



# ACHRO/EEO

Association of Chief Human Resources Officers/  
Equal Employment Officers

## "THE COMMUNICATOR"

### Articles of Interest

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2010 Spring Edition

Volume III, Issue 2

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## **An Update from our ACHRO/EEO President Randy Rowe. . .**

I would like to first thank the ACHRO/EEO Executive Officers for 2009-2010: Vice President: Wyman Fong, Director of Human Resources, Chabot-Las Positas CCD; Treasurer: Connie Carlson, Human Resources Technician, Redwoods CCD; Secretary: Teddi Lorch (re-elected), Director of Human Resources, South Orange CCD; and Past President: Irma Ramos, Vice President of Human Resources, Mt San Jacinto CCD for their time and effort this year. It has been very rewarding to work with this group of highly motivated professionals that believe deeply in our professional development mission. Again thank you so much for your leadership this past year.

Also the Chancellor's Office has provided financial support to ACHRO/EEO for the past 11 years and continues to Partner with ACHRO/EEO. The Chancellor's Office has generously provided ACHRO/EEO with a grant in the amount of \$55,489 to provide support for the following activities during 2009-10: the annual training institute; one day fly in/drive in EEO training; travel reimbursement/training to readers for the evaluation of district EEO Plans; and travel reimbursement for members who participate in the Title 5 EEO Review Committee and other Chancellor's Office EEO Committees. On behalf of ACHRO/EEO, I want to thank Tosh Shikasho the Chancellor's Office for their continued support.

Wyman Fong your Vice President and the ACHRO/EEO Training Committee members with guidance from our outstanding consultant, Ron Cataraha and the ACHRO/EEO assistant Ruth Cortez are planning an excellent Fall 2010 ACHRO/EEO Institute. The ACHRO/EEO Fall Institute will provide valuable information on how to best deal with issues in what is now the most critical time for community colleges in California's history. It is important that we understand our Fall Institute is a place where Chief Human Resource Officers and EEO representatives have the opportunity to enhance their skills, learn new methods for dealing with these very difficult situations and share ideas and solutions among colleagues.

I encourage each of our members to register for the ACHRO/EEO Fall Institute as soon as possible. Please keep in mind that staff diversity money you receive each year from the Chancellor's Office can be used for the Fall Institute.

I look forward to seeing you at the Fall Training Institute in South Lake Tahoe October 20 through the 22.

*Randy Rowe*

Randy Rowe, ACHRO/EEO President  
Associate Vice Chancellor Human Resources  
State Center Community College District  
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These days social networks are the way to go!  
ACHRO/EEO is looking for ways to improve  
communication and is looking into using  
Facebook soon!

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## Consultant's Corner

Greetings! The Fall 2010 Institute scheduled for October 20-22 in South Lake Tahoe at Harvey's Resort is sure to be another great one with outstanding workshops planned to assist all of you human resources professionals & paraprofessionals.

I understand the financial problems each of your districts face this year, but I am hoping you will be able to find available resources to allow you to attend. Remember, you can always pay on your own and claim it on your taxes for next year. This is one of, if not, the most affordable conferences that you can attend.

Hope to see you all there!

*Ron Cataraha*  
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## The Inside Higher Ed Recruiting Hall of Shame

Reading job postings these days it's hard to believe they're supposed to be advertising. Job ads are supposed to sell your opening to a terrific candidate. But the dull, machine-driven and even confrontational style of many job postings means that even in today's tight job market, no one but the most desperate job seeker will respond.

Hold your nose and read through the Hall of Shame – you may laugh, but we're betting it's a laugh of pained recognition. We've also provided some examples of effective ads – the difference is pretty stark. Don't let your posting end up in next year's hall of shame. It's so easy to do it right!

Names have been changed to protect the guilty.

### Worst Job Posting Titles:

Online, your ad will appear in a list of similar postings from competitive institutions. Your title is the “grabber” that will entice terrific candidates to click and read more. Are you losing the best prospects right at the start of the process?

#### *Second Runner Up:*

ASSISTANT PROFESSOR – Full words, always an improvement over pointless abbreviations. But you have to actually click on the job notice to discover of what, exactly, you'd be an assistant professor.

#### *First Runner Up:*

FT 12-MO FAC 3131B – even deciphered, this title is totally uncommunicative. Worse? The ad is categorized only as “faculty” and the description text includes no information at all – one would have to click to the institution web site to even discover what field of study the job will teach!

#### *And the “Winner” is”*

SUP SPEC I-09076 – terse, with overtones of obscurity. The added touch of including the HRIS database job number ensures that there's no human touch whatsoever to this posting.

So what's a good posting title? Something as simple as “Lecturer, Spanish Language and Literature” at least tells a candidate what the job is all about. But going a step further by making a strong case for the job in your title is even better: “Lecturer position in lively Spanish department available for dedicated teacher.”

### Worst Job Posting Introductions:

On some Web sites, the first few words of your posting will appear on the search results page, and on any site the first few words of your ad may be all a candidate reads – the conventional wisdom is that you've got 25 words to grab a passive candidate. Are you wasting that opportunity by regurgitating HRIS data, boring statistics about your institution, or exhaustive lists of requirements?

#### *First Runner Up:*

The University of (City) is a comprehensive, private University with an enrollment of 5,300 students. It offers more than 80 undergraduate majors and minors, as well as graduate degree programs, in a residentially-based educational experience. Yawn.

#### *Second Runner Up:*

The Operations Manager works closely with the Director to maintain, promote, and enhance the programs and services the Division provides. Can't wait.

#### *And the “Winner” is:*

Open for Recruitment: March 28, 2008 - April 28, 2008

Announcement #: 15773013841

Salary Range: \$33,000.00 to \$35,000.00

Full or Part Time: Full Time

Shift: Variable schedule

Ouch. I mean who dreams of working as Announcement # 15773013841?

(continued on page 5)

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So what's a good intro? Try this:

The University of (State) is one great place to work. Our agenda--simple--to accelerate the movement toward academic excellence and become known worldwide for the quality of our academics, commitment to undergraduates and engagement with society. Or this: Think palm trees, orange groves and wide sunsets reflected in sparkling lakes. That's the setting for our beautiful Mediterranean-styled, primarily residential Assemblies of God university offering a vital, Christ-centered education.



### **Special Awards:**

*Worst Application Requirements:*

Ask yourself, what chance does the institution that posted these requirements have of getting a single application from a passive candidate:

*Please be sure to have the following information ready before beginning the process of creating your application:*

Resume - in MS Word or PDF format, List of References (including contact phone number and address), Work history information and dates, educational history information and dates, vacancy numbers of specific position(s) for which you are applying, Cover letter - in MS Word or PDF format. This will reduce the likelihood of lost data and/or being automatically logged out after 60 minutes of inactivity.

### **Worst Web Site Greeting:**

It's become very common for job ads to link potential candidates to an institution's employment page. In theory, this should be a marvelous opportunity to sell your college as an employer. In practice, it's yet another chance to be rude. Remember – at this stage of the process you don't have applicants, you have prospects. Your job is to turn the BEST prospects into applicants. Here's how not to do that:

Attention applicants: Please be aware (University) conducts criminal background checks and drug tests. In addition, the (University) [regulates smoking](#) on campus. Please refer to our [General Information for Prospective Employee](#) for anything further about working at (University) including [campus security](#) and the [drug testing policy](#).

And here's how to do it right. Candidate focused. Persuasive. Friendly. This is a letter to the person you want to hire:  
Student Finance Advisor

The energetic, detail-oriented person who would find satisfaction solving problems and helping our students persevere toward their goals will find a wonderful opportunity with This University. Two aspects of this job will hold great appeal for many:

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## The Employee Selection Process and the EEOC

It is common for employers to use various tests when making decisions about employment such as hiring and promotion. Most people think of multiple choice tests when they think of hiring tests, but selection measures such as interviews, medical exams, performance exams, minimum qualifications and background checks are also tests, and all of these are subject to EEOC regulations. Even if employment tests are not being used with the intent to discriminate on the bases of race, color, sex, national origin, religion, disability, or age, they may end up unintentionally discriminating if they exclude a higher proportion of new or promotional applicants in a particular group according to race, sex, or protected group covered by EEOC regulations, unless the employer can prove that the test meets legal standards for defensibility.

All measures used to make selection decisions must be examined carefully for disparate impact on various applicant groups before they are put into use. A selection criterion that appears to be neutral on its face may actually impact certain groups adversely.

For example, height, weight and strength requirements may look reasonable for physically demanding jobs such as laborers or firefighters. However, such requirements are likely to screen out female applicants disproportionately, which creates adverse impact.

One example is the EEOC's August, 2004 case against the Dial Corporation. Dial added a strength test to their selection process for workers in their meat packing plant in Fort Madison, Iowa. The test looked like the job: on the line, workers had to lift 35-pound rods of sausage links from a conveyor line, carry them to a production table and lift the rods into notches that were from 33 to 65 inches above the floor. The test required applicants to lift a bar with 35 pounds of weight off a table, carry it ten feet and place it 35 inches high on a wooden frame, carry it back to the table, lift and carry it back to the frame again and place it 67 inches high, then lift and carry it back to the table once more.

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A woman who passed all of Dial's other employment tests for this position also passed this one, according to the form on which her results were recorded. However, she was refused an offer of employment. Comments on her test form noted that the task was difficult for her because of her height, and she was told that she had failed the test. In the three years prior to the implementation of this test, 46% of all hires for this position were female, but in the three subsequent years, only 15% were women. The business necessity of the test was challenged, and the EEOC's evidence showed that not only was the test much harder than the job was, it did not correlate with job performance, based on the performance of the women hired into the position prior to the use of this test.

At the trial, the Dial Corporation argued that the test could be validated both for its content, based on similarity to the job, and on the criterion of job related injuries. But Dial did not attempt to validate the test before it was challenged, and their own records showed that injury rates among both men and women on that job did not change after the test was put into use. Therefore they could not back up their claims.

Thus, an organization needs to carefully review employment requirements and tests before using them to anticipate adverse impact. They must take care to establish links between successful job performance and any measures used to make employment decisions. This process called test validation. It is possible to claim that a selection process with show disparate impact is a business necessity, but factual evidence is required to substantiate the claim.

For both legal and practical reasons, the foundation of employee selection is job analysis. In 1971, the Supreme Court determined that employment tests "must measure the person for the job." In 1978, the Federal government issued the Uniform Guidelines on Employee Selection Procedures. The Guidelines prohibit the use of any test or selection procedure for employment decisions if it results in discrimination unless the test is justified in some other job-related way. By conducting a job analysis the organization can identify critical job duties and the knowledge, skills, abilities (KSAs) and/or competencies and physical requirements needed to perform the job successfully. This lays the foundation for establishing the test's job-relatedness or content validity.

A thorough job analysis will provide an organization with the information to identify which KSAs/competencies need to be measured, which assessment methods should be used, and how the candidate's performance will be rated. If job analysis is added to the selection process many EEOC cases involving employment can be avoided because hiring decisions will be based on essential job-related data.

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### OFFICER LEAVE FOR UNION BUSINESS AND DISTRICT REIMBURSEMENT

Recent court cases and PERB decisions have confirmed that under the Education Code, both classified and faculty union officers have an absolute and non-negotiable statutory right to take as much leave as requested, without loss of compensation, in order to attend to union business other than negotiations and grievance processing. However, the district has an equally absolute and non-negotiable right to reimbursement for all compensation paid to a union officer while on such leave, including contributions towards the employee's retirement. Accordingly, to the extent that provisions of a collective bargaining agreement limit the amount of release time or the amount of compensation to be reimbursed to the district, those provisions are void and unenforceable.

Under Education Code §§ 87768.5 (faculty) and 88210 (classified), a district must grant to any employee, upon request, a leave of absence without loss of compensation for the purpose of enabling the employee to serve as an elected officer of any national, state, or local public employee organization. In Tracy Educators Assn. v. Superior Court (2002) 96 Cal. App. 4th 530, an appellate court (interpreting K-12 statutes nearly identical to Section 87768.5) found that through these statutes, the Legislature intended that the employee organization determine the purposes for which leaves of absence were required without regard to duration. (*Id.*) This includes release time to attend regular meetings of the employee organization. (*Id.*) In reaching its decision, the Tracy Court specifically rejected the claims of the district that the "association leave" provision of the parties' Master Agreement superseded the rights afforded the employee by Section 44987(a) or that these absences from the district would cause a hardship. (Tracy Educators Assn., *supra*, 96 Cal.App.4th at 538-539.) Furthermore, relying on Section 44924, the court determined that the parties could not, through their collective bargaining agreement, waive a union officer's right to a leave of absence pursuant to Section 44987 (a), and that any such provisions were void and unenforceable.

Although a union officer is entitled to unlimited leave "without loss of compensation" to attend to union-related business, the burden of that expense is not on the district. (Educ. Code § 87768.5.) Instead, once an employee is paid for the leave of absence, the community college district must be reimbursed by the union "for all compensation paid the employee on account of the leave" within 10 days after receipt of the district's certification of payment of compensation to the employee. (Educ. Code § 87768.5.) "Compensation" includes not only salary and benefits, but "retirement fund contributions required of the community college district as employer." (*Id.*) As stated in Tracy, "if the employee organization determines its purposes require that its elected officer to take a leave of absence 50 percent of the work week, Section 44987(a) requires the school district employer to grant the leave request, so long as the employee organization reimburses the school district for all compensation paid to the employee during the leave of absence." (*Id.* at 536.) Additionally, a recent PERB decision held that while union officers have an absolute, non-negotiable statutory right under Education Code section 87768.5 to take as much leave as requested to attend to union business without loss of compensation, the district has the same absolute, non-negotiable statutory right to full reimbursement of any compensation paid. (See, Berkeley Unified School District (2008) PERB Decision No. 1954.)

Thus, any provision in a collective bargaining agreement which purports to limit the right of the union officers to take leave for union business or the right of the district to full reimbursement for the compensation paid to a union officer for all such leave taken is null, void, and unenforceable. (See Tracy Educators Assn., *supra*, 96 Cal.App.4th at 538-539; Berkeley Unified School District (2008) PERB Decision No. 1954; Brawley Union High School District (1982) PERB Decision No. 266.)

However, it should be noted that the above analysis does not apply to released time given to union members for the purpose of processing grievances and engaging in collective bargaining. (Govt. Code § 3543.1(c); Berkeley Unified School District (2008) PERB Decision No. 1954.) This is because under the EERA, the determination of a "reasonable period of released time" available to unit members for processing grievances and negotiations is considered a mandatory subject for bargaining, and therefore may be mutually agreed upon between the parties. (Govt. Code § 3543.1(c); Anaheim Union High School District (1981) PERB Decision No. 177.)

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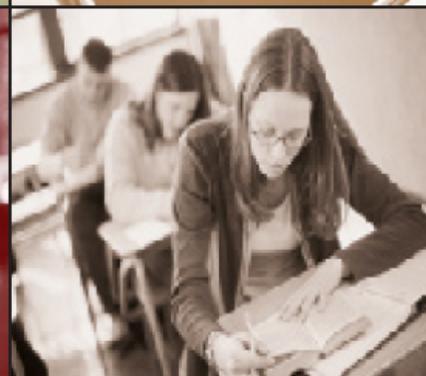
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## AVOIDING LAYOFF PITFALLS -- DO CLASSIFIED LAYOFFS TRIGGER CONSTITUTIONALLY MANDATED SKELLY "HEARINGS?"

*Atkinson, Andelson, Loya, Ruud & Romo*

The California Supreme Court in the landmark case of *Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194, determined that the right to pre-deprivation due process is triggered when an employee has a "property right" to her job. As a result, community colleges are required to provide permanent classified employees terminated for cause with the written documents relied upon by the district and an opportunity to respond, if the termination will be implemented before the final right to a full-blown disciplinary appeal. (Note that many districts have negotiated the right to "Skelly hearings" with unions that provide for much more than required by law.)

In the case of classified layoffs for lack of work or lack of funds, the appellate court has found that the Education Code, unlike the case in faculty layoffs, requires no formal hearing. (*CSEA v. Pasadena U.S.D.* (1977) 71 Cal.App.3d 318.) Courts have expressly recognized that broad layoffs for reorganization or economic purposes do not generally trigger Constitutionally required pre-termination due process rights. The California Court of Appeal explained in *Duncan v. Department of Personnel Administration* (2000) 77 Cal.App.4th 1166 that where a reorganization or other cost-cutting measure results in dismissal of an employee no [pre-deprivation] hearing is due.

However, now unions are arguing that due process hearings are required before layoff, pursuant to the recent federal court decision in *Levine v. City of Alameda* (9<sup>th</sup> Cir. 2008) 525 F.3d 903. The *Levine* decision required a city to provide a due process hearing with a neutral decision-maker before the layoff. The case involved the elimination of a single position, and the allegation by the laid off employee that the layoff was a pretext for a "for cause" termination. This decision is based on federal Constitutional rights, and would therefore trump any provisions of the Education Code.

Many practitioners question the result, and certainly HR professionals hope that the decision is at most limited to cases where employees claim the layoff is a pretext for unlawful motivation by the employer. Litigation of this issue in California courts has already begun related to 2009 layoffs. If California Courts maintain the prior precedents that no due process is required, then the issue can only be resolved by the U.S. Supreme Court or by the Ninth Circuit changing its stand.

How can community college HR departments address the possible need for pre-termination due process? Although many question the *Levine* decision, the risk of substantial back pay liability in the case of litigation leads to taking prudent defensive measures. In order to avoid the *Levine* "trap," without creating full-blown Skelly procedures for layoffs, colleges may consider the following options.

1. Negotiate contract language (or impact negotiation language) providing for grievance of layoffs with at least one meeting before the effective date of termination.
2. Provide for expedited arbitration of layoff grievances.



(continued on page 15)



3. Negotiate contract language (or impact negotiation language) providing for grievance of layoffs with at least one meeting before the effective date of termination.
4. Provide for expedited arbitration of layoff grievances.
5. Provide language in the layoff notice allowing employees to submit a letter to the HR department in the event the employee believes the layoff improper (with a possible opportunity to meet); if the challenge is covered by the grievance procedure, then it can be processed as a grievance. If the challenge is not covered by the grievance procedure, the HR manager can still meet with the employee and hear her allegations. (This procedure was recently upheld by a trial court as meeting Constitutional requirements in light of the *Levine* case.)

Note that many grievance procedures may exclude a general challenge to a layoff (e.g., a claim that it was pretextual). The invitation to communicate with the HR department should not be so narrow that it would prohibit the employee from bringing up issues that are traditionally outside the definition of a grievance.

Often the possibilities for challenge to layoffs are reduced substantially by working with the union representing the employees prior to the initiation of layoffs. In some cases the close review of the actions taken, including bumping and seniority list development, will avoid layoff grievances, and may allow for correction of errors before the notices of layoff are sent.



6. Keep in mind that unrepresented employees are not subject to union grievance procedures nor to contractual agreements with the union. But they may still enjoy due process rights.

The *Levine* issue is likely far from resolved, but keeping an eye out for new decisions by the courts, and “cutting edge” solutions to minimize liability, will keep colleges away from the “bloody edge” of new developments.



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## **Are Governing Board Members Employees?**

**By: Meredith Karasch, Associate, Liebert Cassidy Whitmore**

Every community college district has budget problems this year. Due to the statewide budget crisis, community colleges are forced to scrutinize how revenue is spent. A district's correct categorization of all people it employs is a crucial matter that has important implications on a budget. In such an examination, a district might want to determine whether its governing board members are employees that are entitled to receive benefits afforded to all employees.

District governing boards are composed of members elected by the community. These boards hold meetings open to the public at regular intervals and makes decisions regarding various aspects of managing the district. Board members typically receive a small stipend and, thus, engage in outside employment, which is their primary source of income. Although board members are responsible to the college district, they do not report to anyone and do not have a supervisor.

California law does not include a definition of "employee" that applies in all situations. Rather, the definition of "employee" depends on the context. While given individuals, such as governing board members, may be treated as employees for specific purposes, they may not be considered employees under the general umbrella of California law. There is no statute stating that board members are employees, even though, for example, Board members are treated as employees for purposes of withholding income tax from the stipends they are paid. Thus, whether board members are employees may be more a function of any statute defining them as employees.

### **A. Definition of Employee**

Neither the California Labor Code nor the Education Code defines the term "employee" for all purposes. Rather, whether someone is an employee depends on the context on which it is being defined.

#### **1. The Education Code and the EERA**

No statute in the Education Code defines board members as employees. With respect to defining "employee" under the Educational Employee Relations Act (EERA), the Act specifically excludes the governing board members from the definition of employees. (Gov Code § 3540.1.) A "public school employee" is "any person employed by any public school employer except persons elected by popular vote, persons appointed by the Governor of this state, management employees, and confidential employees." (*Id.*) Under the EERA, the governing board is a "public school **employer**." (*Id.*)

#### **2. Contexts in Which Elected Officials are Treated Like Employees**

There are some statutes that treat elected officials as employees for the purpose of the specific statutory scheme. For example, under both California and federal law, elected officials are considered employees for tax withholding purposes. (See 26 U.S.C. § 3401 (c) and Cal. Un. Ins. Code § 1279.) Thus, payroll taxes must be withheld from officials' salary. Elected officials and board members working in their official capacity are also employees for the purpose of obtaining workers' compensation coverage. (Cal. Labor Code § 3351.)

*(continued on page 19)*

However, these definitions are purposely broad and are intended to cover a wide range of employees. Tax laws are intended to bring revenue to the state and are intentionally inclusive. Similarly, the purpose of workers' compensation insurance is to provide benefits to injured workers. Only workers who are independent contractors are not covered. (*Gonzalez v. Workers' Comp. Appeals Bd.* (1996) 54 Cal.Rptr.2d 308; see also Cal. Labor Code § 3351 (granting coverage to volunteers.))

### **3. Contexts Where Elected Officials are not Defined as Employees**

Notwithstanding the above statutes, elected officials are specifically excluded from the definition of employee in many instances. For example, the federal ADEA definition of "employee" specifically excludes elected officials. (29 USC § 630(f).)

Elected officials are also not considered employees under the Brown Act. Government Code section 54957 excludes elected officials from the definition of employee. Section 54957 grants an exception to the Brown Act's requirement of holding open sessions for personnel matters. The public entity may discuss personnel matters involving employees in closed session unless the employee requests an open session. However, section 54957(b)(4) states that employee "shall not include any elected official." Thus, when public officials are involved, the agency must hold an open meeting.

From 1976 through 1993, the definition of employee only excluded "persons appointed to an office by the legislative body of a local agency," except for specified nonelective positions. The Attorney General found that despite this apparent different treatment of appointed and elected officials, the legislature meant to treat all officials as excluded from the definition of employee. (59 Cal. Opp. Atty. Gen. 266.)

Notably, the California Constitution exempts board members from civil service. (Cal. Const., Art 7, § 4.) This means board members do not share the features that are the hallmarks of civil service; i.e. civil service examinations, permanent and probationary statuses, and periodic performance evaluations. The Government Code dealing with personnel in the State civil service defines "employee" as a person "legally holding a position in the State civil service." (Gov't. Code § 18526.) Section 18520 states that the definitions of that chapter govern, "[u]nless the context requires otherwise." Thus, for the purpose of the state's civil service, a person may be exempt from the civil service and not an employee, yet treated as an employee in certain contexts. (See *Slivkoff v. California State University and Colleges* (1977) 69 Cal.App.3d 394, 401-402.)

### **B. Are Governing Board Members Entitled To Employee Benefits?**

Health Insurance is certainly a topic on the forefront of debate. Coupled with budget problems, districts are forced to negotiate the rising costs while explaining the decrease in services. Thus, it is important to determine whether a given worker is entitled to employee benefits, such as health insurance. To answer this question, the district must look to the language of its policy or plan. Different plans may vary widely in definitions of eligibility. Under some plans, a subscriber may be eligible depending on the district's definition of eligibility requirements. In this scenario, even if the district does not have a written definition or contract requiring it to provide board members with coverage, if it has a longstanding practice of covering them, the district is probably required to continue doing so.

(continued from page 19)

Other plans may limit coverage to full time employees or employees working a specified amount of hours. If this is the case, the board members may not work the minimum hours per week, which would exclude them from coverage under the plan. If the health plan is silent on the issue, the district would not be prevented from giving the members coverage. However, since board members are likely not considered employees, it is unlikely that a district *must* provide them with coverage. This same analysis may be used for other benefits granted under a group plan, such as retirement benefits or life insurance.

While the district is not required to provide benefits, the board itself can elect to give itself coverage. Government Code section 53201 provides that “The legislative body of a local agency, subject to conditions as may be established by it, may provide for any health and welfare benefits for the benefit of its officers, employees, retired employees, and retired members of the legislative body.”<sup>1</sup> Thus, a governing board is authorized to provide health and welfare benefits for its members. (62 Ops.Cal.Atty.Gen. 126.) This includes granting benefits to the student member. (*Id.*) The statutes do not specify a procedure for providing benefits and the board members may act in any way that is consistent with its rulemaking powers. (76 Ops.Cal.Atty.Gen. 91.)

### **C. Board Members Are Not Employees**

In significant ways that define an employment relationship with a public agency, the members of a district’s governing board are not employees. They do not earn a salary or wage and typically hold full time employment separate from acting as board members. The members do not hold any tenured or permanent status and are not subject to the evaluation processes applicable to employees. They are elected officials and hold their position until another candidate takes their place. Further, the Government Code specifically states that board members are not employees. The members are further excepted from the definition of employee under the Brown Act.

Although the board members are treated as employees in certain contexts, this does not compel the conclusion that they are employees of a district. As Government Code section 18520 illustrates, the board members may not be employees, yet be treated as, or derive benefits of being an employee. Thus, while board members are employees for the purposes of withholding taxes and receiving workers’ compensation benefits, they are not employees.

Board members are not employees of the district. There is no dispositive definition of “employee,” but while board members may be treated like employees for some purposes, they are specifically excluded from being employees in many relevant situations. If a district is concerned about granting board members health, insurance coverage, or a similar benefit, it should look to the language of the policy or plan. If there is no definition of “employee” in the insurance plan or policy, the question is more difficult to answer, but it is most likely that board members would not be employees for purposes of the plan. However, even though it is likely that board members would not be considered employees for this purpose, the board may elect to provide this benefit for its members.

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<sup>1</sup>This section actually provides more support for the proposition that Board members are not employees. If the members were employees, there would be no need for a provision of law allowing a board to provide its members with health benefits.



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# ACHRO-EEO Secretary's Column . . . . .

## The Seeds of Diversity

"I have a personality conflict with my supervisor." "I would like to request a faculty transfer to our sister college." "I have a challenge with my leadership style that doesn't match the college's executive team." "A faculty member is not attending Division meetings, can you assist me with their diverse issues?" "Can HR re-visit my job description classification because the tasks assigned are not in my job description?"

As Human Resources professionals we are presented with a barrage of questions stemming from individual differences or the individual's perspective that are outside regulations, contracts and Ed. Code. Central to our profession is an emphatic viewpoint, in that; we listen to these individual requests with a genuine intent of putting ourselves in the other person's shoes and trying to see it as if we were them. Whether you agree or not, the goal is to try to understand why they see it the way they do, it's not a matter of placing blame; it's just a matter of understanding. The idea is to come up with the best solution for all parties as opposed to just a win lose.

For a moment, let's assume that if there's not a shared point of view there's a lack of understanding due to a differing perspective the individual brings forward. In a general sense, when two people sit down and don't share perspectives, their vision is through their own lenses. If you cannot see it from the individual's point of reference then you are left with one choice and one outcome. While an expedient solution, this approach will not foster a larger number of adequate alternatives. Diversity is good because it promotes different perspectives, and differing ideas with a wide variety of outcomes. The more divergent the ideas the better because it generates more alternatives and options that can be used to solve these individual requests.

Our current society, through its laws, institutions, and regulations, seeks uniformity, conformity, and expediency in the name of efficiency to address individual inquires. Virtually, no effort is given to seek alternative responses. There's no real understanding of individuality. As Kirkpatrick Sale states, in his book Dwellers in the Land The Bioregional Vision, "Diversity is a complex and possibly problematic phenomenon in real life and it leads to conclusions not always welcomed by those who embrace its obvious virtues...but this is the point even when differences rub raw and real animosities emerge, the diversity giving rise to them must be treasured and preserved."

Let's dream for a moment where diversity might lead to in the year 2050. In the article on the SmartPlanet, Cary Fowler, a former university professor and an agricultural diversity expert, says seed vaults will mean a lot in the future. Diversity is central to his project because it's not about saving one variety, like providing one response to an individuals' inquiry. It's not a numbers game, it's a diversity matter. According to Fowler, the agricultural project is bent on "saving thousands of seed varieties in a vault in a remote Norwegian mountain is about more than life and death. It's about justice" Likewise, HR professionals posed with differing points of view address these divergent points of views and each day promote a little justice along the way.

Our Fall 2010 ACHRO-EEO conference will offer lots of variety through excellent training opportunities so see you in Lake Tahoe!

*Teddi Lorch*

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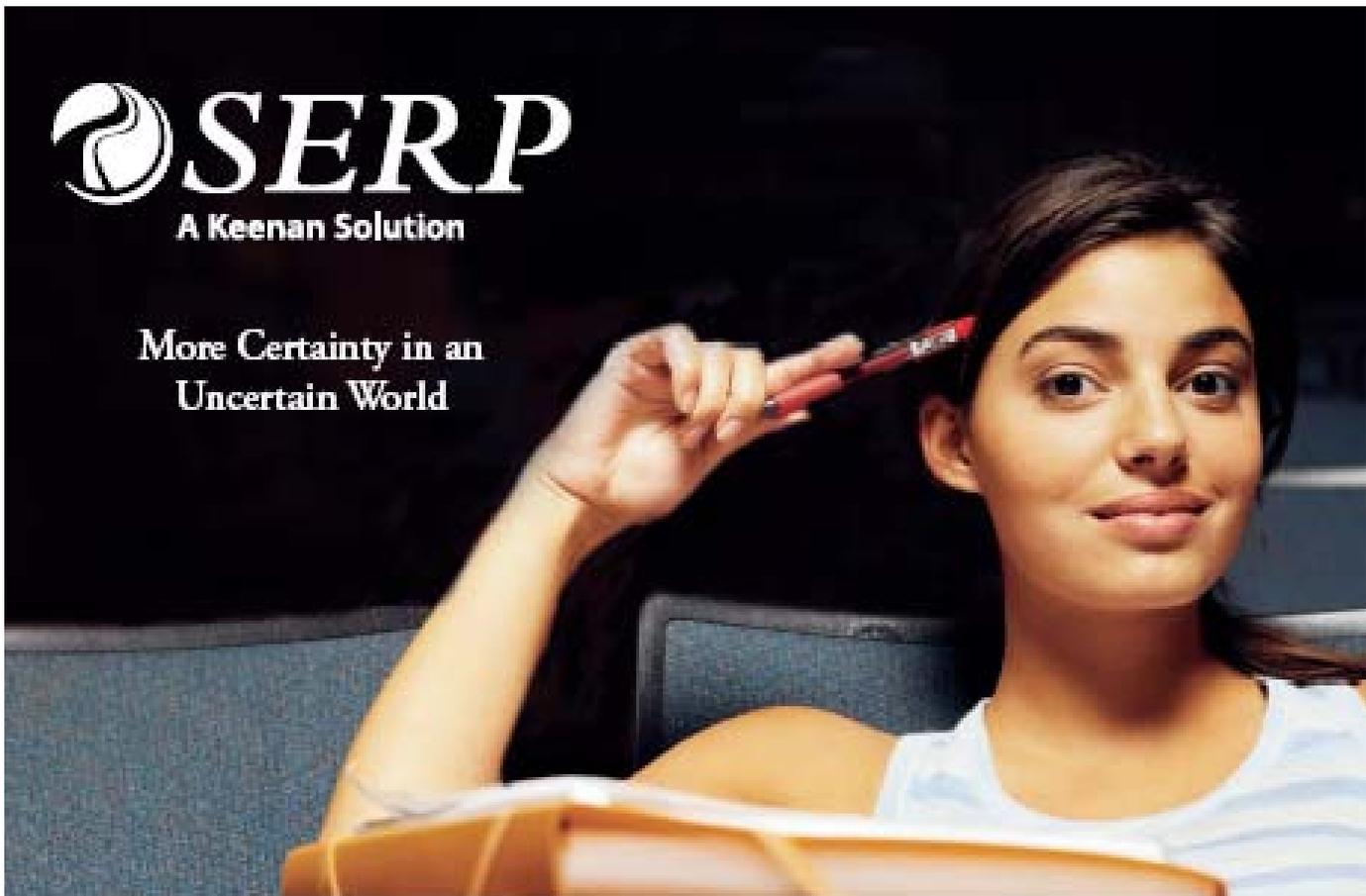


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# Online Social Networking Amongst Education Professionals

Kathy Espinoza, MBA, MS, CPE, CIE

In 2007, the National School Board Association (NSBA) journal featured a study by Grunwald & Associates ([www.grunwald.com](http://www.grunwald.com)) about the use of social networking media by *students*. The article stated that online social networking is so deeply embedded in the lifestyles of tweens and teens that it rivals television for their attention. The study reported that an astonishing 96 percent of students with online access reported using social networking technologies, such as chatting, text messaging, blogging and visiting online communities, such as Facebook, MySpace and services designed specifically for younger children, such as Webkins and the chat sections of Nick.com.

What about the use of social networking amongst education *professionals*? With budget funding all but eliminated for professional distance learning, conferences, meetings, and networking lunches, where do professionals go to gather their decision-making information?

Professionals in the workforce face far more challenges today than earlier generations, as job responsibilities have intensified because of staff reductions and budget constraints. Gone is the luxury of walking down the hall or to the next building to discuss and brainstorm with a colleague about a pending issue. Through technology and mobile devices, serious issues and problems requiring immediate attention present themselves as they occur, followed by the expectation of an instantaneous solution. What venues are professionals using to find accurate, trusted information that allows them to make quick, informed decisions?

## Social Networking – the New Frontier for Information Gathering

In a study presented at Harvard University (2009) by Vanessa DiMauro and Don Bulmer from The Society for New Communications Research, they reported finding that educated professionals today are relying on new forms of social media to inform and validate decisions. Their survey of 356 professionals, of which 95% held a Bachelor's, Master's, or Doctorate degree, showed that:

The average professional belongs to 3 to 5 online networks for business use, of which the top three were: LinkedIn (92%), Facebook (51%) and Twitter(41%). The bottom three were Blogs (5%), Yahoo Groups (4%) and Internal Company Network (3%).

Professionals want to be collaborative in the decision-cycle, but NOT marketed or sold to online.

Younger (20-35) and older professionals (55+) are more active users of social tools than middle aged professionals.

Professionals trust online information almost as much as information gotten from in-person.

Over the past 3 years, reliance on web-based professional networks and online communities has increased significantly.

Within education communities, the use of social networking between professionals has experienced a longer adoption curve than with their student population. The National School Board Association's article reported that "many adults, including school board members, are like fish out of water when it comes to this new online lifestyle, but they are adapting. In districts where structured online professional communities exist, participation by teachers and administrators is quite high."

(continued on page 29)

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### SIDE BAR: Within Education, who participates in social networking?

Nearly six in 10 districts (59 percent) say at least half of their staff members participate, while nearly four in 10 (37 percent) say 90 percent or more do so.  
(National School Board Association Journal, July, 2007)

These findings indicate that educators find value in social networking — and suggest that many already are comfortable and knowledgeable enough to use social networking for educational purposes.

### Social Networking – The ‘No Time/No Budget’ Answer

The turn towards social networking by professionals is being driven by the ‘no time/no budget’ conundrum. Professionals are still required to keep their knowledge and skills fresh but time, money, travel, and work constraints prohibit on-site attendance at meetings and conferences. As mobile technology allows everyone with an issue to have instant access to your time and talent, professionals need that same mobile technology to provide them quick, accurate, trusted information for decision-making and learning.

In a study by Margaret Lohman 2009, she found that professionals most commonly **searched the Internet to learn informally in the workplace**. Her study looked at why IT professionals turned to the internet and what factors influenced professionals to seek answers this way. Lohman found there were six environmental factors that inhibit professionals from consulting with others for information:

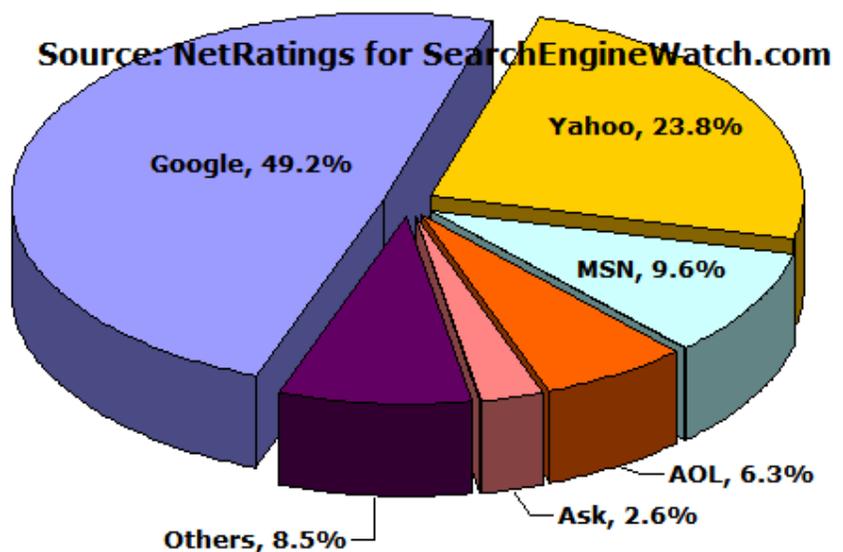
- ◆ Lack of time
- ◆ Lack of proximity to colleagues’ work areas
- ◆ Unsupportive organizational culture
- ◆ Inaccessibility of others
- ◆ Lack of equipment and technology
- ◆ Lack of meeting/work space.

Lohman, Margaret, 2009. *Information Technology, Learning and Performance Journal*, Vol. 25, No. 1.

Since the arrival of the Web in the early 90's, search engines have become an indispensable tool for most professionals.

When seeking information, search engines allow for categorical organization of billions of information bits. The chart below shows the percentage of online searches done by US home and work web surfers in July 2006 that were performed at a particular search engine.

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Even with a search engine's endless supply of information, the education professional still has the task of reading for accuracy, capturing what's applicable, connecting it to district-specific parameters, and formulating a 'best practice' to handle the situation. Enter the world of online social networking media...

While emailing and texting are not new to most professionals, involvement and dependence within an online social networking community may be. If a person has ever asked for or given advice, given or received a recommendation, shared an experience, collaborated on a project or interacted with a group, they have been a part of an in-person social network. This experience is commonly found at professional development conferences, lunch & learn meetings, or roundtables. Today it is done online, using a collection of Web 2.0 technologies which help connect professionals with similar interests into an online, social-support, networking community.

In their 2009 study, DiMauro and Bulmer surveyed which medium professionals use to gather their information, how often they access their social media network, and which specific online resources are browsed. They found:

### **Medium used to access social media network**

- Most access a social network via a PC/Mac and almost half use a mobile device
- Those with multiple networks are more likely to use their mobile device
- Younger professionals are more likely to access social network on their mobile device

### **How often professionals access their social media**

- 75% stated they visit their social networks DAILY
- 4 in 10 visit many times each day
- Usage has increased significantly over the past three years

### **Where professionals browse to find decision-making information**

- Conduct research using a search engine (75%)
- Visit a company website (75%)
- Seek peer referral (42%) – social networking
- Read other blogs (41%) – social networking
- Gather opinions via online network (40%) – Social networking
- Look up company on a social network (39%) – Social networking

*The New Symbiosis of Professional Networks, Survey Results. SNCR Research Symposium, Harvard University, 2009. authors: Vanessa DiMauro and Don Bulmer.*

## **Is Social Networking Going Away?**

Social Networking is not going away – It is the new “water cooler” discussion spot on the virtual highway of life! For professionals in education, as funding constraints continue to impede on-site learning, networking and information gathering, online social networking usage will continue to rise.

Nearly one in five Internet users is tweeting on Twitter or using another service to share personal and business updates, or to see updates about others (*Pew Internet & American Life Project, 2009*)

66% of LinkedIn users are decision makers or have influence in the purchase decisions at their companies (decision makers also tend to be more active on LinkedIn). (*Anderson Analytics, 2008*)

In 2010, 50 plus percent of marketers will be using social media (*Center for Media Research, 2009*) 52% of social networkers had friended or become a fan of at least one brand (*Anderson Analytics, 2009*)

(continued on page 31)

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All ages and levels of professionals are adopting and adapting to social networking media. Online **'Professional Peer Communities'** connect educated professionals with similar backgrounds and work experiences, in a forum where their unique topics and issues are discussed, answered and best practices are formulated.

Like it or not, online social networking is fast becoming the virtual learning hub for all communication and life/work sharing as we know it. Professionals will come for content and stay for community.

About the Author: Kathy Espinoza, MBA, MS, CPE, CIE is a Board Certified Professional Ergonomist. She has worked with Keenan & Associates for over 7 years providing workstation assessments, solutions and employee training. She has over twelve years experience coordinating and teaching a chronic back pain program and wellness program for a major hospital. She has published 35 articles in the field of ergonomics, safety and workplace issues.

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## ***Message from our ACHRO-EEO Vice-President Wyman M. Fong.....***

It has been quite a time for all of us in Community College Human Resources.

In speaking with colleagues, this has been a time in which stamina and a positive outlook are a must. I am grateful that we have ACHRO/EEO as a network for guidance and support: There is clearly no better association than ACHRO/EEO! Our annual Institute, with its numerous workshops delivered by knowledgeable professionals who provide current and comprehensive information, is an exceptional event!

I am excited about this year's conference theme "ACHRO/EEO: The Next Generation". I believe this captures the spirit of the moment and key concepts that I plan to continue as Vice President, particularly succession planning. This theme furthers our efforts to address our members' current needs as well as build for the future.

I appreciate the team effort and hospitality of the ACHRO/EEO Officers, Ron Cataraha, ACHRO/EEO Consultant, and those that make up the ACHRO/EEO membership. For me, it is peace of mind to find others that can truly self identify with the challenges we face as human resource professionals.

This past year, I have learned to be a warrior- moving forward with courage to take advantage of opportunities instead of focusing on obstacles. I take this time to thank Dr. Mary Anne Gularte, Vice Chancellor for Human Resources and Organizational Development, for her encouragement, support, and wisdom in this regard. I encourage you to plan to participate in this fall's Institute and enhance your own ability to take on the challenges you are facing in your organization. We need ACHRO/EEO now, more than ever, as we must find time to rejuvenate ourselves. As such, I encourage you to attend this year's institute, as well as to encourage others to attend.

Lastly, as Chair of the Fall 2011 Training Committee, I invite you to participate at the end of the conference on October 22, 2010 (time to be determined). If you are interested in contributing to the training committee, please contact me at (510) 917-4646 or [wfong@clpccd.org](mailto:wfong@clpccd.org).

I look forward to seeing you at the Fall Training Institute in October.

Cordially,

*Wyman M. Fong*

[WFong@clpccd.org](mailto:WFong@clpccd.org)

## ***Message from our ACHRO-EEO Past President Irma Ramos.....***

Dear Colleagues,

It has been my pleasure to serve as your ACHRO/EEO Past-President and as your representative on Consultation Council for 2009-10. The state budget, accreditation, the 50 Percent Law and categorical flexibility all came before us this year at Consultation Council and I tried to keep you informed with my monthly emails. I hope you found them useful.

Learning about statewide issues has been very rewarding for me personally and professionally. Thank you for giving me the opportunity to serve on the ACHRO/EEO Executive Board for the past three years. Randy Rowe will serve as Past-President for 2010-11 and as your representative to the Chancellor's Office Consultation Council.

I know getting involved in ACHRO/EEO has made a difference in my career. I made many friends here and grew professionally. I would encourage each of you to continue to support our organization by attending our annual Institutes as well as serving in a leadership capacity. If you are a senior professional, I urge you to continue mentoring your staff; if you are new to Human Resources, take advantage of every opportunity to grow and acquire knowledge.

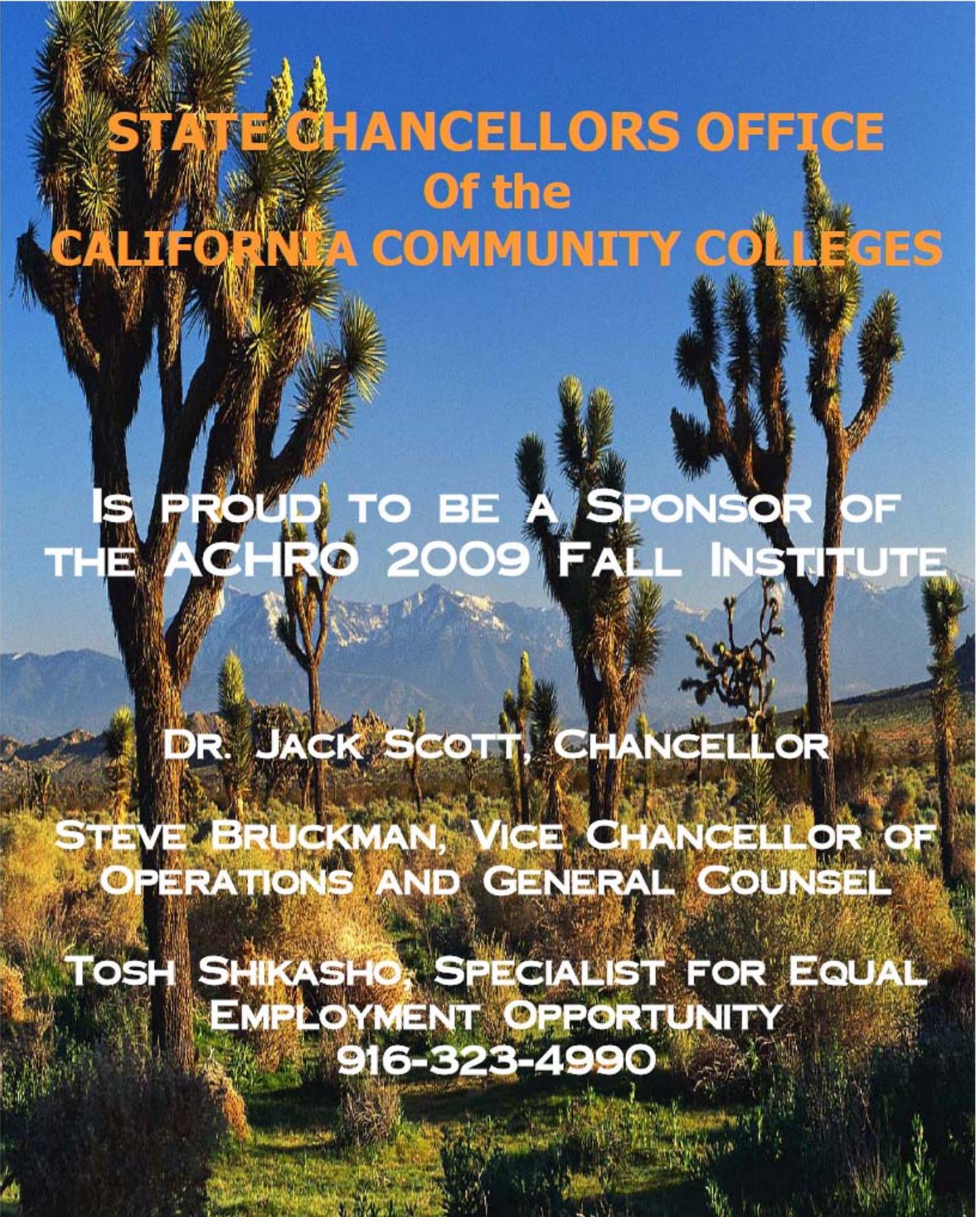
I look forward to seeing you at the Fall Training Institute in beautiful Lake Tahoe!

*Irma Ramos*

ACHRO/EEO Past-President  
Vice President of  
Human Resources  
Mt. San Jacinto College  
[iramos@msjc.edu](mailto:iramos@msjc.edu)



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