



“THE COMMUNICATOR”

2019 Fall Edition

Volume XIV, Issue 1

**Welcome Message ACHRO/EEO President,
Diane Fiero**

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Greetings! I hope this message finds you well and having a wonderful Fall 2019 term at your Districts. Thank you for the confidence you have placed in me to lead ACHRO/EEO for the 2019-2020 year. Julianna Mosier (ACHRO/EEO VP) and I are excited about the year ahead. I want to thank Dr. Cindy Vyskocil, our current ACHRO/EEO Past President, for her expert leadership and partnership over the past year. As your new president, I am dedicated to ensuring that ACHRO/EEO provides a vital network of support for CHRO leaders, works to foster and develop the leaders of the future, and remains a relevant and respected statewide association.

I also want to thank Gene Huff and Abe Ali for their continued efforts in providing exceptional training opportunities through the Leadership Academy and the newly launched Emerging CHRO programs. We had excellent participation in both highly acclaimed programs. Thank you to our partners at both AALRR and LCW for their partnership in and dedication to making us all more informed professionals.

As you are aware, during the past year we have made significant changes to our leadership structure. The work on this change started right after our last conference and came to fruition after a successful vote to revise our Constitution and Bylaws in May this year. I want to specifically thank Cindy Vyskocil and Abe Ali for their partnership and focus in moving these directives forward. Due to our teamwork approach, we now have comprehensive representation and a very capable Board of Directors. This structure will ensure that we receive input from our regional groups across the state, have the leadership structure in place to carry out initiatives, and can effectively advocate on behalf of all of our members. In these challenging times, it is vital that our collective and insightful voices are heard in Sacramento. I am please to announce our new Board of Directors members:



Board of Directors (Includes all positions below):

Executive Committee:

President 1-Year Term (phasing in new terms): Diane Fiero, 2019-2020
 Immediate Past President 1-Year Term: Cindy Vyskocil, 2019-2020

Vice President/President Elect 1-Year Term: Julianna Mosier, 2019-2020,
To be followed by the first two year Presidential term 2020-2022
Treasurer/Secretary 3-Year Term: Jeannine Stokes, 2018-2021

Chair Positions:

Chair, EEO/Equity/Inclusion 2-Year Term: Currently vacant
Chair, Legislative Affairs 2-Year Term: Irma Ramos, 2019-2021
Chair, HR Leadership Academy 2-Year Term: Gene Huff, 2019-2021

Regional Representatives:

Bay 10:

Eric Ramones, Gavilan College, and Nikki Harris, College of Marin

Central 14:

Tonya Davis, Kern CCD, and Kelly Underwood, Merced College

North 14:

Charo Albarran, Napa Valley College, and Gregory Smith, Shasta College

Southern 30:

Will Surbrook, San Diego CCD, Flavio Medina Martin, Santa Clarita CCD, Sokha Song, Mt. San Antonio College, and Tracie Green, Rancho Santiago CCD

As always, I want to hear from you, our esteemed colleagues, about issues that are of importance to you. I invite you to let me know of issues that you would like to see ACHRO/EEO take on in the coming year. I look forward to seeing you all at our conference in October at the Hyatt Regency in Garden Grove/Anaheim. I want to thank Ron Cataraha and Ruth Cortez for their continued support on our behalf to make the conference informative, fun and affordable.

Sending my best to all of you,

Diane M. Fiero

***Update from our ACHRO/EEO Vice President/President Elect,
Julianna Mosier***



I am honored to have been elected as the new Vice President/President Elect. I look forward to seeing and networking with all of you at our conference this year in Orange County, and I want to thank you for all that you do every day in human resources to support the students you serve. We have an incredible line-up of sessions and speakers at the conference this year. I also look forward to learning from each of you what you are doing at your Districts that is innovative in the field of human resources. I am excited to work with Diane over this next year to ensure ACHRO/EEO continues to provide the high level of value that you have come to expect.

Julianna Mosier

ACHRO/EEO 2019-2020 Officers & Support Staff



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HR changes around our state. . .

◆ Promotions/New Hires/Assignment Changes

Charo Albarran, Associate Vice President, HR & Train. & Development, Napa Valley College
Sarah Bish, HR Analyst, Shasta College
Lori Blodorn, Director, HR, Kern CCD
Amalia Calderon, HR Specialist, Kern CCD
Caroline Chretien-Shook, Ex. Director, HR/Personnel Commission, Long Beach CCD
Karen Dubert District Director, Employee Rela. & Title IX Comp., South Orange County CCD
Gene Durand, Vice President, HR, Long Beach CCD
Sandi Edwards, HR Analyst, State Center CCD
Dan Evaro, Clerk Receptionist, Butte-Glenn CCD
Leah Goodlife, HR Analyst, Butte-Glenn CCD
Mercedes Gutierrez, Director, HR, Los Angeles CCD
Sherri Lee-Lewis, Vice President, HR, Santa Monica College
Selena Lee, Supervising HR Analyst, Butte-Glenn CCD
Kristin Olson, Associate Vice President, HR, Long Beach CCD
Teresa Palacios, HR Specialist, Sr., Butte-Glenn CCD
Tiffany Selby, HR Specialist, Butte-Glenn CCD
Jeannine Stokes, Chief Human Resources Officer, San Jacinto CCD
Deana Sweeney, Admin. Assistant, Butte-Glenn CCD
Amy Westlund, Director of HR, Shasta College





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PARS also offers the following innovative solutions:

- Pension Rate Stabilization Program in partnership with Community College League of CA
- OPEB Prefunding Trust Program
- Alternative to Social Security for Part-Time and Adjunct Staff

DON'T MISS OUR WORKSHOP SESSION!

"Deficits and Declining Enrollment: Shaping a Future Workforce in Difficult Times"

Oct 24, 2019: 2:00-3:15 pm

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Mental Health in the Workplace

By Rachel Shaw

Accommodations related to stress psychological disabilities are on the rise. Situations can be challenging especially when related to depression, stress, learning disabilities, working with others and personality issues. The World Health Organization (WHO) has reported depression is the leading cause of ill health and disability worldwide. One in four American adults experience mental health problems in any given year¹ with employees suffering from depression alone reporting the equivalent of 27 missed work days per year. The impact is tangible with cumulative economic output loss projected to be \$16.3 trillion worldwide, making loss related to mental disorders comparable to cardiovascular diseases—and higher than cancer, chronic respiratory diseases, and diabetes².

“If you want to take on the real killers of productivity, innovation and retention you must build a workforce that has the ability to successfully struggle through issues—both personal and professional—and believes you care.”

High workloads and other factors in today’s workplace have led to an increase in workers’ compensation claims related to stress. This equates to a loss in productivity, and less innovation in American organizations. Today, too much leave goes unmanaged, tolerated and simply not budgeted for.

What are employers to do?

The key is to think differently about your role in managing and emotionally supporting your workforce. The fact is the often prevailing attitude of “that’s not our job,” is not working. And, the leave is costing our organizations too much. We work hard to understand and stay abreast of analytical, legal and procedural work but we cannot forget we must also continue to be the heart of our organizations. If you expect to take on the real killers of productivity, innovation and retention – you must build a workforce that has the ability to successfully struggle through issues – both personal and professional – and believes you care.

Employ Your EAP

Investment must be placed in both creating better and more robust Employee Assistance Programs (EAP) as well as ensuring correct staffing exists to support employees. On average, fewer than 6 percent of employees use an employer-funded EAP. Let’s change this! Stress, depression, and anxiety impact employees and your bottom line. A good EAP can positively address these matters to provide immediate outcomes such as improved attendance and productivity as well as helping the employee learn lifelong coping skills.

Manage Leave with the Interactive Process

Once support programming and staff are in place, an organization needs to make sure it is managing leave appropriately. Because almost all psychological or mental disabilities are covered under the Americans with Disabilities Act (ADA), your organization must engage in an interactive process with employees to determine if there are reasonable accommodations that, if implemented, would help an employee fully and safely perform the job even with a disability. Accommodating a mental disability is often the most complex because needs are often not tangible or clear at the outset. Moreover, there is no single accommodation solution for psychological disabilities – they are always employee specific.

Use the Disability Interactive Process Hallway™ and begin at Door #1 by gathering medical documentation — through a Family and Medical Leave Act second opinion, medical supplemental questionnaire, or fitness-for-duty exam — to determine if a disability is impacting the employee and, if so, what are the functional limitations and work restrictions. Move into the hallway with an attitude of being diligent, honest, and fair, and it will lead you to a decision you can feel confident about.

Rachel Shaw is the founder and president of Shaw HR Consulting, Inc. a firm offering training, programming and consulting services related to disability compliance. She is also the author of the award-winning, and industry best-selling book, “The Disabled Workforce: What the ADA Never Intended”



¹ National Alliance on Mental Illness (NAMI)

² “The Economic Costs of Mental Disorders,” by Sebastian Trautmann, Jürgen Rehm, and Hans-Ulrich Wittchen, 2016

CLIENT NEWS BRIEF

“She Said, He Said”: Appellate Court Weighs In On Fairness Requirements In Student Sexual Assault Discipline Case

On April 23, 2019, a California appellate court ruled against a private college for failing to properly provide an accused student with a fair hearing in a sexual assault case that led to the student being suspended from college for two years.

Doe v. Westmont College involved an alleged rape of a female college student (Victim) by a male college student (Accused) and demonstrates the necessity of fairness for all parties involved in contested student sexual assault discipline cases. In *Doe v. Westmont College*, the court concluded that the college denied the Accused a fair hearing when it failed to allow the Accused to fully respond to all evidence against him at a hearing before a neutral disciplinary panel, and the panel failed to question all relevant witnesses.

Background

In January 2016, multiple students gathered at night at an off-campus house for a party. The Victim and the Accused arrived separately with friends, interacted with multiple people throughout the night, and accused one another of smoking marijuana and drinking alcohol.

The Victim alleged that at some point later in the night she and the Accused were alone and agreed to go on a walk together. While walking, the Victim alleged the Accused began making comments of a sexual nature, touched her sexually without her consent, and then forced himself upon her. The Accused disputed all of the allegations, claiming that the walk never happened and that he was with a friend at the party for the entire evening.

The Victim, the Accused and multiple witnesses were interviewed by an associate dean during a preliminary investigation. The dean recommended that the allegations be put before a student discipline panel. The panel consisted of the dean and two additional staff members. The panel found in favor of the Victim and the Accused was suspended from the college for two school years. The Accused challenged this action in court.

Court of Appeal Holdings

The Court of Appeal found that the Accused had been denied a fair hearing since the panel did not hear testimony from all critical witnesses and the information and documents circulated were not shared equally with the Accused. Another factor which the court considered to a lesser extent was the role of the dean throughout the entire investigation and adjudication process. While the court did not prohibit the dean from serving on the student discipline panel, the court questioned the ability of the panel to be fair since the dean conducted the preliminary investigation, and then served on the student discipline panel. While the Court did not specifically analyze issues under Title IX of the Education Amendments Act of 1972, the Court's decision seems to be consistent with the guidance that has been issued by the Office for Civil Rights on addressing sexual assault on college campuses, which calls for due process protections for all students. California's Title 5 regulations also



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As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.

provide specific due process protections for all students in these types of cases and requires certain procedures be followed in processing complaints of sexual violence on campus. Some of the Title 5 requirements, such as deadlines for investigation, may differ from Title IX requirements and thus community colleges must take care to ensure compliance under all applicable regulations.

Takeaways

This is one of many recent cases that serves as a reminder for educational agencies to be impartial and to provide fundamental fairness to the accused during both investigations and student discipline hearings. When conducting student expulsion hearings, especially in contested sexual assault cases, it is recommended that colleges and districts:

- Make available to the accused all documentary evidence that will be used at the hearing, prior to the commencement of a contested expulsion hearing.
- Be judicious with respect to the use of “fear declarations” to ensure that declarations are only used in lieu of personal testimony in student expulsion hearings when lawful, particularly since the use of a fear declaration deprives the accused of the right to confront a witness.
- The administrator conducting the investigation should not serve on the administrative panel conducting the expulsion hearing.

It is also important to remember that investigations into allegations of sexual misconduct, including sexual harassment and sexual assault, implicate Title IX, which prohibits discrimination on the basis of sex and requires educational institutions to properly investigate and address any claims of sexual misconduct that have or could impact a student’s ability to participate in the educational environment. The Office of Civil Rights is currently developing regulations that will also provide direction to colleges and district in handling claims of sexual misconduct, which will likely enhance the due process rights of the accused.

Lozano Smith continues to expand its Title IX and investigations practice as the needs of public education agencies grow in this area. We offer advice and counseling, investigations, and numerous workshops on these topics. For more information and resources on Title IX, please visit our website at www.lozanosmith.com.

For additional information regarding student discipline matters, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcast](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).



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Updating Your EEO Plans

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Retiree Medical Challenges For Community College Districts

Public sector employers and in particular, Community College Districts are finding it increasingly difficult to provide affordable health care for their retirees. This benefit rarely found in the private sector contains a two-fold challenge to Districts.

First, the cost for retiree coverage continues to escalate and with that, it makes plans unaffordable to the District and its retirees. To make matters worse, District's Other Post-Employment Benefits (OPEB) continues to increase. OPEB is technically a debt owed by the Districts that must be disclosed on financial statements. To make matters worse, the Governmental Accounting Standards Board (GASB) has replaced GASB Statement 45 with GASB Statement 75. In doing that, it increases the Districts liability.

Secondly, health care delivery and insurance are very fluid, especially in California. Districts are finding it increasingly difficult to find insurance plans that provides appropriate benefits and provider coverage for both their Medicare and Non-Medical (Early Retiree) plans. This situation puts stress on the relationship between management and labor. Furthermore, retiree plans are difficult to administer putting additional strain on an already overworked Benefits Staff.

Each Districts challenges and programs are unique and require careful consideration. BrightPath Consulting Services has consulted on a myriad of post-retirement medical studies and have obtained significant results. Listed below are several ideas and strategies that have been successful for Districts:

- Changing Plan Eligibility Strategies
- Unblended Health Plan Rates
- Redesigning Plan Retiree Contributions
- Explore Lower Cost Programs
- Consider Private Medicare Exchanges

We understand and sympathize that controlling retiree health costs in the public sector market is a complicated and political challenge. Health Care should be taken to balance the financial requirements of the District and the needs of the retirees; however, by not taking immediate action, the District is placing it's future in financial jeopardy and risking that their current and future retirees will not have viable programs, especially with the looming upcoming pension changes that will be taking place in California.

If you would like to discuss these challenges in more depth, please feel free to contact us at:

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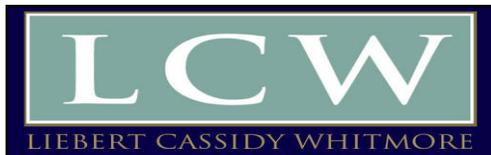
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Hiring Retired Annuitants

It may be convenient for a community college district to hire retired annuitants to perform certain district duties. However, as a general rule, a retiree receiving a CalPERS or CalSTRS retirement allowance is not permitted to be employed by an employer in the same retirement system without first being reinstated, and the law disfavors employment of retired annuitants. There are a few statutory exceptions that may apply, but a district may only utilize retired annuitants under very specific circumstances. The penalties include that the amounts earned by the retired annuitant for service to the district will be deducted dollar-for-dollar from their retirement benefits, reinstatement to active membership, employer catch up on contributions for the time the employee was employed, and administrative fees.

The following checklist will assist districts in ensuring that they have considered the necessary factors regarding whether to hire a retired annuitant. Districts should take care in hiring retirees due to the potential penalties and the specificity of exemptions.

CalPERS Retired Annuitants

When considering the potential hire of CalPERS retired annuitants, address the following questions:

- Is the retired annuitant hired to fill an academic position?
 - If the retired annuitant is enrolled in STRS while working in the academic position, there is no limitation on the employment.
 - If the retired annuitant is not enrolled in STRS, but is working in an academic position, their employment may be limited to no more than 960 hours in a fiscal year.
- Is the retired annuitant hired to provide non-academic service?
 - Extra Help: The appointment is during an emergency to prevent the stoppage of business or because the retiree has specialized skills needed in performing “extra help” work of limited duration, such as elimination of backlog, special projects, and work in excess of what the employer’s permanent employees can do.
 - The retiree may not fill a vacant position under this exception.
 - Work performed must be appropriately “outside the classified service” (e.g., short term, substitute, professional expert, etc.)
 - Interim Administrator: The retired annuitant is appointed by the governing board to a vacant administrator position on an interim basis while the district is actively recruiting to fill the position on a permanent basis where the appointment requires: (1) specialized skills or; (2) is necessary to fill during an emergency to prevent the stoppage of public business.
 - This applies to positions subject to appointment by the appointing power (e.g., classified administrators).

- The appointment must have an end date.
 - A district may only appoint the same retired annuitant once under this exception.
- Has the retired annuitant been retired for at least 180 days?

If the answer is **no**, the district may not utilize a retired annuitant unless an exception applies. Retired annuitants who received a retirement incentive or received unemployment insurance within the last 12 months arising out of other post-retirement work are not eligible for either exception.

- Exception One: The retired annuitant is former public safety officer and will be hired by the district to perform work of a public safety officer (e.g., college police).
- Exception Two: Is the appointment necessary to fill a critically needed position requiring the specialized skills of the retiree?

If the answer is **yes**, the District may hire the retired annuitant without a break in service of 180 days, provided:

- The governing board passes a resolution approving the appointment without the 180 break in service because the retiree has specialized skills needed to perform a critically needed position. The appointment may not be on the consent calendar.
 - The retired annuitant's retirement was not the reason for the need to fill the critically needed position.
- If the retired annuitant is below the normal age of retirement for their retirement formula:
 - (1) There must be a separation from employment of 60 days from the date of retirement; and
 - (2) If retired from the district, there was not a predetermined agreement with the district to return to work after retirement.
- Will the retired annuitant's work be limited to 960 hours per fiscal year or fewer for all public agencies for whom the annuitant has performed work for the fiscal year?

If the answer is **no**, the district may not utilize a retired annuitant.

- Will the retired annuitant be paid not be less than the minimum, nor more than the maximum published pay schedule for the vacant position divided by 173.333 to equal an hourly rate?

If the answer is **no**, the district may not utilize a retired annuitant.

- Will the retiree receive other compensation beyond the hourly pay rate?

If the answer is **yes**, the district may not utilize a retired annuitant.

- Did the retired annuitant receive unemployment insurance payments for retired annuitant work for any public employer within 12 months prior to the appointment date?

If the answer is **yes**, the district may not utilize a retired annuitant.

- The retired annuitant must certify in writing to the district upon accepting an offer of employment that he or she is in compliance with this requirement.

Academic Positions – CalSTRS

- Will the retired annuitant perform “retired member activities” (e.g., instructor, counselor, administrator, librarian) or duties as trustee, fiscal adviser, fiscal expert, receiver or special trustee to address financial weakness?

If the answer is **no**, the district may not utilize a retired annuitant.

- Will the retired annuitant be appointed to a classified position?

If the answer is **yes**, the district may not utilize a retired annuitant.

- Will the retired annuitant earn more than the CalSTRS earnings limitation per fiscal year (\$46,451 for the 2019-2020 fiscal year) including as an employee, independent contract, or third party providing services for the district?

If the answer is **yes**, the district may not utilize a retired annuitant.

- Has the retired annuitant been retired for at least 180 days?

If the answer is **no**, the district may not utilize a retired annuitant.

- If the retired annuitant has not been retired for at least 180 days, does the employee meet the following:
 - Has the governing board approved the appointment by resolution stating the employee as having specialized skills to serve in a critically needed position?
 - Has the governing board certified the critical need for the position to CalSTRS?
 - Is the employee of normal retirement age?
 - Has the employee retired without a retirement incentive?

If the position to be filled by the retired annuitant was not created by the termination of the retired annuitant’s appointment, the answer to **all** of the above is **yes**, the district may utilize the retired annuitant before the 180 day period is elapsed.

- Did the retired annuitant receive service credit under the CalSTRS Retirement Incentive Program?

If the answer is **yes**, the retired annuitant may not be employed as a retired annuitant for six months after most recent retirement.

- Will the retired annuitant's rate of pay be not less than the minimum, nor exceed the maximum, paid to other employees performing comparable duties?

If the answer is **no**, the district may not utilize a retired annuitant.

- Is the retiree employed by a third party and: (1) is performing a limited-term assignment; (2) the third party does not participate in any California public pension system; and (3) is performing work not normally performed by the District's employees?

If the answer is **yes**, the post retirement employment restrictions do not apply.

The information in this publication is not intended to be used as a substitute for specific legal advice or opinions. We recommend seeking professional counsel before acting on the information in this publication.

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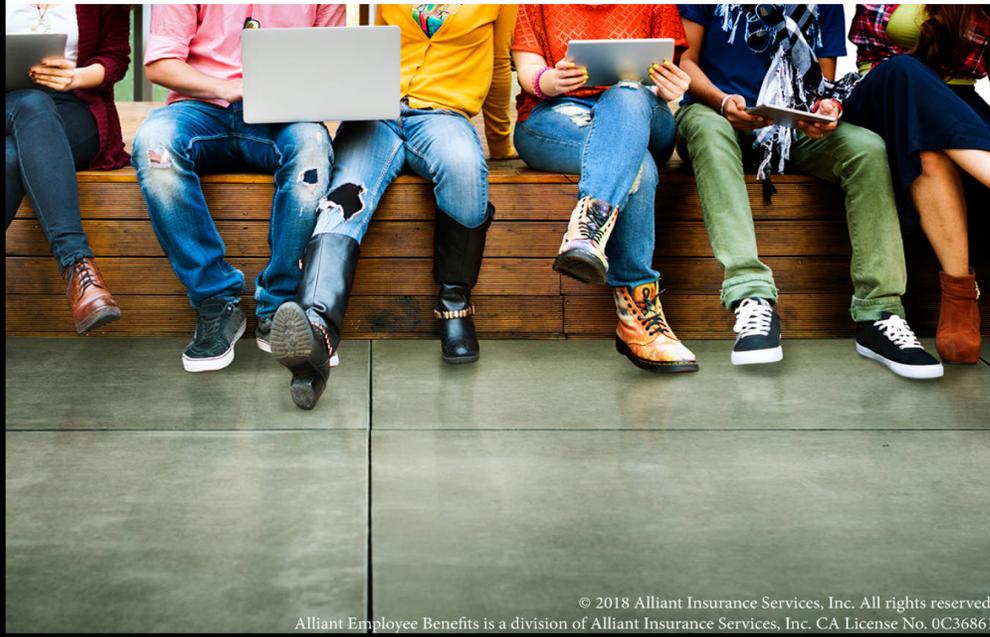
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California's New Individual Health Insurance Mandate – What Does It Mean for Community College Districts?

The state of California recently passed Senate Bill 78, a new state-wide individual health insurance coverage requirement. The legislation requires Californians to either purchase individual health insurance coverage or pay a fine. Like other employers, community college districts want to know the impact of this new law on day-to-day operations. Here's how to answer questions that may come your way from employees and other concerned stakeholders:

I heard that the Affordable Care Act's Individual Mandate was repealed. How does SB78 fit in?

Effective January 1, 2019, Congress acted to reduce to zero the federal penalty for failure to maintain insurance coverage. That requirement is often referred to as the ACA's "Individual Mandate." SB78 is the State of California's way of addressing the same issue on a state-wide basis. Although there is no longer a federal income tax imposed if an individual fails to obtain coverage, in California a state level fine will now apply.

What does this mean for employees?

Beginning January 1, 2020, California residents, their spouses, and their dependents must enroll in and maintain health insurance coverage. If they do not, they will owe a penalty of up to \$695 per year (this dollar amount will be adjusted for inflation each year).

What types of coverage will meet the law's requirements?

Coverage must qualify as "minimum essential coverage," which includes individual health plans meeting ACA requirements, eligible employer-sponsored group health plans, and coverage under certain government-sponsored programs such as Medicare, Medi-Cal, CHIP, and Tricare.

Is there any way for individual employees to be exempt from the law's requirement?

Individuals can apply to Covered California if they believe they are entitled to an exemption from the law's requirements. Available exemptions include hardship, religious conscience, incarceration, noncitizen status, and membership in an Indian tribe.

Do employers have any obligations under this new state law?

Yes. Similar to federal requirements under the ACA, employers must report on the coverage provided to employees during the calendar year and must file annually with the Franchise Tax Board by March 31st of each year, beginning in 2021. The legislation indicates that its reporting requirement may be satisfied by providing the same information that is currently reported under federal ACA requirements. More information about the reporting obligations is expected to be released by the Franchise Tax Board in the future.

What best practices can help CCDs reach employees and stay compliant?

This ever-changing regulatory environment presents unique challenges to employers. More than ever, educating your employees about benefits matters. Communicate with your employees to help them understand the benefits available to them. Stay informed about this and other regulatory changes by subscribing to AFAS's Compliance Insights email newsletters at bit.ly/AFASVIP.



PROS & CONS: TRUSTEE PARTICIPATION IN A SEARCH COMMITTEE

By

Donald F. Averill, Ed.D.

Owner Emeritus, PPL Inc.

There are many guidelines for the participation of trustees on search committees. The concept that a staff hire is the purview of the President, Superintendent, or Chancellor is generally accepted among California community college trustees. Individual districts should have provisions for Board review of candidates, particularly at the executive level. However, the Chief Executive Officer (CEO) makes the final decision on the selection of the person to fill the position.

A different perspective exists in the hiring of a Superintendent/President or a Chancellor who serves as the only employee of the Board of Trustees. The issue of fit, compatibility, and trust are major considerations of the trustees. As a result, the selection process needs to be focused on providing the Board tools to determine how well candidates will work with the Board.

Generally, the Board has a specific policy for selection of the CEO, which defines the roles of the constituents of the college district and those of the Board of Trustees. In many districts, the Board has a Personnel Committee composed of members of the Board of Trustees. Their role in the majority of hirings is related to oversight of the personnel actions on the Board agenda. When a new CEO is being recruited, this responsibility shifts and this committee will work with the consultant or the board in general to oversee the selection process.

Advice from the majority of governing board associations recommends that boards appoint a search committee composed of representatives of the various constituent groups of the district along with community representatives. The search committee has the responsibility to select candidates to be forwarded to the board for consideration.

The question raised in constituting these committees addresses the propriety of a member or members of the board serving on the search committee. When a strong and trusting working relationship exists between the Board and the constituent groups, board participation of the committee may work effectively. However, there are instances when the trust level is low, and board participation may hinder the selection process. One of the reasons cited for board participation is that strong candidates may be passed over by the search committee. The Board wants the opportunity to review all candidates to assure the entire board the pool is sufficient to provide them with a well-qualified candidate. As a result, the board needs to address how board participation in the selection process will take place and incorporate that process into Board Policy.

Both the board of trustees and the search committee members should be aware of the pros and cons of trustee participation on the search committee. Listed pros and cons may change depending on the working relationships among the committee's members.

Pros

- In general, trustees can provide a community perspective in the Committee process based on their knowledge and experience related to the College/District. Board members' perspectives are often different than other committee members.
- The trustees involved will have a first-hand view of the Committee process, which will hopefully contribute to the Board's confidence in the quality and objectivity associated with the process and outcome.
- The trustees involved may, by their contribution, gain the respect, trust, and confidence of Committee members. Creating a positive impact on the general relationship between the Board and constituent groups is important for the future working relationship of the selected candidate.

Cons

- The policy and accreditation principal of the Board "speaking with one voice" is often called into question when board members are on the selection committee. Every participant must act, and be generally perceived by the other Committee members as acting, as individual representatives of their constituent groups.
- One or more Committee members might feel reluctant to orally express an opinion about a candidate, or oppose an opinion or vote of a trustee. To mitigate this con, ground rules can be established—e.g.: Committee dialogue/actions must always be at a professional level; all Committee members' opinions are solicited, valued, and carry equal weight; dialogue and voting must be strictly confidential; no retribution, direct or indirect, may come from individual or group Committee members actions.
- If one or more of the trustees involved breaches the confidentiality of the Committee process by inappropriate dialogue with other Board members, the process may be called into question and even made vulnerable to a legal or regulatory challenge. All members of the Committee are required to sign a "Confidentiality/Responsibility Commitment Statement." The Committee chair (and consultants as appropriate) will consistently remind the Committee of this Commitment throughout the process.
- The trustees involved may, by their inadequate or unprofessional contribution, undermine the respect, trust, and confidence of Committee members. Such breaches could impact the relationship between the Board and constituent groups.
- The committee process is the responsibility of the chair and the consultant. They must ensure ground rules are defined and the process is followed. For an effective search process, all members of the search committee and the board of trustees must exercise professionalism. Non-compliance with the agreed-upon process can affect the transition of the selected candidate into the district.

Donald F. Averill, Ed.D. is Chancellor Emeritus of the San Bernardino Community College District and served the Glendale Community College District as Administrative Dean of Human Resources. Dr. Averill also served as the Chair of the Human Resources Commission of ACCCA. Dr. Averill serves as a search consultant, owner, and President of PPL Inc.



The 2020 Fall Institute will be held at the Hyatt Regency, Incline, North Lake Tahoe, where we will celebrate ACHRO's 25 year anniversary. You will want to be sure to attend so you can join us in all the wonderful festivities.



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Avoiding Interference Charges: Revisiting the No-Contact Directive

In a recent decision, *Zink v. San Diego Unified School District (Zink)*, March 22, 2019, the Public Employment Relations Board (PERB Decision No. 2634) has further established the permissible scope of employee directives during investigatory and disciplinary interviews. Following the decision in *Perez v. Los Angeles Community College District* (2014) PERB Decision No. 2404 (LACCD), PERB has affirmed its standard for finding that a broad “no contact” directive interferes with the EERA-protected rights of employees.

In *Zink*, the charging party was a longtime math teacher at a public high school. Charging party asserted two possible theories under which the employer had committed an unfair practice. First, the charging party alleged that the District had retaliated against the employee by placing her on administrative leave, changing her assignment, and reassigning her to a different worksite. In addition, the charging party alleged that the District interfered with EERA-protected rights by issuing a directive that prevented the charging party from engaging in protected conduct.

The facts in *Zink* were largely undisputed. A contingent of parents at the school lodged a series of complaints and, when the charging party was removed from the classroom and placed on administrative leave, created a petition to prevent charging party from returning to her classroom. While PERB found that the teachers reassignment was an adverse action, the retaliation charge was unsupported and the District had adequate justification (largely supported by parent and student complaints) to change the employee’s assignment and place her on administrative leave pending an investigation. However, the interference charge was upheld.

The District placed the teacher on paid administrative leave while it investigated the initial report, and again when further allegations were received. In its administrative leave letter, the District directed Zink not to report for work, or to appear on District premises, and that:

You are not to discuss the matters of this investigation with any staff member. Should you choose not to follow this directive, we will consider this misconduct, hindering a fair and thorough investigation. Nothing in this letter is intended to restrict your ability to communicate with your union representative or legal counsel about these allegations or any other matter. [Emphasis added.]

Though the directive clearly established that it was not intended to prevent Zink from contacting her representative or private counsel, PERB found that the emphasized portion of the letter constituted interference with EERA-protected rights.

In order to prove a *prima facie* case of interference, an unlawful motive is not required. Instead, PERB will examine the conduct to determine whether it has a tendency to create at least “slight harm” to employee rights. (LACCD, *supra*.) In both LACCD and *Zink*, PERB clearly indicated disapproval for “broad, vague directives that might chill lawful speech or other protected conduct.” (*Zink, supra* at p. 17.) Where a directive can be reasonably construed to prohibit an employee from participating in protected activities, including the discussion of working conditions with coworkers, the directive interferes with employees protected rights.

Going forward, districts should be cognizant of the directives given to employees in the context of investigatory and disciplinary interviews. Unless there is an operational necessity for the directive – removing employees from a position responsible for making decision about complainants, safeguarding student safety and success, or preventing retaliation when the facts indicate it to be likely – districts should be careful not to employ a broad prohibition against protected activity, such as the directive above. As the *Zink* decision advises, a desire not to “stir up staff members” is insufficient justification to issue a broad “no contact” order, even when districts recognize the right of employees to consult with their union representatives.

This publication was prepared solely for informational purposes and should not be construed to be legal advice. If you would like further information on this matter, please contact our office.

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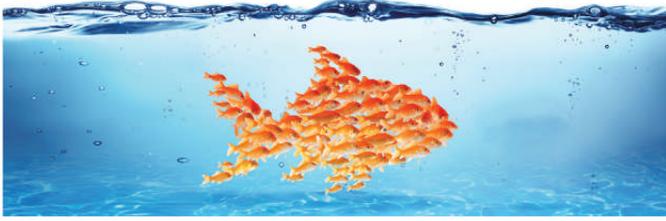
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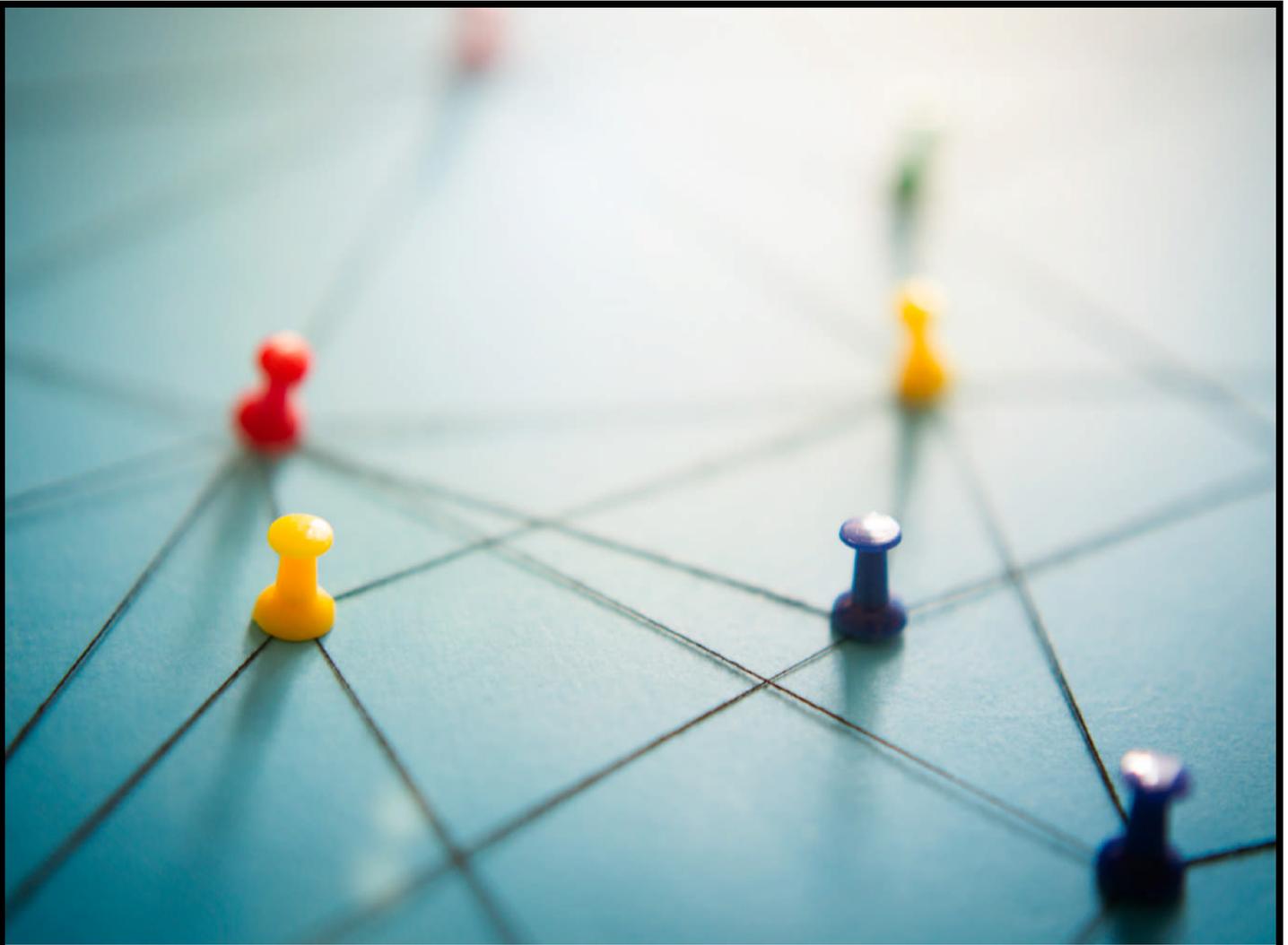
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How to Support Student Achievement Through Equitable Hiring Practices

By Meredith Brown, Partner, AALRR

California's unique, three-tiered public higher education system is one of the largest higher education systems in the world and research has shown that public colleges and universities enroll the largest percentage (almost 80 percent) of college students.¹ A high proportion of minority students attend public higher education institutions; consequently, there is a greater pressure on this sector to improve in order to make an impact on minority student completions². Studies affirm that faculty diversity enhances the breadth, depth, and quality of research and teaching. Scholars have also reported that diversity increases the variety of experiences, perspectives, and scholarly interests among faculty and students³. In an essay published in the American Society of Cell Biology periodical, Dr. JoAnn Trejo noted that U.S. colleges and universities also benefit from faculty diversity because diversity enriches educational experiences and fosters innovation and the type of forward thinking that is essential for the advancement of science. The University of California has published guidelines noting that the University may choose to advance its educational goals, including diversity and equal opportunity, by introducing or placing additional weight on a broad range of selection criteria when making admissions and employment decisions⁴. This article provides practical guidance on how to improve hiring practices to reach the talented diverse candidates for faculty and staff positions.

Cultural Competence and Alleviation of Implicit Bias In the Recruitment and Hiring of Diverse Candidates

Effective inclusive hiring practices can be achieved without quotas or preferential treatment. We identify two general means of increasing diversity without running afoul of the law: (1) widening the pool of potential candidates through expanded recruitment efforts, and (2) removing barriers

¹ Shapiro, D., Dundar, A., Huie, F., Wakhungu, P., Yuan, X., Nathan, A & Hwang, Y., A. (2017, April). *Completing College: A National View of Student Attainment Rates by Race and Ethnicity – Fall 2010 Cohort* (Signature Report No. 12b). Herndon, VA: National Student Clearinghouse Research Center.

² Id.

³ Trejo J. A reflection on faculty diversity in the 21st century. *Mol Biol Cell*. 2017;28(22):2911–2914. doi:10.1091/mbc.E17-08-0505) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5662248/>

⁴ *Guidelines for Addressing Race and Gender Equity in Academic Programs in Compliance with Proposition 209*, University of California, Office of the General Counsel, July 2015

in the application and hiring process. The quest for diversity and equity has been upheld as lawful, as long as the means of achieving these goals do not include “discrimination” or “preferential treatment.” The courts have defined “preferential treatment” as “any kind of treatment favoring one group or individual over another”; it is not limited to so-called quotas, “but extends to all preferences granted to the target groups.” (*Hi-Voltage Wire Works, Inc. v. City of San Jose* (2000) 24 Cal.4th 537, 562)

A high level of cultural competence enhances an institution’s ability to attract and engage faculty and staff from diverse backgrounds by increasing the institution’s awareness of the professional organizations, post-graduate programs, and media outlets that service diverse communities. By way of background, cultured competence is a set of congruent behaviors, attitudes, and policies that come together in a system, agency or among professionals and enable that system, agency or those professions to work effectively in cross-cultural situations. The word culture is used because it implies the integrated pattern of human behavior that includes thoughts, communications, actions, customs, beliefs, values and institutions of a racial, ethnic, religious or social group. The word competence is used because it implies having the capacity to function effectively.⁵

Best Practices for Widening the Pool of Candidates

Outreach

Publicize/share information about job openings and positive news about your institution with Community Based Organizations, Hispanic, African American, Asian, Pacific Islander, Native American, and LGBT professional organizations, churches, temples, Chambers of Commerce, and fraternal organizations, Spanish language/Asian language/Caribbean/urban radio stations and newspapers.

Develop ongoing relationships with the graduate programs and alumni associations of colleges and universities that have a high percentage of graduates from minority populations.

Active Recruitment

Host informational receptions to develop contacts with a pool of qualified candidates.

Create a Welcoming Environment for Applicants through mentoring programs and professional development opportunities for existing employees.

Best Practices for Removing Barriers In the Application Process

Barriers in the application and hiring process can be subtle and insidious. Employment examinations with hidden biases are a particularly difficult problem to overcome. Hidden bias is sometimes referred to as implicit bias. Recognizing and mitigating the occurrence of implicit

⁵ National Center for Cultural Competence, Georgetown University Center for Child and Human Development, (2015)
<http://ncccurricula.info/cultural-competence.html>

bias is effective in removing barriers in the application process. Job descriptions which list qualifications that are not rationally related to the work to be performed also create barriers to employment which artificially lower the pool of qualified candidates for the subject position.

Unlike explicit bias (which reflects the attitudes or beliefs that one endorses at a conscious level), implicit bias is the basis in judgment and/or behavior that results from subtle cognitive processes (e.g. implicit attitudes and implicit stereotypes) that often operate at a level below conscious awareness and without intentional control. The underlying implicit attitudes and stereotypes responsible for implicit bias are those beliefs or simple associations that a person makes between an object and its evaluation that “are automatically activated by the mere presence (actual or symbolic) of the attitude object.”⁶

It is unlawful to ask an applicant any question that may reveal a protected characteristic, such as race, religion, sex, disability, etc. (See 2 Cal. Code Regs. § 11016(b) [preemployment inquiries may not “directly or indirectly identify an individual” on the basis of a protected characteristic]; Government Code § 8310 [it is a misdemeanor to ask any such question in an application for state employment].) As it is unlawful to gather such information from candidates, it is likewise improper to monitor the information.

Mitigate Implicit Bias through Training

Ask yourself what are the qualities and characteristics of the faculty, department, campus and community that are important for the candidate to possess and develop questions and job descriptions related to those qualities and characteristics.

Focus on the candidates’ scholarship, experience and skills rather than on their demographic characteristics.

Continue to evaluate candidates on the initial selection criteria throughout the process.

Review and update the EEO Plan to include input from your local community groups.

Give meaningful consideration to cultural sensitivity and understanding of the diverse student population in ways relevant to the specific position.

Provide as a recommendation an unranked list of qualified candidates with a detailed description of their strengths rather than a ranked order list of candidates.

Recognize that the CEO can reject the candidates recommended by selection committee and reopen the candidate pool to where necessary to further equal opportunity.

⁶ National Center for State Courts, Casey, Warren , Cheesman, and Elk (2012)

