



LBAEE

April 2023 News

Bargaining Preparation Begins

LBAEE has started the planning process for upcoming negotiations. In March, we sent out a bargaining survey to our members. Thanks to everyone who responded, we got excellent participation. The results show members want to see higher wages and better benefits and working conditions, with cost of living increases at the top of the list.

Your bargaining team (currently Jason Rodriguez and Juan Arias) is working with CEA Attorneys Jeffrey Natke and Laura Holtan to develop our initial proposal, based on the input you provided. Mr. Natke will again serve as our chief negotiator. We are reviewing all the City's personnel-related policies for areas of possible improvement, drafting the initial bargaining proposal, and developing a coherent bargaining strategy. Our initial proposal will reflect the issues brought forward by the membership, outstanding proposals from previous negotiations and other issues identified by our review of the current MOU.

We expect to begin formal negotiations with the City in May. We'll be prepared to make a full press then. In next month's newsletter, we will highlight what we plan to present to the City in our initial bargaining proposal package. In the meantime, please let the Board know if any new issues emerge that we may want to address.

This month, we will send the City an official letter requesting to begin negotiations, and we will keep you apprised of our progress. Feel free to reach out to the bargaining team with questions or suggestions. *Thanks for your support!*

ELECTIONS...ELECTIONS...ELECTIONS

Elections will be April 11, 12, and 13th! Be on the lookout for your ballot from Kara Natke at CEA.

Tree planting Events coming soon

LBAEE will be partnering with I Dig Long Beach to help plant trees throughout the city.



TABLE OF CONTENTS

How to Manage Stress in the Workplace	PAGE 3
News Release - CPI Increases!	PAGE 8
Questions & Answers about Your Job	PAGE 8

How to Manage Stress in the Workplace

The labor market has been running hot since the economy began rebounding from COVID-19 nearly three years ago. For California's public sector workforce, the labor market never slowed down.

Public employees were declared disaster service workers under Government Code §3100 and continued providing public service during the entirety of the pandemic. Even prior to COVID, in the wake of the Great Recession, public employees were under attack by reformers who wanted to cut compensation and retirement benefits due to unfunded liabilities. That led to twelve years of debate between management and labor over a limited supply of the public's financial resources, a zero-sum game of conflict and hard bargaining during a time of fiscal austerity. Workers had additional duties added to their jobs because retirement and attrition reduced the overall size of the workforce considerably. Then COVID hit.

Since at least August 2021 – a period often referred to as the “Great Resignation” – there has been huge staff turnover resulting from a record high quitting rate and record low unemployment. By now, most agencies have been hit with acute labor shortages within at least some areas of their workforce. Many agencies cannot fill vacancies fast enough. This is causing a ripple throughout the workforce. That ripple has justifiably left many feeling exasperated and stressed with little hope in sight. This month, we will look at what can be done to combat the record levels of stress that workers are feeling at work.

What Workplace Stress Looks Like: Do any of the following sound familiar?

Your department used to have seven employees, but now you are one of four. You serve the public and do all the paperwork, and your three co-workers work in the field. Because of the constant flow of people at the counter, it is impossible to keep up. The whole office is falling behind. Everyone is angry with you and your co-workers are complaining about a lack of service in your department.

You are a mechanic in charge of keeping fleet vehicles safe and functional. You never seem to have the tools you need to do your job. The vehicles are aging and it's impossible for you to keep up a maintenance schedule. You hurt yourself twice from rushing jobs and working with the wrong tools. You now use your own tools. You were also just yelled at by the Fire Captain because of a near accident in a fire truck with faulty brakes. You

offer to work overtime, but your boss won't authorize the expense. Sometimes you work overtime anyway, without pay.

You are a Police Dispatcher who, left alone in the dispatch office, slept through the first few minutes of an urgent call, and the caller died. You were in your 44th hour of continuous work. You expect to be fired. You're told there is no one to help with the calls.

You were off the job last year for three months recovering from a car accident. You had been back for a month when your wife was diagnosed with breast cancer. You have three young children and no relatives in the area to help. You have exhausted all your accrued leave. Your boss warns you that you really need to be at work.

You are a project engineer with a new supervisor who doesn't have a clue about what you really do. You're constantly told you are not fast enough. Under pressure, you have turned in projects in poor condition and have made several critical errors. You try to talk to your boss but are met with sarcasm. Now your boss is openly hostile and piling so much work on you that you are bound to fail.

Am I Eligible for Workers' Compensation? All these employees are in urgent need of assistance. They may be able to get help from their union representatives, from sympathetic managers or co-workers or from mental health practitioners. They may also have legitimate grievances: unsafe working conditions, excessive workloads, overtime pay, threats for the legitimate use of sick leave. But none of them, as described, has the basis for a successful "stress" claim. Why not?

There is a difference, legally, between feeling distraught and stressed about work, and proving that your job has made you ill. A "stress claim" is a workers' compensation claim. Stress claims are real. People are made sick by the chronic fatigue or chronic frustrations of their jobs. A few (police officers, for example) are recognized by the courts to be so stressful that their stress claims are often granted. But most employers contest stress claims and many stress claims are at least initially rejected.

Stress in the workplace can range from a variety of events such as a supervisor yelling at an employee, an incident of workplace violence, or an employee having to deal with a difficult situation over a lengthy time. Stress can also cause and contribute to a variety of psychiatric conditions, including anxiety disorders, depression, post-traumatic stress disorders, or panic attacks.

Stress in the workers' compensation context is the symptom of injury and not the injury itself. When an injured worker is feeling stressed, it's the effect that stress has on these body parts which is the injury. When an injured worker files a stress claim, they are really reporting the injury not the stress (for example, a psychological condition, headaches, gastrointestinal esophageal reflux, irritable bowel syndrome, or high or increased blood pressure).

The law generally requires that you prove your job was the predominant cause of the injury. Injuries from stress due to lawful and good faith personnel actions (*e.g.*, a demotion, suspension, or transfer) do not qualify. You also may not qualify if you wait to report an injury until after being told you are being terminated from your job.

When Do I Report the Injury? So, at the same time public workplaces are unquestionably becoming more stressful, it's increasingly unlikely that an employee in difficult circumstances will be able to establish a workers' compensation case. This is unfortunate because if work problems remain unresolved, stress-related illnesses have a strong tendency to spiral. Frustration and overwork can create anxiety or depression which may take a toll on an employee's work product, health, and attendance.

The first step is alerting your employer to the work-conditions problem. Do this in writing or in the form of a grievance. It is very difficult to win a stress claim over conditions that have never been reported to the employer. If you do not give your employer an opportunity to resolve the problem before it makes you ill, it is possible the employer may ultimately not be liable for your stress claim.

Filing a workers' compensation claim should really be your last resort to resolve abusive work conditions. This is partly because the process of going through the workers' compensation system is itself extremely stressful. Your claim will probably be contested or rejected. You will need to retain an attorney. You will be questioned about your mental health, your medical history, and all other possible sources of stress in your life.

When and How to Get Help? The larger goal, of course, is to attempt to resolve problems before you are made ill. In the process of attempting to resolve the problems, if you are not successful, you are at least establishing a paper trail of your legitimate complaints. You should ask for help at the earliest possible moment that you realize that you are facing intolerable circumstances.

If you have a receptive supervisor, this is the place to start. Particularly if the stress is from managing an unreasonable workload. Your supervisor can help you identify which tasks to prioritize, and which ones can be left unfinished. If that does not work, you may consider speaking to someone else in Management or in Human Resources.

What About Our Employee Assistance Program? If your work problems are causing mood swings, anger, anxiety, or depression, you should also seek help such as seeing a therapist. Most employers have an employee assistance program (EAP) specifically for this purpose. You can also use your own insurance. If the psychological problems become severe or take on additional physical components (heart palpitations, insomnia, digestive problems, breathing problems, etc.) you should be referred to a psychiatrist or other medical professional. You should also consider filing a workers' compensation claim at that point.

Should I file a Grievance? If you are concerned about retaliation, don't know how to approach the problem, or believe you are the victim of legal violations, call your union representative. Many working conditions that seem unfair can be addressed through informal means or by the grievance procedure. It might even be in the mission statement of your MOU or Personnel Rules that the employer must provide a safe workplace.

When do you know when a bad situation rises to the level of a grievance? There is no simple answer. Sometimes it's best to press for changes. Sometimes it's better to talk to a few people or let matters run their course. People's thresholds for tolerating stress vary enormously. What is clear, though, is that chronic stress will make a significant number of people sick – and when this occurs, action is necessary.

Should I Go Out on Medical Leave: Even if the problem cannot be addressed by a grievance, or the stress doesn't rise to the level of a workers' compensation claim, medical leave is still an option. Workers can take medical leave for mental health conditions under the Federal Family and Medical Leave Act (FMLA) and the state California Family Rights Act (CFRA). Mental health issues qualify as a serious health condition. Workers can take up to 12 work weeks of job-protected unpaid leave in a 12-month period.

Mental health may qualify as a serious medical condition if it requires (1) inpatient care or (2) continuing treatment by a health care provider. Inpatient care includes an overnight stay in a hospital or other medical care facility. Continuing treatment includes conditions that incapacitate an individual for more than three consecutive days and

require ongoing medical treatment, either multiple appointments with a health care provider (such as a psychiatrist or clinical psychologist), or a single appointment and follow-up care (such as prescription medication, outpatient rehabilitation counseling, or behavioral therapy). Chronic conditions such as anxiety, depression, or dissociative disorders that cause occasional incapacitated periods and require treatment at least twice a year also qualify.

Employees may be able to take leave on an intermittent or reduced schedule basis. That means an employee may take leave in separate blocks of time or by reducing the time worked each day or week for a single qualifying reason. Intermittent leave is often needed when managing mental health conditions.

When leave is needed for planned medical treatment, the employee must make a reasonable effort to schedule treatment so as not to unduly disrupt the employer's operations. An employee must request leave 30 days in advance, or as soon as practicable if the need for leave is unforeseeable.

When requesting leave for a qualifying reason for the first time, an employee does not need to say FMLA or CFRA specifically but may need to have their health care provider complete a certification form and get it on file with the employer. If an employee later requests additional leave for the same qualifying condition, the employee must specifically reference either the qualifying reason or the need for medical leave.

Under certain circumstances, employees may choose, or employers may require, an employee to run any accrued paid leave – such as sick, vacation, or paid time off (PTO) – concurrently to cover all or some of the leave period. Whether accrued paid leave is run concurrently is determined by the law, your employer's leave policy, and your MOU.

An employee's use of leave cannot be counted against the employee under a "no-fault" attendance policy or be used as a negative factor in employment decisions, such as hiring, promotions, or disciplinary actions. Employers must restore the employee to the same or virtually identical position at the end of the leave period.

Employers are also required to continue group health insurance coverage for an employee on medical leave under the same terms and conditions as if the employee had not taken leave. The law also requires employers to keep employee medical records confidential and maintain them in separate files from more routine personnel files. An

employer may inform supervisors or managers of an employee's need to be away from work, or if an employee needs work duty restrictions or medical accommodations.

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.

- 6.0% - CPI for All Urban Consumers (CPI-U) Nationally
- 6.0% - CPI-U for the West Region
- 5.1% - CPI-U for the Los Angeles Area
- 5.3% - CPI-U for San Francisco Bay Area
- 7.3% - CPI-U for the Riverside Area (from January)
- 6.4% - 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: I worked late at a commission meeting one evening last week. My manager told me to not put down for overtime and just come in late the next day. I'd really like to work my normal shift and get the overtime, even if it's banked, that way I can use the time when I want it. Can my manager force me to flex my time in lieu of paying overtime?

Answer: Probably not. If you are a non-exempt employee, then you qualify for

overtime pay under the Federal Fair Labor Standards Act (FLSA). This means you are eligible to be compensated at one and one-half times your regular rate of pay for each hour worked over 40 hours in a work week. Under the FLSA, the employer cannot change your work schedule to avoid paying overtime. This means your manager cannot force you to flex your time in lieu of paying overtime.

But check your MOU. There may be a benefit where employees can bank any

overtime as comp time to be used later rather than paid out as overtime in the next paycheck. The employer can legally pay you in cash rather than granting comp time off, but the employer cannot force you to bank the overtime as comp time in lieu of paying you at the overtime rate. And, assuming you bank the overtime, the employer cannot require that you use it on a designated date. An employee gets to choose when to use the time, so long as the time requested off does not unduly disrupt the employer's operations.

If you are an exempt employee under the FLSA, then your employer does not have to pay overtime for the after-hours work. If you are paid your regular salary, there is no FLSA violation. But check your MOU and Personnel Rules. In some agencies, exempt employees can "flex" the start of their next workday to compensate for having to work late the night before.

Question: Under our MOU there is the following noted at the bottom of the sick leave article: "The cash out provision of sick leave pertains only to retirements and positive terminations. Negative terminations (discharge) are not eligible for cash out of sick leave. An employee has the option to convert 100% of the remaining sick leave upon

retirement to PERS service credit." Does this mean that upon separation from the City, if I leave to take another job somewhere else, my sick time may be cashed out?

Answer: Yes, your sick time should be cashed out. The language is ambiguous, but it appears the intent is to allow for the cash-out upon separation unless an employee is discharged for cause. Voluntary separations and layoffs would arguably fall under the phrase "positive terminations," unless that phrase happens to be defined differently in the language. However, to be sure, contact your professional staff. They can confirm the definition of positive termination with HR and inquire as to the City's past practice when it comes to cashing out sick time upon separation from the City when accepting a job somewhere else.

Question: I received a notice from Human Resources saying that my pension contribution is going up by 0.75% effective in July. The notice says that this is due to CalPERS changing their normal cost rate and that I'm still only paying 50% of the normal cost. This is a steep increase on top of inflation. Can we make the employer absorb these increases?

Answer: You can ask. An employer is not obligated to provide a pay increase to

offset the CalPERS rate increase. The Public Employees' Pension Reform Act (PEPRA) defines New Member as someone hired on or after January 1, 2013, unless you had reciprocity from a prior employer and less than a six-month gap in service. PEPRA members are required by law to contribute 50% of the normal cost of their pension benefit. The employer pays the other 50%. CalPERS sets the normal cost rate. It does go up from time to time.

Keep in mind that the employer is also paying an extra 0.75% by law for you, and every other PEPRA employee at your agency. So, they're probably just as unhappy as you are about the new rates. That said, if your agency is having a hard time recruiting new employees and the high PEPRA rate is making the agency even less competitive, it might be worth mentioning an increase in the wage rate to help put the agency on a more equal footing when competing for workers.

Question: The City has posted a new job. Ninety percent of the duties listed are what I do. My classification, Senior Office Specialist, doesn't list specific duties like this new position. Can they take work that belongs to my job class and give it to another position? It is a higher position than mine. I'm not sure

if that matters. I know it is probably more complex than yes or no but I just wanted to see if they can do this.

Answer: The City should have provided the employee organization that represents the new position they created with notice and an opportunity to meet and confer. That Association could have negotiated with the City over the proposed duties, qualifications, and pay.

There can be significant overlap between the new position and your position. If you are performing duties unique to the higher position, you might have a good grievance for extra pay or to have those duties not be assigned to you. If the work you are doing is still within the scope of your job description, there probably isn't anything actionable about the new position having similar (or even to some extent identical) duties. Contact your professional staff, who can contact HR and find out why the position is being created at a higher level.

It is legal for cities to have higher paid positions perform work that primarily belongs to a lower paid position. But agencies do not like to pay a position more to primarily do work of a lower level unless they must. So, finding out what the other 10% of the duties entail is

important. For example, is it supervisory, or does it require higher qualifications or certifications? As it stands, it does not seem to make a lot of business or operational sense. But the City might have a good explanation.

In any event, your professional staff can help you review both job descriptions and decide the next steps. You may want to raise this issue with HR or request a reclassification or changes to your job description. If you are in a different bargaining unit than this new position, contact your employee organization, who may be able to challenge this as an unlawful transfer of work outside the bargaining unit.

Question: The City recently agreed to a new MOU with the Police Officer's Association. It includes a new residency requirement whereby new employees must reside within a 400-mile drive radius of the City. Is this something the City can require for civilian employees too?

Answer: California law says, "No local agency or district shall require that its employees be residents of such local agency or district." Cal. Gov. Code Section 50083. The California State Constitution, Article XI, Section 10(b)

prohibits a residency requirement "except that such employees may be required to reside within a reasonable and specific distance of their place of employment or other designated location." In *Ector v. City of Torrance*, 10 Cal. 3d 129 (1973), *cert. denied*, 415 U.S. 935 (1974), the California Supreme Court struck down a city ordinance which required all city employees to become city residents because it inhibited employees' freedom to travel without a compelling interest.

Here, the City is not requiring sworn personnel to be residents of the City, but merely to reside within a 400-mile drive radius of the City. If challenged in court, the City's residency requirement for police officers would likely be upheld because of the need for fast responses in emergency situations.

It's not clear that the need for the 400-mile drive radius applies equally to civilian employees, or that the City is even interested in implementing such a requirement. But if this possibility concerns you, contact your employee organization. The Association can contact the City to verify this is a change they are seeking, and if so, request to negotiate over it prior to implementation.