LBAEE
September 2023 News

Contract Negotiations Update

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

- Cost of Living Increases (9% in the first year of the contract, 6% in the second year, and 5% in the third year).
- Equity Increases for positions under market.
- Longevity Incentives.
- Increased Medical Benefits.
- Increased Retiree Health Benefits.
- More Expansive Telework Options.
- Expanded Certification and Skill Pay.
- Educational Achievement Incentive.
- Enterprise-Specific Classifications.
- City-Match to Deferred Compensation Program.

We also met with the City to receive the their third proposal, which included:

- Cost of Living Increases (2.2% in the first year of the contract, 2.2% in the second year, and 2.2% in the third year).
- One-time bonus of $750 for all bargaining unit members effective December 1, 2023.
- Equity Increases for positions under market.
- A commitment to discuss enterprise-specific classifications.
- A $100/month City contribution to AEE members' deferred compensation accounts.
- Increased bilingual pay (to $1.50/hr)
- Add skill pay for Utilities Emergency Response Team (ERT) ($0.50/hr).
- Increased higher classification pay (to $2.00)
- Increased night shift differential (to $2.00/hr)
- Increased standby pay (to $2.00/hr)

- Increased footwear allowance (to $350/year).

AEE is currently finalizing our fourth proposal to the City. Our focus is securing the largest possible COLA increase for all AEE members. As we continue to make progress, we will keep you informed. Feel free to reach out to the bargaining team with questions or suggestions. *Thanks for your support!*

RETIREMENT BENEFITS

The City of Long Beach currently offers AEE members retirement benefits according to the following rules:

A. Continuation of Retirement Benefits (Hired before January 1, 2013)

1. For employees who are eligible for and enrolled in the California Public Employees Retirement System (CalPERS) on October 1, 2004, the City will continue to provide pension benefits to said employees in accordance with the contract in effect on October 1, 2004.
2. Effective October 1, 2013, employees shall pay the full employee share of eight percent (8%) of their annual salary towards their individual employee contribution.
3. Effective January 26, 2013, the City shall no longer designate the Employer Paid Member Contribution (EPMC) as compensation earnable and shall not report it as such to CalPERS.

B. Public Employees' Pension Reform Act (PEPRA)

Employees hired on or after January 1, 2013, and who are new members to CalPERS shall receive the new miscellaneous retirement formula of 2 percent at 62 (2% @ 62) pension benefits in accordance with California Government Code section 7522 (PEPRA).
(Effective July 1, 2023 the CalPERS employee contribution rate increased to 8.00%)

For more details refer to the current MOU Article 5 or at
CalPERS Website: www.calpers.ca.gov • Phone# 1 888 225-7377

The Federal Family Medical Leave Act (FMLA) Turns 30!

The Family and Medical Leave Act of 1993 ("FMLA") is a federal law that requires employers to provide employees with job-protected unpaid leave for qualified medical and family reasons. The law was signed by President Clinton on February 5, 1993. Enforcement of the law began six months later, on August 5, 1993, thirty years ago last month. This month, we look at some of the FMLA's key protections and general points to keep in mind. If you have a specific question, please contact your professional staff.

Overview: The FMLA is a landmark civil rights law that protects employees who need to take leave for a qualifying reason. Before the FMLA, employers could and did fire employees for requesting time off to care for their own serious medical condition, to care for a relative with a serious medical condition, or to bond with a new child. It is hard to overstate how important it was for this leave to become protected under federal law.

At its core, the FMLA recognizes employees have a life and obligations outside of work, and it is unreasonable for employees to have to choose between their job responsibilities and their health or their family's health.

The FMLA had a significant impact ensuring equality for women in the workforce, at a time when it was becoming more common for women to advance their own careers in a wider range of occupations.

Congressional Findings: The FMLA made some important legislative findings that were written into the bill that ultimately became law. The findings were that:

1. The number of single-parent households and two-parent households in which the single parent or both parents work is increasing significantly.
2. It is important for the development of children and the family unit that fathers and mothers be able to participate in early childrearing and the care of family members who have serious health conditions.
3. The lack of employment policies to accommodate working parents can force individuals to choose between job security and parenting.
4. There is inadequate job security for employees who have serious health conditions that prevent them from working for temporary periods.

5. Due to the nature of the roles of men and women in our society, the primary responsibility for family caretaking often falls on women, and such responsibility affects the working lives of women more than it affects the working lives of men.
6. Employment standards that apply to one gender, only, have serious potential for encouraging employers to discriminate against employees and applicants for employment who are of that gender.

Purposes: The bill then sets forth the purposes of the FMLA:

1. To balance the demands of the workplace with the needs of families, to promote the stability and economic security of families, and to promote national interests in preserving family integrity.
2. To entitle employees to take reasonable leave for medical reasons, for the birth or adoption of a child, and for the care of a child, spouse, or parent who has a serious health condition.
3. To accomplish the purposes described above in a manner that accommodates the legitimate interests of employers.
4. To accomplish the purposes described above in a manner that, consistent with the Equal Protection Clause of the Fourteenth Amendment, minimizes the potential for employment discrimination on the basis of sex by ensuring generally that leave is available for eligible medical reasons (including maternity-related disability) and for compelling family reasons, on a gender-neutral basis.
5. To promote the goal of equal employment opportunity for women and men.

Coverage: The FMLA does not grant all employees the right to leave. The employee must have been employed for at least 12 months, performed at least 1,250 hours of service during the 12-month period immediately preceding the commencement of leave, and be employed at a worksite where the employer employs at least 50 employees within a 75-mile radius.

Leave Entitlement: An eligible employee is entitled to a total of 12 workweeks of leave during any 12-month period:

1. For the employee's own serious health condition.
2. To care for a family member with a serious health condition.
3. For the birth or placement of a child for adoption or foster care (baby-bonding). Leave must be taken within one year of the child's birth, placement, or adoption.

4. To address a "qualifying exigency" involving an employee's family member on covered active military duty or call to covered active-duty status.

Leave to Care for an Injured Service Member: Added to the FMLA in 2010, qualified employees may take up to 26 weeks of leave in a single 12-month period to care for an injured, covered service-member with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of the covered service-member.

This 12-month period is calculated differently than regular FMLA leave and is more beneficial to the employee. The single 12-month period for military caregiver leave begins on the first day the employee takes leave for this reason and ends 12 months later, regardless of the 12-month period established by the employer for other FMLA reasons.

An eligible employee is limited to a *combined* total of 26 workweeks of leave for *any* FMLA-qualifying reasons during the single 12-month period. Up to 12 of the 26 weeks may be for an FMLA-qualifying reason other than military caregiver leave. For example, if an employee uses 10 weeks of FMLA leave for his or her own serious health condition during the single 12-month period, the employee has up to 16 weeks of FMLA leave left for military caregiver leave.

This leave does not apply to the service-member, only for qualified employees who care for the injured service-member. But the service-member may still be eligible for 12 weeks of FMLA for their own serious medical condition.

Family Member: The FMLA defines a family member as a child, parent, or spouse.

A child includes a biological, adopted, foster, step, or legal ward child, or a child of a person standing *in loco parentis* (*i.e.*, in the place of a parent, instead of a parent, or charged with a parent's rights, duties, and responsibilities). A child is generally someone under 18 years of age, or over 18 if that person is incapable of self-care because of a mental or physical disability at the time the FMLA leave is set to commence.

A parent does *not* include parents-in-law.

A spouse includes same sex couples who are legally married in California.

Serious Health Condition: A serious health condition under the FMLA includes an illness, injury, impairment, or physical or mental condition that involves the following:

1. Inpatient care; or
2. Continuing treatment by a health care provider.

Inpatient care includes an overnight stay in a hospital or medical care facility, including any period of incapacity (*i.e.*, inability to work, attend school, or perform other regular daily activities due to the serious health condition, treatment involved, or recovery therefrom), or any subsequent treatment in connection with such inpatient care.

Continuing treatment includes conditions that incapacitate an individual for more than three consecutive days and require ongoing medical treatment, either multiple appointments with a health care provider, or a single appointment and follow-up care. Chronic conditions that cause occasional incapacitated periods and require treatment at least twice a year are also considered "continuing treatment." Any period of incapacity due to pregnancy or for prenatal care is covered. Mental health issues, including substance abuse, may qualify if the conditions above are met.

Leave is Unpaid: The leave is unpaid, but employer policies often allow or require employees to use their paid leave concurrently with any FMLA-approved absence. This means an employee is typically paid during some, or all, of their leave of absence through the use of their own leave accruals. Whether accrued paid leave is run concurrently is determined by the law, the employer's leave policy, and the MOU.

Right to Maintenance of Health Benefits and Reinstatement: A major guarantee found in the FMLA is that an employer must maintain health benefits during the leave period on the same terms as if the employee were actively working during the leave period. This means both the employer and the employee must continue to pay their portion of the monthly insurance premiums. Also, the employer must restore the employee at the end of the leave period to the position of employment held by the employee when the leave commenced, or to an equivalent position with equivalent pay, benefits, and terms and conditions of employment.

Intermittent Leave: Under some circumstances, leave may be taken intermittently or on a reduced leave schedule. Intermittent leave is taken in separate blocks of time due to a single qualifying reason, rather than one continuous period. It may include periods from one hour or more up to several weeks. A reduced leave schedule is one that reduces the employee's usual number of hours per workweek or workday, usually from full-time to

part-time. Employees needing intermittent leave must make a reasonable effort to schedule their leave so as not to disrupt the employer's operations.

For baby-bonding leave, intermittent leave may be taken only if the employer agrees. For leave to care for a sick family member, covered servicemember, or for the employee's own serious health condition, intermittent leave or leave on a reduced schedule may be taken when "medically necessary." An employee can also take intermittent leave for a qualifying exigency so long as it is consistent with the leave's certification.

Requesting Leave: An employee must request leave 30 days in advance, or as soon as practicable if the need for leave is unforeseeable. Verbal notice may qualify. When requesting leave for an FMLA-qualifying reason for the first time, the employee does not have to say "FMLA" specifically. But the employee will typically need to have their health care provider, or covered family member's health care provider, complete a certification form and get it on file with the employer. If an employee later requests additional leave for the same qualifying condition, the employee must specifically reference either the qualifying reason or the need for FMLA. Employers may also request more information, so long as the inquiry does not require the employee to reveal medical information.

Certifying Leave: In most cases, an employer should request that the employee furnish certification from a health care provider at the time the employee gives notice of the need for leave or within five business days thereafter. In the case of unforeseen leave, an employer should request certification within five business days after the leave commences. When the leave is foreseeable, the employee should provide the employer with certification before the leave begins. If this is not possible, the employee must provide the requested certification to the employer within the time frame requested by the employer (the employer must allow at least fifteen calendar days after the request). An employer must give the employee seven calendar days to cure any deficiency. If the employee fails to cure the deficiency, the employer may deny the FMLA leave.

For the employee's own serious health condition, the certification includes information regarding the health care provider's area of specialty, the date the employee's condition commenced, the probable duration, and the amount of leave needed. For leave to care for a family member, the information the employer may request is more limited, but the health care provider must say the employee's participation is "warranted." An employee may agree to allow the employer (*e.g.*, Human Resources, a leave administrator, or a

management official) to contact the provider to authenticate or clarify the certification. Authenticate means verifying that the provider completed and signed the form. Clarification means to understand the handwriting or the meaning of a response. Under no circumstances may the employee's direct supervisor contact the provider.

If the employer has reason to doubt the validity of the certification, the employer may require, at the employer's expense, that the employee obtain the opinion of a second health care provider designated or approved by the employer. Employers are required to provide employees with copies of the medical opinion upon the employee's request within five days, absent extenuating circumstances. Employers may require periodic recertification of a serious health condition. In some cases, this means as frequently as every 30 days, but generally it means once every six months.

Other Protections: An employee's use of FMLA leave cannot be counted against the employee under a "no-fault" attendance policy or be used as a negative factor in employment decisions, such as hiring, promotions, or disciplinary actions. The FMLA also requires employers to keep employee medical records confidential and maintain them in separate files from more routine personnel files. However, the employer may inform supervisors or managers of an employee's need to be away from work, or if an employee needs work duty restrictions or accommodations.

Specific Calculations: The FMLA has several finer points when it comes to various calculations. For example, the FMLA permits employers to choose the 12-month period for determining the employee's leave entitlement. It may include a calendar year, a fixed 12-month period for all employees (*e.g*., a fiscal year), 12 months measured forward from the first date leave is used, or a rolling backwards 12-month period from the date leave is used. Under the "rolling" 12-month period, each time an employee takes FMLA leave, the remaining leave entitlement would be the balance of the 12 weeks which has not been used during the immediately preceding 12 months.

Also, an employer may retroactively designate leave as FMLA if the employer later discovers the leave was for a qualifying reason. If a holiday occurs within a week taken as FMLA leave, the whole week is counted as a week of FMLA.

The FMLA also places limitations on employers. For example, an employer may not count FMLA leave in shorter increments than used for other forms of leave (*e.g.*, an hour

increment). Also, if an employer closes operations for a week or more (*e.g.*, between Christmas and New Years), the closure days do not count against the employee's leave.

Enforcement: The Department of Labor's Wage and Hour Division enforces the FMLA for all private, state, and local government employees. It will investigate complaints, and if violations cannot be resolved, the DOL may bring legal action in court to compel compliance. An employee may also be able to bring a private civil action against an employer for violations. Generally, any lawsuit must be brought within two years of the date of the violation (three years if the violation is willful). If you believe your rights were violated, contact your employee organization's professional staff first to see if it can be resolved more efficiently, either informally or by a grievance. Grievance time limits are often within seven to fourteen days, so do not wait.

State Law: The FMLA was so ground-breaking that California modeled its own state law off the FMLA. Known as the Moore-Brown-Roberti California Family Rights Act of 1993 ("CFRA"), it advanced many of the same basic protections, but there are some important distinctions between the two.

For example, employers are not required to provide intermittent leave for baby bonding under the FMLA (employers can require it be taken all at once), but intermittent leave is allowed under CFRA. CFRA regulations say the minimum duration of leave shall generally be two weeks. CFRA also allows leave for a registered domestic partner. Under the FMLA, the couple must be legally married.

Another major difference is that CFRA does not include pregnancy or related medical conditions within the definition of serious health condition. An amendment passed in 1978 to the state Fair Employment and Housing Act (FEHA) required employers to provide unpaid job-protected leave to employees disabled by pregnancy (known as pregnancy disability leave, or "PDL") for up to four months. The FMLA runs concurrently with PDL.

Typically, FMLA and CFRA run concurrently, too, but not for pregnancy-related medical conditions. This means a pregnant woman could take leave for her own pregnancy under the FMLA and PDL and then, once that time is exhausted, be eligible for 12 weeks of baby-bonding leave under CFRA. In total, a pregnant woman may qualify for approximately 4 months of leave for her pregnancy under the PDL (this includes the 12 weeks of FMLA that runs concurrently with PDL) and then 12 weeks of baby-bonding under CFRA, for a total of seven months of job-protected leave (with health benefits maintained). A spouse

may be able to take 24 weeks of leave – 12 weeks of FMLA to care for the wife during or after the wife's pregnancy, and then 12 weeks of baby bonding leave under CFRA after the child is born and after exhausting FMLA leave to care for the wife.

Like FMLA, CFRA initially applied to public sector workers and employees at large companies. However, SB 1383, signed by Governor Newsom in 2020, dramatically expanded CFRA's protections to cover all employers in the state with five or more employees. This means many California employees who do not qualify under FMLA now get CFRA's benefits.

SB 1383 also eliminated CFRA's limitation on the amount of leave parents may take for baby-bonding when both parents work for the same employer, and it added qualifying exigency leave (like what FMLA provides for).

The legislation also expanded the definition of covered family members to include a domestic partner, grandparent, grandchild, sibling, or parent-in-law, which means an employee covered under both CFRA and FMLA would still have FMLA leave available after taking CFRA to care for one of these family members.

Two laws which took effect in January 2023 expanded CFRA even further. AB 1041 allows employees to take CFRA leave to care for a "designated person," which is an individual identified by the employee who is related by blood or whose association to the employee is the equivalent of a family relationship. An employer can limit an employee to only one designated person per 12-month period. AB 1949 allows employees to take 5 days of bereavement leave upon the death of a family member. The leave is unpaid, but the law authorizes employees to use other leave balances available to the employee, including accrued and available paid sick leave. An employee is defined as a person employed by the employer for at least 30 days prior to the commencement of the leave. The leave must be used within 3 months of the date of death. Family member means a spouse or child, parent, sibling, grandparent, grandchild, domestic partner, or parent-in-law.

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.

3.2% - CPI for All Urban Consumers (CPI-U) Nationally

3.5% - CPI-U for the West Region

2.7% - CPI-U for the Los Angeles Area

2.9% - CPI-U for San Francisco Bay Area (from June)

3.4% - CPI-U for the Riverside Area

4.3% - 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: Our HR staff is talking about our VEBA (Voluntary Employees' Beneficiary Association) and PEHP (Post Employment Health Plan). Maybe this is a dumb question. What is VEBA and PEHP? No one can explain it to me.

Answer: VEBAs and PEHPs are employee benefit plans. A VEBA is authorized under Federal tax law as a form of trust fund whose sole purpose is to provide employee benefits. Among the types of benefits a VEBA may provide for are insurance benefits (like medical, life, and accident insurance), childcare costs, employee continuing education, legal services costs, sick and vacation pay, supplemental unemployment benefits, and training benefits. VEBAs are pooled accounts that cannot be set up solely for the benefit of a single individual. A PEHP is a form of VEBA. The VEBA trust owns and protects the assets for the exclusive benefit of plan participants and their qualified dependents. Plans are funded by the employer, employee, or both.

A PEHP is a defined-contribution health reimbursement arrangement. It allows for money to be set aside to fund post-employment health care costs and premiums. Like with HSAs (Health Savings Accounts) or Deferred Compensation accounts, the funds are set aside while you are employed and can be invested. The contributions and earnings can then later be used to pay for future health costs after retirement. PEHPs can also be funded by leave cash-outs upon separation of employment.

With PEHPs, a retiree submits a claim for reimbursement from the plan for a qualified post-employment medical expense as defined by the Internal Revenue Code. Examples include health premiums, Medicare Part B premiums, Medicare Supplemental premiums, qualified long-term care premiums, and out-of-pocket medical expenses such as prescription drugs, eyeglasses, and co-pays. Companies that administer 457 Plans – like Nationwide and Mission Square – also offer PEHPs.

Question: Our Director is selectively applying and enforcing one of our department's policies. Two co-workers are being allowed to violate the policy. Everyone else, including myself, is being told we must comply with it or face discipline. I don't think that's fair. I want our employee organization to contact HR and tell them this is happening and request that the two employees who are violating the policy be disciplined. Is this something the employee organization can do for me?

Answer: The employee organization's role is to represent employees who are facing discipline, not to inform management about employees who may be violating an employer's policy. HR is responsible for enforcing the employer's policies. Any employee who is accused of violating the policy may, as part of their defense, raise the issue about the policy being selectively enforced. That could serve as a basis to mitigate the proposed penalty. Keep in mind, though, that sometimes an employer who must accommodate employees who need religious or medical accommodations will modify or exempt an employee who needs accommodation from an employer policy. Any accommodation is typically not disclosed to other employees. That may be the legitimate reason why a policy is not being applied to one person in the same way as others, and why you might not know of it.

Question: I work in the police department. I was recently relieved of one trainee and assigned another. I met with my manager, and explained I did not feel I could adequately train due to being overwhelmed with regular duties, current workload, and staffing levels. I shared my reluctance and concerns that I will not be effective. My manager was not receptive. She was contradictory during the meeting, on the one hand saying I was not well suited, and later saying I was a good trainer. I'm paid a training bonus but only while actively training a new hire. There is no

screening or merit criteria other than management assigning it to you. Can I refuse to accept a training assignment and bonus? Can I refuse without being considered insubordinate? Am I subject to discipline for refusing to train? I am planning to meet with the Chief. Can I bring union representation with me?

Answer: It depends. Ordinarily, management has the right to assign work. This includes training assignments. The assignments should be consistent with your job description. If your job description says training others is a requirement, then no, you cannot refuse to train without being insubordinate. It may be that training is not a requirement but is instead a perk – something management is willing to pay extra for (the bonus). A similar example is bilingual pay. Sometimes translations are not required, but management offers more pay as an incentive. In those situations, it may be possible to ask not to train, but if your request is approved, this would mean you do not get the extra pay. You can bring one of your employee organization officers with you to meet with the Chief. Under Gov't Code §3502, public employees have the right to representation "on all matters of employer-employee relations." This includes discussing reassignment of the duties with the Chief. The goal should be to explain why you think the training assignment should be reassigned and acknowledge this means you will not get the extra bonus. If you know a co-worker who is qualified and interested in the assignment, you might raise this too.

You may also ask the Chief if some of your regular duties can be reassigned or prioritized so you can better accomplish both your regular work and the training.