Regional Employees Association of Professionals April 2016 News

Excessive Absenteeism or Not? Your "Right" To Use Sick Leave

Since 1994, the Family Medical Leave Act has protected sick or injured workers from being fired – at least for a period of 12 weeks. But what the law *doesn't* really protect you from is being *bothered* when you are sick. Yes, it is illegal to retaliate against employees for "exercising rights" under the FMLA, or under most other federal laws. But is it retaliation when they call you at home to ask how long you'll be gone? Is it retaliation to question whether you are really sick, or to ask for documentation of your medical condition? Can they *challenge* your FMLA status?

Can they call you about work issues, when you're off the job, sick? When you return to work, can they change your job or reassign you to a different location? What if you *can't return to work* after 12 weeks? Could they fire you? Could you be terminated for "absenteeism"?

Sadly, the answer to most of these questions is YES. It is almost a given that people who use a lot of sick leave will be under scrutiny by their employer. They have the right to ask lots of questions, but **not** to discipline (or "adversely affect") you for the use of your rights under the law. But… they have work that must be done, and you are a key component to doing it. They can also point out that there ARE occasional sick leave abusers and that, occasionally, sick leave abusers DO manipulate the law to their own advantage.

So, the relationship between sick employees and their employers is fraught with tension – just when the sick employee is least prepared to handle this. Illness is the cause of more grievances and disciplinary appeals than any other subject. Employees interpret their employer's questions as invasions of privacy; and employers, with lots of work to get done but little information, start imagining fakers and fraud. The best way employees can avoid this conflict is to understand their employer's point of view and to be as proactive and communicative as possible. Most people are not fakers, and most employers are not heartless; it's just a fragile period of time.

BIT SOME EMPLOYERS ARE NOT REASONABLE…

On the other hand, some employers ARE heartless – or at least thoughtless. It is NOT legal to reprimand employees, for example (or threaten them or give them negative reviews) because they "used excessive sick

leave" if this leave was protected by the Family Medical Leave Act. The FMLA prohibits such retaliation. If this happens to you, you should appeal. Your union rep is there to help.
It's not legal for employers to establish "blanket" sick leave policies that punish employees for using a certain number of sick leave hours. This also runs counter to the intent of the FMLA. These kinds of policies, which are intended to deter "cheaters," inevitably punish good employees who are truly ill. If you and your co-workers are victims, you should appeal.

When good employees are harassed for their legitimate use of sick time, this doesn't do the employer any good. It takes a toll on morale – and it certainly doesn't make sick employees perform their jobs any better. If anything, the harassment of perfectly good employees who are truly sick, only makes them sicker. It can even turn a non-work illness into a worker's compensation claim!

So…. This leads to a really big question: What IS sick leave "abuse," anyway? What ARE your "rights" to the legitimate use of sick leave? Here are a few answers:

First of all, there is NO legal definition of sick leave abuse. Bargaining teams spend hours arguing over this subject and never come to agreement. Ultimately, Management has the right to monitor sick leave and to question whether its use was legitimate. Employees have the right to defend themselves – and to complain if they believe that Management's questions have crossed the line of privacy.

Under HIPAA (the Health Insurance Portability Accountability Act) you are protected against your employer's probing for personal information about your medical condition. Your employer is also prohibited from sharing any of your medical information without your consent. However, if you use sick leave, depending on the circumstances, you CAN BE asked to "bring a doctor's note," to verify illness. This ISN'T an "invasion of privacy."

People who use a lot of sick leave, particularly if they don't have illnesses (or family members with illnesses) serious enough to be covered by the FMLA, are likely to be watched closely. The employer has the right to watch closely! (The employer even has the right to hire a private detective to follow you.) This isn't considered harassment and doesn't violate any law unless you can demonstrate a retaliatory or discriminatory motive.

FAMILY MEDICAL LEAVE

If you use a lot of sick leave, there's a good chance that either you or your family members have a condition which should be protected by the FMLA. The "threshold" for eligibility, a serious medical condition, is quite low. Almost any chronic condition applies.

The core of your rights under the FMLA are found in the law; but most sick leave policies expand on this. For example, the state law requires only that you receive three days of paid leave, but almost all public agencies provide more than this. The law says that 50% of your annual leave must be available for time off to care for family members, but many agencies allow you to use ALL of your sick leave to care for sick family members.

DISABILITY PAY

Public agencies aren't required to participate in the State Disability Insurance (SDI) plan, although many do. Participants pay between 1% and 1.8% of their salaries for this, which provides them with two-thirds of their salary during the disability leave period.

Employers that don't participate in SDI usually provide some sort of private disability plan. These are rarely as good as SDI (mostly because they have longer waiting periods and medical "exclusions") but they are generally paid for by the employer. **The subject of disability plans is totally negotiable.**

FMLA leave may be taken in whole- day increments ("Block" leave), for partial days ("Intermittent" leave), or in the form of a reduced work schedule. If you have a medical problem, with occasional "flare ups" which require you to take time off, you should let your employer know about it. You have the right to take time off, intermittently. If you have identified a "protected

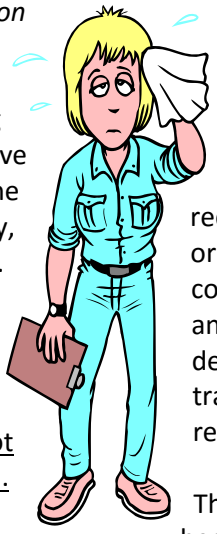
illness" this can make all the difference in the way you are treated.

Employers have an "affirmative obligation" to notify you of your rights under the FMLA. This means that if your supervisor notices that you are using a lot of sick leave (or if you tell them that you are using the leave because of a serious condition for yourself or a family member) they are supposed to tell you about your rights under the FMLA. If you are written up, or otherwise harassed over the use of sick leave, *even if you don't have an FMLA letter on file,* this discipline can probably be rescinded if you can show that the County knew you had a serious medical condition.

WORKER'S COMPENSATION

If you have an injury that arises from the course of employment, you are protected under the state Worker's compensation Act. Even if you have not filed a claim, if your supervisor learns that your absence is due to a work injury, he is supposed to inform you of your right to these benefits.

It is illegal for employers to discriminate against an employee who files a workers compensation claim. Discrimination can include harassment, loss of normal wages or benefits, or an attempt to dissuade you from pursuing your claim. If you are written up, given a negative review, harassed, or threatened with discipline because of absences connected to a work injury, you should call your union rep for assistance. Most employers will stop the harassing behavior when faced with a legitimate legal claim for discrimination.



<u>However, having a workers comp claim does not mean that you can never be laid off or fired.</u> Injured employees can be treated the same as "active" employees when it comes to discipline or a "reduction in force."

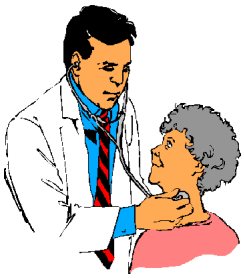
IF YOU ARE ACCUSED OF FRAUD…

If you claim to be sick or injured, and the County does not believe you, they may investigate and, ultimately, take disciplinary action up to termination. Sick leave and workers comp fraud are NOT common. In fact, most people hurt on the job don't receive nearly enough to compensate for their loss. However, occasional fraud does occur.

If you are accused of falsifying information about your illness or injury, and the County does take action to terminate you, you have the right to appeal. The first step is a "Skelly" hearing: usually a meeting with your Department Head. The second step is a "full, evidentiary hearing" before a "reasonably impartial third party." The burden is on the County to prove that you have been receiving sick leave or worker's compensation benefits illegitimately. Your union should represent you if you have been falsely accused... (It has no obligation to represent people who are willfully falsifying information…)

AMERICANS WITH DISABILITIES ACT

The Americans with Disabilities Act (ADA), the Rehabilitation Act of 1973, and the California Fair Employment and Housing Act (FEHA) all prohibit discrimination against disabled workers. Discrimination includes harassment and any "adverse impact" against someone who needs accommodation in order to perform his or her job.



The "right to accommodation" arises when an employee has, or develops, a physical or mental disability which prevents him or her from doing the job normally. When a disabled employee requests accommodation, the employer is required to engage in the "interactive process" in order to determine what can be done to help him to continue to work. The accommodation could be anything from a reduced work schedule to a raised desk. Most accommodations take the form of transfers to different jobs, but the employer is not required to create a job for a disabled person.

The Americans with Disabilities Act was passed because employers sometimes DO discriminate against people with disabilities. Accommodation can be troublesome and expensive. So, an employer that fails to "reasonably accommodate" an eligible employee runs the risk of being sued.

Most people who are sick are NOT considered "qualified injured workers" and are NOT protected under the ADA. However, many employers offer "modified duty" for people who are recuperating from injuries or illnesses. "Modified Duty Policies" vary enormously from employer to employer, and each

person's case is unique. There isn't any universal "right" to temporary modified duty.

IF THEY TRY TO FIRE YOU ….

It's not impossible for the County to terminate a sick or injured employee, BUT a good Union Contract (and good union representative) can make it very difficult. If you are off the job due to illness or injury, the FMLA protects you for only 12 weeks. After this, in theory, you can be terminated. We say "in theory" because there are other hurdles the employer must jump before it can terminate an ill or injured worker.

DISABILITY RETIREMENT

A public employer in California cannot terminate an employee "for disability reasons" without applying for, *and securing*, his disability retirement. PERS provides for disability retirement if an illness or injury "renders the employee incapacitated, mentally or physically, from performing his or her duties."

Even employees who are being terminated due to illness-related "attendance problems" have the right to due process. This is where your Association staff can play an important role. Due process can take quite a while. Often, by the time the appeals process has been exhausted, the sick or injured worker has had time to recuperate.

If you're vested in the PERS system, you cannot be forcibly "separated" from the County until your disability retirement application has been accepted – and this ALSO can take months. During this period, you have the right to "spend down" any accrued leave and to use your employer's disability plan. You also have the right, if you *disagree that you are too disabled to work,* to appeal the County's application, and to file a claim for accommodation under the ADA.

Department of Labor Expands Definition of "Parent" Under the FMLA

The Family Medical Leave Act allows employees to take up to 12 weeks off the job to care for children with medical problems. A child may be a "biological or adopted child, foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis*." *"In loco parentis"* generally means someone who is "standing in" as a parent, but the term is often less than clear. Given the many ways that a family might be constructed today, the DOL has rendered an opinion about the specific meaning of *in loco parentis.*

The new Guidelines make clear that there is no requirement for a biological or legal relationship with the child to stand *in loco parentis*. FMLA leave can be extended to domestic partners, grandparents, or other family members who provide either day-to-day on-going care or financial support for the child. As an example, the DOL stated, "an employee who will share equally in the raising of a child with the child's biological parent would be entitled to leave for the child's birth because he or she will stand *in loco parentis* to the child." Likewise, "an employee who will share equally in the raising of an adopted child with a same sex partner, but who, does not have a legal relationship with the child, would be entitled to leave to bond with the child or to care for the child if the child has a serious health condition."

There are no restrictions on the number of parents a child may have. For instance, if a child's biological parents are divorced and remarried, all four parents (biological and step-parents) may use FMLA leave to care for the child.

Employers Have the Right to Require Evidence…

It remains lawful for employers to require some form of documentation or a statement of the family relationship. However, the DOL has found that a simple statement "asserting the requisite family relationship exists" is all that is needed to be considered *in loco parentis* where there is no biological relationship.

Court to Decide Whether Uber Drivers are Independent Contractors or Employees

(and Why This Matters to You….)

Lots of people love Uber. It's a quick, cheap way to get a ride to almost any place at almost any time. Uber has been wildly successful, largely *because* their drivers are so cheap. They are cheap because they're independent contractors. They pay their own taxes, receive no benefits, and have essentially no job protection -- not even minimum wage or worker's comp. When unhappy customers sue Uber, there's often a question of who's responsible: the company or the driver.

At the moment some of Uber's drivers are suing the Company. The claim, brought by four drivers and "others similarly situated" in California, asserts that the drivers are actually misclassified as contractors and should be considered employees. The key determinant in establishing whether an employment relationship exists lies in CONTROL: the degree to which the company controls daily work conditions. The plaintiffs in this suit argue that there are "a litany of detailed requirements imposed on them by Uber" and that they are "subject to termination, based on their failure to adhere to these requirements…" They are seeking "the same rights and privileges to which all California employees are entitled."

Over the last several years, both the State of California and the IRS have been cracking down on employers who avoid the costs of employment by hiring so-called contractors. In fact, the California Labor Code starts with the presumption that an individual is an employee and places the burden upon the employer to prove otherwise. There are numerous factors that a court may consider in making a classification determination, such as whether the person performs a highly specialized occupation, whether he works at the employer's worksite or on their equipment, and whether he takes direction from the employer or operates independently. If the employer "exerts control" over a contractor's work product on a regular basis, chances are that he is NOT really an independent contractor.

ABUSE OF THE LAW ISN'T LIMITED TO PROFIT-MAKING COMPANIES…

We would all like to think that this (very large) abuse of the law is limited to profit-seeking private companies, but it's not. The use of contractors (or consultants or interns) has become widespread at public agencies. You can find them in public works, in planning, in engineering, in IT, in finance, in human resources, even in recreation and libraries. The abuse has become so widespread that most people would assume that it must be perfectly legal. (After all, government wouldn't *break the law*, would it?)

From a union's perspective, the use of contract labor erodes the size of your bargaining unit, and diminishes your bargaining power. These employees are at-will, and all too often, agencies have offered them higher salaries in exchange for giving up the benefits and job protections your union has struggled to establish. It is possible for you and/or your union to ask questions about the status of independent contractors in your county. It's even possible to report the County, anonymously, to the IRS. The Uber drivers' case is set for trial in June, and there are indications that they will be successful. The outcome is likely to strengthen the status of employment, in both the private and public sectors.

How the Fair Labor Standards Act Applies to Salaried Employees

An employee who is exempt under the FLSA is not eligible to receive overtime and is paid on a "salary basis". This employee must be paid his/her entire salary for any week in which work is done without regard to the quality or quantity of work accomplished. Generally, this employee is considered to be a "professional" and is paid for the work accomplished while using discretion and judgment rather than the time put in.

This does not mean that an exempt employee is "at will" however. The exempt employee in the public sector still enjoys a property right in his/her job. In fact, since a short-term suspension would violate the "salary test," it is difficult for employers to impose discipline greater than a letter of reprimand but less than termination. By law, a suspension or deduction in pay may be imposed on exempt employees ***for disciplinary reasons*** **only** for safety infractions "of major significance". Non-performance of the job or violations of employer policies (which are not safety violations) are not acceptable legal grounds for deducting pay from an exempt employee.

(The only other possible instances in which exempt employees could be in unpaid status have to do with time taken off the job voluntarily or time taken for sick leave before the employee qualifies for the employer's Sick Leave or Disability Plan.)

If the employer ***does*** illegally take time or money from a salaried employee, that employee could be considered no longer "exempt" and the employer becomes liable for past and future overtime payments. Settlements have reached into the hundreds of thousands of dollars when a large group of employees were re-designated as non-exempt because of the heavy handed actions of the employer.

If you have questions about the Fair Labor Standards Act (or *any* labor or employment matter…) feel free to call our professional staff at (562) 433-6983.

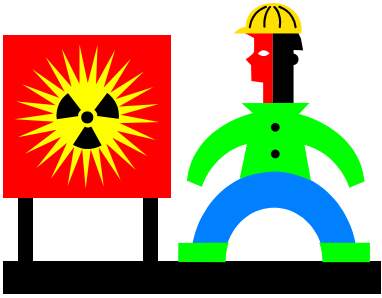
CalPERS Settles Big Lawsuit against Ratings Firm

The California Public Employees' Retirement System is America's largest public retirement fund. In 2009, CalPERS sued Moody's and two other ratings firms for making "negligent misrepresentations" about residential mortgage bonds. Moody's advised CalPERS that these mortgage funds were safe and healthy, when, in fact, they were overinflated, and on the verge of collapse. CalPERS, which relied on Moody's ratings, had purchased "toxic" bonds, and lost more than a billion dollars.

The case was scheduled to go to Court next month, but the parties have settled for $120 million. This is similar to PERS's settlement with Standard and Poor's last year, which was $125 million. Altogether, the two companies have paid more than $1.5 billion to the federal Justice Department and more than a dozen states. But CalPERS was actually one of the earliest entities to sue.

These ratings agencies are now overseen by a new Securities and Exchange Commission division. New rules are intended to insure that ratings aren't "unduly influenced" by the business interests that are being rated!

ENVIRONMENTAL HAZARDS IN YOUR WORKPLACE



People often work in hazardous environments without knowing it. Fast moving vehicles and complex machinery are obviously dangerous, but most "environmental hazards" are unseen. In many ways, they are more dangerous because the injuries from these hazards can take years to surface.

Everyone knows about asbestos and lead paint. Public employees worked with asbestos for years before we knew about the potentially fatal consequences. You should also know about benzene, an alarmingly dangerous agent, which is nearly invisible. Benzene is found in thousands of chemical products, including solvents, gasoline, paints, paint thinners, rubbers, adhesives, resins, and inks. Exposure to benzene (and similar chemicals) can come in two primary ways: skin contact and breathing in fumes. Exposure can lead to deadly diseases including leukemia, multiple myeloma, and severe aplastic anemia. Typically, it takes years of consistent exposure to these substances to cause a harmful disease.

Office workers can be exposed to hazardous levels of mold and other chemicals in "sick buildings." Exposure can result in respiratory problems, allergy-like symptoms, severe headaches, and even permanent neurological damage.

Certain occupations are highly prone to exposure to toxic agents:

- **Automotive mechanics and bus drivers** can be exposed to benzene in various chemicals, as well as toxic fumes emitted from the engines of vehicles.
- **Water department employees** can be exposed to transit or cement pipes, which can contain asbestos. Exposures that occurred over 15 years ago can result in lung disease, lung cancer or mesothelioma.
- **Carpenters, Electricians, Maintenance Workers, Painters, and Plumbers** can also be exposed to various substances such as molds, fungi, solvents, pesticides, and/or other chemicals.

Legal Remedies…

If you, or someone you know, has developed a disease that you suspect may be the result of exposure to toxic materials, you may have legal recourse. If the exposure occurred on the job, you should file a worker's compensation claim. You may ALSO have a claim against the manufacturers and/or distributors of the chemicals.

There are statutes of limitations! For exposure to asbestos, a claim must be filed within one year from the date of the diagnosis, or one year from the date you were disabled due to asbestos exposure, whichever is later. For other chemical exposures, that period may be up to two years from the date you suspected that your disease could have been caused by exposure. A case not filed within the time frame will lose the right to go to court. These claims have to be pursued in the courts, not through the grievance procedure.

Talk to an Attorney Before Filing

Claims based on toxic exposure are more difficult to prove than sudden, overt injuries. But they are very real, and these diseases are often more lethal. You should contact an attorney BEFORE filing a claim, if you believe that your disease could have been caused by chemical exposure. A good lawyer will make sure you achieve the greatest possible settlement on the loss of your health and your job.

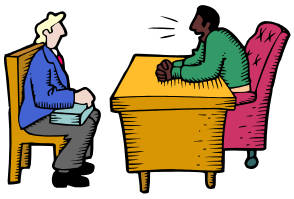
As always, call your professional staff for assistance BEFORE calling a personal injury or workers comp lawyer. Staff at the CEA office can refer you to a reputable attorney.

WHEN DO I HAVE THE RIGHT TO A REPRESENTATIVE?

The right of employees to have union representation at investigatory interviews was established by the U.S. Supreme Court in a 1975 case, *NLRB vs. Weingarten.* Thus, this right has come to be known as the *Weingarten* right.

Many employees believe that you have the right to a representative at ANY meeting with County Management, but this isn't entirely true. ***Employees have Weingarten rights only during investigatory interviews***. An investigatory interview occurs when a supervisor (or HR department, or private investigator) questions an employee, *and the employee reasonably believes that the questioning could be used as a basis for discipline.*

Weingarten also applies when a supervisor tells an employee that he will be called to a meeting where he will be asked to explain or defend his conduct. If an employee has a reasonable belief that discipline -- or other adverse consequences -- may result from what he or she says, then he has the right to request union representation.



WHO GETS TO DECIDE?

The decision about whether or not there is a "reasonable belief" that discipline may arise from a meeting lies with the *employee,* not the employer. You and your Association representative have the right to know the purpose of the meeting in advance. If the employer can guarantee that no discipline will arise from the meeting, then the employer has the right to meet with the employee without a representative.

Management is not required to inform the employee of his/her *Weingarten* rights; it is the employee's responsibility to ask. The Courts have ruled that the employer has to give the employee enough notice about the meeting that he can contact a representative, but it does not have to delay the meeting for an "unreasonable time period" to allow the employee to bring a specific representative of choice.

When the employee makes the request for a union representative to be present, management has three options:

(I) it can stop the questioning until the representative arrives;
(2) it can cancel the interview altogether;
(3) it can give the employee the option to participate in the interview without representation.

The Role of Your Representative

Employers would prefer that the role of a union representative in an investigatory interview be limited to mere observation. The Supreme Court, in the Weingarten Decision, disagreed. It ruled that an employee's representative may "assist and counsel" him during the interview.

The representative may speak privately with the employee before the interview and, during questioning, may interrupt to clarify a question or to object to confusing or intimidating tactics. While the interview is in progress the representative cannot tell the employee what to say, but he may advise his client on how to answer a question. At the end of the interview the union rep may also add information to support the employee's case.

The "Findings" of the Interview

Employees generally assume that the "findings" of their interview will be provided when the investigation is all over. But this isn't true, either. Management is under no obligation to provide any kind of report to people who are called in for "investigation."

The most common outcome of most investigations is NO ACTION AT ALL. When employees *do* receive a formal report after an investigatory interview, this is usually in the form of a disciplinary notice – a much less attractive outcome than no notice at all. If you *do* get a disciplinary notice at the end of the investigation, that's when you get the right to find out what the report contained. You should call your legal staff to discuss how to challenge a proposed discipline with the help of a professional rep.

When Your Co-Worker Has a Communicable Illness…

QUESTION: My co-worker has hepatitis C. We work in close quarters and I want to know how I can protect myself from contracting his illness. I'm wondering if there are precautions the County should be taking for us?

ANSWER: If a co-worker has a serious, communicable illness, he should NOT be at work. If he doesn't stay home voluntarily, the County should send him for a fitness for duty exam to make sure he isn't contagious. The problem with most illnesses is that we are most contagious before the disease actually "manifests."

In truth, hepatitis C is not one of those highly contagious illnesses. The virus is transmitted only through blood-to-blood contact. This means that, in order for it to be passed along, blood from the infected person must enter the bloodstream of another person. No one has ever been infected with hepatitis C through:

- **consuming food or drink prepared by an infected person**
- **being coughed or sneezed on**
- **using the same bathroom, toilet, shower, or sink**
- **sharing water fountains or coffee pots**
- **sharing office supplies, computers, tools, telephones, desks, or uniforms**
- **shaking hands, hugging, kissing, or other casual contact.**
- **sharing eating utensils, dishes or glasses**

Overall, this means that there is very, very little possibility that you could contract hepatitis C from your co-worker. There isn't any precautionary action that your employer can (or should) take in THIS particular instance.

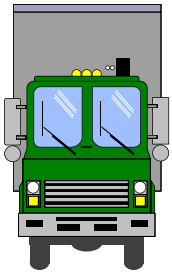
Questions and Answers: Your Rights on the Job

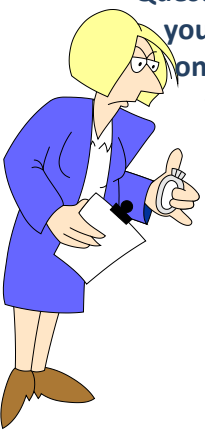
Each month we receive dozens of questions about your rights on the job. The following are some GENERAL answers. If you have a specific problem, talk to your Board Rep or Association Staff at (562) 433-6983 or cea@cityemployees.net

Question: All the guys in our Public Works Department are required to maintain Class A driver's licenses. One of our members has a medical condition and thinks that he may not pass the test this year. He would like to know whether

his job could be in jeopardy or whether the County would have to accommodate his disability?

Answer: It depends. Accommodation is an individual process where the outcome depends on things like the nature of the disability, the nature of the work, and the size and the organization. Many Public Works departments require all employees to carry commercial licenses, because they may drive heavy equipment, *but not every member of a crew necessarily routinely drives a truck.* If your co-worker has been a good employee and can otherwise perform the major functions of the job, it is very likely that the County will accommodate him. If he is unable to maintain the licenses and is called to an "interactive meeting," as required by the ADA, he should call union staff for representation at the meeting.





Question: I want to know if the County can tell you when you will take your breaks. I'm the only person who has been told that I must take them at a certain time. Everyone else just goes whenever they want. Is this legal? I feel like I am being singled out.

Answer: The short answer is "yes, the County can tell you when to take your breaks." However, you have every right to ask why you're treated different from the other employees. Try talking to your supervisor, or *her* supervisor, or someone in the Human Resources department, with the request that you be treated equitably. If this doesn't accomplish your goals, you can call you union staff for help and a possible "disparate treatment" grievance.

Question: Our department seems to fill vacant positions with interim appointments whenever there's a vacancy. Then, when the position actually opens up for permanent hire, the "interim appointee" (who has been doing the job for months) always gets hired. It seems to me that this is Management's way of hand-selecting and then "grooming" special people for their positions. Are there any rules about this? How could we insure that everyone interested in promoting has an honest opportunity?

Answer: Yes, most employers have rules for filling promotional positions that sound very good on paper – but they are violated all too often. There are two different ways to attack this problem. One would be to look at what the Personnel Rules say about Interim Appointments. Chances are that this rampant use of interim appointments violates the intent of the local rules. "Interims" are probably only supposed to be used for very short periods of time only when there is no existing eligibility list. Your union can grieve the violation of these rules.

The other approach could also be a grievance by your Association, pointing to the pattern of hiring, where these appointees are consistently moved from one status to another, without fair opportunities for others. This kind of grievance puts the County on notice that they must make the hiring process more honest and equitable.

Finally, you should know that hiring practices are NEGOTIABLE. You can ask the County to establish stronger rules for equal opportunity, if the current rules are weak. Counties give a lot of lip-service to "in-house promotions," but often lack procedures for this. It is possible to negotiate rules which require promotions (as opposed to "open" hiring) when there are a fair number of eligible applicants.

Question: The staff at County Offices who work a 9/80 schedule have a 30-minute lunch break. But people in our department work a 5-day schedule and are required to take a full hour for lunch. Is this legal? Can the two groups be treated completely differently?

Answer. Yes, it doesn't sound fair, but it's legal. California law merely requires an employee who works more than five hours a day to take at least as 30-minute lunch break. Other than this, the entire issue of scheduling is negotiable. If your MOU actually has this specific work schedule written down, you probably can't change it until bargaining time. But if your Department's schedule is just a matter of Management policy or past practice, you and your co-workers might simply approach the Department Head (or your supervisor) about

changing it.

Question: What exactly is administrative leave supposed to be used for? Vacation? Can I use the time for a family event or for bereavement?

Answer: The definition of administrative leave varies enormously from agency to agency. Most "exempt" employees (professionals, supervisors, and managers) have negotiated some form of "admin leave" as a trade-off for the inability to earn overtime. Normally, it can be used in the same manner as vacation (or "comp time.") This means scheduling the time off with your supervisor, to be used for any purpose you wish (except sick leave.)

HOWEVER, there may be special rules that apply to the use of Admin Leave in your County. If you're concerned, or don't believe you're getting correct information from your Management, you need to check your MOU. (By the way, both the AMOUNT of leave AND its usage are negotiable…)

Most agencies have special policies that apply to bereavement. You should NOT have to use your leave benefit for bereavement, unless it extends for a longer period than the County policy covers.

Question: I would like to know if my position here is legally protected since I was a key witness in my co-worker's lawsuit against our former boss. If so, does the County need to be reminded of this? I ask because out of approximately a dozen positions in my job class in the county, I was the only one targeted for a demotion due to our funding problems.

Answer: Yes, you are protected from retaliation for having truthfully testified in court -- and the County can certainly be reminded of that! **The challenge is proving that the County's decision to demote you was retaliatory.** A demotion arising from funding problems is, essentially, a layoff, which results in bumping. Most layoffs must be done in seniority order, AND the employer is required to meet and confer over "impact" with your Union. If this demotion occurred recently, and your Union wasn't notified of its opportunity to negotiate, then you may request to bargain now. If it happened in close conjunction in time with your testimony, you may have grounds for a strong grievance.

Question: Our new County Supervisor Board is trying to get the residents to eliminate the current Utility Users Tax. But we employees are all concerned because this tax is one of our most stable sources of revenue. We are fairly certain that there could be layoffs if this tax is removed. We would like to know if our Association could put out a "Public Service Announcement" regarding the UUT and what it's used for? We would be using Facebook as the vehicle to get this information out.

Answer: Yes, absolutely! Your Association may communicate with the public on "matters of public concern" (such as taxes and county services). Be careful that you not speak as individual members about your own jobs, as this can be cause for discipline. Also, be aware of the fact that public actions by unions can sometimes cause unintended reactions from County Supervisor members. If it's possible to keep the conversation "elevated" to avoid bickering with the County Supervisors, you should do this. These folks can have a lot of influence over the shape of your next MOU….

Question: I worked for the county for two years as a "contractor" before being hired fulltime, more than ten years ago. I read your article about contractors' rights to get their PERS benefits if they can prove that they were actually employees. I pursued this case and won two years of service credit! Now I'd like to know what steps to take to retrieve my past vacation and seniority benefits.

Answer: Unfortunately, these would be much harder to pursue. The grievance procedure, and probably even the statute of limitations under law, has long since expired. You should probably talk to an attorney about this. You would have to be able to prove that you would have been eligible for benefits under a specific MOU (which has long since been renegotiated.)