LBAEE
Monthly Newsletter
July 2025 News

UPDATES

- LBAEE is discussing with the City whether or not two new classifications: Fire Prevention Specialist and Fire Inspector should be part of the association.
- LBAEE met with Harbor HR to discuss items of common interest and potential synergy.
- A new version of the membership form will be used for enrollment. Forms available on request for new members.
- Letters of Agreement for the Floor Warden Program and Administrative Leave Policy were signed.
- Volunteer still needed for the Director position for the Public Works Group. Contact us!!!
- LBAEE is reviewing applications for the 20025 Scholarship. Recipients will be announced next month.

U.S. Supreme Court Unanimously Affirms Equal Protection for Public Employees in Employment Discrimination Cases

Last month, in a unanimous decision, the U.S. Supreme Court reinforced equal protections under Federal law for public employees who experience discrimination in the workplace. The case is *Ames v. Ohio Dept of Youth Services*. This month, we will look more closely at the case and the impact it may have on public employees in California.

Facts of the Case: Marlean Ames is a heterosexual woman who was hired as an executive secretary by the Ohio Department of Youth Services in 2004. Ames was later promoted to program administrator. In 2019, she applied for a newly created management position in the agency's Office of Quality and Improvement. The agency interviewed her for the position but ultimately hired a different candidate – a homosexual woman – to fill the role. A few days after Ames interviewed for the position, her supervisors demoted her from her role as program administrator to the secretarial role she had when she first joined the agency. This resulted in a significant pay cut. The agency then hired a homosexual man to fill the vacant program administrator position.

Ames filed a lawsuit under Federal law, Title VII of the Civil Rights Act of 1964. Title VII prohibits employers from discriminating against employees based on race, color, religion, sex, or national origin. Ames alleged that she was denied the management promotion and was demoted to the secretarial position because she was heterosexual.

The district court granted the employer's motion to dismiss the case. The court analyzed her claims under *McDonnell Douglas Corp. v. Green* (1973) 411 U.S. 792, which established a burden-shifting framework for an individual discrimination claim that relies on circumstantial evidence. The first step requires an individual to show that an employer acted with a discriminatory motive. The district court said Ames

could not establish this, in part because she did not present evidence of "background circumstances" suggesting that the agency is the rare employer who discriminates against members of the majority group. Without that evidence, the court said that individuals like Ames who are members of majority groups cannot establish a legal violation based on *McDonnell Douglas*.

Ames appealed. The Sixth Circuit Court of Appeal affirmed the district court's decision. The court said that individuals can satisfy *McDonnell Douglas* by presenting evidence that a member of the relevant minority group (homosexuals) made the employment decision, or statistical evidence showing a pattern of discrimination against members of the majority group (heterosexuals). The decision reinforced a split amongst the federal courts of appeal as to whether majority-group plaintiffs are subject to a different evidentiary burden than minority-group plaintiffs at the first step under *McDonnell Douglas*.

The Court's Holding: The U.S. Supreme Court reversed the lower court decisions and revived Ms. Ames's lawsuit. Justice Jackson delivered the Court's opinion. She said an individual can establish a Title VII violation by showing "that she applied for an available position for which she was qualified but was rejected under circumstances which give rise to an inference of unlawful discrimination." (*Texas Dept. of Community Affairs v. Burdine* (1981) 450 U.S. 248, 253). The question for the Court was whether, to satisfy that burden, an individual of a majority group must show "background circumstances to support the suspicion that the defendant is that unusual employer who discriminates against the majority." The Court held that this additional "background circumstances" requirement is not consistent with Title VII's text or the Court's case law construing the statute.

In reaching this conclusion, the Court emphasized that the text of the statute does not differentiate between majority-group plaintiffs and minority-group plaintiffs. Rather, Title VII prohibits discrimination against "***any* individual**" concerning terms and conditions of employment because of such individual's race, color, religion, sex, or national origin. (42 U.S.C. §2000e-2(a)(1)) (emphasis added). By establishing the same protections for every individual, Congress left no room for courts to impose special requirements on majority-group plaintiffs alone. The "background circumstances" rule flouts that basic principle. The rule uniformly subjects all

majority-group plaintiffs to the same, highly specific evidentiary standard in *every* case.

In *Ames*, the public agency employer argued that the background circumstances rule did not impose a higher evidentiary standard. The Court rejected that argument, saying that the employer's "attempt to recast the 'background circumstances' rule as an application of the ordinary prima facie standard misses the mark by a mile." The Court held that "Title VII does not impose such a heightened standard on majority-group plaintiffs."

In a concurring opinion, Justices Thomas and Gorsuch suggested that the entire *McDonnell Douglas* framework should be overturned. Justice Thomas wrote, "[a]s with the 'background circumstances' rule, the *McDonnell Douglas* framework lacks any basis in the text of Title VII and has proved difficult for courts to apply. In a case where the parties ask us to do so, I would be willing to consider whether the *McDonnell Douglas* framework is a workable and useful evidentiary tool." In his view, "requiring a plaintiff to satisfy the *McDonnell Douglas* framework – as this Court has described it – requires a plaintiff to prove too much at summary judgment." He believed that a jury should be the one to decide the ultimate question of whether an employer intentionally discriminated against an individual. He said "litigants and lower courts are free to proceed without the *McDonnell Douglas* framework. This Court has never required anyone to use it. And district courts are well equipped to resolve summary judgment motions without it." (citing Federal Civil Procedure Rule 56). Justice Thomas also wrote about how the background circumstances rule is "plainly at odds with the Constitution's guarantee of equal protection. The guarantee 'cannot mean one thing when applied to one individual and something else when applied to [another].'" (citing *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College* (2023) 600 U.S. 181, 206, the court's most recent higher education affirmative action decision).

Impact of the Case: The *Ames* decision reinforces equality under the law. Title VII prohibits discrimination in employment based on a protected characteristic regardless of an individual's status within a majority or minority group. A protected characteristic – race, color, religion, sex, or national origin – shall not be a basis for personnel decisions.

The California Fair Employment & Housing Act of 1959 ("FEHA") is the main state law prohibiting employment discrimination. It broadly applies to both public and private sector employers. FEHA's list of protected characteristics is broader than Title VII. It prohibits employment discrimination based on race or color; religion; national origin or ancestry; physical disability; mental disability or medical condition; marital status; sex or sexual orientation; gender identity or expression; age (with respect to persons over the age of 40); genetic information; military and veteran status; and pregnancy, childbirth, or related medical conditions. Amendments that took effect in January 2020 include:

- A single incident is enough to create a question for a jury trial.
- Cases are rarely appropriate for summary judgment, which is a legal procedure used to dismiss a case on a legal motion to prevent it from being tried by a jury.
- A discriminatory remark, even if not made directly in the context of an employment decision, is relevant circumstantial evidence of discrimination.
- The legal standard does not vary by workplace. The fact that an occupation or job site tolerated a greater frequency of illegal discrimination in the past is irrelevant.
- Supervisory employees must take at least 2 hours of anti-harassment training every two years and non-supervisory employees must take 1 hour every two years.

Prior to these amendments, individuals in California generally had greater legal protection under FEHA than Title VII. Civil lawsuits were typically brought in state court under FEHA rather than Federal court under Title VII, and those lawsuits were more likely to result in a jury trial. This practice will likely continue as state law is more generous to employees.

The *Ames* decision reinforces that Diversity, Equity, and Inclusion (DEI) programs must comply with both state and Federal anti-discrimination laws. On January 20, 2025, President Trump signed an executive order eliminating DEI programs as requirements in the Federal workforce and for Federal government contractors. Shortly thereafter, on January 28, 2025, the U.S. Equal Employment Opportunity Commission (EEOC) issued a statement saying it would no longer enforce a 2021 executive order that expanded the definition of "sex discrimination" to include sexual

orientation and gender identity, instead shifting its focus to sex discrimination based on gender stereotypes. This has led some to question the future of DEI initiatives. The *Ames* decision is a reminder that DEI programs cannot violate anti-discrimination laws. Employers cannot use a protected characteristic as a basis for personnel decisions. DEI initiatives in California will likely continue. Title VII prohibits discrimination based on sex, which has been interpreted to include gender stereotypes, sexual orientation, and gender identity. (*See, e.g., Bostock v. Clayton County, Georgia* (2020) 590 U.S. 644). In fact, the Court in *Ames* cited *Bostock* with approval and did not suggest they would depart from it in future cases. FEHA expressly prohibits discrimination based on sex, sexual orientation, gender identity, and gender expression. FEHA also requires that California employers provide anti-harassment training to employees. These are requirements established by state law. They are not exclusive to an employer's specific DEI initiative.

The *Ames* decision may lead to a reversal by the Court of the longstanding *McDonnell Douglas* framework. For years, members of the Court have suggested in various decisions an interest in revisiting or overturning other longstanding precedents. To do so, litigants bring cases challenging the precedent, and the Court uses that case to overturn the prior precedent. The *Ames* decision and the reversal of the *McDonnell Douglas* framework may be another example of this. If that occurs, more Federal employment discrimination lawsuits will be tried by juries, which could be a win for employees, assuming juries are a better fit than judges to decide if unlawful discrimination occurred.

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.

2.4% - CPI for All Urban Consumers (CPI-U) Nationally

2.4% - CPI-U for the West Region

3.0% - CPI-U for the Los Angeles Area

1.3% - CPI-U for San Francisco Bay Area (from April)

2.6% - CPI-U for the Riverside Area

3.8% - CPI-U for San Diego Area

New Bill to Expand Pension Benefits Placed on Hold

Assembly Member Tina McKinnor of Inglewood introduced legislation earlier this year that would amend state law to provide better pension benefits for public employees. The bill – AB 1383 – will not pass this year. The legislation was tabled by the Assembly Appropriations Committee. It can be reconsidered in January 2026. The legislation is supported by the California Professional Firefighters, a union that represents approximately 35,000 firefighters. If signed into law, the legislation would mark the first significant expansion of pension benefits since the Public Employees' Pension Reform Act (PEPRA) became law in 2013.

In its current form, AB 1383 would primarily affect safety members by establishing new retirement formulas of 2.5% at age 55, 2.7% at age 55, or 3% at age 55. Public agencies would be required to place new safety employees hired after the law takes effect into one of those three formulas. Current safety employees would be placed into the formula that is closest to their current formula, for service performed after the law takes effect.

The bill authorizes a public employer and a recognized employee organization to negotiate a prospective increase to the retirement benefit formulas, consistent with the formulas permitted under the act. In the bill's current form, it is not clear if this includes higher benefit formulas for all members, or just for safety members.

The legislation also includes some amendments that would improve benefits for non-safety employees. For example, the legislation would allow an employer and an employee organization to collectively bargain a memorandum of understanding where the employer pays a portion of the employee's contribution. Currently, PEPRA requires new members to pay 50% of the normal cost rate, and most Classic members pay their full member contribution rate. In the early-mid 2000s, many employees paid nothing towards their pensions. CalPERS was "superfunded" and employee organizations negotiated to have their employer pay the full cost. That changed in the Great Recession and accelerated once PEPRA took effect. Now, most non-safety employees pay between 7% to 8% for Classic, and 6.5% to 7.5% for new members.

The legislation also adjusts pensionable compensation limits. The cap under current law is about $186,000 per year for new members. The legislation would lift that to $280,000 per year, a figure that would then be adjusted annually in accordance with a defined benefit limitation established under Federal law with respect to tax exempt qualified trusts. This would initially increase the amount of pensionable earnings by about $100,000 and cost more than $300 million annually in new payroll expenses, according to a legislative analysis. This change would affect both safety and non-safety members.

The latest annual review of CalPERS' funding status published in November 2024 for the year ending June 30, 2024, identified an overall 75% funded status. However, the report emphasized that the funded ratios vary among different plans within the system, with plans for non-safety members generally having higher funded ratios than plans for safety members. The funded status is based on assumptions by CalPERS, including a 2.8% payroll growth rate, 2.3% inflation rate, and a 6.8% investment return rate. The next annual review will occur in the fall of 2025 for the year ending June 30, 2025.

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 Maintenance Ranger and I voluntarily remove both venomous and non-venomous snakes from our lake campsites, when needed. When I was being trained to do so, I let my supervisor know I was not okay with this task. I was told it's not a mandatory task and is completely voluntary. The employer does not want to add this task to our job description, because voluntary tasks are not listed within job descriptions. Can we request that the employer hire a company to come remove the snakes, when needed? We do this for our meters and bees. We have an on-call contract with a live bee removal company so anytime a customer calls to report bees in a meter box, we notify the bee company, and they go out to remove the bees. I believe the turnaround time is within 24 hours. Obviously, snakes are different, but have you dealt with this?

Answer: Yes, you can request that the employer use a licensed contractor for snake removal, particularly given the safety risks involved and the current practice of using a specialized service to remove bees from meters. This ensures hazardous work is handled by trained professionals. It also minimizes the risk to employees and reduces potential liability for the employer. You may also have the right to refuse such a hazardous assignment if your supervisor were to claim the duty was no longer voluntary, so long as there is a reasonable belief of a real danger of death or serious injury.

It is not a duty you should request to add to the job description, though, at least not if you want to keep it voluntary. A job description typically identifies job duties that are required for the position.

Your employee organization can raise this issue in a labor management meeting. The employer can memorialize the procedure for how employees should respond if they encounter known hazards at work, such as bees or snakes, including whom to contact for removal. The employer can also communicate this procedure to employees and provide proper training or equipment to keep workers safe.

Question: I called out sick for the Thursday holiday (Juneteenth). I was scheduled to work on Thursday and Friday. My supervisor said I

exceeded my six protected days of sick leave for my evaluation period. He said our MOU provides that if an employee is scheduled to work on a holiday and fails to appear for duty, they will forfeit any compensation for the day, including holiday pay, sick leave pay, or other compensation. I spoke with him, and he said HR had recently informed him of a change in state law that protects six sick days from any penalty. Are you familiar with or aware of any such law? Is it true that I cannot use my paid sick time? Must I take Thursday as unpaid?

Answer: Some MOUs provide premium pay for those working on a designated holiday, particularly those subject to 24-7 staffing requirements. The MOU may allow an employer to withhold this type of holiday pay if an employee does not work a scheduled holiday shift. However, the employer cannot withhold the value of the negotiated holiday time (*e.g.*, the value of the Juneteenth holiday). The employer also cannot deny an employee the ability to use paid sick leave if the employee calls out sick on a holiday.

It is not clear what law your supervisor or HR is referring to. However, under California's Kin Care law, an employee may use in any calendar year up to one-half of their annual sick leave accrual as protected leave for the diagnosis, care, or treatment of an existing health condition of, or preventative care for, an employee or an employee's family member. (*Labor Code §233(a)*). Furthermore, the designation of sick leave taken for Kin Care purposes shall be at the employee's sole discretion. (*Id.*).

Many MOUs provide sick leave at an annual accrual rate of 96 hours. For those who work an 8-hour schedule, this equates to 12 days of sick leave per year. One half of the annual accrual would be 48 hours, or 6 days. This may be what your supervisor and HR meant when they referred to 6 days of protected leave. The Kin Care law also says in any "calendar year," which may or may not coincide with your evaluation period. (*Labor Code §233(a)*).

In any event, even if you have exhausted your Kin Care amount (*e.g.,* the 6 days), you still have the right under California's paid sick leave law (Healthy Workplaces, Healthy Families Act of 2014) to use your accrued sick leave for sick leave purposes. (*Labor Code §246.5*). California's paid sick leave law specifies that, upon the oral or written request of an employee, an employer shall provide paid sick days

for these purposes. (*Labor Code §246.5(a)*). An employer shall not require as a condition of using paid sick days that the employee search for or find a replacement worker to cover the days during which the employee uses paid sick days. (*Labor Code §246.5(b)*). An employer shall not deny an employee the right to use accrued sick days and may not discriminate against an employee for using accrued sick days or attempting to exercise the right to use accrued sick days. (*Labor Code §246.5(c)*).

Any MOU language that attempts to deny employees the right to use accrued paid sick leave for a qualifying absence is void under California law. You do not have to take Thursday as unpaid, unless you do not have any accrued paid sick leave available. Contact your professional staff if you are denied the right to use paid sick leave or are denied the value of the negotiated holiday time.

Question: Our employee organization would like to propose a new position to the City Manager (who would oversee this position) as part of the new budget. Is there a template for a memo or something that we can use to help support our request. How can we go about advocating for this new position?

Answer: The decision to create, modify, or eliminate a position is a management right under most MOUs and state law. Management has the legal authority to decide staffing levels. The employee organization cannot require the City to create a new position. However, the employee organization can suggest a new position and be influential in getting the operational need addressed.

If the City does agree to add a new position, the employee organization has the right to bargain over the job specifications, including the salary, job duties, and minimum requirements. The new position should also be placed in the appropriate bargaining unit in accordance with the City's rules.

While there's no formal template, you can submit a clear, well-supported memo that briefly explains the purpose of the request for a new position, outlines its operational need, and provides job descriptions and salary data from comparable agencies. Doing research ahead of time and linking the request to the City's goals and interests will strengthen your case.

For example, describe the unmet need addressed by this new position. This may include workload that is affecting

public services, regulatory compliance, *etc*. Include any relevant data, such as service delays or areas of non-compliance. Suggest a funding source if applicable, such as a budgeted vacancy or grant funding. Show how the position fits within the existing structure and classification plan. Demonstrate how the proposed position would create efficiency, reduce liability or improve City Council goals or services for the public.

Submit the request before the budget is finalized and adopted. Schedule a meeting with the City Manager if needed. Offer to help with any additional research. Employers can be reluctant to consider suggestions from employees, even if well researched, so you may need to be persistent when pursuing the proposal. Good luck!