LBAEE

June 2024 News

UPDATES

- LBAEE appointed Jennifer Williams to complete the Vice-President term left by, now President, Henry Corzo:

VICE-PRESIDENT:

JENNIFER WILLIAMS
Department: Harbor
Bureau/ Division: Environmental Planning
Classification: Environmental Specialist Associate
Years with the City: 4 years
AEE previous involvement: Executive Assistant – 2023

- Fire & Code enforcement group has been merged into Group A with Building & Safety Group represented by Tai Vu:

GROUP A (Building & Safety / Fire & Code Enforcement):

TAI VU
Department: Community Development
Bureau: Building & Safety
Classification: Senior Civil Engineer
Years with the City: 19 years
AEE previous involvement: Group A Director since 2012

- LBAEE submitted an initial proposal to the city to start considering establishing Enterprise-Specific Classifications, which is currently under review.

- LBAEE had a meet and confer meeting opposing a proposed change to modify the hybrid schedule for Long Beach Utilities.

- We give thanks to Laura Holtan, one of our labor attorneys, for years of professional assistance as she moves on to pursue new endeavors.

Workplace Violence

It is difficult to listen to the news or read a paper nowadays without hearing about another incident of workplace violence. It is a major concern for employees nationwide. Workers have a right to a safe workplace. This is not a new principle. Federal agencies, such as the Occupational Safety and Health Administration (OSHA), and state agencies, such as the California Department of Industrial Relations (DIR), have long since required employers to plan for, prevent, and address various workplace hazards. For example, under current law, employers must maintain an Injury and Illness Prevention Plan (IIPP). Employers were required to adopt a Covid-19 Prevention Plan (CPP) during the pandemic.

One topic that has gained attention lately is workplace violence. Beginning July 1, 2024, most California employers will be required to adopt and maintain a workplace violence prevention plan (WVPP). As with the other mandated plans, the plans use common language from employer-to-employer. However, California public agencies must notify any affected employee organizations and provide reasonable opportunity to meet and confer prior to implementing the plan. This month, we explore the topic of workplace violence and why these WVPPs are so important in your workplace.

Workplace Violence Defined – According to OSHA, workplace violence is any act or threat of physical violence, harassment, intimidation, or other threatening disruptive behavior that occurs at the worksite. Workplace violence ranges from threats and verbal abuse to physical assaults and even homicide. It can affect and involve employees, clients, customers, residents, vendors, and visitors.

Workplace violence is defined under California Labor Code Section 6401.9 as any act of violence or threat of violence that occurs in a place of employment. This includes, but is not limited to, the threat or use of physical force against an employee that results in, or has a high likelihood of resulting in, injury, psychological trauma, or stress, regardless of whether the employee sustains an injury. It also includes an incident involving a threat or use of a firearm or other dangerous weapon, including the use of common objects as weapons, regardless of whether an employee sustains an injury.

Census – According to a Federal Bureau of Labor Statistics (BLS) report dated December 19, 2023, there were 5,486 fatal work injuries recorded in the United States in 2022. This is a 5.7% increase from 2021 and equates to 3.7 fatalities per 100,000 full-time workers. A worker died every 96 minutes from a work-related injury in 2022. Fatalities due to workplace violence increased 11.6% to 849 in 2022. Homicides accounted for 61.7% of these fatalities, or 524 deaths. Acts of violence are currently the second-leading cause of fatal occupational injuries in the United States. 57 people died from workplace violence in California in 2021, a startling statistic since many people were working remotely due to COVID-19. These figures may increase as more workers return to the worksite. We are just beginning to experience the long-term ramifications of psychological stress from the pandemic. Some employees who did report onsite during the pandemic may not have reported a workplace violence incident because of how isolated they felt.

Risk Factors – OSHA identifies at-risk occupations to include public service workers and law enforcement personnel. OSHA identified specific risk factors including:

(1) Working at a site where money is exchanged with the public.
(2) Working with volatile, unstable people, or those with a history of violence.
(3) Working alone or in isolated areas.
(4) Providing public safety or social welfare functions in the community.
(5) Working where alcohol is served.
(6) Working late at night, early in the morning, or in areas with high crime rates.

Workplace violence can occur in any job setting, even in the absence of these risk factors. All workers are encouraged to remain vigilant to guard against incidents of violence.

Prevention – In many workplaces, risks can be prevented or reduced if employers take appropriate precautions. OSHA says one of the best protections employers can offer their workers is to establish a zero-tolerance policy toward workplace violence. This policy should cover all workers and those they encounter during the workday. The employer should do an assessment of the worksite and identify methods for reducing the likelihood of incidents occurring. OSHA believes a well-written and implemented plan combined with training and the proper controls can reduce the incidence of workplace violence. It is critical that all workers know the policy and understand that all claims of workplace violence will be investigated and remedied promptly. The Department of Labor has its

own program at https://www.dol.gov/agencies/oasam/centers-offices/human-resources-center/policies/workplace-violence-program

SB 553 – Last year, Governor Newsom signed into law Senate Bill 553. The law requires employers to implement an effective Workplace Violence Prevention Plan, including training employees, maintaining an incident log and other recordkeeping responsibilities, and to include the plan as part of its IIPP. The new law also allows the collective bargaining representative to seek a temporary restraining order on behalf of affected employees at a workplace. The new requirements are in California Labor Code §6401.9.

Cal/OSHA – Cal/OSHA has developed a webpage to serve as an overview of the new legal requirements. https://www.dir.ca.gov/dosh/Workplace-Violence/General-Industry.html Cal/OSHA is developing a workplace violence prevention standard that meets the requirements of the new law and will submit it to the Occupational Safety and Health Standards Board (OSHSB) no later than December 31, 2025. OSHSB is required to adopt the standard no later than December 31, 2026.

WVPP – Labor Code §6401.7 now requires employers to develop and implement a WVPP in accordance with Labor Code §6401.9, which sets out the plan requirements. It must:

- Identify who is responsible for implementing the plan.
- Involve employees and their representatives.
- Require an employer to accept and respond to reports of workplace violence.
- Prohibit retaliation for reporting workplace violence.
- Be shared with employees.
- Develop and provide effective training (initially, annually, and post-incident).
- Assess workplace violence hazards.
- Include language about performing post incident response and investigations.
- Set forth emergency response protocols.
- Require maintenance of a violent incident log.

Types of Violence – Labor Code §6401.9 identifies four types of workplace violence.

(1) Type 1 violence is committed by a person who has no legitimate business at the worksite and includes violent acts by anyone who enters the workplace or

approaches workers with the intent to commit a crime. This includes robberies and workplaces where employees have face-to-face contact and exchange money with the public.

(2) Type 2 violence is directed at employees by customers or other visitors. Examples include service providers while onsite and during visits at residences or businesses, and school staff where students have a history of violent behavior.

(3) Type 3 is where the violence is by a present or former employee, supervisor, or manager. The primary target of a type 3 incident can be a co-employee, a supervisor, domestic partner, or manager of an individual who may be seeking revenge for what they perceive as unfair treatment at the workplace.

(4) Type 4 is violence committed by a person who does not work there but has or is known to have had a personal relationship with an employee.

Some occupations and worksites are at risk of more than one type of workplace violence.

Post-Incident Response – Employers should ensure employees receive timely and appropriate medical treatment. Employers should give notice to employees of workers' compensation eligibility within one working day of a workplace violence incident. Employers should investigate and evaluate the incident and determine and implement changes needed to reduce workplace hazards in the workplace. Employers should review the effectiveness of the plan and revise it if necessary. Employers must immediately report to Cal/OSHA any serious injury, illness, or death of an employee occurring at a worksite or in connection with any employment, including workplace violence incidents.

Violent Incident Log – Employers must record the required information in a Violent Incident Log. Employers must exclude information that would identify any person involved in a violent incident. However, the entry should identify the person completing the log (name, job title, and date completed), and include:

- Incident date, time, and location.
- Workplace violence type (1, 2, 3, and/or 4).
- Detailed description of the incident.
- Classification of who committed the violence.
- The circumstances of the incident.
- Where the incident occurred.

- Specific details like physical attacks, weapon involved, threats, sexual assault, animal incidents, or other events.
- Any consequences, including involvement of law enforcement.
- Steps taken to protect employees from further threats or hazards.

Recordkeeping – The plan must be kept in writing and easily accessible to employees. Employers must keep incident records for a minimum of five years and training records for a minimum of one year. Records shall be made available to employees and their authorized representatives upon request and without cost for examination and copying within 15 calendar days of a request.

Disciplinary Action – Many public employees have protections in place if an employer takes disciplinary action. However, a "zero-tolerance" policy typically means that, if an employee is found to have violated the policy (absent self-defense), the employer may terminate employment without following progressive discipline. The employee may have a right to notice of the proposed action and the materials upon which it is based, along with a post-termination right to an evidentiary hearing. However, courts consistently uphold terminations of violent employees, without regard to prior work records. The discipline process may allow for an employee to challenge whether the policy was violated, but it is unlikely that any challenge to the severity of the penalty will be reversed if a violation is found. There is an important message here: *Be careful of what you say when you are angry*. A single comment, regardless of intent, made in the heat of the moment, can result in the termination of your employment.

Speak Up! – If you see or hear something that you believe violates the policy, report it. While anyone who brings a weapon to work is easy to recognize as a threat, statistics suggest that anger often erupts into violence among quiet employees who are troubled. People develop a propensity for violent behavior for many different reasons. Pressures at work, family conflicts, and financial distress may play a role in pushing someone over the edge. For example, during the Great Recession, an employee in Costa Mesa made news when he killed himself by jumping off the roof after receiving a layoff notice. Investigators often find indicators that something was wrong after the fact, such as frustration, agitation, arguments, *etc*. For example, an employee may become obsessed with another coworker who they believe undermined them, or an employee may develop

a sudden or increasing fixation with weapons. Because we spend so much time at work, co-workers are often more observant and are the first people to notice changes in behavior which could be precursors to violence. Employees should take reporting on another employee seriously and not create a false narrative to discredit another worker.

Conclusion – If you notice a co-worker exhibiting a propensity for violence, report it to management. The employer is obligated to investigate and protect you from retaliation. How management responds to the threat is based on what the investigation uncovers. If it involves an immediate threat, the employee may be placed on administrative leave until the investigation is complete. This is not yet discipline, and it may provide the employee with an opportunity to get some urgently needed help.

While most employers are responsive to reports of potential violence, some are not. If you believe your legitimate concerns are not being taken seriously, or if you think that management is not following the policy, contact your employee organization leaders or professional staff for help. Contact the police if you reasonably believe there is an imminent threat of violence to yourself and/or your co-workers. Overall, it is in your best interest, and the interest of everyone at your worksite, to speak up if you are concerned about potential violence.

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.

3.4% - CPI for All Urban Consumers (CPI-U) Nationally

3.7% - CPI-U for the West Region

3.9% - CPI-U for the Los Angeles Area

3.8% - CPI-U for San Francisco Bay Area

4.3% - CPI-U for the Riverside Area (from March)

3.6% - CPI-U for San Diego Area (from March)

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: Does my boss have to allow me to take my lunch early? When I got to work, I told my boss I needed to take my lunch early, he said NO, but I could use my own time if I needed to. I don't want to use my time and I want to use my hour lunch break. What can I do to switch my scheduled lunch time?

Answer: It sounds like they are willing to work with you by offering you time off if you use your own leave. Try discussing the issue with your supervisor to find out their reasoning for the denial, while also explaining the need for an early lunch. If there is a business need and you do not have a compelling reason for switching your lunch time, the employer is less likely to approve an early lunch.

Employers are allowed to schedule employees according to operational needs. If you have a job that must provide around the clock service, like a dispatcher, the employer may need to stagger staff lunch breaks to maintain coverage. If you are the only person in a public facing job, like a receptionist, the employer may need to get someone from another department to cover for you.

On the other hand, it is important for employees to receive breaks throughout the day. Employees should generally take a lunch break of at least 30 minutes if they work more than 5 hours a day. Check your meal and rest break policy for specifics about your lunch period. There may also be employer policies or a provision in your MOU that allows you to flex your lunch period, but without this, your supervisor probably does not need to allow you to take your lunch early.

If you need to have an early lunch due to a medical need, such as taking medicine with food at a certain time, your employer may have to accommodate you. However, you will need to provide a doctor's certification and ask for a medical accommodation. Contact your professional staff to assist with this.

Question: What does it mean that my sick leave is "protected." Is it just that the City cannot interfere or deny me the ability to use the leave? Or does it go further and prevent the City from counting it against me on my performance evaluation under the attendance section?

Answer: The employer generally must allow you to use protected leave in accordance with state or federal law and they cannot retaliate against you for the legitimate use of protected leave. This means you cannot be denied the ability to use the leave or disciplined for using the leave under an attendance policy. Your employer also cannot count any protected leave against you in your performance evaluation rating. This includes denial of a step increase or advancement within the salary range. An employer can inquire about your absences from work, but they cannot deny you the right to use protected leave or otherwise hold it against you in a way that negatively affects your employment. If you are on probation, your probation may be extended to account for any periods of time you were on leave.

There are different forms of protected leave, each with their own requirements. For example, under California's Kin Care law (Labor Code 233), employees can use at least one-half of their annual sick leave accrual for protected sick leave to care for themselves or immediate family members. This includes diagnosis, care or treatment of an existing health condition, and preventative care. It also includes for specified purposes, like if you are a victim of domestic violence, sexual assault, or stalking.

California's sick leave law now requires employers to provide at least 5 days or 40 hours, whichever is greater, of paid sick leave per year. There may be a minimum amount of time, such as 90 days, that you must work before you are eligible to use sick leave. Initial hires must have at least 3 days or 24 hours available for use by the 120th day of employment, and 5 days or 40 hours by the 200th day of employment. Your MOU probably provides better sick leave benefits than the state law minimum.

Other forms of protected leave – like the Family Medical Leave Act (FMLA) and the California Family Rights Act (CFRA) – allow employees to take up to 12 weeks of job-protected leave to care for the employee's own, or an immediate family member's, serious health condition. If this situation applies to you, you should request FMLA leave from your Human Resources department. You will need to provide a doctor's certification, and leave can be taken in blocks or intermittently.

Employees should provide notice to an employer of the need to take protected leave as soon as possible in the event of illness or a medical emergency, and in

advance if for planned appointments. Your employer may require a doctor's note and can take disciplinary action if sick leave abuse is discovered. If you are denied the legitimate use of protected leave, or threatened with discipline for using it, contact your professional staff.

Question: Our manager said she was in the process of "testing" a digital sign in/clock in for our workgroup. Over the span of a week, the time it takes to log in could add up to six minutes. Six minutes is the benchmark for receiving overtime for fifteen minutes. I voiced my concern that it takes several minutes to boot up the computer system and it also takes several minutes to sign into the time/punch system she wants to use. While in this testing phase, I am noting how long it takes to log in to our computer system. Is this considered a change to working conditions if it is implemented? Is requiring us to use a computer to log in before our actual start of shift the same as being asked to work off the clock?

Answer: Requiring employees to use a new time clock system is a change to your terms and conditions of employment. Management must notify your employee organization and provide an opportunity to bargain over the implementation and foreseeable effects. This includes the possibility that employees may be unpaid for work they are performing by waiting to log in and clock in or out if the system is slow or there are too many people trying to log in and not enough computers. Another possible effect could be employees being considered tardy and facing possible discipline if they are clocking in after the start time.

Under the Federal Fair Labor Standards Act (FLSA), the time an employee is engaged to wait can be compensable time. However, if it is taking a grand total of 6 minutes extra per week, meaning only 1-2 minutes extra per day, this may be considered *de minimis*. Infrequent and insignificant periods of time that cannot be precisely captured may not be compensable under the FLSA.

Adding a grace period for clocking in, ensuring that employees are not considered tardy if they are work ready by start time, and adding a means of time adjustment in case someone clocked in late or forgot to clock in or out altogether could address these possible issues. Contact your employee association or professional staff once you hear the employer is looking to move this out of the testing phase, so that they can meet

and confer with the employer regarding the effects before it is implemented.

Question: I just learned the City reposted a vacancy. Some colleagues and I had applied and were qualified. No internal applicants were informed as to why they were not given an interview or why they were no longer considered for the vacancy. It seems sneaky. It appears Management does not want to promote internally. Is the City allowed to do that? Do we have to apply again? What recourse do we have?

Answer: Whether the City can stop and later repost a recruitment depends on its hiring and promotional policies, the Civil Service Rules, if applicable, or your MOU. There may be rules regarding a minimum number of applicants, minimum days for a job posting to be open, when and what type of notice an applicant should receive regarding the selection process, when a recruitment may be internal or also external, and eligibility lists. If the City did not follow the established rules, contact your employee organization or professional staff for help. This could mean a formal grievance, or a meeting with HR to discuss the issue. If there is no violation, the City can probably do it as it falls within their management rights, but it is a fair question to ask why it did so. The City should want to promote from within, if possible. Your employee organization could also consider negotiating for better language on hiring and promotions in the next MOU.

The first step you should take is to apply for the promotion again to ensure that you are a possible candidate if you or your colleagues are still interested in the position. If you do not apply, and there is no additional recourse available to you, you will miss out on the promotional opportunity altogether. If you find the job specification has changed, let your employee organization know, just in case the City did not provide proper notice and an opportunity to meet and confer before implementing the changes. If the job posting has changed, such as the pay range or requirements, this could be why the City launched a new recruitment.

Employers have broad discretion over filling positions, including when and who is selected for a position. There are many legitimate reasons why they may have stopped the original recruitment, including budget concerns, hiring freezes, reorganizations, and changing business needs. If you ask, management or Human Resources should be willing to provide more insight into why they stopped the original recruitment.