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Labor and Employment Litigation Update

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I. INTRODUCTION

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

The cases and legislation discussed in this update span a broad range of issues that public employers routinely encounter. Recent legislation imposes new obligations on agencies, including advance notice requirements before contracting out bargaining unit work and expanded access to personnel and training records. The Legislature also enacted laws requiring employers to provide written notices of employee rights, maintain additional compliance records, and address employee training and bias mitigation efforts. Other measures expand disqualification rules for public employment, clarify reimbursement obligations and worker classification standards, and introduce new requirements affecting public safety practices and oversight.

In addition, the Legislature continued to refine enforcement procedures under the Fair Employment and Housing Act (FEHA) and expand employee protections in areas such as leave rights, workplace protections for victims of violence, and access to benefits.

The following sections highlight key developments in labor and employment law, organized into the following categories: (1) Labor and Employment Legislation; (2) Brown Act; (3) Discrimination, Harassment, and Retaliation; (4) First Amendment and Freedom of Religion; (5) Government Claims Act; (6) Labor Relations; (7) Peace Officer Records; (8) Retirement; (9) Workplace Violence; and (10) Wage and Hour.

CASES AND LEGISLATION

1. LABOR AND EMPLOYMENT RELATED LEGISLATION

1. Labor Relations

AB 339 — Requires Agencies to Give 45 Days' Notice to Employee Organizations Before Contracting

The Meyers-Milias-Brown Act (MMBA) authorizes local public employees to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on matters of labor relations. The MMBA also requires the governing body or management of a public agency to meet and confer in good faith regarding wages, hours, and other terms and conditions of employment with representatives of recognized employee organizations and to fully consider presentations that are made by the employee organization on behalf of its members before arriving at a determination of policy or course of action. Pursuant to existing legal obligations under the MMBA and Public Employment Relations Board (PERB) case law, an agency has an affirmative obligation to provide notice to a recognized employee organization, and to meet and confer with organization upon request regarding a proposal to contract out bargaining unit work.

Government Code section 19130 permits public agencies to contract for services, subject to certain conditions. Public agencies enter into these contracts through various, sometimes competitive methods, such as requesting proposals or quotes from external, private firms.

Starting January 1, 2026, AB 339 requires public agencies to give a recognized employee organization at least 45 days' written notice before issuing a request for proposal, a request for quotes, or renewing or extending an existing contract to perform services that fall within the scope of work of job classifications represented by that organization.

The notice to the employee organization must include details, including the following:

1. The anticipated contract duration;
2. The scope of work to be performed under the proposed contract;
3. Anticipated costs associated with the proposed contract;
4. A draft of the contract solicitation (or if not yet drafted, any information that would normally be included); and
5. The agency's justifications for contracting the work at issue.

AB 339 exempts certain contract services from the new law's notice requirements, including services for public works, software or data services that directly support public works, and services that involve planning, designing, administering, overseeing, or delivering public works projects, buildings, and infrastructure.

Additionally, AB 339 provides that, in emergencies or exigent circumstances that prevent a public agency from providing the requisite 45 days' notice, an agency must provide notice as soon as practicable under the circumstances.

To the extent that a public agency has negotiated terms related to contracting that are more restrictive or prescriptive than those set forth under AB 339, those contractual obligations continue to apply.

2. Employment

SB 521 — Disqualification of Public Employment

The Government Code disqualifies a public employee from any public employment for five years if the employee is convicted of a felony related to bribery, embezzlement of public money, extortion, theft of public money, perjury, or conspiracy to commit those crimes, when the crime arises directly from the employee's official duties.

SB 521 expands the list of disqualifying offenses to include a conviction for a felony involving a conflict of interest. SB 521's provisions apply to all cities, including charter cities.

SB 521 also adds a permanent disqualification for a city manager or city attorney, including individuals who provide such services under contract, if the individual is convicted of any felony listed in Government Code Section 1021.5, including a conviction that relates to a conflict of interest. A city manager or city attorney convicted of any disqualifying felony will be permanently barred from holding public employment in an equivalent role.

SB 521 defines "city manager" as a person employed pursuant to Government Code Section 34851 on or after January 1, 2026 and "city attorney" as a person employed pursuant to Section 41801 on or after January 1, 2026.

SB 303 — Bias Mitigation Training

The Civil Rights Department (CRD) enforces the California Fair Employment and Housing Act (FEHA), which prohibits employment and housing discrimination based on protected characteristics. CRD investigates complaints, pursues enforcement actions, and seeks to eliminate unlawful practices.

Public and private employers provide bias mitigation or elimination training in order to educate employees on understanding, recognizing, and acknowledging bias, including employees' own personal biases, and their impact in the workplace. SB 303 provides that an employee's assessment, testing, admission, or acknowledgment of their own personal biases that is made in good faith and solicited or required as part of a bias mitigation training does not, by itself, constitute unlawful discrimination.

SB 513 — Personnel Records Related to Education and Training

The Labor Code grants current and former employees, or their representative, the right to inspect and receive a copy of personnel records maintained by an employer relating to the employee's performance and to records regarding any grievance concerning the employee.

Existing law requires the employer to make the contents of those personnel records available for inspection, as specified, and makes it a crime for an employer to violate these requirements.

SB 513 adds any records maintained by the employer that relate to employee education and training to the type of personnel records subject to inspection. SB 513 requires that an employer that maintains such education and training records ensure those records include: (1) the name of the employee; (2) the name of the training provider; (3) the duration and date of the training; (4) the core competencies of the training, including skills in equipment or software; and (5) the resulting certification or qualification.

SB 642 — Pay Scale and Wage Ranges

The Labor Code requires employers to provide applicants, upon request, a pay scale of range of wages the employer reasonably expects to pay for a position and to include that information in job postings if the employer employs more than 15 employees. The Labor Code also prohibits employers from paying employees at rates less than those paid to employees of the opposite sex or of another race or ethnicity for substantially similar work, except under specific circumstances.

Effective January 1, 2026, SB 642 updates the definition of "pay scale" to mean "a good-faith estimate of the expected salary or hourly wage range that an employer reasonably expects to pay for a position upon hire." Employers must continue to include the pay scale in job postings.

SB 642 also replaces the phrase "opposite sex" with "another sex," clarifying that the law applies across all gender comparisons. SB 642 extends the statute of limitations for filing a civil action for alleged violations from two to three years after the last date the cause of action occurs, allowing employees to seek relief for the entire period of a violation, up to six years. SB 642 specifies that a cause of action occurs under the following circumstances: (1) when an alleged unlawful compensation decision or practice is adopted; (2) when an individual becomes subject to the decision or practice; or (3) when an individual is affected by the application of the decision or practice.

SB 294 — The Workplace Know Your Rights Act

The Division of Labor Standards Enforcement (DLSE), within the Department of Industrial Relations (DIR), enforces state labor laws.

SB 294 creates the Workplace Know Your Rights Act under the Labor Code, which requires employers to provide a stand-alone written notice to each current employee about specified workers' rights. Employers must provide such notice on or before February 1, 2026 and annually thereafter.

Employers must provide notice to all current employees, new hires, and any authorized representatives describing the following rights:

1. Rights to workers' compensation benefits and contact information for the Division of Workers Compensation.
2. The right to notice of immigration agency inspections.
3. Protection from unfair immigration-related practices.
4. The right to organize or join a union and engage in concerted activities.
5. Constitutional rights when interacting with law enforcement at the workplace, including protections against unreasonable searches and self-incrimination.

Employers may provide the notice by personal service, regular mail, email, text, or another method that can be reasonably anticipated to be received within one business day.

SB 294 requires employers to issue the notice in the language normally used to communicate with employees, and to maintain compliance records for three years. The Labor Commissioner must create and post a template notice by January 1, 2026, that will include other legal developments that the Labor Commissioner deems relevant, update the template annually, and make it available in multiple languages.

SB 294 also requires that, by March 30, 2026, employers provide employees the opportunity to name an emergency contact and to indicate whether they would like the employer to notify the contact if the employee is arrested or detained on their worksite, or during work hours or during the performance of the employee's job duties, but not on the worksite, if the employer has actual knowledge of the arrest or detention of the employee. SB 294 requires that employers must provide employees the opportunity to update their emergency contact at any time.

SB 294 prohibits retaliation or discrimination against employees who exercise or attempt to exercise their rights under the Workplace Know Your Rights Act. The Labor Commissioner and public prosecutors may enforce the law, and employers who violate it may face penalties of up to $500 per employee per violation per day, up to $10,000 per employee for violations of the emergency contact provisions of the Workplace Know Your Rights Act. The law permits waiver through a collective bargaining agreement only if clearly stated, and allows local ordinances to provide greater employee protections.

SB 477 — California Civil Rights Department Enforcement Procedures

The Civil Rights Department (CRD) enforces the California Fair Employment and Housing Act (FEHA), which prohibits employment and housing discrimination based on protected characteristics. CRD investigates complaints, pursues enforcement actions, and seeks to eliminate unlawful practices.

Effective January 1, 2026, SB 477 clarifies FEHA's enforcement procedures regarding complaint processing, deadlines, and right-to-sue provisions. SB 477 provides a statutory definition for the term "group or class complaint," which means a complaint that alleges a pattern or practice of discrimination. SB 477 notes that the definition is declaratory and reflects existing law.

SB 477 clarifies the CRD's deadline to issue a right-to-sue notice shall be no later than one year for an individual complaint and two years for a group or class complaint.

SB 477 directs CRD to issue a right-to-sue notice to a complainant whose complaint relates to a complaint filed in the name of the director or a group or class complaint upon request by the person claiming to be aggrieved or, if the person claiming to be aggrieved does not request such notice, after the complaint has been fully and finally disposed of and all related proceedings, actions and appeals conclude.

SB 477 tolls (pauses) the time to file a civil action when a complainant timely appeals the closure of a complaint by CRD, signs a written agreement with CRD, or CRD extends the complaint investigation period due to a petition to compel cooperation.

SB 590 — Leave for Designated Persons Under Paid Family Leave

The Unemployment Insurance Code established the Paid Family Leave Program that provides for wage replacement benefits for up to eight weeks for workers who take time off work for prescribed purposes, including to care for a seriously ill family member.

Effective July 1, 2028, SB 590 expands eligibility for benefits under the Paid Family Leave Program to include individuals who take time off work to care for a "designated person" who is seriously ill designated person. SB 590 defines designated person to mean any care recipient related by blood or whose association with the individual is the equivalent of a family relationship, and makes conforming changes to the definitions of the terms "family care leave" and "family member."

SB 590 requires an individual that requests benefits pursuant to the Paid Family Leave Program to care for a designated person for the first time to identify the designated person and, under penalty of perjury, attest to how the individual is related by blood to the designated person, or how the individual's association with the designated person is the equivalent of a family relationship.

AB 406 — Prohibition on Discrimination Against Victims of Violence Reinstated to Labor Code

The California Fair Employment and Housing Act (FEHA) prohibits employers from discriminating or retaliating against employees who take time off work due to jury service, court appearances, or circumstances related to qualifying acts of violence or crime. The FEHA currently authorizes the Civil Rights Department (CRD) to enforce these protections effective January 1, 2025, and provides rights related to leave, confidentiality, and reasonable accommodation for affected employees.

Until January 1, 2025, the Labor Code set forth the statutory prohibitions on discrimination or retaliation against an employee who took time off of work for the above purposes. During that time, the Division of Labor Standards Enforcement (DLSE) had authority to enforce these provisions. However, as of January 1, 2025, these Labor Code provisions were repealed and replaced by the provisions in the Government Code (under FEHA, as noted above) prohibiting discrimination or retaliation against an employee who is a victim or whose family member is a victim of qualifying acts of violence.

AB 406 reinstates the prior Labor Code provisions that governed employee rights to take leave or request accommodations as victims of crime, applying those provisions on a limited basis to alleged violations that occurred on or before December 31, 2024. AB 406 adds a sunset clause to the reinstated Labor Code provisions such that they are repealed January 1, 2035.

AB 406 also transfers enforcement responsibilities for the reinstated Labor Code provisions from the DLSE to the CRD to maintain consistency in enforcement.

AB 406 also updates the paid sick leave law in Labor Code Section 246.5 to reflect the transition from Labor Code to Government Code provisions, clarifying that victims of violence may use paid sick leave for qualifying absences.

AB 406 removes the requirement that an employee give reasonable notice before taking time off to serve on a jury, and prevents an employer from retaliating against an employee for doing so without giving reasonable notice. AB 406 took effect immediately on October 1, 2025, as urgency legislation.

SB 809 — Employment Status and Reimbursement Rules for Vehicle Use[1]

Courts apply the three-part "ABC" Test to determine whether a worker qualifies as an employee or an independent contractor in matters concerning wages and benefits. Under this test, a court evaluates whether the worker: (1) operates independently of the hiring entity's control; (2) performs work outside the usual course of the hiring entity's business; and (3) engages in an independently established trade, occupation, or business.

Additionally, the Labor Code requires employers to reimburse employees, but not independent contractors, for necessary expenditures incurred in the course of employment.

SB 809 clarifies that existing law does not consider ownership of a vehicle used to perform labor or services for compensation, whether personal or commercial, as determinative of a worker's status as an independent contractor.

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[1] Labor Code Sections 2775 through 2787 set forth the criteria of whether a worker is an independent contractor or an employee. Currently, it is unclear if these sections apply to public agencies. Until a court decides this issue of whether these Labor Code sections apply to public agencies, all public agencies should conduct a careful analysis as to whether they should still abide by Labor Code Sections 2775 through 2787 including this new statute, Section 2775.5.

SB 809 further clarifies that the Labor Code provision requiring employers to reimburse employees for necessary work-related expenditures includes costs associated with the use of personal and commercial vehicles. In the context of construction trucking, SB 809 requires employers to reimburse employees who are commercial drivers and who own their trucks, tractors, or trailers for expenses related to use, maintenance, and depreciation.

Employers and employees who drive personal and commercial vehicles, or the labor union that represents such employees, must negotiate reimbursement rates. Such reimbursement rate may be established as either a flat rate or per-mile rate, but not less than either the actual expenses incurred by the employee or the standard mileage rate set by the Internal Revenue Service.

3. Brown Act

SB 707 — Overhaul of Meeting and Teleconferencing Requirements Under the Brown Act

The Ralph M. Brown Act (Brown Act) requires local legislative bodies to hold open and public meetings, with limited exceptions and that all persons be permitted to attend and participate in these meetings. Current law sets standards for teleconferencing, public notice, agenda posting, and public participation. SB 707 significantly overhauls and standardizes key provisions of the Brown Act.

SB 707 also imposes additional requirements on "eligible legislative bodies" that do not otherwise apply to all legislative bodies subject to the Brown Act. SB 707 defines "eligible legislative body" as "a city council of a city with a population of 30,000 or more," a "county board of supervisors of a county, or city and county, with a population of 30,000 or more," or a "city council of a city located in a county with a population of 600,000 or more." The definition of "eligible legislative body" also includes "the board of directors of a special district that has an internet website" for special districts that (1) include the entirety of a county with a population of 600,000 or more and the special district has over 200 full-time employees; (2) have over 1,000 full-time employees; or (3) have over 200 full-time employees and has annual revenues, based on the most recent Financial Transaction Report data published by the California State Controller, that exceed four hundred million dollars ($400,000,000), adjusted annually for inflation commencing January 1, 2027, as measured by the percentage change in the California Consumer Price Index from January 1 of the prior year to January 1 of the current year." The current definition of "special district" under Government Code section 53835 remains unchanged by SB 707.

Effective July 1, 2026, and continuing until January 1, 2030, SB 707 expands public access and participation in local government meetings. SB 707 requires eligible legislative bodies to provide two-way telephonic or audiovisual access for all open meetings and to take specific actions that encourage residents to participate. Additionally, each eligible legislative body will be required to adopt, in open session before July 1, 2026, a policy that addresses disruptions to telephonic or internet service during meetings. When a disruption occurs, the eligible legislative body must recess the meeting for at least one hour and make a good-faith effort to restore service before resuming.

SB 707 will make permanent the existing rule that allows members of legislative bodies to engage in separate social media communications, provided they do not collectively deliberate or act on items within the legislative body's jurisdiction.

SB 707 requires each legislative body to make oral reports in open session before taking final action on specific forms of compensation for local agency executives, department heads, and similar officers.

Starting July 1, 2026, and continuing until July 1, 2030, each eligible legislative body must translate required meeting agendas into every applicable language when it posts the agenda with the required 72-hour notice. The bill defines "applicable languages" as those spoken by at least 20 percent (20%) of the local population that speaks English less than "very well," according to the most recent American Community Survey.

SB 707 also expands public comment rights. The Brown Act requires agendas for regular meetings to let the public directly address the legislative body on any topic of public interest. It exempts items already reviewed by a committee unless the legislative body determines the item has substantially changed. SB 707 adds new exceptions to that exemption, excluding committees focused on elections, budgets, police oversight, privacy, limiting access to public library materials, or taxes and related spending, except as otherwise specified. SB 707 directs every local agency to provide copy of the Brown Act to all elected and appointed members of legislative bodies.

Key amongst SB 707's provisions are the standardization of audio and visual teleconferencing rules. Each legislative body that uses teleconferencing will need to provide two-way audiovisual or telephonic access and a live webcast that lets the public both see and hear the meeting. The legislative body must record in its minutes the names of members who participate remotely and the specific law that authorizes each member's remote participation. Each local agency must identify and make available meeting locations for use by legislative bodies. Members with disabilities will still be able to participate remotely as a reasonable accommodation as is the case under existing law.

SB 707 redefines "teleconference" to exclude situations where members only watch or listen through non-interactive media. SB 707 requires all legislative bodies to post special meeting notices on their websites and establishes uniform emergency meeting procedures across all local agencies. The bill applies these provisions to neighborhood councils, student body associations, student-run community college organizations, and certain subsidiary or multijurisdictional bodies. These bodies must maintain at least one (1) physical location where the public can attend, observe, and participate. Presiding officers will have the authority to remove disruptive individuals from both in-person and teleconferenced meetings.

4. Public Safety

AB 847, 1178, and 1388 — Expand and Clarify Access to Confidential Peace Officer Personnel Records

The Government and Penal Codes provide for confidentiality protections that apply to peace officer personnel records, and enumerate the exceptions to those protections, including under the California Public Records Act (CPRA) and investigations of a peace officer and their employing agency conducted by a grand jury, a district attorney's office, the Attorney General's Office, or Peace Officer Standards and Training Commission (POST).

AB 847 expands access to confidential peace officer personnel records to a civilian oversight board or commission for a law enforcement agency. In addition, under AB 847, the inspector general and members of a sheriff oversight board are authorized to access confidential peace officer personnel records required for performance of their oversight duties, but must maintain the confidentiality of these records. A sheriff oversight board may also review these records in closed session, if such sessions comply with applicable confidentiality laws.

AB 1178 requires a court in an action to compel disclosure of confidential peace officer personnel records under a CPRA request to consider whether an officer is working undercover and their duties demand anonymity in determining whether there is a specific, articulable, and particularized reason to believe that disclosure would pose a significant danger to the physical safety of a person, so as to allow a law enforcement agency to redact that record.

AB 1388 prohibits an employing agency from entering into an agreement with a peace officer that would require the agency to destroy, remove, or conceal a record of a misconduct investigation, to halt or make particular findings in a misconduct investigation, or to restrict the disclosure of information about an allegation or investigation of misconduct. AB 1388 also renders any provision of an agreement that is inconsistent with these requirements contrary to law and public policy, and void and unenforceable. In addition, any such prohibited agreement is subject to disclosure pursuant to a CPRA request.

SB 524 — Creates Recordkeeping Requirements for AI-Assisted Police Reports

Existing law requires local law enforcement agencies to conspicuously post on their websites all current standards, policies, practices, operating procedures, and education and training materials that would otherwise be available to the public under certain circumstances.

SB 524 addresses law enforcement agencies' use of artificial intelligence (AI) tools to create reports, such as AI software that analyzes camera footage or audio recordings to generate a report. SB 524 requires law enforcement agencies to adopt a policy governing the use of AI in preparing reports. The policy must include the following requirements.

If a law enforcement officer or agent uses AI, fully or in part, to draft a report, every page of the report must identify the specific AI program(s) used and prominently state: "This report was written either fully or in part using artificial intelligence."

The officer or agent who prepared the report must sign it to verify that they personally reviewed the report and the facts it states are true and correct. SB 524 requires that all drafts of the report (including earlier AI-generated versions) must be retained for as long as the final report is retained. Further, SB 524 prohibits drafts generated using AI from constituting an officer's statement for legal purposes.

SB 524 requires that the AI software program used to draft a report must maintain an audit trail that, at a minimum, identifies who used AI to create the report, who made edits or changes, and, where applicable, any video footage used to generate content (e.g., body cameras). A contracted vendor providing AI services to a law enforcement agency may not share, sell, or use the agency's data, except in limited circumstances. SB 524 requires that law enforcement agencies adopt the required policy by January 1, 2026.

SB 627 — Prohibits Law Enforcement Officers from Wearing Masks or Personal Disguises while Interacting with the Public in the Performance of Their Duties

The Penal Code makes it a misdemeanor for any person to wear a mask, false whiskers, or any complete or partial disguise for the purpose of evading or escaping discovery, recognition, or identification in the commission of any public offense, or for concealment, flight, evasion, or escape from arrest or conviction for any public offense.

SB 627 makes it a misdemeanor for a local, state, or federal law enforcement officer to wear a "facial covering", as that term is defined, that conceals or obscures that officer's facial identity in the performance of their duties.

The prohibition does not apply for certain narrowly tailored exemptions or when an officer is assigned to a Special Weapons and Tactics (SWAT) unit while actively performing SWAT duties.

SB 627 provides that any officer found to have committed certain enumerated torts while wearing a facial covering in knowing and willful violation of this prohibition is not entitled to assert any privilege or immunity in a civil action and is liable for the greater of actual damages or statutory damages of no less than $10,000.

SB 627 also requires law enforcement agencies operating in California to maintain and publicly post a written policy regarding the use of facial coverings by not later than July 1, 2026.

SB 627 enumerates the minimum requirements that must be included in the written policy, which shall be deemed consistent with Penal Code section 185.5, unless a verified written challenge to its legality is submitted by a member of the public. Upon receipt of the verified written challenge, the agency shall be afforded 90 days to correct any deficiencies, and if it fails to do so, the complaining party may challenge the written policy in a court of competent jurisdiction.

SB 627 requires that the written policy must remain in effect until the court rules that it is not in compliance with Penal Code section 185.5 and all potential appeals to higher courts have been exhausted.

SB 8 — Expands Labor Code Section 4850 Benefits to Qualifying Peace Officers

The Labor Code provides that certain enumerated persons who are employed on a regular, full-time basis and who become disabled by injury or illness arising out of and in the course of their duties, are entitled to a one year leave of absence without loss of salary. SB 8 expands the list of enumerated persons to include "peace officers," as the term is defined in Penal Code section 830.31, employed by a county containing a population of between 600,000 and 650,000.

SB 229 — Expands the Statutory Definition of "Peace Officer"

The Penal Code provides the statutory definition of "peace officer". SB 229 expands the statutory definition of "peace officer" to include deputy sheriffs in Amador and Nevada Counties, whose duties are primarily custodial. As a result, SB 229 provides that deputy sheriffs in Amador and Nevada Counties are now covered by and entitled to rights under the Public Safety Officers Procedural Bill of Rights Act.

SB 447 — Extends Health Benefits for Minor Dependents of Local Public Safety Personnel

The Labor Code provided that, if a local firefighter or peace officer, or Sheriff's Special Officer of the County of Orange, is killed in the line of duty or as a result of an accident or injury that occurred in the line of duty, the deceased employee's minor dependents continued receiving health benefits until the age of 21. SB 447 raises that minimum age for which a deceased employee's minor dependents continue receiving health benefits to 26.

SB 459 — Extends Confidentiality Protection to Confidential Communications during Group Peer Support Services

The Government Code provides for the Law Enforcement Peer Support and Crisis Referral Services Program, authorizing local and regional law enforcement agencies to create a peer support network. In addition, subject to certain enumerated exceptions, the Government Code permits law enforcement officers to keep communications with peer support team members confidential. SB 459 expands these rights.

SB 459 amends the term "confidential communications" to include any information transmitted between law enforcement personnel recipients of group peer support services while a peer support team member or mental health professional provides group peer support services. The term "group peer support services" is amended to mean peer support services comprised of at least one peer support team member or mental health professional and more than one recipient of group peer support services.

Subject to certain enumerated exceptions, which now include juvenile delinquency proceedings, a law enforcement officer has a right to refuse to disclose and to prevent another from disclosing a confidential communication between law enforcement personnel recipients of group peer support services made while a peer support team member or mental health professional provides group peer support services.

SB 487 — Apportions Recovery to Peace Officers and Firefighters who Pursue Civil Claims against Third Parties

The Labor Code authorizes an employer to make a claim or bring an action against a third-party who caused the injury or death of an employee that gave rise to the employer's obligations under California's Workers' Compensation system. The Labor Code also relieves the employer from an obligation to pay further compensation to or on behalf of the employee under circumstances, establishes certain requirements for a release or settlement agreement to be valid, authorizes certain credits to the employer, and authorizes the employer to enforce payment of a lien against a third-party or against the employee under certain circumstances.

Under SB 487, an employer of a peace officer or firefighter, as defined, may receive no more than one-third (1/3) of a third-party defendant's applicable liability insurance policy limits if the peace officer or firefighter establishes that their total damages exceed the net recovery available after satisfaction of the employer's claim and the total liability insurance limits available are insufficient to fully compensate the employer and peace officer or firefighter's proven damages.

SB 487 also limits the employer's right to reimbursement, subrogation, or lien to the one-third (1/3) recovery threshold, and the employer may not assert any credit or offset against future workers' compensation benefits owed to the employee.

The one-third (1/3) recovery allocated to an employer may not affect or diminish the employer's existing obligation to provide any compensation under existing law. In addition, a release or settlement is not valid or binding unless it provides that the employer may not receive more than one-third (1/3) of the third-party insurance limits, and the employer has no right to assert any credit or offset against future worker's compensation benefits.

AB 354 — Provides for Fingerprint-Based Background Checks of Certain POST Employees or Staff

Existing law requires any agency that employes peace officers to report certain information to the Peace Officer Standards and Training Commission (POST) and to complete investigations of any allegation of serious misconduct against an officer, regardless of that officer's employment status. Existing law also establishes the California Law Enforcement Telecommunications System (CLETS) to facilitate the exchange and dissemination of information between law enforcement agencies in California.

AB 354 requires POST employees or staff, including appointees, volunteers, contractors and subcontractors, whose job duties require access to criminal offender record information, state summary criminal history information, or information obtained from CLETS to undergo fingerprint-based state and national criminal history background checks.

In addition, AB 354 authorizes POST and POST employees or staff for whom fingerprint-based background checks have been completed and whose duties require such access to inspect or duplicate any information derived from CLETS.

AB 354 also authorizes POST to inspect and duplicate any criminal history, criminal offender record, or criminal justice information, or any other sensitive, confidential or privileged information if it determines that the information is needed in the course of its duties.

AB 992 and SB 385 — Update Education Criteria for Peace Officers

The Penal Code requires the Chancellor of the California Community Colleges, in consultation with specified entities, to develop a modern policing degree program and to prepare and submit a report to the Legislature outlining a plan to implement it. The Government Code enumerates the minimum standards that peace officers must meet, including minimum education standards.

AB 992 and SB 385 repeal the requirement that the Police Officer Standards and Training Commission (POST) approve and adopt the education criteria for peace officers based on the recommendations in the report. AB 992 and SB 385 thus impose higher education requirements directly, without POST approval and adoption.

AB 992 also authorizes specified credential evaluation services to evaluate the equivalency of a foreign college or university degree for purposes of attaining the minimum education standards that peace officers must meet.

Under AB 992, starting on January 1, 2031, each peace officer must attain at least one enumerated degree or certificate. This includes a modern policing degree or a professional policing certificate as described in AB 992. The degree or certificate must be attained no later than 36 months of the peace officer receiving their basic certificate from POST.

This requirement does not apply to any individual with at least eight years of experience as a sworn peace officer form another state and with a separation in good standing or with at least eight years of military service and with an honorable discharge if military service has concluded. An individual with less than eight years of the requisite experience as a sworn police officer from another state or the requisite military service must attain an enumerated degree or certificate no later than 48 months after receiving their basic certificate from POST.

AB 992 requires that a modern policing degree or professional policing certificate meet certain enumerated criteria. A modern policing degree must require at least 60 semester units or 90 quarter units, award credits for required POST-certified academy course instruction, and offer courses that include, without limitation, communications, psychology, writing, ethics and criminal justice. A professional policing certificate must require at least 16 semester units or 24 quarter units, and include, without limitations, courses in the same list of subjects as a modern policing degree.

AB 992 does not apply to any person who, as of December 31, 2030, is currently enrolled in a basic academy or is employed as a peace officer by a public entity in California or the State Department of State Hospitals. SB 385 took effect immediately on October 1, 2025 as urgency legislation.

5. Retirement

AB 1067 — Public Employee Misconduct and PEPRA

The California Public Employees' Pension Reform Act of 2013 (PEPRA) defines how public retirement benefits are calculated, funded, and administered for state and local government employees who entered their respective retirement systems after January 1, 2013. It governs employee and employer contributions, benefit formulas, and other rules for participation in public retirement systems.

PEPRA requires any public employee convicted of a felony arising from the performance of their official duties, or in connection with obtaining salary, disability retirement, service retirement, or other benefits, to forfeit all accrued rights and benefits in any public retirement system. The forfeiture applies from the date the felony conduct began to the date of conviction, and the employee may not accrue additional benefits in that system. An elected public officer who is convicted, during or after holding office, of a felony involving bribery, embezzlement, extortion, theft of public money, perjury, or related conspiracy must also forfeit all rights, benefits, and membership in any public retirement system effective on the date of final conviction.

AB 1067 requires that, if a public employer's investigation of an employee for misconduct arising from their official duties, or in connection with obtaining salary, disability retirement, service retirement, or other benefits indicates the employee may have committed a crime, the public employer must continue investigating the employee, even if the employee retires while under investigation.

AB 1067 also requires that, if a public employer's investigation of an employee for misconduct arising from their official duties, or in connection with obtaining salary, disability retirement, service retirement, or other benefits indicates the employee may have committed a crime, the public employer refer the matter to the appropriate law enforcement agency. Thereafter, the public employer may close the investigation.

If a court later convicts the employee of a felony for the conduct under investigation, AB1067 requires that the employee must forfeit all accrued rights and benefits in any public retirement system, as provided under existing law under PEPRA.

SB 827 — Ethics and Fiscal and Financial Training for Local Agency Officials

The Government Code requires that specified local agency officials receive two hours of ethics training every two years, with the first training occurring within one year of the official commencing their service. The Government Code requires that local agencies maintain records of such trainings.

Effective January 1, 2026, SB 827 expands these requirements to include department heads or similar administrative officers of local agencies. Effective January 1, 2026, covered officials must complete an initial ethics training within six months of the official commencing their service.

SB 827 requires that local agencies maintain records of such trainings for at least five years and post to their websites clear instructions and contact information for members of the public to request copies of such training records.

SB 827 also creates a new requirement related to fiscal and financial training for the following officers, officials and executives: (1) elected officers; (2) members of a local agency's legislative body; (3) appointed officials who make decisions or recommendations regarding financial administration, budgeting, or the use of public resources; (4) local agency executives; and (5) employees designated by the local agency. Covered individuals must complete at least two hours of training on financial administration, budgeting, reporting, capital financing, debt management, pensions, cash management and investments, fiscal and financial planning, procurement and contracting, and related laws. Covered individuals must complete this training every two years.

SB 827 authorizes local agencies to contract with a qualified provider to offer the training or develop self-study materials with tests. SB 827 requires that providers develop the content in consultation with recognized experts in local government finance and provide participants with proof of participation. Local agencies must distribute to covered individual information on available trainings at least once annually.

II. LABOR AND EMPLOYMENT RELATED CASES

1. BROWN ACT

Berkeley People's Alliance v. City of Berkeley,* 114 Cal. App. 5th 984 (2025) - *Disruptive Attendees Did Not Justify City Council's Action To Reconvene In Different Room

Members of the public disrupted three meetings of the Berkeley City Council. The mayor determined that the disruptions made it impossible to continue business. The mayor stated order could not be restored by removing these individuals because of the level of the disruption and number of people involved. The mayor recessed the meetings and reconvened them in a smaller nearby room. Members of the press were allowed to attend in person, but the public could only observe by video. The City Council did not return to the original meeting room on these three occasions.

The Berkeley People's Alliance ("Alliance"), a civic group, sued the City for violating the Brown Act's open-meeting requirements. The Alliance argued that the City violated the Act by: 1) failing to attempt to remove those who were interrupting the meetings before determining that order could not be restored; and 2) recessing the meetings and moving to a different room rather than ordering the meeting room cleared and continuing in session in the original room pursuant to Government Code section 54957.9.

The City demurred, alleging that the Brown Act did not require those measures. The superior court sustained the City's demurrer, finding that section 54957.9 did not require the City Council to first attempt to remove disruptive individuals before determining that order could not be restored. The superior court also concluded that the City Council complied with the statute by recessing and reconvening the meetings in a different room with the press present.

The Alliance appealed. Its primary argument on appeal was that the City Council violated section 54957.9 by recessing the meetings and reconvening them in a different room rather than ordering the original meeting room cleared.

The Court of Appeal reversed the trial court's dismissal, ruling that the Alliance adequately stated a claim for violation of the Brown Act.

The California Court of Appeal noted the Brown Act's fundamental purpose is to ensure that the people's business is conducted openly and that members of the public can directly observe and participate in local government decision-making. Exceptions allowing closed sessions or restricted access are to be construed narrowly.

Section 54957.9 provides one such limited exception to the open meeting requirement if a group willfully interrupts a meeting and order "cannot be restored by the removal of individuals who are willfully interrupting the meeting." In that case, "the legislative body …may order the meeting room cleared and continue in session."

The Court of Appeal found that the phrase "order the meeting room cleared" meant that the City Council could empty the same room of its occupants, but not move the meeting elsewhere. The Court reasoned that the Legislature could have authorized relocation if it intended to, but it had not.

The Court emphasized that other sections of the Brown Act, such as section 54954, allow relocation if it is unsafe to meet in the designated location because of fire, flood, or other emergencies. Section 54957.9 contains no similar authorization to relocate.

The Court also rejected the City's argument that its approach promoted safety and efficiency. The justices noted that the Brown Act's primary goal is transparency, and public agencies may not prioritize convenience or control over public access unless explicitly permitted by statute.

Public agencies should be cautious when responding to disruptive public meeting attendees. If a meeting is interrupted and cannot continue, agencies should follow the statute's express procedures and should not assume they may relocate the meeting to a different room unless the Brown Act specifically authorizes that step.

City of Vallejo v. Superior Court of Solano County,* 112 Cal.App.5th 565 (2025) - *City Must Release Some Peace Officer Records Regarding Badge Bending Investigation

In 2020, Open Vallejo, a local news outlet, published an article alleging a secretive group of officers within the Vallejo Police Department ("Department") were bending a point of their star-shaped badge after each time they used lethal force in the line of duty. The Department retained a third party to investigate. The investigator found that the practice had occurred, but that no officer had violated the Department's use of force policy.

The American Civil Liberties Union of Northern California ("ACLU") filed a request for records related to the investigation, including the written investigation report, under the California Public Records Act ("CPRA").

The Department released some records but maintained that the bulk of the materials sought—including the investigative report—were confidential peace officer personnel records that were exempt from public disclosure under *Pitchess* statutes. Pursuant to the parties' stipulation, the superior court heard and ruled on the ACLU's *Pitchess* motion that sought materials relevant to its CPRA arguments. Thereafter, the ACLU filed a petition for writ of mandate in the superior court challenging the sufficiency of the Department's CPRA response.

The superior court ordered disclosure of portions of the investigative report and related materials. The materials to be disclosed included the materials the court had ordered disclosed following the *Pitchess* hearing, with redactions to all identifying information pertaining to officers, witnesses and their families.

Both parties sought writ review by the California Court of Appeal. The ACLU argued that the records must be disclosed under amendments made to the *Pitchess* statutes in 2018 through the enactment of Senate Bill No. 1421 and, specifically, the amendment requiring the disclosure of records "relating to the report, investigation, or findings" of "[a]n incident involving the discharge of a firearm at a person by a peace officer." The City argued that the records at issue were confidential because they did not "necessarily and promptly" follow any specific police shooting.

The Court found that the crux of dispute was whether the investigative report and related documents on badge bending were subject to public disclosure as records "relating to" the report, investigation, or findings of an incident involving the discharge of a firearm by a peace officer. The Court considered the meaning of the phrase "relating to" and found that it should be interpreted broadly. The Court also found that the legislative history of the law was concerned with transparency regarding an officer's use of significant force. The Court held that any report, investigation, or finding of an incident involving an officer involved shooting is a public record that must be disclosed.

The Court sent the case back to the superior court to deal with the secondary issue of whether officer names should be redacted from the records. The Court noted that the superior court ruled that officer names must be redacted because the names were part and parcel of what it deemed were confidential officer personnel records. The Court rejected that part of the superior court's ruling as erroneous because the records sought were not confidential personnel records, but were instead publicly disclosable personnel records. But the Court determined it could not make any final pronouncement on the redaction issue because the parties had not addressed all the relevant facts and legal issues in the superior court. The Court provided a lengthy analysis of the relevant cases to guide the superior court and the parties on remand.

Public agencies should expect courts to interpret SB 1421's disclosure requirements broadly when records relate to officer-involved shootings. Agencies should also be prepared to justify any redactions, including officer names, with a developed factual and legal record rather than relying on blanket confidentiality arguments.

2. DISCRIMINATION, HARASSMENT, AND RETALIATION

Romero v. County of Kern,* 116 Cal. App. 5th 1189 (2025) - *Firefighter Did Not Have To Exhaust County Remedies To Pursue Whistleblower Lawsuit

A County firefighter with more than 20 years of service raised concerns about safety violations related to the maintenance of fire extinguishers on County fire engines. After reporting these issues to his supervisors in 2020, the Department removed him from fire prevention duties. The firefighter believed that action was retaliation for his whistleblowing. He filed internal complaints with the County's Office of Human Resources and the Civil Service Commission. But later withdrew his appeal after being assured that the issues would be addressed.

In 2022, the County investigated the firefighter for alleged misconduct and terminated his employment for violations of County rules. The firefighter submitted a claim under the Government Claims Act, which the County denied, and sued the County for retaliation for his whistleblower activities.

The superior court granted the County's motion for judgment on the pleadings. The court ruled that the firefighter could not pursue his whistleblower action because he did not exhaust available administrative remedies by first appealing his termination to the Civil Service Commission. The court also denied the firefighter leave to amend.

The California Court of Appeal reversed. No exhaustion of internal administrative remedies was required because the County's ordinances and rules did not establish a clear procedure for presenting, investigating, and resolving whistleblower retaliation claims. The Court distinguished general disciplinary appeal processes from administrative remedies for discrimination or harassment, and found that the County had no comparable remedy for whistleblower retaliation. The Court reversed the judgment and remanded the case to the superior court. The decision clarifies that if an internal administrative remedy does not specifically cover a particular claim, exhaustion of that remedy is not a prerequisite to filing suit.

Before asserting failure to exhaust administrative remedies as a defense, public employers should confirm that their internal rules actually provide a clear procedure for investigating and resolving the specific type of claim at issue.

Caldrone v. Circle K Stores Inc.* (9th Cir. 2025) 156 F.4th 952 - *Age Claim Was Viable Despite That Employees Had Not Applied For The Promotion

Three Dealer Business Managers (DBMs) were long term employees at Circle K: Brian Caldrone (54); Joseph Celusta (56); and Kathleen Staats (57). Each had a history of strong performance evaluations, awards, and wanted to advance to regional leadership roles.

In 2020, Circle K's West Coast Regional Director position became vacant. In the past, Circle K had posted position openings internally or circulated announcements by email or intranet to encourage qualified employees to apply. This time, the company did not post or open the position for applications. Instead, Circle K's senior management handpicked Miko Angeles, a younger employee aged 45 to fill the position. Angeles had previously served as the Southeast Regional Director, though he had a mixed performance record in that role.

When the three DBMs learned of the promotion, they believed that the company bypassed its normal process to promote a younger employee. They sued Circle K in California state court for age discrimination under both the ADEA and FEHA. Circle K removed the case to the U.S. district court.

The district court granted summary judgment for Circle K, holding that the DBMs could not establish age discrimination because they had not applied for the position. The court also found that, even if they could establish age discrimination, Circle K had provided a legitimate, nondiscriminatory reason for its decision, and the DBMs had not shown that this reason was pretextual.

The U.S. Court of Appeals for the Ninth Circuit reversed. The Ninth Circuit held that, when an employer does not announce a vacancy or solicit applications, employees are not required to show that they applied for the position to establish age discrimination. The Court also clarified that, although a ten-year age difference is the usual threshold for a "substantial" age gap, the DBMs could overcome a smaller gap by providing evidence that age was a significant factor in the employer's decision. The Court found that the DBMs had presented sufficient evidence to create a triable issue of pretext. This included evidence that the decisionmaker made ageist comments, expressed a preference for younger employees, and encouraged older employees to retire. Further, there was evidence undermining Circle K's stated rationale that Angeles was uniquely qualified, including testimony that his prior performance was poor and evidence that Circle K deviated from its usual practice of posting job openings, which a jury could view as an effort to prevent older employees from applying. The Court reasoned that taken together, this evidence could lead a reasonable jury to conclude that Circle K's proffered explanation was unworthy of credence and that age discrimination was the real motive, requiring reversal of summary judgment and remand for further proceedings.

This case is reminder that all employers including public agencies should use consistent hiring and promotion processes and be prepared to support selection decisions with credible, well-documented, nondiscriminatory reasons.

Carroll v. City & County of San Francisco,* 115 Cal. App. 5th 1192 (2025) - *City and County's Disability Retirement Formula Was Not Age Discrimination

A group of employees of the City and County of San Francisco (the City) filed a class action alleging that the City's disability retirement system benefits formula discriminated against older workers in violation of California's Fair Employment and Housing Act ("FEHA").

The employees challenged the San Francisco Employee's Retirement System ("SFERS") which calculated disability retirement benefits using two formulas and paid retirees the higher amount of either: Formula 1 (Regular Formula): based primarily on years of service and salary; or Formula 2 (Backup Formula): based on estimate of what the employee might have earned if they had continued working until age 60, subject to limitations.

The employees argued that Formula 2 disproportionately benefited younger workers and could result in lower disability retirement benefits for employees hired at age 40 or older. They claimed this was unlawful age discrimination. After a bench trial, the superior court ruled in part that pension status motivated the City's disability retirement system, and that age was not a substantial motivating factor. The employees appealed.

The California Court of Appeal ruled in favor of the City, holding that the SFERS disability retirement formulas did not violate FEHA because substantial evidence showed Formula 2 was based on pension status—credited years of service and retirement eligibility—not age. The Court emphasized that age and pension status are analytically distinct, that the formula was offered to all employees on equal terms, was not based on age-related stereotypes, and in some cases treated older and younger employees similarly.

The Court also rejected the disparate impact claim, finding plaintiffs' evidence insufficient because it relied on hypothetical calculations rather than actual data and failed to show a statistically significant adverse effect on older workers. As a result, the Court concluded plaintiffs did not establish age discrimination and affirmed the judgment.

Public employers defending age-discrimination challenges to retirement systems should focus on whether the governing formula is based on neutral factors such as service and earnings rather than age itself. Absent evidence of discriminatory intent or disparate impact, courts may uphold retirement formulas even if older hires fare less favorably in some applications.

Kruitbosch v. Bakersfield Recovery Services, Inc.*, 114 Cal.App.5th 200 (2025) - *Employer's Poor Responses To Employee's Complaint Could Support Claim For Hostile Work Environment

Bakersfield Recovery Service, Inc (BRS) provides substance abuse treatment. Steven Kruitbosch was an assistant corporate compliance officer. Lisa Sanders was Kruitbosch's coworker, though the two did not work together or in the same location often.

Like many BRS employees, Kruitbosch was in recovery from substance abuse, and many employees, including Sanders, knew that Kruitbosch was sober. After Kruitbosch's long term partner passed away, he took leave under the California Family Rights Act.

In the week leading up to Kruitbosch's return, Sanders began sending Kruitbosch multiple unsolicited nude pictures and propositioning him. Kruitbosch firmly rejected these advances. Sanders went to Kruitbosch's home uninvited, and again propositioned him. Kruitbosch told her to leave. Sanders eventually departed Kruitbosch's property, but left behind a cucumber with a condom attached in his driveway. Sanders texted Kruitbosch and invited him to a hotel room to have sex and drugs. She sent him multiple sexually explicit images.

Upon returning to work, Kruitbosch immediately complained about Sanders's conduct to acting program director Stephanie Carroll and HR representative Kimberly Giles. Carroll said there was not much she could do. Giles posted a video to social media depicting dogs whining that made a veiled reference to Kruitbosch's complaint.

Kruitbosch's employment became unbearable as he went to great lengths to avoid Sanders. He was fearful that he would be forced to see Sanders. He was overcome with anger and humiliation knowing Sanders was free to continue harassing him. Kruitbosch resigned because he felt that continuing to work at BRS would be detrimental to his mental health, grief recovery process and sobriety.

After resigning, Kruitbosch filed a complaint against BRS and Sanders under the Fair Employment and Housing Act (FEHA). He included a claim for hostile work environment sexual harassment. The superior court granted BRS's demurer, finding that Sanders's conduct was not attributable to BRS on the basis of their co-working relationship alone. The court found that although Kruitbosch was unhappy with BRS's response, the situation was not pervasive, and BRS took no adverse action. Kruitbosch appealed.

The California Court of Appeal reversed the superior court's ruling sustaining BRS's demurrer as to Kruitbosch's claim for sexual harassment hostile work environment. The Court held that Sanders's conduct was not sufficiently work-related to be imputed to the BRS. But, BRS's response to the Kruitbosch's complaint—specifically, Carroll and Giles's failure to act and Giles's comment and social media post mocking him—could support a claim for hostile work environment sexual harassment. Giles's comment, in conjunction with BRS's ratification of Sanders's conduct through inaction, materially altered his working conditions. There was no investigation of Kruitbosch's complaint, no admonition to Sanders to cease her conduct, and BRS took no steps to shield Kruitbosch from having to interact with Sanders.

This case illustrates that an employer's response to a harassment complaint can itself support a hostile work environment claim, even when the underlying misconduct is not sufficiently work-related to be attributed to the employer. Public agencies should promptly investigate complaints, instruct the alleged harasser to cease the conduct, and take concrete measures to protect the complainant from further harm.

Allos v. Poway Unified School District, **112 Cal.App.5th 822 (2025) -** ***Employer's Interactive Process Efforts Help Defeat Lawsuit***

Kheloud Allos worked for Poway Unified School District ("PUSD"). When the COVID-19 pandemic began in 2020 she began working remotely. After in-person operations resumed, Allos requested to continue working from home. Initially, she based her request on her desire to protect her elderly mother. Later, she claimed her own medical vulnerabilities made in-person work risky. She claimed that her past reaction to a vaccine meant she could not safely take the COVID-19 vaccine.

PUSD responded with a series of interactive meetings—six in total over nearly two years—to explore accommodations. The district offered Allos a private office and various hybrid work arrangements. Ultimately, Allos agreed to a hybrid schedule and later announced her retirement. She then filed a lawsuit against PUSD under California's Fair Employment and Housing Act ("FEHA") and various Labor Code provisions, claiming disability discrimination, failure to accommodate, retaliation, and associational discrimination (related to caring for her disabled mother), among others.

PUSD filed a motion for summary judgment asserting Allos's claims were barred by Government Code section 855.4, which provides immunity to public entitles for decisions related to preventing disease or controlling its spread. The superior court agreed, holding that PUSD's decision to end remote work and require in-person attendance was a discretionary act protected under § 855.4. The court also found that Allos's disability claims failed. The court noted that PUSD had multiple interactive meetings with Allos and provided various accommodations.

The California Court of Appeal affirmed the superior court's judgment. The Court agreed that section 855.4 provided immunity to PUSD for its decisions related to COVID-19.The court reasoned that these decisions were discretionary acts aimed at controlling the spread of disease and therefore fell squarely within statutory public health immunity, regardless of whether that discretion was abused.

The court further held that Allos failed to establish a qualifying disability under FEHA because the evidence showed only a past, minor reaction to a vaccine and a subjective fear of future vaccine reactions, neither of which constituted a condition limiting a major life activity. The court emphasized that an employee's subjective belief is insufficient and that the undisputed medical evidence showed she was not precluded from vaccination.

The Court also rejected Allos's argument that PUSD "regarded" her as disabled, explaining that the employer's participation in the interactive process is required by law and does not constitute an admission of disability. In addition, the court found that PUSD satisfied its obligations by engaging in an extensive, multi-year interactive process and offering several reasonable accommodations, noting that an employer is not required to provide the employee's preferred accommodation.

The court further concluded that Allos could not establish essential elements of her remaining claims because there was no evidence of an adverse employment action—she voluntarily retired—and her retaliation and Labor Code claims were unsupported by specific facts or legal argument. Accordingly, the court held that no triable issues of material fact existed and affirmed summary judgment in PUSD's favor.

This case illustrates that public employers that engage in a thorough, documented interactive process and offer reasonable alternative accommodations place themselves in a stronger position to defeat disability-related FEHA claims.

3. FIRST AMENDMENT AND FREEDOM OF RELIGION

Detwiler v. Mid-Columbia Medical Center,* (9th Cir. 2025) 156 F.4th 886 - *No Religious Accommodations Required For Employee's Secular Judgments

Sherry Detwiler worked for the Mid-Columbia Medical Center in Oregon (MCMC). Detwiler is a Christian who believes her body is a temple of the Holy Spirit, and that she has a duty to avoid defiling her 'temple' with substances that the Bible explicitly condemns or which could potentially harm her.

Detwiler sought a religious exemption from MCMC's policy requiring healthcare workers to be vaccinated against COVID-19, absent an approved exemption. Detwiler, relying on sources she found online, believed that COVID-19 vaccines were created from fetal cell lines and contained potentially harmful substances. She informed MCMC that her religious beliefs against abortion and the use of harmful substances conflicted with the vaccine requirement.

MCMC approved Detwiler's request for a religious exemption from vaccination. As part of that accommodation, MCMC required Detwiler to wear personal protective equipment while in the office and to submit to weekly antigen testing for COVID-19 through a nasal swab. Detwiler informed MCMC that she believed that nasal swabs contained a carcinogenic substance and reasserted her religious beliefs.

Detwiler proposed MCMC allow her either to submit to saliva testing for COVID-19 or to work remotely full-time. MCMC's Chief Human Resources Officer (CHRO) responded that MCMC had granted her request for an exemption from the vaccine requirement, but denied her requested accommodations of saliva testing or full-time remote work. CHRO advised her that saliva testing would be impractical due to the delay for test results. In addition, MCMC might ask Detwiler to appear for same-day, in-person work because of dissatisfaction with Detwiler's work during her remote work periods. MCMC placed Detwiler on unpaid leave until she: complied with the vaccine mandate; the terms of her approved religious exemption; or accepted reassignment. Detwiler chose none of those options, and MCMC terminated her employment.

Detwiler sued MCMC for religious discrimination in violation of Title VII of the Civil Rights Act of 1964. MCMC filed a motion to dismiss the case for failure to state a claim. MCMC argued Detwiler's objection to antigen testing stemmed from her secular, medical judgment rather than a bona fide religious belief. The District Court dismissed the complaint, accepting Detwiler's bona fide religious beliefs but noting Detwiler's specific determination of what is harmful was not premised on her religion. Detwiler appealed.

The U.S. Court of Appeals for the Ninth Circuit, opined that it had not yet endorsed a test for determining the nature of a religious belief underlying a Title VII claim. The Court ultimately held that an employee seeking a religious exemption must plead a clear connection between her faith and the specific belief that conflicts with her work requirement.

The Court emphasized that an employee does not need to show that their belief is consistent, rational, or widely shared, but it must demonstrate that the requested accommodation flows from a truly religious principle rather than a personal or secular concern. The panel rejected the notion that generic references to broad religious tenets, such as treating one's body as a temple, can automatically transform a secular preference into a religious belief. The Court reasoned that allowing such assertions would permit employees to bypass workplace requirements by reciting "magic words." The Court concluded that judges must verify whether the asserted belief is religious in nature, as opposed to merely secular, but may not question the sincerity or reasonableness of the belief.

Applying that standard, the Court found that Detwiler's complaint was not sufficient. Although the Court accepted her general Christian conviction that her body is a temple, the Court determined that her actual objection—the belief that antigen test swabs were carcinogenic—rested on her personal interpretation of medical research. Because her belief arose from a secular judgment rather than a religious doctrine, the Court ruled it was not protected under Title VII. The Court stressed that Detwiler had no religious conflict with the testing policy apart from her secular opinion about chemicals she believed to be in the swab materials. The Court warned that adopting Detwiler's proposed lenient approach would create an unmanageable expansion of religious accommodation claims, and force employers and courts to treat ordinary personal preferences as matters of faith.

Employers evaluating Title VII religious accommodation requests may, with careful analysis, distinguish between a bona fide religious belief and an employee's personal or secular judgment about health risks. Agencies should focus on whether the employee identifies a clear religious basis for the specific conflict with the work rule at issue, while avoiding challenges to the sincerity or reasonableness of the asserted faith.

Burch v. City of Chubbuck*, 146 F.4th 822 (9th Cir 2025) - *PW Director Who Resigned After Criticizing The Mayor Could Not Prove First Amendment Retaliation

Kevin England, Mayor of Chubbuck, Idaho, appointed Rodney Burch to be the City's Public Works Director in 2015. For the first six years of Burch's tenure, he and Mayor England had a good working relationship. During that time, Burch communicated his concerns regarding

City management directly to England without issue, and ultimately developed a strategic plan to improve operations, which obtained the City Council's approval.

By 2021, England and Burch's relationship had soured. Burch, frustrated with England's policies and performance, proposed changing the City's management structure from a strong mayor system to a weak mayor system by creating a City administrator position. He criticized England for: failing to implement the strategic plan; mismanaging budgeting; reducing revenue through a utility credit program; and failing to support Public Works effectively. Burch argued that a City administrator would improve oversight and reduce waste. England ultimately rejected the proposal.

Councilmember Dan Heiner challenged England in the 2021 mayoral election. Burch placed a campaign sign for Heiner in his front yard. One of Burch's neighbors informed England of Burch's yard sign.

England won re-election. England spoke with the City's legal counsel and human resources director about removing Burch for cause, or requesting Burch's resignation. England said that he no longer trusted Burch because of his City administrator proposal and the "Options in Process" document Burch created that sharply criticized England.

England met with Burch and asked him to resign. Burch refused. England then scheduled an executive session of the City Council to argue for Burch's removal but the Council declined and instructed the two to continue working together. By 2022 Burch resigned, claiming that England had cut Burch out of decision-making and that many of his duties had been reassigned to his subordinates.

Burch then sued the City and England, claiming that England had retaliated against him based on his protected speech under the First Amendment. Burch alleged that his duties and decision-making were reduced and that he was constructively discharged due to his: protected speech, which included criticisms of England's policies and performance; advocacy for a City administrator position; and political yard sign supporting England's opponent. The district court granted summary judgment the City and England. Burch appealed.

The Ninth Circuit Court of Appeals affirmed. The Court found that Burch was not constructively discharged. Burch had complained that he was working 2.5 jobs, so the reduction in his duties and decision-making did not rise to the level of intolerable working conditions that would cause a reasonable person to resign.

As to the First Amendment issues, the Court held that Burch's criticisms of England's policies and performance and his advocacy for creating a city administrator position were made pursuant to his official duties as Public Works Director and therefore were not protected. In reaching this conclusion, the Court emphasized that Burch largely communicated these concerns within his chain of command (to the Mayor and City Council), that the subject matter of his speech—budgeting, operational efficiency, and long-range planning—fell squarely within his routine job responsibilities, and that he did not act in defiance of his supervisor's directives. In contrast, Burch's placement of a political yard sign supporting England's opponent was protected speech because it was made as a private citizen, outside the workplace and chain of command, and was unrelated to his official duties.

The Court nevertheless concluded that Burch could not establish a First Amendment retaliation claim because, even assuming the yard sign was a substantial or motivating factor in certain adverse actions, the City satisfied its burden at the final steps of the analysis. The Court found there was no genuine dispute that the City had adequate justification for its actions—particularly England's loss of trust based on Burch's unprotected speech, including the "Options in Process" document criticizing England's leadership—and that the same employment decisions would have been made regardless of the protected activity.

Public employers should remember that not all employee criticism of management is protected citizen speech under the First Amendment; speech made pursuant to official duties may fall outside constitutional protection. Even where protected political speech is involved, agencies can still prevail if they can show legitimate operational reasons for their actions and that they would have made the same decision anyway.

Thompson v. Central Valley School District No. 365,* (9th Cir. 2025) 163 F.4th 654 – *Middle School Assistant Principal Disciplined For Off-Duty Social Media Posts

Randey Thompson, a middle school assistant principal in the Central Valley School District (CVSD), posted a message on his private Facebook account criticizing the Democratic National Convention. The post included derogatory language, including a disability-related slur ("demtard"), and violent rhetoric suggesting opponents should be taken "to the woodshed."

Within days, the district placed Thompson on paid administrative leave and launched an investigation. Interviews with staff and administrators revealed concerns not only about the Facebook post but also about prior comments Thompson had made at work that were viewed as insensitive toward students and staff. The district ultimately concluded that Thompson's conduct undermined his effectiveness as a leader and transferred him from an administrative role to a teaching position.

Thompson sued under 42 U.S.C. § 1983, alleging the district retaliated against him for protected speech in violation of the First Amendment. He argued that his Facebook post was private, political speech on a matter of public concern, made off-duty and on his personal device, and that the district took adverse action against him because of that speech. He further contended that the speech did not cause actual disruption sufficient to justify discipline.

The district responded that, even if the speech was protected, it was entitled to discipline Thompson under the *Pickering* balancing test. The *Pickering* test is a two-step framework used to evaluate public employee speech, asking first whether the employee spoke as a private citizen on a matter of public concern, and if so, whether the government employer's interests in workplace efficiency and avoiding disruption outweigh the employee's First Amendment rights.

CVSD argued that Thompson's use of slurs and violent language—combined with his public-facing leadership role—created a reasonable prediction of disruption, undermined staff relationships, and conflicted with the district's mission to maintain a safe and inclusive educational environment.

The Ninth Circuit applied the two-step *Pickering* framework. At step one, the court agreed Thompson's Facebook post constituted private speech on a matter of public concern, and a reasonable jury could find that the post motivated the district's decision to place him on leave.

At step two, however, the court held that the district's interests outweighed Thompson's First Amendment interests. The court emphasized that not all speech on matters of public concern receives equal protection. Thompson's post, while political, was not tied to his professional expertise and included derogatory and violent language, which reduced its constitutional weight.

The district also produced evidence supporting a reasonable prediction of disruption. Administrators and staff expressed concern about Thompson's ability to lead, maintain professional relationships, and effectively discipline students if the comments became known. The court also gave weight to Thompson's role as a public-facing school administrator, noting that disruption concerns are heightened for employees in supervisory or leadership positions.

Balancing these considerations, the court concluded that the district's interest in maintaining a safe, inclusive, and effectively functioning school environment outweighed Thompson's interest in the speech. Because no First Amendment violation occurred, the court also held that the individual defendants were entitled to qualified immunity. Ultimately, the Ninth Circuit affirmed summary judgment in favor of the school district and its administrators.

Public employers may discipline employees for off-duty social media speech where the speech includes derogatory or violent language, and the employer can show a reasonable prediction of workplace disruption.

4. GOVERNMENT CLAIMS ACT

Black v. Los Angeles County Metropolitan Transportation Authority,* 116 Cal. App. 5th 677 (2025) - *Failure To Properly Register Public Entity Status Keeps Employee's Suit Alive

Andrew Black sued both the Los Angeles County Metropolitan Transportation Authority ("MTA") and Public Transportation Services Corporation ("PTSC") for wrongful termination, Labor Code violations, and breach of contract. The PTSC is a nonprofit public benefit corporation that MTA created. Black, however, did not file a prelitigation government claim prior to filing his lawsuit.

PTSC argued on demurrer that Black failed to comply with the claims presentation requirement under the Government Claims Act (GCA) (Gov. Code, § 810 et seq.), which mandates that plaintiffs present written claims for damages to public entities before initiating a lawsuit. PTSC contended that it is a public entity entitled to the protections of the GCA because it was created as an organizational unit of the MTA and functions as a nonprofit public benefit corporation to manage and supply workers for MTA's operations. PTSC further argued that, as a public entity, it is immune from the plaintiff's wrongful termination and Labor Code claims.

In opposition, Black argued that PTSC is not a public entity and, therefore, the GCA's claims presentation requirement does not apply. Alternatively, Black asserted that even if PTSC were deemed a public entity, he was excused from complying with the GCA because PTSC failed to register with the Registry of Public Agencies as required under Government Code section 52051.

The superior court ultimately sustained PTSC's demurrer without leave to amend. The court concluded that both MTA and PTSC were public entities entitled to Government Claims Act (GCA) protections and that PTSC was not required to register separately because it functioned as an organizational unit of MTA.

On appeal, Black conceded MTA was a public entity but challenged PTSC's public entity status. The California Court of Appeal held that PTSC **is** a public entity for purposes of the GCA because: MTA used its statutory authority to create it; and that PTSC exists to further MTA's public transportation mission, operates subject to MTA's control, and functions as MTA's instrumentality in managing and supplying employees. The Court rejected the argument that nonprofit public benefit corporations can never be public entities and explained that public entity status depends on the entity's creation, governmental purpose, and relationship to government. Public entity status is not based only on traditional sovereign powers like taxation or eminent domain.

The Court agreed, however, that Black should be allowed to amend his complaint to allege an excuse from the claims presentation requirement based on PTSC's alleged failure to comply with statutory registration requirements. A public agency must register both with the Secretary of State (SOS) and the county clerk of each county in which it maintains an office, and failure to do so excuses a plaintiff from filing a government claim. (Gov. Code sections 946.4 and 53051.)

Although MTA submitted evidence that it registered PTSC with the SOS, it failed to demonstrate registration with the relevant county clerks. The Court rejected the trial court's conclusion that PTSC's relationship with MTA excused it from independent registration, holding that each public agency must comply with the statute on its own. The Court affirmed the judgment in favor of MTA, reversed the judgment in favor of PTSC, and remanded to allow Black to amend his complaint.

Public agencies and related entities should ensure they comply with Government Code registration requirements, including filing with the appropriate county clerks, not just the Secretary of State. Failure to do so may excuse a plaintiff's noncompliance with the Government Claims Act and keep litigation alive.

6. LABOR RELATIONS

City and County of San Francisco (2025)* PERB Dec. No. A532-M - *PERB Denies DSA's Improper And Untimely Severance Petition

The San Francisco Deputy Sheriffs' Association ("DSA") filed a severance petition that requested to remove four classifications out of the SEIU Local 1021-represented bargaining unit at the City and County of San Francisco (City), and to place them into the unit that DSA exclusively represents. Both the City and SEIU opposed the petition to the Public Employment Relations Board (PERB).

PERB's Office of the General Counsel ("OGC") tentatively concluded that DSA's petition could not go forward because severance petitions may not be used to add employees to an existing bargaining unit; a severance petition must propose a new unit consisting only of the severed employees. In response, DSA amended the petition to place the affected employees in a new bargaining unit consisting only of themselves. However, by this point, the City and SEIU had already entered into a successor MOU. OGC determined that the amended petition was untimely because PERB Regulation 61400(b) requires that severance petitions or amendments be filed during the narrow 29-day "window period" before an MOU's expiration. The amended petition was filed outside that window period and was barred. DSA appealed.

On appeal, DSA argued that its amendment was permissible under PERB Regulation 61260(a), which allows petitions for certification or recognition to be amended to correct technical errors or adjust classifications at any time before a hearing notice is issued. DSA claimed its change was a harmless, technical correction. PERB rejected this argument, holding that the more specific Regulation 61400(b) controlled in severance cases and contained the window period rules.

PERB also found that DSA's amendment was material rather than technical. PERB agreed with OGC that the original petition itself was invalid because it attempted to transfer employees into an already existing unit, which severance petitions cannot do. PERB reiterated that severance petitions must create a new bargaining unit "consisting of" only the employees to be severed, not reassign them to another established unit.

PERB concluded that both the initial and amended petitions failed to comply with governing regulations. PERB denied DSA's appeal, dismissed both petitions, and closed the case.

Public employers and labor organizations should pay close attention to PERB's procedural rules governing unit modification petitions. Severance petitions must be substantively proper at the outset and filed within the applicable window period; a later "amendment" that materially changes the unit sought may be treated as untimely.

7. PEACE OFFICER RECORDS

Schneider v. Superior Court (Los Angeles County Sheriff's Department)*, 111 Cal.App.5th 613 (2025) - *Sheriff Ordered to Disclose Brady Materials

A defendant charged with murder filed a *Pitchess* motion to get *Brady* information from the confidential personnel files of six Los Angeles County Sheriff's deputies. *Brady* refers to a 1963 U.S. Supreme Court case that found that a criminal defendant's right to due process requires a prosecutor to disclose evidence or information that would prove the innocence of the defendant or would enable the defense to more effectively impeach the credibility of government witnesses.

In this case, the superior court found the defendant's *Pitchess* motion established good cause for the court to review the peace officer records. The trial court determined the personnel files of four of the six deputies contained *Brady* material. The Los Angeles Sheriff's Department (LASD) contended that the initial disclosure in *Pitches*s is limited to the name and the contact information of the reporting parties and witnesses. The superior court agreed with LASD and denied the request for the *Brady* material itself. Instead, the superior court ordered disclosure of the names, addresses, and telephone numbers of the individuals who had witnessed or complained of the conduct of the officers that was at issue in the case.

The defendant then filed a *Brady* motion seeking *Brady* discovery. In the *Brady* motion, the defendant argued he was entitled to the actual *Brady* evidence, as opposed to a single document listing the name and contact information of each complainant as is commonly provided in response to a *Pitchess* motion. (Penal Code sections 832.7 and 832.8; and Evidence Code sections 1043 through 1045.)

The superior court still refused to give the defendant the actual *Brady* information. The trial court found that the case authorities did not specify the scope of the information to be turned over once a court determines that *Brady* material is present in an officer's file. The trial court concluded that it should not turn over any more than what is required by *Pitchess* -- the names and contact information for complainants and witnesses. The man then filed a petition for writ of mandate in the California Court of Appeal to order the trial court to provide the *Brady* material.

The California Court of Appeal found that the trial court should have ordered the LASD to disclose all *Brady* material in the four deputies' personnel files, including documents and any audio-video materials.

This case is a primer on the discovery of confidential peace officer records. Although the Court found that a party seeking *Brady* material must comply with the *Pitchess* motion procedures, this case defines the substantive differences between a *Pitchess* motion and a *Brady* motion, including: 1) what a party must show to justify an *in camera* review on each type of motion; and 2) what information the court must order disclosed on a successful motion.

First, the Court found that a criminal defendant must show good cause in order to allow a court to review peace officer files. This is a low burden on both motions. On a *Pitchess* motion, the defendant must show that the information is material to the pending criminal case; and that the defendant has a reasonable belief that the agency has the type of information sought. *Pitchess* motions generally seek information about past complaints by third parties of excessive force, violence, dishonesty, or the filing of false police reports.

The criminal defendant's burden on a *Brady* motion is even lower. All a defendant must do is describe the *Brady*-tip or *Brady* bank alert that it received, together with some explanation of how the officer's credibility might be relevant to the proceeding. No allegations of officer misconduct in the defendant's case are required.

Second, once good cause has been shown, the scope of the disclosures for a classic *Pitchess* motion versus a *Brady* motion is also different. On a *Pitchess* motion, material that is potentially relevant includes records that touch on the type of misconduct that the defendant has alleged the officer committed in dealing with the defendant. This would include complaints that the police agency has deemed unfounded. Given this low bar and the potential to sweep in materials with only minimal relevance, limiting initial disclosures to names and contact information for complainants and witnesses makes sense in a classic *Pitchess* context.

Conversely, when a court determines that an officer's personnel file contains *Brady* information, by definition, the relevance of the material is not "minimal." Rather, the court has concluded that the information has the potential to affect the outcome of the trial. The limitations on disclosure in the *Pitchess* statute (Evidence Code section 1045(b) & (c)) do not apply to *Brady* information. Therefore, the practice of refusing to disclose the actual records is not applicable to *Brady* material.

Agencies responding to Brady-related Pitchess motions should be prepared for broader disclosure obligations than those that apply in a traditional Pitchess context. Once a court finds Brady material in an officer's file, the agency may be required to disclose the actual records, not merely names and contact information for complainants or witnesses.

8. RETIREMENT

Bishop v. San Diego County Employees Retirement Association*, 118 Cal.App.5th 694 (2026) - *Employee's Felony Conviction Caused A Pension Forfeiture Despite Its Later Reduction To A Misdemeanor

A former County employee pleaded guilty to a felony conflict-of-interest charge in May 2022. The Retirement Board informed him in August 2022 that under state pension law codified at Government Code section 7522.74, his felony conviction required a forfeiture of part of his pension benefits. The criminal court later reduced the felony to a misdemeanor under Penal Code section 17(b)(3). The former employee asked the pension board to reinstate his benefits.

The County Retirement Board denied his request and the trial court upheld that denial. The California Court of Appeal addressed whether a public employee is "convicted" under Government Code section 7522.74 when guilt is adjudicated (by plea), or only when a judgment is entered, and the effect of a subsequent reduction to a misdemeanor.

The Court agreed with published precedent that a guilty plea to a felony constitutes a "conviction" for purposes of the pension forfeiture statute, and that the subsequent reduction to a misdemeanor did not undo the earlier conviction for pension purposes. The Court noted that the forfeiture law only identifies one circumstance when pension benefits can be returned-- when the conviction is reversed. Thus, the former employee could not receive his forfeited pension benefits. Under the Public Employees' Pension Reform Act, statutory felony pension forfeiture is triggered by the adjudication of guilt and subsequent reductions of the underlying charge do not restore forfeited benefits.

Public retirement systems may treat a felony guilty plea as a conviction triggering pension forfeiture, even if the conviction is later reduced to a misdemeanor. Agencies and retirement boards should not assume post-conviction reductions restore benefits unless the conviction itself has been reversed.

Mendoza v. Board of Retirement of the Ventura County Employees' Retirement Association,* 117 Cal.App.5th 559 (2025) - *Deputy's Refusal To Undergo Treatment Doomed His Service-Connected Disability Retirement Application

Alberto Mendoza worked as a Deputy Sheriff for Ventura County. He injured his back at work in late 2014 and mid-2015. In 2015, three different doctors recommended the surgery, and the County authorized it. One doctor predicted Mendoza had a 90% chance of good to excellent results. Mendoza declined the surgery. A doctor reported that Mendoza was "simply scared" to complete the procedure based on "bad information" from his friends and the internet. Mendoza applied for a service-connected disability retirement in 2016. The County advised Mendoza that it was challenging his application.

Doctors continued to examine Mendoza's back from 2016 to 2019. In 2018, Mendoza reported constant pain, but he was still not interested in surgery. He did not continue a doctor-recommended home exercise program because he said the exercises hurt his back. In 2019, a doctor recommended Mendoza undergo a work hardening program to help him increase his ability to lift and potentially allow him to return to work.

The administrative hearing on Mendoza's service-connected disability retirement petition took place in December 2019. Mendoza called no witnesses, and testified that he declined the surgery because his incontinence symptoms had decreased and he felt he was getting better. He testified that he did not see any medical benefit to the work hardening program because the exercises increased his pain.

In October 2020, the hearing officer issued a recommended decision to deny Mendoza's application. The hearing officer determined that Mendoza: refused to undergo reasonable and appropriate medical treatment that had a high probability of success and would have allowed him to return to work; may have made his condition worse by refusing surgery; unilaterally decided to stop home exercise; and did not participate in the work hardening program the County had authorized. The County's retirement board adopted the hearing officer's recommended decision.

Next, Mendoza petitioned for a writ of administrative mandate in the superior court. The superior court denied Mendoza's petition based on the common law doctrine of avoidable consequences/ mitigation of damages. Under that doctrine, an application for service-connected disability retirement benefits is properly denied if the applicant's disability is caused, continued, or aggravated by their unreasonable refusal to undergo medical treatment for their injuries. Mendoza appealed.

In the California Court of Appeal, Mendoza argued that the doctrine could not be applied to him because: the initial surgery he refused to undergo would no longer be effective; and the subsequently recommended surgeries would not enable him to perform all of his job duties.

The Court disagreed. It found that the doctrine of avoidable consequences/ mitigation of damages applies not only if it is likely that the employee could still return to work with recommended medical treatment, but also if it is likely the employee could have returned to work but for their unreasonable refusal to timely submit to treatment that may no longer be effective due to the passage of time. A retirement board can find that the employee's inability to return to work is not a result of their work-related injury, but rather a result of their unreasonable refusal to submit to medical treatment.

The Court of Appeal also noted that the trial court was right to presume that the findings underlying the County board's decision were correct. Although the trial court focused on Mendoza's refusal to undergo the approved surgery, the County board also found Mendoza had: unreasonably refused to participate in the work hardening program; unreasonably stopped the home exercise program; and required further medical care and treatment. The Court decided that Mendoza failed to establish that his writ petition was erroneously denied.

Retirement boards and public employers may rely on the avoidable-consequences doctrine where an employee unreasonably refuses treatment that likely would have enabled a return to work or prevented deterioration. Agencies should document treatment recommendations, expected outcomes, and the employee's refusals when contesting service-connected disability claims.

Baker v. San Mateo County Employees Retirement Association, **114 Cal.App.5th 81 (2025) -** ***County Employee Unsuccessfully Challenged The Effective Date Of Her Retirement Benefit.***

Catherine Baker worked for San Mateo County as a Social Worker III. She reported back pain that prevented her from performing some essential job duties. She went on medical leave in 2009. In 2015, she returned to work in a different position as a Screener Trainee. The Screener Trainee job had the same pay rate as her original position. On January 21, 2016, Baker left County employment.

In 2017, Baker applied for a "service-connected" disability retirement. The County Employees Retirement Association ("SamCERA") recommended that, pursuant to the County Employees Retirement Law of 1937 at Government Code section 31724, the effective date of her retirement benefit was January 22, 2016, the day after her last receipt of "regular compensation."

After SamCERA's Board approved her application and set the effective date, Baker sought administrative review. She felt that her compensation as a Screener Trainee did not qualify as "regular compensation" because she had not returned to her Social Worker III job. She argued that her effective date of retirement should have in 2009 when she left her Social Worker III job. An administrative law judge recommended denial of her request to change the effective date, and the Board adopted this recommendation. Baker then filed a petition for writ of administrative mandamus in superior court, which denied the petition and confirmed the January 22, 2016 effective date.

The California Court of Appeal reviewed whether "regular compensation", as used in section 31724, included Baker's pay as a Screener Trainee. To make its decision, the Court looked at the ordinary meaning of the words "regular compensation" and to prior case law. The prior case law held that the term "regular compensation" includes compensation for sick leave taken as time off because, during such periods, employees receive their "regular salary" or "full wages." The Court held that "regular compensation" refers to regular salary or full wages, regardless of whether the position is the employee's original job.

Because Baker's Screener Trainee pay matched her original position's pay rate, it qualified as "regular compensation." The court affirmed the trial court's judgment, upholding the effective retirement date that SamCERA had set.

For disability retirement timing purposes, "regular compensation" may include pay earned in a different position, not just the employee's original classification. Public employers and retirement systems should focus on whether the employee continued receiving regular salary or wages, rather than on the job title alone.

9. WORKPLACE VIOLENCE

County of Los Angeles v. Niblett,* 116 Cal. App. 5th 454 (2025) - *Courts May Imply "Credible Threat Of Violence" By The Context

The County of Los Angeles sought a workplace violence restraining order (WVRO) against Senior Mechanic Neill Francis Niblett after a series of escalating incidents when he angrily confronted management officials and an Assistant Fire Chief over employment decisions. In October 2022, Niblett yelled profanities at the Assistant Fire Chief, advanced to within inches of the Assistant Fire Chief's face, and spit on him while shouting.

Several days later, Niblett told a secretary that if management did not "change things," they would have "another situation like they had with Tatone." That was a reference to a June 2021 incident in which one firefighter fatally shot another at a fire station. The County argued this statement constituted an implied credible threat of violence, particularly in light of: Niblett's angry demeanor; his history of confrontational conduct toward management; and evidence that he owned firearms.

Multiple witnesses testified during the hearing in the trial court. The trial court found by clear and convincing evidence that Niblett's reference to the prior shooting constituted a credible threat of violence under California Code of Civil Procedure section 527.8, and that there was a reasonable probability of future harm. The trial court issued a WVRO prohibiting Niblett from harassing or contacting the Assistant Fire Chief or entering the Assistant Fire Chief's workplace. The WVRO also required Niblett to relinquish firearms and ammunition.

Niblett appealed. He argued that there was no evidence of an immediate threat or that he had any intent to harm. He claimed that his statement was protected speech related to union activity and workplace grievances. He said the WVRO violated his First and Second Amendment rights.

The California Court of Appeal rejected Niblett's arguments. The Court held that a "credible threat of violence" under section 527.8 need not be explicit or immediate or supported by an intent to harm, but may be implied when the context shows a reasonable person would fear for their safety. The statute defines "credible threat of violence" as a knowing and willful statement or course of conduct that would place a reasonable person in fear for their safety, or the safety of their immediate family, and that serves no legitimate purpose. The Court concluded that speech that meets this definition is not protected by the First Amendment. The Court further held that the firearm prohibition was lawful and consistent with historical restrictions on those who were found to pose a credible threat to others.

Public employers seeking workplace violence restraining orders do not need an express or immediate threat if the surrounding circumstances would cause a reasonable person to fear for safety. Agencies should carefully monitor and document threatening statements, context, prior confrontations, and other surrounding facts that show an implied credible threat of violence.

10. WAGE AND HOUR

Levy v. City and County of San Francisco, **114 Cal.App.5th 997 (2025) -** ***Labor Code Section 512.1's Meal and Rest Breaks Do Not Apply To Charter Cities***

In 2022, the California Legislature added Labor Code section 512.1 to extend the meal and rest break rights that private sector health care workers have to public sector health care employees who are directly employed by: the state, political subdivisions of the state, counties, municipalities, and the Regents of the University of California.

A group of nurses who worked for the City and County of San Francisco (City) sued on behalf of themselves and similarly situated City-employed nurses. The nurses alleged that the City has failed to comply with section 512.1 since it took effect. The City is a charter city.

The City demurred on two grounds. First, the City argued section 512.1 did not apply to charter cities. Second, the City argued that even if the Legislature had meant to apply section 512.1 to charter cities, the law would violate the constitutional home rule doctrine because the law "does not pertain to a matter of statewide concern" and "is not narrowly tailored to its purported goals." The trial court sustained the City's demurrer without leave to amend. The court found no clear indication that the Legislature intended section 512.1 to apply to charter cities. The nurses appealed.

The California Court of Appeal affirmed the sustaining of the City's demurrer. The nurses argued that charter cities came within section 512.1's broad definition of "employer". The Court disagreed. The Court of Appeal found that none of the other aids to statutory interpretation supported the nurses' argument. For example, the Court noted that in other statutes, the Legislature expressly stated both that a matter was of statewide concern and was not a "municipal affair" as that term is used in the "home rule" doctrine stated in Section 5 of Article XI of the California Constitution. The Court found that section 512.1 did not expressly apply this statute to charter cities.

The Court of Appeal concluded that the City's home rule authority gave it sovereignty over its employees' compensation. The Court declined to address constitutional home rule questions because the statutory grounds were available and dispositive. The Court declined to infer any legislative intent from section 512.1 to contravene the City's constitutional home rule authority.

Although this case involved a charter and county, this case illustrates that charter cities may be able to resist application of state employment statutes where the Legislature has not clearly stated an intent to override local home-rule authority. Charter cities should evaluate whether state labor requirements relating to wages expressly apply to them before assuming compliance obligations exist.