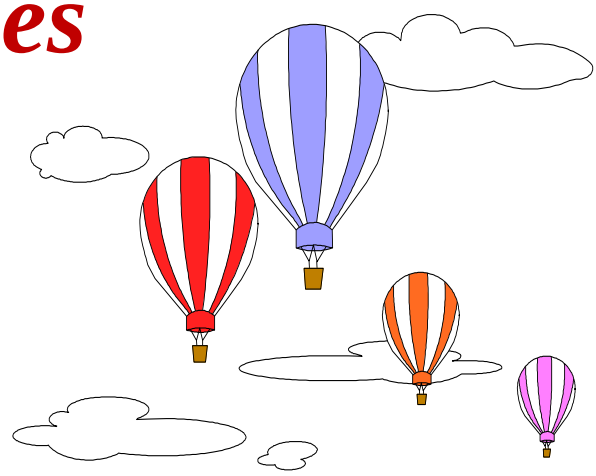
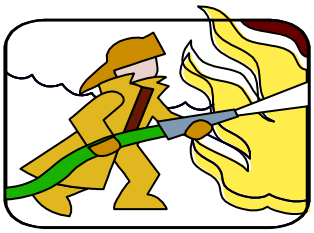
Regional Employees Association of Professionals March 2017 News





Employee Rights "When the Lights Go Out"

Your employer has an obligation to maintain a work environment that is physically "habitable," if not always comfortable. For most employees, this means a workspace that has electricity, plumbing, heating and air conditioning, etc. This doesn't mean that public employees don't do some pretty nasty, uncomfortable jobs… Think about street paving in 100-degree temperatures, or crime scene investigation… But, for the most part, public buildings are pretty "civilized."

So what happens if the electricity goes out or the plumbing backs up or the formaldehyde in the new carpet makes everyone sick? What happens if there's a bomb scare, or god-forbid, a shooting in the building? Well, what happens is most people go home. But then what? Are you paid? What if you need medical attention or even psychiatric attention? How does this work? Here are some answers…

First of all, if your employer sends you home because your workplace is uninhabitable, *and you have an MOU,* they must continue to pay you. This isn't a matter of law; it's a matter of contract. No law requires that an employee continue to be paid if he or she isn't working. But your contract establishes your hours of work and your pay level. You can't be "suspended" (denied pay) without just cause. You can't even be forced to use your own vacation or sick leave. This would be a "taking" of negotiated benefits.

You CAN BE compelled to work at home, of course, or to work at another location. In most cases, Management retains the right to "transfer" you at will. If you're given the choice between going home and going to another worksite, and you choose home, they no longer need to pay you.

If you Become Sick…

If you become sick as the result of an environmental issue in the workplace,

you may have a legitimate workers compensation claim. This doesn't necessarily mean that you need to sue your employer. The County may simply recognize that people have been rendered ill and take care of their medical bills and permit them to stay at home, in paid status for a few days. It's rare that this kind of "exposure" results in any permanent health condition. You probably don't need an attorney or a workers compensation "settlement."

On the other hand, not all environmental hazards in the workplace are acknowledged by the employer. Some people get sick from the formaldehyde in the carpet (or mold in the air conditioning or fumes in the water treatment plant) - and some don't. Those that do may need to file a claim and prove the case with medical evidence.

Occasionally someone has serious damage to the lungs or eyes or brain arising from environmental hazards. People really do die from pesticide exposure, poisonous gases, and asbestos. In these circumstances, you may need a doctor AND a lawyer. You may also want to start by calling your union staff and/or OSHA. A lot of chemicals which were once thought to be harmless are now turning out to be cancer-causing. If you have reason to think you've been exposed, you should bring this to your employer's attention.

But Public Employees ARE The Emergency Responders!

On the other hand, many public employees are hired specifically to protect the health and safety of the public, which means putting themselves in danger all the time. Most people think of Police Officers and Fire Fighters as their County's "first responders," but those of us who work in this field know that there are *many* non-sworn support staff who also face daily hazards: PSO's and CSO's, jailers, building and fire inspectors, code enforcement officers, utility workers, street maintenance employees, etc. These employees have high rates of work injury, but the laws protecting their jobs and benefits that apply when they are hurt or disabled are much weaker AND much lower than those provided to sworn employees.

Can I be forced to work during an emergency?

But, what if you are not an "emergency responder" at all? What if you work in the library, or the accounting department? What if you write parking tickets? Can you be forced to work during the aftermath of an earthquake or during a riot? The answer is yes. In theory, ALL public employees can be pulled in to perform services to the public in an emergency. This means that you can be expected to stay at work, and may even be called in to work, to assist with whatever tasks your public agency wants to assign to you. All agencies are supposed to have a written Emergency Response Plan, and your role in that plan is supposed to be provided to you. In theory, if you are unwilling to play your part in an emergency, you can be subject to discipline.

Did You Know:

Disability Insurance is a Negotiable Subject

There is no requirement that public employees must be enrolled in the State Disability System. In fact, there's no requirement that public employers provide ANY disability insurance. However, BOTH are negotiable subjects.

SDI is the state-run program that all private employers must participate in. Their employees pay about 1% of their salaries for the insurance which provide two-thirds of their pay when they are off their job due to their own illness or injury OR due to the illness or injury of an immediate family member. There is only a one week waiting period for "SDI."

Most public employees are NOT in SDI, though some are. On the other hand, most public employers provide *some kind* of disability insurance for their employees, usually paid entirely by the employer. These private plans are rarely as good as the state system in terms of benefits. They tend to have longer waiting periods (usually 30 days... sometimes as long as 90) often have "exclusions" in terms of the kinds of absences that are covered, they rarely cover family illness, and they can be difficult to navigate. But they ARE usually paid by the employer.

If your local disability plan is "lacking," keep in mind that this subject can be addressed in Contract Negotiations. You can ask the County to upgrade its "in-house" plan or you can ask for a vote of the membership on enrollment in the State Disability System. SDI has a price, but the coverage is priceless when you, or a family member, have a serious medical condition…

BIG Changes Coming in Federal Labor, Employment Law

Under President Trump's administration, we have already seen a number of changes in the direction of labor and employment. The new administration has moved swiftly, and most of these actions have not been "union-friendly." If you are asking "will any of this affect MY job?" the answer is YES! What follows is a very brief summary. Please keep in mind, though, that things are changing *fast,* and that many actions are subject to congressional approval. No one can predict today exactly what impact the new program will have on labor tomorrow.

Department of Labor… For secretary of Labor, Trump initially nominated the CEO of a hamburger chain, who was an outspoken critic of the Labor Department. Under pressure, he withdrew the nomination, so the job remains vacant. But he did articulate the President's plan to roll back several programs from the Obama era: gender-based pay equity, the increase in the minimum wage, the expansion of overtime benefits, and controls on "investment

advisors," intended to force them to act in the best interest of their clients.

In keeping with the theme of "no regulation," the administration intends to reduce the budget for the Equal Employment Opportunity Commission (EEOC) and OSHA (the Occupational Safety and Health Administration.) The DOL's current program, pushing private employers to create retirement plans for their employees, is also subject to cancellation.

Fair Labor Standards Act In October, 2016, the DOL changed the definition of "exempt" employee under the FLSA, to broaden the number of people who could collect overtime. This meant that anyone earning less than $47,476, *even if he was called a "manager,"* would be eligible for overtime pay. In January, however, a federal judge blocked this change in the law, stating that Obama had overstepped his authority. The new administration will not be challenging that judge's order.

Similarly, the proposed expansion of the Family Medical Leave Act to include six weeks of PAID Sick Leave, has now been put on hold. If it is permanently tabled, then FMLA time will remain unpaid.

Cases before the Supreme Court

President Trump has nominated Neil Gorsuch to be the next Supreme Court justice. As a federal judge, Gorsuch decided many cases against unions. One case that may be going to the Supreme Court holds the potential to overturn unions' right to collect "fair-share" fees in the public sector. This right, established in the 1970s, has been challenged by several California teachers. The Court was poised to strike down the "Agency Shop" precedent last year; but when Justice Scalia died, the status quo was left intact. Most observers agree that Gorsuch will likely be the 5th vote in striking down this Fair Share Law.

National Labor Relations Act. The NLRB, passed in 1935, established employees' right to form unions and negotiate enforceable contracts. Congress can (and has) modified the NLRB. The current congress is discussing a change to establish a national "Right to Work" law. This would bar private companies from signing ANY Contract requiring employees to join (or support) their unions as a condition of employment. This decision would have the effect of crippling large unions, nationwide.

The President of the United States also appoints members to the National Labor Relations Board. Much like PERB in California, the NLRB hears disputes between labor and management in the private sector. The Board makes all the rules for how a union is organized, how the parties must negotiate fairly, whether employers must be transparent in pay policies, and whether employees may file "class action" lawsuits. **An anti-employee majority could well overturn decades of precedents which have formed national labor-management relations.**

The Good News Is… On the other hand, the Trump administration has now struck down the "Transpacific Partnership" (or "TPP") which was widely viewed as bad for American workers. Trump is an advocate of high taxes on goods coming in from other countries, rather than reciprocal agreements. Although the Labor Movement likes the idea of keeping industry in this country, it is also concerned that high tariffs will drive up prices of oil and consumer goods, *and* stimulate inflation. This can make it much tougher for the average working person to survive. Furthermore, Trump's reform program calls for huge tax breaks for multi-national corporations, which doesn't benefit employees at all.

"The Wall" The labor movement is divided on the subject of immigration. It is undoubtedly true that millions of undocumented workers undercut the value of American-born labor. But there's also an argument that most Americans wouldn't take the low-paid jobs that immigrants perform. It is probably true that if undocumented workers were not available, the pay for these jobs would go up, and that the cost of goods and services would rise. There is no element to the administration's platform that would restrict or

penalize employers from *hiring* undocumented workers.

The Affordable Care Act Although the Labor Movement believes that employers should provide their employees health care, they have also acknowledged that huge numbers of jobs will NEVER include health care. This includes large numbers of public employees: part-timers. So, most unions are strong advocates of the Affordable Care Act (Obama Care.)

While the new administration has spoken loudly about dismantling Obama Care, they also are acknowledging that there are 20 million users. This program is largely funded by higher taxes on the wealthy. If this element is removed, prices will become unaffordable to the average working class person. Some parts of the law are also really popular, such as the requirement that insurance companies can't deny coverage to people with pre-existing conditions. So, eliminating Obama Care is a real dilemma for the Trump administration. It's hard to pull out one piece without causing the whole program to collapse…

Overall, most public employees are protected by California's stronger state laws, rather than federal ones. At the moment, this is a VERY good thing.

Overtime Alert!

EMPLOYER CAN'T OBSTRUCT YOUR RIGHT TO COLLECT "THE MONEY"

Your right to collect overtime is controlled by federal law. The Fair Labor Standards Act says that time worked in excess of 40 hours in a week, must be paid at the rate of time-and-one-half. Overtime work can be mandatory. The high rate of pay is recognition that this is a burden.

It's legal for employers to OFFER to allow employees to save their overtime in the form of "comp time." But it's NOT LEGAL to require this. If an employee works overtime, he/she has the right to THE MONEY. If the employer *offers* "comp time," and the employee accepts, this is fine. But the discretion lies with the employee.

If overtime work is VOLUNTARY, the employer may offer comp time only. The employee must be given this option before the overtime is worked, and the employee must have the right to say "no, thank you" without repercussions.

Comp time must be saved as time-and-one-half. It isn't legal for the employer to require employees to "flex" their schedules to avoid payment of overtime. The comp time cannot lose value and, unless it is used, must be paid in full value when the employee leaves.

Employers cannot "unreasonably deny" employees the right to use accrued comp time, and can't compel employees to "use comp time first" when they need to take leave. In general, it can be scheduled for use under the same circumstances that vacation time is used.

Still Working in Understaffed Conditions? What To Do When You Can't Do It All…

During the Recession, almost all public agencies downsized staff *massively.* This created a LOT of problems (if not legal violations) for the remaining employees: out-of-class assignments, exhaustive work hours, denials of time off, negative reviews or harassment for work that can't possibly be finished, injuries and illnesses (including stress illnesses,) increased conflict in the workplace, etc.

As the financial crisis lifted, most agencies began actively filling their vacant positions. *But many did not.* Due either to continuing economic problems, or simple neglect, many employees in cities, counties, and "special districts" *still* work in understaffed conditions. If YOU are one of these people, you should know there ARE some legal remedies – as well as methods for coping. Here are a few ideas:

First of all, you are paid to do 40 hours of work, not to squeeze 80 hours into 40… If you are doing the work of multiple jobs, under pressure to accomplish an unreasonable amount of work, having difficulty taking lunches, breaks or vacation, finding yourself at work when you're sick, or experiencing stress-related symptoms, it's time to do something. The first step is to communicate to someone about your situation. Employees overwhelmingly assume that their supervisors "know all of this," when, in truth, they do not. Or, at least, don't know the *extent* of the problem.

So… the first step in resolving a workplace problem is to present the problem, and ask for a solution. Depending on the severity of the situation you should:

MAKE SURE YOUR MANAGEMENT KNOWS THAT YOU HAVE A WORKLOAD PROBLEM and

you are 1) doing the work of a higher class, 2) exhausted, 3) stressed and needing time off, 5) needing an immediate change in the work environment. This means a good in-person discussion with your supervisor, where he/she expresses a genuine understanding of your situation.

MAKE SURE THAT YOU AND YOUR MANAGEMENT AGREE ON YOUR PRIORITIES,

which includes agreement on which tasks may never get accomplished. This means a written agreement, or email exchange which lists your many duties and, literally, puts them in priority order. You should probably also talk about what happens if certain tasks aren't performed regularly. What are the consequences? Who will these consequences fall upon? Who CAN pick up the work?

CLARIFY THE STATUS OF OVERTIME.

Most employers don't want to pay for overtime, but sometimes they MUST. This is their choice, not yours (unless they give *you* the choice, which should be in writing). **You should NOT work overtime without being appropriately paid.**

IF YOU'RE FLSA-EXEMPT (NOT ELIGIBLE FOR OVERTIME PAY) YOU SHOULD STILL MAKE IT CLEAR THAT YOU CAN'T WORK BEYOND A REASONABLE WEEK.

"Reasonable" is a pretty fuzzy term, and for exempt employees, overwork is an extremely common complaint. The point is that being a mid-manager or professional does not make you a slave. Abusive work conditions are grievable under the "health and safety" provision of your MOU.

CLARIFY WORK DISTRIBUTION ISSUES.

When Management is asking you to work "above and beyond" normal capacity, you're allowed to ask questions – or give suggestions – that aren't normally your areas of concern. This means that if it's obvious that the workload isn't equitable, you can suggest that some of your excess duties be reassigned. **You can also suggest other ways that the work can be streamlined or reorganized.**

Supervisors aren't omniscient; they may really appreciate your input. Or they may completely reject it. If they reject it, drop it! Unless your rights are being

violated, the work other people do is truly none of your business. Further, there may be other information about the Department's operation that you're not privy to.

IF YOUR RIGHTS ARE BEING VIOLATED

You have the right to a safe, healthy workplace. If you can't achieve agreement with your supervisor on what constitutes a reasonable workload (*or if you DO achieve agreement, but nothing really changes)* then you probably have the basis for a grievance. They are not allowed to make you crazy!

THE LAW requires them to provide lunches and breaks – and to not make you sick. Your MOU provides you sick leave, vacation, and appropriate pay for the duties you're performing. It probably also has provisions that say "employees will be treated fairly and respectfully," and that you'll have a "safe, healthy workplace." So, if your work conditions are such that you're deprived of these rights and benefits, you may insist, via the grievance procedure, that they be restored. You may want to call your Association staff for help with this.

IF YOU ARE NOT BEING PAID FOR THE DUTIES YOU'RE PERFORMING…

The most common consequence of understaffed work conditions is that employees end up wearing "multiple hats." You may enjoy being busy; you may enjoy learning new skills. Management may enjoy giving you this "training opportunity." But at some point, it dawns on you that you are filling the shoes of someone who was better paid than you are.

You have the right to request that you be properly classified. If the County doesn't do this when you ask, informally, you have the right to file a grievance. Job classes are listed in your MOU with negotiated pay levels. They are defined by written job descriptions. If you're performing the majority of duties on a job description other than your own, you can *insist* that the County pay attention to this violation, and fix it. They can respond to your grievance by taking away the higher paid duties. Or they can respond by reclassifying or promoting you. But they can't respond by saying "there is no budget for this." Classification matters in your MOU are just as enforceable as any other right or benefit.

Most public employees are *extremely* hard-working, helpful, and reasonable. They are "public servants," sometimes to the point of exploitation. But the truth is, also, that most top managers know very little about their employees' daily experience. If you work in conditions that may be exploitive, the first step is to bring this to someone's attention. Most supervisors and their employees want to get along, and want to resolve problems. If your employer doesn't want to solve your problem, however, it's good to know that you have alternatives: a union contract, union staff – and a grievance procedure.

WARNING! CONTACT YOUR STAFF BEFORE YOU CALL A WORKERS COMP LAWYER!

Why? Because all too often workers comp lawyers are focused on the short term goal of maximizing your workers comp claim – without concern for JEOPARDIZING YOUR JOB.

If you are injured at work, and are later found 'permanently incapable of performing' your job duties, you *can* be terminated. A bad lawyer may exaggerate your injuries in order to secure the highest settlement. You might earn a higher settlement, but lose your earning capacity - *for the rest of your life.*

If you are injured on the job, call your union rep FIRST. Your rep is concerned with your "whole picture"; not just the injury. Your rep can determine whether you do need a lawyer and, if so, make sure you are sent to a competent and reputable one.

NEW COURT RULINGS THREATEN PUBLIC EMPLOYEES' RETIREMENT SECURITY

(Your Report from the Retired Public Employees Association)

On December 30, 2016, a California Appeals Court ruled, for the first time, that a pension which is offered at the point of hire may be altered by an employer, *without offering a comparable new benefit.* This ruling has raised HUGE concerns for retirees and future retirees. A brief historical background will provide some context:

- In 1955, a State Supreme Court ruling stated that an employee's vested contractual pensions rights can only be modified if the alterations are 1) reasonable and 2) accompanied by comparable new advantages. This is commonly known as the California Rule.
- In 2003, a state law (§20909) gave employees the option to purchase extra service credit (i.e. airtime credit). This option was eliminated on January 1, 2013, through the Public Employees' Pension Reform Act (PEPRA).
- In 2012, a union, CAL FIRE Local 2881, filed a lawsuit against CalPERS asserting that the option to purchase airtime service credit was a vested contractual right and that the elimination of the option was in violation of the contracts clause of the California Constitution.
- In 2014, the State of California became involved with the lawsuit. As a result, a trial court concluded that the legislative modification (PEPRA) was permissible. The union filed an appeal shortly thereafter; the December 30, 2016, ruling was in response to this appeal. It says that PEPRA was legal and CAN change public employees' retirement options.
- In August 2016, a similar case was decided upon by an appeals court in Marin County. The outcome was that *another* PEPRA-related change (which was done to curtail pension spiking) was ALSO permissible. **The ruling stated that public employees have a "vested reasonable right" to pensions, but that this right is not an immutable entitlement**. The state Supreme Court will be hearing this Marin County case in 2017 to make a final decision.

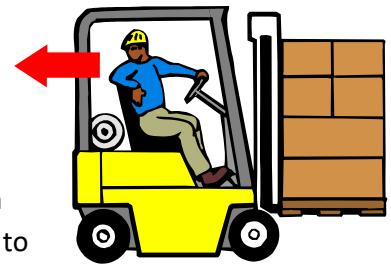
Although most public employees probably don't object to language which curbs spiking, there is a big principle at stake here. **The State Supreme Court is REALLY deciding whether the retirement program that an employee in hired under could be modified, so that he/she is not provided the same benefit at retirement.** This decision could shake the foundation of a rule that has been in place for 70 years and have lasting effects on how pensions could be altered in the future.

The two 2016 decisions have raised questions about how the "California Rule" should be interpreted. As it stands now, amendments and alterations can be made to pensions which were agreed upon at the time of hire, *without comparable advantages,* when the pension still in place is deemed "reasonable." So, this interpretation rests with what is meant by a "reasonable" pension. Retiree advocates (such as the RPEA) are insisting that no action may be taken to jeopardize the security public employees' pensions. We are all waiting for the outcome of this Supreme Court ruling.

Founded in 1958, RPEA has more than 24,000 members in 85 active chapters in California, Arizona, Nevada, New Mexico, and Oregon. They are the only association representing all public retirees. RPEA takes an active role in CalPERS, serving on their Advisory Committee and meeting regularly with CalPERS board members. For more information regarding retiree pensions and health benefits or to learn more about the Retired Public Employees' Association of California check out their website www.rpea.com.

The "Presence of Imminent Hazard:"

Your Right to Report Safety Problems on the Job



It has been nearly 40 years since California implemented the Occupational Safety and Health Act, OSHA. This law established the state's right to set safety standards in the workplace and to investigate and require correction of potential hazards. It also established your right, as an employee in California, to call OSHA directly about a hazardous situation -- and to be protected against retaliation for making that report.

Today, outright violations of safety standards at public agencies are rare. But the occasional unsafe condition (which no one may want to speak up about) is not at all uncommon. Particularly in agencies with limited resources, the maintenance and replacement of equipment and vehicles can be known to 'slide' a bit.

Employees generally avoid reporting safety hazards out of fear of being labeled "complainers." They may also have legitimate concerns about whether their reports will simply be ignored. But employees in the field are often the ONLY one aware of a problem. Their failure to report real hazards can not only hurt themselves, their co-workers or members of the public… they also present potential liability for the County itself.

So… first-line employees are usually the first to notice unsafe conditions, and they are also the most vulnerable. They need to be protected against retaliation – and this is what OSHA does. Labor Code Section 6310 says that "no person shall be discharged or in any manner discriminated against because he/she has filed a Cal/OSHA complaint." The law actually goes on to list all the possible examples discrimination: firing, demotion, transfer, layoff, losing opportunity for overtime or promotion, exclusion from normal overtime work, assignment to an undesirable shift, denial of benefits such as sick leave or vacation time, damaging credit at financial institutions and reducing pay or hours."

If You Become Aware of a Safety Problem…

So, if you become aware of a hazard in your workplace, or in ANY of the County's operations, it's your right (and perhaps your obligation) to report this to Management. You may ALSO report it to your employees' association, but this isn't necessary. Your union *can* report the problem on your behalf, but your union isn't an outside agency. It can help you report the problem, but it won't be able to take any action to correct it.

If the problem is serious and immediate and/or not corrected within a reasonable period of time, you should feel free to call OSHA directly. The agency has written safety standards for conducting almost any work activity, or running every kind of equipment. In fact, the standards are available, along with information about your rights and about how to file a complaint at www.dir.ca.gov/occupational_safety. Most fundamentally, OSHA would like you to know that your right to a safe work place is protected by law, and that you have the specific right to:

1. Get training at the worksite, about potential hazards and how to report them.
2. Request information from the County about Cal/OSHA's standards and how it is complying with these.
3. Request action from your employer to correct hazards or violations.
4. File a complaint if you believe that there are either violations of standards or serious workplace hazards.

5. Be present at OSHA's inspection ('walk around') of your workplace and find out the results of the inspection.

6. File a discrimination or whistleblower complaint with the Division of Labor Standards Enforcement (Labor Commissioner) if you are retaliated against due to your exercise of any of the above rights.

Protection Against Retaliation

OSHA recognizes that retaliation for reporting hazardous conditions is a very real phenomenon. Therefore, the law gives you right to file a complaint ANONYMOUSLY, without your identity ever being provided to your employer. To report a problem, call the Cal/OSHA Enforcement Unit County Office nearest your workplace. If you believe you are a victim of retaliation, you may file a discrimination complaint, with OSHA or with your Union. (Be aware, though, that there is a 6-month statute of limitations on these complaints…)

Your Right to Refuse to Perform in Dangerous Circumstances

You have the right to refuse to work if a situation presents a serious, immediate hazard. Labor Code Section 6311 protects you against being disciplined for exercising this right, when both of these conditions are met: (1) You believe that the situation presents a violation of a Labor Code Safety Standard or a Title 8 Safety Order; and (2) the violation presents "a real and apparent hazard" to yourself or others. The legal term for such a situation is "imminent hazard."

Significantly, not all imminent hazards fall into the category of dangerous machinery. OSHA has become increasingly concerned with toxic substances "where exposure may result in shortened life or cause reduction in physical or mental efficiency." In many agencies, employees work with potentially damaging substances such as toxic gases and pesticides. Lax enforcement of ventilation standards and protective clothing requirements can create "imminent hazard."

If you know that ANY hazardous situation exists, you have the right to refuse to perform an assigned duty. If/when you do this, you should ask a co-worker or supervisor to verify the situation and/or take pictures. OSHA also enables you to file an "imminent hazard complaint," which is defined as "any condition, practice or hazard … which could reasonably be expected to cause death or serious physical harm." OSHA maintains excellent information about the proper handling of substances. We hope that, if you have any doubt, you will err on the side of caution…

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, please call Association Staff at (562) 433-6983 or cea@cityemployees.net.

QUESTION: I work 12 hour shifts and want to know if my management has the right to compel me to work another four hours at the end of my shift. Also, if I am at work and haven't left for the day yet, can they tell me that I must come in the next day to work – even if I'm schedule to be off?

ANSWER: Yes, your employer does have the right to require you to work the extra hours and to require you to come in the next day. The law requires them to pay you time-and-a-half after 40 hours in recognition of this inconvenience. However, this doesn't mean that you have no

right to raise questions about the situation. If the length of the shift raises safety issues, you should communicate that to your supervisor. Also, if you have specific plans for your day off, it's perfectly reasonable to explain this to your supervisor and request that they select someone else. (Though, they don't need to cooperate with your request.)

Question: We received notification today that all the guys at the Public Works Yard need to attend a special luncheon with the new Director from 12 to 1 p.m. We were told to bring our lunches with us. I think this should be considered paid time. Am I right?

Answer: You ARE right. The law requires that you must be provided an unpaid, non-working lunch break. If attendance at this meeting is mandatory, you should either be paid overtime for the hour or provided another hour for your unpaid lunch period.

Question: The County has given us a new policy that says we are not allowed to use our cellphones outside of break time and lunch. Can we be forbidden to use them, and actually disciplined if we do? What about family emergencies?

Answer: Yes, the county has a right to NEGOTIATE a "no cell phones during work" policy with your Association. In these negotiations, you should discuss potential discipline for violations AND the need for some leniency in the case of perceived emergencies. These issues require discussion and can, ultimately, be worked out.

Question: As a money saving measure, our Department is pushing everyone to take comp time instead of pay, when we work overtime. However, we are only allowed to "bank" 80 hours of comp time. What happens when I hit the cap? Do I just stop accruing, even though I've worked the time?

Answer: You have a right to be PAID for overtime in cash if the overtime is required. The County cannot "make up" a policy which takes away this right, although your union and the County could probably negotiate a temporary suspension of the right to be paid. A key element of those negotiations would be a "lifting" of the cap on comp time accruals. If the cap isn't lifted, the County would have to pay you, automatically, for all overtime worked above the 80 hours.

Question: I was recently asked/told to move to another County department, although I've worked in the same department for 26 years. Others with less seniority were allowed to stay in their positions, but I was forced to move. I was given only one days' notice and I had to suspend all the projects I've been working on. I did this cooperatively because am not ready to retire or quit and don't want to be threatened with layoffs. Did I have any rights?

Answer: Your employer has the right to transfer you to another location, as long as you're still performing the duties of your job class. However, doing this on such a short notice and without apparent reason could be could be considered punitive. At minimum, you have the right to some courtesy and a bit of explanation. Also, most MOU provide for some "reasonable notice" prior to a change in employees' work schedules or locations. You may, at least, have had the right to a few weeks' notice.

Question: The County is telling our crew that we all have to start working weekends on alternative months. I don't really mind this but I have a seriously ill mother, who is on hospice. I go to see her (about 2 hours away) every weekend. I want to know if it is possible for me to ask to be left out of the weekend rotation while I'm still caring for my mother.

Answer: Yes, if you are one of your mother's caretakers, your situation is covered by the Family Medical Leave Act. You should have an FMLA letter on file, and request to be excluded for the weekend work. You can do this, intermittently, for a period as long as 12 weeks.

Question: I am resigning from my job and was just told I'll be receiving my final paycheck "within a few weeks." I looked on the website for the State Labor Commission and it says that employers must provide final checks within 72-hours. What can I do?

Answer: You're not going to like this answer, but several sections of the Labor Code don't apply to public employees – and this is one of them. Public employers have the right to provide last paychecks on the basis of their "normal pay schedule."