



# Public Safety Legal Update

*Presented By: Morin I. Jacob*



# Legislation

# Retaliation

- **AB 987** – Prohibits an Employer from Retaliating or Discriminating Against a Person for Requesting an Accommodation for His or Her Disability or Religious Belief, Regardless of Whether the Accommodation was Granted.

# Retaliation

- **AB 1509** – Prohibits Employers from Retaliating Against Family Members of a Person Who Engaged in Protected Activity.

# Case Law

# Investigations

- POBR Only Requires Police Department to Inform Officer of Nature of Investigation “Reasonably Prior” to Interrogation.
  - *Ellins v. City of Sierra Madre* (2016) \_\_\_\_\_  
Cal.Rptr.3d \_\_\_\_\_ [2016 WL 337383].

# Investigations

- Telephone Conversations Surreptitiously Recorded As Part of Law Enforcement Agency's Criminal Investigation Were Admissible In Officer's Administrative Appeal of His Termination.
  - *Telish v. California State Personnel Bd.* (2015) 234 Cal.App.4th 1479 [184 Cal.Rptr.3d 873].

# Investigations

- Standard Notice Requiring Confidentiality of Employer Investigations Violated Employees' Union Rights.
  - *The Boeing Company* (August 27, 2015) 362 NLRB No. 195.



# Right to Representation

- Right of Representation Includes Right for Union to Represent Employee at Interactive Process Meeting.
  - *Sonoma County Superior Court (2015) PERB Dec. No. 2409-C, 39 PERC ¶ 88.*

# Personnel Files

- Supervisor's Daily Log is not a "File Used for Any Personnel Purposes" Under the FBOR So Long As Supervisor (1) Does not Share the Log with Anyone Else and (2) Does not Have Authority to Take Adverse Disciplinary Actions.
  - *Poole v. Orange County Fire Authority* (2015) 61 Cal.4th 1378 [191 Cal.Rpt.3d 551].

# Discipline

- Officer on Relieved-of-Duty Status Could Be Terminated for Driving Under the Influence and Making False Statements.
  - *Negron v. Los Angeles County Civil Service Commission* (2015) 240 Cal.App.4th 874 [193 Cal.Rptr.3d 62].

# Disability Discrimination

- Anxiety and Stress Caused by a Supervisor’s “Standard Oversight” of an Employee’s Job Performance is Not a Recognized Disability under FEHA.
  - *Higgins-Williams v. Sutter Medical Foundation* (2015) 237 Cal.App.4th 78 [187 Cal.Rptr.3d 745].

# Disability Discrimination

- Employee Who Repeatedly Threatened Co-workers with Serious Violence Could Be Terminated Regardless of Whether Conduct Was Attributable to His Disability.
  - *Mayo v. PCC Structural, Inc.* (9th Cir. 2015) 795 F.3d 941.

# Disability Discrimination

- Employee's Request That City Accommodate His Disability by Removing Essential Function of His Position Was Not Reasonable.
  - *Nealy v. City of Santa Monica* (2015) 234 Cal.App.4th 359 [184 Cal.Rptr.3d 9].

# Discrimination/Harassment

- United States Supreme Court Holds that an Employee Alleging Religious Discrimination Under Title VII is Required to Prove Unlawful Motivation, Not That the Employer Had Actual Knowledge of the Religious Practice.
  - *E.E.O.C. v. Abercrombie & Fitch Stores, Inc.* (2015) 135 S.Ct. 2028.

# Free Speech

- Police Officer Who Complained Internally About Chief of Police's Sexual Favoritism Did Not Engage in Protected Speech.
  - *Young v. Township of Irvington* (3d Cir. 2015) \_\_\_ Fed.Appx. \_\_\_ [2015 WL 6123228].



# Free Speech

- Employee Who Complained to Supervisors About City's Hiring and Use of Temporary Employees Did Not Engage in Protected Speech.
  - *Turner v. City and County of San Francisco* (9th Cir. 2015) 788 F.3d 1206.

# Probationary Employees

- Probationary Employee Who Was Not Served with Timely and Effective Notice of Rejection Was Deemed to Have Successfully Completed Probation.
  - *Dept. of Corrections and Rehabilitation v. State Personnel Bd.* (2015) 227 Cal.App.4th 1250 [174 Cal.Rptr.3d 471].

# Wage and Hour

- Firefighters Not Entitled to Compensation for Time Spent Traveling Between Fire Stations to Pick Up or Drop Off Turnout Gear.
  - *Balestrieri et al v. Menlo Park Fire Protection District* (9th Cir. 2015) 800 F.3d 1094.

# Wage and Hour

- Fifteen Minute Unpaid Meal Break Was Not Compensable Because It Primarily Benefitted the Corrections Officers.
  - *Babcock v. Butler County* (3d Cir. 2015) 806 F.3d 153.

# Retirement

- Supreme Court Unanimously Overrules Presumption That Retiree Medical Benefits in Collective Bargaining Agreement Are Per Se Vested.
  - *M&G Polymers USA, LLC v. Tackett* (2015)  
135 S.Ct.926.

# Thank You

## Questions?

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