LBAEE
January 2024 News

MOU CHANGES HIGHLIGHTS

A new MOU 2023-2026 was approved by City Council on 12/5/23 and is currently routed for final signatures. In the next few Newsletters we will highlight the most important changes:

ARTICLE I – Memorandum of Understanding

- Clarification on notification of written notices.

ARTICLE II – Salaries and Compensation

- General Salary Increase per agreement.
- Equity Adjustments per agreement.
- The City shall conduct a comprehensive classification and compensation study of all AEE positions to be completed no later than March 1, 2026.
- The City agrees to partner with AEE, the appropriate departments, Civil Service and HR to discuss enterprise-specific classifications during the term of the contract.
- Skill pays adjustments per agreement.
- Bilingual Pay increased to $1.50 per hour.
- Night Shift Differential increased to $2.00 per hour.
- Higher Classification Pay increased to $2.00 per hour and rules clarified.
- Standby Duty explained and Standby pay increased to $2.00 per hour
- Uniform Allowance explained.
- Professional Certification Incentive Rules detailed.

ARTICLE III – Paid Time-Off Benefits

- Temporary 4-Year Vacation Maximum extended thru 1/7/2027
- Personal Holiday Accrual explained.
- In-Lieu Holiday Accrual explained.
- Any accrued Sick Leave can be used for Doctor or Dental Appointments or Family Illness.
- Bereavement Leave 5 days (Only 3 paid)
- Juneteenth (June 19) to be considered a Regular Holiday.
- Up to 160 Hours Paid Parental Leave explained.

Changes to the remaining sections of the MOU will be highlighted in upcoming Newsletters.

Workplace Bullying

Happy new year! Did you know workplace bullying occurs in public workplaces? Media accounts portray bullying as commonplace and increasing in frequency. It is not an easy problem to resolve, legally. There is no state or federal law prohibiting workplace bullying, but there are ways to address it. This month, we look at workplace bullying and what to do if you unfortunately find yourself a victim.

Workplace Bullying Defined: Since there is no state or federal law on workplace bullying, there is no statutory definition. Some employers have adopted anti-bullying policies. The starting point is to figure out whether your employer has an anti-bullying policy, and if so, how workplace bullying is defined. For example, the policy may define bullying as the use of aggression with the intention of harming another individual, or behavior that creates an intimidating or threatening environment. It may also reference examples of behavior that might qualify as bullying, such as taunting, shoving, or even gossiping.

The Workplace Bullying Institute (WBI) was established in 1997 to help educate the public about workplace bullying, advocate for legislation, and train employers and organizations on how to identify and address bullying behavior. The WBI defines workplace bullying as repeated, health-harming mistreatment by one or more employees towards another employee. This includes abusive conduct that takes the form of verbal abuse; behaviors perceived as threatening, intimidating, or humiliating; work sabotage; or some combination of these.
The WBI conducted a survey in 2021 of U.S. workers and found that 30% report having been bullied at work. The survey also found that remote workers are affected too. About 43% of remote workers reported having been bullied during work. You can find the report online at https://workplacebullying.org/

Workplace bullying has been described as a persistent pattern of mistreatment from others in the workplace that causes either physical or emotional harm. It can include verbal, nonverbal, psychological, and physical abuse, as well as humiliation. This type of workplace aggression is particularly difficult because workplace bullies may operate within established rules and policies of their organization, and in most cases, is reported as having been done by someone who has authority over the victim (downward bullying). But managers and supervisors can and do experience bullying from their peers or subordinate employees (upward bullying). Workplace bullying can take many forms

including overbearing supervision, constant criticism, and blocking promotions. Academic research puts workplace bullying behavior into five categories: Threat to professional status; Threat to personal standing; Isolation; Overwork; and Destabilization.

Workplace Bullying is Different from an EEO Policy: Unlike bullying, there are state and federal laws that protect workers from harassment, discrimination, and retaliation based on various protected characteristics. The most often cited is Title VII of the Federal Civil Rights Act of 1964, which prohibits discrimination based on race, color, religion, sex, and national origin. Other laws prohibit harassment based on similar protected characteristics, such as age or disability. Employers are required to have policies, known as Equal Employment Opportunity (EEO) policies, which prohibit harassment, discrimination, and retaliation based on these legally protected characteristics. The policies must include a complaint procedure, which usually results in an investigation, and when appropriate, disciplinary action against a worker who violates the policy, up to and including termination of employment.

Abusive Conduct Training: In California, all public agencies, and all employers with five or more employees, are required to provide one hour of training to workers (two hours for supervisory employees) on sexual harassment and gender discrimination in the workplace every two years. This training typically addresses other forms of legally prohibited harassment, discrimination, and retaliation. An amendment in 2015 (AB 2053) added a training component on preventing "abusive conduct." The amendment did not add abusive conduct as a protected category under state law, but it did add the training requirement. Under the amendment, abusive conduct means conduct of an employer or employee in the workplace, with malice, that a reasonable person would find hostile, offensive, and unrelated to an employer's legitimate business interests. It may include repeated infliction of verbal abuse, such as derogatory remarks, insults, and epithets; verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating; or gratuitous sabotage or undermining of a person's work performance. A single act shall not constitute abusive conduct, unless especially severe and egregious.

Effects: Workplace bullying can, literally, make people sick. Stress is the most common. The stress often results in the employee using more sick days, seeking medical care, and possibly taking a lengthier medical leave of absence. Severe bullying can lead to post traumatic stress disorder and even suicide. Dr. Noreen Tehrani, who publishes articles on Post Traumatic Stress Syndrome, has said that the symptoms of long-term bullying are

not much different from those of soldiers returning from combat: nightmares, anxiety, inability to concentrate and a variety of very real physical illnesses.

Workplace bullying can lead to other chronic medical conditions, such as heart attacks, high blood pressure, gastrointestinal distress, panic attacks, anxiety, depression, and insomnia. A study by Swedish researchers at the Stress Institute in Stockholm studied 3,100 men over a 10-year period in typical work settings. The results, published in the Journal of Occupational and Environmental Medicine, found that people who reported that their managers were incompetent, inconsiderate, secretive, or uncommunicative were 60% more likely to suffer a heart attack.

Much of the literature in this field is intended to help employers. Unchecked bullying takes a toll on organizations: high absenteeism rates, staff turnover, low productivity, and low organizational efficiency. One long-term study by a molecular biologist showed that employees stressed by bullying performed up to 50% worse on cognitive tests, like reading and math. The American Psychiatric Association Foundation Center for Workplace Mental Health found that the financial costs of bullying on American employers is $250 million per year. Costs may include counseling services, transfers, department reorganizations, workers compensation claims, and even civil lawsuits.

Causes: The Great Recession, COVID-19, and economic concerns have exacerbated stress in the workplace and have likely led to an increase in workplace bullying. People concerned with finances and job security while working in understaffed conditions experience more conflict on the job. Workplace bullying may also reflect a general decline in civil behavior. Americans seem to be agreeing that their workplaces are less civilized and more negative. Some theorize that bullying has become more pervasive in society: in schools, in neighborhoods, on the roads, in the media, and most notably in politics.

Academic literature tends to focus on organizational deficiencies and bad management. The difference between a good manager and a bad one is often how they behave under stressful circumstances – such as when the work does not go according to plan. Bullies may respond by acting out or blaming others. Bullies tend to be egocentric or narcissistic. Good managers tend to have a high degree of self-awareness, or at least self-control. A good manager looks at situations from other peoples' points of view. Researchers at both UC Berkeley and USC found that managers who are in over their heads are more likely to bully subordinates. This is because feelings of inadequacy trigger them to lash out at

others. Similar studies, published in the journal Psychological Science, showed a direct link between self-perceived incompetence and aggression.

Solutions: If you experience bullying at work, the first step may be to do nothing, at least initially. Confronting a bully directly may resolve the matter, but it could lead to further escalation and conflict at work. Reporting the behavior to management or human resources may be a better approach, particularly if you have a receptive employer that has an anti-bullying policy or is capable and willing to take the appropriate action. However, if your management and HR are more likely to view their role as defending supervisors and management from criticism by subordinates, reporting the behavior may not solve much and could make the situation worse. If you are unsure what to do, contact your employer's Employee Assistance Program (EAP).

If your employer does not have an anti-bullying policy, or the existing policy is deficient, your employee organization can propose adding language to your MOU, or propose revising the policy, in the next round of bargaining. It may be possible to negotiate a policy or revisions to an existing policy while an MOU is in effect, but there is no legal ability to compel the employer to bargain over one until the MOU is up for re-negotiation.

If your employer has an anti-bullying policy, it likely has an internal procedure for making complaints. The EEO complaint procedure or a grievance could bring attention to any improper workplace behavior, but it is not the procedure for addressing workplace bullying. Documenting and reporting the behavior to management or Human Resources is better, particularly in the absence of a specific anti-bullying procedure. The complaint should be formal and, if possible, done in conjunction with others who are experiencing the same problem. A group complaint helps mitigate any potential for individual retaliation. It is also much harder for your Human Resources Department to ignore a group complaint than an individual complaint. Employers may not intervene if they believe the conflict is inherent to specific personalities, or to the supervisor/subordinate relationship. They are much more likely to intervene if it is apparent that it is more than an isolated issue. Your employee organization can help ensure that Human Resources pays attention to this complaint and follows through. If necessary, the employee organization leaders can request a group meeting with management. Make clear that the goal is for the abusive behavior to stop, not necessarily to fire the abuser. Management will not likely admit that there is a problem, or identify the personnel action they took against the abuser, but the bullying should cease. If not, document it and report it again.

Anyone who is adversely affected by workplace bullying should consider getting medical treatment. Workplace bullying should not be ignored. Victims can develop psychological problems which can take the form of very real, disabling illnesses – and you may need to take time off the job. Your medical practitioner can certify you for job-protected leave under the Federal Family Medical Leave Act (FMLA) and California Family Rights Act (CFRA). These laws allow for up to twelve weeks of unpaid leave for a serious medical condition. Your paid leave accruals may run concurrently with an FMLA or CFRA absence. You might also consult a workers compensation attorney. To win a "stress claim," you need to be under the care of psychologist or psychiatrist, who can verify that your illness is caused by the job. You need to show that you asked management for help, but did not receive it, and that the abusive treatment continued.

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.

3.1% - CPI for All Urban Consumers (CPI-U) Nationally

3.3% - CPI-U for the West Region

2.8% - CPI-U for the Los Angeles Area

2.8% - CPI-U for San Francisco Bay Area (from October)

4.3% - CPI-U for the Riverside Area

5.2% - CPI-U for San Diego Area

Did You Know?

The California Public Employees Retirement System (CalPERS) has a special power of attorney form that you can file now, in order to protect your retirement benefits later, if you die or become incapacitated prior to your retirement. It is called the CalPERS Special Power of Attorney form and it allows you to designate a representative to conduct your retirement business if you are unable to do so.

If 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, and retirement benefit elections, including beneficiary designations.

Remember, not all power of attorney forms are the same – the CalPERS Special Power of Attorney form is specifically designed for CalPERS retirement. You may already have a power of attorney from another source (*e.g.* your will or estate plan), but it may not address your CalPERS retirement benefits specifically.

If you do not complete and submit the CalPERS form, you run the risk that, if you die or become incapacitated prior to retirement, CalPERS may find it necessary to withhold your retirement allowance until a court appoints a conservator to handle your affairs. This can be both expensive and time-consuming.

Completing and submitting the form ensures you get to decide who makes these decisions, in the unfortunate situation that you cannot. You can contact CalPERS toll free at (888) CalPERS (or 888-225-7377). You can also learn more, and download the form, at:

https://www.calpers.ca.gov/powerofattorney

Not all public employees in California are in CalPERS. Some are in local County retirement systems. This includes counties with retirement systems under the County Employees' Retirement Law of 1937. Many of these systems have reciprocity agreements with CalPERS, and many look to CalPERS as the leader in managing pension systems. You should contact your county retirement system if you are a member and inquire about whether they have a form similar to the CalPERS Special Power of Attorney form.

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 am having a medical procedure done in Mexico. I will have follow-up appointments done there as well. Are they eligible for FMLA?

Answer: In short, yes. The Federal Family and Medical Leave Act (FMLA) provides employees with up to 12 weeks of unpaid job protected leave for a qualifying reason, such as the employee's

own serious medical condition. The FMLA allows for treatment by a foreign health care provider if that provider is authorized to practice under the laws of the foreign country, and the provider is acting within the purview of their practice. So long as the provider who treats you in Mexico is authorized to practice under Mexican laws and is acting within the scope of their practice, the time you take off for the medical procedure, as well as any follow up appointments, would qualify.

Under some circumstances, leave may be taken intermittently. Intermittent leave is taken in separate blocks of time due to a single qualifying reason, rather than one continuous period. It may include periods from one hour or more up to several weeks. Employees needing intermittent leave must make a reasonable effort to schedule their leave so as not to disrupt the employer's operations. Be clear with your employer about what your specific need is. For example, you might need to take several weeks off for the procedure and recovery. After you return to work, you may need time off intermittently for follow up appointments. You must request leave thirty days in advance, or as soon as practicable if the need for leave is unforeseeable.

You will need to have your health care provider complete a certification form. Your practitioner in Mexico may or may not be familiar with the FMLA certification process, so this could be more challenging for you than it would be if you used a U.S.-based provider. The certification includes information regarding your provider's area of specialty, the date your condition commenced, the probable duration, and the amount of leave needed.

If a certification by a foreign health care provider is in a language other than English, you may have to provide the employer with a written translation of the certification if requested. If the employer has reason to doubt the validity of the certification, the employer may require, at the employer's expense, that you obtain the opinion of a second health care provider designated or approved by the employer.

You might also check with your health plan. Insurance may not cover the procedure and any follow-up appointments. Plans must cover medical care in a foreign country, but only in an emergency. Your situation might not

constitute an emergency, and therefore might not be covered by your insurance.

Question: I'd like to decorate my work area for the December holiday. What is the policy for decorations for work areas that are public facing and work areas that are not public facing? Does it make a difference? What are considered secular holiday decorations? What religious symbols can we display and what are off-limits?

Answer: Secular holiday decorations would include things like garland, tinsel, snow globes, reindeer, snowmen, Santa Claus, Christmas trees, candy canes, *etc*. Religious symbols would include a crescent and star, star of David, menorah, nativity scene, a cross or crucifix, a picture or figure of Jesus, *etc.*

Government entities are limited by the Establishment Clause of the First Amendment to the Constitution, which prevents the government from endorsing a particular religion. Official public displays and common areas may be limited to secular decorations, to avoid the appearance of endorsement of religion or a particular religion.

In a 2022 U.S. Supreme Court case, *Kennedy v. Bremerton School District*, the Court rejected a longstanding precedent from 1971, and said "the Establishment Clause does not include anything like a modified heckler's veto in which religious activity can be proscribed based on perceptions or discomfort." A public agency cannot restrict religious speech based solely on how others may react.

A public agency may decorate public spaces to reflect an array of different religions. To determine if a public entity's holiday display conforms to the Establishment Clause, courts look to: (1) is the display noncoercive; (2) does the display give a direct benefit to a religion in such a degree to establish or tend to establish religion; and (3) does the display convey a message to the reasonable observer that a combined display is an effort to acknowledge cultural diversity. (*ACLU of New Jersey v. Schundler*).

You have far more latitude in decorating your own work area, office, or cubicle, so long as it does not significantly disrupt the employer's operations. Under Title VII of the Federal Civil Rights Act of 1964, an employer cannot discriminate against an employee based on religion. California's Fair Employment and Housing Act (FEHA) contains a similar prohibition. An employer cannot legally require you to remove a religious symbol

from your work area absent exceptional circumstances.

An employer must also reasonably accommodate a sincerely held religious belief or practice of an employee unless doing so would cause an undue hardship. Undue hardships are actions that would require the employer to incur significant difficulty or expense in relation to the conduct of its operation. In another recent U.S. Supreme Court case, *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.

In short, a public agency cannot suppress free speech and religious expression of employees who decorate their own personal workspaces unless it creates an undue hardship on business operations. A public agency also cannot endorse a particular religion, or religion in general.

Question: How do the new paid sick leave law amendments affect those who have one paid time off bank and not separate sick and vacation benefits?

Answer: Governor Newsom signed SB 616 into law on October 4, 2023. It increases the minimum requirements of what an employer must provide for in terms of paid sick leave. Typically, an employer will have a policy providing for either separate leave benefits (vacation and sick leave), or a combined leave benefit (annual leave or PTO). So long as a PTO policy provides employees with the same or greater rights as required by the law (*i.e.* hours of leave, or use of leave for the same purposes), then the policy does not require any revisions.

Even before the enactment of the original sick leave law – the Healthy Workplaces, Healthy Families Act of 2014 – most public agencies already provided leave benefits that exceeded the then-new state minimum, at least for full time employees. That is because public employee organizations had previously bargained for more than what the new state minimum requires. That is still largely the case, regardless of whether your benefits are separate or combined.

In many agencies, when the leave is separate, sick leave often accrues at ten days (80 hours) or twelve days (96 hours) per year. The 2014 law required employers to provide three days (24 hours). The 2023 amendment requires

five days (40 hours). Unless you receive less than five days, the amendment does not require your employer to give more.

If your agency provides annual leave or PTO, the accrual rate must be at least five days (40 hours) annually. Because the concept of a combined bank is to provide for both sick leave and vacation, in most agencies, the accrual rate well exceeds this. Annual leave often accrues at one hundred sixty hours per year or more.

SB 616 does have some more nuanced requirements, such as employees must earn at least five days or forty hours of sick leave or paid time off within six months of employment. If the PTO policy provides an accrual rate that results in less than 40 hours within the first six months of employment, the policy would need to be revised to conform to SB 616. Some employers who provide the minimum accrual provide it up front to avoid this, but they are not required to.

Another nuance is that employers can have an accrual cap, but it cannot be less than eighty hours. If the annual leave or PTO policy provides a cap that is less than what the amendments require, then the employer will have to update the policy so the cap conforms to the new law.

In many ways, the 2014 law and 2023 amendments are like the minimum wage. They set a floor of what must be provided. As the floor increases over time, increasing it for those who already get more than the new minimum may be advisable, but not required, especially if the intent is to provide more than the minimum. If you think your PTO or annual leave benefits are inadequate, especially considering what the 2023 amendments require, contact your employee organization. They can propose improving the annual leave or PTO benefit in the next MOU negotiation.