LBAEE
May 2023 News

AEE's Retention Bonus

On September 6, 2022, as part of the Fiscal Year 23 budget, the City Council approved a one-time retention bonus of $5.8M in funds directed towards retention efforts for non-safety employees. Those eligible for the retention bonus include current full-time, part-time and non-career employees (budgeted FTEs) who were employed with the City as of January 1, 2022. Full-time employees will receive a one-time bonus of $1,450 split over two payments of $725 each. Part-time employees will receive a one-time bonus of $725 split over two payments of $362.50 each. The first Retention Bonus installment appeared on employee paychecks on December 9, 2022. The second Retention Bonus installment will appear on employee paychecks on May 12, 2023.

Thank you to all the members for voted in the Election last month, below is a list of AEE's current Board and their contact information.

LBAEE Board Contact List		
Executive Positions	**Name**	**Email**
President	Jason Rodriguez	jason.rodriguez@lbaee.org
Vice-President	Henry Corzo	henry.corzo@lbaee.org
Treasurer	Chris Sanatar	chris.sanatar@lbaee.org
Executive Assistant	Jennifer Williams	jennifer.williams@lbaee.org
LBAEE Groups	**Director Name**	**Email**
Group A (Building & Safety)	Tai Vu	tai.vu@lbaee.org
Group B (Energy Resources) - Acting	Will Stevenson	william.stevenson@lbaee.org
Group C (Public Works & Airport)	Dillon O'Donohue	dillon.odonohue@lbaee.org
Group D (Harbor)	Jorge Castillo	jorge.castillo@lbaee.org
Group E (CM & Survey)	Juan Arias	juan.arias@lbaee.org
Group F (Fire & Code Enforcement)	Robert Tinsley	robert.tinsley@lbaee.org

Bargaining Preparation Continues

LBAEE has started the planning process for upcoming negotiations. Your bargaining team (Jason Rodriguez, Henry Corzo, Chris Sanatar, Jennifer Williams, Juan Arias, Tai Vu, William Stevenson, Robert Tinsley, Jorge Castillo, and Dillon O'Donohue) are working with CEA Negotiators Jeffrey Natke and Laura Holtan to finalize our initial proposal, based on your input. Our initial proposal includes items such as:

- Cost of Living Increases
- Additional Salary Step
- Longevity Incentives
- Increased Medical Benefits
- Increased Retiree Health Benefits
- More Expansive Telework Options
- Expanded Certification Pay
- And more!

We have notified the City we would like to begin negotiations. We have our initial meeting later this month. Feel free to reach out to the bargaining team with questions or suggestions.

Thanks for your support!

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Pew Study Finds Workers are Not Taking Enough Vacation

As the weather heats up, and school breaks for summer, many workers take a well-deserved vacation. This is particularly true for workers with children who have summers off. This is good news! Vacation benefits are intended so that employees detach from work. A pause from the workplace and your daily responsibilities is good for you.

You may have seen headlines last month about a new study conducted by Pew Research Center. It found workers are not using enough vacation, and the reasons are revealing. Over half of the survey respondents said they do not feel they need to take more time off. About half of those surveyed said they worry they might fall behind with work. 43% of the respondents felt badly about co-workers taking on additional work. The full study can be found at https://www.pewresearch.org/social-trends/2023/03/30/how-americans-view-their-jobs/

Benefits of Taking Vacation

Studies show that workers who take vacation are more productive at work and have better overall health than those who do not use their vacation. A 2019 study found that vacations lower the risk for metabolic syndrome, a cluster of conditions that increase the risk of heart disease. Vacations replenish the mind and reduce the physical effects of stress on the body. A longitudinal study published in 2018 followed a group of men for a period of over 50 years. It found that men who improved their lifestyles but shortchanged their vacations still had a higher mortality rate – they were 37% *more likely* to die prematurely than the male employees who took three weeks or more of vacation annually. A global analysis by the World Health Organization and the International Labour Organization (of both male and female workers) estimated that between 2000 and 2016, the number of deaths from heart disease due to working long hours increased by 42%. The number of deaths from stroke due to working long hours increased by 19%.

But the health benefits of taking vacation assume you unplug from work. Working remotely is not the same as taking vacation. An Associated Press survey from June 2017 found that one-third of Americans work or check in with work while on vacation. These trends have accelerated since the pandemic as teleworking has become more common.

So, why don't American workers take more time off? According to the Bureau of Labor Statistics, the average employee works 20 years before earning 20 days, or roughly one

month, of paid vacation annually. Even for those who have paid time available, many employees do not utilize their vacation time because they cannot afford vacationing, have too much work, or too many family obligations. Another survey of more than 7,000 Americans found that 43% of workers feared returning to a mountain of work and 32% said they could not financially afford going away for a vacation. Another study found younger employees do not take vacation because of their financial situation and workload. Older employees cite family obligations as the reason.

If you cannot detach for one long break, many studies recommend that you take vacation time off at least twice a year to improve health benefits. The worst health effects documented were for people who had not taken a vacation for several years in a row.

Your Legal Rights to Vacation

Despite the mountain of evidence showing the health and productivity benefits of taking a vacation, you might be surprised to learn that even in 2023, there is still no state or federal law that requires employers to provide paid vacation benefits. The subject is negotiable, however. In California, almost every public agency offers some form of paid vacation benefits to full time employees. The terms and conditions governing vacation benefits are typically found in your MOU or your personnel rules.

If your employer does provide vacation benefits, state law offers some legal protections. Under California law, earned vacation time is considered wages, and vacation time is earned, or vests, as labor is performed. For example, Labor Code §227.3 says that employers cannot take away any earned vacation or paid time off (PTO) benefits once accrued. If you accrue vacation hours, the employer must also pay out your vacation when you separate employment at your hourly rate in effect at the time of separation. Your earned vacation time must be paid, regardless of the reason, even if you are terminated for cause. (*Suastez v. Plastic Dress Up* (1982) 31 Cal.3d 774).

Section 227.3 says that, unless otherwise provided by a collective bargaining agreement, all vested vacation shall be paid upon separation at the final rate then in effect and that no employment contract or employer policy can provide for forfeiture of vested vacation time upon termination. The Labor Commissioner shall apply the principles of equity and fairness in resolving any dispute over vested vacation time.

It is legal for the employer to place a reasonable cap on vacation accruals that prevents an employee from earning time once they have accrued a certain number of hours. (*Boothby v. Atlas Mechanical* (1992) 6 Cal.App.4th 1595). The law does not require a specific cap. The law also does not mandate a specific accrual rate. Most employers have a graduated scale, where employees accrue at a faster rate based on seniority.

Using and Improving Current Vacation Benefits

Increasing vacation accrual rates has been a big subject of bargaining the last year or two. Both the cap and accrual rate are negotiable. With a strong labor market and many employers struggling with recruitment and retention, it is not surprising that both labor and management want to improve vacation benefits. If your employer is having a hard time recruiting, they might want to increase the accrual rate for newer employees. If retaining senior staff is a problem, employers might consider a higher maximum accrual rate for the most senior employees. This can help keep talent from leaving for a slightly higher salary somewhere else.

A higher vacation accrual rate can be a big draw for employees in choosing where to work, especially when other factors are similar – such as salary and pensions. This is even more so for employees who already work at one public agency and who may already accrue at a much higher rate than what another agency currently offers to new hires.

With many public agencies short-staffed, it is wise to submit your vacation request as far in advance as possible. Check your MOU and vacation policy. It may require a certain amount of advance notice. It often allows management some discretion over whether to grant or deny a request. But management cannot deny you the ability to use a negotiated benefit completely.

You might also review your leave cash-out language. Many public agencies provide for an annual cash-out of vacation time, either in the MOU or the personnel rules. The terms of any annual vacation cash-out program are not set by law, but by your MOU, and they are negotiable. Many employees like to cash-out vacation time to help pay for a vacation. It is one of the reasons why there are many vacation cash-outs in July and December.

What to Do if Your Rights Are Violated

Contact professional staff, who can help you figure out whether your rights have been violated and what to do next. For a violation of the Labor Code, you could also file a wage

claim with the California Labor Commissioner and the Department of Labor Standards Enforcement (DLSE). It's not lawful for your employer to have a "use it or lose it" policy when it comes to vacation, for example. The Department also publishes a useful Frequently Asked Questions about vacation benefits under California law. https://www.dir.ca.gov/dlse/FAQ_Vacation.htm

Most problems with vacation benefits are less likely to be Labor Code violations, and more likely to be employer violations of your MOU, personnel rules, or vacation policy. Often filing a grievance is the quickest and most effective way of resolving a violation. For example, if your employer unreasonably or repeatedly denied you the ability to use vacation, you may be able to resolve this quickly by filing a grievance.

Your employer cannot change work rules without first providing notice and an opportunity to meet and confer with your employee organization. If your employer unilaterally changed the vacation policy, your employee organization can file an unfair practice claim with the state Public Employment Relations Board (PERB). PERB can order the public agency to make employees whole for any violation. They can also order the parties to negotiate, which is the best path for securing improvements in vacation benefits in the first place.

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.

5.0% - CPI for All Urban Consumers (CPI-U) Nationally

5.1% - CPI-U for the West Region

3.7% - CPI-U for the Los Angeles Area

5.3% - CPI-U for San Francisco Bay Area (from February)

4.6% - CPI-U for the Riverside Area

5.3% - CPI-U for San Diego Area

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 recently promoted from our general employees' group to our mid-management employees' group. When I was a general employee, I paid into the State Disability Insurance system, but I'm no longer paying as a mid-management employee. Can I still get my SDI benefits based on my prior contributions? How long do I have to submit a claim?

Answer: Yes, you theoretically should still be able to get SDI benefits based on your prior contributions. But how much you get will depend on how much time passes before you are eligible for, and submit, a claim.

The State Disability Insurance plan is a state-run program that provides monetary benefits when you have a disability and are unable to work due to a non-work-related illness or injury. It also pays benefits for paid family leave. The illness or injury can be either physical or mental, but it must prevent you from being able to perform your regular and customary work.

Eligibility for payments depends upon how recently you paid into the system. To be eligible you must have earned at least $300.00 in wages that were subject to SDI deductions during the twelve-month base period of your claim. A base period includes wages subject to the SDI tax that were paid about 5 to 18 months before your disability claim began. The base period is broken into quarters to determine your highest wages earned within the base period. There are four base periods – (1) January, February, and March; (2) April, May, and June; (3) July, August, and September; and (4) October, November, and December.

For example, if your claim begins in June 2023, the base period for eligibility would be the 12 months ending on December 31, 2022. April, May, and June 2023 have a base period of January 1, 2022, through December 31, 2022.

Other eligibility criteria for disability benefits are (1) you must be unable to do your regular job or customary work for at least eight days; (2) you must have lost wages because of the disability or illness; and (3) you must be under the care and treatment of a licensed physician or practitioner within those first eight days.

Question: The City is giving employees in our bargaining unit an option to become at-will (give up our due process and Skelly rights) in exchange for a City contribution to our deferred compensation program. Is this allowed? I thought due process for public employees came from the California Constitution? If it is, is it advisable?

Answer: Not every public employee in California has a right to due process. California is an at-will employment state. This means that you can be terminated with or without cause (you can be terminated for a good reason, bad reason, or no reason at all). There are certain exceptions to the at-will doctrine. Employees covered by a collective bargaining agreement that provides for a contractual entitlement to continued employment (subject to a layoff or disciplinary procedure), and public employees who have a property interest in continued employment are two big exceptions. A property interest typically arises from a written or implied contract, a past practice, or a statute or regulation.

Generally, most permanent full-time public employees in California have a property interest protected by the California Constitution, but not all do. Employees serving a probationary period and employees hired into an at-will or limited-term position do not have a property interest. Your MOU should identify whether you are at-will or if you are subject to disciplinary protections.

For those who do have a property interest, the employer must comply with the California Supreme Court case of Skelly v State Personnel Board (1975) 15 Cal.3d 194. In Skelly, the court held that a state employee had a property right to his job and was entitled to due process before the employer could separate employment. The minimum due process requirements include notice of the proposed discipline and all the materials upon which it is based, and an opportunity to respond verbally or in writing prior to the action taking effect. The notice must identify the specific rule or policy that has allegedly been violated. The employer has the burden of proof in disciplinary actions.

Typically, a union cannot agree to waive an individual's property interest, but the individual can. This happens sometimes when an employee agrees to accept a higher-level position that is already identified in advance as at-will. The union can agree to change the permanent status for any new employees, but it is not advisable to do

so. The union can also agree to change the discipline procedure in the MOU. But the procedure must still satisfy Skelly.

Disciplinary protections are an important term and condition of employment and should not be bargained away lightly. For employees who are performing a position that is truly at-will (typically a management-level position), it is better to negotiate for severance pay in lieu of property interest rights. Paying severance typically causes an employer to exercise caution and restraint before arbitrarily separating one's employment. Keep in mind that even if you trust the current management, they might not always be the ones in charge. Having that safeguard of knowing that your employer must follow certain procedures before separating employment (regardless of the reason) helps make your life and everyday work experience less stressful.

Question: We have an Employee Appreciation Breakfast coming up. It is typically an annual event except for the last two years due to Covid. This year we were told the event is mandatory (or use PTO). The event is from 7 am – 9 am during the work week. Can the employer declare this mandatory or force us to use our PTO? Do they have to pay us extra for attending?

Answer: The employer can require that employees attend events like this. The issue typically comes down to pay. If it is during normal work hours, there is nothing unlawful, particularly if the employer allows employees the option to use PTO to not attend.

If it is outside of normal work hours (or partially outside of normal work hours), any hourly employee must be paid not just for their regular hours but also any additional hours that they are required to attend. If that pushes the total hours worked over 40 in a work week, then the employer must pay the additional hours at the overtime rate (time and one-half pay). For salary exempt employees, the employer does not have to pay anything more than the employee's regular salary.

The employee organization could request to negotiate over the impacts of the employer making this a mandatory assignment. For exempt employees, this might include proposals like allowing staff to flex their time or not use PTO for any time that's not part of their regular work schedule. For hourly employees, it might include allowing employees the

option to leave work two hours early or work the normal shift and get overtime.

Question: Are disciplinary records subject to disclosure under the public records act?

Answer: The California Public Records Act exempts from disclosure personnel, medical, or similar files, if the disclosure of which would constitute an unwarranted invasion of personal privacy. (Gov't Code §6254(c)).

For disciplinary matters involving those who are not in law enforcement, courts look at whether the disclosure of employment investigation reports or related records constitutes an unwarranted invasion of personal privacy. California courts have established a liberal standard for disclosure of public records relating to complaints or investigations of misconduct by public employees or officials. There is a balancing of competing interests of privacy for the employee and the public's right to know.

For example, the public's right to know may trump employee privacy if a complaint about a public employee's wrongdoing and resulting disciplinary investigation reveal allegations of a substantial nature, as distinct from baseless or trivial nature, and there is reasonable cause to believe the complaint is well founded. In these cases, a member of the public is entitled to information about the complaint, the discipline, and the information upon which it was based.

The deliberative process privilege exemption allows for nondisclosure of records revealing the deliberations of agency officials. According to the Supreme Court, the key question in every case is whether disclosure of the materials would expose an agency's decision-making process in such a way that would discourage candid discussion with the agency and thereby undermine the agency's ability to perform its functions. This means that certain records related to an investigation of employee misconduct may be withheld, even if the complaint itself and the notice of discipline are subject to disclosure.

Another exception is known as the "catchall" provision. (Gov't Code §6255). It says that even if the record does not fall within an exemption found under §6254, the record can still be withheld if the government can demonstrate that on the facts of a particular case the public interest is served by not making the record public and withholding the

information clearly outweighs the public interest served by disclosure of the record. The exceptions – including the catchall – are interpreted narrowly.

Question: Our Department needs extra help for specific projects over the next two years. The City wants to hire two full-time limited-term employees, who would be fully benefited, but the positions would end two years from the hire date. The City says the other option is to hire an outside contractor that will provide temporary employees, paid for by the contractor. Either way the temp workers would be working on-site under the daily direction of City staff. Can you advise as to what the best way is for our employee organization to approach this? On the one hand, we could use help. On the other hand, we're concerned about the possible long-term erosion of our Association if we agree to something like this. We also want to protect these workers if possible.

Answer: The employee organization generally should oppose efforts by the employer to use contract or temporary staff to perform bargaining unit work. But the employee organization might consider allowing an exception if the current staff is not equipped to take on the extra work and it really is temporary in nature. The employee organization can negotiate with the employer and memorialize in a side letter agreement a narrow scope for both the tasks and duration of the projects to be performed. It is better to use temporary staff over contractors, particularly if the work is performed on-site and under the direction of City staff. The side letter agreement should identify that they are employed by the City, with full benefits but for a limited term, that they are in the bargaining unit, and it should also identify the specific title and scope of work for those who will perform the job.