

Public Sector Employment Law Update

League of California Cities 2014 City Attorneys' Spring Conference


Presented by: Richard S. Whitmore

LCW LIEBERT CASSIDY WHITMORE

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Employment Applications

- **AB 218** – “Ban the Box” Legislation Limits the Ability of Public Agencies to Ask Applicants Information Regarding Criminal Convictions.
 - *(AB 218 adds Section 432.9 to the Labor Code.)*

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Wage and Hour Litigation

- Warehouse Workers Required to Wait 25 Minutes for Security Clearance Stated Plausible FLSA Violation.
 - *Busk v. Integrity Staffing Solutions, Inc.* (9th Cir. 2013) 713 F.3d 525 HEARING GRANTED.

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Wage and Hour Litigation

- Supreme Court Defines “Clothes” and “Changing Clothes” and Sets Forth Test for Determining if Time Spent Donning and Doffing is Compensable.
 - *Sandifer v. United States Steel Corp.* (2014) __ S.Ct. __ [2014 WL 273241].

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Labor Relations

- **AB 1181** – Expands Time Off for Representatives of a Recognized Employee Organization.
 - *(AB 1181 amends Section 3505.3 of the Government Code.)*

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Labor Relations

- Union No Longer Required To Request To Bargain Over “Effects” Of A Managerial Decision If Employer Did Not Give Advance Notice Of Unilateral Decision Resulting In Negotiable Effects.
 - *County of Santa Clara (2013) PERB Decision No. 2321- M [38 PERC ¶ 30].*

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Labor Relations

- City Required To Meet and Confer Over Decision To Eliminate One Classification Entirely and Transfer Work to Another Classification Within Another Bargaining Unit.
 - *Stationary Engineers Local 39 v. City of Sacramento* (2013), PERB Decision No. 2351-M

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Labor Relations

- **AB 537** – Requires a Governing Body of a Local Agency to Vote on a Tentative Agreement Within 30 Days from the Date it is Noticed at a Public Meeting and Imposes Certain Procedural Requirements Related to Arbitration Proceedings Governed by an MOU.
 - *(AB 537 amends Section 3505.1 of, and to add Section 3505.8 to, the Government Code.)*

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Labor Relations

- A union's right to seek fact finding after impasse only applies in negotiations for a successor MOU and not in mid-term non-contract negotiations
 - *San Diego Housing Commission v. PERB* (January 31 2014) San Diego Superior No 37-2012-00087278-CU-WM-CTL.

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Employment Law

- **SB 288** – Expands Leave Rights for Employees who are Victims of Specified Crimes to Take Time Off to Appear in Court Proceedings Related to the Crimes.
 - (*SB 288 adds Section 230.5 to the Labor Code.*)

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Employment Law

- **SB 400** – Extends Leave Protections to Victims of Stalking, Prohibits Discrimination/Retaliation Based on a Status as a Victim of Domestic Violence/Sexual Assault/Stalking; Requires Employers to Provide Reasonable Safety Accommodations to Such Victims.
 - *(SB 400 amends Sections 230 and 230.1 of the Labor Code.)*

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Labor Relations

- Hospital's Prohibition Against Discussion Of Internal Investigations Interfered With Employee Rights.
 - *Banner Health System D/B/A Banner Estrella Medical Center (N.L.R.B. 2012) 358 NLRB No. 93 [2012 WL 3095606].*

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Fire Fighter Bill of Rights

- A Supervisor's File Constitutes A Personnel File Under The Fire Fighter Bill Of Rights (FBOR), Entitling A Fire Fighter To Review Adverse Comments Before They Are Placed In The File.
 - *Poole v. Orange County Fire Authority* (November 4, 2013) _____ Cal App 4th _____ (Cal App 4th District No. G04785) HEARING GRANTED

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Public Safety

- **SB 313** – Prevents an Agency from Taking Disciplinary Action against a Peace Officer Solely Because the Officer Has Been Placed on a “Brady List.”
 - (*SB 313 adds Section 3305.5 to the Government Code.*)

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First Amendment

- Ninth Circuit Issues First Amendment Ruling Applying the Legal Framework Set Forth by the Recent *Dahlia* Decision.
 - *Hagen v. City of Eugene* (9th Cir. 2013) 736 F.3d 1251 [2013 WL 6231740].

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Retaliation/Whistleblower

- **AB 263**, **SB 496**, and **SB 666** – Expands Retaliation Protections to Employees Who Make Wage Claims under the Labor Code; Prohibits Unfair Immigration-Related Practices for the Purpose of Retaliation; Expands Whistleblower Protections; and Eliminates the Requirement of Administrative Exhaustion.

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Administrative Hearings/Due Process

- District Did Not Violate Due Process By Amending Charges Against Terminated Employee During Course of Hearing.
 - *Thornbrough v. Western Placer Unified School District* (2013) __ Cal.App.4th __ [2013 WL 7045577]

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Sexual Harassment

- *Harris* Causation Standard Applied to Wrongful Termination Claim Arising From Same-Sex Harassment.
 - *Mendoza v. Western Medical Center Santa Ana* (2014) __ Cal.App.4th __ [2014 WL 123417].

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Disability Discrimination

- City Must Actually Offer Disabled Employee a Comparable Job Position to Prove the Employee Could Perform the Duties of the Comparable Job Position and Not Qualify for Disability Retirement.
 - *Meyers v. Board of Administration for the Federated City Employees Retirement Fund* (2014) ____ Cal. Rptr.3d ____ [2014 WL 788266].

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Retirement

- Ninth Circuit Decides No Implied Contract For Vested Health Benefits Was Created.
 - *Retired Employees Association of Orange County, Inc. v. County of Orange* (2014) ____ F.3d ____ [2014 WL 555156].

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Public Safety/Workers' Compensation

- Officer Working Modified or Light Duty Not Entitled To 4850 Benefits.
 - *County of Nevada v. Workers' Compensation Appeals Board* (2014) __ Cal.App.4th __ [2014 WL 321899].

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Attorney's Fees

- Prevailing Employer in FEHA Discrimination Lawsuit Could Receive Attorney's Fees Even Though Trial Court Did Not Issue a Separate Written Order on Fees.
 - *Robert v. Stanford University* (2014) ____ Cal. Rptr.3d ____ [2014 WL 793112].

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Attorney's Fees

- It is Not an Abuse of Discretion for a Trial Court to Award Plaintiff Attorneys Fees 25 Times Larger than the Jury Verdict.
 - *Muniz v. United Parcel Service, Inc.* (9th Cir. 2013) ___F.3d___ [2013 WL 6284357].

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New Cases

City of San Jose v. Superior Court (2014)
___ Cal.Rptr.3d ___ [2014 WL 1254821].

U.S. v. Quality Stores, Inc. (2014) ___ S.Ct.
___ [2014 WL 1168968].

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Questions?

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Thank You!

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