



ACHRO/EEO

Association of Chief Human Resources Officers/
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An Update from our ACHRO/EEO President Wyman Fong. . .

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Colleagues,

Welcome to sunny Palm Springs! It's time for a much needed and necessary break for all of us, and for me to be with colleagues and friends that can relate to the good, bad, and ugly of the past year. I cannot count the number of calls I have placed, or received, about a myriad of personnel issues and initiatives resulting from the ever shrinking state budget and the ever increasing demands on Human Resources. Does the below sound all too familiar?

Have you implemented or are you planning to implement employee furloughs or salary reductions, supplemental employee retirement plans, layoffs, benefit caps, and/or other concessions through negotiations?

Still breathing and still sane (with a little help from my ACHRO/EEO friends) below are some 2011 ACHRO/EEO high-lights.

Title 5 EEO Revisions

We are pleased that the revisions to Title 5 have been adopted by the Board of Governors – pending approval by the Department of Finance. Much thanks goes to the Title 5 writing team, which includes but is not limited to John Tortarolo, Chair, Karen Robinson, Laura Schulkind, Sheri Wright, and Irma Ramos. We also thank Tosh Shikasho for all his efforts!

Revision and Adoption of ACHRO/EEO Constitution and By-Laws

The ACHRO/EEO membership adopted its revised Constitution and By-Laws on March 24, 2011. Significant changes include the positions of Treasurer and Secretary being consolidated, and the Human Resources Consultant or designee serving as the Membership Director.

U.S. Department of Education Community College Summit and ACHRO/EEO

On April 15, 2011, I was able to represent ACHRO/EEO by participating in the White House/U.S. Department of Education's fourth regional community college summit – hosted by San Diego Community College District. The summit was in support of President Obama's goal in having the highest proportion of college graduates in the world by 2020.

(continued on page 2)

APAHE and ACHRO/EEO

In my other capacity as Vice President for Asian and Pacific Americans in Higher Education (APAHE), I was pleased that ACHRO/EEO members assisted with the APAHE national conference (see apahenational.org) this past February. We organized a workshop entitled "Human Resource Services Executive Panel: Behind the Curtains." Panelists shared their perspectives as it relates to promotional opportunities, and had a candid discussion with attendees concerning barriers affecting the Asian Pacific Islander community. A big thanks to Abe Ali, Linda Beam, Cynthia Hoover, and Gene Huff.

ACCCA and ACHRO/EEO

I want to personally thank the Association of California Community College Administrators (ACCCA) for highlighting ACHRO/EEO this year. An article was recently published – providing awareness of our organization to its membership, as well as ACCCA support for the development of their human resources professionals by encouraging them to attend the annual ACHRO/EEO fall institute. Congratulations to our very own, Linda Beam, as ACCCA President-Elect!

CCLC AND ACHRO/EEO

A special thanks to Kimi Shigetani, Vice President, Community College League of California (CCLC) for fostering dialog regarding potential partnerships with ACHRO/EEO. I look forward to providing you with more updates as we further build upon this relationship.

ACHRO/EEO (Now) and ACHRO/EEO (The Future)

A key purpose of the Association is to take responsibility and assume leadership for the professional development efforts of human resource professionals. As with last year's theme, ACHRO/EEO: The Next Generation, we will continue with this focus and relationship building through the leadership of Cynthia Hoover – our next ACHRO/EEO President. A big thanks to Ron Cataraha, Wayne Murphy, Marcia Wade, and Abe Ali, for joining Cynthia Hoover and me for the opening pre-conference workshop titled "Taking the "Para" out of "Para-Professional": Transitioning into Management. Developing our future leaders (from within) is a high priority.

Have a rejuvenating conference!

Sincerely,

Wyman M. Fong

Wyman M. Fong,
ACHRO/EEO President
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Court of Appeal Clarifies Temporary Classification of Part-Time Community College Faculty

On August 24, 2011, the California Court of Appeal published a decision, first issued as unpublished in July, concluding a community college district could lawfully release a temporary basketball coach whose assignment did not exceed 60% of a regular full-time teaching assignment. (*Theiler v. Ventura County Community College District* (August 24, 2011) 2011 WL 3690043.) The case, in which AALRR partner, Warren S. Kinsler, served as co-counsel for the district, provides important clarification of Education Code section 87482.5, governing temporary classification of part-time community college faculty.

Background

The Ventura County Community College District employed Jeff Theiler as a basketball coach from 2004 to 2008. Each semester, Theiler accepted a written "Offer of Temporary Non-Contract Academic Employment," which specified he was to teach a course in basketball for two hours a day, Monday through Friday. None of the offers provided for greater than 0.6 of full-time equivalent (FTE). The collective bargaining agreement recognized that a coach has other duties performed outside of course hours. The district compensated coaches for these extra duties with a stipend that did not depend on the number of hours worked. The court uses the term "ancillary duties," but without reference to the sorts of duties considered ancillary in Education Code section 87482.5(c).

In November 2008, the district terminated Theiler's employment. An investigation revealed he submitted false transcripts to obtain eligibility for student athletes, granted favors to nonresident athletes, and interfered with the investigation of his wrongdoing. Although temporary employees are not entitled to due process in the termination of employment, Theiler claimed he was employed to teach classes for more than 60% of a full-time assignment. Thus, he argued he was a "contract employee" and therefore entitled to due process.

Theiler sued to compel the district to reclassify him as a contract employee, rescind his termination, and grant him due process. Theiler argued that although the class was officially scheduled for one hour 50 minutes, he spent at least two to three hours per session coaching, held one extra basketball practice per week for two to three hours, supervised students in weight training and exercise, spent at least 1.63 hours a week coaching basketball games, and taught athletes a minimum of 17.63 hours per week. Theiler's coaching duties required other activities such as attending meetings, planning, preparing for classes, recruiting high school students, supervising work-study programs, and fundraising.

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The District produced evidence that a full-time faculty member spends 15 hours per week teaching class, 15 hours preparing course work, five hours holding office hours, and five hours in committee work. Although 60% of 15 hours is nine hours, under the District's collective bargaining agreement physical education was considered a laboratory teaching assignment, and given only two-thirds the value of a lecture teaching assignment. Coaches were paid a stipend to cover the extra duties such as those identified by Theiler.

The trial court concluded Theiler spent more than the nine hours per week teaching necessary to exceed the 60% FTE threshold and thus qualified as a contract employee entitled to due process. The district appealed.

The Court's Decision

The Court of Appeal reversed. The Education Code authorizes community college districts to employ three categories of faculty: regular, contract and temporary. Only regular and contract employees are entitled to due process before termination.

During Theiler's employment, Education Code section 87482.5(a) required temporary classification of a person employed to teach community college classes for not more than 60 percent (now 67 percent) of the hours per week considered a full-time assignment for regular employees having comparable duties. The court held that although some of the duties of a basketball coach involve a type of teaching, the duties of a basketball coach "are not comparable to that of the typical classroom instructor." The contractual stipend for a basketball coach, which is not paid to full-time faculty who teach traditional classroom courses, illustrates this difference.

Theiler's employment contemplated two types of duties: teaching a two-hour class five days a week, and "ancillary" duties. The court determined only the 10 hours per week spent teaching the class counted in determining the numerator for the 60 percent equation. Under the collective bargaining agreement, those PE class hours were not treated as full hours in calculating the FTE but were allotted two-thirds the value of a regular class. Theiler presented no evidence as to what the denominator in the equation should be, but regardless of the number utilized, his assignment did not exceed 60 percent of the hours per week considered a full-time assignment for faculty performing comparable duties. Accordingly, Theiler was properly designated a temporary employee, and was not entitled to due process before being terminated from his coaching position.

Impact on Community College Districts

Education Code section 87482.5(a) was amended effective January 1, 2009 to require temporary classification of a person who is employed to teach adult or community college classes for not more than 67 percent of the hours per week considered a full-time assignment for regular employees having comparable duties. If that provision conflicts with the terms of a collective bargaining agreement in effect on or before January 1, 2009, the 67 percent threshold governs the affected employees once the agreement expires.

(continued on page 6)

When determining whether an instructor exceeds the 67 percent threshold, community college districts must consider their collective bargaining agreements, along with the actual duties performed by part-time instructors. The fact that an assignment is compensated through a stipend is not sufficient to distinguish the assignment from regular teaching duties. (See *Stryker v. Antelope Valley Community College District* (2002) 100 Cal.App.4th 324, 338 [remanding to trial court to determine whether work experience classes, paid by stipend, caused instructor to exceed 60 percent of full-time, where the record was “devoid of evidence regarding the work experience assignments given to full-time teachers”].)

Rather, the focus of the inquiry is on distinguishing regular teaching duties from other extra, or as the court referred to them, “ancillary duties,” and on whether the employee spends not more than 67 percent of whatever constitutes a full-time assignment performing teaching duties “comparable” to those of a regular teaching assignment. In the *Theiler* case, because the collective bargaining agreement identified PE classes as “laboratory” assignments with two-thirds the value of a lecture assignment, the court discounted the classroom hours spent in this assignment in comparing them against the 15 hours per week assigned to a full-time instructor.

The *Theiler* decision does not resolve every questionable situation where an instructor claims to exceed the 67 percent of full-time threshold, and the result turned, in significant part, on specific collective bargaining agreement provisions. The decision, however, highlights the factors to be considered when making the determination: whether the instructor performs duties comparable to a regular teaching assignment, whether those duties are compensated differently, and whether and how the assignment is considered contractually and in practice--in calculating FTE.



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OMG, What Do You Do When An Employee Commits An Embezzlement?

By: Edward C. Saucerman, LPI #24454
The Titan Group, Professional Investigations

Over the past 23 years, I have spent my time investigating various types of theft as both a Police Officer and Licensed Private Investigator. One of the most commonly disregarded crimes in the workplace is Embezzlement. What does a person who embezzles look like? They can be your co-worker or your supervisor, so don't be afraid to seek the truth. We all look at the fellow employee as dedicated, trustworthy and hard working, even if the employee is a faculty member or President of the College. We want to believe people mean well, however that is not always the case. More and more during these days of hard economic times, employers are faced with cases wherein employees are pilfering from their employers whether it is scrapped metal from the maintenance yard or electronics from the office. Don't ignore crime when it has been committed and the red flags that go along with these types of investigations. Embezzlement is the stealing of funds or property from an employer, company or government or misappropriating money or assets held in trust. Embezzlement is a Felony in California and codified under Penal Code section 503. Report crimes on campus, and don't conceal or sweep Embezzlement under the good ole' rug. If the case involves theft of funds, I recommend using a qualified CFE/CPA to conduct a forensic accounting and if a computer is involved, a Certified Computer Forensic Examiner to gather additional trace evidence. Often times, we don't want to spend the money on these cases and want to see them just go away, but with due diligence and the right investigation plan in place, you will prevail in the long run with either a resignation, termination and/or an arrest of the wrongdoer.

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New Administrator Orientation, by Robert Griffin

Everyone, regardless of how qualified they are, has a sharp learning curve when they start a new position. This is particularly true of senior level administrators that are new to Districts and colleges. A way to shorten the learning curve, or strengthen the learning is to create an individualized orientation for new administrators. We can start by asking ourselves, “what **must** every senior administrator know about our college and/or district to be an effective leader?” and to develop an orientation program that supports their learning and their success.

When your college/district is engaged in hiring a new senior level administrator, it is committed to finding the best person possible. The process to hire the best includes countless hours of work by individuals and groups. When the final decision is made and the person is offered the position, we expect the new administrators to hit the ground running. Far too often in their efforts to start running, they have to learn for themselves, by trial and error, where the goal line is located, as well as what and where the obstacles are located on their path to success. This takes valuable time and effort and too often causes avoidable delays, or undermines their effectiveness on key issues, or initiatives.

Colleges/districts are committed to creating strong leadership teams, a very important step in adding a new member to the team is to strategically invest in their success. New administrators want to be successful. To often their time is taken up by a crisis or important tasks, which does not leave them a lot of time to stroll casually across campus or around the District office in an effort to develop a working understanding of organizational culture or the unwritten processes and procedures for getting things done.

An option is to set up a series of appointments for the new administrator, over a period of one to two months. It is not necessary for them to know everything or meet everyone immediately. These appointments should be prioritized based on what they need to know or understand to provide leadership on important issues or task. The appointments should be driven by what a college or district knows every senior level administrator must be aware of and issues that came from the process of developing the job description and interview questions for the position.

Examples of appointments/meetings:

- * Classified Senate Leadership
- * Student Government Association Leadership
- * Human Resources – review negotiated contracts
- * Budget Officers
- * Diversity Officer
- * Institutional/District Researcher, Technology Group
- * Small group discussions - SLO's, Basic Skills
- * Accreditation, Educational Master Plan, Strategic Plan and Planning
- * Staff Development, Evaluation, Professional Development
- * Dean Councils (Student Services and Instructional)

The purpose and agenda for these meetings should be framed in advanced. Don't assume a meeting will accomplish the intended purpose, have a question or discussion item identified to address. An example would be to clarify “why it is important to meet with someone from research and what is important for the new administrator to know”.

Colleges and District invest a great deal of time and resources in selecting the right person/leaders for their organization, developing an individualized orientation for the new administrator could prove valuable to their ability to “hit the ground running” toward your institutional leadership goal.

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OBSERVATIONS ABOUT CEO SEARCH POOLS 2011

Donald F. Averill, Ed.D.

Over the last ten years, I have been tracking the turnover of those in positions of the chief executive officer in the California community colleges, as defined in that State. Since joining Professional Personnel Leasing (PPL) in 2008, that report has been maintained on the PPL web site at www.PPLPros.com. PPL has been providing executive searches since 1978, accounting for many of the current CEO placements in California.

Several research efforts and articles have appeared in the community college educational press, in the ACCCA Report, CCLLeague Report, and in the work of Terry O'Banion, CEO Emeritus of the League for Innovation. The last definitive report by the CC League was prepared by Rita Mize in the "CEO Tenure and Retention Study" 4th Update, January 2003 --- December 2006. This report has been the only definitive work that addresses tenure, demographics and the changing scene of then currently serving California CEOs.

Both the CCLLeague and the PPL efforts in tracking changes have continued and tracks presidents of multi-college districts, Superintendent/Presidents, and Chancellors. The PPL report also includes the CEO of professional groups such as CCLLeague, CCLDI, and ACCCA. A copy of the April status report is appended to this article.

Based on these categories for tracking CEO turnover in California, there are currently 133 identified CEO positions. This includes 23 Chancellors of multi-college districts and 48 Superintendent/Presidents for a total of 71 community college districts. Fifty-eight (58) presidents serve in the multi-college campuses and there are four (4) provosts or CEO's. The 133 functional CEO's would serve as the divisor in defining turnover percentages each year. However, five colleges were added to the total campus count in the last six years so that there is a slight skew in defining the ten year average. The State is experiencing approximately a 15 percent turnover in the CEO ranks each year which I would contend is fairly reflective of national turnover rates.

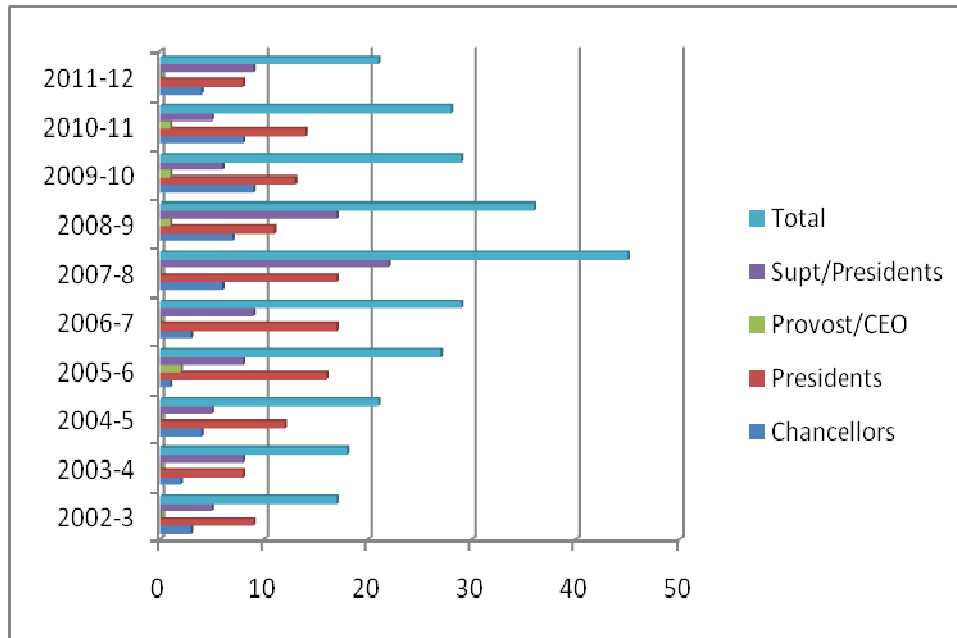
A great deal of concern was raised in the field in the 2007 -2008 fiscal year when 45 CEO's left their positions. This came to the attention of the group that was heading up the Community College Leadership Development Initiative (CCLDI) and, as a result, focus was strengthened on increasing the number of academic and leadership development activities for community college leaders available to those interested in filling leadership positions. Several positive efforts came from this concern including:

- Increasing the number of staff development programs within the community colleges;
- Supporting the development of the Ed.D. program for educational leaders in the California State University System; and
- Initiating the Community College Leadership Academy that currently is operated out of the University of San Diego;
- This effort has increased the available pool of new leaders in the state, as well as the work of the Association of California Community College Administrators (ACCCA) in providing for an outstanding mentoring program serving approximately 30 developing leaders each year; the initiation and operation of Administration 101 and now 201.

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The chart below provides a picture of the turnover rates among the classifications of CEO's over the last ten years. I have listed the potential starting group for openings in 2011 – 2012 which is heading us toward another significant list of changes next year.

TEN YEAR TURNOVER RATE OF CEO'S



Several observations on the CEO turnover rate have been reported in articles on a national level, but there is no real identified reason for the spike in 2007 -2008. It is obvious that the rate of turnover has moved back to the average 15 percent level in the last few years. In the early studies the concerns were focused on several important concerns:

- ◆ The gender distribution of CEO's – Over the years, the CEO position had been not only a male dominated position, but also weighted to the Caucasian ethnicity. Attention has been given to the issue of gender equity in the earlier reports. Some gain in gender equity has been realized, but the overall gain still does not match the gender or ethnicity distribution for the general population..
- ◆ Promotion has been given to diversity in the CEO pools – The effort on diversity extends over the ten year period I have reported. Originally there were big gains and now there is slippage in the diversity numbers: A picture of the current distribution for 2010-11 is reported below:

Female	50	38%
Male	83	62%
Caucasian	89	67%
Hispanic	21	16%
African American	17	13%
Asian	6	5%

It is apparent that California has a long way to go to have the diversity of community college leadership reflect the population of the State. Part of this may be tied to the diversity of available new leaders, but there are many other contributing factors.

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- ◆ Determining the turnover rate of CEO's – In the early studies by Rita Mize, a lot of work was completed to ascertain the turnover rate of CEO's in California and that was weighted against national averages. The turnover rate has been forecasted at a high of 7 years average and, based on the last update, it can be estimated to be at about 4.5 years. No work has been completed that I know of on this figure since the 2006 report. However, when the community college CEO turnover is compared to that of the K-12, it is doing well. Currently the tenure expectancy of a K-12 superintendent is 2.8 years.
- ◆ Determining the causes for leaving a position – When a decline in CEO tenure was originally realized, the studies tried to focus on why CEO's were moved out of their jobs. Some of this movement can be expected, based on the age of the population and the fact that the "baby boomers" are reaching retirement age. There has been a significant growth in actual retirements in the last five (5) years. When I first started reporting turnovers, there were generally about five CEO retirements and five CEOs who ran into difficulty and decided to move on. The rest of the pool played musical chairs, moving from one campus to another for advancement in responsibility or an increase in pay. Today that is significantly different and we are seeing a larger cohort of the CEO's who actually retire.

What are the major reasons for CEO turnover?

I have already addressed a couple of the reasons for turnover, but I will expand upon these causes below:

- Reaching retirement age – The leading reason is reaching retirement age and in California that is often measured by having reached 30 years of service. There is a point at which the retiree will lose money by continuing to stay in the system. Another factor is the stress level of the job which also causes retirees to go out of service after reaching age 60.
- Seeking growth in the CEO responsibilities – Not all those listed as CEO's in California actually function at that level. In the 23 multi-college districts there are 58 presidents that are actually chief administrative officers that report to a chancellor, not to a board of trustees. These CEOs might be expected to seek higher levels of responsibility and the presidency has served as the training ground for that effort. This same correlation can be made for both presidents and superintendents that want to move to the chancellor position.
- Losing the trust and confidence of the board of trustees – There are a number of causes for a CEO to lose the trust and confidence of the board, some brought about by personnel management skills, ethical conduct and, to some extent, the people skills of the CEO. This has not been a significant issue, but some cause for concern was raised when the 2009 -2010 retirement list had sixteen (16) CEOs that left employment before their contracts were completed.
- Board member misconduct or relations with the CEO – There has been a growing concern in the accreditation process related to board conduct, including unethical practices, micromanagement of the district by board members, special interest group support, board members with an axe to grind and, finally, the rogue board member who doesn't get along with the CEO or the other board members. Eventually, these instances may result in sanctions in the accrediting process.
- Personal physical or mental health causes – There are a number of times that the CEO is going to have personal or family issues—i.e., related to physical and mental health involving themselves or a family member—that will lead to a retirement decision. This tragedy often occurs when the CEO waits too long and ends up seriously ill or dies shortly after leaving employment.

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What does the applicant pool hold for the future?

California has seen a significant change in the administrative ranks and the pools of candidates that are applying for open positions. Several factors have affected who and why individuals will enter the CEO market. Some of the factors that may affect future pools are listed below. Several may dissipate as the field focuses more on leadership development on campus. :

- Age of the workforce – The average CEO today is 58 years old and many of the new CEO appointments are coming into those positions at 55 or older. Based on an average age of retirement of 63, these CEOs are going to generate a higher turnover.
- Age of the executive level leader pool – Like the CEOs, the average vice president is also sitting in the 55 plus age category and many boards look to this level of experience in finding replacement personnel.
- Ability to acquire or retain tenure – California does not generally provide tenure to academic administrators. This was lost with the passage of AB 1725. Unless a person is able to get an administrative position in the district where s/he acquired tenure, tenure will be lost and many will not take that risk. This can result in some good potential leaders not wanting to move.
- Board expectation that a CEO will hold a doctoral degree from an accredited institution – Many boards place a higher than necessary expectation that their candidates will hold a doctoral degree. In some cases, this accomplishment is achieved in an academic discipline and some would posit that the degree does little to nothing to prepare the individual for community college leadership. Even the State regulatory minimum qualifications only call for a master's degree and encourage, but do not mandate, that administrators have business and leadership training. More attention needs to be given to experience and training in business and leadership skills.
- Boards place a priority on individuals with experience working with a board of trustees – Most boards want broadly experienced leaders and avoid selecting a person who has not had past responsibilities working directly with a board. Unfortunately, this restricts the number of potentially viable candidates and almost assures a board will select an older candidate, particularly for superintendent and chancellor positions. One of the realities in the selection process twenty years ago was that boards were willing to work with a candidate with potential rather than experience and, as a result, they were able to get candidates that would stay with the institution.
- Community college faculty experience– Many community college constituents place an inordinate value on the CEO having faculty experience and having that experience at a community college. This can be compounded where a constituent group wants that experience in instruction, rather than student services or administrative services. There is an assumption that having this experience will provide a sensitivity to the teaching/learning process and an empathy with the community college student. While it is an important factor, the value placed on this requirement often outweighs the ability of the candidate to provide leadership to the institution.
- Dealing with the California syndrome – There is a prevailing opinion that California is so different and so complicated that individuals with experience outside of California will not be able to hit the ground running. While there is a learning curve for administrators that have not had to deal with the California Education Code and Title 5, work with collective bargaining, or navigate the California brand of collegial consultation, there are many examples of out-of-state candidates who have brought new strength and vitality to the CEO position and the colleges they serve.

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- The California budget impact on search pools – The budget situation in most states is not a whole lot better than it is in California. One of the qualities of a crisis is that it creates opportunity and the person who is strong in dealing with people and change will thrive in this environment. One of the changes that can be seen in the pools during a fiscal crisis is more interest in the candidates that have strong business backgrounds with boards feeling some comfort in having someone that will focus on this aspect of the institution.
- Changes in the compensation package and perks- There have been a number of changes in the last ten years in the compensation packages for new CEOs. When we had the big turnover in 2007 – 2008, boards were increasing sitting CEO salaries to keep from losing quality leaders. This is not as much of a factor because the salaries are more competitive today. However a number of previously offered perks may not be in the mix now, including moving expenses, housing assistance, annuities etc. Based on the current economic climate and the “City of Bell aftermath,” some serious discussion needs to take place regarding CEO compensation.

There is a positive side to these factors that affect the composition of the pools. To some extent, change in the content and availability of leadership training has occurred, both within academia and on college campuses around the state. This focus on leadership across the campus provides a means of developing teams that can address the quality of education and seek ways of providing for continuous improvement within the institution. CEOs that understand the value of collegial consultation and collaboration will find colleagues that are prepared to enter into this type of leadership.

What is the value in using a search consultant?

There is some interesting movement in the CEO search market in recent years and the result has been a significant change in how search firms are used. California has become a competitive market. The CC League publication “Conducting a Successful CEO Search” indicates that the cost of using a search consultant is between \$20,000 and \$35,000. What is not described in this quotation is the depth or quality of the search.

This past year, there has been an increasing number of districts conducting searches internally and not using a search firm. The success of this process is still up for review. Some have had to go out a second or third time, or accept a less than adequate pool, particularly if there was an inside applicant. Both the federal Equal Employment Opportunity Act (EEO) and state legislation calls for an open search process and this may be better facilitated with the assistance of search consultants.

Several exceptional firms are providing services to the California community colleges and all of them will work to design a search process that will meet the needs of the district being served. There is a big difference in value added with a full, comprehensive search process. The Board needs to know what they are expecting out of the search and work with the firm to meet that expectation.

It is important to note that the cost of the search consultant does not constitute the entire cost of a search process. The average search this past year in California has been between \$24,000 and \$26,000. On top of that cost is the design and development of the applicant brochure, the printing, advertising and coordination of the search process. Unless specifically delegated to the search firm, these tasks and attendant costs fall upon the District.

There is a specific value in using a search consultant that will help the district to have a successful search. The leading points include the following:

- A CEO search is different than searches for other professional employees. This person will work with the board of trustees and needs to have a trust and confidence level with the Board to enable them to work as a team to administer the district. Search consultants build those resource pools. It is not just a case of advertising and the candidates will come.

(continued on page 15)

- In a full and comprehensive search, the consultant will learn about your campus and can assist the board and the campus community in defining the challenges and opportunities that a candidate will have to address to be successful.
- The search consultant can work with the district to develop the resources that will be provided to the candidate and ensure that all candidates have equal access to those resources through current web page technology.
- The consultant can work with the college constituency and the search committee to be sure that they stay focused on the qualities of leadership sought and define what the college needs in an effective candidate.
- A professional consultant works within the guidelines of the federal Fair Employment Information Act and manages the reference checking process to maintain confidentiality and to protect the rights of the candidate. If properly managed, the confidentiality of candidates can be better maintained.
- The consultant can support the Human Resources staff in managing the process and identifying appropriate evaluation tools with the search committee and the board of trustees.
- Consultants are often better equipped to know the current market rates, salaries and perks that will assist in drawing an experienced and qualified pool. Knowledge of these parameters will help a district negotiate a beginning contract.
- Based on the need of the board of trustees the consultant can work with the candidate to complete the final contract and to facilitate the transition into the new position.

What can the board of trustees do to strengthen the selection process?

The most important point for a board of trustees to remember is that the CEO is your only employee. It is important that a person be selected who can earn the trust and confidence with the board to work as a team to provide leadership to the district. The American Governing Boards list of the ten responsibilities of the board identify that one of the most important responsibilities is the selection of the chief executive officer. With these two points in mind, let's share some ideas on strengthening the selection process.

- Get your act together so you can function effectively as a team – The board needs to take on the task of a CEO search with a good understanding and agreement about what it is that you expect out of your future CEO. Remember that candidates are interviewing you at the same time they are being interviewed by you. They have to be comfortable that there is an effective working relationship that will contribute to the success of the institution.
- Resolve dysfunctional or unethical board practices before starting a search – More CEO failures take place because a board is not functioning as a team and refuses to delegate authority to the CEO to define the goals of the institution and be held accountable for them. The Board needs to resolve these issues especially if the last CEO left because of a dysfunctional relationship.
- Remember the CEO is your employee - The CEO is being selected to work for and with you, not for the constituent groups. Discuss and plan your needs for a CEO. Seek input and consultation with your constituent groups, but remember the final decision belongs to the Board. You need to define how many candidates the board wants to interview, determine the qualifications that are important to you, and insist that the search committee send an unranked and qualified list of candidates for the board to make their selection.

(continued on page 16)

- Be considerate of the confidentiality of the candidates – The greatest difficulty in getting qualified candidates is protecting their confidentiality until they are in the final pool. The consultant can assist in this process, particularly with the search committee, but many top candidates are reluctant to get into a search process if they feel the word will get back to their campuses. Sitting CEO's have lost their jobs over this issue even when they did not make the final list of candidates.
- Think positively about the issue of tenure for a CEO – If the college is small, or the district is concerned about someone who will stay with the college, you may have to consider potential over experience. Doctoral degrees and instructional experience alone do not make a good leader. You need to be satisfied that the CEO is competent, has a compassion for learning and has leadership skills to move the college forward toward continuous improvement.
- Consider the issues of housing, moving and living in your community – Most boards would like to have their CEO living in the community, but employment law does not allow you to set this requirement. With that in mind, you may have to consider assistance with moving and housing and at best you should spend time with the candidate defining your expectation for participation in the community and at the state and national level.

There are many other areas of discussion that can be added to this process of selecting a new CEO. The most important tasks are to define your needs, communicate them to your candidates and select a candidate with whom the whole board can build trust and confidence to create a solid team. Most of all, when you make the final selection, the board needs to be unanimous in support of its candidate.

Many of you will be going out for searches this coming fiscal year. We are already at 21 announced openings for next year. Hopefully the discussion in this paper will assist you in getting off on the right track. May each of you have a successful search process!



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Update from ACHRO/EEO Consultant Ron Cataraha . . .

Greetings All! It's been 17 years since we organized and established ACHRO/EEO and our first annual conference. It seems like only yesterday when we first became a recognized and viable statewide California community college professional human resources/equal employment opportunity organization. By organizing and establishing ourselves we gained a seat and a voice on the State Chancellor's Office Consultation Council and other statewide task forces and committees. Prior to organizing and establishing ourselves our voice was heard through ACCCA's Human Resources Commission which was all right, but not as strong a voice as with our own organization and identity. In years past we mounted letter writing campaigns, sat on statewide task forces/committees, etc. to preserve and support and/or oppose various legislations affecting human resources and equal employment—many we won and some we lost. Our founding officers were HR and AA Co-Chairs—Pat Mollica and Fusako Yokotobi respectively; HR and AA Co-Chairs-Elect—Clint Hilliard and Karen Furukawa respectively; Treasurer—Wayne Murphy; and Secretary—yours truly. Our first representative on the Consultation Council was John Renley. Pat, Clint, Wayne, John & I are now retired (Clint passed away several years ago), but both Fusako and Karen are still actively working in the system.

Over the past several years Districts have experienced budgetary problems, but your Executive Committee, as well as the Training Committee, has been vehemently opposed to cancelling our annual conferences. They feel that if any of the five (5) statewide professional California Community College organizations (CEOs, CIOs, CSSOs, CBOs & CHRO/EEOs) is in need of annual training it is the CHRO/EEOs. Besides, none of the other four (4) organizations have cancelled any of their annual conferences. And I have to agree albeit every year it becomes increasingly difficult to maintain high attendance. Many districts have suspended or cut their budgets, and thus many are unable to attend. However we must remember that we can use staff diversity funds and/or your own personal funds, which you can claim as professional development when filing your tax return, to pay for attendance at our conferences. Our 2012 conference is scheduled to be held at Harrah's South Lake Tahoe. Having the conference in South Lake Tahoe is very affordable for many to attend. I've heard where Boards have curtailed out of state travel, but Harrah's South Lake Tahoe is just on the other side of the California border. An argument to use with your CEO and Board is the affordability to attend a conference where valuable information is given and received to assist you in the administration of the day-to-day functions of the HR and EEO operation.

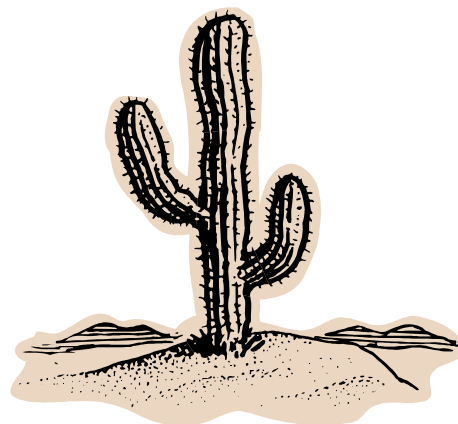
This year's program is as good as any others we've had in the past—thanks to the hard work of your Training Committee Chair and Vice President of ACHRO/EEO, Cynthia Hoover, as well as the rest of the committee members too many to mention (Please refer to your program and page where members are listed) and the support of your Executive Committee. The dinner/entertainment planned and sponsored by Keenan & Associates, Atkinson, Andelson, Loya, Rudd & Romo, and Student Insurance will undoubtedly be as great if not better than ones in the past. I hope those of you who plan to attend the conference have signed up and paid for this event. You won't be sorry.

I have enjoyed working as your consultant and look forward to continuing this relationship for years to come. The invaluable assistance from Ruth Cortez and Reneé Gallegos has made it easy for me to fulfill the duties and responsibilities as a consultant. Please stop by the conference registration area and thank Ruth for all she does. She is second to none!!! I'm still trying to get Reneé to attend so you can also meet the individual who assists me with the maintenance of our web page and the publication of our Newsletter. Wyman Fong, President of ACHRO/EEO, has done an excellent job and I enjoy working with both he and Cynthia Hoover, Chair of the Training Committee and Vice President of ACHRO/EEO. They've certainly made my job easier, too.

Thank you Wyman & Cindy! Hope to see you all in Cathedral City!

Ron Cataraha

ACHRO/EEO Consultant
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ACHRO/EEO Vice-President's Column

ACHRO Membership

The overall condition of the California Community Colleges has brought to the forefront the importance of being an active member of ACHRO/EEO and for one to attend the Fall Training Institutes. Over these past few months, most of my time and energy has been focused on the many immediate and critical needs of administration and staff, and handling the many casualties of the “fallout” from the state’s budget reductions. I am very thankful for my fellow ACHRO colleagues, whom I have contacted or surveyed on numerous related issues.

If you are new to the California Community College system, you might ask: ***“Why should I become a member of the ACHRO/EEO organization?”***

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Join the ACHRO Training Committee

If you have great ideas for events and training and want to get involved, become a member! Under the guidance of ACHRO Consultant Ron Cataraha, and in conjunction with the ACHRO President, the Chair of the Training Committee is responsible for coordinating and leading the Training Committee meeting, and assisting in the evaluating and planning of the training programs and activities for the Fall Training Institutes. Becoming a member of the Training Committee is a way for you to get involved with ACHRO, offer feedback, and help coordinate the events and trainings for the 2012 year. Membership in the Training Committee is open to all ACHRO members; if you are interested in joining, please contact me by email at choover@avc.edu.

Cynthia Hoover

Cynthia Hoover

ACHRO/EEO Vice President/Training Committee Chair

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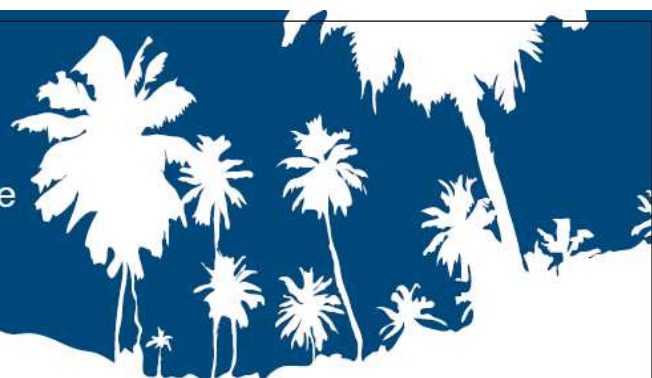
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CASE STUDY

Glendale Community College



Agency Challenge

Handling the hiring for 30+ departments, the Glendale Community College Human Resources employment office consists of 4 recruiters and 1 support staff member. They receive approximately 10,000 to 15,000 applications per year, and handle 150 recruitments. The objectives for the new recruiting and applicant tracking system are:

1. Replace the outdated and inefficient recruitment and applicant tracking system
2. Shorten the average time-to-hire significantly (currently approx. 3 months)
3. Design a workforce management solution that is both flexible and customizable
4. Reduce the number of calls from applicants regarding the functionality of the system

NEOGOV Solution

Glendale Community College deploys NEOGOV's Insight campuswide. Insight's flexible, web-based architecture provides a process that is implemented quickly and seamlessly. Immediately following implementation, the college begins working with a comprehensive, fully-integrated and functional system that allows them to finally completely automate their hiring process.

Although Insight has been installed for less than ninety days, the College projects to: accept over 98% of their applications online and reduce their average time-to-hire by nearly 10%.

Implementing Insight has improved service for both their departments and their applicants. Department satisfaction has improved and the College projects that it will operate much more efficiently using fewer resources to process more applicants while remaining confident that they are hiring the most qualified candidates, as quickly and effectively as possible. Glendale Community College continues to make improvements to their process each and every day with continued guidance from NEOGOV.

"My favorite feature of the NEOGOV Insight product is its' Systems Administration which offers a lot of the features that allow you to make changes quickly and in real-time with little to no technical support required."

I have received several comments from department users indicating that they like the system and it is very user-friendly.

- Valicia Dantzier, Human Resources Manager

Glendale Community College Overview

The campus consists of 100 acres and 15 permanent buildings. It is beautifully located on the slopes of the San Rafael Mountains overlooking the valleys in the Glendale, California suburb of Los Angeles. Glendale Community College has a college-credit enrollment of about 15,000 day and evening students, and approximately 10,000 others are reached through the adult education program, specialized job training programs such as JTPA and GAIN, and contract instruction is administered by the Professional Development Center. The College needed a way to streamline its hiring process from requisition to hire, while ensuring the recruitment of highly qualified candidates. After an extensive procurement process, the college selected NEOGOV.

Business Overview

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Annual Applications:	10,000
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A portrait of a smiling woman with dark hair pulled back, wearing a light-colored blazer over a white top.

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DOES YOUR JOBS WEB SITE BOOST YOUR INSTITUTIONAL BRAND?

By Kathlene Collins, Publisher, Inside Higher Ed

Take this quick test. Surf to your institution's home page, and click on the link for prospective students. You're likely to be pleased with what you see (it was probably created by a talented marketing team, after all). Now try the link for prospective employees - did you wince? You're not alone. And yet your jobs pages are among the most visited on your web site.

Inside Higher Ed recently conducted an informal survey of nearly 150 college and university human resources professionals. While nearly half had no idea the volume of traffic to their jobs pages, those institutions that do track reported numbers that may surprise you. Nearly two-thirds reported that their jobs pages account for more than 25% of overall site traffic. And more than 10% indicate that their jobs pages account for more than half of the visits to their institution's Web site!

An effective employment Web site will sell your openings to terrific candidates--and can also be an important touch point to strengthen your institutional brand, or to erode the impact of an otherwise strong image. Yet rarely are employment pages reviewed with institutional brand messaging in mind.

In our recent survey we asked HR officers about the marketing department's role in job advertising. A whopping 67% responded that marketing has no role whatsoever in the recruiting process. And while about 25% of institutions said they have guidelines from marketing, or at least can call on their marketing department for assistance, just 4% cite an active role in the recruiting process by their marketing team.

The result: Poorly constructed job announcements, often packed with obscure abbreviations, internal jargon or job ID numbers. A stark lack of appealing language or images on employment pages. And a general lack of focus on the candidate experience.

We asked our HR respondents to engage in a bit of brutal self-examination. More than 50% admit to using generic or abbreviated job titles in their advertising. Nearly 50% acknowledge that their online job descriptions are dull or bureaucratic. And a full two-thirds recognize that their advertising is not advertising at all, merely a listing of requirements and qualifications unlikely to intrigue the highest caliber candidates.

On a more encouraging note, the HR folks responsible for recruiting generally recognize that they could use some help – and say they'd like to communicate their institution's employment brand more effectively. The solution? Get your marketing department involved. While marketing's primary motivation may be to protect and enhance your institutional brand, their knowledge of good principles of communication and promotion have the potential to greatly improve the outcomes of your institution's recruitment efforts – the quintessential win-win.

Great hires are the single most important investment your institution makes in its competitiveness and success. Making sure you're investing in the absolute best is worth a bit of attention and effort, especially when you're making only a few hires. And your institution's best chance to attract top talent is with terrific, brand-savvy recruitment advertising.

Kathlene Collins is Publisher of *Inside Higher Ed* (insidehighered.com), a free news, information, and analysis web site supporting a truly innovative approach to professional recruiting for colleges and universities.

Before founding Inside Higher Ed with partners Scott Jaschik and Doug Lederman, Kathlene spent 20 years in the recruitment advertising department of *The Chronicle of Higher Education*. As associate publisher of *The Chronicle*, she conceived *The Chronicle's Career Network*, five time winner of Editor & Publisher Magazine's EPPy award for best classified site on the Internet.

A regular speaker on recruiting issues at higher education and publishing industry conferences, Kathlene is a leading authority on online recruiting in higher education.

Off-Duty Obscene Speech By Faculty And Its Nexus To The Community College Environment

By Frances Rogers, Liebert Cassidy Whitmore

We all recognize that employees are entitled to a private life and what they do off-hours and away from campus typically should not be a concern for human resource managers. However, there are times where off-duty conduct can adversely effect the educational environment. This is exactly what happened in a case where a public school educator lost his job after he posted a pornographic and obscene ad on the popular Craigslist website soliciting sex.¹

Frank Lampedusa was an educator in the San Diego Unified School District when he posted an ad on Craigslist.com stating in obscene and vulgar, and albeit misspelled and grammatically incorrect phrases, that he wished to engage in sexual relations with another adult. The ad also contained pictures of Lampedusa's face and genitalia.

An anonymous parent of a student at Lampedusa's school reported the ad to police who then notified the school district. Lampedusa was placed on paid administrative leave and served with notice of intent to dismiss for "evident unfitness for service" and "immoral conduct," among other charges. The Commission on Professional Competence which hears termination appeals in the K-12 setting ordered Lampedusa reinstated, reasoning that the district failed to establish a nexus between his conduct and his performance as an educator. The school district sought relief in Superior Court and ultimately, the Court of Appeal.

The Court of Appeal held that the commission's decision must be set aside and that Lampedusa's conduct did in fact constitute grounds for dismissal, applying the "Morrison factors" which are used to determine whether a nexus exists between misconduct and the impact on performance for both K-12 and community college academic employees.

The court surprisingly gave weight to the hearsay evidence of the anonymous parent complaint to find that the conduct had an adverse effect on students. Lampedusa's principal also testified that she lost confidence in Lampedusa's ability to serve as a role model for students, thus establishing an adverse effect on other educators.

The court also gave weight to the fact that the conduct was recent and that Lampedusa served as an educator in a *middle* school. Lampedusa's conduct was further aggravated by the fact that he posted graphic, pornographic photos and obscene written material on a website open to the public; that he admitted to posting similar ads in the past; that he would probably post less graphic ads in the future; and that he believed he had not done anything immoral.

The court also relied on evidence that Lampedusa did not take responsibility for his conduct, but rather stated that he expected parents and students to take care not to look at such ads on Craigslist, reasoning that Craigslist posts an advisory that the content is explicit and that users should be at least 18 years of age. Lampedusa testified he believed that if a student saw his ad, it would not affect his ability to teach the student effectively.

The court found that Lampedusa's conduct was immoral because it evidenced indecency and

¹ *San Diego Unified Sch. Dist. v. Commission on Professional Competence* (2011) 194 Cal.App.4th 1454 [2011 WL1234686].

moral indifference. The court further noted that disciplining Lampedusa for publicly posting his ad did not infringe on his constitutional rights or the rights of other teachers. These factors established evident unfitness for service.

The court noted that this educator was not disciplined for his private sexual conduct and certainly, such conduct between two consenting adults was not the issue. The educator's exercise of poor judgment in publicly posting obscene and pornographic statements and photos is what cost him his job.

The causes for which a community college district may discipline one of its faculty members under the Education Code are the same for K-12 teachers, including evident unfitness for service and immoral conduct. In both the K-12 and community college contexts, the nexus between the misconduct and the instructor's employment is measured by application of the "Morrison factors."²

In a case involving a community college faculty member, the impact that the conduct would have on the ability to teach students would be different. Undoubtedly, the fact that Lampedusa was an employee at a *middle* school weighed heavily on the Court's determination. Certainly, the facts that minor-aged students and their parents had been exposed to the Craigslist ad impacted Lampedusa's ability to teach and guide these students in the future. Community college faculty, on the other hand, instruct adults. Arguably, there is less of an impact on students in the community college setting than in a middle school setting. This is not to say that a Court may similarly find *some* impact on students in cases involving community college faculty.

The Court of Appeal also noted that other public employees besides educators, such as police, are held to a higher standard, and thus their off duty speech may be found to have a nexus on their ability to carry out their job and may subject them to discipline. "There are certain professions which impose upon persons attracted to them, responsibilities and limitations on freedom of action which do not exist in regard to other callings. Public officials such as judges, policemen and schoolteachers fall into such a category." In making disciplinary decisions, Community College Districts should carefully evaluate the conduct at issue, and its impact on the employee's ability to carry his or her job.

As the Internet and social media become more prevalent in everyday society, we can expect that there will be an evolution in case law addressing the intersection of "private" life and public employment.

[Frances Rogers \(frogers@lcwlegal.com\)](mailto:frogers@lcwlegal.com) is an associate with Liebert Cassidy Whitmore in the firm's San Diego Office providing representation and legal advice to community college districts throughout the State in all matters relating to labor, employment, governance, and student issues. Ms. Rogers is also a contributor to the firm's [California Public Agency Labor & Employment Blog](#).

² The "Morrison factors" include: (1) The likelihood that the conduct adversely affected students or fellow teachers; (2) the degree of such adversity anticipated; (3) the proximity or remoteness in time of conduct; (4) the type of teaching certificate held by the party involved; (5) the extenuating or aggravating circumstances, if any, surrounding the conduct; (6) the praiseworthiness or blameworthiness of the motives resulting in the conduct; (7) the likelihood of the recurrence of the questioned conduct; and (8) the extent to which disciplinary action may inflict an adverse impact or chilling effect on the constitutional rights of the educator involved or other faculty members.



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PENSION REFORM A HOT TOPIC FOR RETIREES

Pension reform is gathering steam both in the legislature and in the community as the media continues to heat up the issues with six figure salaries being earned by retirees, double dipping in the public trough and incidents of spiking salaries just before retirement.

Several bills have been put on the table to regulate or change current pension reform in the public sector. This includes STRS PERS, and other public retirement systems. SB 27 (Simitian) would place a 180 day period in which retirees could not work in public education. SRC 13 (Emerson et.al) is a Republican effort to put a referendum on the ballot. In addition the Republicans have a list of 20 reform items that they wanted to include in the budget bill. Fortunately, that effort failed. Governor Brown has twelve points to his pension reform agenda and several of them are consistent with the Republican platform. The 2012 legislative program will certainly have some action on these issues.

ACCCA has established pension reform as its priority theme for the year's legislative agenda and action is already underway to develop a plan of action that will protect the pension rights of its members. Don Averill, from PPL will be serving on that workgroup. It is important for our retiree community to maintain awareness and support the ACCCA efforts as they move forward.

A major concern that will affect retirees will be changes in CalSTRS and CalPERS that will affect the ability of retirees to work in public education after retirement. One of the benefits retirees have enjoyed is the ability to work without earning restrictions if you did not work in an STRS creditable position for a period of 12 months. That language will sunset on July 20, 2012 and the interpretation of STRS is that this right will disappear.

There was legislation in the current session to extend the twelve month out rule until 2014, AB 758 (Wiechowski) was held over as a two-year bill. At least the bill is still alive and it will be important for retirees to talk to their legislators and ensure that this bill moves forward.

Community college districts in California have depended on the expertise of retired administrators and teachers to help them as they transitioned through new leadership, filled adjunct teaching positions with seasoned teachers, and addressed management changes and other issues on campus. These have been important benefits to the education community and to those retirees that have been able to assist in maintaining excellence through their assistance.

Your ability to be involved in post-retirement work in the community colleges is in jeopardy. PPL will keep you informed of the changes and will continue to provide a link to the STRS and PERS regulations on its web page at www.PPLPros.com. Please join us in whatever way you can to protect your retirement fights.

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NEWS UPDATE

Employment Protections of Disabled Employees

When is an employee deemed disabled for purposes of qualifying for protections under disability law? If an employer has reason to believe that an employee has a disability which interferes with that employee's work, does the employer have any obligations with respect to continuing the employment of such employee? Both the federal Americans with Disabilities Act (ADA) and the California Fair Employment and Housing Act (FEHA) govern the duties an employer has with respect to a disabled worker's employment.

Unlike federal law, the CA FEHA provides that an individual may be considered to have a disability even if the disability limits the ability to work with respect to a single job. (*Real v. City of Compton* (1999) 73 Cal.App.4th 1407, 1418; CA Gov. Code § 12926.1(c).) The FEHA specifically lists, for illustrative purposes only, certain mental and physical conditions as disabilities: physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss, mental retardation, organic brain syndrome, emotional or mental illness, or specific learning disabilities that limits a major life activity. (CA Gov. Code § 12926 (i) & (j).)

Under CA FEHA, a determination of whether a person is able to participate in major life activities must be made without regard to mitigating measures. (CA Gov. Code § 12926 (i)(1)(A).)

Duty to Communicate with Disabled Employee

If an employee qualifies as disabled and desires an accommodation which will allow the employee to remain employed, the employer has a duty to engage in an "interactive process" with that employee. This "interactive process" is an informal good-faith communication and exploration with the employee to determine the work limitations arising from the disability and to identify a reasonable accommodation that allows the employee to perform the job effectively. (*Jensen v. Wells Fargo Bank* (2000) 85 Cal.App.4th 245, 261.) In turn, the employee has

a duty to cooperate with the employer's efforts by explaining to the employer his or her disability and qualifications. (*Spitzer v. Good Guys, Inc.* (2000) 80 Cal.App.4th 1376, 1385.)

Identifying and Providing Reasonable Accommodation

In this interactive process, the employee does not have the responsibility to identify a reasonable accommodation, because the employee may not have the superior knowledge of the workplace that the employer possesses, such as knowledge of alternative positions or other accommodations. (*Jensen, supra*, 85 Cal.App.4th at 262.) If the employer finds that a reasonable accommodation does exist and such accommodation does not impose an "undue hardship" on the employer, the employer has a duty to provide this reasonable accommodation so that the employee can retain employment. (*Id.* at 263, fn. 6.) In some instances, a medical leave of absence may be a reasonable accommodation for a disabled employee who simply needs time to recuperate or heal. (*Id.* at 263.)

When the Duty to Communicate with the Employee Regarding the Disability and Reasonable Accommodation Arises

It is important to note that courts differ as to when an employer's duty to engage in this interactive process is triggered. Some courts recognize that this duty is triggered when the employee provides mere notice to the employer of his or her disability. (*Id.* at 261.) Other courts find that the duty to engage in the interactive process arises when the employee provides both notice of the disability and requests a reasonable accommodation. (*Spitzer, supra*, 80 Cal.App.4th at 1384-85.)

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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Innovative Solutions for California Schools



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The Protected Insurance Program for Schools and Community Colleges (PIPS) provides workers' compensation protection to public educational agencies statewide. PIPS provides superior claims administration services with over 200 claims specialists through a network of 10 offices located throughout the state. PIPS also includes integrated Loss Control services to foster reduction in overall loss experience, a greater understanding of loss trends and a focused plan for effecting change in future loss experience.



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