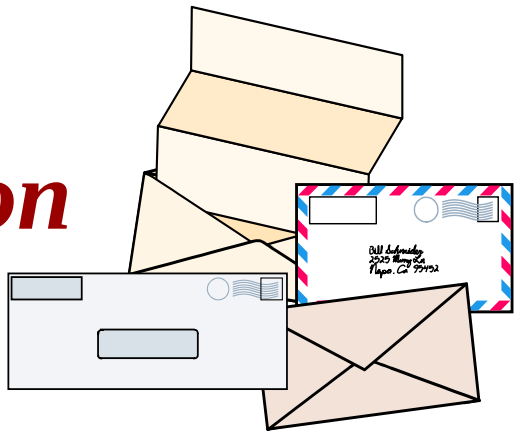
Regional Employees Association of Professionals June 2017 News



WHAT TO DO IF YOU'RE HURT ON THE JOB…

If you are hurt on the job, *whether it causes you to miss work or not*, the first thing to do is to report the injury. Notify a supervisor, and ask for a "DWC-1" form, also known as an "Employee Claim of Work Injury" form. Even if you think the injury is minor, *report it*. If you fail to report, and then find yourself in pain later, your employer may suspect that the injury didn't take place on the job. It is much better to "err on the side of caution" even with a minor accident. There is no downside to letting the County know you were hurt, even if you don't need to go to the doctor.

Workers' compensation is the "Exclusive Remedy"

When you report an injury, you are potentially filing a claim with the County for workers' compensation benefits, although you may not need benefits, nor medical care, now. The workers comp system replaces your need to sue your employer in civil court. It's your "exclusive remedy" for a physical or psychological injury, which stems from your work. Injured employees are entitled to benefits regardless of fault; the system doesn't really care how the injury occurred.

Benefits Provided

If you DO need medical care, the law requires your employer to provide it. This is true whether you are full-time or a part-time employee, and whether you have other medical insurance or not. If you aren't able to work for a period of time, you will also be provided with "wage replacement," usually two-thirds of your salary. During this time, you're considered "temporarily totally disabled," and may collect "TTD" payments for up to 104 weeks. If the outcome of the injury is that you have a permanent disability/work limitation, you will be owed a financial settlement to compensate for this. If you also lose your job because you are "unable to perform," the essential duties of the position, the amount of the settlement will be considerably higher.

When Should You Call a Lawyer?

If your injury is so serious that you are likely to lose your job, YOU WILL NEED A LAWYER! You need an advocate who can help navigate the system, and make sure that you are fully compensated. Workers' compensation law differs from almost all other kinds of law because the attorneys do not charge "up front" fees. Your lawyer's fees will be a percentage of your total disability settlement, and by law, that amount is fixed at 15%.

What if my Employer Doesn't Take Care of Me?

You also need a lawyer under two other circumstances: 1) when your employer is not providing adequate medical care; and 2) when you have a "disputed claim" (when they don't agree that you are hurt, or don't agree that the injury was caused by your work).

With regard to medical care, most injuries are minor, and require only a few visits to the doctor. But in some

cases, it matters a great deal to be able to see specialists or be approved for surgery. It also matters that a County doctor not be able to force someone back to work before he is healed. In these cases, it's crucial that you establish what the lawyers call "medical control." If you have pre-designated your doctor with the County, they must allow you to see the doctor of choice. If you have not, you may need an attorney to make sure you are sent to a supportive doctor.

Disputed Claims (You Need a Lawyer…)

After you report an injury, your employer has 90 days to decide whether or not to accept the claim. During this time, you may be required to use your own sick leave and use your own medical insurance. Once the claim is accepted, your leave will be restored and your medical costs, reimbursed.

But what if the claim is NOT accepted? What if they say you DIDN'T hurt yourself at work? This is a common response to cumulative trauma (repetitive injury) claims and a *standard* response to stress claims. In *this* case you will need a lawyer in order to insure that you are cared for and fairly compensated.

When you DON'T Need a Lawyer…

If your injury is temporary, you don't have difficulty securing medical care, and you don't expect to or lose your job or sustain a permanent disability, you probably don't need a lawyer. Your Association staff can probably answer most of your questions about the workers' comp system, and if you DO need an attorney, refer you to a reputable one.

Legal Update: Employment Bills Pending In CA State Legislature

Here are some "employee friendly' bills awaiting a vote in the state legislature. We'll keep you up to date if/when they go into effect. If you have any specific questions, please contact your HELP representative.

Pay Equity (Assembly Bill 46): This bill makes clear that employers are prohibited from paying lower wages based on gender, race, or ethnicity.

Prohibition on Prior Salary History (Assembly Bill 168): To address the wage gaps based on gender, race, and ethnicity, this bill prohibits employers from requesting prior salary information from applicants.

Gender Pay Differential Reporting (Assembly Bill 1209): This bill requires an employer to file a statement of information on the gender pay differentials of their employees with the Secretary of State. It would only apply to employers with 250 or more employees.

Ban the Box (Assembly Bill 1008): This bill makes it illegal for employers to ask questions regarding an applicant's criminal history. An employer that decides to deny an applicant a job solely, or partially because of prior criminal conviction must make an individualized assessment of whether the applicant's conviction would have a direct, adverse relationship with the specific duties of the job. Background checks would also be limited to disclosing misdemeanors within three years of conviction and felonies within seven years of conviction.

Increased Salary Threshold for Overtime Exemption (Assembly Bill 1565): Currently, employers are able to define employees as "exempt" from overtime if they make less than $43,680. This bill raises that threshold to $47,476 annually. This compensates for the recent cancellation of the Obama administration's changes in the FLSA, and increases the number of people eligible for overtime – at least in California.

Your Right to Use Family Medical Leave

The Family Medical Leave Act, passed in 1994, is essentially a "job protection law." If you have been employed for at least 1250 hours, it protects you against termination for up to twelve weeks while off the job with your own, or an immediate family member's, serious illness. It also requires that your benefits continue for this time period, and that you are returned to the same job -- or one of equal pay – when the leave is over.

You may use FMLA time intermittently: days or weeks at a time. You may use ANY accrued leave: sick leave, vacation, or comp time. If your accruals run out, you may go into unpaid status (or use your employer's disability plan). If you're ABLE to return to work when the leave is over, but decide not to (as sometimes happens after childbirth) your employer can require you to repay the cost of the insurance provided while you were off.

That is the basic law. In 2009, the Obama administration amended the law to resolve these questions:

Are part-time employees or those who don't work continuously, ever covered by the FMLA?

Yes, you can establish eligibility (12 months' time on the job) by working intermittently for the same employer, for up to a period as long as seven years, with a total of 1250 hours.

What IS a "serious medical condition?"

This has been a subject of great contention. Not all medical conditions are "serious." At minimum, the person with the condition must have three full days of "incapacity," and have met at least twice with a health care provider within the last 30 days before going on leave. In order for an employee to use FMLA time *intermittently,* the person must see a doctor at least twice a year for a "chronic, serious medical condition."

Can a husband use FMLA time to care for his pregnant wife?

Yes, but only if the wife has a serious medical condition due to the pregnancy.

Can I be forced to transfer to a different job because of my intermittent use of FMLA time?

Employees are expected to make a "reasonable effort" to schedule time off to minimize impact on the employer's operations; but employers cannot ***force*** an employee to transfer because of their use of intermittent leave. (Also, an employee may *voluntarily* transfer to a "light duty" job for a period of time, without jeopardizing his right to return to his regular job, when healthier.)

Can employees be required to provide PROOF of illness? How does this impact medical privacy?

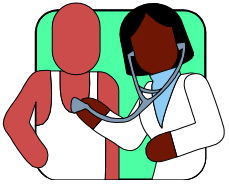
Yes, employers can require employees to provide medical "proof" that they (or the family member) have a serious condition. In fact, they can require "recertification" every six months. The proof may be in the form of a letter from the doctor, which does not violate HIPAA (the medical confidentiality law.)

Could the County say that my illness doesn't qualify for FMLA protection?

Yes, although these challenges are rare because the "threshold" for eligibility is low. In the case of a challenge, the County may send you to their doctor. If your doctor and their doctor disagree about whether you are truly sick, the parties agree on a 3rd doctor, who makes the decision.

Can the County force you to see their doctor before allowing you to return to work after FMLA leave?

Yes, if there is a legitimate question about your ability to do the work safely. In this circumstance, the County must provide the doctor conducting the "fitness for duty exam" a list of your "essential job functions," to see if you are capable of performing them. Absent



safety concerns, you can't be required to submit to a back-to-work exam.

Finally, you should know that our state laws, the California Family Rights Act (CFRA) and the Pregnancy Disability Leave Act (PDLA) are patterned after the FMLA, but with superior benefits especially in the area of pregnancy leave. Keep in mind that you may benefit from protection under BOTH laws.

Here's a Good Question…

My Co-Worker is Slandering Me! What Should I do?

QUESTION: My supervisor has told me that my co-worker has tried to "report" me for things that she says I'm doing wrong. This ranges from the way I do my job to discussions I've had with her or other co-workers. I'm a very good, long-term employee and these are all falsehoods! What should I do about this? It's happened several times and I'm beginning to feel like my work life is a mine field…

ANSWER: Your decision about what to do revolves around the consequences of her "reports." Do you think your supervisor believes her? Is he bringing these issues to the attention of human resources? Is anyone calling you in for questioning or threatening you with discipline? If the answer is mostly NO, then you probably should do NOTHING at all.

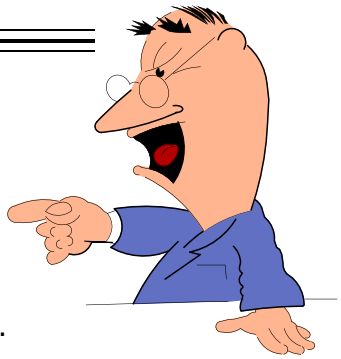
If your supervisor KNOWS you are a good employee and knows that her "reports" are false, then she probably shouldn't even be telling you about this! Your best defense against "accusations" that no one in authority believes or acts upon is to rise above the nasty behavior and ignore it. Frankly, you would be better off not knowing about it.

On the other hand, if these reports ARE having an effect in the workplace, you have the right to ask that the meddling stop. An "effect" could be a negative performance review or a memo accusing you of improper behavior. It could also be unnecessary interview meetings by Management, triggered by your co-worker's "reports" or questions/comments from co-workers or members of the public.

If there are real consequences stemming from your co-workers' statements, you should consider writing down what you are fairly certain she said, and what has happened to you because of this. The problem, of course, is that you don't know *exactly* what she said, and don't want to be repeating "hearsay." So be careful not to exaggerate or be overly emotional.

You should give this summary to your supervisor AND to Human Resources, calling it a harassment complaint and requesting the remedy that your co-worker "discontinue making false claims or filing reports about your personal or work behavior." You might also request an in-person meeting with someone in Human Resources. If you'd like, your Association staff person can help you with this.

The County should respond to this complaint by interviewing your supervisor and your co-worker, and possibly, you. They may or may not get back to you with a report. They are NOT likely to confirm, in writing, that you were harassed (as this would give you grounds for legal action), but if your complaints were legitimate, they probably will take action to ensure that these "false reports" don't reoccur. You probably won't ever find out what "action" might have been taken against your co-worker, but you should be able to get on with your job, without feeling like your workplace is a minefield…



WHEN DO I HAVE THE RIGHT TO A REPRESENTATIVE?

The right of employees to have union representation at investigatory interviews was established by the U.S. Supreme Court in a 1975 case, *NLRB vs. Weingarten.* Thus, this right has come to be known as the *Weingarten* right.

Employees have *Weingarten* rights only during investigatory interviews.

An investigatory interview occurs when a supervisor questions an employee, and the employee believes that the questioning could be used as a basis for discipline. Weingarten also applies when a supervisor tells an employee that he will be called to a meeting where he will be asked to explain or defend his conduct. If an employee has a reasonable belief that discipline or other adverse consequences may result from what he or she says, the employee has the right to request union representation.

The decision about whether or not he has "reasonable belief" that discipline may arise from the meeting lies with the *employee,* not the employer. You and your Association representative have the right to know the purpose of the meeting in advance. If the employer will guarantee that no discipline will arise from the meeting, then the employer has the right to meet with the employee without a representative.

Management is not required to inform the employee of his/her *Weingarten* rights; it is the employee's responsibility to ask. The Courts have ruled that the employer has to give the employee enough notice about the meeting that he can contact a representative, but it does not have to delay the meeting for an "unreasonable time period" to allow the employee to bring a specific representative of choice.

When the employee makes the request for a union representative to be present management has three options:

(I) they can stop questioning until the representative arrives.
(2) they can call off the interview or,
(3) they can tell the employee that it will call off the interview unless the employee voluntarily gives up his/her rights to a union representative. (Presumably the employee in this circumstance has a desire to participate in the interview…)

Your Representative's role: Employers will often argue that the only role of a union representative in an investigatory interview is to observe the discussion. The Supreme Court, however, disagreed. It asserted that an employee's representative may assist and counsel him during the interview.

The representative is allowed to speak privately with the employee before the interview and, during questioning, may interrupt to clarify a question or to object to confusing or intimidating tactics. While the interview is in progress the representative cannot tell the employee what to say but he may advise his client on how to answer a question. At the end of the interview the union representative may also add information to support the employee's case.

A Message from the Retired Public Employees Association

By Stephen Rodriguez

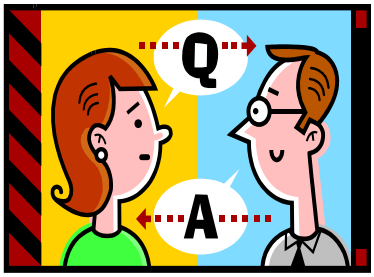
The Retired Public Employees' Association has the mission of maintaining security for all California retirees. RPEA is a non-profit association of more than 30,000 retirees and current public employees. RPEA members serve on the CalPERS Advisory Committee and meet regularly with CalPERS executives and board members. They maintain lobbyists in Sacramento, geared to support legislation protecting the long-term interests of public employees.

RPEA's current agenda focuses on the grave legal challenges facing many pension programs in the state. We believe in collective action, beginning at the grassroots level, and have many local chapters. Together, we have the resources to sustain some significant struggles, if necessary. RPEA has a number of grassroots initiatives that you may participate in:

- Chapter Membership
- Legislative Luncheons
- Interactive Surveys
- Virtual Town Halls
- Lasting Friendships
- Effective and Fun Activism

As we continue educating ourselves, we can ensure that retirees' security will be protected by effective legislation. For more information please visit RPEA.com.

Questions & Answers About Your 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* work-related problem, feel free to talk to your HELP representative.

Question: I've just discovered that my department head has made negative comments about me, personally, to several other staff members. The comments are

very offensive. I want to know what action I can take. I'd like to get her fired…

Answer: If you can prove that your department head said what you were told, you can file a complaint or grievance with Human Resources. Your employer should then begin an investigation. Depending on the specifics of the comments, they may be enough to sustain an allegation of discrimination, retaliation, or hostile work environment. The decision to discipline the department head is up to the County. A complaint about offensive remarks, even if it's sustained, doesn't guarantee your department head will get fired, but it should guarantee that that the behavior stops.

By the way, if you were merely told about the offensive remarks, but have no "proof," you can still register a complaint. Even an allegation could generate an investigation, especially if the alleged comments are threatening or racial in nature. And an investigation could well have the effect of deterring your manager from making similar comments in the future.

Question: Several years ago the County tried to suspend me for 5 days, but I appealed and the discipline was reduced to one day. Our department head also told me that after a few years I could have the discipline "purged" from my file. That Manager has now retired, and I have asked the new Department Head to purge the document. He says he doesn't know anything about this. What can I do?

Answer: You can work with your Labor Representative to see if you can formally ask for the discipline to be removed. If there is a County rule or MOU provision allowing old discipline to be purged, this is a slam- dunk. If there is no identifiable rule, but there's a "past practice," you might also be able to do this. (The difficulty might be proving that such a past practice exists.)

Finally, if the old department head put IN WRITING that you can delete this old discipline, you may also be able to argue that this was part of the settlement of the grievance at that time.

Question: I have a question about a time frame for a disciplinary action. I got in trouble in January and was questioned about the incident in February. My supervisor said he would get back to me. It is now June and I still have not received any discipline. I have heard nothing and feel that this is being held over my head. My question is: is there a time frame during which a disciplinary matter has to be taken? Could this be brought up ANY time in the future?

Answer: Unfortunately, for non-sworn employees there isn't any legal limit on how long employers may wait to issue discipline. (For sworn employees, it's one year.) However, if you are threatened with major discipline a very long time after the incident, you will be entitled to a full hearing *and the delay may make it difficult for your employer to prove their case*. It's also a reasonable argument in your defense that you may not be able to remember the details of the incident.

More often than not, in these kinds of matters, you feel that a major threat is hanging over your head when everyone else has forgotten about it. Your best course of action is to DO NOTHING…

Question: The County has informed us that they are no longer cashing out our accrued leave at retirement and, instead will be using this money to pay for our retiree health care. I have nearly $30,000 in accruals: sick leave, vacation, comp time, and holiday pay! I want to know if they can legally do this.

Answer: No! Unless your MOU (or some other policy) allows for this change, it cannot be made. It is definitely a loss or retirees, and violation of contract, and possibly ALSO a violation of law.

Both vacation and comp time are due and payable to you as MONEY when you leave your job.

So unless the local rules specifically allow the County to convert accrued leave into payment for healthcare, they can't make this change without bargaining. If your Association is in the midst of a contract, you (meaning your Association) do not need to bargain at all. This is a "term and condition" of your employment and you should talk to your Board about filing a grievance over this change.