Regional Employees Association of Professionals November 2015 News

The County has "Recovered." But Has Your Job?

By Robin Nahin, Association Staff

One of the most upsetting realities about this post-recession world is that businesses and agencies have "recovered" -- but many of the poor conditions in your work place *have not!* Between 2009 and 2012 almost all public agencies massively reduced the size of their workforces; in some cases, by nearly 50%. Over 100,000 public employees in California were laid off. This was the highest percentage of layoffs, per capita, in the country. **The negative effects *on the remaining workforce,* were rampant AND visible: out-of-class work, understaffing, increased injury rates (psychological as well as physical), and widespread exhaustion and demoralization**.

Now that these agencies have "recovered," the insult to public employees is two-fold: 1) many are failing to provide cost-of-living raises that reflect an equitable share of the pie, and 2) **they are failing to restore the workforce to healthy staffing levels**. As we speak, the majority of public employees are still working in understaffed conditions. It seems as if, once managers discovered how much work they could squeeze out of so few people, there was little incentive to repair the situation.

Overwhelmingly, during the recession, public employees pitched in and tolerated abusive work conditions. This was partly because they are loyal and hard-working and wanted to help their employer in difficult circumstances. But it was ALSO because they were afraid to speak up, for fear of finding themselves on a layoff list. Sadly, many abusive conditions persist today, especially in Counties that don't pay well enough to recruit new staff.

What has changed, though, is that a lot of employees are fed up. They are mad about being "nickeled and dimed" at the bargaining table and fed up with working in a pressure cooker. From many people's point of view, the only "reward" for working, *for years, "*above-and-beyond the call of duty," has been *continued* overwork and underpay.

The Line Between Hard Work & Abuse

There IS a difference between hard work and exploitation. Employees don't mind working overtime, for example, but they shouldn't be required to work it *every* night, or *every* weekend. They shouldn't be expected to work through lunch or skip breaks or come to

work sick. They shouldn't be taking work home or working "off the clock" or performing the work of a higher paid classification without appropriate pay. **They shouldn't be doing the work of several job classes.** If these circumstances are present in your worksite, you and/or your Association have the right to tell the County that they are NOT acceptable. Here are some suggestions about how to proceed.

We are not the first generation to try to draw the line between hard work and abuse. One goal of the labor movement, throughout American history, has been to try to force employers to be more humane – and less fixated on "the bottom dollar." This movement has been reflected in state and federal employment law, which made some large leaps forward, starting in the '60s. For the most part, these laws are incorporated in your union's MOU.

As a public employee in California, for example, you have the legal right not to:

- **Work overtime without additional pay (unless you are "FLSA exempt.")**
- **Work excessive numbers of hours (even if you *are* exempt…)**
- **Be required to take "comp time" instead of pay.**
- **Take work home "off the books."**
- **Do work that is unnecessarily dangerous (such as working alone when you should be part of a crew, working faster than you should or without well-maintained, appropriate equipment.)**
- **"Look the other way" at safety violations.**

- **Do work at a lower pay rate than is listed in your salary schedule. (Or the work of higher-paid job, without the pay of that job.)**
- **Do work that your doctor has said you are not supposed to do. (Or so much work, or under such conditions, that it makes you ill.)**
- **Skip lunches or breaks in order to get work done.**
- **Do without negotiated vacations or holidays, or without sufficient rest time between shifts.**
- **Be discouraged from calling in sick (or encouraged to come to work when you are feeling ill.)**
- **Be criticized, harassed, or threatened with lower employment status if you can't keep up with the (sped-up) regimen.**

- **Be discouraged from applying for bonuses, salary adjustments (such as Acting Pay) or reimbursements because someone "doesn't have the budget" for it.**
- **Be "encouraged" to retire, and/or threatened with demotion, termination or layoff if you don't.**
- **Be assigned to carry a cell phone or beeper during non-work hours without standby pay -- or to return to work without overtime or "callback" pay.**
- **Be discouraged from applying for other County jobs because "we need you here."**
- **Be discouraged from filing a legitimate workers compensation claim or threatened with discipline for taking time off for an injury.**
- **Be discouraged from filing grievances over the violation of your rights (or discouraged from representing *other* employees in the exercise of *everyone's* rights...)**

All of the above are real examples of circumstances going on in County workplaces today. To some extent, employees simply became tolerant of such conditions because of the crisis created by the Recession. But it also has to do with the nature of public employment. **We are in the service business.** We are hired to be *helpful.* Public employees are painfully reasonable, thoughtful, and cooperative (even in the face of unreasonable work conditions.) They will often tolerate terrible circumstances for long periods of time in order to avoid conflict – especially when they promised a "payoff" later.

But there is danger in this excessively cooperative behavior. First of all, the payoff may never come. But second: when rights are not enforced or exploitive conditions not corrected over a long period of time, they can come to be viewed as "the norm." **And, when *this* happens your Association may appear to have waived its right to address these problems at all!**

Sacrificing Rights "In Little Pieces"

Drawing the line between hard work and abuse can be difficult because the deterioration of work conditions is usually incremental and insidious. For example,

most employees are happy to help out if they're asked to pick up a few extra duties when a co-worker goes out on medical leave. But what if the co-worker never comes back? All too many agencies will consciously leave the position vacant –with the remaining employee doing all the work. This places the burden on this "helpful" employee to speak up. (And all too often, she is too fearful to do this.)

If the above situation goes on long enough, *no one will even remember the vacant position!* This may or may not be Management's deliberate intent, but it certainly doesn't hurt their bottom dollar! **When rights are eroded in small pieces, *over long periods of time,* employers can easily DENY that they are violating anything.**

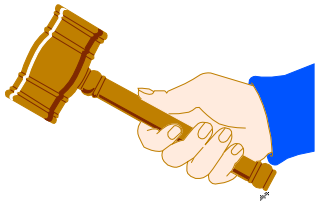
Long Term Damage

Everyone can manage to overachieve for a short period of time. But, in the long-run, people pay a price: exhaustion, irritability, illness, loss of time with family, conflict among co-workers, and conflicts in personal life -- not to mention the loss of pay and promotional opportunities when higher paid work is collapsed into lower-paid jobs.
Far-thinking managers know that their agencies ALSO pay a price: lost work time, loss of good employees; recruitment and training costs, and poor service to the public, who are no longer willing to pay taxes to support their own local government.

What IS the Solution?

Management has the right to decide how to staff its workplaces. But YOU have the right to a safe, healthy environment. You ALSO have the right to require your employer to follow your MOU and the law. If you are unable to take time off, working excessive hours, skipping lunches and breaks, working-out-of-class, and/or being generally run ragged, these are grievable conditions. They violate your Contract.

If you are taking work home, not collecting overtime (or being forced to accept "comp time" *instead* of overtime) or working in unsafe conditions, these may also be violations of LAW: the federal Fair Labor Standards Act. You may want to contact your union staff – sooner, rather than later.



A Corollary: Public Employers Can't Fill Permanent Jobs With Temporary Labor… By Robin Nahin, CEA staff

Utility Districts are in the service business; most spend more than 80% of their revenues on labor. So, when they have financial problems – *or just want to save money* – one very simple solution is to "hire a temp." If your co-worker retires, and you find yourself unable to perform ALL of her duties, your boss may help you out by "hiring a temp." In the short run, this may help you (or your employer) out in a crisis. But, in the long run, the use of part-time and temporary labor in bargaining unit jobs causes permanent jobs to disappear, causes your Association membership to dwindle, and puts you in the position of negotiating in the presence of co-workers who are doing your jobs at half the price. It is the single most destructive action your Association can agree to.

Did I say AGREE TO? Yes. **The jobs in your Association's bargaining unit *belong to* the Association. They're covered by a Labor Contract -- an MOU -- and the County cannot give your jobs to "non-bargaining unit members" without the Association's agreement.**

Many public agencies solved their urgent need for cheap labor, during the Recession, by filling permanent jobs with part-timers and temps. Many unions "looked the other way" at this violation while they tried to cope with other problems. But if this "erosion" is still thwarting YOUR growth, either personally or organizationally, you may want to consider taking corrective action NOW.

Just a Reminder…

"CLASSIC" EMPLOYEES MAY CHANGE JOBS WITHOUT LOSS OF PERS BENEFITS!

When PEPRA, the Public Employee Pension Reform Act, went into effect a few years ago, it created the lowest tier of benefits in CalPERS' history. The "2%@62" plan applies to all new entrants into the PERS system after January 1, 2013. However, employees who were ALREADY employed when PEPRA went into effect were considered "classic" employees. Their formula did not change.

Before 2013, most public employees in California enjoyed plans that ranged from the "2.0@55" to the "2.7@55" or even the "3.0@60." The writers of this law were well aware that most people would never move from one agency to the next, even for promotional purposes, if they had to accept a much worse retirement plan. So, the law includes a provision which allows "classic" employees to *remain* classic employees, if they move from one agency to another within a six-month time period.

This doesn't mean that the "classic" employee retains the formula from the original employer wherever he or she goes, but it does mean that he's treated as a classic employee in the new workplace, falling under whatever PERS plan was in effect for employees *at that agency* before 2013.

So, do not be deterred from expressing your ambition in service to the public! If you are a Classic PERS employee, you will ALWAYS BE a classic employee, unless you have more than a 6-month break in service.

Layoffs & The Law

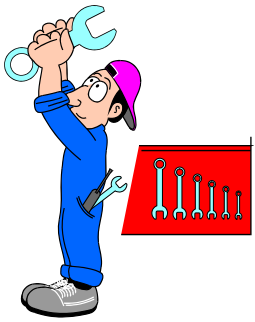
Question: Our County is collapsing two departments into one, and eliminating "duplicate" jobs. I know this is legal, but they seem to be hand-picking the specific employees they want to get rid of, rather than looking at the positions they fill. Don't employees have to be laid off in seniority order?

Answer: There is an old law from the '30's which says that layoffs in cities, "for economic reasons," must be based on inverse seniority (in other words, the least senior employees are laid off first.) However, this law wouldn't apply if the layoffs are just a matter of reorganization.

Layoff procedures are entirely negotiable, and some agencies have no layoff policies at all. This means that your union has the role of trying to initiate bargaining to establish a FAIR procedure. (And, yes, the fairest procedure is based on seniority.)

In the vast majority of agencies, there IS a layoff procedure and it IS based, loosely, on seniority. These

layoff policies are often ambiguous when it comes to questions of *how seniority is actually measured*. Is it by department? Or by job class? Or by total, County-wide longevity? Because the stakes are obviously very high, an ambiguous layoff procedure can lead to a high level of conflict in the workplace.

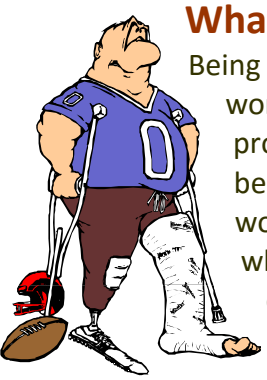


So, to answer your original question, management IS probably supposed to lay off by seniority, but this concept can be manipulated to fit almost any scenario. Your union then has the opportunity to challenge the County's interpretation of the policy, either by filing a grievance on behalf of those employees who seem to be "hand-selected" or by negotiating over the "impact" of their layoffs.

Grounds for Legal Action

Employees who believe that they were "targeted" for layoff may have grounds for legal action. It's not legal, for example, for employers to lay people off on the basis of age, race, gender, physical disability, or union activism. Thus, if older employees are laid off while younger employees *in the same job class* are not, this raises strong questions about possible age discrimination. Similarly, if your Association president is laid off, when no one else in the Department is affected, there is an *appearance* of discrimination based on his/her union activity.

In 2009, in *Levine vs City of Alameda*, another important precedent was established. In this case, the employee alleged that his layoff was a pretext, and that he was actually terminated because his supervisor disliked him. The Court then held that Mr. Levine was entitled to due process, including a full evidentiary hearing, as if he were being fired for disciplinary reasons rather than being laid off. Since then, the *Levine* decision has been broadened to apply to any situation where an employee believes he has been "targeted" to be laid off for an impermissible reason.



What About People on Sick Leave or Workers' Comp?

Being sick or injured doesn't protect an employee against layoffs, even if the injury is an accepted workers comp claim. However, both workers compensation law and the Family Medical Leave Act protect employees against being targeted for an "adverse action" *because of their conditions* (or because of filing claims under these laws). This is important! There is no doubt that employers would prefer to terminate sick or injured workers, rather than the healthy, able-bodied ones. So, while being sick or injured doesn't "immunize" anyone against layoffs, if an injured worker is laid off *out of seniority order,* this can raise serious questions about retaliation or discrimination.

Taking Legal Action?

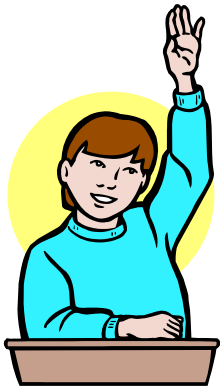
Your union has the right to meet and confer with the County over the "impact" of layoffs. Normally, this means talking about severance pay, timing of the layoffs, COBRA, bumping (and pay rates after bumping) and re-employment rights. It can also get into questions about the division of labor among remaining employees. Each laid off employee can be represented, individually, and **if you believe that the County has violated the layoff policy or committed some form of discrimination, this can be brought up in the "impact" meeting**.

If the parties can't come to agreement, your union can help you file a grievance over the violation of the local grievance procedure, or quite possibly, of state law. If the grievance process isn't successful, it's possible that your union can either take your claim to the Public Employment Relations Board or help you with a discrimination complaint at the EEOC (Equal Employment Opportunity Commission).

Your Rights AFTER Layoff

Laid off employees have the right to collect unemployment insurance, and they may try to negotiate severance pay, continued benefits, and the ability to return to the job when the employer is re-hiring. If the employer is violating the local procedure or clearly committing illegal discrimination, they can file suit. Normally, the negotiation over "impact" involves the employer's offer of severance pay or benefits in exchange for a settlement agreement which waives the employee's right to sue. You should know that there are some "rights" which the County can NEVER ask you to surrender. T**hese include the right to file a workers' compensation claim, *after you are no longer employed,*** over an injury -- often long-term trauma -- which developed during the course of your employment.

When Are Public Employees "Liable" for Damages?



Q - My wife is working with disabled children. As part of her duties, she has to ferry them around to various public facilities. Is she liable if something happens to one of them?

A - No. The legal doctrine of '*respondeat superior*' means that an employer is responsible for the acts of its employees which were taken within the scope of their employment. Three different factors are at work here. First, if the action is reasonably foreseeable, the employer is liable and the employee is not. For example, if there is a traffic collision when the employee is transporting children to a scheduled activity, it's probably foreseeable that driving could lead to an accident? Even if the employee might be responsible for the accident, the employer bears the responsibility for paying for it because it set the employee on this task.

Second, the Courts look at whether the action is in the course and scope of employment. If it is, then the employer is responsible even if the event is not foreseeable. For example, if somebody is engaging in criminal conduct (like robbing a store) and one of the employee's students is hurt, the employer is responsible. (This is NOT true if the employee is the one intentionally engaging in the criminal conduct, however. In this case, the employee would definitely be acting outside the scope of the job.)

The third factor which often raises concerns is that recent legal decisions have raised the question of personal liability for certain employees in certain situations. For example, in the areas of sexual harassment and on-the-job safety, personal misconduct can trigger liability for the guilty employee. But these cases are a small exception to the general rule. A conscientious employee who does not act inappropriately on the job need not be concerned with liability issues. The general rule is that the employer -- *not the employee* -- is responsible for mishaps on the job. This situation is generally upheld by another, practical factor: employees are not very good targets for lawsuits. They do not have the "deep pockets" of large, public employers. Thus, members of the public who believe that they have sustained damage because of the actions of an employee will still file suit against the employer.

SOME BASIC INFORMATION ABOUT THE WORKERS COMPENSATION SYSTEM

By Alan Kreida, Workers Compensation Attorney

It used to be difficult to be an injured worker. Those were the good old days. Now it is horrendous. Over the past decade, employers and insurance companies have managed to change the law so it is extremely difficult for injured employees to get the benefits that the law entitles them to.

In the previous century, employees gave up their right to sue in civil court over their injuries, in exchange for an administrative system that was supposed to take care of them fairly and quickly. It was never very fair or quick, but over the years, the system has become so complex that many people are unable to make sure their rights are protected without a lawyer. Here, however, are a few tips to help you navigate the system, if you are injured on the job:

1. You should pre-designate a treating physician. This means you should provide your employer with the name of a doctor who you want to be sent to if you are hurt. Your Human Resources Department may have a form for this or you can secure one from the CEA office. It is essential that this information be placed in your personnel file and that you keep a copy of it. ("Predesignate" means before you are injured. If you if you are hurt BEFORE you designate your doctor, you will be stuck with the doctor of the County's choice.)

2. If you do suffer an injury, you should report it immediately to a supervisor and make sure you're provided a claim form. The law mandates that the employer provide a claim form to an injured worker within 24 hours of the time that the injury is reported. Make sure to keep a copy of this claim form.

3. Write down the facts about your injury including the names of any witnesses and the time and place that it happened. The sooner you record this information the more likely it is going to be accurate. This is critical, in case your employer raises a question about whether the injury happened on the job.

4. Do not discuss your workers compensation claim with co-workers. Keep your business to yourself. Along that same line, don't talk about your injury on any social media. Nothing on the internet is private!

5. If your employer, the insurance company or medical providers are not responsive to your needs, talk to your union's legal staff. They can give advice about your best course of action and tell you if you need an attorney. Your union rep can refer you to a reputable attorney, who will not jeopardize your job for the sake of a high settlement.

6. Workers compensation attorneys are specialists, and all reputable attorneys in this field work on a contingency basis. This means they are not paid unless they obtain benefits for the client. The fee is low and is set by law, by the Workers' Compensation Appeals Board.

If you or someone that you care about becomes injured at work and needs legal assistance you may contact Mr Kreida at the Law Firm of Glow & Kreida (562) 432-5519.

Legal Decisions "Raise the Bar" For Public Employees

The following are significant legal decisions which further the rights of public employees in California. Please keep in mind that each case is unique. If you have a *specific* legal question or problem, contact your Board Representative or our Professional Staff at 562-433-6983 or cea@cityemployees.net before taking action.

Media Can't be Barred From Publishing Potentially Confidential Information

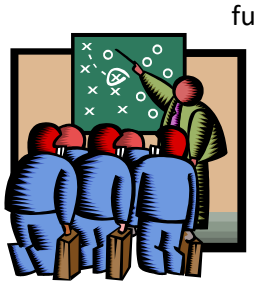
In July 2013, two LA County Sheriff's deputies received calls from a reporter for the LA Times who said that he had copies of the deputies' background investigation files. Among other things, the files contained the names and addresses of family members, previous employment, current debts, as well as information about whether the officer had ever been arrested, been the subject of a call to the police, or had their driver's license suspended or revoked. The reporter told both deputies that he was writing an article for the Times about LASD's hiring practices.

The employees' union (ALADS) filed a complaint against the Times seeking a temporary restraining order and permanent injunctions. The trial court denied the union's request on grounds that the potential release of personal information was "too speculative" to impose a prior restraint on the Times' free speech rights. The Times then filed suit against the union, asserting that it was trying to interfere with the paper's constitutional rights.

The Court ultimately found in favor of the newspaper, pointing to a line of federal and California cases which set precedent, on the subject of "the public's right to know" about its public servants. It appears that the only time public employees can reasonably expect the Courts to protect their confidential information is when the information has been obtained illegally, in violation of privacy laws.

Employer Must Pay for Mandatory Training

The City of Los Angeles, like most cities, requires all Police Officers to attend and graduate from a Police Academy. In L.A., the Administrative Code requires any officer hired by the Police Department to reimburse the City a prorated portion of the cost of POST training if he or she leaves the LAPD voluntarily, after serving less than 60 months following graduation, to work for another law enforcement agency. (In fact, new Officers have been required to sign agreements to this effect, and the LAPD had successfully sued more than 40 officers for reimbursement, after they left the Department for jobs in other agencies.)



HOWEVER, this rule seems to fly in the face of California law, which says that employers must pay for training, if that training is required as a condition of employment. One officer decided to challenge the LAPD's practice.

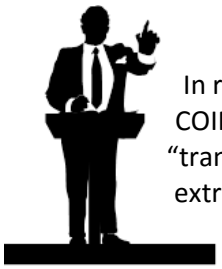
Labor Code section 2802 provides that an employer "shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties…." The officer argued that because the Department requires all officers to attend its academy, the cost of the academy is "a necessary expenditure incurred as a direct consequence of the discharge of duties," and that the reimbursement requirement violates the law.

The Court of Appeal agreed that the POST certificate is a statutory prerequisite to exercising the powers of a peace officer in California. The Court held that "department required" training is an expense that the City must bear, and that Labor Code section 2802 prevented the City from requiring officers to reimburse any portion of the cost of the training – even if they left before 60-months' time. The Court further told the City that any agreement it asks employees to sign, which waives the protections of Labor Code section 2802, is null and void.

More Good Law: No Need to Exhaust Your Grievance Procedure Before Filing a Claim with State Labor Commission

In 2014 the California state legislature adopted California Labor Code section 244, which reversed a long-standing practice requiring employees to "exhaust administrative remedies" before filing a complaint against their employer. In other words, employees were required to go all the way through their grievance procedure before asking the State to investigate a legal violation. The new law makes it clear that "a plaintiff seeking to enforce his rights under any section of the Labor Code" need not exhaust "internal remedies" prior to bringing suit.

This change is significant for people who may be the victims of serious legal violations. Many agencies have confusing or inconclusive grievance procedures, or procedures that end with expensive arbitration hearings. The Labor Commission is FREE and relatively speedy. If you believe that your employer has violated your rights under state law, you may now go to the Labor Commission directly!



Governor Signs SB 331 (AKA CRONEY)

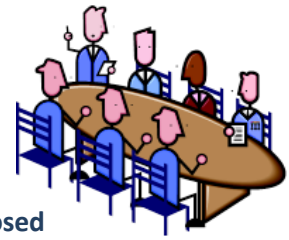
In response to media-generated hysteria over "secret negotiations," several California cities have adopted COIN ("Civic Openness in Negotiation") ordinances. The supposed purpose of COIN is to impose "transparency" requirements, with the cost of making bargaining between labor and management extremely time-consuming and tedious. These ordinances typically require the local government to:

- **Hire an independent negotiator.**
- **Obtain an independent analysis of the costs of contract proposals.**
- **Require public disclosure, within 24 hours, of all offers and counteroffers made during the negotiations.**
- **Disclose communications that elected local government officials have with representatives of recognized employee organizations.**
- **Publicly disclose the contents of a proposed contract before it is placed on an agenda for approval by the County Board.**

These COIN ordinances have been opposed by unions, not only because they make effective negotiations nearly impossible, but because *they unfairly focus only on labor contracts*. **The unions have raised questions about why negotiations for goods and services provided by private third-parties to public agencies are not ALSO subject to "public transparency."** Now, with the new law, they will be.

What the New Law Says

SB 331 requires any city, county, or special district that has adopted a COIN ordinance to comply with similar



requirements when it negotiates with any private person or entity that seeks to provide services or goods to that government. Specifically it says that the negotiation of government contracts with a value of $50,000 or more will be subject to these requirements:

- **The local government must retain an independent auditor to review the cost of any proposed contract. The auditor will prepare a report on the cost of the contract, provide it to all parties, and make it available to the public before the governing body can approve it. The report must include:**
- **A recommendation about the viability of the contract and the fiscal impacts of each term of the contract.**
- **Information to the public 30 days before the issue can be heard before the governing board and 60 days before any action to approve or disapprove it.**
- **An analysis of changes to the contract after it has been approved, based on the same approval requirements as the original contract. The changes cannot go into effect until all of these requirements are met.**
- **Government disclosure of all offers and counteroffers to the public through its Internet Web site.**
- **A list of names of all persons in attendance during any negotiation session about the contract, the date, length and location of the session, and facts regarding the negotiations.**
- **Public disclosures by each governing body member and staff person of all verbal, written, electronic, or other communications related to the negotiations, within 24 hours after the communication occurs.**
- **Final approval of any contract may occur only after the matter has been heard at a minimum of two meetings of the government, where the public has had the opportunity to review and comment on the matter.**

The bill is known as the Civic Reporting Openness in Negotiations Efficiency Act, or CRONEY. **The deliberate intent of its authors is to make the entire process of negotiating ANY contract in ANY public arena so difficult that governing boards will think twice before implementing ANY COIN ordinance.** (This is also known by a very sophisticated legal term: *What's good for the goose is good for the gander…)*

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, talk to your Board Rep or Association Staff at (562) 433-6983 or cea@cityemployees.net

Question: My supervisor is taking duties away from me and giving them to a co-worker. I think they are going to try to demote me. What can I do about this?

Answer: You don't have much control over how Management hands out work assignments, but you do have the right to ask why this change is occurring. You might ask for a meeting with your supervisor or send an inquiry by email. The inquiry can also document your willingness to keep performing your duties, as needed.

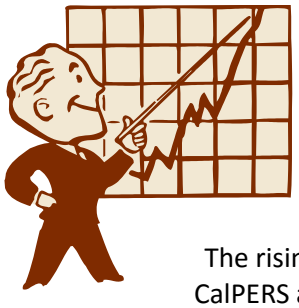
On the subject of potential demotion, the answer is No, they can't simply take your duties away and then try to reclassify you downward. In order to demote

you, the County would have to give you a hearing and prove that you're incapable of performing the duties of your job class.

Question: My subordinates are being interviewed by HR about a work complaint and it appears that they are being asked questions ABOUT ME. I have not been informed about this, nor have I been scheduled for an interview. Is this legal?

Answer. Your Human Resources Department has an obligation to look into any complaints or reports which could be cause for concern. If they find that there is a reason to believe you did something wrong, you will either be interviewed or given some sort of disciplinary notice. Either way, you have the right to representation. Consider also that it's possible that a report was made concerning you, but that the County has not found evidence to substantiate this -- and so there might never be a need to interview you.

Question: Who negotiates the County's contribution amount towards the cost of employees' medical coverage? My monthly cost, along with my co-workers, is going to increase 15% in 2016, and I don't think the County's portion has gone up in years. What action is needed to get the County to increase ITS contribution?



Answer: Your Association negotiates on the subject of increases in the County's medical contribution. This happens in contract negotiations, which generally take place every few years. Contract bargaining usually addresses a range of subjects that are considered "total compensation." The major subjects include across-the-board raises, employee contribution to retirement costs and employer contributions to medical premiums. Assuming that the County provides any increase at all toward "total compensation," there are arguments on all sides about which "pot" the money is best spent upon.

We don't know whether your bargaining team focused on one element of the package as a deliberate strategy, or whether the entire subject of rising medical costs was simply neglected. Your best solution to this problem is to talk to your Association leadership about the need to press for an increase in employer contributions in the next round of bargaining. Better yet, consider volunteering to sit on the bargaining committee. This way, you'll be able to see exactly what takes place…

Question: I thought CalPERS held a lot of power to negotiate lower medical rates for its members. Last year my medical plan increased 22% and this year it will increase by 18%. Our annual wage increase doesn't begin to cover this cost! If CalPERS is doing a good job representing its members, shouldn't our costs be under control? For example, have they considered increasing the copays in order to reduce the monthly premium cost?

Answer: Great question! The answer is that, in its first decade, CalPERS medical, representing MILLIONS of public employees, had considerable bargaining power. CalPERS was able to "control the market" and successfully drove down rates in the late '90s and early 2000s. About 10 years ago the medical industry and CalPERS had a bargaining "showdown," – and CalPERS lost. The insurance industry established dominance and public employees in California have had about as much control over rising medical costs as other Americans ever since (which means very little.)

The rising cost of drugs is a big part of the problem. CalPERS attributes almost half the price increase for HMO and PPO policies to increased pharmaceutical costs. Having said this, however, CalPERS is still more affordable than private plans, by virtue of its very large membership. And it also has features which are superior to private plans (such as the right to "opt out" and full coverage of retirees at the same rates as active employees).

Question: Is the County required to meet and confer on job descriptions or when they want to make something up?

Answer: Job descriptions are subject to bargaining and should not be changed by your employer without at least "extending the offer to meet and confer to the exclusive representative:" your union. The County should notify your Board when it wants to change a job description, and the Board should consult with members in those job classes. It's important for your union to keep an eye on these proposed changes in job descriptions because "revisions" often consist of additional duties that employees may be expected to perform, without additional compensation.

You should know that when an employer opens negotiations on the subject of changes in job descriptions, this ALSO opens discussion on the subject of PAY for this job class. Also, keep in mind that if your Association is in the middle of a contract, it does not need to negotiate at all. If the proposed changes in job descriptions are unattractive, or not accompanied by appropriate pay adjustments, you union can always "just say no" to discussing any changes.

Question: My girlfriend is about to have a baby, and I'm the father. Do I have the right to take parental leave time off?

Answer: Yes, although your employer may require that you provide some evidence that you ARE the parent. Parents are generally eligible under both the Family Medical Leave Act (FMLA) and the California Family Rights Act (CFRA) for up to 12 weeks of leave for the birth of a child and to care for the newborn child within one year of birth. You can request FMLA and CFRA paperwork from your HR department and have it completed by your girlfriend's doctor who is overseeing the pregnancy.

Question: The County wants to change our health care provider, and they are holding a vote of the members. Is this subject negotiable? I think that it should be handled, at least initially, by our board. Am I correct?

Answer: YES! Changes to your medical plan should be negotiated with your Association's leadership. Someone needs to sit down and go over the details of this proposed change, probably over the course of several meetings. Then, once you arrive at agreement with the County (IF you agree to a change…) your Association (*not the County)* should conduct the election. When the County bypasses your elected leaders, and goes directly to your membership for a vote, this is called "direct dealing." It's a major violation of state law.

Question: I would like to know if it is legal to have the employees in one department be required to write the times of their breaks and lunches on a "white board", when most other departments don't conform to this rule?

Answer: Legally, these would be considered operational decisions. They're not subject to bargaining, and don't need to be uniform across departments. Departments can establish operational practices which apply only to their own employees, or even to specific sections of employees. Different departments have different needs. Rules about requesting time off and taking breaks and lunches are usually department-specific because management's coverage needs vary from department to department.

PLEASE WELCOME UNION REP, PETER NGUYEN AT THE CEA OFFICE

Peter Nguyen, JD is the newest staff at the CEA office. He received his B.A. in Psychology and Political Science from the UC Davis and his law degree from UCLA. During law school, he served as a judicial extern in the US District Court, Student Bar Association President, and staff for the Journal of International Law.

Peter has 15 years' experience representing public sector employees, handling complex negotiations, grievances, and civil service hearings. He also served as General Manager at the largest independent public employee union in Northern California. He is a master trainer, on topics such as bargaining, labor/management committees, and political action. He has testified publicly before the State Education Committee, UC Board of Regents, and numerous local councils on the working conditions of public employees, and the need for increased funding.

Peter joins Director, Robin Nahin; attorneys, Vicky Barker, Brian Niehaus, Jeff Natke, Oshea Orchid; union reps, Marjeli Cruz, Rich Anderson, Mary LaPlante, Nik Soukonnikov, and office manager, Pat Marr. Feel free to call them directly. ALL the staff at the CEA office are available to ALL Association members.