

Labor and Employment Litigation Update

League of California Cities 2021 Annual Conference | September 24, 2021

Presented by: *Brian P. Walter*

LCW LIEBERT CASSIDY WHITMORE

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Agenda

- First Amendment
- Discrimination and Harassment
- Retaliation
- Wage and Hour
- Labor Negotiations – MMBA
- CPRA – Peace Officer Personnel Files
- Retirement

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First Amendment

Ninth Circuit Court of Appeals addresses how First Amendment rights impact an agency's ability to discipline a law enforcement officer for a social media post.

Moser v. Las Vegas Metropolitan Police Department
(9th Cir. 2021) 984 F.3d 900

Harassment – SOL for Promotion

FEHA harassment claim accrues when an employee knows or reasonably should know of the employer's unlawful refusal to promote the employee.

Pamela Pollock v. Tri-Modal Distribution Services, Inc., et al. (2021) 11 Cal.5th 918

Discrimination – Equal Pay

District Court was wrong to dismiss university professor’s U.S. Equal Pay Act claim where a reasonable jury could find that plaintiff and her competitors perform a “common core of tasks” and do substantially equal work.

Freyd v. Univ. of Oregon
(9th Cir. 2021) 990 F.3d 1211

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Discrimination - Age

Former employee’s statement that a co-worker said she “wanted someone younger” for a position was admissible to defeat summary judgment because :

1. The decision-maker could have been influenced by this statement, and
2. The statement fell within the “state of mind” exception to hearsay.

Jorgensen v. Loyola Marymount Univ.
(Sep. 10, 2021, B305594, __ Cal.App.5th __)

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Discrimination – Age

Employee must offer substantial evidence to establish that a reduction in work force was discriminatory in response to legitimate, nondiscriminatory reasons for termination.

Foroudi v. Aerospace Corp. (2020) 57 Cal.App.5th 992

Discrimination and Retaliation

Terminated employee who had complained of headaches could not establish claims for interference with CFRA rights and retaliation where there was no evidence:

1. Employee requested and was denied CFRA leave, and
2. Supervisors who terminated him knew about his prior complaint against his supervisor.

Choochagi v. Barracuda Networks, Inc. (2020)
60 Cal.App.5th 444

Retaliation

Employer's termination of an employee for falsifying her job application may be unlawful where employer failed to investigate employee's claim that conviction was judicially dismissed.

Garcia-Brower v. Premier Auto. Imports of CA, LLC
(2020) 55 Cal.App.5th 961

Wage and Hour – Meal Breaks

City wastewater collection workers are not covered by Wage Order 9 because they are not employed in the "transportation industry."

Miles v. City of Los Angeles (2020) 56 Cal.App.5th 728

Wage and Hour – Independent Contractors

California Supreme Court concludes that the *Dynamex* decision (and ABC test) on who is an independent contractor applies retroactively.

Vazquez v. Jan-Pro Franchising Int’l, Inc.
(2021) 10 Cal.5th 944

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Wage and Hour – Travel Time

Certain travel time between employee’s home office and employer’s offices is not work time under the continuous work day rule according to the DOL.

12/31/20 US DOL Opinion Letter

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Labor Negotiations and the MMBA

PERB rules county impermissibly surface bargained revisions to class specifications and wage proposals based on new EMD certification requirement.

United Public Employees v. County of Sacramento, PERB Decision No. 2745-M (2020)



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Labor Negotiations and the MMBA

Manager interfered with union's MMBA rights by sending emails praising an employee's criticism of the union.

California Public, Professional and Medical Employees, Teamsters Local 911 v. City of San Diego, PERB Decision No. 2747-M (2020)



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Labor Negotiations and the MMBA

PERB finds that a county was guilty of bad faith effects bargaining because of misrepresentations and exploding offer.

County of Ventura, PERB Dec. No 2758-M (2021)

CA Public Records Act

City's disclosure of peace officer records related to dishonesty in response to CPRA request was protected activity under Anti-SLAPP statute.

Collondrez v. City of Rio Vista (2021)

61 Cal.App.5th 1039

CA Public Records Act

Records of peace officer misconduct covered by SB1421 must be disclosed in response to a CPRA request even if the records were created prior to 2019.

Ventura County Deputy Sheriffs' Association v. County of Ventura (2021) 61 Cal.App.5th 585

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Retirement

A deputy sheriff's appeal of his termination was no longer viable after he obtained a disability retirement.

Deiro v. Los Angeles Cty. Civil Serv. Comm'n
(2020) 56 Cal.App.5th 925

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Retirement

A retiree forfeited part of his pension because of criminal conduct.

Wilmot v. Contra Costa County Employees' Retirement Association (2021) 60 Cal.App.5th 631



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Thank You!

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