Regional Employees Association of Professionals December 2015 News

"Equal Protection Under the Law"… A Little History

One hundred years after the Civil War, President John F. Kennedy called on Americans to fulfill the nation's promise of equal rights and equal opportunities. The President's decision to send civil rights legislation to Congress followed a decade of increasingly insistent civil rights activism. In 1961, he ordered government-funded schools in the South to allow the attendance of black children. When Alabama refused, Kennedy sent the National Guard to accompany two students to the University of Alabama. During the spring of 1963, the world was shocked to see civil rights demonstrators beaten, attacked by police dogs, sprayed with high pressure water hoses, arrested and jailed. In June the President addressed the nation to say:

"We face a moral crisis as a country and as a people. It cannot be met by repressive police action. It cannot be left to increased demonstrations in the streets. It cannot be quieted by token moves or talk. It is time to act in the Congress, in your State and local legislative body and, above all, in all of our daily lives. . . ."

What Kinds of Discrimination?

The proposed legislation addressed discrimination in voting, public accommodations, and education, as well as employment. Interestingly, the new law which prohibited discrimination in employment had its roots in the Great Depression. The Unemployment Relief Act of 1933 had provided that "in employing citizens for the purpose of this Act no discrimination shall be made on account of race, color, or creed." The law was designed to count on voluntary compliance. The Roosevelt, Truman, Eisenhower, and Kennedy administrations all created Fair Employment Practices Committees to investigate discrimination complaints within companies receiving federal contracts, so the 1963 legislation simply continued this practice. In other words, the early Civil Rights in employment laws contained no enforcement mechanism.

Before it was signed, however, public fervor took hold. On August 28, 250,000 demonstrators marched on Washington, where Martin Luther King delivered his famous "I Have a Dream" speech. Afterward President Kennedy met with march leaders and tried to discourage them

from insisting on an enforcement arm for Title VII. He feared that if the law became any stronger, it would lose the Republican support necessary for passage. Two weeks later several children were killed when a black church was bombed in Birmingham, Alabama. Supporters of the Civil Rights Bill responded by demanding a *meaningful, enforceable* law, especially in the area of equal employment. The law was then amended to apply to all employers with more than 25 employees, and created the Equal Employment Opportunity Commission, which held "cease and desist" authority.

Many members of Congress opposed the new Civil Rights law. Because it was no longer acceptable to be overtly racist, they argued that Title VII gave the government too much ability to regulate private enterprise. Kennedy achieved a compromise that left EEOC as the enforcement agency but *took away its cease and desist powers*. This means that the agency can investigate claims of discrimination AND, if the investigation turns up facts to support those claims, it can issue "right to sue" letters. The person filing the complaint can then either find his own attorney, or ask the EEOC for assistance with suing his employer over the discrimination.

The bill was sent to the Rules Committee the day before President Kennedy was assassinated. Six days after that, an exhausted President Johnson addressed Congress saying:

> **"We have talked long enough in this country about civil rights. Now it is time to write the next chapter …in the books of law. . . .No eulogy could more eloquently honor President Kennedy's memory than the earliest possible passage of the civil rights bill for which he fought so long."**

Passage of the bill became a priority for Congress and was backed by public opinion. A Newsweek poll showed that 62% of people supported civil rights; a National Opinion Center survey showed 83% in favor of equal employment opportunity. After extensive debate and lobbying efforts by the southern opposition, Johnson signed Title VII into law on July 2, 1964.

Equal Opportunity …

The new law was simple and straightforward. It prohibited discrimination in employment decisions "because of an individual's race, color, religion, sex, or national origin" and it opposed "limiting, segregating, or classifying" employees or applicants in any way that would deprive them of equal opportunity based on "race, color, religion, sex, or national origin." By the mid-60's, thousands of people had filed charges with the newly created EEOC and these cases began to make their way into the courts.

One of the first questions the Courts had to establish, of course, was proof necessary to establish a violation of the discrimination law. Two seminal cases, McDonnell Douglas Corp. v. Green and Griggs v. Duke Power Co. established two different methods for measuring discrimination: disparate *treatment* and disparate *impact*. These proof "paradigms" are still applied to all kinds of claims – from a failure to hire or promote, to termination, to cases of unequal pay. One of the most important cases brought to trial under the EEOC involved a union: Teamsters v. United States. In this claim, Black employees challenged the broad systemic pattern of discrimination in the Union's seniority system. The Court found that a seniority system could not be used to perpetuate patterns of "disparate impact" in the workplace.

Today, Title VII is still the law that minorities look to for "equal protection" under the law. But the meaning of "minority" has changed radically. Today, as racial and ethnic discrimination becomes less overt, many more claims are filed over gender, disability, and age discrimination. In fact, as the first Baby Boomers hit social security eligibility just this year, many legal analysts suggest that the most common form of workplace "disparity" will soon be age discrimination …

Do I Have to Respond to a Subpoena? (Will I Be Paid?)

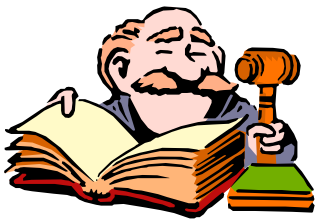
QUESTION: I have been subpoenaed to appear in a deposition in a lawsuit brought by my co-worker against my current boss. I really don't have firsthand information about her case (sexual harassment), and I would prefer not to say anything. How do I politely decline to testify?

Also I've been assuming that I would be paid for this time, since it's in the middle of my work day. But our payroll clerk says this isn't true. What is the law on this?

ANSWER: A subpoena is not like a party invitation to which you can graciously reply that you cannot attend. You're required to appear and to tell the truth - unless the information you would provide might implicate you in a crime.

But here's some good news: Because you are not an expert in workplace behavior, you have no obligation to comment on whether particular conduct did or didn't amount to harassment. All you're required to do is answer questions about what you saw or heard at your job. For example, if you were asked whether you saw A touch B, you would reply yes or no and then, if you did see it, you would likely be asked more questions about when, where, and how often. But you would not have to answer questions about whether, in your opinion, A was sexually harassing B. By the way, you have the right to be represented by a lawyer at a deposition (although it sounds as if you have no reason to need one for this case.)

Generally, public agencies pay their employees when they are subpoenaing you, but not when you've been called by an outside source. There may be different information in your particular MOU, though. In this case, even if it's your co-worker who's subpoenaing you, since you would not be forced to take the time off but for your role as an employee, you could reasonably argue that you should be paid.



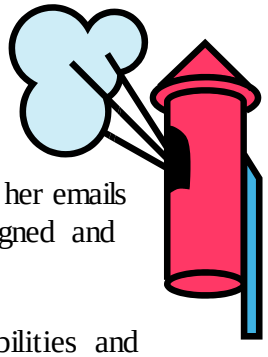
Major Legal Decisions

The following are some major legal decisions which improve the rights of public employees in California. If you have a specific question or problem, please contact your Board or Association staff at (562) 433-6983 or cea01@charter.net.

ADA & Rehabilitation Act Protect Whistleblowers against Retaliation

A teacher for disabled students in Riverside County complained to her Management that the County Education Office was not complying with State and Federal law regarding special education programs. When

the County refused to correct the problems, the teacher filed a complaint on behalf of her students with the federal Education Civil Rights Office.



The County responded by changing her work assignments, so that she had to drive much farther from home, excluding her from important work-related meetings and not responding to her emails and phone calls. In short, they made her work environment almost intolerable. The teacher resigned and filed a lawsuit.

The court eventually agreed she was a victim of retaliation under both the Americans with Disabilities and the Rehabilitation Act. Both laws prohibit retaliation against any person who opposes any act or practice prohibited by the ADA or Rehabilitation Act.

Employer's Failure to Promote Can Be Evidence of Discrimination

A female police officer, with 17 years' experience tested for promotion to supervisor three times over a four-year period. Each time she scored among the top three candidates, and each time the Chief chose a male candidate who had a lower test score. Additionally, she was repeatedly exposed to degrading comments from male officers and supervisors saying, in effect, that females did not belong in police work. One supervisor even told her the Chief would never promote a woman police officer.

The female officer sued for sex discrimination -- and the court agreed with her. Clearly an employer's repeated failure to promote, without good cause, may be evidence of illegal discrimination.

Sexual Harassment Can Be Grounds for "Constructive Discharge"

A female employee worked as a front office manager in a private company. Her male supervisor began making sexually explicit comments to her and giving her unwanted gifts. He also installed a "webcam" camera on top of her desktop computer aimed at her chest. When she removed it, he re-installed it. He called her and propositioned her repeatedly. When she rejected his advances, he became belligerent and broke things in the office.

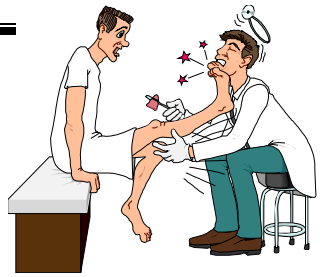
The employee was so frightened she left work and did not return. She filed a complaint with the State Department of Fair Employment and Housing (DFEH). The DFEH ordered the employer to pay damages and a fine because the sexual harassment caused her to be "constructively discharged" or forced to quit. A constructive discharge can occur when an employer creates, or knowingly permits, working conditions that are so intolerable that a reasonable person in the same position would have no other option but to resign.

Suggestion About Retirement is Not a Constructive Discharge

A school custodian, who was of retirement age began having significant health problems. He used large amounts of FMLA (Family Medical Leave Act) leave and workers compensation leave, and one of his supervisors commented that his absences were costing the District considerable money. The supervisor also said that the custodian was "getting too old" to keep doing his job, that if he continued to have medical problems, he might be transferred to another work site, and that he should consider retiring.

The custodian was never transferred, nor did the District ever take any "adverse action" against him. After awhile, however, he did voluntarily retire – after which he sued for age and FMLA discrimination. He did NOT win his case, however. **The court sided with the employer.** Why? Because the Court concluded that the supervisor's comments were only "suggestions." Since the District never took any action against the custodian, the Court decided that there was no actual harm to the custodian's employment, and therefore, no discrimination.

Can the County Make Me See THEIR Doctor When I Return From Medical Leave?



Under the Family Medical Leave Act (FMLA), you have the right to use up to twelve weeks' leave for your own illness or injury. When you return to work, your employer may require you to provide a doctor's note, explaining that you're released to full duty, or stating what accommodations you may still need on the job. The law says that the County can "delay restoration to employment" following a medical leave until you provide such a "fitness for duty certificate."

After that, you should be able to return to work – right? Well…probably. If your employer is able to show that it has a genuine concern about your ability to "safely and effectively" perform your job duties, it DOES have the right to send you to *its* doctor, for further verification. However, such an exam must be "job-related and consistent with business necessity." The need for this exam can't interfere with your right to return to work. The FMLA expressly states that an employer can't delay your return to work with a requirement that you obtain a fitness for duty certification from *their* doctor. Nor can they require a "second or third opinion…"

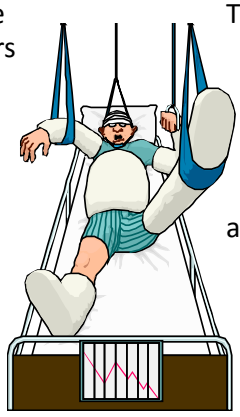
What does "job related and consistent with business necessity" mean?

This means, for example, that a Maintenance Worker returning from work after back surgery can be examined about his ability to lift, stoop, or operate equipment. But he can't be required to take an HIV test that has nothing to do with his job. On the other hand, *an accountant* returning from back surgery probably shouldn't be subjected to further examination (unless she's claiming to have a disability) because lifting and stooping are not central to the performance of the job.

Generally, the law considers the employee's doctor to be the "primary treating physician" for deciding whether or not an employee is capable of returning to work. However, if YOUR doctor and the County's doctor disagree about your ability to work, a third doctor can be brought in to render an opinion. Under this circumstance, employees generally have grounds for claiming that the County must pay them for the period of time that they have delayed the return to work. Ultimately, it's illegal for employers to interfere with employees' return to work after FMLA leave.

The "Interactive Process": How the ADA Requires Employers to Accommodate People with Injuries & Disabilities

The Americans with Disabilities Act has been around since 1994. But, only in the last few years have some serious lawsuits begun forcing employers to think twice before firing injured workers. Under the ADA, and its state counterpart, the Fair Employment & Housing Act, employers are required to attempt to "reasonably accommodate" disabled workers – unless this accommodation presents an "undue hardship." The big loopholes, of course, are the words ***reasonable*** accommodation and ***undue*** hardship.



The ADA was intended to protect employees from discrimination who either are, or become, disabled while employed. **It doesn't matter whether the injury OCCURRED at the workplace.** If a worker has a disability, or even a *perceived* disability, under the law he/she should be accommodated.

People often assume that this means their employer must comply with any work

restriction a doctor provides. **In actuality, it means that the employer must engage in an analysis of whether meeting the needs of the employee will create "undue hardship.**" In other words, the law allows a balancing of the needs of the employer against the employee's medical limitations.

What is Reasonable? What is hardship?

The answers are "fact-intensive"; each case is unique to the individual and his employer. In fact, until recently, there were so many possible ways for employers to avoid their obligations under the ADA that many employee advocates considered the ADA a sham.

What has happened recently is that some strong lawsuits have forced employers who failed to take the "interactive process" seriously were forced to re-hire their disabled workers until the process was completed.

So, what exactly, IS the interactive process?

It is the thorough analysis of one's medical limitations in relation to his job, to determine how the job can be modified (or the employee reassigned) so he can continue to work**.** Employees have the right to be represented in these meetings, *and the burden is on the employer to show that he or she can NOT perform his (or any other available) job.*

Not everyone who has a medical problem is eligible for ADA protection.

In general, temporary conditions are NOT covered. If you are recuperating from a broken leg, for example, and can't do your job now but expect to return to it later, you won't have an ADA claim. This is because you are not, at least at this point, threatened with losing your job.

When a temporary condition becomes "permanent and stationary," *if there is an ongoing impairment,* the County must attempt to accommodate it. The law defines disability as a condition which limits, or is perceived to limit, a major life activity. Disabilities may be mental as well as physical. For example, depression and bipolar disorder have both been found to be protected conditions.

What happens when an employee notifies his employer that he has a permanent disability and will need accommodation" in order to continue to work? In truth, many employers drag their feet. **The reason there IS an ADA is that employers would generally prefer NOT to employ disabled workers.**

Do NOT assume that your employer is there to help you.

Accommodation can be troublesome and, if it involves special equipment or special hours or locations, it can also be expensive.

So, if YOU need accommodation, and your employer is not helpful, you may want to call your union rep for assistance. He or she will tell you that it's important that you provide the County with a specific list of limitations from the doctor – and it is very, very important that these limitations not be exaggerated. The harder you make it for the County to meet your needs, the more likely that it will claim "undue hardship" -- and terminate you. You may then have the right to sue, but you will also be out of work for months or years (and you may not win!)

In order to engage in the "interactive process," the County must meet with you to, literally, analyze your physical limitations, your job description, and your skills for alternate employment. Although there are professionals who do these analyses, the County is under no obligation to retain one. Also, please keep in mind that any professional retained by the County to conduct the interactive process, is being *retained by the County.* This is ***not*** an impartial hearing officer, which is why you might want your own advocate present.

Prior to the interactive meeting, you should do some preparation. You are going to have to convince your employer that you are perfectly capable of returning to work if they will provide "just a few small tweaks…" to the job. If you think it's dubious that your job can be modified to accommodate your condition, it's important that you bring a good list of your other skills and qualifications. Also, it's helpful to know what other jobs might be open which you might be able to perform. ***Nobody really has a strong interest in the accommodation process but you and your representative…***

The most common type of accommodation involves moving employees from mostly-physical jobs to mostly-desk jobs. Cities do this for Police Officers and Firefighters all the time and, now that there's an ADA, the

County can be pressed to do this for you, too. It's also fairly easy for an employer to modify a workstation. This can be good for the County as well: ergonomically correct workstations, for example, can help them avoid *future* injuries to *other* employees.

Employee requests for modified work schedules or limited duties are often met with resistance. While these accommodations are well within the law, employers can reasonably argue that "special" duties or schedules would "pose a burden on the rest of a crew." (Again, if an employer can show an employee's only requested accommodation would cause "undue hardship," the next accommodation that employee might receive would be a pink slip...)

When an Employer REFUSES to "Reasonably Accommodate"

Of course, often employers *could* accommodate an injured worker, but choose not to. This is the stuff of lawsuits. Legal precedents in this arena are changing the law every day, mostly in the direction of providing greater accommodation rights for disabled employees.

If you or a co-worker believes your rights may have been violated, feel free to call your Association legal staff. It often requires professional evaluation to determine whether an employee has the basis for a claim under the Americans with Disabilities Act.

Employees MAY have "Reasonable Expectation of Privacy" in Text Messages

Most employees know that they have very little "expectation of privacy" in their communications at work. Your phone calls can be monitored; your e-mail spied upon; you can even be videotaped without your knowledge! But a recent Court decision has decided that you may have the right to some privacy in another arena: text messaging.

Text messaging has exploded in popularity around the world. More than 75 billion text messages were sent in the month of June 2008 alone. With so much communication exchanged through this medium, the privacy question has come under legal challenge in a number of settings. Employees often have text-messaging capacity on devices provided by their workplace, and, guess what: they often use the devices to send personal messages. Until recently, employers had assumed that text messaging was, like all other on-the-job communication, subject to employer monitoring. But the 9th Circuit Court of Appeals has provided a loud wake-up call. The court held that the City of Ontario violated the state and federal constitutional privacy rights of its police officers when it reviewed their personal text messages.

The "Ontario decision" may have limited application depending on policy and practices in your Workplace. In Ontario, when the City issued the pagers, the employees were told that their text messages were considered to be e-mail and would fall under the existing Computer and Internet Policy (which clearly states that there is no privacy.) However, an unwritten practice developed where, if the police officers paid any text-message fees that went over the amount allotted by the City, the City would not audit the messages. Eventually, the Chief of Police changed his mind about this practice and, in an effort to determine how much work time was being spent on text messaging, directed a lieutenant to "request the transcripts of those texts for auditing purposes ... to determine if the messages were exclusively work-related or if they were using the pagers for personal matters."

***PRACTICE**...The court held that the officers did, in fact, have a "reasonable expectation of privacy" because of the practice that had developed. This practice, the Court said, superseded the published Internet policy! In addition, the court held that the scope of the search was not reasonable because there were less intrusive ways to conduct an investigation. For example, the officers could have been warned in advance that they would be prohibited from using their pagers if they went over the limit. While this case sets an interesting precedent, the circumstances were unique; most employees never pay a portion of the bill for their work-related pagers or phones. The general rule is that IF the county has a written policy governing e-mail or phones, your privacy rights – even in text messaging -- may be minimal.*

Can the County Deny Your Use of Vacation Leave?

Almost all permanent public employees are provided allotments of vacation time. It follows, therefore, that you should be able to USE your vacation time, doesn't it? In the "old days" – before most agencies were "downsized" -- everyone seemed to agree on the basic principle that vacations are good for both labor and management. Employees who take time to rest and "recreate" are, ultimately, more productive employees.

As public workplaces have become understaffed, however, increasing numbers of people are having trouble scheduling vacation time off. Sometimes, this problem is self-imposed: responsible employees have so much work to do that they are reluctant to leave it, for fear that something catastrophic may happen, or that the work load will be intolerable when they return, or that they will be disciplined for unfinished work. But more often, the problem is caused by Managers who need to accomplish an increasing number of tasks with a diminishing number of employees.

The end result, though, is the same: employees are provided a negotiated benefit, but not really able to use it. LEGALLY, YOU DO HAVE THE RIGHT TO USE YOUR VACATION TIME. However, most County rules require that the scheduling be "mutually agreed upon" between employee and employer. So, the problem is really a matter of negotiating around a few obstacles. Here are a few suggestions, for both YOU and your group's Bargaining Team:

1) STOP "TYING YOURSELF TO YOUR DESK"

Obviously, if YOU are the one telling yourself that "you can't take a vacation," you can either change your mind and take one or you can engage in some discussion with Management about the structure of your job which leaves you so burdened. Truly, no one is indispensable; the problem CAN BE worked out. If you need assistance talking to the County, feel free to call your association staff.

2) ASSERT YOUR RIGHTS

If you have the chronic problem that *someone above you* won't let you take a vacation, you may have a legitimate grievance. If you routinely request time off, but are denied, this is not "mutual agreement!" Feel free to call your union rep for assistance, but make sure you have kept good records. Management's normal response to this complaint is that employees haven't "asked through proper channels" or are exaggerating the severity of the problem.

One Solution: A Vacation Bidding System

One solution to a vacation scheduling problem is to come up with a bidding system. These are routinely used in Transportation and Police Departments, where scheduling is very tight and/or operations must be maintained 24 hours a day. This kind of a system, usually based on seniority, requires people to designate their vacation "picks" well in advance. There are often disputes about operations of bidding systems, but they DO make sure that everyone gets some time off.

(It is perfectly legal, by the way, for management to "black out" certain times of the month or year for vacations. But it is not legal for them to black out so much time that you can NEVER take time off…)

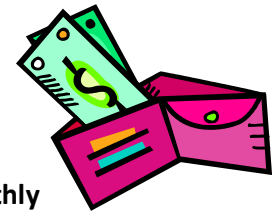
Another Solution: Vacation "Payouts"

Another "solution" doesn't solve the time off problem at all, but it does ensure that employers compensate people for the vacation they don't get to take. This is by allowing yearly "payouts" of time that has piled up in your bank unused.

Management can agree to allow some payouts as the result of a grievance where employees prove that they have been denied the right to take vacation time. **Or, "payouts" can be established in your contract negotiations.** Usually such a program requires that employees use *some* of their leave before they can cash out the remainder.

Your Vacation Leave is Your <u>Property</u>

By law, once you have accrued vacation, it is your "property," with monetary value. When you leave the County you must be paid for that accrued leave.



To limit this liability, employers establish limits or "caps" on the amount of leave time you may accrue. (Both the amount of monthly accruals and the "caps" are negotiable, by the way…) **It is legal for your employer to discontinue your monthly**

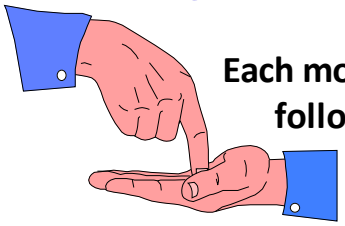
accruals when you reach the cap. This is why an agreement on a regular "cash-out" opportunity might be important to you and your co-workers.

The County Cannot "Seize" Your Property

Because vacation leave has cash value, if the County fails to enforce the cap and people accrue more hours than the policy allows, those hours become the property of the employee. You must be allowed to cash them out when you leave, although the County can also require that you use this "excess leave" while you are still employed.

One thing the County CANNOT do, however, is establish a "use it or lose it" policy for vacation which has already been accrued. They can "cap" the time, and prevent you from accruing more until you have "spent down" to the cap… But they cannot seize time which is already "on the books."

Questions & Answers About Your Job



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

QUESTION: I sometimes receive packages at work of things I've ordered. The County has started opening them. Can they do that? Does it matter that I work in the Police Department?

ANSWER: It's convenient to have items delivered directly to you at work, but the County doesn't have to allow this at all. With today's emphasis on security, employers have concern about what items enter the workplace, especially Police Departments.

Federal law protects any mail sent through the United States Postal System from any tampering or opening by anyone other than the person it is addressed to. This protection does not apply to anything other than the U.S. Mail system, so if the packages are delivered by some other carrier, there's no legal restriction on your employer's opening them.

So……while you have some protection against invasion of privacy, you probably run the risk of losing the right to use your workplace as a delivery location if you insist on exercising that right.

Question: My co-worker wants to take a vacation but doesn't have enough vacation time. She wants to take absence without pay and has also offered to give up her health benefits for that time period. Management has told her if she does this, they will write her up. Can they do this?

Answer: Yes. Most MOU's have provisions which allow employees to request unpaid leaves of absence. But there is no automatic *right* to this benefit; leaves of absence are subject to management's approval. If your co-worker has no accrued time, nor any medical condition necessitating the leave, Management does not have to agree to it. In theory, if she leaves the job against their direction, she could be disciplined or even terminated for this apparent "abandonment of job."

Question: Is there anything we can do about the County using "consultants" in the Engineering Division? It seems like every time someone leaves, they bring in a consultant instead of filling the job.

Answer: Absolutely. The County cannot simply replace permanent, "bargaining unit" jobs with non-permanent labor. Not only are there rules about how positions must be filled (and how long they may be filled by temps) but if the jobs are represented by your Association, they may not be "taken" from the Association.

The Association has the legal right to protect the integrity of its bargaining unit, and any time the employer fills a bargaining unit job with a non-bargaining unit employee, the association is being eroded. So…yes, it's very likely that you DO have the ability to stem the use of consultants in Engineering. Let your Board know about the problem, so it may work with staff to initiate a grievance.

Question: Can my boss call me at home to talk about work? Yesterday, she called in the middle of dinner for no good reason at all. I was upset all night…

Answer: You have the right to be left alone when you're not on duty -- although the County *does* have the right to call you in an emergency. This situation doesn't sound like an emergency, and you should feel free to politely tell your supervisor that you're busy and can talk to her at work the next day.

Also… 1) you have the right to be paid overtime for time spent on the phone to work during non-work hours; and 2) most MOU's have language preventing the County from changing your shift without reasonable notice.

Question: I'm the president of our Association and the county just sent me the job descriptions of two new classes they intend to create. What should I be doing about this? What if they want to make changes in CURRENT job descriptions? What is our role?

Answer: The Myers-Milias-Brown Act (the state bargaining law) requires employers to "extend the opportunity to meet and confer" over changes in the "wages, hours and conditions of employment." When a new job class is assigned to your bargaining unit, your Association has the right to "meet and confer" (negotiate) over the pay level of the position. If it's a promotional position, for example, you may want to run it by your members in that department, to see if they believe that the pay is reasonable. You also may negotiate with the County about how the new position will be filled – on a promotional basis, for example, rather than "open and competitive."

When the County wants to change job descriptions of existing classes, it should also notify the Association and extend the opportunity to meet and confer. 90% of the time, it is unlikely that you'll be concerned, but every once in a while, the change will be significant. You want to make sure, for example, that the duties of higher-paid positions aren't being "dumped" into lower-paid jobs. Or, if your positions ARE being modified to take on more difficult duties, you want to make sure that you negotiate with the County to change the pay level. You should feel free to call professional staff for help with this kind of bargaining.

Question: I have never worked for a public county before and I understand that all the people in the same job class need to be on the same pay schedule. But it doesn't seem fair that some people work much harder than others without any reward. I know that the General Manager wanted to institute a "meritorious performance" bonus system, but our Association opposed this. Why shouldn't we support it?

Answer: The problem with any system of rewards for "meritorious performance" is that it pivots entirely on the relationship between an employee and his supervisor – and this relationship can be influenced by subjective factors. The theory in most public agencies is that employees who perform their jobs reasonably well receive not only step adjustments, but also promotions to higher positions. Those who perform poorly are given constructive discipline and can be denied step adjustments. This seems to combine a system of "rewards and punishments" which is fairly objective.

You should know, though, that it's within your Association's ability to negotiate such concepts as "outstanding performance awards." Also, the County has the ability to advance employees faster-than-normal through the step system, or to reclassify them to higher positions when they take on duties that are more complex than others in the same job class.

Question: I would like to know who I am allowed to call as a representative next time my supervisor wants to call me to a meeting. They say I can only have our Association rep, who works here in the yard. He is a nice guy, but I want a professional.

Answer: The right to have a representative is generally referred to as your **Weingarten Right**, named after the court case establishing the right. "Weingarten" applies when a meeting called by your employer is intended to gather information that could result in discipline. You DO have the right to the representative of your choice, but the Courts have said that the employer does not have to "unreasonably" delay a meeting in order for you to have any specific representative.

So, the County cannot tell you that you must use your elected rep in the yard. But neither does it have to wait weeks for the rep you like to return from vacation. A delay of a few days is "reasonable." A delay of longer than this could probably be found unreasonable.

Your Association does have professional staff that are available with a day's notice for meetings. Unless your Association has agreed to something else, if the County refuses to allow you to be represented by a professional, rather than a co-worker, they are violating your Weingarten rights.