

## Forum on AB X1 26: Labor and Employment Issues

J. Scott Tiedemann  
Managing Partner, Liebert Cassidy Whitmore  
[stiedemann@lcwlegal.com](mailto:stiedemann@lcwlegal.com) (310)981-2000

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- I. Who was/is the employer?
- A. After February 1, 2012, employees of RDA are employees of the successor agency. [Cal. Health & Safety Code § 34190(e).] “Successor agency” means the county, city, or city and county that authorized the creation of each redevelopment agency or another entity as provided in Section 34173.” [Cal. Health & Saf. Code § 34171.]
  - B. If a city is the successor agency, is the successor agency separate from the City?
  - C. Were RDA employees actually employed by the RDA or were they city employees performing RDA related duties? Seniority and classifications of RDA employees transfer to successor agency for two years. [Cal. Health & Saf. Code § 34190(h).]
- II. Are former RDA employees members of a represented bargaining unit?
- A. If yes, then examine the terms of existing memoranda of understanding. [Cal. Health & Safety Code § 34190(g).] If no MOU, then terms and conditions specified in an expired MOU or established past practices may govern. [Cal. Health & Safety Code § 34190(e).]
    - 1. Obligation to meet and confer continues. [Cal. Health & Saf. Code § 34190(b), (c), (d).]
    - 2. Zipper clause? No layoff clause?
    - 2. Does AB 646 impact the negotiations timeline? [Cal. Gov’t. Code § 3505.4]
    - 3. An employer may implement a nonnegotiable decision before completion of the bargaining process if:
      - a. the implementation date is not arbitrary one, and is based upon either an immutable deadline . . . or an important managerial interest, such that a delay would effectively undermine management rights; and,
      - b. notice of the decision and implementation date is given sufficiently in advance of the implementation date to allow for meaningful negotiations prior to implementation; and,
      - c. the employer negotiates in good faith prior to implementation and continues to negotiate in good faith after implementation as to those subjects not necessarily resolved by virtue of the implementation. [Compton Community College Dist. (1989) PERB Dec. No. 720.]
  - B. If no, then the terms and conditions of employment will depend on who is the employer.
- III. Will former RDA employees be laid off?
- A. If yes, the decision to layoff is a management right. [*International Ass’n of Fire Fighters, Local 188, AFL-CIO v. PERB (City of Richmond)* (2011) 51 Cal.4th 259.]
    - 1. If employees are represented, then the impacts of layoff are generally negotiable, unless a comprehensive layoff plan has already been negotiated.

2. If a general law city is the successor agency, then order of layoff is determined by seniority. [Cal. Gov't Code § 45100.]
3. Rights of Laid Off Employees
  - a. COBRA/ CalCOBRA [29 USC §§ 1161- 1169.]
  - b. Unemployment Insurance. [Cal. Unemployment Ins. Code § 675.]
- B. If no, in what capacity will they be employed, what work will they perform, and what impact, if any, will there be on other city employees? [See, e.g. Fire Fighters Union v. City of Vallejo (1974)12 Cal.3d 608 (finding workload is a mandatory subject of bargaining).]
- C. Alternatives to layoff? e.g., Early Retirement Incentives [Cal. Gov't Code § 20903.]
- D. Rights of employees on leave at time of dissolution, e.g.FMLA/CFRA. [See, e.g. Tomlinson v. Qualcomm, Inc. (2002) 97 Cal.App.4th 934.]

IV. Who pays for former RDA employees?

- A. Is an employee's compensation an "enforceable obligation"? [Cal. Health & Safety Code § 34171(d)(1).]
  1. "Payments required by the federal government . . . or obligations imposed by state law . . . or legally enforceable payments required in connection with the agencies' employees, including but not limited to, pension payments, pension obligation debt service, unemployment payments, or other obligations conferred through a collective bargaining agreement." [Cal. Gov't Code § 34171(d)(1)(C) (emphasis added).]
  2. Administrative Costs
    - a. "Contracts or agreements necessary for the administration or operation of the successor agency, in accordance with this part, including, but not limited to, agreements to purchase or rent office space, equipment and supplies, and pay-related expenses pursuant to Section 33127 and for carrying insurance pursuant to Section 33134." [Cal. Health & Saf. Code § 34171 (emphasis added).]
    - b. An agency may: (a) Obtain, hire, purchase, or rent office space, equipment, supplies, insurance, or services. (b) Authorize and pay the travel expenses of agency members, officers, agents, counsel, and employees on agency business. [Cal. Health & Saf. Code § 33127 (emphasis added).]
    - c. "Administrative cost allowance" means an amount that, subject to the approval of the oversight board, is payable from property tax revenues of up to 5 percent of the property tax allocated to the successor agency for the 2011-12 fiscal year and up to 3 percent of the property tax allocated to the Redevelopment Obligation Retirement Fund money that is allocated to the successor agency for each fiscal year thereafter; provided, however, that the amount shall not be less than two hundred fifty thousand dollars (\$250,000) for any fiscal year or such lesser amount as agreed to by the successor agency. However, the allowance amount shall exclude any administrative costs that can be paid from bond proceeds or from sources other than property tax." [Cal. Health & Safety § 34171.]
- B. Administrative Budget. [Cal. Health & Saf. § 34177(j).]
- C. Recognized Obligation Payment Schedule. [Cal. Health & Saf. §§ 34171(h), 34177(m).]