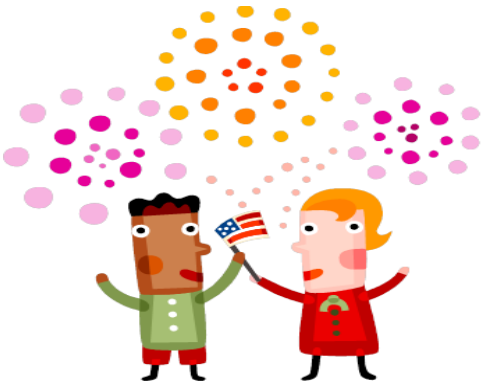
Regional Employees Association of Professionals July 2015 News



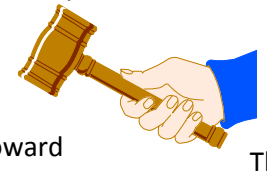
THE GOOD, THE BAD & THE UGLY……..HOW HAS YOUR JOB CHANGED OVER THE YEARS?

Robin Nahin, Association Staff

Although it's not as common as it used to be, many public employees work for the same agency "for life." It's not unusual to run into someone who's retiring after 30, 35 or 40 years of service. Almost always, he or she will say "it was a great job… but it got worse and worse" over the last decade or so.

What they say isn't really a matter of opinion; it's concrete FACT. While government employees' rights improved markedly in a fairly short time span, the work conditions and monetary value of their jobs deteriorated just as quickly. I know. I've been representing city employees since 1980 and have had a "hands on" view of these developments. If you *haven't* been around that long – or even if you have -- you may be interested in some of the very large changes we have seen in the jobs you hold today:

THE GOOD…



Unless you're really studying the issue, it's easy not to recognize the *massive* move toward equality and humanity in the workplace during our lifetimes. At the City where I first worked as a union rep, some management would refer to the Sanitation Yard as "the plantation." The racist connotation was deliberate. The Civil Rights Movement brought about some strong legislation AND enforcement agencies (such as the EEOC) where victims of discrimination could seek redress.

Many people DID seek redress, and in the '80s and '90s a great many public agencies were sued over their racist (and sexist) behavior. The process worked. The culture *did* change. And today, while racism and sexism survive often *covertly,* they are NOT at all tolerated out in the open, in the workplace. The result has been genuine, widespread equality: millions of minorities and women have moved into well-paid jobs in the public sector in California.

Speaking of sexism, there has been another huge development: the huge reduction of sexual harassment in the workplace. This too, was the result not only of good law, but of good lawsuits.

Throughout the 1980s and '90s, I received calls from women who were "bothered" by their bosses, in one form or another, on almost a weekly basis. They tolerated it, or they stayed away from work (sometimes losing their jobs) to avoid it, or they tolerated retaliation for reporting it.

But, eventually, IT changed! Today, the law *requires* supervisory anti-harassment training, and people who make sexual comments or display harassing behavior

can lose their jobs quickly. I won't say that sexual harassment (or harassment in general) is entirely wiped out, but the numbers of overt instances are far, far fewer.

A KINDER, GENTLER WORKPLACE (Really)

Until 1994, there was no law protecting your job while you recovered from an injury, or cared for a sick family member. In 1987, I represented a city employee who was terminated *the day after her child died.* She had used up all of her sick leave, and was fired. It didn't matter that she still had two other children at home to feed.

Today, this can't happen. The Family Medical Leave Act guarantees you up to twelve weeks of leave, and most agencies have disability plans to help "tide you over" if you use up sick leave due to your own illness. The State Disability System also has a family component (although many public agencies still don't contract with SDI). The effects of the FMLA have been massive!

When the Americans with Disabilities Act took effect, also in the mid-90s, no one knew the impact on the labor landscape. City and utility employees have a LOT of injuries; they maintain the physical infrastructure of their communities. Until quite recently, when an employee's injury failed to heal, he simply went "out the door," with the very real likelihood of never holding a decent job again. Today, thanks to the ADA, a significant proportion of injured employees are able to continue working for the same employer.

THE BAD

Beginning in the early '80s, right-wing "taxpayer groups" began attacking public employees in the media. Within a decade, the long-standing, paternalistic view of public employees as helpmates -- "public servants" – was supplanted by a view of you as public *parasites.* After all, if it weren't for your excessive pay and opulent benefits, residents of your community wouldn't pay such high taxes – right? With the recession of 1990-92 (and thanks to Prop 13) cities began attritioning jobs, if not actively laying people off. Cost-of-living adjustments were suspended and "takeaway bargaining" (where the new Contract is *worse* than the previous one) became widespread.

Throughout the '90s and early 2000s, although the economy was booming, the raises and benefits of public employees fell farther and farther behind the actual cost of living. **They have never caught up.** With the Great Recession, most agencies suspended pay increases for five to seven years, while the cost of goods and services continued to rise. **Today the average public employee is 20% to 30% worse off than he was 30 years ago.**

EMPLOYEE "SHARING" OF BENEFITS

Also during the '80s and '90s, the cost of medical insurance skyrocketed. Your insurance today is THREE TIMES the cost that it was in 1990! Do you remember the days when people said government jobs "don't pay as much as private companies," but they come with "full benefits and job security." Not really; not any more. Today's philosophy is employees must pay "their own fair share" of benefits. And what *this* really translates to is: when the cost of your medical plan goes up, YOU must pay most of the increase!

THE *REALLY* UGLY…

From the perspective of 2015, we can see that the entire era from 1980 forward was characterized by a widening gap between the rich and the poor throughout society. If you were to look at your own agency, you'd probably discover that your General Manager makes twice what he/she did during that time (their average income is now over $300,000), while the average County "worker bee" job has not even kept pace with inflation.

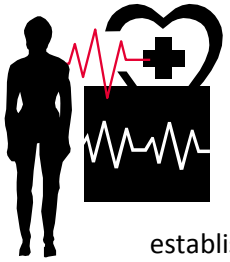
So… just when you thought the insult couldn't get much worse, along came PEPRA. The Public Employee Pension Reform Act "reformed" the system, so that people who fill your job after 2013 retire without nearly the same security.

Guess what the average CalPERS retiree earned in the year 2014? It was $28,400 per year. And this is based on the relatively high retirement formulas, which have been negotiated since 1995. After constant struggle to improve your options from the "2% at 60" plan, to the "2% at 55," to the 2.5%, 2.7% or 3.0% plan, the new PERS formula for all non-sworn "new hires" is "2% at age 62!" This literally wipes out 30 years of struggle!

THE FORECAST

The loss of decent retirement benefits will probably turn out to be the last straw for public employees in California. Your pay and benefits are not better than comparable jobs in the private sector; there is not the same job security; and the pension plan for new employees is roughly equivalent to Social Security. What will probably happen, assuming that the economy continues to improve, is that talented people who want to earn a good living will no longer seek jobs in local government.

We are already seeing staff shortages in some areas, and some cities are already seeking to negotiate special pay increases for certain job classes. Maybe these "market forces," along with some increases in the minimum wage, will truly improve the lot of the average County employee. Maybe not. What we do know, though, is that public employees' *legal rights* on the job are far, far better than they have ever been. This is a good thing, because the next generation of public employees is going to have quite a fight on its hands…



New Sick Leave Law Is NOW In Effect

The Healthy Workplaces, Healthy Families Act of 2014, is NOW in effect, requiring all California employers to provide employees with at least 3 days or 24 hours of paid sick leave per year. The law establishes minimum requirements; it does not preempt other policies that provide greater benefits. (In fact the law specifically excludes employees who are covered by a union contract - if that contract provides sick leave.) Thus most full-time public employees are not affected. HOWEVER, **temporary, part-time, and seasonal employees, even those at public agencies, WILL BE affected. If they work 30 or more days in a calendar year, they will now have paid sick leave.**

ACCRUALS AND USAGE

Under this law, employees will accrue at least one hour of sick leave for every 30 hours of work. Unused leave will carry over to the next year, up to a cap of 48 hours. Sick leave has no inherent monetary value. Unlike vacation, employers are not required to cash it out upon separation.

Sick leave may be used for diagnosis, care, or treatment of an existing health condition, or preventative care for an employee or an employee's family member. Employees may begin using their leave after 90 days of employment, and employers cannot condition the use of leave on an employee's finding someone else to cover a shift. Employers are also required to: 1) give employees written notice of the amount of paid sick leave they have available; 2) post information in the workplace about the law and; and 3) record employee's hours worked, as well as sick days accrued and used.

RETALIATION FOR EXERCISING RIGHTS UNDER THE NEW LAW

Employees may report violations of the new law to their union or to the State Labor Commission. It is illegal to retaliate against an employee for reporting a violation. The law creates a "rebuttable presumption of retaliation," which means that if an employee suffers an "adverse action" with 30 days of filing a complaint, the Courts will assume that this action is a matter of employer retaliation.

HOW MUCH IS YOUR TIME WORTH?

Who's responsible for the time an employee spends "preparing" to do his or her job: putting on a uniform or protective gear, scrubbing up, sharpening tools, conducting a safety check? Although the US Department of Labor has, since the 1950s, held the opinion that "**prep time" is work time,** that opinion had been "forgotten" over the years. So, in 2008 when the employees at a chicken farm in Texas and Louisiana sued for years of back wages for time spent putting on hairnets and gloves, sharpening knives, sanitizing work areas and walking to the assembly line, the Court agreed that they were entitled to millions of dollars in back pay – *and this decision had ripple effects, nationwide.*

The chicken company defended itself by saying that the time spent on "prep" was only a few minutes a day, amounting to no more than $15 per week for anyone. The legal term for this is "de minimis," implying that the time is so minimal that it's not worth counting. The Court disagreed, and asked: "de minimis to whom? **When you are making $8 per hour, $15 is a lot of money…"**

Is YOUR Prep Time "de minimis?"

In public agencies, most employees make more than $8 per hour. But this does not mean that they don't spend a good amount of time "*prepping."* Generally, this means putting on uniforms, checking vehicles, turning on lights or equipment, opening doors or shades, preparing cash drawers or setting up a counter for public operation. Most employees clock in as soon as they arrive at work. Often, however, they are told *not* to clock in "until the door opens" -- or until the crew leaves the yard. These directions violate the Fair Labor Standards Act. The time an employee spends at work, getting ready for some *other work*, is STILL paid time.

Working from Home… "de minimis?"

"Prep time" is not the ONLY time where employees may be working without appropriate pay. If you work from home, your employer cannot tell you that this time "doesn't count." Even if you are not *at the physical workplace,* your time spent on work is considered paid time. This is true, e***ven if this is only a few minutes,*** on the computer or the phone.

Again, "de minimis" to whom? If you are bothered at 2:00 a.m., even if only for five minutes, is this "de minimis?" What if this happens several times a week? The law clearly says that ANY TIME spent working is time which must be paid….

"Standing By…."

Similarly, employees are sometimes told that they need to "be available" to help with off-duty emergencies, but that they are "not really" on standby – which means that they shouldn't *really* expect to be paid. Or they might be told to remain on-site or to "keep your radio on" during lunch. Employers often say "well, you won't really be working… just keeping your ears open." **Both of these circumstances are violations of the law.** If you're expected to BE at work or be monitoring equipment at work, *you're working…*

The legal guideline for determining whether an employee is actually *working* when "on call" has to do with control: **"any time an employee is subject to the control of the employer" s/he must be paid.** So, if an employee *must* answer a phone or beeper or *must* remain within a short distance from the job or *must* be in work-ready condition during non-work hours, s/he must be paid for "standing by." Similarly, a person who is not free to leave the building or to turn off his public radio is "under control of the employer*," no matter how else he or she spends the time.*

Working Remotely is STILL Working…

Work is work, no matter where it is done. With the increased use of computers and smart phones, huge, complex operations can be run remotely! This means that larger and larger numbers of employees are at home, or at family functions, or even on vacation, "just responding to email," or "just tweaking the program." *Again, if they are not paid, it's a violation of the law…*

The Big Picture

For most public employees, the workplace is less pleasant and more exploitive than ever before. Hours are long, departments are understaffed, and pay and benefits fail to keep up with inflation. **All of this makes your time more valuable than ever.** Work conditions that take advantage of employees' good will (whether it's "please arrive a few minutes early," or "please keep

the door open during lunch," or "please help us out at the parade") are circumstances which increase the number of hours you work *without increasing their pay*.

What amount of "di minimis" time is acceptable to you? Are a few minutes "off the clock" worth filing a grievance for? Are few phone calls at home worth making a request for overtime? This is entirely your decision. **How much is your time worth?**

New CalPERS Medical Rates Are In

The new CalPERS rates, which will go into effect January 2016, are below. *The rates are based upon the county in which you live.* The increases are HIGH this year, averaging 10%, but some plans did come down. Keep in mind that *if your Agency's medical plan is CalPERS,* this October is your "Open Enrollment Period" and you may want to look at changing plans.

<u>Employer contributions vary from agency to agency,</u> and they are completely negotiable. You may want to look at your Association's MOU to before deciding whether to change *your* medical plan. (Even if your employer is NOT in CalPERS, these changes will be felt in YOUR plan…)

Basic	2015			2016			Percent Change (+/-)
	Single	2-Party	Family	Single	2-Party	Family	
Basic Premium Rates - Los Angeles Area							
Los Angeles, San Bernardino, and Ventura							
PERS Choice	585.18	1,170.36	1,521.47	598.75	1,197.50	1,556.75	2.32%
PERS Select	576.49	1,152.98	1,498.87	547.55	1,095.10	1,423.63	-5.02%
PERSCare	647.11	1,294.22	1,682.49	666.91	1,333.82	1,733.97	3.06%
Basic Premium Rates - Other Southern California							
Fresno, Imperial, Inyo, Kern, Kings, Madera, Riverside, Orange, San Diego, San Luis Obispo, Santa Barbara, and Tulare							
PERS Choice	594.40	1,188.80	1,545.44	683.71	1,367.42	1,777.65	15.03%
PERS Select	585.58	1,171.16	1,522.51	625.20	1,250.40	1,625.52	6.77%
PERSCare	657.32	1,314.64	1,709.03	761.50	1,523.00	1,979.90	15.85%

STATE SENATE CONSIDERS OVERHAUL OF PROP 13

When Proposition 13 passed in 1978, it was hailed as salvation of working-class homeowners whose property taxes were, literally, pushing them out of their homes. The law worked by <u>blocking</u> increases for people who stayed in their homes, and adjusting the rates only when a property is sold.

This was really good for the elderly and poor, who still had houses. But it was really bad for young people and first-time buyers, especially as housing prices skyrocketed and then plummeted *twice* since 1978. It was also really good for corporations and agribusinesses, whose property ownership almost never changes. And it was absolutely terrible for the State budget, and for the people, programs and agencies that depend on state funding to provide their services.

Prop 13 is the reason that so many city governments have had to enact local sales and utilities users' taxes. Many people don't remember that the first real effects of Prop 13 were felt in 1989 and '90, when almost all city budgets hit rock bottom, and many agencies instituted cutbacks and layoffs.

One of the reasons that the Recession was deeper in California than almost any other state -- and one of the reasons that our layoffs of public employees were the *highest in the nation* – is that our economy is entirely tied to the (unstable) housing market. We were hit not only by the dropping sales tax but by the near-collapse of the housing market. There wasn't a city, county or local district that didn't feel the pain. **And, as we speak, there is nothing to stop it from happening again.**

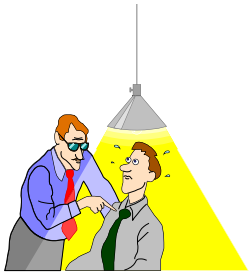
Clearly, therefore, legislation which can mitigate the losses caused by Prop 13 without hurting moderate-income home owners would be something to celebrate. Such legislation has been proposed by several Democratic senators and is before the Legislature now. The measure would allow regular reassessments of offices, factories and other buildings, ensuring that they are taxed at closer to current market value, while having no impact on residential property. It would require businesses to "step up to the plate" of property tax, even if they have not changed hands for generations.

This "amendment" to Prop 13 is being supported by unions and public employee advocates, statewide. It would not apply to private homes or agricultural property, and there would be special exemptions for small businesses. If approved by the Legislature, it will be placed on the ballot in November 2016. Supporters say it could raise $9 billion for schools and local governments, where it will be felt immediately in classrooms and communities.

The majority of the legislature supports such a tax reform, and a recent poll of 1750 households shows 60% support. However, this bill has an uphill battle. First, it will require a two-thirds vote of the Legislature (which means it MUST get bi-partisan support) and second, it will be *actively* opposed by businesses, chambers of commerce, and their lobbyists. A similar bill, one which would have curbed the ability of businesses to evade reassessment when a building changes hands, was defeated last year.

We will know more within a few months. If the measure isn't approved by the Legislature, supporters could still collect signatures to place it on the ballot. According to the AFL-CIO website, there is a group of employee activists standing by to do just that…

Public Officials Convicted of Felonies Can Lose Retirement Benies…



Several years ago, in response to a San Juaquin County Sheriff who retired on his $140,000 pension after pleading guilty to mail fraud, the California legislature passed AB 1044. The law established that any elected public officer convicted of a felony arising out of his or her official duties will forfeit all rights and benefits earned during the period of elected office. Those crimes that are considered "arising from official duties" include bribery, embezzlement, extortion, theft of public money and perjury.

The law covers official who may be enrolled in PERS, STRS (the State Teachers Retirement System) or the twenty county retirement systems covered by the 1937 County Pension Act.

How prevalent *are* convictions of public officials for crimes committed in office? Data provided by the federal Justice Department reveals that between 1993 and 2012, nearly 1200 public officials were convicted of bribery, embezzlement, conspiracy, mail fraud or money laundering…

Here's a Good Question:

Why Am I a Contractor Instead of An Employee?

QUESTION: I've been working as a contract engineer with the County for nearly five years. I work on the County's computer system, under the direction of the Department Head. I receive medical benefits, but not retirement, and I'm told that I'm at-will and cannot join the union. Lately I've been wondering: what is the difference between a contractor and an employee, and whether I might have grounds to argue that I'm an employee?

ANSWER: There are strict federal guidelines surrounding this question, which are violated in thousands of workplaces every day. **The key question is: who controls the manner and means by which you perform your job?** In a LEGAL independent contractor situation, a worker is hired for her expertise and is paid by the job. She controls how the project gets done, pursuant to her individual contract. The absence of an individual, written contract is one indication that a contractor is more likely to be an employee – and there are several others:

1) Whether she performs her duties at the employer's worksite, 2) Whether she uses her own tools and equipment or the employer's, 3) Whether she works regular hours or sets her own hours of work; 4) Whether she takes direction from a manager of the employer or works autonomously, rendering "independent decision making;" 5) Whether she receives benefits or leave accruals from the employer; and 6) Whether she bills the employer for services rendered or receives an ongoing "paycheck."

Employers that hire employees as contractors are able to evade a myriad of employment laws, as well as workers compensation, unemployment and basic employment taxes. Public employers violate the law as often as private companies. In 1999, 700 "temps" working for the Metropolitan Water District sued over this issue, and the agency was compelled to pay their back taxes AND their PERS contributions for seven years, retroactively.

There is an entire department of the IRS devoted to catching and correcting these "employee designation" violations. If you believe that you are misclassified as a contractor, you can also go to the California State Labor Commission and/or directly to CalPERS.

Working in High Temperatures

The US Department of Labor has just released guidelines to employers on hold to prevent heat-related illnesses in the workplace. The directions are pretty simple:

1. Provide water, rest and shade;
2. Acclimatize new employees or those who have been off the job for more than a week by gradually giving them full workloads and allowing them more frequent breaks;

3. Modify work schedules for anyone who complains about serious heat-related discomfort;
4. Monitor employees for signs of illness;
5. Plan for emergencies and train employees about what to do if they (or co-workers) exhibit symptoms of heat-related illness.

Public employees do a LOT of manual labor, in confined spaces AND outside, in the heat. According to the Feds, those occupations most affected by heat-related illness are: construction, transportation and utilities; agriculture; building and grounds maintenance; landscaping and park maintenance; and support activities for oil and gas operations.

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.

Who is affected?

Any employee exposed to hot and/or humid conditions is at risk, especially those doing heavy labor or using or wearing bulky clothing and equipment. People who have not yet built up a tolerance for hot conditions are particularly at risk. Further, working in full sunlight can increase the *impact* of hot wealth (the "heat index value" by 15 degrees).

To Reduce the Risk of Heat Illness, employees should:

- Drink water every 15 minutes, even if you are not thirsty.
- Rest in the shade, often to cool down.
- Wear a hat and light-colored clothing.
- Closely monitor your physical condition and know what to do in an emergency.
- Keep an eye on co-workers.
- Don't work too strenuously on your first days of work in the heat. You need to adjust.

If your employer doesn't enable you to maintain these healthy work conditions, they may be reported to Cal-OSHA ((the Occupational Safety and Health Administration.) OSHA sets standards, *which employers must follow,* for providing shade, water, and rest breaks. Employers who violate these standards may be reported, anonymously.

What you should know about potential heat exhaustion:

Heat exhaustion occurs when one's body cannot 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) and 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 fluids such as water and sports drinks. Avoid alcohol and drinks with caffeine, which can cause dehydration. Also, be aware of the fact that some medications, including antihistamines, certain antidepressants and tranquilizers, can increase the risk of heat-related illness.

Department of Labor Cites "Underlying Changes in Economy" Reason for Rising "Wage Theft" Claims

The federal Department of Labor is reporting a "rising tide" of cases (the largest number of which come from California) which accuse employers of violating minimum wage and overtime laws, "erasing" work hours and wrongfully taking employees' tips. The term for these practices is "wage theft."

The Department asserts that more employers are violating wage laws than ever before, and that this may be caused by the fierce competition between companies brought on by the recession. In other words, businesses that are "close to the edge" themselves have a lot of motivation to "cut corners" on employees' wages.

The most common violations are overtime violations: advising employees not to record their "extra hours" as overtime on time cards, or to "flex hours" so they don't really go over 40 a week. In California, our Labor Commissioner recently ordered a janitorial company in Fremont to pay $332,675 in back pay and penalties to 41 employees who cleaned supermarkets. The company had forced employees to sign blank time sheets, which it then used to record inaccurate work hours.

David Weil, director of the federal wage and hour division, says wage theft is surging because of increasing use of business structures which are largely designed to evade labor and employment laws: franchises, subcontractors and temp agencies. Using an outside agency enables employers to "deny knowledge" of wage violations. This was the case with a dozen housekeepers at a Las Vegas hotel who were told by their temp agency that the hotel had not paid for their services. They went to the hotel, who advised them that it HAD paid the temp agency. It took a federal claim to get to the bottom of the "wage theft:" the hotel.

"We have a change in the structure of work that is compounded by a falling level of what is viewed as acceptable treatment in the workplace… and this is compounded by an increasing lack of regard for the law," Mr. Weil said. His agency has uncovered nearly $1 billion in illegally unpaid wages since 2010.

While the victims of wage theft are disproportionately immigrants, California's commissioner said, "My agency has found more wages being stolen from workers in California now, than any time in history." She says this is found in "all sectors," including public agencies. "It's

affected not just minimum-wage workers, but also the middle-class."

Here in California, for example, a federal appeals court has just ruled that FedEx committed "wage theft" by insisting that its drivers were independent contractors rather than employees. FedEx required hundreds of drivers to work excessive hours, without paying overtime. Overtime is required for employees; but most employment laws don't cover contractors.

At all levels of enforcement, government agencies are reporting that employers "seem almost proud" of their tricks for avoiding the law. New York's attorney general, Eric T. Schneiderman, who has recovered $17 million in wage claims since 2012, says "I'm amazed at how petty and abusive some of these practices are. Cutting corners is increasingly seen as a sign of libertarianism rather than the criminal behavior that it really is."

Questions and Answers: Your Rights on the Job

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

Question: I am on our Association's Board and have been subpoenaed to respond to an employee lawsuit which partly involves our agreements at the bargaining table. I'm happy to testify but I know that Management won't like my answers to certain questions, and am worried about retaliation. I can't afford to lose my job. What should I do? Also, they have subpoenaed my email. Must I provide this?

Answer: You are required to testify truthfully and produce the subpoenaed documents, including email. A subpoena is a court-ordered command so a person who fails to obey it may be subject to contempt charges. Your employer is prohibited under various state and federal laws from retaliating against you for testifying. There is nothing wrong with raising your concerns about retaliation *in advance* with the County. Your union representative can send a letter or email to Management, mentioning that you will be testifying and reminding the County that retaliation, in any form, is strictly against the law.

Question: I am about to get braces on my teeth and will be visiting the dentist at least every 4 weeks. Will I be able to use my accumulated sick time for this procedure? Do I have to get my supervisor's approval? The orthodontist only works Tuesdays, Wednesdays and Thursdays, so I will need to go during work hours. Can my supervisor deny me the right to do this?

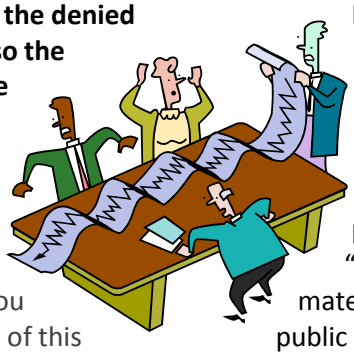
Answer: An employee is entitled to use sick leave to have dental work done. However, your supervisor can require advance notice of appointments. Management can ask you to schedule your appointments outside of work hours, but cannot require this. You should be prepared to explain that the orthodontist only works certain hours.

Question: Our department manager sometimes takes months before he presents employees with write-ups for events that took place months prior. Are there any limits on how long management can wait before presenting employees with writes up or disciplinary actions over past incidents?

Answer: Generally there is no time frame in which management must impose discipline. However, if an employer fails to take action in a timely manner, this failure can be part of the employee's defense. Not only can he argue that everyone involved in the incident may no longer have clear memories, but the employer failed to follow principals of progressive discipline. These principals require an employer to take timely action so that the employee 1) has a chance to respond to allegations immediately and 2) can correct his behavior, so the problem doesn't reoccur.

Question: I work in the Police Department, and I often work on holidays. The County gives us "floating holiday hours" to compensate for this, but they must be used up by the end of the calendar year. Our area is always short-staffed, so it is always

difficult to take time off. We are often the denied the opportunity to use our "floaters," so the time is simply lost. Is there anything we can do about this?



Answer: Yes. It's perfectly reasonable to ask your Management to either extend the period during which you may use the time OR allow you (and your co-workers) to cash out some of this time. You can ask your union rep to help work this out. Ultimately, the denial of the right to use a negotiated benefit is grievable.

Question: Does our employer have the right to view emails between members of our Board that are transmitted through work email if the subject is bargaining related? Could the public see these?

Answer: Your employer has the right to view any emails on its own system. This includes emails that are bargaining related. Under political pressure, some agencies are enacting "transparency" ordinances, which can make all materials related to contract negotiations subject to public review. You DO have the right to use County email and communication is important. Further, most union communications are not exactly high-level secrets and it is highly unlikely that employer is closely monitoring your email. However, if you are concerned about the need for complete privacy, it would be best to use private email accounts.

WHO YOU GONNA CALL? (For Help with a Work-Related Problem)

Your Employees Association is your Labor Union, and one of the primary obligations of a union is to help its members with workplace problems. Your Association staff is trained to know labor and employment law and to provide day-to-day help when you need it on the job. You can reach our staff (Robin Nahin, Director, attorneys Brian Niehaus, Jeff Natke, Oshea Orchid and Vicky Barker; and union reps, Marjeli Cruz, Nik Soukonnikov, Mary LaPlante, Andy Lotrich and Rich Anderson) at 562-433-6983 or cea@cityemployees.net.

Often employees are told that it's "improper" to go "outside the chain of command" for help with a problem. This simply isn't true! Your Association is your EXCLUSIVE LEGAL REPRESENTATIVE for resolving workplace grievances. Your Association Board is legally mandated to represent you in meetings with Management (although you may also always represent yourself or retain your own legal counsel). **You have the right to talk to anyone you want to about any subject that affects your job, and you have the right to be represented in many interactions with your employer.**

HOWEVER, the Association is NOT necessarily the best source of information on ALL subjects! Sometimes it's the Payroll Department that has the answer; sometimes it's your Human Resources Department. Sometimes, it is an outside agency or a specialized professional (such as a workers comp attorney.) You should always feel free to ask our staff at CEA for assistance. If they are not the right people for the job, they will provide a direct referral. Here is a good summary of who to call and the best way to start to solve certain kinds of problems:

WORKERS COMPENSATION AND ADA HELP

Your union staff has *some* training in workers compensation, but cannot represent you in court or give actual legal advice. Most of the time you DON'T need a lawyer. Call Association staff for help if the County isn't taking proper care of your needs on the job or if you are being called to an "Interactive meeting" to see if you are able to continue to work." If your workers comp claim has been denied, or your injury is so severe that you will never be able to return to this workplace, you WILL need a lawyer. Your union staff can put you in touch with a good one.

OUT OF CLASSIFICATION WORK

If you're regularly doing work that's not part of your job, call staff or start the "conversation" yourself by

talking to your supervisor about an upgrade. Don't pursue a grievance without help.

INADEQUATE OR INCORRECT PAYCHECK

This is often an honest error. Go directly to the Payroll Department or the person who handles timecards in your department. If it turns out that you have a dispute with the County (i.e. you think you should have gotten more money and they don't) call Association Staff.

RETIREMENT AND BENEFITS

Association staff can tell you A LOT about how the PERS system works, but cannot provide details about your particular situation. Call CalPERS (or your retirement administrator.) If you are having difficulty with the medical plan OR are not receiving the proper contribution from the County, talk FIRST to your County's Human Resources Department. If you continue to get the run-around, call Association Staff.

MINOR DISCIPLINE or QUESTIONING

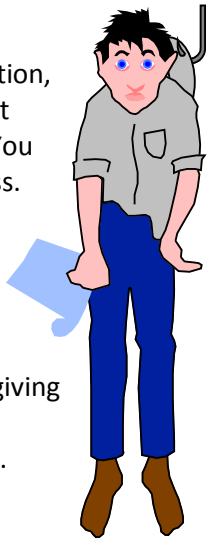
If you are called into a meeting, and would like representation, you need to ask for it. You have the right to a representative of your choice, but the County is not required to tell you this. Call staff!

You DO have the right to know the purpose of the meeting in advance. If the purpose is simply to hand you a letter, you don't need a rep. Take the letter, read and sign it. If you disagree, write "I disagree and intend to appeal."

Unless your MOU strictly prohibits this, you have the right to appeal ANY discipline: an oral or written reprimand, a "personnel action," even a negative performance review.

MAJOR DISCIPLINE

If you are threatened with suspension, demotion, termination or reduction in pay, Management must put this *proposed* discipline in writing. You have the right to a full, formal appeals process.



Although the letter may tell you that a meeting is scheduled for your appeal, you have the right to representation and your rep may change the date of the meeting. Don't engage in discussions with the person giving you're the letter. Receive it, sign it (this only indicates that you've read it) and call for help.

GRIEVANCE

If you think you are due some pay or privilege or benefit, but have been denied, the first step is to ask your immediate supervisor about this. If for some reason, you're uncomfortable making this request, your professional rep can do this for you. Making this request for some "wrong" to be "righted" is essentially the first step in a grievance.

If the problem isn't resolved by an informal conversation, you (and your rep, if you choose) can go "up the chain of command," ultimately to the General Manager, Civil Service Commission, a 3rd party arbitrator, or the Public Employment Relations Board.

You are always welcome to call staff to talk about problem before taking any action at all.

HARASSMENT

If you believe you are being harassed, threatened, intimidated or treated unfairly, feel free to call Staff. You might -- or might not -- have grounds for a grievance. Staff can help you figure this out, as well as the best course of action.

ALTERNATELY, you might want to go to someone from your Agency's Employee Assistance Program (EAP). This program includes therapists who cannot only help you cope with work-related stress, but can get your problem "on record." Work-related stress *can* make employees ill. The "EAP" can document your situation in case you need to file a workers compensation claim.

By the way, the Union doesn't "take sides" in conflicts among co-workers. But it does represent you in correcting violations of your rights – including the right to a safe, healthy workplace.

CONTRACT BARGAINING; DUES COLLECTIONS, ETC

If you want to know how the Association works, how it functions as your "exclusive legal representative," how bargaining works, or how to become more involved, call your Board Rep or professional staff.

If you have a NON-work legal question or problem, you may call our OUTSIDE attorneys, John Stanton (714) 974-8941 or Brian J. Ramsey Tredway, Lumsdaine & Doyle at (562) 923-0971. for a free consultation. This is available to employees represented by City Employees Associates.