LBAEE
August 2023 News

Contract Negotiations Update

Last month, AEE presented the City with our second proposal, which includes:

- Cost of Living Increases (10% in the first year of the contract, 8% in the second year, and 8% in the third year).
- Equity Increases for positions under market.
- Longevity Incentives.
- Increased Medical Benefits.
- Increased Retiree Health Benefits.
- More Expansive Telework Options.
- Expanded Certification and Skill Pay.
- Educational Achievement Incentive.
- Enterprise-Specific Classifications.
- City-Match to Deferred Compensation Program.

This month, we met with the City to receive the their second proposal. It has considerably lower COLA increases, but it makes substantial movement towards some of AEE's other priorities such as equity increases, a City contribution to deferred compensation, and increased higher class pay. In general, the City's latest proposal reflects the progress in the discussions we've had at the table, but we still have a way to go on the overall COLA.

AEE is currently finalizing our third proposal to the City. We plan to present it to them when we meet again later this month.

As we continue to make progress, we will keep you informed. Feel free to reach out to the bargaining team with questions or suggestions.

Thanks for your support!

SHORT-TERM AND LONG-TERM DISABILITY INSURANCE

The City of Long Beach is to provide AEE members an employer-paid short-term and long-term disability plan(s), in addition to a voluntary, supplemental long-term disability option.

Short-Term Disability

The City shall provide a Short-Term Disability (STD) Plan to employees in the unit that provides disability payments to employees. The plan includes the following provisions under Class 3 as identified in the plan document:

1. Seven (7) calendar day elimination period. Disability payments begin on the 8th day.
2. Payments shall not exceed 50% of the employee's salary up to $1,000 per week.
3. Maximum duration is twenty-six weeks (180 days or 6 months) of STD payments.
4. The premium will be paid by the City. The benefit is taxable to the employee.
5. Disability payments are not provided for workers' compensation injuries when Total Temporary Disability (TTD) or 4850 workers' compensation benefits are being paid.
6. Requires employees to exhaust sick leave accruals first.

Long-Term Disability

The City provides a Long-Term Disability (LTD) Plan to employees in the unit that provides disability payments to employees under the following basic provisions:

1. Disability payments will commence on the 181st day of the illness or injury.
2. Payments shall not exceed a total of 50% of the employee's salary or a maximum of $4,000 per month (whichever is less) and will be coordinated in accordance with provisions as provided under the LTD plan
3. The maximum benefit period for an individual under class 3 provisions is eighteen (18) months.
4. The premium will be paid by the City. The benefit is taxable to the employee.
5. In addition to the basic LTD plan provided by the City, the employee may elect to enroll in a supplemental LTD plan at their cost, which provides supplemental LTD payments equal to 66.67% of the employee's salary up to a maximum of $12,000 per month, will be coordinated in accordance with provisions as provided under the LTD plan.
6. Requires employees to exhaust sick leave accruals first.

For more details refer to the current MOU Appendix H and/or the Life and Disability Booklet on the City's intranet.

Inflation is Starting to Impact Medical Insurance Premiums

Inflation has been cooling recently, but not in time to affect medical plan premium increases for 2024. Last month, CalPERS – one of the nation's largest medical insurance providers – approved rates for next year's plans. On average, prices will increase by 11%. These increases are high, but not out-of-line with general medical premium increases seen outside of CalPERS. For example, a recent study by Price Waterhouse Cooper's Health Research Institute projects a 7.0% increase in medical costs for 2024. This is higher than the figures Price Waterhouse had projected for 2022 (5.5%) and 2023 (6%).

According to an article in the Sacramento Bee, the CalPERS price increases reflect the larger trend of medical inflation across the country. This includes a combination of rising demand for non-COVID-related health services, high labor costs, and a desire to recoup pandemic-era losses. These factors have all driven health care providers to raise their prices, the Bee reported. According to CalPERS, the increases for the 2024 premiums are largely due to rising medical costs and continued high pharmacy costs. It also includes other factors such as an additional surcharge and decreased Federal Medicare Reserves.

According to the Price Waterhouse study, general inflation is now beginning to impact healthcare spending and rates. Health plans are pressured to raise reimbursement levels in price negotiations with providers, in part due to rising wages and expenses, compounded by clinical workforce shortages. The Price Waterhouse study also cites persistent double-digit pharmacy trends driven by specialty drugs as a contributing factor.

CalPERS Premium Increases: CalPERS provides health insurance for more than 1.5 million people, including about 770,000 public employees and retirees and about 770,000 dependents. CalPERS offers both preferred provider organization (PPO) and health maintenance organization (HMO) plans. CalPERS members can change health plans later this fall during open enrollment (September 18 to October 13). The new premiums will take effect January 1, 2024. Rates vary based on region, plan, and level of coverage (*e.g.,* employee only, employee +1, and employee +Family). Detailed information on premiums for each region are on the CalPERS website: https://www.calpers.ca.gov/page/active-members/health-benefits/plans-and-rates

The CalPERS Pension and Health Benefits Committee met on June 21, 2023, to receive an update on the Rate Development Process and the 2024 proposed premiums for CalPERS

health plans. The 2024 preliminary premiums reflected an average increase of over 11% but varied widely by plan, with the two popular PPO plans increasing substantially more. The two PPO plans – PERS Gold and PERS Platinum – were projected to increase by 19.25% under the current two-pool system. However, using a single pool system, HMO rates will rise to keep PPO premiums from skyrocketing. The PPOs will only go up by 12%.

Chief Health Director, Don Moulds, said PPOs continue to lose healthy members to HMOs. This is causing PPOs to spend more money than they collect from premiums, which threatens the viability of the PPOs. "We had hoped it would be longer before we needed to begin to merge the two risk pools," he said. "This is not our preferred way of working, but the challenges we are facing today call for immediate action."

To smooth out the cost increases for PPOs, CalPERS looked at phasing-in a single risk pool over either two or three years. This would increase 2024 premiums by either 11.27% or 10.99%, respectively. During a July meeting, the CalPERS Board approved the three-year phase-in option. Initially, the two-pool method was meant as a temporary fix while CalPERS transitioned into a one-pool system. At the time, the CalPERS Board said prices would increase again in 2023 before stabilizing in 2024. That timeline has now changed.

CalPERS has been implementing a rate-setting system which, officials say, will gradually stabilize prices and align prices more closely with a plan's value. The CalPERS Board approved the new system in 2020 on the recommendation of health insurance experts, who said the changes are needed to save three of the best plans – Anthem HMO Traditional, Blue Shield Access+, and what was then the PERS Care PPO – which attract those who spend the most on medical treatment. As a result, insurers kept raising premiums to cover costs. The fear was this trend – referred to as a "death spiral" – would drive healthy people away from the plans, prompting even further price hikes, ultimately leading to these plans being unsustainable. The new system partly re-distributes premium cost increases from plans with higher health risk to those with lower risk.

The monthly price for the most popular plan – an HMO plan administered by Kaiser Permanente – will rise 13%. That plan serves nearly 550,000 people. The Kaiser rates were projected to go up 11.79% under the current two-pool scenario. The Anthem HMO Traditional will go up about 7%, and the Blue Shield Access+ will go up about 6%. United Healthcare plans will go up about 5%. These are averaged amounts statewide. The actual

percentages will vary based on region. The out-of-network deductible will go up by $1,500 for the PPO plans.

CalPERS negotiates aggressively with insurers. They understand that many members often must absorb the increased costs entirely out of their own pocket. While rates tend to reflect the current state of the health care market, CalPERS expects health insurance companies to take decisive action to keep costs down. CalPERS leverages its large pool of members to try and hold insurance companies accountable and keep costs transparent. Premium increases generally stem from the costs of medical care exceeding premium revenue, rather than an overall increase in usage. Despite efforts to control costs, however, the cost trend is still affected by general inflation.

Price Waterhouse Cooper Study: The Price Waterhouse study projects a 7% rise in costs in 2024. The study defines the medical cost trend as the projected percentage increase in the cost to treat patients from one year to the next, assuming benefits remain the same. The study estimates the projected increase in per capita costs of medical services and prescription medications that affect both group and individual health plans. Insurance companies use the projection to calculate health plan premiums for the coming year. The growth rate is influenced primarily by changes in the price of medical products and services and prescription medications (known as unit cost inflation) and changes in the volume of services used (known as the utilization rate).

The study cited overall inflation as the main driver of projected costs. Although inflation began to take off as early as 2021, inflation has only just begun to affect premiums. That's because many providers had been in multi-year contracts that affected how soon providers could begin to pass on higher costs to insurance plans. Another major contributor is workforce shortages. Total employment in healthcare has not yet returned to pre-COVID levels, and a noticeable gap persists for the nursing and residential care facilities. This has forced providers to use temporary staffing companies that charge higher prices. But even as healthcare employment returns to normal, the study predicts the potential savings may be offset by a higher utilization rate, driven by pent-up demand for care. Increases in prescription drugs – in the high single to low double digits – are also affecting plan premiums. Drug shortages and supply chain issues are contributing to the general inflation of pharmaceuticals.

Heat Illness Prevention

The U.S. Department of Labor (DOL) and Occupational Safety & Health Administration (OSHA) have published best practices to prevent heat illness at work. The best practices are designed to help employers reduce the risk of heat related illness for workers as we head deep into the summer months. Suggestions include:

Did You Know?

Train All Workers. Employers should train supervisors and workers on how to control and recognize heat hazards. This includes first aid.

Follow the 20% Rule. On a worker's first day of working in extreme heat, no more than 20% of the duration of their shift should be at full intensity in the heat. The duration of time at full intensity should be increased by no more than 20% a day until workers are used to working in the heat.

Remember These Three Words: "Water. Rest. Shade." Workers should drink 1 cup of water every 20 minutes while working in the heat to stay hydrated. When the temperature is high, employers should have workers take frequent rest breaks in shaded, cool, or air-conditioned areas to recover from the heat.

Workers New to the Job are at Higher Risk. Workers who are new or returning to working in warm or hot environments need more time to adapt. More than 75% of heat-related fatalities occur during a worker's first week, which is why "acclimatization" – the process of building resistance to increased temperatures – is so important. Learn how to protect new workers from heat-related illness and monitor them until they are acclimated.

Hazardous Heat Exposure Can Happen Indoors or Outdoors. Though heat stress is typically related to outdoor work environments, and construction workers account for about one-third of heat-related deaths, workers in hot indoor environments like kitchens, laundries, warehouses, and electrical utilities are also at risk.

Engineering Controls and Modified Work Practices Can Reduce the Risk of Heat Illness. Employers should consider reducing physical activity as much as possible by planning for the work ahead and rotating job functions among workers to help minimize exertion.

If you encounter unsafe heat conditions, tell your employer immediately. If nothing changes, contact your professional staff for help, or call OSHA at 1-800-321-6742 (OSHA).

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

3.5% - CPI-U for the West Region

2.5% - CPI-U for the Los Angeles Area

2.9% - CPI-U for San Francisco Bay Area

3.9% - CPI-U for the Riverside Area (from May)

5.2% - CPI-U for San Diego Area (from May)

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 have an FMLA intermittent leave form on file with my employer for my anxiety and PTS disorders. My manager and HR recently met with me to advise me about how I'm not providing enough notice about my need for leave. I have not been formally disciplined as far as I know, and my leave requests have not been denied. But I'm concerned that either one may happen with a future leave request. How much notice must I provide? For doctor appointments, I may know in advance. But typically, I don't know of the need until my condition flares up. How is that my fault?

Answer: According to FMLA regulations, an employee who needs intermittent leave or a reduced schedule or has planned medical treatment must make a reasonable effort to schedule leave with the employer in a manner that does not unduly disrupt the employer's operation. Employees are required to provide 30 days advance notice of the need to take FMLA leave when the need is foreseeable and such notice is practicable. An employee must also comply with an employer's call-in procedures unless unusual circumstances prevent the employee from doing so (in which case the employee must provide notice as

soon as practicable). If an employee fails to provide timely notice, the leave request may be delayed or denied. An employee could be subject to discipline, depending on the employer's policies. If the need for leave is not foreseeable, the employee must provide notice to the employer as soon as possible.

The guidelines on FMLA leave related to mental health conditions include, but are not limited to, chronic conditions like anxiety and depression that cause occasional periods when an individual is incapacitated and requires treatment by a health care provider at least twice a year. Continuing treatment includes multiple appointments with a mental healthcare provider and follow-up care like prescription medication, counseling, or therapy. The FMLA does not exempt individuals with anxiety or other mental health conditions from callout polices but recognizes that certain mental health conditions may incapacitate a person for occasional periods without notice. If for example, someone who suffers from panic attacks is in the middle of a panic attack, they might not have the ability to physically call out at that exact moment, but the employee can be required to comply once the panic attack subsides.

It is best to specifically identify the need for FMLA when you callout so that the employer cannot argue that your leave was for any other reason like ordinary sick leave. For any doctor's appointments or other scheduled treatment, try to give as much notice as possible. For any unforeseeable flare ups, give your employer notice as soon as you can. If you are following the FMLA guidelines on leave, your employer has no reason to formally discipline you. If your request for leave results in discipline or any other retaliation, then contact your professional staff for help.

Question: We recently got a new Director. He said our Department has not been following our written meal and break policy, which provides for a 30-minute lunch break. He announced that going forward we are going to comply with the policy as written. For as long as I can remember we have been getting 45-minute lunch breaks. I'd like to file a grievance to keep the 45-minute lunches. Do I have a winning case?

Answer: A grievance is typically an alleged violation of an MOU between an employer and an employee organization. In some MOUs, the grievance procedure may extend to violations of an

employer's policies, too. Check your specific language to be sure.

If the written policy has always been 30 minutes and the City has allowed 45 minutes, this means the City was not enforcing the policy as written. The employer can enforce it now as written, even if it has not done so consistently in the past. Enforcing the policy as written is generally not subject to the meet and confer process and it typically does not give rise to a grievance. For example, in *Marysville Joint Unified School District* (1983) PERB Decision No. 314, at p. 10, the Board said that the mere fact that an employer has not chosen to enforce its rights in the past does not mean that it is forever precluded from doing so. There, the policy granted teachers a lunch period of only 30 minutes. The fact that the District allowed teachers to take 55 minutes for lunch did not mean the District was prohibited from enforcing the policy as written.

But let your employee organization leaders know about this. They can evaluate whether the employee organization has the right to meet and confer over it. For example, if the MOU has expired, or the underlying policy was established by the employer unilaterally, the employee organization may be able to negotiate over the proposed change now, prior to implementation. (*See, e.g., City of Culver City* (2020) PERB Decision No. 2731-M) (employee organization established an unfair labor practice when the City unilaterally changed work schedules, meal periods, and rest breaks after the MOU expired without first giving the employee organization prior notice and an opportunity to bargain). If it is not immediately negotiable, the employee organization can revisit the matter in the next MOU negotiation.

Question: The City sends some of us out of state for weeklong training. The travel to and from often takes place on a day off. Due to the distance, the time it takes for the travel takes up those "Days Off". Does the City have to compensate me for the travel? There seem to be some distinctions between the State and Federal Laws on this. In a past discussion with HR, they said the City is exempt from some of the state laws because it is a "Charter City." I have done some research and it seems to indicate that I should be paid for travel on days when I would typically be working. Is that correct?

Answer: Under state law, HR is correct. Charter Cities are afforded the right to exempt themselves from certain state

laws under California's Constitution. Article XI (5) Section 5 of the State Constitution allows charter cities to "make and enforce all ordinances and regulations in respect to municipal affairs" and make these laws supreme over "all laws inconsistent therewith" under the "home rule doctrine." The California Supreme Court has enforced the home doctrine rule specifically regarding charter cities and employee travel pay. The test for what falls under the home doctrine rule is whether the issue is a "municipal matter" or a "matter of statewide concern." Travel pay has been determined to be part of employee compensation, which is considered a "municipal matter." On the other hand, minimum wages laws have been determined to be a matter of statewide concern, so even charter cities must pay the state mandated minimum wage.

Under Federal law, yes, if you are eligible for overtime pay (non-exempt), you should be paid for overnight, out-of-state travel during your typical work hours even on your off days. Under the Fair Labor Standards Act (FLSA), certain travel time is categorized under "hours worked" for non-exempt employees participating in interstate work travel (travel from state to state). This includes travel that keeps an employee away from home overnight if it cuts across the employee's workday.

But time spent travelling away from home outside of regular working hours as a passenger on a common carrier – for example, an airplane, train, boat, bus, or automobile – is not considered work time. This includes time waiting in line for security or at the baggage claim.

In your situation, if the time you spent traveling outside of your regular working hours consisted of time spent traveling on a common carrier, then the FLSA does not require that the City compensate you for that travel time. Contact your professional staff for help in determining whether any of your travel time is compensable under the FLSA.

Question: I work in an open-air cubicle around several other co-workers who each have their own cubicle. One of my co-workers openly displays a religious symbol in their cubicle area. I don't think that's appropriate for the workplace. Don't I have the right to come to work and not be exposed to someone else's religious point of view? Who should I contact about having the religious symbol be taken down?

Answer: You can ask that it be taken down, and your co-worker may voluntarily agree to do so, but know that your co-worker has a legal right to display the religious symbol in their cubicle, at least insofar as doing so does not significantly disrupt the employer's operations. Under Federal law, Title VII of the Civil Rights Act of 1964 prohibits an employer from discriminating against employees based on various protected classifications, including religion. California's Fair Employment and Housing Act (FEHA) contains a similar prohibition under state law. This means the employer cannot legally require your co-worker to remove the religious symbol from the cubicle, absent exceptional circumstances. An employer must also reasonably accommodate an employee's sincerely held religious belief or practice unless doing so would cause an undue hardship. Undue hardships are actions that would require the employer to incur significant difficulty or substantial increased costs in relation to the conduct of its business.

In your situation, there does not appear to be any legitimate basis for the employer to demand that your co-worker remove the symbol from visibility. Doing so may mean that your co-worker could sue your employer for religious discrimination or failure to accommodate. In a U.S. Supreme Court case from June, *Groff v. Dejoy*, the Court unanimously said that a hardship that is attributable to employee animosity to a particular religion, to religion in general, or to the very notion of accommodating religious practice, cannot be considered "undue." Bias or hostility to a religious practice or accommodation cannot supply an employer with a defense.

Question: I received a 2-step promotion in July 2022. However, my supervisor was 9 months late with his appraisal and approval of this pay increase. In April 2023, I received retroactive pay. The gross retro pay amount was calculated correctly. However, the net retroactive pay was taxed at a higher tax bracket than my normal salary rate. I would like to know what options are available to me. If I had been paid on time, I would not have been taxed at the higher rate.

Answer: Taxes for one-time payments – such as retroactive pay and bonuses – are typically withheld by the employer at a higher tax rate. This is usually automatic via the employer's payroll software. This is because you typically receive these payments on top of what your normal salary or wages would be for the full year,

and the system assumes (often correctly) that you will owe tax at the higher rate. The tax authorities – the Federal Internal Revenue Service and the state California Franchise Tax Board – require employers to withhold taxes on supplemental pay at a higher rate.

The good news is, you do not necessarily owe more tax than you would if you had received your pay raise on time. It just means that you likely will not receive the difference back until you file your taxes for that tax year. If more was withheld than you owe, you would get a refund. Contact your tax professional for questions about any potential refund.