PCA PUBLIC CEMETERY ALLIANCE

Update

FROM THE PRESIDENT

BY CHERYL SMITH, PRESIDENT

Merry Christmas, Happy Hannukah, Happy Kwanzaa & Happy New Year!

This year, perhaps more than ever before, everyone is ready to ring in the New Year. Let's chalk 2020 up as a learning experience and focus on the positives it did bring us. Maybe the COVID-19 pandemic gave you more time to spend with your family, your grandchildren, friends and neighbors, or perhaps you took up a new sport or hobby. (We know the stores were out of flour and sugar for months, so somebody must be doing all that baking!) But if nothing else, we've all learned we must be ***flexible***!

Several years ago a dear friend passed away at 50, leaving behind a husband and two teenage daughters. I said then that I wanted to be more like Carol, she always saw the positive side of things and was flexible, so my 2008 New Years' resolution was to be more flexible. I shared my resolution with my cousins (who are more like sisters) on our hiking trail. They laughed at the thought of me being flexible—apparently not one of my better traits! But over the years I've learned—no more so than this year--that sometimes when you don't have many options you have to compromise, to bend, to be flexible.

The PCA has worked hard this year developing new ways to keep our members informed and educated as we negotiated the pandemic's effects on our Districts, employees, families, and our world. Our PCA Outreach Coordinator, Bob Hunt, has spent many hours studying the everchanging "COVID19 Orders" and how Districts need to adjust to be compliant. Although we have been unable to meet in-person, we have found other ways of keeping our members informed and updated.

This past year's ***Update*** newsletters have covered topics ranging from District Consolidations and Employee Drug Testing to the rules for Interring Non-Residents. In partnership with Golden State Risk Management, PCA's first Zoominar presentation, Documenting Employee Performance, was held in September. Our next Zoom presentation is scheduled for January 21, 2021, when Bob will be presenting AB 1234 Ethics & Public Service, sponsored by Golden State Risk Management.

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Happy Homestead Cemetery, South Lake Tahoe, CA

GOLDEN STATE
RISK MANAGEMENT AUTHORITY

Innovative programs, personalized service

We Work For California Public Cemeteries

Golden State Risk Management Authority (GSRMA) is unique in California risk pools. We cater to small and medium-sized public entities that do not have the resources to fund all the expertise (human resource staff, dedicated legal counsel and even risk management and loss prevention positions) that their larger counterparts can afford.

A good number of our members are public cemeteries ranging from multi-site entities with as many as 20 employees and a full time administrative staff, to small entities run with only a small volunteer board. We are proud to provide them and all of our members not just competitive insurance rates, but a solid, respected risk sharing pool, a variety of useful benefits and the highest level of personalized service.

We "work" for California public cemeteries by:

- *Being responsive to busy, multi-tasking cemetery professionals.*
- *Leveraging our experience in public cemetery risk management.*
- *Issuing dividends and never having assessments.*
- *Achieving "Accredited with Excellence" by the California Association of Joint Powers Authorities.*
- *Processing our claims in-house.*
- *Providing a wide range of valuable services to members at no additional cost.*
- *Implementing loss prevention and training incentive programs.*
- *Packaging the best mix of coverage and services from first class partners.*

More than 120 public cemeteries of all sizes and from all regions of California are covered through Golden State Risk Management Authority. If you are not already a GSRMA member, we invite you to contact us and take a look at the comprehensive coverage and services that we offer California public cemetery districts.

For more information please contact:
Jennifer Peters at
(530) 934-5633 or memberservices@gsrma.org
Visit our website at www.gsrma.org

California Association of Joint Powers Authorities — Accredited with Excellence

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From the President

As a way of keeping our members informed in between ***Update*** newsletters, the PCA publishes very helpful and informative "News & Notes." Last month's topic was COVID-19 Employment Laws, breaking down complicated Federal Families First Coronavirus Response Act, and December's issue addressed OSHA's new regulations about employee COVID-19 exposures and everything that entails. [***Because those issues are so crucial and current, they are being reproduced in this Update newsletter to make sure as many people as possible are aware of them***.] Other hot topics covered in 2020 were Controlling Health Insurance Cost and Wildfire Smoke & Protecting California Employees.

2020 is soon to be history but the experience and insights we've gained will assist us in meeting the challenges 2021 may bring. Of course, my resolution once again will be FLEXIBILITY!

All of us at PCA wish each and every one of you and your families a very Merry Christmas, Happy Holidays and a wonderful, Happy New Year!

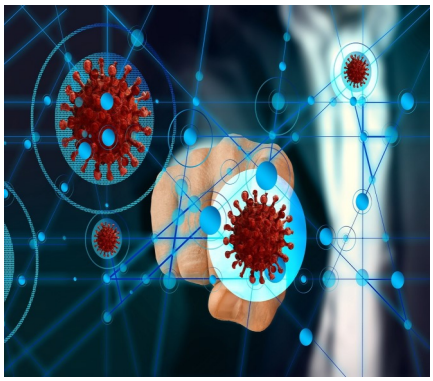
Cheryl

New Website!

calpca.org

The new PCA web site is up and running. Access it at calpca.org. Below is what you will see when you log in. There is a new "Members" section in which PCA members will have access to sample policies, sample forms, recent legal updates, the Brown Act, applicable Health & Safety Code and other code sections, and other helpful information. More material is being added all the time, including commentary on various code sections. So be sure to log in and create your user account.

NEW COVID-19 WORKPLACE RULES



EDITOR'S NOTE: ***The following article is reprinted from the December 2020 issue of the PCA's News & Notes. It is intended to present only a few general rules as they exist as of this writing. New legislation, regulations and orders are being issued frequently. Please consult your safety specialist, risk manager or legal counsel for questions and further guidance.***

More than eight months after the onset of the COVID-19 pandemic Cal-OHSA has issued emergency workplace rules. These rules will remain in place until at least May 2021, but may be extended or made permanent.

Although there are number of rules, here are just a few things you need to know. Let's start with required safety prevention practices.

Physical Distancing.

Employers should separate workers from one another by at least six (6) feet if possible. This may involve taking other measures such as staggering work schedules, arranging for those who can do so to work remotely, and so forth.

Remember, just because some of your employees work outdoors doesn't mean that you can ignore reasonable safety precautions for those employees, including wearing masks.

Districts should also consider limiting free access to their enclosed work spaces. For example, a number of districts provide service by appointment only and no longer permit walk-ins. Service is provided only if masks are used and ***properly*** worn. You might also consider what sort of physical barriers you can place between your employees and the public, such as plastic partitions and the like.

Masks. Under the new rules employers must provide face coverings and ensure that your employees wear them ***over the nose and mouth*** when indoors, and outdoors if workers can't maintain physical distancing of at least six (6) feet. Anyone not wearing a face covering, face shield with a drape or other effective alternative must remain separated from others by at least six (6) feet unless the employee is ***tested at least twice a week***.

Training. Employers are required to provide training to employees on the agency's COVID-19 policies and procedures, including COVID-19 related benefits such as worker's compensation. This means, of course, you must have ***written*** policies and procedures.

Other Safety Rules.

Outside Air—Employers must maximize the amount of outside air coming into the workplace, provided the weather is not too cold or hot or the AQI (Air Quality Index) is not 100 or above. (*The AQI in your specific location is available at airnow.gov.*)

Cleaning—Employers must regularly disinfect frequently touched surfaces such as door handles, rest room facilities, vehicles and so forth. You should also prevent or minimize shared use of such items as phones, desks, chairs, tools and so forth. And employees should be encouraged to frequently wash their hands and given time to do so.

If an employee tests positive for COVID-19

Workplace Tracking—First, the employer must determine who may have been within six (6) feet of that person for at least 15 minutes during any 24-hour period which falls within any part of the "high-risk" exposure period. The high-risk exposure period starts two (2) days prior to the person developing symptoms and ends ten (10) days after the symptoms first appeared, as long as the person had one whole day without a fever. If the employee has no symptoms the period is two (2) days before and ten (10) days after the employee was tested for COVID-19.

Notification—If the employer determines that an employee may have been exposed to COVID-19 the employee must be notified within one (1) business day. The employee must be offered COVID-19 testing at no cost and during working hours. (*If possible it's a good idea to identify and make arrangements with a testing location well in advance of needing it. See November 2020 "**News & Notes**" for a discussion of acceptable testing. Notably, the CDC also recommends against relying on "antibody" testing.*)

Employee Exposure or Positive Tests

If an employee is exposed to COVID-19 the employer must keep the employee out of the workplace for 14 days after the last known exposure. If an employee tests positive but has no symptoms, the employee must be kept out of the workplace for ten (10) days after the test. If the employee has symptoms, the employee cannot return to the workplace until ten (10) days after those symptoms first appeared and a full day with a temperature of ***lower*** than 100.4°.

(The CDC lists the following as common COVID-19 symptoms:

- *Fever or chills*
- *Cough*
- *Shortness of breath or difficulty breathing*
- *Fatigue*
- *Muscle or body aches*
- *Headache*
- *New loss of taste or smell*
- *Sore throat*
- *Congestion or runny nose*
- *Nausea or vomiting*
- *Diarrhea)*

Pay—The new rules provide that the employer must "continue and maintain" the employee's earnings and other benefits under the above circumstances, through accrued sick leave or the FFCRA mandated sick leave. However, if the employer can show that the employee's COVID-19 exposure was not work-related, paid leave ***in addition to any sick leave*** program isn't required.

(*Editor's Note: At this time there seems to be some confusion regarding Cal-OSHA's requirement that the employer "continue and maintain" pay and benefits, and whether and how that requirement meshes with existing sick leave programs, the Federal FFCRA's additional sick leave benefit, and/or worker's compensation benefits*.)

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Ask Bob . . .

By Bob Hunt

Question:

Are our Trustees W-2 "employees" subject to taxes and other withholdings?

The question actually asked was: Are trustees W-2 employees from whose compensation all usual and ordinary taxes and withholdings must be made? For purposes of reporting, taxes and withholdings—the answer is YES.

However, trustees and directors are treated differently in California depending on the context and your district's polices, practices and agreements with other agencies.

For purposes of this specific question, elected and appointed officials are treated as "employees" by several different statutes. For example, for purposes of tax withholding federal law defines an employee to include:

> ". . . an officer, employee, or elected official of the United States, a State, or *any political subdivision thereof*, ..." (26 U.S.C. 3401(c).) (Somewhat confusingly, § 3401(a) defines "wages" to mean all remuneration (*other than fees paid to a public official*) for services performed by an employee. But see section 3540.1 below.)

If *not an employee*, however, a person receiving compensation is effectively an independent contractor and would be required to file and pay self-employment taxes. (Generally, self-employment taxes would be paid by a 1099 independent contractor, not a W-2 employee.) The IRS has determined that holders of public office are ***not*** subject to self-employment tax, i.e., ***not*** 1099 workers. (IRC §1402(c)(1).) Regulations promulgated under section 1402 state that performing duties as an elected or appointed official is not a "trade or business," the key to paying self-employment taxes. Therefore, while presumably ignoring the explicit definition in section 3401(c) above, the IRS deduces that such officials are "employees" receiving wages requiring the payment and withholding of taxes. (26 U.S.C. § 3540.1.)

In addition, the Social Security Act provides that the term

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New COVID-19 Workplace Rules

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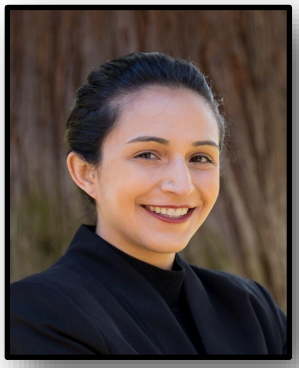
Rule Exemptions—The new rules don't apply to those who work remotely (from home, for example) or working at a place where they have no contact with others.

There are still many questions regarding the interpretation and application of the new rules. You are strongly advised to contact GSRMA or your agency's safety specialist or risk manager for more information.

Of course, in addition to workplace rules our public cemetery districts must still deal with issues surrounding interment services, protecting employees, limiting attendance and so forth. Finally, in addition to the Governor's orders, you should remain in contact with your county's public health official for further guidance.

COVID-19
EMPLOYMENT LAWS

By Lauren Orozco and Amanda Iler



EDITOR'S NOTE: ***The following article is reprinted from the November 2020 issue of the PCA's "News & Notes." It is intended to present only a few general rules as they exist as of this writing. However, every circumstance is unique, and it is impossible to predict how the application and interplay of numerous employment laws will impact any particular situation. Please consult your legal counsel for further assistance with specific situations.***

Since the onset of COVID-19, employers have had to navigate a complex, ever-changing legal landscape – one where there has often been more questions than answers. This article provides general information regarding some of the most common COVID-19 issues arising in the workplace.

COVID-Specific Legislation

Let's start with a few general rules established by the recently-enacted Federal Families First Coronavirus Response Act (FFCRA).

- The FFCRA applies to all public employers without regard to the number of employees.
- Generally speaking, it provides up to 80 additional hours of paid sick leave for qualifying employees who are:
  - Subject to a federal, state or local quarantine or isolation order related to COVID-19.
  - Advised by a health care provider to self-quarantine due to COVID-19 related concerns.
  - Experiencing symptoms of COVID-19 and seeking a medical diagnosis.
  - Caring for an individual subject to a quarantine or isolation order.
  - Caring for a child whose school or place of care is closed or whose care provider is unavailable because of COVID-19.
  - Experiencing any other substantially similar condition specified by government officials.
- The FFCRA offers up to 10 weeks of expanded FMLA leave for use only when daycare/school/child care provider is unavailable due to COVID-19 reasons.

Again, every case is factually unique and these rules must be carefully examined in light specific circumstances.

What Can an Employer Require of an Employee?

One frequent question is – what can an employer require of employees?

For starters, employers may require employees to leave the workplace if they exhibit symptoms associated with COVID-19. (Managers and supervisors should be educated about such symptoms.) Employers cannot, however, exclude employees from the workplace in an illegally discriminatory manner. For example, an employer cannot exclude older or immuno-compromised employees from the workplace solely because those employees may be at a higher risk of becoming severely ill from COVID-19.

Employers may also require employees to submit to testing for COVID-19 or temperature checks before allowing employees to enter the workplace. *(Employer mandated medical testing is generally prohibited unless the testing falls within a defined exception and is "job related and consistent with business necessity.")* Coronavirus testing falls within this exception because the virus poses a direct threat to the health of others. Nonetheless, employers must ensure testing is consistent with the current guidelines from the CDC and other public health authorities.

Generally, employer-mandated COVID-19 testing must be accurate, reliable, and part of an objective, comprehensive plan for eliminating COVID-19 in the workplace. "Antibody" testing is generally considered to be less accurate and reliable than "viral" testing; it fails to meet the "business necessity" standard and, therefore, should not be used. Despite the fact that even viral testing is not fail-safe, it may nevertheless be an appropriate screening step to help ensure a safe work environment. Employers should continue to implement other infection-control practices as well.

In addition, employers may ask employees if they are experiencing symptoms associated with COVID-19, and require a doctor's note certifying an employee's "fitness for duty" before permitting a return to the workplace. Any restrictions or limitations placed on an employee's return to work by a healthcare provider may invoke the requirement to conduct an interactive process with the employee. (*Below is a short discussion of the interactive process in a specific circumstance, but a full discussion of the interactive process is well beyond the scope of this article.*)

If claiming paid sick leave or expanded FMLA under the FFCRA, the employee should provide (orally or in writing):

- The dates for which leave is being requested.
- The reason for the requested leave.
- A statement that the employee is unable to work because of the reason for the requested leave.
- If the employee is requesting leave because he/she is subject to a quarantine or isolation order or to care for a person subject to such an order, the employee should provide the name of the government entity or healthcare provider that issued the order or advice.

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COVID-19
EMPLOYMENT LAWS

- If the employee is requesting leave to care for a child whose school or place of care is closed, or a child care provider is unavailable, the employee must provide:
    - The child's name,
    - The name of the school, place of care, or child care provider that has closed or is unavailable,
    - A statement that no other suitable person is available to care for the child.

Remember, this additional FFCRA leave is in addition to and separate from your agency's existing sick leave policy, and is available only under the circumstances described above. Therefore, it will be necessary for you to maintain records of the FFCRA sick leave entitlement and usage separately from your existing sick leave records.

Teleworking and Other Accommodations

Earlier in this article, we discussed what an employer might require of an employee. Now let's reverse the roles.

What if an employee insists on teleworking? Does an employer have the right to say no? In some cases, an employee may fear getting COVID-19 or simply working around others. In either case, the employer may not be required to grant an employee's request to work remotely. There are, however, many factors an employer must consider before rejecting an employee's request to work remotely.

Employers must always be sensitive as to whether a request to telework is actually a request for reasonable accommodation. An employee may seek to work remotely as an accommodation for a disability. Such a request may triggers the interactive process for evaluating the employee's claimed disability, medically-imposed restrictions or limitations, and the availability of any necessary accommodations. It is then incumbent on both the employee and employer to engage in the interactive process. If an employee does not have a cognizable disability, the employer is not required to grant a telework request or other accommodation.

Telecommuting may nevertheless be an appropriate accommodation is some cases. For circumstances that require presence at a workplace, however, telecommuting may pose an undue hardship on an employer. What may or may not constitute a reasonable accommodation will vary based on the specific facts of a situation. (***Once again, please consult your legal counsel in any case in which an employee may need accommodation for a disability***.)

Finally, it is important to keep both California and Federal guidelines regarding COVID-safe workplaces in mind, including the CDC guidance which recommends telecommuting, when possible, as a means of protecting employees and preventing the spread of COVID-19.

Stay Tuned

The workplace landscape is rapidly evolving under the COVID-19 pandemic. Nearly all of the provisions of the FFCRA are currently set to expire on December 31, 2020. However, given the recent spikes in transmission of the coronavirus, it is likely that they will be extended. In the meantime, California continues to enact additional workplace laws and issue new regulations regarding safety protocols, reporting requirements, and interpretations of employment laws.

And remember that all other laws regarding sick leave, FMLA/CRFA, Pregnancy Disability Leave and so forth, as well as your agency's policy and benefit programs, remain in full force and effect. The provisions of the FFCRA do not replace, but only expand upon, existing laws and benefits.

As we began this article—we finish it with very best advice we can offer: ***Consult your legal counsel for further assistance with specific situations*.**

Amanda Iler is a Senior Associate Attorney with the Porter Scott law firm specializing in employment law. Amanda may be reached at ailer@porterscott.com, or 916-929-1481.

Lauren Orozco is an "attorney-in-waiting," pending California Bar results which should be coming out any day. Based on the quality of her work on this article, we're sure she has nothing to worry about. We wish Lauren the very best, not only with her Bar results but throughout her future legal career!

Sandra H. Wheeler
Vice President/Investments

(805) 783-2921
(877) 816-1231
sandra.wheeler@stifel.com

999 Monterey Street, Suite 360
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New Employment Legislation for the New Year

By Derek Haynes

The California Legislature enacted a series of new employment laws in 2020 that impact how employers operate. Some of those laws have already gone into effect. Others take effect on January 1, 2021. This article highlights some of the most important new laws.

Enhanced Enforcement Authority and Employer Reporting Requirements

The COVID-19 pandemic continues to impact employees and businesses throughout California. In hopes of limiting the outbreak, the Legislature passed Assembly Bill 685, which takes effect on January 1, 2021.

That bill authorizes California's Division of Occupational Safety and Health (Cal-OSHA) to shut down worksites that it believes pose "imminent hazards" relating to COVID-19. The bill does not explain what safeguards employers must take to avoid a shutdown, but following all federal CDC guidelines and guidelines imposed by state and local governments is a prudent step.

The bill also imposes strict employer action and reporting requirements in the event an employee is exposed to or infected with COVID-19. [***Editor's Note: Many of those mandates are covered in the article "New COVID-19 Workplace Rules" on page 13. However, every employer should contact their safety or risk manager and develop a written plan for complying with AB 685 and the new Cal-OSHA regulations***.]

COVID-19 Workers' Compensation Presumption

In general, employees who are injured on the job are entitled to workers' compensation benefits for their injuries. SB 1159 now creates a *presumption* that certain employees who test positive for COVID-19 which was contracted while on the job entitled to workers' compensation benefits. There are certain threshold rules for the presumption to apply, so please contact your worker's comp insurance carrier if you have an employee that may have contracted the virus at work.

Senate Bill 1159 also imposes new reporting requirements on employers. Employers must report all of the following to their workers' compensation claims administrators within 3 days after the employer knows or reasonably should know that an employee tested positive for COVID-19:

- Report that an employee tested positive, without disclosing the employee's identity;
- The date the employee tested positive;
- The address for all places the employee worked in the 14 days before testing positive;
- The highest number of employees who worked at the same place as the infected employee in a single day within the 45-day period preceding the last day the infected employee worked at that location.

These reporting requirements are crucial. Failing to comply with them can result in civil penalties up to $10,000.

Protected Family Leave

The Legislature also passed Senate Bill 1383, which significantly expands the application of California's Family Rights Act (CFRA).

The CFRA authorizes employees to take a leave of absence lasting up to 12 weeks to bond with a new child, care for a serious medical condition, or care for the serious medical condition of a family member. Employers generally must grant the requested leave of absence and allow the employees to return to work after the leave of absence expires.

Prior to the adoption of Senate Bill 1383, the CFRA only applied to large employers that employed 50 or more people. That is no longer the case. With the adoption of Senate Bill 1383, the CFRA now applies to all employers that employ 5 or more people, and *all public employers*.

Senate Bill 1383 also expands the category of employees that qualify for a leave of absence under the CFRA. As set forth above, employees can take leave to care for a new child, care for their own serious medical condition or care for a family member suffering from a serious medical condition. Prior to Senate Bill 1383, an employee could only take leave to care for a family member if the family member was the employee's parent, child, spouse or registered domestic partner. Senate Bill 1383 now expands that to include grandparents, grandchildren and siblings.

Senate Bill 1383 did not, however, alter one of CFRA's limitations. Employees still must work at least 1,250 hours within the past 12 months in order to qualify for a leave of absence under the CFRA.

In sum, under the CFRA, employers now must grant employees a job-protected leave of absence lasting up to 12 weeks if all of the following are true:

- The employer employs 5 or more employees or is a public agency;
- The employee worked at least 1,250 hours within the last 12 months; and
- The employee is taking the leave of absence to bond with a new child, care for the employee's own serious medical condition, or care for a parent, child, spouse, registered domestic partner, grandparent, grandchild or sibling who is suffering from a serious medical condition.

Protected Leave for Victims of Crime or Abuse

Existing California law protects victims of domestic violence, sexual assault and stalking from employment discrimination and retaliation. It also grants those employees the right to take time off from work to obtain protection orders from the courts and other services to ensure their health and safety.

Assembly Bill 2992 now expands those protections to also apply to victims of other crimes that "caused physical injury or that caused mental injury and a threat of physical injury." Employees who are victims of those crimes may now take time-off from work to obtain aid. They are also protected from discrimination and retaliation.

Employees who intend to take time off for those reasons must provide their employer with reasonable advance notice unless doing so is not feasible. Employers may also request that the employees provide documentation certifying their status as crime victims. That documentation can

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New Employment Legislation

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include a police report, a court order granting the employee protection from the perpetrator, documentation from a licensed medical professional, counselor, victim advocate or licensed health care provider confirming that the employee received services for injuries resulting from a crime, or any other form of documentation that reasonably verifies that a crime occurred and that the crime is the reason for the employee's absence.

Statute of Limitations for Labor Code Complaints

The California Labor Code includes provisions that protect employees from certain forms of discrimination and retaliation. The California Labor Commissioner enforces some of those provisions. That means employees who claim they suffered discrimination or retaliation in violation of those provisions must file their complaints with the Labor Commissioner's Office.

In years past, employees had to file their complaints with the Labor Commissioner within 6 months after the alleged unlawful activity. This year, however, the Legislature passed Assembly Bill 1947, which extends that deadline to 12 months.

The Labor Commissioner has limited jurisdiction over public agencies. Thus, this expansion of the statute of limitations should have little impact on public agencies.

No-Rehire Provisions

Not all of the new laws impose additional burdens on employers. The Legislature also passed Assembly Bill 2143, which expands the circumstances in which employers can prohibit former employees from applying for re-hire.

As you likely know, a very small percentage of employment lawsuits actually go to trial. Most of them are either settled or dismissed through pre-trial proceedings. In years past when employers settled employment lawsuits, we often included a provision in the written settlement agreement that prohibited the employee who filed the lawsuit from ever working for the employer again. In 2019, the Legislature put an end to that practice. A law was passed that largely prohibits those provisions. One exception is if the employer discovered that the employee sexually harassed or assaulted someone. In that case, employers could preclude those employees from continuing to work or applying for re-hire.

This year, the Legislature passed Assembly Bill 2143 to expand that exception. Employers may now include provisions in settlement agreements that prohibit employees who engaged in sexual harassment, sexual assault or other "criminal conduct" from continuing to work for the employer or applying for re-hire.

Derek Haynes is a Partner with the Porter Scott law firm specializing in employment law. Derek may be reached at dhaynes@porterscott.com, or 916-929-1481.

Avoid These Hazardous Follies to Keep Your Holidays Jolly

By Brian Edinger

For some, holidays are the happiest times of the year, for others they are the worst time of the year, and for risk management professionals they are truly some of the busiest times of the year. Much of this comes with the winter season bringing wet weather and shorter days, but decorating for the holiday's can create some unique challenges itself. Please take a minute to read these common hazards below to avoid some common winter follies and keep your holidays jolly!

Crowding Cords

As Holiday lights come out, so do the extension cords. Extension cords are only meant to be used for a temporary basis, such as during construction projects. Also, extension cords should be of the 3-prong variety (hot, neutral, ground) and should be UL-listed. You should never daisy-chain your cords, which is to combine multiple extension cords to achieve greater length. Make sure to not leave extension cords in walkways or anywhere else they may be a trip hazard.

Heater Hazards

Space heaters are a common sight when visiting members during the winter months. While truly in an ideal world we would never recommend using a space heater, we understand that is not feasible, so we ask you follow several guidelines when using a space heater. First and foremost, never plug your space heater into an extension cord or power strip, space heaters are always to be plugged into a wall outlet due to their large current draw. Second, ensure your space heater is UL-listed, and only use space heaters that have a tilt sensor which will shut the device off if it falls over. Third, be sure to shut your heaters off every day before you leave the office!

Litigious Lighting

Adequate lighting is a large concern for everyone during the winter months, where we see a surge of slips/trips/and falls from wet or icy surfaces. First, do a site-audit and ensure that your agency has adequate lighting to begin with. Make sure to replace any outdoor bulbs when necessary. Be sure to adjust any timers so that they are operational during any times staff would be present. Also, carry a flashlight in your vehicle and make sure your district vehicles have one in their safety kits.

Worrisome Water

Historically, with the winter months come more precipitation, although 2020 seems to disagree so far. As best practice, it is good to have an adequate mat at entryways that can help wick off some of the water, snow, or mud that people may track in with their boots. Also, have a "Caution: Wet Floors" sign handy for the instances people may track in water, and clean and dry any wet floors immediately.

Languishing Ladders

From changing bulbs to decorations, ladder use generally increases for many offices around the holidays. Be sure that you are well versed in the design and function of the ladder you will be using, including having read and understanding the affixed safety warning sticker. Do a pre-inspection and make sure your ladder is free of any cracked or broken parts, as well

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AVOID A RUDE AWAKENING: THE NEED TO CONSIDER ZONING AND USE PERMITS IN CEMETERY EXPANSIONS NOW

By Mark R. Velasquez

Throughout California, public cemetery districts are increasingly running out of space. Districts are now purchasing land to grow so they can continue their mandate of providing respectful and cost-effective interment of human remains. Many districts are operating on land they obtained 50 to 100 years ago. Before now, there was no need for districts to consider zoning or use permits by the county or city they are in. After all, most public cemeteries predate these laws. Approval to operate a cemetery from another public entity, such as the county, has always been unnecessary and not even a consideration.

Unfortunately, as some districts have found as they begin to develop newly purchased land for expansion, zoning and use permits (i.e. permission) must now be considered. Health & Safety Code section 9042 (a) states that public cemetery districts must comply with building and zoning laws when "acquiring, improving, or using any real property." It also says that the districts must comply with the Surplus Land Act when disposing of surplus land.

I would be flabbergasted to see land designated for future cemetery use in any county general plan. Despite the need for cemeteries in every community, those who are involved in operating public cemetery districts know from experience that cemetery districts are not on the minds of—or even known to—the decision makers and planners. As such, planning for future growth of a cemetery district is the responsibility of each district's trustees.

Suitability for burials and land costs are not the only substantial considerations when purchasing cemetery property. Other considerations include whether the land can be rezoned to government (usually) or cemetery designation. Additionally, many counties require a use permit to operate a cemetery no matter if it's a public or private cemetery. Use permits almost always have numerous conditions, the most onerous being environmental compliance. These considerations including their costs must be taken into account when planning for expansions. Districts will likely need the assistance of counsel, as well as a working relationship with the county (or city) planning department. Discussions with county supervisors can be a good place to start.

In short, planning for expansion must begin now even if it is not expected to happen for many years. Zoning and use approvals can take a lot of unexpected time and energy. Additionally, the requirements and regulations for approval only get more onerous over time, never less. Determine what will be required of your district now, before you have a rude awakening when you apply for that building permit.

Mark Velasquez is Of Counsel with the law firm of Best Best & Krieger. He can be reached at (916) 551-2824 or by email at mark.velasquez@bbklaw.com.

Ask Bob . . .

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"employee" includes:

"An officer of a State or political subdivision." (42 U.S.C. 218(b)(3).)

In 1991 Congress extended mandatory Social Security coverage to all public employees who are not members of a qualifying public retirement system and for whom a Section 218 agreement isn't in place. An interesting aspect here is that Section 218 agreements are written to cover *positions*, not people. Public retirement systems, such as CalPERS, were initially intended to replace Social Security and public employees were not covered. Section 218 of the Social Security Act permits an agreement to extend coverage to those public employees who are members in a qualifying public retirement system. Non-participants in either a qualifying retirement system or a Section 218 agreement, therefore, must be included in Social Security Coverage.

Similarly, California Unemployment Insurance Code § 1279 has been interpreted to include as "employees" elected and appointed officials and appropriate contributions must be withheld from their pay. (The term "stipend" has no meaning different from wages or pay in the context of any of these laws. The State & Local Social Security handbook states that the label given to the payment is immaterial. (§70001.701.))

In addition, for purposes of worker's compensation coverage California Labor Code § 3351 provides that:

> *"Employee" means every person in the service of an employer under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed, and includes:*
>
> *(b) All elected and appointed paid public officers*.

There are other areas of the law which treat elected and appointed members of public agencies' governing bodies as non-employees, notably the Brown Act and the Civil Service Act. But those contexts are irrelevant to the determination of whether a trustee is an employee subject to withholding and payment of taxes, Social Security and other contributions. (It is noted that in some cases relevant statutes may refer to elected, but not appointed, officials, or vice versa. However, the Attorney General has in one case opined that the Legislature intended that both elected and appointed officials to be covered. (59 Cal.Opp.Atty.Gen. 266.).)

From the quick review above, I believe it is clear that district trustees are W-2 employees and appropriate taxes and other withholdings must be made from their checks. Social Security and Medicare coverage, and associated withholdings, are mandatory in nearly all cases, except in a few very narrow instances.

Because of the complexity of these issues, not the least of which might be the retroactive calculations and payments of unpaid taxes and contributions, each district would be well advised to give the information below to your CPA and/or auditor for their review and appropriate action.

Avoid Holiday Hazards

(Continued from page 15)

as free from any oily or wet residues. Make sure that your ladder is fully open and on level ground before use. Maintain 3 points of contact as you climb the ladder (2 hands and 1 foot, or 1 foot and 2 hands). Do not lean off a ladder in an attempt to extend your reach, always move your ladder closer to the work you are doing or get a larger ladder.

Disastrous Decorations

Starting with Halloween, many offices begin putting up decorations in efforts of getting into the Holiday Spirit. It is prudent that you always remove any previous decorations before you begin adding the next holiday's decorations. Make sure that you are not putting any combustible decorations in areas where they may possibly become a fire hazard and try to minimize your use of combustible decorations entirely. Do not block any hallways, exits and Fire Exits with decorations. Look out for balloons or other decorations blocking security features, cameras, or smoke/CO2 detectors from proper function. And finally, try to have your decorations put away by January 1 as to avoid being that agency who keeps their Holiday Lights up year-round.

We hope you found these holiday tips helpful. Please reach out to the GSRMA Loss Prevention Department if you have any questions regarding safe operation during the holidays.

Brian is Risk Control Advisor with Golden State Risk Management JPA. He can be reached at (530)934-5633 or by email at bedinger@gsrma.org.

Mark Your Calendars!

January 6 — 9:00 a.m. — GSRMA/Eyre's Law Group — California Family Rights Act Update

January 21 — 10:00 a.m. — PCA/GSRMA — Ethics in Public Service

January 21 — 1:30 p.m. — PCA/GSRMA — Legislative Update

February 9 — 10:00 a.m. — CAPC/GSRMA Sexual Harassment Prevention

February 18 — 10:00 a.m. — GSRMA: Developing a Culture of Safety

March 18 — 10:00 a.m. — GSRMA — Inspecting the Workplace

"Mini-Conference"

Due to the continuing COVID-19 pandemic, PCA has had to cancel its first PCA Mini-Conference that was scheduled to be held in Williams, California in January. Similarly, GSRMA has cancelled the Harassment Prevention and Ethics training programs that were scheduled for the day prior.

At this time, and obviously depending on prevailing circumstances, PCA is tentatively planning a conference in October 2021 at the Embassy Suites in Sacramento. More information will be provided as things move forward.

PCA Public Cemetery Alliance

Articles in this issue are for informational purposes only and not for the purpose of providing legal advice. You should contact your attorney to obtain advice with respect to any particular issue or problem. Use of any information contained in these articles does not create an attorney-client relationship between the reader and Robert W. Hunt or any other attorney or author.