CITY EMPLOYEES ASSOCIATES MONTHLY NEWSLETTER

AUGUST 2025

LBAEE UPDATES

- LBAEE completed discussions with the City about the placement of two new classifications: Fire Prevention Specialist and Fire Inspector. Even after our strong objection the City assigned them to IBEW.
- The City announced that City Hall staff will be returning to their designated parking at the Pike Parking garage due to capacity limitations at the Civic Center Parking garage.
- The City sent an update on Federal Funding Impacts and City Support for Employees. LBAEE will be monitoring potential impacts, if any, to our membership.
- LBAEE reviewed updated bulletins for Senior Survey Technician, Petroleum Engineer I-II and Permit Technician.
- Volunteer still needed for the Director position for the Public Works Group. Contact us!!!
- Recipients for the 20025 Scholarship have been identified and after board approval will be announced.
- The Association is planning a meeting to connect in person with our members in October. Stay tuned for details.

Whistleblower Protections for California Public Employees

This month, we will discuss whistleblower protections for public employees in California. This includes a detailed look at the statutory scheme for whistleblowers found in the Labor Code, as well as the California Labor Commissioner's model whistleblower notice posting, and two recent legal decisions issued by California appeals courts in July.

The Labor Code: State law provides legal protection for whistleblowers. The Code says:

> An employer, or any person acting on behalf of the employer, *shall not make, adopt, or enforce any rule, regulation, or policy* preventing an employee from disclosing information to a government or law enforcement agency, to a person with authority over the employee, or to another employee who has authority to investigate, discover, or correct the violation or noncompliance, or from providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.

Labor Code §1102.5(a) (emphasis added). An employer also shall not retaliate against an employee *for disclosing* such information to a government or law enforcement agency, to a person with authority over the employee, to a person with authority to investigate or correct the noncompliance, or to a public body conducting a hearing, investigation, or inquiry. *Labor Code §1102.5(b)*. The Code also prohibits an employer from retaliating against an employee *for refusing to participate* in an activity that would result in a violation of a state or federal statute, or a violation of or noncompliance with, a local, state, or federal rule or regulation. *Labor Code §1102.5(c)*. The Code makes it illegal for an employer to retaliate against an employee for having exercised their rights under (a), (b), or (c) above *in any former employment*. *Labor Code §1102.5(d)*. The Code also makes it illegal for an employer to retaliate against an employee *because the employee is a family member* of a person who has, or is perceived to have, engaged in any acts protected by this section. *Labor Code §1102.5(h)*.

The Code specifically states that a report made by an employee of a government agency to their employer is a disclosure of information to a government or law enforcement agency pursuant to section (a) and (b). *Labor Code §1102.5(e)*. For purposes of the whistleblower laws, "employee" includes, but is not limited to, any individual employed by the state or any subdivision thereof, any county, city, city and county, including any charter city or county, and any school district, community college district, municipal or public corporation, political subdivision, or the University of California. *Labor Code §1106*.

An injured employee has the right to recover damages from their employer. *Labor Code §1105*. The Code allows for an award of reasonable attorneys' fees to a plaintiff who brings a successful action for a violation of these provisions. *Labor Code §1102.5(j)*. In addition to other remedies available, an employer is liable for a civil penalty not exceeding ten thousand dollars ($10,000) per employee for each violation, to be awarded to the employee who was retaliated against. *Labor Code §1102.5(f)(1)*. In assessing this penalty, the Labor Commissioner shall consider the nature and seriousness of the violation based on the evidence obtained during the investigation. *Labor Code §1102.5(f)(2)*. The Labor Commissioner's consideration of the nature and seriousness of the violation shall include, but is not limited to, the type of violation, the economic or mental harm suffered, and the chilling effect on the exercise of employment rights in the workplace. *Id*.

An employer, or any individual who violates the whistleblower law, is guilty of a misdemeanor punishable by imprisonment in the county jail not to exceed one year or a fine not to exceed $1,000 or both. *Labor Code §1103*. An entity that violates the whistleblower law is guilty of a misdemeanor punishable by a fine not to exceed $5,000. *Id*. In all prosecutions under this chapter, the employer is responsible for the acts of its managers, officers, agents, and employees. *Labor Code §1104*.

In a civil action or administrative proceeding brought pursuant to Section 1102.5, once it has been demonstrated by a preponderance of the evidence that an activity proscribed by Section 1102.5 was a contributing factor in the alleged prohibited action against the employee, the employer shall have the burden of proof to demonstrate by clear and convincing evidence that the alleged action would have occurred for legitimate, independent reasons even if the employee had not engaged in activities protected by Section 1102.5. *Labor Code §1102.6*. An employee may petition the superior court in any county wherein the violation in question is alleged to have occurred, or wherein the person resides or transacts business, for appropriate temporary or preliminary injunctive relief as set forth in Section 1102.62. *Labor Code §1102.61*. Upon the filing of the petition for injunctive relief, the court shall consider the chilling effect on other employees asserting their rights and shall issue appropriate injunctive relief on a showing that reasonable cause exists to believe a violation has occurred. *Labor Code §1102.62*.

The office of the Attorney General shall maintain a whistleblower hotline to receive calls from people who have information regarding possible violations of state or federal statutes, rules, or regulations, or violations of fiduciary responsibility by a corporation or limited liability company to its shareholders, investors, or employees. *Labor Code §1102.7*. The Attorney General shall refer calls from the hotline to the appropriate government authority for review and possible investigation. *Id*. During the initial review of a call, the Attorney General shall hold in confidence information disclosed through the hotline, including the identity of the caller disclosing the information and the employer identified by the caller. *Id*.

An employer shall prominently display in lettering larger than size 14 point type a list of employees' rights and responsibilities under the whistleblower laws, including the telephone number of the whistleblower hotline. *Labor Code §1102.8(a)*. A bill signed by Governor Newsom last fall, 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. The Labor Commissioner approved the model notice earlier this year. You may have already seen it posted in your workplace. You can also access a copy at: Whistleblower Notice. An employer complies with the posting requirement if the employer posts the model posting. *Labor Code §1102.8(b)*.

The Brown Case: Last month, in a unanimous decision, the California Supreme Court held the elected treasurer of the City of Inglewood is not an "employee" as that term is defined under *Labor Code §1106*. Therefore, an elected official may not invoke whistleblower protections under state law. The case is *Brown v. City of Inglewood*. The Court explained how California's Legislature "has built a powerful network of whistle-blower protection laws" for those who seek to expose wrongdoing. The Court said *Labor Code §1102.5* is part of that network. The *Brown* case is important because it provides history and context for expanded whistleblower protections to rank-and-file public employees.

Ms. Brown was elected City treasurer in 1987. She received regular paychecks and annual W-2 forms, which showed typical deductions for an employee's taxes and benefits such as health insurance, retirement, and workers' compensation. The City Council and City Manager also had power to control her job duties and salary and

took action to reduce both. Ms. Brown had written to the city and several of its officials, including the mayor and council members, in late 2019 and early 2020, raising concerns about the city's financial affairs. She believed the city retaliated against her for raising these concerns. Ms. Brown filed a lawsuit under Section 1102.5. The court of appeal held that elected officials are not included in the definition of "employee" under Section 1106. The court of appeal contrasted Section 1106 with Section 3351, which expressly defines the term "employee" in the workers' compensation context to include elected officials. This linguistic difference, according to the court of appeal, confirmed the Legislature's intent to exclude elected officials from Section 1106, and thus from the whistleblower protections under Section 1102.5. The court of appeal dismissed Ms. Brown's lawsuit because it said Section 1106 was clear and unambiguous. Ms. Brown appealed, and the California Supreme Court agreed to hear the dispute. The issue for the Court was whether elected officials are employees for purposes of whistleblower protection under Section 1102.5(b). The Court held that Section 1102.5 does not cover elected officials.

The Court contrasted statutes that include elected officials – such as workers' compensation, restraining orders against workplace violence, public pension laws, and unemployment insurance – with statutes that exclude elected officials – state bargaining laws such as the Meyers Milias Brown Act and Educational Employment Relations Act, and laws concerning which government workers may have their disciplinary matters be discussed in closed legislative sessions.

The Court then looked to legislative history from 1991-1992, which suggested a particular purpose of protecting rank-and-file employees from supervisors and managers, but not protecting elected officials. According to the legislative analysis, the law's proponents believed "public employees should be encouraged to report illegal activities by supervisors and managers without fear of retaliation," and "government employees who report illegal activity by supervisors deserve the same rights of redress against retaliation as private sector employees." The Court said the impetus for legislative action was a news story about a rank-and-file municipal employee, referring to a local building inspector in Pomona, who complained of retaliation because he reported to the local police that his supervisor had ordered him to violate the building inspection law. The L.A. District Attorney declined to

prosecute the supervisor on the basis that the anti-retaliation provisions of the Labor Code at the time applied only to private sector workers. The Court concluded that the legislative focus in expanding Section 1102.5 to public employees was to protect rank-and-file workers from the retaliation of supervisors or managers and not to protect an employee who is an elected official such as Ms. Brown in the *Brown* case.

The Court also looked at other laws addressing public employee whistleblowing. This includes how pre-existing public employee whistleblower statutes defined the workers subject to their protections prior to the Legislature's 1992 expansion of section 1102.5 to include public employees. The Legislature enacted Section 1102.5's whistleblower protections in 1984. At the time, the statute made no mention of public employees. Eight years later, in 1992, when the Legislature enacted Section 1106, it extended the definition of "employee" for purposes of Section 1102.5 to include public employees. According to the Court, the Legislature was addressing limitations in three prior whistleblower statutes – (1) Section 1102.5, (2) the Reporting of Improper Government Activities Act (addressing state employees), and (3) the Local Government Disclosure of Information Act (addressing local employees).

At the time of the 1992 expansion, the Legislature believed that the Local Government Disclosure of Information Act provided very little protection for local public employees, who were forced to file their complaints pursuant to the procedures of their local agency. Local government employers were not subject to misdemeanor penalties unless malice could be shown. The Local Government Disclosure of Information Act distinguished between appointed officials and elected ones, and between officers and employees. Section 1104 has, since its enactment in 1937, differentiated between employees and officers. The Court found that a law including public employees while omitting public officers suggests an intent to exclude elected officials. Therefore, the Court reasoned, Section 1106 was meant to exclude elected officials such as Ms. Brown.

The Lampkin Case: Last month (one day after the *Brown* case was decided), a state appeals court issued a decision denying attorneys' fees to a public employee in a whistleblower case. The case is *Lampkin v. County of Los Angeles*. In the *Lampkin* case, plaintiff Mr. D'Andre Lampkin established the elements of a whistleblower retaliation claim, but the County of Los Angeles established an affirmative defense

under Section 1102.6. That section allows an employer to prevail if the alleged retaliatory action would have occurred for a legitimate, independent reason, had the employee not been a whistleblower. The defense is commonly known as a "same-decision defense" and applies in what are known as "mixed-motive" cases. The trial court awarded Mr. Lampkin his attorney's fees, even though he had not obtained any relief. The County appealed from the order granting his attorney's fees. The appeals court had to decide if Mr. Lampkin brought a "successful action" under Section 1102.5 and was entitled to a fee award. The court of appeal held that an employee's action is not successful if the defendant employer has established the same-decision defense and the plaintiff obtains no relief. Therefore, Mr. Lampkin received no attorneys' fees after all.

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.

2.7 % - CPI for All Urban Consumers (CPI-U) Nationally
2.7 % - CPI-U for the West Region
3.2% - CPI-U for the Los Angeles Area
1.5 % - CPI-U for San Francisco Bay Area
2.6 % - CPI-U for the Riverside Area (from May)
3.8 % - CPI-U for San Diego Area (from May)

"No Tax on Overtime"

Last month, President Trump signed into law a bill he described as the "One Big Beautiful Bill." The bill provides what is commonly referred to as the "no-tax-on-overtime" provision that is effective beginning January 1, 2025, through December 31, 2028. "No tax on overtime" is not quite accurate. The provision applies to individuals who receive qualified overtime compensation that exceeds their regular rate of pay – such as the "half" portion of "time-and-a-half" compensation. Only the "half" portion will count for the deduction, not the straight time pay that makes up the bulk of a worker's additional overtime pay.

The White House claims that Americans will receive up to $1,400 annually from the no tax on overtime provision. The White House says that over 60% of Americans are eligible for overtime pay, and about 20 million workers regularly receive overtime

hours. This includes law enforcement and first responders employed by local governments. The White House has an online calculator at: Whitehouse Calculator

The provision allows for a tax deduction – not a tax credit – which reduces the individual's taxable income for the year. The savings from the deduction depends on the individual's marginal tax rate – the tax rate applied to the last dollar of income earned. This means individuals who do not earn a lot of income will not realize much in savings. You can find updated tax rates at Federal Income Tax Brackets. The maximum annual deduction is $12,500 ($25,000 for joint filers). The deduction phases out for taxpayers with modified adjusted gross income over $150,000 ($300,000 for joint filers). The deduction decreases by $100 for every $1,000 of income exceeding these thresholds. Modified adjusted gross income means your income before applying deductions (for example, the standard deduction, or mortgage interest and property taxes if you itemize). The deduction is available regardless of whether you itemize or take the standard deduction. Workers who do itemize might see larger savings from the increase to the state and local property tax (SALT) deduction on their Schedule A than from the "no tax on overtime" provision. The "no tax on overtime provision" will primarily benefit middle income workers.

There are some important caveats for public sector workers in California. First, the deduction applies only to your federal income taxes, not your FICA taxes or California state taxes (California does not allow a deduction for overtime compensation). Second, Californians typically earn higher incomes than the national average, particularly public safety employees and those who earn a lot of overtime pay. Due to the income phase out, some workers may see only a limited deduction or potentially no deduction at all. Third, the new law requires married couples to file jointly to qualify for the deduction.

Also, the deduction is limited to the overtime pay that *is required* by the Fair Labor Standards Act (FLSA). Some public sector union contracts (MOUs) provide premium pay for overtime that is not required by the FLSA. For example, an MOU might include in the regular rate of pay special compensation (like uniform reimbursement) that is not required by the FLSA. The MOU might also require specific forms of paid leave – such as holidays or jury duty – to count as hours worked. The FLSA requires overtime pay only for actual hours worked (not including

any paid leave). The MOU might also provide for double-time pay for working over 12 hours in a day (this often mirrors a state Labor Code provision that is not applicable to local government employees). The FLSA only requires time-and-one-half pay for actual hours worked over 40 in a work period. It does not provide premium pay for working additional hours worked in a single day, or a double time rate for working over a specific number of hours in a day or week. California public sector workers should understand that the "no-tax-on-overtime" deduction does not apply to any portion of overtime compensation that is not *required by the FLSA*.

Employers must file information returns with the IRS and furnish statements to taxpayers showing the total amount of qualified overtime compensation paid during the year. The IRS will provide transition relief for tax year 2025 to taxpayers claiming the deduction and to employers subject to the new reporting requirements. In the meantime, taxes will continue to be fully withheld from overtime pay. The benefit (if eligible) will come when federal tax returns are filed next spring (potentially reducing tax debt or increasing tax refunds). Workers should understand that the actual dollar savings they might realize from the "no tax on overtime" provision may be way less than what has been publicly promoted. Contact your tax professional, who can give you a better estimate of the savings you might see from the "no tax on overtime" provision recently signed into law.

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 going through the rules and regulations, and I am not seeing anything about a supervisor being allowed to go through my locked office without prior notice or consent. I am under the impression that I have no expectation of privacy when it comes to City buildings and assets, but I do have an expectation of privacy within my locked office. Is that correct? If I am being investigated, does management have to notify me in advance about the search? My locked office was searched when I was not there, and I was not notified. I feel this is intrusive. How should I handle this?

Answer: Since most government work is carried out in public spaces, your right to privacy at work is limited. Cameras cannot be installed in places where you have a reasonable expectation of privacy – restrooms or dressing areas, for example. *Trujillo v. City of Ontario* (C.D. Cal. 2006) 428 F. Supp. 2d 1094. However, generally, there is no reasonable expectation of privacy in open-air cubicles or shared workspaces. *Sanders v. American Broadcasting Companies* (1999) 20 Cal. 4th 907. Even in private offices, there may not be a reasonable expectation of privacy. *Hernandez v. Hillsides* (2009) 47 Cal. 4th 272. However, that does not necessarily mean that public employees have *no* privacy rights. You may have a limited expectation of privacy (*e.g.,* your personal belongings, particularly if they are in a personal bag, purse, or briefcase). However, City equipment, devices, buildings, and offices are typically considered property of the City. The City may have the right to access them for investigatory, safety, or operational purposes.

Unless your City's personnel rules and regulations or the MOU explicitly state that management must provide notice or have a valid reason to access City workspace and equipment, the search was probably permissible. This is a stark reminder not to leave any sensitive personal items on-site when you leave. However, consider reaching out to your City's Human Resources Department to ask for clarification on why your locked office was searched and whether this specific incident was tied to any investigation. If you are given discipline and it is based on any materials that were uncovered in the search, you can raise any objections to the reasonableness of the search in the disciplinary process.

Question: Is it okay for a manager to request that their employees bank overtime as compensatory time off instead of being paid for the overtime, so that they stay under budget?

Answer: Many employees prefer to get the extra cash in their next paycheck instead of banking the overtime as compensatory time off. The Fair Labor Standards Act (FLSA), which is the federal law governing overtime, does not require compensatory time off. It allows public employers and public employee unions to negotiate comp time off into a collective bargaining agreement. In other words, it is negotiable, and your contract or MOU should have language clarifying under what circumstances overtime pay is banked as comp time off.

For example, if overtime is mandated, the MOU may provide that the employee has the right to receive overtime pay, whereas if the overtime is made available on a voluntary basis, and the employer is only offering comp time off, the MOU may allow the employee to choose whether to work the overtime and get the comp time off. Keep in mind that if there is language allowing employees to decide if overtime is paid as cash or banked, management must follow it. You have an actionable grievance if the employer does not comply with the MOU language. If the language is ambiguous about who gets to decide when overtime pay is banked, let your Association know. They can propose clarifying the language in the next MOU negotiations.

Question: I work in Public Works. We have an on-call program and typically one person is on-call at any one time. When there is a call-out, we are dispatched to a location for some type of event that may arise. Are there any underlying security or safety concerns regarding only one person being dispatched? Are we mandated by OSHA or California law to always double-up personnel, sending two people whenever possible, during an event of an on-call need? Please advise any findings you may have.

Answer: Under both OSHA and Cal/OSHA, there is no requirement to double-up on personnel, but there are safety requirements that must be followed when an employee is responding solo. Under OSHA, employers are required to account for employees working alone via sight or verbal check-ins at regular intervals, and at the end of the shift. Additionally, under Cal/OSHA, your employer must have a written

hazard plan that outlines the risks of solo-work, as well as regular communication methods, such as radio or phone. Cal/OSHA requires employers to perform a written risk assessment for lone or isolated work assignments, especially for employees in Public Works. If the assessment identifies severe hazards, then the employer should prohibit lone dispatching for tasks or areas that are identified as high risk.

Question: The City is trying to make me pay for mandatory counseling. They also want me to use my own vacation or comp time off to attend. So far, at least, I have not received any disciplinary paperwork. I do not think this is something they should be directing me to do, but I am willing to go if I don't have to pay for the services and I can go on City-paid time. Do I have the right push back on this?

Answer: Under California law, if an employer is requiring an employee to attend a counseling session or medical evaluation, it is considered work related. This means that the City must pay for the service and for the time you spend attending. Requiring you to use your own vacation or compensatory time off for a mandatory appointment could be a violation of California law and your MOU.

This is especially true if you have not received any form of discipline or proposed discipline. You should clarify with the City if this counseling is considered a fitness-for-duty evaluation, an Employee Assistance Program (EAP), or just some form of corrective action. If it is a fitness-for-duty exam, then it must be job related and consistent with business necessity. EAP services are usually voluntary, unless they are formalized in a disciplinary process. If it is merely a form of corrective coaching, there should be some clear documentation and justification. You have the right to request written documentation outlining why the counseling is required, who is providing it, and whether it is disciplinary, fitness for duty, or EAP related. If the City deems it mandatory, they should pay for the service, provide justification, and let you attend during paid work time.