



"THE COMMUNICATOR"

2021 Winter Edition

Volume XVI, Issue 1

**Welcome Message ACHRO/EEO President,
 Julianna Mosier**

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Greetings!

It sure has been a busy and exciting year for ACHRO/EEO. Between the work on the DEI Implementation Plan Taskforce, the Police Reform Taskforce, the advocacy work, and partnerships with the ASCCC to deliver a number of workshops throughout the year on diversifying the hiring process, the ACHRO/EEO Board has also been working on a rebranding effort, including a new website to provide greater resources to our members and a new logo. Our academies continue to help build our future CHRO's and we are expanding the leadership over the academies to ensure continuity of the programs. We also held our second virtual Fall Institute, utilizing a new platform that allowed for greater interaction with our vendors and sponsors. It was great to see so many of you there.



We revised our constitution and bylaws to expand our training committee to include regional representatives, to change the name of the HR Leadership Academy to the HR Administration Academy, and to add a Communications Chair that will provide regular reporting of ACHRO/EEO news to our membership and maintain our new website. An announcement on the new Chair will follow after the first of the year. We also hosted our first Open Forum, where we discussed vaccine mandate best practices, and we are planning to hold more open forums and networking events in the spring. Stay tuned.

Gratitude...

This second year of the COVID-19 pandemic has been in many ways more challenging than the first year, but as the holidays are upon us and we are nearing the end of 2021, I know a lot of us are reflecting on what we are thankful for. One of the things I am most thankful for is to be a part of such an amazing group of dedicated and caring professionals. So, thank you for all that you do. I wish you a season of joy and a healthy and happy New Year!

Julianna Mosier

Message From ACHRO/EEO Vice President/President Elect, Charo Albarran, MPA

I want to thank all of you who attended the 2021 ACHRO/EEO Virtual Fall Institute. We had 385 register for this conference !!! This is a testament of how strong and committed our HR family is! The conference was an information packed event covering topics such as, challenges from COVID related issues, ongoing Title IX regulations and DEI initiatives.

Thank you to all our sponsors and presenters! ACHRO/EEO is so appreciative of all the time and talent that was shared during the conference. The support we receive from our sponsors, vendors and presenters allows us to gain access to up to date information, services and products that make our lives as human resources professionals simpler. I want to also thank all the conference volunteers and moderators. It is amazing how many of you jumped at the opportunity to help when asked. I want to personally thank Saraeng Nhim, from State Center, for her expertise and time in setting up and managing the virtual platform that was used for the conference. She balanced a heavy workload of implementing vaccine requirements for her District while sacrificing any free time to ACHRO/EEO!!! Saraeng, you are incredible, and we are truly grateful. Lastly but not least, I want to thank Ron Cataraha and Ruth Cortez for their continued work and support to ACHRO/EEO.



I really wish we could have met in person, but I am looking forward to seeing you all next year. Our conference next year will be 'INPERSON' and will be held on October 25-28, 2022, at the Hyatt Regency Lake Tahoe, Incline Village, Nevada. Please mark your calendars and begin to reserve your hotel rooms. We are finally going to celebrate the 25th anniversary of ACHRO/EEO next year!!!

We have also been busy in revamping the ACHRO/EEO website. The goal of this project was to provide an up to date website that allows our organization to provide specific information that is needed for our respective roles. We have also explored updating the ACHRO/EEO logo! The new logo will incorporate the theme of people and community. ACHRO/EEO membership will get a chance to vote on the new logo soon. More information regarding the website and logo will be shared in the Spring of 2022.

Charo Albarran

Message from Past President, Diane Fiero

It is my honor to represent ACHRO/EEO on the State Chancellor's Office Consultation Council as the ACHRO/EEO Past President. The Board of Governors of the California Community Colleges is dedicated to ensuring representatives from all levels of the community college system have a voice on policy decisions. This includes the Consultation Council made up of 18 representatives of institutional groups, labor unions and students to help develop and recommend policy to the chancellor and the Board of Governors. The Consultation Council is chaired by the Deputy Chancellor and meets monthly to review and evaluate policy proposals and related issues. It has been a busy year that has seen many actions related to our DEI Implementation Team. Our representatives on that team are Gregory Smith and Irma Ramos. Each time we have a Consultation Council meeting, I send out notes and links in case ACHRO/EEO members are interested in learning more.



Dr. Diane Fiero

ACHRO/EEO 2020-2021 Officers & Support Staff



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ACHRO/EEO President,
2020-2022
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ACHRO/EEO 2020-2021 Chair Positions Regional Representatives

Chair Positions

Chair, EEO/Equity/Inclusion: Tre'Shawn Hall-Baker

Chair, Legislative Affairs: Beatriz Chaidez and Julie Kossick

Chair, HR Administration & Emerging CHRO Academies: Clint Dougherty

Regional Representatives:

North 14: Charo Albarran and Marrienne Williams

Bay 10: Nikki Harris and Eric Ramones

Central 14: Kelly Avila and Kayla Valentine

Southern 30: April Hebert, Flavio Medina-Martin, Greg Smith, and Sokha Song



HR changes around our state. . .

◆ **Retirees**

David Betts, Director of Employment and Labor Relations; Chabot-Las Positas CCD
Tracie Green, Vice Chancellor, HR; Rancho Santiago CCD

◆ **Promotions/New Hires/Assignment Changes**

Anna Bartkowski, Title IX/Civil Rights Comp. Officer; Cabrillo College
Jennifer Bartz, VP, HR; Barstow CC
Monica Blandford, Assistant Director, HR; Cuesta College
Margie Casillas, Benefits Analyst; Cabrillo College
Jennifer Druley, Director, HR; Chabot-Las Positas CCD
Diana Federico, HR specialist; Cuesta College
Angela Hoyt, Vice President, HR and Labor Relations; Cabrillo College
Amy Lamson, HR Specialist; Cabrillo College
Amy Mahoney, HR Analyst; Cabrillo College
Briana Martenies, HR Specialist; Cuesta College
Janene McIntyre, Asst. Superintendent/VP, HR; Southwestern CCD
Jesse Meeder, HR Analyst; Shasta College
Hilda Montanez, Director, HR; Cabrillo College
Roxanne Nicholson, HR Technician; Cabrillo College
Christine Phillips, District Director, EEO/Diversity & Prof. Development; State Center CCD
Megan Pierce, Executive Administrative Assistant; Cabrillo College
Loy Nashua, Vice President, HR; Long Beach CCD
Cynthia Nunez, Manager, HR; Long Beach CCD
Britney Ramirez, Recruiter; Merced College
Cristina Rocha, HR Specialist; Cabrillo College
Katerinne Alvarado Wing, HR Technician II; College of Marin



◆ **Degrees/Certificates**

Jesse Meeder, received an AA in Business Administration; Shasta College

***Update from our ACHRO/EEO Secretary/Treasurer,
Jeannine Stokes***



ACHRO/EEO
FINANCIAL SUMMARY REPORT
10/14/20-11/22/2021-Revised

INCOME

2021 Registration
2020-21 Membership
2021-22 Membership
2021 HR Academy
2021 Emerging CHRO
2020 Sponsor
2021 Sponsor
2021 Sponsor Software

INCOME

\$6,850.00
\$3,800.00
\$18,600.00
\$11,000.00
\$2,250.00
\$500.00
\$1,250.00
\$9,000.00

TOTAL INCOME

\$53,250.00

EXPENSES

Consultant Fee R. Cataraha
Consultant Fee R. Cortez
2019 HR Leadership
2019 CHRO
Software Expense Use Overage Accelevents
Website Expense
Electronic Transactions Exp
2021 Conference Expenses Accelevents
Refunded Sponsorship
Reorder of Checks
Refund overpayment
Virtual Conference Door Prizes
TOTAL EXPENSES

EXPENSES

\$22,500.00
\$9,000.00
\$55.00
\$0.00
\$1,173.00
\$3,000.00
\$340.00
\$4,000.00
\$0.00
\$36.00
\$150.00
\$359.90
\$40,613.90

BEGINNING BALANCE

\$ 55,798.51

INCOME

\$53,250.00

EXPENSES

-\$40,613.90

ENDING BALANCE

\$68,434.61

Thank you to our 2021 Vendors

We so appreciate your continued support and are happy to have you as part of the ACHRO/EEO family. We could not do this without you!!!



Virtual Conference Raffle Winners Prizes provided by our generous vendors

Michelle Bullock, Napa Valley College, \$50 Doordash gift card, from CODESP
 Dianne Dudek, San Jose-Evergreen CCD, \$50 Target gift card, from Alliant
 Chris Little, Butte College, \$50 Amazon gift card, from Alliant
 Clare Langeveldt, El Camino College, \$100 Amazon gift card, from Shaw HR Consulting
 Michelle McKay, San Jose-Evergreen CCD, \$50 target gift card, from American Fidelity
 Tina Middleton, Hancock College, \$50 Visa gift card, from Erickson Law Firm
 Sareang Nhim, State Center CCD, \$100 Amazon gift card, from Shaw HR Consulting
 Kenya Runyan, Los Rios CCD, \$50 gift card, from Cornerstone
 Staci Stangerone, Coast CCD, \$50 Visa gift card, from Erickson Law Firm



Free Registration to the 2022 ACHRO/EEO Fall Institute

Sandra Housden, Yosemite CCD; Loya Howell, Copper Mountain College; Sareang Nhim, State Center CCD; Harizon Odembo, Peralta College

We are excited to announce the ACHRO Excellence in Diversity, Equity, and Inclusion Award!

ACHRO/EEO is committed to recognizing, supporting, and developing leaders and Institutions on a mission to provide Diversity, Equity, and Inclusion (DEI) excellence. DEI excellence is providing exemplary service focused on continuing to identify, improve and implement DEI practices. The ideal recipient(s) will have a mindset and/or demonstrated efforts towards an organizational culture that maximizes every opportunity to be intentional and innovative in creating and advancing DEI within their College, within the California Community College System, and within the community. Those that are nominated must have effectively demonstrated achievement in DEI areas that lead to meaningful change related to institutional and employee-centered DEI enhancements, professional development, community service, selection and recruitment practices, and through serving and developing opportunities for students, employees, and community members who are historically underserved.



Categories for nominations:

- Human Resources professionals within the California Community College System.
- Multi-College and Single College Districts, or a single College or Center within a College District.
- Intergroup Collaborations (a group within the California Community College District strategically and intentionally addressing gaps in the efforts towards enhancing and addressing DEI initiatives and practices within the California Community College District.

Questions on the awards can be directed to Tre'Shawn Hall-Baker, ACHRO EEO/Equity/Inclusion Chair, at hallbaker_treshawn@smc.edu.

Campus Policing Task Force

On April 1, 2021, the Campus Police Reform Task Force held its first meeting as part of the California Community College's Call to Action issued in summer 2020. The Taskforce's purpose, goals, and outcomes are to clarify and develop a state-wide/system-wide approach to campus policing that advances the commitment to racial equity and student success in the Chancellor's Call to Action.

The Chancellor's Office Task Force includes twenty-two members, representing a diversity of stakeholders and campus executive leaders throughout the community college system. The charge focuses on reimagining campus policing to advance the commitment to diversity, equity, and inclusion; create consistency within the community college system; shift campus-based policing reform to ensure the most welcoming environment possible for students and others on campus.

In December 2021, the task force recommendations for reimagining campus policing will be presented to the California Community Colleges Board of Governors. The final Task Force meeting will wrap up in late January 2022. For more information on Campus Police Reform, please go to [Newsletter/Campus-Policing](#).

Task Force member, Nikki Harris, Executive Director of HR at the College of Marin

DEI Implementation Plan Update

The summer and fall have been highly productive for the DEI Implementation Workgroup. We have completed approximately 60% of the DEI implementation strategies, addressing a wide range of pre-hire, hiring, and post-hire activities to increase the diversity of our workforces and create meaningful equity and inclusion for our diverse communities.

Early next month, the DEI Implementation Workgroup will be reviewing an exciting set of recommendations that reimagine how we market employment opportunities, recruit diverse applicants, define “most qualified” with an intentional focus on DEI skills, collect information from applicants, screen for technical and DEI qualification, and conduct interviews. With support from the Academic Senate, trustees, CEOs, CIOs, ACBO, CSSOs, and Student Senate, we expect the recommendations will be adopted and incorporated into the final set of implementation strategies presented to the Board of Governors. Once approved, we will conduct a pilot program for interested districts to conduct selected recruitments using the DEI-centric model. During the pilot, we will collect and analyze data on the outcomes to determine how well we are achieving our desired outcomes. Look for more information on how your district can participate on the ACHRO listserve in January.

DEI strategy recommendations developed by ACHRO’s DEI workgroups can be found on our website at <http://achroeeeo.com/diversity-equity-and-inclusion/>. You will find strategies for increasing student participation in screening committees, diversifying participation in screening committees, revising Exit Interviews to collect data on DEI-related employee experiences, conducting open houses to increase the diversity of our applicants, revising employment websites to better market the DEI-focus in our districts, and draft recommendations on the application, screening, and interview processes.

Thank you to the many ACHRO/EEO members who have contributed to the development of our strategy recommendations!

Thank you,

Greg Smith

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ACHRO HR Academies Update

First we would like to again recognize and congratulate all of our 2021 ACHRO HR Administration and ACHRO Emerging CHRO academy graduates. They completed a year long, 10 session, academy which provided information, discussion, and interactive activities on subjects such as labor negotiations, EEO and Diversity, Title IX, dealing with conflict, employee relations, legal issues, Brown Act, and handling grievances. ACHRO/EEO would also like to thank the presenters; Erickson, AALRR, and LCW Law Firms, and our HR Leadership Greg Smith, Irma Ramos, Abe Ali, Juli Mosier, Cindy Vyskocil, Wyman Fong, Diane Fiero, and Charo Albarran. I also want to give a special shout out to LaToya Bass and Jeannine Stokes who worked in the background on logistics and scheduling. Thank you all so much!



Looking ahead, and by popular demand, ACHRO/EEO will again offer the HR Administration and Emerging CHRO Academies for 2022. This time we plan to have the sessions back in person where the very important networking and development of professional relationships can again take place. Be on the outlook for the announcement for applicants in January. The schedule is still being worked out but the first session will likely occur in March/April time frame followed by three other sessions ending at our next ACHRO/EEO conference. Our Academy facilitators and planners for next year will be Greg Smith, Jeannine Stokes, Tre'Shawn Hall-Baker, and myself. We hope to continue these Academies in support of Community College HR and growing our own leaders.

Clint Dougherty



How Free is “Free Speech” for Law Enforcement?

“Congress shall make no law . . . abridging the freedom of speech, or of the press.” What does this mean for us in our roles as professionals today? Generally speaking, in an employment context, it means that government employers may not take adverse action against employees based on what they say or write, except in exceptional circumstances. Freedom of speech is one the founding ideals in this country; however, this right of free speech we are afforded comes with great responsibility.

This article examines the pitfalls of free speech and social media as applied to law enforcement – nonetheless, the basic principles should be understood to apply to all public employees. While it seems that the question of free speech and law enforcement has become more common in the past five years, in reality, this issue has been discussed in American Jurisprudence for over one hundred years. Case in point, the 1892 case of *McAuliffe v. City of New Bedford*, Massachusetts Supreme Judicial Court Justice Oliver Wendell Holmes, which is regarded as one of the most reasoned jurists of all time, made written statements in regard to a police officer’s First Amendment right of free speech. Justice Holmes expressed that he [the police officer] “may have a constitutional right to talk politics, but he has no constitutional right to be a policeman.”

While this statement was written over one hundred years ago, the principal still rings true in today’s world. For example, last year in 2020, a Long Beach police officer was terminated after posting graphic images of blood splattered on a wall and picture of the officer holding a night stick, with the caption stating, “Bro getting his.” In addition, also consider the Fulton, New York police officer who was fired after posting a meme on her Instagram story that stated, “Black [sic] people only care about Black lives when they are ‘killed by a white person.’”

Most of you reading this article may think it is easy to avoid the problems by consciously avoiding posting anything political; however, be warned, officers that have merely commented on the provocative posts of other current or former co-workers have experienced adverse employment impact to their careers. For example, nine Oakland Police Department officers were disciplined after the department discovered their comments on a former Oakland police officer’s Instagram page. The investigation revealed that the nine officers also made provocative posts, to include memes and images, that joked about police brutality, rape, and jokes made to undermine constitutional policing reforms.


Moreover, statistics demonstrate that this issue of law enforcement's problematic relationship with social media is widespread. Case in point, according to a BuzzFeed News report from 2019 on the Plain View Project, a database of public Facebook content posted by police officers in the U.S., one in five current police officers and two in five retired police officers across the country had posts "displaying bias, applauding violence, scoffing at due process, or using dehumanizing language" on Facebook alone.

The easiest solution to this issue is to stay off social media, period. However, if you feel quitting social media "cold turkey" is too difficult, then the following guidelines can help prevent you from experiencing negative consequences. First, remember that if you are on duty, you represent your department or agency. Second, if you are off duty, but still in uniform, then you also represent your department or agency. Lastly, if you are off duty, but have pictures of yourself in uniform or you identify yourself as an employee of your agency on your page, then you still represent your agency. If you want to exercise your right to free speech on social media, then do so within the law, as a person, as a citizen, with nonviolent posts.



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Digital Communications for Better Employee Engagement

With open enrollment season upon us, how will you engage your employees who may still be working from home or don't have access to company computers? Alliant can help by moving your organization to a digital-first communications approach which will make reaching employees anywhere both easy and cost-effective.

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Henry Beceiro: (619) 849-3735 (Southern California)
Christine Kerns: (415) 403-1462 (Northern California)

Alliant is proud to sponsor the ACHRO/EEO 2021 Fall Institute.



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New Legislation Effecting Classified Employee Probationary Periods

On August 23, 2021, the Legislature passed Assembly Bill 275 through both chambers, with the intent of amending Education Code Section 88013. On October 6, 2021, the Governor signed the Bill. The effective date of the amendment is January 1, 2022.

The effect of AB 275 will be to cut the probationary period for classified personnel in half. Under existing law, the governing board of a district could adopt or negotiate rules regarding probationary periods for classified employees so long as the period of probation did not exceed one year. (Educ. Code § 88013(a).) The amendment effectively reduces the maximum statutory probationary period from one year to "six months or 130 days of paid service, whichever is longer." College police personnel, including officers and dispatchers, are exempt from the lowered probationary threshold.

The author of Assembly Bill 275 indicated that the intent of the Bill was to standardize the probationary period between merit and non-merit districts. Further, the author noted that in 2019, AB 1353 reduced the probationary period for K-12 classified personnel, and that "Community college classified employees working in non-merit districts were inadvertently left out." (Sen. Comm. on Labor; June 21, 2021.) The Legislative history and analysis indicate that objections were raised regarding the impact that a Personnel Commission may have on evaluating employees during probationary periods, as well as the relative disparity the Bill would work on new applicants not given the chance to grow into their expected roles, but those arguments were not persuasive. (Bill text, History, and Analysis may be accessed at: <http://leginfo.ca.gov>.)

The Assembly Bill includes a limited exception that permits a collective bargaining agreement that contains a probationary period of up to one year reached before January 1, 2022, to remain in effect until its expiration. However, for districts that have not renewed an expired bargaining agreement on or before January 1, 2022, or who have an agreement that will expire at the end of the current academic year, the effect will be immediate. This may include the effect that immediately grants permanent status to a probationary classified employee who has served more than six months as of January 1, 2022.

In the time remaining before the effective date, we recommend that districts ensure that probationary classified evaluations are scheduled and consult with district supervisory personnel in order to properly assure that any performance concerns are addressed prior to probationary employees passing into permanent status.

As a general rule, only those individuals who have served as probationary classified employees for the requisite time period have a recognized property interest in continuing employment. (*Board of Regents v. Roth* (1972) 408 U.S. 564, 577.) As a result, probationary employees may generally be released at any time and for any non-discriminatory reason. This includes any articulable performance concerns, which may permit the district to release an employee during the initial probationary period. In determining what constitutes a sufficient reason for the release of a probationary employee, courts have held that the district provided sufficient justification for releasing probationary personnel where the employee was simply "not a good match for the district." (*California Teachers Assn. v. Mendocino Unified School Dist.* (2001) 92 Cal.App.4th 522, 530.) Complicating matters, no disciplinary action may generally be taken against a permanent employee for conduct that occurred prior to the employee gaining permanent status. (Educ. Code § 88013(d).)

The efficient operation of the district is of paramount importance, and this legislation may impact current policy development or collective bargaining efforts. Additionally, disciplinary proceedings involving permanent classified personnel can be time consuming, costly, and frustrating for all involved. It is for these reasons that we are bringing attention to the potential impact of the new statutory requirements so that districts have time to address any foreseeable impact upon the district. Further, once AB 275 and the amendment to Education Code Section 88013 becomes effective, we recommend that districts closely monitor the performance of its probationary classified employees and exercise its broad discretion to release them if the employee exhibits concerning behavior or is not performing at a high level.

If you have any questions or concerns, or if you would like to further discuss this matter, please do not hesitate to contact our office.



Fitness for Duty Examinations & the Disability Interactive Process

By Rachel Shaw

Simply put, a Fitness for Duty (FFD) Examination is a tool you use when you are stuck. The disability interactive process requires clear medical information in order to base reasonable accommodation decisions on. Obtaining this data is often a roadblock for employers. The key to FFD Examinations is understanding how and when to best use it, and what information it should yield.

An employer can coordinate an FFD Examination with a qualified health care provider whenever the need to do so is job related, consistent with business necessity¹ and there are objective facts² that pose a safety concern or pose a concern that an employee is not fully performing the duties of the job. FFD Examinations are primarily used when clarification on work restrictions, leave needs and the duration of each is needed and:

- an employee is unwilling to have their health care provider provide this information;
- an employee's health care provider is unable to provide the information;
- an employee's health care provider gives information that is not sufficiently clear;
- an employee's health care provider gives information that is unreliable, inconsistent, or not logical, based on past information (this is a judgment call that carries more risk); or
- there are multiple health care providers involved (in which case an FFD Examination *may* be helpful).

Per the Equal Employment Opportunity Commission (EEOC), an employer must have "reasonable belief" based on "objective evidence" that an employee may have a disability impacting him or her at work. A concern for an employee's general welfare is not an acceptable reason to conduct an FFD Examination. Further, an FFD Examination would not be used unless an employee has triggered the organization to act under the Americans with Disabilities Act (ADA) and there is a concern the actual or perceived medical condition is impacting the employee to fully or safely perform the work assigned.

It is important to remember, under the ADA, as an employer you are looking to understand *only* two things. These two things are: 1) if the employee has a disability that substantially limits performance at work, and if yes, what are the employee's work restrictions, functional limitations and / or leave needs, and 2) the duration of the work restrictions, functional limitations and/or leave needs.

¹ 42 USC § 12112(d)(4)(A)


² <https://www.eeoc.gov/policy/docs/guidance-inquiries.html>

That's it. You are looking to obtain just those two things. You are not asking for the name of their disability or specifics on their treatment.

Before conducting an FFD Examination, it is typically best to first attempt to gather this information from the employee's health care provider via a letter and questionnaire. If you don't receive it, or if it is not sufficiently clear, you may need to request clarification a second time before moving to an FFD Examination. There are some exceptions this "rule," for example, if an employee refuses to allow their provider to participate, does not have a provider, or if there is a significant and immediate safety concern. In these cases employers may go straight to an FFD Examination. Be prepared to document in detail the business need to do so and include notes on why obtaining medical clarification from the employee's health care provider was not done.

Finally, know you may or may not get the medical opinion you prefer when employing an FFD Examination and you are stuck with your doctor's opinion. The goal is to make the right decision based on objective facts from a neutral health care provider. In the end, managing the interactive process is hard work, it requires that you work to gather objective facts on what your employees can and cannot do. Once you have this clear data point, and know how the disability impacts the traditional job performance, you are prepared to move forward and make reasonable accommodation decisions.

Rachel Shaw is the principal consultant of Shaw HR Consulting, a Human Resources firm specializing in providing employers with a full range of Disability Compliance Management consulting and training services to support their compliance with federal and state disability and leave laws. Rachel is also the author of "The Disabled Workforce: What the ADA Never Anticipated."



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Unique Ways to Save on Your Benefits Program

October 12, 2021

4 minute read

Category: [Benefits Strategy](#)

In a time where the price of almost everything seems to be skyrocketing, finding savings can feel like finding a unicorn. Like the demand on housing - food, furniture, gas, and even employee benefits are also having their moment.

How do you find savings within your benefits program?

There are strategies to help control benefits costs, such as implementing wellness programs and telemedicine. But, possibly one of the most effective ways to find savings on your current program is to educate your workforce on the benefits you offer and how to best use them.

Having a benefits-savvy staff could mean lower claims costs for you.

Set Your Strategy

Many employers are struggling with how to communicate to their employees in this new age. The same challenges that always existed - tight budgets and slim staff - are now coupled with the reality of a remote workforce.

[Effective benefits communication](#) helps employees so they can be motivated to make better decisions. By doing this they will naturally become smarter consumers.

94% of employees do not have a very high level of understanding of their health benefits¹

Start your strategy by asking yourself how you like to receive information. If you're like many, you want consistent education through multiple, easy-to-understand mediums.

Best practices for employee education include frequent and targeted communications through postcards, email, and your organization's social outlets, and group meetings prior to enrollment to reach all your people. Individual education may now be more essential than ever in ensuring employees understand their benefits and how to use them.

Read: [How COVID-19 Should Change Your Benefits Communication Strategy](#)

Geoff Macy, former Chief Operating Officer at Northwest R-1 School District in Missouri turned to American Fidelity for help communicating benefits information to his multi-location district. [Watch his story.](#)

“The idea that people are utilizing the benefits people are paying for and they’re utilizing it to increase their quality of life, to me that’s the greatest thing that American Fidelity has done for Northwest.” Geoff Macy, COO

Once you determine and set your communication strategy, consider other tools to help drive additional savings.

Promote Total Wellness

Across organizations, there’s a surge in prioritizing employee wellness programs. Traditionally, these included benefits like group fitness programs, on-site medical facilities, healthy snacks, or subsidized healthy lunch options. And in some programs, more complex benefits, like biometric screenings to identify areas of improvement.

Today, more employers are also adding access [mental health resources](#) to which may provide employees free counseling sessions or subscriptions to wellness apps, as examples. Upfront access to preventative services that support total wellbeing may help your organization from incurring claims often related to behavioral health.

Include Access to Telemedicine

Telemedicine also provides opportunities to develop lower-cost alternatives to traditional primary care. Telemedicine can be a good first line option for basic care, and can be particularly effective in rural communities, where access to doctors may require significant time and effort. Usually, the cost-per-visit is lower than an in-person appointment and allows your employees to visit with a provider on their schedule.

Implement Health Literacy

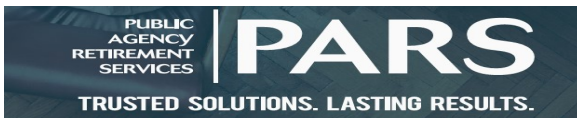
Employers can encourage cost-saving behaviors by offering employees opportunities to learn more about making healthy choices, from the food they eat to the benefits they elect. If done well, these can be win-win, reducing costs for both the employer and the employee.

Read: [Wellness at Work: Adjusting Your Benefits Program for a Changed America](#)

This blog is up to date as of September 2021 and has not been updated for changes in the law, administration or current events.

¹International Foundation of Employee Benefit Plans: Trends in Benefit Open Enrollment and Communication: 2020 US Survey Report; September 2020. <https://www.ifebp.org/store/Pages/open-enrollment-communication-survey.aspx>, accessed on April 7, 2021.

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Retiree Benefits: Avoiding Compliance & Regulatory Landmines

At the ACHRO/EEO Fall Virtual Training Institute 2021 Julianna Mosier, Vice Chancellor of Human Resources of State Center CCD moderated a panel on "Retiree Benefits: Avoiding Compliance & Regulatory Landmines". Julianna asked questions of Maureen Tool of PARS, Michelle McKay Underwood of School Services of California, and Marcus Wu of Pillsbury Winthrop Shaw Pittman LLP. For those who could not attend this informative session, this article highlights some of the questions and answers discussed.

Julianna explains that the topic arose when the IRS selected State Center Community College District for an audit: "This workshop came about because Maureen, Marcus and I worked together on a complex retiree health benefit issue that came up at my district back in 2017-18. Maybe other districts could benefit from what we learned from that situation and from more education around retiree benefits regulations and compliance."

Here are just a few of the questions and answers covered related to providing post-employment benefits to retirees. (Information about accessing the virtual presentation/recording is included at the end of this article.)

What is IRS Constructive Receipt?

In its Constructive Receipt Rule, the IRS stipulates that an employer cannot offer employees or retirees the choice between a taxable and non-taxable benefit. For instance, employees cannot choose between a retiree healthcare benefit which is non-taxable or a cash benefit or retirement plan benefit which is taxable.

Violating Constructive Receipt can result in penalties to both employers and employees.

What are the Restrictions on Paying Out Cash Post Employment?

Districts need to be careful about how they pay out compensation post-employment to avoid "ineligible" deferred compensation and other IRS rules. Section 457(f) of the Internal Revenue Code governs "ineligible" deferred compensation plans or arrangements maintained by tax-exempt employers. Section 457(f) does not apply to retirement plans that are qualified under Section 401(a), Section 403(b) plans, or deferred compensation plans that qualify for special tax treatment under Code Section 457(b) (i.e., "eligible" deferred compensation plans). Other plans, such as bona fide severance pay, vacation leave, sick leave, disability [pay](#) or death benefit plans are also exempt from Section 457(f). As bona fide severance plans are not deferred compensation under IRC 457(f), cash payouts at retirement come with certain restrictions. For instance, all payments must be completed by the end of the second year after the severance has been completed and can be no more than double the employee's salary. In addition, both the employer and employee are subject to payroll taxes which must be paid immediately upon receipt of the funds.

Cash payouts that are made after this "2-year" mark can be considered ineligible deferred compensation and employees/retirees can be taxed and penalized as if money was received in the first year.

What are the Restrictions on Using a 403(b) Plan for Post-Employment Benefits?

Under 403(b) plan rules, employers can make contributions for up to 5-years post-employment into a 403(b) plan on behalf of a retiree or separating employee, and this may be helpful for budgetary or cash flow purposes.

From a plan participant standpoint, these offerings also may be more attractive than cash because taxes are not paid until the benefit is received, funds can be rolled over into an Individual Retirement Account (IRA), another 403(b) plan, a 457 plan or another tax qualified plan. The benefit amount can be annuitized for multiple payout options exist (lump sum, fixed-term, lifetime etc.)

How Can a District Avoid Age Discrimination in Employment Act or EEOC Issues When Offering a Voluntary Early Retirement/Separation Incentive Benefit?

To avoid the age discrimination, an incentive should not be based on age, but rather length of service or other neutral criteria. It can be based, for example, on age and service together (such as STRS/PERS eligibility). To ensure fairness, the EEOC guidelines state that all incentives should have an offer enrollment window of at least 30 days.

How Should Retirement Incentives be Communicated to Employees?

Employees should never be pushed towards retirement or separation when communicating an early retirement/separation incentive. It must be voluntary. Information provided should remain strictly educational. All materials should clearly and carefully explain what is being offered and include details on IRS rules and tax implications.

How Can Districts Set Aside Funds for Post-Employment Benefit Costs, such Retiree Healthcare (OPEB) or Pension Under IRS Rules?

The IRS has deemed through Private Letter Rulings that post-employment benefits, such as retiree healthcare or pension, are "essential government functions," which allows districts to set aside funds or pre-fund these benefits within an IRC Section 115 trust.

Once assets are in such a trust, they can be used under IRS rules to: 1) reimburse a district for retirement system costs (STRS/PERS) or retiree healthcare costs; or 2) make a payment directly to the retirement system or healthcare provider.

What Types of Supplemental Retirement Plans are Prohibited Post-PEPRA in California?

The California Public Employees' Pension Reform Act (PEPRA), which took effect in January 2013, eliminated the ability of districts to offer supplemental defined benefit (pension) plans. IRC 401(a) supplemental defined benefit plans previously allowed districts to make employer contributions post-employment to enhance benefits. Existing supplemental pension plans are grandfathered if in place prior to 2013.

Why Types of Supplemental Retirement Plans can a District Provide to Employees to Help Them Enhance Their Retirement Benefits (Beyond STRS and PERS)?

Districts can offer employees any or all of the following: 401(a) defined contribution plan, 403(b) plan, and 457(b) plan. Districts can utilize 403(b) plans for employer contributions post-employment on behalf of retirees, now that 401(a) defined benefit plans are not permitted due to California law.

What are the Limits on Employer and Employee Contributions for 2021 for Each Plan Type and Do the Limits Coordinate with Each Other?

The table below shows the limits on employer and employee contributions by plan type in 2021¹

Plan Type	Employee Contribution Limit	Employee & Employer Contribution Limit
401(a)	\$58,000	\$58,000
403(b)	\$19,500*	\$58,000
457	\$19,500*	\$19,500*

*Employees age 50 or older may contribute an additional \$6,500 as a “catch up contribution”

When used in coordination with each other, the total employee/employer contribution limits for all three plans, while an individual is employed, is \$137,000. Post-retirement employer contributions up to \$58,000 into a 403(b) plan are also allowed. Please note that these limits change in 2022 (and do so annually).

What Federal Regulatory Body Has Jurisdiction Over Governmental Retirement Plans?

Jurisdiction for governmental retirement plans and trusts lies with the IRS, whereas private sector plans are overseen primarily by the Department of Labor. Governmental employers and plans are exempt from the federal Employee Retirement Income Security Act 1974 (ERISA). Since non-ERISA, governmental retirement plans do not have to adhere to top heavy, discrimination testing, and other private sector ERISA retirement plan rules, public employers have more flexibility in terms of plan design compared to their private sector counterparts.

For further information on supplementary retirement plans and trusts, or a copy of the ACHRO presentation, please contact Maureen Toal, Public Agency Retirement Services (PARS) at mtaal@pars.org or (844) 540-6732. PARS does not provide legal, tax, or accounting advice.

Please consult your legal counsel and IRS and state law for matters related to retiree benefits compliance for your particular district's situation.

PARS is the California leader in the analysis, design, implementation and administration of supplementary retirement plans and has been providing these services to California community college districts for over 35 years. PARS pioneered the Pension Rate Stabilization Trust Program in partnership with the Community College League of California and is the largest private provider of OPEB trusts in California. We are a proud long time sponsor of ACHRO-EEO.



ACHRO/EEO's 25th Anniversary was 2020, but because we had to cancel the live conference, we will be celebrating in 2022. The conference will be held:

**October 25-28, 2022
Hyatt Regency Lake Tahoe
Incline Village, Nevada**

