LBAEE

March 2025 News

UPDATES

- LBAEE started discussions with the City about implementing Paid Admin Leave during pending investigations where employee does not remain in workplace.
- LBAEE supported a few members over a grievance related to the Professional Certification Incentive
- LBAEE discussed with the City about implementation of 6-minute rounding policy for timekeeping.
- LBAEE continued talks with the City during the 2nd Phase of the Charter Amendment Meet and Confer.
- HIAC will start an RFP for Life and Disability Insurance in the next few months.
- LBAEE facilitated a workshop with Mission Square that provided valuable information about 457 Retirement Savings Planning.
- We are still urging L.B Public Works Department members interested in having a crucial participation in the decisions that may affect the work conditions and benefits of that group to reach back to us mentioning interest in volunteering as Director of the group.

CalPERS special power of attorney

A CalPERS special power of attorney allows you to designate a representative or agent, known as your attorney-in-fact, to conduct your retirement affairs. Should you become unable to act on your own behalf, your designated attorney-in-fact will be able to perform important duties concerning your CalPERS business, such as:

- **Address changes**
- **Federal or state tax withholding elections**
- **Retirement benefit elections**

https://www.calpers.ca.gov/members/retirement-benefits/service-disability-retirement/power-of-attorney

https://www.calpers.ca.gov/sites/default/files/spf/docs/forms-publications/special-power-of-attorney-form.pdf

The Future of Remote Work in Local Government

This month marks the five-year anniversary of the onset of the COVID-19 pandemic. In March 2020, many office workers were instructed to work from home, while field staff and emergency personnel continued working on-site. Although remote work had existed as an option for some employees before the pandemic, it was not common. Local government work was typically thought to require a physical presence. However, the pandemic altered in profound ways our belief in the need to report to an on-site workplace. This includes additional flexibility for those whose job duties can be performed remotely.

While remote work was initially a temporary measure to respond to a public health crisis, it has evolved into a viable long-term option in some public agencies. Employers who are struggling with labor shortages (particularly in fields like information technology and engineering) offer remote work to attract and retain skilled workers. The pandemic helped show that flexible work arrangements for the most part are sustainable even in public service. This month, we look at the future of remote work for local government employees.

Recent Return-to-Work Orders: On January 20th, President Trump signed an executive order directing the heads of all departments and agencies in the executive branch of the U.S. government to, "as soon as practicable, take all necessary steps to terminate remote work arrangements and require employees to return to work in-person at their respective duty stations on a full-time basis, provided that the department and agency heads shall make exemptions they deem necessary."

Governor Gavin Newsom issued a similar directive for state employees in April 2024. A recent article from the Sacramento Bee analyzed the State of California's return-to-work orders and found that many California state workers are still enjoying some telework privileges. Governor Newsom's order had a provision that allowed employees to keep working remotely full-time on a case-by-case basis for medical accommodations or based on "individual circumstances and the specific needs and objectives of the department."

It is unclear how much of the Federal work force will continue working remotely under President Trump's order. Under Governor Newsom's order, according to the most recent numbers from the state, nearly nine in ten public employees who are eligible for hybrid

working conditions come into state offices to work at least twice a week. The Sacramento Bee reported that a more flexible implementation of the return-to-work order has led to happier employees who are more productive and less likely to leave their jobs.

Last month, Jaime Dimon, the CEO of J.P. Morgan Chase Bank, made headlines when he announced the end of hybrid work and a return to the office full-time. An employee asked Dimon in an open town hall meeting about considering a more flexible policy and allowing managers to decide what was best for their teams. Dimon responded "There is no chance that I would leave that up to managers. Zero chance." Dimon also rejected a petition signed by about 13,000 employees asking him to rescind the return-to-office mandate.

But employers should be cautious when rescinding remote work policies or retaliating against employees who ask for remote work, as they could be violating the law. The National Labor Relations Board's regional office in Los Angeles recently filed a complaint against a private company that issued a return work order that ended its fully remote work model and implemented a hybrid model where employees work on-site two days a week. The company terminated employees who refused to comply with the order. The NLRB said it is unlawful to retaliate against workers for organizing a union.

Remote Work is a Bargainable Subject: In the last few years, remote work or hybrid work policies have become a major item of negotiation between management and employee organizations. Remote work is a negotiable subject. This means the employer, or the employee organization, can make proposals, and the other party must bargain over it as part of MOU negotiations. It also means that the employer cannot change current terms and conditions of employment without providing the employee organization with notice and an opportunity to meet and confer prior to making the changes.

The prior pandemic telework policies have all since been rescinded, consistent with public health orders. If there is an existing remote work policy in effect, the employer cannot rescind or modify it without first bargaining with the employee organization. However, some policies might allow management to make changes or rescind the policy (or a specific work-from-home arrangement) without notice or meet and confer. Some policies may also let management exercise discretion as to how to implement the policy (for example, requests are subject to department approval). Exercising discretion under these policies does not require prior notice and an opportunity to meet and confer. Not having

a mandatory meet and confer to change or rescind the policy was common with remote work policies before the pandemic, and it is common in policies now.

Features of Current Remote Work Policies: Employees who can work remotely often want an arrangement that allows them to work remotely one or two days per week as part of their regular schedule. This is typically called hybrid work and is often subject to manager or director approval. Hybrid work has been the latest target of return-to-work orders.

Other employees may want flexibility to work remotely in specific situations, such as after being released from jury duty or leaving a doctor's office when there is still enough time in the day to work but not enough time to commute to the worksite. In other instances, an employee may need to be physically present at their home – for example, to let someone on to their property to perform repairs – but is otherwise free to work and can perform work remotely. In those instances, employers and employees may find it mutually beneficial for an employee to work remotely versus using personal leave.

In other cases, an employer might be legally obligated to allow an employee to work remotely. This might be the case for employees who need a medical accommodation under state or Federal disability law. Even in the absence of a formal remote work policy, or if an employer prohibits remote work, the employer must still consider remote work as a reasonable accommodation when engaging with disabled workers as part of the interactive process.

Employers Must Medically Accommodate Disabled Employees: The California Fair Employment & Housing Act requires employers to provide reasonable accommodation to employees who have a disability. The regulations specifically define "reasonable accommodation" to include "permitting an employee to work from home." (*Cal. Code. Regs Title 2 §11065(P)(2)(L)*). The Americans with Disabilities Act has a similar requirement. Under both state and Federal law, working from home is reasonable if the essential functions of the position can be performed at home and a work-at-home arrangement does not cause an undue hardship for the employer. (*Humphrey v. Memorial Hospitals Ass'n* (9th Cir 2001) 239 F.3d 1128, 1136).

The U.S. Equal Employment Opportunity Commission has issued guidance on remote work as a reasonable accommodation under the Americans with Disabilities Act. The guidance says that "not all persons with disabilities need – or want – to work at home. And not all jobs can be performed at home. But, allowing an employee to work at home

may be a reasonable accommodation where the person's disability prevents successfully performing the job on-site and the job, or parts of the job, can be performed at home without causing significant difficulty or expense."

If the employer determines that some job duties must be performed in the workplace, the EEOC says the employer and employee "need to decide whether working part-time at home and part-time in the workplace will meet both of their needs."

The EEOC states that employers "may need to reassign some minor job duties or marginal functions (*i.e.*, those that are not essential to the successful performance of a job) if they cannot be performed outside the workplace and they are the only obstacles to permitting an employee to work at home. If a marginal function needs to be reassigned, an employer may substitute another minor task that the employee with a disability could perform at home to keep employee workloads evenly distributed."

Under disability law, an employee may work at home only to the extent that their disability necessitates it. For example, this could mean (1) one day a week, (2) for three continuous months (*e.g.*, while recovering from treatment or surgery related to a disability), or (3) on an "as-needed" basis. If the effects of a disability become particularly severe on a periodic but irregular basis, these flare-ups may prevent an individual from getting to the workplace. In these instances, an employee might need to work at home on an as-needed basis if it can be done without causing undue hardship for the employer.

A recent case suggests that "reasonable accommodation" might include allowing an employee to work-from-home if the employee's disability substantially interferes with their ability to travel to and from work. (*EEOC v. Charter Communications, LLC* (7th Cir. 2023) 75 F.4th 729, 734). In that case, the court said that the employee may be entitled to work remotely as a "reasonable accommodation," if commuting to work is a prerequisite to an essential job function, such as attendance in the workplace, and if the accommodation is reasonable under all the circumstances.

Under disability law, an employee is not entitled to their preferred accommodation. The employer may select any effective accommodation, even if it is not the one preferred by the employee. If there are multiple accommodations that allow a disabled employee to perform the essential functions of their job, the employer can choose which one to provide once it completes the interactive process. The employer does not have to allow remote work if the accommodation the employer provides is reasonable.

Remote Work While on Family Care Leave: Employees are entitled to medical leave under the California Family Rights Act and the Federal Family Medical Leave Act if they have a serious medical condition or care for an immediate family member with a serious medical condition. Employees who care for a family member with a serious medical condition have discovered during the pandemic that in some situations they can work remotely and attend to their caregiving responsibilities. Although the employer is not legally obligated to allow remote work during family caregiving leave, some employers may consider it. For example, if an employee is on leave for 12 weeks, the employer may agree to allow remote work to better handle workload, deadlines, and important projects. The employer and the employee must both agree to this. The employer cannot require remote work if what the employee wants is a leave of absence.

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.

3.0% - CPI for All Urban Consumers (CPI-U) Nationally

2.4% - CPI-U for the West Region

3.3% - CPI-U for the Los Angeles Area

2.4% - CPI-U for San Francisco Bay Area (from December)

2.9% - CPI-U for the Riverside Area

3.8% - CPI-U for San Diego Area

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: Are there any laws regarding transferring sick time between city jobs? Is this done on a city-by-city basis? Does this happen at the executive level, or is it not allowed? I am contemplating moving to a different organization, but I have a lot of sick time on the books since I have been here a long time. I am

concerned about moving over without any sick time.

Answer: No law specifically forbids the transfer of sick leave between public agencies. However, in practice, this is not something that typically occurs. You may be able to negotiate with the new employer to start with sick leave or vacation available on your first day of employment. If you are represented by an employee organization at your new employer, you may be bound by the terms of any existing MOU, as well as any employer personnel policies that are not in conflict with the MOU. Most MOUs do not allow new employees to start with any accruals from a prior agency. However, some employee organizations have negotiated language into their MOUs to, for example, give the City Manager the discretion to grant initial leave balances to new hires, or to count years of service at prior public agencies toward leave accrual rates. This might allow an employee with 8 years of prior public service to accrue vacation leave at the same rate as an existing 8-year employee. Check the relevant MOU at the new agency (it should be on the agency's website) and ask HR about any rules that apply. You can also ask if you can purchase leave time upon hire, which you might be able to fund with any cash-outs of leave from your prior employer.

Question: My regular work schedule is Monday - Thursday. Last week, I was told I must take Monday off to have two days off in a row, since I worked overtime on Friday and Saturday for windstorm cleanup. I asked where I should put Monday's hours, but no one had an answer. Today, I was told I must work Friday (my regular day off) to make up Monday's hours. Can the City do that since they had me take Monday off?

Answer: Unless your MOU requires you to have two days off in a row or you requested the time off, the City should not have required you to take your regularly scheduled Monday off. Most MOUs or City policies have rules governing changes to work schedules that require some notice (typically a few weeks or more) before the City can implement a schedule change. It is unlikely they did this in your case.

If the City is sending you home for safety reasons, because they have determined that you need rest from the overtime you worked during the windstorm cleanup, they should still pay you for that time off. As a public employee, you have a property right to your job, which includes

the right to work your regular schedule without being arbitrarily sent home without pay. Sending you home on Monday without pay is like a one-day suspension when you have done nothing wrong to deserve that.

Regardless of whether or not you worked on Monday, the City can require you to work on Friday, just as it did the previous week. However, they should not change your schedule to avoid paying overtime. You should be paid for the hours that you work on Friday, and at the rate of time-and-one-half pay for any hours worked more than 40 in the FLSA workweek.

Question: Are employers required to provide paid time to shower after exposure to non-toxic sludge on shift?

Answer: Probably not. This would fall under the FLSA's "donning and doffing" rules. Donning and doffing refers to putting on (donning) and taking off (doffing) uniforms and protective gear or equipment, or in this case, showering and changing clothes at work.

In *Steiner v. Mitchell,* 350 U.S. 247 (1956) the Supreme Court set forth the test for whether employers must pay employees when they showered after being exposed to toxic chemicals. In that case, the employees worked at a battery manufacturing plant and were required to shower and change clothes at the end of each shift due to exposure to lead and other toxic chemicals. The employer claimed they were not required by the FLSA to pay the employees for the time spent showering and changing, but the court disagreed. The Court held that time spent on tasks that are an "integral and indispensable part of the principal activity of the employment" must be paid. Time spent showering off *toxic* chemicals met that test.

Since your question involves non-toxic sludge, rather than exposure to a toxic health hazard, under the FLSA the time spent showering is probably not compensable because it is voluntary and more for your comfort and convenience and is not "integral and indispensable" to your work as a "principal activity of employment." However, compensation can be negotiated into the MOU. If exposure to non-toxic sludge is a recurring issue at work, compensation for the time it takes to shower it off can be proposed in the next MOU bargaining.

Question: Do we have to use leave time for personal appointments away from work for less than 4 hours (usually an hour or two for doctor appointments)? My understanding has been that as a

salary employee, the FLSA does not require time from the work schedule to be deducted unless it was 4 hours or more in the day or a full day. My practice has been to advise my director of an appointment where I need to leave early or come in late, but I do not record that on my payroll or use vacation or sick time. We have a new director who said I must use my leave time to cover the short absence and record it on my pay sheet. I asked HR and they agreed. Is that allowed?

Answer: Yes. Although the FLSA prohibits exempt employees from being docked pay for partial-day absences, an employer can require exempt employees to use their accrued leave to cover a partial day absence. However, just because it is legal under the FLSA does not mean it is permitted by your MOU. Check your MOU to see what benefits, if any, apply to those who are exempt under the FLSA. Since exempt employees are expected to complete their work, regardless of how long it takes, without earning overtime for working more than 40 hours in a week, many MOUs provide for additional time off for exempt employees. It is common for MOUs to provide administrative leave that can be used instead of vacation to cover absences. Vacation has a cash value when you leave or retire from the agency. In many cases, administrative leave does not. So, using administrative leave instead of vacation is a smart way to cover a partial day absence. Although much less common, some MOUs allow exempt employees to take partial day absences (under 4 hours) without using their accrued leave. If your MOU does not have special leave provisions for exempt employees, ask your employee organization to consider making proposals the next time they bargain.

Question: I have been directed by my department to go to the city's medical clinic to get a medical clearance that is necessary to renew my commercial driver's license, which is a basic requirement for my job. I've been told I must use my own leave time during working hours, or I can go outside of my normal working hours on my own time if I can secure an appointment after hours. I feel like this is something the city should compensate me for. If I use my own time, I will miss out on overtime pay during the work week in which I must use my own paid leave time. I do not feel like it is fair to have to go on my own time or miss out on overtime pay

for something that is a job requirement. What are my options?

Answer: Yes, if the City is directing you to get the medical clearance, you should be paid for time spent going to the City's clinic to get a medical clearance to renew your commercial driver's license, whether during worktime or after.

In 1979, the Department of Labor (DOL) issued an opinion letter stating that time spent undergoing a physical examination required by the employer is compensable, regardless of whether it occurs during normal working hours or outside of them. Similarly, in 1997 and 1998, the DOL said that when the Federal government requires employees to submit to physical examination and drug testing as a condition of the employer's license to operate its business, both the drug tests and physical examinations are for the benefit of the employer, and therefore compensable. More recently, in the context of COVID-19, the DOL reiterated that employees must be paid for time spent going to, waiting for, and receiving medical attention required by the employer during normal working hours, including activities such as obtaining a COVID-19 vaccine dose or undergoing a COVID-19 test when mandated by the employer. These DOL opinions support your right to get paid for medical examinations directed by your employer as a condition of employment.

Some employers have policies that provide for how the medical examinations or license renewals shall be handled. Check to see if your employer has a policy, and if so, under what circumstances the time is compensable. Also, if you were directed to go to the clinic, be sure to go and get the medical clearance for your CDL because it is a job requirement, and you do not want to be considered insubordinate. However, call your professional staff, who can reach out to HR, to try and resolve this so that you get paid. You can file a wage claim with the U.S. Department of Labor for any unpaid compensable time.