# *Regional Employees Association of Professionals June 2014 News*

## How the Public Employment Relations Board Enforces Employee Rights

When Senate Bill 739 passed in 2000, it granted "local government employee organizations" the right to take cases before the Public Employment Relations Board (PERB). This was a revolutionary change in labor relations for cities, counties and utility districts. For the first time, even the smallest organization gained the ability to enforce its MOU without the trouble or expense of going to Court.

In fact, an organization does not even need to go to the trouble of exhausting its local grievance procedure before going to PERB. If your employer is "unilaterally modifying" your Contract -- which means changing or ignoring it, in the middle of the term without benefit of negotiations -- your union may file a complaint directly at PERB. You may also file directly at PERB if your County fails to bargain in good faith, or attempts to implement a new Contract without properly completing the bargaining process.

Over the last dozen years, we have seen how the access to PERB has changed the relations between labor and management in many agencies. There is no question that management has much greater respect for the rights of union members, even in the smallest agencies. This is because they understand that you can AND WILL enforce your rights at PERB. If your County decides to change some aspect of your wages or benefits (or even daily work conditions,) or fails to adhere to "good faith" bargaining, your Association may file, quickly and affordably, for a hearing at PERB. And, when you do, your case is then heard by professionals in public sector labor law, against a backdrop of thousands of past decisions on similar matters.

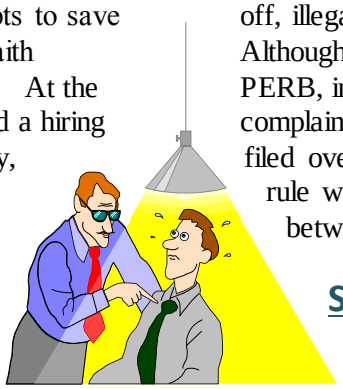
### How does PERB actually work?

PERB is comprised of a Board of Directors appointed by the Governor, and a staff of attorneys and judges. There are three regional offices: San Francisco, Sacramento, and Los Angeles. Once a union files a charge, it is reviewed by a "screening" attorney. If it is found reasonable, the case is set for a more thorough investigation and a mediation session at the PERB office. Many cases are settled when the parties sit down with a skilled mediator to work out their differences.


If the case isn't settled through mediation, it is assigned to an administrative law judge for a full hearing. This hearing may take several days and involve witnesses, evidence and legal briefs. The judge has the power to order your employer to restore lost pay or benefits or prior working conditions. He can also force the County to post information in the

workplace, admitting its error. The judge's decision is legally binding, although either side has the right to one more appeal step: PERB's Board of Directors. It's extremely unusual for PERB's Board to overturn a judge's decision.

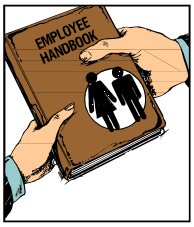
**Free and (sort of) Fast** PERB was designed to be a quick, low-cost method for labor and management to resolve their disputes. Until 2009, this model worked well, and most matters were either settled at the mediation step or heard, formally, within a few months. The Great Recession changed all this, however. The number of disputes on PERB's docket skyrocketed, as employers' attempts to save money often "crossed the line" of good faith bargaining and outright contract violation. At the same time, PERB, a state agency, suffered a hiring freeze and severe understaffing. So, today, it's not unusual for a simple claim to take two years for resolution.



## What Kinds of Problems Can PERB Solve?

**PERB does NOT hear ALL disputes** between employees and employers. It hears "unilateral violations" (which are basically repeated contract violations,) claims of improper bargaining, and claims of retaliation for union activity. PERB can also render a decision on the "reasonableness" of local rules, if they appear to conflict with state labor law. This is significant; many local agencies have obsolete rules or procedures that run afoul of newer, fairer laws.

**Only unions have "standing" at PERB**; not individuals. The one exception to this arises when an individual believes he has been punished by management for a "protected activity:" serving as a union or filing a grievance. PERB does NOT hear individual disciplinary appeals.




## PERB ENFORCES THE "MMBA"

**The state law by which PERB measures "reasonableness" is the Meyers-Milias-Brown Act.** The MMBA is the law which establishes your Association's right to exist, to bargain a contract, to collect dues (and to require *everyone* to pay dues or a service fee.) Since its passage in 1968, the MMBA has been "fleshed out" in the Courts such that today, a PERB hearing officer can quickly determine whether your agency may be breaking your contract or refusing to bargain fairly.

For example, since January 2012, when the MMBA was modified to allow unions to call for fact-finding before their employers may impose a "last, best offer," PERB has been hearing cases, brought by unions, where impatient employers imposed new contract terms *without* waiting for fact-finding to be completed. Since the recession started, they have also been hearing many more cases where employers have declared impasse illegally; imposed "takeaways" or furloughs illegally; allowed changes in "terms and conditions" to go on the ballot, illegally; contracted out jobs, illegally; laid people off, illegally; or changed their benefits, illegally. Although both labor and management have access to PERB, in reality, almost all Unfair Labor Practices complaints are brought by unions. A "ULP" may be filed over the violation of any Contract or written rule which has been the subject of negotiations between the parties.

## Some examples of ULPs are:

- "Union Busting": refusal to recognize or work with the employee organization. Attacks against union leaders.
- Retaliation or threats to employees for filing grievances, participating in politics or serving on bargaining teams
- Refusal to bargain or bargaining in "bad faith." Imposing changes in "terms and conditions" without completing negotiations.
- Violations of the MOU (or even "past practices") by reducing pay or benefits, without bargaining.
- Refusal to deduct dues from the employees' paychecks or implement an Agency Shop agreement
- Violating "union security" clauses by filling bargaining union jobs with "temps" or contracting out, illegally.

These are just a few examples of cases within PERB'S purview. One need not be an attorney to file a PERB claim – although the process is quite legalistic. For more information, please call your Association's legal staff or take a look at PERB's website: www.perb.ca.gov. The website includes information of PERB's procedures, filing forms, the history of the law and the Board's previous decisions

## CAN THE COUNTY MAKE YOU TAKE A PERSONALITY TEST?

**Psychological and aptitude testing are often used by employers when they are trying to find the best candidate for promotion or trying to unravel interpersonal problems in the workplace. The question is: when do these tests "cross the line" into invasion of privacy, or even violate your rights under HIPPA, which guarantees confidentiality of your medical records?**

**The answer is that, in general, as long as the questions are limited to legitimate topics, employees can be compelled to answer them.**

**But what is a "legitimate topic?" Which Tests Are Legal?**

**First of all, an employer must have a sound, work-related reason to require a current employee to submit to any testing. The employee has the right to ask for the reason and, if he believes it ISN'T legitimate, to refuse to participate. The burden then rests with the employer to threaten disciplinary action if he doesn't cooperate. Then the employer would have to PROVE that the employee's (or Agency's) continued effective performance was in jeopardy.**

**Second, it is illegal for the employer to ask questions about personal issues, which invade employees' privacy. Unfortunately there are no simple criteria for defining "improper, personal questions." The courts deal with these issues on a case-by-case basis, looking at the totality of facts and circumstances.**

**As a rule of thumb, common sense can help you assess whether a question is inappropriate: if it makes you very uncomfortable or seems unrelated to your job, you are likely within your rights to refuse to answer. If an employer inquires into your sex life, or asks about your religious or political beliefs, for example, you are probably protected from participating in the interview.**

## No Retaliation for Exercising Your "Family Responsibility Rights"

Just twenty years ago, you could have been fired for taking time off the job to stay with your child in the hospital. But, with the passage of the Family Medical Leave Act, in 1994, most employees gained the right to take up to 12 weeks of time off the job, without threat of termination. Family Medical Leave time is NOT paid time, but you do have the right to use all accrued sick leave and vacation if *you* are the subject of the leave. In 1999, the law was improved, in California, to enable employees to use up to one-half of their annual sick leave accruals to care for ill family members.

One big piece was left out of the original FMLA: the piece that made it illegal to retaliate against employees for exercising their right to USE the law. It can be a real bother to employers when an employee disappears for weeks at a time with a sick child or spouse. Retaliation was (and still is)

common. So, in 2003, the California legislature upgraded our state family leave law (the CFRA) making it a crime to retaliate or discriminate against an employee for *exercising* this right.

Retaliation isn't necessarily termination. It can take a variety of uncomfortable forms, intended to embarrass or harass employees into coming to work, or (perhaps…) drive them out of the workforce completely. Retaliation could be the failure to promote someone because he used "too much time off" under the FMLA. It could be the failure to provide a merit increase, negative comments on a performance review, assignment to the most unattractive work schedule or duties, or constant requirements to bring doctors slips when the employee takes time off. Recent cases which have been heard by the courts include:

- Termination of a pregnant employee because she can no longer meet the physical demands of the job;
- Failure to promote someone with a disabled child, because she "can't be fully dedicated to the job";
- Refusal to provide a flexible work schedule to an employee who must take a parent for medical treatments;
- Fabrication of performance deficiencies to justify dismissal of an employee who "used too much sick leave" under the FMLA.
- The layoff of a long-term employee, who was also the primary caretaker of a disabled spouse.
- Letters of reprimand sent to an employee for using "excessive sick leave," despite her long-standing FMLA status for a chronic neurological condition.

## Retaliation has a "Gender Bias"

The majority of victims of FMLA retaliation and discrimination are women. Why? Because the majority of USERS of the FMLA, for non-work injuries, are women. Women DO take time off the job to bear children. They also take more time off the job to care for *sick* children -- and for sick parents. Whether they are conscious of this or not, employers discourage the use of time off under the FMLA and want to reward people who DON'T use much time off. Although these impulses are perfectly reasonable, if they take the form of actual barriers to promotion, or disparate treatment on the job, they are illegal.

Simply put, it's illegal in California to discriminate against employees for exercising their "family responsibility rights." Many of the cases brought to court under the 2003 statute share a common characteristic: each arises out of conflict between the needs of the employer and the needs of the employee to take care of his/her family. Although we have made a great deal of progress, these cases show that there is still an assumption that mothers/women are less committed to their jobs and that fathers/men should be at work – not taking time off with their children. There is a built-in assumption that employees who also function as care givers are distracted and unreliable, and it is hard for some employers to resist reminding them of this, in all kinds of petty forms.

If YOU have been the victim of retaliation for exercising your rights under any of the family leave laws, feel free to call your staff at the CEA office: 562-433-6983 or cea@cityemployees.net.

# Disability Insurance: A Primer

Everyone knows that if you're hurt *on the job,* you are covered by workers compensation. But what if you fall off a ladder at home, or are in a car accident *on the way to work?* What if you have a heart attack and need to be hospitalized? Your loss of income will not be covered unless you have disability insurance – **and there is no obligation for public employers in California to provide disability insurance.**

Over the last two decades, more and more public agencies have begun to implement disability plans, but this is often a topic which unions tend to skim over – until something goes wrong. Often, holes in a disability plan only become apparent when it is too late, for example, when an employee files and is denied because the plan has a 30-day "waiting period," or it doesn't cover pregnancy, or it doesn't cover employees with less-than-full-time work schedules (who may be working less than full-time because of their illnesses…) So, what follows is a summary of your Association's options and considerations when looking at disability insurance. If you have specific questions, you have the legal right to review your employer's "plan document" and you may always call staff at the CEA office for assistance: 562-433-6983.

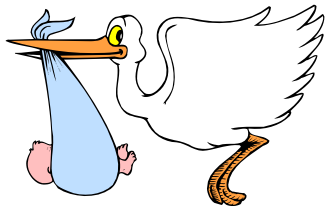
## STATE DISABILITY INSURANCE

Yes, the State does have a disability program. It's called SDI: the California State Disability Insurance program. It's administered through the Employment Development Department, and private companies are *required* to participate in SDI, or to have permission from the State to opt out.

Public agencies have no such mandate, but this is not necessarily a bad thing for you. **SDI is fairly expensive and it is employee funded.** Employee contributions are made via payroll deduction and the withholding rate, this year, is 0.8 percent of your salary. There is a taxable wage limit of $86,698 so no employee pays more than $694 per year for this insurance.

Most cities and water districts *don't* participate in the SDI system, but some voluntarily do. Again, it's a negotiable subject. It's an expensive program, but there are some big advantages to SDI. First, it has only a 7-day "waiting period" (while many private plans have a 30-day "wait.") Second, it provides substantial coverage of your lost income. Based on a sliding scale, you may be able to collect up to $917 a week. Third, and most importantly: it is a widely used, solidly funded, reliable program. While we wouldn't go so far as to say that SDI is an "employee-friendly program," it differs from other insurance companies in that it need not generate a profit for stockholders by collecting more money than it spends. (Private disability companies are notorious for changing rules and throwing up obstacles to make it difficult for injured workers to collect benefits.)

People covered by SDI have access to two programs: Disability Insurance and Paid Family Leave. The **Disability Insurance** program is a short-term benefit: up to 39 weeks. The program includes pregnancy and childbirth. Additionally, when an insured employee is entitled to workers compensation benefits at a rate less than the daily SDI benefit amount, he/she may also be entitled to SDI benefits.



The **Paid Family Leave** program was established for employees who suffer income loss when they need to take time off from work to care for a seriously ill child, spouse, parent, registered domestic partner, or to bond with a new minor child. **This coverage is provided for a maximum period of six weeks.** Private disability plans rarely provide ANY paid family leave.

## PRIVATE DISABILITY PLANS

Most public employers – *but not all* – provide disability plans through private insurance companies. There are short-term plans and long-term plans. The terms of both are highly negotiable (which means it's important to watch for loopholes…) Short-term plans usually "kick in" when an employee has been off the job for seven to 30 days, but "turn off" at 90 or 120 days. They usually cover 66% of income, but there is often a maximum, which can be much less than this. Long-

term plans may start at 60 or 90 days and generally continue to provide benefits until the employee retires, or sometimes, until he/she turns 65 or dies. Private plans often exclude pregnancy. Sometimes they exclude mental disability. They sometimes work hard to question your doctor's diagnosis or to argue that your injury is really work-related. They are required by law to have appeals procedures (if you are denied benefits) but these are often difficult to navigate, especially when you're ill.

The great advantage to private disability plans is that the employer usually pays for the entire benefit (although there is no legal requirement that they do this.) Long-term disability plans are much less expensive than short-term programs (because of the long waiting periods and because most people with serious illnesses or injuries end up retiring) so many employers provide ONLY long-term disability plans. These plans won't do most members any good. They don't pay if you lose three weeks' pay with a broken leg or six weeks, with a hysterectomy. Also, almost all private disability plans require that you exhaust all accrued leave before you can use their program. SDI has no such requirement.

## ENFORCEMENT OF YOUR DISABILITY POLICY

You should know that if your employer provides a benefit, it must assist you if that benefit turns out not to be what was "advertised." In other words, if the MOU says that you're provided a disability plan that covers two-thirds of your income during periods of "incapacity," but the insurance company tries to avoid paying off, you MAY use your Association's grievance procedure to compel the employer to take care of this problem. The disability pay is a negotiated benefit just as much as your vacation pay or dental insurance are benefits.

Also, you should know that it is normal to apply for disability pay *even if your injury occurred at work and you are filing a workers compensation claim.* This is because employers may now take up to 90 days to decide whether to accept or deny a workers comp claim – and more and more of these claims are now being denied. If you must hire a workers comp lawyer, it could be many months before your income is restored – if ever.

So, like most other "conditions of employment" in California, income protection for non-work related illnesses or injuries is a negotiable subject. If your employer provides no disability plan, you may negotiate to establish one. If there *is* a plan, you may want to negotiate to improve it.

## WARNING: CONTACT ASSOCIATION STAFF BEFORE CALLING A WORKERS COMPENSATION LAWYER…

**Why? Because all too often workers comp lawyers make their livings by exaggerating your injury – which could, ultimately cause you to LOSE YOUR JOB.**

**If you are injured or made ill at work, and are later found 'permanently incapable of performing the duties of the position' you *can* be terminated. If you have a bad lawyer, he may have the goal of working out the highest workers comp settlement, by claiming that you are severely injured. You might earn a higher settlement, but possibly lose your earning capacity - *for the rest of your life.***

**If you are injured on the job, call your union rep FIRST, before calling a lawyer. Your rep will be concerned with the "whole picture;" not just the workers comp settlement. They can assess whether or not you need a lawyer and, if you DO need one, make sure you are sent to a competent and reputable one…**

# Department of Labor Plugs "Loopholes" In Family Leave Act

The Family Medical Leave Act, passed in 1994, is essentially a "job protection law." If you have been employed for at least a year, it protects you against termination for up to twelve weeks, while off the job with your own, or an immediate family member's, serious illness. It also requires that your benefits continue for this time period, and that you are returned to the same job -- or one of equal pay – when the leave is over.

You may use FMLA time intermittently: days or weeks at a time. You may use ANY accrued leave: sick leave, vacation or comp time. Employers can require the employee to use time that is on the books first, even if the employee wants to go on unpaid status initially. If your accruals run out, you may go into unpaid status (or use your employers disability plan) until the leave is exhausted. If you use up the twelve weeks, but are still unable to return to work, you CAN be terminated (though, as a public employee, you do have the right to an appeal hearing.) If you're ABLE to return to work, but decide not to (as sometimes happens after childbirth) your employer can require you to repay the cost of the insurance provided while you were off.

That is the basic law, v*ery basic.* As parties on both sides of the law have discovered, the basic FMLA is short on detail, which leaves many issues open to "interpretation" (and according to management, open for abuse.) To close some of these loopholes, the Department of Labor has now published some legal guidelines. These went into effect in 2009 and answered these questions:

**Are part-time employees or those who don't work continuously, ever covered by the FMLA?**

Yes, you can establish eligibility (12 months' time on the job) by working intermittently for the same employer, for up a period as long as seven years, with a total of 1250 hours.

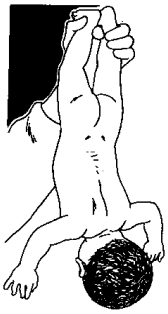
**What IS a "serious medical condition?"**

This has been a subject of great contention. Not all medical conditions are "serious." At minimum, the person with the condition must have three full days of "incapacity," and have met at least twice with a health care provider within the last 30 days before going on leave. In order for an employee to use FMLA time *intermittently,* the person must see a doctor at least twice a year for a "chronic, serious medical condition."

**Can a husband use FMLA time to care for his pregnant wife?**

Yes, but only if the wife develops a serious medical condition due to the pregnancy.

**Can your employer force you to transfer to a different job because of your use of time off due to a chronic medical condition?**

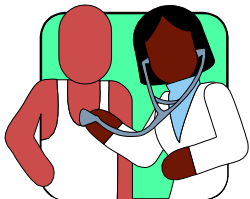


Employees are expected to make a "reasonable effort" to schedule time off to minimize impact on the employer's operations; but employers cannot ***force*** an employee to transfer because of their use of intermittent leave. (Also, an employee may *voluntarily* transfer to another job, or take "light duty" for a period of time, without jeopardizing his right to return to his regular job, when he is healthier.)

**Can employees be required to provide PROOF of illness? How does this impact medical privacy?**

Yes, employers can now require employees to provide medical "proof" that they (or their family member) have a serious condition. In fact, they can require "recertification" every six months. The proof may be in the form of information from the doctor, which does not violate HIPAA (the medical confidentiality law.)

If an employee doesn't want to provide medical information, employers now have the right to deny the FMLA claim. In order to address the conflict between your employer's "right to know" and <u>your</u> "right to privacy," the new guidelines enable the employer to



select one representative, who will be allowed to review your medical information. That representative must be a health care professional or human resources professional. (Your supervisor won't have access to your medical information.)

**Can the County force you to see their doctor before allowing you to return to work after FMLA leave?**

Yes, **if** there is a legitimate question about your ability to do the work safely. In this circumstance, the County must provide the doctor conducting the "fitness for duty exam" a list of your "essential job functions," to see if you are capable of performing them. Absent safety concerns, you can't be required to submit to a back-to-work exam.

Finally, you should know that our state laws, the California Family Rights Act (CFRA) and the Pregnancy Disability Leave Act (PDLA) are patterned after the FMLA, but with superior benefits especially in the area of pregnancy leave. The Department of Fair Employment and Housing (DFEH) is working now to reconcile the changes in the FMLA with the CFRA. In the meantime, keep in mind that you may benefit from protection under BOTH laws.

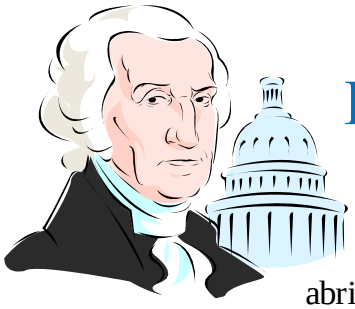
## *Here's a Good Question…*

## IS IT "DISCRIMINATION" FOR THE COUNTY TO ASK YOU ABOUT YOUR RETIREMENT?

**The short answer is, no, a simple question is not evidence of discrimination. It is also perfectly legal for the County to offer you a "Golden Handshake" -- even if you don't want to take it. As public agencies count their nickels and dimes, with layoffs often looming, it is reasonable that they try to predict who may be "stepping down" voluntarily. The PERS Golden Handshake was specifically designed as an early retirement incentive for agencies that need to downsize. It's a benefit. Managers who query their staff about their plans or offer this benefit are being prudent about the future.**

**Inquiries DO cross into illegal territory when they are accompanied by threats or actual action. It IS discriminatory, for example, for Management to say "if you don't retire, we will probably have to lay you off." It's equally illegal to impose negative work conditions such as "Since you decided not to retire, we're going to have to send you back to the asphalt crew," or "you know, we really can't afford to keep you on modified duty, when all the other guys are pulling double shifts. Have you thought about taking a disability retirement?"**

**Every case is unique. Feel free to call Association staff for assistance. If you do decide to retire, they may be able to help you negotiate your exit. If you DON'T want to retire, they will stop the harassment.**



# Public Employees' Right to Free Speech

The First Amendment to the U.S. Constitution establishes American citizens' right to free speech. It says "Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." In other words, "we the people" have the right to speak out – and even speak against – our government.

But what if you are a **government employee?** Do you have the right to speak out against your **employer?** The courts say "maybe." Let us explain….

First of all, you should know that through most of U.S. history, public employees did NOT have the right to speak out against their employers. At least; not without fear of reprisal. As recently as 1952, the Supreme Court said "You have a constitutional right to say and think as you will, but you have no constitutional right to work for the government..."

With Free Speech Movement of the 60's, however, attitudes began to change. Public employees unionized. They gained the right to negotiate and enforce union contracts, and even gained the right to strike. And, in 1967, they gained protection against discipline if they choose to speak out on issues of "public policy." This was an era when the courts and the media began to realize that public employees could well be heroes for revealing information, or speaking out publicly, about the abuses of their governments. It was also the era in which our first whistleblowing laws were born.


However, the Courts didn't grant employees the right to say *anything* or to act out *in any manner* without fear of discipline. It said that the interests of employee free speech, *for the good of society,* must be weighed against employers' right to control their staff *for the good of the organization.* The Courts established a 2-part analysis, looking first, at whether the employees speech or actions were truly a matter of "public policy" and second, at whether that speech or action could have a damaging effect upon the workplace.

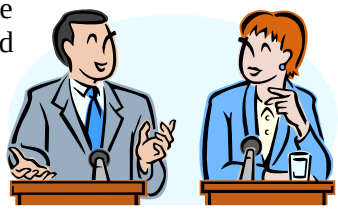
## The "Good of the Public"

So, first, what is a "matter of public policy?" The Supreme Court has said that this refers to "any matter of political, social, or other concern to the community." For example, the Courts have found that employees who speak out against fraud or corruption at their agencies are protected under the First Amendment. Their participation in discussions about of allocation of resources or how County services should be provided are ALSO protected. After all, the Court has reasoned, public employees are citizens, first, AND they may know a lot about these subjects. They may be able to enlighten the public debate, help us understand the government's operations, and alert us to potential wrongdoing.

However, employees are NOT protected when they speak out on issues that are NOT public policy. They are not protected when they speak about their own jobs, or personnel matters or grievances. Generally, these are not matters that concern "the good of the public" and an employee who raises such issues in public is very likely to be disciplined.

Generally, employees who speak out in public as leaders of their labor organizations are considered "protected" but this doesn't mean that their right to "free expression" is limitless. The courts do not interfere with employer discipline where the agency is able to show that the employees' comments or activities could have the effect of undermine the organization, or interfering with accomplishment of its mission.

Obviously, this is a very fine line. Public criticism of an agency CAN damage its reputation, which CAN interfere with its accomplishment of goals. Hence, there are contradictory decisions on this subject. The president of a Firefighters Union was found "protected" against discipline for speaking out on his County's poor emergency preparedness plan, but the president of a Police union was found to be appropriately disciplined when he talked about poor management of the Police Department.



Further, some speech has been considered so "disruptive" that, even if the original topic *was* a matter of public concern, the courts have merely stepped aside and allowed the employer to impose discipline. These

instances include include racist remarks, foul language, personal attacks on administrators, attempts to incite conflict in the workplace, or criticism of management's operational decisions, or plans to deliberately interfere with those operations. In general, the courts have agreed that public employees' protected right to free speech might be "surrendered" if the facts in the case show:

- An impairment of discipline, morale or harmony among co-workers;
- A detrimental impact on working relationships for which personal loyalty and confidence are necessary; or
- Interference with the normal operation of the employer's business.

So, where does this leave us? In truth, this means that public employees DO have the right to speak out on public issues, but quite possibly could be fired if their comments really upset anyone. It means that your right to "Freedom of Expression" under the First Amendment is guaranteed, *except under circumstances where it is not* – and no one can be sure when or where this might be. What it REALLY means is that, if you value your job, you need to be exceedingly careful about issues you raise at a Board of Supervisors meeting, or any public forum. It might be better to let someone else do the speaking or to try to resolve your problems through some other mechanism…

## CEA Attorney Prevails in Precedent Setting Lawsuit Over Definition of "Unfair Bargaining"

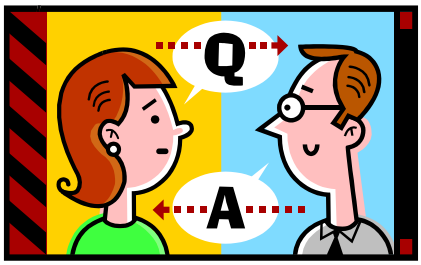
**CEA attorney, Jeff Natke, has won a major case on behalf of the Glendale City Employees Association which will change the law regarding unfair bargaining claims, brought by unions, to the Public Employment Relations Board. This case arises from a dispute in negotiations between the GCEA and the City of Glendale, at the height of the Recession, 2010. The City was proposing "takeaways" and engaged in a series of unfair tactics including regressive bargaining, which means offering less in each written proposal, as a means of "punishing" the union for taking a strong stand.**

**When the City proposed a "last best final offer," which was rejected by the membership, it actually imposed additional takeaways that had never been seen before. The GCEA immediately filed an unfair practice charge at PERB, but PERB dismissed the charge, saying that regressive bargaining, alone, was not enough evidence of bad faith bargaining. PERB's practice at that time was to require multiple indicators (or "indicia") of bad faith before it would grant an unfair bargaining complaint. GCEA Board then authorized Jeff to take PERB to court. They believed emphatically that the City's tactics were unacceptable.**

**The Court heard GCEA's case in April 2014 in the California Court of Appeals. A final ruling is expected in August. This is a big victory for public employee associations statewide, who can now ask PERB to intervene when employers commit unfair bargaining practices. Ultimately, it will probably also affect the way bargaining is conducted at public agencies, forcing the process to become more civil, and forcing managers to give the most extreme bullying tactics. This case sends a message to public agencies that unfair practices are more likely to be under the microscope now at PERB.**

***Know Your Rights:***

# Answers to Your Questions about Your Job




**The following are some *very general* answers to your work-related questions. Act. If you have a specific grievance or problem, please talk with your Board Rep or professional staff at 562-433-6983 or e-mail us at cea@cityemployees.net BEFORE taking action.**

**Question: I am the ONLY non-Spanish speaking person on our crew and I'm fed up with my co-workers talking about me in Spanish behind my back. What can I do about this?**

**Answer:** Although your employer does have the right to require that employees speak English on the job, it isn't *required* to do this. If the work of the Department isn't disrupted, it can allow people to speak their native language. However, if you know that they are making disparaging remarks about you, you do have the right to complain, and to insist that these remarks cease.

Similarly, if you are treated differently – and suffer "adverse impact" -- because of your ethnic origin, this is discrimination. Adverse impact could be anything from assigning you to unattractive tasks to failing to offer overtime opportunities. If you think you are the victim of discrimination, you can raise the issue to your supervisor. If he or she doesn't help, call your union rep for assistance.

**Question: My boss and I had a disagreement and he got so angry that he threw a notebook at me. I ran out of his office and went into a complete panic attack. My doctor sent me to a psychiatrist, who took me off the job for three weeks. I am back at work now, and the County has assigned me to a new supervisor. However, they have also taken ALL of my sick leave and some of my vacation. Don't they have to pay me during the time that I was off? I was told that it was covered by the FMLA.**

**Answer:** The Family Medical Leave Act protected you against any threat to your job for the weeks that you were off, but it doesn't require that you be paid for this time. If you had been off the job on workers compensation leave, the City would have had to pay at least two-thirds of your income.
It is not too late to file a workers comp claim now. The medical condition seems to have been caused by your supervisor's action. If/when the claim is accepted, the County should restore your lost sick leave and vacation.

**Question: I work for a police department, wear a uniform and drive a police car but am not paid for my lunch. However, I am bothered all the time during lunch, both by calls from my department or by residents who want help with problems. How can I truly be "relieved of all duty" under these circumstances? Also since my worksite is considered the whole County, I would like to know if I am allowed to leave the County for lunch.**

**Answer:** It does not matter where you work; your lunch is unpaid time and you shouldn't be bothered with work at lunchtime. If you ARE bothered (i.e. required to perform actual work) you should be paid – overtime, if this causes you to work more than 40 hours in a week. If the County doesn't want to pay you, they need to provide an alternate lunchtime (one during which you should not be called upon to work.)

As a County employee you CAN BE interrupted at any time to serve the needs of the public. But you must be paid for all time worked! (And yes, you may leave the County during your lunch period. This might give you a bit of relief.)

**Question: Does the County still pay their portion of health insurance when an employee goes on long-term disability?**

**Answer:** When you are on FMLA leave (up to 12 weeks) the County is required to continue payment of their contribution to your insurance. Once the 12 weeks have been exhausted, *unless you are still using paid sick leave or vacation*, you may be required to take over the medical premium payments. This is the case even if you are on State Disability or using your employer's local disability plan.

**Question: I recently accepted a voluntary demotion. I would like to know how this might affect my future retirement benefit.**

**Answer:** It should have little or no impact. Depending upon your County's contract with PERS, your retirement income will be based on either your single highest year of earnings or an average of three highest years. This means that your retirement pay will probably be based on your income before you demoted.

**Question: I have one tattoo on my arm, but it is not visible when I wear even a short sleeve shirt. I have been thinking of getting another on my forearm, but was told I could not because the County has a policy against "visible tattoos." However, there are several female staff members who have tattoos on their necks or shoulders that are visible when they wear certain blouses. Why would a tattoo on my arm be objectionable when other employees have them in equally visible locations?**

**Answer:** The fact that other employees seem to be violating County policy doesn't mean that you should violate it, too. We suspect that the other employees' tattoos may have pre-existed the policy, and that they may have arrived at some agreement about these with the County. Or possibly not. If you feel strongly about getting another tattoo, which would be visible, it might be a good idea to get permission from your management in advance.

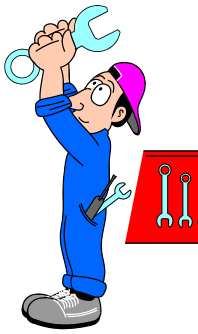
**Question: The County rejected my application for a promotion because I don't currently have a certain certificate. However, the recruitment bulletin specifically said that employees would have one year to obtain the certification. Is there any way I may challenge this rejection? I am troubled that HR put specific information in the recruitment flyer and then just picked the applicants they wanted to. It feels like bait and switch to me**…

**Answer:** Unfortunately, the County doesn't have any obligation to interview everyone who meets the minimum qualifications for a position. If the possession of certain certificates is "desirable," and there are more than enough applicants who hold these, the County can limit their interviews to those who already hold them. There isn't any requirement that they also interview applicants who might be able to secure the certificates later.

**Question: HR is saying they do not need to pay me during maternity leave because "we are not in the state system?" What does this mean? Is it legal?**

**Answer:** Under the Family Medical Leave Act, you can use your accrued leave while on maternity leave but, the County doesn't have to pay you. Your HR person is probably referring to the State Disability Insurance System, also called SDI. Some public employees are in the SDI system (which does provide pay for maternity leave) but most are not. Participation is a negotiable subject.

Having said this, you should know public agencies do provide some form of disability insurance – and maternity leave is usually covered. You might look into this a bit more thoroughly, or talk to someone else in the HR Department.



**Question: I hurt my hand pretty badly on the job. I had surgery and am healing, but the doctor doesn't know whether I'm going to have some permanent loss of movement. I want to know if my job might be in jeopardy. I'm a 911 dispatcher. Also, do you think that I need a workers comp attorney?**

**Answer:** There is always the possibility that your job may be at stake if you must work with equipment which can't accommodate your disability. However, before the County can terminate you, it must go through several steps, including an "interactive analysis" per the Americans with a Disability Act (ADA). Several laws give you quite a bit of leverage in this arena, so assume the best (including full recovery) until advised otherwise. And be sure to have a union rep during this process.

On the subject of workers compensation, as long as you're receiving adequate treatment, you probably don't need a lawyer UNLESS you are determined to have a permanent disability. In this case, you do need legal assistance working out a final settlement on the injury. This is particularly the case, if you are going to lose your job because of the injury.

One important warning: not all workers compensation attorney are created equal. We suggest that you use the attorneys recommended by your staff. They will work hard to minimize any threat to your continued employment.