



LIEBERT CASSIDY WHITMORE

Self-Inflicted Wounds – Top 10 Ways to Avoid Liability

**League of California Cities: Fire Chiefs Leadership
Seminar | December 10, 2025**

Presented By:

James E. Oldendorph & Joung H. Yim

Agenda

1. Performance Evaluations
2. Promotions
3. Discipline
4. Interrogations
5. Training
6. Complaints
7. FLSA
8. Appeals
9. MMBA
10. Injuries



1. Performance Evaluations



Performance Evaluations – Best Practices

- Regular, objective evaluations
 - Maintain consistent evaluation schedule
 - Align evaluations with job descriptions and department goals
 - Use evaluations as a tool for improvement
- Best practices for documentation
 - Focus on job performance, not personal characteristics
 - Do not be afraid to describe mistakes and ways to improve
 - Avoid discriminatory language or practices

Cal. Gov. Code §§ 3255-3256

- **Cal. Gov. Code § 3255** – A firefighter shall not have any comment adverse to his or her interest entered in his or her personnel file, or any other file used for any personnel purposes by his or her employer, without the firefighter having first read and signed the instrument containing the adverse comment indicating he or she is aware of the comment....
- **Cal. Gov. Code § 3256** – A firefighter shall have 30 days within which to file a written response to any adverse comment entered in his or her personnel file. The written response shall be attached to, and shall accompany, the adverse comment

Poole v. Orange County Fire Authority (2015)

- *Poole v. Orange County Fire Authority* (2015) 61 Cal. 4th 1378
 - Because a supervisor's daily log was not shared with or available to anyone else, it did not constitute a file "used for any personnel purposes by his or her employer" and Gov. Code, § 3255, therefore, did not apply in an action brought by plaintiff firefighter against his employer...

2. Promotions



Promotions – Best Practices

- Establish transparent selection criteria
- Document the decision-making process
- Objectivity is crucial
- Ensure equal opportunity
- Provide feedback to candidates

3. Discipline



Discipline – Common Issues and Determining Level of Discipline

- Common Issues: insubordination, substance abuse, violation of safety protocols, harassment/discrimination, theft or misuse of department property, tardiness and abuse of leave, fighting
- Importance of Proper Documentation
- Elements of Effective Documentation
- Determining Level of Discipline

Compliance with FBOR

- FBOR ensures due process rights
 - Right to Notice (Gov. Code § 3253)
 - Right to Representation
 - Investigation Process
 - Access to Evidence

Legal Issues to Consider Prior to Implementing Discipline

- Discrimination based on “protected class”
- First amendment rights
- Discrimination/Retaliation for making a Workers’ Compensation claim
- MMBA
- “Whistleblower” retaliation
- Disability accommodation
- Invasion of privacy

4. Interrogations



Interrogations – Complying with FBOR

- Cal. Gov. Code § 3253 ensures interrogations are conducted fairly, including rules on timing, disclosure of information, and treatment of firefighters
- Key Provisions include:
 - The right to compensation for off-duty interrogations;
 - Protection from coercion;
 - The right to record interrogations; and
 - The right to have a representative present
- This section does not apply to “counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor of any other firefighter.”

Interrogations – Complying with FBOR (Cont'd)

- Routine or Unplanned Contact?
 - *City of Los Angeles v. Superior Court (Labio)* (1997) 57 Cal.App.4th 1506
 - *Paterson v. City of Los Angeles* (2009) 174 Cal.App.4th 1393
 - *Steinert v. City of Covina* (2006) 146 Cal.App.4th 458

5. Appeals



Appeals

- Government Code section 3254, subd. (b): “Punitive action or denial of promotion on grounds other than merit shall not be undertaken by any employing department or licensing or certifying agency against any firefighter who has successfully completed the probationary period without providing the firefighter with *an opportunity for administrative appeal.*”

Appeals

- Govt. Code section 3254.5 – an administrative appeal instituted by a firefighter under the FBOR shall be conducted in conformance with rules and procedures adopted by the employing fire department or licensing or certifying agency that are in accordance with Chapter 5 of the Administrative Procedures Act

Appeals – APA

- Appeal According to APA – Govt. Code section 3254.5
 - Final Notice is an “Accusation”
 - Must serve copies of discovery provisions
 - Must serve blank copies of “Notice of Defense”
- ALJ presiding – gives proposed decision or runs hearing for Agency’s appeal body; OR:
- If binding arbitration in MOU, arbitrator presides and gives binding decision

6. Complaints



Hostile Work Environment Claims

- Hostile work environment claims from living spaces and shared music
 - *Sharp v. Activewear, LLC* (2023) 69 F.4th 974
 - *Reeves v. CH Robinson Worldwide Inc.* (2010) 594 F.3d 798
- Review policies and enforce them evenly as they may entail limits on music, shows, radio programming, or other forms of audio or visual activity in the workplace

7. FLSA



FLSA – Shift Trades and Early Relief

- Policy Gaps
 - Many agencies lack clear policies on shift trade execution and repayment
 - Limited litigation, but significant concern from many fire chiefs
- FLSA Regulations and Policy Details
 - Regulations allow for shift trading but do not specify details on implementation
 - Gamut of various policies – if you do not have one, you should
 - Policies should be reviewed by legal counsel

FLSA – Shift Trades and Early Relief (Cont'd)

- Early Relief
 - LCW just handled large lawsuit for City of LA Fire based on early relief
 - Similar lawsuits likely to spread to other departments
 - MOU language often inadequate or not followed

FLSA – Classification and Record Keeping

- Classification
 - Misclassification of Battalion Chiefs common
 - Exemption status depends on specific duties and department size
 - First responder exception may apply even for limited call responses
- Record Keeping
 - FLSA requires accurate time records
 - Ensure scheduling software (e.g., Telestaff) accurately reflects actual hours worked
 - Align payroll and scheduling systems and implement policies for accurate timecards

FLSA – Classification and Record Keeping (Cont'd)

- Legal Risks
 - DOL likely did not intend shift trading or early relief to avoid overtime
 - Maintain accurate records for shift trades and early relief
 - Be aware of 2-3 year statute of limitations

8. Training



Training

- Ensure up-to-date certifications (harassment, discrimination, and retaliation training for all employees)
- Document training attendance and completion
- Address skill deficiencies promptly

9. MMBA



Meyers-Milias-Brown Act (MMBA)

- MMBA prohibits discrimination due to union activity
- Public employers must consider this when disciplining union-involved employees
- Two key decisions for managers/supervisors:
 - Determine employee's primary role: employee, union steward, or both
 - Consider relevance of employee's role at time of offense

MMBA – When to Negotiate

- Obligation to negotiate, or “meet and confer,” generally arises when one of the parties:
 1. Makes a request to negotiate or
 2. When the agency wishes to change a matter within the scope of representation
- Statutory scope of representation: [A]ll matters relating to employment conditions and employer-employee relations, including, but not limited to, wages, hours and other terms and conditions of employment... (Govt. Code section 3504)

10. Injuries



Injuries

- Worker's Compensation
- Disability
 - FEHA's definition of physical and mental disability only requires a limitation on major life activities
 - ADA's language requires that disability "substantially limit" a major life activity

Questions?



Thank You!

James E. Oldendorph
Partner | Los Angeles

310.981.2095 |
joldendorph@lcwlegal.com
www.lcwlegal.com/people/james-oldendorph/

Joung H. Yim
Partner | Los Angeles

310.981.2036 |
[jiyim@lcwlegal.com](mailto:jyim@lcwlegal.com)
www.lcwlegal.com/people/joung-yim/



LIEBERT CASSIDY WHITMORE