LIEBERT CASSIDY WHITMORE

EDUCATION MATTERS

News and developments in education law, employment law and labor relations for School and Community College District Administration

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LCW NEWS

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

TITLE IX

U.S. Department Of Education Releases New Questions And Answers On Title IX Regulations.

On July 20, 2021, the U.S. Department of Education Office for Civil Rights (OCR) released Questions and Answers on the Title IX Regulations on Sexual Harassment, which clarifies how OCR interprets schools' existing obligations under the 2020 amendments to the federal Title IX regulations. OCR also released an Appendix that provides examples of Title IX procedures from elementary, secondary, and postsecondary schools that may be adapted to implement the 2020 amendments.

The July 2021 Questions and Answers document includes guidance on 67 questions in categories including general Title IX obligations, the definition of sexual harassment, determining whether the sexual harassment occurred within the school's education program or activity, formal complaints of sexual harassment under Title IX, live hearings (required for post-secondary institutions), informal resolution, and retaliation.

OCR also posted the transcript from its recent virtual public hearing on Title IX.

NOTE:

If your school, college, or university needs assistance understanding and implementing the changing Title IX law and regulations, learn more about LCW's new Title IX compliance training program and other resources by visiting this page.

SPECIAL EDUCATION

The Individuals With Disabilities Education Act's Stay Put Provision Applies To The Educational Setting In Which The Student Is Actually Enrolled At The Time Parents Request A Due Process Hearing.

E.E., a student with autism, began kindergarten in the Norris School District in Bakersfield in August 2018. The District implemented E.E.'s original Individualized Education Plan (IEP) beginning in November 2018.

In January 2020, E.E.'s parents filed a due process hearing request with the Office of Administrative Hearings (OAH) seeking to modify E.E.'s IEP. Subsequently, the District offered a new IEP, but the parents did not agree to the proposed IEP. The District then filed its own due process hearing request in June 2020, and OAH consolidated the two cases for a hearing in July 2020.

The Administrative Law Judge (ALJ) issued a ruling in September 2020 and found in favor of E.E's parents in part and the District in part. Specifically, the ALJ found that the District denied E.E. a Free Appropriate Public Education (FAPE) because it failed to implement the 2018 IEP. The ALJ ordered that the 2020 IEP constituted

E.E.'s "stay put" placement under the Individuals with Disabilities Education Act (IDEA), which meant that the District was required to implement the 2020 IEP until E.E.'s parents consented to a new amendment or annual IEP or as otherwise ordered by OAH or other court.

In preparation for the 2020-2021 school year, the District made plans to implement the 2020 IEP consistent with the ALJ's ruling. E.E.'s parents filed a federal lawsuit challenging parts of the ALJ's ruling and requested the trial court prevent the District from implementing the 2020 IEP pending the litigation.

The trial court granted E.E.'s parents' request to prevent the District from implementing the 2020 IEP. The trial court concluded the ALJ's ruling was wrong as a matter of law, and that proper stay put placement was the placement from the 2018 IEP. Accordingly, the trial court ordered that the District must implement the 2018 IEP pending the litigation because it was the "stay put" placement. The District appealed.

The IDEAs stay put provision reads:

> [D]uring the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, ***the child shall remain in the then-current educational placement*** of the child, or, if applying for initial admission to a public school, shall, with the consent of the parents, be placed in the public school program until all such proceedings have been completed.

(20 U.S.C. § 1415(j) (emphasis added).)

The Court of Appeals stated that the reading most consistent with the ordinary meaning of the phrase suggests that the "then-current educational placement" refers to the educational setting in which the student is actually enrolled at the time parents request a due process hearing to challenge a proposed change in the child's educational placement. Specifically, "current educational placement" meant "the placement set forth in the child's last implemented IEP."

Here, E.E.'s parents and District agreed that the 2018 IEP was the last IEP in effect for E.E., and in particular, the 2018 IEP was in effect at the time the parents requested a due process hearing in January 2020. Therefore, the 2018 IEP constituted E.E.'s "then-current educational placement" under the plain language of IDEA. Absent parental agreement for a modification, E.E.'s 2018 IEP remained his current educational placement and the default stay put placement. The ALJ lacked the legal authority to effectively reinterpret the word "current" in the statute to "future" and order the District to implement the 2020 IEP instead.

In rebuttal, the District argued that the Court of Appeals should create an exception to IDEA's stay put provision. Specifically, the District argued that when a student challenged the then-current placement as a failure to offer FAPE, the student was not entitled to invoke stay put to force the District to continue implementing that IEP. However, the District did not offer any cases to support this argument, and the Court of Appeals found the language of IDEA directly conflicts with the argument. IDEA does not make the stay put provision contingent on any challenges to a current placement. The Court of Appeals declined to create the new exception because it would add a provision that Congress did not include in the statute.

Ultimately, the Court of Appeal supported the trial court's ruling in favor of E.E.'s parents, and the parties will continue to litigate the remaining disputes in trial court.

E. E. v. Norris School District (9th Cir. 2021) 4 F.4th 866.

COVID-19

California's COVID-Related Restrictions On In-Person Instruction At Public Schools Did Not Violate Due Process Rights.

In response to rising cases of COVID-19, the Governor, the California State Public Health Officer, the California Department of Public Health, and local governments issued executive orders, frameworks and guidance in 2020 and 2021 that limited the ability of public and private schools to provide in-person instruction to students, which caused many students to receive remote instruction.

In July 2020, a group of parents of students attending public and private schools sued the State and demanded the ability to send their children to school for in-person instruction during the COVID-19 pandemic. The Parents argued California's COVID-related prohibition on in-person learning precluded children from receiving a basic minimum education and violated their fundamental rights under the Due Process Clause of the Fourteenth Amendment. The parents also allege that California's school-closure mandate violated the Equal Protection Clause by arbitrarily treating children attending public and private schools differently from those in nearby school districts, from those in childcare, and from those attending summer camps, even though all such children and their families were similarly situated.

The trial court refused to issue a temporary restraining order against the State and considered dismissing the lawsuit entirely. In opposing the dismissal, the parents submitted declarations that primarily discussed how their children suffered emotionally or academically because distance learning. The trial court ultimately issued an opinion in the State's favor without a full trial. The parents appealed.

The Court of Appeals first determined the lawsuit was not moot because the pandemic was not over. Therefore, the State could still issue guidance that would continue to impact a public or private school's ability to offer in-person instruction even though many schools that have already reopened for in-person instruction currently anticipate reopening for the 2020-2021 school year.

On appeal, the public-school parents argued the Due Process Clause of the Fourteenth Amendment provided the "affirmative right to public-school education" that met a "basic minimum" level of instruction. However, the Court of Appeals found that the United States Supreme Court had repeatedly declined to hold that education is a fundamental right, and the Court of Appeals stated that there is "no enforceable federal constitutional right to a public education." The Court of Appeal did find that the government cannot deny a basic minimum education to a group of students. However, the public-school parents here failed to show the State denied a minimum public education to their students because the declarations offered by the parents were "conclusory and lack sufficient factual detail to establish that the difficulties of the distance-learning method have caused or will cause their children to be deprived of a basic minimum education."

The Court of Appeals found that the only possible exceptions to this holding for the public-school parents were for those Parents who argued their children were no longer receiving their special education services as outlined in the student's individualized education program as required by the federal Individuals with Disabilities Education Act (IDEA). However, claims regarding violations of the IDEA must be brought under the IDEA, which has specific due process requirements different than the lawsuit brought by the parents in this case.

Accordingly, the Court of Appeals held that the public-school parents failed to show the students had been deprived of a fundamental right. Because the lawsuit did not involve the State denying a fundamental right to a group of students, the Court of Appeal determined the State only needed to show that its actions in issuing the COVID-related restrictions bore a rational relation to a legitimate government objective. Here, the Court found that abating the COVID pandemic was a legitimate and compelling state interest, and the State's refusal to allow in-person public school instruction was rationally related to furthering that interest. The Court of Appeals affirmed the trial court's decision against the public-school parents.

The Court of Appeals also considered similar arguments from the private-school parents. For the private-school parents, the Court of Appeals held that the State's school-closure policies violated their fundamental right to make decisions concerning the care, custody and control of their children. Specifically, the State's COVID-related restrictions on in-person instruction at private schools denied private-school parents the "choice of the educational forum itself," which is a violation of the Due Process Clause.

Because the Court of Appeals found that the State's action involved denying the private-school parents a fundamental right, it then questioned whether the State's COVID-related restrictions were adequately justified. Specifically, the Court of Appeals considered whether the State's infringement of the private-school parents' rights was "narrowly tailored" to advance a "compelling" state interest. Ultimately, the Court of Appeals ruled the State had not proven why it could not address legitimate concerns about COVID-19 with rules short of a total ban on in-person instruction. Accordingly, the Court of Appeals ruled in favor of the private-school parents and directed the trial court to reverse its decision.

Brach v. Newsom (2021) __ F.4th __ [2021 WL 3124310].

BUSINESS & FACILITIES

A Contractor's Change In Business Form Does Not Create A Gap In Licensing Or Require Disgorgement Under Business And Professions Code Section 7031, If The Contractor Remains Duly Licensed At All Times During The Performance Of Work Under The Construction Contract.

From 1982 through 2015, John D. S. Stone (Stone) held a California general contractor's license and did business under that license as Stone Construction Company, a fictitious business name for his sole proprietorship. In early 2015, Stone and Yosef Manela (Manela) began discussing a major home remodeling project on the Manela's property. On January 4, 2015, Stone, as a sole proprietor doing business as Stone Construction Company, signed a contract with Manela regarding the project. The contract provided that, "Stone Construction Company will perform the work specified herein…" and included a price and estimated completion date of December 2015.

On February 11, 2015, after work on the project began, Stone formed JDSS, a corporation doing business under the same fictitious business name as Stone's sole proprietorship, Stone Construction Company. Stone was the sole shareholder of the corporation. He applied to the Contractors State License Board (CSLB) to reissue his existing contractor's license to JDSS. While waiting for the CSLB to reissue the license, on March 15, 2015, Stone executed an agreement between himself and JDSS that purported to formally assign to JDSS all of his "rights and obligations" under the contract with Manela. The CSLB reissued Stone's license to JDSS on June 22, 2015. The first invoice from JDSS to Manela was dated August 15, 2015, which is after JDSS was licensed by the CSLB; all subsequent invoices to the Manelas are from JDSS as well.

Throughout the course of the project, Manela requested numerous change orders that expanded the scope of the project, increased the cost, and delayed the estimated completion date. In late 2018, the project still was not completed and the Manelas stopped paying JDSS's invoices. The Manelas then filed a complaint against Stone and JDSS alleging they had performed defective work. Stone, on behalf of himself and JDSS, recorded a mechanic's lien on the Manela property for the allegedly unpaid invoices, and filed an action to foreclose on the lien.

The Manelas initial complaint did not include allegations based on lack of licensure. However, they amended their complaint to add allegations that JDSS and "possibly Stone," had performed work on the project without a contractor's license in violation of Business and Professions Code Section 7031. Section 7031, subdivision (a) prohibits any "person engaged in the business or acting in the capacity of a contractor" from recovering compensation where a license is required, if they were not duly licensed at all times during the performance of the contract. Subdivision (b) of the section further requires disgorgement of compensation already paid under such circumstances. The Manelas argued that the assignment of the construction contract prior to the licensure of JDSS created a gap in the licensure even if Stone was always the person performing the contract work. The trial court agreed with the Manelas and ordered the removal of the mechanic's lien. Stone filed an immediate petition for writ of mandate challenging the court's order.

The appellate court found that Stone's assignment of the construction contract to JDSS did not create a gap in licensure and JDSS's assignment did not trigger Section 7031 forfeiture. The appellate court further found that allowing a change in business form to create a gap in licensing would lead to "absurd results" and would preclude licensed sole proprietors from lawfully incorporating at any time during a construction period. The licensing law's purpose is not to forbid change from individual to corporate form but to assure that a qualified person conduct the actual construction work. The court reversed the order of the trial court removing the mechanic's lien and instructed the lower court to enter a new order confirming the validity of the lien.

Manela v. Stone (2021) 66 Cal.App.5th 90.

FIRM VICTORIES

LCW Obtains An Arbitration Victory For A Hospital In A FEHA Case.

LCW Partner Jesse Maddox and Associate Daniel Bardzell recently obtained a victory on behalf of a hospital in an arbitration involving alleged violations of the Fair Employment & Housing Act (FEHA).

In 2016, a maintenance engineer filed a lawsuit against the hospital and his former supervisor alleging claims for: 1) race harassment; 2) race discrimination; 3) failure to prevent harassment and discrimination; 4) wrongful termination (retaliation); 5) intentional infliction of emotional distress; and 6) negligent infliction of emotional distress. The employee alleged he was forced to go on stress leave in 2014 after: his department director made three comments about race between late 2012 and January 4, 2014; and another manager told him he would be moved to the night shift in March 2014. The employee submitted a written complaint to the hospital about these allegations, and the hospital immediately commenced an investigation. While on leave, the employee submitted a note from his health care provider indicating that he could return to work, but not at any of the hospital's many facilities. As a result, the hospital separated the employee in March 2015 due to its inability to accommodate him. After the employee initiated his lawsuit, the hospital successfully moved to compel arbitration of the issues.

After the employee presented his case at the arbitration, the hospital moved for judgment as to all of the employee's causes of action. As a preliminary matter, the hospital argued that the employee did not timely exhaust his administrative remedies. Under the FEHA at the relevant time, an employee was required to first file a complaint with California's Department of Fair Employment and Housing (DFEH) within one year of the alleged misconduct. In this case, the employee did not file a DFEH complaint until January 16, 2015. Thus, the hospital argued that any harassing conduct prior to January 16, 2014, including all of the alleged comments about race, were time-barred. Further, because the employee did not amend or refile his DFEH complaint

after the hospital terminated his employment in March 2015, he did not exhaust his administrative remedies with respect to the termination of his employment.

The hospital argued that even assuming that the employee's claims were not barred, they still failed. For example, as to the harassment claim, the hospital contended that the employee did not prove severe or pervasive harassment. In order to be actionable harassment, the conduct must be "sufficiently severe or pervasive to alter the conditions of the victim's employment and create and abusive working environment." Because none of the three comments were physically threatening or egregious, and because they occurred sporadically over a period of 14-months, the employee could not demonstrate they were "severe" or "pervasive."

The hospital also argued that the employee failed to prove his discrimination claim. The employee testified he believe he was being moved from the day shift to the swing shift because of comments he had made during a town hall meeting in early March 2014. Thus, he could not prove that his proposed shift change was based on race, and this allegation could not support a discrimination cause of action. Because the employee asserted he could not work at any hospital facility, there was no evidence the hospital terminated him because of his race, and the hospital had legitimate reasons to end his employment.

Further, the hospital argued the employee could not establish a causal connection between his complaints and the alleged adverse acts. Although the complaint alleged the department director harassed him in March 2014, the employee did not present any evidence showing who made the decision to terminate his employment or whether the decision-maker knew about the complaint. Therefore, he could not establish a causal connection between his complaint and his termination.

The hospital also contended the employee could not establish his intentional infliction of emotional distress or negligent infliction of emotional distress claims. The arbitrator agreed, and entered judgment in the hospital's favor on all of the employee's causes of action.

NOTE:

LCW is proud to have won this arbitration but also to have saved our client the time and expense involved in a trial. Note that while this case involved claims for wrongful termination, intentional infliction of emotional distress, and negligent infliction of emotional distress, public employees are generally barred by case law from bringing such claims against public education employers. Note also that effective in 2020, the legislature amended the FEHA to extend the time an employee has to file a DFEH claim from one to three years.

Union's Request For "Clarification" Of Arbitration Award Denied.

LCW Partner Adrianna Guzman and Associate Attorney Iolina Abrena successfully represented a county in opposing a union's request for clarification of an arbitration award involving a deputy sheriff. The union's request came more than two years after arbitration.

In the original arbitration, a deputy sheriff grieved the removal of his training duties while assigned to a field training officer (FTO) position. The memorandum of understanding (MOU) provided that an FTO receives bonus pay only when assigned training duties. In July 2018, the original arbitration decision found that the department violated the MOU by not providing the deputy with training duties. The arbitrator ordered that the deputy be reinstated as an FTO with training duties and awarded him the bonus pay he would have received had the department not removed those duties. After the arbitrator issued his arbitration decision and award, the union requested that the arbitrator retain jurisdiction until November 21, 2018. Since the union did not seek to re-open the arbitration proceedings, the decision became final and binding on November 22, 2018.

In April 2021, approximately 29 months after the arbitration decision became final and binding, the union requested that the arbitrator clarify the arbitration award. Specifically, the union alleged that the deputy was entitled to "Senior FTO" bonus pay – a higher level of bonus pay – from the time his training duties were removed until the department reinstated those duties in compliance with the arbitration award in 2018. The union argued that its request for clarification did not represent a "reopening" of the prior arbitration because the request did not require consideration of additional testimony or documentation.

The department opposed the union's request for clarification on the grounds that the union waited more than two years after the original decision became final and binding to make its request. The department further noted that the union had the opportunity to submit an application to correct the arbitration decision and award under Code of Civil Procedure Section 1284, or to file a petition to correct the arbitration decision and award pursuant to Section 1285.8 and 1288, but failed to do either. The arbitrator agreed, noting that he had neither the authority nor the jurisdiction to clarify the award. Accordingly, the arbitrator denied the union's request for clarification.

NOTE:

LCW was able to prove that the union was not simply seeking a "clarification" of the arbitration award, but was trying to reopen or correct an arbitration decision and award without a timely motion.

Final Decision Maker's Involvement Excused Employee From Exhausting His Administrative Appeal.

Jason Briley worked for the City of West Covina as a deputy fire marshal. As deputy fire marshal, Briley oversaw the operations of the Fire Prevention Bureau, which included checking building code plans and existing buildings for Fire Code compliance and conducting fire investigations. For part of his employment, the assistant fire chief, Larry Whithorn, supervised Briley.

In June 2014, Briley complained to the City that several City officials, including Whithorn and the city manager, had: failed to address his reports of Fire Code violations; and allowed a building permit to be issued before the building plans had passed fire inspection. The City hired a private firm to investigate Briley's allegations.

After making his initial complaint, Briley also complained that Whithorn and others had retaliated against him by cancelling his scheduled overtime, moving him to a smaller office, and changing his take-home vehicle. These new allegations were included in the pending investigation.

During this time, Briley also filed grievances raising many of the same claims and alleging that Whithorn had retaliated by giving him a poor performance review. In January 2015, the investigation firm concluded that Briley's allegations were largely unfounded. The then-Assistant City Manager Freeland received the report and adopted the firm's findings. As a result of this investigation, Whithorn's relationship with Briley became "strained."

While this investigation was still pending, Whithorn and the city manager also informed the City of multiple complaints against Briley involving allegations of misconduct and unprofessional behavior. Specifically, Briley was alleged to have: 1) addressed a fire captain in an unprofessional manner and used profanity in addressing a retail worker when responding to a fire alarm at a store; 2) improperly obtained a prospective City employee's personnel form; and 3) used profanity in addressing individuals at a CrossFit gym. The City retained another firm to investigate the allegations against Briley. The investigation ultimately determined that Briley had exhibited a pattern of unbecoming conduct, unprofessional behavior, and incompetence, and that Briley had been untruthful. By this time, Whithorn had been promoted to fire chief.

As fire chief, Whithorn issued Briley a notice of intent to terminate. After a pre-termination meeting, another city official decided to uphold Briley's termination and issued him a notice of termination. Through his counsel, Briley protested his termination and asserted it was "clearly further retaliation against him."

In December 2015, Briley initiated an administrative appeal of his discipline to the City's HR Commission. The City's rules provide that the HR Commission must grant the employee an evidentiary hearing and deliver its recommendations to relevant City officials. For Briley's appeal, the ultimate decisionmakers following the HR Commission's review would have been Whithorn and Freeland. Around this time, Freeland, who had adopted the investigation firm's findings that Briley's retaliation claims were largely unfounded, had been promoted to city manager.

While the HR Commission scheduled Briley's appeal, Briley's counsel notified the commission that Briley would not proceed because the appeal hearing would be futile for several reasons, including that Freeland and Whithorn were biased against him. Briley then initiated a civil lawsuit against the City alleging whistleblower retaliation under Labor Code Section 1102.5. The City argued that Briley could not pursue his claims because he failed to exhaust his administrative remedies, but the trial court disagreed. Instead, the court concluded that Briley was excused from pursuing an appeal to the HR Commission. The matter proceeded to trial, and the jury awarded Briley $4 million dollars, including $3.5 million in noneconomic damages. The City appealed.

On appeal, the City claimed, among other arguments, that the trial court: erred in concluding Briley was not required to exhaust his administrative remedies; and abused its discretion in failing to reduce the jury's excessive award for non-economic damages.

The Court of Appeal found for Briley on the failure to exhaust remedies defense. The Court relied solely on Whithorn's involvement in the underling dispute and his expected role in deciding Briley's appeal. Although the Court found that the standard for impartiality in an administrative hearing was lower than in judicial proceedings, the Court determined that Whithorn's involvement in the administrative appeal violated due process. Therefore, Briley was excused from proceeding with his administrative appeal. The court reasoned that due process entitles a person seeking an evidentiary administrative hearing appeal to "a reasonably impartial, noninvolved reviewer." Whithorn's role presented an "unacceptable risk" of bias that excused Briley

from exhausting this remedy, given both: Whithorn's personal involvement in the same controversies at issue in the administrative appeal; and the significant animosity between Whithorn and Briley that resulted from Briley's attacks on Whithorn's integrity. The Court was careful to emphasize that it was not making any blanket finding about bias in administrative hearing decision makers. Instead, the Court held "only that as a matter of due process, an official whose prior dealings with the employee have created substantial animosity and whose own conduct and character are central to the proceeding may not serve as a decisionmaker."

The court concluded that the $3.5 million noneconomic damages award was so excessive that it may have resulted from the jury's passion or prejudice. At trial, Briley claimed that his termination had caused him "distress" and that the ordeal was "tough" because: his livelihood was taken away; and he had dedicated eight years to the City. He also stated his termination was "upsetting", and that he had "issues with his sleep" because of financial uncertainty. There was no evidence, however, that any of the problems Briley described were particularly severe. Thus, the court concluded that the jury's total award of $3.5 million in noneconomic damages was "shockingly disproportionate to the evidence of Briley's harm and cannot stand." The court remanded the case for a new trial on Briley's noneconomic damages.

Briley v. City of W. Covina, 66 Cal.App.5th 119 (2021).

NOTE:

LCW Managing Partner J. Scott Tiedemann, Senior Counsel David Urban, and Associate Alex Wong prepared an amicus brief on behalf of the League of California Cities and California Special District's Association for this case.

The Time To File A Failure-To-Promote Claim Begins When The Employee Knows Or Should Known Of The Decision To Promote Another.

Pamela Pollock is a customer service representative at Tri-Modal Distribution Services, Inc. (Tri-Modal), a freight shipping company. In 2014, Tri-Modal's executive vice-president, Michael Kelso, initiated a dating relationship with Pollock. While Kelso wanted the relationship to become sexual, Pollock did not, so she ended the relationship in 2016. Subsequently, Pollock alleged that Tri-Modal and Kelso denied her a series of promotions, even though she was the most qualified candidate, and that her refusal to have sex with Kelso was the reason.

On April 18, 2018, Pollock filed an administrative complaint with California's Department of Fair Employment and Housing (DFEH) alleging quid pro quo sexual harassment in violation of the Fair Employment and Housing Act (FEHA). In her DFEH complaint, Pollock challenged the promotion of Leticia Gonzalez, among others. As relevant to this appeal, Tri-Modal offered, and Gonzalez accepted, a promotion in March 2017 and the promotion took effect on May 1, 2017. There was no evidence as to whether or when Tri-Modal notified Pollock that she did not receive the promotion. There was also no evidence that Pollock knew or had reason to know that Gonzalez was offered the promotion and accepted it in March 2017.

At the time Pollock filed her DFEH complaint, the FEHA required employees seeking relief to file an administrative complaint with the DFEH within one year "from the date upon which the alleged unlawful practice . . . occurred." Pollock argued her failure to be promoted occurred on the May 1, 2017 date that Gonzalez began her promotion, so her April 2018 administrative complaint was timely. Tri-Modal and Kelso argued, however, that its failure to promote Pollock "occurred" in March 2017 when Gonzalez accepted promotion, so Pollock filed her complaint too late.

The trial court concluded that the failure to promote occurred in March 2017 when Gonzalez was offered and accepted the promotion. Thus, the trial court found that Pollock's claim was time-barred, and the Court of Appeal agreed. The Court of Appeal then awarded costs on appeal to all of the defendants. However, the court did not address whether Pollock's underlying claim was "frivolous, unreasonable, or groundless when brought" or that she "continued to litigate after it clearly became so." After Pollock petitioned for a rehearing on the award of costs and the Court of Appeal denied her petition, the California Supreme Court granted review.

The California Supreme Court held that for a FEHA failure to promote claim, the statute of limitations to file a DFEH complaint begins to run when an employee knows or reasonably should know of the employer's refusal to promote the employee. Although there was no evidence in this case when Pollack knew of Gonzalez' promotion, Pollack's legal papers in opposition to Kelso's motion for summary judgment did not dispute that Gonzalez was offered and accepted the promotion in March 2017.

In addition, the Court held that the FEHA's directive that a prevailing FEHA defendant "shall not be awarded fees and costs unless the court finds the action was frivolous, unreasonable, or groundless when brought, or the plaintiff continued to litigation after it clearly became so" also applies to an award of costs on appeal. The Court concluded the Court of Appeal erred in awarding

costs on appeal to Tri-Modal and Kelso without first finding whether Pollock's underlying claim was objectively groundless.

Pollock v. Tri-Modal Distribution Servs., Inc., 2021 WL 3137429 (Cal. July 26, 2021).

NOTE:

At the time of the alleged misconduct here, the FEHA provided that an administrative complained needed to be filed with the DFEH within one year. The California Legislature expanded that time to three years. This case also demonstrates how important it is to carefully respond to alleged facts in a summary judgement motion.

City Reasonably Interpreted Its EERR To Process A Decertification Petition.

From 2016 to 2020, the Long Beach Supervisors Employees Association (LBSEA) exclusively represented the Skilled & General Supervisor Unit (Supervisor's Unit) at the City of Long Beach. However, in July 2020, the International Brotherhood of Electrical Workers, Local 47 (IBEW) filed a decertification petition and an accompanying proof of support seeking to represent the unit. IBEW submitted its petition on letterhead bearing the address and telephone number of its Diamond Bar office. IBEW also attached two nearly identical lists of classifications to its petition; but, each list included one classification not listed in the other. According to the IBEW petition, LBSEA no longer had majority support among employees in the Supervisors Unit, and approximately 67% of unit employees had signed cards authorizing IBEW to represent them. On two of the 64 cards, the IBEW union number was missing. Only the number "47" was listed on one of the two cards.

The City's Employer-Employee Relations Resolution (EERR) details the City's processes for: establishing appropriate bargaining units; and formally recognizing exclusive bargaining representatives. In order to establish a bargaining unit, the EERR requires a recognition petition to "indicate by classification the unit of employees claimed to be appropriate" and be "accompanied by proof of employee approval of no less than thirty percent (30%) of the employees in the proposed unit." Proof of support may be in the form of: signed authorization card; a verified authorization petition; or employee dues deduction authorizations.

Similarly, under the EERR, a union may also file a petition that the incumbent union no longer represents a majority of the employees in its bargaining unit. Like the recognition petition, this decertification petition must be accompanied by "written proof that at least 30% of employees in the unit do not desire to be represented by the formally recognized employee origination."

The decertification petition must also include the petitioner's name, address, and telephone number; the name of the incumbent union; and a statement that the petitioner shall agree to abide with any existing Memorandum of Understanding (MOU) covering said employees. A decertification petition can only be filed during certain time periods before the expiration of a MOU. Pursuant to the EERR, the employer is required to post notice of the petition in employee areas and the question concerning representation created by a valid decertification petition is decided through a secret ballot election.

On July 15, 2020, the City concluded IBEW had submitted a decertification petition that complied with the requirements of the EERR. The City's Labor Relations Manager subsequently notified IBEW and posted a notice. Along with the notice, the Labor Relations Manager posted a list of all classifications in the Supervisors Units; that list included 14 classifications that were not on either of the lists IBEW had attached to its petition.

Subsequently, LBSEA filed an unfair practice charge against the City alleging, among other claims, that the City unlawfully accepted the Petition even though IBEW deviated from the procedure established in the City's EERR. After an evidentiary hearing, the Administrative Law Judge (ALJ) concluded that the City violated its EERR, the Meyers-Milias-Brown Act (MMBA), and Public Employment Relations Board (PERB) Regulations by: 1) applying a rule concerning revocation of proof of support that was not contained in the EERR; and 2) disclosing to IBEW the identity of two employees who had sought to revoke their support for the Petition. However, the ALJ ruled in the City's favor as to the other allegations in the complaint and dismissed the claims. LBSEA filed exceptions regarding those dismissed claims. PERB then reviewed the ALJ's proposed decision.

First, LBSEA argued that because IBEW failed to include a statement it would abide with any existing MOU covering bargaining unit employees and failed to properly describe the Supervisors Unit, the City improperly approved the petition. PERB disagreed. Instead, PERB concluded that this missing information was "immaterial" and the EERR did not require an exhaustive list of classifications included in the unit. In addition, PERB noted IBEW exercised due diligence in attempting to determine the classifications in the Supervisors unit, both by examining the City's website and submitting a CPRA request. When these efforts led to slightly different lists, IBEW attached both lists in an abundance of caution. For these reasons, PERB concluded the City reasonably approved IBEW's petition.

Second, LBSEA alleged that IBEW filed it petition outside the period specified in the EERR. However, PERB determined the City reasonable interpreted the EERR provision as applying only when an MOU is in effect. Because no MOU was in effect on July 13, 2020, the City reasonably concluded that the EERR did not bar the petition.

Third, LBSEA contended the City was required to reject IBEW's authorization cards because they only stated that the signatory employees wanted IBEW to represent them, without mentioning decertification of the incumbent representative. Once again, PERB disagreed. PERB reasoned that under the EERR, authorization cards designating a petitioning union to represent them in their employment relations with the City provides sufficient evidence that the employees wish to both decertify and replace their exclusive representative. Thus, IBEW's proof of support complied with the EERR.

Finally, LBSEA argued PERB should cancel future election proceedings. However, because the violations LBSEA established were so limited, PERB concluded they would not tend to prevent a fair election going forward. For these reasons, PERB affirmed the ALJ's proposed decision.

City of Long Beach, PERB Dec. No. 2771-M (June 9, 2021).

NOTE:

Following its decision, PERB ordered the City to process the petition filed by IBEW and post the notice for Supervisors Unit employees.

Television Station Violated NLRA By Implementing Changes After The CBA Expired.

The management of the KOIN television station and the union representing the station's employees, the National Association of Broadcast Employees & Technicians (the Union), entered into a collective bargaining agreement (CBA). After the CBA expired, management made two changes to the terms and conditions of employment. First, management began requiring employees to complete an annual motor vehicle and driving history background check. Under the Employee Guidebook referenced in the CBA, these background checks were only required for employees who were involved in an on-duty motor vehicle accident. Second, management began posting employee work schedules two weeks in advance. While this was consistent with the expired CBA, since at least 1993, station managers had posted schedules four months in advance. The Union filed charges with the National Labor Relations Board (NLRB) alleging these two unilateral changes constituted unfair labor practices.

The NLRB noted that after a CBA has expired, unilateral changes are permissible during bargaining only if the CBA "contained language explicitly providing that the relevant provision" that permitted the change "would survive contract expiration." Because there was no such language in this CBA, the NLRB concluded the television station violated the National Labor Relations Act (NLRA). The NLRB ordered the television station to rescind the changes, bargain with the Union before imposing further changes, and post remedial notices. The NLRB then petitioned the Ninth Circuit Court of Appeals for enforcement of those orders.

On appeal, management asserted that it was entitled to make the changes under the "contract coverage" doctrine. The "contract coverage" doctrine is a method of contract interpretation that analyzes whether the contract's language granted the employer the right to act unilaterally. The Ninth Circuit disagreed. The court reasoned that the NLRA recognizes that an employer's unilateral changes during negotiations creates "an untenable power imbalance infringing on the employees' rights to bargain and their rights to organize." As a result, the NLRA freezes the terms and conditions of employment upon expiration of the CBA, until negotiations reach an impasse, unless the parties explicitly agree to a waiver. The Ninth Circuit therefore reasoned that because the CBA did not allow management to make unilateral changes to terms and conditions of employment in "clear and unmistakable language," management's changes violated the NLRA. Thus, the Ninth Circuit ordered the television station to comply with the NLRB's order.

Nat'l Lab. Rels. Bd. v. Nexstar Broad., Inc., 2021 WL 2909026 (9th Cir. July 12, 2021).

NOTE:

While the NLRA does not apply to public educational entities, this case offers valuable guidance. LCW attorneys can help public educational entities determine whether they are able to implement changes after the expiration of an MOU.

WAGE AND HOUR

California Law Allows The "Rate-In-Effect" Method To Calculate The Regular Rate Of Pay.

In 2011, a group of employees from several Buffalo Wild Wings franchises sued the owners of their restaurants for violations of California wage and hour law on behalf of themselves and others. The employees were employed in various capacities, including server, bartender, certified trainer, manager-in-training, and shift lead.

In 2014, the trial court partially granted the employees' motion for class certification and certified multiple classes and subclasses. One such subclass, the dual rate overtime subclass, alleged the owners paid certain employees different rates of pay for performing the same type of work during the same pay period and, as a result, underpaid certain employees for overtime work. Specifically, these employees asserted that the owners violated Labor Code sections 510 and 1194 by using the "rate-in-effect method" instead of the "weighted average method" for calculating the regular rates of pay for dual rate employees.

Labor Code section 510 requires that employees be compensated at a rate of no less than 1.5 times the employee's regular rate of pay for all work in excess of eight hours in one workday and 40 hours in any one workweek. When an employee works at two different pay rates rather than a fixed rate during a single workweek, employers must calculate the regular rate of pay based on both rates. For these dual rate employees, two methods for calculating the regular rate of pay have been developed: the weighted average method and the rate-in-effect method.

The weighted average method adds all hours worked in the week and divides that number into the total compensation for the week. Under the rate-in-effect method, the regular rate of pay is the hourly rate in effect at the time the overtime hours begin. The rate-in-effect method has the added benefit of being a simpler method for computing overtime pay. However, California's Division of Labor Standards Enforcement (DLSE) Manual has endorsed the weighted average method.

While the trial court initially certified multiple classes and subclasses, it ultimately decertified all classes but the dual rate overtime subclass. In a separate trial related to another portion of employees' claims, the trial court ruled in favor of the owners, finding that: 1) the employees failed to exhaust the necessary administrative remedies; 2) their dual rate claim was barred by the statute of limitations; 3) they failed to prove that owners' use of a rate-in-effect method to calculate overtime in dual rate workweeks violated any labor law; and 4) even if the owners did violate the law by using the rate-in-effect method to calculate overtime, the impact on the employees was negligible. Based on the trial court's ruling, the owners moved to decertify the dual rate overtime subclass, and the trial court granted the motion. The parties also stipulated to dismiss the employees' other claims under the Private Attorney's General Act (PAGA) so that only the individual claims remained. The employees appealed.

On appeal, the appellate court noted that the trial court gave a single reason for decertification of the dual rate overtime subclass: the employees, who had proposed the separate trial in the first place, were bound by the trial court's finding that the owners did not violate any law by using the rate-in-effect method of calculating the overtime rate. The appellate court agreed, finding that although the DLSE Manual has endorsed the weighted average method, the statements in the DLSE Manual are not binding. Further, the court noted that while a California Supreme Court case cited the weighted average method, the issues in that case were different. In summary, California law did not make the weighted average method the exclusive method for calculating the regular rate of pay for dual rate employees.

In addition, the court noted that by using the rate-in-effect method for calculating the regular rate of pay, the owners conferred a net benefit on dual rate employees. For example, the employees' expert testified that one of the dual rate employees worked seven dual rate periods. Of those seven periods, one resulted in the employee receiving 98 cents less overtime pay than he would have received using the weighted average method, and six periods resulted in a total of $34.31 more overtime pay. Thus, the employee received $33.33 more overtime pay due to the owners' use of the rate-in-effect method. The employees' expert also determined that in total, the employees were paid $2,065.74 more because the owners had used the rate-in-effect method instead of the weighted average method. Thus, the court concluded that imposing penalties of any amount against the owners would be unjust.

Accordingly, the court affirmed the trial court's decision and determined that the owners did not violate California employment law.

Levanoff v. Dragas, 65 Cal. App. 5th 1079 (2021).

NOTE:

This case interpreted California wage and hour law, which generally applies to private employers. The federal law – the Fair Labor Standards Act (FLSA) – generally applies to public educational entities. Under the FLSA, when an employee has more than one rate of pay, the regular rate of pay is "the weighted average of such rates." However, the FLSA allows the rate-in-effect method if the overtime compensation was paid pursuant to an agreement or understanding arrived at between the employer and the employee in advance of performance of the work.

BENEFITS CORNER

IRS Tax Relief Extended For Employer Leave-Based Donation Programs Aiding COVID-19 Victims.

On June 30, 2021, the IRS announced via IRS Notice 2021-42, a one-year extension to the special federal income and employment tax treatment/relief for leave-based donation programs aiding victims of the COVID-19 pandemic. Leave-based donation programs allow employees to forgo their accrued leaves (vacation, sick, personal leave, etc.) in exchange for cash payments from the employer to charitable organizations. Usually, these donations would still have to be included as part of the employee's income for tax purposes. Last year, the IRS provided relief from this tax issue via IRS Notice 2020-46, which also provided that employees electing to forgo leave would not be treated as having constructively received gross income or wages.

IRS Notice 2021-42 extends this tax relief from January 1, 2021 through December 31, 2021 regarding cash payments made to charitable organizations described in Section 170(c) and that provide COVID-19 relief. Employees, however, cannot claim a deduction for the leave that they donated to their employer. Although an employer may deduct these cash donation payments under Internal Revenue Code Sections 162 or 170, if they meet the requirements of either section. For example, the cash contributions must be to a qualifying organization, such as a non-profit or religious organization.

Especially for those employers who have already established such leave-based donation programs, the IRS's announcement provides confirmation that the favorable tax treatment of leave-based donations can continue, at least through 2021.

Firm Publications

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

LCW Associate Alex Volberding spoke with KABC-TV anchors John Gregory and Rachel Brown during an Aug. 7, 2021, segment centered on vaccine mandates at the workplace. Alex provided details on the segment topic, including: legal implications surrounding vaccination and/or weekly testing measures for city and state employees; the prospect of upcoming FDA vaccine approval and what this means for employers/employees; the ramifications of private employers who require employee proof of vaccination; and potential legal challenges that could stem for these measures and mandates.

LCW Partners Mark Meyerhoff, Morin Jacob and Associate Paul Knothe penned "Free Speech in the Age of Facebook" for the July/August 2021 issue of *Sheriff & Deputy Magazine*. In the piece, the attorneys address the importance of developing and enacting updated agency social media policies that balance employees' First Amendment rights. The article also shares details on how to the courts determine whether employee posts are protected speech or inflammatory remarks that may not serve in the interest of the law enforcement agency or in preserving public trust.

LCW Associate Alex Volberding weighed in on employers' newfound interest in requiring COVID-19 vaccinations for employees in the July 29 *Daily Journal* article "Employers showing more interest in required vaccinations." Alex shared that in relationship to California unionized workforces and public colleges/universities "the analytical framework … can be reasonably extended to cover other public employers."

LCW Partner Shelline Bennett's article "Decorum and civility in the public sector" was published in the July 27, 2021 edition of *American City & County*. The piece provides helpful pointers that aid elected officials in preserving decorum and civility on the job.

In a July 23 KRON4 news segment, LCW Partner Peter Brown discussed the legality of vaccination mandates and the potential for legal challenges as some employers now push for mandatory vaccinations for their government employees.

LCW Partner Michael Blacher recently weighed in on the Supreme Court's decision to avoid making any sweeping decisions on LGBTQ bias laws after its recent ruling that Philadelphia violated the religious rights of a foster care agency that refused to place children with same-sex couples. In the June 17 *Law360* article "3 Takeaways From High Court's Ruling In LGBTQ Rights Fight" Michael noted that the high court's ruling "recognized that Philadelphia intended to discriminate based on religion" though it left the Employment Division v. Smith precedent intact. He added, "That's particularly significant in a case that had largely been framed as weighing the interests of anti-discrimination against religious liberty. The court reframed the issue as one solely addressing intolerance of religious beliefs and practices. That focus should resonate with courts around the country."

LCW Partner Heather DeBlanc and Associate Stephanie Lowe penned "What Benefits Administrators Should Know … Temporary Flexibilities for Health FSAs and DCAPs" for the July 2021 issue of *HR News*. The piece details some of the flexibilities in health FSAs and DCAPs created by the IRS in response to the COVID-19 pandemic. According to the authors, those flexibilities are intended to provide employees with more opportunities to utilize these accounts to pay out-of-pocket medical and dependent care costs on a tax-free basis.

LCW Special Counsel David Urban penned the article "Give Me a $#@%—SCOTUS Bolsters First Amendment in Cheerleader Case," which was published in the July 9 issue of *Bloomberg Law.* The piece explores the U.S. Supreme Court's decision regarding a public school that punished a cheerleader for a vulgar social media post and what the decision means for public educators.

New to the Firm

Joseph Suarez is an Associate in the Los Angeles office of LCW where he provides advice and counsel to cities, counties, and other public agency and nonprofit clients in all matters pertaining to employment and labor law.

He can be reached at 310.981.2056 or jsuarez@lcwlegal.com.

Dana Sever Scott is an Associate in the Sacramento office of LCW where she advises public/private schools, colleges and nonprofit organizations across the state. Dana provides representation and counsel in transactional, administrative, governance and advice and counsel matters.

She can be reached at 916.584.7015 or dscott@lcwlegal.com.

Eugene Zinovyev is an Associate in the San Francisco office of LCW. A skilled litigator, Eugene has tried over a dozen cases in both state and federal courts and he notably helped secure a defense verdict after a 16-day trial on behalf of an accreditation agency for public and private schools.

He can be reached at 415.512.3026 or ezinovyev@lcwlegal.com.

Keenan O'Connor is an Associate in the San Diego office of LCW. He is experienced in all phases of litigation, including developing responsive pleading strategies, dispositive motion practice, and all phases of discovery, including crafting written discovery and deposition preparation.

He can be reached at 619.481.5919 or koconnor@lcwlegal.com.

Upcoming Webinar

MOU Overtime:
Are You Paying Above the Legal Requirements?

August 26, 2021
10:00 - 11:00am
Register online here!

Baby Bonanza!

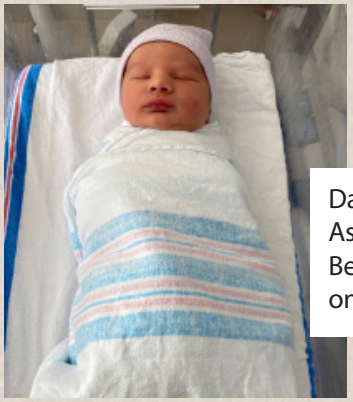
June, July and August have been especially exciting months for our firm. LCW sends huge congratulations to our attorneys and staff who recently welcomed little bundles of joy into the world! We send best wishes to each of our new parents, their partners, families and friends.

Stephanie Lowe, San Diego Associate, welcomed baby Jamie Lowe Larson on June 25.

Anthoy Risucci, San Francisco Associate, welcomed baby Talia Marie Risucci on July 10.

Cynthia Michel, San Diego Legal Secretary, welcomed baby Carina Luz Michel on June 29.

Lars Reed, Sacramento Associate, welcomed baby Fiona Sofie Miner on July 10.



Dana Sever Scott, Sacramento Associate, welcomed baby Benjamin (Benji) Albert Scott on August 1.

LCW

LABOR RELATIONS CERTIFICATION PROGRAM

The LCW Labor Relations Certification Program is designed for labor relations and human resources professionals who work in public sector agencies. It is designed for both those new to the field as well as experienced practitioners seeking to hone their skills. Participants may take one or all of the classes, in any order. Take all of the classes to earn your certificate and receive 6 hours of HRCI credit per course!

Join our other upcoming HRCI Certified - Labor Relations Certification Program Workshops:
1. September 9 & 16, 2021 - Bargaining Over Benefits
2. October 7 & 14, 2021 - The Rules of Engagement: Issues, Impacts & Impasse
3. November 3 & 4 - Trends & Topics at the Table
4. December 9 & 16 - Communication Counts!

The use of this official seal confirms that this Activity has met HR Certification

APPROVED · 2021 · PROVIDER HRCI HRCI.ORG

Learn more about this program here.

Firm Activities

Consortium Trainings

Aug. 19 **"Managing COVID-19 Issues: Now and What's Next"**
East Inland Empire ERC | Webinar | Alexander Volberding

Aug. 19 **"Managing COVID-19 Issues: Now and What's Next"**
Gateway Public ERC | Webinar | Alexander Volberding

Aug. 19 **"Human Resources Academy II for Community College Districts"**
Northern California Community College District (NCCCD) ERC | Webinar | Eileen O'Hare-Anderson

Aug. 19 **"Managing COVID-19 Issues: Now and What's Next"**
South Bay ERC | Webinar | Alexander Volberding

Aug. 19 **"Managing COVID-19 Issues: Now and What's Next"**
West Inland Empire ERC | Webinar | Alexander Volberding

Aug. 25 **"Managing COVID-19 Issues: Now and What's Next"**
Imperial Valley ERC | Webinar | Alexander Volberding

Aug. 25 **"Managing COVID-19 Issues: Now and What's Next"**
North State ERC | Webinar | Alexander Volberding

Aug. 25 **"Managing COVID-19 Issues: Now and What's Next"**
San Gabriel Valley ERC | Webinar | Alexander Volberding

Aug. 25 **"Managing COVID-19 Issues: Now and What's Next"**
Ventura/Santa Barbara ERC | Webinar | Alexander Volberding

Sept. 2 **"Introduction to the FLSA"**
Central Valley ERC | Webinar | Lisa S. Charbonneau

Sept. 2 **"Maximizing Performance through Evaluation, Documentation and Corrective Action"**
Gateway Pubic ERC | Webinar | Ronnie Arenas

Sept. 2 **"Managing the Marginal Employee"**
Humboldt County ERC | Webinar | Erin Kunze

Sept. 2 **"Managing the Marginal Employee"**
Napa/Solano/Yolo ERC | Webinar | Erin Kunze

Sept. 2 **"Introduction to the FLSA"**
North San Diego County ERC | Webinar | Lisa S. Charbonneau

Sept. 2 **"Maximizing Performance through Evaluation, Documentation and Corrective Action"**
San Mateo County ERC | Webinar | Ronnie Arenas

Sept. 2 **"Managing the Marginal Employee"**
Sonoma/Marin ERC | Webinar | Erin Kunze

Sept. 3 **"Reductions in Staffing"**
Central California Community College District (CCCCD) ERC | Webinar | Meredith Karasch

Sept. 8 **"Supervisor's Guide to Understanding and Managing Employees' Rights: Labor, Leaves and Accommodations"**
Imperial Valley ERC | Webinar | Jack Hughes

Sept. 8 **"Supervisor's Guide to Understanding and Managing Employees' Rights: Labor, Leaves and Accommodations"**
Monterey Bay ERC | Webinar | Laura Drottz Kalty

Sept. 8 **"Supervisor's Guide to Understanding and Managing Employees' Rights: Labor, Leaves and Accommodations"**
NorCal ERC | Webinar | Laura Drottz Kalty

Sept. 8 **"Managing the Marginal Employee"**
North State ERC | Webinar | Erin Kunze

Sept. 8 **"Managing the Marginal Employee"**
San Gabriel Valley ERC | Webinar | Erin Kunze

Sept. 8 **"Managing the Marginal Employee"**
San Joaquin Valley ERC | Webinar | Erin Kunze

Sept. 8 **"Supervisor's Guide to Understanding and Managing Employees' Rights: Labor, Leaves and Accommodations"**
Ventura/Santa Barbara ERC | Webinar | Jack Hughes

Sept. 9 **"Managing COVID-19 Issues: Now and What's Next"**
Bay Area ERC | Webinar | Alexander Volberding

Sept. 9 **"Managing COVID-19 Issues: Now and What's Next"**
Coachella Valley ERC | Webinar | Alexander Volberding

Sept. 9 **"Managing COVID-19 Issues: Now and What's Next"**
Gold Country ERC | Webinar | Alexander Volberding

Sept. 9 **"Moving Into the Future"**
Los Angeles County Human Resources (LCHR) Consortium | Webinar | Alysha Stein-Manes

Sept. 9 **"Managing COVID-19 Issues: Now and What's Next"**
San Diego ERC | Webinar | Alexander Volberding

Sept. 15 **"Public Sector Employment Law Update"**
Orange County Consortium | Webinar | Richard S. Whitmore

Sept. 23 **"Leaves, Leaves and More Leaves"**
Central Coast ERC | Webinar | Che I. Johnson

Sept. 23 **"Difficult Conversations"**
Mendocino County ERC | Webinar | Heather R. Coffman

Sept. 23 **"Leaves, Leaves and More Leaves"**
West Inland Empire ERC | Webinar | Che I. Johnson

Customized Training

For more information, please visit http://www.lcwlegal.com/events-and-training.

Aug. 20 **"Preventing Harassment, Discrimination and Retaliation in the Academic Setting/Environment"**
Gavilan College | Webinar | Heather R. Coffman

Aug. 20 **"Hiring the Best While Developing Diversity in the Workforce: Legal Requirements and Best Practices for Screening Committees"**
Pasadena City College | Meredith Karasch

Aug. 26 **"Section 504"**
Ohlone College | Webinar | Alysha Stein-Manes

Sept. 16 **"Mandated Reporting"**
Foothill-De Anza Community College District | Webinar | Amy Brandt

Sept. 23 **"Title IX"**
Mt. San Antonio Community College District | Webinar | Pilar Morin & Monica M. Espejo

Sept. 24 **"Title IX"**
Southern 30 | Webinar | Pilar Morin & Monica M. Espejo

Sept. 29 **"The Art of Writing the Performance Evaluation"**
Mendocino County | Webinar | Jack Hughes

Speaking Engagements

Sept. 9 **"Chief Human Recources Officers- Emerging Leaders: Grievances"**
Association of Chief Human Resource Officers (ACHRO) | Webinar | Melanie L. Chaney

Sept. 29 **"Executive Briefing: What Police Chiefs Need to Know about Labor Relations and Personnel Issues"**
California Police Chiefs Association (CPCA) Becoming a Police Chief: Developing a Mindset for Success and Service | Pismo Beach | J. Scott Tiedemann

Seminars/ Webinars

For more information, please visit http://www.lcwlegal.com/events-and-training.

Aug. 18 **"The Public Employment Relations Board (PERB) Academy - Part 1"**
Liebert Cassidy Whitmore | Webinar | Kristi Recchia & Che I. Johnson

Aug. 25 **"The Public Employment Relations Board (PERB) Academy - Part 2"**
Liebert Cassidy Whitmore | Webinar | Kristi Recchia & Che I. Johnson

Aug. 26 **"MOU Overtime: Are You Paying Above the Legal Requirements?"**
Liebert Cassidy Whitmore | Webinar | Peter J. Brown

Sept. 9 **"Bargaining Over Benefits - Part 1"**
Liebert Cassidy Whitmore | Webinar | Kristi Recchia & Steven M. Berliner

Sept. 16 **"Bargaining Over Benefits - Part 2"**
Liebert Cassidy Whitmore | Webinar | Kristi Recchia & Steven M. Berliner

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