



LIEBERT CASSIDY WHITMORE

6033 WEST CENTURY BOULEVARD,
5TH FLOOR
LOS ANGELES, CALIFORNIA 90045
T: (310) 981-2000
F: (310) 337-0837

135 MAIN STREET,
7TH FLOOR
SAN FRANCISCO, CALIFORNIA 94105
T: (415) 512-3000
F: (415) 856-0306

5250 NORTH PALM AVENUE,
SUITE 310
FRESNO, CALIFORNIA 93704
T: (559) 256-7800
F: (559) 449-4535

401 WEST "A" STREET,
SUITE 1675
SAN DIEGO, CALIFORNIA 92101
T: (619) 481-5900
F: (619) 446-0015

400 CAPITOL MALL
SUITE 1260
SACRAMENTO, CALIFORNIA 95814
T: (916) 584-7000
F: (916) 584-7083

LEAGUE OF CALIFORNIA CITIES FIRE CHIEFS LEADERSHIP SEMINAR

Legislative and Legal Update

12/11/2019

PRESENTED BY:

Morin I. Jacob

Legislative and Legal Update

League of California Cities Fire Chiefs
Leadership Seminar | December 11, 2019

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Significant Court Decisions

CPRA Requests: Constructive Possession



- Right to access privately held records does not establish Constructive Possession for a CPRA request.
 - *Anderson-Barker v. Superior Court (City of Los Angeles)* (2019) 31 Cal.App.5th 528.

CPRA Requests: Recovery of Costs



- Permits a public agency employer to recover, from the requestor of public records, the actual costs to the agency of redacting information from electronic records in response to a request for electronically stored public records.
 - *National Lawyers Guild v. City of Hayward* (2018) 27 Cal.App.5th 937 (Review granted by California Supreme Court, but case remains published in interim.)

CPRA Requests: Recovery of Costs



- County lawfully increased its fee for copies of records.
 - *California Public Records Research, Inc. v. County of Alameda* (2019) 934 F.3d 1089.

Labor Relations



- County violated MMBA by unilaterally amending rules regarding promotional opportunities.
 - *County of Orange*, PERB Decision No. 2663-M (2019).

Labor Relations



- Fire protection district violated MMBA when it denied represented employees longevity differential.
 - *United Chief Officers Association v. Contra Costa County Fire Protection District*, PERB Decision No. 2632-M (2019). [Judicial Appeal Pending]

Retirement



- Employee who settles a pending termination for cause and agrees not to seek reemployment is not eligible for disability retirement.
 - *Martinez v. Public Employees' Retirement System*, 33 Cal.App.5th 1156 (2019).

Disciplinary Proceedings



- Application of exclusionary rule in criminal proceeding did not require suppression of same evidence at administrative hearing.
 - *Ramirez v. State Personnel Board* (Cal. Ct. App., Feb. 27, 2019, No. C080298) 2019 WL 948970 (unpublished).

Disciplinary Proceeding



- Civil Service Commission abused its discretion by reducing deputy's punishment, because the Commission's decision to reduce punishment from discharge to a 30-day suspension was unsupported by its own factual findings.
 - *County of Los Angeles v. Civil Service Commission of the County of Los Angeles* (2019) 40 Cal.App.5th 871.

Administrative Appeal



- Sheriff's Sergeant not entitled to an administrative appeal for release from probationary promotion; release constituted a denial of promotion, rather than a demotion.
 - *Conger v. County of Los Angeles* (2019) 36 Cal.App.5th 262.

Rights of Privacy and Free Association: Limits on Discipline for Off-Duty Conduct



- Releasing probationary officer for off-duty, extramarital affair with a coworker could violate the Constitutional rights of privacy and free association.
- Reversed in 2019: held officers involved in probationary officer's termination were entitled to qualified immunity from her § 1983 action against for violation privacy and intimate association rights.
 - *Perez v. City of Roseville* (9th Cir.2018) 882 F.3d 843 was reversed by *Perez v. City of Roseville* (9th Cir. 2019) 926 F. 3d 511).

Legislative Update

SB 1300

FEHA Amendments



AMENDED: FEHA

- Adds Section 12923 to the Government Code
 - Dismantles the “severe or pervasive” standard;
 - Plaintiff need not show decline in “tangible productivity”, only must show altered working conditions under a “reasonable person” standard;
 - Any discriminatory remark may be relevant evidence of discrimination;
 - Legal standard for sexual harassment does not vary by type of workplace;
 - Harassment cases rarely appropriate for disposition on summary judgment.
- Prohibits an employer from requiring an employee to release a FEHA claim or sign a nondisparagement agreement, confidentiality agreement, or any other document denying the employee the right to disclose information about unlawful acts in the workplace, including sexual harassment in exchange for a bonus, raise, or continued employment
 - Employer may be responsible for all acts of harassment by nonemployees in the workplace, not only sexual harassment.

AB 9



- Complaints will now have three (3) years instead of one (1) year from alleged discrimination to file a claim with DFEH.
 - Government Code 12960, 12965

SB 820 Settlement Agreements



AMENDED: Code of Civil Procedure Section 1001

- Prohibits confidentiality clauses in settlement agreements entered into on or after January 1, 2019 that would limit the disclosure of factual information related to sexual assault, sexual harassment, or workplace harassment or discrimination based on sex.

AB 3109

Settlement Agreements



AMENDED: Code Section 1670.11

- Prohibits a contract or settlement agreement entered into on or after January 1, 2019 from limiting a party's right to testify in an administrative, legislative, or judicial proceeding concerning alleged criminal conduct or alleged sexual harassment on the part of the other party to the contract where the party has been required or requested to attend the proceeding.

AB 749



- New California law prohibits “no rehire” provisions in settlement agreements.
 - C.C.P. 1002.5 et seq

SB 1085

Paid Release Time



AMENDED: Government Code Section 3558.8

- Requires a public employers to grant reasonable leaves of absence without loss of compensation or other benefits for employees to serve as stewards or officers of the employee organization.
- Employee association/union is responsible for all compensation owed to the employee on leave unless agreed otherwise.

SB 188



- California workplace nondiscrimination laws amended to protect traits historically associated with race, including hair texture, braids, locks, and twists.
 - Senate Bill No. 188 (amending California Government Code section 12926)

Thank You!



Morin I. Jacob

Office Managing Partner | San Francisco

Phone: 415.512.3036 | mjacob@lcwlegal.com

www.lcwlegal.com/our-people/morin-jacob

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