

# ***LBAEE***

## ***October 2023 News***

### **Contract Bargaining Update**

Last month, AEE presented the City with our fourth proposal, which included:

- Cost of Living Increases (7% in Year One, 5% in Year Two, and 4% in Year Three).
- Equity Increases based on the market study.
- Expanded Certification and Skill Pay.
- City-Match to Deferred Compensation Program.
- Retirement Incentive (upon retirement, ability to convert 75% outstanding vacation leave balance to sick leave).
- Enterprise-Specific Classifications.
- More Expansive Telework Options.
- Increased Higher Class Pay.
- Increased Safety Footwear Allowance.

We emphasized the high inflation, recruitment and retention issues, and the fact that the overall value of the City’s package is not competitive and must be increased. The City stated that they were working on a comprehensive counterproposal as they cancelled our late September meeting. Apparently they’ve met with Council to consider what more, if anything, the City could offer to AEE.

We met with the City on October 5, 2023, but they expressed they were still working on their proposal which is now planned to be presented on October 10<sup>th</sup>. Stay tuned!

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## **Previous MOU Salary and Equity Adjustment Reminder**

The previously negotiated MOU (2019-2023) still provides for an additional salary adjustment this month:

### **General Salary Increase:**

The Salary Resolution will be amended to provide for the following salary increases for all represented employees:

Effective the pay period that includes September 30, 2023, bargaining unit members shall receive a one percent (1%) general wage increase.

### **Equity Adjustment Classifications:**

Effective the first day of the pay period that includes September 30, 2023, the following classifications shall receive a one percent (1%) equity adjustment:

- Civil Engineering Assistant
- Civil Engineering Associate
- Geographic Info Sys Analyst II
- Geographic Info Sys Analyst III
- Chief Surveyor
- Senior Surveyor
- Geographic Info Sys Supervisor

Additional increases and equity adjustments to additional classifications are currently being negotiated for the upcoming MOU.

## The Importance of a Classification Plan

With so many new faces popping up, employees at public agencies across California have been left wondering whether there is any method to all the hiring. This is where the importance of your agency's classification plan comes into focus. In addition to your MOU, your agency's classification plan is one of the more essential employment-related documents that affects you. It is a roadmap for how the business of delivering public services is apportioned throughout the organization. This month, we look at why a classification plan is critical and how it affects terms and conditions of employment.

***What is a Classification Plan:*** A classification plan provides a complete list of all positions at an agency and describes each position in a class specification. The specification defines the job and essential functions, describes the typical tasks and responsibilities, and states any training, experience, and qualification requirements. It is often used for:

- **Setting Salaries.** Class specifications are used to compare jobs within the organization with those at other public agencies. Classification plans should allow for variance based on differences in tasks, skills, job responsibilities, and authority.
- **Recruitment.** The classification plan is used as a source of information in preparing job bulletins to recruit for vacancies and in preparing job examinations that will help measure the qualifications of applicants to fulfill the job requirements.
- **Division of responsibility.** The plan helps define more clearly the various levels of responsibility within an organization, and the chain of command and paths for promotion. It should also be used to develop training and succession programs.
- **Personnel Actions.** Generally, all positions in the same class are treated alike for purposes of selection, transfer, demotion, promotion, and pay.

Most agencies have clearly defined classification structures. Vendors who perform classification studies for public agencies say they have been swamped with requests to review existing classification systems for many agencies. These studies look at whether job titles and job descriptions need revision due to changes in what the job entails and how work is assigned. Each classification has a corresponding job description. This is the document that sets forth the duties and scope of work, as well as the requirements and qualifications necessary for those who hold a position within that classification.

**Why is a Classification Plan Important:** Personnel policies and civil service rules typically emphasize the merit principle over speed in hiring decisions. That's because government jobs are supposed to be filled based on merit: the absolute best person for the job determined by an objective testing procedure. Merit-based appointments date back to the late 19<sup>th</sup> and early 20<sup>th</sup> centuries. The spoils system (also referred to as patronage) is a practice whereby a political party gives government civil service jobs to its supporters, friends, and relatives as a reward for helping them to victory. The practice had prevailed since the inauguration of Andrew Jackson and remained rampant up until Ulysses S. Grant's presidency. Reform movements that began in the late 1860s and accelerated after the assassination of James A. Garfield led to the Civil Service Reform Movement and the enactment of laws to ensure civil servants are selected based on merit – *i.e.* credentials and demonstrated knowledge, skills and abilities. The classification plan helps preserve the merit principle. Today, the importance of a classification plan has re-emerged as hiring has picked up, particularly in the four key areas discussed below – career ladders, flexible staffing, layoffs, and classification and compensation studies.

**Career Ladders:** Although recent data shows labor shortages are starting to ease, many California public agencies are still hiring, particularly for hard-to-fill job classifications. Many agencies cannot fill vacancies fast enough. Employers are discovering that often the best person for a job may be someone they already employ, but in a different role.

Employees frequently cite pathways for growth as a reason to either stay or leave an employer. A July 2021 poll conducted by Monster found that almost 30% of workers cited lack of growth opportunities as a reason for wanting to quit, 80% of workers thought their employer did not offer growth opportunities, and almost 50% of workers expect their employer to play a part in career development. Employees who believe their employer makes effective use of their talents and abilities are overwhelmingly more committed to staying on the job. Demographically, younger workers are the least likely to be interested in pay increases and the most likely to be interested in learning new skills, and they are more likely to value a career path than any other generation. By offering clear pathways for growth, a classification plan can help current staff identify what skills they need to advance within the organization. It also helps employers save time and money and avoid the costs of higher turnover by helping develop and nurture the talent they already have. Doing so helps the employer fill future needs internally and retain good employees.

**Flexible Staffing:** The classification plan typically assigns a higher salary to progressively higher-level work. In some cases, this may be a ladder series within a job family. For example, grade one level, grade two level, senior or journey level, and then possibly a supervisor or manager level. Or it may divide work between assistant, technician, coordinator, or analyst. Regardless of how it is defined, the varying levels often consider if the role is entry-level, journey-level, or advanced-level, and whether it involves front-line supervision, higher-level management, or even executive management authority.

Flexible staffing is a concept that allows an employee in a lower-level position within a job family to “flex up” to a higher-level position without the employer opening a job announcement or running a recruitment. Many employees cite the need for flexible advancement as a major priority in MOU bargaining. For example, in many cases, employees are hired into a grade one level position and never advance because the employer does not open higher grade levels for promotion. This results in some employees who excel at their role and gain valuable skills and experience leaving their job for promotional opportunities with another employer who does offer upward mobility.

A flexible progression program starts with a well-maintained classification plan. A flexible staffing model makes it easier for employees to advance to higher level positions once they get the necessary skills and experience. This might be based on performance evaluations or acquiring various certifications or education needed for the higher-level work. The metrics used to identify if someone can flex upwards will derive in part from the classification plan, so it is important for employers to have and maintain a solid plan.

**Layoffs:** An ambiguous layoff policy, or an out-of-date classification plan, can lead to a high level of conflict in the workplace if layoffs become necessary. Those who worked through the Great Recession might recall management conducting layoffs or defunding or eliminating positions. When management eliminates a position that is filled, they must follow the negotiated layoff policy and MOU. Historically, many layoff policies had protections for more senior employees within a job class or job family. This may give more senior employees the ability to “bump” or displace employees with less seniority in the same or similar job class. These types of policies have the effect of retaining more senior staff and separating employees who are most recently hired.

Although the layoff policy may not specifically reference it, the classification plan plays an important role in determining how far seniority extends in layoffs. How is seniority

defined in the layoff policy? Is it overall years of service or date of hire? Is it limited to time in a specific job classification? Does the layoff policy allow a more senior employee to displace another employee in a lower-level position? Is bumping limited to the same classification? Does it extend to lower-level positions in the same job family that the more senior employee might have never held? If it does extend to positions in the same job family, how is the job family defined? A well written classification plan will help identify the answer. This is another reason why it is so important to review the classification plan.

***Class & Comp Studies:*** Many agencies have conducted classification and compensation studies since COVID-19. These studies are commonly done by outside vendors. The classification study is designed to ensure that roles are properly defined by title and job description based on the knowledge, skills, and abilities required to perform the work. Within a classification plan, job classes can either be broad (with several positions) or narrow (emphasizing individual job characteristics). Broad job classes are useful when a broad spectrum of knowledge, skill, and qualifications are needed for a role and an employee can readily learn the specific details on- the-job. It is also useful if flexibility is needed in assigning work within a department or organization due to changing programs, technologies, or workload. Individualized job classes are useful when the role requires specialized knowledge and skills, the ability to hit the ground running, or an organizational need to delineate specific job responsibilities or to highlight differences between jobs.

Many classification plans use both. Older cities – particularly those with civil service commissions – historically emphasized specific job titles and job descriptions. Since the Great Recession, and in part due to the recommendations from vendors who conduct these studies, the trend has been towards broader more generic titles and descriptions that are used across an organization. For example, a classification plan may provide for an analyst in several departments, all with the same title, job description, and pay range, but of course, very different day-to-day job responsibilities.

The key to a classification plan is the relationship these job classes share with one another. Grouping of positions into an orderly classification system supports planning, budget analysis and preparation, and various other administrative functions. Often grouped into job families, the classification plan is vital to ensuring and maintaining equity within the organization. Unfortunately, with so much hiring in the last few years, the classification plan has often been forgotten. However, there is good reason to be vigilant about maintaining a solid classification plan! A classification plan is not an inflexible,

unchanging document. It can be updated and revised, and an organization-wide classification study may help identify changes that are needed to the classification plan.

With compensation studies, pay is often based not just on the external labor market – *i.e.*, how much other agencies pay for similar work – but also the internal relationships between job classes within the organization. The classification plan is a written document that explains what those internal relationships are. It is also sometimes called an internal settings document. It is a critical document to consider before salaries are reset based on market comparisons.

For example, if a compensation study shows that one position needs an increase, other positions in the same job family or salary band (which might not have even been studied) may merit the same or a similar increase, at least if the internal relationships identified in the classification plan are to be maintained.

An organization-wide compensation study may highlight changes that are needed to salary ranges based on market comparisons, but it is important to review the classification plan to help identify how any salary adjustments should be implemented so that salaries are aligned internally and not set solely based on market comparisons.

***Changes are Negotiable:*** Changes to job classifications and job descriptions are typically negotiable between the employer and the employee organization which represents those job classifications. This includes when management proposes eliminating a classification and transferring duties to a new or existing classification. *City of Sacramento* (2013) PERB Decision No. 2351-M, pp 18-19. Transferring existing duties between classifications is also negotiable regardless of whether it is to an existing or new classification. *Desert Sands Unified School District* (2001) PERB Decision No. 1468, pp 3-4. Reclassifying or retitling an existing classification is also negotiable. *Alum Rock Union Elementary School District* (1983) PERB Dec. No. 322, p 18.

However, when management creates a new classification to perform tasks not previously performed, or abolishes a classification because it is no longer needed, the decision itself is not negotiable. *City of Alhambra* (2010) PERB Dec No. 2139-M, pp 15-16. In those instances, only the impact of that decision on terms and conditions of employment are negotiable. Negotiable impacts may include job title, bargaining unit placement, duties, qualifications, and pay for any new classification.

## **Raising the Salary Threshold for Overtime Pay**

On August 30, 2023, the U.S. Department of Labor announced a proposal to expand overtime pay for 3.6 million low-paid salaried workers. The proposed rule would guarantee overtime pay for most salaried workers earning less than \$1,059 per week, about \$55,000 per year.

Many low-paid salaried employees work side-by-side with hourly employees, doing the same tasks and often working over 40 hours a week. But because the salary threshold for exempting employees from overtime pay under the Federal Fair Labor Standards Act (FLSA) has not been raised as often as it should, these low-paid salaried workers are not getting overtime pay (time-and-one-half) for hours worked over 40 in a week.

The proposed salary level would help ensure that more low-paid salaried workers will receive overtime pay. Under the FLSA, employers may “exempt” from overtime pay employees who are paid above the salary threshold and satisfy the duties test for an exemption – typically, either the executive, administrative or professional employees’ exemptions.

By better identifying which employees are truly executive, administrative, or professional employees and therefore are eligible to be exempted from overtime pay, the proposed rule better ensures that those who are not exempt will receive overtime pay if directed to work more than 40 hours a week.

The proposed rule proposes to automatically update the salary threshold every three years to reflect current earnings data. The proposed rule is open for public comment for 60 days before a final rule can be adopted and implemented, likely beginning next calendar year.



## **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.

3.7% - CPI for All Urban Consumers (CPI-U) Nationally

3.9% - CPI-U for the West Region

3.3% - CPI-U for the Los Angeles Area

3.4% - CPI-U for San Francisco Bay Area

3.4% - CPI-U for the Riverside Area (from July)

4.3% - CPI-U for San Diego Area (from July)

## **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'm a new employee. I have a 4-year-old son with a chronic heart condition. My child is having open heart surgery next month. I will be taking 3 days off. I disclosed this during the interview process, and they approved my time with no issues. Per our rules & regs, an employee cannot file for FMLA until they have been employed for a year. Is there any county or federal emergency program available to me as a new employee? I do not foresee any issues. I just want to know my options.**

**Answer:** Since you are a brand-new employee, you won't be eligible for most job protected leave programs. Both the

federal Family Medical Leave Act (FMLA) and the California Family Rights Act (CFRA) require employees to work for at least one year to qualify for leave.

California's Kin Care law (Labor Code §233) allows employees to use up to one-half of their accrued sick leave to care for ill family members, and that is protected time. Since you just started, you might not have accrued enough sick time to cover all three days. Kin care applies to "accrued and available sick time." If you do not have enough accrued sick time available by the date of your absence, kin care's protections will not apply to you.

The state sick leave law also won't help, since it says employees are not entitled to use accrued sick leave until the 90<sup>th</sup> day of employment. Your employer sick leave policy can be more generous than the law, though. For example, the policy may allow you to use sick time as you accrue it, or up front, beginning on the first day of employment. It may also let you borrow against your future leave accruals to cover days that you will be off. Check your employer's sick leave policy to see what it allows. Violations of your sick leave policy may be enforced through the grievance procedure.

Since your employer has already approved your leave, you should be able to take the time off, but more than likely the three days will be without pay.

**Question: For those of us eligible for the 2@62 retirement plan, does the provision of survivor continuance apply to us as well, not just classic members?**

**Answer:** Yes. The Public Employees' Pension Reform Act (PEPRA) of 2013 did not eliminate or change survivor benefits for new members. Survivor continuance is an employer-paid monthly benefit payable after your death in retirement to an eligible survivor defined by law. You must have an eligible survivor when you

retire, and that survivor must remain eligible until you die. This benefit is available to all employees, regardless of retirement plan, if your employer selected it in its contract with the pension system. There are also pre-retirement survivor benefits that apply to employees, regardless of retirement formula. For example, your employer can contract with CalPERS for the 1959 Survivor Benefit. This benefit applies to employees who aren't covered by Social Security and provides a monthly allowance to eligible survivors of CalPERS covered members who died before retirement. Covered members pay a monthly fee deducted from their salary.

Your MOU's retirement section should list all the extra retirement benefits that your agency selected in its contract with the pension system. You can also contact your pension system directly to find out your benefits. If your employer has not contracted for survivor benefits, contact your Association to see if this can be negotiated in your next MOU.

**Question: Our department gave us a directive regarding "Special Jobs." The directive is that employees in our job class must be on the scene of a "Special Job" at the posted time for the assignment. Special jobs are typically**

**overtime assignments that are paid for by third party vendors that require our services. We are told we must use our own time without compensation to drive from the department to the job site. We also would be using a city vehicle while not being compensated for the driving time. Can they direct us to travel to the job site using city vehicles on our own time without pay?**

**Answer:** The federal Fair Labor Standards Act (FLSA) sets the rules that your employer must follow regarding commute and travel time. The general rule is that normal commute time from home to work and work to home is not paid, even if you are using your employer's vehicle. However, under the continuous workday rule, the period from the beginning of an employee's work duties to the end of those activities on the same workday is paid work time, including travel between worksites. In your case, you are driving from the department to another job site for an overtime assignment. The city must pay for that travel time. The city must also pay for the time that it takes to drive back to the department at the end of the job to drop off the city vehicle.

**Question: Are there any regulations pertaining to employer obligations to**

**share with employees or employee organizations the results of a third-party safety hazard assessment of a worksite?**

**Answer:** Yes! Under California Division of Occupational Safety and Health (Cal/OSHA) regulation and General Industry Safety Order 3204, employees and their designated representatives have the right to records of their exposure to toxic substances or harmful physical agents and records of the exposure of other employees with similar working conditions. If the consultant's report contains information about employee exposure to toxic substances or harmful physical agents, then you have a right to that information and any safety data sheets included in the report.

You also have the right to see your employer's Injury and Illness Prevention Program (IIPP). Under Cal/OSHA regulation 3203, every employer must develop and implement a written IIPP. The purpose of an IIPP is to prevent workplace injuries and illnesses. Employers must provide employees with the ability to access and copy the IIPP.

You can obtain a consultant's final report through a Public Records Act (PRA) request under Government Code Section 7920. The purpose of the PRA is to give

the public access to information that enables them to monitor the functioning of their government. Governmental records shall be disclosed to the public, upon request, unless there is a legal basis not to do so. In this case, the final report should be disclosed.

Finally, your Association can obtain the report via an information request to the employer. Your Association is entitled to the report as part of its obligation to represent members with respect to mandatory subjects of bargaining, including workplace safety.

**Question: I have maxed out my vacation time. I have been unable to use my time due to staffing levels and staff not signing up for overtime to provide coverage so that I may take time off. Currently I was told by my manager I will lose vacation time as I earn it. The only accommodation my manager would allow is to take time off in increments due to staffing, or on one day of the week that is a heavy staff day. Can they require that I take the vacation time they offer, rather than on the days and times of my choice? I did not create the situation as I requested time off prior to being maxed out but time off has been denied due to no staff coverage. Can I cash out the vacation**

**time rather than accepting the time off options they are approving?**

**Answer:** Unfortunately, the law does not require your employer to let you cash out your accrued vacation leave. However, if your MOU provides a vacation cash out option, then you can cash out up to the maximum amount that the policy provides for.

Vacation time is a negotiated benefit and although your employer can deny vacation requests for operational reasons, they cannot have a permanent “no vacation” policy. This is especially true when they control the means to solve the problem by either hiring more staff or requiring employees to work overtime for vacation coverage.

Many employees choose to take off a day here and there to keep under the vacation accrual cap, but that’s not a substitute for a longer vacation. You should continue to request your vacation dates in writing and in accordance with the MOU and your employer’s vacation policy. It is helpful to provide as much notice as possible. Contact professional staff for assistance if your employer continues denying your requests.