LCW Liebert Cassidy Whitmore

Client Update

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

July/August 2019

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LCW NEWS

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FIRM VICTORY

LCW Obtains Dismissal Of Former Fire Chief's Claims Of Discrimination And Retaliation.

LCW Partners Elizabeth Arce and Suzanne Solomon, and Associate Attorneys Alison Kalinski, Isabella Reyes, and Megan Atkinson helped obtain summary judgment for a city against its former fire chief. The former chief was promoted up through the ranks of the fire department until he was appointed fire chief in 2011. He served at-will and had an employment agreement that granted the city manager the sole discretion to terminate his employment.

By the fall of 2015, the then city manager had lost confidence in the former chief's judgment and his abilities to lead the fire department. The city manager met with the former chief and informed him of the termination decision, but also stated that he would allow the former chief to retire honorably. The former chief and the city manager spent over six months negotiating a settlement agreement for the retirement.

After six months, however, the former chief refused to sign the agreement and instead filed a complaint with the Department of Fair Employment and Housing alleging discrimination, harassment and retaliation. Since the former chief did not sign the agreement and did not resign, the city manager exercised his discretion under the employment agreement and proceeded with the decision he made in the fall of 2015 to terminate the former chief's employment.

The former chief then filed a lawsuit against the city and former city manager in the Superior Court alleging race discrimination, race harassment, and retaliation under the Fair Employment and Housing Act ("FEHA"), and whistleblower retaliation under Labor Code section 1102.5. In essence, the former chief claimed he was terminated for complaining about the lack of African-Americans in the Department. The former chief even went on local news to broadcast his allegations. The former chief later amended his complaint to include a claim for disability discrimination. LCW filed a demurrer and obtained dismissal of all claims against the former city manager as well as the claims for race discrimination and harassment, and whistleblower retaliation. The city then won summary judgment on the former chief's claims for disability discrimination and retaliation. The court found no evidence of discrimination or retaliation and that the city had legitimate reasons for the termination.

NOTE:

A demurrer and a motion for summary judgment are powerful tools that can save public agencies money by getting lawsuits dismissed before trial. LCW attorneys can help public agencies determine whether a case is appropriate for demurrer or summary judgment.

PUBLIC SAFETY

Sheriff's Sergeant Not Entitled To Appeal Release From Probationary Promotion.

On November 1, 2015, the Los Angeles County Sheriff's Department ("Department") promoted Thomas Conger from sergeant to lieutenant, subject to a six-month probation period. A few months later, the Department informed Conger that he was under investigation for events occurring before his promotion. Shortly thereafter, the Department relieved Conger of duty, placed him on administrative leave, and extended his probationary period indefinitely due to his "relieved of duty" status.

On May 20, 2016, the Department notified Conger that it was releasing him from his probationary position of lieutenant based on investigatory findings that Conger had failed to report a use of force while he was still a sergeant. The Department provided Conger with a "Report on Probationer" ("Report"), which indicated that on May 21, 2015, Conger and two deputy sheriffs moved a resisting inmate from one cell into an adjacent cell. The Report said that Conger violated Department policy by failing: to report the use of force; to document the incident; and to direct his subordinates who used or witnessed the use of force to write the required memorandum. The Report concluded that Conger did not meet the standards for the position of lieutenant, and recommended Conger's release from probation and demotion back to sergeant.

Subsequently, Conger filed a written appeal with the County's human resources office and a request for a hearing pursuant to the Public Safety Officers Procedural Bill of Rights Act, at Government Code section 3304 subdivision (b), with the County's Civil Service Commission. Section 3304, subdivision (b) provides that "[n]o punitive action, nor denial of promotion on grounds other than merit, shall be undertaken by any public agency against any public safety officer who has successfully completed the probationary period that may be required by his or her employing agency without providing the public safety officer with an opportunity for administrative appeal." Section 3303 defines "punitive action" as "any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment."

After both the human resources office and the Civil Service Commission denied Conger's requests, Conger petitioned the trial court for an order directing the County to provide him with an administrative appeal. Conger argued that releasing him from his probation based on alleged pre-promotion misconduct constituted a "denial of promotion on grounds other than merit" under section 3304, subdivision (b), and entitled him to an administrative appeal. The trial court denied the petition, ruling that the Department could properly consider Conger's pre-probationary conduct in rescinding his promotion, and that the decision to rescind was merit-based due to Conger's failure to report a use of force. Conger appealed.

The Court of Appeal affirmed. First, the court determined whether Conger's release from his probationary promotion was a "denial of promotion" or a "demotion" The court noted that this was an important distinction because under section 3304, subdivision (b), an employer can deny a promotion without triggering the appeal right, so long as the denial is based on merit. The court concluded that the Department's decision was indeed a denial of a promotion. The court noted that Conger had not completed his probationary period at the time the Department returned him to his previous rank because the Department had extended the probationary period indefinitely.

Therefore, Conger did not yet have a vested property interest in the lieutenant position. Because Conger lacked permanent status as a lieutenant,

his release from his probationary promotion constituted a denial of promotion rather than a demotion.

Next, the Court of Appeal considered whether the Department denied Conger's promotion on merit-based grounds. The court noted that because lieutenants are high-level supervisors in the Department, complying with Department procedures and ensuring that subordinates do so as well is substantially related to successful performance in that position. The court reasoned that Conger did not demonstrate competence as a supervisor when he failed to report a use of force or instruct his subordinates to do so. Further, the court noted that nothing in section 3304, subdivision (b) suggests that the term "merit" should be limited to the merit of an officer's performance during the probationary period. Thus, the court concluded that the Department's grounds for denying Conger's promotion were merit-based.

Finally, the court evaluated whether Conger was entitled to an administrative appeal because the Report could lead to future adverse consequences. Conger argued that he was entitled to an administrative appeal because the Department placed the Report in his personnel file and could rely on it in future personnel decisions that could lead to punitive action. The court said that the mere fact that a personnel action may lead to a denial of promotion on merit grounds does not transform it into a punitive action for purposes of section 3304. Moreover, Conger did not provide any evidence that the Report would lead to punitive action or affect his career because the only action the Report recommended was release from promotion.

For these reasons, the court found that the Department was not required to provide Conger with an administrative appeal for his release from his probationary promotion.

Conger v. County of Los Angeles, 36 Cal.App.5th 262 (2019).

NOTE:

Public safety officers are entitled to a number of additional protections under the Public Safety Officers Procedural Bill of Rights Act ("POBRA"), which includes administrative appeals of certain types of personnel actions. LCW attorneys are experts at advising public safety agencies about their obligations under the POBRA.

LABOR RELATIONS

Community College District Could Refuse To Provide Faculty Members Written Complaints Before Their Investigatory Interviews.

The Public Employment Relations Board ("PERB") found that the Contra Costa Community College District ("District") did not violate the Educational Employment Relations Act ("EERA") when it withheld copies of written discrimination complaints against two faculty members until after their investigatory interviews.

The District had received two student complaints against two faculty members. The District hired an attorney to investigate the complaints and required the two accused faculty members to be interviewed. The faculty members requested union assistance, and the union asked for copies of the complaints before the interviews took place. However, the District informed the union that it did not provide copies of complaints before an interview in order to protect the integrity of the investigation and the complainants' privacy rights. The union challenged the District's refusal.

PERB noted that an employer must provide the union and employee with reasonable, timely notice of the alleged misconduct. This means that the notice must include sufficient information about the alleged wrongdoing "to enable a union representative to represent an employee in a meaningful manner during the interview" and must give the accused employee enough time to consult with his or her representative. However, PERB concluded "the employer has no obligation to provide the underlying written complaint until after the employer conducts an initial investigatory interview."

PERB also explained that after an investigatory interview, the employer may not deny the union's request for information on the basis that: a disciplinary meeting or proceeding falls outside the scope of the bargaining agreement; or that the union has no duty of fair representation.

Similarly, the employer may not deny the union's request for information by simply asserting a third party's right to privacy. PERB reaffirmed the rule that after the employer raises the legitimate privacy rights of a third party, such as a student, the employer cannot simply refuse to provide any information. Rather, the employer must meet and confer in good faith to reach an accommodation of the union and accused employee's right to obtain the information, and the third party's right to privacy. Such accommodations could include redacting information that is not relevant or entering into an agreement that limits the use of the information.

Contra Costa Community College District, PERB Decision No. 2652E (2019).

NOTE:

Agencies must follow a variety of laws, court cases, and administrative decisions in responding to union requests for information, especially while investigations are pending. LCW attorneys can help agencies navigate these requirements.

PERB Granted Partial Injunction To Prevent County Employees In Essential Positions From Striking.

In April 2018, the County of San Mateo ("County") and the American Federation of State, County & Municipal Employees ("AFSCME") began negotiations for a new memorandum of understanding. In January 2019, AFSCME declared that the parties had reached impasse.

The County's Employer-Employee Relations Policy ("Policy"), which contains impasse resolution procedures, provides that when either the County or a union requests an impasse meeting, the parties shall promptly meet to review their positions in a final, good faith effort to reach an agreement. If the parties do not reach an agreement at the impasse meeting, they may agree to try additional dispute resolution methods, but either party has the right to decline.

The County requested an impasse meeting, but the parties were unable to reach an agreement. At the meeting, AFSCME notified the County it was not interested in trying other dispute resolution methods, and gave the County with written notice of a two-day strike.

In response, the County filed an unfair practice charge ("UPC") alleging that AFSCME's planned strike violated the union's duty to bargain in good faith because: 1) the strike was premature and did not allow adequate time to consider alternative dispute resolution methods; and 2) the threatened strike included employees whose absence from work for two days would imminently and substantially threaten public health or public safety. The Public Employment Relations Board ("PERB") determined that 61 positions were essential to the public health or safety. AFSCME agreed to exempt those positions from the strike.

Subsequently, the parties renewed their negotiations and AFSCME cancelled the strike. The parties then reached a tentative agreement with 11 AFSCME-represented units. However, one AFSCME unit did not ratify the tentative agreement, and AFSCME notified the County of another two-day strike on behalf of that unit. The County amended its UPC to argue that this strike was premature and that the strike included employees whose absence from work would imminently and substantially threaten public health or public safety. AFSCME agreed to exempt many of the employees; however, it sought to proceed with the strike for the remaining employees.

PERB rejected the County's argument that AFSCME's strikes were premature. PERB noted that further procedures were not required under the County's Policy. Thus, PERB denied the County's requests to enjoin the strikes in their entirety.

However, PERB determined that some of the employees included in the strike held positions that were essential. In determining which positions were essential, PERB used a three-part test. First,

PERB considered the nature of the services the employees performed and whether the employer has clearly demonstrated that disruption of those services for the length of the strike would imminently and substantially threaten public health or safety. Second, if the employer met the first test, PERB considered whether the employer had clearly demonstrated that an injunction was necessary to protect the public even after fully accounting for all possible service reductions and coverage options. Third, for the employees who PERB determined were essential, PERB considered what arrangements would protect the public while infringing as little as possible on the employees' protected rights.

PERB applied this test to each of the positions the County sought to exclude. Ultimately, PERB granted injunctions, in whole or in part, for various essential positions including: 911 dispatchers; sheriff's office food workers; boiler watch engineers; juvenile shelter counselors; social workers who operated the County's hotlines for child maltreatment; counselors for the County's residential facility for severely emotionally disturbed youth; hazmat response leads; adult protection services social workers; deputy public guardians; and certain hospital positions.

On the other hand, PERB denied the County's requests for an injunction with respect to the following positions: sheriff's office utility workers; autopsy technicians; airport operations specialists; stationary specialists; benefits analysts; the employees staffing the County's mental health call center; alcohol and other drug treatment employees; regional clinic employees; school-based mental health specialists; social worker supervisors; microbiologists; and community workers.

County of San Mateo, PERB Decision No. IR-61-M (2019).

NOTE:

Employee strikes can be extremely disruptive for public agencies. LCW can assist agencies to prepare a strike plan and file PERB charges to help minimize disruptions.

RETIREMENT

CalPERS Could Not Reinstate Previously Terminated Employee To A Higher Classification.

Clare Byrd worked as an Administrative Analyst/ Specialist at San Diego State University ("SDSU"), which is part of the California State University ("CSU") system. In December 2014, after 14 years of employment, SDSU dismissed Byrd. Byrd subsequently filed a retirement application with CalPERS, and CalPERS accepted her application.

Byrd also filed an appeal with the State Personnel Board ("SPB") to challenge her dismissal. Byrd and CSU ultimately agreed to settle the appeal. One provision of their settlement agreement directed CSU to reinstate Byrd to a higher classification, which Byrd had not previously held, and pay Byrd the higher salary associated with that classification while CSU applied for medical retirement benefits on Byrd's behalf. The SPB approved the settlement agreement.

Following the settlement agreement, CalPERS refused to reinstate Byrd to the higher classification because Government Code section 21198, part of California's retirement law, only authorized Byrd's reinstatement to a job she previously held.

In light of CalPERS' refusal to reinstate Byrd to the higher classification, the SPB issued a decision voiding its prior approval of the settlement agreement. Byrd then asked the superior court to compel CalPERS to reinstate her to the higher position. The trial court denied Byrd's request, and Byrd appealed.

On appeal, the court considered whether Government Code section 21198 prevented CalPERS from reinstating Byrd to a classification she had not previously held. In pertinent part, section 21198 reads, "[a] person who has been retired under this system for service following an involuntary termination of … employment, and who is subsequently reinstated to that employment . . . shall be reinstated from retirement." The court, relying on the plain meaning of the statute,

determined that the term "reinstate" means that the employee is returning to the specific, previously-held position or classification.

The court noted that while a reinstatement to a different classification at a higher salary level could be consistent with section 21198 if the different classification had some connection to the underlying dispute, Byrd alleged no such connection in this case. Instead, the court reasoned that Byrd's reinstatement to the different classification was merely part of a package of benefits CSU had offered in exchange for the promises it received from Byrd in the settlement agreement. Therefore, the court found that section 21198 prevented CalPERS complying with the settlement agreement's directive that Byrd be reinstated to a different job classification.

Byrd v. State Personnel Board, 36 Cal.App.5th 899 (2019).

NOTE:

This case illustrates the complexities of California's retirement law. Public agencies should ensure they are not reinstating an employee to a different classification as part of a settlement agreement if the classification has no connection to the underlying dispute.

DISCRIMINATION & WHISTLEBLOWER

Trial Court Erred By Dismissing Deputy District Attorney's Disability Discrimination and Whistleblower Claims.

Christopher Ross worked for the County of Riverside ("County") as a deputy district attorney. In 2011, the County assigned Ross a murder case in which Ross believed the accused person was innocent. Ross emailed his supervisors twice indicating that he did not believe the County could prove the case beyond a reasonable doubt and recommending that the dismissal of the case.

The case was not dismissed, and over the next two years, Ross obtained more evidence exculpating the accused person. For example, Ross: received DNA testing results indicating the accused did not commit the crime; identified a witness who implicated the accused's roommate in the murder; and obtained recordings of two telephone calls the roommate made from jail in which the roommate admitted to murdering the victim. Despite Ross' repeated requests from 2011 to 2013, the district attorney's office did not dismiss the case until February 2014. Ross believed that the district attorney's office was violating the accused's due process rights by pursuing an allegedly malicious prosecution, but Ross never expressly informed his supervisors that he believed the office was violating state or federal law.

During this same time, Ross learned he was exhibiting neurological symptoms that required evaluation and testing. While Ross was undergoing testing at an out-of-state clinic, he requested a number of accommodations to reduce his workplace stress. However, the district attorney's office either denied Ross' requests or did not follow through with the accommodations.

A few months later, the assistant district attorney sent Ross a memorandum directing him to provide a doctor's note indicating his work restrictions so that the County could evaluate whether it could reasonably accommodate him. Ross explained that his out-of-state testing center had a policy not to provide such documentation, but he offered to provide a note from his primary care physician. The County refused to accept a note from his primary care physician, so Ross never provided the County with any documentation.

After Ross missed approximately three weeks of work over a six-month period to attend out-of-state testing, the County placed him on paid administrative leave of absence pending the outcome of a fitness-for-duty examination. A little over a week later, Ross' counsel sent the County a letter informing the County that Ross deemed himself constructively discharged as of the date of the letter. While the County attempted to send Ross subsequent letters directing him to return to work, Ross did not return. After repeated attempts, the County sent Ross a final notice of job abandonment indicating that the County considered him to have abandoned his job.

Ross then filed suit against the County alleging a violation of Labor Code section 1102.5 and the Fair Employment and Housing Act's ("FEHA") disability-related provisions. The trial court dismissed Ross' lawsuit, and Ross appealed.

The Court of Appeal concluded that the trial court improperly dismissed Ross' claims. In order to establish a claim for violation of Labor Code section 1102.5, an employee must show: (1) participation in protected activity; (2) an adverse employment action; and (3) a causal link between the protected activity and the adverse employment action. Under Labor Code section 1102.5, an employee participates in protected activity by disclosing "'reasonably based suspicions' of illegal activity." The court noted the trial court erred in dismissing Ross' Labor Code section 1102.5 claim because Ross had sufficient evidence of protected activity. For example, Ross brought the evidence exculpating the accused to his supervisors, and he repeatedly recommended dismissing the case, at least in part, because of his belief that continued prosecution would violate the accused's due process rights and well as Ross' ethical obligations under state law. The court noted that while Ross did not expressly say that he believed the County was violating any specific state or federal law by continuing to prosecute the accused, Labor Code section 1102.5 does not require that.

Similarly, the court found that the trial court erred in dismissing Ross' claims under the FEHA. The FEHA prohibits an employer from discharging or discriminating against an employee because of a physical disability. The FEHA also prohibits an employer from failing to reasonably accommodate an employee's known physical disability, from retaliating against an employee who has requested reasonable accommodation, and from failing to conduct a timely, good faith interactive process with an employee who has requested reasonable accommodation. Ross presented enough evidence to show a physical disability, and that the County was aware of his potentially disabling condition. For example, Ross told his supervisors about his symptoms and that he was being tested at an out-of-state clinic, he missed work periodically to travel to testing, and the County placed him on a paid leave of absence pending a fitness for duty examination.

Ross v. County of Riverside, 36 Cal.App.5th 580 (2019).

Note:

This case illustrates that an employee need not say that the public agency employer is violating any particular state or federal law to pursue a whistle-blower claim under Labor Code section 1102.5. This case is also a cautionary tale about FEHA disability and reasonable accommodation claims; a careful analysis of the facts and law is always required in this high-risk area.

WAGE & HOUR

California Supreme Court Limits State Correctional Employees' Claims For Additional Compensation.

In these consolidated class action lawsuits, correctional employees sued the State of California and various departments of the State government for violations of wage and hour law. The correctional employees alleged that they were entitled to additional compensation for the time they spent in pre- and post-work activities. These activities included traveling between the outermost gate of the prison facility and the employees' work posts within the facility; briefing at the beginning and end of each shift; checking in and out mandated safety equipment; and submitting to searches at various security checkpoints.

The California Supreme Court divided these activities into two categories: "entry-exit walk time" and "duty-integrated walk time." Entry-exit walk time is the time an employee spends after arriving at the prison's outermost gate but before beginning the first activity the employee is employed to perform (plus the analogous time at the end of the employee's work shift). Duty-integrated walk time is the time an employee spends after beginning the first activity the

employee is employed to perform but before the employee arrives at his or her assigned work post (plus the analogous time at the end of the employee's work shift).

In each of the class action complaints, the correctional employees alleged the State failed to pay minimum wages, breached their contract, and failed to pay overtime compensation. The trial court divided the employees into two subclasses: (1) unrepresented supervisory employees; and (2) represented employees. The California Supreme Court addressed the causes of action for each subclass of employees separately.

Minimum Wage Claims

For the unrepresented supervisory employees' minimum wage claim, the Court first had to determine which regulations applied: the Industrial Welfare Commission's ("IWC") wage order No. 4-2001 or CalHR's Pay Scale Manual. The California Legislature delegated authority to the IWC to adopt regulations regarding wages, hours, and working conditions in the state of California. Similarly, the Legislature delegated authority to CalHR to adopt regulations governing the terms and conditions of State employment, which includes setting the salaries of state workers and defining their overtime.

IWC wage order No. 4-2001 provides that employers must pay their employees at not less than a designated hourly rate "for all hours worked." The order defines all hours worked as "the time during which an employee is subject to the control of any employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." While most provisions of the order do not apply to state or local public agency employees, the minimum wage provision does. Under this definition, entry-exit walk time would likely be considered hours worked.

In contrast, the Pay Scale Manual adopts the narrower definition of hours worked under the Fair Labor Standards Act ("FLSA"), the federal wage and hour law. The Pay Scale Manual provides "[f]or the purpose of identifying hours worked under the provisions of the [FLSA], only the time spent which is controlled or required by the State and pursued for the benefit of the State need be counted." The FLSA excludes entry-exit walk time from hours worked.

While the unrepresented correctional employees argued the more employee-friendly standard from the IWC wage order should apply, the Court disagreed. The Court concluded that the two definitions of "hours worked" could not be harmonized, and therefore, the CalHR Pay Scale Manual acted as an exemption to the IWC wage order. The Court noted that because the Legislature explicitly delegated to CalHR the authority to adopt regulations for State employees, the Pay Scale Manual, including its narrow FLSA-based definition of compensable work time, governed the rights of the unrepresented employees. Because the FLSA definition applied, the Court reasoned that the unrepresented employees were not entitled to compensation for entry-exit walk time. However, duty-integrated walk time is included as work time under the FLSA. If the State did not take into consideration this time, the unrepresented employees may be entitled to additional compensation.

With regard to the represented employees' minimum wage claim, the Court found that they were not entitled to additional compensation. The memoranda of understanding ("MOU") at issue specifically provided the represented employees with four hours of compensation for duty-integrated walk time. As a result, they were not entitled to additional compensation for that time. Also, the evidence did not suggest that the four hours was insufficient. The Court noted that although the MOUs did not specifically refer to entry-exit walk time, they expressly stated that they constituted the entire understanding of the parties regarding the matters they addressed, and compensation for pre- and post-work activities was one of those matters. Therefore, the represented employees were also not entitled to additional compensation for entry-exit walk time. Further, the Court highlighted that the Legislature approved the MOUs, which precluded the represented employees from relying on more general state laws to support their minimum wage claims.

Breach of Contract Claims

For the unrepresented employees' breach of contract claim, the Court determined that because CalHR's Pay Scale Manual controlled their right to compensation, they could only recover any uncompensated duty-integrated walk time under a breach of contract theory. The Court concluded that if the unrepresented employees performed duty-integrated walk time and did not receive overtime compensation for it, they may have a contractual interest in receiving that compensation.

For the represented employees, the Court concluded their breach of contract claim failed. The Court again noted that the Legislature approved the MOUs governing their employment, and the unrepresented employees' contract rights derive from, and are limited to, the legislatively-created terms of their employment. Thus, they were not entitled to additional compensation under a breach of contract theory.

Overtime Compensation Claims

Finally, the Court concluded that the unrepresented employees could not maintain a cause of action for unpaid overtime compensation under California Labor Code sections 222 or 223. The Court noted that section 222 only applies when an employer withholds "the wage agreed upon" in "any wage agreement." Thus, it did not apply to the unrepresented employees because their employment was not governed by an agreement. Similarly, the Court noted that section 223 only applies to "secret deductions" or "kick-backs," which were not alleged.

Similarly, the Court found that the represented employees' overtime compensation claims under Labor Code sections 222 and 223 were without merit. For the section 222 claim, the Court noted that the represented employees could not prove that any duty-integrated walk time ever went uncompensated. Additionally, the MOUs precluded compensation for entry-exit walk time. Accordingly, the State did not withhold the wage agreed upon in a wage agreement. Further, as was the case with the unrepresented employees' section 223 claim, the represented employees' allegations did not involve "secret deductions" or "kick-backs."

Stoetzl v. Department of Human Resources, 2019 WL 2722597 (2019).

Note:

Because wage and hour claims are often brought on behalf of a large category or class of employees, these lawsuits can subject public agencies to substantial liability. LCW attorneys have defended many FLSA collective actions and can assist public agencies to limit or eliminate liability.

FIRST AMENDMENT

Transit Authority Unreasonably Rejected Union's Proposed Bus Advertisements.

The Spokane Transit Authority ("STA") generates revenue through ads on its busses. After receiving complaints about the content of a number of ads on its buses, STA adopted its Commercial Advertising Policy ("Ad Policy"). STA only permits two types of ads under its Ad Policy: "commercial and promotional advertising" and "public service announcements." Further, the Ad Policy expressly prohibits "public issue" advertising, which is defined as advertising "expressing or advocating an opinion, position, or viewpoint on matters of public debate about economic, political, religious or social issues."

In 2016, Amalgamated Transit Union Local 1015 ("ATU"), the union that represents all of STA's transit operators and maintenance, clerical and customer service employees, submitted a proposed ad to the media vendor STA contracted with to run ads. The ad stated, "Do you drive: Uber? Lyft? Charter Bus? School Bus? You have the Right to Organize! Contact ATU 1015 Today at 509-395-2955." The ad prominently featured ATU's logo.

However, after a delay in the approval process for the proposed ad, STA informed ATU that it had terminated its contract with the media vendor and was no longer accepting new ads until it chose a new vendor through a public proposal process.

Following STA's rejection of its ads, ATU filed a lawsuit alleging violations of its rights under the First and Fourteenth Amendments of the U.S.

Constitution. ATU alleged that STA discriminated on the basis of viewpoint by prohibiting only labor organizations from placing ads. ATU also alleged that the Ad Policy's restrictions on ads were unreasonable. While the trial court found no viewpoint discrimination, the court concluded that: it did not need to defer to STA's way of applying its Ad Policy; and that ATU's proposed ad constituted "commercial and promotional advertising," not "public issue" advertising. Therefore, the court found that STA was unreasonable in denying the ad.

On appeal, STA argued that the trial court should have deferred to its way of applying its Ad Policy as courts in other jurisdictions have done. STA also argued that it was reasonable to reject the ad as "public issue" advertising because the ads could be interpreted as a foray into the public debate between labor unions and opposition groups. Finally, STA argued that ATU's ad did not constitute "commercial and promotional advertising." The Ninth Circuit Court of Appeals rejected all of STA's arguments.

The Ninth Circuit noted that STA's buses are limited public forums, which means that STA can restrict the content of speech on its buses so long as the restrictions are reasonable and viewpoint neutral. The court identified the three components of the reasonableness requirement: (1) "whether [the policy]'s standard is reasonable 'in light of the purpose served by the forum,'"; (2) whether "the standard [is] 'sufficiently definite and objective to prevent arbitrary or discriminatory enforcement by [the government] officials'"; (3) and "whether an independent review of the record supports [the agency]'s conclusion" that the ad is prohibited by the agency's policy. The court applied this three-part test in addressing each of STA's arguments.

First, the court found that the trial court should not defer to how STA applied its advertising policy. The court noted that while other jurisdictions give agencies deference, the case law in Ninth Circuit is clear and does not require deference.

Second, the court applied the three-part test to review STA's decision to exclude ATU's ad under "public issue" advertising. The court noted that the decision was unreasonable under the third part of the test because an independent review of the facts did not support STA's decision. The record showed that since 2008, STA buses have carried stickers on the inside that displayed ATU's logo and stated that "This vehicle is operated and maintained by union members Amalgamated Transit Union AFL CIO/CLC." Further, these stickers, and other union ads that STA ran previously, never elicited a complaint. Thus, the facts did not suggest that ATU's ads would cause conflict or debate to the detriment of STA, and STA unreasonably rejected the ads.

Lastly, the court considered whether STA properly rejected ATU's proposed ad because it did not qualify as "commercial and promotional advertising." Again, the court, relying on the third part of the test, determined that STA's decision was unreasonable. The court noted that STA's definition of "commercial and promotional advertising" is broad and promotes any entity engaged in commercial activity. The court found that because ATU's ad promotes an organization that engages in commercial activity, STA unreasonably rejected ATU's ad.

Amalgamated Transit Union Local 1015 v. Spokane Transit Authority, 2019 WL 2750841 (2019).

NOTE:

An individual or entity's free speech rights depends on the forum in which the speech occurs: a public forum; a limited public forum; or a nonpublic forum. Speakers enjoy the strongest First Amendment protections in public forums and the weakest in nonpublic forums.

PAID FAMILY LEAVE

Governor Signs Budget Bill Into Law Increasing Paid Family Leave To Eight Weeks.

On June 27, 2019, California Governor Gavin Newsom signed into law the State Budget and accompanying budget trailer bills. One of those bills, Senate Bill No. 83 ("SB 83") amends Unemployment Insurance Code section 3301 regarding the Paid Family Leave program that is administered by the Employment Development Department. Specifically, SB 83 increases the maximum length of paid family leave benefits from 6 to 8 weeks,

effective July 1, 2020. SB 83 also notes that the Governor will create a task force to develop a proposal to increase paid family leave duration to a full six months by 2021-2022. The bill indicates the Office of the Governor will present the task force findings and observations to the Legislature by November 2019.

Sen. Bill No. 83 (2019-2020 Reg. Sess.)

NOTE:

Only those public entities that have opted into the Paid Family Leave program will be impacted by this new legislation.

DID YOU KNOW....?

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

- LCW ranks as the #3 law firm for its size for female attorneys by *Law360*. See the full article here!
- Effective January 1, 2020, the definition of "race" under the Fair Employment and Housing Act will include "traits historically associated with race, including, but not limited to, hair texture and protective hair styles." Protective hair styles include, but are not limited to, hairstyles such as braids, locks, and twists. (Sen. Bill 188, 2019-2020 Reg. Sess. (Cal. 2011).)
- Employers are prohibited from seeking gender or sex-related information from applicants and employees. (See 2 C.C.R. § 11030 et seq.)

CONSORTIUM CALL OF THE MONTH

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

Question: A human resources director wanted to know if a part-time employee in the agency's recreation department could also volunteer in the agency's human resources department.

Answer: The attorney explained that under the Fair Labor Standards Act, employees cannot volunteer to do work at an agency that involves the same type of services that the employee is paid to perform at that agency. In this case, because the duties the employee performed in the recreation department were not similar to the volunteer duties she would perform in the human resources department, the attorney advised the agency that the employee could also volunteer in the human resources department.

BENEFITS CORNER

Two New Health Reimbursement Arrangements (HRAs) Employers Can Offer Employees.

On June 13, 2019, the Department of the Treasury, Department of Labor, and Department of Health and Human Services ("Departments") issued final regulations creating two new health benefit arrangements ("HRAs") that employers may offer to employees starting for the January 1, 2020 plan year. Individual Coverage HRAs ("ICHRA") and Excepted Benefit HRAs ("EBHRA") are the two new arrangements.

An HRA generally is an account-based plan funded solely with employer contributions and not with contributions or salary reduction elections from the employee. These plans generally reimburse medical expenses incurred by an employee and dependents. Historically, HRA's have not been widely available to employees due to their restrictive rules.

These new rules now provide employers with two new options. First, an employer made adopt an ICHRA to reimburse medical care expenses or premiums for individual coverage the employee purchases on the individual market or through Covered California. An employer may adopt an ICHRA when the employer does not also offer a traditional group health plan to the same class of employees. Second, an employer may adopt an EBHRA to reimburse medical care expenses, but not premiums, when the employer offers a traditional group health plan.

The following is a basic comparison chart showing the differences between an ICHRA and an EBHRA:

	Individual Coverage HRA (ICHRA)	Excepted Benefit HRA (EBHRA)
How it works with the employee's medical coverage?	Participants must enroll in individual health insurance coverage or Medicare (i.e. coverage that's not employer sponsored; not short-term limited duration insurance; and not solely an excepted benefit)	Participants must have the opportunity to enroll in the employer's group health plan (but don't have to actually enroll)
What can the HRA reimburse?	Premiums for individual coverage and/or Code §213(d) medical care expenses (depending on how it is designed)	Code §213(d) medical care expenses; Premiums only for excepted benefit coverage (i.e. stand-along dental)
How much can the HRA reimburse?	No Limit	Maximum of $1,800 (2020 amount) newly available to each participant each plan year.
Will unused amounts rollover into the next plan year?	Yes	Yes
Employer contributions?	No minimum or maximum	See maximum above
Notice Requirements	Written notices to all employees (and former employees) eligible for the ICHRA 90 days before the start of each plan year or the first day the coverage begins (see below)	No additional requirement yet, but there may be future notice requirement for non-federal government plans.
Other Requirements?	Must be able to opt out and waive future reimbursements each plan year.	Must be available to all similarly situated individuals under the same terms and conditions
Is it considered an offer of minimum essential coverage under the Affordable Care Act?	Yes	No

Employer Must Offer an ICHRA to all Employees within a Class

An employer may not offer both an ICHRA and an EBHRA to the same class of employees.

However, an employer may offer an ICHRA to one class and a traditional group health plan to other class. What is a class?

- Full-time employees;
- Part-time employees;
- Employees in a unit covered by a particular collective bargaining agreement;
- Seasonal employees;
- Employees working in the same geographic location;
- Salaried workers;
- Hourly workers;
- Temporary employees of staffing firms;
- Non-resident aliens with no U.S. based income;
- Employees who have not satisfied a waiting period, or
- Any group of employees formed by combining two or more of these classes.

The minimum class size depends on the employer's total number of employees:

Number of Employees	Minimum Class Size
Fewer than 100	10 employees
100 to 200 employees	10% of total number of employees
More than 200	20 employees

An employer can offer new employees an ICHRA, while grandfathering existing employees in a traditional group health plan. This is called the New Hire Rule. The minimum class size requirement generally does not apply to the new hire subclass.

ICHRA Same Terms Requirement

The general rule is that an employer must offer an ICHRA to a class of employees on the same terms and conditions to all employees within the class. Exceptions to this general rule are that an employer may increase the maximum dollar amount available to participants:

1. As the number of dependents who are covered under the HRA increases (as long as the same increase attributable to increase in family size is made available to everyone in the same class who has the same number of covered dependents);
2. As the age of the participant increases up to three times the maximum dollar amount available to the youngest participant (as long

as the same increase in age is made available to all participants who are the same age). The employer may use any reasonable method to determine age (i.e. age on the first day of the plan year) as long as the same method is use for everyone in the class and the employer determines the method prior to the plan year.

ICHRA Substantiation Requirements

The ICHRA will need to have reasonable procedures to prove that participants are enrolled in individual health coverage. There are two substantiation requirements:

1. Annual Substantiation Requirement – The HRA must prove that participants and dependents covered by the HRA are, or will be, enrolled in individual health insurance coverage or Medicare Part A and B or Medicare Part C ("Enrollment") for the plan year.
2. Ongoing Substantiation Requirement – Before reimbursement of a medical expense, the participant must substantiate Enrollment for the month during which the participant or covered dependent incurred the expense.

Participants satisfy these requirements by signing an attestation. The Departments issued model attestations to satisfy these requirements, which may be found here: https://www.irs.gov/pub/irs-utl/health_reimbursement_arrangements_faqs.pdf.

ICHRA Notice Requirement

An ICHRA must provide written notice describing, among other things, the terms of the HRA, the maximum dollar amount, right to opt out of and waive future reimbursement, the availability of premium tax credits through Covered California if the ICHRA is not affordable, a statement explaining that the individual may not be eligible for a premium tax credit if the individual accepts the HRA, a statement explaining that the HRA may not reimburse any medical care expense without substantiation.

The Departments issued a model notice to satisfy the requirements in the regulations. The model notice may be found here: https://www.irs.gov/pub/irs-utl/health_reimbursement_arrangements_faqs.pdf .

How does an ICHRA work with a cafeteria plan?

If the ICHRA does not cover any portion of premiums for individual coverage, employees can still use pre-tax salary reduction elections through a cafeteria plan to pay those premiums, with one exception. An employee cannot pay the balance of premiums for individual coverage through Covered California using salary reduction elections.

Employees in the same class can still participate in both a health FSA and ICHRA.

How does an ICHRA work with the Affordable Care Act's Employer Mandate?

Recall that the ACA's Employer Mandate only apply to applicable large employers (at least 50 full-time employees including full-time equivalents in the prior calendar year). The Employer Mandate has two requirements:

1. An employer must offer minimum essential coverage at least 95% of the employer's full-time employees and their dependents. An employer's offer of an ICHRA to an employee counts as an offer of coverage for this purpose.

The offered coverage must provide minimum value and be affordable. Whether an ICHRA is affordable will be based in part on the amount the employer makes available under the HRA, but the IRS will be providing more information on this in the future. The final regulations currently base affordability on the individual's household income. We expect that the IRS will explain how the Affordability Safe Harbors under the Employer Mandate will apply to ICHRA arrangements, as well as how the eligible opt out arrangement rules relating to affordability will work if an employer offers an ICHRA.

Future Impact

The Departments intend for the ICHRA and EBHRA to increase options for employee health

benefits, provide portable coverage for employees, and provide Americans with more options for selecting health insurance.

Public agencies who decide to offer one of these new arrangements to employees should keep in mind that health benefits are a mandatory subject of bargaining. Employers should consider potential labor negotiation requirements and other impacts when implementing these new rules.

ACA Affordability Percentage Lowered to 9.78% for 2020

The IRS has decreased the benchmark percentage for determining the affordability of employer-sponsored medical coverage under the ACA's employer shared responsibility provisions. Based on IRS Revenue Procedure 2019-29, employee coverage is affordable for the 2020 plan year if the required employee contribution for the employer's lowest-cost, self-only coverage option does not exceed 9.78% (down from 9.86% for 2019) of the employee's household income. The same percentage will apply to calculations performed under the ACA's Form W-2, rate of pay, or federal poverty line safe harbors for determining affordability.

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Daniel Cassidy Celebrates Fifty Years of Practicing Law

Liebert Cassidy Whitmore would like to congratulate **Daniel C. Cassidy** on celebrating fifty years of practicing law. Dan, a founding partner of Liebert Cassidy Whitmore, is among the most experienced and accomplished practitioners in the fields of public sector labor relations, negotiations and employment law.

After graduating from the University of Southern California Dan joined the workforce for a decade before attending law school. He earned his Juris Doctor degree from Loyola Law School in Los Angeles in 1968 and began practicing law in 1969 working in the Los Angeles County Counsel office. During his time there, Dan was promoted to Assistant County Counsel and gained numerous insights into the trials and tribulations of labor negotiations and employee relations along the way.

Dan joined the law office of Paterson and Taggart, an education law firm. Here he met his lifelong friend, John Liebert. However, after the tragic death of partner Mike Taggart in the 1978 PSA Flight 82 plane crash in San Diego, the firm dissolved. After this traumatic event, Dan adopted the motto, "life is short, take risks."

Dan and John formed their own firm in 1980 – Liebert Cassidy – which quickly became the top public employment law firm in Southern California. The rapid success of the firm was in part to Dan's leading philosophy on how the firm should be, as he describes, "more like a family – I wanted to make sure that our people gave their best service to clients but had a well-rounded life outside of the law office."

Building on the success cultivated by Dan and John, the firm continued to grow by merging with the Whitmore Johnson & Bolanos firm in 2000. The Whitmore firm was based in the Bay Area and was culturally complimentary to Liebert Cassidy – a critical requirement for Dan, John and the other partners. Liebert Cassidy Whitmore was born and has continued to build upon the foundation well established in both predecessor firms.

Over the course of his fifty years practicing, Dan's love of the law and his clients has never wavered. Melanie Poturica, former Managing Partner of LCW, describes some of Dan's key qualities that shaped LCW's culture.

"I learned from Dan that one of the successes to being an effective lawyer and trusted advisor to our clients is to bring my best, caring self to all client relationships. Not only does Dan sincerely care about our clients but he also knows how to work with the union side of the table and employees. His care for people and genuine concern for the public agencies he represents are the reason he is so good at getting labor agreements without acrimony and bitterness."

J. Scott Tiedemann, the current Managing Partner of LCW, echoes Melanie's sentiments, stating, "Dan's love of people is the foundation of LCW's success. Nowadays, Dan is often the first one sending and responding to congratulatory emails with apt emojis as he celebrates life milestones for our partners, employees and their families." Scott adds, "Dan is, of course, a pioneer in the field of labor and education law in California, but he is also a leader in the law business, adopting the premise of preventative law and laying the foundation for a firm that fosters inclusivity."

Dan is now semi-retired from practicing law, but continues to mentor attorneys at LCW and provide advice and support to clients. "I am so grateful that even in retirement, Dan is actively involved with LCW," says Scott, "he provides us with invaluable insights about our past but always has a keen eye towards our future."

Outside of his practice, Dan is involved in his community and volunteer work with his alma mater, USC. In 2017, USC awarded Dan with the Alumni Service Award, an honor that recognizes outstanding volunteer efforts on behalf of the university.

Dan enjoys spending time with his wife, Terri, 5 kids, 14 grandchildren, and 12 great-grandchildren. His two favorite hobbies are traveling and trying new restaurants and food.

LCW congratulates Dan Cassidy for this incredible accomplishment and wishes him continued success in his practice!

NEW TO THE FIRM

Kevin B. Piercy joins our Fresno office where he provides advice and counsel to the firm's clients in matters pertaining to employment and labor law. His main areas of specialty include the Fair Labor Standards Act, the California Labor Code, Title VII, and the Fair Employment and Housing Act.

He can be reached at 559.449.7809 or kpiercy@lcwlegal.com.

Isabella Reyes joins our San Francisco office where she assists clients in a full array of employment matters, discrimination, harassment, and retaliation claims under Title VII, Title IX, the ADA, FEHA, and various federal and state statutes.

She can be reached at 415.512.3015 or ireyes@lcwlegal.com.

Brian J. Hoffman is a litigator in Liebert Cassidy Whitmore's Sacramento office. He has experience in all phases of litigation, from the pre-litigation stage through mediation and trial. Prior to joining LCW, Brian worked as a full-service civil and business litigation attorney.

He can be reached at 916.584.7015 or bhoffman@lcwlegal.com

Videll Lee Heard represents Liebert Cassidy Whitmore clients in matters pertaining to labor and employment law. With over 25 years of trial and arbitration experience, Lee has extensive knowledge in all aspects of the litigation process.

Lee joins our Los Angeles office and can be reached at 310.981.2018 or lheard@lcwlegal.com

Meredith Karasch joins our Los Angeles office where she provides counsel and advice to educational institutions in all aspects of labor, employment, and education law. Meredith is an experienced litigator and trial lawyer and has defended clients before administrative bodies and state and federal courts.

She can be reached at 310.981.2059 or mkarasch@lcwlegal.com.

Kate Im joins our Los Angeles office where she provides counsel and representation to Liebert Cassidy Whitmore's clients on a variety of matters including labor, employment, and education law. Kate specializes in working with school districts covering the full spectrum of education law including personnel matters, collective bargaining, public works contracts, and student affairs.

She can be reached at 310.981.2056 or kim@lcwlegal.com.

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

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

MEGAN ATKINSON NAMED A 2019 SOUTHERN CALIFORNIA RISING STAR!

Liebert Cassidy Whitmore is pleased to announce that associate Megan Atkinson has been selected a "2019 Southern California Rising Star" by *Super Lawyers*. Megan was selected in the Employment Litigation: Defense category.

Megan Atkinson, located in the Los Angeles office, represents public entities in labor and employment law matters. She regularly defends against claims of discrimination, harassment, retaliation, and wage and hour violations and litigates in both state and federal courts.

LCW congratulates Megan for achieving this honor!

LCW Named A Best Law Firm for Women And Minority Attorneys By Law 360

Los Angeles, CA – On July 11, 2019, Law360 published their annual Best Law Firms for Women and Minority Attorneys list that highlights the top 25 firms outranking their peers on their representation of both women and attorneys of color. Liebert Cassidy Whitmore ranked third out of firms with 50-149 attorneys on staff.

Law360 surveyed more than 300 law firms across the United States and their Diversity Snapshot revealed that "just over 16% of attorneys and just over 8% of equity partners at surveyed law firms are attorneys of color. Women still represent just over one-third of all attorneys, and slightly more than 20% of equity partners. These numbers have remained consistent over the five years Law360 has conducted the survey."

However, Liebert Cassidy Whitmore reported above-average representation of both women and minorities at every tier, from nonpartners to equity partners, compared to firms of similar size.

Fifty-five percent of LCW's attorney workforce is comprised female attorneys and fifty-one percent of the partners are female. These numbers nearly double the legal industry's overall average where, according to Law360, firms of comparable size are thirty-five percent female and only twenty-seven percent of partners are female.

In addition, minority attorneys make up twenty-four percent of LCW's workforce and twenty-four percent of LCW's partners. These numbers are significantly higher compared to the legal industry's national average where, according to Law360, firms of comparable size have only thirteen percent minority attorneys and ten percent minority partners.

Liebert Cassidy Whitmore is honored to be included in Law360's list of Best Law Firms for Women and Minority Attorneys and to be recognized for its long-standing tradition of inclusiveness and diversity.

Firm Publications

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

Partner **Geoffrey Sheldon** of our Los Angeles office spoke on a Podcast episode for the Daily Journal, "Episode 140: Brady v. Pitchess" on June 7, 2019.

Partner **Geoffrey Sheldon** of our Los Angeles office was quoted in a *Los Angeles Times* article, "Should Prosecutors Get the Names of Officers Who Commit Misconduct?" on June 5, 2019 issue.

Partner **Geoffrey Sheldon** from our Los Angeles office was quoted on a radio segment by 89.3KPCC titled "CA Supreme Court Oral Arguments: Can Police Share Problem Officers' Names With DAs?"

MANAGEMENT TRAINING WORKSHOPS

Firm Activities

Consortium Training

Sept. 3 **"Maximizing Supervisory Skills for the First Line Supervisor"**
San Mateo County ERC | South San Francisco | Heather R. Coffman

Sept. 4 **"Nuts & Bolts: Navigating Common Legal Risks for the Front Line Supervisor"** & **"Navigating the Crossroads of Discipline and Disability Accommodation"**
San Joaquin Valley ERC | Ceres | Jesse Maddox

Sept. 5 **"Navigating the Crossroads of Discipline and Disability Accommodation"** & **"Human Resources Academy II"**
Bay Area ERC | Santa Clara | Richard Bolanos & Austin Dieter

Sept. 5 **"The Art of Writing the Performance Evaluation"** & **"Difficult Conversations"**
Sonoma/Marin ERC | Rohnert Park | Casey Williams

Sept. 10 **"How to Conduct Student Misconduct Investigations"**
CAIS | Webinar | Stephanie J. Lowe

Sept. 11 **"Nuts & Bolts: Navigating Common Legal Risks for the Front Line Supervisor"**
Humboldt County ERC | Fortuna | Jack Hughes

Sept. 11 **"The Future is Now - Embracing Generational Diversity and Succession Planning"** & **"Difficult Conversations"**
San Gabriel Valley ERC | Alhambra | Christopher S. Frederick

Sept. 11 **"The Meaning of At-Will, Probationary, Seasonal, Part-time and Contract Employment"**
Ventura/Santa Barbara ERC | Webinar | Ronnie Arenas

Sept. 12 **"Conducting Disciplinary Investigations: Who, What, When and How"** & **"Managing the Marginal Employee"**
Central Valley ERC | Fresno | Shelline Bennett

Sept. 12 **"Exercising Your Management Rights"**
Humboldt County ERC | Fortuna | Jack Hughes

Sept. 12 **"Labor Code 101 for Public Agencies"**
Monterey Bay ERC | Webinar | Michael Youril

Sept. 12 **"Workplace Bullying: A Growing Concern"** & **"Public Service: Understanding the Roles and Responsibilities of Public Employees"**
San Diego ERC | La Mesa | Stephanie J. Lowe

Sept. 17 **"Labor Code 101 for Public Agencies"** & **"Privacy Issues in the Workplace"**
North San Diego County ERC | Vista | Kevin J. Chicas

Sept. 18 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
NorCal ERC | San Ramon | Morin I. Jacob

Sept. 19 **"MOU Auditing and The Book of Long Term Debt"** & **"Labor Code 101 for Public Agencies"**
Coachella Valley ERC | La Quinta | Melanie L. Chaney

Sept. 19 **"Navigating the Crossroads of Discipline and Disability Accommodation"** & **"Privacy Issues in the Workplace"**
Napa/Solano/Yolo ERC | Fairfield | Gage C. Dungy

Sept. 19 **"The Art of Writing the Performance Evaluation" & "Difficult Conversations"**
Orange County Consortium | Tustin | Kristi Recchia

Sept. 19 **"Workplace Bullying: A Growing Concern" & "Legal Issues Regarding Hiring"**
West Inland Empire ERC | Chino Hills | Danny Y. Yoo

Customized Training

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

Aug. 20 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Carlsbad | Stephanie J. Lowe

Aug. 21 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Pittsburg | Kelsey Cropper

Aug. 21 **"Managing the Marginal Employee"**
ERMA | Novato | Heather R. Coffman

Aug. 21 **"Managing the Marginal Employee"**
ERMA | Barstow | Danny Y. Yoo

Aug. 22 **"Harassment and Ethics"**
City of Long Beach Water Department | Long Beach | Laura Drottz Kalty

Aug. 22,28 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Sunnyvale | Lisa S. Charbonneau

Aug. 23 **"Managing the Marginal Employee"**
ERMA | Martinez | Heather R. Coffman

Aug. 27 **"Legal Issues Regarding Hiring and Promotion"**
City of Glendale | Mark Meyerhoff

Aug. 28 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
Nevada County | Grass Valley | Donna Williamson

Aug. 28 **"Fire Management Academy"**
San Mateo Consolidated Fire Department | Foster City | Morin I. Jacob

Aug. 29 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Compton | Alysha Stein-Manes

Aug. 29 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
Marin/Sonoma Mosquito and Vector Control District | Cotati | Heather R. Coffman

Seminars/Webinar

For more information and to register, please visit www.lcwlegal.com/events-and-training/webinars-seminars.

Sept. 4 **"Effectively Using Public Safety FLSA Work Periods"**
Liebert Cassidy Whitmore | Webinar | Peter J. Brown

Sept. 12 **"Nuts & Bolts of Negotiations"**
Liebert Cassidy Whitmore | Alhambra | Melanie L. Chaney & Kristi Recchia

Sept. 17 **"Is it Pensionable? Hybrids, Lump Sums, & Other Pensionable Compensation Challenges"**
Liebert Cassidy Whitmore | Webinar | Laura Drottz Kalty

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