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Where Has All the Money Gone?

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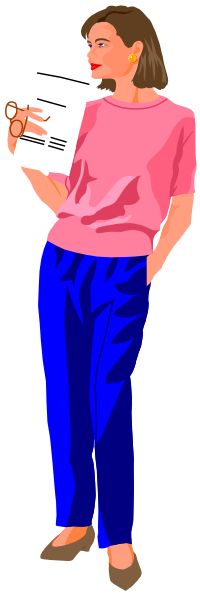
You may have heard that the middle class is disappearing. Now that the Great Recession is considered history, it's apparent that its most measurable outcome was a massive "wealth shifting" from the majority of the U.S. population to the top five percent. When we compare income to the actual cost of living, the middle class is now poor. Despite a huge increase in the cost of living, from 1999 to 2013, the income of the lower 90 percent of America's population **fell** by $2,868.

Did you know that when economists study "the middle class," ***they study city and county employees?*** Not just "public employees," but *local government* employees. You are considered "the middle of the middle" There used to be more of you, but even now, City and county employees are, by far, the biggest group of public employees.



So, studying what has happened to YOU over the last few decades supposedly gives historians pretty decent idea about what has happened to the middle class…

What IS the "Middle Class?"

Can we measure the middle class by the ability to buy a home? Take a vacation? Send a kid to college? If so, until the mid-1990s, county employees were middle class. In her autobiography, Michelle Obama talks about how her father, a Chicago trash collector, was able to support a stay-at-home wife and send two children to Princeton. A government job was a plum job!

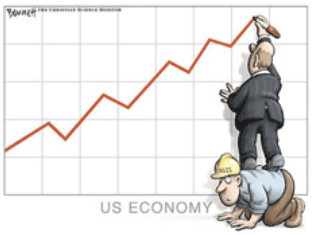
Beginning in the '80's, however, the idea that public employees were, somehow, greedy parasites on the body politic took hold in the media. This made it more palatable for employers to begin "ratcheting down" the cost of their workforce. Or, to be more polite: "cost sharing." One of the first big steps took place when the cost of medical care began to skyrocket around 1992. Governing boards all over the state suddenly decided it was time for employees "share" in the cost of their benefits. Until then, almost all local agencies paid the full cost of family health care.

Two other big changes, which began in the 90s, involved the "broad banding" of job classes and the civilianization of Police and Fire Departments. Broad-banding means the creation of broad job classes, which can incorporate many duties. Simply by rewriting employees' job descriptions, agencies were able to do away with most skilled trades (i.e. welders, carpenters, electricians) and rename them all "maintenance worker." Maintenance workers, of course, don't make nearly the salaries of skilled craftspeople. The consequences were massive, both inside and outside public employment. Skilled labor been dummied down, and the skilled trades (which the labor movement worked so hard to elevate) have been nearly forgotten.

Similarly, starting in the late '80's, counties scaled costs in Police and Fire Departments by creating multitudes of non-sworn job classes: "PSO's," "CSO's," Technicians Inspectors, etc. This was good for the tens of thousands of men *and women* who flooded into these jobs, but they are earning HALF (considering both pay AND benefits) of what Police Officers and Fire Fighters make.

Attacks on Pensions

The early 2000s, saw increasingly aggressive attacks on public employee their pension plans - and their unions. Coincidentally, this was at the same time that the stock market skyrocketing, generating so much income for CalPERS that the employers were making NO retirement contributions at all! Nonetheless, the media fixated on your "Cadillac plans" and your gluttony. When the Crash really did wipe out most of the CalPERS stock market excess, ***you*** were blamed for your employer's rising retirement costs.



Great Recession = Great Excuses

The Recession was the nail in the coffin for middle class public employees. In the face of austerity, the "takeaways" became direct: wage and benefit cuts, layoffs, furloughs (with concomitant understaffing and out-of-class work) elimination of such "frills" as training pay, tuition reimbursement and Civil Service Systems. The whole traumatic period culminated with PEPRA, the Public Employee Pension Reform Act. The new law *did* crack down on pension "spiking," but it also ushered in a retirement formula for new hires which means, essentially, that they will never be able to afford to retire!

Today, most agencies have recovered from the Recession, but the average employee has not. In buying-power he is worse off than he was 8 years ago. And, absent a BIG fight, there is little relief on the horizon.

In contract negotiations today, even when employers offer raises, they are usually far lower for general employees than for police and fire. Even worse, they are usually far lower than the agencies can honestly afford to pay. The public's lack of regard for people who actually *serve the public* is insulting.

Powerless? Hopeless?

The media tells us that the average American feels powerless. Hence, the lowest of participation in elections, at all levels, in America's history.

In January, a Wall Street Journal survey of U.S. workers found that while only 8 percent were satisfied with their pay, fewer than half had asked for a raise. The Journal concluded, "When it comes to asking for more pay, people are afraid."

Why are people afraid to ask for a raise? Perhaps they are realistic. They are mostly alone in their workplaces, or, even worse, they are pitted against one another. Certainly, they have little bargaining power. In truth, only GROUPS of employees have bargaining power -- it's another side effect of the great "wealth-shifting" that unions have pretty much disappeared!

Fewer than one in twelve American workers belongs to a union. And most of these are public employees. *In fact, the ONLY sector of our economy which is still mostly unionized is the public sector*. **You're IT!**

So here we are: you're still "the middle class." Your wages and benefits have "squeezed" heavily, but you DO still have a union! Because you have a union, you have a union contract (which still provides much better pay, benefits and work conditions than the average employee). Your Contract is enforceable.

You *CAN* ask for a raise. You have an organization, professional staff, the right to collect dues, participate in local politics, negotiate a contract, enforce the law. You have Collective Bargaining power. This is not an inspirational concept; it's a matter of law. The right to negotiate and enforce a contract is rooted in the Contract Clause of the U.S. Constitution.

Ultimately, you have the right to **compel** your employer to bargain with you "in good faith." You can sue them – or even legally withhold your labor – if they do not.

Pressure from "Below…"

From the 1940s through the '80s, most of the working class had the same rights you have now. Collective bargaining was "ground zero" for the middle class. Unions were the primary source of pressure forcing

middle class incomes into working class hands. Only in retrospect, do we see the glaring correlation between the decline of organized labor and the decline of the middle class.

Although much of the population was unionized, the Movement was large enough to have a huge "spillover NEVER effect" on the economy. From 1935 (when the National Labor Relations Act was passed) to 1980, 70 percent of income growth went to the lower 90 percent of the population. Only 7.1 percent went to the top one percent. Today this is completely reversed. Today, there are very few forces pressing *upward* on American wages, but many forces, in this globalized economy, pressing downward.

The Burden of Being "It"

Here's the painful truth: You're the last ones standing. You, the poor, ratcheted-down public employee are the middle class! **You're still in the position to ask for a raise.** In fact, you have the *responsibility* to ask for a raise. You owe it to yourself, your coworkers, your family and your country, not settle for another round of loss – at least not without a fight!

If Your Union is Bargaining This Year...

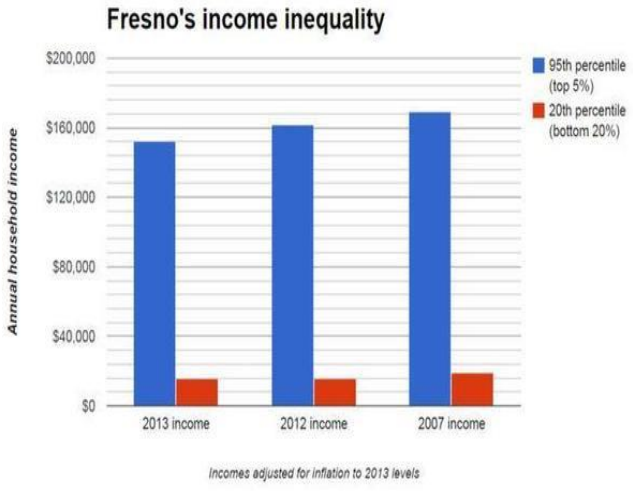
If your union contract is expiring this year, you probably ARE asking for a raise. If you're not being offered a reasonable raise, you are probably fighting mad! *A lot of employees are fighting mad this year.* They've gone for too long on too little. They are struggling to regain a fair share of the pie.

There are tools available to you to help with the fight. If your employer doesn't take negotiations seriously, you CAN file a complaint with the Public Employment Relations Board. If the overall compensation package isn't good enough, you CAN declare impasse and call for fact-finding. If you believe your governing Board is anti-employee, you CAN meet with them, privately, individually or in public session. You can ALSO establish an ongoing political action committee, for purposes of influencing Board policy in the future. You, and about 5 million other public employees, ARE in a position to ask for a raise. We hope you put up a good fight! We're here to help.

DEMISE OF THE MIDDLE CLASS: INCOME INEQUALITY IN THE CITIES

The analysis below from Brooking Institute analysis of Census Bureau data says it all. It compares households in the top 5% (95th percentile) to those in bottom 20% in large cities in California. The "multiple" category shows the difference between the two income groups.

City	95th percentile	20th percentile	Multiple
San Francisco	$423,171	$24,815	17.1 x
Los Angeles	$229,310	$18,322	12.5 x
Oakland	$236,205	$19,493	12.1 x
Long Beach	$195,675	$19,854	9.9 x
San Jose	$310,325	$32,018	9.7 x
Fresno	$152,045	$15,895	9.6 x
Sacramento	$173,466	$18,282	9.5 x
San Diego	$236,093	$26,719	8.8 x



CalPERS Prevails in Final San Bernardino Decision

A bankruptcy judge has now, finally, dismissed the two lawsuits by private creditors in the San Bernardino bankruptcy and upheld the City Council's decision to make its full back payments to CalPERS. In the course of its bankruptcy, which has been ongoing since 2012, the City has failed to make more than $24 million a year in PERS contributions. Until now, the repayment of those contributions was being challenged by two private companies which also lost a lot of money (more than $59 million) in bonds in the bankruptcy.

The judge's decision in this case was significant because it raised the question of who has primacy when a public agency is in financial trouble: the employees and their benefits – or private investors. **So far, no public agency in California has been allowed by the Courts to default on its pension plan.**

A spokesperson for CalPERS said simply, "The judge in this case has ruled appropriately."

The Spokesperson for the retiree group Californians for Retirement Security added: "This is another big win for middle-income working families who play by the rules and earned their security, over the interests of Wall Street. The courts have made it clear that California law protects the promises made to other public employees about their benefits."

What IS the "CPI?" (and Why Should You be Wary of It?)

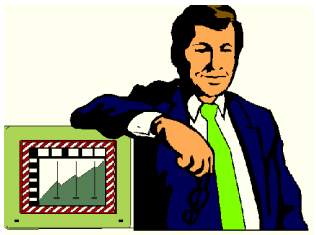
In contract negotiations, Unions and Management banter about "COLA's" and "the CPI" as if everyone knows, and agrees, what these terms mean. In truth, there can be a lot of "variation" about what these words mean from setting to setting -- and these can have a lot of effect on YOUR income. In general COLA stands for Cost Of Living Adjustment. It's an old-fashion union term, meaning the salary increase we try negotiate to keep up with rising living expenses. CPI stands for Consumer Price Index. This is a set of government-published statistics which presumes to *measure* the increases in the cost of living. The CPI varies *a lot* from location to location.

In many people's minds, "COLA" and the "CPI" are synonymous, but there is no real connection between the terms. In fact, tying the two concepts together can be bad for public employees. This is because **the published CPI is often much, much lower than the *real cost of living in your neighborhood.***

Your union's goal in negotiations is to work out a contract which actually enables its members and their families to keep up with inflation. But Management often defers to "the CPI," especially when it appears low. What follows is an explanation of this term – and why you should be wary and negotiate carefully.

What IS the "CPI?" Who publishes it, and where do these numbers come from, anyway?

The Consumer Price Index is calculated and published by the Federal Bureau of Labor Statistics. The BLS says that it is "a measure of the average change over time in the prices paid by urban consumers for a fixed market basket of goods and services."



In other words, the CPI is supposed to enable us to compare what a "market basket of goods and services" costs *this* month with what the same market basket during the same month costs, the year before. The CPI's "market basket" is a ***national*** calculation, although there are also local indexes. In negotiations in Southern California, the most commonly-used CPI index is the "LA/Riverside/Orange County All Urban Consumers Index."

The national "market basket" is developed from expenditure information provided by 36,000 families and individuals in residential settings all over the country, based on the 2000 census. "Base information" is gathered over a 3-year period by looking at the purchase costs of items bought by 12,000 families. The "basket" includes about 200 items in eight major categories:

FOOD AND BEVERAGES (breakfast cereal, milk, coffee, chicken, wine, full-service meals, and snacks);

HOUSING (rent of primary residence, owners' equivalent rent, fuel oil, bedroom furniture);

APPAREL (men's shirts and sweaters, women's dresses, jewelry);

TRANSPORTATION (new vehicles, airline fares, gasoline, motor vehicle insurance);

MEDICAL CARE (prescription drugs and medical supplies, physicians' services, eyeglasses and eye care, hospital services);

RECREATION (televisions, cable television, pets and pet products, sports equipment, admissions);

EDUCATION AND COMMUNICATION (college tuition, postage, telephone services, computers and accessories);

OTHER GOODS AND SERVICES (tobacco, grooming, and other personal services, funeral expenses).

The CPI also includes utilities and government-user fees (such as auto registration fees, and vehicle tolls) as well as the taxes associated with the purchase of goods and services. It excludes taxes (such as income and Social Security taxes) not directly associated with consumption and investment items (such as stocks, bonds, real estate, and life insurance).

The CPI isn't really about cost; it's about the **change** in costs. In order to measure change in the cost of living, BLS data collectors literally call upon thousands of retail stores, service establishments, rental units, and doctors' offices, to obtain price information on about 80,000 items a month. The data is then reviewed by "commodity specialists," who check for accuracy and consistency in products. Their goal is to make sure that changes in size, package or quality of items don't affect the CPI's measurement of price change.

The data is analyzed for two population groups: 1) **All Urban Consumers** (CPI-U) and 2) **Urban Wage Earners and Clerical Workers (CPI-W).** The CPI-U is a huge aggregate group representing about 87% of the U.S. population. It includes working people as well as the self-employed, the unemployed, and retired people. The CPI-W's is a subset of the CPI-U, representing about 32% of the U.S. population: wage earners and clerical employees. *The CPI-W is intended to measure the cost of living increases experienced by the American working class.*

HOW IS THE CPI USED?

The CPI is supposed to measure inflation, and there is an assumption in much of public policy that inflation is a BAD thing. **However, if the CPI is used to determine your Cost-Of-Living Adjustment, then a low CPI means, for you, a low pay increase.** Further, since the CPI is also used to "adjust" government incomes, such as Social Security, a low inflation rate could also mean low adjustments for people who desperately need a raise. In this context, the CPI affects the incomes of almost 100 million people: Social Security beneficiaries, food stamp recipients, and military personnel and federal retirees and

survivors. Even the cost of government- funded school lunches is determined by the CPI!

The cost of living in California is higher, and changes faster, than most of the country. So, union contracts that pivot around the National, All Urban Consumer's CPI may be doing their members a disservice. There are some obvious reasons for this:

1) The CPI, even the local LA-Orange-Riverside index, does not truly reflect the real cost of living. For example, the costs of housing and gasoline in California have more than doubled in a decade, but the Consumer Price Index shows only a 42% increase! Further, the aggregate numbers for tens of thousands of people in three huge counties may have little bearing on the real cost of living in a single, impacted community.

2) **The "all urban consumers" index is not relevant to *working people* in California.** Increases in living expense are higher for "wage earners" than for everyone. This is because hourly employees spend a much higher proportion of their incomes on mere survival than does the population as a whole. If your employer insists on using the CPI in negotiations, it's important that they use the Urban Wage Earners and Clerical's, the CPI-W, rather than the CPI-U.

3) **Finally, the CPI reflects changes in prices that have already occurred.** It has no control and does not predict price increases that might still occur over the term of the agreed-upon contract. In other words, tying a COLA to the CPI means that the affected employees will always be 'behind the curve' financially speaking.

In general, the CPI is a tool used by the government and by employers to satisfy *their constituents'* demand for cost-of-living adjustments which are low. **But employees' needs are not always the same as their employers'.** A good bargaining strategy *for your unions* focuses on what employees need most in pay and benefits increases, in order to survive in their own communities. This goal, combined with what the employer can truly afford, is a much more useful strategy than focusing, solely, on the CPI.

SHOULD YOU FILE A WORKERS COMP CLAIM?

You hurt your back lifting a piece of furniture. It doesn't hurt much at the time, and it doesn't even occur to you to file a workers comp claim. The next day, however, you can barely get out of bed. You go to the doctor, who says "it's a pulled muscle. It will probably be fine. *Take a few weeks off the job….*" And now you are wondering: ***Should you have reported this injury? Should you, now, file a workers comp claim?***

Now have a bit of a dilemma:

- Will your department be upset about your taking the time off?
- Will they be upset, or even question your honesty, because you didn't report the injury right away?
- Will they think you're just trying to avoid working, or wonder if you're really hurt at all?
- Could a claim like this put your job in jeopardy?
- What if the injury doesn't heal right away? What if it gets worse, rather than better?
- What if it turns out to be something serious? Who will pay for the treatment?
- What if you use up your sick leave and have no income?

These are the kinds of questions faced every day by people who experience minor injuries on the job. The question about whether to report the problem seems to be a tough one -- BUT IT ISN'T. ***There is no question that you should file a workers' compensation claim.*** Here's why:

ALWAYS Report an Injury…

If you hurt yourself on the job, you should report this immediately. This is, first of all, so your Department

can acknowledge the injury… just in case. Second, it's to make sure you get appropriate medical care, even if *you* think you don't need it. Third, it is because ***failing to report the injury can do more damage to your employment than reporting it.*** It can cause a legitimate workers comp claim to be denied, and it can raise questions about potential workers comp fraud. **Injuries that are reported later than the day they actually occurred are almost always treated with suspicion.**

Conscientious employees often worry that filing a workers comp claim may label them as "complainers." But from an agency's point of view, this is only a matter of business. It is part of an agency's business to understand that people do get hurt and do need care. Most employers have entire departments and/or full-time positions devoted to the subject of "risk management." **You may find it outside the norm to file a workers comp claim, but to them it is an everyday occurrence.**

It is unquestionably against the law for your employer to retaliate against you for reporting an injury or filing a claim. This doesn't mean than injured workers are "immune" from normal personnel actions. Injured employees can be disciplined for legitimate reasons, and they can also be laid off. But it does mean that the California Labor Code, Section 132(a), prohibits employers from taking "adverse action" against an employee *because* he filed a workers comp claim. This means that they may not fire, *threaten* to fire, demote, or otherwise treat an injured employee differently from other employees who have not filed such claims. (In fact, if an employee is able to prove that he has been the victim of workers' comp retaliation, he could be awarded a 50% increase in workers' compensation benefits, up to $10,000, reinstatement, and reimbursement for lost wages and work benefits.)

Most Important Reason: Your Medical Care

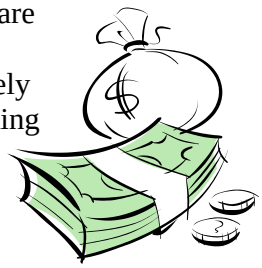
The most important reason for reporting even a minor injury is that you do not know what may happen next. If the injury doesn't heal right away, if you need ongoing medical attention, or lose time off the job, it is reasonable for your employer to provide for you. <u>You would not have hurt yourself if you were not on the job.</u> You need your income and you need decent medical care. There is not any good reason that an injury sustained in the service of the County should not be cared for by the County.

Further, if the injury turns out to be more complicated than it appears, is aggravated by a return to work *or results in a permanent disability*, you need to make sure that you have good, <u>long-term</u> medical care. An unreported injury has no guarantee of this.

You Probably DON'T Need a Lawyer Unless…

Most people who suffer minor injuries on the job DON'T need a lawyer. You will probably heal and return to work without any permanent disability. There is danger in hiring a lawyer unnecessarily: a bad lawyer may have interests which is the opposite of yours. Your interest is in recuperating fast and keeping your job. His interest is in the highest possible settlement. The more severely injured you are found to be, the higher the settlement … but also the greatest likelihood that you may be found unable to do your job and face separation. (So, call your union rep first.)

Most public employers today provide appropriate care and compensation, as required by law. Most injured employees return to work without much difficulty. However you DO need a lawyer when the County "contests" your claim. If, for example the employer says the injury didn't happen at work OR that you really are not hurt at all, you will probably need a lawyer. (Hence the need to report an injury as soon as it occurs!) You should also be represented by a lawyer if you are injured so severely that you are likely to lose your job. Under this circumstance, your union rep can help you through the process of seeking accommodation under the Americans with Disabilities Act, but *your lawyer needs to make sure you receive the highest possible settlement for this life-altering event.*



What Does the County Need to Know About Your Medications?

"I am a bus driver and am taking medication for chronic back pain. I told my Department about this, and they now want more information. They also said they may have to send me to a fitness-for-duty exam. Can they do this? Could my job be in jeopardy?"

The short answer is Probably and Maybe. Your medical records are protected from disclosure, at least without your consent, under a federal law called HIPAA. However, there are situations in which your disclosing of certain specific medical information could save your job.

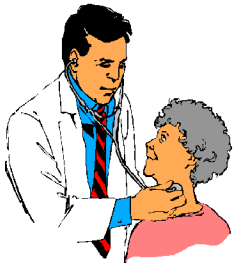
Under the Americans with Disabilities Act, an employer may exclude an individual from employment for safety reasons only if the employer can show that he/she would "poses a direct threat" to himself or others. "Direct threat" means a significant - not just slightly increased--risk of "substantial harm to the health or safety of the employee or others that cannot be eliminated or reduced by reasonable accommodation." The determination about whether someone poses a "direct threat" must be based on an individualized assessment of that person's ability to safely perform the functions of the job, "relying on the most current medical knowledge and/or the best available objective evidence." 29 C.F.R. § 1630.2(r).

The Equal Employment Opportunity Commission's guidelines state that an individual does NOT "pose a direct threat" simply because he or she takes medication that might diminish concentration *for some people.* There must be an individual assessment by a medical professional, which, for you, would evaluate whether your medication interferes with your ability to safely drive a bus. Further, even if such analysis indicates that there IS a "significant risk of substantial harm," you employer must try to provide you with reasonable accommodation, which will "reduce or eliminate the risk."

So, **yes, the County does have the right to know exactly what medication you're taking and what effect it may have upon you if you want to remain employed in your current position**. And they probably DO have the right to send you to a doctor for an exam. If the exam indicates that the medication creates a problem, the County can take you off the job, *but it cannot simply discontinue your pay or terminate your employment! First, b*ecause you are a public employee in California, you have the right to a "full evidentiary hearing" before you can lose the "property right" to your job; and second because your employer has an obligation to try to accommodate your potential limitations. This means that you also have the right to present your doctor's view of your medical condition, and to attend an "interactive meeting" pursuant to the Americans with Disabilities Act. On top of all this, if you are in the PERS system, your employer cannot terminate you for disability reasons until they have applied for – *and secured* – your Disability Retirement

So while there are many steps before a public employee can lose his job because of medical condition, it is also possible that your need to take medication can put your job in jeopardy. It's best to be pro-active: make sure your employer knows about your condition BEFORE they find it out for themselves.

Sick Leave: Is it a Right or a Privilege?



In July 2015, California's first mandated sick leave law will go into effect. The Healthy Workplaces Healthy Families Act will require all California employers to provide employees with at least 3 paid days (or 24 hours) of sick leave per year. The law covers all employees who work more than 30 hours per week, which means that a good number of "part-timers" at public agencies will now have sick leave.

The law doesn't affect *most* public employees because *most* have union contracts with sick leave programs that are more generous than the law. (The new law establishes *minimum* requirements; it doesn't preempt existing contracts as long as they meet the standards of the law…)

Most public agencies grant employees about 8 hours a month of sick leave or 96 hours a year. This time isn't like vacation time; it has no monetary value (although some agencies do allow "cash outs, especially at retirement) and its use is limited to when an employee, or immediate family member, has a verifiable illness or injury. Conflicts over employees' use – or misuse -- of sick leave are amongst the most common source of tension in the labor-management relationship. **Alleged sick leave abuse is the most common cause for discipline.**

Notice that we say *alleged* abuse! The vast majority of people who use sick leave are NOT leave abusers. In fact, many people struggle to come to work, sick or hurt, when they really should be home recuperating. They are concerned about work going unfinished and about the impact of their absence on co-workers and supervisors. The truth is that many public workplaces are still understaffed, and absenteeism, even in small doses, can have a big impact.

Supervisors and managers are under pressure to get the work done, whether *you* are there or not. So sadly, it's not unusual for them to doubt whether their employees are truly ill. *And, in truth, sometimes they are not.* Sick leave IS a negotiated benefit, but it's also a benefit which can be manipulated.

From Management's Perspective…

From Management's point of view, absenteeism, whether legitimate or not, is a source of chronic irritation. It's not uncommon for managers to become punitive or irrational in their campaigns to "stop sick leave abuse." They make up rules for bringing doctor's slips, for requesting time off in advance, for not crossing some imaginary "average usage" line, etc. These "policies" often have a greater effect at demoralizing good employees than deterring the bad ones. Good employees can, and *do,* become offended when their bosses appear to be "checking up" on them: calling their homes, calling their doctors, asking for proof of medical appointments, even hiring investigators to track their whereabouts.

Here's the core of the conflict: Employees who try to use sick leave when they are *not* sick CAN BE disciplined**; but employers who obstruct or infringe upon sick employees' negotiated benefits can also find themselves facing a legitimate grievance.**

Sick people have the right to use sick leave. There is no "blanket solution" to the problem of abuse. Employers have no right to "crack down" on people who are doing nothing wrong. Each situation is unique.

Most *generalized* attendance control programs tend to fail. For example, when a Department Head sets a policy that says "everyone who uses more than the average number of sick days will get a warning letter in their file," it is almost inevitable that an employee who is NOT an abuser will receive a threatening letter. What if that person used her sick leave up during pregnancy? Or due to a heart attack? Or to take care of a dying parent? In any of these cases, the employee will have a grievance, and the letter will have to be retracted because it violates the Family Medical Leave Act. **Employees with conditions covered by the FMLA have the right not to be harassed or disciplined for using their time off.**

Not everyone who uses sick leave has a condition covered by the FMLA. Some people just have the flu…a child with the flu…or several children with the flu. Sick leave covers these situations. But it is also legal for Management to ask employees to provide

proof of illness if they frequently use their sick leave. Again, it is case by case. Good managers realize the folly of trying to "cast a net" over all sick leave users, in an attempt to catch the one bad fish!

Good Supervisors Use Incentives, Not Punishments

In general good managers realize that "the carrot" works much better than "the stick" in trying to get employees to come to work! Rather than punish people for *using* leave, good managers provide *incentives for low sick leave usage*. These might include yearly bonuses or cash "payoffs" for people who use little or no sick leave. Good managers realize that regard for people's individual needs and providing satisfying work conditions are among the reasons people come to work in the first place!

Badgering people for taking time off which they probably can't avoid will almost always have the opposite effect.

So, is your sick leave a "right" or a "privilege?" Probably both. And if you employer attempts to implement heavy-handed policies on this subject, your union does have the ability to negotiate over these issues. The County has the right to try to stop "fraud." But good employees have the right to use their leave -- and they shouldn't be bothered when they do this. Bright people on both sides really can sit down to develop a program of benefits and incentives that work. ***This is exactly what the bargaining process is supposed to be about…***

Courts Protect Employees' Right to "Speak the Truth"

The Fourth District Appellate Court has ruled that a school district violated the free speech rights of a secretary when it suspended her for revealing truthful information to the unsuccessful bidders on a contract about a conflict of interest with a consultant hired by the District. The Court held that the employee should NOT be suspended for supposedly "disrupting District business," because the information she revealed was true.

In blazing this trail, the court announced its conclusion that "it is appropriate to require an actual showing of disruption of business" if the employee is to be suspended. Finding none, the court found that the employer's irritation did *not* outweigh the employee's free speech rights.

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.

Q: The County has created a policy that states that an employee cannot be paid for Jury Duty during the "winter closure" between Christmas and the first week of January. Is this legal? I thought that the County was required to pay for Jury service whenever the courts are in session.

A: There is no legal requirement for employers to pay employees when they're on jury service. However, if this is a CHANGE in policy, and it hasn't been approved by your Association, it's a violation of your current MOU. Policies regarding pay for jury duty are entirely negotiable.

Most public employers do compensates employees for at least part of the time spent on jury service, but this is not required by law. The entire topic is negotiable. So, if they want to modify policies regarding pay for jury duty, the County needs to submit a proposal to your Association.

Q: I was off the job for three months with a medical condition. I'm back now and doing fine, but my supervisor mentioned the absence in my performance review. He also wrote something about my "talking too much" about my illness to my co-workers. Are these comments legal?

A: Medical absences shouldn't influence your review. Per the Family Medical Leave Act, it is illegal for your employer to discriminate against you based on your use of time off for a medical condition. Comments on a review could be considered discriminatory and/or could be considered "adverse action" affecting your future employment.

You supervisor can note that someone "talks too much to co-workers" on a review. However, if the past practice of the office is that employees are allowed to chit-chat, and the supervisor is applying a "no chit-chat" policy to YOU and your medical condition, that could be considered a form of discrimination.

Q: I am a part-time employee, enrolled in the PERS system. I'm applying for part-time jobs in other counties and have come across statements that "applicants who are current CalPERS members may not apply." Isn't this discrimination? Is it legal?

A: Legally, this is not prohibited discrimination because being enrolled in PERS is not a protected class. If the job bulletin were to state "women need not apply," that would be discrimination, with legal consequences. Protected classes are set by law: gender, race/color, religion, military/veteran status, genetic information, disability, religion, etc.

This policy DOES treat PERS-enrolled employees differently but it's not illegal. People who are enrolled in PERS, even part-timers, generally cost an employer 10% to 15% more than those who are NOT PERS members. Once an employee is enrolled in PERS at **any** public agency, they must remain in PERS, if they go to any OTHER agency that also contracts with PERS. So, an agency that wants to hire part-time labor outside the PERS system, is (legally) avoiding the whole subject of retirement benefits.

Q: I am on FMLA leave, and my employer is asking for the operative notes of my surgery. Am I required to disclose this information? Is this a violation of my privacy rights?

A: Under both the state and federal Family Medical Leave Acts, your employer has the right to know that you may have a serious medical condition, which may require that you take time off the job. This information should come from a doctor who should, to the best of his ability, estimate the length of your expected leave. **But neither he, nor you, are required to tell the County anything else.**

Unless your condition involves a workers comp claim the County does not have the right to call your doctor about it. In fact, the only information your employer has the "right to know" about your health is that information which you decide to release. Thus you may be asked to sign an authorization form which gives the County your permission to access your medical records. You do not need to agree to this and there should be no retaliation for refusing to agree.

Q: I am an Administrative Analyst I and I received an email from HR stating that my application for Analyst II was not among the most qualified and therefore I would not be allowed to take the promotional test. I would like to find out why I was disqualified since the position is the next level up from mine. Do I have the right to find out?

A: Most Personnel Rules have detailed processes for applying and testing for promotional positions. If there is no formal appeals procedure for a "denial of the right to apply," then you do have the right to ask questions about whether the employer *followed* its own rules, via the grievance procedure. It's not unusual that there are many more eligible applicants in the "applicant pool," than an employer would need to interview in order to fill one vacant position. So, not everyone in the applicant pool – even those who meet the minimum requirements for the job – may be interviewed.

On the other hand, it's not unusual for applicants for jobs to be "hand-picked" and for Management to *fail* to interview a reasonable number of applicants. Bottom line: since you were eligible to apply for the position and were not even allowed to test, you have every good reason to ask why not and, if provided no good reason, to file a grievance over the apparent violation of rules for filling promotional positions.

Employers Can't Make Hourly Employees "Exempt" to Avoid Payment of Overtime

In today's economy, employers are leaving no stone unturned in their attempt to cut labor costs. So it's not surprising that overtime expenses have come under special scrutiny. Runaway overtime can easily double the cost of an employee. It's legal for public agencies to cut back sharply on overtime opportunities. In fact, it's even legal for your Union to negotiate an agreement that all overtime be paid in the form of "comp time" for a limited period of time.

What's NOT legal, however, is for the County to attempt to designate hourly employees as "salaried," or FLSA-exempt, in the attempt to avoid payment of overtime. Salaried employees are a relatively small group of professionals and managers, as defined by the Fair Labor Standards Act. Salaried (or "FLSA-exempt") employees can be asked to work any number of hours in exchange for their (presumably high) salaries. Today, it's not surprising that the number one complaint of most "exempt" is excessive workload and/or hours of work.

Although much muddied by the 2004 "reforms," the FLSA still has explicit criteria for determining what kinds jobs may be considered exempt. In general, an employee may be salaried rather than hourly if he is 1) a manager, clearly spending the majority of his time supervising and directing other employees, 2) a professional, with "specific advanced knowledge in a field of science or learning;" or 3) an administrator, making decisions independently in handling projects or programs. If you or a co-worker have been told that you are exempt, but do not meet one of these criteria, you may have a claim for back overtime.

The FLSA is violated constantly. There is an entire world of attorneys processing FLSA claims on behalf of employees who have been mislabeled "exempt." In public employment, violations are not as common, but some agencies are actively attempting to re-designate certain positions as we speak. Thus, lower-level supervisors, or even crew leaders, may be told they are no longer eligible for overtime (although they do NOT spend the majority of their time "managing.") Or Secretaries -- especially "confidential" secretaries – are suddenly told that they are exempt because of their "special relationship" with public officials. And all too often "white collar" workers are flattered into believing that they are exempt because of the "specialized" or professional nature of their jobs.

In truth, if the jobs were analyzed, most first-level supervisors would NOT meet the "exemption test." And, it's almost NEVER true that clerical staff would be anything other than hourly (no matter how important their bosses may be.) With professional exemptions, it's more complicated, but generally true that a position cannot be considered "professional" unless it requires a college degree. *Even when job specifications are being written to include educational requirements, this does not mean that all jobs with degree requirements are considered "professional" under the FLSA.* Again, the law is specific; the threshold which employers must cross in order to avoid overtime obligations is quite high.

Even if they do not believe that their jobs are truly managerial or professional, most people assume that they do not have any choice in designation. THIS IS WRONG. Even if you ARE in a job class which could be moved, legally, from hourly to salaried status, your employer cannot do this without the agreement of your Association. FLSA status is a subject of bargaining; the County cannot take away your right to collect overtime without BOTH meeting the "exemptions test" for your job under law AND negotiating with your union!

Association Members are Eligible for Free Legal Services

One of the benefits of membership in the Employees Association is that you now have access to free attorney's services. If you are a current dues-payer, you may call our Attorney John Stanton for assistance in any of the following areas:

1. **Small Claims Court**
2. **Family Law (divorce, child custody, guardianship, etc.)**
3. **Workers Compensation and Americans with Disabilities Act**
4. **Estate Planning (Wills and Trusts)**
5. **Bankruptcy**
6. **Personal Injury**
7. **Real Property (interests in land)**
8. **Department of Motor Vehicle hearings**
9. **Unemployment Insurance hearings**

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

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

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