LBAEE
November 2024 News

UPDATES

- The Association held a meeting to reach out and reconnect in person with our members last month. Nearly 80 members representing all six groups conforming LBAEE were in attendance where they had an opportunity to learn more about the association's purpose and mission and our future plans. The feedback was positive overall so we will plan to make it a recurrent event in the future.

- Two volunteer committees have been created:
  Social and Networking Committee Education & Community Committee
  Contact Jennifer.Williams@lbaee.org , Annie.Mosher@lbaee.org or your group's director if interested in joining either committee.

- LBAEE, as labor representative stakeholders, attended the Zeero Emmissions Energy Resilient Operations Collaborative where the upcoming Pier Wind Project was introduced to the local community.

- LBAEE discussed with the City the expansion of the Sick Leave entitlement as required by new laws and the representation of some Temporary Employees (interns and retired annuitants).

- Measure "JB" was placed before the voters, attempting to amend the Long Beach City Charter to reorganize the Civil Service system. Preliminary results show votes in favor of Measure JB by a wide margin. LBAEE plans to watch carefully any foreseeable impacts of the charter amendment during the second meet and confer process that is estimated to go thru January/ February 2025.

- Preliminary results also show votes in favor of Measure HC amending terms and authority at Harbor Dept. LBAEE requested Harbor Management that transparency in hiring is still maintained after the change.

Governor Newsom Signs Important New Legislation into Law

September 30th was the deadline for Governor Newsom to sign a wave of new state legislation into law. Here are some of the key pieces of legislation affecting public employees that the Governor signed into law.

Public Agency Job Vacancies (AB 2561): Amends the Meyers-Milias Brown Act (MMBA) to require a public agency to present the status of vacancies and recruitment and retention efforts at a public hearing at least once per fiscal year and entitles the recognized employee organization to make a presentation at the same hearing.

During the hearing, the public agency shall identify any necessary changes to policies, procedures, and recruitment activities that may lead to obstacles in the hiring process. If the number of vacancies within a single bargaining unit meets or exceeds 20% of the total number of authorized full-time positions, the public agency must, upon the request of the recognized employee organization, include the following information during the public hearing:

1. The total number of job vacancies within the bargaining unit.
2. The total number of applicants for vacant positions within the bargaining unit.
3. The average number of days required to complete the hiring from when a position is posted.
4. Opportunities to improve compensation and other working conditions.

Vacancies have been a problem in many public agencies for years. This bill helps to ensure transparency as to the nature and extent of any recruitment and retention challenges.

This bill also amends the MMBA to include the following language:

> Job vacancies in local government are a widespread and significant problem for the public sector affecting occupations across wage levels and educational requirements. High job vacancies impact public service delivery and the workers who are forced to handle heavier workloads, with understaffing leading to burnout and increased turnover that further exacerbates staffing challenges. There is a statewide interest in ensuring that public agency operations are appropriately staffed and that high vacancy rates do not undermine public employee labor relations.

Restrictions on Driver's License Requirements in Job Postings (SB 1100): Amends the Fair Employment and Housing Act (FEHA) to establish an unlawful employment practice for an employer to state in employment materials that an applicant must have a driver's license unless the employer reasonably expects the duties of the position to require driving and the employer reasonably believes that satisfying the driving job function using an alternative form of transportation would not be comparable in travel time or cost to the employer. Alternative forms of transportation are defined to include but are not limited to using a ride hailing service, using a taxi, carpooling, bicycling, and walking. This bill addresses concerns that requiring a driver's license disproportionately affects those who cannot afford a vehicle or individuals with disabilities. Moving forward, employers must consider reasonable alternatives to driving requirements.

Local Public Employee Organizations (AB 1941): Amends the MMBA to allow a recognized employee organization to charge an employee covered by the *Public Safety Officers Procedural Bill of Rights Act (POBR)* for the reasonable cost of representation when the employee holds a conscientious objection or declines membership in the organization and requests individual representation in a discipline, grievance, arbitration, or administrative hearing from the organization. This bill would apply this authorization only to proceedings for which the recognized employee organization does not exclusively control the process. Existing law authorizes a similar charge for employees covered by the *Firefighters Procedural Bill of Rights Act (FBOR)*.

This law is important for public employee unions organized under the MMBA. In 2018, the U.S. Supreme Court decision in *Janus v. AFSCME* allowed employees to initially opt-out of paying union dues, though it left open many questions, such as how public employee unions could charge non-members who later request representational services and who benefit from union negotiations without paying their fair share of dues.

This bill expands the rights of public employee organizations to recover representational costs from non-members. Under the *Janus* decision, public employee organizations can also include restrictions in their membership authorization forms and internal governance documents (like the bylaws) to limit a member's ability to opt-out of paying union dues, and to pay back dues if the non-member later decides to join. These documents can also include provisions to limit certain members-only benefits to those who pay dues.

Ban on Captive Audience Speeches (SB 399): Amends the Labor Code to prohibit an employer from subjecting, or threatening to subject, an employee to discharge, discrimination, retaliation, or any other adverse action because the employee declines to attend an employer-sponsored meeting or affirmatively declines to participate in, receive, or listen to any communications with the employer or its agents or representatives, the purpose of which is to communicate the employer's opinion about religious or political matters.

The law also requires that an employee who declines to attend such a meeting continue to be paid, and it imposes a $500 civil penalty on employers for violations. The bill authorizes the Labor Commissioner to enforce the law and authorizes any affected employee to bring a civil action and to petition for injunctive relief.

This new chapter of the Labor Code is titled the "California Worker Freedom from Employer Intimidation Act." It defines "employer" to include both private employers and "all branches of state government, or the several counties, cities and counties, and municipalities thereof, or any other political subdivision of the state, or a school district, or any special district, or any authority, commission, or board or any other agency or instrumentality thereof."

Political matters mean matters relating to elections for political office, political parties, legislation, regulation, and the decision to join or support any political party or political or labor organization. Religious matters mean matters relating to religious affiliation and practice and the decision to join or support a religious organization or association.

The bill has the following exceptions:

1. A public employer may hold a new employee orientation as defined in Section 3555.5 of the Government Code.
2. A public employer may communicate to its employees any information related to a policy of the public entity or any law or regulation that the public entity is responsible for administering.
3. An employer may communicate to its employees any information that is necessary for those employees to perform their job duties.
4. An employer may still require employees to undergo training to comply with the employer's legal obligations, including obligations under civil rights laws and occupational safety and health laws.

5. An employer may communicate to its employees any information the employer is required by law to communicate, but only to the extent of that legal requirement.

California is now one of 10 states to implement such a law. Minnesota Governor Tim Walz signed a similar measure into law last year. Federal legislation, known as the Protecting the Right to Organize (PRO) Act, includes a similar ban. According to the bill's sponsor, SB 399 "is about fairness and equity in the workplace. Captive audience meetings disrupt the balance of power by forcing workers to attend meetings unrelated to their jobs, often under threat of retaliation. This bill ensures employees can focus on their work without coercion, creating a fairer and more respectful environment."

State Disability Insurance Paid Family Leave Program (AB 2123): Removes a provision that authorizes an employer to require an employee to take up to two weeks of earned but unused vacation before, and as a condition of, the employee's initial receipt of benefits under the State Disability Insurance (SDI) Paid Family Leave (PFL). The SDI-PFL program provides wage replacement benefits to workers who take time off work to care for seriously ill family members, to bond with a minor child within one year of birth or placement, or to participate in a qualifying exigency related to the covered active duty or call to covered active duty of family members.

This bill allows employees to begin receiving wage replacement benefits immediately upon taking leave without having to first use their own vacation for two weeks. Employees often want to retain some of their own vacation for when they return to work. Requiring an employee to use vacation for the first two weeks negatively affected newer employees who often do not accrue more than two weeks of vacation in their first year of employment. The law is an important expansion of the SDI-PFL program and assists workers who need to take time off for family or medical reasons to do so without having to first use their own vacation time.

Health Coverage of Fertility Services (SB 729): Requires large and small group health care service plan contracts and disability insurance policies issued, amended, or renewed on or after July 1, 2025, to provide coverage for the diagnosis and treatment of infertility and fertility services. Existing law requires plans to offer coverage for the treatment of infertility, except in vitro fertilization (IVF). This bill removes IVF as an exclusion. The law also prohibits a health care plan or insurer from placing different conditions or coverage

limitations on fertility medications or services, or the diagnosis and treatment of infertility and fertility services, than for what applies to other medical conditions.

Religious employers are exempted. For large group health care plans and disability insurance policies, the bill requires coverage for a maximum of three completed oocyte (egg) retrievals with unlimited embryo transfers using single embryo transfer when recommended and medically appropriate. For small group health plans, the insurer must offer the coverage to employers, but it is not required to be included in the plan.

Infertility is established based on (1) a licensed physician's findings, (2) a person's inability to reproduce either as an individual or with their partner without medical intervention, or (3) upon the failure to establish a pregnancy or to carry a pregnancy to live birth after regular, unprotected sex (no more than 12 months for those under 35 and no more than 6 months for those 35 or older). A miscarriage does not restart the 12-month or 6-month timeframe to qualify as having infertility. The bill is a significant expansion of healthcare coverage and eases the financial burden for those struggling with infertility.

Victims of Violence (AB 2499) – Moves the jury duty, court appearance, and victim time off provisions under the Labor Code (§230 and §230.1) to the Fair Employment and Housing Act (FEHA), and thus within the Civil Rights Department's enforcement authority. Expands protections in existing laws that apply to victims of a crime, sexual assault, domestic violence, or stalking, to include more broadly victims of a qualifying act of violence. This includes the following, regardless of whether there is an arrest, prosecution, or conviction for any crime:

- Domestic violence
- Sexual Assault
- Stalking
- An act, conduct, or pattern of conduct that includes:
    - An individual causes bodily injury or death to another.
    - An individual exhibits, draws, brandishes, or uses a firearm or other dangerous weapon, with respect to another.
    - An individual uses or makes a reasonably perceived or actual threat of use of force against another to cause physical injury or death.

Employers must run the leave taken under these provisions concurrently with leave taken under the Federal Family and Medical Leave Act (FMLA) and the California Family Rights

Act (CFRA) when eligible. Employers must reasonably accommodate an employee who is a victim or whose family member is a victim of a qualifying act of violence, for the safety of the employee while at work. The bill also extends paid sick leave to victims of a qualifying act of violence under the Healthy Workplaces, Healthy Families Act of 2014.

The bill requires employers to notify employees of these rights at the time of hire, once annually, at any time upon request, and any time the employer becomes aware that an employee or an employee's family member is a victim. The Civil Rights Department must develop and post a form for employers to use to comply with the notice requirement on or before July 1, 2025. The law takes effect January 1, 2025.

Public Employee Retirement Law Changes:

AB 1246 – Revises the Public Employees' Retirement Law (PERL) to allow a member, starting January 1, 2026, to elect to add their new spouse as the beneficiary of their interest, if they elected to receive an optional settlement at retirement, and the member's former spouse was named as beneficiary, and a legal judgment awards only a portion of the interest in their retirement benefits to the retired member. A member can select this option only once and it must not reduce the former spouse's interest.

AB 2284 – Authorizes a county retirement system to define "grade" under "compensation earnable" under the County Employees Retirement Law (CERL) to mean several employees considered together who share similarities in job duties, schedules, unit recruitment requirements, work location, collective bargaining unit, or other logical work-related group or class.

AB 2474 – Makes important changes regarding a public employer's use of retired annuitants by prohibiting a person retired under CERL from being employed in any capacity beyond 960 hours in a calendar year or fiscal year unless the person has first been reinstated from retirement or is authorized under CERL or the Public Employees' Pension Reform Act (PEPRA). Requires a public employer that employs a retired member in violation of CERL or PEPRA, if the retired member is reinstated, to pay the retirement system an amount of money equal to the employer contributions that would have otherwise been paid, plus interest, for the period of time that the member was employed in violation of these provisions, and to contribute toward reimbursement for reasonable administrative expenses of the system.

The bill also revises the CERL to define "account of the retired member or survivor of a deceased retired member" to include an account held in a living trust or an income-only trust. It further authorizes the board of retirement for the County of Los Angeles to permit a person entitled to receive benefit payments to have them deposited into a prepaid account.

AB 2770 – Under the CERL, extends a presumption of disability retirement benefits for post-traumatic stress disorder that arose out of, or in connection with, the member's employment. Originally set to expire January 1, 2025, the presumption is now extended to January 1, 2029.

Other Bills: Other noteworthy employment-related bills include:

- **AB 1815** – Strengthens the CROWN Act (prohibiting employment discrimination based on hairstyle and hair texture) by removing the word "historically" from the definition of race to clarify that race is inclusive of traits associated with race, such as hair texture and protective hairstyles. Protective hairstyles are defined to include, but are not limited to, braids, locs, and twists.
- **AB 1870**– Requires the notice that employers are required to post in the workplace to include a statement that an injured employee has the right to consult a licensed attorney to advise of their rights under workers compensation laws.
- **AB 2299** – Requires the Labor Commissioner to develop a model list for employers to post at work of employee rights and responsibilities under whistleblower laws.
- **AB 2364** – Requires the Department of Industrial Relations and UCLA Labor Center to conduct a study evaluating how to improve worker safety and employment rights in the janitorial industry.
- **AB 2631** – Requires the Fair Political Practices Commission to create, maintain, and make available an ethics training course for local agency officials.
- **AB 2889** – Prohibits the City of L.A. Employee Relations Board and the L.A. County Employee Relations Commission, in an action to recover damages due to an unlawful strike, from awarding strike-preparation expenses as damages and from awarding damages for costs, expenses, or revenue losses incurred during, or because of, an unlawful strike. Grants the Public Employment Relations Board (PERB) with exclusive initial jurisdiction in an action involving the City of L.A. or the

County of L.A. over a request for injunctive relief that seeks to enjoin employee organization or employee activity, including, but not limited to, a strike.

- **SB 1137** – Revises the FEHA to clarify that discrimination based on more than one protected trait, or a combination of protected traits, is still legally prohibited.
- **SB 1340** – Allows local governments to enforce local law prohibiting employment discrimination that establish stricter anti-discrimination standards than the state.
- **SB 1350** – Establishes greater health and safety protections for domestic workers.

One Veto: Governor Newsom vetoed AB 2681, which would have prohibited manufacturing, modifying, selling, transferring, or operating a robotic device equipped or mounted with a weapon. Called the "killer drone" bill, it did not include an exception for law enforcement, who lobbied against it in the final days of the legislative session.

In his veto message, Governor Newsom said he supports prohibiting weaponization of emerging technologies and placing common sense restrictions on potentially dangerous devices, but he said he could not sign AB 2681 because it "would also prohibit beneficial law enforcement use of such devices." He said law enforcement agencies sometimes use remotely operated robots to deploy less-lethal force to drive dangerous suspects into the open or protect officers who are confronted with armed and barricaded suspects.

The American Civil Liberties Union (ACLU) criticized Governor Newsom for the veto, citing bipartisan support that deploying killer police robots on domestic soil is a step too far.

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

2.1% - CPI-U for the West Region

2.8% - CPI-U for the Los Angeles Area

2.7% - CPI-U for San Francisco Bay Area (from August)

1.4% - CPI-U for the Riverside Area

2.5% - 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: Can I use bereavement leave for the death of a "designated person"?

Answer: No. There is no statutory requirement for employers to provide bereavement leave to an employee for a "designated person" or anyone not listed in §12945.7 (as defined in §12945.2). AB 1041 could have added "designated person" to Gov't Code §12945.7 (bereavement leave), but it did not. AB 1949 could have listed "designated person" using either the CFRA or sick leave definitions, but it did not.

AB 1041, signed by Governor Newsom on September 29, 2022, expanded the California Family Rights Act (CFRA) and the Healthy Workplaces, Healthy Families Act of 2014 (California's paid sick leave law) to include a "designated person" as an individual that an employee can take CFRA leave or paid sick leave to care for. Under CFRA, a designated person means an individual related by blood or whose association with the employee is the equivalent of a family relationship. (*Gov't Code* §12945.2(b)(2)). The designated person should be identified at the time the employee requests CFRA leave. Under the sick leave law, a designated person is a person identified by the employee at

the time the employee requests paid sick days (*Labor Code* §245.5(c)(8)). This could include a neighbor, a friend, or a co-worker. Under both laws, an employer may limit an employee to one designated person per 12-month period, but it does not have to be the same person for CFRA as for paid sick leave.

AB 1949, also signed by Governor Newsom on September 29, 2022, provides up to five days of bereavement leave upon the death of a "family member." (*Gov't Code* §12945.7). A family member is a spouse, child, parent, sibling, grandparent, grandchild, domestic partner, or parent-in-law, as defined in Gov't Code §12945.2 (CFRA). CFRA defines "child" to include a biological, adopted, foster child, stepchild, a legal ward, a child of a domestic partner, or a person to whom the employee stands in loco parentis. CFRA defines "parent" to include a biological, foster, or adoptive parent, a parent-in-law, a stepparent, a legal guardian, or other person who stood in loco parentis to the employee when the employee was a child.

Employer bereavement leave policies and labor contracts can provide a greater benefit than what the statutes require. Check your MOU and employer policy to see if it allows you to take bereavement leave for individuals beyond those listed in §12945.7. For example, it could provide bereavement leave for family members such as aunts, uncles, nieces, nephews, or cousins. If it does not include "designated person," or the person you want to use bereavement leave for, then you will not be able to use bereavement leave, but you can still request vacation or annual leave.

Question: I have a disabled adult child that is under my care. Periodically, my child has appointments with a caretaker who needs to enter the home. An adult needs to be present at the home during the appointment but not involved. I can work remotely during these times. I requested to work from home under my employer's work from home policy, but I was denied. Does my employer have to reasonably accommodate me? Does my employer have to allow me to work from home? What are my options?

Answer: Under the Fair Employment and Housing Act (FEHA), an employer must "make reasonable accommodation for the known physical or mental disability of an applicant or employee." (*Gov't Code* §12940(m)(1)). An employer must also "engage in a timely, good faith, interactive process with the employee or

applicant to determine effective reasonable accommodations, if any, in response to a request for reasonable accommodation by an employee or applicant with a known physical or mental disability or known medical accommodation." (*Gov't Code* §12940(n)). The FEHA regulations also refer to an "applicant" or an "employee." (2 CCR §11068). However, the FEHA also says that it is an unlawful employment practice for an employer, because of a disability, to discriminate against a person in compensation or in terms, conditions, or privileges of employment. (*Gov't Code* §12940(a)). The FEHA also prohibits discrimination against an applicant or employee based on a perception that the person has a disability or is associated with a person who has, or is perceived to have, a disability. (*Gov't Code* §12926(o)).

The Federal Americans with Disabilities Act ("ADA") prohibits disability discrimination and requires reasonable accommodation on similar terms. (42 U.S.C. §12112). The ADA also states that an employer shall not exclude or otherwise deny equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association. (*Id.* at (b)(4)). These associational provisions prevent employers from taking adverse actions such as refusing to hire, discharging, or otherwise discriminating against an employee who, for example, has a child with a disability based on a mistaken assumption that the employee will be away from work excessively or otherwise be unreliable.

A state and federal court have issued legal decisions suggesting that FEHA might require employers to reasonably accommodate employees who associate with someone with a disability. However, the case law needs more development before it can be relied upon to require an employer to allow remote work as a reasonable accommodation.

Even though your employer might not have to reasonably accommodate you, your employer cannot discriminate against you based on your child's disability. This includes, for example, not providing you with the same work-from-home privileges provided to other employees who do not have a disability or a child with a disability. You may also consider taking family care leave under either the California Family Rights Act (CFRA) or the Federal Family Medical Leave Act (FMLA). Both laws allow you to

take protected leave on an intermittent basis, or a reduced work schedule basis. If you request this leave, your employer might discover that allowing you to work from home on these occasions is a more practical solution than providing you with leave under CFRA or FMLA.