LBAEE

September 2021 News

AEE Election Results!

Congratulations and welcome to the AEE Board.

President: Jason Rodriguez

Treasurer: Alex Mitoma

The AEE Board is still seeking Group Directors for groups B and F, if you're interested, please reach out to your AEE Board and/or Kara Natke from CEA.

The Great Resignation

Happy Labor Day! As people reflect on the role that labor unions play in our society, they often envision organized labor protests such as strikes, pickets, or work stoppages. But this year, something different is playing out across the country, to much the same effect. In fact, some pundits have even called it "The Great Resignation." The number of workers who are voluntarily retiring early, resigning, or dropping out of the labor force altogether has hit record levels. Employers are pointing to acute labor shortages. The causes are varied, but the effect has been not unlike a nationwide labor strike. To respond to the turnover, employers have increased pay and improved benefits to retain existing staff and attract new workers. This includes continuing with remote work arrangements when possible, something many workers have found to be both desirable and productive. This month, we take a brief look at the current state of the labor market, including what is causing it, and what to expect in the new post-pandemic world.

JOLTS Report: The U.S. Department of Labor, Bureau of Labor Statistics publishes a monthly report known as the Job Openings and Labor Turnover Survey (JOLTS). The most recent report, published on August 9, reflects the JOLTS data through June. Job openings are at a record high of 10.1 million as of June 30, with the largest increases in professional and business services, retail trade, and accommodation and food services. Another important data point is called the "quits rate," which measures voluntary separations initiated by the employee. The quits rate can serve as a measure of workers' willingness or ability to leave jobs. The quits rate increased the most in professional and business services, durable goods manufacturing, and state and local government (excluding education). The quits rate is slightly less than the record set by May's data but is well above pre-pandemic figures. On the other hand, the number of layoffs and discharges – separations initiated by the employer – are at record lows.

The next report is scheduled to be released on September 8th and covers data through July. Early indications are that job growth accelerated in July as employers hired the most workers in nearly a year and that employers continue to raise wages.

Other Surveys: Other surveys from the private sector also reflect this trend. Career website company Monster conducted a survey recently and found that 95% of workers are currently considering changing jobs. Microsoft researchers found that 41% of the global workforce is considering leaving their current employment this year, and 46% plan to make a major pivot or career transition. A survey from TINYpulse, a human resource software company, polled 770 companies worldwide in May (with most responses coming from the U.S.) and found that 39% say it is more challenging to fill jobs.

But not all decisionmakers are buying it. Business leaders in the TINYpulse survey believe that only 8% of employees will choose to quit before COVID restrictions are fully lifted. "If we trust all of that other survey data, it means that HR leaders and C-suite leaders are going to be surprised with the 'Great Resignation,'" said Dr. Elora Voyles, psychologist, and people scientist at TINYpulse. The Microsoft survey found a similar disconnect. For example, 61% of business leaders say they are "thriving" right now, while 37% of the global workforce says their employers are asking too much of them at a time like this. In addition, 54% feel overworked, and 39% feel exhausted. Interestingly, Microsoft found the youngest employees (Generation Z) are struggling the most.

Causes: The quits rate is usually seen as a barometer of job market confidence. Employers have been scrambling to fill vacancies, but the supply of labor remains restrained due to ongoing childcare obligations, health concerns, and other personal factors keeping some workers from returning to work. The rapidly spreading Delta variant could delay more significant progress in labor force participation if growing health concerns spur workers to delay returning. To lure more workers, employers are offering higher wages, and other incentives like cash bonuses. Some employers who were planning a full return to on-site work this month have announced extensions of their current remote work policies.

The reasons employees are quitting are numerous. Some are realizing the job is not for them and are changing careers. Many are suffering from burnout after an 18-month pandemic and are exhausted from trying to juggle everything. Some cannot or do not want to return to on-site work as directed after adjusting to remote work, including single parents homeschooling kids or those caring for sick or elderly family members.

For California public sector workers, it might also include retirement, commuting, and relocating out of state. For example, some Classic Members are filing for their hard-earned pension early. The pandemic prompted many to no longer put off retiring any further. They may have plans to go back to private sector work once the pandemic is over, but they are ending their years in public service. New Members – who earn the same benefits regardless of which agency they work for, thanks to the Public Employees' Pension Reform Act (PEPRA) of 2013 – are looking to leave for higher salaries in other agencies, including ones closer to home. Other employees want to spend less time in traffic commuting or cash in on record home prices and relocate to lower cost communities, either for quality-of-life factors or for family reasons.

The pandemic has certainly had an impact. Forced to adapt to changing circumstances, the pandemic has prompted many workers to think through their careers and work-life balance. As a result, they are discovering better ways to handle the gaps missing in their lives. Adapting to COVID has made it easier for workers to adapt to change in work. Many are determined to better align how they spend their time with their values and priorities. And the expansion of remote-work opportunities has democratized access to opportunities for workers who have previously been marginalized.

Effects: The Microsoft survey found that 73% of workers want flexible remote work options to continue, and 67% want more in-person work or collaboration post-pandemic. It also found that 66% of business decision-makers are considering redesigning physical spaces to better accommodate hybrid work environments.

According to the Microsoft study, the data is clear that hybrid work will define the post-pandemic workplace. In fact, a similar survey from Global Workplace Analytics estimates that 30% of the U.S. workforce will be working from home multiple days a week by the end of 2021. "That hybrid model is here to stay," said the TINYpulse pulse CEO. "Almost every large company will have to have some hybrid option to maintain and staff their teams."

To address the Great Resignation, employers should consider changes that most workers are looking for post-pandemic. These include:

- Remote work or hybrid-work arrangements
- Flexible scheduling
- Competitive compensation and bonuses

- Longevity pay to retain the existing workforce
- Employee assistance programs and other protection from burnout
- Better communication from management about the challenges employees face

With some jobs, productivity can now be measured better by focusing on deliverables rather than the amount of time an employee stays on-site to complete work. If an employer wants to attract and retain a skilled workforce, it should consider giving employees more choice in how they work, whether it is remote work, on-site, or a hybrid format. The pandemic has shown that a one-size-fits-all approach is a relic of the past.

MOU Negotiations: All this news likely comes as no surprise to many California public employee organization leaders. As public agencies secure federal relief monies from the American Rescue Plan Act (ARPA), at the top of the list for most groups to negotiate for is higher base pay, one-time essential worker bonuses, longevity pay, and better remote work policies. For unions currently in a Memorandum of Understanding (MOU), these items remain at the top of the list to negotiate for once the current MOU expires. If your agency is struggling with recruitment and retention challenges, consider contacting staff about the prospect of bringing some of these issues up to management early.

Conclusion: The Great Resignation might seem like quite a transformation in the labor market for those who endured the Great Recession. It appears that 2021 is shaping up to be a labor market where employers are competing to win over workers, rather than workers competing to win over employers. As with most things, it won't stay this way forever.

But for the foreseeable future, employers will struggle to recruit and retain skilled workers. This should continue to drive up wages across industries and help secure benefits – such as flexible work arrangements – which workers have long sought. Simply put, workers do not want to go back to the way things were. Some permanent change is inevitable. Workers are demanding more pay, improved work-life harmony, and job satisfaction. They have realized that they can get more, and they deserve more.

Incorporating any changes that your employee organization negotiates for into your union contract will help ensure the changes are here to stay. It will also help improve the pay, benefits, and working conditions of those who will come after you. In the 20th Century, labor unions helped secure the 8-hour day, 40-hour workweek, overtime pay, and family medical leave. As we emerge from the pandemic, labor is continuing to play a role in defining work for the 21st Century. That is something to celebrate this Labor Day!

News Release - CPI Increases!

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.

5.4% - CPI for All Urban Consumers (CPI-U) Nationally

5.2% - CPI-U for the West Region

3.9% - CPI-U for the Los Angeles Area

3.2% - CPI-U for San Francisco Bay Area (from June)

6.5% - CPI-U for the Riverside Area

6.0% - CPI-U for San Diego Area

COVID Paid Sick Leave Benefit About to Expire (SB 95)

If you have not used your COVID Paid Sick Leave benefit under Senate Bill 95 (SB 95), you may want to do so soon! SB 95, which Governor Newsom signed into law on March 19, 2021, expires on September 30, 2021. SB 95 provides 80 hours of COVID supplemental paid sick leave if you are unable to work or telework because you are:

- ***Attending a COVID vaccine appointment, or you are experiencing symptoms due to having received the COVID vaccine.***
- ***Caring for a child whose school or place of care is closed or otherwise unavailable for reasons related to COVID on the premises***.
- **Advised by a health care provider to self-quarantine due to COVID concerns.**
- **Under quarantine/isolation pursuant to COVID local, state, or federal guidelines.**
- **Experiencing COVID symptoms and seeking a medical diagnosis. OR**
- **Taking care of a family member who was recommended by a medical professional to stay home due to COVID, or who is under quarantine/isolation pursuant to COVID local, state, or federal guidelines.**

If you are taking leave when SB95 expires, you can finish taking the leave you are entitled to. If you work *full-time* or are scheduled to work, on average, at least 40 hours per week, you are entitled to 80 hours. Part-time workers may get leave but at a reduced amount.

If you have any questions on whether you qualify for leave under SB95, please contact your Association representative as soon as possible.

CalPERS Achieves Extraordinary Investment Return

Did You Know?

Riding a stock market surge as the economy rebounded from the pandemic, CalPERS reported a **21.3%** return on its investments last fiscal year (July 1, 2020 – June 30, 2021). The return represents a sharp turnaround from the early days of the pandemic when the fund's value briefly plunged by tens of billions of dollars before rebounding. Over the past 12 months, the portfolio **gained $80 billion**, driven by a 43.7% gain in private equity investments and a 36.3% gain in stocks. CalPERS investment officials have emphasized that this won't likely be repeated since current prices of stocks, real estate, and other assets are high right now, leaving less room for growth. The return far exceeds the 7% annual target CalPERS uses as an assumed rate of return. CalPERS manages pensions for about 2 million California public employees and retirees. Separate county pension funds, which cover many public employees who are not in CalPERS, may have achieved a similar return, in part because they invest similarly to CalPERS.

CalPERS is a long-term investor. Their performance horizon is measured in decades, not single years. Excellent returns in one year help offset losses in bad years, such as in the wake of the Great Recession. Smoothed out over a 30-year period, CalPERS expects to achieve a 7% annual rate of return. If returns far exceed the estimate, CalPERS may reduce employer contributions to the fund. Those who worked during the early 2000s – when CalPERS was "Superfunded" – may recall a time when the employer contribution rate was zero. Alternatively, if returns routinely fall below the estimate, such as the years during the Great Recession, CalPERS may increase employer contribution rates to help stabilize the long-term health of the pension fund. CalPERS says the retirement system remains short of being considered "Fully Funded," but this year's return improved its long-term status. A year ago, CalPERS had about 71% of the assets it would need to cover all its long-term debts. The funded percentage is now 82%, according to the news release.

The high return triggers automatic changes under a new risk mitigation policy, which harnesses short-term gains and shifts assets into less volatile categories of investments to reduce risk. The policy also calls for CalPERS to reduce the assumed rate of return from 7% to 6.8%. In July, CalPERS CEO, Marcie Frost, told the fund's board of directors that the large return would shield public employers from rate increases related to the system's long-term debts. However, local government employees hired after 2013 will now have to contribute about 0.5% more toward their pensions.

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: The Agency is implementing a new COVID policy where anyone who refuses to provide proof of vaccination must test for COVID on a regular basis. Unvaccinated employees will be required to test once a week, but in some sensitive environments it may be more often as currently required by the State. My question is for those who have medical related issues and are advised not to get the vaccine or who just don't want to put this vaccine inside their body. Must these weekly tests be done on employer time during regular work hours and paid for by the Agency?

Answer: Your Agency must pay for the time spent traveling to and from the test site, waiting for the test, and the cost of the test itself. According to the State of California Department of Labor Standard Enforcement (DLSE), that time counts as "hours worked" that your Agency must pay. There is no blanket rule that bars your Agency from requiring employees to get vaccinated after regular working hours. However, if it does, then your Agency may have to pay employees overtime for the time it takes to get tested. Your Association can also ask to meet and confer over the impacts of this policy to clarify some of these issues. Contact professional staff for assistance.

Question: A few years ago, the City opened an investigation as a result of a complaint made against me in a public City Council meeting. A member of the public accused me of being racist. The investigation was concluded several months later without any action being taken to address the matter or clear my name. I requested a copy of the investigative report from Human Resources but to no avail. Am I entitled to have access to this report since it involved me? If so, is there any legal action I can take to get a copy of the investigation report?

Answer: Unfortunately, you do not have the right to a copy of the investigative report unless disciplinary action is taken against you. You do have a right, however, to review your personnel file. California Labor Code Section 1198.5 requires your employer to provide you or your representative with a copy of your personnel file within 30 days of receiving your written request. You should check your file to make sure that nothing is in it that refers to this incident. Call your professional staff if you need assistance.

Question: I recently tested positive for COVID-19. I am concerned that my co-worker, who I share a desk with and who works next to me, was not asked to quarantine. HR says they are currently following CDC and Cal-OSHA guidelines regarding COVID exposures. But they do not say whether my co-worker has been notified of my case and/or why she is not being directed to quarantine. Are they handling it properly?

Answer: Under the most recent Cal-OSHA guidelines, fully vaccinated employees without symptoms do not need to be tested or quarantined after close contact with COVID-19 cases unless they develop symptoms. HR was required to notify your co-worker that she was exposed in the workplace, but if she has been vaccinated, she can continue to work on-site so long as she does not develop COVID-19 symptoms. If you are still concerned that HR is not following the rules, you can always talk to your co-worker yourself. Although HR cannot identify you as the person who exposed your co-worker, you are free to let her know.

Question: I work in recreation and our wage scale has not kept up with the minimum wage increases. So, for example, this past January my pay was increased to $14 per hour, which is above Step E ($13.70) on our five-step scale. Our employee organization negotiated for a 3% increase effective July. Although my colleagues all got the full amount of this negotiated raise, another recreation employee and I did not. The Agency is saying it is because of the minimum wage. They are saying that they increased the wage scale by 3%, and Step E is now $14.11 per hour. So, my pay went up 11 cents. I think I should be getting 3% of $14, or $14.42 per hour. Next January, the minimum wage increase will move my pay up to $15 per hour. If the Agency increases Step E by another 3% in July 2022, it will only be $14.53 per hour. In short, I will continue to be paid minimum wage and I won't get the negotiated raises, because the Agency is keeping the wage scales below minimum wage and it is not increasing fast enough to keep up. Do we have any recourse?

Answer: You have a good point! The answer depends on what the parties negotiated. The minimum wage increases in January and the contractual raises go into effect in July. Therefore, you should be getting your raise based upon the actual wage that you are being paid each July. Unless the Association agreed to the City's formula during the negotiations (which seems unlikely), you can file a grievance for being paid incorrectly. In addition, the Association can file an unfair practice charge at the Public Employment Relations Board (PERB) for the City's unilateral action in deciding how to adjust the wage scales and how much you should be paid. Call your professional staff for help.

Question: Our office employees have largely been working remotely, but on occasion we have found that some work must be done onsite. When this occurs, we drive to the office, do what we need, and return to our remote location as directed. Any drive time during our regular work schedule is booked as "Drive Time" and is paid at our regular rate. Now that restrictions are being lifted, can we be required to drive to the office during our regular work schedule on our own time? Can we be required to extend our work shift at the end of that workday to make up for any time spent driving to the office? Does this require a meet and confer before it is implemented? Must it apply to everyone equally, or can it apply differently or only to some people? We do not have a remote work policy that covers this, though I hear one is in the works. Some employees were already told to extend their normal workday by the time spent commuting, and I need some clarity as soon as possible.

Answer: The Fair Labor Standards Act (FLSA) is the federal law that sets out the minimum requirements for when an employer is legally required to pay its employees. Generally, an employer must pay for time an employee spends working for the employer's benefit. Your employer is not required to pay for off-duty time. An employee's normal commute to and from work is typically not paid because the employee is not considered on duty until they begin work and off duty when they leave. But travel time after reporting to work during a regular schedule (for example, between worksites) is typically compensated.

So, how does this apply to employees who are telecommuting? The answer depends on where your regular worksite is for the day and who decides on that location. If the employer directs you to start working at home and then, after you have started, requires you to go into the office for a meeting, that travel time should be compensated. On the other hand, if you start the day working in the office, then go home for lunch, then back to the office, the travel during your regular shift is considered ordinary commuting and is not paid.

Yes, employees can be required to stay late at the end of a shift to make up for being late starting the shift. If the drive to work is a commute, and you only begin performing work once you arrive, you can be asked to stay late to make up the time you missed.

The employer can adopt more generous terms of paying for travel time than what the FLSA requires. If the employer is changing the policy, or adopting a new policy, the employer must give the employee organization notice and an opportunity to meet and confer prior to implementing it. If, however, telework was a temporary arrangement during COVID, the fact that telework is ending and conditions are reverting to what they were previously may mean that the employer is not subject to any bargaining obligation.

Any policy does not necessarily have to treat all employees equally. For example, it might treat hourly employees different from those who are exempt under the FLSA, or it may treat employees in one bargaining unit different than those in another, especially if it was negotiated that way. But the employer cannot treat employees differently for an illegal reason. In any event, there should be a *written* policy or procedure about any new rules, particularly ones that do not apply equally across the board. If there are distinctions in the proposed policy that do not make sense – for example, whose commute time is paid, or who must stay late to make up for missed time – ask your Association to negotiate over it. This may include proposing that the current practice of booking it as "Drive Time" continue in the new policy.