Regional Employees Association of Professionals April 2015 News

ATTENTION
MEMBERS OF THE SUPERVISORY BARGAINING UNIT

Article 24 of the current MOU allows every supervisor represented by SEIU, the opportunity to opt out. As a supervisor, some of your subordinates may also be represented by SEIU which results in a conflict of interest.

You may feel a bit apprehensive to opt out of SEIU, wondering if you will continue to have representation. Because County Human Resources determines which job classifications are represented by which labor organization, SEIU is still required to provide you representation in the event you find yourself facing a disciplinary investigation.

As a result of your decision to opt out, you may be told that all of your step increases or Cost of Living Allowance (COLA) will be forfeited. This simply is not true. The negotiated contract is between the County of Riverside and SEIU, not you and SEIU.

As important as representation is, SEIU does a very poor job. REAP offers quality representation by a recognized firm in Southern California who has, and continues to provide, representation and contract negotiation for employee associations for the past 25 years. With over 115 associations, the City Employees Associates is REAP's choice.

If opting out is the choice you would like to make, REAP wants to help! Download the attached letter. This letter can be hand carried or mailed directly to SEIU at 6177, #B River Crest Dr. Riverside CA 92507. Also make a copy of your desire to opt out and send a copy to Michael Stock, Director of HR. If you would like professional representation, a designation form is also included. You are not required to be represented by either SEIU or REAP, but if representation is needed, REAP does not use a steward system for its members, CEA utilizes attorneys versed in California labor law. The choice is very clear.

What Does the Public Have the Right to Know about Its "Public Servants"?

For more than a decade, public agencies have been under attack by "taxpayer" groups, aggressively pushing for personal information about employees. Since 2009, virtually every agency in the state has received a Public Records Act request, demanding names, job titles, union affiliations, and salaries of the people who work there. Many of these requests are ignored or rejected, on grounds that they violate employees' privacy but, if and when these cases have moved into court, the employees' "right to privacy" has NOT won out over "the public's right to know."

Under the California Public Records Act, (the purpose of which is to "ensure public access to vital information about the government's conduct of its business…") any member of the public has the right to know the name, position, work location, work phone number, work email address and salary of any public employee. **The Courts have found that public employees have "no reasonable expectation of privacy" about their jobs or their relationship to those jobs.**

The CPRA does establish a few exemptions: 1) personnel and medical files, which if disclosed would constitute an "unwarranted invasion of personal privacy," and 2) facts which, "better serve the public interest" by withholding the information than by disclosing it. So, while the overall battle to maintain the privacy of who you are, what you do, and what you earn has been lost, your "personal" information (parents' names, place of birth, school records, examination records, performance evaluations (all considered part of your personnel file) is still protected. The second exemption is obviously a large grey area; a myriad of court cases are currently debating what kinds of information "better serves the public interest" by non-disclosure, than disclosure…

Non-Work "Contact" Information

In hearing these various "public demands" for information, the Courts apply a "balancing test," weighing the value of the information the public is seeking in "contributing to public understanding of government activities" against the damage that might be done by intrusion into employees' lives. So, the Courts have put their feet down on requests for employees' personal phone numbers or home addresses. In 2009, the judge in *County of Santa Clara v Superior Court* found that "even when the requester asserts that personal contact is necessary to confirm government compliance with mandatory duties," disclosure may be denied when there are "less intrusive means of obtaining that information…"

What about the "public's interest" in protecting employees against intrusions on their time or against threats from members of the public?

The Courts have said that *some* employees (basically undercover police officers) may be allowed to maintain anonymity under *some* circumstances, because of personal danger if their identities are released. However, they have NOT come down on the side of privacy in the face of "threats" in general. Instead, the state of

the law is that safety or security issues may be examined on a case by case basis, but that the "mere assertion of possible endangerment does not clearly outweigh the public interest in access to records."

On the question of "disruption" by bothersome members of the public, the legal decisions have not been sympathetic. Public employees are considered servants OF the public – and considered available for contact by the public, while they are at work. In truth, we all know that all the "contact information" that the public *really* needs in order to reach you on the job is available on your employer's website. The REAL reason for most of these Public Records Act requests IS disruptive: to pester public agencies and their employees (or to try to embarrass them) by release of financial information. The public is truly not "illuminated" about the operations of your department when they print your salary (or the value of your retirement benefits) in the newspapers. *For now, however, the practice is perfectly legal…*

IS IT "DISCRIMINATION" FOR THE COUNTY TO ASK YOU ABOUT RETIREMENT

The short answer is no. A simple question is not evidence of discrimination. Nor is the offer of a retirement "incentive" evidence of discrimination - even if you don't want to take it. As public agencies count their nickels and dimes, often with layoffs often looming, it is reasonable that they try to predict who may be "stepping down" voluntarily. Managers who survey their staff about their retirement plans, or offer retirement inducements, are generally being prudent about the future.

HOWEVER, Inquiries DO cross into illegal territory when they are accompanied by threats or actual action. It IS discriminatory, for example, for Management to say "if you don't retire, we may have to lay you off." It's equally illegal to impose negative work conditions such as "Since you decided not to retire, we're going to have to send you back to the asphalt crew," or "you know, we really can't afford to keep you on modified duty, when all the other guys are pulling double shifts. Have you thought about taking a disability retirement?" Every case is unique. If you believe that you're a victim of age discrimination -- or ANY kind of discrimination -- feel free to call Association staff for assistance. If you do decide to retire, the staff may be able to help you negotiate your exit. If you DON'T want to retire, they will stop the harassment.

What Happens When Your Employer Says You Owe Them Money?

It doesn't happen *often,* but it *does* happen: your employer sends you a letter saying "Sorry, but we've been paying you on the wrong scale for the last 4 years." Or "we've been accidentally giving you Acting Pay, or the wrong certification pay amount, or the wrong cafeteria plan *or whatever…* **and *you just happen to owe us thousands of dollars…"***

What do you do now? You call your union rep – Fast! **You DO have some rights when your employer wants to collect an overpayment.** Here's a summary:

First, it's important to know that your employer cannot lawfully deduct or withhold your pay without your consent. (California Labor Code §221) However, if the County believes that you owe them money, they will probably go to some trouble to collect it. They may even tell you that

they have a "legal obligation" to collect it. Failure to do so, after all, would be "a gift of public funds," and they have no choice but to collect the *entire amount*, in evenly divided payments, to start coming out of your paycheck, *now.* If you do indeed owe the money and can afford the payments, your easiest course of action is to go along with your employer's proposal. Most people do this; they enter into a repayment agreement. If you DON'T agree, however….

You have the Right to Ask for Proof

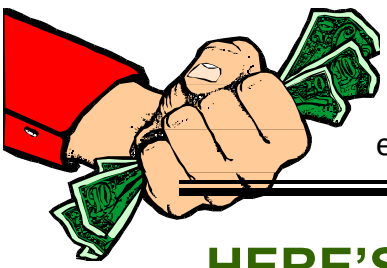
If you are NOT sure that you've been overpaid and/or cannot afford the County's payment schedule, you DO have the right to object – or at least negotiate. First of all you have the absolute right to insist that the County PROVE that you were overpaid. Public agencies do make mistakes. After all, they made the first one.

Second, you have the right to point out that this error is not your fault! You can offer to pay only a portion of the "debt." It's negotiable; your union rep can help with the discussion. It is simply not true that the County has some legal requirement to recover the entire amount.

Third, repayment schedules are completely negotiable. If it took four years for this "debt" to pile up, you may request four years to pay it back. Again, your rep may help with these negotiations, including reducing any agreement to writing. Your employer cannot simply take money out of your paycheck unless you agree with them.

If the Parties Can't Agree…

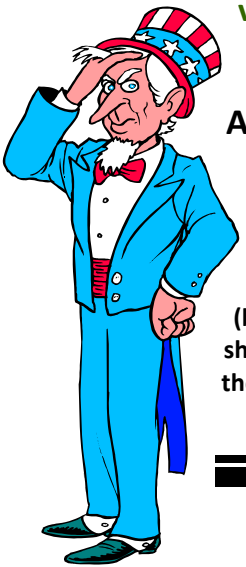
If you CANNOT arrive at agreement the County MAY take action to recover an unpaid debt, by filing for wage garnishment in Court. You DO have the right to defend yourself if you believe the debt is not owed. If the County prevails, it cannot take more than 25% of your paycheck at one time.



Finally, you should know that, while it may be legal for the County to garnish your wages, it's ILLEGAL to retaliate against you for resisting repayment. There is actually a State statute which warns employers not to discriminate against employees whose paychecks are subject to garnishment.

HERE'S A GOOD QUESTION… TIME OFF TO VOTE

Question: **Can you tell me what the law says about an employee's right to take time out to vote? Our HR Department is telling us that because the polls close at 8 p.m. there is no right to take time off.**



Answer: **This is what the Election Code actually says:**

(a) If a voter does not have sufficient time outside of working hours to vote at a statewide election, the voter may, without loss of pay, take off enough working time that, when added to the voting time available outside of working hours, will enable the voter to vote.

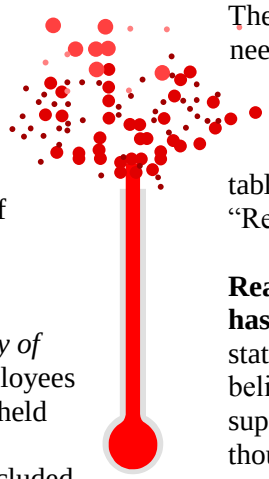
(b) No more than two hours of the time taken off for voting shall be without loss of pay. The time off for voting shall be only at the beginning or end of the regular working shift, whichever allows the most free time for voting and the least time off from the regular working shift, unless otherwise mutually agreed.

(c) If the employee on the third working day prior to the day of election, knows or has reason to believe that time off will be necessary to be able to vote on election day, the employee shall give the employer at least two working days' notice that time off for voting is desired, in accordance with this section.

Translated: most public employees who work a day shift probably don't have the right to take time off the job to vote – unless they live very far from their workplace. However, *some* employees work 10- or 12-hours shifts, and some, literally, cannot leave the workplace for days at a time. This law applies to them; they may take up to two hours off at beginning or end of shift. Such employees are supposed to let their employer know about this, at least two days in advance. (Also, please note this law applies only to State elections...)

Drugs, Alcohol & Your Public Job

In the late 1980's, during a period of hysteria over drunken oil rig crews and drug-addled airline pilots, Congress passed the "Drug Free Workplace Act." This law was actually very narrow; it told public agencies that they were not allowed to employ drug-related felons to work on projects that received federal funds. HOWEVER, it was used as grounds for enacting - or attempting to enact – random, unannounced drug testing in hundreds of public workplaces. In reaction, a number of unions filed suit, to defend their members' constitutional right of privacy.



In California, the most important case was *Glendale City Employees Association vs City of Glendale*, which established that public employees could *not* be randomly tested *UNLESS* they held "safety sensitive" positions or "top secret" national security clearances. The Court concluded that "the collection and testing of urine infringes upon protected privacy interests . . . and that the validity of a drug testing program must balance the privacy interests of the employee against the interests promoted by the search."

The Court's "balancing test" agreed that the need for public safety outweighed the right to privacy, but did *not* agree that a city's concern with its public image outweighed that privacy right.

It suggested that cities could, if they wished, conduct a job-by-job review of all its classes to determine which ones were "safety" sensitive (in other words, which would result in "danger of disastrous proportions" to the public if the employee on duty had an "impairment of judgment") but, absent such review, could NOT randomly test.

Negotiated Substance Testing Programs

The *Glendale* decision left public employers needing to negotiate with their employees if they wanted to implement drug-testing programs for non-safety employees. So… they invoked the "Drug Free Workplace Act" at the bargaining table -- and most unions agreed to something called "Reasonable Suspicion" testing.

Reasonable suspicion, as it relates to drug testing, has no legal definition. Many of these policies simply state that an employee may be tested when a supervisor believes he is "suspicious" – in other words, if the supervisor believes that his eyes look strange, or his thought process seems cloudy or he emits an unusual smell.

Unions that opposed these fuzzy definitions were accused of trying to defend potential felons against the appropriate punishment. But, in the best of circumstances, these policies have come to require corroboration of a supervisor's "suspicion" by other Management personnel before an employee can be forcibly tested. (And, under the worst circumstances, involuntary testing is used by bad supervisors as a form of humiliation and coercion.)

Random Testing for "Safety Sensitive" Positions.

Not long after the *Glendale* decision, the federal Department of Transportation **did** establish guidelines for the random testing of heavy vehicle drivers. Although local agencies were required to cooperate with the broad strokes of the law, they were ALSO required to negotiate with their employee organizations prior to implementation.

Basically, these policies identify which job classes would be subject to random, quarterly testing; how the testing must be carried out (including how the testing agency protects against improper handling of samples;) how an employee who tests positive must be treated, etc. As time passed, DOT substance policies have become stricter. Today, someone who tests positive for drugs or alcohol may not drive a truck or bus again for months.

The DOT leaves it up to the employer to decide what discipline will be meted out to an "offender," and over the years, some common practices have developed. Perhaps the most significant of these was the arrival of the "last chance agreement."

In general, today, if an employee is found "dirty" by a substance test, *but has been a "good" employee and committed no other alcohol or drug-related violations,* s/he is given a Last Chance Agreement. This usually means the opportunity to save her/his job by agreeing to some pretty nasty conditions: 1) to be randomly tested at any time, 2) to go to treatment and/or counseling programs and 3) an agreement that, if s/he shows evidence of substance abuse on duty *again,* he will waive his right to a hearing and be immediately terminated.

This last condition, the waiver of one's constitutionally-based right to due process before the imposition of major discipline, has been subject to a LOT of legal challenges. But Last Chance Agreements are still widely in use – and they do seem to have a deterrent effect on repeat drug and alcohol use in the workplace. **In fact, there doesn't seem to be any doubt that while the DOT testing program *IS* an incursion on employee privacy, it has also gone far to insure that public bus drivers, truck drivers and heavy equipment operators are sober while driving.**

Punishment All Around…

Punishment for drug- or alcohol-related infractions, if they go *beyond* a mere "dirty" test, are almost always severe -- and they aren't limited to truck drivers. People who have accidents or cause loss of County property or harm to the public while "under the influence" can usually expect to be terminated. The same is true of employees caught *in possession* of drugs or alcohol on the job.

When it comes to trafficking of any illegal substance, ***even when this is not on the job,*** the discipline is usually termination. This is the case despite the fact that general employees are not supposed to be held liable *on the job* for their activities *off the job.* The idea that someone is a "representative of the agency" *in his personal life* still hangs heavily over public employees, despite the fact that the Courts have struck this concept down entirely. **You are NOT a "representative of the County" when you are not on the job!**

People who are given "a second chance" under these circumstances are usually long-term employees with good records who manage to convince their employers that they recognize the error of their ways, are seeking help for their "addictions," and they sincerely apologize and desperately need their employers support to conquer. Sometimes a good person, who was going down a bad road, is turned around!

You DO NOT Waive Your Right to Due Process

None of this means that employees who are found in possession, under the influence, or even charged with "trafficking," waive their right to appeal discipline! You have every right to full "Skelly Due Process." This means two levels of hearing, the second of which must be a "full evidentiary hearing before a reasonably impartial third party." The decision to accept a last chance agreement should be weighed carefully against this right to a full hearing…

So What DOES "the Right to Privacy" Mean?

It's important to know that, although most employees, under *most* circumstances, can't be compelled to give urine or blood samples for substance testing, they CAN be compelled to cooperate with workplace inspections. **Ultimately, this can mean that you have very little privacy in a public work place.** Your desk, your locker, your computer can all be searched without your knowledge or agreement. The employer <u>can</u> videotape you (except in restrooms and changing areas) without your knowledge.

You can also be compelled to answer questions, even questions about criminal activity of yourself or others, as a condition of employment. You do have the right to representation, but there is no such thing as protection against self-incrimination ("taking the

5th"), at least insofar as saving your job is concerned.

Public employers who question employees about matters that could involve criminal penalty are simply required to notify the employee that questions answered in an "administrative setting" will not be used in a criminal proceeding, with exceptions such as for purposes of impeachment.

You DO have the right to representation in any investigatory meeting where the subject of discussion could lead to discipline. If an employee believes that he may be charged *criminally*, he/she should seek help from a criminal attorney to decide whether or not to participate in the employer's administrative investigation.

Just a Reminder:

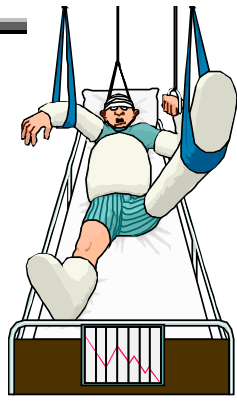
If you (or a Family Member) have a Chronic Illness, you SHOULD have an "FMLA Letter" on File

Why is this important? If you or an immediate family member has a medical condition which might cause you to lose work time, you will be protected from job loss for up to 12 weeks. Further, it is illegal for employers to "adversely impact" (discipline, reprimand, or give negative evaluations) employees for the legitimate use of time under the Family Medical Leave Act.

"FMLA time" may be used intermittently: a day here or there, or even a partial day, as needed. However if you do NOT tell your employer about the medical condition, your time off may be interpreted as abuse.

Sick leave abuse is one of the most common causes of discipline in public workplaces. If you are *not* an abuser, but must take frequent time off due to a parent's, children, spouses, or your own illness, ask your employer for their "FMLA form." The County prefers you to use its form. If the County has no form, ask your doctor to write a letter. Give it to both your supervisor and your Personnel Department.

A doctor's general statement is necessary to establish "protection" under the FMLA, but it is not necessary to provide specific medical information. In fact, your right to privacy about the specific nature of you, or your family member's, illness is protected under HIPAA.



"You Can't Fire an Injured Worker" – or Can You?

It is illegal for employers to retaliate or discriminate against an employee for filing a workers compensation claim. It's also illegal to retaliate because 1) they are unable to do the "full range of duties" of their job or 2) they missed time at work due to the injury.

But, it is NOT illegal for the employer to treat injured employees the same as other employees in the workplace, with regard to overall personnel policies. In other words, injured workers don't have any "special immunity" against layoffs or "bumping" or disciplinary action. Can an employee, who is off the job with an injury, be fired? The answer is MAYBE, depending on a range of circumstances.

It's illegal for an employer to take "adverse action" against an employee BECAUSE he or she is injured or has filed a claim. Adverse action could be a negative performance review, assignment to unattractive duties, or even a change in work schedule. But this doesn't mean that he/she can never be terminated.

The best way to avoid any risk of conflict during a period of work-related injury is to maintain good, cooperative communication with your employer. This isn't always easy when you are off the job, *because of an injury sustained at their workplace* – and quite possibly, in pain. Ultimately, though, you want to be welcomed back to the workplace, even if you need modified duty or have an ongoing disability. Cooperation works both ways…

If you believe that you have been laid off or somehow "punished" for filing a claim (or taking time off due to injury) you should call your union rep for help.

Unemployment Insurance… How Does It Work?

If you are laid off, terminated, or in some other way forced to leave your job, you are likely eligible for Unemployment Insurance. Initiated in the mid-1930's, when 25% of the population was out of work, the unemployment insurance system was intended to benefit not just *individual workers,* but the whole economy. The program was intended to inject money into the system: to enable unemployed people to purchase goods and services, to avoid homelessness by paying rent and/or not defaulting on mortgages. It was one of many Depression-era tools for keeping people afloat, and keeping money in circulation.

For this reason, the "UI system" has a tradition of being "employee friendly." The system leans in the direction of making benefits easily available. In fact, when unemployment levels are high, the system automatically extends the length of time people can receive benefits, often for months at a time.

The *original purpose* of the Unemployment Insurance System was to inject money into the hands of consumers. Today, though, this has largely been forgotten, while the benefits have been largely eroded. Today, the maximum benefit is $450 per week and the system's "generosity" has been severely curtailed. While in the past most applicants were granted unemployment benefits easily, without a lot of probing of their reason for being unemployed, today, one's eligibility can vary hugely from office to office. In other words, today it is much more difficult to "collect unemployment."

One big complication is that the "UI System" is created under federal law, but administered by the individual states -- and paid for by employer taxes. Employees are only eligible to receive benefits if they are actively searching for work. This program does NOT provide benefits for people who are injured, disabled or otherwise not able to go to work, *immediately.*

WHO'S ELIGIBLE?

So, today, the question of why someone is out of work determines whether or not they can secure benefits. In general, today, employees can "collect" only if they are laid off or have become unemployed through no fault of their own.

However a person who quits work or is fired from work *may be* eligible for UI benefits, if he/she can demonstrate that he was 1) terminated unjustly or 2) forced to leave the job because conditions became intolerable.

What "intolerable" means, of course, is highly subjective. The Employment Development Department (EDD) may conduct actual interviews with applicants, to get information about of how the job ended. If, for example, someone left his job because the duties changed so much that he could no longer perform it, OR because his workplace moved to a location too far from his home, he might have quit *voluntarily*, but would still be eligible for benefits. Similarly, if she can show that she was forced to leave the job because of harassment or discrimination OR because of a sudden *unjustified* termination, she may be eligible for benefits.

But if an employee simply quits a job, or is terminated for gross misconduct (i.e. for doing something really wrong) he or she will probably NOT be able to collect unemployment insurance.

EVERYONE WHO WORKS IS "COVERED" – IN THEORY

Everyone who works is eligible for unemployment benefits: temps, part-timers and consultants. Everyone's wages are reported to the EDD. People who are not considered employees (i.e. independent contractors) must also pay unemployment benefits, but as their *own* employers, on their own behalf.

The EDD uses the money and information sent by employers to compensate eligible employees based upon the amounts of money earned during specific "base periods." A base period is a 12-month period, which occurred several months prior to the filing of the unemployment insurance claim. For example, if a claim is filed in April, May or June, the "base period" is the previous January 1st through December 31st.

Unemployment benefits are issued every two weeks, and they are taxable. They must be reported as income on federal tax forms, but not for state income tax purposes. The EDD actually deducts the taxes from the benefit amount before unemployment checks are issued.

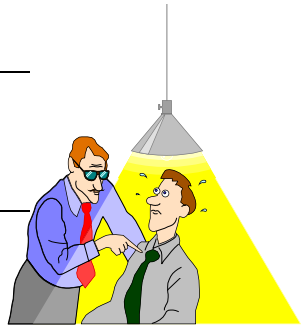
DENIALS AND APPEALS

People who collect Unemployment benefits have to demonstrate that they are looking for work, and must complete claim forms every two weeks. If the information they provide raises questions, the Department will conduct a telephone interview, and benefits may be reduced or denied. Someone who disagrees with a decision to deny or reduce his/her benefits may file an appeal.

Also, since unemployment benefits are generally denied to employees who are fired for cause, disputes between former employees and their employers over the "real" reason for the termination are common. The EDD routinely denies benefits if the employer claims that the employee was fired, rather than laid off. People who are unjustly denied benefits, however, should file an appeal. The System often reverses its decision if employees have strong grounds for appealing.

Finally, you should know that the question of an employee's right to "collect unemployment" often comes up in settlement discussions when an employee is being terminated. If you have decided to leave your job (or are being "forced" to leave) and need help in resolving this issue with your employer, you should call your Association staff for representation.

LABOR RELATIONS UPDATE



EMPLOYEES *DO* HAVE RIGHT TO REPRESENTATION IN ADA "INTERACTIVE" MEETINGS

In 2013, an employee of the Sonoma County Court was diagnosed with a medical condition which left her unable to perform the full range of her duties. The Court scheduled a meeting with her to conduct an "interactive process," in compliance with the ADA, to consider "reasonable accommodations" so she could continue to work. She believed that her job could be at stake, and contacted her union representative, to attend the meeting. The employer denied the employee's request to be represented, arguing that the right to representation applied only in pre-disciplinary meetings – and that the ADA meeting didn't involve discipline. The County characterized the meeting as "a confidential discussion of medical conditions."

The employee attended the meeting without representation, and her Management told her that her only alternative to avoid termination would be to accept a demotion. She asked to remain at her previous pay level, but her request was denied. The employee's union filed an unfair practice charge with the Public Employment Relations Board (PERB) alleging that the Court violated state law when it refused to permit her representative to attend the Interactive Meeting. A PERB hearing officer initially denied the complaint, but it was reversed by appeal to the Board.

The Union argued that the employee's right to representation was founded in the 1975 *Weingarten* Decision. In this case, the U.S. Supreme Court held that an employee who has a reasonable fear that discipline may result from a meeting with the employer has a right to union representation. PERB did NOT agree that the right to representation in an ADA Interactive Meeting derives from *Weingarten*. Instead PERB considered that the state labor laws for public employees in California provide the "right of employees to form, join and participate in the activities of employee organizations ... for the purpose of representation on all matters of employer-employee relations." The Board interpreted this language to mean to that employees have the right to representation in any grievance meeting, or any meeting which could have an impact on the "terms of their employment."

HIGHER "DAY RATE" FOR SUBPOENAED EMPLOYEES

AB 2727 has increased the Daily Fee for "Local Agency" employees who are compelled by subpoena to attend a civil matter in court. Where an employee is subpoenaed to attend a court as a witness regarding an event they saw or investigated in the course of his or her duties, *even if the employer is not a party* to the case, the employer must pay his or her normal salary for: 1) time spent preparing for the appearance, 2) travel to and from the hearing, and 3) time spent AT the hearing. The local agency must also pay the reasonable travel expenses incurred by the employee.

The party that issues the subpoena is then required to reimburse the employer the full cost of the employee's participation, including salary and reasonable traveling expenses. Under this new law, amount of this cost increases from a maximum of $150 per day to $275 per day.

Questions & Answers: Your Rights on the Job

Each month we receive dozens of questions about your rights on the job. The following are some GENERAL answers. If <u>you</u> have a specific problem, feel free to talk to your Board Rep or Association Staff at (562) 433-6983 or cea@cityemployees.net.

Question: My co-worker wears a lot of perfume, and I have an allergic reaction. Sometimes I get so sick I cannot work. What should I do? If I have to go home, is this paid by Workers Compensation?

Answer: First explain your problem to your fellow worker, and ask her to use less scent. Sometimes this is

uncomfortable, but it may solve the problem. If it doesn't, report the problem to your supervisor or the Human Resources Department, with as much medical support as you can provide, and explain that the perfume is literally interfering with your ability to work. **Your employer has an obligation to provide you with a safe and healthy place to work, and must make reasonable accommodations to a legitimate medical condition.**

If your County doesn't take you seriously, document your efforts and consider filing a grievance. Make sure your doctor identifies those substances that make you unable to work, and call your professional rep.

The County is NOT required to pay you for lost time under workers compensation unless/until you file an actual claim. Even then, it's likely that this kind of claim will be denied, at least initially. It's much wiser to try to solve the problem as quickly as possible with a simple discussion.

Question: I am a Building Inspector and was told, indirectly, by my supervisor, to "look the other way" at building code violations by a particular member of the public. Now the violations have resulted in problems and the County is being sued. Can I be sued personally? Would the County have to defend me?

Answer: Yes and yes. You can be named as a defendant in the suit and the County will have an obligation to defend you. The latter is true even if supervision **didn't** direct you to "look the other way." Whatever misconduct or failure you would be charged with in the lawsuit would fall within the "scope" of the job, so the County is responsible for indemnifying you. Only if the actions were completely outside the scope of your job can the employer refuse to represent you.

Two important points: First, if a supervisor tells you to "bend the rules," document it. Send an email back to that supervisor, telling him that you will do exactly what he's telling you to do – and save that email.

Second, if the County's interests in this lawsuit are different from yours (i.e. the county tries to *blame you* for its problem) you have the right to ask for separate counsel. Check with your Association rep to determine whether this may be the case. If the parties truly have opposing interests, your employer must provide you with your *own* attorney.

Question: I work days and I am thinking about taking a second job working evenings and weekends. Can the County stop me from doing this?

Answer: The County has the right to know what other work you're doing and, under certain circumstances, to let you know that you may need to choose between the two jobs. There are two possible reasons for concern: first, avoiding a conflict of interest. This comes into play, for example, if you are a building inspector and decide to take a second job with a contractor who might do business with the County; second, avoiding potential workers comp fraud. The County needs some assurance that it won't be held liable for an injury you sustain in someone else's employment. The solution to this is that you may be required to sign a waiver.

Question: I use toxic chemicals on the job, and I just found out I'm pregnant. My doctor says I should stop using these chemicals until the baby is born, and my boss is saying I must either do my job or go home "sick" for the rest of the pregnancy. Can they do this? Don't they have to give me modified duty?

Answer: If your "medical condition" means that you can't do your full range of job duties, the County is required to "reasonably accommodate" you until the pregnancy is over. Further, if the County has a practice of accommodating other employees with modified duty you have the right to expect the same accommodation.

The County should be able to accommodate you if 1) the use of chemicals is only a small part of the job; 2) another employee can help, temporarily, with that part of the job; 3) there are enough other duties that you could be assigned to make up a full-time job; and 4) the Department wants to avoid being accused of discriminating against a pregnant employee.

Question: For several years, I have been doing the work of a higher job class. Now that I am leaving the job, it's being upgraded! Can I get any back pay for all that work I was never compensated for?

Answer: The key question is: did you ever get your grievance or request for a reclassification on file? If you did, you may now pursue the grievance, requesting back pay from the day you originally filed. If you never formally asked for this violation to be corrected (or, if you asked but have no written record) it will be difficult to prove that you were performing the duties of a higher class.

A basic rule in employee-employer relations is that <u>your right to remedy any grievance begins on the date you first file the complaint.</u> You can't ask for a retroactive solution to a problem that was never brought to your employer's attention. After all, the employer had the right to remedy an out-of-class grievance by *taking away* the higher-class duties, rather than paying extra for you to perform them.

Question: The superintendent had us sign a document called the "Fair Absenteeism Policy," which says that using more than the average number of sick hours of employees in our division could be considered "excessive sick leave usage." But the MOU states that we get 96 hours per year! Can I be disciplined in line with this new policy? Can we refuse to sign it?

Answer: This gets into the age-old question about whether Sick Leave is considered a "right" or a "privilege." The MOU provides you with a maximum number of hours employees may use per year. HOWEVER, abuse of sick leave may be cause for discipline. When an employee uses a lot of sick leave, this is usually because he, or a family member, has a serious illness. Usage alone is NOT evidence of abuse; and, in fact, the law clearly says that employees cannot be "adversely affected" (punished) for the legitimate use of Family Medical Leave.

On the other hand, some people DO use a lot of sick leave when they aren't always sick. Sick leave abuse is a reality in the workplace, and Management does have the

right to monitor and try to eliminate it. Usually they do this by establishing some *internal* guidelines for raising "a red flag" when an employee uses a lot of leave. This is legitimate, *but it can also be heavy handed.* Too many of these efforts end up punishing people who are the victims of genuine illness. Further, Management does NOT have the right to try to impose a "one size fits all" program for detecting abusers on the whole workforce. It flies in the face of the FMLA and, when your Management attempts to negotiate the "Fair Absenteeism Policy," with a small portion of the workforce, it violates your union's right to bargain *collectively*.

No individual supervisor may negotiate with his employees to establish rules that differ from the MOU or from the law. You may want to you call your Association Board or professional rep, to make sure that this "policy" is rescinded!

QUESTION: My co-worker and I reported our boss for conducting personal business on County time, using County property, and falsifying his time cards. Management promised us something would be done, but he's still here, as if nothing happened. What should we do?

ANSWER: You've done the right thing by reporting the misconduct. Unfortunately, it's now out of your hands. The next course of action falls on County Management's shoulders. Take no further action, lest you become the subject of retaliation. (Also: don't assume that nothing is happening; bureaucracies often move slowly, out of necessity.)

Question: Shouldn't I be paid for time spent at night on the phone handling work problems?

Answer: Absolutely, if you are non-exempt under the FLSA. Whenever your employer requires you to work, you are entitled to pay! Generally, if you are eligible for overtime and required to work during non-work hours, you should receive overtime pay. Just add this time to your time card; if your Management denies payment, give staff a call.

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