LEAGUE OF CALIFORNIA CITIES
FIRE CHIEFS LEADERSHIP SEMINAR

Legislative and Legal Update

12/11/2019

PRESENTED BY:

Morin I. Jacob
Significant Court Decisions
CPRA Requests: Constructive Possession

• Right to access privately held records does not establish Constructive Possession for a CPRA request.
CPRA Requests: Recovery of Costs

- Permits a public agency employer to recover, from the requestor of public records, the actual costs to the agency of redacting information from electronic records in response to a request for electronically stored public records.

CPRA Requests: Recovery of Costs

• County lawfully increased its fee for copies of records.
Labor Relations

• County violated MMBA by unilaterally amending rules regarding promotional opportunities.
• Fire protection district violated MMBA when it denied represented employees longevity differential.

Retirement

• Employee who settles a pending termination for cause and agrees not to seek reemployment is not eligible for disability retirement.

Disciplinary Proceedings

• Application of exclusionary rule in criminal proceeding did not require suppression of same evidence at administrative hearing.
Disciplinary Proceeding

• Civil Service Commission abused its discretion by reducing deputy’s punishment, because the Commission’s decision to reduce punishment from discharge to a 30-day suspension was unsupported by its own factual findings.

• Sheriff’s Sergeant not entitled to an administrative appeal for release from probationary promotion; release constituted a denial of promotion, rather than a demotion.

Rights of Privacy and Free Association: Limits on Discipline for Off-Duty Conduct

• Releasing probationary officer for off-duty, extramarital affair with a coworker could violate the Constitutional rights of privacy and free association.

• Reversed in 2019: held officers involved in probationary officer's termination were entitled to qualified immunity from her § 1983 action against for violation privacy and intimate association rights.
  – Perez v. City of Roseville (9th Cir.2018) 882 F.3d 843 was reversed by Perez v. City of Roseville (9th Cir. 2019) 926 F. 3d 511).
**SB 1300**

**FEHA Amendments**

**AMENDED: FEHA**

- Adds Section 12923 to the Government Code
  - Dismantles the “severe or pervasive” standard;
  - Plaintiff need not show decline in “tangible productivity”, only must show altered working conditions under a “reasonable person” standard;
  - Any discriminatory remark may be relevant evidence of discrimination;
  - Legal standard for sexual harassment does not vary by type of workplace;
  - Harassment cases rarely appropriate for disposition on summary judgment.

- Prohibits an employer from requiring an employee to release a FEHA claim or sign a nondisparagement agreement, confidentiality agreement, or any other document denying the employee the right to disclose information about unlawful acts in the workplace, including sexual harassment in exchange for a bonus, raise, or continued employment
  - Employer may be responsible for all acts of harassment by nonemployees in the workplace, not only sexual harassment.
AB 9

- Complaints will now have three (3) years instead of one (1) year from alleged discrimination to file a claim with DFEH.
  - Government Code 12960, 12965
**AMENDED**: Code of Civil Procedure Section 1001

- Prohibits confidentiality clauses in settlement agreements entered into on or after January 1, 2019 that would limit the disclosure of factual information related to sexual assault, sexual harassment, or workplace harassment or discrimination based on sex.
**AB 3109**
Settlement Agreements

**AMENDED**: Code Section 1670.11

- Prohibits a contract or settlement agreement entered into on or after January 1, 2019 from limiting a party’s right to testify in an administrative, legislative, or judicial proceeding concerning alleged criminal conduct or alleged sexual harassment on the part of the other party to the contract where the party has been required or requested to attend the proceeding.
• New California law prohibits “no rehire” provisions in settlement agreements.
  – C.C.P. 1002.5 et seq
AMENDED: Government Code Section 3558.8

• Requires a public employers to grant reasonable leaves of absence without loss of compensation or other benefits for employees to serve as stewards or officers of the employee organization.

• Employee association/union is responsible for all compensation owed to the employee on leave unless agreed otherwise.
• California workplace nondiscrimination laws amended to protect traits historically associated with race, including hair texture, braids, locks, and twists.
  – Senate Bill No. 188 (amending California Government Code section 12926)
Thank You!

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  - National Lawyers Guild v. City of Hayward (2018) 27 Cal.App.5th 937 (Review granted by California Supreme Court, but case remains published in interim.)

CPRA Requests: Recovery of Costs

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Labor Relations

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### Disciplinary Proceeding

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### Administrative Appeal

- Sheriff’s Sergeant not entitled to an administrative appeal for release from probationary promotion; release constituted a denial of promotion, rather than a demotion.

### Rights of Privacy and Free Association: Limits on Discipline for Off-Duty Conduct

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- Complaints will now have three (3) years instead of one (1) year from alleged discrimination to file a claim with DFEH.
  - Government Code 12960, 12965
SB 820
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AB 749
• New California law prohibits “no rehire” provisions in settlement agreements.
  – C.C.P. 1002.5 et seq
**SB 1085**

**Paid Release Time**

**AMENDED:** Government Code Section 3558.8

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