Regional Employees Association of Professionals November 2014 News

Bad News: Stockton Judge Rules that Retirement Contributions May Be "Impaired" by Bankruptcy

The City of Stockton made history two years ago when it became the largest U.S. city to declare bankruptcy. (It has since been eclipsed by Detroit.) One of the big questions was whether the City would be compelled to make its CalPERS contributions during and after the bankruptcy. It has been a long, well-publicized legal battle, partly because bond holders, including Franklin Templeton Investments, one of the City's big debtors, has insisted that they have equal footing with CalPERS for recovery of lost investment money.

Now that the dust is finally settling, it isn't good for public employees. U.S. Bankruptcy Court Judge Christopher Klein has ruled that Stockton's debt to CalPERS may be "impaired" – legally wiped out like any other debt in a bankruptcy proceeding. The judge IS allowing Stockton to cut future retirement payments.

To its credit, the City of Stockton took the side of CalPERS, arguing that it must make its pension contributions for employees before its creditors are paid off. But the judge has advised Stockton, Franklin Templeton, and PERS that they must now cooperate in "working out a deal."

Already this has had a big rippling effect in the world of municipal government. Councils and Boards that would like to evade the "bombshell" costs of PERS payments are now aware that they may do this by declaring bankruptcy. Investment analysts at both Fitch and Moody's (which establish ratings for municipal investors) are looking at big potential downgrades for local government bond ratings.

None of this affects the solvency of the multi-billion dollar CalPERS fund, nor does it affect the retirement income of the employees of Stockton. PERS is a "defined benefit" program; the City's retirees will receive whatever payments are established by their contract, between the City and PERS. However, it does mean that CalPERS will do without the contributions of one fairly good-sized city. Absorbing this loss *will* have a small (*very* small) effect on the contributions paid by all other agencies in the System.

Public Agencies Still in Flux: How to Survive in an Understaffed Workplace…

There is an old adage in labor relations: "Management has the right to Manage." This means, generally, that your County's managers and elected officials, in their collective wisdom, have the right to decide how the county's money will be spent, and its services, rendered. With amazingly little oversight or legal boundaries, they can decide *which* services the public will be offered, *how* they will be run, *and how they will be staffed.*

Some of those few legal "boundaries," however, are YOUR rights as a public employee. The County has to comply with state or federal employment laws – and with your union contract. This means even though the County Management has broad authority to decide how they want to conduct business, **you** have the right to certain work conditions, fair pay, reasonable work hours, and *a safe, non-harassing, non-discriminatory work environment.*

Normally, management's "right to manage" and *your right* to a safe, healthy workplace are compatible. However, the Recession wreaked havoc on public agencies and many have still not recovered. Many are politically volatile and suffer chronic turnover and/or lack of skill in top management. Many more are still understaffed. And, while there are many laws (or contract provisions) protecting your paycheck, your privacy, your appeals rights, and your *physical* work environment, there are virtually none addressing your right to fair *staffing.* How can you be assured a "safe and healthy workplace" if you are working alone in an office that used to have *three* employees? Or if you are answering phones in an emergency center filled with part-time co-workers who have no idea what they're doing?

The answer is that you cannot. But you DO have the right to object…and to INSIST that your employer correct the violation of your "health and safety rights." Here's how…

Effects of Understaffing

Understaffed work conditions may have a wide range of effects: out-of-class work, excessive hours, stress-related illness, conflict with co-workers, unjustified discipline, etc. The extent to which people can, or will, tolerate understaffed conditions varies a LOT. Some people speak up right away; others will *never* complain. It's up to YOU to decide what you will tolerate…

Most public employees have a strong work ethic. They genuinely believe in serving the community. They are "good" employees ... generally not the kind of people who want to "make waves," even during the Recession years, when wages and benefits were being "ratcheted" down. They were overwhelmingly willing to pitch in ***now*** and assumed they would be thanked and rewarded ***later.***

But what happens when pitching in just leads to *MORE* pitching in? What happens when you have been working long hours without adequate help *for years,* and your job is not just demoralizing… it is crazy-making and illness-causing. What if your management says everything is fine? Or, what if you have complained about these unacceptable conditions but received no response? What next?

Taking Action…Unacceptable Conditions

You don't have the right to demand that the County fill vacant positions, but you DO have the right to insist that **violations of your rights** be corrected. Your rights are being violated when these kinds of conditions arise:

- **Excessive hours of work**
- **Inability to take lunches or breaks**
- **Inability to schedule vacation or other time off**
- **Encouragement to come to work when sick or when family is sick**
- **Encouragement to take work home or work extra hours "off the clock"**
- **Dangerous working conditions, including working alone when you should be in pairs; inability to take necessary safety precautions**

- **Injuries or stress-related illness**
- **Inability to finish work; lack of assistance from management in prioritizing work**
- **Harassment, discipline, or negative reviews due to unfinished work**
- **Tension with co-workers caused by understaffed conditions**
- **Working "out-of-classification"**

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

The First Step…

The first step in requesting relief is to talk to your supervisor and, possibly, your union rep. Employees often assume that the boss is paying close attention to their work activities and is aware of their workload. Don't assume this. Most people are much too absorbed with their own workload to pay much attention to yours – even if they are supposed to be supervising you. **If you have never told your Manager, *directly*, that you're overloaded, *do so now.***

Be specific. You may want to give him a list of the times you've worked through lunch or been denied vacation or worked a 50-hour week. It's reasonable for you to ask who else may be given some of the work – and when. If you don't think he understood the severity of the situation, follow up with an e-mail, and "cc" your rep.

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

A Group Grievance?

If you are working in understaffed conditions, you are probably not the only person suffering**. Filing a grievance *as a group* not only lends credence to your complaint, but also reduces the likelihood that <u>you</u> will become the target of your manager's irritation.** Your union representative should meet with everyone affected and put together your list of violations/abusive conditions. S/he should then contact department management (or Human Resources) and schedule a grievance hearing.

In the meeting your representative will enumerate your complaints and explain the "remedy" is relief from these conditions. Understaffing itself isn't a violation (unless your contract has specific language on staffing) and the remedy you seek can't be that the "county must hire more people" – even if it is the obvious solution. The remedy is relief from the abuse.

Also, remember that a grievance is a complaint over *legal violations*; it is NOT a complaint that you have too much work to do. If you have too much work but are not suffering from excessive work hours, being harassed, being threatened with discipline for unfinished work, skipping lunch, being denied time off, or being made sick, you really don't have a grievance.

If your primary complaint is that you cannot keep up with the workload or cannot provide the level of *quality* in your work that you used to provide, *but you are NOT working excessive hours, denied time off, or being bothered by your management because of this decline*, you probably don't have a grievance either. **<u>You have the problem, sadly, of caring too much about your job</u>**. In today's world it's probably not a good idea to care any more about your job than your management does. *That* can make you sick…!

The County's response…

Management's resolution to your grievance *might be* to hire more people – or it might not. But it SHOULD address the violations of your right to a safe, healthy workplace. They can try fixing this by moving the work around, restructuring procedures, discontinuing certain functions, or filling vacant positions. <u>It's their call.</u> Your job, after this, is to monitor whether the conditions in your job have improved.

If Management doesn't offer any solutions (or their solutions don't solve any problems…) you and your union should move up the chain of command. Ultimately, you WILL get relief. Some issues go to workers comp or to court…

The Big Picture

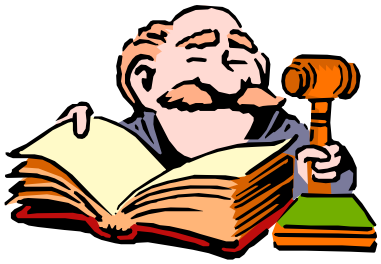
Some agencies exploit people until the mistreatment results in costly litigation. But, in truth, this is rare. The majority of managers take legitimate grievances seriously. If nothing else, good Managers understand that morale problems have a direct effect on productivity: employees who are angry, overwhelmed, or exhausted simply don't do their jobs to full potential. (And the best ones *leave the job* entirely.) So, a good "workplace conditions" grievance can well accomplish your goal. Finally, please consider that top Management at your county may be unaware of your problem entirely. The larger the organization, the less likely they are to even *know* about the understaffed conditions. **Your formal grievance may articulate this for the first time.** It may also place your supervisor under *his supervisor's* scrutiny. He may want to solve your grievance because scrutiny is not in *his* interest, either…

New IRS Rules Allow Employees to Withdraw from Employer Cafeteria Plans To Go on "The Exchange"

Existing rules for employer-sponsored cafeteria programs often make it difficult for employees to change their medical plans unless their work status changes. In September, however, the IRS released new rules which allow employees to drop employer coverage under two circumstances: 1) if his/her work hours fall under an average of 30 per week or 2) if the employee would like to acquire coverage through Covered California.

***Now,* if someone does wish to leave an employer's plan to go on The Exchange, he must "represent" to the County that the reason for dropping coverage is to go on a Covered California plan – and the County *must* accept this representation. One important rule: the new plan must go into effect immediately following the last day of the canceled plan. There cannot be any break in coverage.**

This change in rules may benefit employees in agencies that don't pay the bulk of employees' monthly premiums. Not all public employees are highly-paid, and not all agencies pay for full coverage. Employees (especially those with families) who may be paying hundreds of dollars out of pocket might well be eligible for good, *subsidized* care through the State's plan.



Labor Relations Update

The following are some major legal decisions which may affect the rights of public employees in California. If you have a question or problem, please contact your Board or Association staff at (562) 433-6983 or cea@cityemployees.net.

County Can't Terminate Deputy Sheriff in Retaliation for Whistleblowing

In September 2000 a deputy sheriff was assigned to investigate the disappearance of a co-worker who had been assigned to a drug enforcement task force in Antelope Valley. He discovered that the missing deputy had been murdered and that another deputy was involved in the narcotics trade. He reported this information -- about the "dirty deputy" -- up his chain of command. He was told to drop the issue and NOT to pass any information on to Internal Affairs or Criminal Investigations.

Despite this order, the Deputy continued to investigate and prepared a request for a search warrant. When his captain stopped him from pursuing this, he then went above his captain's head to his superiors.

Shortly thereafter, the Sheriff became the subject of an internal affairs investigation himself. He was charged with insubordination, making false statements, and conducting unauthorized wiretaps. Then he was fired. The Deputy sued for wrongful termination claiming he was fired in retaliation for whistleblowing.

To win this kind of claim, an employee must show, first, that he disclosed a violation of law, rule, or regulation to a government or law enforcement agency; and, second, that he suffered "adverse action" in

retaliation for the disclosure. In this case, the employee was able to prove both, and the Court awarded him over $2,500,000 in damages.

What makes this case particularly interesting, is that the County claimed the sheriff was not, truly, a whistleblower because his department already knew about the "dirty deputy." The Court, however, found that an employee may have "whistleblower protection" even if he is not the first person to report wrongdoing – and even if he is reporting something that the authorities already know. The Court said that if the law were interpreted to so only the "first reporter" is protected this could easily discourage whistleblowing among employees at public agencies.

Public Employer May Terminate Employee for Refusing Fitness-for-Duty Exam

A math professor at the University of San Francisco submitted a 485-page complaint to his Human Resources Department alleging race-based discrimination, harassment and the lack of diversity among faculty. The University set up an investigatory meeting. At the meeting, according to several witnesses, the professor was "unable to control his emotions," started yelling and screaming and went into "an irrational, uncontrollable rage." Three other faculty members complained to HR that the professor had thrown papers across a table at another meeting, where he was "shaking with anger" and was "physically confrontational."

After consulting with a psychiatrist, the University decided to send the employee to a fitness-for-duty exam: a medical consultation by an independent physician. They placed the professor on paid leave. He then hired an attorney who requested detailed information regarding the reports made by faculty members. The university refused to provide reports.

The attorney told the university that his client would not cooperate with the fitness-for-duty exam and alleged that it was retaliation for his discrimination complaint. The Director of Labor Relations then met with the parties, concluded that the professor's behavior did seem bizarre, and sent a letter, ordering the professor to attend the medical exam and threatening termination if he failed to cooperate.

The professor continued to refuse and was then terminated. His lawyer sued the University, arguing that it had violated his rights under various laws including those prohibiting discrimination, requiring protection for a disability under the ADA (Americans with Disabilities Act,) and protecting privacy of his medical records. The key question was whether the university had the right to compel an employee to comply with a medical exam as a condition of continued employment.

The case went before a jury which found that the university had committed no wrongdoing. According to the court, employers have no obligation to provide "reasonable accommodation" under the ADA unless an employee claims to have a disability and *requests* accommodation.

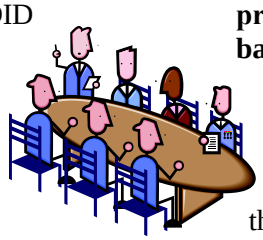
The professor also argued that the university had no right to gather "private" information about his medical condition. But the court disagreed, and found that an employer may legally require a fitness for duty exam if the employer can show a "business necessity" for the exam. Although this is ordinarily a difficult threshold to meet, the employer was able to show that in this case multiple witnesses had reported multiple instances of aberrant behavior, AND the employer had consulted with a psychiatric professional before ordering the exam, AND the employee's behavior was sufficiently threatening and interfered with departmental business.

City Cannot Refuse to Bargain over Change in Municipal Code

In 2010 the Palo Alto City Council began to discuss eliminating that section of its Municipal Code which provided for binding arbitration in negotiations impasses with its police or firefighters union. When the two unions heard about this, they both sent letters to Human Resources, requesting to bargain. The City responded by saying that it was not required to bargain.

The Council prepared for a ballot measure to eliminate the arbitration clause through a vote of the public The City was careful to keep both unions informed about this, but continued to respond negatively to the union's request to negotiate. The City did provide the unions with the opportunity for "informal comment and discussion." At one Council session, the leader of the Firefighters Union openly insisted that the City "adhere to Government Code Section 3507 and meet and consult in good faith." He was ignored. The Council put the measure on the ballot in November 2011, and the voters approved the elimination of the arbitration clause. The Unions then filed a PERB claim over the City's refusal to "meet and consult" as required by law. The City responded by arguing that bargaining was

"permissive," but not required, and that it DID "consult" with the union.



The key issues were 1) whether "meet and consult" means "negotiate" and 2) whether a change in the municipal code, affecting collective bargaining procedure is considered a "mandatory subject" of bargaining (i.e. a subject requiring negotiations if the union request this.)

The PERB judge said yes on both counts. The City was ordered to meet and confer with the unions and the repeal the voters' actions repealing the arbitration section of the City's Code.

Some Really Basic Information About Overtime

In 1985, public employees in California came under the protection of the federal Fair Labor Standards Act – the national Overtime Law. The FLSA requires that all employees, except those who are specifically exempt (managers, professionals, and some supervisors and administrative employees) must be paid overtime if they work more than 40 hours in a week.

The overtime rate is one-and-one-half times your normal rate of pay. It must be provided in the form of pay or, *if the employee agrees,* in the form of "comp time." (In the public sector, your association may bargain for an agreement that allows the employer the discretion to pay comp time instead of overtime. But in the absence of a negotiated agreement, the employee has the discretion…) Comp time must also be provided at the rate of time-and-one half.

For employees over the age of sixteen, the law does not set any limits on the number of hours you can be asked to work in a week, but it does prohibit the overtime requirement from being waived, even by agreement of the employer and employee. In other words, it is illegal for Management to try to coerce or intimidate you into not asking for or receiving overtime pay for overtime worked.

Overtime laws can be enforced through your Association's grievance procedure and/or by the Wage and Hours Division of U.S. Department of Labor. The advantage of using the grievance procedure is that it is relatively swift and non- controversial. However, the grievance procedure usually does not incorporate back pay provisions.

Federal statute allows the employee to recover up to two years of back pay – and this extends to three years if investigators determine that the violation was "deliberate and willful." Not only can employers be criminally charged for knowingly violating the FLSA, but it is also illegal for them to discipline or discriminate against an employee for filing an FLSA complaint.

Perhaps the most frequent complaint involves employees who have been improperly told that their job classification is "FLSA-exempt: that they are salaried and not eligible for overtime pay." Supervisors who spend a considerable amount of time "in the field" should not be classified as FLSA exempt. Similarly, clerical and administrative employees should not be designated "exempt" unless they work autonomously, exercise independent judgments and do NOT work under supervision of another non-management employee. Employees who are called "confidential" would usually NOT meet the criteria for FLSA-exemption, and should not be denied overtime pay.

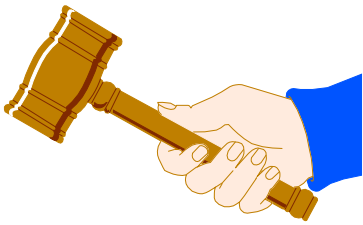
If you think you have been improperly denied overtime pay, you can call your union rep or look up the nearest office of the Department of Labor on the Internet. The complaint may be filed in person, by letter or by telephone, but it also must be made in writing.

CEA Welcomes New Staff Attorney, Nik Soukonnikov

This month, we welcome Nikita Soukonnikov to the staff at City Employees Associates. "Nik" received his B.A. from Bard College, and his law degree from the University of Minnesota. He worked as a union organizer before law school, helping employees at public and private agencies form unions and negotiate labor contracts. During law school, Nik specifically worked on matters of justice for victims of employment discrimination and wage theft, in state and federal courts.

Nik joins co-workers Mary LaPlante, Mike Gaskins, Andy Lotrich, Marjeli Cruz; attorneys Vicky Barker, Jeff Natke, Brian Niehaus, and Oshea Vasquez; office manager, Pat Marr and Director Robin Nahin. At CEA, he will be emphasizing his skills of "expanding the rights of the average employee" though both individual and group grievances, and representing members in disciplinary appeals.

The State of the Law on Retiree Health Benefits



There is no doubt that public employee retirement benefits are under attack today. This is especially true of retiree *health* benefits, which are more expensive every year.

In the past the majority of agencies DID provide some paid medical benefit for retirees. But these have been whittled down over the years, so that many union contracts show multiple "tiers" of benefits. Most "new hires" today will NOT receive paid health care when they retire.

But if you are a longer-term employee you may wonder whether this benefit can be taken from you. The answer is generally NO! The state of the law on ALL retirement-related benefits *(at least today)* is that **your county that MUST continue to provide you with whatever benefits were in place at the time that you hired.** The employer may negotiate changes for new employees, and they may *propose* to negotiate changes to the entire plan, but your Association does not need to agree -- and your employer cannot impose a "takeaway" of retirement-related benefits without your complete agreement.

Principle of Deferred Compensation

The security of your retirement benefits has come as the result of a lot of litigation between employers and retired employees groups. T**he Court decisions all rest on the principle that retirement benefits are part of a deferred compensation package,** which may only be altered by the substitution of a benefit of equal value. The courts have looked at two main principles for their decisions on this issue:

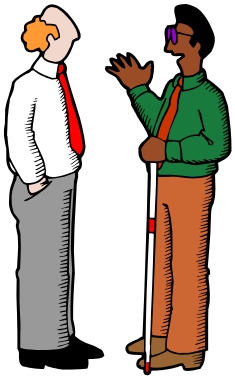
The first principle lies in what the Courts call "the inviolability of private contracts." What this means, simply, is that **the Constitution stands behind the concept that contracts must be enforceable.** If a binding contract tells employees that when they retire, they will have paid health care, then they MUST have paid health care.

This is because of the second principle: that **retirement benefits are a form of deferred compensation**. They are a benefit, which "vests" (becomes yours) with your initial employment. If you serve one day under a contract with certain retirement benefits, those benefits are yours forever. Retiree benefits differ from all other elements of an MOU in this regard: you don't receive them while you are working. You receive them afterward -- BECAUSE you

worked. The benefit is deferred; it can't be taken away if you worked while it was in place.

Retirees have no Bargaining Power

The Courts have taken a very strong position so far on the subject of retiree benefits (as opposed to other elements of a union contract) because retirees have no bargaining rights! If younger, newer employees would like to "trade away" the benefits of the older population they are prohibited, by law, from doing this. For this reason, even employers' attempts to modify medical plans by increasing co-payments or drug costs have been successfully thwarted by retirees' lawsuits. Their inability to bargain collectively, say the Courts, means that retirees "vested benefits" cannot be altered.



What about economic crisis?

In recent years there have been court cases where employers have cited economic instability as the grounds for avoiding the burden of rising retiree health costs. Even in these circumstances, the Courts have leaned in the direction of protecting current employees' future retirement benefits. A public agency may *argue* that it has a compelling interest to save money which is *more* compelling than the needs of retirees, but the Courts have been clear: **the mere existence of a fiscal crisis is not sufficient to justify the "impairment" of a contract.** Once employees have been promised a retirement-related benefit, a public employer is *legally bound* to follow through on that promise.

San Diego Cities File Suit to Try to Avoid Paying Fair Wages

NEWS FLASH!

Several years ago, cities all over the state began conducting "charter city elections." This "movement" is largely in an attempt to evade state labor and employment laws. The argument was that charter cities are their own independent governments, and therefore able to make *their own* labor and employment regulations, often in defiance of the state regulations.

It's not clear exactly which laws charter cities truly are able to evade. The whole subject is in extreme flux, with issues being decided in the courts (often in contradiction to one another) on a case-by-case basis.

One of the laws that some cities *really, really* wanted to evade involves "prevailing wage." This is the requirement that cities pay fair salaries, equal to the unionized construction trades, for publicly-funded construction projects. In 2013, after years of watching cities *first* hold charter elections, *and then* refuse to abide by prevailing wage laws, the legislature passed a NEW law, SB7. SB 7 requires charter cities to pay prevailing wages on city-funded construction projects.

Now, six cities in San Diego are challenging this law, insisting that charter cities *cannot* be forced to pay prevailing wage. They have filed for "injunctive relief," arguing that construction projects are actually being held up because the law requires them to pay unreasonably high wages.

In late August, the San Diego County Superior Court heard oral arguments on this constitutional challenge, and in late September, they rejected the cities' request. The cities are appealing. They would rather spend their money on court battles than on paying the prevailing wage.

Job Growth in Local Government is Up... (But the New Jobs Are Lower-Paid than the Ones We Lost)

According to the Bureau of Labor Statistics, hiring is once again on the upswing. But in both the public and private sectors, the **type** of job growth is troublesome. Low-wage jobs are growing far more quickly than mid-range or higher-paid positions. In fact, while lower-paid jobs were only 22 percent of those *lost* in the recession, they composed 44 percent of the new jobs *created* between January 2012 and July 2014. **In other words, this "recovery" seems to be missing something: the middle class.**

Interestingly, the fastest growing sector of *public* employment is *city and utility agency employment.* *But t*his is because cities had the ***steepest decline*** in employment during the Recession. During the years 2009 to 2012, almost all cities implemented both workforce reductions AND compensation cuts: retirement incentives, layoffs, furloughs, wage freezes, benefit cuts (and benefit costs passed to employees,) multi-tiered benefit structures, etc. **Nationally, hundreds of thousands of public jobs were lost.** The biggest loser, per capita, was California.

Now, however, cities are growing at the rate of 6,000 new jobs a month! This is a good thing, except for the fact that the average take-home pay of new city employee is *lower* than it was five years ago.

According to Bureau budget analyst, Christiana McFarland, this is not only unfortunate for city employees, but also for the quality of life throughout our economy. This is because government employment is the "core" of the American economy. Because, government jobs are considered secure "middle-range" jobs, they act "almost like a barometer" for the rest of the economy. Hence, when the value of government jobs is down, this ripples into other industries, and investments (and salaries) in transportation, utilities, and communications will also be down.

It remains to be seen whether "mid-range jobs" will return as the "core" of government employment. For the moment it appears that we are more likely simply to adjust our standards… Maybe just rename those new lower-paid positions "the NEW middle class…"

Questions and Answers...

Can They Do That to Me???

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

Question: Can my department make me come to work on a holiday? (I wouldn't be able to do this because my kids are out of school.)

Answer: Unless your MOU says that you will *never* be asked to work on a holiday (and that would be very unusual) you *can* be. Although most employers are reasonable about family conflicts, public

employees can be "called out" at any time, to respond to all sorts of emergencies. If it is any consolation, most MOUs do call for a higher rate of pay when employees work on a recognized holiday.

Question: Recently there was a promotion in our Department for a Senior Planner position. Two of us feel as though we were more qualified for the job than the person who got it. Our MOU doesn't spell out any specific procedures for filling promotional positions. Are there any rules that govern this?

Answer: Most public agencies do have some rules for hiring and promoting. These are usually found in the Personnel or Civil Service Rules or Administrative Policies. Older/larger agencies generally have rules about promoting from "the top of the eligibility list" or giving credit for seniority, but newer/smaller agencies rarely have detailed rules. This means that the question of who is most qualified is left to the opinion of one or two managers and may be highly subjective.

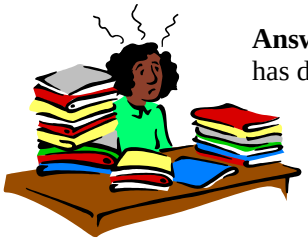
You DO have the right to ask questions, however, and even to ask about possible violations of rules, such as nepotism. Feel free to call your union rep for help with this. You can also go to the HR department directly with your concerns.

Question: Our county created a weekend shift in the library which included a small pay differential. Two of us volunteered to take this shift and we've been doing it for a year. Now management wants to rotate the weekend shift amongst all eight of us. Do we have a right to insist on keeping our schedules -- or can management just change us?

Answer: Management does have the right to assign staff to different (existing) work schedules. However, you have the right to ask why the need for the change? Most people don't want to work weekends! The next step is some improved communication with your department. It's possible to negotiate a shift selection or bidding procedure. For example, everyone might agree on a rotation amongst *only those people who want to work the weekend shifts*.

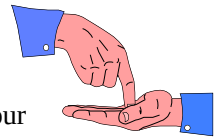
Question: I just found out that my child will be receiving a school award in two days, but I've been denied the time off because it I did not give advance notice to my supervisor. How much time exactly is proper advance notice?

Answer: There is no legal definition of advance notice, and while it's generally within management's prerogative to approve (or deny) time off, there are many, many instances where employees need to use "emergency vacation." There is also a state law (the Family-School Partnership Act, which allows you to take up to 40 hours a year off the job to attend children's school activities.) So, if you think your supervisor is being unreasonable, you do have the right to request some reconsideration. Feel free to contact Association staff or to talk to someone *above* your supervisor in the chain of command.



Question: I received a jury notice. I told the County about it and, because my co-worker will be on vacation the week I am scheduled for jury service, they told me to postpone it to when it is more convenient for the County to have me attend. I was instructed that I must "work around the department's needs and not the other way around." I am definitely NOT trying to meet my own needs by attending jury duty! Can they legally do this?

Answer: Unfortunately for the County, it is the Judge that determines whether or not you attend Jury Duty. Having said this, some systems do allow you to change the date for your potential jury service. If you can do this, you should. But if you cannot, you are legally obligated to serve Jury Duty if summoned. At that time you can explain to the judge that you are under some pressure from your employer and would like to reschedule this civic duty.



Question: I am on the Standby Crew for the Public Works Department. There is a special event put on by Community Service which I am being told that I have to attend "because you are on stand-by." I thought my standby duty only covered emergencies in the public works department: streets, electrical, plumbing, etc. Can the County force me to work this special event?

Answer: The employer can always require you to work outside normal hours and to perform *some* duties that aren't on your job description. The fact that you are on stand-by only tells the employer that you are ready and able to work; they could compel you to do this even if you were not on the Standby Crew. So, yes, they can require you to work but they must pay you overtime, in accordance with the law and the MOU.

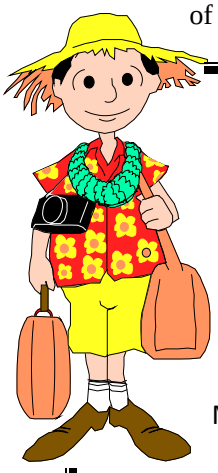
Question: I had a stroke last year, but was back on the job within two months. Now the county wants me to do a physical and provide information about all my medications. There is one medication for depression that I'd rather they not know about. Do I have to cooperate with this? Isn't it a violation of my HIPAA rights?

Answer: This is a difficult situation. If your employer has doubts about your ability to perform the work safely, they do have the right to send you for a "fitness-for-duty exam," and this could well involve providing the examining doctor with information about the

drugs you are taking. However, per HIPAA, the County should not have access to this information. The doctor should only use this information to determine whether or not you're able to perform the essential functions of your job.

There's a further consideration: depending on the duties of your job, you may be obligated to report the use of any drug that can affect your state of mind. This is the case, for example, if you operate a heavy vehicle.

So, while you *can* legally refuse to provide the release of medical information, your employer may take you out of the workplace until they have more information. If your pay is affected, you would, of course, have the right to appeal…



Don't They Have to Let Me Take a Vacation?

Most permanent public employees have vacation benefits. This is clearly so you can TAKE a vacation. The theory is that some time off – a respite from the workplace – is good for you, and good for productivity when you return. The amount of vacation you receive is negotiated by your Association, but vacation is also a "vested benefit" under law. This means that it belongs to you and that any portion of your vacation which you aren't able to use must be paid to you when you leave the County.

Most MOU's also contain a section about the conditions under which your vacation can be taken. This usually says something about "mutual agreement of the parties," or scheduling "with supervisor's permission" or "based on the needs of the department." In other words, you CAN'T usually take vacation whenever you want. In some agencies (or departments) there are policies about the length of time you must request the vacation in advance; in others, there are limits on the amount of vacation that must be used at one time. In still others, there are whole policies about vacation bidding and seniority.

Management can't simply generate new policies about how vacation may be used or scheduled. Such policies are subject to negotiations (although it's not unusual for managers to argue that they can be changed as a matter of "operational necessity.") As public workplaces are becoming understaffed, more and more employees are having difficulty scheduling time off. Thus, people who used to be able to call in for a day off on an "emergency basis," are being told that they cannot do this anymore. Others who used to schedule two weeks every summer for a family vacation are being told that they must put their plans on hold "for the good of the department." All of this raises questions about whether vacation *really is* a vested benefit, or whether management can just dictate the terms. Here's the answer:

Vacation IS your benefit and you DO have the right to use it.

Management can make you adhere to some rules about scheduling, and they don't have to agree to every request, ***but if you are chronically unable to use this benefit, you have a grievance!*** Similarly, if they change the rules for scheduling without bargaining, your Union has a grievance!

Vacation is earned paycheck by paycheck and the accrual rate is based on your years of service. Most vacation policies also have a "cap" on the amount you may accrue. When you reach that cap, your employer can stop allowing you to accrue any more vacation. (However, if you do accrue hours over the cap, these hours become yours and cannot be taken from you.) Employees who are chronically reaching their vacation caps, but are unable to schedule their vacations have the legitimate right to ask their employers for some solution. **It is NOT okay for you to lose vacation because your workplace is understaffed!**

NEGOTIATING "PAYOFFS"

One solution to the "use it or lose it" problem is to negotiate a policy where employees may "cash out" a reasonable portion of vacation time each year. This doesn't give you more time off, but can put a little more money in your pocket during hard times. An even simpler solution is to negotiate a higher accrual "cap" which would mean that you would be able to use the time (or take the money) later.