Regional Employees Association of Professionals July 2014 News

SUPREME COURT SETS NEW PRECEDENT ON FREE SPEECH RIGHTS OF PUBLIC EMPLOYEES

In a 9-0 decision last month, the U.S. Supreme Court voted to "extend 1st Amendment protection" to public employees who report and testify against their employers about wrongdoing uncovered in the course of their employment. By "1st Amendment protection," we mean the right to continued employment and freedom from retaliation from that employer.

This decision reverses a previous decision which said that public employees are NOT "protected" if they report wrongdoing as part of their normal job duties. According to Associate Justice Sonia Sotomayor, "Speech by citizens on matters of public concern lies at the heart of the 1st Amendment. This remains true when speech concerns information …learned through public employment."

The hero in this case was Edward Lane, Director of a Georgia college program for underprivileged youth. Soon after taking his job, Lane discovered that the college was paying a state representative over $130,000 a year to be an "employee" of this program, although she never came to work. He reported the fraud to his supervisor, who warned him not to do anything because the representative could do damage to the program.

Nonetheless, Lane sent a letter to the politician advising her to report to work or be terminated. When the politician failed to report, Lane fired her and called the FBI about the fraud. The FBI initiated a corruption probe and the politician was, ultimately, convicted and sent to prison. Lane's testimony was central to the prosecution' case.

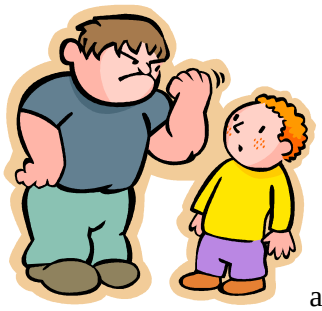
Lane's "reward" for speaking out was termination from his position. He sued, claiming to be a victim of retaliation for exercising his right to free speech, but the federal court in Atlanta threw the case out. That court based its decision on a 2006 case from Los Angeles (Garcetti vs. Ceballos) which found that public employees did not have protection against retaliation if they reported wrongdoing which was discovered "pursuant to their official duties."

The Lane case establishes a new precedent, at least when it comes to employees who *testify* against their employers. As Sotomayor pointed out, "public employees should not be torn between the obligation to testify truthfully and the desire to …keep their jobs."

WHO SAYS PUBLIC EMPLOYEES "REFUSE TO COMPROMISE"?

(And Why Are They Saying This…?)

Robin Nahin, CEA Director



Between 2009 and 2012 more than 100,000 public employees in California were laid off. This was more per capita than any other state in the country. Despite our "recovery," the average County employee is STILL, if we adjust for inflation, taking home far less than he was five years ago. So, why is there still such a myth – in the media and in the minds of many residents -- that public employees are a problem… that you are somehow "scamming the system," or that your unions are exerting inappropriate control in the protection of your "lavish lifestyle"?

Where is all this baloney about public employees' "excessive" wealth and power coming from? Are you REALLY a bunch of uncompromising bullies? **Is there <u>any</u> truth to this?** … And, if not, why do so many people *think* you are?

Answer: Because some very well organized interests are deliberately spinning this myth. Why? Because it works really, really well, and it serves *their interests*. Here is some information; please feel free to share it with your neighbors…

Myth #1: Public employees, as a group, are bullies and unwilling to compromise.

On its face, this statement is ridiculous. ***If public employees are in a position to dominate, <u>why aren't you better off?</u>*** The truth is that public employees in California have never been in much control of anything -- and whatever influence they did have was massively shaken by the recession. City and County employees are at the very bottom of the pecking order when it comes to public money. Every dollar they earn comes from hard work and hard bargaining. (And, if it weren't for hard bargaining, they would be in even worse shape today.)

The explanation for this is obvious. Starting in 2009, the word "compromise" took on whole new dimensions. Mostly it meant "cling steadfastly to the status quo." When public agencies had financial problems they pressed hard for employee "give backs." The primary function of almost all unions was to try to stop the hemorrhaging. Those who had no unions and no contracts suffered the most. But even the toughest groups were "compromised." In *hundreds* of bargaining settings all over the state, unions and associations agreed <u>*voluntarily*</u> to give up money. These losses took the form of bypassed pay raises, furloughs, layoffs, deferred payouts, increased absorption of benefit costs, or direct reduction in benefit plans.

The vast majority of negotiations were cooperative; unions that refused to bargain found themselves to be the most devastated. This is because employers, not unions, are dominant in these circumstances, and are able to rely on a wide range of "management rights" when faced with genuine fiscal crisis.

Intelligent unions paid attention to reality and cut realistic deals. Most public employees groups found themselves focused on three issues: 1) making sure the "compromises" were spread *equitably* across the workforce, 2) making sure that they were *temporary*, and 3) making sure that the employers followed the law!

There would be little point for most public employees in California to "refuse to negotiate." *Unions accomplish their goals through negotiations.* Almost all changes in the workplace are the result of such negotiations: intelligent discussions between employees' representatives and their managements.

In truth, it is far more likely that an employer will make a change in the workplace *without offering to bargain over the issue* than for the association to *refuse* to bargain! In fact, the entire reason for the existence of PERB (Public Employment Relations Board) is to hear claims, *mostly from*

unions, about the other side's failure or refusal to negotiate. Negotiations benefit employees. PERB compels *employers* to cooperate. It is almost never the other way around.

A FEW BIG EXAMPLES OF COMPROMISE… According to CalPERS, public agencies and their employee organizations negotiated more than 600 changes to retirement benefits in the last two years. Almost all of these were reductions to benefits or shifting cost burdens from employers to employees. They were BIG compromises, and the employee organizations DIDN'T agree to them easily. In most cases, as the result of hard bargaining, they were "offset" by other improvements in the employees' MOU. The point, though, is that lots of productive negotiations took place which will actually save the taxpayers a lot of money. But almost none of this received any coverage in the media.

An even GREATER example of compromise took place in 2012, when the new retirement law, PEPRA (Public Employees Retirement Reform Act) passed. This law represented a huge compromise between the anti-employee "tax reform" movement (who were trying to gut the PERS system on the grounds that its cost was bankrupting all the public agencies) and the unions and retiree groups who were trying to save it. The end product of these high-level negotiations was a "reform" law *which did no damage at all to then-current employees or retirees*. Despite common opinion, PEPRA contains NO "requirement" that pre-2012 employees pay ANY cost of their own retirement! This was the result of very effective negotiations at the top levels between and unions and management.

Myth #2: Public employees have excessive compensation packages and are better off than their private sector counterparts.

This isn't even remotely true. What IS true is that top executives in public agencies are making a lot more than they used to. This reflects the widening gap between managers and "worker bees" in our economy overall; *the middle class really is disappearing…*

But the average employee at public agency does NOT make more than he or she would at a private company. In 2012 the UC Berkeley Institute for Research on Labor and Employment completed an exhaustive statewide study on this subject, finding the following:

- **As an aggregate, California's full-time public employees (state, schools, city, county, and utility districts) earn 7% less than employees in the private sector; and**
- **Public employers spend 11.8% of employee costs on medical and 8.2% on retirement. Private companies, on average, spend 7.7% on medical and only 3.6% on retirement.**

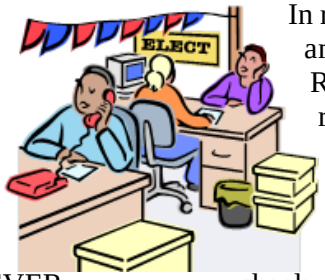
In other words, it is true that public agencies spend more on medical and retirement benefits than private companies, but this is completely offset by lower wages. (Interestingly, the study also found that public employees are better educated than their private counterparts: 55% hold Bachelor's degrees, compared to only 35% at private employees. They are significantly older: 44 years, average, verses 40, and more female: 55% to 45 %.) So, as we already suspected, here's the evidence: public employees are willing to trade lower pay *now* for better benefits and financial security *later*. **But, as a group, they are not any wealthier than the average American worker.**

What is the reason for the myth?

Why have so many people come to believe that public employees are overpaid, uncompromising, and "playing hardball" with the public's tax dollars? The reason is that a well-funded campaign by "Tax-Revolters" is chronically -- and effectively -- creating a false image of YOU in the media. Their goal is to turn government (and its workers) into "the enemy"… to convince the average citizen that *rather than enjoying the services you provide*, they should be angry, because you "stealing" their money! Ultimately, this myth accomplishes several goals: 1) it discredits unions, 2) it discredits government, 3) it justifies an attempt to reduce YOUR wages and benefits, and 4) it justifies the evasion of taxes, *often by those who should, legally, be paying the most…*

When these "Taxpayer Revolts" get well organized they can do real damage. In 2012 in both San Diego and San Jose, citizens were given the opportunity to vote on the structure of their County employees' retirement plans. They voted *overwhelmingly* to gut the plans. The destruction was blocked because the employees associations in both cities went to court. (Both initiatives were struck down as violations of the contract's clause of the constitution. Negotiated benefits can't be "overruled" by a vote of the public.) But a great deal of money

was spent, and a great deal of conflict created between the employees and their own residents.



If we look even more closely at the San Diego and San Jose situations, a lot is revealed about who *really* is "playing hardball." In both cities, before the Council took the retirement issue to the public, the employees had offered to negotiate reductions in pay and/or benefits to help the cities save money. Neither city EVER brought the retirement issue "to the table." The opportunity to *compromise was* completely lost, and many good employees were demoralized and left their cities. *So, what was the point?* The point, in truth, was to grandstand and polarize… to put on a show to stigmatize city employees in the eyes of their residents. Had the parties negotiated instead of grandstanding, both cities' budget could have been balanced a lot easier.

In reality, public employees in California were amongst the greatest victims of the Great Recession – and they still have not fully recuperated. The people who characterize them as uncompromising bullies have an agenda: to reduce the size of government and save their own tax dollars. In the end, the whole economy suffers: overcrowded schools, closed libraries and senior centers, buckling streets and sidewalks, un-mowed parks, unpatrolled parks and buildings, understaffed safety centers, long lines at public events. The average citizen is simply forced to live with the decline. In truth, too many unions may have just been a bit TOO passive all along. It's enough to make you want to start a Political Action Committee of your own!

Just a Reminder:

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

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

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

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

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

Working in High Temperatures

Heat can kill, and it doesn't take long. A pregnant teenager died when her body temperature climbed to 108 degrees after working in a Lodi vineyard. In Los Angeles, a 42-year-old employee collapsed in his truck and died after he had been unloading construction materials. Cases have been reported in which people seemed fine at lunch, but then were found unconscious an hour later.

Heat-related illnesses have reached alarming levels in California, as more employees are doing more work with fewer co-workers and are working longer and longer hours. The problem is showing up not only in manual labor, but in construction work and public safety.

Cal-OSHA (the state Occupational Safety and Health Administration) sets standards which employers must follow for providing employees with shade, potable water and adequate rest breaks. Employers which violate these standards can be reported, anonymously.

Here's what you should know about potential heat exhaustion:

Heat exhaustion occurs when one's body can't maintain normal functions due to excessive loss of body fluids and salts. Symptoms include sweating, weakness, dizziness, headache, cramps, muscle pain or spasms, heat rash (small red bumps on the skin,) weak and rapid pulse.

Treatment should include:

- **Moving the person to a cooler, shaded area; don't leave the person alone.**
- **Providing water, little by little.**
- **Making sure the person lies down with the feet elevated.**
- **Cooling the person by fanning and applying wet cloths.**

Untreated heat exhaustion can escalate into heat stroke, which is a life-threatening emergency stemming from the body's inability to regulate its core temperature. Symptoms include: body temperature of 105 degrees or higher; red, dry, hot skin; dilated pupils; strong, rapid pulse; extreme disorientation; loss of consciousness or convulsions.

If you believe that someone you are working with is experiencing heat exhaustion, call 911 immediately; a heat stroke victim needs urgent care. Move the person to a shaded, cooler place until medical care arrives. Loosen tight clothing, and put cool water on the body. Do NOT give the victim anything to drink, not even water.

If YOUR JOB requires that you perform physical activities in hot weather, drink plenty of fluids such as water and sports drinks. Avoid alcohol and drinks with caffeine, which can cause dehydration. Wear a hat in direct sunlight and loose-fitting, light-colored clothing, if possible. Also, be aware of the fact that some medications, including antihistamines, certain antidepressants and tranquilizers, can increase the risk of heat-related illness.

If you believe that your employer is putting you or co-workers at risk, ever, by causing you to work in unsafe conditions, feel free to call the CEA office: 562-433-6983 or call Cal-OSHA directly.

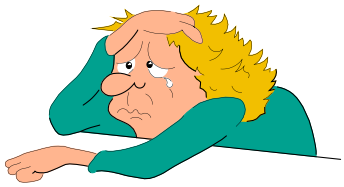
UNDERSTAFFING & WHAT YOU CAN DO ABOUT IT

By Mike Gaskins, CEA Staff

There is an old adage in labor relations: "Management has the right to Manage." This means that the County's elected officials, in their wisdom, have the right to decide how public money will be spent and how the County's services will be rendered. With amazingly few legal boundaries, they can decide *which* programs to run, *how* to run them – *and how to staff them.*

Among those few "boundaries," however, are YOUR rights as an employee. The County cannot violate State or Federal law, nor can it violate your Union Contract. So, even though the Board and Management have broad powers to decide how to conduct the County's business, *you have the right to a safe, non-harassing, non-discriminatory workplace.*

The County's right to manage and your right to a comfortable workplace are usually compatible. When revenues are down, however the County's effort to provide full, high-quality service may run into direct conflict with YOUR effort to maintain decent wages and benefits, in a safe and comfortable environment. Public services are labor intensive: it is virtually impossible for them to sustain the same level of activity *with less money*, without putting "the squeeze" on you.



Today, almost all public agencies in California understaffed, and to many employees "the squeeze" seems almost to be a permanent state of affairs. What follows are some of our suggestions for responding…

"The squeeze" can take a variety of forms. Certainly it shows up as "takeaways" at the bargaining table, or in the form of delayed pay increases or benefit cuts. But if your Association is in the middle of a contract, your wages and benefits are protected, by law**.** This means that an agency suffering revenue problems must save money from some other source – **and there are virtually no laws defining how many people must *be* in most jobs, nor how many days or hours they can be asked to work.** FLSA-exempt employees (mid-managers and professionals) are particularly vulnerable to "the squeeze" as they don't, as a rule, collect overtime.

Effects of Understaffing

The effects that understaffed work conditions may have on employees can vary widely: out-of-class work, excessive hours, stress-related illness, conflict with co-workers, unjustified discipline, etc. The extent to which people can, or will, tolerate understaffed conditions varies equally. Some people speak up right away; others will *never* complain.

The vast majority of public employees believe in a strong work ethic and genuine service to the public. The are "good" employees. ***They are NOT the kind of people who make waves!*** Throughout the Great Recession, the vast majority of public employees responded with understanding and cooperation to the departments' declining budgets. They were overwhelmingly willing "pitch in," *now*, based on the assumption that they would be appreciated and rewarded, *later*.

But what happens when understaffing continues for YEARS at a time? What happens when "pitching in" just leads to *MORE* pitching in – and there is *NEVER* any reward? This is not just demoralizing; it is crazy-making and illness-causing. It is not unknown that "good" public employees work themselves to the point of hospitalization before they will speak up about unacceptable conditions.

So, what are "unacceptable conditions?" And, if "management has the right to manage," (which means to set staffing levels) what can you do to control them? This is where your Union comes in. The answer is that you DO have the right to take

action over violations of rights, *including your right to a safe and healthy and harmonious workplace*. Your rights are being violated when these kinds of conditions arise:

- **Excessive hours of work**
- **Inability to take lunches or breaks**
- **Inability to schedule or use vacation, holiday or comp time**
- **Encouragement to come to work when sick, or family is sick**
- **Encouragement to take work home or work extra hours "off the clock"**
- **Dangerous working conditions, including working alone when you should be in pairs or failing to take safety precautions due to time pressure**
- **Actual injuries due to the above**
- **Harassment from supervisors for unfinished work**
- **Tension with co-workers caused by understaffed conditions**
- **Working "out-of-classification"**
- **Inability ever to finish work; constant interruptions**
- **Stress-related illnesses due to the above**
- **Poor performance review or reprimands, for unfinished work**

Some of these are simple violations. Others, if left unaddressed, can become expensive workers compensation claims. **Either way, if you or your co-workers are facing a number of "unacceptable conditions," you have every right to request relief.**

How to Initiate Change…

The first step in "requesting relief" is to talk to your supervisor and, possibly, your union rep. It's common for employees to assume that their boss knows more about their daily activities and workload than he actually does. Don't assume this. If you have never told your Manager, directly, that you're overloaded, *do so now*. Be specific; you may want to give him a list of the times you've worked through lunch or been denied vacation requests or worked a 50-hour week. It's reasonable for you to ask who else may be given some of the work – and when. If you don't think he understood the severity of the situation, follow up with an email, and cc your union rep.

If you supervisor tells you that there is no relief on the horizon (i.e. no one new being hired, nor anyone else to take some of your workload) you should consider filing a grievance. Give your union rep a list of your violations and let him or her guide you "up the chain" of command.

A Group Grievance?

If you are working in understaffed conditions, you are probably not the only person suffering. Filing a grievance *as a group* not only lends credence to your complaint, but reduces the likelihood that you will become the focus of your manager's irritation. Your union representative has the task of organizing the list of violations from everyone affected by your information, filing a complaint and arranging a meeting with County Management.

In the meeting your representative will enumerate your complaints. Keep in mind that a grievance is a complaint over *legal violations*; it is NOT a complaint that you have "too much work to do." **Unless you are being denied your negotiated time off, working excessive hours, being harassed, or being made mentally or physically ill, you do not have a grievance.**

The County's response…

Be advised that management's resolution to your grievance does *not* have to include hiring more staff. But it DOES have to address the violations of your rights. They need to provide reasonable work hours, protection against harassment or unsafe conditions, the right to schedule vacations or go to lunch, to recuperate from illness, etc. Your department can do this any way it wishes: assigning the excess work to someone else (unless your *group* has the grievance,) restructuring the work, or simply discontinuing certain functions. Your rep will summarize the outcome of the grievance meeting, for future reference, in a letter to your management.

Some employers are truly "penny-wise, pound-foolish." They abuse subordinates until the abuse results in costly litigation. But the vast majority take legitimate staffing grievances seriously. If nothing else, most managers understand that morale

problems equate directly to productivity problems in the workplace. Employees are angry, overwhelmed or exhausted simply do their jobs very well. (And the best ones *leave the job* entirely.

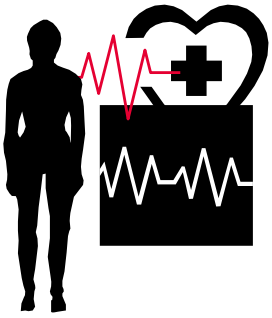
In truth, Management is often unaware of the high level of stress that understaffing has created. Your formal grievance may articulate this for the first time. Further, your formal grievance has the capacity to place your supervisor under *his supervisor's* scrutiny. This is NOT something that he wants to happen. It can be amazing how quickly abusive work conditions may be "relieved" once they are committed to paper!

Ultimately, if you have a grievance which rises to the level of contract violation, you may seek a remedy from someone outside your "chain of command." This might be a Civil Service Commission or Personnel Board, or even to the Public Employment Relations Board. One way or another, you do have the right to insist on a mentally and physically "healthy, harmonious workplace…"

Careful! Last Night's Drink Could Endanger Your Job!

Changes in the Department of Transportation substance-testing rules could mean that last night's beer might endanger your job. The new rules require that if your Breathalyzer result is 0.02% or higher, you will be re-tested for confirmation, with the results reported to your employer. This is the case, even though the legal alcohol limit for Class A and B licenses is (0.04%) or (0.06%).

If you hold a commercial driver's license you are, by law, subject to random testing. If you are selected, it is important to understand that *even if you have had nothing to drink that day,* alcohol consumed the night before may trigger the .02% re-testing procedure. Depending on your body size and metabolism, it is possible to have enough alcohol in your system to cause trouble at work, though you are not intoxicated. In addition to the DOT regulation, if your employer has a disciplinary policy for low levels of alcohol (most do…), you could be subject to major discipline, even termination. Yes, you do have the right to two levels of hearing prior to major discipline – so you will be able to tell "your side of the story," but it would be much better to avoid the problem at all. (And, yes, substance-testing programs are subject to negotiations. But the 0.02% re-testing trigger is mandated by the State.)



Here's a Good Question…

I'm Leaving My Job! What Should I do About Medical Insurance?

Today, no one needs to go without medical insurance. In fact, today, if you're about to be an ex-employee, you have choices that may be confusing. Here's some information to help choose the best option for your continued medical coverage:

COBRA. Whether you're "leaving" is a layoff, a termination, or just your decision to move on, you have the right to continue to use the County's health plan, for a period of at least 18 months, at a cost that is no more than 2% of the full premium for current employees. Most public agencies provide very good health plans; the monthly premiums may be high, but the advantage is that there is no discontinuation of any service.

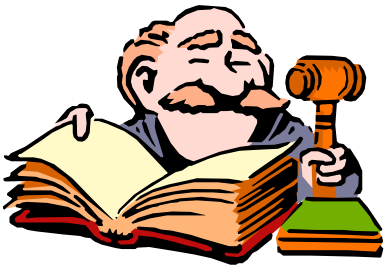
AFFORDABLE CARE ACT. If you are concerned about cost, or won't have a lot of income, you can purchase a plan on the health exchange, Covered California. (In fact, if you leave the state, you can purchase a plan on the exchange in your new location.) Based upon your family size and income, you may well be eligible for a subsidy. If cost is a concern, California Care has plans ranging from "Bronze" (low cost, high deductibles or co-pays) to "Platinum" (probably as good as the plan you have now.)

RETIREMENT. Your employer MAY pay a portion of your continued medical coverage. This benefit is negotiated and will be found in your MOU. Some employers still pay 100% of retiree health. Some pay a portion, often based on a service- /age-based formula. Some pay nothing at all. Almost all agencies enable retirees to continue using the County's plan for life. However, that plan may be expensive, especially if the rates are determined by age. You might find a much better option "on the exchange." HOWEVER, if your employer has been using the PERS Health Plan, your situation will be different, and you should consider continuing with the County's plan. This is because 1) PERS Law requires employers who use this plan to pay a portion of their retirees' monthly premiums. (It's not a large contribution. This year the amount is about $120; it adjusts with the cost-of-living); and 2) PERS law requires that retirees must be able to use the plan at the same cost as ACTIVE employees. This means a LOT: your rates will be (somewhat) controlled, and not determined by your age.

SWITCHING FROM COBRA OR RETIREE MEDICAL TO COVERED CALIFORNIA.
If you opt to use your employer's health plan, under COBRA or as a retiree, and then decide to switch to a plan on the exchange, you can be required to wait for an open enrollment period. The only real exceptions to this occur if you have a "qualifying event," such as *sudden* loss of employment or discontinuation of your COBRA. *So, if you are thinking about leaving your job, it might be wise to think about your health care choice NOW.*

NEW LAW SETS PENALTIES FOR PROVIDING FALSE INFORMATION TO HEALTH CARE EXCHANGE

Individuals who provide false or misleading information in connection with an application for coverage to an Affordable Care Act exchange may now be subject to severe penalties. The penalties are for providing false information which may have enabled the individual to purchase insurance with tax credits or cost-sharing subsidies. The amount of the penalty is determined by the extent of the fraud, but may be as high as $25,000 per application, or $250,000 for multiple applications.



QUESTIONS & ANSWERS

Your Rights on the Job

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

Question: I am an Assistant Civil Engineer. The County wants to change my FLSA status to exempt. The other Assistant Engineers I know of in other public agencies are non-exempt. Is it legal for the County to do this?

Answer: There are federal guidelines, focusing on job duties, which can determine whether your classification should be designated FLSA exempt. If your employer wants to make this change, *even if the "duties test"* points in this direction, the subject is negotiable. If your Union is in the middle of a contract, you need not agree to the change. Or, if there is some benefit to the change (such as administrative leave) you may want to ask the union to agree. Your association staff can assist you in determining if your duties qualify for this change.

Question: Our new supervisor calls employees at home if they call in sick. He says that he's concerned about us, but I think he's really checking up to make sure we're home sick. Can he do this?

Answer: No. If you called into work properly to say you were sick, then you shouldn't be disturbed at home – whatever the reason. Call your union staff if you need help communicating this to your supervisor.

Question: I was wondering if the Family Medical Leave law covers my mother-in-law. She has cancer and is on hospice and living in our home. I would like to be able to take some time off to help my wife with this…

Answer: The basic Family Medical Leave Act covers only spouses, children, or parents (and, of course, oneself). However, many associations have negotiated extended definitions of "family," which include in-laws. So, you might check your MOU for a definitive answer to your question.

Question: Our supervisor has stated that the Department wants us to wear slacks or suits. No jeans any longer. We are supposed to maintain a "professional appearance." There are many people here who wear jeans, tastefully, every day of the week. There are also people in

other departments who wear jeans. Can they just do this? Is there something our Board can do to oppose this?

Answer: Unless you have a written dress code which addresses the subject of jeans, this change is a "unilateral change in terms and conditions." In other words, this change in the dress code is a negotiable subject. If the County wants to ban jeans in the workplace; it should send your Association a *proposal* to do this. The Association Board can agree to negotiate or, if an MOU is in force, the association can "just say no" to bargaining on this subject.

Question: Tomorrow is Election Day and my polling place does not open until 7a.m. I live an hour from my job and I would like to vote before going to work. During the last election I said I would be late to work because I wanted to vote and my boss was obviously irritated about this. He also told me that I needed to use my vacation for this time. I always thought that employers are supposed to allow time off to vote. Can you please clarify for me?

Answer: They must allow time off, if you are unable to vote before or after work. No, you should not be required to use your vacation, but you may be required to provide "reasonable notice" and secure management approval in advance.

Question: I'm on our Association Board and have a member who finally has decided to call for help. She's been working out of class for years, and there is a huge pay gap between her job and the job she has been performing. Do you have any suggestions for steps she can take?

Answer: To start the process, she should get copies of her current job description and the job description of the class that most closely matches the higher-paid duties that she has been performing. She should circle the duties on the higher-paid job spec that she is performing, and add up the total number of hours she spends on these in the average week. This is the basic "evidence" that will be brought out at a grievance meeting.

A grievance over "working out of class" can be resolved in two ways: 1) the employee can be reclassified to the proper position, or agree to a special pay differential; or 2) the County can remove the higher-paid duties. It's often difficult to win retroactive compensation for the time an employee served in an out-of-class capacity *prior to* filing the grievance.

Question: I'm a permanent part-time employee and have been with the County for 9 years. Before going off on medical leave, I was working 35 hours a week. I was on leave for 6 weeks, but when I went back to work, they told me that my new schedule was now only 24 hours a week! Is this legal?

Answer: This sound like a *probable* violation of your rights. It depends on how long your work schedule had been 35 hours, and whether it was considered your normal work schedule.

Assuming that your leave was taken under the federal Family Medical Leave Act, then you are entitled to be returned to the same position that you held before the leave commenced, or to "an equivalent position with equivalent benefits, pay, and other terms and conditions of employment." If your long-term regular schedule was 35 hours, the change to 24 hours could be a violation of your right to an "equivalent position." However, if the 35-hour week was NOT considered your regular schedule, or if other employees in similar job classes had ALSO suffered a similar cut in hours, this would probably mean that your loss is not a violation of your rights.

Question: I am being told that I can't apply for a position (graffiti abatement) because I don't speak Spanish. Is this legal? It sounds like reverse discrimination to me.

Answer: Yes, it's completely legal. The County may establish that speaking Spanish is an essential skill for the performance of the duties of the job, just as "computer literacy" is an essential skill for clerical work or the ability to drive a truck is essential for a Heavy Equipment Operator.

Question: Last Friday I turned in a doctor's slip for three days off starting next week. I'm having ear surgery. Yesterday, my supervisor told me I need to reschedule the leave, because it is an elective procedure, for later in the month in order to cover another employee's vacation time. My surgery is all set. Can they make me reschedule the operation?

Answer: Absolutely not. You might want to *voluntarily* reschedule the procedure for the sake of helping the department out. But you have every right to use sick leave as your doctor sees fit.