



Legal Update

Fire Districts Association of
California (FDAC) 2017 Annual
Conference | April 5, 2017

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Legislation

SB 1221 – Behavioral Health Training for Firefighters

- POST Currently Provides Training On “Evidence-Based Behavioral Health” for Covered Peace Officers
 - Requires Additional Training in Evidence-Based Behavioral Health So That Law Enforcement Officers Can Recognize, Deescalate, and Appropriately Respond to Persons with Mental Illness, Intellectual Disability, or Substance Use Disorders
- This Law Authorizes the State Fire Marshall to Take this Training and Revise it to Apply to Firefighters

AB 1676 and SB 1063 – Expand Labor Code § 1197.5 to Prohibit Wage Differentials Base on Race and Ethnicity

- These bills amend LC 1197.5 and LC 1199.5.
- Before these bills passed, LC 1197.5 prohibited ER from paying EEs different wage rates based on SEX/GENDER for “substantially similar work.” (2016’s SB 358.)
- Only exceptions:
 - Seniority system
 - Merit system
 - System based on quantity or quality of product
 - Other “bona fide” factors other than sex
- Now – must assure not paying different wage rates based on RACE and ETHNICITY for “substantially similar” work.
- Now - prior salary history cannot – by itself – justify disparity in compensation with other EEs based on sex, race or ethnicity.

SB 1001 – Prohibits ERs from Requesting Documents Relating to Immigration

- Adds LC 1019.1
- Federal Immigration law prohibits “bringing in and harboring of aliens,” including do so in the context of employment.
- Federal Immigration law also requires ERs to verify the immigration status of both Applicants and EEs via I-9 form.
- SB 1001 purports to make it unlawful for an ER to take certain actions that go above and beyond federal law’s verification requirements, including:
 - Requesting documents that are not specifically permitted to be requested under Federal Immigration law.
 - Refuse to honor documents that on their face “reasonably” appear to be genuine.
 - Refuse to honor documents OR work authorization based upon the status that accompanies the authorization to work.
 - Attempt to investigate or re-verify an incumbent EE’s authorization to work.

AB 1661 - Local Agency Officials Harassment Training

- Requires “Local Agency Officials” to Undergo Two Hours of Sexual Harassment Training Every Two Years and Initially Within First Six Months of Taking Office or Commencing Employment.
- Agencies Must Maintain Records Establishing that Local Agency Officials Received the Harassment Training
- Completion of AB 1825 Harassment Training Should Satisfy This Requirement
- “Local Agency Officials” Include Any Legislative Body Members and Elected Local Agency Officials of an Agency

AB 1843 – No Inquiry Into Juvenile Offense History

- Employers Are Now Prohibited Into Inquiring About an Applicant or Employee's Juvenile Offender History.
- Exceptions:
 - Applicants for Peace Officer or Other Criminal Justice Agency Positions.
 - Health Facilities Can Inquire with Applicants About Sex Offender Registration and Controlled Substances Offender Registration for Job Positions With Regular Access to Patients or Drugs/Medication Unless Offense Has Been Sealed by Juvenile Court.

AB 2337– Notice to Employees of Rights as a Victim of Domestic Violence, Stalking, and Sexual Assault

- Requires Employers to Provide a Written Notice to Employees of their Rights as a Victim of Domestic Violence, Stalking, and Sexual Assault.
- The Labor Commissioner has Until July 1, 2017 to Develop a Written Notice that Employers Can Use to Satisfy this Requirement.
 - Employers Can Also Use Their Own Notice So Long as it is Substantially Similar to the Labor Commissioner’s Notice
- Not Effective Until Labor Commissioner Issues Written Notice.

AB 1732 –Single Occupancy Restrooms in Gov’t Buildings and Places of Public Accommodation Must be Available to All Genders

- Adds Art. 5 (commencing with 118600) to Chapter 2 of Part 15 of Division 104 of Health and Safety Code.
- Beginning 3/1/17, all single user restrooms in public buildings or on private property that are “places of public accommodation” to be identified as all gender facilities.
- Subject to inspection by Code Enforcement Officers, Building Inspectors, etc.

Case Law

POBR - Choice of Representative

- Subject Officer Was Not Entitled to be Represented by a Fellow Witness to the Investigation
 - *Barcelona v. State of California Department of Justice* (E.D. Cal.) (2016 WL 632785)

POBR – Adverse Comments

- County Violated POBR by Failing to Disclose Supervisors' Memoranda Regarding Employee's Psychological Condition and Fitness for Duty
 - *White v. County of Los Angeles* (2016 WL 2910095)

POBR – Hearing Procedures

- City Abused Discretion and Failed to Comply with MOU by Rejecting the Hearing Officer's Unsupported Recommendation and Adopting the Original Discipline
 - *City of Los Angeles v. Henderson* (2016 WL 6996163.)

POBR – Notice of Investigation

- Officers were Provided with Sufficient Notice of Investigation Containing a General Description of the Allegations
 - *Santa Ana Police Officers Association v. City of Santa* (C.D. Cal.) (2016 WL 827750)

FBOR – Protections on Duty

- Firefighter Engaged in Performance of Duties When Alleged Misconduct Occurred Was Entitled to FBOR Rights
 - *Seibert v. City of San Jose* (2016) 247 Cal.App.4th 1027.

FBOR – Punitive Action

- Firefighters were not Subject to Punitive Action Under FBOR by Being Transferred out of an Assignment for Failure to Pass a Psychological Exam Requirement
 - *Leonard v. City of Los Angeles* (9th Cir.) (2016 WL 6212008).

POBR - Punitive Actions

- Removal of a Police Officer from Collateral Duties of SWAT, Honor Guard and Field Training Officer Was Not Punitive Action Sufficient to Trigger POBR Rights
 - *Perez v. City of Westminster* (2016) 5 Cal.App.5th 358.

FBOR – Appeal Procedures

- City's Method of Providing an Administrative Appeal Through its Civil Service Commission was Functionally Equivalent to Administrative Requirements Under FBOR
– *LeRoy v. City of San Jose* (2016 WL 879235)

FBOR – Individual Liability

- FBOR Bars Individual Liability
 - *Clark v. California Department of Forestry*
(N.D. Cal.) (2016 WL 4411816)

Disability Discrimination

- Question of Fact Whether an Employee Who Has to Care for a Disabled Family Member Is Protected Under FEHA for Associational Disability Discrimination
 - *Castro-Ramirez v. Dependable Highway Express* (2016) 2 Cal.App.5th 1028.

Free Speech

- Employers Liable for Disciplining Employee Based Upon Mistaken Belief That Employee Exercised Right of Free Expression
 - *Heffernan v. City of Paterson* (2016) 136 S.Ct.1412.

Free Speech

- A City Employee Who Is Fired After Announcing That He Will Testify in a Co-Employee's Lawsuit Against the City Can Sue for 1st Amendment Retaliation
 - *Stillwell V. City of Williams, AZ* (9th Cir. 2016)
831 F. 3d 1234

Public Records Act

- California Supreme Court unanimously decides emails or text messages about local agency business, sent, stored or received in a personal account or private electronic device are subject to disclosure under the Public Records Act
 - *City of San Jose v. Superior Court* (2017 WL 81850617)

Questions?

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