LIEBERT CASSIDY WHITMORE

PRIVATE SCHOOL MATTERS

NEWS AND DEVELOPMENTS IN SCHOOL AND EMPLOYMENT LAW FOR CALIFORNIA INDEPENDENT AND PRIVATE SCHOOLS

November 2011

INSIDE THIS ISSUE

STUDENTS AND PARENTS

Arbitration 1
Sexual Harassment 2
Disability Discrimination 3
Defamation 4

EMPLOYMENT

Mandated Reporters 4
FMLA 5
Negligent Misrepresentation 6
Age and Religious Discrimination 7
Age Discrimination 8
Disability Discrimination 9
Protected Classification 10
Sexual Harassment 11
Tax Issues 11
Indemnification 12

BUSINESS AND FACILITIES

Environmental Quality Act 13

DEPARTMENTS

Firm Publications 14
New to the Firm 15
Firm Activities 15

Private School Matters

Private School Matters is published monthly for the benefit of the clients of Liebert Cassidy Whitmore. The information in ***Private School Matters*** should not be acted on without professional advice.

Los Angeles
Tel: 310.981.2000

San Francisco
Tel: 415.512.3000

Fresno
Tel: 559.256.7800

San Diego
Tel: 619.400.4955

www.lcwlegal.com | www.flsaaudit.com
www.calpublicagencylaboremploymentblog.com

■ STUDENTS AND PARENTS

ARBITRATION

Court Finds that Forum Selection Clause of Enrollment Agreement's Arbitration Provision Is Unenforceable Because the Chosen Forum Was Cost-Prohibitive For Parents Bringing Claim Against School.

Jane and John Doe enrolled their minor daughter, June Doe, at New Leaf, an all-girls therapeutic boarding school in North Carolina. The Does executed several documents with New Leaf, including its enrollment agreement, which contained a forum selection clause and an arbitration clause. The forum selection clause required that any dispute between the parties would be governed by the laws of the State of California. The arbitration clause required that any claim arising out of or related to the contract shall be settled by binding arbitration conducted in California in accordance with the rules of the American Arbitration Association ("AAA").

New Leaf transferred June to a program administered by Trails Carolina LLC, in South Carolina, which resulted in June being among a predominantly male group of students. Shortly after June was transferred, she claimed that she was raped while attending a camping trip in South Carolina with the male student group. The Does sued both New Leaf and Trails Carolina in South Carolina. New Leaf moved the Court for an order dismissing the case or alternatively compelling arbitration.

New Leaf argued that the case should be dismissed because the Court could not assert personal jurisdiction over it. Personal jurisdiction is the authority of a court to adjudicate and enforce its rulings over a person or entity. A court may exercise jurisdiction over an out-of-state defendant if the defendant engages in activity purposely aimed toward the forum state and the cause of action arises directly from that activity. In addition, a court may exercise jurisdiction if an applicable state long-arm statute confers jurisdiction. A long-arm statute allows a court to exercise jurisdiction over an out-of-state company if certain requirements are met. South Carolina's long-arm statute provides that personal jurisdiction may be based on conduct in South Carolina including the commission of a tortuous act in whole or in part in South Carolina. The Court concluded that at least part of New Leaf's alleged conduct occurred in South Carolina and thus it could exercise personal jurisdiction over it.

With regard to the arbitration clause, the Does did not challenge that they agreed to arbitrate their dispute. They argued, however, that the arbitration provision's requirement that arbitration be conducted in California was unenforceable and that they should not be compelled to arbitrate in California. They claimed that the chosen forum was so inconvenient that it essentially deprived them of their day in court. As support, they noted that nearly all of the witnesses were located in either South Carolina or North Carolina, all of New Leaf's decisions at issue were made by its personnel in North Carolina, and Trails Carolina, the other Defendant, was located in North Carolina. The Court agreed that the forum selection clause in the

Agreement would impose great inconvenience and costs on the Does. It determined that the arbitration provision was severable from the forum selection clause and thus compelled the parties to participate in arbitration in South Carolina.

Doe v. New Leaf Academy of North Carolina LLC (D.S.C. 2011) 2011 WL 4434051.

Note:

The Court's rationale was based on legally technical issues. However, this case highlights some of the issues that can be triggered by including a forum selection clause and arbitration provision in an enrollment contract. Even where the parties do not dispute that the matter should be submitted to arbitration, the School nevertheless had to incur the time and expense of enforcing the arbitration provision, which could not be enforced consistent with the contract. Thus, while arbitration can often provide a more cost-effective and efficient resolution of disputes, the inclusion of an arbitration provision does not guarantee a speedy result. In addition, note that California has also adopted a long-arm statute, codified in California Civil Procedure Code section 410.10.

SEXUAL HARASSMENT

Institute Prevails Against Sexual Harassment Claim Where It Took Prompt Corrective Action And Did Not Act With Deliberate Indifference Towards Acts Of Known Harassment.

Alpha Institute of South Florida is a career school that offers programs in cosmetology, massage therapy and skin care. Luis Rodriguez is a gay man who enrolled in the cosmetology program in February 2009. On his first day, he signed an enrollment agreement and acknowledged he received the Institute's catalog and orientation packet and would follow school policies. The catalog and orientation packet discussed the requirements for graduation, expectations with regard to student conduct and student misconduct. It expressly provided that abusive or disruptive behavior would be grounds for separation. Rodriguez also received a copy of the Institute's sexual harassment policy.

Rodriguez alleged that shortly after he started classes, he experienced a pattern of harassment by his classmates, who made negative comments about homosexuals. He also complained that his instructor, "Maggie," treated him differently than women, by criticizing him for wearing his long hair down and not allowing him to have his nails painted. Shortly thereafter, Sammy Rivera enrolled and began calling Rodriguez derogatory names as well as making crude comments about gay men.

Rodriguez complained to the Institute's owner, Erin Creef, that Rivera was harassing him. Creef spoke with Rivera privately in her office. Later, Rodriguez and Rivera were involved in an altercation during which Rodriguez touched Rivera's book bag, Rivera threw a water bottle and pen at Rodriguez and Rodriguez responded by calling him a "junkie." An instructor who witnessed the incident demanded that both Rodriguez and Rivera apologize. A few days later, Rodriguez complained to a professor that someone had written a derogatory word on his timecard. The professor assured Rodriguez that the Institute would take care of the matter.

Before Creef had learned of the book bag incident, she met with Rodriguez and informed him that she believed he had anger issues and should speak with Rivera directly. Rodriguez refused. Creef then learned of the book bag incident and spoke with the instructor who had witnessed the incident the next day. She then met with Rivera. Rivera admitted that he had thrown the water bottle and pen at Rodriguez but denied writing the derogatory word on Rodriguez's time card. Creef placed Rivera on written probation and advised him that any further incident would result in his expulsion.

Creef then met with Rodriguez as well to discuss the book bag incident. She claimed that during the meeting, Rodriguez started yelling and was unapproachable. She further claimed that she became fearful of Rodriguez and so she expelled him and directed him to leave the premises immediately. Rodriguez responded by calling Creef an "intolerant bigot."

Roughly two weeks later, the Institute sent Rodriguez a letter formally advising him that he had been expelled from the program but that he could petition the Institute for readmission. Rodriguez never did.

Rodriguez sued for sexual harassment under Title IX. The Institute filed a motion for summary judgment, which is a request that the Court rule in one party's favor based on certain facts without

proceeding to a trial. It argued that sexual orientation is not protected under Title IX, the alleged harassment was not severe or pervasive enough to have deprived Rodriguez of access to the educational opportunities of the Institute and that the Institute was not deliberately indifferent to the sexual harassment of which it had knowledge.

Rodriguez conceded that sexual orientation is not protected under Title IX but argued that his claim was based on sexual stereotyping and Title IX does preclude discrimination on the basis of sex. On review of the record, however, the Court found that the majority of the comments made to Rodriguez were based on his sexual orientation and thus could not support his claim of harassment. While there were some comments that were indicative of sexual stereotyping, those few comments did not rise to the level of actionable harassment because they were not sufficiently severe or pervasive.

With regard to whether the Institute acted with deliberate indifference to known acts of harassment, the Court found that the Institute maintained a policy against sexual harassment and promptly investigated Rodriguez's claims of harassment. Following each incident of harassment of which it was aware, the instructors or administrators responded almost immediately by intervening or speaking with the involved parties. Rodriguez argued that the Institute's actions were unreasonable because the harassment by Rivera did not stop after the Institute intervened, Creef delayed investigating the timecard incident by a few hours and Creef delayed speaking to the instructor about the book bag incident until the next day. The Court noted that it is not material whether the Institute's actions to stop the harassment were ineffective because the relevant inquiry is whether the Institute's actions can be regarded as deliberately indifferent. Moreover, the Court stated that a delay of a few hours regarding the investigation of the timecard incident and the one-day delay regarding the book bag incident were not unreasonable. It thus granted summary judgment in the Institute's favor thereby disposing of the entire case.

Rodriguez v. Alpha Institute of South Florida, Inc. (S.D. Fla. 2011) 2011 WL 5103950.

Note:

This case was decided in Florida and thus is not binding in California. It nevertheless demonstrates the importance of taking prompt and corrective action in response to known acts or complaints of harassment. Even though the Institute's actions did not actually alleviate the alleged harassment, it was still able to prevail against Rodriguez's claims because it was able to offer evidence of the immediate action it did take in response to his complaints.

DISABILITY DISCRIMINATION

Law School Admission Council Enters Into Settlement Agreement To Provide Testing Accommodations To Test Taker Under Americans With Disabilities Act.

The Law School Admission Counsel, Inc. ("LSAC") is a non-profit corporation that administers the Law School Admission Test ("LSAT"), an examination that is required for applicants of law schools. The Americans with Disabilities Act ("ADA") requires that any entity that offers examinations relating to applications for post-secondary education must offer the examinations in a place and manner that is accessible to people with disabilities.

A twenty-two year-old individual ("Complainant") who has Congenital Hypotonia, Attention Deficit Disorder and a learning disability applied for testing accommodations for the October 2008 and 2009 LSAT examinations. LSAC denied his request. Complainant then filed a complaint under the ADA with the U.S. Attorney's Office, who investigated the complaint. Following the investigation, the U.S. Attorney's Office found that Complainant had submitted appropriate documentation to demonstrate that he was disabled within the meaning of the ADA and that he was entitled to testing modifications or accommodations. It thus concluded that LSAC had violated the ADA by denying the request for accommodation. LSAC disputed the U.S. Attorney's Office's conclusions, but reached a settlement of the dispute.

The settlement required that LSAC would grant Complainant testing accommodations for the October 2011 and/or December 2011 LSAT including double time on all sections of the examination, permission to use scratch paper during the examination, an alternative non-scantron answer sheet, permission to bring his own computer and printer for the writing sample section of the LSAT, a break of 10 minutes between each section of the examination and a

separate and quiet room to take the test. The settlement agreement provided that the Complainant's score report would be annotated with language indicating that accommodations were provided pursuant to a settlement agreement.

For more information, please visit http://www.ada.gov/lsac_2011.htm

Note:

Like entities that administer examinations, schools are similarly required to provide reasonable accommodations to students with disabilities in the test-taking process. Upon receipt of a request for accommodation, schools should document all steps taken to consider and process the request, including interactive meetings held with the student to determine whether reasonable accommodations can be provided. The ability to offer documentation of a school's proper response to a request for accommodation can often help shield against liability.

DEFAMATION

Media Did Not Defame University By Describing It As A "Suspected Degree Factory" Based On Investigation And Facts.

Korean Broadcasting System (KBS) aired a broadcast that described Yuin University, a university in Compton, California, as a "suspected degree factory." After investigations and on-site research, the KBS reporters determined that Yuin University was left vacant and that some of its students had graduated after submitting identical graduate theses to one another. KBS concluded that the university is "virtually a ghost school . . . that recklessly issued degrees."

Yuin University filed suit against KBS, claiming KBS libeled the university with three statements in its broadcast: (1) Yuin was "vacant," implying that it was abandoned; (2) Yuin was a "ghost school"; and (3) two dissertations by graduates of Yuin were "perfectly identical." The trial court found that KBS had not libeled the university, and Yuin appealed.

The Court of Appeal affirmed the trial court's ruling. Libel, which is a form of defamation, is a false statement in a publication that exposes the subject of the statement to "hatred, contempt, ridicule, or . . . which has a tendency to injure him in his occupation." (Civ. Code, section 45.) Where there are alleged false statements in a T.V. broadcast, the surrounding information in the news report is relevant in determining whether there is a defamatory meaning. Here, there was insufficient evidence of libel. The broadcast only described the school to be "suspected as a degree factory" and provided underlying facts, based on its research, to support this assertion. Describing the school as "vacant" was based on the fact that reporters went to the school and found an empty building. The Court concluded that these assertions, based on fact, were expressions of opinions, rather than defamatory statements. The Court therefore affirmed the trial court's ruling and awarded costs to KBS.

Yuin University v. Korean Broadcasting System (2011) 199 Cal.App.4th 1098 [131 Cal.Rptr.3d 919], opn. mod. on denial of rehg. by 2011 WL 5137242.

■ EMPLOYMENT

MANDATED REPORTERS

If "Penn State" Happened Here, Would You Have A Duty To Report?

We have all heard about the scandal at Penn State that brought down college football royalty. We cringe at what happened (or didn't happen). We agree there was a moral obligation to report child abuse. However, moral obligation aside, all school districts and community college districts need to know that, if this situation occurred in California, anyone who failed to report suspected child abuse may not only be out of a job. They would be prosecuted.

The California Penal Code contains provisions detailing who are mandated reporters in the Child Abuse and Neglect Reporting Act. You may be surprised about the scope of those who are "mandated reporters." Here is a partial list:

- All faculty members, teachers, instructors at a school
- Counselors
- Medical staff
- Campus safety and police
- Childcare center workers
- Head Start teachers
- Administrators of a school if the scope of

employment places them in contact with children on a regular and continuous basis such that evidence of child abuse or neglect would be readily apparent
- Any employee of a county office of education or the State Department of Education, whose duties bring the employee into contact with children on a regular basis

In order to trigger the duty to report, a mandated reporter must actually know or have an objectively reasonable suspicion that abuse or neglect has occurred. A mandated reporter must make a telephone report to a child protective agency immediately and follow up with a written report in 36 hours. Reporting to a supervisor does not satisfy the reporter's duty. People who report suspected abuse generally have immunity from liability. On the other hand, a mandated reporter who fails to report an incident of suspected child abuse "is guilty of a misdemeanor punishable by up to six months confinement in a county jail or by a fine of $1,000 or both."

We would like to use this as a teachable moment: this situation, and the abuse itself, might have been prevented if everyone who was a witness or heard suspicions from a witness knew exactly what to do to. All entities should train their mandated reporters regarding their duties, as well as the procedures they must follow to fulfill those duties. (Liebert Cassidy Whitmore offers this training).

This article was first published on the firm's blog.

FMLA

How To Calculate FMLA Leave During The Holidays.

The blog *FMLA Insights* recently commented on how to calculate FMLA leave during a week when a holiday occurs or when the employer is closed for a period of time. Since we also get questions about this issue during the holiday season, we wanted to pass along some rules on this topic.

HOLIDAYS
Even if a holiday occurs within a work week during which FMLA leave is taken, the week is still counted as one week of FMLA leave and counts towards the employee's 12 week maximum eligibility. The fact that a holiday occurs within a week taken as FMLA leave has no effect. For example, Christmas falls on a Sunday this year but will be observed on Monday, December 26th. If an employee happens to be on FMLA leave during the entire week Christmas is observed, that full week should be counted as one full week of FMLA leave.

However, if an employee is using FMLA leave in increments of less than one week, the holiday will not count against the employee's FMLA leave entitlement unless the employee would otherwise be scheduled and expected to work on the holiday. For example, if an employee does not work Monday because of Christmas, but works Tuesday and Wednesday, and then takes FMLA leave on Thursday and Friday, the employer can only count the two days taken off in the work week as FMLA leave. The employer may not count the holiday.

OFFICE CLOSURES AND SCHOOL BREAKS
Many offices close between Christmas and New Year's Day. In addition, many schools , colleges and universities take extended winter and summer breaks. If an employer closes for a week or more and employees are not expected to report to work, then the days the employer's activities have ceased operation do not count against the employee's FMLA allotment.

SPECIAL RULES FOR SCHOOL EMPLOYEES
For employees who work in education, the holidays coincide with the end of the first school semester. FMLA has special rules that apply to "instructional employees" of public and private elementary and secondary schools who wish to take FMLA leave around this time. There rules are designed to limit disruption to the educational process. The FMLA defines "instructional employees" are those whose primary function is to teach and instruct students.

If an employee begins FMLA leave for their own serious health condition more than five weeks before the end of the semester, the school may require the employee to remain on leave until the end of the term if the leave lasts at least three weeks and the employee would otherwise return to work during the three week period before the end of the semester.

For an employee who takes FMLA leave for any qualifying reason other than the employee's own serious health condition, the school may require the employee to remain on leave until the end of the semester if the employee begins leave less than five weeks before the end of the term. The

leave period must also be longer than two weeks and the employee would otherwise return to work during the two week period before the end of the semester. However, if the employee begins FMLA leave less than three weeks before the end of the semester, then the school may require the employee to remain on leave until the end of the term if the leave lasts more than five work days.

Finally, if the school requires the employee to remain on leave until the end of the semester, only the period of leave until the employee is ready and able to return to work shall be charged against the employee's FMLA leave entitlement. For example, assume today is exactly three weeks (or 15 work days) before the end of the semester and a teacher submits a request to take seven days of FMLA leave to care for an ill parent. Although the school has the discretion to require the employee to remain out on leave until the end of the semester, the school may only count seven days as FMLA leave.

This article was first published on the firm's blog.

NEGLIGENT MISREPRESENTATION

Court Rescinds Tenured Professor's Buyout Agreement Finding That Private College Engaged In Fraud And Misrepresentation In Order To Persuade Professor To Accept Buyout Offer.

Whittier College is a private college in California that operates a Law School. Nelson Rose was a tenured professor at the Law School. In August 2005, the American Bar Association (ABA) placed the Law School on a two-year probation because of the Law School's low success rate of its graduates on the bar examination. Its placement on probation threatened the School's ability to retain and attract students, which in turn created financial concerns as Whittier relies almost entirely on tuition to meet its budget.

Whittier hired an outside consulting firm to address their financial concerns. The consulting firm, Huron, advised Whittier that it should increase salaries by 2.5% and consider whether it could abrogate its contracts with tenured law professors based on financial exigency. Both Huron and Whittier's legal counsel concluded that Whittier could not abrogate its contracts.

Whittier ultimately decided to reduce the size of its law school faculty and offered its 20 full-time tenured professors a one-time incentive for tenure buyout equal to a lump sum payment of one year's salary. It gave faculty members a deadline of November 1 to accept the offer and advised faculty that the reason for the deadline was for budgetary reasons. In actuality, the reason for the November 1 deadline was to force faculty to accept the offer before the summer bar examination results, which typically are available near the end of November, would be known. It believed that if a higher percentage of their recent graduates passed the bar examination, fewer tenured professors would accept the buyout offer.

Whittier's administrators met with the faculty in September and October to discuss the buyout offer. The law School dean and chief financial officer informed them that if they declined the offer, their workloads would increase by 50% to 100%, their salaries would be frozen for the indefinite future, and that it was possible that Whittier would be able to abrogate their contracts based on financial exigency.

Rose ultimately accepted the buyout offer. The November bar examination results were published and the passage rate for Whittier's graduates increased by 20%. In July 2007, one month after Rose departed the College, Whittier increased the salaries of its tenured professors by 3%. In addition, none of the tenured professors who rejected the buyout offer experienced an increase in workload.

Rose sued the College for fraud, negligent misrepresentation and rescission of the buyout agreement. The trial court ordered that the College reinstate Rose and award him general damages and punitive damages totaling $850,000. Whittier appealed.

On appeal, Whittier argued that the trial court's determinations that Whittier's representations that tenured professors who did not accept the buyout offer would experience increased workloads and frozen salaries were material representations upon which Rose relied was in error, because these statements were mere expressions of opinion. Generally, expressions of opinion are not actionable in a misrepresentation cause of action. Here, the Court determined that Whittier's statements were made under circumstances that indicated they were intended to be fact, not opinion. Rose and another tenured professor who had accepted the buyout offer testified that they believed the administrators' statements to be fact.

Whittier also argued that these statements were not actionable because they were mere predictions of future events, which generally cannot form the basis for a misrepresentation claim. The Court noted that there are recognized exceptions to this general rule, one of which is if the party making the representation has special or superior knowledge such that the receiver of the representation can rely on it. The trial court had determined that this exception applied here, because Whittier's administrators had information that was not available to the professors and were responsible for making decisions regarding the issues that were at stake with the buyout offer, including information from Huron. In addition, the Court noted that Whittier threatened Rose that their contracts could be abrogated when in fact, they knew they could not. The Court thus determined that Whittier could not establish that the trial court erred by finding it liable for negligent misrepresentation.

Whittier further argued that Rose's claims cannot be based on its imposition of the November 1 deadline because it was not material and its statements regarding the deadline were not false. The Court found, however, that although the administrators represented that the November 1 deadline was solely for budgetary reasons, in fact, the deadline was chosen so that its professors had to decide whether to accept the offer before the bar examination results were available. Rose testified that the examination results were an important factor in his decision because the results would probably determine whether the ABA could continue Whittier's probation. The Court thus determined that Whittier's statements regarding the deadline were not accurate and were material to Rose's decision.

Finally, Whittier challenged the trial court's award of both compensatory damages and punitive damages. The Court determined that the trial court's award of compensatory damages was not excessive. However, with regard to punitive damages, the Court noted that the California Supreme Court has previously held that a determination concerning punitive damages requires evidence of the defendant's overall financial condition. Such evidence was lacking here and the Court thus reversed the award of punitive damages.

Rose v. Whittier College (2011) Not Reported in Cal. Rptr.3d, 2011 WL 5223146.

Note:

This case is not officially published and thus cannot be relied on as precedent. It is nevertheless significant for schools who enter into severance and other release agreements with separated employees. If a separated employee is able to demonstrate that a school engaged in misrepresentation or fraud, he or she may be able to successfully rescind the agreement. It is thus important that when entering into these types of agreements, administration refrain from making any material misrepresentations or omissions.

AGE AND RELIGIOUS DISCRIMINATION

Private School Prevails Against Discrimination Claims Based On Non-Renewal Of Teacher Contract Where It Had Legitimate Business Reasons For Decision.

St. Pius X School is operated by St. Pius X Catholic Church, located in Oklahoma. The School requires religious instruction for its students, but teaches many secular subjects as well. Matthew Vereecke was the principal of the School from 2007 until 2010. Friar Michael Knipe served as pastor of St. Pius from 2005 until 2011. Each year, Vereecke would recommend to Knipe whether or not a teacher's contract should be renewed. Knipe would then approve or reject Vereecke's recommendations.

Martha Lou Braun was a fifth grade teacher working under a one-year, renewable contract with the School during the 2007-2008 academic year. She had been employed by the School since 1988. She is not Catholic. In April 2008, Vereecke recommended to Knipe that her contract not be renewed. Knipe accepted the recommendation and Vereecke notified Braun of the School's decision. She was 63 years old at the time.

Braun sued the Parish, alleging age discrimination in violation of the Age Discrimination in Employment Act ("ADEA") and discrimination based on religion in violation of Title VII. The Parish filed a motion for summary judgment, which is a request that the Court rule in one party's favor based on certain facts without proceeding to a trial. It first argued that religious educational institutions are permitted to legally discriminate based on

religion in the employment context. Braun conceded that under Title VII, religious organizations may discriminate based on religion. She contended, however, that St. Pius did not meet the definition of a religious organization or educational institution.

The Court quickly dismissed Braun's argument, finding that the School is operated by the St. Pius X Catholic Church, it requires religious instruction for its students, its handbook describes the School as "first and foremost a Catholic school," and requires that its students actively demonstrate their faith and participate in daily prayer. The Court thus found that St. Pius was a religious organization and thus could legally discriminate on the basis of religion.

St. Pius then argued that the ministerial exemption insulated it from all discrimination suits, including Braun's ADEA claim. The ministerial exception is based on the Free Exercise and Establishment clauses of the First Amendment of the U.S. Constitution. It bars some employment claims between ministers and religiously affiliated employers. St. Pius argued that it adopts the concept that teachers are ministers of the Catholic faith. However, it could offer no legal authority supporting the conclusion that all teachers should be considered ministers. While Braun's contract required that she teach and act in accordance with the precepts of the Catholic Church, St. Pius could not identify any specific duties or requirements that were ministerial in nature. Moreover, Braun did not teach religion nor did she lead the students in prayer. In fact, she is not Catholic. As such, the Court ruled that the ministerial exception did not apply here.

With regard to Braun's age discrimination claim, the Court noted that Braun was unable to produce any evidence that Vereecke or Knipe ever made inappropriate comments about her age or that they evaluated her capabilities based on her age. In fact, St. Pius was able to articulate legitimate business reasons for its decision to not renew Braun's contract. Specifically, St. Pius offered evidence that Braun had engaged in inappropriate conversations with parents of students in her classroom, who became outraged and threatened that if their children were not removed from Braun's classroom, they would withdraw from the School. In addition, St. Pius demonstrated that Braun failed to follow through with a development plan for a student and failed to require students to use organizational and communication tools leading to parental complaints about the way homework was distributed. All of these incidents were documented in Braun's performance evaluations. Finally, a family who were long-time members of the Parish had four children. The three older children all attended the School, but the fourth child left the School because the parents did not want him to be taught by Braun. The family explicitly told the School that it decided to send the fourth child to public school specifically to avoid Braun. As such, the Court granted summary judgment in St. Pius' favor thereby disposing of the entire case.

Braun v. St. Pius X Parish (N.D. Okla. 2011) 2011 WL 5086362.

Note:

This case demonstrates the importance of adequately documenting an employee's performance issues as they occur. Here, St. Pius was able to prevail, in part, because it was able to offer evidence of all of Braun's performance issues, thereby demonstrating that it had legitimate business reasons for its decision to not renew Braun's contract. In addition, this case reinforces the principle that while religious entities may shield their employment decisions with regard to ministerial employees using the ministerial exception, the ministerial exception may not be used to shield employment decisions made with regard to employees with purely secular functions.

AGE DISCRIMINATION

Inconsistent Enforcement Of Disciplinary Process Was Evidence Of Pretext.

Christine Earl worked as a recruiter for Nielsen Media Research. She recruited households to install devices that monitor television viewing habits. In August 2005, she received a verbal warning for violating a Company policy by leaving a gift at an unoccupied household. In January 2006, she violated the same policy. In February 2006, Earl violated another policy. The Company then placed Earl on a Developmental Improvement Plan (DIP).

A DIP is an informal, non-disciplinary tool that the Company uses to notify an employee of below standard performance. Earl never received a Performance Improvement Plan (PIP), however, which is part of the Company's disciplinary process. Earl's performance evaluation for 2005-

2006 noted her DIP, but also commended her strong ability in signing homes and that she had good production.

In October 2006, Earl obtained the consent of a household but mistakenly wrote down the incorrect address. Consequently, the Company terminated her employment. Earl was 59 years old. The Company replaced her with a much younger recruiter.

Earl sued the Company for age discrimination. The district court granted summary judgment, but the Ninth Circuit Court of Appeals reversed. The Court found that Earl provided enough evidence to show that the Company's reasons for terminating her may be pretextual.

If a plaintiff can establish a *prima facie* case of discrimination, the burden shifts to the employer to provide a legitimate, nondiscriminatory reason for its decision. The burden then shifts back to the plaintiff to establish with specific and substantial facts that the proffered reason is pretextual.

Earl offered evidence that three employees between the ages of 37 and 42 had violated numerous policies and were not terminated. Although the other employees' policy violations were not identical to Earl's, the differences were immaterial because they all concerned the proper collection and verification of household information.

The Court also noted that it was immaterial that two of the comparison employees were over the age of 40. Age discrimination is relative. The proper inquiry is whether the other recruiters were significantly younger than Earl, and here they were.

Finally, the Company deviated from its regular procedure when it terminated Earl without first placing her on a PIP, as it did with the other employees. Even if the Company did not have an official policy of first placing employees on PIPs, there was evidence that the Company applied a more forgiving disciplinary process to younger recruiters who were similarly situated to Earl.

Earl v. Nielsen Media Research, Inc. (9th Cir. 2011) 658 F.3d 1108.

Note:

The employer might have avoided this result by evaluating how it had previously disciplined other employees for similar misconduct. If an employee is treated differently than others, he or she may assume that discrimination accounts for the different treatment.

In addition, disciplinary procedures are often part of the contractual relationship between schools and its faculty and staff. It is important that schools adhere to its stated procedures and policies, as a separate cause of action for breach of contract may arise if a school substantially deviates from its stated process.

DISABILITY DISCRIMINATION

Employee Who Received Unsatisfactory Evaluations Could Not Establish Claim For Discrimination Or Retaliation.

Robert Dickerson has worked as a part-time janitorial custodian for Belleville Area Community College District in Illinois since 1999. Dickerson is mildly mentally retarded. Since 1999, when he began working for the District, he only received three warnings for job-related performance issues. In 2007 the District began conducting performance evaluations of part-time employees. At this time Dickerson received his first performance evaluation, which rated him as "unsatisfactory" in the categories of "Quality of Work," "Responsibility," and "Relationships with People." In response, Dickerson filed an EEOC charge claiming discrimination based on his mental disability. He approached the District's Vice President of Human Resources, who told him that if he wanted to be promoted he should stop suing the District.

The following year Dickerson received his second performance evaluation, which indicated his performance had not significantly improved. Based on this evaluation, the District fired Dickerson. Dickerson grieved his termination and, at arbitration, the arbitrator ordered Dickerson reinstated to his part-time position based on the District's failure to implement progressive discipline. Dickerson filed a second EEOC claim, as well as a suit in federal district court, alleging that the school discriminated against him when it did not promote him, gave him poor performance evaluations, and fired him. The district court granted summary judgment to the District. The Seventh Circuit Court of Appeals affirmed.

In order to establish a discrimination or retaliation claim under the Americans with Disabilities Act (ADA), an employee must show that he is disabled, as defined by the ADA, and that he was meeting his employer's legitimate employment expectations and performing satisfactorily. Here, while the Court found that Dickerson qualified as a disabled person because of his mental disability, the Court held that Dickerson had not shown that he met the District's performance requirements. Rather, he had received warnings from his supervisors about poor performance and received "Unsatisfactory" on his performance evaluations. Given this evidence, Dickerson could not establish any genuine issue of material fact as to whether he performed satisfactorily in his position with the District and, therefore, his claim could not survive summary judgment.

Dickerson v. Board of Trustees of Community College Dist. No. 522 (7th Cir. 2011) 657 F.3d 595, rehg. den.

Note:

As previously discussed in the above cases, this case also reinforces the importance of maintaining adequate documentation of performance issues as they arise. The ability to offer evidence of performance problems can help shield a school from liability.

PROTECTED CLASSIFICATIONS

New State Laws Establish Gender Identity, Gender Expression, And Genetic Information As Protected Classifications.

The Governor recently signed into law AB 887 and SB 559, which prohibit harassment and/or discrimination based on gender identity and expression, and genetic information, respectively.

Individuals who are transgender identify themselves with a gender that is different from their "assigned" sex. The term transgender also applies to individuals who dress or behave in ways socially associated with the opposite sex.

The California Fair Employment and Housing Act (FEHA) prohibits discrimination and harassment based on various specified protected classifications, including sex and gender. Courts have interpreted these terms broadly to include other non-enumerated personal characteristics. Over the last several years, many California courts have interpreted FEHA to protect transgender individuals. However, although 70% of transgender Californians have experienced workplace discrimination or harassment, many are unaware that they are protected. Similarly, many employers are unaware that transgender discrimination is unlawful.

Consequently, AB 887 amends FEHA to specifically include "gender identity" and "gender expression" as part of the term "sex." Gender identity refers to a person's deeply felt internal sense of being male or female. And gender expression refers to one's behavior, mannerisms, appearance and other characteristics that are perceived to be masculine or feminine. AB 887 clarifies that FEHA prohibits, for example, the harassment of a male employee who wears make-up, wears skirts, or behaves effeminately.

California law has not previously addressed discrimination based on genetic information. In the mid and late-1900s, employers sometimes used genetic screening to disqualify applicants from employment. Because some genetic traits are most prevalent in particular groups, genetic screening stigmatized or discriminated against specific ethnic or racial groups. In 2008, Congress passed the Genetic Information and Nondiscrimination Act (GINA) which prohibits employment discrimination based on genetic information.

SB 559 adds this same protection to FEHA and other California laws. Employers are now prohibited from discriminating against a job applicant or employee based on the individual's genetic tests, genetic tests of the individual's family members, or the manifestation of a disease or disorder in the individual's family members. It has long been unlawful to discriminate against someone who, for example, has a parent with Huntington's Disease (because the individual is associated with someone with a disability). Under SB 559, however, an employer may not discriminate against an individual on the basis that the individual is a potential carrier of the Huntington's gene and may one day exhibit symptoms of the disorder.

Employers should update their harassment policies to reflect these changes and train managers and supervisors regarding these new protected classifications.

This article first appeared on the firm's blog.

SEXUAL HARASSMENT

Sexually Derogatory Email About Employee And Sporadic Comments Over Time Did Not Constitute Sexual Harassment.

Stephanie Brennan was a vice-president of Townsend & O'Leary Enterprises, Inc., an advertising agency. In August 2004, in response to news that an employee was leaving the agency, the Executive Creative Director Scott Montgomery sent an e-mail to Senior Vice-President David Robinson stating "Three down, one big-titted, mindless one to go" referring to Brennan. Robinson forwarded the email to a coworker, who forwarded the email to Brennan.

After receiving this email, Brennan talked to other coworkers to determine whether there were other examples of sexual harassment in the agency. Brennan learned that in September 2003, Montgomery had referred to a female client with sexually derogatory epithets, but Montgomery had never heard those comments herself. Brennan later testified that in 2000 and 2001, she had regular conversations with her supervisor, who was like a second father to her, and he would ask about her personal life and sex life. In 2000 or 2001, Brennan also attended a company Christmas party during which a management employee dressed as Santa Claus and asked three female employees to sit on his lap while he asked them personal questions. In 2002 or 2003, Brennan's supervisor wore a Santa hat with the word "bitch" on the brow.

Brennan sued the agency and Montgomery for sexual harassment. The trial court found in favor of the defendants on the grounds that there was insufficient evidence that any harassment was severe or pervasive. The California Court of Appeal affirmed.

Sexual harassment in the form of a hostile work environment is actionable only when the harassing behavior is severe or pervasive. The Court found that the August 2004 email was insulting, but it was an isolated event and there was no evidence that Montgomery or any other employee made any other derogatory remarks about Brennan in any other context. The email was also not intended to be shared publicly, and Montgomery was never Brennan's supervisor. Brennan's other evidence of sexual harassment occurred over a three year period and was insufficient to constitute pervasive harassment.

Similarly, although Brennan's supervisor asked her about her personal life, she admitted that most of the conversations were not unwelcome or offensive to her. Moreover, Brennan's argument that the conduct was unwelcome was weakened by the fact that she herself used profanity at work and sent emails containing sexual material to coworkers from her computer at work.

Brennan v. Townsend & O'Leary Enterprises, Inc. (2011) 199 Cal.App.4th 1336 [132 Cal.Rptr.3d 292], rehg. den.

Note:

Although the conduct in this case did not meet the "severe or pervasive" test for sexual harassment, this type of case is never easy to defend against. Prompt investigation and corrective action for harassment on the basis of any protected status provides the best protection to the school. A school best fulfills its duty to prevent harassment by prohibiting any protected-status-based conduct.

TAX ISSUES

Reminder! Certain Organizations That Are Not Required To File An Application For Tax Exemption Still Have An IRS Filing Requirement.

The IRS has issued a reminder that certain organizations that are not required to file an application for tax-exempt status still have an IRS filing requirement. 501(c)(3) organizations whose gross receipts in each taxable year do not normally exceed $5,000 are included.

In addition, small tax-exempt organizations whose gross receipts are normally $50,000 or less for tax years ending on or after December 31, 2010 still have an annual reporting requirement.

IRS Clarifies Tax Treatment Of Employer-Provided Cell Phones

The IRS has issued a notice clarifying the tax treatment of employer provided cell phones and similar telecommunications equipment for business purposes. The notice provides guidance on two key issues regarding employee cell phone use.

First, if an employer provides an employee with a cell phone for "noncompensatory business reasons," the IRS will treat the employee's use of

the phone for business purposes as a "working condition" fringe benefit. This means that the value of this use is excludable from the employee's income. Second, if the employee uses the employer provided cell phone for personal calls, the value of the personal use will also be excludable from the employee's income as a *de minimis* fringe benefit.

According to the IRS, a cell phone is provided for "noncompensatory business reasons" if there are substantial business related reasons for giving the phone to the employee. These reasons can include the need to contact the employee at all times for work related emergencies or for the employee to contact clients while away from the office. However, a cell phone is not provided for "noncompensatory business reasons" if the cell phone is given to the employee to "promote the morale or good will of an employee," to recruit a prospective employee, or to provide additional compensation to the employee.

The IRS clarified its position following questions it received following passage of the Small Business Jobs Act of 2010 which removed cell phones from the definition of listed property for taxable years beginning after December 31, 2009. When cell phones were included in the definition of listed property, employers and employees were required to keep detailed records of whether calls made on employer provided cell phones were for work or personal purposes. This put an enormous record keeping burden on employers. If no such records were kept, the value of the cell phone and the accompanying service were deemed "perks" that should have been treated as taxable income to the employee. As a result, numerous employers were being hit with back tax charges by the IRS. Some may remember that UCLA was slapped with nearly $240,000 in back taxes a few years ago.

The IRS' clarification regarding the tax treatment of work issued cell phones is welcome news to employers. Now, employers and employees will not have to go through the onerous process of reviewing cell phone bills to separate work from personal calls and then include the value of the personal calls in the employee's taxable income. Nonetheless, employers who already have a cell phone policy should review it to make sure it clearly states that the phone should be used for business purposes only. In addition, the policy should discourage employees from using employer provided cell phones for personal use. Finally, employers who do not have a cell phone use policy should adopt one.

This article first appeared on the firm's blog.

INDEMNIFICATION

Employer Not Required To Reimburse Employee For Attorney's Fees Incurred In Employee's Successful Defense Of The Employer's Action Against The Employee.

Christopher Chen was a director for Nicholas Labs. The Company believed that Chen created a competitor business and directed business away from the Company in violation of Chen's employment contract. The Company sued Chen for breach of contract and other similar claims. Chen cross-sued under the Labor Code for the Company to pay for his expenses and attorney's fees in defending the lawsuit.

The Company later dismissed its case against Chen. The superior court rejected Chen's claims for attorney's fees. The California Court of Appeal affirmed.

Labor Code section 2802 requires employers to indemnify employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties. This statute also requires an employer to indemnify an employee who is sued by third persons for conduct in the course and scope of his or her employment, including paying any judgment entered and attorney's fees and costs incurred in defending the action.

The Court found that Section 2802 does not require an employer to pay an employee's attorney's fees in a "first party" dispute between the employer and the employee. The term indemnify generally refers to an obligation to pay for judgments and/or expenses incurred in a lawsuit brought by a third party. The Legislature could have, but did not, specifically state that Section 2802 includes attorney's fees incurred defending an action by the employer against the employee. Thus, the Court defaulted to the general rule that parties pay for their own attorney's fees absent express language to the contrary.

Nicholas Laboratories, LLC v. Chen (2011) 199 Cal. App.4th 1240 [132 Cal.Rptr.3d 223], rehg. den., review filed.

Note:

Employers are required to pay for the employee's attorney's fees if the employee prevails in a harassment or discrimination case under the Fair Employment and Housing Act, or in a

wage and hour claim under the Fair Labor Standards Act. This case involved a unique situation in which the employer sued its employee.

■ BUSINESS AND FACILITIES

ENVIRONMENTAL QUALITY ACT

Violation of CEQA's Notice Requirements Did Not Require Project Approval To Be Set Aside Where There Was No Prejudice To The CEQA Process.

Liquid Investments, Inc. and Mesa Beverage Company, Inc. ("Mesa"), the real parties in interest, filed an application with the County of Sonoma ("County") for approval to develop and construct a warehouse and beverage distribution facility. The project's location was zoned for industrial use, so Mesa only needed the County's approval of the design review.

After an initial design study and preliminary design review hearing, the County issued an initial mitigated negative declaration. The County conducted a hearing and sent notice of the hearing to specified federal, state and local government agencies. After the hearing, the County prepared a revised mitigated negative declaration and held an additional public hearing before the Design Review Committee, which approved the modified design. Plaintiff Beverly Schenck appealed the decision to the Planning Commission, which denied the appeal and approved the mitigated negative declaration as completed in compliance with the California Environmental Quality Act ("CEQA"). Schenck appealed the decision to the County Board of Supervisors requesting that the County require Mesa to provide an environmental impact report. Thereafter, after additional studies, the County ultimately issued a fifth negative declaration. The Board adopted a Resolution denying Schenck's appeal and adopted the fifth mitigated negative declaration.

Schenck filed a petition for peremptory writ of mandate and injunctive relief challenging the County's compliance with CEQA. CEQA, at Public Resources Code section 21080.3, requires that an agency give notice to the public and allow time for comment before adopting a negative declaration. In order to implement this requirement, the lead agency must consult with any other public agency having jurisdiction by law over natural resources affected by the project (Section 21080.3) and must send notice of its intent to adopt a negative declaration. This notice was required by the Bay Area Air Quality Management District's ("District") CEQA guidelines adopted in the mitigated negative declaration ("Guidelines").

Although the trial court denied the petition for injunction, it found that the County failed to furnish proper notice of the Board's intent to adopt the mitigated negative declaration to the District and failed to show lack of prejudice associated with the defective notice. The trial court granted a writ of mandate to require Mesa to provide adequate notice to the District and to determine further course of action needed to cure the defects and ensure proper CEQA review of the project with the results of such notice. The County provided the court-ordered notice to the District and requested comments. The District commented that the analysis provided met appropriate standards. The County filed a Certificate of Compliance and the trial court's order was entered as a final, appealable judgment. Schenck appealed. On appeal, the Court held that while the County failed to give notice to the District of the intent to adopt the revised mitigated negative declaration as required by the Guidelines, such failure was not prejudicial.

The failure to give notice was a violation of CEQA. However, the court explained that noncompliance with CEQA does not necessarily require reversal; the appellant must show prejudice. A subversion of the purposes of CEQA, through the omission of information from the environmental review process, is sufficient to establish prejudice.

Here, the Court held that the failure to provide notice to the District was not prejudicial for four reasons:

1. The District was given notice of the application for design review, but did not offer any input and further studies did not alter the conclusion of no significant impact under the District's established criteria.
2. Before approval, the County and the public was provided with disclosures necessary to make an informed assessment.
3. The lack of notice did not result in the omission of relevant information from the review and decision-making process.
4. After review of the notice of intent to adopt the revised mitigated negative

declaration, the District confirmed that the projects emissions were below the threshold of significance.

Schenck also challenged the notice given to the Regional Water Board and CalTrans. These two agencies received notice of the proposed fourth mitigated declaration through the State Clearinghouse, but once they responded with comments, Schenck claims that the County was obligated to notify them directly of the scheduled public hearing per the Guidelines. Public Resources Code section 21092 requires only that public notice be made within a reasonable period of time before the adoption of a negative declaration. Subsection (b)(2) prevents section 21092 from being construed in any manner that results in the invalidation of an action due to allegedly inadequate notice as long as there is substantial compliance. The court found that the County substantially complied with the notice requirements of Section 21092 through publication and posting. Since the notice procedure did not result in any prejudicial impact on the CEQA process, the mitigated negative declaration was not set aside.

Schenck also claimed that the trial court violated CEQA by issuing an order on the petition for writ of mandate that directed the County to provide notice to the District, claiming that the trial court should have set aside the project approval. The Court held that CEQA, at Public Resources Code section 21168.9, allows a court to provide alternative remedies or mandates that a public agency take specific action to bring the finding or decision into compliance with CEQA.

Schenck v. County of Sonoma (2011) 198 Cal.App.4th 949 [130 Cal.Rptr.3d 527].

Note:

*CEQA originally only applied to public projects. However, in 1972, the California Supreme Court ruled that CEQA applies to projects by private businesses and individuals where a government permit or other entitlement for use is necessary. (*Friends of Mammoth v. Board of Supervisors *(1972) 8 Cal.3d 247 [104 Cal.Rptr. 761].) This case illustrates some of the issues that can arise under CEQA's requirements when seeking approval for a construction or development project.*

§

Firm Publications

To view these articles and the most recent attorney-authored articles, please visit:
www.lcwlegal.com/lcw-attorney-authored-articles

Christopher Fallon and **Randy Parent** authored the article, "Public Entities May Enter Into Project Stabilization Agreements That Require An Apprenticeship Program" which appeared in the October 25, 2011 issue of *CASBO News*. The complete article can be viewed by visiting the link listed above and/or searching the keywords, "Project Stabilization."

To view archived articles, please go to:
www.lcwlegal.com/lcw-attorney-authored-articless?archive=1

New to the Firm

Liebert Cassidy Whitmore Welcomes Two New Associate

Che Johnson joins the Fresno office. Che's experience includes employment related litigation, including federal and state litigation and administrative proceedings. Prior to joining LCW, Che worked with a full-service firm where he represented employers in employment law matters. Che can be reached at 559.256.7800 or emailed at cjohnson@lcwlegal.com

Emily Fulmer joins the Fresno office. Emily advises and counsels Liebert Cassidy Whitmore clients in matters pertaining to education law, employment and labor law. Emily can be reached at 559.256.7800 or emailed at efulmer@lcwlegal.com

§

MANAGEMENT TRAINING WORKSHOPS

Firm Activities

Consortium Workshop Training

Dec. 6	**"Finding the Facts: Disciplinary and Harassment Investigations"** and **"Prevention and Control of Absenteeism and Abuse of Leave"** San Mateo County ERC | Foster City | Cepideh Roufougar
Dec. 9	**"Mandated Reporting"** Southern California Community College Districts (SCCCD) ERC | Webinar | Michael Blacher
Dec. 9	**"Employees and Driving"** Central CA CCD ERC | Webinar | Mark Meyerhoff
Jan. 5	**"Sick and Disabled Employees"** Gateway Public ERC | Santa Fe Springs | Michael Blacher
Jan. 13	**"Advanced Retirement Issues for California's Public Employers"** and **"Employees and Driving"** Central Coast Personnel Counsel Consortium | Santa Barbara | Frances Rogers
Jan. 18	**"Difficult Conversations"** Coachella Valley ERC | Palm Desert | Donna R. Evans
Jan. 18	**"Public Sector Employment Law Update"** Los Angeles County Human Resources Consortium | Los Angeles | Geoffrey Sheldon
Jan. 18	**"Leaves, Leaves and More Leaves" and "Difficult Conversations"** South Bay ERC | Santa Monica | Laura Kalty
Jan. 20	**"Leaves, Leaves and More Leaves"** and **"Promoting Safety in Community College Districts"** Bay Area CCD ERC | Pleasanton | Laura Schulkind
Jan. 20	**"Public Sector Employment Law Update"** SCCCD ERC | Webinar | Mary Dowell

Jan. 20	**"Public Sector Employment Law Update"** Central CA CCD ERC | Webinar | Mary Dowell
Jan. 25	**"Legal Issues Related to Generational Diversity and Succession Planning: Opportunities for Building a Stronger Workforce"** and **"Public Sector Employment Law Update"** San Joaquin Valley ERC | Modesto | Jack Hughes
Jan. 26	**"Supervisory Skills for the First Line Supervisor/Manager"** West Inland Empire ERC | Rancho Cucamonga | Donna R. Evans
Jan. 26	**"Annual Audit of Your Personnel Rules"** and **"Managing the Marginal Employee"** North San Diego County ERC | Vista | Judith S. Islas
Jan. 26	**"Managing the Marginal Employee"** Gold Country ERC | Webinar | Jack Hughes
Jan. 26	**"Labor Code 101 for Public Agencies"** Napa/Solano/Yolo ERC | Webinar | Elizabeth Tom Arce
Jan. 26	**"Mandated Reporting"** and **"Healthcare Reform"** Bay Area ERC | Sunnyvale | TBD
Jan. 27	**"Prevention and Control of Absenteeism and Abuse of Leave"** Northern CA CCD ERC | Webinar | Mary Dowell

Customized Training

Dec. 1	**"Preventing Workplace Harassment, Discrimination and Retaliation"** City of Lancaster | Donna R. Evans
Dec. 2	**"Nuts and Bolts of Human Resources: State Center CCD Leadership Series"** State Center Community College District | Fresno | Shelline Bennett
Dec. 5	**"FLSA Compliance"** Los Angeles County | Commerce | Elizabeth Tom Arce
Dec. 5, 6	**"FBOR Refresher"** Contra Costa County Fire Protection District | Concord | Jack Hughes
Dec. 6	**"Harassment and Bullying"** Yorba Linda Water District | Placentia | Donna R. Evans
Dec. 6	**"Supervisory Skills for the First Line Supervisor/Manager"** City of Barstow | Mark Meyerhoff
Dec. 6	**"Preventing Workplace Harassment, Discrimination and Retaliation"** City of Fresno | Gage Dungy
Dec. 7	**"Preventing Workplace Harassment, Discrimination and Retaliation"** Liebert Cassidy Whitmore | San Francisco | Kelly Tuffo
Dec. 7	**"Preventing Workplace Harassment, Discrimination and Retaliation"** Liebert Cassidy Whitmore | Los Angeles | Donna R. Evans
Dec. 7	**"Preventing Workplace Harassment, Discrimination and Retaliation"** Liebert Cassidy Whitmore | San Diego | Frances Rogers
Dec. 7	**"Preventing Workplace Harassment, Discrimination and Retaliation"** Liebert Cassidy Whitmore | Fresno | Gage Dungy
Dec. 7	**"Preventing Workplace Harassment, Discrimination and Retaliation"** Point 360 | Burbank | Mark Meyerhoff
Dec. 7	**"Preventing Harassment, Discrimination and Retaliation in the Academic Setting/ Environment"** Hartnell Community College District | Salinas | Alison Neufeld

Dec. 8	**"Ethics in Public Service"** City of Indian Wells | Donna R. Evans
Dec. 9	**"Preventing Harassment, Discrimination and Retaliation in the Academic Setting/ Environment"** State Center Community College District | Fresno | Shelline Bennett
Dec. 12	**"Privacy Issues in the Workplace"** City of Richmond | Jack Hughes
Dec. 12, 15	**"FBOR"** City of West Covina | Scott Tiedemann
Dec. 13	**"Preventing Workplace Harassment, Discrimination and Retaliation"** City of Newport Beach | Laura Kalty
Dec. 13	**"Roberts Rule of Order"** Ventura Community College District | Ventura | Mary Dowell
Dec. 13	**"Absenteeism"** JURUPA Community Services District | Mira Loma | Donna R. Evans
Dec. 14	**"Ethics in Public Service"** Merced County | Merced | Shelline Bennett
Dec. 14	**"Ethics in Public Service"** Liebert Cassidy Whitmore | San Francisco | Morin I. Jacob
Dec. 14	**"Preventing Workplace Harassment, Discrimination and Retaliation"** County of San Luis Obispo | San Luis Obispo | Laura Kalty
Dec. 14	**"Ethics in Public Service"** Liebert Cassidy Whitmore | Los Angeles | Donna R. Evans
Dec. 14	**"Ethics in Public Service"** Liebert Cassidy Whitmore | Fresno | Gage Dungy
Dec. 14	**"Ethics in Public Service"** Liebert Cassidy Whitmore | San Diego | Frances Rogers
Dec. 15	**"Absenteeism and FLSA"** City of Pico Rivera | Connie C. Almond
Dec. 15	**"FLSA Compliance"** Los Angeles County | Downey | Elizabeth Tom Arce
Dec. 19	**"Preventing Workplace Harassment, Discrimination and Retaliation"** City of Gardena | Laura Kalty
Jan. 5	**"Managing the Marginal Employee and Prevention and Control of Absenteeism and Abuse of Leave"** Madera Unified School District | Madera | Eileen O'Hare-Anderson
Jan. 6	**"Managing the Marginal Employee"** Merced Community College District | Merced | Eileen O'Hare-Anderson
Jan. 6	**"FBOR"** City of West Covina | Scott Tiedemann
Jan. 12	**"Conflict of Interest and Personnel Files"** City of Beverly Hills | Mark Meyerhoff
Jan. 24	**"Supervisory Skills for the First Line Supervisor/Manager"** City of Glendale | Mark Meyerhoff
Jan. 24	**"Preventing Workplace Harassment, Discrimination and Retaliation"** City of Fresno | Gage Dungy
Jan. 25	**"Temporary Transitional Work"** Municipal Pooling Authority - No CA | Walnut Creek | Alison Carrinski

Jan. 25 **"Ethics in Public Service and The Brown Act"**
Vallejo Sanitation & Flood Control District | Vallejo | Kelly Tuffo

Speaking Engagements

LCW appreciates the invitation to address professional organizations and associations. To learn how you can have an LCW presentation at your association meeting, contact info@lcwlegal.com.

Dec. 1 **"The High Cost of Retirement"**
Association of California Water Agencies (ACWA) Annual Fall Conference | Anaheim | Frances Rogers

Dec. 1 **"Social Media Guidelines for Educators"**
California School Boards Association (CSBA) Annual Conference | San Diego | Pilar Morin

Dec. 1 **"Navigating Disability Laws, Leave Rights, and Employee Discipline"**
ACWA Annual Fall Conference | Anaheim | Frances Rogers

Dec. 1 **"Construction - The Impact of Changes to Stop Notice Laws"**
California Council of School Attorneys (CCSA) Annual Workshop | San Diego | Randy Parent

Dec. 1 **"Annual FLSA Update"**
California Public Employers Labor Relations Association Annual Conference | Monterey | Peter J. Brown

Dec. 2 **"HR Issues"**
San Diego/Imperial County Deans Academy | North San Diego | Judith Islas

Dec. 2 **"Legal Update: Camp Issues"**
Western Association of Independent Camps Annual Conference | Palm Springs | Michael Blacher

Dec. 2 **"Community College Legal Update"**
CCSA Annual Workshop | San Diego | Mary Dowell

Dec. 2 **"Brown Act for Board Members"** and **"Electronic Monitoring of Employees - Dos and Don'ts"**
CSBA Annual Conference | San Diego | Frances Rogers

Dec. 2 **"Engaging in the Interactive Process"**
International Public Management Association (IPMA) - HR Central California Chapter | Merced | Gage Dungy

Dec. 2 **"A Brown Act Update"**
CCSA Annual Workshop | San Diego | Bruce Barsook

Dec. 2 **"Finance Director's Role in Labor Negotiations"**
League of CA Cities Municipal Finance Institute | Long Beach | Mark Meyerhoff

Dec. 8 **"Labor Relations Update"**
Marin County City Managers Association | Tiburon | Kelly Tuffo

Dec. 8 **"Things You Need To Know To Be An Effective Negotiator"**
California Society of Municipal Finance Officers | Redondo Beach | Mark Meyerhoff

Jan. 18 **"Pension Reform Updates and What They Mean to Special Districts"**
California Special Districts Association | Webinar | Steve Berliner

Jan. 19 **"Workplace Bullying: The Silent Epidemic"**
Professionals in Human Resources Association (PIHRA) Annual Legal Update | Garden Grove | Oliver Yee

Jan. 19 **"Public Sector Employment Law Update"**
IPMA - HR San Diego Chapter Meeting | San Diego | Frances Rogers

Jan. 19	**"Communications and the New Media"** League of California Cities New Mayors and Council Members Academy | Sacramento | Laura Kalty
Jan. 21	**"Annual Legal Update for California Independent Schools"** California Association of Independent Schools (CAIS) Annual Conference | San Francisco | Donna Williamson and Michael Blacher
Jan. 21	**"Dollars and Sense: Are you the Only School that Enforces the Tuition Agreement?"** CAIS Annual Conference | San Francisco | Donna Williamson and Grace Chan
Jan. 21	**"Five Ways to Put Your School's 501C(3) Status at Risk (and How to Avoid Them)"** CAIS Annual Conference | San Francisco | Donna Williamson and Michael Blacher
Jan. 21	**"Show Me the Money: The New Green Construction at Independent Schools"** CAIS Annual Conference | San Francisco | Randy Parent
Jan. 24	**"Workplace Bullying: The Silent Epidemic"** PIHRA Annual Legal Update | Pamona | Oliver Yee
Jan. 25	**"Workplace Bullying: The Silent Epidemic"** PIHRA Annual Legal Update | Burbank | Oliver Yee
Jan. 30	**"Sexual Harassment"** Mosquito and Vector Control Association of California Annual Conference | Burlingame | Morin Jacob

To view our current calendar of events, please visit: www.lcwlegal.com/calendar.aspx

§

LCW Liebert Cassidy Whitmore

6033 West Century Blvd., 5th Floor
Los Angeles, CA 90045

@lcwlegal

Private School Matters is published monthly for the benefit of the clients of Liebert Cassidy Whitmore. The information in ***Private School Matters*** should not be acted on without professional advice. To contact us, please call 310.981.2000, 415.512.3000, 559.256.7800, or 619.400.4955 or e-mail info@lcwlegal.com.