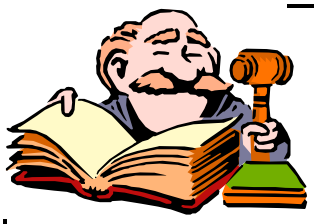
Regional Employees Association of Professionals January 2015 News



The beginning of each New Year is a great time to reflect on those things in life that are important to us. When we reflect back on the reasons why REAP was formed, we recall the many tricks and stunts SEIU board members and staff tried to pull over their members. Many members are still unaware of the circus of events that resulted in the inception of REAP. To review the history, go to the REAP website, reap4us.org, click on the media tab, then on the Blog Booker.

Because SEIU 721 has a larger interest in politics than in fully representing their members, the Interim REAP Board has been diligently working to pave the way for a SEIU-free Inland Empire. As you may have guessed, SEIU has fought us every step of the way. They have a lot of money coming from the members here in the IE and while they aren't interested in investing their members' money in the best representation possible, they don't want anyone else to provide their members the best representation either.

Part of paving the way for a SEIU-free Inland Empire, is removing the many obstacles created purposely by SEIU 721 or inadvertently by the County of Riverside. Some of these obstacles include the rules outlined by the MMBA (Meyers-Milias Brown Act) regarding the decertification process. Other obstacles are found in the County's ERR (Employee Relations Resolution). CEA has filed two separate complaints with the Public Employment Relations Board (PERB) in order to remove multiple obstacles. SEIU 721's general counsel has also filed a complaint with PERB, accusing the County of Riverside of conspiring with REAP to divert SEIU's members to REAP. Sounds like SEIU is a little paranoid, wonder why? Stand by for a more detailed analysis of the PERB complaints filed by CEA on behalf of REAP members in next month's REAP newsletter. CEA staffer Andrew Lotrich will write the article and general analysis. If you have any immediate questions regarding these complaints, email REAP at reap4us@hotmail.com.

January 13, 2015

A Quick Note from the Desk of the Interim President:

I would like to bring to your attention that on February 21st from 8:30 A.M. to 4:00 P.M. Unite I.E will be holding their second annual Conservative Conference.

Although REAP is not a group that endorses candidates we like to know what our leaders are doing and thinking.

Just some of the Guest Speakers: Bobby Jindal, Rick Perry, Larry Elder and Carly Fiorina.

This conference gives us just that opportunity. We have been lobbying the politicos over the last year to explain to them "Labor is NOT the enemy." We have been making some very important contacts and folks are beginning to listen respectfully and intently.

We would highly recommend your attendance to this conference to hear firsthand what we can do as citizens to get involved with today's government. We believe everyone should exercise their right to vote. Be a responsible voter and educate yourself on the candidates and the issues

REAP has been given custody of 25 tickets for balcony seating. The price is $25.00 a ticket. If you would like a ticket contact Kris Zaragoza and give her your name a contact phone number and an E-mail address where you can be contacted. (Please not your work E-mail).

I look forward to seeing you at the conference.

Sincerely

Rick Gay

REAP Interim President

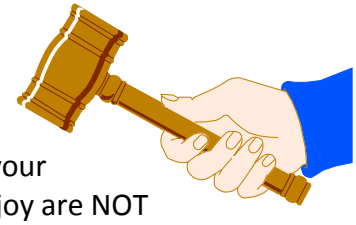
Just a reminder…Membership Dues

Many of you may recall that in June of 2013, SEIU attempted to raise the membership dues of all represented employees from $12.00 per pay period to 1.5% of their hourly rate. This meant that an employee earning $25.00 per hour would be paying SEIU $729.60 per year rather than the $288.00 per year they are currently paying. What's even more disturbing…SEIU even asked County HR to be sure that **ALL** employees whose job title was represented by SEIU were paying dues, even if they had previously opted out.

It was on this day in June when REAP was formed. The founding members of REAP had a few simple goals in mind - Fairness to ALL employees and quality, professional representation at a reasonable rate. To this day, REAP continues to receive quality representation from the City Employees Associates (CEA). CEA has filed several Public Employee Relation Board (PERB) complaints against Riverside County for failure to recognize our association and against also against SEIU for a number of reasons. Together, REAP and CEA are hopeful for a positive outcome and ruling in REAP's favor.

The ability of any association to function is based solely on the membership support it receives. REAP membership dues are $10.00 ***per pay period***. These dues **ARE NOT** automatically deducted from your pay. To minimize the number of invoices you receive, **every 28 days** a single invoice for (2) pay periods is sent to your email address we have on file. It is the responsibility of the member to be sure their payment is sent to REAP either electronically, using automatic bill pay via your financial institution, personal check sent to out mailing address located on our web site, or by Pay Pal. Membership dues must be sent every 28 days to be eligible for representation if needed. – Thank you! Your Interim REAP Executive Board.

What Are Your Rights, Anyway?



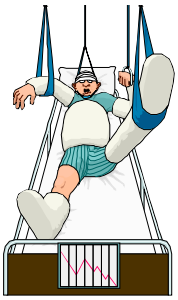
If you belong to a union in California, you have two kinds of rights: those conferred upon you by law and those that have been negotiated between your association and your employer. The vast majority of "rights" and benefits which most public employees enjoy are NOT established by law, but through bargaining. Here is a very brief summary of each…

Your Right to Your Job – Due Process

In 1978, the California Supreme Court (in *Skelly vs the State of California)* said that public employees have a "property interest" in their jobs, which derive from the federal constitution. The legal theory is that the government (your employer) cannot take the property of your job without due process (proving that you did something wrong). Thus, your "Skelly Rights," are the right to a pre-disciplinary hearing before any

government can take the job (or even a significant amount of pay) from any government employee.

"Skelly Law" hasn't changed much over the years. It basically says that permanent employees have the right to TWO levels of appeal when faced with termination, demotion, or suspension for more than 40 hours. The first level must be before a hearing officer with authority to modify the proposed discipline, and must occur *before* the proposed discipline is implemented. The employer must provide fair notice and complete information on which the proposed discipline is based.



The second level must be a "full evidentiary hearing" before a "reasonably impartial" hearing officer, also capable of modifying the discipline. This hearing may occur after the discipline has gone into effect. In most public agencies, nowadays, this "hearing officer" is an arbitrator or panel, such as a Civil Service Board. But it's legal for the County Supervisor, or some other agreed upon "expert," to be the hearing officer – so long as he or she hasn't been involved with the case.

Employees can represent themselves, be represented by their unions, or by their "agent of choice" in a Skelly hearing. **Your union is obligated to represent you at the first level, but is not to take cases which "lack merit" through the full hearing process.**

Due Process and Disability

Even employees who are unable, physically or mentally, to perform their jobs ALSO have the right to due process. If someone becomes disabled, the County is required to hold an "interactive analysis," (per the Americans with Disabilities Act) to see if the job can be modified or there is another job which he or she can perform. Employees can (and should) be represented in ADA-related meetings.

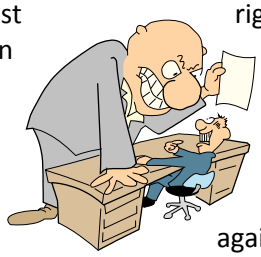
If the employer believes no other job or modification is available without causing "undue hardship," then they terminate the disabled employee – but not without extending the opportunity to appeal via the "*Skelly"* process. Even people who are "unable to perform" have a property interest in the job.

Layoffs

Absent an agreement with your union to the contrary, public employers in California have the unfettered right to lay employees off. They do NOT need to show "economic necessity."

There is NO legal requirement that employers have a layoff procedure, bumping rights or any sort of severance package (although there is a mid-1930's law which says that **if** layoffs are for "economic reasons" they must be "by seniority order.") Having said this, most labor groups HAVE negotiated layoff procedures which DO involve seniority.

Also, state labor law requires your employer to notify your Association of any *intent* to eliminate positions, or lay off current employees. The union, then, has the right to meet and confer over the "impact" of these layoffs. This means discussion about bumping rights, severance pay, benefits, re-employment rights, etc.



Discrimination and Harassment

A series of state and federal laws make it illegal for employers to discriminate against or abuse employees on the basis of race, ethnicity, gender, age, sexual orientation or disability. Discrimination is evidenced by some sort of "adverse action," i.e.: interference with pay or benefit, threatening, name- calling, assignment to the dirtiest or most difficult job, etc *because* you are in a "protected class."

You are NOT the victim of discrimination if your manager takes negative actions against you because he doesn't like you. You must be a member of a protected class, and able to PROVE that the bad treatment is *because of* your minority status. Alleging and proving are two different things…

This doesn't mean, however, that victims of plain old harassment have no recourse. Most MOU's DO have anti-harassment policies. You CAN file a complaint against a harasser, even if you are not a member of a protected class. Your union CAN represent you. (It's just not discrimination...)

Protected (Union) Activity

Thanks to state labor law, union activists are also protected against discrimination or retaliation. Union activity can be anything from serving on your Association Board or bargaining team, to filing a grievance. Individuals who are victims of retaliation

for union activity may file complaints directly with the Public Employment Relations Board.

Wages and Hours

The FLSA (Fair Labor Standards Act) is our primary national employment law. The FLSA was a legislative effort to stimulate employment by shortening the workweek and raising the incomes of the poorest Americans. And it worked. Passed in 1935 (the same year that unions were legalized,) it established the minimum wage, the 40-hour work week, and the overtime rate of time-and-a-half. Since its passage, the Courts have "interpreted" the law in thousands of decision affecting everything from standby pay to training time to clothes changing time.

On the other hand, the FLSA has been massively eroded by employers' efforts and anti-employee political administrations so that large portions of the workforce are now "FLSA exempt," which means that they don't receive overtime pay after 40 hours in a week. The law was originally intended to cover all but a handful high paid managers and "specialized professionals." However, today many employees are told they are "exempt" when they are basically just working people. "Exempt" employees can easily be exploited, especially during periods of recession and understaffing. If you believe that your job class has been improperly designated "exempt" you may call your union rep for assistance.

Medical Leave, Sick Leave

In 1994, the Clinton administration pushed through a controversial law called the Family Medical Leave Act. The FMLA requires employers with 50 employees or more to allow their employees up to 12 weeks of time off the job to care for their own, or their immediate family's serious medical conditions. The time may be used intermittently, *but it is NOT PAID TIME*.

Essentially, the FMLA creates a "protection period," during which the employee on leave cannot be terminated. Employees may use accrued leave during their FMLA period (although not necessarily ALL sick leave, if the time off is for a family member.) The employer must also provide continued benefits and accruals. Most employers ALSO provide some local disability plan to employees who are off the job with long-term illnesses or injuries – but this is not required by law. (Public employees are NOT required to participate in the State Disability Insurance system, although participation is completely negotiable.)

Most *full time* public employees have negotiated some paid sick leave benefits; but most employees *in general* do not. Just this year, however, the California legislature passed a law requiring that ALL employees be provided at least three days of sick leave. It goes into effect in July 2015, *and will cover thousands of part-time public employees.*

Under the law, sick leave has no monetary value. However, many union contracts have negotiated sick leave "cash outs" or conversion programs, especially for retiring employees.

Vacation

There is no legal requirement that any employer give its staff with paid vacation time, although most unions do negotiate vacation time for their members. IF there is any paid vacation, that time becomes a form of vested property for the employee. This means that unused vacation hours must be paid when the employee leaves the employer, no matter WHAT the circumstances of the separation.

Privacy and Substance Testing

Most people think they have more privacy in the workplace than they actually do. Your e-mail can be read; you can be videoed (except in restrooms); and your phone conversations can be listened to (as long as the employer has a policy for this). They can go through your desk or your locker – but cannot go through your purse, wallet, or car without a warrant.

Unless you are a "safety sensitive" employee or required to carry a Class A or B license, the County cannot substance test you, unless it has reasonable suspicion. The definition of "reasonable suspicion" is negotiable, but at minimum, means some behavior or appearance of intoxication (or of "hard evidence" such as a material substance,) *which is corroborated by more than one person.* The County can also require you to be substance tested as part of a fitness for duty exam, but it must be able to show grounds, arising out of your work behavior, to justify this.
If you ARE in a "safety sensitive" position or are heavy vehicle driver, carrying a Class A or B license, you can be randomly tested at any time.

Free Speech, Political Activity, Illegal Activity and Whistleblowers Protection

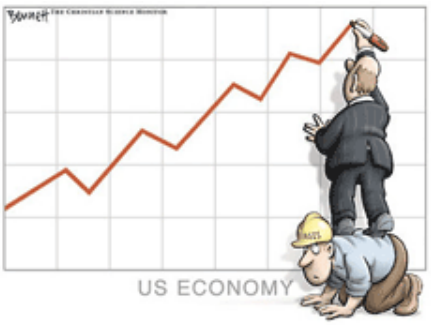
Employees don't surrender their right to free speech when they go to work for the government. You have the right to participate in political activity and to take issues before the County Board – although never using County time or materials. If you are active in your employees association, you have the right to speak -- in public or private -- with County policy makers about issues affecting your members. You do NOT have the right to ask the Board to intervene in any aspect of your own personal job; for this you can be disciplined.

If you believe that you have been directed to take action which violates the law or County rules, you should document your concerns, and then do what you are told UNLESS this could result in imminent danger to yourself, co-workers or members of the public. **You should NOT take it on yourself to try to decide what is legal or illegal; you should not refuse a direct order**.

If you believe that your employer (or some specific person in the County's administration) is breaking the law, you *can* report this "up the chain of command;" but you can also report it anonymously. If you suffer retaliation for taking this action, you MAY be protected for being a whistleblower. Strictly speaking, whistleblowing is the reporting of wrong doing to an *outside* governmental agency. Telling your boss, or a co-worker, or even the General Manager about a suspected wrongdoing may not afford you "whistle-blowers protection." For this reason, you may want to think hard before reporting perceived wrongdoing.

This is, essentially, the totality of law protecting your rights as a public employee in California. In most cases, your rights are considered "incorporated" in your union contract. This means that you can exercise them by using your union's grievance procedure. Or you may sue, under law, directly. Feel free to call Association staff for help with any problem: 562-433-6983 or cea@cityemployees.net. If staff are unable to help you, they can send you to a legal practitioner who can.

Congress' "Deal" to Allow Cuts in Retirement Funds Doesn't Affect Public Employees in California



Last month a bi-partisan congressional committee worked out a deal that will allow the benefits of current retirees, from certain corporations, to be cut back, substantially. The arrangement, which was worked out with the reluctant cooperation of several unions, may affect millions of employees in the trucking, construction, and supermarket industries.

Specifically, the agreement was aimed at stabilizing such "multi-employer" pension programs as the Teamsters' Central States fund. In this particular case, the retirement of large number of baby-boomer truckers are putting the retirement fund at risk because there are not enough *currently-working* union members to keep the fund solvent. There were nearly five retirees or inactive members for every active worker.

So, congress, the employers and the unions were, literally, backed against the wall: if they did not allow the pension plan to be compromised *partially,* it was likely to collapse, *entirely,* putting the benefits of about 400,000 members in jeopardy. This was no idle threat: since the Recession, several dozen multi-employee retirement funds *have* collapsed.

This "deal" is a BIG deal. It overturns 40 years of federal retirement law, which compels employers and retirement funds to honor its promises. However, it's entirely about private sector, multi-employer plans, covered by ERISA; it has no bearing on public employees in California. (In fact, public employee retirement plans aren't even *covered* by ERISA…)

Public sector plans such as CalPERS are structured differently from private companies. They are funded primarily by employers (although, since 2012, most employees are making contributions.) In California, each public agency has a Contract with PERS, which is routed in the contracts clause of the constitution. These contracts guarantee that the "defined benefit" paid to retirees cannot be modified, even by a change in federal law. Your retirement benefit is not in jeopardy.

What happened in 2012 was that the California legislature did modify public employees' retirement plans to make it less expensive for employers. They did this in two ways: 1) by requiring that all new employees join a plan (the "2% at 62" plan) which is much, much less expensive than previous generations' plans; and 2) by allowing employers the ability to compel current employees (via the bargaining process) to pay up to 8% of their plan costs by the year 2018.

There are no other changes to PERS Law on the horizon. Your post-retirement is not in jeopardy – but you are probably paying a lot more for it than you were five years ago!

It is difficult to listen to the news or read a paper nowadays without hearing about another incident of violence in the workplace. The Department of Labor says these events are no more frequent than in the past, but it doesn't *feel* that way. What **has** changed is that both employees and management are much more aware of the problem, much less likely to tolerate it, and much more likely to report it. More than a decade ago, the State established guidelines that public employers must follow in order to protect your safety in the workplace. Here is a summary of the guidelines, along with suggestions for your own best defense against workplace violence.

First, you should know that CAL-OSHA requires your employer to have an injury and illness prevention program (IIP), which includes the following components:

- Designation of a person or persons in charge of the program
- A system of assuring compliance by all employees including Management.
- A system of communicating to employees about workplace hazards and encouraging employees to report any perceived danger. (Regular safety meetings and notices posted in the workplace are advised.)
- Established procedures for investigating an injury or illness that arises from an assault or *threat of assault.*
- Procedures to correct unsafe conditions, practices and procedures with attention to protecting employees from retaliation for reporting threats.
- Training and instruction on identifying security hazards, measures to prevent assaults and procedures to follow if an assault does occur.

Mandatory Background Checks

As part of this program, employers are required to perform background checks on prospective employees in order to identify any history of potential violence. These checks must protect applicants' privacy rights, but may include questions about convictions (not arrests or investigations) for a crime. Recent court decisions have held employers liable for

workplace violence where they knew “or should have known” about a problem employee's history. One consequence of this is that agencies are increasingly asking applicants to sign authorization forms allowing them to look at previous work records, or even hold conversations with previous employers. If the applicant refuses to sign such a release, he or she is likely to be dismissed from further consideration.

Managers and supervisors are supposed to be trained about how to avoid, recognize and report both real and threatened violence. The goal is to establish all employees’ confidence that a proper investigation will be conducted, while also protecting the privacy of the "accused." Supervisors are supposed to educate all employees about workplace violence with the strong message of a "zero tolerance policy." There is no legal obligation that the employer, follow progressive discipline practices in the case of violence on the job. While all public employees have the *"Skelly"* right to a fair hearing (which your Association is obligated to insure) the Courts have consistently upheld terminations of violent employees, without regard to prior work records.

There is an important message here: be careful of what you may say when you are angry. A single comment, made in the heat of the moment, if it involves intent to hurt someone, can mean the end of your job.

If You Are Threatened…

Management is responsible for having a prevention program in place, but co-workers are usually the first people to become aware of problems. While anyone who brings a weapon to work is easy to recognize as a threat, statistics show that anger often erupts into violence among good, quiet employees who begin to have “bad things” happen to them. When some "last straw" triggers the explosion, it is usually a surprise. In retrospect, investigators usually find indicators that something was going wrong: frustration, agitation, arguments, etc. They may become obsessed with a coworker who doesn't return their interest, or obsessed with a co-worker believed to be undermining them. Or develop a sudden, or increasing, fixation with firearms. People who mutter threats against other people shouldn't be ignored; there's always a possibility that they may act upon these.

If you have a coworker exhibiting danger signals, you know that you probably should do something. But what should -- or can you -- do? The most important thing is that you bring your concerns to Management’s attention. The County is obligated by law to conduct an investigation, and it should keep your involvement confidential.

The County’s handling of the threat will be based upon what the investigation uncovers. If a potential for violence appears immediate, the employee will be placed on paid administrative leave until the investigation is complete. *This is not discipline*, and it may give the employee an opportunity to get some urgently needed help. Often an incident of 'acting out' on the job can be the first indicator of mental illness, and an employee who needs, and receives, medical help is very likely to be able to continue to work.

If Your Employer Fails to Respond…

While most employers are responsive to reports of potential violence, some are not. If you believe that your legitimate concerns are not being taken seriously or, if you think that management is not following the state requirements, you should call your Association representative. Your legal staff will get your Management's attention, and, if necessary, make sure your concern is on the record. Overall, it is in your best interest, and the interest of everyone you work with, to speak up if you are concerned about a co-worker's excessive anger on the job.

I've Been Falsely Accused! What Are My Rights?

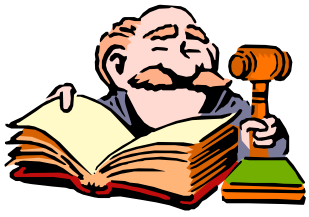
Question: I have been accused of harassing a co-worker, but the allegation is completely false! My manager says I must take sensitivity training to appease this person and will be disciplined "if it happens again." The truth is, though, that "it" never happened. They have never even told me exactly what I did wrong, and haven't proven a thing! What should I do?

Answer: You have every right to insist on more information. If necessary, your union rep can assist you with a grievance over this. If you have not been interviewed, you should be able to tell your side of the story. Keep in mind, though, that being directed to take sensitivity classes is NOT a form of discipline; it's a form of education.

After conducting a thorough investigation, your employer has the right to act on its good-faith belief that you may benefit from further education. It is not always easy to know exactly what is true, and they may be erring on the side of caution. As long as they pay for this and give you time to attend, this is their prerogative.

Keep in mind that the law *requires* your employer to take remedial action if there is reasonable possibility that any of your co-worker's accusations may be true….particularly if your co-worker is the kind of person who may sue.

Finally, even if the allegations are completely unsubstantiated, there is no downside to your employer's reminding both of you that the County has policies about proper workplace conduct. Rather than drawing continued attention to yourself, you might just demonstrate that you are a team player, and go along with the request…

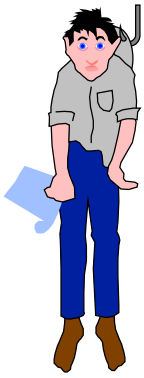


Labor Relations Update

The following are some major legal decisions that may affect the rights of public employees in California. If you have a

question or problem, please contact your Board or Association staff at (562) 433-6983 or cea@cityemployees.net.

Employer Can't Base Termination on "Moral Convictions"



An emergency medical technician at an agency in Michigan became romantically involved with a married co-worker. She was seen several times arguing with him at work, and a co-worker once found her crying in a parking lot. Another co-worker observed her having an argument on the cell phone, and sending text messages, while driving an ambulance. The co-workers reported this to the employee's supervisor, who advised her that she should seek Counseling. She asked whether the Agency would pay for therapy, and the supervisor said the Agency would not.

Subsequent to this discussion, the employee had an argument with a female co-worker and, according to the co-worker, refused to help her administer oxygen to a patient. The co-worker complained to their supervisor. The supervisor told the employee that she did not approve of her behavior, and that she could only continue her employment if she agreed to get counseling. The employee said that she could not afford counseling, and the supervisor then asked her to turn in her equipment, and did not schedule her for any future work.

The employee filed a lawsuit, alleging that her rights under the ADA (Americans with Disabilities Act) were violated when her employer tried to force her to submit to medical examination that was not related to her employment. When the supervisor testified, he said that he didn't have a problem with the employee's work performance, but was concerned about her personal life and her improper sexual relationships. He said he wanted her to get counseling because of her "immoral personal behavior." Neither the supervisor nor the agency director had consulted with a health care professional before trying to press the employee into counseling or, later, terminating her.

The employee ultimately won her lawsuit because the ADA prohibits an employer from requiring a medical examination unless it is job-related and consistent with business necessity. To prove that an examination is job-related and consistent with business necessity, the employer must demonstrate that 1) the employee has requested an accommodation; (2) the employee's ability to perform the essential functions of the job is impaired; or (3) the employee poses a direct threat to himself or others. In this case, the employer had never taken disciplinary action against the employee, but showed ample evidence of a moral bias against her. She had never requested accommodation under the ADA, nor was there any evidence that the directive to seek counseling was based on business necessity.

Agency Can't Refuse to Acknowledge Sleep Apnea as a Disability

A police officer in Kansas was found asleep on several occasions during the middle of his shift. He sought medical care, was diagnosed with severe sleep apnea, and began treating the disease with medication and a device. He was never found by a medical practitioner to be unable to perform the essential functions of his job.

The City terminated the employee for falling asleep on the job. He sued for wrongful termination on grounds that the City had violated his rights under the ADA. The jury agreed, saying that he clearly had a recognized medical condition and that the City had failed to offer an "interactive meeting" or to accommodate him. He was awarded nearly $1 million in lost wages and emotional distress.

Employee Has No Grounds to Sue for Racial Harassment if Employer Takes Immediate Corrective Action

An African-American man who started a job at a transportation company received an employee handbook which contained the company's anti-harassment policy. The policy (which covered racial discrimination) and the complaint procedure were also discussed during his orientation. During the employee's first two weeks of job training, he was assigned to a trainer who made racist remarks, including references to the Ku Klux Klan, "black thugs", and African-American women using food stamps. The trainer also said that his father belonged to a motorcycle gang, and that if "anybody ever had a problem with his family, that they would be taken care of."

The employee reported these statements to his supervisor, who immediately assigned him to a new trainer. He had no further contact with the previous trainer. In a few weeks, however, he quit

the job saying that he felt threatened, and soon thereafter, sued for racial harassment. He argued that management's response was insufficient, because 1) there was no formal investigation of his complaint, 2) his supervisor never reported the matter to Human Resources, and 3) that the harasser was not disciplined.

When the court found in favor of the company, the employee appealed. The appellate court agreed that the employee had been subjected to "reprehensible behavior" and that the company should improve its supervisors' training. But since the company had taken swift action to protect the employee from continued harassment as soon as he complained, the Company was exonerated them from any wrongdoing.

"Free Speech" on Facebook Doesn't Always Mean Employees Can't Be Disciplined

Employees at an after-school teen center in San Francisco had an exchange on Facebook about whether they would return to their jobs after summer vacation. They complained about the workplace, using profanity, and assured one another that they were going to ignore certain Teen Center rules.

A co-worker sent screen shots of the Facebook conversation to their management, and the Center rescinded the employees' post-summer rehire offers. The employees filed charges with the National Labor Relations Board (NLRB), arguing that their Facebook conversation had been private, and was protect free speech. An administrative law judge found in favor of the Center, and the employees appealed. The NLRB then upheld the judge's decision.

The judge's statement made clear that law does protect employees from being terminated for engaging in "protected activity." Complaining about ones job on a social media website CAN BE considered protected activity. However, the employer may take disciplinary action against employee conduct (including Facebook statements) that are so extreme that they are outside the protection of the law, or could render the employee unfit for service. The judge in this case concluded that the employees' collusion in a plan to disregard their employer's rules was so extreme that it overrode any "free speech" protection and ALSO rendered them unfit for further service.

Supreme Court to Decide on Accommodation Rights of Pregnant Employees

In November, the case of Peggy Young, a UPS driver who was put on an involuntary unpaid leave when shewas pregnant, was argued before the Supreme Court. Because her employer refused to provide light duty, she was left with no income and forced to look for another job. Her attorney argued that UPS violated the Pregnancy Disability Act (PDA) by refusing to accommodate her.

Under the PDA, if a woman is temporarily unable to perform her job due to pregnancy or childbirth, the employer must treat her in the same way it treats other temporarily disabled employees. This could include providing light duty, alternative assignments or disability leave.

Young worked as a driver for UPS for four years before she became pregnant. When she revealed that she was pregnant, UPS sent her to a company nurse, who asked for a doctor's note about her condition. When her doctor recommended that she not lift more than 20 pounds till the pregnancy was over, the company nurse told her that UPS's policy was not to provide accommodation unless the medical condition was caused by a work injury.

Young's job consisted primarily of picking up envelopes and small packages, so the lifting restriction would have had little impact upon her job. However, the company forced her to take unpaid leave, which caused her to lose her health coverage.

UPS argued that their policy to only accommodate only work-related injuries, was not targeted at pregnant employees. They prevailed in the lower courts, but Young was successful upon appeal. Justices Ruth Bader Ginsburg and Elena Kagan specifically pressed UPS's lawyer over the company's refusal to find a temporary assignment for a pregnant woman, while it is able to find alternative work for the (mostly men) who are hurt on the job.

Many states have laws that build upon the federal pregnancy law. California specifically requires employers to provide the same accommodations to pregnant workers they provide to workers who are injured on the job.

Although the case won't be decided till June, UPS has now announced that, beginning January 1, 2015, the company will be accommodating pregnant employees who need light duty assignments.

Employment

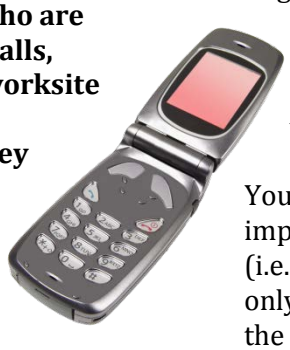
Questions & Answers About Your Job

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, feel free to talk to your Board Rep or Association Staff at 562-433-6983 or write to cea@cityemployees.net. There is no charge for Association members.

Question: Our employer gives us annual leave, but there is no separate leave bank for sick leave. I know there is a new law about sick leave. Under this new law, do they now have to provide us with at least 3 days of sick leave?

Answer: If your annual leave is intended to be used when you are sick, and you are given more than 3 days, then your current program is more generous than the new law. So, no, they don't ALSO have to give you another 3 days of leave.

Question: During our recent labor management meeting, the County told us that they will be decreasing the reimbursement amount for people who use their cell phones on the job. This program is for employees who are required to take and receive County calls, emails or texts when away from the worksite – so it involves quite a few of our members. I want to know whether they are required to negotiate with us before it can implement this change?



Answer: Yes, they must negotiate. It sounds as if the County has worked out an arrangement with its employees to pay you for the use of your personal phone. These arrangements are common AND benefit both parties. So, the policy (including the benefit of the payment) can't be *changed* without the other side's agreement. Your Board may want to let the County know it is not interested in this "takeaway."

Question: I'm a jailer and was injured in an attack by an inmate. The City has accepted my workers compensation claim, of course; but I want to know if I can also sue the person who attacked me.

Answer: Yes, you can always sue someone for inflicting personal injury. In this case, you may want to weigh the costs of the lawsuit against what you can reasonably expect to collect. Depending on the inmate's finances, this lawsuit may not be worth the trouble.

Question: People who work in the police department are being told that they cannot eat at public places such as restaurants, while in uniform. They are being told they can go through the drive thru, but have to eat in their vehicles or back at the office. Is this legal?

Answer: No! Employees in uniform may eat wherever they wish *if the lunch period is unpaid*. If the lunch period is paid, then the employer **can** restrict employees' activities and/or whereabouts.

Question: I'm a maintenance worker II and I'm often called to work on weekends. I don't mind because I need the overtime money. However, our new supervisor has started calling one of the temporary Laborers in to do weekend work, instead of me. Is he allowed to do that? This is clearly intended to cut me out of the overtime.

Answer: The answer depends on what your MOU might say about overtime. If the MOU says anything about overtime assignments being on the basis of seniority, or overtime going only to full-time employees, then you probably have a contract violation.

You might also have a violation if the Laborer is improperly performing the duties of your job class (i.e. if the duties of the weekend assignment should only be done by a Maintenance Worker II). If this is the case, your Association may have a grievance on grounds that the temporary Laborer is eroding the work of your bargaining unit.

Question: Our County is adding new employees in different departments. Some of them are labeled as part-time positions and others are labeled as Interns. They are doing some of the same work as full-time employees, who are Association members. Does the County have the right to create these new jobs? Should these employees be members of the Association?

Answer: The use of interns and part-timers are, too often, employers' way of getting work done at cut-rate prices. If they are performing the same work as union-represented employees for more than a few months, your Association may want to take action over this "erosion" of its bargaining unit.

There are legitimate uses of temporary labor: to fill in for a member on an extended leave, or to provide expertise for a limited-term project. Since it sounds as if these positions are popping up all over the County, your Union may want to talk to Management about what jobs these people are going to be doing – and for how long. Keep in mind that it's always possible to negotiate the short-term use of temporary labor in bargaining unit positions.

Question: Our agency seems to be moving people around from one assignment to another

on the basis of whether they speak Spanish. Is this legal?

Answer: Yes, management can make assignments based on a specific skill set, such as the ability to communicate with certain segments of the population.

Question: **If an employee is out on FMLA and they miss their interview time for a promotional opportunity, does the FMLA protect their right to interview for the position at a later date?**

Answer: Unfortunately, no. The employer cannot *discriminate* against the employee for being off the job on FMLA time, but they don't have to modify procedures, either. So, they need to give the employee the opportunity to interview during the interview period *if he/she is able*, along with other employees. But they can't be compelled hold up the hiring process in order to give the employee a special opportunity to interview.

Just a reminder…

Association Members Are Eligible for Free Legal Services

As part of our arrangement with our professional staff, members now have access to an attorney for all types of legal advice. If you are a current Association member, you may call our Attorney, John Stanton for assistance with any non-work legal problem

This service does NOT include representation in Court, but does include evaluating your case, and up to two hours' of assistance in resolving it. There is no limit to the number of cases you may bring forward & all conversations are confidential.

John has advised us that very often, people don't need to *retain* a lawyer; they just need simple advice and perhaps, a little help. If you do need formal representation, they will refer you to a reputable attorney in that field.

John is available at (714) 974-8941 or john@johnjstanton.com

(This program is provided to Association members, ONLY, please…)