Labor and Employment Litigation Update

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I. INTRODUCTION

In the last several months, California and Federal courts, and the Public Employment Relations Board ("PERB") have issued significant decisions impacting labor and employment law for public agencies. Several of these developments are particularly important for cities as employers.

The cases discussed in this update span a broad range of issues that public employers routinely encounter. The following sections highlight key developments in labor and employment law, organized into the following categories: (1) Discrimination, Harassment, and Retaliation; (2) First Amendment; (3) Labor Relations; (4) Public Records; (5) Retirement; and (6) Workplace Investigations.

CASES AND LEGISLATION

I. DISCRIMINATION, HARASSMENT, AND RETALIATION

Williams v. Legacy Health, 174 F.4th 1201 (9th Cir. 2026) – Healthcare Employer Could Deny Religious Accommodations Requests to Vaccine Requirement Based On Undue Hardship Defense

Legacy Health, a healthcare system operating eight hospitals, implemented a COVID-19 vaccination requirement in August 2021 during a surge. Nine employees in patient-facing healthcare positions requested religious exemptions from the vaccine requirement. Legacy Health denied the requests, concluding that allowing unvaccinated frontline workers would create an undue hardship, and ultimately placed the employees on leave and then terminated them.

The employees sued under Title VII alleging religious discrimination for failure to accommodate their religious beliefs.

The District Court granted summary judgment for Legacy Health, holding that accommodating the employees would have imposed an undue hardship. The employees appealed to the Ninth Circuit.

The Ninth Circuit upheld the District Court's decision. The evidence showed that accommodating employees would impose "outsize[d] risks" to Legacy's patients and staff, thereby "jeopardizing [Legacy's] ability to provide healthcare" in a safe and effective manner.

The Court reasoned that under *Groff v. DeJoy,* 600 U.S. 447 (2023), an employer establishes undue hardship by showing that a proposed accommodation would impose a substantial burden in the overall context of its business, not merely a de minimis cost. Legacy had demonstrated that exempting unvaccinated frontline healthcare workers during the Delta surge created realistic risks of employee illness, staffing shortages, transmission to coworkers, and infection of vulnerable patients.

Additionally, expert evidence established that masking, testing, and other safety measures were not adequate substitutes for vaccination in patient-care settings, and the employees presented no evidence to rebut that showing.

The Court rejected the employees' argument that Legacy had to individually evaluate every proposed accommodation, explaining that if no reasonable accommodation exists without undue hardship, Title VII does not require the employer to do so.

This case informs public agencies that employers may deny religious accommodation when they can demonstrate *with evidence* that the accommodation would create a realistic and substantial health, safety, or operational burden. The case also brings clarity that an employer does not have to establish that it engaged in good faith efforts if it can establish that no reasonable accommodation would avoid undue hardship.

Husband v. Target Corp., 120 Cal.App.5th 762 (2026) – Employer's Knowledge of Disability is Requisite for Disability-Related Claims

Daniel Husband, a Target employee with an undisclosed diagnosis of bipolar disorder, was terminated after two incidents in which he acted erratically, made irrational statements, yelled once, and frightened coworkers. Although supervisors believed he needed medical or psychological evaluation, Husband never informed Target of his diagnosis before his termination, and no medical provider or third party disclosed it. After his termination, Husband sued Target under the Fair Employment and Housing Act (FEHA) for disability discrimination, failure to accommodate, and failure to engage in the interactive process.

The trial court granted Target's motion for summary judgment. They found that Target did not have knowledge of Husband's disability when they terminated his employment. Husband appealed.

The question the 2nd District Court of Appeal decided on was whether an employer can be held liable under FEHA for disability discrimination or failure to accommodate when the employee never disclosed a mental disability and the employee's observed behavior that could be reasonably explained by causes other than a disability.

The Court upheld summary judgment for Target, meaning that an employer's knowledge of an employee's disability is a prerequisite to liability under FEHA, and Husband failed to show Target knew or should have known of his bipolar disorder.

The reasoning relied primarily on FEHA's requirements, under which liability for termination may arise only if the employer had knowledge of the employee's disability. Because Husband never disclosed his disability, his conduct would have needed to be reasonably interpreted *only* as evidence of a disability. Although Husband behaved erratically, he did not establish that there were no other reasonable explanations for his behavior.

Public agencies do not have to infer or diagnose an employee's health condition. Additionally, suggestion an employee seek help may not equate to making an inference that a disability is the only reasonable explanation for erratic or dangerous behavior. If there are other reasonable explanations, public agencies can carry on with termination without fear of being held liable for disability discrimination.

Brown v. Alaska Airlines, Inc., 2026 U.S. App. LEXIS 18364 (2026) (Certified for Publication) – Employer May Enforce Anti-Harassment Policies, But Summary Judgment Is Improper Where Evidence Suggests Religious Discrimination

Marli Brown and Lacey Smith, two Alaska Airlines flight attendants, sued Alaska Airlines and their union after they were terminated following comments they posted on the company's internal employee communications platform in response to Alaska's public support for the federal Equality Act. The Act is a proposed federal law that would expand civil rights protections to prohibit discrimination based on sexual orientation and gender identity.

Brown posted that the Equality Act would endanger the Christian church, suppress religious freedom, and eliminate conscience protections. Smith questioned whether a company could "regulate morality." Both employees alleged that Alaska terminated them because of their sincerely held Christian beliefs, in violation of Title VII and analogous state anti-discrimination laws. They also alleged that their union unlawfully participated in or acquiesced in the discriminatory treatment.

The district court granted summary judgment for Alaska and the union, concluding the employees were terminated for violating workplace anti-harassment policies rather than because of their religion. In their view, Brown's rationale for leaving her comments was based on universal human morals, and Smith's comment was not overtly religious. Therefore, religion could not have been the basis of termination because their motivations were not religious.

The Ninth Circuit reversed. The Court held that the plaintiffs produced sufficient evidence to create a genuine dispute of material fact as to whether Alaska's stated reason for termination was a pretext for religious discrimination. Although Alaska asserted that the employees were fired for violating workplace policies prohibiting discriminatory or harassing conduct, a reasonable jury could conclude those policies were used as a cover for terminating them because of their religious beliefs.

The Court emphasized that Brown's comments were facially religious, Alaska acknowledged their religious nature, and Brown repeatedly explained that her statements reflected sincerely held religious beliefs. Likewise, although Smith's comments were less overtly religious, Alaska investigated and disciplined her together with Brown, creating a factual dispute as to whether the company's explanation was genuine.

The Court also held that a reasonable jury could find the union attempted to cause, or acquiesced in, the terminations because of the employees' religious beliefs. Finally, the court held that the Railway Labor Act does not preempt the plaintiffs' state-law discrimination claims against the union.

This decision highlights that public employers may enforce workplace conduct policies, but they are not entitled to summary judgment where the evidence would permit a reasonable jury to conclude that the stated policy violation was a pretext for discrimination based on religion. Even when an employer identifies a facially legitimate reason for discipline, summary judgment is not given if there is evidence that the decision may have been motivated by an employee's protected religious beliefs rather than the asserted misconduct.

Decloedt v. RadNet Management, Inc., 2026 Cal. App. LEXIS 411 (2026)(Certified for Publication) – Under FEHA Sexual Orientation Related Harassment Can Establish Sexual Harassment

Trevor Decloedt sued his former employer, RadNet Management, Inc., his supervisor, and a coworker, alleging multiple employment claims under the Fair Employment and Housing Act (FEHA). These claims included discrimination, hostile work environment, sexual harassment, retaliation, and wrongful termination. Decloedt alleged a coworker repeatedly harassed him because he was gay by telling him that he “shouldn't be gay,” that being gay was “sinning,” threatening to kill him, pulling his hair, and engaging in unwanted physical contact.

He further alleged he repeatedly reported the conduct to management and human resources, but the employer failed to take any corrective action. RadNet ultimately terminated his employment. When RadNet moved to compel arbitration under the parties' employment arbitration agreement, Decloedt argued the action fell within the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021 (EFAA), which renders predispute arbitration agreements unenforceable for cases relating to sexual harassment disputes.

The trial court denied RadNet's motion to compel arbitration because it concluded that Decloedt's complaint alleged a sexual harassment claim under FEHA, which brought the case within EFAA. Radnet appealed.

The Court of Appeal affirmed. It held that harassment based on an employee's sexual orientation constitutes sexual harassment under FEHA because discrimination or harassment based on homosexuality necessarily constitutes harassment because of sex. Relying on *Bostock v. Clayton County*, 590 U.S. 644 (2020), the Court found that sexual orientation harassment falls within FEHA's prohibition against harassment because of sex.

The Court further held that Decloedt sufficiently alleged a plausible FEHA sexual harassment claim by alleging repeated anti-gay comments, threats of violence, physical aggression, unwanted touching, and management's failure to take corrective action. Because the complaint adequately alleged a sexual harassment dispute, the EFAA exempted the entire case from arbitration.

This decision provides important guidance for California employers engaging with sexual harassment claims, and in managing anti-harassment policies. Although public agencies do not require employees to sign arbitration agreements and EFAA is not applicable to public agencies, the case is important because it establishes that sexual harassment claims can be based on sexual orientation, which had not been established prior.

Adelanto Elementary School Dist. v. Krause, 2026 Cal. App. LEXIS 408 (2026)(Certified for Publication) - Employer's Right to Seek Workplace Violence Restraining Order Cannot Be Waived by Separation Agreement, But Can be Limited by First Amendment

The Adelanto Elementary School District sought a workplace violence restraining order (WVRO) on behalf of three employees against its former superintendent, Michael Krause. The employees alleged that over the course of two years Krause engaged in a pattern of harassing conduct. The conduct included: intimidating outbursts, repeated unprompted text messages, photographing employees without their knowledge, sending photos of those employees unprompted, following employees near their homes and in public, and other conduct that caused them to fear for their safety and seek mental health treatment.

After the District terminated Krause, the parties entered into a separation agreement containing a broad release of claims. Krause was later elected to the District's Board of Trustees. The District subsequently petitioned for a WVRO under Code of Civil Procedure section 527.8. Krause argued that the District had waived its right to seek a restraining order through the release contained in the separation agreement and that there was insufficient evidence of a future threat because he had not threatened violence.

The trial court granted the WVRO, finding that Krause engaged in a continuing course of harassment creating a reasonable probability of future harm. The court issued a four-year restraining order restricting Krause's contact with the protected employees and limiting certain conduct during Board meetings. Krause appealed.

The Court of Appeal affirmed the district court but modified two parts of the WVRO. First, it held that an employer's statutory right to seek a workplace violence restraining order on behalf of its employees is unwaivable under Civil Code section 3513 because the statute serves the fundamental public policy of protecting workplace safety for employees. The Court reasoned that allowing employers to waive this statutory remedy would undermine the Legislature's goal of preventing workplace violence and harassment.

Second, the court clarified that, following the 2023 amendments to Code of Civil Procedure section 527.8, an employer is no longer required to prove a reasonable probability of future violence or threats of violence. Instead, because the statute now additionally covers harassment, the future-harm requirement is satisfied by showing a reasonable probability that harassment will continue, even if the conduct does not rise to the level of violence or a credible threat of violence. The Court agreed with the trial court that there was substantial evidence supporting the restraining order based on Krause's repeated pattern of harassing conduct and his lack of remorse.

The Court modified the WVRO in two ways. It held that the provision prohibiting Krause, an elected Board member, from discussing the WVRO during public Board meetings was overbroad and violated the First Amendment because it prohibited more speech than necessary to prevent harassment. The Court also reduced the duration of the WVRO from four years to the statutory maximum of three years.

This decision provides important guidance for public employers seeking WVROs. It confirms that an employer's authority to seek a WVRO cannot be waived by a private agreement because the statute serves an important public purpose. It also establishes that, under the recently amended statute, employers need only demonstrate a reasonable probability of continued harassment to get relief. This may allow employers to intervene earlier before workplace misconduct escalates into actual threats or physical violence.

II. FIRST AMENDMENT

Reges v. Cauce, 162 F.4th 979 (9th Cir. 2026) – University Violated First Amendment Rights When It Disciplined Professor For His Mocking Land Use Acknowledgement In His Course Syllabus

A professor at the University of Washington (UW) had a statement in his syllabus that criticized the school's recommendation that formal land acknowledgments be included in course syllabi. The professor viewed UW's land acknowledgment, and the recommendation to include it in syllabi, as a political statement. In his syllabus, the professor included a mock land acknowledgment in his computer science syllabus. His version criticized the official acknowledgment and expressed his own political viewpoint.

This statement sparked a controversy on campus. UW asked him to remove his statement off the syllabus, stating that it created a "toxic environment." After refusing to remove the statement, UW had IT staff replace his syllabus on the course page. UW launched an investigation and withheld pay. Although the university ultimately imposed no formal sanctions, they concluded that the statement caused significant disruption. UW threatened that he could be disciplined if he used it again. The professor sued under 42 U.S.C. §1983, claiming UW retaliated against him and discriminated against his viewpoint in violation of the First Amendment.

The District Court ruled in favor of UW, reasoning that the university's interest in mitigating the disruption to university staff functions and student learning had outweighed the professor's need to voice public concern under the *Pickering v. Board of Education* standard.

The Ninth Circuit Court of Appeals reversed, holding that UW had violated the First Amendment by taking adverse employment action against the professor. The Ninth Circuit reasoned that his statement was protected academic speech, not government speech, because faculty control syllabus content and the statement expressed his personal views on a matter of public concern, not an official UW position.

Applying the *Pickering* balancing test, the court found that his interest in speaking outweighed the university's interest in avoiding disruption. His statement addressed a matter of public concern was therefore "core political speech that merits the highest First Amendment protection."

Because the university investigated Reges, withheld his merit pay during the investigation, reprimanded him, and threatened future discipline because of the viewpoint he expressed, the court concluded that the university engaged in both First Amendment retaliation and viewpoint discrimination.

Although the Ninth Circuit placed special emphasis on academic freedom in this case, it is relevant to all public employers who may wish to reprimand employees based on controversial statements that affect other employees or the public.

Public agencies should exercise caution, as the court held that investigations, reprimands, withholding merit pay during an investigation, and threats of future discipline may constitute adverse employment actions supporting a First Amendment retaliation claim, even absent termination or suspension.

Employers must show that their interest in maintaining workplace efficiency outweighs the employees' First Amendment rights under the Pickering balancing test. Employee speech should not be punished simply because coworkers or members of the public find it offensive.

Finally, public employers should not rely on speculation of fears that speech will harm morale and function. They should rely on some set of articulable and material facts that show real disruption to the workplace.

Joyner v. City of Atlanta, 170 F.4th 1320 (11th Cir. 2026) – Removal of Flextime Privilege Was Adverse Action that Could Support First Amendment Retaliation Claims

Atlanta Police Lieutenant Terry Joyner reported alleged "ticket fixing" by his supervisors to the FBI and the department's Office of Professional Standards. One week later, his supervisors removed his longstanding flextime privilege. He relied on this to work part time and have a second job. They required him to work on a fixed schedule. The change significantly reduced his ability to work a second job, cutting that income by at least two-thirds, and interfered with his ability to meet child custody obligations.

Joyner sued the City of Atlanta, alleging VII race discrimination, Title VII retaliation, First Amendment retaliation under 42 U.S.C. § 1983, and retaliation under the Georgia Whistleblower Act. The district court granted summary judgment on all three retaliation claims. It concluded that Joyner's Title VII retaliation claim failed because he could not establish a causal connection between his 2008 discrimination complaint and the City's 2014 promotion decision. The court also concluded that the loss of flextime did not constitute an actionable adverse employment action for purposes of Joyner's First Amendment and Georgia Whistleblower claims.

Joyner's Title VII race discrimination claim was the only claim that proceeded to trial. The jury returned a verdict in favor of the City of Atlanta, rejecting Joyner's claim that race motivated the decision not to promote him. Joyner appealed both the summary judgment rulings on his retaliation claims and some trial rulings relating to his race discrimination claim.

For the Title VII retaliation claims, the 11th Circuit Court of Appeal upheld that portion of the decision. Joyner had argued that the City of Atlanta refused to promote him to Captain in 2014 in retaliation for his complaints of racial discrimination made in 2008. However, the Court explained that there was no evidence offered to show that the decisionmaker had knowledge of the discrimination complaints. The Court found Joyner's claim based only on speculation. Indeed, the Court reasoned that "what could have happened is not evidence that creates a genuine issue of fact about what did happen; it's speculation, conjecture, and wishful thinking that doesn't stand a chance against unrefuted testimony going the other way."

Additionally, there was more than six years between the complaint and the denied promotion and there was no continuous pattern of retaliatory conduct sufficient to connect the 2008 complaint to the 2014 promotion decision. Joyner was unable to establish a finding of causation and, accordingly, the Court affirmed summary judgment for the City.

On the flip side, the 11th Circuit Court of Appeals decided that the loss of a long-used flextime privilege could constitute an adverse employment action that is sufficient to support a First Amendment retaliation claim and defeat qualified immunity. They reversed that portion of the district court's decision. The district court took a more literal view as to Joyner's loss of flextime pay. In their view, his salary, rank, and title remained the same, and the only loss was the flexibility of hours.

After viewing the facts in a light most favorable to Joyner, the 11th Circuit decided that the loss of flextime constituted a materially adverse employment action that could chill protected speech due to the loss of a second income and resulting in inability to comply with his child custody obligations. The court reversed the summary judgement on Joyner's claims.

This decision serves as a reminder to public employers that retaliation is not limited to termination or demotion. Taking away a meaningful workplace benefit can be enough to support a First Amendment retaliation claim if it would discourage a reasonable employee from reporting misconduct or engaging in other protected speech.

III. LABOR RELATIONS

City & County of San Francisco v. Public Empl. Rels. Bd., 121 Cal.App.5th 243 (2026) – Union Member Attorneys Were Not Eligible For Binding Interest Arbitration on the Issue of Just Cause Discipline and Termination Because the City and County's Charter Classified Them as At-Will

The Municipal Attorneys Association (MAA), comprised of 500 attorneys employed by the City, proposed contract provisions requiring just cause for discipline and discharge and requiring layoffs based on seniority. The City rejected the proposals, arguing they conflicted with the San Francisco Charter because city attorneys are exempt, at-will employees who serve "at the pleasure" of the appointing authority.

When the City refused to submit the proposals to binding interest arbitration after bargaining reached impasse, the union filed an unfair practice charge with PERB.

PERB concluded that the City's refusal to submit the proposals to binding interest arbitration constituted bad-faith bargaining under the MMBA. The City petitioned the Court of Appeal for a writ of extraordinary relief. The City appealed.

The Court of Appeal granted the City's petition, vacated PERB's decision, and held that the City did not commit an unfair labor practice by refusing to submit the proposals to binding interest arbitration.

The Court reasoned that although courts generally defer to PERB's interpretation of the MMBA, they do not defer to PERB's interpretation of a city charter. Instead, substantial deference is given to the City's longstanding interpretation of its own charter. In this case, the San Francisco Charter expressly provided that exempt employees, including city attorneys, serve at the pleasure of the appointing authority and may be terminated without cause. Additionally, the Charter excluded matters involving the civil service merit system from binding interest arbitration.

Public agencies should consider that charter cities have authority to preserve charter-based employment provisions (such as the at-will status of exempt employees) from alteration through binding interest arbitration. This case also clarifies that while PERB receives deference on interpreting the MMBA, courts have the final word on interpreting municipal charters, and a city's longstanding interpretation of its own charter is entitled to substantial deference.

Los Angeles County Professional Peace Officers Assn. v. County of Los Angeles, 119 Cal. App. 5th 1091 (2026) – Management Rights Clause Was Not a Clear and Unmistakable Waiver to Contract Out Services

The Los Angeles County Professional Peace Officers Association (PPOA) represented County security officers. The County decided to outsource some bargaining unit security work to a private contractor but refused to meet and confer with the union over the decision, arguing that the parties' Memorandum of Understanding (MOU) contained a management rights clause that waived the union's bargaining rights with respect to any “decision of any reorganization by the County.”

PPOA filed an unfair practice charge, asserting the County violated the Meyers-Milias-Brown Act (MMBA) by failing to bargain over the outsourcing decision.

The Los Angeles County Employee Relations Commission (ERCOM) hearing officer concluded the MOU contained a clear and unmistakable waiver of the union's right to bargain over outsourcing. The superior court agreed and denied PPOA's petition for writ of mandate. PPOA appealed.

The Court of Appeal reversed and held that the management rights clause did not constitute a clear and unmistakable waiver of the union's statutory bargaining rights for three main reasons, and the County was required to meet and confer before outsourcing bargaining unit work.

First, the Court found that the article in dispute, read as one, did not contain an express waiver of PPOA's statutory right to meet and confer over outsourcing decisions. Although the article specifically addressed transfers of functions to public and private entities, it required only that the County notify PPOA when it entered into an agreement involving the transfer of bargaining unit work and that, “[w]hen a Department's Request for Proposal is approved by the Chief Executive Officer, the Labor Relations Office will arrange to meet with representatives of PPOA to advise them of this action within five (5) days.” The Court concluded that these provisions discussed outsourcing but “sa[id] nothing about the statutory right at issue,” as they did not mention the meet-and-confer process or state that PPOA was waiving its statutory rights.

Second, the Court rejected the County's reliance on this sentence: “Management shall have no obligation to negotiate the decision of any reorganization by the County during the life of this agreement.” The Court held that this language did not expressly reference the MMBA or PPOA’s statutory right to meet and confer regarding outsourcing decisions.

Third, the court concluded that the clause could reasonably be interpreted as preserving only the County's preexisting managerial authority under Government Code section 3504 to make fundamental organizational decisions, rather than waiving bargaining over outsourcing.

The Court further held that a public employer seeking to rely on an MOU waiver of bargaining rights must identify contract language that clearly and unmistakably addresses the specific management action at issue. The article of the MOU at issue was not clear, and there was no extrinsic evidence offered to show unmistakability of waiver. General management-rights clauses and broad references to reorganization may not be enough to avoid bargaining over outsourcing decisions.

Public agencies should be cautious to rely on general management rights clauses to avoid bargaining over outsourcing decisions. Any waiver of a union's statutory right to meet and confer under the MMBA must be clear, unmistakable, and expressly stated.

County of San Diego, PERB Decision No. 3006-M (Feb. 17, 2026) – Release Time May Need to Be Included for Calculation of Overtime

After Teamsters Local 986 became the exclusive bargaining representative for two San Diego County bargaining units, the County refused to count union bargaining release time as hours worked for purposes of determining overtime eligibility. The County explained that the existing Memoranda of Agreement and its Compensation Ordinance excluded union release time from overtime calculations. Teamsters filed an unfair practice charge, arguing that this practice violated Government Code section 3505.3, which requires bargaining representatives to receive release time "without loss of compensation or other benefits."

PERB issued a complaint, and the parties submitted the case on a stipulated record directly to PERB Board for decision.

PERB decided in favor of Teamsters and held that Government Code section 3505.3 requires bargaining release time to be provided without loss of compensation or benefits, which includes credit toward overtime eligibility.

PERB reasoned Government Code 3505.3 guarantees employees release time without loss of compensation or other benefits, meaning employees must receive the same compensation they would have earned had they worked their regular schedule. Refusing to credit bargaining release time toward overtime eligibility results in reduced compensation for employees who otherwise would have earned overtime.

This decision is consistent with PERB's earlier Riverside I and Riverside II decisions that employees must be made whole for compensation lost because of protected release time.

Additionally, PERB required that the County make affected employees whole, with 7% interest (from date of harm to date of payment), for lost overtime compensation.

Public agencies should be cautious about relying on collective bargaining agreements, ordinances, or history of past practices to reduce compensation pertaining to protected bargaining release time. The right to receive payment in this situation is non-waivable, and any contract contrary to the following would be unenforceable as a matter of law.

IV. <u>PUBLIC RECORDS</u>

City of Fresno v. Superior Court, 119 Cal. App. 5th 418 (2026) – Records Related To "Great Bodily Injury" Are Broader Than "Serious Bodily Injury"

On March 27, 2023, the ACLU submitted a CPRA request to City seeking public records regarding the City of Fresno Police Department's use of police K-9's involving use of force incidents. Specifically at issue here, was the request for "all records relating to the report, investigation, or findings of a K-9 incident involving use of force resulting in death or great bodily injury."

The City produced some records but withheld others, arguing that only incidents involving "serious bodily injury" were subject to disclosure under Penal Code section 832.7. The ACLU contended that the statute requires disclosure whenever an incident results in "great bodily injury," which it argued has a broader meaning.

The Fresno Superior Court ruled in favor the ACLU and ordered the City to disclose records involving incidents that resulted in "great bodily injury." The City appealed.

The City's principal argument was that the phrase "great bodily injury" in Penal Code section 832.7 should not be interpreted according to its well-established meaning in Penal Code section 12022.7 ("a significant or substantial physical injury"). Instead, the City argued that it should be construed more narrowly to mean "serious bodily injury" as defined in Government Code section 12525.2 which is a much higher threshold.

The Court of Appeal upheld the Superior Court's decision and rejected the City's narrow statutory interpretation. The Court reasoned that the statutory language is clear, so there was no reason to adopt the City's narrower definition of "serious bodily injury." The Legislature intentionally used the phrase "great bodily injury," a term with an established meaning in California law. The Court also considered that legislative history supported a broad interpretation favoring public access to law enforcement records under the CPRA. The Court reasoned that adopting the City's interpretation would improperly limit the transparency intended by the Legislature.

Police departments should be cautious when withholding use-of-force records, as they must evaluate injuries under the broader "great bodily injury" standard rather than a narrower "serious bodily injury" standard.

Voice of San Diego v. San Diego Unified School District, 120 Cal.App.5th 923 (2026) – While There is No Bright Line Rule for Production, Agency Must Make Records "Promptly Available"

Voice of San Diego, a nonprofit news organization, and its editor-in-chief sued the San Diego Unified School District, alleging the District routinely violated the California Public Records Act (CPRA) by taking more than one year to produce public records in response to requests. They sought to enjoin the District from using public funds to maintain what they alleged was an unlawful practice of delaying disclosure of public records. The plaintiffs argued that the CPRA's requirement that records be made "promptly available" generally meant agencies must produce records within days or a few weeks after determining the records were disclosable.

The trial court entered judgment in favor of the District, finding that Voice failed to prove the District maintained an unlawful policy or practice of delaying or withholding records. Voice appealed. In their view, Voice sought records spanning long periods of time and requested multiple categories of documents, making them much more burdensome than narrow requests. This meant that "promptly" did not mean immediately.

In this case, the California Court of Appeal considered whether the CPRA imposes a fixed deadline for producing public records after an agency determines they are disclosable and whether the District's record production practices violated the Act.

The Court held that the CPRA does not establish a bright-line rule for a deadline for producing records. Instead, whether records are made "promptly available" is a fact-specific inquiry based on a variety of factors. Appropriate factors include "the specificity and breadth of the request, the nature and location of the records sought, the volume of data to be searched, the storage medium that must be accessed, the level of review required for any exemptions and redactions, and the complexity of the request; as well as the size, scope and complexity of the business or activities of the agency responding to the request." Additionally, it would be appropriate to consider whether external circumstances beyond the agency's control impacted its ability to respond, such as a cyberattack on its systems or a global pandemic. The Court further concluded that substantial evidence supported the trial court's finding that the District did not maintain an unlawful practice of delaying or withholding public records, and it affirmed the judgment.

This decision provides guidance for California public agencies by highlighting that the CPRA's requirement to make records "promptly available" is flexible rather than subject to a rigid standard. The legal standard to takeaway is that compliance will be evaluated on a case-by-case basis, balancing the public's right of access with the practical burdens imposed by individual records requests.

V. RETIREMENT

Monroe v. Public Employees' Retirement System, 119 Cal. App. 5th 37 (2026) – Employee's Resignation in Lieu of Termination Precluded His Disability Retirement

A parole agent with the California Department of Corrections and Rehabilitation (CDCR), applied for service retirement pending disability retirement while under investigation for misconduct involving a parolee's family member. Before the disciplinary process concluded, CalPERS processed his service retirement application. CDCR later determined that Monroe had retired under unfavorable circumstances and withdrew its pending dismissal. CalPERS denied his disability retirement application, finding his separation from employment resulted from misconduct rather than disability.

The parole officer petitioned for a writ of mandate to reverse the Board's decision. The trial court denied his petition.

The Court of Appeals upheld, noting that petitioner's retirement arose out of unfavorable circumstances. The Court explained that disability retirement is intended to be a temporary separation from employment, with the possibility that the employee may later return to work if no longer disabled.

In this case, the court found it did not matter whether Monroe technically retired before his dismissal became effective because he left employment while under investigation for misconduct and had no right to return.

The decision reinforces that eligibility for disability retirement depends on preserving the employment relationship. Public employers and employees should recognize that a service retirement or resignation while disciplinary proceedings are pending may permanently foreclose disability retirement benefits if it constitutes a complete severance of employment.

VI. WORKPLACE INVESTIGATIONS

Paknad v. Superior Court, 119 Cal. App. 5th 1256 (2026) – Employer Waived Attorney-Client Privilege by Putting Investigation at Issue During Litigation

Michelle Paknad sued her former employer, Intuitive Surgical, alleging sexual harassment, gender discrimination, and retaliation. Before litigation, the company hired outside counsel to investigate her complaints and later relied on the thoroughness and independence of those investigations as part of its defense. Paknad sought production of the attorney's investigative reports and supporting materials, but Intuitive asserted attorney-client privilege and attorney work product protection over portions of the documents

In an earlier proceeding, the Court of Appeal held that Intuitive waived privilege by placing the adequacy of its investigation at issue and directed the trial court to conduct an in-camera review to determine whether any protection remained. On remand, the trial court permitted extensive redactions. Paknad filed a second writ petition challenging those redactions.

The question for this proceeding was when an employer relies on the adequacy of an attorney-conducted workplace investigation as a defense, whether that waives attorney-client privilege and attorney work product doctrine over the investigation's findings.

The Sixth District Court of Appeal held in favor of Paknad, finding that when a party affirmatively defends themselves on the grounds that an investigation is of quality, they waive attorney-client privilege and attorney work product protection as to the findings and contents related to the investigation. The Court found the trial court erred in not determining whether or not the investigation fell within the scope of the employer's waiver.

This means that a party cannot use an investigation as both a sword and a shield. If a party relies on it to defend a case, they cannot prevent the other party from examining the investigation for themselves.

This decision warns employers that relying on the thoroughness of an attorney-led workplace investigation as a defense may require disclosure of otherwise privileged investigative materials. Attorneys and public agencies should think carefully about using an attorney-led investigation as an affirmative defense if they do not wish the contents to be available to opposing parties.