LBAEE
Monthly Newsletter
April 2025 News

UPDATES

- LBAEE continued conversations with the City during the 2nd Phase of the Charter Amendment Meet and Confer.
- LBAEE reached an agreement regarding the Code Enforcement – Inspector Safety Policy.
- LBAEE reached an agreement regarding 6-minute rounding policy.
- LBAEE reached an agreement to implement Paid Admin Leave pending certain workplace investigations
- LBAEE reached an agreement to represent Engineering Interns and Retired Annuitants.
- LBAEE resume conversations with the City regarding implementation of Enterprise Specific Classifications.
- If you belong to the L.B Public Works Department you could 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.

You are invited to our

ENGINEERING EMPLOYEES MIXER

THURSDAY, APRIL 24, 6-8 PM

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Layoff Protections for Local Government Workers

Lately, there has been extensive news coverage of layoffs in the Federal government. On February 11, President Trump signed an executive order implementing the President's "Department of Government Efficiency (DOGE) Workforce Optimization Initiative." The order directed Federal agencies to enact large-scale reductions in force (RIFs). RIF is synonymous with the term layoff. President Trump also directed Federal agencies to develop reorganization plans (also synonymous with layoffs) no later than March 13, 2025. The administration offered buyouts to some Federal government employees, and separated employment for at-will or probationary employees in the Federal workforce.

Federal workers are not alone. The State of California, facing a significant budget deficit, eliminated 6,500 vacant government jobs. The state said eliminating the vacancies saved $1.2 billion of the state's $322 billion budget. This was just one of the tools the administration was pursuing to save money. The state estimates it will save $2 billion in operating expenses after directing departments to cut 8% of their operating budgets.

On March 19, the City of Los Angeles announced a $1 billion budget shortfall in next year's budget, making layoffs "nearly inevitable," at least according to the City's top budget official. City management advised the City Council about reducing the size of the workforce to balance the budget. "We're not looking at dozens or even hundreds of layoffs, but thousands," the City's top budget official said. Mayor Karen Bass issued a statement during the council's deliberations, saying her upcoming budget will seek "fundamental change" to city operations. "We must leave no stone unturned. We must consider no program or department too precious to consider for reductions or reorganization," Bass said. Pay raises for city employees are scheduled to take effect in the upcoming budget year and are expected to add $250 million to the shortfall.

Federal, state, county, and city employees are not alone. School districts, including the University of California, are initiating RIFs due in part to funding cuts from both the state and the Federal government. President Trump signed an executive order on March 20, in an attempt to abolish the U.S. Department of Education. In addition to the current challenges facing school districts – particularly declining enrollment in some communities

– the reductions at the state and Federal level will likely mean a significant reduction in funding, which is a significant share of the overall revenue for local school districts.

The flurry of negative headlines has left many local government employees concerned about their rights should layoffs become necessary in their agency. This month, we look at the layoff protections that are available for local government employees.

Reasons for Layoffs: Layoffs can be a method of addressing cash shortages, but this should be seen as a last resort. The employer may implement layoffs for various reasons, such as budget constraints, workload reductions, organizational restructuring, technological advancements, operational adjustments, or changes to services or activities. Under California Government Code §45100, where a reduction in personnel is necessary for economic reasons, the employer shall observe the seniority rule in putting the reduction into effect. Section 45100 is an old law and there are no published court decisions enforcing it. Section 45100 likely applies only to general law cities. Regardless, it is a starting point for discussions between the employee organization and the employer about the reason for the layoffs and whether the seniority rule will be observed in identifying the individuals who will be affected. The goal should be to protect as many jobs as possible while continuing to provide services. Layoffs for economic reasons typically affect the entirety of the employer's labor force, not just a specific group of employees or departments. Layoffs for lack of work or due to a reorganization typically affect a specific division (*e.g.,* in 2012, when the state eliminated local redevelopment agencies). How layoffs are implemented, including whether any affected employees will be absorbed elsewhere in the workforce, will depend on the negotiated layoff procedure and the reason for layoffs.

Initial Cost-Savings Measures: Before implementing deep personnel cuts, agencies should implement other cost-savings measures first. These include a hiring freeze; eliminating non-permanent staff, such as contractors or seasonal help; reducing training, travel, and other discretionary expenses; deferring capital improvement projects and other investment in equipment, facilities, and supplies; and using reserves. To the extent that further cuts are necessary, cost savings should come from all levels of the organization, starting at the top. Everyone should contribute if reducing costs is necessary.

Furloughs: Furloughs are one way to address both the cash-flow and budget problems. During the Great Recession, most agencies implemented furloughs as a cost-savings measure. In general, most employees prefer furloughs over layoffs, especially during an economic crisis. Furloughs are also preferable to pay or benefit cuts because they include a reduction in hours along with any pay reduction. They are also usually temporary. At some point, furloughs end, and employees go back to a regular 40-hour workweek. But the employer must first negotiate over the implementation of furloughs and its effects, such as how many furlough days will be taken in a pay period and how long furloughs will continue. In *City of Long Beach* (2012) PERB Decision No. 2296-M, at 23, PERB held that the City did not have the right to unilaterally implement furloughs since the motivation was labor cost savings, not the quality, nature or level of service provided to the public.

MOU & Local Rules: The first place to look for protection if layoffs become necessary are your local rules. This includes your union contract (MOU), personnel rules and policies, and civil service rules, if applicable. Most employees represented by an employee organization are covered by a layoff policy. This may require the employer to grant employees specific protections like notice, seniority, transfer to vacant positions, bumping, and severance. The rules may also require that other cost savings measures be implemented first, like eliminating vacancies, contractors, probationary, and/or temporary employees before eliminating permanent employees.

If the layoff is for economic reasons, the employer will have likely eliminated vacancies prior to implementing layoffs. The big question then becomes whether the local rules allow an employee who was selected for layoff to "bump" another employee in an equal or lower job classification that has less seniority. The language should specify how seniority is treated. For example, in some instances, seniority is defined as date of hire as a full-time employee. In other instances, seniority is defined as time worked in that job classification. If seniority is narrowly defined, the ability to bump or displace other employees who were hired later will be more limited. However, if seniority is broadly defined, an affected employee may be able to displace an employee in another department in the same or lower classification, even a classification the employee never held before, as long as the affected employee meets the minimum qualifications for the position they are bumping into.

The Role of Your Employee Organization: The employee organization is typically the best protection in the unfortunate event that layoffs become necessary. The employee

organization can help provide resources, such as representation, to any employees who are affected. The employee organization can also ensure the employer follows the MOU, policies, and rules, such as those concerning layoffs. Finally, the employee organization can negotiate with the employer and file an unfair practice charge with PERB (Public Employment Relations Board) if the employer refuses to negotiate or follow its rules.

Under state bargaining law, the employer cannot change the terms and conditions of employment of represented employees without providing the employee organization with prior notice and an opportunity to meet and confer about the changes. The right to implement layoffs is typically a management right. The employee organization cannot generally negotiate over the decision to implement layoffs. However, the employee organization can negotiate over the impact/effects of the layoffs. This not only includes how the layoffs will be conducted (particularly if the MOU, policies, or rules are silent or ambiguous), but also the impact the layoffs will have on the remaining workforce. This can include topics like how the extra work or services will be performed by the workers who remain, and if there will be additional compensation for performing extra duties.

In a legal challenge arising out of the Great Recession, the California Supreme Court said:

> Under the MMBA, a local public entity that is faced with a decline in revenues or other financial adversity may unilaterally decide to lay off some of its employees to reduce its labor costs. In this situation, a public employer must, however, give its employees an opportunity to bargain over the implementation of the decision, including the number of employees to be laid off, and the timing of the layoffs, as well as the effects of the layoffs on the workload and safety of the remaining employees.

Int'l Assn of Fire-Fighters v. PERB (2011) 51 Cal. 4th 259, 277. The employer must give employee organizations timely notice and a reasonable opportunity to negotiate the effects of the layoff decision. Bargaining is required even if the impacts may be speculative and the full extent of the layoff uncertain at the time of bargaining. *Newark Unified School District* (1982) PERB Dec. No. 225 at p 5. Negotiable effects may include recall and reemployment rights, order of layoff (including seniority), distribution of workload among remaining employees, retraining for laid-off employees, bumping rights, benefits for laid-off employees (medical premiums or pay for unused sick leave), severance pay, reorganizing or reclassifying positions because of layoff, and workload or safety of remaining workers.

In some instances, the decision itself may be negotiable. If there is a no-layoff clause in the MOU, the employer must negotiate the clause out of the contract before it can implement layoffs. Also, if the reason for the layoffs is to save labor costs by transferring work outside the bargaining unit, the decision itself is negotiable. *Indio Police Command Unit Assn v. City of Indio* (2014) 230 Cal. App. 4th 521, 535-540.

In most cases, if the employer is initiating layoffs, it will begin by providing notice, not just to the affected employees, but also to the employee organization. The employee organization can meet with the employer and discuss the reasons for the layoffs and propose alternatives. This may be appropriate where layoffs are for economic reasons. The MOU is an enforceable contract. This means the employer cannot open the MOU and change the terms while the MOU is in effect without the employee organization's consent. An employer may agree to concessions – such as a furlough, deferral of pay or benefit increases, freezing leave cash-outs or tuition reimbursement, and temporarily freezing step increases or suspending contributions to the 457 or 401(a) retirement plan – to prevent or mitigate any job losses. Any agreement should be reduced to writing with a specific date as to when reductions will be restored. The concessions should be limited to no longer than necessary to get through the fiscal crisis, and there should be regular updates to identify any progress towards pre-set targets.

The employee organization's bargaining rights also include the right to make information requests. This includes financial data, such as any cost savings figures the employer needs to realize to avoid layoffs, or the cost of any alternative proposals made by the employee organization or the employer. The employer's refusal to provide relevant information could serve as basis for an unfair practice charge with PERB, the state agency tasked with overseeing enforcement of the state's bargaining laws.

Filing with PERB may not result in an immediate remedy. PERB claims can take months or years to resolve. However, PERB has jurisdiction to award remedies such as back pay and reinstatement in appropriate cases. PERB can also order the employer to bargain with the employee organization or provide responsive information.

If the parties reach a bargaining impasse, the employee organization can file for factfinding under state law. Under Government Code §3505.4, the employee organization may request that the parties' differences be submitted to a fact-finding panel. The panel shall, within ten days after its appointment, meet with the parties and

make inquiries and investigations, hold hearings, and take any other steps it deems appropriate. The panel can issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence. Under Government Code §3505.5, if the dispute is not settled within 30 days after the appointment of the panel, the factfinders shall submit, in writing, any findings of fact and recommended terms of settlement to the parties before they are made available to the public. The public agency shall make these findings and recommendations publicly available within ten days of their receipt.

"Emergency Exception" to Bargaining: In times of financial distress, the employer will want to move quickly to avoid insolvency. The employer may even declare a fiscal emergency. In the Great Recession, a state employees' union sued then-Governor Schwarzenegger when he declared a fiscal emergency because of the state's budget deficit and cash-flow crisis. Without notifying or bargaining with the unions, he issued an executive order imposing furloughs. Several unions challenged the Governor's actions and won. The California Supreme Court held that the state constitution did not allow him to unilaterally furlough represented employees. Even in a fiscal crisis, the power to alter wages or other terms and conditions of employment was governed by statute. *Professional Engineers in California Government v. Schwarzenegger* (2010) 50 Cal.4th 989.

The law provides a limited "emergency exception" to bargaining. Government Code §3504.5 allows a public agency to unilaterally adopt a rule or regulation without prior notice so long as the employee association is given notice and an opportunity to meet and confer at the earliest practicable time thereafter. The agency has discretionary power to declare an emergency. The burden is on the party challenging the use of the emergency power to show an abuse of discretion (a high legal threshold to satisfy). Any facts set forth in the emergency declaration are evidence of an emergency. *Sonoma County Organization etc. Employees v. County of Sonoma* (1992) 1 Cal. App. 4th 267, 274-279. In the Sonoma County case, the County declared an emergency after employees went on unpredictable rolling sickouts and strikes occurring on a sporadic and erratic basis, which the County said impaired operations because department heads had no clue who, if anyone, would show up for work each day. Pursuant to an emergency order, the County let department heads place employees who participated in intermittent work stoppages on unpaid administrative leave. The unions sued, but the County's actions were upheld. PERB now has greater authority than it did at the time of this decision.

In *San Francisco Community College District* (1979) PERB Decision No. 105, a prior case under a different state bargaining law, PERB took a narrow view of the emergency exception. The district declared a fiscal emergency in 1978 when Proposition 13 took effect and unilaterally withheld step increases and postponed sabbaticals. PERB said the district could not rely on the emergency declaration to circumvent prior bargaining. PERB said the duty imposed by law is simple but unconditional – the duty to meet and confer in good faith on matters within the scope of representation. Uncertainty about the financial effects of Proposition 13 did not allow the district to act unilaterally.

Levine Hearing: Employees who feel they were targeted for layoff may have rights to a *Levine* hearing. In *Levine v. City of Alameda* (2008) 525 F.3d 904, a Federal appellate court held that an employee who was selected for layoff was entitled to procedural due process, including a full evidentiary hearing before a neutral third-party. The City Manager told the employee, Mr. Levine, that he was going to be laid off. Mr. Levine wrote a letter to the City Manager requesting a pretermination hearing regarding his layoff. Mr. Levine believed that the layoff was a pretext and that he was being terminated because the City Manager disliked him. The HR Director wrote a letter back to Mr. Levine, saying he was not entitled to a pretermination hearing under his union contract because he was being laid off and not discharged for cause.

The court found that Mr. Levine was a civil servant who had a protected property interest in his job. According to the court, under the Due Process clause, Mr. Levine was entitled to a hearing before his layoff to allow him to present his side of the story. The court found that the City failed to give him a meaningful opportunity to respond to the layoff decision. As a remedy, the court said that Mr. Levine was entitled to a full post-termination hearing because there was no way to give him the process that he had been due, which was the opportunity to respond before the termination occurred. The court further held that the hearing must be before a neutral third-party, citing precedent that post-termination hearings require an impartial decisionmaker. The court said that people working for the City would not be sufficiently neutral in this case after the extensive litigation.

During the Great Recession, many agencies implemented layoffs. Some employers lacked a seniority rule and instead chose employees for layoffs based on management's evaluation of performance or the employer's need for retained skills and capabilities. Many employees argued the layoffs were pretext to lay off workers for improper reasons (*e.g.,* poor performance, disability, or age). Employees who made these claims were often

granted an evidentiary hearing consistent with the disciplinary procedure. In some instances, this meant arbitration, civil service, or an outside hearing officer.

The *Levine* case did not draw a distinction between layoffs for economic reasons and layoffs due to reorganization, contracting out, or discontinuation of services. If the employer does not observe the seniority rule in implementing layoffs, particularly when layoffs are necessary for economic reasons, there is a good chance an affected employee has the right to request a full evidentiary hearing to challenge the real reason for why they were selected for layoff.

Conclusion: If you hear your employer is contemplating layoffs, contact your employee organization for assistance. If you are concerned about the potential impacts of future layoffs, consult your MOU and local rules. Your bargaining committee may consider improving layoff language during the next MOU negotiation if the membership is concerned about a reduction in force.

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.

2.8% - CPI for All Urban Consumers (CPI-U) Nationally

2.6% - CPI-U for the West Region

3.1% - CPI-U for the Los Angeles Area

2.7% - CPI-U for San Francisco Bay Area

2.9% - CPI-U for the Riverside Area (from January)

3.8% - CPI-U for San Diego Area (from January)

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 limit my use of sick leave to partial day increments? I took sick leave for the day to take my wife to her medical appointment. It was an hour, plus thirty minutes of driving each way. I put in for a full day of sick leave. The employer is now saying that I can only use two hours of sick leave, and I must use the balance of the day from my vacation. Is this permissible? Shouldn't the employee get to decide how much sick time to use for a sick-related absence?

Answer: Yes, the employee can determine how much sick time to take. Under the state sick leave law, Labor Code §246(k), "[a]n employee may determine how much paid sick leave they need to use, provided that an employer may set a reasonable minimum increment, not to exceed two hours, for the use of paid sick leave." In your case, the employer can require you to use a minimum of two hours of sick leave, but you can decide if you want to use more sick time to cover a whole day absence. Keep in mind, any sick time you choose to use must be for a sick-related purpose.

Question: In a recent staff meeting, our director spoke about how many (it was a percentage – and a big one) of employees in our department are over 50, over 60 and even over 70 years old. I felt the conversation was a bit off-putting. I think it was meant in the spirit of discussing succession planning, but I felt targeted as someone over 60. Is this appropriate for the workplace? Is there anything I can do about it?

Answer: This is not an appropriate conversation for a staff meeting. If the employer is interested in succession planning, it should handle the topic another way. It is against state and Federal law for the employer to harass, discriminate, or retaliate against employees because of their age (over 40). This is particularly concerning because the discriminatory statements were made by a management-level employee with the power and ability to affect personnel decisions.

An employee who is offended by the statements can file an equal employment opportunity (EEO) complaint with the employer's Human Resources Department. If a complaint is filed, or the

employer is made aware of the inappropriate statements by its supervisors or management, the employer must investigate and take appropriate remedial action. That may mean disciplinary action, or additional harassment training, for anyone found to have made discriminatory statements.

Employees should keep notes of any other inappropriate statements and report them to HR or the investigator. If the employer does not investigate or remedy the harassment, an employee may consider filing a charge of discrimination with the Federal Equal Employment Opportunity Commission (EEOC) or state Civil Rights Department.

Question: Management instructed us that our leave requests will be denied if we are not caught up on our work assignments. There is nothing in our MOU or personnel rules that allow for that. Can Management deny me the right to use my own leave time like that? We are so understaffed. Work is never ending. We will never completely catch up on our assignments. Please advise.

Answer: Management has the discretion to approve or deny vacation or annual leave requests. Staffing and workload considerations are valid reasons for doing so, but management cannot create a new rule on paid leave usage without first providing notice and an opportunity to meet and confer with your employee organization. It sounds as though management has created a new policy that leave requests are automatically denied if employees are behind on work. If there is nothing written in your MOU or personnel rules, and it is not an established past practice, then management cannot create this new rule without first notifying your Association.

Your supervisor cannot deny your right to use accrued and available sick leave for sick leave purposes if you give notice according to the law, established department policy, or MOU. This right does not hinge on workload issues. If you follow the prescribed procedure for notice, such as calling in before a shift or notifying in advance for scheduled appointments, sick leave must be provided. While supervisors may appreciate advance notice for scheduling, workload alone is not a ground to deny the use of sick leave.

If your leave requests are repeatedly denied over an extended period, or you are denied your right to use sick leave, contact your professional staff for assistance with filing a grievance.