# Regional Employees Association of Professionals October 2014 News

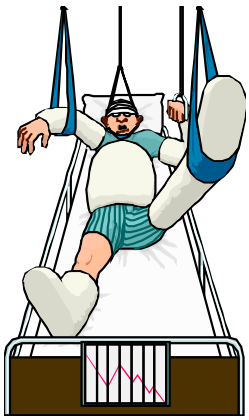
## Governor Signs Statewide Sick Leave Law

In September Governor Brown signed a law which will require most California employers to give most employees up to three days of sick leave per year. The Healthy Workplaces, Healthy Families Act of 2014 covers any employee who works at least 30 days per year. Sick leave is accrued at the rate of one hour of paid sick leave for every 30 hours worked. This will affect about 6.5 million people, or 40 percent of California's workforce.

House Democratic Leader Nancy Pelosi has gone on record saying "California's Healthy Families Act will help lower health care costs, reduce employee turnover, prevent the spread of illnesses, and support both women and men caring for families. In order to jumpstart the middle class, Congress should follow California's lead and guarantee paid sick leave for workers across the country."

The National Federation of Independent Business in California said in a statement that the law will kill plans by small employers to expand their businesses while damaging the state's business climate. The League of California Cities actively opposed this law saying that it was not necessary because public employees ALREADY receive generous health care benefits.

The law will go into effect on July 1, 2015. It will also cover tens of thousands of part-time *public* employees who may currently receive no benefits at all.



## ON THE JOB INJURY: WHEN DO YOU NEED A LAWYER -- AND WHY?

If you're hurt on the job, either physically or psychologically, your employer has the responsibility to care for you, in accordance with the law. You DON'T necessarily need a lawyer. The decision about whether you need one depends on (1) whether you have a

*permanent* injury, and/or (2) whether the County is *contesting your claim* (i.e. not agreeing that you're injured, or not agreeing that it happened at work). Workers compensation law is complex, and each case is unique; but here are some basic guidelines:

First of all, if you are hurt on the job, REPORT IT! Even if you have a minor injury, and it becomes more serious, the County can deny any responsibility unless the problem has been documented. Also, if you must take time to go to the doctor, you will lose your own sick leave, unless your injury has been demonstrated to be work-related.

## SHORT-TERM INJURY

The law requires that your employer meet certain standards of care for an injured worker: continued medical attention and minimum pay levels (currently it is $890 per week), until you are either declared "permanent and stationary" or return to work. Workers comp rates, above the minimum are negotiable. Your compensation may be higher than the state minimum if the union has been able to negotiate this.

Most employers handle short-term injuries very well. They want you to heal and return to work. They *don't* want you to become a liability by hurting yourself again. And *they don't want you to hire a lawyer*. Lawyers significantly increase the cost of simple claims, and usually don't have any impact on your pay, medical care or benefits. Call your union professional rep first if you are having difficulty. **For a short-term injury, you usually DON'T need assistance UNLESS any of the follow developments occur:**

1. **The County does not take proper care of your medical needs.**
2. **The County tries to force you to work (or do work that is too strenuous when you are still hurt)**
3. **The County refuses to pay your "Temporary Disability Pay"**
4. **The County harasses you, threatens your job or benefits; or**
5. **The County denies your claim.**

If you are mistreated while on temporary disability, your Union staff person can probably be more helpful than an attorney. The fact is, most "workers comp" lawyers don't solve work-related problems and may well jeopardize your job. They are primarily geared to getting you a financial settlement, which only will be available if you have an injury which is serious and permanent. Also, the County will turn all cases handled by an attorney over to *their* legal representatives. Once you have a lawyer, they won't talk directly to you or your union rep - even if you're back on the job.

## DO CALL A LAWYER WHEN:

1. **You have a *permanent* injury, and may not be able to return to your regular work** or are in doubt about the fairness of the settlement you've been offered. (The County may tell you that you don't need a lawyer "because you're only going to get what the law pays anyway." This isn't true. Your settlements may cover lifetime medical care, financial compensation for loss of income, rehabilitation, retraining, even job placement. There are many variables. You do need a good workers comp lawyer.)
2. **The County has contested your claim,** and is refusing to take care of you. If you have a serious, work-related injury, there may be a great deal of money involved. Companies hire "Risk Managers" who may try to minimize your problem or say it didn't happen on the job. If this occurs, you may need a lawyer to force the County to accept its responsibility. (By the way, an injury, which happened off the job, but is made worse due to the nature of your work, will be considered a partially compensable injury.)

## WARNING....WARNING

Whether your injury is temporary or permanent, always call your union rep ***before*** calling an attorney. We

may be able to save your job without endangering your settlement. We are interested in *you, and your continued employment*, not just a monetary payoff. Your union staff can evaluate your case and communicate directly with your employer. We can determine when and if you do need a lawyer and we will be able to send you to a reputable one.

## YES! Salaried Employees Are Considered "Hourly" When Furloughed!

**Most professionals and managers in public agencies in California are considered "FLSA exempt." In other words, they are "salaried," rather than the hourly. This means that they are *not* eligible for overtime after working for 40 hours in a workweek. Technically it is illegal for an employer to deduct pay from an exempt employee's check for less than a full pay period.**

**So, what happens if/when your Association agrees to a furlough? Do the salaried employees become hourly employees? The answer is YES. According to the Department of Labor Standards Enforcement (DLSE), salaried employees on furlough are considered hourly, although *this is only for the pay period in which the partial week's loss – the furlough -- occurs.* In other words, a salaried employee does become eligible for overtime, in any week that he works more than 40 hours when he is also on furlough.**

**DLSE has also warned employers in order to avoid jeopardizing their employees' exempt status on a permanent basis, the employer must restore affected employees to full work schedules and salaries "as soon as business conditions permit." It did not provide guidance as to how we would know when this change in conditions had occurred, but advised that it should be "based upon the employer having experienced significant economic difficulties due to the present severe economic downturn."**

**A good many public employees' work forces have been furloughed for so long that this appears to be a permanent state of affairs. You, or your legal staff, may want to remind the Agency about the DLSE's warning. Keep in mind also, that the DLSE's rulings only involve wages and hours. Our State labor law (the Meyers-Milias-Brown Act) prohibits employers from implementing furloughs without bargaining (as long as the employees are organized and covered by an in-force labor contract.)**


# Labor Relations Update

**The following are some major legal decisions which improve the rights of public employees in California. If YOU have a question or problem, you may contact your Board or Association staff at (562) 433-6983 or cea@cityemployees.net.**

### Supreme Court Agrees that CalPERS can sue credit-rating agencies

Last month California's Supreme Court determined that the Public Employment Retirement System (CalPERS) had the right to sue the giant credit-rating agencies Moody's and Standard & Poor's for the hundreds of millions of dollars lost in investments that collapsed in 2007-08.

CalPERS, which has more than 1.6 million state and local government employees and retirees as members, suffered $10 billion in investment losses when the real estate market plummeted in the late 2000s. $1.3 billion of those losses came from bad financial products that had received the highest ratings from Moody's and Standard & Poor's. Only after all three went bankrupt did CalPERS learn that the products' assets were mostly high-risk subprime mortgages. The suit also alleged that the rating agencies' fee agreements had a built-in bias; they made more money from the companies who they gave the highest ratings to.

The credit agencies denied negligence and claimed the suit violated their freedom of speech. The Supreme Court has rejected those arguments and allowed the suit to proceed. The Court said that while investment ratings *are* a form of free expression, they are not mere "expressions of opinion." Instead, the court said, the ratings are intended to be factual assertions, issued "from a position of superior knowledge" about the investments' financial health. If the ratings companies fail to properly assess buyers' risk – or provide false information – they can be sued for this fraud.

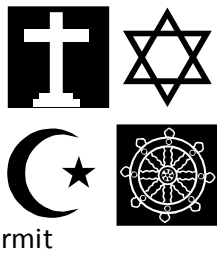
## Attention Deficit Disorder Might be Grounds for Protection Under the ADA

The 9th Circuit Court of Appeals has just published a decision raising the issue of what mental disabilities qualify affected employees for protection against termination under the ADA. In *Weaving v. City of Hillsboro* the employee was a police officer, who was described as acerbic, sarcastic, patronizing, and sometimes demeaning. When a subordinate complained about bullying, he was put on administrative leave during an investigation. During that time he consulted a psychologist who attributed that behavior problem to ADHD. The officer requested to return to work, with accommodation under the Americans with Disabilities Act. However, the City concluded that he had "fostered a hostile work environment" and did not possess "adequate emotional intelligence" to work with a team. The officer was fired and filed a disability discrimination/wrongful termination suit in federal court. The jury agreed with his claim and awarded him $500,000 in damages and attorneys' fees.

The City appealed and the Court reversed the jury's decision, ruling that "To hold otherwise…would expose employers to potential ADA liability any time they take adverse actions against ill-tempered employees who create a hostile workplace environment for their colleagues."

This was one of the first big court opinions after passage of the ADA Amendments Act of 2008, which contained "broad coverage" for employees with disabilities, especially mental disabilities. Under this new Act, employers are required to recognize that ADHD might well be an illness requiring employers' accommodation. However, this case also pointed out that even a "substantial mental impairment" doesn't protect an employee against discipline if he can't get along with co-workers.

## Religious Accommodation



Under Title VII of the Civil Rights Act of 1964, employers with at least 15 employees are required to reasonably accommodate the religious belief of an employee, unless doing so would impose an undue hardship. Accommodation requests generally deal with time off the job to pray or attend services.

In March of this year, the Equal Employment Opportunity Commission (EEOC) published new guidelines that also apply to religious dress (e.g. headscarves, jewelry, body piercings) and grooming policies (e.g. beards). In most instances, employers are required to make exceptions to dress rules to permit employees to observe religious dress and grooming practices. Of course, such a request still must not present an undue hardship on the agency. Undue hardships must be analyzed on a case by case basis, and the employer may deny the request if the accommodation poses a risk to the health, safety and security of the employee or

others.

The guidelines define religions broadly to include not only traditional, organized religions, but also religious beliefs that are new, uncommon, or may even seem illogical or unreasonable to others.

Religious discrimination claims in the workplace have doubled in the last 15 years. The EEOC recently settled a case against a Texas company for $100,000, after a female employee claimed she was wrongfully terminated because she declined to remove her *hijab*, the headscarf worn by Muslim women.

## What Does the Agency Have the Right to Know about Your Medical Condition?

**Under both the state and federal Family Medical Leave Acts, your employer has the right to know that you may have a serious medical condition, which may require you to take time off the job. This information should come from a doctor who should certify that your condition meets the FMLA's "serious medical condition requirements" and, to the best of his ability, estimate the length of your expected leave – but neither he, nor you, are required to tell the Agency *anything else.***

**Unless your condition involves litigation (i.e. a workers comp claim) the Agency does not have the right to call your doctor about it, nor to send you to *their doctor*. In fact, the only information your employer has the "right to know" about your health is the information which you decide to release. Thus you may be asked to sign an authorization form which gives the Agency your permission to access your medical records. You do not need to agree to this and there should be no retaliation for refusing to agree.**

**If you have been off the job with a serious condition, *and are now planning a return to work,* the Agency may request that you provide a medical clearance from your doctor, confirming that you are now fully able to perform the duties of your job. The certification should also inform the Agency of any necessary restrictions on your ability to work because of your medical condition, any conditions that you may still need to meet (such as taking medications or going to physical therapy), and any accommodations that you need for you to continue performing your job. (If your job DOES need to be "accommodated," the Agency does not necessarily need to comply. This leads to another complex set of procedures under the Americans with Disabilities Act, which we *won't* go into here…)**

**You do not have to provide the Agency with your medical records, but if you are returning to work *with restrictions, or if the Agency has doubts about your physical readiness to return*, it MAY send you their own doctor for a second opinion. At this point you may be required to disclose the full diagnosis about your health condition to the Agency's doctor, and if your medical clearance does not describe your condition adequately, your employer may gather information (by sending you to another doctor) themselves. (And, by the way, any information the Agency wishes to gather at this time must be at *the Agency's* expense.)**

**What happens if the Agency's doctor's opinion differs from *your* doctor's? (For example, what if your doctor says you're fine, but the Agency's doctor says you are not yet "fully capable" of performing your job duties.) In this instance, the parties are required to obtain the opinion of a *third*, agreed-upon doctor. The opinion of this third health care provider establishes the final decision.**

# *Ergonomics…Is the Agency Required to Make Sure Your Work Station Fits?*

Ergonomics is the science of determining the best available arrangement of an employee's work site and/or tools, in order to minimize workplace injuries. The concept came to widespread public awareness with the rise of computers in the '80s, as large numbers of people spent long hours at workstations. Within just a few years at the new machines, tens of thousands of people were suffering from hand, arm and shoulder injuries, many of which ultimately crippled them. Workers comp claims among "white collar workers" skyrocketed, and OSHA (the Occupational Safety and Health Administration) published extensive guidelines for ergonomically safe workplaces. OSHA (and CalOSHA) are the agencies charged with insuring that America's workplaces are safe. The enforcement section of OSHA's rules says that an employer shall:

**(1) Furnish to each of his employees a place of employment which is free from recognized hazards that are causing or are likely to cause death or serious physical harm; and**

**(2) Comply with occupational safety and health standards promulgated under this Act.**

OSHA produces ergonomic guidelines for high-risk industries: construction, nursing homes, shipping, poultry-processing, etc. **For offices, the guidelines focus on such details as the height of someone's desk or chair, the distance to their keyboard or computer screen, etc.** Over the last decade employers' increased understanding of workstation injuries (most triggered by increased workers compensation costs…) have resulted in a 39% *decrease* in reported carpel-tunnel injuries.

## ACTION MAY BE UP TO YOU…

So, it is good to know that your employer has a legal *obligation* to insure that your tools or workstation are well fitted to the needs of your body. This is true, but only in a very general sense; there are no OSHA Police inspecting offices to make sure that you aren't in pain. **It's up to you to alert your workplace if you believe that your workstation is causing injury.** OSHA will *respond* to employee complaints when called and will issue "ergonomic hazard alert letters" where they deem appropriate. There is no responsibility on your employers' part to proactively insure that you and your equipment are "comfortable."

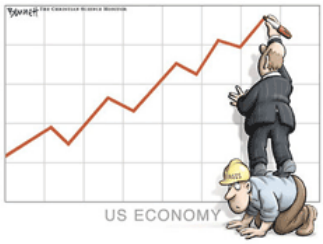
## Cumulative Trauma Injuries

Injuries resulting from stress on certain body parts from using tools or workstations that don't fit are called cumulative traumas. They develop over periods of time. Cumulative traumas become worse because employees don't like to complain. After all, who would want to complain about the height of a desk or the tilt of a chair? The discomfort is mild at first and, to a considerable extent, *people adjust to it.*

Unfortunately, it often takes a disabling injury (and many hours of lost work) for many employers to do an ergonomic evaluation. Legally-speaking, there are two circumstances when an employer may be compelled to conduct such an analyses: 1) when the modification of your work station may be part of a workers compensation settlement, or 2) when the employer may be compelled to "accommodate a disabled worker" under the Americans with Disabilities Act. ADA accommodations can range from raising a desk to fit a wheel chair to putting voice activation tools on a computer. OSHA puts out detailed guidelines on how to reduce cumulative trauma injuries in offices.

Over the years, out of financial self-interest if not compassion, employers have learned to take ergonomic complaints seriously. Employees may still have to initiate the conversation, but should not feel embarrassed to ask for modifications if your workstation is uncomfortable.

If you ask for assistance, but your employer refuses to help (or takes too long to respond) you may also file a grievance or call your union rep for help. This is a safety issue as much as any other and your right to a "safe, healthy working environment" will be enforceable under your Association's MOU.




## *SURPRISE!* NATIONWIDE SURVEY FINDS THAT EMPLOYERS ARE FOISTING MORE HEALTH COSTS ONTO BACKS OF EMPLOYEES

A survey of 3,139 public and private agencies has found that employers are pushing the cost of health care onto the backs of their employees *at a much faster rate than the actual increases in the cost of that health care.* The increase in the cost of health care, nationwide, was only 2.3% -- considerably lower than most years in the last three decades. But many employers are passing disproportional amounts of those costs onto their employees. They are doing this either by changing the medical plans (so employees pay larger deductibles and co-pays) or by demanding that employees pay higher portions of their monthly premiums. The excuse they are using for this is "the high cost of Obamacare…"

The survey, conducted by the Kaiser Family Foundation and the Health Research & Educational Trust, found that the average cost of an employee's health care premiums is now $16,834 per year, and that workplace insurance is still the primary source of coverage for most Americans: about 150 million people. During the recession many employers reduced their care costs by taking a number of measures:

**1. Reducing the number of workers covered by insurance. (Public agencies did this by hiring part-time, unbenefited labor)**

**2. Reducing the *value* of the medical plans. Since 2009, for example, the average employee's deductible increased by 47%! This means that they are often "out of pocket" by thousands of dollars before their expenses even begin to be covered by their plans!**

**3. Eliminating health care coverage altogether. (The number of companies and agencies providing health coverage to employees dropped from 69% to 55% in the years between 2010 and 2014, alone!)**

**A shocking statistic…**Since 1999, for those employees who still have health insurance, their share of the employer's costs have shot up 212%. This is nearly four times as fast as wage growth, nationwide. The average worker now pays 29% of his employer's monthly premium. And, this, we are told is the Good News…

## 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 work-related problem, feel free to talk to your Board Rep or Association Staff at (562) 433-6983.**

**Question: Our HR Department sent us all contracts saying that we are at-will employees. Should we sign them? Does this mean that we will no longer have the right to a hearing if the Agency tries to fire us?**

**Answer**: It sounds as if your Agency may be committing TWO violations here. First, unless you are an executive manager, or were hired with an individual employment contract that says you are an at-will employee, you are NOT an at-will employee. Permanent public employees have a "property interest" in their jobs which means that you have the right to due process before you can be terminated.

Second, if you belong to an employee organization, the ***Agency cannot negotiate with your members individually.*** You're covered by a contract which includes a disciplinary appeals procedure. Your job status can't be modified except via negotiations. (We suggest you're your legal staff be authorized to tell the Agency to stop interfering with your job status and your MOU.)

**Question: I was told that someone has submitted a Public Records Act request, asking for the names and salaries of all agency employees. Is the Agency required to provide this?**

**Answer**: Yes, unfortunately your name and salary are a matter of public record. But neither your social security number nor medical information is a matter of public record.

**Question: I am a librarian and have been told that I "might be" called to work on weekends if one of the other librarians calls in sick. Is this legal? What if I am busy with family… could I be punished for not coming in?**

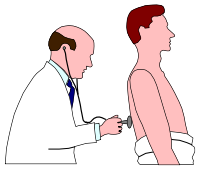
**Answer:** You **can** be compelled to come to work on your day off, if your employer is able to reach you. But, unless you are being paid to "stand by," the City can't compel you to answer their calls, nor to be in "work ready" condition. So, it's up to you to decide whether you want to respond if the department calls. If you are unavailable or unable to work, it's best not to answer. If this happens often enough, the result could well be the Department's establishment of a paid "stand by" policy for the library.

**Question: Can you tell me if there is a law that controls how long someone can work in the course of a day?**

**Answer:** The only laws regulating how many hours in a day you can work apply to truck drivers and bus drivers. Many public employees work very, very long hours, especially in emergencies. Many MOUs include provision for meal allowances and "fatigue time" pay for people who work excessive hours.

**Question: I had to go to the doctor for a work injury. My work day usually ends at 4:00 but my doctor's appointment went till 4:30. Do I get a half-hour of overtime pay because the appointment ran ½ hour over my work day?**

**Answer:** No. Going to the doctor, even if the appointment involves a work injury, is not considered work under the law. The Agency doesn't have to pay you for being at the doctor after your work day has ended.



**Question: I work at a water treatment plant and have been trying to transfer to the same job at another plant. There is an opening and I do have seniority. I have applied for this position twice and been denied. The reason for the denial is that the Agency is very happy with my work at the current plant (which is our most difficult one.) Basically, it seems as if I'm being punished for being a good employee. Is there anything I can do about this?**

**Answer**: Your MOU may have language about transfer rights, possibly based on seniority. You or your union rep can check on this. If there is no such language, there is probably no legal violation. However you have every right to talk to your management about this, going to the director if necessary. "Being punished" for doing a good job is unreasonable. If you're a good employee, most organizations would take some effort to reward you – or risk losing you.

**Question: I'm on the Board of my mid-management association and we have all been asked to sign an "Anti-Bullying Policy." I think it is unnecessarily harsh, and possibly targeted at one of our members. Is there anything we can do about this?**

**Answer:** Yes, a policy like this is negotiable. *In fact, it should have been sent to your Board for possible negotiations BEFORE it was sent to your members*. Your Board can ask that the Agency meet and confer now, and let the members know that the policy is rescinded until that bargaining is completed.