

LBAEE

December 2024 News

AEE UPDATES

- LBAEE wish our members a very Happy Holiday season and a peaceful and prosperous New Year.
- LBAEE is discussing with the City the reactivation of the Floor Warden program, which will revise the associated Floor Warden policy and provide a skill pay to City employees performing the duties and trainings as a Floor Warden.
- LBAEE discussed with the City the digitalization of the Collateral Employment Business Activity Authorization process.
- The City sent notice regarding Reproductive Loss Leave protection for employees. Under a new bill, an employee can receive up to five (5) days of unpaid leave based on reproductive loss and up to twenty (20) days within a twelve (12) month period.
- LBAEE and the City started the 2nd Phase of the Charter Amendment Meet and Confer process after Measure JB passed by a 61.93% margin in the past elections. LBAEE plans to watch carefully and oppose any foreseeable negative impacts to our members.

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Artificial Intelligence

On November 30, 2022, OpenAI launched ChatGPT, a generative artificial intelligence (AI) chatbot based on an open-source large language model. Technology disrupting the workplace is not new. However, the AI craze has reinvigorated new speculation that generative AI may replace human labor in the not-so-distant future.

During the summer of 2023, work stoppages in the entertainment industry involved disputes about AI and ChatGPT replacing workers, particularly writers. In the fall of 2023, Aura, one of the world's most advanced humanoid robots, began greeting and interacting with guests in the atrium at Sphere Las Vegas. In the fall of 2024, the Intuit Dome opened in Inglewood, using facial recognition and a smartphone app for entry. It also uses AiFi (an AI-powered shopping platform) to allow individuals to enter a food or merchandise market, take any item off the shelf, and walk out instantly, getting charged for what is taken without standing in line or getting out a credit card. Other stadiums and event spaces now use similar technology. The technology may soon be used in grocery stores, convenience stores, and shopping malls. All this leads to a diminishing workforce.

The dystopian future is here. Public sector workers have already started seeing AI used as a tool in their workplace in various ways. This month, we look at how AI may impact public sector workers and what public employee organizations can do to protect their members.

What is Generative AI: According to ChatGPT (who better to ask), generative AI refers to a type of AI that can create content such as text, images, or even computer code, by learning patterns from large datasets. Unlike traditional AI, which focuses on recognizing patterns and making predictions, generative AI is designed to generate new, original outputs based on what it has learned. It works through models like neural networks, particularly deep learning techniques, which are trained on vast amounts of data to understand the relationships within it. Examples of AI generated content already include text, images, voices, music, and computer code.

Recent Legislation in Response to the AI Boom: This fall, Governor Newsom signed several pieces of legislation in response to the AI boom. This includes:

- **AB 1836** – Protects the voice and likeness rights of deceased performers.
- **AB 2355** – Requires electoral advertisements using AI-generated or substantially altered content to disclose that the material has been altered. Authorizes the Fair Political Practices Commission to enforce violations by seeking injunctive relief.
- **AB 2602** – Requires informed consent before using a performer’s digital replica.
- **AB 2655** – Requires large online platforms to remove or label deceptive and digitally altered or created content related to elections and requires them to provide mechanisms to report such content. Authorizes injunctive relief against a large online platform for noncompliance. The legislation attempts to curtail the use of “deepfakes” that pose a risk to our elections and democracy.
- **AB 2839** – Expands the time prohibiting a committee or other entity from knowingly distributing an advertisement or other election material containing deceptive AI-generated or manipulated content.
- **SB 926** – Prohibits creating and distributing sexually explicit images of a person that appear authentic, when intended to cause that person emotional distress. Attempts to curtail the use of sexually explicit deepfakes.
- **SB 942** – Requires widely-used generative AI systems to include disclosures in the content they generate to ensure transparency and accountability in the creation and dissemination of digital content.
- **SB 981** – Requires social media platforms to establish a mechanism for users to report sexually explicit deepfakes and, once reported, to temporarily block the content while the platform investigates and, if confirmed, remove the deepfakes.

Governor Newsom also vetoed Senate Bill 1047, which would have required developers of large AI models and those providing the computing power to train such models to put certain safeguards and policies in place to prevent catastrophic harm and establish a state board to oversee the development of these models. Governor Newsom vetoed the bill because it focused only on the most expensive and large-scale models. According to his veto message, the bill “could give the public a false sense of security about controlling this fast-moving technology. Smaller, specialized models may emerge as equally or even more dangerous than the models targeted by SB 1047 – at the potential expense of curtailing the very innovation that fuels advancement in favor of the public good.” Governor Newsom said “the bill applies stringent standards to even the most basic

functions – so long as a large system deploys it. I do not believe this is the best approach to protecting the public from real threats posed by the technology.”

Will AI Replace Public Sector Workers? The short answer is no. Robots and AI will not likely replace or reduce the need for human labor in the public sector anytime soon. Public sector employees are essential workers who perform vital public services, as we were all reminded during the pandemic. Although the recent pace of technological development with AI has been extraordinary, we are a long way away from technology or robots fully replacing permanent full-time public sector workers. Existing technology simply cannot perform the skilled and demanding work that maintenance crews, water operators, building inspectors, engineers, accountants, investigators, analysts, IT staff, public safety staff, or other work which public employees perform every day.

Even the chatbots agree. We gave Chat GPT several prompts, and the responses were all similar. According to Chat GPT, although AI is rapidly expanding and transforming the nature of work, including in the public sector, a full-scale replacement of jobs is unlikely to occur anytime soon. Instead, AI is expected to automate certain tasks or streamline workflows to allow public sector employees to spend more of their time focused on the tasks that require human skill, judgment, and empathy.

However, employees in job classifications that perform primarily administrative work, data analysis, customer service, or drafting or reviewing a lot of reports may begin seeing AI affect their work sooner than jobs that require more physical labor, that operate heavy equipment, or that require specialized education or certification. For example, AI might help with drafting summaries of documents, data entry, scheduling, analyzing large datasets, or communicating general information about public services to residents.

In any event, the employer cannot remove work from the bargaining unit without negotiating with the employee organization. This is similar to the contracting out of bargaining-unit work, and it does not become less so just because the work is assigned to a robot instead of a human. The employee organization can use the negotiation process to help keep the work in the unit, and to keep bargaining unit employees performing the work to the greatest extent possible. If AI were to ever fully replace a worker, the employer would still need to follow the negotiated layoff process, which may include advanced notice, the right to displace other workers or be reassigned to a vacancy if

qualified, severance pay, and negotiation with the employee organization over how any remaining duties will be performed and by who.

How Might AI Affect Public Sector Workers? Replacing people or removing work duties is not the biggest risk AI poses for public sector workers. The biggest risk involves ways in which AI might negatively affect terms and conditions of employment.

AI is already used in surveillance. This includes drones, GPS, and other tools that public agencies can use to monitor and protect their equipment or facilities. Although management has the right to install this equipment in the workplace, and safeguarding assets is not inherently a bad justification, employee organizations have the right to negotiate over any effects on terms and conditions of employment. With surveillance, the issues typically concern how data might be used for disciplinary purposes or performance evaluations, as well as who can access the data and for what reasons.

Human Resources has already begun using AI to assist with recruiting. The last few years have seen rampant hiring, and HR often uses technology to assist with tasks like drafting recruitment flyers, screening resumes, identifying and ranking top candidates, and scheduling and conducting initial interviews. It is not surprising that many agencies have sought to revamp or streamline their hiring policies or abolish civil service systems altogether. Management often views civil service as outdated and not on par with what they perceive as the flashy new tools private sector hiring entities use to recruit. Speed is preferable to a comprehensive and independent testing and interview process, they believe. This approach too is not inherently bad, but it does reflect a major change in the way public sector hiring has traditionally been handled. One potential is that candidates who know how to use the right buzzwords or who have more experience with these new recruiting tools may have an advantage over a candidate who might be better qualified but have less experience with how recruiting is handled today. Employee organizations can and should negotiate over any proposed changes to the hiring process to help ensure the system is fair for everyone, transparent, and merit based. Recruitment violations can be challenged through the grievance procedure, but employees often hesitate to bring these cases. This grievance can be hard to win since management has so much discretion over who is hired for an opening.

AI is also being used to draft and revise all sorts of documents, like job descriptions and policies. There has been a trend over the last decade or so for agencies to use very generic

job titles and job descriptions. For example, using titles like maintenance worker, operator, analyst, coordinator, technician, specialist, or assistant. Again, this trend is not inherently bad. It can lead to greater pay equity in organizations, and less disparity in pay, for example, based on who you work for or what department or division you work in. However, generic titles and job descriptions give management a greater ability to use a position in all sorts of ways, in various departments and divisions, possibly without even having to pay employees extra compensation for working out-of-class or negotiating with employee organizations over changes to job descriptions. Generic titles are the modern equivalent of “other duties as assigned,” which many public sector workers have heard used at some point as an excuse to assign work outside of their job classification.

Most, if not all, the vendors who perform classification and compensation studies prefer and promote generic titling concepts. Regardless of whether an outside vendor or your internal HR department conducts the study, the likelihood is that AI will be used to assist with drafting and revising job descriptions going forward (if not already). AI will use more vague and ambiguous language in job descriptions that sound fine in theory but avoid identifying at a granular level the types of tasks workers do on a day-to-day basis and the specific skills that are needed to perform the role in a particular work group. Employee organizations should be mindful of how AI might describe or water down the job specification. Employee organizations should be aggressive in negotiating with the employer to add back more detail, which AI will likely omit.

AI is increasingly being used to manage payroll data, attendance, leave requests, scheduling, shift bidding, and other benefits administration. Gone are the days when public employers issued paper checks and stubs, or routed leave requests through paper forms. Most employers today have implemented electronic software or databases for managing this (*e.g.*, NeoGov). AI is being integrated into the technology the employer currently uses. This can be good. For example, employees may be able to log in to the system and see the status of a request or download records from a computer or smartphone. Previously, employees may have had to manually submit a request and wait for finance, human resources, or management to respond with the information. AI can make it easier for employees to get what they need more quickly.

But AI can also negatively affect how benefits are administered. For example, it is far easier now with AI for employers to monitor attendance or the use of sick leave. This includes the total number of hours used by an individual employee in a defined period,

or any pattern of how an employee uses sick leave during that period. The system might even allow the employer to use an algorithm to alert management when an employee's attendance or sick leave use exceeds a threshold number of hours. The system might be able to identify potential for attendance violations or sick leave abuse. Employers can also run reports that allow them to see how benefits are used or abused, and to compare it against averages for other employees or for prior years. Employee organizations should be on guard as to how this might affect how benefits are administered. This includes evaluating the relevant MOU or policy language to decide if the employee organization should propose more specific protection in the next round of MOU negotiations.

AI has also been integrated into "performance management" systems. This is the fancy terminology for how management evaluates and monitors employee work performance. Most public agencies use annual performance evaluations to assess how an employee is progressing, to identify areas an employee can improve, and to set goals for the next review period. Compensation is often tied to an evaluation score, especially for those who are not at the top of their pay scale. Not that long ago, this data was managed through paper forms and placed in hard copy employee personnel files. More recently, employers have been using technology and AI specifically to assist with performance management, including drafting or revising evaluation forms, monitoring progress during the review period, developing goals and metrics, and identifying how those are weighted in any overall scoring. Some systems are now fully digitized and managed in the cloud. Employees can expect this trend to continue. Employee organizations should be prepared to negotiate over this to a greater extent than they did in the past.

Conclusion: For workers who are still feeling the effects of understaffing, and who are trained in how to use new technology to assist with their work duties, generative AI might help to alleviate the burden of staffing shortages in the short term. However, employees should be mindful of how AI might negatively affect their work conditions in the longer term. The best safeguard is a strong employee organization that is vigilant about the ways public employers are deploying new technology, and who exercise the right to negotiate over how technology affects the terms and conditions of employment of their members.

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.

2.6% - CPI for All Urban Consumers (CPI-U) Nationally

2.1% - CPI-U for the West Region

3.0% - CPI-U for the Los Angeles Area

2.4% - CPI-U for San Francisco Bay Area

1.4% - CPI-U for the Riverside Area (from September)

2.5% - CPI-U for San Diego Area (from September)

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: I notified my supervisor in advance that I needed to use two hours of leave at the beginning of my shift on November 5 so that I could vote in the general election. My supervisor asked me why I could not simply vote by mail or return my ballot to one of the Secretary of State drop boxes near my home or workplace. I felt like my supervisor was giving me a hard time for wanting to vote on-site at one of the voting precincts on the day of the election. I am empathetic because we are short staffed, and scheduling is always a challenge. But I do not think that should prevent me from voting on

election day. Does my supervisor have the right to tell me about other ways that I could have voted that do not require my absence from my work shift?

Answer: Under California Elections Code Section 14000, employees have a protected right to take up to two hours of paid time off to vote in a statewide election if they do not have sufficient time outside of working hours. This law requires that employees provide at least two working days' notice to their employer, and that the time off be scheduled at the beginning or end of the work shift. If these requirements are

met, your supervisor must allow you to vote in person on election day, regardless of short staffing or other constraints.

Your supervisor can suggest alternative voting methods, such as mail-in ballots or drop boxes. These options are intended to make it easier to vote without having to stand in long lines or deal with difficult commutes between your worksite and your polling location. However, your employer cannot require that you vote this way. You are entitled to vote in-person on election day if you choose, if you provide the necessary notice and can demonstrate that your work schedule does not allow you sufficient time outside of work to vote.

Additionally, it may be helpful to check your MOU or personnel policies for any provisions that might offer more flexibility to vote. The MOU can offer a greater right to take leave to vote than what the statute provides for. If you choose to vote in-person, you can respond to your supervisor that you are aware of those options, but you will be voting in person on election day and need to leave early or come in late.

Question: I need guidance on the use of sick leave. We have always provided notice by calling in sick before a

scheduled work shift. However, supervision believes we should not assume that sick leave will be approved simply because we provide advanced notice. They believe sick leave requests are contingent on daily staffing, from their perspective. If an employee provides advanced notice via email, time sheet entry, verbal request, etc., can the supervisor deny the request for sick leave? The lack of clarity as to whether an advance notice request can be denied is causing unnecessary stress when scheduling appointments.

Answer: Under state law – California’s Healthy Workplaces, Healthy Families Act of 2014 (*Labor Code §245 - §249*) – an employer shall provide paid sick days to an employee who requests it orally or in writing for the purpose of diagnosis, care, or treatment of an existing health condition of, or preventative care for, an employee or an employee’s family member. (*§246.5(a)(1)*). An employer shall not require as a condition of using paid sick days that the employee search for or find a replacement worker to cover the days during which the employee uses paid sick days. (*§246.5(b)*). An employer shall not deny an employee the right to use any accrued sick days. (*§246.5(c)*).

If the need for paid sick leave is foreseeable, the employee shall provide reasonable advance notice. (§246(m)). If the need for paid sick leave is not foreseeable, the employee shall provide notice of the need for the leave as soon as practicable. (*Id.*) An employer shall provide payment for sick leave taken by an employee no later than the payday for the next regular payroll period after the sick leave was taken. (§246(n)).

California law mandates that employers provide at least 40 hours (or five days) of paid sick leave per year. (§246). California law also says that an employer who provides sick leave for employees shall permit an employee to use in any calendar year the employee's accrued and available sick leave entitlement, in an amount not less than the sick leave that would be accrued during six months, at the employee's then current rate of entitlement, for the reasons specified in §246.5(a). (§233(a)). The designation of sick leave taken for these reasons shall be made at the sole discretion of the employee. (*Id.*) An employer shall not deny an employee the right to use sick leave to attend to an illness or the preventive care of a family member or for any other reason specified in §246.5(a). (*Id.*)

Your supervisor cannot deny your right to use accrued and available sick leave for sick leave purposes provided you give notice according to the law and established department policy or your MOU. This right is not contingent on staffing considerations. 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 approved. While supervisors may appreciate advance notice for scheduling, staffing constraints alone are not grounds to deny sick leave.

If your supervisor is suggesting that your request is subject to approval, or your supervisor is not timely acknowledging or confirming your request, contact your employee organization leaders or professional staff for assistance.

Question: I am an hourly employee and recently interviewed for an internal promotion during my workday. I was informed that I must use my own leave time to cover the time that I spent interviewing. Is that correct? Would an internal interview with the employer be considered a meeting if it were during regular work hours and on-site?

Answer: Although your internal interview occurred during regular work

hours, time spent on internal interviews is typically not considered "hours worked." This is because internal interviews are voluntary activities focused on future career opportunities, rather than tasks required for your current role. Under wage and hour laws, compensable "hours worked" generally include only those tasks performed at the employer's direction and necessary for an employee's current responsibilities.

Policies can vary, so it is worth reviewing your employer's policies or MOU to see if internal interviews are specifically covered as compensable time. For example, some employers may wish to encourage internal promotions, which can be more cost-effective than hiring externally, and doing so can promote good labor-management relations. Requiring an employee to use personal time for an internal promotional interview may discourage staff from seeking advancement. However, unless otherwise specified, current employees are expected to use personal leave time for internal promotional interviews.

Question: Can I bring my pet to work?

Answer: Although many people understandably dislike leaving their furry friends at home, bringing pets to work is

generally at the employer's discretion and may be influenced by specific policies related to pet-friendly workplaces. Ask your human resources department to clarify the employer's policy on bringing pets to work.

If your employer allows it, they will likely have guidelines in place to ensure a safe and comfortable environment for all employees. This may include but is not limited to (1) pet behavior and training (ensuring pets are well-behaved and socialized); (2) allergies and phobias (accommodating coworkers who may have allergies or phobias related to animals); and (3) hygiene and cleanliness (maintaining cleanliness to prevent health or sanitation issues).

Service animals fall into a different category, as they are protected under state and federal disability law (California's FEHA and the Federal ADA). If you need to bring a pet to work due to medical reasons, contact HR to request a medical accommodation.