LCW LIEBERT CASSIDY WHITMORE

LEGISLATIVE ROUNDUP

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

2018

TABLE OF CONTENTS

LCW NEWS

Legislative Roundup is published annually for the benefit of the clients of Liebert Cassidy Whitmore. The information in ***Legislative Roundup*** should not be acted on without professional advice.

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The Legislative Roundup is a compilation of bills, presented by subject, which were signed into law and have an impact on the employment and employment related issues of our clients. Unless the bills were considered urgency legislation (which means they went into effect the day they were signed into law), bills are going into effect on January 1, 2019, *unless otherwise noted. Urgency legislation will be identified as such.*

If you have any questions about your agency's obligations under the new or amended laws as outlined below, please contact our Los Angeles, San Francisco, Fresno, Sacramento or San Diego office and an attorney will be happy to answer your questions.

DISCRIMINATION, HARASSMENT AND RETALIATION

AB 2770 – Employee Sexual Harassment Complaints Are Privileged Communications.

Civil Code section 47(c) defines privileged publications and broadcasts that can be used as a defense to claims of defamation. Included among these is the so-called "common interest privilege", which allows employers to provide factual information without malice about current or former employees to a prospective employer, including whether the employer would rehire the employee.

AB 2770 expands the categories of privileged communications not subject to defamation claims under this subsection to now include the following:

1. Complaints of sexual harassment made by an employee, without malice, to an employer based on credible evidence;
2. Communications between the employer and interested persons, without malice, regarding a complaint of sexual harassment; and
3. Communications from an employer, without malice, regarding a current or former employee to a prospective employer of that employee to note if they would rehire the current or former employee and whether such decision is based upon the employer's determination that the employee engaged in sexual harassment.

Public agencies should examine their policies about the disclosure of information to prospective employers about current and former employees to determine if such procedures should be modified in light of AB 2770. While AB 2770 does not mandate that an employer disclose any information regarding a current or former employee to a prospective employer, public agencies should also be cautious about what information to provide. The reference in Civil Code section

47(c) to "*without malice*" is generally interpreted to mean that the information disclosed must be objective and factual, and not based solely on an opinion. In addition, there is also case law noting that an employer may be liable for providing a positive reference to a prospective employer when the employer knew of employee misconduct, which could include sustained claims of sexual harassment. Neutral references that merely provide dates of employment and job positions held will not establish such liability.

(AB 2770 amends Section 47 of the Civil Code.)

AB 3109 – Voids Waivers of Right to Testify About Alleged Criminal Conduct or Sexual Harassment.

AB 3109 prohibits a contract or settlement agreement from limiting or waiving a party's right to testify in an administrative, legislative, or judicial proceeding concerning alleged criminal conduct or alleged sexual harassment on the part of the other party to the contract where the party has been required or requested to attend the proceeding. Any such provisions will be void and unenforceable in a contract or settlement agreement entered into on or after January 1, 2019. A party is deemed required or requested to attend a proceeding when it is pursuant to a court order, subpoena, or written request from an administrative agency or the legislature.

Public agencies must ensure that any contracts or settlements entered into on or after January 1, 2019 do not limit or waive a party's right to testify in a proceeding concerning alleged criminal conduct or sexual harassment.

(AB 3109 adds Section 1670.11 to the Civil Code.)

SB 224 – Amends Elements for Sexual Harassment Claims Under the Civil Code.

Civil Code section 51.9 of the Unruh Act imposes liability for sexual harassment in a non-employment context involving business, service, and professional relationships (e.g., physician, attorney, real estate agent, loan officer, financial planner, landlord, teacher, etc.). Currently, sexual harassment liability exists under Section 51.9 when a plaintiff shows that such a business, service, or professional relationship exists between the plaintiff and defendant and the following elements are met:

1. The defendant has made sexual advances, solicitations, sexual requests, demands for sexual compliance, or engaged in other verbal, visual, or physical conduct that were unwelcome and pervasive or severe and based on gender;

2. The plaintiff could not easily terminate the relationship; and

3. The plaintiff has suffered or will suffer economic loss or disadvantage or personal injury as a result of the defendant's conduct.

SB 224 removes the second element noted above – *"The plaintiff could not easily terminate the relationship"* – in order to bring a cause of action for sexual harassment under Section 51.9.

The bill also adds "elected official", "lobbyist" and "director or producer" to the list of examples of individuals who can be subject to liability if they engage in sexual harassment in such business, service and professional relationships. As applied to public agencies, the addition of "elected official" could now expand liability of an elected official for any sexual harassment towards others in a business, service or professional relationship. According to the bill's author, elected officials have particular influence over their staff and lobbyists, which warranted including them under this law.

This bill also makes the Department of Fair Employment and Housing ("DFEH") responsible for enforcing sexual harassment claims under Section 51.9 and makes it unlawful to deny or aid, incite, or conspire in the denial of a person's rights related to sexual harassment claims.

(SB 224 amends Section 51.9 of the Civil Code and amends Sections 12930 and 12948 of the Government Code.)

SB 820 – Settlement Agreements Cannot Prevent Disclosure of Sexual Harassment or Sexual Assault Information.

Effective with any settlement agreements entered into on or after January 1, 2019, SB 820 prohibits confidentiality provisions in settlement agreements that limit the disclosure of factual information related to:

1. Sexual assault;
2. Sexual harassment involving business, service, or professional relationships as defined in Civil Code section 51.9 of the Unruh Act; or
3. Workplace harassment or discrimination based on sex, failure to prevent an act of workplace harassment or discrimination based on sex, or an act of retaliation against a person for reporting harassment or discrimination based on sex as provided under Government Code section 12940 of the Fair Employment and Housing Act.

Any such confidentiality provisions in settlement agreements, entered into on or after January 1, 2019, are void as a matter of law and against public policy.

Public agencies should note this restriction on settlement agreements and work with legal counsel to ensure that any settlement agreements entered into on or after January 1, 2019 do not limit or seek to limit a party's disclosure of information related to sexual assault, sexual harassment, or discrimination based on sex.

(SB 820 adds Section 1001 to the Code of Civil Procedure.)

SB 1300 – Creates New Employee Protections Impacting FEHA Claims for Discrimination, Retaliation, and Harassment.

SB 1300 makes a significant number of changes related to the handling of and determining liability for discrimination, retaliation, and harassment claims under the Fair Employment and Housing Act ("FEHA"), including the following:

<u>New Section 12923 Expands Harassment and Discrimination Liability Under FEHA</u>

SB 1300 creates a new Government Code section 12923 under FEHA, which mandates the following:

- The "*severe or pervasive*" legal standard is rejected, so that a single incident of harassing conduct is now sufficient to create a triable issue of fact regarding the existence of a hostile work environment;
- A plaintiff no longer needs to prove his or her "*tangible productivity*" declined as a result of harassment in a workplace harassment suit, and may instead show a "*reasonable person*" subject to the alleged discriminatory conduct would find the harassment altered working conditions so as to make it more difficult to work;
- Any discriminatory remark, even if made by a non-decision maker or not made directly in the context of an employment decision, may be relevant evidence of discrimination in a FEHA claim; and
- The legal standard for sexual harassment will not vary by type of workplace, and courts will therefore only consider the nature of the workplace in a harassment claim when "*engaging in or witnessing prurient conduct or commentary*" is integral to the performance of an employee's job duties.
- Establishes the Legislature's intent that "*[h]arassment cases [under FEHA] are rarely appropriate for disposition on summary judgment.*" This means that FEHA harassment claims will be more difficult to get dismissed in court before trial, regardless of the merit of the allegations.

<u>Limitations on Recovery of Attorney's Fees by Prevailing Employer in FEHA Cases</u>

SB 1300 limits a prevailing employer's ability in a FEHA case to recover attorney and expert witness fees unless a court finds a plaintiff's action was "*frivolous, unreasonable, or totally without foundation.*"

Limitations on Use of Non-Disparagement Agreements, Confidentiality Agreements and Waiver of FEHA Claims

SB 1300 also prohibits an employer from requiring that an employee sign a non-disparagement agreement, confidentiality agreement, or any other document denying the employee the right to disclose information about unlawful acts in the workplace, including sexual harassment. SB 1300 also makes it unlawful for an employer to require an employee to waive FEHA rights in exchange for a raise or bonus or as a condition of employment unless the release is a voluntarily negotiated settlement agreement filed by an employee in court or an alternative dispute resolution forum, before an administrative agency, or through an employer's internal complaint process.

Option for Employers to Provide Bystander Intervention Training

Finally, SB 1300 allows, but does not require, an employer to provide "*bystander intervention training*" to enable bystanders to identify problematic behaviors in the workplace, including sexual harassment, and intervene as appropriate.

In summary, SB 1300's changes to FEHA will make it much easier for employees to file, litigate, and prevail on harassment and discrimination claims against California employers. Accordingly, it is vital that employers take effective corrective action immediately when claims of harassment and/or discrimination arise. Employers should also review their harassment and discrimination policies to ensure they are compliant with these changes to FEHA. Employers should also consult with legal counsel regarding the use of non-disparagement agreements, confidentiality agreements, and waivers of FEHA claims that may be limited by these new statutes.

(SB 1300 amends Sections 12940 and 12965 and adds Sections 12923, 12950.2, and 12964.5 to the Government Code.)

SB 1343 – Requires Employers to Provide Sexual Harassment Trainings to Supervisory and Non-Supervisory Employees.

The California Fair Employment and Housing Act ("FEHA") currently requires public employers to provide at least two hours of training and education on sexual harassment, abusive conduct, and harassment based on gender to all supervisory employees within six months of attaining a supervisory position and once every two years. This is commonly referred to as "AB 1825 supervisor harassment trainings", named after the 2004 legislation that created this requirement.

SB 1343 will now also require public employers to provide at least one hour of sexual harassment training to ***nonsupervisory employees*** **by January 1, 2020**, in addition to the existing requirement to provide two hours of sexual harassment training to supervisory employees. The trainings must be provided in a "classroom or effective interactive training" environment either individually or as part of a group presentation. Similar to the existing supervisory harassment trainings, the trainings must be provided to nonsupervisory employees within six months of their assumption of a position and once every two years thereafter.

Beginning January 1, 2020, an employer must provide sexual harassment trainings to all seasonal employees, temporary employees, and any employee hired to work for less than six months within 30 calendar days after the hire date or within 100 hours worked, whichever occurs first. If a temporary employee is employed by a temp agency to perform services for a public agency, the temp agency shall provide the training and not the public agency.

SB 1343 also mandates that the California Department of Fair Employment and Housing ("DFEH") create two online trainings courses—one supervisory, and one nonsupervisory—to be made available on its website so employers may comply with these sexual harassment training requirements for both nonsupervisory and supervisory employees.

Employers should review all training materials and procedures to ensure they are satisfying not only their existing obligations, but also all new requirements established by these new bills.

(SB 1343 amends Sections 12950 and 12950.1 of the Government Code.)

HIRING

AB 2282 – Clarifies Elements of California's Salary History and Equal Pay Statutes.

California's salary history statute, Labor Code section 432.3, went into effect January 1, 2018. In short, Labor Code section 432.3 prohibits employers from seeking an applicant's salary history in previous employment, requires an employer to provide an applicant with the pay scale for the position upon reasonable request, and restricts how employers can use properly obtained salary history information.

AB 2282 clarifies that a current employee who applies for a different position with the same employer is not considered an "*applicant*" as referenced in Section 432.3. This clarification to the law avoids placing the employer in the untenable position of being required to avoid consideration of salary history information that is already in their possession. For purposes of clarification, AB 2282 defines "*pay scale*" as "*a salary or hourly wage range.*" AB 2282 further revises subdivision (c) of Labor Code 432.3 to define a "reasonable request" for a pay scale as "*a request made after an applicant has completed an initial interview with the employer*." Therefore, an employer is not required to comply with a request for a pay scale from an applicant who has not yet completed an interview. AB 2282 also clarifies that employers are not prohibited from asking an applicant about his or her salary expectation for the position he or she is applying for.

California's Equal Pay Act (Labor Code section 1197.5) currently prohibits employers from relying solely on an applicant's previous salary in making pay determinations. AB 2282 revises Section 1197.5 to maintain that prohibition, but to also specifically permit an employer to make a compensation decision for one of its current employees based on that current employee's existing salary, so long as any wage differential resulting from that compensation is justified by one of the bona fide factors noted in the law. This includes a seniority system, a merit system, a system that measures earning by quantitate or quality of production, or a bona fide factor other than race or ethnicity, such as education, training, or experience.

(AB 2282 amends Sections 432.3 and 1197.5 of the Labor Code.)

AB 2830 – Requires General Law Counties to Develop Hiring Preference Programs for Disadvantaged Groups for Internship and Student Assistant Positions.

AB 2830 requires each general law county to develop a hiring program that gives preference to qualified applicants from "disadvantaged groups" when hiring for internship and student assistant positions. "Disadvantaged groups" are defined in this new law as follows:

- Foster youth,
- Homeless youth (applicant up to 26 years of age who has been verified as a homeless child or youth by a homeless services provider),
- Formerly homeless youth (applicant up to 26 years of age who was previously a homeless youth), and
- Formerly incarcerated youth (individual who was imprisoned and released from that incarceration or custody before attaining 21 years of age).

Under this new law, preference is given to individuals from these "disadvantaged groups" over similarly qualified applicants. Any application for an internship or student assistant position shall have a section allowing the applicant to identify whether he or she is eligible for the hiring preference without specifically requiring the applicant to identify the reason(s) why they are eligible. AB 2830 also requires county welfare departments to notify dependent children, who are subject to termination of dependency proceedings, that they may be eligible for preference in hiring for student assistant or internship positions with general law counties.

In light of AB 2830, general law counties that have intern and/or student assistant positions should review their hiring procedures and make any necessary adjustments in order to comply with this new law.

(AB 2830 adds Section 31000.11 to the Government Code and amends Section 391 to the Welfare and Institutions Code.)

SB 1412 – Clarifies Employers Are Not Prohibited from Seeking Criminal History Information When Required by State or Federal Law.

Labor Code section 432.7 currently prohibits employers from asking an applicant to disclose or considering information related to a criminal conviction that has been judicially sealed or ordered sealed. However, Section 432.7 does not prohibit employers from asking about criminal convictions that have been judicially sealed or expunged if the employer is required to obtain such criminal conviction information pursuant to state or federal law.

SB 1412 confirms that employers are not prohibited from seeking or receiving an applicant's criminal conviction history, including those convictions that have been judicially sealed or expunged, if the employer is required by state, federal, or local law to conduct criminal background checks for employment purposes. However, SB 1412 limits the ability of an employer to gather such criminal conviction history only to those "*particular convictions*" that are either required by state or federal law to be reviewed or that would preclude the applicant from holding the position sought by state or federal law.

The purpose of this bill is to limit the review by employers of judicially sealed and expunged convictions only to those particular convictions that are required to be considered under any applicable state or federal law. Public agencies should ensure that when asking for criminal conviction information in the hiring process involving convictions that have been judicially sealed or expunged that are required to be reviewed under state or federal law, that they only focus on those particular convictions noted in the relevant state or federal law.

This bill only impacts those situations where employers are obligated under state or federal law to consider criminal convictions that have been judicially sealed or expunged. For employers not required by state or federal law to consider an applicant's criminal convictions, they are still obligated to follow the restrictions in Section 432.7 and to not request criminal history information until a conditional offer of employment has been made as provided in Government Code section 12952. Public agencies should closely review their current employment applications and overall hiring practices to ensure compliance with these laws.

(SB 1412 amends Section 432.7 of the Labor Code.)

HEALTH AND BENEFITS

AB 1976 – Ensures Employers Provide Lactation Accommodations in Rooms or Spaces Other than Bathrooms.

California law currently requires every employer to provide a reasonable amount of break time to accommodate employees who want to pump or express breast milk for an infant child. Existing law requires employers to make reasonable efforts to provide employees with the use of a room or other location, other than a toilet stall, close to the employee's work area to express breast milk in private.

While existing law provides that the lactation location cannot be a toilet stall, AB 1976 expands this to now require that the lactation location not be anywhere in a bathroom. According to the bill's author, the purpose of this change is to avoid requiring employees to express breast milk in a bathroom environment that is neither comfortable nor sanitary.

AB 1976 provides that an employer complies with this law if the employer provides a temporary lactation location that meets all of the following requirements:

1. The employer is unable to provide a permanent lactation location because of operational, financial, or space limitations;

2. The temporary location must be private and free from intrusion while an employee expresses milk;

3. The temporary location is used only for lactation purposes while an employee expresses breast milk, and;

4. The temporary location otherwise meets the California law requirements for lactation accommodations. (Labor Code sections 1030-1033)

AB 1976 also creates an exemption for employers who can demonstrate to the Department of Industrial Relations ("DIR") that providing a room or location, other than a bathroom, would impose an undue hardship when considering the size, nature, and structure of the employer's business. If an employer is granted an exemption by the DIR, the employer is still required to make reasonable efforts to provide an employee with the use of a room or other location, other than a toilet stall, in close proximity to the employee's work area to express breast milk in private.

Public agencies should review their lactation accommodation policies to ensure that any rooms or spaces used for lactation accommodations satisfy these new requirements.

(AB 1976 amends Section 1031 of the Labor Code.)

AB 2587 – Clean-Up Bill to PFL Benefits Law to Clarify Elimination of Seven-Day Waiting Period.

California offers the Paid Family Leave ("PFL") program to provide wage replacement benefits to employees who take time off to care for a seriously ill family member or to bond with a minor child within one year of birth or placement with a family. The PFL program is part of the state disability insurance ("SDI") program. While PFL provides wage replacement benefits for an employee who is out of work for a qualifying reason, it does not provide the employee an entitlement to a leave of absence for such reason.

In 2016, California passed AB 908 to amend PFL benefits. The amendment eliminated the seven-day waiting period an employee had to wait to receive PFL benefits effective January 1, 2018.

Since there is no longer a seven-day waiting period for PFL benefits, AB 2587 is clean-up legislation that deletes an outdated reference to the former seven-day waiting period in Unemployment Insurance Code section 3303.1, but does not otherwise substantively change the PFL benefits program.

Not all public agencies have opted into the PFL benefit programs. Therefore, only employees of public agencies that participate in the PFL program would be entitled to these benefits.

(AB 2587 amends Section 3303.1 of the Unemployment Insurance Code.)

AB 3224 – Designates County Merit or Civil Service Employee to Make Eligibility Decisions for County Public Benefit Programs.

AB 3224 requires a merit or civil service employee of a county make all decisions governing eligibility for Medi-Cal, CalWORKS, and CalFresh.

AB 3224 is a reaction to concerns that future changes by the United States Department of Agriculture could undermine long-standing federal regulations requiring eligibility decisions to be made exclusively by merit or civil service county employees by removing these duties from the county and privatizing them. AB 3224 would therefore codify under California law that such eligibility decisions continue to be made only by a county's merit or civil service employees, regardless of any potential changes to federal regulations.

As a result, counties should continue to designate merit or civil service employees to make decisions related to an individual or family's eligibility for Medi-Cal, CalWORKS, and CalFresh.

(AB 3224 adds Section 10503 to the Welfare and Institutions Code.)

SB 1123 – Expands Scope of PFL to Cover Covered Active Duty for Employees or Family Members in the Armed Forces.

California offers the Paid Family Leave ("PFL") program to provide wage replacement benefits to employees who take time off to care for a seriously ill family member or to bond with a minor child within one year of birth or placement with a family.

Beginning January 1, 2021, SB 1123 expands the scope of providing PFL benefits to include time off to participate in a qualifying exigency related to covered active duty or a call to covered active duty for an individual's spouse, domestic partner, child, or parent in the Armed Forces of the United States. SB 1123 adds a new Unemployment Insurance Code section 3302.2, which outlines a list of "*qualifying exigencies*" that matches those provided under the

federal Family Medical Leave Act ("FMLA") for a qualifying exigency leave of absence, including the following:

1. Short-Notice Deployment
2. Military Events and Related Activities
3. Childcare and School Activities
4. Financial and Legal Arrangements
5. Counseling
6. Rest and Recuperation
7. Post-Deployment Activities
8. Parental Care
9. Additional Activities

Not all public agencies have opted into the PFL benefit programs. Therefore, only employees of public agencies that participate in the PFL program would be entitled to these benefits.

(SB 1123 amends, repeals, and adds Sections 3301, 3302.1, 3303, and 3303.1 and adds Sections 3302.2 and 3307 to the Unemployment Insurance Code.)

PUBLIC SAFETY/PUBLIC RECORDS ACT

AB 748 – Establishes Standards for Disclosure of Video and Audio Recordings of Critical Incidents.

The California Public Records Act ("CPRA") requires public agencies to make public records promptly available for inspection and copying to a requesting party, unless the public records are exempt from disclosure under the CPRA. The CPRA currently exempts from disclosure records of investigations conducted by any state or local police agency.

Beginning July 1, 2019, AB 748 mandates the disclosure of video and audio recordings of "*critical incidents*" involving police agencies, except in delineated circumstances when the disclosure of the recording may be delayed or when recordings may be redacted or withheld. Under AB 748, an audio or video recording relates to a "*critical incident*" if it depicts an incident involving a peace officer or custodial officer's discharge of a firearm at a person or an incident in which the use of force by a peace officer or custodial officer against a person resulted in death or great bodily injury.

AB 748 further provides that "*an agency may provide greater public access to video or audio authority than the minimum standards set forth in this paragraph.*" This means that, as under current law, an agency has the discretion to release more recordings, and to do so sooner than required by law.

AB 748 provides that, during an active criminal or administrative investigation, disclosure of a recording related to a critical incident may be delayed for up to 45 calendar days after the date the agency knew or should have known about the incident, if disclosure would substantially interfere with the investigation such as by endangering a witness or confidential source. If an agency delays disclosure for this reason, the agency is required to provide to the requester, in writing, the specific basis for the determination that disclosure would substantially interfere with the investigation and an estimated date for disclosure.

The agency may continue to delay disclosure of a recording of a critical incident beyond this 45-day period up to one year if it is able to demonstrate by clear and convincing evidence that disclosure would substantially interfere with the investigation. The agency is required to reassess withholding and notify the requester every 30 days. The recording must be released promptly when the specific basis for withholding is resolved.

AB 748 permits an agency to withhold a recording related to a critical incident, without limitation as to time, if it determines the public interest in withholding the recording clearly outweighs the public interest in disclosure because the release of the recording would violate the reasonable expectation of a subject depicted in the recording. The agency is required to provide in writing to the requester the specific basis for the expectation of privacy and the public interest served by withholding the recording.

The agency is only permitted to withhold the recording if it demonstrates that the reasonable

expectation of privacy of the subject cannot adequately be protected through redaction and that interest outweighs the public interest in disclosure. The statute specifically authorizes redaction technology, including blurring or distorting images or audio to obscure those specific portions of the recording that protect the interest. However, redaction shall not interfere with the viewer's ability to fully, completely, and accurately comprehend the events captured in the recording.

Even if redacting is inadequate to protect the reasonable expectation of privacy of a subject, the agency must produce an unredacted version of the recording, upon request, to the subject of the recording, his or her parent, guardian, or representative, or his or her heir, beneficiary, immediate family member, or authorized legal representative, if the subject is deceased.

While AB 748 technically goes into effect January 1, 2019, **the bill specifically delays the obligation to product the affected audio and video recordings until July 1, 2019**. Although these new requirements will pose significant burdens and costs on agencies, they may also provide an opportunity to build public trust through increased transparency. Agencies should, therefore, conduct administrative investigations and draft disciplinary documents for the types of complaints affected by AB 748 with the expectation that these records will be subject to public inspection. Agencies should consult with LCW or other trusted legal counsel regarding not only how to bring their policies into line with the new laws, but to assist in preparing investigation reports and disciplinary notices that will meet legal requirements and survive public scrutiny.

(AB 748 amends section 6254 of the Government Code.)

SB 1421- Increases Public Access to Peace Officer Personnel Records.

Penal Code sections 832.7 and 832.8 currently make personnel records of peace officers and/or custodial officers confidential, and also prevent such records from being disclosed in any criminal, civil or administrative proceeding except pursuant what is commonly called a "*Pitchess* motion." For decades, this meant that records maintained in an officer's general personnel file, or any other file used for a personnel purpose, including records of disciplinary investigations, could not be publically released, including in response to public records requests under the California Public Records Act ("CPRA").

SB 1421 amends Penal Code section 832.7 to generally require disclosure of records and information relating to the following types of incidents in response to a request under the CPRA (i.e., without a *Pitchess* motion):

- Records relating to the report, investigation, or findings of an incident involving the discharge of a firearm at a person by a peace officer or custodial officer.
- Records relating to the report, investigation or findings of an incident in which the use of force by a peace officer or custodial officer against a person results in death or great bodily injury.
- Records relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that a peace officer or custodial officer engaged in sexual assault involving a member of the public. "*Sexual assault*" is defined for the purposes of section 832.7 as the commission or attempted initiation of a sexual act with a member of the public by means of force, threat, coercion, extortion, offer of leniency or any other official favor, or under the color of authority. The propositioning for or commission of any sexual act while on duty is considered a sexual assault.
- Records relating to an incident in which a sustained finding of dishonesty by a peace officer or custodial officer directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another peace officer or custodial officer, including but not limited to, any sustained finding of perjury, false statements, filing false reports, destruction of evidence or falsifying or concealing of evidence.

SB 1421 specifies that the types of records of covered incidents that must be released pursuant to a CPRA request include:

- All investigative reports.
- Photographic, audio, and video evidence; transcripts or recording of interviews.
- Autopsy reports.
- All material compiled and presented for review to the district attorney or to any person or body charged with determining whether to file criminal charges against an officer in connection with an incident, or whether the officer's action was consistent with law and agency policy for purposes of disciplinary or administrative action, or what discipline to impose or corrective action to take.
- Documents setting forth findings or recommended findings.
- Copies of disciplinary records relating to the incident, including any letters of intent to impose discipline, any documents reflecting modifications of discipline due to the Skelly or grievance process, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action.

SB 1421 restricts redaction of records before disclosing, except for the following reasons:

- To remove personal data or information, such as a home address, telephone number, or identities of family members, other than the names and work-related information of peace and custodial officers.
- To preserve the anonymity of complainants and witnesses.
- To protect confidential medical, financial, or other information of which disclosure is specifically prohibited by federal law or would cause an unwarranted invasion of personal privacy that clearly outweighs the strong public interest in records about misconduct and serious use of force by peace officers and custodial records.
- Where there is a specific, articulable, and particularized reason to believe that disclosure of the record would pose a significant danger to the physical safety of the peace officer, custodial officer, or another person.
- Other circumstances not listed above, where, on the facts of the particular case, the public interest served by not disclosing the information clearly outweighs the public interest served by disclosure of the information. This language mirrors the catch-all provision of the CPRA, and courts will likely interpret the law similarly.

SB 1421 also sets out several circumstances in which agencies may delay the mandated disclosure of records, including delays for the disclosure of records related to active criminal investigations, criminal charges filed related to a force incident, and active administrative investigations of serious force incidents or shooting.

SB 1421 does not require agencies to disclose records or information related to civilian complaints that are found to be frivolous or unfounded. The statute is silent as to whether this exception applies to administrative investigations initiated for reasons other than a civilian complaint.

SB 1421 will require major changes in how law enforcement agencies respond to requests for peace officer personnel records. SB 1421 does not specifically address the applicability of the standard CPRA exemptions, other than the law enforcement investigation exemption under Government Code section 6254(a)(1)(f) to these documents, but the mandatory language "*shall not be confidential*" and "*shall be made available for public inspection*" indicate the Legislature's intent to make these documents available under the CPRA.

(SB 1421 amends Sections 832.7 and 832.8 of the Penal Code.)

Note:

LCW is offering a webinar on "Managing Increased Public Access to Peace Officer Personnel Records after SB 1421 and AB 748" on November 5th, 2018. To register for the webinar (or the archived recording), pleast visit: **https://www.lcwlegal.com/events-and-training/webinars-seminars/managing-increased-public-access-to-peace-officer-personnel-records-after-sb-1421-and-ab-748.** *For more information on AB 748 and SB 1421, please see LCW's Special Bulletin:* **https://www.calpublicagencylaboremploymentblog.com/public-safety-issues/governor-signs-sb-1421-and-ab-748-dramatically-increasing-public-access-to-peace-officer-personnel-records/.**

SB 978 – Requires Law Enforcement Agencies to Publish Standards, Polices, and Practices Online.

Beginning January 1, 2020, this bill requires local law enforcement agencies and Commission of Peace Officer Standards and Training ("POST") to post on their Internet websites all current standards, policies, practices, operating procedures, and education and training materials that would otherwise be available to the public through a California Public Records Act ("CPRA") request.

The Legislature declared that making this information available online and easily accessible to the public helps educate the public about law enforcement policies, practices, and procedures and is intended to increase communication and community trust, while saving on costs and labor associated with responding to individual CPRA requests for this information.

For any law enforcement agency that does not already post their training, policies, practices, and operating procedures on its website, it should begin taking the necessary steps to make this information publicly available online by the January 1, 2020 effective date of this new law.

(SB 978 adds Section 13650 to the Penal Code.)

PUBLIC SAFETY

AB 1888 – Extends Penal Code section 832.3 Requirements for POST Training.

Penal Code section 832.3 generally outlines the training requirements for deputy sheriffs, and police officers to successfully complete the Commission on Peace Officer Standards and Training's ("POST") basic training before exercising the powers of a peace officer. Section 832.3 also currently allows a deputy sheriff assigned to custodial duties (e.g., correctional officer duties in county jail) to not have to requalify for such POST basic training again if re-assigned to peace officer duties within five years of completion of such POST training. This exception applies so long as the deputy sheriff remained continuously employed with the same department and maintains the perishable skills training required by POST during the time period in question. AB 1888 extends the operation of Section 832.3 ongoing by deleting the previous January 1, 2019 sunset date.

(AB 1888 amends Section 832.3 of the Penal Code.)

AB 1985 – Provides Requirements for Law Enforcement Hate Crime Policies.

AB 1985 adds Penal Code section 422.87 to require local law enforcement agencies that have a policy regarding hate crimes to include certain information in the policy. While AB 1985 does not require law enforcement agencies to adopt or update an existing hate crime policy, it sets forth requirements to follow for agencies that choose to adopt or update a hate crime policy going forward, including the following:

- Legal definitions of hate crimes, as defined in the Penal Code.
- Content of the model policy framework developed by the Commission on Peace Officer Standards and Trainings ("POST").
- Information regarding "*bias motivation*" – defined as a preexisting negative attitude toward actual or perceived disability, gender, nationality, race or ethnicity, religion, sexual orientation, or association with a person or

group with one or more of these actual or perceived characteristics.

- Information to identify if a perpetrator targets a person with a disability – defined to include mental and physical disabilities that are temporary, permanent, congenital, or acquired by heredity, accident, injury, advanced age, or illness.
- Information on general underreporting of hate crimes and extreme underreporting of anti-disability and anti-gender hate crimes and a plan for the agency to remedy such underreporting.
- A protocol for reporting suspected hate crimes to the Department of Justice.
- A checklist of first responder responsibilities.
- A specific procedure for distributing the hate crime policy to officer and to access the policy as needed.
- A process to ensure that required hate crimes brochures are distributed to victims of hate crimes and all other interested parties.
- Require all officers be familiar with and carry out the policy at all times unless otherwise directed by an authorized command-level officer.

AB 1985 also authorizes law enforcement agencies to use model hate crime policies developed by the International Association of Chiefs of Police, to the extent consistent with this law. Law enforcement agencies that have adopted or are updating a policy regarding hate crimes should review such policy to ensure compliance with AB 1985.

(AB 1985 amends Section 422.56 of and adds Section 422.87 to the Penal Code.)

AB 2034 – Requires Transportation Agencies to Provide Training on Human Trafficking.

AB 2034 requires businesses or agencies that operate a facility for an intercity passenger rail, light rail, or bus station to provide training to new and existing employees on recognizing the signs of human trafficking and how to report those signs to law enforcement. These businesses or agencies are required to provide training to employees who may interact with, or come into contact with, victims of human trafficking or who are likely to receive reports about suspected human trafficking.

This training is required on or before January 1, 2021 and must be at least twenty (20) minutes in length. The training must provide the definition of human trafficking - including sex trafficking and labor trafficking, myths and misconceptions about human trafficking, and physical and mental signs that may indicate human trafficking. The training must also give guidance on how to identify individuals who are most at risk for human trafficking, guidance on how to report human trafficking, and protocols for reporting human trafficking when on the job.

Public agencies that operate facilities for rails or bus stations should be prepared to provide employees with training on human trafficking on or before January 1, 2021.

(AB 2034 amends Section 52.6 of the Civil Code.)

AB 2327 – Requires Law Enforcement Agencies to Maintain Peace Officer Misconduct Investigations in Personnel Files.

Existing law requires law enforcement agencies to retain reports or findings related to complaints by the public against peace officers for at least five years. While existing law allows these reports or findings to be maintained in a peace officer's general personnel file or separate file designated by the agency, the law does not currently require a law enforcement agency to maintain reports or findings in such files.

AB 2327 will now require law enforcement agencies to make and retain a record of any investigations involving peace officer misconduct in the peace officer's general personnel file or a separate file designated by the agency. In addition, AB 2327 requires a peace officer seeking employment with any law enforcement agency in California to give written permission to that hiring agency to view his or her general personnel file or the separate file.

This bill will assist law enforcement agencies hiring lateral peace officers with thoroughly checking an applicant's employment background through a review of personnel files from a prior law enforcement agency. Law enforcement agencies must ensure they retain records of any investigations of peace officer misconduct in the peace officer's general personnel file or otherwise designate a separate file to house such records. Law enforcement agencies must also require peace officer applicants to provide written permission for the agency to review their personnel files maintained by other agencies.

(AB 2327 adds Section 832.12 to the Penal Code.)

AB 2504 – Creates a POST Training Course on Sexual Orientation and Gender Identity.

AB 2504 requires the Commission on Peace Officers and Standards Training ("POST") to develop and implement a course regarding sexual orientation and gender identity as part of its basic training for peace officers and dispatchers. The course must cover certain topics, which include but are not limited to:

- The difference between sexual orientation and gender identity.
- Terminology used to identify and describe sexual orientation and gender identity.
- How to create an inclusive workplace within law enforcement for sexual orientation and gender identity minorities.
- Important moments in history related to sexual orientation and gender identity minorities and law enforcement.
- How law enforcement can respond effectively to domestic violence and hate crimes involving sexual orientation and gender identity.

The bill provides that peace officers, administrators, executives, and dispatchers may participate in supplementary training on these topics, outside of basic training, for continuing professional training required by POST.

(AB 2504 adds Section 13519.41 to the Penal Code.)

AB 2992 – Creates POST Training Course on Commercial Exploitation of Children and Victims of Human Trafficking.

AB 2992 requires the Commission of Peace Officer Standards and Training ("POST") to develop a course on commercial sexual exploitation of children and victims of human trafficking. The course must cover topics and activities including the dynamics of commercial sexual exploitation of children, the impact of trauma on child development, manifestations of trauma in victims, and strategies to identify potential victims. The course must also provide information about mandatory reporting requirements, appropriate interviewing, engagement, and intervention techniques to avoid re-traumatizing the victim, and specialized child victim interview resources. The POST course will be a continuing professional training course and must include facilitated discussions and learning activities, including scenario training exercises.

(AB 2992 adds Section 13516.5 to the Penal Code.)

SB 1331 – POST Domestic Violence Training Must Include Instruction on Lethality Assessments.

The Commission of Peace Officer Standards and Training ("POST") currently implements a legally required training course to teach law enforcement officers how to handle domestic violence complaints and to develop guidelines for peace officers who respond to domestic violence situations. SB 1331 creates a requirement for this course to include instruction on the assessment of lethality or signs of lethal violence in domestic violence situations.

According to the bill's author, the goal of adding lethality assessments is to prevent domestic violence homicides, serious injury, and re-assault by encouraging more victims to utilize the support and shelter services of domestic violence programs. As part of the lethality assessment, peace officers will ask victims a series of questions based on research factors linked to lethality. If a victim's responses trigger the "protocol referral," they are immediately connected with a local advocacy program.

(SB 1331 amends Section 13519 of the Penal Code.)

PUBLIC RECORDS ACT

SB 929 – Requires "Independent Special Districts" to Create Websites by January 1, 2020.

The CPRA requires a local agency to make public records available for inspection and allows a local agency to comply with any CPRA obligations by posting the record on its website and directing a member of the public to the website. However, there are no existing legal requirements for "independent special districts" to create and maintain websites and many such special districts do not have websites.

SB 929 requires all independent special districts to maintain an internet website by **January 1, 2020.** "Independent special districts" are generally defined under Government Code section 56044 as "a*ny special district having a legislative body all of whose members are elected by registered voters or landowners within the district, or whose members are appointed to fixed terms, and excludes any special district having a legislative body consisting, in whole or in part, of ex officio members who are officers of a county or another local agency or who are appointees of those officers other than those who are appointed to fixed terms*."

An independent special district's website must conform to existing requirements for local agency websites, including the following:

- Time and location of regular board meetings,
- Agendas to board meetings,
- District's report on financial transactions, and the annual compensation of its elected officials, officers, and employees.
- List contact information for the district.

The purpose of this bill is to provide the public with easily accessible and accurate information about each district and to increase public access to public records.

The bill creates an exemption for independent special districts that adopt a resolution, pursuant to a majority vote of the governing body, declaring that a hardship exists that prevents the district from establishing and maintaining a website. Reasons for such hardship may include inadequate access to high-speed Internet access, significantly limited financial resources, or insufficient staff resources. Such resolutions are valid for one year and the district must adopt a resolution annually for the exemption to apply.

Independent special districts who do not currently have a district website should prepare to create and maintain a website by January 1, 2020. Districts that currently have a website should ensure they maintain the website and the website conforms to the requirements for local agency websites.

(SB 929 adds Sections 6270.6 and 53087.8 to the Government Code.)

SB 1244 – Clarifies the Requester of Public Records is the Prevailing Plaintiff Who May Recover Attorney's Fees.

The California Public Records Act ("CPRA") requires public agencies to make public records available for inspection and for copying to a requesting party, unless the public records are exempt from disclosure under the CPRA. When a public agency withholds a record from a member of the public and it appears the record is improperly withheld, a Superior Court shall order an officer of the public agency to disclose the record or show cause why he or she should not do so. The existing CPRA requires the court to award court costs and reasonable attorney's fees to the plaintiff if the plaintiff prevails in obtaining the withheld records through litigation. If the court finds that the plaintiff's case is clearly frivolous, it shall award court costs and reasonable attorney's fees to the public agency.

SB 1244 replaces the word "*plaintiff*" with the word "*requester*" in Government Code section 6259. This change is intended to clarify that only the requester of documents can recover attorney's fees and court costs as a prevailing plaintiff. This bill is a response to a school district's attempt to seek attorney's fees from a member of the public who made a request for records under the CPRA. The school district inadvertently disclosed records that were exempt under the CPRA and sought an injunction requiring the person to return or destroy the inadvertently produced records. A court granted the injunctive relief and the school district attempted to recover attorney's fees and court costs from the requesting

member of the public. The court refused to grant attorney's fees to the school district and explained that "*plaintiff*" means a person seeking an order directing a public agency to disclose public records.

Public agencies should be aware that they will only be entitled to attorney's fees and court costs in litigation challenging the disclosure of public records under the CPRA if the requester's case is clearly frivolous.

(SB 1244 amends Section 6259 of the Government Code.)

RETIREMENT

AB 1912 – Prohibits JPA Member Agencies from Disclaiming Retirement Liability for the JPA.

Existing law permits two or more public agencies to jointly exercise any power common to the contracting parties to create a Joint Powers Authority ("JPA"). A JPA is a separate public entity from the parties that are the members of the JPA. A JPA may enter into a contract with CalPERS for retirement benefits. Under current law, when a contract between a JPA and CalPERS terminates, the JPA must pay for any retirement liabilities because the JPA is the party to the contract, whereas the member agencies of the JPA are not parties and therefore, have no liability.

AB 1912 prohibits member agencies of JPA from disclaiming retirement liability of a JPA. If the JPA's agreement with CalPERS terminates or the JPA dissolves, this bill requires apportionment of retirement liability among the JPA member agencies. The purpose of AB 1912 is to require member agencies of a JPA to remit payments to CalPERS for any of the JPA's unfunded obligations to CalPERS.

This bill requires member agencies of a JPA to reach a mutual agreement about the apportionment of the agencies' retirement obligations amongst themselves prior to filing a notice to terminate a contract with CalPERS. The mutual agreement must equal 100% of the JPA's retirement liability. If member agencies are unable to mutually agree to the apportionment, AB 1912 requires CalPERS to apportion the retirement liability to each member agency and establish procedures for a member agency to challenge the Board's determination through arbitration.

AB 1912 applies retroactively to a member agency, or current and former member agency, that has an agreement with CalPERS on or before January 1, 2019, and to new agreements with CalPERS on or after that date.

(AB 1912 amends Sections 6508.1 and 20575, adds Sections 6508.2 and 20574.1, and repeals and adds Section 20577.5 of the Government Code.)

AB 2196 – Discontinues CalPERS Installment Payments into Retirement.

CalPERS offers 50 different types of service credits that active members may purchase or convert before their retirement date. Currently, if a member retires while still making installment payments on a service credit election, the member may choose the pay the remaining balance in full or in installment payments where the amounts will be deducted from their retirement allowance. If a member passes away with an outstanding balance, CalPERS continues to deduct monthly payments from his or her beneficiary's monthly allowance or deducts a lump sum from death benefit payments. However, if the member does not provide for a monthly survivor benefit or death benefit payment, CalPERS is not able to collect the unpaid balance.

AB 2196's purpose is to strengthen CalPERS' financial policies by discontinuing installment payments for service credits. The bill requires members to pay their full balance for service credits at the time of retirement or preretirement death for all elections with an effective date on or after January 1, 2020. The member, survivor, or beneficiary shall have his or her allowance reduced by the actuarial equivalent of any balance unpaid and remaining by the member.

CalPERS members who make elections **on or after January 20, 2020,** including elections for normal contributions, arrears contributions, absences, or public service, need to be aware that they will no longer have the option to make installment payments for their elections. They must be prepared to pay the full balance at the time of retirement or preretirement death, or otherwise elect an actuarial equivalent reduction of the balance.

(AB 2196 amends Sections 20776, 21037, 21039, 21050, and 21073.1 of the Government Code.)

AB 2310 – Revises Requirements for CalPERS Cost Sharing Agreements.

Under the Public Employees' Retirement Law ("PERL"), a CalPERS agency and its employees may agree in writing to share the costs of the employer contribution to CalPERS following the procedures in Government Code section 20516. AB 2310 modifies Section 20516 as follows:

- Adds references to a memorandum of understanding ("MOU"), in addition to existing language regarding a collective bargaining agreement ("CBA").
- Allows for a MOU or CBA to now specify a methodology for calculating the cost-sharing rate, as an alternative to the existing option to provide the exact percentage of the member's cost-share.
- Once the CalPERS agency and employee unit have agreed to cost sharing, they will not be required to create a contract amendment for cost sharing in subsequent CBA's or MOU's if they use an exact percentage of cost sharing. However, if the CBA or MOU specifies a methodology for calculating the cost-sharing rate, the CalPERS agency must provide CalPERS with a signed side letter indicating the exact percentage derived from the calculation at least 90 days before the effective date of the cost-sharing rate.

CalPERS agencies who have existing cost sharing agreements with employees through contract amendments or are interested in entering into such contract amendments should review these new options for cost sharing agreements going forward.

(AB 2310 amends Section 20516 of the Government Code.)

AB 2696 – Clarifies Employer Penalty for Violating 960-Hour Limitation on Out-of-Class Appointments.

On January 1, 2018, AB 1487 added Government Code section 20480 to the Public Employees Retirement Law ("PERL"), which prohibited out-of-class appointments of CalPERS members for more than 960 hours per fiscal year. An "*out-of-class appointment*" is an appointment of an employee to an upgraded position or higher classification by the employer or governing board to a vacant position during recruitment for a permanent appointment in the position.

AB 2696 clarifies the penalty for violating the 960-hour limitation on out-of-class appointments. Specifically, AB 2696 provides the penalty is three times the employee and employer contributions that would have otherwise been paid to CalPERS for the difference between the compensation paid for the out-of-class appointment and the compensation that would have been paid and reported to CalPERS, ***but for the vacancy***, in accordance with a publicly available pay schedule for the entire period of the out-of-class appointment.

Public agencies who contract with CalPERS should ensure that employees working in out-of-class appointments do not work than 960 hours per fiscal year to avoid a violation of Section 20480. CalPERS agencies should also ensure that they report out-of-class appointments to CalPERS no later than July 30th each year to further avoid any penalties.

(AB 2696 amends Section 20480 of the Government Code.)

SB 1022 – Revises Timeline and Requirements for Agencies to Terminate CalPERS Contracts.

SB 1022 shortens the timeline for an agency to terminate its CalPERS contract and ensures that employees and retirees receive adequate notice of the agency's intent to terminate the contract. Instead of requiring an agency to wait at least one year to terminate the contract, this bill requires the agency to adopt the ordinance or resolution terminating the contract not less than 90 days and not more than one year after the CalPERS receives the resolution giving notice of the intent to terminate.

SB 1022 also requires agencies who are terminating their contracts to notify past and present employees of the intent to terminate the contract within 30 days of the adoption of the resolution. This bill requires CalPERS to provide member and retiree contact information to the agency for the purpose of providing this notice.

This bill also clarifies the confidentiality provisions governing data filed with CalPERS. This bill specifies CalPERS may provide the data to an agency for purposes of notifying members, former members, or retired members of the agency's intent to terminate the contract. This bill also clarifies that the confidentiality provisions apply to the Public Employees Medical and Hospital Care Act ("PEMHCA").

Any CalPERS agency that is considering terminating its contract with CalPERS should be aware of the specific procedural requirements for adopting resolutions, timelines for giving notice to employees and retirees, and the timeline for the termination of the contract.

(SB 1022 amends Sections 20230, 20570, and 20571 of the Government Code.)

SB 1195 – Authorizes PORAC to Base Health Benefit Premiums on Regional Rates.

The Public Employees' Medical and Hospital Care Act ("PEMHCA") governs postemployment health care benefits for eligible retired public employees and their beneficiaries. The Peace Officers Research Association of California Insurance and Benefits Trust ("PORAC") offers designed health benefits plans exclusively to its membership through PEMHCA. Under existing law, PORAC can only offer a plan structure that utilizes a statewide rate when determining what cost PORAC can charge to the member.

SB 1195 authorizes PORAC to incorporate regional rates in their plan design and offer lower premiums to their members who are in lower cost regions. The bill prohibits the trustees of these health benefit plan trusts from using geographic regions that are different from the geographic regions established by CalPERS in determining the regional premiums, except as specified by SB 1195.

Agencies that offer heath care benefits through PORAC should be aware that their premium rates may change due to the increase in flexibility for PORAC to use regional premium rates rather than statewide premium rates.

(SB 1195 amends Section 22850 of the Government Code.)

SB 1413 – Creates the California Employers' Pension Prefunding Trust Program.

The Public Employees' Retirement Law ("PERL") authorizes CalPERS to provide defined retirement benefits to employee of member public agencies. These benefits are funded by employer and employee contributions and investment returns overseen by CalPERS. Under the PERL, there is no provision allowing public agencies participating in a defined benefit pension plan to prefund their payments toward their future annual required pension contributions.

SB 1413 creates the California Employers' Pension Prefunding Trust Program (CEPPT). The CEPPT is a special irrevocable trust fund intended to meet the requirements of Section 115 of the Internal Revenue Code, which provides that income earned by a trust that is derived from the exercise of an essential governmental functions is excludable from gross income. This bill allows state and local public agencies that provide a defined benefit pension plan to their employees to prefund their pension contributions. A defined benefit plan is prefunded when it is a trust fund for the purpose of investing employer payments toward future required pension contributions.

SB 1413 authorizes public agencies to elect to participate in the CEPPT and enter into contracts with CalPERS for prefunded CEPPT Funds. It gives the CalPERS Board of Administration (Board) the authority to administer and invest the CEPPT Fund under the requirements of Section 115 of the Internal Revenue. The Board is required to offer participating employers specified cost-effective, diversified investment portfolios. SB 1413 requires each participating agency to pay a reasonable amount, determined by the Board, for the administrative and asset management costs for the CEPPT Fund. These costs will be credited to the CEPPT Fund. Any income earned through the CEPPT Fund will be credited back to the Fund.

The bill also sets the terms under which a CEPPT Fund contract can be terminated or transferred. In addition, SB 1413 authorizes the Board to adopt regulations, including emergency regulations, to implement the CEPPT.

(SB 1413 Sections 21710, 21711, 21712, 21713, 21714, 21715, and 21716 to the Government Code.)

MANDATED REPORTERS

AB 2302 – Extends Statute of Limitation for Mandated Reporter's Failure to Report Sexual Assault.

The Child Abuse and Neglect Reporting Act makes certain people mandated reporters, including teachers, social workers, peace officers, and firefighters. A mandated reporter is required to make a report whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, observes or has knowledge of a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect.

A mandated reporter's failure to report an incident of known or reasonably suspected child abuse or neglect is a misdemeanor, the prosecution of which is to commence within one year after the failure to report occurs. Current law also provides that if a mandated reporter intentionally conceals his or her failure to report an incident, the failure to report is a continuing offense. For a continuing offense, the one-year statute of limitation begins to run on the date an agency discovers the failure to report.

AB 2302 extends the statute of limitations for filing a case against a mandated reporter who fails to report an incident known or reasonably suspected to be sexual assault to five years from the date the offense occurred. This extends the period of liability for mandated reporters if they fail to report known or reasonably suspected sexual assault. Many public agencies employ individuals are mandated reporters and are encouraged to provide these employees with training about the duties in child abuse and neglect identification and reporting.

(AB 2302 amends Section 801.6 of the Penal Code.)

WORKERS' COMPENSATION/ WORKPLACE SAFETY

AB 1749 – Allows Employers to Voluntarily Accept Liability for Workers' Comp Injuries Off-Duty Police Officers Sustain Out-of-State.

Existing law provides that a peace officer is entitled to workers' compensation benefits whenever he or she is injured, dies, or is disabled performing his or her duties as a peace officer when not acting under the immediate direction of his or her employer. Existing law states that peace officers are entitled to such benefits if they have engaged in the apprehension or attempted apprehension of individuals violating the law, the protection or perseveration of life or property, or preservation of the peace anywhere in California.

AB 1749 provides that peace officers who are injured while performing these duties are entitled to workers' compensation benefits regardless of whether the injury occurs in or out of California, and specifically references the October 1, 2017 mass shooting at a Las Vegas, Nevada concert event where several off-duty California peace officers attending the concert were injured while assisting in response to the incident. Since existing law does not expressly authorize workers' compensation benefits to peace officers who sustain injuries out of state, AB 1749 states that an employer, ***at its discretion or in accordance with policy***, is not precluded from accepting liability for workers' compensation for peace officer injuries sustained outside of state. If the employer determines that providing workers' compensation serves the public purposes of the employer, it may accept workers' compensation liability for the injury.

This new law **does not** create a mandate for public agencies to provide workers compensation benefits for injuries sustained while off-duty and out of state, but instead provides a mechanism to voluntarily provide for such benefits at the discretion of the agency.

(AB 1749 amends Section 3600.2 of the Labor Code.)

AB 2334 – Amends Cal/OSHA's Six-Month Period for Issuing Citations for Ongoing Workplace Violations.

Currently, the California Division of Occupational Safety and Health (Cal/OSHA) has six months from the date the violation occurred to issue a citation to an employer for violations related to the life, safety, and health of employees.

AB 2334 modifies the application of this six-month period for Cal/OHSA to issue a citation and defines when an occurrence of a violation is ongoing for purposes of issuing a citation. While the law remains unchanged in that Cal/OHSA still shall not issue a citation more than six months after the "*occurrence*" of a violation, under AB 2334, an "*occurrence*" continues until it is corrected, until Cal/OSHA discovers the violation, or until the duty to comply with the violated requirement ceases to exist.

Public agencies should be aware that if there are any life, safety, or health violations in the workplace, these violations will now be ongoing until the agency corrects them, Cal/OSHA discovers them, or the requirement related to the violation ceases to exist. As a result, Cal/OSHA could now potentially have a prolonged period of time to discover the violations and issue a citation. Agencies should use ensure they are correcting any potential life, safety, or health violations in a timely manner so as not to maintain continuous occurrences of violations.

(AB 2334 amends Sections 138.7, 3702.2, and 6317 of the Labor Code and adds Sections 6410.1 and 6410.2 to the Labor Code.)

SB 1086 – Permanently Extends 420-Week Window for Dependents of Deceased Firefighters and Peace Officers to File for Workers' Compensation Death Benefits.

California law currently requires dependents of a deceased individual to initiate proceedings to collect workers' compensation within specific time periods – no more than one year after the date of death and generally not more than 240 weeks from the date of injury, with certain exceptions.

One exception currently provides an extension of up to 420 weeks from the date of injury, but no more than one year from the date of death, for dependents of deceased firefighters and peace officers to file for workers' compensation death benefits when the cause of death is cancer, tuberculosis, methicillin-resistant staphylococcus skin infections, or bloodborne infectious disease. This exception is set to expire on January 1, 2019. SB 1086 deletes the January 1, 2019 expiration date and now permanently extends this exception.

In managing workers' compensation death benefits claim, public agencies should be aware of the permanent extension of time for dependents of decreased firefighters and peace officers to file for workers' compensation death benefits for certain causes of death.

(SB 1086 amends Section 5406.7 of the Labor Code.)

LABOR RELATIONS

SB 846 – Creates a Complete Defense to Public Agencies for Deducting Agency Shop Fees Prior to U.S. Supreme Court Decision in Janus v. AFSCME.

On June 27, 2018, the United States Supreme Court held that mandatory agency shop service fees are unconstitutional under the First Amendment of the United States Constitution in *Janus v. AFSCME* (2018) 138 S.Ct. 2448. Prior to the *Janus* decision, public employers and employee organizations relied on, and abided by, state law to deduct and accept agency shop fees.

SB 846 creates statutory indemnification for public employers, employee organizations, and any of their employees or agents who collected agency shop fees prior to *Janus*. **SB 846 is urgency legislation that went into effect upon the Governor's approval of the bill on September 14, 2018.**

Under SB 846, public employers, employee organizations, and any of their employees of agents are not liable and have a complete defense to any claims of actions for requiring, deducting, receiving, or retaining agency fees from public employees if the fees were permitted at the time and paid prior to the date of the *Janus* decision on June 27, 2018. This statutory indemnification applies to claims and

actions pending as of September 14, 2018, as well as claims filed on or after September 14, 2018.

For public agencies, SB 846 creates certainty that they will not be liable for relying on existing state laws authorizing the collection of agency fees prior to the *Janus* decision on June 27, 2018. If a public employee were to try to bring a lawsuit against a public agency for deducting agency shop fees from his/her wages, this bill provides a complete defense to any such claims.

(SB 846 amends Sections 1159, 19230, 19232, 19236, 19237, and 31552.5 of the Government Code, amends Section 101853.1 of the Health and Safety Code, and adds Section 10298.1 to the Public Contract Code.)

SB 866 – Post-Janus Legislation Provides Public Employee Unions Greater Control Over Dues, Communications, and New Employee Orientations.

Immediately after the United States Supreme Court decided *Janus v. AFSCME* (2018) 138 S.Ct. 2448, Governor Brown signed into law SB 866. **This law was urgency legislation that became effective immediately on June 27, 2018.** Among other things, SB 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. Additionally, if an employee requests to "cancel or change deductions," the agency must direct the employee to the union. 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.

SB 866 also 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."

(SB 866 amends Sections 45060, 45168, 87833, and 88167 of the Education Code, amends Sections 1150, 1152, 1153, 1157.3, 1157.10, 3550, 3551, 3552, 3555.5, 3556, 18502, 18525.3, 18528, 18577, 18939, 18950, 19050.4, 19054.1, 19057.1, 19057.3, 19243, 19816.18, 19827.2, 22944.5, 23725, 31552.5, 71638, and 71824 of, adds Sections 1157.12, 3553, and 19995.1.5 to, repeals Section 19995.5 of, and repeals and adds Section 19051 of the Government Code, amends Section 101853.1 of the Health and Safety Code, adds Section 2716.5 to the Penal Code, adds Sections 14038, 14040, 14041, 14042, 14100, 14101, and 14105 to the Unemployment Insurance Code.)

NOTE:

LCW's Special Bulletin discussing SB 866 further is available here: **https://bit.ly/2J4MZ4k**.

SB 1085 – Creates Paid Leaves of Absence for Union Stewards and Officers.

Various labor relations laws grant public employees the right to form, join, and participate in employee organization activities, including the Meyers-Milias-Brown Act ("MMBA") for local public agencies. SB 1085 creates paid leave for stewards and officers to participate in employee organization or union activities.

Upon a request by an exclusive employee organization, SB 1085 requires public employers to grant reasonable leaves of absence without loss of compensation or other benefits for employees to serve as stewards or officers of the employee organization. The leave may be granted on a full-time, part-time, periodic, or intermittent basis. At the end of the leave, the employee has a right to reinstatement to the same position and work location he or she held before the leave, or, if not feasible, a substantially similar position without loss of seniority, rank, or classification.

Under SB 1085, the employee organization is not obligated to use leave and may terminate an employee's granted leave at any time, for any reason. The bill also requires the employee organization to reimburse the public agency for all compensation paid to the employee on leave, unless otherwise provided in a collective bargaining agreement or memorandum of understanding. An employee organization is required to make such reimbursements to the public agency on or before 30 days after receiving certification from the public agency showing payment to the employee.

The bill specifies that compensation during leave granted is required to include retirement contributions. During the leave, the employee is also entitled to earn full service credit and is required to pay his or her membership contributions, unless the employer has agreed to pay the contributions on the employee's behalf in a collective bargaining agreement or memorandum of understanding. The bill would also provide that a public employer is not liable for acts, omissions, or injuries suffered by employees that occur during the course and scope of the employee's leave.

The bill requires the public agency and employee organization to reach a mutual agreement on procedures for requesting and granting leave. As a result, this may be a hot topic at bargaining tables and public agencies must be prepared to meet and have discussions with employee organizations to come up with an agreement on how this new paid leave of absence will be provided.

(SB 1085 adds Section 3558.8 to the Government Code.)

Note:

For more information on SB 1085, please see LCW's blog post: **https://www.calpublicagencylaboremploymentblog.com/labor-relations/paid-time-off-for-union-leaders-new-law-extends-requirements-for-public-employers-to-grant-leaves-of-absence-for-union-stewards-and-officers/**.

EMERGENCY SERVICES

SB 532 – Names Cyberterrorism as a Condition of Disaster for Declaring a State of Emergency or Local Emergency.

The California Emergency Services Act authorizes the Governor to declare a state of emergency and authorizes local officials and local governments to declare a local emergency when conditions of disaster or extreme peril to the safety or persons and property exist. The Act gives the Governor and local government the ability to exercise certain powers in response to an emergency. The Act currently lists examples of conditions of disaster or extreme peril to the safety or persons and property, such as air pollution, fire, flood, storm, epidemic, riot, drought, sudden and severe energy shortage, plan or animal infestation or disease, the Governor's warning of an earthquake or volcanic prediction, and an earthquake.

SB 532 adds cyberterrorism to the list of conditions of disaster or extreme peril to the safety or persons and property in the Act. As a result, cyberterrorism may be cited to support a declaration of a state of emergency or local emergency. According to the bill's author, SB 532 is intended to provide the Governor and local governments will necessary tools to respond quickly as cyberterrorism becomes more of a threat.

Local public agencies that are authorized to declare a local emergency should understand that cyberterrorism may be cited to support a local public agency's proclamation of a local emergency.

(SB 532 amends Section 8558 of the Government Code.)

BUSINESS AND FACILITIES

AB 375 – The California Consumer Privacy Act of 2018.

This bill creates the California Consumer Privacy Act of 2018, which gives California residents ("consumers") the right to:

1. Know what personal information a business has about them, and where information came from or was sent (e.g., who it was sold to);

2. Delete personal information that a business collects from them;

3. Opt-out of the sale of personal information about them; and

4. Receive equal service and pricing from a business, even if they exercise their privacy rights under the law, with some exceptions.

Companies will need to provide information to consumers about these rights in privacy policies and will need to provide consumers with the ability to opt out of the sale of personal information by supplying a link titled "Do Not Sell My Personal Information" on their home page. The Act further provides that a business must not sell the personal information of consumers younger than 16 years of age without that consumer's affirmative consent or for consumers younger than 13 years of age, without the affirmative consent of the consumer's parent or guardian.

The Act defines "personal information" broadly as any information that identifies or can be used to identify a consumer or their household, such as: records of products purchased, browser search histories, educational information, employment history, and IP addresses.

Public entities do not need to comply with the Act because the Act only applies to: for-profits doing business in California, that: (a) have annual gross revenues in excess of $25 million; *or* (b) receive or disclose the personal information of 50,000 or more Californians; *or* (c) derive 50 percent or more of their annual revenues from selling California residents' personal information.

However, when contracting with covered companies, **public entities will want to ensure that the obligations and risks of the law rest squarely with the for-profit business**. Those risks are real. The Attorney General has enforcement authority over the act. Consumers may bring class actions against non-compliant companies that allow sensitive consumer personal information to be stolen or wrongfully disclosed. In these cases, consumers may seek statutory damages between $100 and $750 per California resident per incident.

(AB 375 adds Sections 1798.100 to 1798.198 to the Civil Code.)

AB 1565 – Limits Liability of General Contractors for Sub-Contractor's Failure to Comply with the Labor Code.

Last year, the Legislature enacted Labor Code section 218.7, which holds direct contractors liable, under certain types of construction contracts, for unpaid wages, benefits, or contributions that a subcontractor owes to its workers. Labor Code section 218.7 allows direct contractors to require subcontractors to provide certain payroll records so that the direct contractor can evaluate the subcontractor's compliance with wage and hour laws. The direct contractor may withhold payments until the subcontractor provides those records.

When Labor Code section 218.7 was enacted, Governor Brown explained that in 2018 the sponsors of that law would pass clarifying legislation regarding the scope of liability for contractors. This bill is that clarifying legislation. AB 1565 strikes language providing that the direct contractor's liability for unpaid wages or benefits is in addition to any other existing rights and remedies. AB 1565 also provides that in order to withhold payments, the direct contractor must specify in its contract with the subcontractor, what specific documents and information that the subcontractor is required to provide.

Public agencies who enter into construction contracts should require direct contractors to

comply with Labor Code section 218.7 and should draft contracts that state the specific documents and information the subcontractor must provide. A well-planned construction contract will help protect the public agency from contract/subcontractor disputes.

(AB 1565 amends Section 218.7 of the Labor Code.)

AB 1766 – All Public Swimming Pools, Where Admission Fees are Charged, Must Now Have an Automated External Defibrillator Onsite.

This bill requires all public swimming pools to have an Automated External Defibrillator ("AED") onsite. This bill applies to all artificial public swimming pools, as opposed to public lakes or rivers, where an entrance fee is charged. Currently, public agencies are required to provide lifeguards during pool operations. Agencies will now be required to also provide AEDs, which are portable electronic devices used to deliver an electrical shock, or defibrillation, during life-threatening cardiac arrest.

(AB 1766 amends Section 116045 of the Health and Safety Code.)

AB 1770 – Deletes the Requirement that the Issuer of an Asset-Based Security Must Have at Least an "A" Rating for Public Investment of a Surplus Fund.

This bill gives local agencies more flexibility to invest surplus funds in mortgage-backed securities ("MBS") and asset-backed securities ("ABS"). Current law allows a local agency to invest surplus money into MBSs and ABSs if:

1. The security's issuer has an "A" rating or better by a National Recognized Statistical Rating Organization;

2. The security itself is rated "AA" or better; and

3. The security comprise no more than 20% of the agency's surplus funds.

However, issuers of MBSs and ABSs are often trusts organized as separate legal entities only to issue specific securities. These "issuers" are not themselves rated, which prevents local agencies from investing in these high yield instruments, because the second requirement – an "AA" rating or better – cannot be met.

This bill removes that requirement, enabling treasurers to purchase these instruments. Agencies will instead be limited to purchasing only highly-rated securities (e.g., the security must have an AA rating, but the issuer of the security does not need to be rated). The bill also clears up an ambiguity over the application of a five-year limit on the maturity of the investment. The bill revises the maximum five-year maturity requirement to a requirement that the securities have a maximum remaining security of 5 years or less.

(AB 1770 amends Section 53601 of the Government Code.)

AB 2137 – Allows Regional Park or Open-Space Districts to Enter into Contracts Worth $50,000 and More Without Formal Bidding Process.

This bill increases the authority (from $25,000 to $50,000) that a general manager of a park or open space district has to bind a district without submitting a contract through a formal bid process.

Under current law, the general manager of a park or open space district, with the approval of the district's board and according to a formally adopted policy, may bind the district to contracts for materials, supplies, and labor worth up to $25,000, without first sending the contract out for bid. Some of the larger districts are also permitted to enter into contracts up to $50,000, including contracts for new construction.

AB 2137, increases the limit to $50,000 for all regional parks and open space districts. AB 2137 makes $50,000 the limit by which the general manager of any park or open space district, with district board approval, may bind the district without bidding. The contract must be approved in accordance with a board policy that was adopted in an open meeting. The contract may be for the payment of supplies, materials, labor, or other purposes, including new construction or building improvements.

Additionally, AB 2137 allows a district, by action in an open meeting, to increase the amount by which the general manager may bind the district without bidding beyond $50,000, so long as the amount does not exceed 2% of the amount in effect when the board

last authorized the manager to enter into contracts without bidding.

Districts should revisit their policies on contracting and amend them to conform to AB 2137.

(AB 2137 amends Section 5549 of the Public Resources Code.)

AB 2249 – Increases Project Cost Limits of the Uniform Public Construction Cost Accounting Act.

The Uniform Public Construction Cost Accounting Act promotes uniformity of cost accounting standards and bidding procedures on construction work performed or contracted for by public agencies. The Act is a voluntary program available to all public agencies that opt in with a formal resolution.

The Act allows participating agencies to use own employees or hire other entities directly through a negotiated contract or purchase order to perform public construction contracts that cost under a certain limit. Agencies may also use informal bid procedure to bid public projects that cost less than certain thresholds. Every five years, the State Controller reviews and makes recommendations for adjustments to these costs limits. With this bill, the Controller has approved the following cost limit increases:

1. For projects that may be performed by the employees of a public agency, by negotiated contract, or by purchase order from $45,000 to $60,000; and

2. For informal bidding from $175,000 to $200,000.

This bill also allows an agency to exceed the $200,000 threshold and award a contract at $212,500 or less in cases where all bids exceed $200,000, and the governing body approves the higher amount by adopting a resolution by a four-fifths vote and determines the public agency's cost estimate was reasonable.

This bill provides that the Controller will only notify participating public agencies, rather than all public agencies. Accordingly, agencies that are not part of the volunteer program, but track the program's cost limits, should note that they will no longer get notice of cost limit changes.

(AB 2249 amends Sections 22020, 22032, and 22034 of the Public Contract Code.)

AB 2263 – Developments of Designated Historical Sites Are Entitled to a Reduction in Required Parking.

In an effort to increase affordable housing construction and reduce the costs of development, AB 2263 requires local agencies to provide specified reductions in required parking for developments projects involving "designated historical resources." A "designated historical resource" is a structure or property designated on a local register of historic places, the California Register of Historical Resources, or the National Register of Historic Places. Under AB 2263, a local agency may not require any additional parking if the development of a designated historical resource involves a residential development within a half-mile of a major transit stop. If the development is for nonresidential use, the local agency must provide a 25% reduction in the amount parking that would otherwise be required.

(AB 2263 adds Section 18962 to the Health and Safety Code.)

AB 2396 – Exempts Employees and Officers of District Agricultural Association from Conflict-of-Interest Requirements, Allowing Them to Work for Other Agricultural Districts.

Existing law divides the state into agricultural districts and provides for the management of these districts by district agricultural associations ("DAA"). DAAs hold various activities on their sites, such as fairs and commercial events.

Many small DAAs rely on experts from neighboring DAAs when they are conducting fairs. However, current laws related to conflicts-of-interests prohibits an officer or employee in state civil service from being employed with another state agency or department. This prohibition precludes DAA employees and state officers from contracting with other DAAs during fair time. This bill provides DAAs needed flexibility during fair times by

exempting DAA employees and state officers from these conflict-of-interest rules. Specifically, this bill exempts an employee or state officer (not including a member of the board of directors), of a DAA from that conflict-of-interest prohibition for purposes of contracting with another DAA, subject to the approval of the board of directors of the DAA of which the person is an employee or state officer.

(AB 2396 adds Section 10413 to the Public Contract Code.)

AB 2600 – Counties and Cities May Now Create Regional Parks and Open-Space Districts by Adoption of a Resolution by Application.

This bill establishes an alternative procedure for forming a regional park or open-space district. Existing law authorizes the creation of a new regional park or open-space districts to be initiated by a petition signed by at least 5,000 voters within the proposed territory or by resolution of a county board of supervisors adopted after a noticed hearing.

This bill creates a third way of initiating the creation of a new park or district through the adoption of a resolution of application by the legislative body of any county or city that contains the territory proposed to be included in the district. The resolution of application must contain all of the following: (a) how the district will finance itself; (b) the proposed name for the district and why it should be formed; and (c) a description of the territory to be included.

The legislative body must hold a public hearing on the resolution before adopting it, and must publish notice of the hearing in one or more newspapers of general circulation within the county or city and on the county's or city's website. It also must provide mailed notice of the hearing to the executive officer of the local agency formation commission of the principal county at least 20 days before the hearing. The notice must generally describe the proposed formation of the district and the proposed territory of the district.

(AB 2600 adds Sections 5503.5 to the Public Resources Code.)

AB 2762 – Increase in Small Business Public Procurement Preferences Amounts and Preference Categories to Include Disabled Veterans and Social Enterprises.

This bill provides another opportunity to use the public procurement process to promote small business. This bill increases the maximum value of a small business procurement preference used by a local agency when awarding a contract based on the lowest responsible bidder from 5% to 7% and sets a maximum financial value of $150,000. Next, the bill adds two new preference categories: (1) disabled veteran-owned businesses; and (2) social enterprises. The disabled veteran business preference and the social enterprise preference categories may be used by local agencies contracting in the following counties: Alameda, Contra Costa, Lake, Los Angeles, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma. The bill defines a "social enterprise" as a nonprofit or for-profit business whose primary purpose is to benefit the economic, environmental, or social health of a community. **The two new preferences are being rolled out as a pilot program, with both set to sunset on January 1, 2024.**

(AB 2762 amends Section 2002 of the Public Contract Code and adds Section 2003 to the Public Contract Code.)

SB 100 – California Must Achieve 100 Percent Clean Energy by 2045.

SB 100 requires the State of California to achieve 100 percent clean and renewable energy by 2045. SB 100 will be known as The 100 Percent Clean Energy Act of 2018. When Governor Brown signed SB 100, he also signed an executive order establishing that California's new statewide goal to achieve carbon neutrality is 2045. Current law requires that the State achieve 50 percent carbon neutrality by 2030. The ambitious modification increases from 50 percent to 60 percent by 2030, and doubles that 50 percent goal by requiring that renewable energy and zero-carbon resources supply 100 percent of electricity for California end-use customers and state agencies by 2045. California is only the second state after Hawaii to require that all of its energy come from clean renewable sources.

The California Air Resources Board will work with state agencies to develop a framework for implementing and measuring carbon neutrality goals. State agencies will request the support of colleges, businesses, communities, and others to help California obtain all of its energy from clean sources.

Public agencies can get a help in achieving these goals by spreading the word across their communities and setting an example by achieving carbon neutrality within the agency. Public agencies can get a head start on these statewide requirements by installing solar panels or implementing other proven methods of producing clean and eligible renewable energy resources. Another way of helping is to review policies to ensure that the agency is complying with any applicable statutory requirements for awarding contracts to renewable energy resources companies.

(SB 100 amends Sections 399.11 through 299.30 of the Public Utilities Code and adds Section 454.53 to the Public Utilities Code.)

NOTE:

LCW regularly assists agencies with their clean and renewable energy resource needs. Our attorneys include a LEED Green Associate, an accreditation by LEED as a professional with extensive knowledge of green design, construction, and operations.

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LCW WEBINAR:

2019 PUBLIC AGENCY LEGISLATIVE UPDATE

Tuesday, November 13, 2018 | 10 AM - 11 AM

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

Who Should Attend?

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

Workshop Fee:

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

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Live, Recording, Live & Recording

Presented by:

Gage C. Dungy

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LCW Webinar:
Managing Increased Public Access to Peace Officer Personnel Records after SB 1421 and AB 748

Monday, November 5, 2018 | 10 AM - 11 AM

For decades, California peace officer personnel records could only be obtained through the Pitchess motion procedure. This regime will change dramatically in 2019, when Senate Bill 1421 and Assembly Bill 748, signed by Governor Jerry Brown on September 30, 2018, take effect. These new laws allow members of the public to obtain certain, frequently high-profile and controversial, categories of peace officer personnel records by submitting a California Public Records Act (CPRA) request. These records include audio and video recordings of critical force incidents and incidents in which an officer discharges his or her firearm at a person. Agencies should expect major influxes of CPRA requests in the new year. The new laws also set out specific timelines for disclosure and exceptions to the production requirements. This webinar will offer practical guidance from leading experts to prepare your agency to navigate these new laws.

Who Should Attend?

Police Chiefs, Sheriffs, City Attorneys, County Counsels, and any sworn and civilian law enforcement personnel with records management responsibilities.

Workshop Fee:

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

Viewing Options:

Live, Recording, Live & Recording

Presented by:

J. Scott Tiedemann

&

Paul D. Knothe

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