LBAEE
July 2023 News

Bargaining Is Underway

The AEE bargaining team (Jason Rodriguez, Henry Corzo, Chris Sanatar, Jennifer Williams, Juan Arias, Tai Vu, William Stevenson, Robert Tinsley, Jorge Castillo, Dillon O'Donohue and CEA Negotiators Jeffrey Natke and Laura Holtan) have exchanged initial proposals with the City. The City's proposal has a 5% COLA increase over three years, equity increases for classifications under market, longevity bonuses, and increasing higher classification pay to $2/hour. Although a better initial proposal than in years past, we remain far apart on economics. We have dates calendared through the summer. At our next meeting, AEE will present our second proposal, which will include:

- Higher Cost of Living Increases
- 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

We will keep you informed as we continue to make progress. Feel free to reach out to the bargaining team with questions or suggestions. *Thanks for your support!*

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Vacation Allowance

Permanent full-time members are entitled to vacation allowance as described in this table:

Service Completed	Days Earned Per Year
Upon hire through 4 years, 5 months (Upon hire through 53 months)	12
4 years, 6 months through 11 years, 5 months (54 months through 137 months)	15
11 years, 6 months through 13 years, 5 months (138 months through 161 months)	16
13 years, 6 months through 17 years, 5 months (162 months through 209 months)	17
17 years, 6 months through 18 years, 5 months (210 months through 221 months)	18
18 years, 6 months through 19 years, 5 months (222 months through 233 months)	19
19 years, 6 months or more (234 months or more)	20

As a result of COVID-19 the City implemented a temporary 4 year vacation maximum cap set to expire December 31, 2023. The vacation cap will revert to three (3) year maximum effective January 1, 2024. For more details refer to Accruals Maximum FAQ-Final available on the City's intranet.

Retention Study Shows How Long Workers Stay at a Job

The labor market has been hot since June 2021, when the level of job openings hit a record high of 10.1 million, according to data from the U.S. Department of Labor, Bureau of Labor Statistics (BLS). The BLS publishes monthly reports, including what is known as the Job Openings and Labor Turnover Survey. The job openings report published June 2, 2023, found that employment increased by 339,000 in May 2023. This was well above estimates. It has been a hot two-year stretch for the job market!

A recent study by LendingTree, which analyzed BLS data from 2012 to 2022, found that the median job tenure has dropped from 4.6 years to 4.1 years. The biggest drop in job tenure was for workers between age 25 and 34, which fell from 3.3 years to 2.8 years.

Age Band	2012 Tenure	2022 Tenure	Percentage Change
25 – 34	3.3 Years	2.8 Years	-12.5%
35 – 44	5.3 Years	4.7 Years	-12%
45 – 54	7.8 Years	6.9 Years	-11.5%
55 – 64	10.3 Years	9.8 Years	-4.5%
65 and Older	10.3 Years	9.9 Years	-4%

The study concluded that workers – particularly younger workers – are not staying at a job for as long as they used to. On average, younger workers stay at a job for less than 3 years. The trend is likely to continue, as workers continue to seek better opportunities as employers continue to face labor shortages due to the lingering effects of the pandemic and overall demographic changes. There are now roughly two jobs open for every unemployed worker, more than any other point before the pandemic, according to recent BLS data.

A similar study by Payscale analyzed US worker retention between March 2018 and March 2023. According to the report, the main reasons workers say they leave their current job include perceived inequity in the employer's pay practices, concerns about job stability, toxic workplace culture, and bad management. Fear of getting laid off was the biggest factor impacting someone's decision to seek other employment. Workers who felt secure in their job reported a 39% decrease in their desire to job seek. Pay also came in high, and for younger workers especially, pay transparency. Workers under 24 said that when a position's pay is revealed publicly, their desire to job seek falls significantly.

Last fall, Governor Newsom signed a new state law (SB 1162) that requires all employers with 15 or more employees to provide a salary range on all job postings, and to provide to an employee upon request the pay scale for the position in which the employee is currently employed. A similar law (SB 973) was signed two years earlier. It required California employers with 100 employees or more to submit an annual pay data report to the state outlining the compensation and hours worked of its employees by gender, race, ethnicity, and job category. Labor Code Section 432.3, effective January 1, 2018, prohibited California employers from relying on salary history information of an applicant in determining whether to make an offer to the applicant, and in determining the proposed pay rate. The 2018 law applies to all employers regardless of size, and subsection (g) specifically applies it to state and local government employers.

Two years before that, on January 1, 2016, California's Equal Pay Act (Labor Code Section 1197.5) made it illegal for an employer to pay any of its employees at wage rates less than the rates paid to employees of another race or gender for substantially similar work. The law also prohibits employers from restricting employees from disclosing their wages, discussing the wages of others, inquiring about another employee's wages, or aiding or encouraging others to exercise their rights under the law.

Most public agency jobs already have publicly available pay scales. The California Public Employees' Pension Reform Act of 2013 took effect on January 1, 2013. Referred to as "PEPRA," it applies to all state and local public retirement systems, including CalPERS and County pension systems. PEPRA says that employee compensation must be set forth on a publicly available pay schedule that can be used to calculate the amount of the employee's retirement benefit. CalPERS requires that the public agency adopt the pay scales through an appropriate resolution for a group or class of employees and make it available for public review.

Although pay transparency has had a positive impact on retention overall, it may trigger higher turnover for younger workers, who are more likely to be paid at the lower end of the range. When they notice job postings that show higher ranges than their current rate of pay, this may increase their desire to seek a new job. Turnover can also increase when existing employees see new employees brought in at a higher pay rate for the same work.

Other than pay and job security, a positive relationship with one's manager and a good work culture can go a long way in improving the average tenure. For example, the

Payscale study showed that each of those factors lowered an employee's desire to leave by 21% and 22% respectively.

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.

4.0% - CPI for All Urban Consumers (CPI-U) Nationally

4.5% - CPI-U for the West Region

3.2% - CPI-U for the Los Angeles Area

4.2% - CPI-U for San Francisco Bay Area (from April)

3.9% - CPI-U for the Riverside Area

5.2% - CPI-U for San Diego Area

New Federal Pregnancy Law Takes Effect

The Pregnant Workers Fairness Act (PWFA) took effect on June 27, 2023, and requires covered employers to provide "reasonable accommodations" to a worker's known limitations related to pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an "undue hardship." Private and public sector employers with at least 15 employees are considered a covered employer.

The PWFA is a new federal law and applies only to accommodation. Existing state and federal discrimination laws already make it illegal to fire or otherwise discriminate against workers because of pregnancy, childbirth, or related medical conditions.

The PWFA does not replace federal, state, or local laws that are more protective of workers affected by pregnancy, childbirth, or related medical accommodations.

The Federal Equal Employment Opportunity Commission ("EEOC") is required to issue regulations to carry out the law. Violations of the PWFA can be enforced through the

EEOC beginning on June 27, 2023. For the PWFA to apply, the situation in the complaint must have occurred on June 27, 2023, or later.

In some situations, workers affected by pregnancy, childbirth, or a related medical condition may be able to get an accommodation under the Federal Americans with Disabilities Act (ADA) or the California Fair Employment in Housing Act (FEHA).

The House Committee on Education and Labor Report on the PWFA provides examples of possible accommodations including:

- The ability to sit or drink water.
- Receive closer parking.
- Have flexible hours.
- Receive appropriately sized uniforms and safety apparel.
- Receive additional break time to use the bathroom, eat, and rest.
- Take leave or time off to recover from childbirth.
- Be excused from strenuous activities and/or activities that involve exposure to compounds not safe for pregnancy.

Covered employers cannot:

- Require an employee to accept an accommodation without a discussion about the accommodation between the worker and the employer.
- Deny a job or other employment opportunity to a qualified employee or applicant based on the person's need for reasonable accommodation.
- Require an employee to take leave if another reasonable accommodation can be provided that would let the employee keep working.
- Retaliate against an individual for reporting or opposing unlawful discrimination under the PWFA or participating in a PWFA proceeding (such as an investigation).
- Interfere with any individual's rights under the PWFA.

The PWFA was passed December 29, 2022, along with the PUMP Act, which expanded protections for nursing mothers by providing the right to break time and a clean, private space to pump. Expanded protections took effect April 28, 2023. Workers in California have already been covered under related state laws. The PUMP Act now adds similar protection under Federal law.

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: Our Department is implementing minimum staffing and forced overtime assignments for our job classification. If we go under minimum staffing, the Department will post an overtime position for the shift. Approval of our time off request is contingent upon having the shift filled – otherwise, our vacation request will be denied. If we are at minimum staffing and someone calls off sick, which puts us below minimum, they will use the forced overtime list to bring us back to minimum. We are also encouraged to find a replacement for any time off request. Others in our department and in our Association get stand-by pay. Can the Association do something about this? At the very least I want standby pay for being subject to call-back due to minimum staffing.

Answer: Check your MOU or personnel rules and policies. These documents frequently include language on topics such as overtime, standby, on-call, call-back, or after-hours callouts. If there is language that applies, then it must be followed. You may also want to review the seniority language (if any) to determine if it identifies which employees are called back first.

Your employer may place you on standby, but they should provide notice and an opportunity to meet and confer to your employee organization over any identifiable impacts. This may include items like standby pay, and procedures for determining which employees are added to the standby list and how the responsibilities are shared or distributed. For example, this could be through a bidding process, or by seniority.

Standby pay is common where an employee is required during off-duty hours to respond if called out. Typically, an individual is assigned to be on standby for a day or week. There may be geographical, response time, or other restrictions placed on their off-duty time. Standby pay is designed to compensate the person who is required to be responsive if called out. Standby pay is in addition to any wages that must be paid if you do have to report back to work.

As for time off requests, the employer should not be placing new restrictions on your right to use your vacation time. But

the employer can deny requests on a case-by-case basis, including for operational needs, such as not having enough workers to cover mandatory minimum staffing. If the department is announcing a new blanket rule, that could be challenged. The employer should also not be asking you to find a replacement for your time-off requests as a condition of having it approved. Unless finding a replacement is already required in your MOU, rules, or policy, your employer cannot unilaterally announce this as a blanket rule without first bargaining with your employee organization.

Question: The City announced that they are reclassifying a vacant Administrative Assistant position in our department to a new Management Analyst position. This moves the position from our employee organization into the management unit. Can they do this? What recourse do we have to object?

Answer: The employer can create a new position within the department. If the work the new position will perform belongs to the management unit, then the employer should provide notice and an opportunity to meet and confer with the employee organization that will represent this new position. In your question, that sounds like it will be the employee organization that represents the management unit. They can negotiate over the job specification and pay if it has not already been done.

The employer can also eliminate a vacant position, or the funding, even if that position belongs to your bargaining unit. However, the employer cannot then transfer the work outside the bargaining unit. If that occurs, the employee organization that represents the vacant and now eliminated position may be able to challenge the employer's actions through a grievance regarding the erosion of the bargaining unit, or through an unfair practice complaint with the state Public Employment Relations Board. This will depend on how different the analyst position is from the assistant.

Regarding your question, this sounds as though it will be your employee organization, which represents the work performed by the Administrative Assistant position. Let your employee organization know that you noticed the position was eliminated. They can contact the employer to find out more.

As part of a fiscal year budget, it is common for the employer to reclassify a position rather than create a new

position and eliminate an old one at the same time. Reclassifying in this manner combines two steps into one. This may be objectionable. Check your MOU and personnel rules to see if there is any language on reclassifications.

In any event, it is likely a good idea for your employee organization to inquire with the employer about the changes. It may be that a reclassification is wise given the needs and responsibilities within the department. But it could also be a way of slowly eliminating bargaining unit positions over time, particularly if no other positions are being added to your unit at this time.

Question: I have been having concerns at work that I have needed assistance with. I reached out to one of our employee organization officers, and we had a discussion at my desk on work time about some of those concerns and whether the employee organization can help me. My manager later asked what I was discussing, and I told her, "Union business." She said I was not allowed to do union business during work time. This seems extreme to me. Can management restrict private communications between my union representative and I about workplace conditions and concerns?

Answer: You really have two questions. The first involves whether you have the right to conduct union business during work time. Your employer may prohibit you from doing so. However, the employer must follow both the MOU and the law, which may require release time for union business under certain circumstances. For example, the MOU might allow for release time to your employee organization leaders to represent a member in a grievance or discipline case, or to investigate whether a grievance has occurred. Union release time language in an MOU usually does not extend to rank-and-file members. The law may also provide protection, for example, when employee organization leaders are formally meeting and conferring with the employer over changes in terms and conditions of employment, or when an employee is participating in hearings before the state Public Employment Relations Board. It does not sound like these protections apply to the situation you have described. So, your manager likely can ask that you do this on your own time.

The second question is whether the employer can interfere with your right to engage in protected activity. The answer is no. Under the Meyers-Milias-Brown

Act, public agencies shall not interfere with, intimidate, restrain, coerce, or discriminate against public employees because of their exercise of their rights to engage in protected activity. (Gov't Code §3506). An employee can file an unfair practice claim with the state Public Employment Relations Board if there is a violation. Merely asking if an employee is engaging in work or protected activity is not a violation. But if the manager asked you to reveal the substance of your discussion, that would be a claim.

Question: I am requesting some time off, and the days I am requesting off, our office will be fully staffed except for our open Accountant position. I am requesting one day and a few hours three days later. I had mentioned to my supervisor that I am behind on work prior to requesting this time. My supervisor told me she will approve my time conditionally because she cannot approve my time off if I am already behind on work. We have been short-staffed for several months because the open Accountant position has not been filled. I am currently performing the duties of this open position, so of course I am behind on some of the tasks. Can she deny my request for time off?

Answer: Your supervisor can deny your leave request. However, your employer should be following the MOU and any personnel rules and policies. Many MOUs provide for a right to paid time off, and the procedures are often set forth in a separate rule or policy. The starting point is to check those documents to see whether there are any limitations on the employer's exercise of discretion in approving or rejecting leave requests.

In the absence of any protocols, your supervisor can exercise discretion to approve or deny a request. However, this discretion must be exercised reasonably. Your request (one day, and a few hours three days later) sounds like a reasonable leave request. Generally, understaffing is not a valid reason to deny the request or place conditions on approval, absent a hard deadline on a specific work project.

General workload – particularly, as in your situation, where you are performing not just your job but that of another open position in your department – is not a reason in and of itself to deny leave. Particularly when the employer has control over staffing. If your supervisor changes the approval to a denial, you may have grounds for a grievance.

You may also be entitled to additional pay for performing out-of-class work, for example the duties of the vacant Accountant position. Check your MOU and personnel rules to see if there is language that provides for additional pay, and if so, consider asking for it.