LCW Liebert Cassidy Whitmore

Client Update

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

JUNE 2019

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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FIRM VICTORY

LCW Obtains Workplace Violence Restraining Order For Special District.

California employers may seek a temporary restraining order (TRO) and a permanent injunction against anyone in order to protect current employees from unlawful violence or a credible threat of violence in the workplace. As part of the LCW employment relations consortium, a Special District contacted LCW to report that one employee assaulted another employee, without provocation, at the workplace. The employees seldom spoke to each other, and the employee who was attacked does not know why the other employee assaulted him. No other employees were present in the room during the attack, but members of the public and children were present. The Special District reported it terminated the attacker-employee, but thereafter, other employees saw him the parking lot and they were concerned. The employee who was attacked feared he would be attacked again if he encountered the former-employee.

LCW attorney Alison R. Kalinski advised the Special District that the best way to protect the employee who was assaulted would be to obtain a Workplace Violence Restraining Order. After obtaining the TRO, Kalinski met with the employee who was attacked and other witnesses to prepare for the hearing. Kalinski guided the employee's testimony in court about the attack and his fears that it could re-occur. In response, the court issued a permanent restraining order that keeps the attacker away from the employee and the worksite for three years.

Note:

Employers have a duty to provide a safe workplace. If you are aware or suspect any threats of violence to any employees, LCW can advise and determine whether a Workplace Violence Restraining Order is appropriate.

DISCRIMINATION

U.S. Supreme Court Concludes That County Forfeited Its Late Objection That An EEOC Complaint Failed To Reference A Protected Status The Employee Pursued In A Title VII Action.

Title VII of the Civil Rights Act of 1964 ("Title VII") prohibits discrimination in employment based on race, color, religion, sex, or national origin. Title VII requires an employee to file a charge with the Equal Employment Opportunity Commission ("EEOC") or a State fair employment agency before commencing a

Title VII action in court. Once the EEOC receives a complaint, it notifies the employer and investigates the allegations. The EEOC may then resolve the complaint through informal conciliation, or may sue the employer. If the EEOC chooses not to sue, it issues a right-to-sue notice, which allows the employee to initiate a lawsuit. An employee must have this right-to-sue notice before initiating a lawsuit.

Lois Davis filed an EEOC complaint against her employer, Fort Bend County. She alleged sexual harassment and retaliation for reporting harassment. While the EEOC complaint was still pending, the County fired Davis because she went to church on a Sunday instead of coming to work as requested. Davis attempted to amend her EEOC complaint by handwriting "religion" on an EEOC intake form; however, she never amended the formal charge document. Upon receiving her right-to-sue notice, Davis sued the County in federal court for religious discrimination and retaliation for reporting sexual harassment.

After years of litigation, the County alleged for the first time that the court did not have jurisdiction to decide Davis' religious discrimination claim because that protected status was not included in her formal EEOC charge. The trial court agreed and dismissed the suit. On appeal, the Fifth Circuit reversed and held that an EEOC complaint was not a jurisdictional requirement for a Title VII suit, and therefore, the County forfeited its defense because it waited years to raise the objection. The U.S. Supreme Court then agreed to hear the case.

The U.S. Supreme Court had to decide whether an EEOC complaint is a jurisdictional or procedural requirement for bringing a Title VII action. When a jurisdictional requirement is not met, a court has no authority whatsoever to decide a certain type of case. A procedural requirement, by contrast, is a claim-processing rule that is a precondition to relief that may be waived if there is no timely objection. The Court noted that a key distinction between the two is that jurisdictional requirements may be raised at any stage of the proceedings, but procedural requirements are only mandatory if the opposing party timely objects.

The Supreme Court concluded that Title VII's complaint-filing requirement is not jurisdictional because those laws "do not speak to a court's authority." Instead, those complaint-filing requirements speak to "a party's procedural obligations." Therefore, the Court found that while filing a complaint with the EEOC or other State agency is still mandatory, the County forfeited its right to object to Davis' failure to mention religious discrimination in her EEOC complaint because the County did not raise the objection until many years into the litigation.

Fort Bend County v. Davis, 587 U.S. ____ (2019).

NOTE:

This case demonstrates the importance of considering the adequacy of an employee's administrative EEOC or California Department of Fair Employment and Housing discrimination complaint early in the litigation process. LCW trial attorneys regularly help public agencies defended themselves against all types of discrimination lawsuits.

School District Gets Employee's Harassment And Retaliation Claims Dismissed.

Aurora Le Mere began working as a teacher for Los Angeles Unified School District ("LAUSD") in 2002. While working at LAUSD, Le Mere filed numerous claims and complaints. Le Mere filed two workers' compensation claims and at least two administrative complaints alleging that LAUSD violated provisions of the Education Code. In 2007, Le Mere filed a civil action against LAUSD and two individuals for discrimination, retaliation, and civil rights violations. In 2015, Le Mere filed a second civil action against LAUSD and six individuals alleging that she had endured a pattern of continued harassment, intimidation, discrimination, hostility, and retaliation following her various complaints.

LAUSD demurred to Le Mere's 2015 civil action. In other words, LAUSD requested the trial court to determine, even assuming that the incidents Le Mere claimed were true, that she still had no case under the law. The trial court sustained LAUSD's demurrer and dismissed many of Le Mere's claims, including all of the claims against

individual defendants. Subsequently, Le Mere filed a First Amended Complaint ("FAC") asserting the same causes of action against LAUSD and the individual defendants. LAUSD demurred again, and for the same reasons as before, the trial court dismissed her complaint. Le Mere then filed a Second Amended Complaint ("SAC") alleging that LAUSD: (1) harassed her in violation of Education Code sections 44110 through 44114; (2) violated Labor Code section 1102.5; and (3) violated Labor Code section 226.7. The first claim for harassment was newly added. In February 2016, prior to filing her SAC, Le Mere filed a claim under the Government Claims Act, which is a prerequisite for bringing certain claims against a public entity. LAUSD demurred once again, and the trial court dismissed Le Mere's lawsuit. Le Mere appealed.

On appeal, Le Mere argued that the trial court improperly dismissed the retaliation claim under the California Fair Employment and Housing Act ("FEHA") that she asserted in her FAC. The Court of Appeal disagreed. The court noted that the elements of a claim for retaliation under the FEHA are: (1) the employee's involvement in a protected activity; (2) retaliatory animus on the part of the employer; (3) an adverse employment action; (4) a causal link between the retaliatory animus and the adverse action; (5) damages; and (6) causation. However, the court noted, Le Mere's FAC did not name the individual defendants engaged in any retaliatory conduct or even allege the named defendants were LAUSD employees. Further, the FAC did not allege that the individual defendants knew about Le Mere's 2007 lawsuit, which Le Mere had identified as her protected activity. Moreover, the court noted that almost two years elapsed between the 2007 lawsuit and the first alleged instances of retaliation in 2009. This was not sufficient to establish causation. Thus, the trial court properly dismissed the retaliation claim.

Le Mere also argued that the trial court erred in dismissing the harassment claim under the Education Code she asserted in her SAC. Again, the Court of Appeal affirmed the trial court's ruling. Le Mere filed her SAC 14 months after the original complaint and offered no explanation for asserting the new cause of action. Further, the new cause of action was not properly pled because it did not allege that a complaint had been lodged with local law enforcement, which is a prerequisite for a harassment claim under Education Code sections 44110 through 44114. Accordingly, the trial court properly dismissed this claim in Le Mere's SAC.

Finally, Le Mere argued that the trial court improperly dismissed her Labor Code section 1102.5 claim in her SAC. The Court of Appeal disagreed once again. In order to bring a Labor Code section 1102.5 claim against a public entity, the person must comply with the Government Claims Act. Under that Act, a person must first file a claim for money or damages with the public entity. Further, the claim must usually be presented to the public entity within six months after the alleged bad act occurred. Failure to meet these requirements bars a person from suing the entity. Here, Le Mere eventually filed a claim in February 2016, but that was one year after Le Mere filed the initial complaint and several months after she filed the FAC. Thus, the Court of Appeal concluded that the trial court properly dismissed the claim.
Le Mere v. Los Angeles County Unified School District, 2019 WL 2098780 (2019).

Note:

LCW has a thriving litigation practice. LCW attorneys are very successful in using all available tools to convince courts to dismiss claims against public entities.

CONSTITUTIONAL RIGHTS

Ninth Circuit Withdraws Its 2018 Opinion And Upholds Probationary Release Of Officer For On-Duty Calls And Texts To Paramour-Officer.

Janelle Perez, a probationary police officer, began a romantic relationship with Shad Begley, another officer employed at the same municipal police department. Both officers separated from their respective spouses once they began working together.

The department then received a written citizen's complaint from the male officer's wife, alleging

that the two officers were having an extramarital relationship, on-duty sexual contact, and numerous on-duty communications via text and telephone.

The department's internal investigation found no evidence of on-duty sexual relations, but did find that the officers called or texted each other several times while on duty. The investigation ultimately sustained charges that both officers: (i) violated the department's telephone policies; (ii) violated the department's "unsatisfactory work performance" standard; and (iii) engaged in "conduct unbecoming" for their personal, on-duty contact.

On August 16, 2012, the department sent a letter to Begley's wife informing her that its investigation into her citizen complaint was completed. The letter also listed the sustained charges against the officers.

Based on the department's custom of terminating probationary officers who violate policies, the Internal Affairs Captain overseeing the investigation recommended that Perez be terminated. The Chief disagreed, and decided a written reprimand based on the two sustained charges against both officers was sufficient.

Both officers appealed the written reprimands. While the appeals were pending, the officers continued their personal relationship. Before the date of Perez's administrative hearing, the Chief received negative comments about Perez's job performance from several sources.

Perez's administrative appeal of her reprimand concluded in September 2012. Based on the evidence, the Chief sustained her reprimand for violating the department's telephone policy. However, based on the recent negative comments about Perez's job performance and the sustained policy violation, the Chief released Perez from probation on September 4, 2012. The Chief confirmed that the officers' affair played no role in his decision to release Perez.

Perez then sued the city, the police department, and individual members of the department. She claimed, among other things, that her release violated her constitutional right to privacy and intimate association because it was impermissibly based in part on management's disapproval of her private, off-duty sexual conduct. The district court granted summary judgment in favor of the city defendants on all claims, and Perez appealed.

In its first decision in this case in 2018, the Ninth Circuit reversed the city defendants' summary judgment victory as to Perez's privacy and intimate association claims. In that 2018 decision, the Ninth Circuit opined that Perez had presented sufficient evidence that "[a] reasonable factfinder could conclude that [the Captain overseeing the investigation] was motivated in part to recommend terminating Perez on the basis of her extramarital affair, and that he was sufficiently involved in Perez's termination that his motivation affected the decision-making process."

Following the death of Judge Stephen Reinhart, who was on the panel that issued the 2018 opinion, the Ninth Circuit withdrew the 2018 opinion and issued a new one. The second opinion gave the summary judgment victory back to the individual defendants based on qualified immunity.

The Ninth Circuit noted that under the doctrine of qualified immunity, courts may not award damages against a government official in his or her personal capacity "unless the official violated a statutory or constitutional right, and the right was clearly established at the time of the challenged conduct." To determine whether there is a violation of clearly established law, courts assess whether any prior cases establish a right that is "sufficiently definite."

The Ninth Circuit first examined *Thorne v. City of El Segundo*, 726 F.2d 459 (9th Cir. 1983), which explicitly rejected a rule that a police department can never consider its employees' sexual relations. Rather, *Thorne* held that a police department could not inquire about or consider a job applicant's past sexual history that was irrelevant to on-the-job considerations.

Similarly, in *Fleisher v. City of Signal Hill*, 829 F.2d 1491 (9th Cir. 1987), the Ninth Circuit held that a police department could fire a probationary police officer over criminal sexual conduct that occurred before he was hired because it "compromised [the

officer's] performance as an aspiring police officer" and "threatened to undermine the department's community reputation and internal morale."

The Ninth Circuit held that *Thorne* and *Fleisher* did "not clearly establish that a police department is constitutionally prohibited from considering an officer's off-duty sexual relationship in making a decision to terminate her, where there is specific evidence that the officer engaged in other on-the-job conduct in connection with that relationship that violated department policy."

The Ninth Circuit held the individual defendants did not violate any clearly established law in terminating Perez because there was evidence from the investigation that Perez's on-duty personal telephone use was a clear violation of department policy that reflected negatively on the department. Therefore, the individual defendants had qualified immunity on the privacy and intimate association claims.

Perez also claimed that the individual defendants violated her constitutional right to due process under the Fourteenth Amendment by failing to: give her adequate opportunity to refute the charges made against her; and allow her to clear her name before she was released from probation. Specifically, Perez argued the department managers violated her right to due process by disclosing the charges sustained against her in the August 16, 2012 letter to the officer's wife.

The Ninth Circuit disagreed. To trigger a procedural opportunity to refute the charges, the employee must show: (i) the accuracy of the charge is contested; (ii) there is some public disclosure of the charge; and (iii) the charge is made in connection with termination of employment. The Ninth Circuit stated that the letter to the officer's wife regarding her citizen's complaint was not made "in connection with termination of employment" because there was an insufficient temporal nexus between that letter and Perez's release 19 days later. Therefore, the Ninth Circuit found the individual defendants had qualified immunity as to Perez's due process claim because they did not violate any clearly established law in terminating her.

Perez's complaint also claimed that her release was due to gender discrimination in violation of Title VII of the Civil Rights Act of 1964 and California's Fair Employment and Housing Act. But she conceded on appeal that the only "gender-related" discrimination she was alleging was based on her relationship with the other officer. The relationship, however, triggered only her rights to privacy and intimate association. In view of Perez's concession, the Ninth Circuit affirmed the grant of summary judgment to the individuals, the city and the department on those claims.

Perez v. City of Roseville, et al, 2019 WL 2182488 (unpublished).

NOTE:

LCW previously reported on the Ninth Circuit's 2018 opinion in this case in the March 2018 Client Update. The 2018 opinion has been withdrawn and cannot be relied upon. The new opinion shows why public safety managers must carefully analyze whether an employee's off-duty conduct impacts the workplace before issuing discipline based on off-duty conduct. This case outlines the circumstances when a public safety employer may lawfully consider its employee's off-duty sexual relations.

RETIREMENT

Interim Finance Manager Retained Through Regional Government Services Was An Employee Entitled To CalPERS Membership And Contributions.

Tracy Fuller served as an Interim Finance Manager for the Cambria Community Services District ("CCSD") from March to November of 2014 following the former Finance Manager's retirement. Fuller previously worked with other CalPERS member agencies, and retired within the CalPERS system. Throughout Fuller's retention, CCSD actively sought to (and eventually did) hire a permanent Finance Manager replacement. CCSD retained Fuller through Regional Government Services ("RGS"), a joint powers authority that does not contract with CalPERS. RGS has worked with over 200 local agencies

since approximately 2002. RGS hires retirees as employees of RGS, and classifies itself as an independent contractor which is not subject to CalPERS pension laws.

CalPERS audited CCSD in late 2014, and issued a report finding Fuller was not an independent contractor and should have been enrolled in CalPERS as an eligible employee. CCSD appealed CalPERS' determination. Throughout the audit and appeal, CCSD, RGS and even Fuller agreed and characterized her service as a third-party contractor and RGS employee.

The CalPERS Board of Administration adopted the Administrative Law Judge's ("ALJ") proposed decision and determined that Fuller was a common-law employee of CCSD. Thus, CCSD was required to pay pension contributions on Fuller's behalf as a CalPERS member. The Board noted that the California Supreme Court has held that the retirement law's provisions regarding employment incorporate the common law test. Under this test, an employer-employee relationship exists if the employer has the right to control the manner and means of accomplishing the desired result (as opposed to simply the result, which instead establishes an independent contractor relationship). Courts will also consider a number of other secondary factors in this analysis.

The Board and the ALJ primarily relied on the following factors to determine that Fuller was a common law employee who must be enrolled in CalPERS: 1) CCSD ultimately had the right to control the manner and means in which Fuller accomplished her assignments; 2) RGS could not reassign Fuller without CCSD's consent; 3) Fuller ultimately reported to CCSD's General Manager; 4) CCSD's General Manager and Administrative Services Officer ("ASO") determined and issued her particular assignments, not RGS; 5) CCSD's General Manager and ASO evaluated her work; 6) Fuller's work, although different in kind from her predecessor, simply reflected the particular financial work CCSD needed at the time, and was not sufficiently distinguishable from any other past Finance Manager's duties; 7) CCSD provided Fuller with an office, phone, limited access to its computer systems, and an email address; 8) CCSD paid for Fuller's local housing; 9) CCSD described Fuller as a staff member in its board minutes; 10) RGS did not provide any specialized services and the ALJ held "operating as an Interim Finance Manager for a public agency is not a distinct occupation or business, and is work usually done under the principal's direction"; 11) RGS and CCSD's independent contractor agreement provided for an option to extend the agreement on a month-to-month basis, past the specified four-month term; and 12) although CCSD paid Fuller indirectly through RGS, Fuller was still paid by the hour, not the job. Accordingly, the Board and ALJ concluded that the weight of the factors supported a finding that Fuller was a CCSD employee. Further, because the Board determined CCSD should have known Fuller was improperly classified, it imposed additional liability on CCSD.

Fuller v. Cambria Community Services District, PERS Case No. 2016-1277.

NOTE:

Following the Board's adoption of the ALJ's proposed decision, CalPERS staff recommended the Board designate the decision as "precedential" so that it would be binding on other agencies. The CalPERS Board, however, sought out public comment before considering at its June 2019 Board meeting whether to make the Fuller decision precedential. As of May 24, 2019, the item was pulled from the Board's June agenda, and CalPERS does not appear to have any public plans to designate this decision as precedential. Even though this case is not precedential, the Fuller decision demonstrates the great level of risk involved in classifying a retiree as an independent contractor. LCW is publishing a blog post on this decision with additional information regarding the implications of the Fuller decision. LCW can assist employers to analyze whether a retiree qualifies for the independent contractor exception to CalPERS membership.

Bonus Payments For Consultant's Additional Work Were Not Pensionable.

Dr. Robert Paxton is a medical consultant-psychiatrist for the Department of Social Services ("DSS") who reviews claims of disabled Californians seeking federal Social Security Benefits. Dr. Paxton, and other consultants who do this work,

are expected to be at work for certain hours and must work 40 hours per week, but otherwise have flexibility in their schedules.

In 1993, after laboring with periodic backlogs of cases, the DSS received an exemption from the Department of Personnel Administration ("DPA") to temporarily pay medical consultants overtime to deal with the pending cases. The DPA granted the exemption even though the consultants were salaried employees.

The DSS requested another exemption in 1996, but the DPA denied the request. Thereafter, the DSS and the union agreed to a voluntary bonus program for processing additional workload. Under the bonus program, medical consultants would be paid for each case closed above a certain threshold per week. The DSS stopped the bonus program in November 2011.

Dr. Paxton participated in the bonus program from 2005 until it ended. As a result, Dr. Paxton earned over 1.2 million dollars in bonuses, despite testifying that he did not work more than 40 hours per week. At times, Dr. Paxton's monthly bonuses were more than three times his monthly salary.

In 2012, Dr. Paxton submitted a request to CalPERS for the cost to purchase five years of additional service credit, which was allowed under the retirement law at the time. CalPERS excluded Dr. Paxton's bonuses in its calculation of the cost. While the exclusion of Dr. Paxton's bonuses resulted in a lower cost to purchase the additional service credit, calculating his pension this way would reduce the benefit Dr. Paxton would be eligible for upon retirement. Dr. Paxton challenged CalPERS determination that the bonuses were not pensionable.

The CalPERS Board determined that the bonus payments were not pensionable because they did not qualify as special compensation under the law. Dr. Paxton then requested that the courts review the decision. The trial court concluded the Board properly determined that the bonus payments were not pensionable compensation because they were intended to compensate Dr. Paxton for performing additional work outside of his regular duties. Dr. Paxton appealed.

The Court of Appeal affirmed the trial court's decision and determined that the bonus payments were not compensable. The court noted that the retirement law explicitly excludes "bonuses for duties performed after the member's work shift" from the calculation of special compensation but includes "bonuses (for duties performed on regular work shift)." Here, the court determined that Dr. Paxton's bonus payments were for duties performed after his work shift, and therefore, were not included as special compensation. The court noted that the bonus program was a replacement for an overtime program that was necessitated because the consultants refused to work more hours to address the backlog of claims. Therefore, the foundation of the bonus program was the understanding that it would compensate consultants for additional work that was not part of their duties.

Paxton v. Board of Administration, California Public Employees' Retirement System, 2019 WL 2171135 (2019).

Note:

This case illustrates the complexities of calculating an employees' pensionable compensation. LCW attorneys are experts in helping agencies to comply with CalPERS requirements, including analyzing what types of pay count toward pensionable compensation.

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.

- The Ninth Circuit Court of Appeals held that racial discrimination claims under 42 U.S.C. section 1981 may be subjected to compulsory

arbitration. *See Lambert v. Tesla, Inc.*, 2019 WL 2147497 (2019).

- The Fair Labor Standards Act does not permit an employee to volunteer for a public agency if the volunteer services involve the same type of services that the employee is paid to perform for that agency. For example, a city's beach lifeguard cannot volunteer to lifeguard for swim lessons at the city's recreational center. *See* 29 C.F.R. section 553.102.
- Employers are prohibited from considering misdemeanor marijuana-related convictions that are more than two years old when making an employment decision regarding a job applicant. *See* California Labor Code sections 432.7 and 432.8.

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 analyst contacted LCW with a question regarding an applicant selected for a seasonal position. The agency accidentally extended a conditional job offer to an applicant who did not show up for the interview, and the no-show applicant promptly accepted the offer. The agency had already requested a fingerprint and drug screen for the no-show applicant, so the human resources analyst sought LCW's guidance for how to proceed.

Answer: The attorney advised the human resources analyst to cancel the fingerprint and drug screen immediately. The attorney noted that the agency should cancel these tests so that the no-show applicant could not argue that the agency improperly relied on any incriminating results to rescind the conditional offer.

BENEFITS CORNER

Has Your Agency Received An IRS Letter 226J Penalty Notice?

The IRS has steadily increased its enforcement practices since approximately late 2017, starting with evaluation of the 2015 tax year. In March 2018, the Treasury Inspector General for Tax Administration issued a report referencing that of the 318,296 applicable large employers ("ALEs") filing ACA information returns for the 2015 tax year, the IRS identified 49,259 ALEs as potentially owing an ACA penalty. The IRS has continued its ACA enforcement practices for subsequent tax years, currently focusing on the 2016 tax year.
The IRS may have sent your agency a Letter 226J penalty notice, proposing an Employer Shared Responsibility Payment ("ESRP"). This ESRP is essentially an IRS assessed penalty for full-time employees of an ALE who for one or more months of the reporting year received a premium tax credit through a government exchange.

These ESRP assessments can range from hundreds to millions of dollars depending on the size of your agency, reporting requirements and information. We recommend employers receiving any type of IRS penalty notice respond quickly and carefully. These proposed ESRP amounts are not final penalties, but provide employers an opportunity to respond and appeal.

Employers should assess whether the potential ESRP relates to penalty (a) (i.e. the failure to offer coverage to "substantially all" full-time employees and their dependents penalty) or penalty (b) (i.e. the "unaffordable" coverage penalty). Once you assess the nature of the potential penalty, gather and analyze all relevant information relating to the

penalty calculation. Often times, the IRS does not have the full or complete information and you will want to carefully explain your agency's position in an appeal letter and provide the supporting documentation.

A copy of Letter 226J may be reviewed here: https://www.irs.gov/pub/notices/ltr226j.pdf.

Can Your Agency Offer Deferred Compensation Under A Section 125 Cafeteria Plan?

A key question we often receive and advise agencies on is whether a Section 125 Cafeteria Plan allows employees to direct cash in lieu of benefits and excess plan allowances to a deferred compensation plan. These arrangements should be red flags for the agency since cafeteria plans under Internal Revenue Code section 125 may not offer any benefit which defers the receipt of compensation (subject to limited exceptions). On a related note, 457(b) plans are deferred compensation plans, and therefore are not qualified benefits under a cafeteria plan benefit. For the reasons just mentioned, we generally recommend that employers create election forms for 457(b) plans separate from election forms used for a cafeteria plan, along with additional safeguards to maximize separation between the plans.

Agencies who fail to comply with this requirement risk potential significant tax implications for both the employee and employer that jeopardize the tax-advantaged nature of the qualified benefits under the cafeteria plan.

IRS Announces 2020 Annual Contribution Limits For Health Savings Accounts (HSA)

The 2020 annual limit on HSA contributions will be $3,550 for self-only coverage and $7,100 for family coverage.

For 2020, a HDHP is a health plan with an annual deductible of not less than $1,400 for self-only coverage or $2,800 for family coverage, and the annual out-of-pocket expenses do not exceed $6,900 for self-only coverage or $13,800 for family coverage.

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New to the Firm

Donald Le is an Associate in Liebert Cassidy Whitmore's Los Angeles office where he assists clients in matters pertaining to labor & employment law as well as business, construction and facilities. He represents the interests of both public and private sector clients in transaction and litigation matters. He has experience representing and advising owners, contractors, design professionals, and large sub-contractors on a wide variety of construction matters and projects throughout the state.

He can be reached at 310.981.2020 or dle@lcwlegal.com.

PLEASE NOTE:
To celebrate the upcoming summer break, we will combine the July and August 2019 issues of this newsletter.

Check your inbox in August for information on the latest legal developments.

ON THE MOVE!

Our SAN DIEGO Office is relocating! As of June 1, we'll be located at:
401 West "A" Street, Suite 1675
San Diego, CA 92101
619.481.5900

MANAGEMENT TRAINING WORKSHOPS

Firm Activities

Consortium Training

June 13 **"Creating a Culture of Diversity in Hiring, Promotion and Supervision"**
LA County HR Consortium | Los Angeles | Kristi Recchia

June 19 **"Leaves, Leaves and More Leaves"**
Orange County Consortium | Buena Park | Jennifer Rosner

June 20 **"The Future is Now - Embracing Generational Diversity and Succession Planning"**
San Mateo County ERC | Belmont | Heather R. Coffman

Customized Training

June 3,6,12,14 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Stockton | Kristin D. Lindgren

June 4 **"Training Academy for Workplace Investigators: Core Principles, Skills & Practices for Conducting Effective Workplace Investigations"**
City of Los Angeles | Julie L. Strom

June 4,12,13 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Newport Beach | Christopher S. Frederick

June 6,10,11 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of El Segundo | Jenny Denny

June 6 **"12 Steps to Avoiding Liability and Nuts & Bolts Navigating Common Legal Risks for the Front Line Supervisor"**
California Joint Powers Risk Management Authority | Livermore | Suzanne Solomon

June 6 **"Maximizing Performance Through Evaluation, Documentation, and Corrective Action"**
Zone 7 Water Agency | Livermore | Lisa S. Charbonneau

June 10,12 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Santa Cruz | Kelsey Cropper

June 12 **"Respectful Workplace: Preventing Workplace Harassment, Discrimination and Retaliation and Mandated Reporting"**
City of Carlsbad | Carlsbad | Frances Rogers

June 13 **"Ethics in Public Service"**
City of Rancho Cucamonga | Kevin J. Chicas

June 13 **"Communications Regarding Critical Incidents"**
City of South Gate | J. Scott Tiedemann

June 13 **"12 Steps to Avoiding Liability and Nuts & Bolts Navigating Common Legal Risks for the Front Line Supervisor"**
California Joint Powers Risk Management Authority | Rocklin | Suzanne Solomon

June 13 **"Managing the Marginal Employee"**
County of Riverside | Riverside | Danny Y. Yoo

June 14 **"Freedom of Speech and Right to Privacy"**
Labor Relation Information System - LRIS | Las Vegas | Mark Meyerhoff

June 19 **"Mandated Reporting"**
City of Rancho Cucamonga | Christopher S. Frederick

Speaking Engagements

June 12 **"#MeToo: A Guide to Effectively Addressing Risk"**
Public Agency Risk Management Association (PARMA) San Diego Chapter Luncheon | San Diego | Stephanie J. Lowe

June 20 **"Will the California Rule Survive? Update on State Pension Litigation"**
Southern California Public Labor Relations Council (SCPLRC) | Cerritos | Steven M. Berliner

June 25 **"A General Manager's Guide to Bringing Out the Best in their Boards, Commissions and Elected Officials"**
California Special Districts Association (CSDA) General Manager Leadership Summit | Newport Beach | T. Oliver Yee

Seminars/Webinar

June 20 **"The Rules of Engagement: Issues, Impacts & Impasse"**
Liebert Cassidy Whitmore | Suisun City | Richard Bolanos & Kristi Recchia

Firm Publications

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

Partner **Elizabeth Tom Arce**, from our Los Angeles office, was featured in the March 27, 2019 *Los Angeles County Bar Association's Daily eBriefs* "Member Benefit Spotlight" in honor of Women's History Month.

"California's Minimum Wage Applies to Charter Cities and All Counties" quote by Partner **Peter J. Brown** and Associate **Megan Atkinson** of our Los Angeles office, appeared in the April 1, 2019 issue of the *Daily Journal*.

"Is the Holiday Over? California Public Agencies May Face a Barrage of FLSA Lawsuits for Holiday Pay" quote by Partner **Jesse Maddox** and Associate **Bryan Rome** of our Fresno and Sacramento offices, appeared in the April 3, 2019 issue of the *Daily Journal*.

"Nepotism Investigations Spur Questions for California State Workers: Where is it Happening?" quote by Partner **Gage C. Dundy** of our Sacramento office, appeared in the April 15, 2019 issue of the *Sacramento Bee*.

The ***Client Update*** is available via e-mail. If you would like to be added to the e-mail distribution list, please visit https://www.lcwlegal.com/news. **Please note:** By adding your name to the e-mail distribution list, you will no longer receive a hard copy of the ***Client Update***.

If you have any questions, contact **Jaja Hsu** at 310.981.2000 or at info@lcwlegal.com.

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