LBAEE
February 2025 News

UPDATES

- Our Group C – Public Works Director Dillon O'Donohue took a position at a different City that prevents him from continue being part of the LBAEE Board. The Association is grateful for his invaluable service and wish him the best on his new endeavors.
- If you belong to the L.B Public Works Department this is your chance to have a crucial participation in the decisions that may affect the work conditions and benefits of your group. Reach back to us if you are interested in volunteering as Director of this group.
- LBAEE continued conversations with the City during the 2nd Phase of the Charter Amendment Meet and Confer.
- LBAEE reached an agreement with Harbor Department about an option of conversion for incumbents of the DCHE II classification.
- LBAEE started meeting with HIAC to review and plan for the 2026 Benefits Plan Year
- LBAEE has organized a workshop with Mission Square to learn more about 457 Retirement Savings Planning. Details and Link below.

Learning the Basics of 457 Retirement Savings Planning.

Join Mission Square via teams Thursday February 13th Noon to 1pm.

Join the meeting now

Meeting ID: 277 791 587 532

Passcode: uw2xd9ny

Social Security Benefits Restored for Government Workers!

President Biden signed important legislation into law on January 5, 2025, that restores full social security benefits for government workers. The Social Security Fairness Act eliminates the reduction of Social Security benefits for government workers by repealing two provisions of Social Security law known as the Government Pension Offset (GPO) and the Windfall Elimination Provisions (WEP). The GPO and WEP were both amendments to Social Security law that were signed into law by President Reagan in 1983. Now, about 400,000 California Social Security beneficiaries will be eligible for full benefits retroactive to January 1, 2024. President Biden said back benefits would come as a lump sum payment. Going forward, according to the nonpartisan Congressional Budget Office, beneficiaries could see an average of $360 to $1,190 more a month. This month, we look at how the new law affects California's local government employees and their families.

The Social Security Act of 1935. The Social Security Act of 1935 was signed into law by President Franklin D. Roosevelt on August 14, 1935. The law created the Social Security program, as well as unemployment insurance and financial assistance to single mothers. It was a major part of President Roosevelt's *New Deal*. The United States was one of the few industrialized countries without any national social security system. The Great Depression also reinforced the need for direct payments to older people, including retirees. Secretary of Labor, Francis Perkins, helped develop the plan, then known as the old-age program, which was funded by payroll taxes. It was successful and led to a dramatic decline in poverty among older people over the ensuing decades.

The initial law, however, excluded public employees, particularly state and local government employees, due to questions regarding the Federal government's authority to impose payroll taxes on state and local governments. In 1950, the Act was amended to allow state and local governments to voluntarily enroll employees in Social Security. In 1983, the Act was amended to require coverage for Federal employees hired after January 1, 1984. In 1990, through the Omnibus Budget Reconciliation Act, Social Security benefits were extended to state and local government employees, unless they were enrolled in a retirement plan that meets federal regulations requiring sufficiently generous benefits. Although extending Social Security benefits to local government employees was an improvement, two amendments to the Act signed by President Reagan in 1983 were not – the GPO and the WEP. These amendments reduced Social Security benefits, including

those beneficiaries who paid Social Security payroll taxes while working in the private sector before or after their public employment.

The Government Pension Offset (GPO). Social Security pays benefits to the spouse, widow, or widower of beneficiaries. Under the GPO, a beneficiary's spousal benefit may be reduced if the spouse is filing based on the beneficiary's Social Security record and not the spouse's own record. (*See SSA Publication No. 05-10007*). More than half a million spouses had their benefits reduced to zero due to the GPO. Almost all were women.

The spousal benefit was initially designed to compensate spouses who stayed home to raise a family and were financially dependent on the working spouse. Although it is more common today for both spouses to work continuously, each earning their own Social Security benefit, couples might still file for spousal benefits based on the spouse with higher earnings if the spousal benefit is higher than the spouse's own benefit. The GPO affected these spouses who received spousal benefits and not their own benefit. The GPO also made it less likely for a spouse to file for benefits based on the other spouse's higher earnings if that other spouse was a government worker affected by the GPO. Under the GPO, the spousal benefit is reduced by two-thirds of the beneficiary's government pension. For example, if the beneficiary gets a monthly pension check of $3,000, then two-thirds of that, or $2,000, is deducted from the spousal benefit. If two-thirds of the beneficiary's government pension is more than the spousal benefit, the spousal benefit is reduced to zero. This is particularly harmful for spouses who do not have much of an earnings record of their own.

The Windfall Elimination Provisions (WEP). Under the WEP, the beneficiary's own Social Security benefits were reduced if the beneficiary earned a pension from an employer who did not withhold Social Security taxes. (*See SSA Publication No. 05-10045*).

The WEP reduced Social Security benefits by up to 55%. As with the GPO, this provision reduced the beneficiary's Social Security benefit, not the beneficiary's pension amount. The WEP did not harm all retirees who received a government pension. For example, a beneficiary whose public employment was with an agency that paid Social Security taxes would not have been affected. However, a sizeable number of local government agencies in California still do not pay Social Security taxes. If a beneficiary worked at such an agency, the WEP reduced the beneficiary's Social Security payments. A beneficiary can check their pay stubs to see if Social Security (FICA) taxes were withheld if they are unsure.

The maximum reduction in benefits from the WEP was about $587 per month. It is on a sliding scale. If the beneficiary had 30 or more years of substantial earnings where the beneficiary paid Social Security taxes, the WEP probably did not apply. If the beneficiary had between 20-30 years of substantial earnings covered by Social Security, the WEP probably applied, but at a reduced level. If the beneficiary's Social Security payment was very minimal, the WEP may have caused a larger percentage to be withheld from the beneficiary's Social Security payments. Also, if the beneficiary took a lump sum payment of their pension contributions, Social Security still calculated and applied the WEP reduction as if the beneficiary had received monthly pension payments.

The Social Security Fairness Act. Initially introduced into Congress by former Senators Sherrod Brown (D-OH) and Bob Casey (D-PA), Congress included the law as part of a government funding bill that was approved at the end of the calendar year that was necessary to fund the government and keep it running. California's senators – Alex Padilla and Adam Schiff – voted for the Social Security Fairness Act. The new law repealed the GPO and WEP, meaning that government workers, retirees, and their spouses will now receive full benefits based on what they earned without any reductions or offsets.

The nonpartisan Congressional Research Service estimates that about 300,000 California public employees, mostly retired workers, will benefit by the repeal of the WEP. They could get an extra $360 per month, according to the Congressional Budget Office. That's roughly the amount most retirees see reduced from their Social Security benefits because they also receive a pension from a government job during which they did not pay Social Security taxes. About 100,000 California spouses will benefit from the repeal of the GPO. Spouses will receive an additional average monthly benefit of $700, with some surviving spouses getting up to $1,190 a month. Some beneficiaries may have had their benefits reduced by the WEP *and* their spousal benefit reduced by the GPO. Both will be restored.

What Happens Next? Beneficiaries do not need to take any action, though they should make sure Social Security has their current mailing address and direct deposit information. The new law still needs to be fully implemented, but it is retroactive to January 1, 2024. Beneficiaries who have questions about their Social Security benefits can visit the Social Security Administration's website (www.ssa.gov/myaccount) or call (800) 772-1213. If a beneficiary is unable to resolve the issue at the Social Security field office, they may contact the San Francisco Social Security Administration Public Affairs team or the California Official State Social Security Administrator (SSSA) office by email or

call (916) 795-0810. The SSSA serves as a liaison with the Social Security Administration to address coverage-related issues and questions.

The new law does not have a dedicated funding source separate from the Social Security Trust Fund and ongoing payroll taxes the fund collects. According to the 2024 annual report from the Social Security Board of Trustees, the Social Security Trust Funds are not projected to run out of money until 2035 (the Act's 100-year anniversary!), and that is assuming no action is taken by Congress to shore up the program. Even if the Trust Fund is depleted, the latest Trustees' report says that ongoing payroll taxes are enough to pay 83% of Social Security benefits, starting in 2035, gradually declining to about 73% of Social Security benefits in 2098. A future Congress will likely address any funding shortfalls. For example, Congress can raise the payroll tax rate (currently 6.2%) on employers and/or employees. Congress could also eliminate the tax cap and collect payroll taxes on those who make a higher wage. Currently, wages over $176,100 are not taxed. Another option would be to use general tax revenue. It is not necessary to reduce Social Security benefits to address funding shortfalls. When legislation to reduce Social Security benefits has been proposed, it has primarily focused more on changing how cost of living adjustments are calculated rather than reducing current Social Security benefit payments.

Conclusion. This law ends the unfairness of reducing benefits for government workers and puts all beneficiaries on the same playing field. Government workers will now receive the benefits they earned, finally ending 40 years of unfair reductions!

News Release - CPI Data!

The U.S. Department of Labor, Bureau of Labor Statistics, publishes monthly consumer price index figures that look back over a rolling 12-month period to measure inflation.

2.9% - CPI for All Urban Consumers (CPI-U) Nationally

2.5% - CPI-U for the West Region

3.4% - CPI-U for the Los Angeles Area

2.4% - CPI-U for San Francisco Bay Area

1.1% - CPI-U for the Riverside Area (from November)

2.6% - CPI-U for San Diego Area (from November)

Questions & Answers about Your Job

Each month we receive dozens of questions about your rights on the job. The following are some GENERAL answers. If you have a specific problem, talk to your professional staff.

Question: Can the employer require me to use my own paid leave to cover unpaid time during my bereavement leave? Can I take those days unpaid?

Answer: Many employers have bereavement leave policies in the MOU or the personnel rules that provide for paid bereavement leave. If an employee needs additional time, or the leave falls outside the parameters of paid bereavement leave, some policies may allow an employee to use their own paid leave to cover any unpaid time during bereavement. This is to avoid going into an unpaid status, which may affect other benefits, such as leave accruals, medical insurance, retirement service credit, *etc*. It is usually in your best interest to avoid unpaid status. It is important to consider any potential repercussions before requesting that the days go unpaid. If the employer has a policy that requires an employee to use their own paid leave before going unpaid, it is important to comply with that policy.

If the MOU or policy does not address the issue, the law can provide some additional clarity. AB 1949, signed by Governor Newsom on September 29, 2022, provides up to five days of bereavement leave upon the death of a family member. (*Gov't Code* §12945.7). The law says bereavement leave shall be taken pursuant to any existing bereavement leave policy of the employer. (*Gov't Code* §12945.7(e)(1)). The law says an employee "may" use vacation, personal leave, sick leave, or compensatory time if (1) there is no policy, (2) if the policy provides less than five days of paid bereavement leave, or (3) if the policy provides less than five days of unpaid bereavement leave. (*Gov't Code* §12945.7(e)(2-4)). The law also says bereavement leave "may" be unpaid if the employee does not elect to use their own paid leave. (*Id.*) Therefore, the employer should not require that you use your own paid leave to cover any unpaid leave during your bereavement leave, unless the employer's policy or the MOU says so. Check with your professional staff if you have questions about how any existing policy or MOU provision applies to your situation.

Question: I am concerned about a potential conflict when investigations occur because HR is under the Administrative Director. From my understanding, when an investigation occurs, the Administrative Director and HR conduct the investigation. Since HR is under this Director, I feel they will not conduct an unbiased or fair investigation. Is there anything that can be done about this?

Answer: No, unfortunately management has the right to decide how to set up their organizational structure. This is a very typical structure these days. If you go back far enough in time, in some institutions, HR was set up to be truly independent. Its role was neither to protect the worker nor to defend management. Those days are mostly gone. Today, HR is more likely to function as "risk management," which is just another function of management or administrative services.

If a particular investigation is unfair or biased, there are options. For example, if an employee feels there is a conflict of interest, they can raise this concern through the chain of command or report it to the City Manager or the General Manager. In other instances, they may be able to file a grievance (*e.g.,* if an investigation is not conducted in accordance with the employer's policies) or successfully defend against proposed disciplinary action (*e.g.,* if the investigation was biased or mishandled). Under equal employment opportunity laws, an employer is required to launch an unbiased investigation after receiving a complaint of harassment, discrimination, or retaliation. Contact your professional staff about any improper investigation. They can help you decide on the best course of action.

Question: I'm an exempt employee and I was told I could not move my lunch to the end of the day to accommodate an early out for doctors' appointments. When asked about flexing our time to accommodate the time off, my director did not know of this practice. I often work late and do numerous events on weekends. I do not abuse the time. I put in the standard number of hours or more. We have been flexing time for as long as I have been here. Do I have the right to flex my time? Does the employer have the right to insist that I use my paid leave to cover partial day absences in lieu of flexing?

Answer: Flexing is a common benefit for those employees who are exempt from overtime under the Fair Labor Standards

Act (FLSA). Some employers have a flex-time policy that allows employees to leave early or come in late if they must work after hours. Check to see if the flex-time policy is written down, and if so, see what it says. Policies typically allow for flexing under certain circumstances, with Director approval. If your situation falls under one of these circumstances, and your Director approves, you should be able to flex your time. If the policy is not written down anywhere, consider proposing specific language in the next MOU negotiation. Keep in mind the employer cannot change an existing policy without first providing notice to your employee organization and an opportunity to negotiate before making the change. Contact your employee organization to see if this is something that has been negotiated. In some cases, the employer might not be changing the policy, but is simply exercising discretion under the policy, which does not require notice or an opportunity to negotiate first. Also, some MOUs provide an annual amount of administrative leave to compensate for the extra time exempt employees may be required to work.

As for moving lunch periods, your employer can deny those requests. Employers routinely do so for operational reasons. If you need to leave early for a doctor's appointment, you have the right to use your own sick leave in accordance with the employer's sick leave policy. Policies usually require advance notice for planned absences (like a doctor's appointment) and require you to use your own accrued sick leave to cover the time you are absent from work. A flex time policy likely won't change that. In short, the employer can insist that you use your paid leave to cover partial day absences in lieu of flexing for planned medical appointments.

Question: Two months ago, I was verbally counseled by my direct supervisor. I was under the impression that the verbal counseling was the extent of the matter. The situation was not brought up again. Yesterday, I was given a written reprimand regarding the same matter that I was verbally counseled about two months ago. I was told that I do not have the right to appeal a written reprimand, but I may submit a rebuttal within ten days of receipt of the written reprimand for inclusion in my personnel file along with the reprimand. Can management give me a verbal counseling *and* a written reprimand for the same matter? Is my only recourse to submit a rebuttal?

Answer: It is common for an employer to issue verbal counseling and then later follow up with a written document memorializing the counseling that was issued. Check to see if the written reprimand you received was a memorialization of the initial counseling. If not, you should not receive two levels of discipline (a verbal counseling and a written reprimand) for the same offense. Also check to see if the written reprimand identifies anything additional that occurred since you received the initial verbal counseling. If the employer gave verbal counseling at the time of an incident, but after further investigation, learned additional facts or had additional discussions with the chain of command that might justify a more severe punishment, the employer may have grounds to issue a reprimand instead.

Absent unusual circumstances, though, you should not later receive more severe discipline than what you had initially received. Also, check your MOU. It likely includes language on progressive discipline. Progressive discipline typically means the employer should start with lower discipline (counseling notices or reprimands) for the first offense and gradually escalate the penalty for future offenses. The reason for this is because discipline is intended to be corrective, not punitive. This especially applies to performance issues. Progressive discipline might not apply for some types of misconduct (theft, dishonesty). The level of discipline may be commensurate with the severity of the offense. The MOU or discipline policy should also identify what recourse you have. You might be able to challenge this under the discipline or grievance procedure. You may also have the right to have either the initial verbal counseling notice or the written reprimand removed from your file. State law does not require an evidentiary hearing for minor discipline (a counseling notice or reprimand), but you can submit a rebuttal. Clearly state in the rebuttal that you received two levels of punishment for the same offense. If you later receive major discipline for a future offense, and the employer relies on these notices to support a more severe punishment, you will preserve your ability to argue the verbal and written notices are for the same infraction. In addition to the ten-day time limit to submit a rebuttal, most discipline or grievance procedures provide short time frames to challenge the action, so pay attention to deadlines.

Question: Is there a certain point at which, after working consecutive hours in a day, overtime becomes double time? If after working consecutive days in a row, is time worked automatically overtime, even if it is regular hours worked? For example, if I were working Monday – Friday one week, but also had to work on Sunday for something out of the ordinary, are my Friday hours overtime instead of straight time?

Answer: For private sector employees, California law says any work in excess of twelve hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee (*Labor Code Section 510(a)*). Unfortunately, that section – and state overtime law more generally – does not apply to local government employees. The Federal Fair Labor Standards Act (FLSA) does apply, but it does not provide a double-time rate. The FLSA also does not categorize time differently based on which hours are part of the regular shift, and which are outside normal work hours. The FLSA simply requires that time worked over forty hours in a workweek be paid at time-and-one-half the regular rate of pay. The FLSA allows the employer to define the workweek, which does not have to coincide with work schedules. For a traditional work schedule (eight-hour days, Monday through Friday), most employers set the FLSA workweek at 12 am on Sunday to midnight the following Saturday. In your example, this might mean the Friday hours are paid at the overtime rate. However, for those on a 9/80 alternate work schedule, the employer almost always sets the FLSA workweek at 12 noon on Friday to 12 noon the following Friday (or whatever the regular day off – RDO day – is), so that forty hours are worked each week, rather than 36 one week and 44 the next, which would require four hours at the FLSA overtime rate every other week. In your example, this might mean some of the Thursday hours are paid at time-and-one-half, depending on how many hours were worked the previous Sunday.