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Labor and Employment Litigation Update

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I. INTRODUCTION

In the last several months, California and Federal courts have decided a number of new cases that will shape employment and labor practices for the public sector employers. Recent court decisions discussed in this paper cover a wide range of employment and labor issues that public sector employers commonly face. Amongst these decisions are a case brought by a police captain who was successful in an action in which she was harassed by second hand knowledge that her harassment, i.e., the sharing of a photograph, was taking place. Another decision clarified to some degree when elected official can sue under employment laws, and another discusses the risks associated with a public officials' social media activity. While we do not believe there is a significant pattern with these decisions, it is clear that employment and labor law litigation remains robust and is an area cities and other public agencies must be cognizant of from a risk management perspective.

II. CASES

Chapter 1: Whistleblower Retaliation

Lampkin v. County of Los Angeles (2025) 112 Cal.App.5th 920 – An employee's action is not successful if the defendant employer has established the same-decision defense and the plaintiff obtains no relief

On August 22, 2017, Plaintiff Lampkin ("Lampkin"), a deputy with the Los Angeles County Sheriff's Department (LASD), filed a complaint in California state court against the County of Los Angeles, alleging a single cause of action for whistleblower retaliation in violation of Labor Code section 1102.5. The complaint arose from a March 2016 investigatory stop by Lampkin involving Michael Reddy ("Reddy"), a retired LASD deputy, whom Lampkin suspected of soliciting a prostitute. According to Lampkin, Reddy attempted to leverage his former position and LASD connections to discourage any enforcement action against him. Reddy, in contrast, alleged misconduct by Lampkin, including an inappropriate comment made in the presence of Reddy's companion.

Following the incident, Lampkin reported the matter to his supervisor, while Reddy filed a formal complaint against Lampkin with LASD. Lampkin subsequently alleged that he suffered retaliation for his report, including suspension, a search of his residence, and termination of medical benefits. His original complaint sought only monetary damages, omitting requests for injunctive or declaratory relief.

The case proceeded to a jury trial in January 2023. On February 10, 2023, the jury returned a special verdict finding that Lampkin had engaged in protected activity under section 1102.5 and that such activity was a contributing factor in the adverse employment actions taken against him. However, the jury also found that LASD would have taken the same actions irrespective of the protected activity, in accordance with Labor Code section 1102.6. As a result, no damages were awarded.

Following trial, Lampkin moved to amend his complaint to include claims for injunctive and declaratory relief, which the trial court denied. He also sought a prevailing party determination and an award of costs, relying on *Harris v. City of Santa Monica* (2013) 56 Cal.4th 203, in which the California Supreme Court held that a same-decision defense under the Fair Employment and Housing Act (FEHA) does not preclude a prevailing plaintiff from recovering fees and costs. The trial court extended *Harris* to Labor Code section 1102.5 claims, declared Lampkin the prevailing party, and awarded him $52,043.65 in costs. On March 8, 2024, the court further awarded $400,000 in attorney's fees.

The County timely appealed from both the January 22, 2024 judgment and the March 8, 2024 fee award.

On appeal, the Court held that although Lampkin was able to prove the necessary elements of his/her required whistleblower retaliation claim, the County successfully established a "same decision" defense in accordance with Labor Code section 1102.6. The County was able to establish this defense by showing that they would have terminated Lampkin for a reason entirely separate from his whistleblower activity. As such, Lampkin was not entitled to recover any damages. Therefore, because Lampkin obtained no relief-no damages, no injunctive or declaratory remedy- the appellate court held his action was not successful, and therefore no fee award was authorized.

<u>Chapter 2: Social Media Use By Public Official</u>

Garnier v. O'Connor-Ratcliff (9th Cir. 2025) 136 F.4th 1181 – Public Official's Activity on Personal Social Media accounts like Twitter and Facebook can create liability as state action

Plaintiffs Christopher and Kimberly Garnier (collectively the "Garniers") are parents of children enrolled in the Poway Unified School District ("PUSD"). Defendants Michelle O'Connor-Ratcliff ("O'Connor-Ratcliff") and T.J. Zane ("Zane") (collectively the "Trustees") were, at the relevant times, members of the PUSD Board of Trustees. During and following their 2014 election campaigns, both Trustees operated public-facing social media accounts (on Facebook and Twitter), which they used to share updates regarding PUSD activities, announce Board meetings, and solicit community input.

Beginning in 2015, the Garniers frequently posted critical comments on the Trustees' social media pages, often duplicating messages across posts. In response, the Trustees initially deleted or hid the comments but eventually blocked the Garniers altogether from their accounts—O'Connor-Ratcliff blocked both Garniers on Facebook and Christopher Garnier on Twitter; Zane blocked both on Facebook.

The Garniers filed a civil rights action under 42 U.S.C. section 1983 against the Trustees and the District, alleging that the Trustees' social media pages constituted designated public fora and that blocking them constituted a violation of their First Amendment rights. They sought damages, declaratory relief, and injunctive relief.

At summary judgment, the district court held that the Trustees acted under color of state law, that their social media pages were designated public fora, and granted them qualified immunity as to damages. Following a two-day bench trial, the court concluded that although the Trustees' initial decision to block the Garniers was narrowly tailored to prevent repetitive postings, the indefinite nature of the blocking was not justified. The district court ruled in favor of the Garniers on their section 1983 claims and issued an injunction requiring the Trustees to unblock them.

On appeal, the Ninth Circuit affirmed the district court's findings, including the determinations on state action, forum designation, and the qualified immunity ruling. The Trustees petitioned for certiorari, which the Supreme Court granted.

Subsequently, in *Lindke v. Freed* (2024)601 U.S. 187 (2024), the Supreme Court clarified the standard for when public officials' social media conduct constitutes state action. In light of *Lindke*, the Court vacated the Ninth Circuit's prior decision in Garnier and remanded for further proceedings. On remand, the Ninth Circuit ordered supplemental briefing and held additional oral argument to reconsider the case under the new *Lindke* standard.

Per the *Lindke* Standard, "the Supreme Court held that a public official's social media activity constitutes state action for purposes of section 1983 "only if the official (1) possessed actual authority to speak on the State's behalf, and (2) purported to exercise that authority when he spoke on social media." 601 U.S. at 198.[1] Under *Lindke*, the Ninth Circuit held that O'Connor Ratliff's actions on social media met the standard under *Lindke*.

California Law and PUSD bylaws, specifically Bylaw 9012 which conferred authority to communicate with the public about district matters, led to the holding that the first element of *Lindke* was met. O' Connor-Ratcliff's posting of official district content such as (e.g., Board meeting details, superintended announcements) showed the exercise of entrusted duties.

The Court held that the second element *Lindke* was also satisfied. On the social media account that O'Connor-Ratcliff used, she identified herself as Board president, and used this account separately from her personal account. Additionally, the content of posts were focused on PUSD business, with little to no posts regarding her personal or campaign-related content.

[1] *Garnier v. O'Connor-Ratcliff* (9th Cir. 2025) 136 F.4th 1181, 1185.

Chapter 3: Elected Officials' Ability to Sue Under Employment Law

***Brown v. City of Inglewood* (2025) 18 Cal.5th 33 – Elected official is not an employee who can sue for whistleblower retaliation under labor code section 1102.5**

Wanda M. Brown ("Brown") served as the elected treasurer of the City of Inglewood ("City") since 1987. In late 2019 and early 2020, she raised concerns to City officials regarding alleged financial mismanagement, including an alleged overpayment of approximately $77,000 to a contractor, which she claimed violated Penal Code section 424. Following these allegations, Brown claimed she faced a series of retaliatory actions by the City and its officials, including diminished authority, loss of access to financial tools and documents, exclusion from committees and City Hall, demotion from auditing duties, and a significant salary reduction.

Brown filed suit under Labor Code section 1102.5, asserting whistleblower retaliation. The defendants moved to strike the claim under California's anti-SLAPP statute, arguing Brown was not an "employee" under the statute and thus not entitled to its protections.

The trial court denied the anti-SLAPP motion, holding the claim did not arise from protected activity under the statute. On appeal, the Court of Appeal reversed in part, holding the individual defendants' conduct was protected under the anti-SLAPP statute and that Brown, as an elected official, was not an employee for purposes of section 1102.5. The court relied on the statutory definition in Labor Code section 1106, which excludes elected officials, contrasting it with broader definitions in other contexts.

The California Supreme Court granted review, limiting the issue to whether elected officials qualify as employees under Labor Code section 1102.5(b).

The Supreme Court held that Labor Code section 1102.5 is limited to individuals who satisfy the statutory definition of "employee" under Labor Code section 1106. Under Labor Code section 1106, elected officials are expressly excluded. The legislative history of Labor Code section 1106 suggested a "particular purpose of protecting rank-and-file employees from supervisors and managers, not protecting elected officials." (See *Brown v. City of Inglewood* (2025) 18 Cal.5th 33, 44.) Therefore, elected officials cannot claim whistleblower protection under section 1102.5, regardless of the legitimacy of their claim or reporting.

Chapter 4: Public Agencies' Liability for Alleged Labor Code Violations

***Krug v. Board of Trustees of California State University* (2025) 110 Cal.App.5th234 – Unless specifically mentioned, the labor code does not apply to public sector employers**

The California State University (CSU) system directed faculty to teach remotely in March 2020 due to the COVID-19 pandemic. Plaintiff Krug ("Krug") complied, but was denied access to his campus office and incurred personal expenses to replace work-related equipment. When CSU refused to reimburse these costs, Krug filed a class action alleging a violation of Labor Code section 2802, which requires employers to indemnify employees for necessary business expenses.

Krug later amended the complaint to add a Private Attorneys General Act (PAGA) claim based on the same facts, but later conceded that claim was not viable. CSU demurred, arguing that as a state agency, it was not subject to Labor Code section 2802 absent express legislative intent. The trial court sustained the demurrer without leave to amend, finding CSU exempt from the statute and holding that the lack of a statutory violation defeated the PAGA claim.

Krug appealed the judgment of dismissal. The California Supreme Court granted review pending its decision in *Stone v. Alameda Health System* (2024) 16 Cal.5th 1040.

Applying its holding in *Stone*, the Supreme Court held that Labor Code section 2802 does not apply to the CSU. The analytical framework of *Stone* requires an evaluation of a Labor Code by asking three questions:

- Does section 2802 reference its application to public employers?
- Does legislative history support Labor Code section 2802's application to public employers?
- Lastly, does applying Labor Code section to public employers infringe on sovereign governmental powers?

The Supreme Court found that Labor Code section 2802 makes no reference to a public entity, there was no legislative history suggesting the section was meant to apply to public entities, and that imposing Labor Code section 2802 on public entities would infringe on the CSUs authority to govern equipment policies and reimbursements. The Supreme Court referenced *Stone's* citing of *U. S. v. Hoar* in support of its conclusions, stating:

> [T]he general words of a statute should not include the government "unless that construction be clear and indisputable upon the text of the act." (*U.S. v. Hoar* (C.C.D. Mass. 1821) 26 F.Cas. 329, 330 (No. 15373) ["It appears to me, therefore, to be a safe rule founded in the principles of the common law, that the general words of a statute ought not to include the government, or affect its rights, unless that construction be clear and indisputable upon the text of the act"].) Our Supreme Court quoted *U.S. v. Hoar* for this rule in *Mayrhofer v. Board of Education* (1891) 89 Cal. 110, 112 [26 P. 646], which the court quoted in *Stone* to support its holding that it "is deeply embedded in our state's jurisprudence" that "absent express words to the contrary, governmental agencies are not included within the general words of a statute.'" (*Krug v. Board of Trustees of California State University* (2025) 110 Cal.App.5th 234, 250-251 [citing (*Stone*, *supra*, 16 Cal.5th at 1053].)

The Supreme Court concluded that although Labor Code section 2802 is silent on whether "employer" denotes both public and private entities, the statutory structure and legislative history indicate that the legislature intended to exclude public employers from Labor

Code section 2802's reimbursement obligations.[2] Therefore, Labor Code section2802 does not obligate public entities like CSU to reimburse employees for work-related expenses.

Chapter 5: Discrimination/Reverse Discrimination

Ames v. Ohio Department of Youth Services (2025) 145 S.Ct. 1540 – A plaintiff in "reverse discrimination" case has the same evidentiary burden as a minority plaintiff

In 2004, Marlean Ames ("Ames"), a heterosexual woman, was hired by the Ohio Department of Youth Services and later promoted to program administrator. In 2019, she applied for a newly created management position, but was not selected (the position went to a lesbian woman instead). Shortly after her interview, Ames was removed from her program administrator role and accepted a demotion back to her original secretarial position, resulting in a substantial pay cut. The agency later appointed a gay man to her former program administrator post.

Ames filed suit under Title VII, alleging that the agency discriminated against her based on her sexual orientation. The U.S. District Court for the Southern District of Ohio granted summary judgment to the agency, applying the *McDonnell Douglas* framework and concluding Ames failed to establish a prima facie case. The court required her, as a member of a majority group, to show "background circumstances" suggesting the agency was especially likely to discriminate against majority-group members than minorities—an evidentiary hurdle she did not meet.

The Sixth Circuit affirmed, reiterating that majority-group plaintiffs must meet this additional burden at the prima facie stage. The panel found Ames had not produced sufficient evidence of discriminatory background circumstances. Judge Kethledge concurred in the result, but criticized the "background circumstances" requirement as inconsistent with Title VII.

The U.S. Supreme Court granted certiorari to resolve a circuit split on whether majority-group plaintiffs must meet a different evidentiary standard under the *McDonnell Douglas* framework.

The Supreme Court held that the additional hurdle for majority plaintiffs is not consistent with Title VII's text or case law construing the statute. The Court specifically held that:

> "Our case law thus makes clear that the standard for proving disparate treatment under Title VII does not vary based on whether or not the plaintiff is a member of a majority group. Accord, *Bostock*, 590 U. S., at 659, 140 S. Ct. 1731, 207 L. Ed. 2d 218 ("This statute works to protect individuals of both sexes from discrimination, and does so equally"). The "background circumstances" rule flouts that basic

[2] *Krug v. Board of Trustees of California State University* (2025) 110 Cal.App.5th 234, 258 [331 Cal.Rptr.3d 358].)

principle.…"(See *Ames v. Ohio Dep't of Youth Servs.* (2025),U.S.,[145 S.Ct. 1540, 1546, 221 L.Ed.2d 929, 937].).

Therefore, it is inappropriate to require a Title VII plaintiff who is a member of a majority to meet the additional hurdle of the “background circumstances” rule.

Lui v. DeJoy (9th Cir. 2025) 129 F.4th 770 – A post office supervisor can proceed with title VII Claims for disparate treatment and harassment by her subordinates

Marlean Lui (“Lui”), a Chinese American woman in her late fifties, worked for the U.S. Postal Service (USPS) since 1992 and became Postmaster of the Shelton, Washington Post Office in 2014. Following her appointment, she allegedly faced racially and sexually charged harassment from employees, including slurs and unfounded complaints. She and her supervisor, Charles Roberts (“Roberts”), attributed this treatment to her race, sex, and national origin, citing that white male managers were not similarly targeted.

Roberts reported concerns to USPS Human Resources Manager Alexis Delgado (“Delgado”), alleging that certain employees, including a union representative, were targeting Lui. Instead of investigating, Delgado allegedly collaborated with those pursuing disciplinary action against Lui. Roberts also stated he was pressured by Delgado and another manager to support disciplinary measures against Lui, which he believed were racially motivated.

Ultimately, Lui received a notice of proposed downgrade based on three misconduct charges. Roberts refused to sign the notice, and was replaced by another manager who did. Lui filed an informal EEO complaint, then a formal complaint, alleging a hostile work environment, discrimination based on protected characteristics, and retaliation. She also appealed the downgrade through USPS and the Merit Systems Protection Board, both of which upheld the demotion. Lui was reassigned to a lower-paid Postmaster position in Roy, Washington, and replaced at Shelton by a less-experienced white man.

Lui then filed suit in federal district court. USPS moved for summary judgment. A magistrate recommended dismissal only of her retaliation claim, but the district court granted summary judgment on all claims. Lui appealed.

On appeal, the Ninth Circuit held that Lui met the fourth element of McDonnel Douglas by showing that she was demoted and replaced by a white man. This action sufficed to raise an inference of discrimination, and did not require that she show that she was treated less favorably than similarly situated employees. Additionally, the Ninth Circuit rejected USPS’s rejected that the demotion stemmed from misconduct, ruling that the internal appeal, conducted solely through document review by the Tacoma Postmaster, was not independent. The reliance on potentially biased sources, without live interviews or credibility assessments, could lead a jury to reasonably infer subordinate bias influenced the decision.

The Ninth Circuit held that Lui had exhausted her administrative remedies by contacting an EEO counselor within 45 days of receiving the proposed downgrade. It further found that the demotion could reasonably be seen as part of a broader pattern of discriminatory mistreatment, contributing to a hostile work environment. Accordingly, the court vacated the summary judgment and remanded for further proceedings on this claim.

Lui also alleged that her demotion was retaliatory, tied to her involvement in investigating a sexual harassment complaint. However, the court affirmed summary judgment on this claim, finding no causal link between her investigative role and the demotion. The Tacoma Postmaster explicitly stated that the investigation was not considered in the decision, and there was no evidence of pretext.

The Ninth Circuit's decision underscores the importance of procedural fairness and evidentiary standards in employment discrimination cases. By recognizing Lui's replacement by a white male as sufficient to raise an inference of discrimination, and by finding flaws in the internal review process, the Court reinstated key claims for further proceedings.

Chapter 6: Retirement

Lowry v. Port San Luis Harbor Dist. (2025) 109 Cal.App.5th 56 – Denial of disability retirement benefits is not a legally cognizable adverse employment action for a disability discrimination claim

Lowry, a harbor patrol officer with the Port San Luis Harbor District ("District"), suffered physical and psychological injuries, including PTSD, after a work-related accident. His psychiatrist deemed him unfit to return to duty and recommended medical retirement. Based on this assessment, the District initially informed Lowry that he could not return to work and advised retirement as his only option.

Lowry applied for disability retirement, but the District later reversed its position and denied his application, stating it lacked sufficient information to determine disability. CalPERS also denied the application, citing the District's finding that Lowry was not incapacitated for duty. The District then terminated Lowry's employment, inaccurately stating that he had voluntarily resigned, a position it later conceded was incorrect.

After abandoning several claims, Lowry filed a first amended complaint asserting disability discrimination under California's Fair Employment and Housing Act (FEHA), alleging the denial of disability retirement constituted discrimination regarding a term or privilege of employment. The District moved for summary judgment, arguing Lowry could not perform his job's essential duties and that FEHA was not the proper vehicle for challenging denial of retirement benefits.

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[3] *Lowry v. Port San Luis Harbor Dist.* (2025) 109 Cal.App.5th 56, 66

The trial court granted summary judgment for the District, finding that disability retirement did not constitute a protected term or privilege of employment under FEHA. Lowry did not dispute that he was unable to return to work within 12 months of the injury, yet he appealed.

The Court held that postemployment retirement benefits—such as disability retirement benefits provided to individuals who are no longer qualified employees—do not fall within the scope of the "terms, conditions, or privileges of employment" as contemplated by FEHA (Government Code § 12940, subd. (a)). Because retirement benefits commence after employment ends, they are not "reasonably likely to adversely and materially affect an employee's job performance or opportunity for advancement in [their] career" (Yanowitz v. L'Oreal USA, Inc. (2005) 36 Cal.4th 1028, 1053-1054). Moreover, absent evidence that a disabled employee will be able to perform essential duties with or without reasonable accommodations in the future, disability retirement benefits do not assist such individuals in "hold[ing] employment." Therefore, Lowry was not entitled to retirement benefits required by FEHA.

Stanley v. City of Sanford (2025)606 U.S.___(145 S.Ct. 2058) – Retirees are not entitled to sue for disability discrimination under the ADA

Karyn Stanley ("Stanley") worked as a firefighter for the City of Sanford, Florida ("City"), beginning in 1999. At that time, the City provided health insurance until age 65 for retirees who either completed 25 years of service or retired earlier due to disability. In 2003, the City revised its policy, limiting health insurance for disability retirees to 24 months unless Medicare eligibility began sooner, while maintaining full coverage for 25-year retirees.

After developing an unspecified disability, Stanley was forced to retire in 2018, prior to completing 25 years of service. Under the revised policy, she received only limited post-retirement health insurance. She filed suit against the City, asserting, among other claims, that this differential treatment violated the Americans with Disabilities Act (ADA) as unlawful disparate treatment based on disability.

The district court dismissed her ADA claim, holding that Stanley was not a "qualified individual" under the ADA at the time of the alleged discrimination because she was no longer employed or seeking employment. The Eleventh Circuit affirmed, joining several other circuits in holding that ADA Title I protections do not extend to individuals who are not employed or seeking employment when the alleged discrimination occurs.

The U.S. Supreme Court granted certiorari to resolve the circuit split on whether 42 USCS section 12112(a) applies to disability-based discrimination against retirees who are no longer in the workforce or seeking employment.

The Supreme Court majority held that the ADA applies only to individuals who, at the time of the adverse action, "hold or desire" a job and can perform its essential functions with or without reasonable accommodation. Under 42 USCS section 2000e-5(e)(3)(A), the Supreme

Court considered three potential triggering events for filing a Title VII claim based on a discriminatory policy.

First, when the policy is adopted: Stanley failed here, as she suffered no injury in 2003 and was not disabled at that time. However, this avenue may remain open for plaintiffs who were both disabled and qualified when the policy was enacted.

Second, when an individual is affected by the policy's application: Stanley's benefits expired in 2020, but she was retired and no longer a "qualified" individual, precluding relief under this prong.

Third, when a person becomes subject to the policy: although the government argued Stanley became subject between her 2016 diagnosis and 2018 retirement, the complaint lacked necessary allegations regarding the timing of her disability and employment status. Moreover, Stanley expressly disclaimed this theory on appeal. The Eleventh Circuit found the claim forfeited, and the Supreme Court declined to disturb the lower court's waiver ruling or consider facts outside the complaint.[3]

Because retirees like Stanely do not meet that definition at the relevant time, the Court held that she is excluded from being able to bring a Title I ADA claim regarding post employment benefits. Additionally, the court in dicta stated that Stanely had other avenues to seek relief such as state law, Rehabilitation Act, or an equal protection claim under Rev. Stat. §1979, 42 U. S. C. §1983.[4]

In sum, Stanley's claims under Title I of the ADA failed because she was no longer a qualified individual with a disability at the relevant times.

Serrano v. Public Employees' Retirement System (2025) 109 Cal.App.5th 96 – A police sergeant on 'Association Leave' is not entitled to CalPERS Retirement benefits based on overtime or holiday pay

The City of Santa Ana ("City") and the Police Officers' Association ("Association") entered into a memorandum of understanding (MOU) governing officer compensation and benefits. The MOU included provisions for granting full-time release from duty to the Association president, who would continue to receive full salary and specific pay additives, including a "confidential premium," while on leave. The MOU also specified that the Association would fully reimburse the City for the president's compensation and that inclusion of the confidential premium as pensionable compensation was contingent upon CalPERS approval.

In April 2016, Detective Sergeant Gerry Serrano became Association President and went on leave from his City duties. While serving as the union's President, Serrano continued receiving his base salary and several pay additives tied to his former position. In 2020, CalPERS determined the confidential premium was not pensionable because Serrano was on leave. After reviewing his full compensation, CalPERS later concluded that other pay additives—such as detective premium,

[4] Id.
[5] Id.

bilingual premium, holiday pay, and uniform allowance—were also non-pensionable under the Public Employees' Retirement Law.

At an administrative hearing, the ALJ found that Serrano's Association duties did not qualify as active City service and therefore several of the pay additives were not pensionable. Only the educational incentive was deemed pensionable, as it was based solely on educational attainment. The CalPERS Board adopted the ALJ's findings in April 2022.

Serrano filed a petition for writ of administrative mandamus challenging the Board's decision. The trial court denied the petition in March 2023, and Serrano appealed.

The Court of Appeal found that while Government Code section 3558.8 of the Meyers-Milias-Brown Act ensures public employees on union leave retain base compensation and service credit, it does not guarantee retention of all pensionable earnings accrued in prior roles. Applying the Retirement Law and CalPERS regulations, the Court determined Serrano's confidentiality premium was non-pensionable because it replaced overtime compensation, which is excluded under Sections 20630 and 20636. The Court of Appeal also found his holiday pay non-pensionable as he did not meet the requirements of Regulation 571, subdivision (a)(5). The court emphasized that Section 3558.8 did not override the Retirement Law's definitions or CalPERS's authority in pension determinations.

Chapter 7: Hostile Work Environment Harassment

In November 2018, LAPD Captain III Karyn Carranza ("Carranza") learned while on vacation that a nude photo of a woman reported to be her was being circulated among LAPD personnel. Although the woman in the photo was not Carranza, she shared similar features, and the image was widely believed by officers to depict Carranza. She immediately filed a sexual harassment complaint with the City's MyVoiceLA agency and requested departmental action to stop the photo's dissemination.

LAPD launched an internal investigation, but Carranza became increasingly distressed as reports surfaced of officers viewing and discussing the photo at multiple LAPD locations. Despite her requests, LAPD leadership, including the Chief of Police, declined her request to issue a Department-wide communication clarifying the photo did not depict her. Carranza was later hospitalized for stress-related symptoms and diagnosed with multiple psychological disorders. Although the internal investigation ultimately sustained her complaint and deemed the circulation of the photo serious misconduct, no officers were disciplined because while the Department's investigation found that distributing the image was a violation of sexual harassment policies, it could not establish who first shared it.[5]

Carranza filed suit in January 2019 against the City of Los Angeles ("City"), alleging sexual harassment based on a hostile work environment. At trial in 2022, the jury found in her favor, concluding the harassment was severe or pervasive and that the City failed to take immediate corrective action. Carranza was awarded $4 million in noneconomic damages. The

[6] *Carranza v. City of Los Angeles* (2025) 111 Cal.App.5th 388, 398 [332 Cal.Rptr.3d 778].)

City's posttrial motions, including for a new trial and claims of jury misconduct, were denied. The trial court also awarded Carranza over $600,000 in attorney's fees and costs. The City appealed both the judgment and the fee award.

The Court of Appeal held that under the totality of circumstances test, the lower courts holding was affirmed. Factors of the totality of circumstances test include the frequency, severity, physical threat/humiliation, and interference with work the employee's performance. In evaluating the City's actions, the court noted that Carranza's stress was amplified by the fact that her Department repeatedly ignored Carranza's requests to make attempts to stop the dissemination of the photo. Additionally, the Court of Appeal rejected the City's argument that harassment must occur in the plaintiff's presence to be actionable under FEHA. Citing a broad array of precedents, the court reaffirmed that an employee can perceive and be harmed by harassing conduct even if it occurs outside their immediate presence, so long as they are aware of it. The court emphasized that FEHA does not excuse harassment merely because it is concealed or indirect; rather, it protects employees from hostile environments regardless of how the offensive behavior is communicated.

<u>Chapter 8: California Public Records Act</u>

Sacramento Television Stations Inc. v. Superior Court (2025) 111 Cal.App.5th 984 – Disclosure of critical incident video and audio under CPRA

In June 2023, following media inquiries about a officer involved shooting incident on April 6, 2023, Roseville Police Department ("RPD") released four 39-second body-worn camera clips and two radio audio clips to a Sacramento television station ("Sac TV"). RPD asserted these recordings covered the entirety of RPD officers' firearm discharges during the event and that no additional disclosure was required under the Assembly Bill No. 748, i.e., legislation that requires law enforcement agencies to disclose audio and video files of "critical incidents" under the California Public Records Act ("CPRA").

Between June and October 2023, Sac TV and RPD exchanged e-mails disputing the scope of disclosure required. Sac TV requested all body-worn and dashboard camera footage from officers' arrival to scene security, as well as drone footage. RPD refused, reiterating that only recordings depicting the "critical incident" of officer firearm discharge were subject to disclosure and noted that a criminal court order had sealed drone footage in connection with pending prosecution related to the incident.

In February 2024, Sac TV filed a petition for a writ of mandate in the superior court seeking an order compelling immediate disclosure of all requested materials. The City opposed, arguing: (1) the statutory disclosure obligation was limited to discrete "critical incidents," (2) release of additional recordings would substantially interfere with an active criminal investigation and pending trial, and (3) certain footage was sealed by court order in the criminal case.

At a July 2024 hearing, the City confirmed that the four released clips encompassed all shots fired by RPD officers and argued that unreleased drone footage did not depict any officer shootings and remained under seal. The parties also discussed whether in-camera review was mandatory.

In supplemental briefing, the City relied on the criminal court's July 2024 sealing order and the prosecutor's declaration to support its claim of substantial interference. Sac TV countered that the sealing order did not apply to the body-worn or dashboard camera footage at issue and that the City had forfeited its "ongoing investigation" argument.

In October 2024, the superior court denied Sac TV's petition, finding that the City had shown by clear and convincing evidence that further disclosure would substantially interfere with the active criminal investigation, rendering it unnecessary to decide the precise scope of Assembly Bill No. 748's requirements.

Later in October 2024, Sac TV filed a petition for writ of mandate in the Court of Appeal seeking reversal and an order for full disclosure of all footage from officers' arrival at approximately 12:30 p.m. until the scene was secured around 1:25 p.m. The appellate court issued an order to show cause, briefing concluded in February 2025, and oral argument occurred on May 20, 2025.

The Court of Appeal held that substantial evidence did not support applying the "active investigation" exemption under Assembly Bill No. 748 because the City's showing—a prosecutor's general concern about victim trauma and a fair trial—lacked meaningful detail and did not establish that disclosure would substantially interfere with an ongoing investigation.[6] The court agreed with Sac TV that a pending criminal prosecution alone is not necessarily an "active investigation," via distinguishing legislative treatment of "investigations" from "proceedings" in related statutes.[7]

On the scope of disclosure required under Government Code section 7923.625(e) for "an incident involving the discharge of a firearm," the court found the City's interpretation too narrow and Sac TV's interpretation too broad. The case was remanded for the superior court to, after an in-camera review of the unedited footage, determine the extent of additional disclosure needed to allow viewers to fully understand the events, including sufficient context before and after the shooting.

The City's reliance on good faith did not excuse insufficient disclosure, and its late-raised arguments under CPRA's catchall exemption were forfeited. The Court of Appeal also rejected the City's claim that Government Code section 7923.625(b)(1) allowed wholesale withholding to protect third-party privacy, holding that the statute requires redaction where possible rather than complete non-disclosure unless privacy cannot be protected through redaction.

[7] *Sacramento Television Stations Inc. v. Superior Court* (2025) 111 Cal.App.5th 984, 994 [333 Cal.Rptr.3d 309].)
[8] *Id.* at 1001

The Court of Appeal granted Sac TV's petition, vacating the superior court's prior ruling on the "active investigation" exemption and ordering further proceedings, including an in-camera review. The decision narrowly construes the exemption, requiring concrete evidence of interference beyond the existence of a prosecution, and affirms that firearm-discharge incidents under the CPRA must include enough footage to provide meaningful context. It reinforces CPRA's pro-disclosure presumption, clarifies privacy–redaction principles, and requires fact-specific in camera determinations, limiting agencies' reliance on broad or conclusory withholding claims.