LIEBERT CASSIDY WHITMORE

EDUCATION MATTERS

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

SEPTEMBER 2021

INDEX

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.

CIVIL RIGHTS

U.S. Department Of Education Announces Civil Rights Data Collection For 2021-2022 School Year.

On August 13, 2021, the U.S. Department of Education Office for Civil Rights (OCR) announced that it will administer a 2021-2022 Civil Rights Data Collection (CRDC). The Department indicated that the effort is aimed at gathering data to help ascertain the impacts of the COVID-19 pandemic on student learning and success.

The CRDC is a biennial survey of K-12 public schools that gathers and publishes information about student access to educational resources, use of discipline, and student experiences of harassment and assault. The Department collects the data to ensure schools and districts are complying with civil rights laws, including Title IV and Title IX.

This is the first time OCR has conducted a CRDC two years in a row, for 2020-2021 and 2021-2022.

TITLE IX

The U.S. Department Of Education Ceases Enforcement Of Title IX Regulation Restricting Use Of Statements by Parties And Witnesses.

On August 24, 2021, the U.S. Department of Education Office for Civil Rights (OCR) announced that it will no longer enforce the Title IX provision that prohibits statements not subject to cross-examination.

The announcement was made in a Letter to Students, Educators, and other Stakeholders re *Victim Rights Law Center el al. v. Cardona*. The letter follows a district court ruling in Massachusetts in *Victim Rights Law Center el al. v. Cardona* that found 34 CFR § 106.45(b)(6)(i) (live hearing requirement for the Title IX grievance process at postsecondary institutions only) to be arbitrary and capricious, a violation of the Administrative Procedure Act. The court vacated the part of 34 CFR § 106.45(b)(6)(i) that prohibits the decision-maker from relying on statements that are not subject to cross-examination during the hearing. The provision states, "[I]f a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility."

In response to the district court ruling, the Department stated it will "immediately cease enforcement of the… prohibition against statements not subject to cross-examination" and that postsecondary schools are no longer subject to that provision.

The Department further stated that "[i]n practical terms, a decision-maker at a postsecondary institution may now consider statements made by parties or witnesses that are otherwise permitted under the regulations, even if those parties or witnesses do not participate in the live hearing, in reaching a determination regarding responsibility in a Title IX grievance process."

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

Parents Must Exhaust Administrative Remedies Under The Individuals With Disabilities Education Act.

In a class-action complaint, parents of current and former San Francisco Unified School District (SFUSD) students with dyslexia, autism, and other disabilities alleged SFUSD failed to fulfill its obligations under the Individuals with Disabilities Education Act (IDEA). Specifically, plaintiffs alleged SFUSD failed to: (1) timely identify and evaluate students who qualify for special services, (2) offer appropriately tailored special education services to students with disabilities, and (3) provide sufficient resources for its special education program.

The parents did not initiate a procedure in the Office of Administrative Hearings (OAH) or under a less formal process called complaint resolution proceeding (CRP), which allows a parent to bring a complaint directly to the California Department of Education. IDEA requires states to provide an opportunity for an impartial due process hearing to parents who dispute what services must be provided to their child, and parents must generally exhaust this remedy before filing a lawsuit in court.

The trial court dismissed the plaintiffs' complaint for failure to exhaust administrative remedies. The court concluded that the plaintiffs did not allege enough facts in their complaint to support their argument that an exception to the exhaustion requirement applied to their claims. The trial court allowed the plaintiffs to amend their complaint. The plaintiffs did so and alleged that the OAH procedure would be useless because they sought to address "systematic," district-wide complaints. The trial court again dismissed their complaint, finding that the plaintiffs failed to exhaust their complaints through administrative remedies, and barred the plaintiffs from bringing that same claim to court. The plaintiffs appealed to the Ninth Circuit Court of Appeals.

The Ninth Circuit agreed with the trial court. The Ninth Circuit found that plaintiffs sought a remedy for failure to provide free access to education (FAPE). Under IDEA, plaintiffs must exhaust administrative remedies before filing a lawsuit if they seek a remedy for a school's failure to provide a FAPE. There is an exception to this requirement when: (1) use of the administrative process would be futile, (2) the claim arises from a policy or practice of general applicability that is contrary to law, or (3) it is improbable that adequate relief can be obtained by pursuing administrative remedies. The Ninth Circuit emphasized that these exceptions apply to limited situations where pursuing administrative remedies would serve no purpose. In those cases, exhaustion would not be required if the facts of the case would not further IDEA's intent that state and local education entities should ensure IDEA's compliance, not the courts.

The Ninth Circuit found that the plaintiffs did not identify any SFUSD policy that could not be addressed through administrative processes. The Ninth Circuit also noted that the trial court could not determine how SFUSD may have failed their students because there was no record from an administrative proceeding and therefore, the trial court would be "ill-equipped to determine whether students were receiving a FAPE."

The Ninth Circuit also rejected the plaintiffs' argument that there was no point in seeking administrative remedies because the plaintiffs wanted to systematically change the SFUSD special education system. The Ninth Circuit noted it has not issued an opinion that found that a challenge was "systemic" and exhaustion of administrative remedies was not required. Furthermore, the plaintiffs did not identify the policies or practices they felt needed to be addressed and did not explain why administrative remedies would not correct SFUSD's alleged deficiencies. The Ninth Circuit agreed with the trial court that "merely characterizing a school district's problems as 'systemic' and the relief sought as 'structural' does not provide the facts necessary to show that the allegedly needed reform is… anything other than increased funding and greater adherence to existing policies." The Ninth Circuit emphasized the importance of giving California educational agencies the opportunity to investigate complaints and correct a school's failures before a parent files a lawsuit against the school.

Student A v. San Francisco Unified Sch. Dist. (9th Cir. 2021) 9 F.4th 1079.

FIRST AMENDMENT

Agency Wins Qualified Immunity From Scientist's Claim That The First Amendment Protected His On-Duty Trial Testimony.

The State of Arizona employed Greg Ohlson was a forensic scientist. Ohlson worked in the Department of Public Safety, Scientific Analysis Bureau (Department). Ohlson's job was to test blood samples for alcohol content, report the findings, and testify about those findings in court.

The Department used a variety of quality control policies, including ensuring the accuracy of blood samples by looking at an entire batch of samples. That quality control policy allowed the Department to identify non-conformities and catch instrument failures or malfunctions that skew test results. Department policy limited criminal defendants to only the individual sample results; absent a court order, the remaining samples in the batch were not disseminated.

Ohlson felt strongly that the Department should provide the results of all of the samples within a batch to criminal defendants. He suggested releasing the batch data on a public website. Ohlson suggested this approach to his supervisors on multiple occasions. Each time, they informed him that while the release of batch results may be a good idea, it was not feasible because the Department would need technological help. Also, Ohlson's supervisors said they were not authorized to make a Department-wide decision.

Ohlson began creating a private PDF file of all the data within the batches. Part of Ohlson's job duties was to meet with defense attorneys for pre-trial interviews. During those interviews, he began instructing defense attorneys to request the data for the entire batch.

Then, in May 2016, Ohlson testified in a criminal proceeding that the disclosure of the entire batch was necessary to ensure accuracy of the result and that he had a PDF of the batch results he could send to the parties if permitted to do so. Ohlson's supervisors told him he had violated Department policy, counseled him to bring his future testimony in line with policy, and directed him to delete the PDF files. After Ohlson reacted strongly, Ohlson's supervisor gave him a Performance Notation that instructed him to, among other things, adhere to policies, stop scanning of batch results, cease use of job-related legal proceedings to advance his personal views, and align his testimony with the Department's positions.

A few days later, Ohlson testified in another evidentiary hearing. Ohlson testified that his personal belief, after 35 years of job experience, was that batch results should be disclosed. He also expressed his disagreement with his supervisors. He underscored his testimony by stating that it was not in his "best interest in terms of career advancement" to testify as he had.

Following his testimony, the Department placed Ohlson on administrative leave pending investigation by the Professional Standards Unit. After the investigation findings led to a 16-hour suspension, Ohlson gave notice of his retirement.

Ohlson then filed a complaint in federal district court alleging a First Amendment retaliation claim for: "testifying truthfully and completely under oath"; and advocating within the Department for "a change in the manner in which the Department responds to requests in criminal cases for entire batch runs." The district court found that while Ohlson had First Amendment rights to his trial testimony, those rights were not clearly established, so the Department had qualified immunity. After the district court entered judgment in the Department's favor, Ohlson appealed.

On appeal, Ohlson argued that the First Amendment protected both his testimony in court and his advocacy in the workplace concerning the production of batch results.

The Ninth Circuit determined that the only dispute was whether Ohlson was speaking as a private citizen or a public employee. If Ohlson was speaking as a private citizen, his speech was protected by the First Amendment; if he was speaking as part of his duties as a public employee, it was not. The Ninth Circuit disagreed with the district court that Ohlson's speech was protected, in large part because Ohlson spoke against his supervisor's orders. If courts were to protect speech that violates a supervisor's orders, it would be difficult for a public agency to enforce any rules.

The Ninth Circuit also disagreed with the district court's conclusion that because citizens have a duty to testify, Ohlson was speaking as a private citizen. The Ninth Circuit noted that Ohlson was testifying in court as part of his job duties; Ohlson was not called to testify as a private citizen.

The Ninth Circuit noted that the US Supreme Court had not addressed whether a government employee who testifies as part of her job duties has First Amendment protection in that speech. The only US Supreme Court case on the topic involved a government employee whose testimony was not made as part of his job duties. (*See Lane v. Franks,* 573 U.S. 228, 238 n.4 (2014).)

The Ninth Circuit affirmed the district court's ultimate decision that regardless of whether Ohlson had a First Amendment right, the Department was entitled to

judgment because the Department had not violated any clearly established law. Because Ohlson's First Amendment rights were not clearly established, the Department had qualified immunity.

Ohlson v. Brady (9th Cir. 2021) 9 F.4th 1156.

Note:

Qualified immunity protects government employees from being sued for violating an individual's civil rights. Qualified immunity is generally available if the law a governmental official or entity violated is not "clearly established." Here the Ninth Circuit noted that after 40 years of US Supreme Court cases on the First Amendment rights of public employees, many free speech issues still remain unsettled.

RETIREMENT

Former Fire Chief Was Wrongly Accused Of Pension Spiking.

Peter Nowicki was employed with the Moraga-Orinda Fire District (District) from 1983 until 2009. In July 2006, Nowicki became the District's fire chief. Nowicki had an employment contract with a four-year term. Later, Nowicki and the District agreed to two contract amendments. The amendments granted Nowicki added benefits, including salary increases, annual vacation and holiday "sell-backs," and additional vacation and administrative leave credit. Nowicki was a member of the Contra Costa County Employees' Retirement Association (CCCERA), which administers pensions for Contra Costa County.

On January 30, 2009, two-and-a-half years into his term as fire chief, Nowicki retired for personal reasons. Nowicki's contract said he was eligible for retirement benefits under the then-applicable formula, which took into account a member's "highest annual compensation earnable." When Nowicki retired, his retirement allowance was based on the total of his final year's salary, plus the vacation leave and holiday cash-outs he took during his final year of employment.

In late 2013, CCCERA began a "lookback project" to review past incidents of unusual compensation increases at the end of employment, and to determine if pension spiking had occurred through "members' receipt of pay items that were not earned as part of their regularly recurring employment compensation during their careers."

In August 2015, Nowicki received a letter from CCCERA's Board of Retirement (Board) that the Board had scheduled a hearing to determine whether adjustments to his retirement allowance were warranted. The letter noted that before the Board adjusted Nowicki's retirement benefits, it would give him the opportunity to present his position and any relevant information.

Following a September 2015 open public meeting on the issue, CCCERA sent Nowicki a letter stating that the Board had determined he had caused his final compensation to be improperly increased at the time of retirement, and therefore, his retirement allowance would be reduced from $20,448.09 to $14,667.74 per month. CCCERA also informed Nowicki that his retirement allowance had been overpaid from January 2009 through September 2015 and that Nowicki would be responsible for repaying the overpayments plus interest, which totaled $585,802.90.

Nowicki subsequently filed a petition for writ of administrative mandate requesting an order rescinding the Board's decision to reduce his pension benefit and reinstating the benefit as originally calculated. The trial court denied Nowicki's writ after determining that Nowicki did not meet his burden of establishing that the Board's decision to decrease his monthly allowance was an abuse of discretion. Nowicki appealed.

The California Court of Appeal reversed the trial court's ruling. The statute at issue in this case was Government Code Section 31539, subdivision (a)(2), which provides that the board of retirement may, in its discretion, correct any error made in the calculation of a retired member's monthly allowance if "the member caused his or her final compensation to be improperly increased or otherwise overstated at the time of retirement and the system applied that overstated amount as the basis for calculating the member's monthly retirement allowance." On appeal, Nowicki argued that there was no evidence of impropriety on his part, given that he acted to increase his final year's compensation under CCCERA's own rules and he simply sold benefit accruals back in his final year, as he had in prior years.

First, the Court of Appeal considered the meaning of "improperly" as used in Section 31539. Relying on the history behind the statute's enactment, the court concluded that the use of the word "improperly" unquestionably reflected an intent for subdivision (a)(2) to address actual wrongdoing.

Next, the court analyzed whether the evidence of Nowicki's pre-retirement conduct supported a finding that he caused his "final compensation to be improperly increased or otherwise overstated at the time of retirement." The court noted that Nowicki's contract expressly allowed for annual salary adjustments. While his original contract did not include benefit sell-back provisions, it did permit contract amendments by mutual written agreement. In addition, Nowicki had

previously utilized the sell-back provisions in his prior battalion chief contract every year between 2000 and 2006. Nowicki twice used the sell back provisions, and his amended contract permitted him to do so. This was also permitted under the law and CCCERA guidelines in place at the time.

The court also found the Board's lookback project the Board used standards that took effect in 2013 and were only to be applied prospectively. The Board had no authority to apply the 2013 standards to Nowicki's 2009 retirement.

The Court of Appeal concluded that the Board erroneously applied subdivision (a)(2) to Nowicki. The court found that "it simply is not plausible that the Legislature intended to empower retirement boards to target long retired county employees who had negotiated with their employer for contract terms permitted under then-existing law and county retirement association guidance, solely because those acts enabled them to increase their final compensation at the time of retirement." Thus, the trial court erred in denying Nowicki's petition for writ of mandate.

Nowicki v. Contra Costa Cty. Employees' Ret. Ass'n (2021) 67 Cal.App.5th 736.

Note:

In 2013, the Legislature enacted the Public Employees' Pension Reform Act (PEPRA) to curb pension spiking. PEPRA would also have prohibited Nowicki's conduct, had it occurred after 2013.

LABOR CODE

Employee Forced To Pay For Her Employer's Business Losses Has A Potential Labor Code Claim.

Krizel Gallano worked as a cashier and customer service representative for Burlington Coat Factory (Burlington) at its Daly City store. In March 2014, loss prevention personnel confronted her in a room at the back of the store about mistakes she purportedly committed that resulted in business losses. She was then allegedly coerced into signing a statement confessing to the mistakes, which included processing a return of perfume that resulted in a loss of $400 and ringing up items that had been mismarked by other employees with the wrong price tags. Burlington characterized these mistakes as "fraudulent" returns and other acts of "shoplifting."

After signing the confession, Gallano was directed to sign a promissory note establishing a personal debt of $880 for the losses her employer had allegedly sustained. Burlington told her that if she paid the amount owed on the promissory note and resigned, it would not pursue criminal charges against her. Gallano resigned, and no criminal proceedings were ever initiated against her in connection with her employment at Burlington. However, Gallano received two civil demand letters from a law firm seeking $350 for "shoplifting, theft, or fraud."

In 2015, Gallano filed a class action complaint against Burlington. She declared that the purpose of her complaint was to stop Burlington's "unlawful practice of intimidating its employees into indemnifying the company for [its] ordinary business losses." She alleged that Burlington had a practice of mischaracterizing routine retail mistakes as theft, such a processing fraudulent returns or selling mis-tagged items, and intimidating employees into signing promissory notes to shoulder the debt for the company's financial losses. Gallardo asserted a cause of action for violations of Labor Code Section 2802, among other claims. After significant litigation, the case made its way to the California Court of Appeal.

On appeal, one of the issues the court considered was whether Gallano could maintain a claim for violations of Labor Code Section 2802. Section 2802 provides that "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge or his or her duties." To prove a violation of Section 2802, an employee must therefore establish that: (1) he or she made expenditures or incurred losses; (2) the expenditures or losses were incurred in direct consequence of the employee's discharge of his or her duties, or obedience to the directions of the employer; and (3) the expenditures or losses were necessary.

While Burlington argued that Gallano could not meet the first element because she "never paid Burlington any money in relation to the promissory note or the civil demand letters," the court disagreed. The Court of Appeal reasoned that to "incur" is "to become liable or subject to." When Gallano signed the promissory note, she incurred an economic loss. She became legally obligated under the promissory note, subject to debt collection efforts, and possible exposure to civil liability. For these reasons, the court concluded that an employee may incur a "loss" for purposes of Section 2802 when the employer causes or directs the employee to become personally liable for a necessary business-related expense. Thus, Gallano could maintain her claim.

Gallano v. Burlington Coat Factory of California, LLC (2021) 67 Cal. App. 5th 953.

Note:

It is unsettled whether Labor Code Section 2802 applies to public entities. In the teleworking context, however, the most risk adverse approach is to reimburse public employees for some teleworking expenses if the employer requires the employee to work from home because of the COVID-19 pandemic. LCW attorneys can assist in determining whether agencies need to reimburse certain employee expenses.

DID YOU KNOW....?

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

The temporary Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) health insurance premium subsidy Congress granted to eligible individuals through the American Rescue Plan Act of 2021 (the ARP) will expire at the end of September 2021. Employers should be aware of their obligation to timely notify COBRA recipients of this fact.

On July 29, the U.S. Department of the Treasury announced regulatory changes providing new qualifying reasons for tax credits under the American Rescue Plan Act (ARPA). Eligible employers may now claim payroll tax credits if they provide Emergency Paid Sick Leave (EPSL) or Emergency Family and Medical Leave (EFML) to employees who take time off to either: 1) accompany an individual to receive an immunization against COVID-19; or 2) care for an individual who is recovering from an immunization against COVID-19. The expanded EPSL and EFML leave provisions are discretionary, and the associated tax credits are limited to employers that provide such leave between April 1 and September 30, 2021, in compliance with the ARPA.

A public educational entity has 10 days to provide an initial response to a public records request notifying the requestor whether their request seeks disclosable records. (Gov. Code, § 6253, subd. (c).)

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 educational entity, 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 city manager contacted LCW to ask whether part-time employees qualify for COVID-19 supplemental paid sick leave.

Answer: Provided other statutory requirements are met, part-time employees are entitled to COVID-19 Supplemental Paid Sick Leave (SPSL) under Labor Code Section 248.2. Part-time employees are entitled to a proportionate amount of SPSL that full-time employees receive. If the part-time employee works irregular hours, the agency should conduct a six-month look back to determine the average number of hours worked and calculate the proportionate entitled to SPSL based on that number.

BENEFITS CORNER

IRS Clarifies Substantiation Requirements For Health FSA Debit Card Programs.

On June 25, 2021, the IRS released two information letters that address how an employee can substantiate a request for reimbursement of a medical expense under a Section 125 cafeteria plan health flexible spending arrangement (health FSA) debit card program. A health FSA allows expenses paid or reimbursed to an employee to be excluded from gross income. Some employers issue debit cards to employees to pay for medical expenses covered under a health FSA.

Letter 2021-0003 explains that IRS rules require medical expenses to be verified by a third party in order to be excludable from the employee's gross income. Proper substantiation for such expenses includes: (1) a description of the service or product; (2) the date of the service or sale; and (3) the amount of the expense.

Special issues arise when an employee's medical expenses are reimbursed with a debit card linked to a health FSA account. Specifically, a debit card transaction may not collect all of the information needed to substantiate the expense. If the transaction does not include all of the required information, the administrator of the health FSA must request additional information from the employee to substantiate the expense. If the

employee cannot provide the information in a timely manner, the plan administrator must deactivate the employee's health FSA debit card.

Letter 2021-0013 discusses IRS rules for using a debit card to substantiate health FSA expenses, as described in Proposed Treasury Regulations Section 1.125-6. Specifically, an independent third party must provide the employer with a statement verifying the medical expense, either automatically or after the debit transaction. If, at the time and point of sale, the third party provides information to verify that the charge is for a medical expense, then that expense is substantiated without the need for further review. Also, the health FSA sponsor may coordinate with an employee's insurance provider to use information provided in an explanation of benefits to substantiate a debit card charge without requiring more information.

Plan administrators can also approve payment of an employee's recurring medical expenses incurred with certain providers that match the amount, medical care provider, and time period of previously-approved expenses without additional substantiation.

An employer may impose stricter standards than those described above to ensure that the health FSA is used only to pay or reimburse medical expenses.

Although these letters do not change existing law, employers may find them useful in navigating what debit card transaction information is needed to substantiate reimbursement requests.

Firm Publications

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

In the article "ERMA Legal Update: Legal Obligations Related to Managing Employee Requests for Religious Accommodations," LCW Associate **Alex Volberding** explores religious accommodations in regard to COVID-19 vaccination mandates and sheds light on employees' rights pertaining to religious beliefs. The piece was written in partnership with the Employment Risk Management Authority.

LCW Partner **Shelline Bennett's** article "Codes of conduct and ethics in the public sector" was published in the Aug. 24, 2021 edition of *American City & County.* The piece, which is part two of her series addressing the prevalence of bad behavior from elected officials, provides elected officials useful tips on constructing a governing code of conduct and specific measures and consequences for those who fail to abide by established rules.

LCW Partner **Michael Blacher** recently weighed in on the discussion of COVID-19 vaccine mandates at California Jewish high schools. In *J. The Jewish News of Northern California* article "Kehillah Students Must be Vaxed. Other Local Jewish schools are Still Weighing their Options," which was published Aug. 18, Blacher explained that California Jewish high schools were not "seriously considering vaccine mandates" before the delta variant, but are now rethinking this policy in the wake of the new variant. Blacher shared, "Before the delta variant, I think most schools — not just Jewish day schools — felt that there were better ways to increase vaccinations and maintain a safe environment than requiring vaccinations. However, since the rapid spread of the delta variant and the increased risk of infection, more schools have opted to require vaccinations. What's changed is not the law or the legal risks, but the virus."

Introducing LCW's newest partner, James E. Oldendorph!

James Oldendorph represents employers in cases involving alleged violations of Title VII, the Fair Employment and Housing Act, the Americans with Disabilities Act, the California and United States Constitutions, the Public Safety Officers Bill of Rights and the Firefighters Procedural Bill of Rights Acts, as well as collective and class actions under the Fair Labor Standards Act and the California Labor Code. He also advises clients on injunctions, wage and hour claims, and wrongful discharge actions.

James has extensive experience representing Liebert Cassidy Whitmore (LCW) clients in many forums from federal and state court to the Office of Administrative Hearings to civil service commissions, and arbitration. While James represents all types of employers, he focuses his practice on public safety agencies. James is fluent in Spanish, and utilizes this skill in consulting with LCW's Spanish-speaking clients and in translating and drafting correspondence and contracts in Spanish.

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LCW Webinar

A Practical Approach for Regular Rate of Pay Reviews

TUESDAY, OCTOBER 19, 2021 | 10:00 AM

Each negotiated form of compensation in collective bargaining agreements can affect an employee's regular rate of pay. This webinar will address common forms of compensation in memorandums of understanding that signal the need for a review of the regular rate. Not only will this webinar cover the nuts and bolts of how to perform a regular rate review, but it will also discuss best practices on coordinating this review with labor negotiations. Register for this webinar now!

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PRESENTED BY:
Lisa Charbonneau

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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. October 7 & 14, 2021 - The Rules of Engagement: Issues, Impacts & Impasse
2. November 3 & 4 - Trends & Topics at the Table
3. December 9 & 16 - Communication Counts!

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Firm Activities

Consortium Trainings

Oct. 1 **"Disability Interactive Process"**
Bay Area CCD ERC | Webinar | Alysha Stein-Manes

Oct. 5 **"Difficult Conversations"**
San Mateo County ERC | Webinar | Heather R. Coffman

Oct. 6 **"The Meaning of At-Will, Probationary, Seasonal, Part-Time and Contract Employment"**
Humboldt County ERC | Webinar | Heather R. Coffman

Oct. 6 **"Finding the Facts: Employee Misconduct & Disciplinary Investigations"**
NorCal ERC | Webinar | Shelline Bennett

Oct. 6 **"Hiring the Best While Developing Diversity in the Workforce: Legal Requirements and Best Practices for Screening Committees"**
Northern CA CCD ERC | Webinar | Amy Brandt

Oct. 6 **"Privacy Issues in the Workplace"**
Sonoma/Marin ERC | Webinar | Jack Hughes

Oct. 7 **"Difficult Conversations"**
Central Valley ERC | Webinar | Heather R. Coffman

Oct. 7 **"Difficult Conversations"**
North San Diego ERC | Webinar | Heather R. Coffman

Oct. 7 **"Difficult Conversations"**
West Inland Empire ERC | Webinar | Heather R. Coffman

Oct. 8 **"Where's the Line? Community Colleges in a Virtual World"**
Central CA CCD ERC | Webinar | Eileen O'Hare-Anderson & Yesenia Z. Carrillo

Oct. 13 **"Supervisor's Guide to Public Sector Employment Law"**
Central Coast ERC | Webinar | Jack Hughes

Oct. 13 **"File That! Best Practices for Employee Document and Record Management"**
Gold Country ERC | Webinar | James E. Oldendorph

Oct. 13 **"Supervisor's Guide to Public Sector Employment Law"**
San Joaquin Valley ERC | Webinar | Jack Hughes

Oct. 13 **"File That! Best Practices for Employee Document and Record Management"**
Ventura/Santa Barbara ERC | Webinar | James E. Oldendorph

Oct. 14 **"Maximizing Supervisory Skills for the First Line Supervisor - Part 1"**
Coachella Valley ERC | Webinar | Kristi Recchia

Oct. 14 **"Maximizing Supervisory Skills for the First Line Supervisor - Part 1"**
East Inland Empire ERC | Webinar | Kristi Recchia

Oct. 20 **"Leaves, Leaves and More Leaves"**
Monterey Bay ERC | Webinar | Che I. Johnson

Oct. 20 **"Leaves, Leaves and More Leaves"**
North State ERC | Webinar | Che I. Johnson

Oct. 20 **"Leaves, Leaves and More Leaves"**
Orange County Consortium | Webinar | Che I. Johnson

Oct. 21 **"Nuts & Bolts: Navigating Common Legal Risks for the Front Line Supervisor"**
Bay Area ERC | Webinar | Danny Y. Yoo

Oct. 21 **"Disaster Service Workers - If You Call Them, Will They Come?"**
Mendocino County ERC | Webinar |

Oct. 21 **"Nuts & Bolts: Navigating Common Legal Risks for the Front Line Supervisor"**
West Inland Empire ERC | Webinar | Danny Y. Yoo

Customized Trainings

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

Oct. 19 **"Hiring the Best While Developing Diversity in the Workforce: Legal Requirements and Best Practices for Screening Committees"**
Contra Costa Community College District | Webinar | Amy Brandt

Speaking Engagements

Oct. 5 **"How to Conduct an Effective and Defensible Workplace Investigation"**
College and University Professional Association for Human Resources (CUPA-HR) Annual Conference | Virtual | Judith S. Islas & Kim Overdyck

Oct. 20 **"Title 5 Update"**
ACHRO Fall Training Institute | Virtual | Laura Schulkind & Irma Ramos & Gregory Smith & Fermin Villegas

Oct. 21 **"Town Hall - Legal Eagles"**
ACHRO Fall Training Institute | Virtual | Eileen O'Hare-Anderson & Laura Schulkind & Pilar Morin & Meredith Karasch & T. Oliver Yee

Oct. 21 **"Returning to the Campus and the Workplace: Key Considerations for Reopening Your Campus and Workplaces to Employees, Students and Members of the Public"**
ACHRO Fall Training Institute | Virtual | T. Oliver Yee

Oct. 22 **"Status of the Title IX Regulations"**
ACHRO Fall Training Institute | Virtual | Pilar Morin & Ryan Wilson & Sokha Song

Seminar/ Webinars

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

Oct. 7 **"The Rules of Engagement: Issues, Impacts & Impasse - Part 1"**
Liebert Cassidy Whitmore | Webinar | Kristi Recchia & T. Oliver Yee

Oct. 14 **"The Rules of Engagement: Issues, Impacts & Impasse - Part 2"**
Liebert Cassidy Whitmore | Webinar | Kristi Recchia & T. Oliver Yee

Oct. 15 **"Train the Trainer Refresher: Harassment Prevention"**
Liebert Cassidy Whitmore | Webinar | Christopher S. Frederick

Oct. 19 **"A Practical Approach for Regular Rate of Pay Reviews"**
Liebert Cassidy Whitmore | Webinar | Lisa S. Charbonneau

Oct. 19 **"Best Practices for Conducting Fair and Legally Compliant Internal Affairs Investigations - Day 1"**
Liebert Cassidy Whitmore | Tustin | Geoffrey S. Sheldon & James E. Oldendorph

Oct. 20 **"Best Practices for Conducting Fair and Legally Compliant Internal Affairs Investigations - Day 2"**
Liebert Cassidy Whitmore | Tustin | Geoffrey S. Sheldon & James E. Oldendorph

Oct. 20 **"FLSA Academy Day 1"**
Liebert Cassidy Whitmore | Webinar | Lisa S. Charbonneau

Oct. 21 **"FLSA Academy Day 2"**
Liebert Cassidy Whitmore | Webinar | Lisa S. Charbonneau

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