Regional Employees Association of Professionals December 2016 News

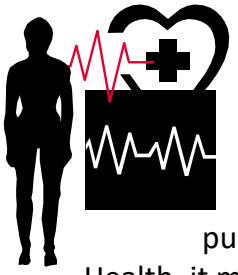
Status of REAP'S Effort to Decertify SEIU

The Public Employment Relations Board (PERB) has confirmed that it will be issuing a decision in response to REAP's claim, at the end of the year or January 2017.

As you recall, between June 2016 and July 2016, hundreds of County employees signed petitions to decertify SEIU. The County's rules allow only a 30 day "window" for gathering these signatures. These rules contradict the State "window," which is 180 days, so we have filed a complaint with PERB to compel a longer time period for the gathering of signatures. In addition, the County requires signatures from 40% of each bargaining unit while the State only requires 30%.

Our legal staff at CEA has been working with the Board to move forward with this decertification effort. As soon as we hear from PERB we will let you know.

Thanks for your support! Feel free to call Robin or Rich at the CEA office with specific questions: 562-433-6983 or cea@cityemployees.net.



YOUR Health Care: How Good is Your Plan? How Much Can it Change?

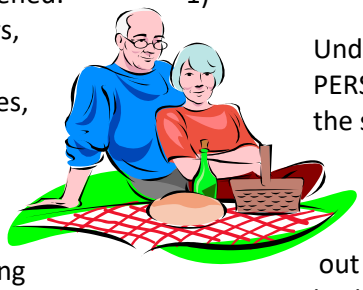
By Robin Nahin, CEA Staff

The health plan that your employer provides is 100% negotiable. Most, but not all, public agencies in California contract with CalPERS medical. If your agency is not in PERS Health, it may have its own private health plan. Or, it may participate in some other benefits pool. (A "pool" is simply a group of employers that "pool" their numbers for purposes of negotiating lower rates.)

PERS Health is basically a huge pool –a broker – working on behalf of its 1.4 million members, both active and retired, to bargain the best possible deals. Even if you are *not* covered by PERS Health, you are still likely to be insured by one of the large companies in the PERS network: Anthem, Blue Shield, Health Net, or Kaiser. (By the way, it is possible for an employer to participate in PERS retirement without belonging to PERS Health, *or vice versa.)*

Bargaining For Billions

Until the early '90's most public employers paid the full cost of employees' health premiums. When rates began to skyrocket, two things happened: 1) they formed large pools of employers, attempting to negotiate lower costs; and 2) they began pressing employees, themselves, to "share the costs" of their own insurance.



PERS Health quickly became the largest "pool" in the world, advertising its ability to challenge the big companies by "controlling the market" of California's massive public sector. This *sort of* worked – for a while. Today PERS Health is the third largest private member network in the world. BUT IT HAS NEVER ABLE TO BRING THE HEALTH CARE COMPANIES "TO THEIR KNEES."

In 2006, after fierce negotiations, PERS Health was, finally, able to force Health Net to drop its yearly increases below double digits. But this "benefit" was offset by the higher deductibles, co-pays and other loopholes its members enjoy today. Most observers would probably say that PERS was the one to "blink" in that round of negotiations…

PERS Rates "Rise More Slowly…???"

As everyone knows, the cost of employee healthcare has nearly tripled in the last twenty years. But PERS Health rates have gone up more slowly than the rates of single-agencies, or smaller pools. This is admirable, given that public employee groups are heavily populated by women (who are more expensive to insure) and retirees (who are WAY, Way more expensive).

Under California law, if your agency contracts with PERS Health, it allows retirees to stay on the plan for the same rates as ACTIVE employees, and must pay a portion of your monthly premiums.

Many employers have, in fact, dropped in and out of the PERS Health network, in an attempt to broker their own "deals." Ultimately, they have all had roughly the same experience with health insurance: constant rate increases, higher co-pays and deductibles, and an increasing number of exclusions. (Luckily, under the Affordable Care Act, these companies may no longer reject employees for pre-existing conditions.)

Your Choice of Plans…

Your County's relationship with your medical provider is established by contract between the two of them, *but the County cannot change companies without your union's agreement.* Most proposals to change plans are initiated by employers, but it's perfectly legitimate for the union to propose a different company.

What MUST Your Employer Pay?

Similarly, the amount of money your employer contributes toward your medical plan is entirely negotiable. Since the 1990s, when employers began pressing for "caps" on their contributions, employees have taken on more and more expense. For decades, now, the question of "who's going to pick up the medical increases" has been a central fight at most bargaining tables. (In fact, in many agencies, the decision to join PERS Health was an attempt to end these disputes -- based on the assumption that PERS was going to force medical costs down.)

Your MOU Language is Crucial

Regardless of your plan, **there is no standardized amount that employees pay, out-of-pocket, for medical benefits.** Some unions manage to negotiate good "escalator" language (which mean that employer's contributions go up as rates go up) but most do not. During the recession, many employers adamantly refused to pick up ANY increased benefit expenses which meant that their employees' out-of-pocket expenses skyrocketed.

YOUR QUESTIONS…

With all the debate in the media lately about health care plans, public employees are beginning to ask questions about the integrity of ***their*** plans. Here are just a few answers, mostly related to the PERS Health System:

Q: Can my provider change the plan? For example, can they charge higher co-pays or deductibles, or refuse to pay for tests my Doctor orders?

A: Your plan is controlled by a contract between your employer and the health care company. It cannot change unless your employer AND your union agree.

Q: Can I change plans?

Yes. If you're in PERS Health, there are multiple providers and a yearly open enrollment period during which you can change plans. If your county has its *own* contracts with providers, there are probably at least two plans (an HMO and a PPO) and you may change during an enrollment "window." Once the "window" closes, you may change plans only when a "qualifying event," occurs (such as a marriage, birth or adoption of a child, loss of coverage by a spouse, etc.)

Q: Can they change the amount I pay for the plan?

Yes, but only through negotiations for your entire union membership. Medical rates DO rise steadily; **your** portion of the cost is determined by your MOU.

Q: Can I purchase my own plan or go on my spouse's plan, instead of using the County's? Is there any advantage to this?

Yes. Unions often negotiate "opting out" provisions in their contracts with the employer. This might enable you to buy your own plan, or go on your spouse's and receive monthly reimbursement for all or part of the County's contribution. The opt-out amount is, like so much else, negotiable.

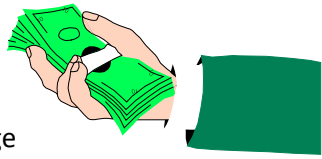
Q: Do they have to cover me after retirement?

Yes, as we said earlier, retirees in PERS Health receive the same plan, *at the same cost*, as active employees AND employers must pay a portion of the cost (though the minimum contribution is quite low). Other plans may charge higher rates.

Q: How much will I pay after retirement?

In PERS Health, although retirees' rates are the same as active employees', the amount YOU pay after retirement is controlled by the MOU which was in place ***while you were working.***

Until fairly recently, many employers provided FULLY PAID retiree health care. If you were hired under this system, *unless your union has agreed to a change,* you must still receive this benefit. The County's contribution CANNOT change (except to increase) after you retire.



In recent years, employers began chipping away at these benefits. Today very few agencies provide retiree health benefits for new employees.

Q: What if I leave my job before I retire? Can I still use the plan?

Yes. The County must continue to provide coverage under your plan during the month that you leave. After that, depending on the basis for your separation, you may be eligible for continued coverage under COBRA. This allows you to use the employer's medical plan at the active employees' rate, plus 2%.

PERS Cracks Down on Part-Time Labor

In 1982, the Board of Directors of CalPERS acted to control the rising tide of part-time employees who were working year-round, but were not being enrolled in the Retirement System. This had led to two problems. First, the part-time employees were not accruing benefits for future retirement. AND second, the System was being eroded, due to declining participation.

The Board established a "1000-hour limit" on the number of hours an employee may work in a year until s/he must be signed up for retirement benefits. The intent was to prevent part-time or temporary labor from replacing full-time, permanent jobs – or at least to capture and bring them into the system.

The majority of public agencies complied with the new rule, but a sizable minority requested, a*nd were granted,* exemptions. Many of these exemptions persist today, enabling dozens of agencies (mostly cities) to employ any number of employees for any number of hours, call them "part-timers" or "temps," and NEVER enroll them in CalPERS.

Since the Recession, the MAJORITY of jobs filled at public agencies in California are non-permanent positions, many of which are outside the Retirement System, and almost all of which are lacking job protection and union membership. Just as the number of permanent jobs has diminished, so too has the size of most employees associations…

CalPERS has the absolute right to revoke these exclusions from the "1000-hour rule" if they conclude that the exemption is being used to replace permanent, benefitted jobs with temporary labor. They do not automatically review agencies' PERS contracts, but they will respond to your union's request for a review. If you work for an agency that participates in the CalPERS program, and suspect that your employer is hiring temporary or part-time employees who are not enrolled in the system, feel free to contact your staff at the CEA office: 562-433-6983 or cea@cityemployees.net. Staff can contact the PERS member relations department for you, or give you the information to file an inquiry yourself.

Update from Retired Public Employees Association

RPEA is supporting AB 1584, which would reinstate Cost-Of-Living Adjustments for the State Supplementary Program for the Aged, Blind, and Disabled. The SSI/SSP program provides monthly assistance to aged, blind and disabled individuals and couples in need. The money helps cover basic living expenses. In order to be eligible for assistance, individuals must be over 65 years old, have disabilities (or dependent children with disabilities) and meet certain income requirements.

Unfortunately, the SSP program was impacted by the recession and the annual Cost-of-Living Adjustment was discontinued in 2009. This means that the cost of living continues to rise while income for many aged and disabled people remains stagnant. For many, this has forced difficult decisions about what expenses will be paid each month.

The bill's author states, "Aged, blind and disabled Californians need our help. Eye-watering recession-era cuts to the SSI/SSP programs plunged over 1 million Californians into poverty, and their only way out is through the actions of the Governor and the Legislature."

RPEA, founded in 1958 and has more than 24,000 members and is the only statewide association representing all public retirees RPEA members serve on the PERS Advisory Committee and meet regularly with CalPERS executives and board members. RPEA works to safeguard and promote the benefits of all California's public employees. For more information see www.rpea.com.

Pay Increases Are Back on the Scene *(Sort Of…)*

There's a trend, and it's real: public employees are getting raises again, *mostly.* The Recession is over. Housing prices are up. Sales are up. Sales *taxes* are up. Government programs are staffing up and those staff are being compensated – sort of. We say *sort of* because this "recovery" for most small government employees is spotty and inadequate, at best. And, at worst, it is entirely non-existent.

Marjeli Cruz at the CEA office has been tracking the bargaining settlements for "general" employees at more than 120 agencies since 2013. There are some definite trends:

#1: Each year since "the recovery" has been better. Contracts negotiated in 2016 generally included salary adjustments of 2% to 3% AND some employer absorption of increased benefits costs. The contracts are also longer than previous years, indicating employer financial stability. BUT…

#2: Some agencies are a whole lot more "flush" than others -- and the differences are clearly geographic. Despite "the recovery," some agencies are still NOT stable at all. Employees in these agencies have not received a pay increase for a decade! These appear to be the agencies where the middle class truly was decimated by the collapse of the housing and financial markets. To put it bluntly, employers in less affluent communities mostly lag far behind the wealthier communities in their ability to improve their employees' wages and benefits – or to expand their services to the public. AND…

#3. Even those agencies which ARE financially "flush" are rarely paying their employees adequately for the work they perform – and

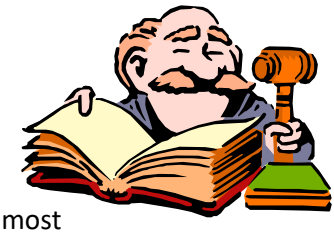
rarely keeping up with the true cost of living.
According to the Bureau of Labor Statistics, the cost of living for "urban wage earners" has gone up 16.4% since 2007. As far as we can tell, NO general employee at a city, county or "special district" has received this kind of a pay adjustment. In fact, very few public employees have received even HALF that much improvement. If we include the rising cost of health care AND employees' increased contributions to their retirement plans in the calculation, the average public employee saw less that a 5% adjustment during the entire decade.

THE LONG-TERM PROGNOSIS

When statisticians study the American economy, they look to local government employees as the core of the middle class. Even as millions of jobs were shipped overseas and the union movement, in general, declined, public employees remained well organized and their agencies continued to grow. Beginning with the bursting of the $8 trillion housing "bubble" in 2008, however, the economy – and public employment – began to unravel. Within a year, 8.7 million jobs disappeared; more than 25% of government jobs (over 100,000 people) were lost in California. Real wages were stagnant (if not dropping) for more than 6 years. If local government employees are considered "the middle of the middle," the placement of that "middle" is far below its previous location. Many analysts would suggest that the "middle class" is but a shadow of its former self.

Today, however, we're recovering, sort of, *unless you work for a county which STILL has no money.* The problem with the funding of local agencies is that they are directly dependent on their own, local economies. This is a good thing if you work in a well-off community, where the effects of the Recession were muted, and the middle-class has truly rebounded. But it's NOT a good thing if you work for an agency in a working class area, where housing prices and tax bases are still depressed. The differences between employee pay increases in poorer communities verses wealthy ones has never been more clear.

"IT'S IN THE CONTRACT"



Caution remains an overriding phenomenon in almost all contract negotiations. Even agencies that are doing well financially are for the most part not providing adjustments equal to the real cost of living. The truth is that they don't have to: there's still an excess of unemployed workers ready to fill most jobs, and there's considerable public pressure to reduce the cost of pay and benefits. The truth, also, is that far too many local political leaders don't fully understand what their employees do, and are mostly not sympathetic to employees' interests. But, specifically, these are the trends:

Raises: The average salary increase in cities and water districts between 2013 and 2016 is just under 2% per year. However, some agencies have agreed to multi-year contracts as high as 12% -- while others are still not offering ANY increases at all. Still others seem only willing to offer one-time bonuses. These may be large ($1,000 to $2,000) but they are not cumulative; they don't add to base pay and are not "PERS-able."

Health Benefits: Health care costs have NEVER stopped going up. Most local agencies have now negotiated "cafeteria plans" where the employer pays a fixed dollar amount, over which the employee pays extra. Thus the greatest expense usually falls on employees with family plans. In some agencies, people are paying $500, $600 or even $700 or more out-of-pocket each month, to purchase health care.

The employer's contribution, of course, is negotiable, so the burden falls to the union to try to "push the cap up." At most (but not all) agencies we are securing employer agreements for $30 to $60 increases in the "caps" in new contracts. These do NOT absorb all of the increases, especially for family users. Absorbing the medical increases is an expense which detracts from employees' cost-of-living raises.

Most, but not all, employers also make a provision for employees to "opt out" of the medical plan if they have other sources for coverage. These programs are

GOOD; they save both parties money. Both the existence of such a program and the "opting out" amount are negotiable. As rates go up, this amount should go up…

Other Benefits: The old-fashioned union concept was that "if you don't get money, you get time off." During the Recession, this trade-off occurred dramatically, with furloughs. Hundreds of thousands of public employees worked fewer days or hours and accepted lower pay. Today, very few are still furloughed, although some remnants remain in the form of holiday closures. If an agency is closed, for example, during Christmas and New Year's Day and the employees are PAID, it's a form of compensation, as is holiday pay or vacation. If the workplace requires employees to use their OWN time when it closes for the holiday, it's almost like a furlough.

In the absence of base pay increases, employers and associations are finding clever ways to improve "overall" compensation by looking at benefits that are somewhat "under the radar" of the public. These include longevity pay, certification pays, tuition reimbursements and education incentives, increased uniform and boot allowances, increased call out and standby pays, etc.

Agency managers need to recruit and retain staff and, as the economy improves, they must compete with OTHER agencies. In many ways, they have a stronger interest in providing fair wages and benefits than local political leaders. It's always smart for your Association to focus on the "little pockets" of benefits when you negotiate. These may affect smaller numbers of people but, altogether, they add up. And they are much, much easier to win "at the table…"

Most Repetitive Injuries are WORK Injuries….

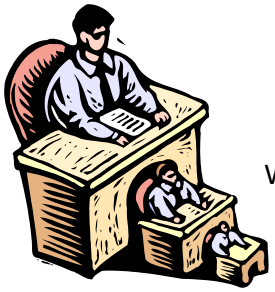
BY SHERRY GRANT of Gordon, Edelstein, Krepack, Grant, Felton & Goldstein LLP

From clerical staff to mechanics to bus drivers… all are subject to repetitive stress injuries (RSI). According to the Occupational Safety and Health Administration (OSHA), there are more than 100 different types of job-induced injuries caused by repetitive motions. And, RSIs make up the largest category of workplace injuries….. even more than cuts, falls and car accidents. Hundreds of thousands of working people suffer from the cumulative effects of repetitive motions.

RSIs are caused by repeated physical movement that inflicts damage on tendons, nerves, muscles and other soft body tissues. These movements aren't necessarily difficult or physically challenging, but when done over a long period of time, can cause permanent injury, usually to the hands, wrists, back, shoulders or neck. Common symptoms include the following:

- **Pain**
- **Tightness**
- **Dull ache**
- **Throbbing**
- **Numbness**
- **Tingling**

These symptoms develop over time, first apparent only while you're working, but later, chronically – and with increased severity. Carpal tunnel syndrome is the most common repetitive injury amongst public employees. It's a condition crippling the hands and wrists of people who work at keyboards all day. Certain cumulative traumas are unique to certain occupations. Teachers may develop arm and shoulder injuries from working at whiteboards or dispatchers from working at a CAD system. People who drive trucks, serve food, lift boxes or direct traffic also have certain repetitive injuries. RRSI's are industrial injuries, compensable under California's Workers' Compensation system. If you would like to speak with an experienced Workers' Compensation attorney call 213-739-7000.



What is Insubordination?

When you refuse to carry out a direct order, it's called insubordination. Very few employees actually *refuse* to carry out orders, but people are accused of being "insubordinate" all the time. Why? Because this has become the "catch phrase" that employers may use when they aren't happy with something a subordinate has said or done – and they can't quite figure out what actual rule has been violated.

If you have a disagreement with your boss about how a job should be done, for example, this is called **a disagreement.** It's not insubordination unless you refuse to do what s/he has asked you to do. This doesn't mean that you can't get in trouble for arguing with your boss, especially if the arguments are heated or frequent. You could be also accused of interrupting work production or disturbing co-workers, or even threatening violence -- but it's not insubordination.

It's also not insubordination if you fail to carry out work exactly the way your supervisor *expects* you to carry it out. Managers are often irritated if you don't do a job right, or don't do it the way *they* would have done it. **Most of the time, however, there's nothing willful about an employee's performance problems.** It's not usually insubordination. It's more likely a lack of time, lack of skill, or poor communication.

Insubordination involves a *conscious decision* on the part of a subordinate not to do what he was told. *Why make this distinction?* Because there is a big difference between an employee who has a differing opinion or performs his work in a different manner than one who pointedly refuses to carry out an order. True insubordination can be cause for serious discipline… Here's why…

"WORK NOW, GRIEVE LATER"

Employers, especially employers that serve the needs of the public, have the right to expect that employees will do as they are told. Some departments, such as Police and Fire, are quasi-military operations and must respond to public emergencies. Even the clerical employees in these departments are expected to be completely trustworthy and cooperative. This is, in fact, the general assumption for ALL agency departments. They are ALL responsible for the "good of the public."

So, with few exceptions, public employees need to do what they're told, even if they disagree. The union term for this is "work now, grieve later." This means that, even if you don't like what you're being told to do – even if it's not your normal job, or you think it's wrong or stupid, or illegal, or will make you late or interfere with other work you need to accomplish -- you should do what you're told to do, and raise your objections later. **There are many circumstances where you may believe your rights have been violated, but this doesn't give you grounds for "refusing an order."**

THE EXCEPTIONS…

There is really only one exception to this rule: when you are told to do something that may cause immediate danger to yourself, co-workers or members of the public. In this case, you should identify the danger to your management, seek a witness to the dangerous situation and remain on the job until someone can evaluate the situation. You CAN'T be compelled to take action that is dangerous, but should be prepared to provide proof about WHY it is dangerous.

These situations come up most often amongst employees who drive trucks, do manual labor or operate heavy equipment. Let's say that you KNOW that your brakes are really bad, and your vehicle shouldn't be driven until serviced. You have the right not to drive, but MUST show this problem to someone in authority before refusing.

Similarly, you may *believe* that there's a dangerous gas leak, or un-grounded high voltage, or an unleashed dog – or a dozen other conditions that present danger, but before you *refuse,* establish your evidence. Cameras in phones work well, but co-workers and supervisors are better. Evidence will protect you against discipline for insubordination.

IF YOU BELIEVE THAT A DIRECTION IS ILLEGAL…

Government employees deal a lot with rules, laws and regulations. Occasionally they believe they've been directed to take actions which run afoul of these rules.

However, even if you believe that you've been given a direction which violates a rule or law, this is not usually grounds for refusing an order.

Unless you are an attorney – or hired to investigate legal violations -- it's not your job to figure out what is or isn't an illegal act on your employer's part.

Unless your actions would, literally, endanger someone, you should do what you're told, then (*maybe*) report the action to the appropriate authorities. The concept is "work now, grieve later."

"Doing what you are told" doesn't mean that you have no right to express your opinion. You can do this by emailing the person who gave you the task, reminding her or him of what s/he's directed you to do, saying to her or him that you ARE doing it, and (maybe) mentioning the violation you're concerned about. You can also tell your boss you are confused, point out the discrepancy, and ask if they could clarify if you've interpreted the directive the wrong way.

But, unless you're a lawyer, or have some sort of obligation to insure your agency's compliance, you don't have to be too specific. It's fine to say, "I'm a little worried that this might run afoul of the rules…" and leave it at that. Doing this *protects you* against accusations of being the person who BROKE the rule, and **also** protects you against being insubordinate.

If the matter is serious enough you can ALSO go to higher levels of management or outside authorities. **This is not insubordination; it's whistleblowing.** But it holds potential for making your employer angry and subjecting you to retaliation.

If you're going to be a whistleblower, you should think about this, carefully, and possibly consult with union staff. (People often think they are "whistleblowers" when they are not…)

WHAT IF YOU ARE INSUBORDINATE?

In order to discipline an employee for insubordination, an employer is supposed to be able to prove:

- That the manager gave the subordinate employee a "direct order;"
- That the manager told the employee what would happen if he/she disobeyed the order;
- And that the employee clearly disobeyed the order

If all of these conditions are met, an employee who "refuses a direct order" can truly jeopardize his job. It's not good to be insubordinate. It's almost always better to "work now; grieve later…"

Reporting the Death of a PERS Member

While nothing can compensate for the loss of a loved one, you should know that CalPERS members are eligible for various death benefits. These benefits range from a simple return of contributions (plus interest) to a monthly allowance, depending on the program for which the person's employer contracted.

If your loved one *ever was* a PERS member, don't forgo the opportunity to investigate this benefit. To report a death, call CalPERS at 888-225-7377. You can also review or change your own beneficiaries by visiting *https://mycalpers.ca.gov/*

Private Sector Employees Are Facing a Retirement Crisis (But Public Employees Are Not…)

Starting with the "Reagan Revolution" in 1980, companies transitioned from traditional employer-sponsored **defined-benefit** pension plans to individual 401(k) plans. A recent article in the LA Times noted that this "has been a failure for all but the wealthiest Americans." This is because most employees could not withstand the loss of their savings when the stock market plummeted in 2009.

But, while the vast majority of private companies gave up the "defined benefit" plan, most public employees are still covered by them. This is because these programs can't be swept away with the whim of a few stockholders. They are established by law, controlled by contract, and can't be changed without an act of the legislature.

A "defined benefit" plan is one where the OUTCOME of the retirement program is DEFINED by the formula. For example, the "2% at 55" plan means that the participant must receive 2% of his/her last (or average of last 3) year's pay, multiplied by number of years of service, multiplied by age. **The amount of payment is predictable and defined,** which means that the contribution might have to fluctuate to bring about the promised return.

A 401K (or defined *contribution* plan) establishes the amount of money (or percentage of gross pay) put into the plan on a regular basis, *but makes no promises about the outcome.* The "payoff" to these plans floats with the returns of the underlying investments (typically stocks or mutual funds), and the employee/participant often has little control over what investment options are available to choose from.

The average CalPERS retiree collected $2,627 a month in 2015. This isn't exactly the lap of luxury, but it is stable income. Retirement incomes for people with 401k's crashed eight years ago and, for some, have never really recovered. Today, most public employees pay a significant portion of their own PERS contribution, and their County's expenses are beginning to go down. This is because many agencies negotiated weaker (less expensive) formulas for new employees, starting in 2010, and *much lower* formulas, *by law,* in 2013.

A study conducted by the UC Berkeley Institute on Labor and Employment found that the post-recession conversation about retirement is "schizophrenic." On the one hand, says researcher

Ram Rhee, people relying on 401(k)s "don't have enough to live on and it's too much risk," but on the other, critics of public employee plans say "these plans are too expensive. We should put everyone on 401(k)s.´

Rhee's study was devoted to solutions to the "retirement crisis." She says that "the real irony of the public pension debate is that it comes at a time when nearly 40 million working-age households (45% of working Americans) do not own ***any*** 401(k)s or Individual Retirement Accounts at all -- and the average household has virtually ***no*** retirement savings.

Questions & 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 Staff at (562) 433-6983 or cea@cityemployees.net.

Question: Our building is infested with termites and is going to be tented and uninhabitable for a week. The County says it will find other locations for us to work in, but may also need to send some people home for "a few days at a time." Is this legal? Are they allowed to not pay us – or force us to use our own vacation banks?

Answer: No! If the County shuts down for less than a full week (even for a holiday), employees must receive their full salary -- and the County cannot demand employees use their vacation to cover this time. The same would apply if the employer didn't have work available for an employee. If this is happening, you may want to contact your Union Rep for help.

Question: My doctor is recommending that I take marijuana for my acute back pain. I don't drive on the job and am not in a "safety sensitive" position. So, is there any reason I should not do this?

Answer: Even though marijuana is now legal in California -- *and even if your doctor has prescribed it* -- you can be disciplined for having it in your system while at work.

There are two reasons for this. First, marijuana is still illegal (i.e. a controlled substance, or "schedule 1" drug) under federal law. Second, there is currently no way for an employer to distinguish between someone who is "under the influence" on the job, and someone who simply has residual medicinal marijuana in their system. You are, therefore, considered under the influence (and "impaired") if you have ANY amount in your system.

This may change in the future; but, for now, any marijuana use may subject you to discipline.

Question: My supervisor is off the job, recovering from surgery. I am doing his entire job while he's gone, on top of my own. They are giving me a 5% bonus, but this has been going on for months and, frankly, I'm tired of the stress. I want to tell the HR department that I don't want this assignment anymore. Do I have that right or can they force me to do this job?

Answer: Strictly speaking, they may assign you to do ANYTHING that isn't dangerous to yourself or others. However, if you're being asked to perform duties outside your job class and you definitely have the right to request to be relieved of these. You should start by simply asking someone in authority to please give the assignment to someone else. (The extra money and chance to perform supervisor's duties are probably attractive to someone else.)

If the County won't agree, call your union rep for help with a possible grievance. Keep in mind that another possible way to frame this grievance is that you should be receiving the FULL PAY of the supervisor's position

after so many months, and/or should be relieved of your OTHER job…

Question: Our Department is doing a disaster drill, starting at 11 a.m. and then they're going to provide lunch for everyone, at noon. I want to know whether we will be paid for this lunch time. Attendance seems to be mandatory.

Answer: If attendance is mandatory, then this time is considered "on the clock" and you should be paid. If you don't have to attend, then the time doesn't have to be paid. You might ask, in advance, whether your attendance is mandatory…

Question: If I leave my job and take a promotion in another county, how can I make sure I'm hired as a "classic" employee, under the old PERS formula? Which formula would I be working under: my previous employer's classic formula or the new employer's?

Answer: If you are currently a "classic" employee, then you have a six-month window to "carry-over" this status to the next PERS agency. If you have a break of longer than six months, then you would fall

under the new PEPRA formula: "2.0 @ 62." When you ultimately retire, the classic employees' formula in place at EACH agency will be applied to the years of service you spent with that employer.

Question: Do I have the right to use FMLA time to care for my mother-in-law?

Answer: Under the FMLA, "mother-in-law" is NOT covered. However, both the California sick leave law (which provides 3 paid days) and the Kin Care Law (which allows you to use up to 50% of your yearly sick leave accruals) DO cover in-laws. Also, keep in mind that this subject is negotiable and that your MOU includes benefits that are "above the law." So, check your contract. Many groups have negotiated additional "designated relatives" to be added to their FMLA (and bereavement) provisions.

Question: Can the County make it "mandatory" for us work overtime? Is there a maximum number of hours per day or week that we can be required to work?

Answer: Yes, the County can force you to work overtime, which is why (under federal law) it's so well paid: time-and-a-half. Public employees are all considered "first responders" in case of emergencies… There's no limit on the number of consecutive hours you may be required to work (unless you are a bus or truck driver, and required to take rest periods…)

Don't Forget!

Association members Have Free Assistance with NON-WORK Legal Problems

If you are a member of your employees association, you are eligible for up to two hours' assistance from CEA's outside legal counsel. Feel free to call John Stanton's office for help with any of these NON-Work-related subjects: small claims court; family law (divorce, child custody, guardianship;) estate planning (wills and trusts;) bankruptcy; personal injury, real estate; Department of Motor Vehicle or Unemployment Insurance hearings, and (minor) criminal prosecutions.

You may contact Mr. Stanton at (714) 974-8941 or John@johnjstanton.com.