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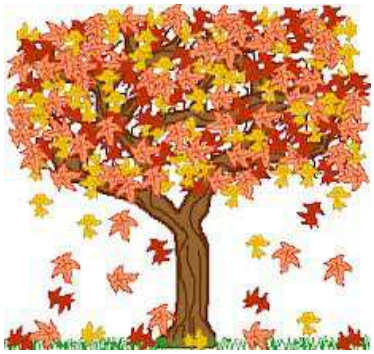

"THE COMMUNICATOR"

2012 Fall Edition **Volume VI, Issue 1**

Featured Articles of Interest Inside This Issue:

An Update from our ACHRO/EEO President Cynthia Hoover. . .

TURBULENT TIMES: HR'S ROLE IN MANAGING CHANGE

Are we experiencing turbulent waters; OR are we holding onto the handles of our raft as we go over Niagara Falls! What a ride!

Did you know that the first person to attempt to go over Niagara Falls, Annie Taylor, was a school teacher and 63 years old? Though battered and bruised, Annie survived!

The ACHRO Fall Institute is being held in Lake Tahoe (no, not Niagara Falls).

I know, we've all seen those airport books that you pick up and chapter three is "leading in challenging times," and ends with four neat bullet points. If only it were that easy. And with so many administrators and CEO's retiring, there is additional responsibility on leadership because new people don't have the organizational heritage to help guide them through tough times.

I think the more turbulent the time and the more challenge in the environment, the higher the premium on simplicity and the more important to have a really great compass. It can't be 'spin.' It must be a genuine attempt to say we are here (X) and we're going there (Æ), and here's how we all play a role… HR professionals, we have to be that compass.

(continued on page 2)

There will be many presenters at our Fall Institute offering their expertise to help better equip us as we navigate through those turbulent waters, through some really BIG rapids, and, hopefully, to help us avoid going over the edge of those 176 foot falls! And, if we do go over the edge, we will survive it like Annie Taylor did, bruised and battered, but ready to take on the next day.

Mark your calendars and submit your travel requests for Board approval for October 23-26, 2012. I hope to see all of my HR colleagues there. Niagara Falls, here we come!

Cynthia Hoover

Cynthia Hoover

ACHRO/EEO President

Director of Human Resources, Antelope Valley College

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HR changes around our state. . .

- **Retirees**

  Patricia Demo, Associate VP of HR, Shasta CCD
  Vicki Nickolson, Director of Human Resources, Glendale CCD
  Randy Rowe, Associate Vice Chancellor, HR State Center CCD

- **Temporary Promotions / Promotions / New Hires**

  Lisa Bailey, Vice President, Administrative Services, Chaffey College
  Linda Beam, Vice President of Human Resources, El Camino College
  Laura Benson, Associate Vice President of Human Resources, Shasta CCD
  David Burris, Director of Human Resources/EEO Officer, Feather River CCD
  Samerah Campbell, Personnel Analyst, State Center CCD
  Jamie Cannon, Director for Human Resources, Butte-Glenn CCD
  Diane Clerou, Associate Vice Chancellor of Human Resources
  Laura Cyphers Benson, Associate Vice President of HR, Shasta College
  Judie Engel, Contracts Technician, Merced College
  Frances Garza, Personnel Assistant, State Center CCD
  Susan Hardie, Interim Director of Human Resources / Risk Management, Chaffey College
  Yen Her, HR Technician, Merced College
  Maria Lopez Smith - HR Analyst, El Camino College
  Albert Roman, Vice President of HR, Southwestern CCD
  Dio Shipp, Director of HR , Contra Costa CCD (effective July 30)
  Victoria Simmons, Vice Chancellor, Human Resources, Grossmont-Cuyamaca Community College District
  Christina Torres-Peters, Human Resources Director, Merced College
  Jaques Whitfield, Director of Human Resources, Yuba CCD

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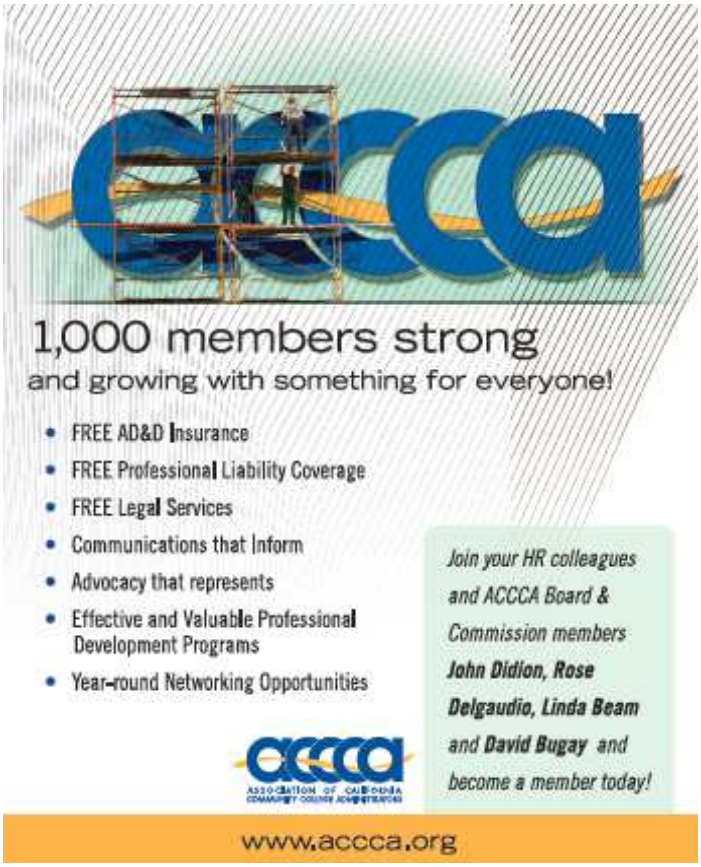

2011-12 YEAR IN REVIEW: ACCCA Board Meets to Set the 2012-13 Agenda

By: Susan Bray, ACCCA Director

In last months' issue of *ACCCA Reports* we released the results of our 2012 Board Election and told you about two incumbents who won a second term (**Tom Greene**, Vice President of Instruction, Lake Tahoe CCD and **Derrick Booth**, Dean of Business & Computer Science at American River College), as well as the three newest members of the ACCCA Board:

***Wyman Fong**, Director of HR at Chabot Las Positas*

***Steve Crow**, Vice President of Business & Financial Affairs at Southwestern CCD*

***Ron Taylor**, President of Merced College*

These newly elected Board members joined their ACCCA Board colleagues for an intense session of long and short range planning for the Association in June, approving a tentative budget for operations, as well as the action plans of the three commissions charged with carrying out ACCCA's mission through its services and programs for members. Following are some highlights from the meeting:

- ***Professional Development**:* Despite the challenge of fiscally driven reductions in attendance which made necessary the postponement of the 2nd installment of Admin 201, ACCCA's significant accomplishment in 2011-12 was the successful re-envisioning and re-launch of Admin 101. Additionally, the launch of another successful training concept focusing on the needs of new CEOs was *The Freshman Class*. These two programs will go forward in the coming year. ACCCA's professional development goals for 2012-13 include the following:

o *Re-establish the Admin 201 program for next level training and prepare it for a 2013 re-launch;*

o *Address the content of the annual conference (February 2013) to make it more inclusive, timely and a "must-attend" event for administrators*

o *Explore and develop a new Dean's Training Program to address the nuts and bolts training for new deans in the system.*

Further develop the Freshman Class concept and survey the newest CEOs to add content elements to their sessions.

- ***Communications:*** With no direct staff support in 11/12 for the communications division of ACCCA operations, there were many challenges for remaining staff. Temporary consulting was engaged to assist with maintaining the newsletter production and basic web site maintenance, and a new website design and navigation system was implemented. In spite of these bumps in the road, our Communications Oversight Commission and staff worked together and a new Salary Survey was developed and distributed, and month after month the newsletter was consistent in its strong content and interesting articles. For the 2012-13 year, we have a new Communication Coordinator, Cort Tafoya, who is focusing on several objectives including:

o *Tying member survey data directly to newsletter and web site content;*

o *Expanding the use of social media for our members;*

o *Exploring the development of research reports and white papers that can be useful to members;*

o *Focusing on media analytics to drive content and design of the web site;*

o *Updating the overall ACCCA marketing plan*

(continued on page 5)

***Advocacy for Administrators**:* Members and others heard a lot from ACCCA this past year about their positions and strategies on everything from pension reform to the 50% law, and all the legislation in between. The CFLA and its volunteer members are continuing to work closely with the Association's consultants to make sure our member's voices are heard on a variety of issues impacting their jobs, and evidence of this is in the weekly legislative reports our members now receive. These reports will continue in the coming year and among the goals for the 2012-13 year are the following:

- *Establish & provide a process for levels of response including formalizing positions taken, responding and taking critical or strong positions*
- *Providing improved education for members about advocacy and specific issues*

Developing alliances with affiliate groups on key positions and/or to target issues and raise funding for direct lobbying

***Operational Goals & Objectives in 2012-13**:* In spite of a series of staffing challenges the ACCCA office managed to ensure progress was made in a number of operational areas including membership development (*in 2011-12 membership grew by nearly 100 members overall*) and outreach jumped substantially with ACCCA directly supporting and either attending or presenting at the conferences of six key affiliate groups. This trend will continue in 2012-13.

In order to continue these efforts and ensure that no gap in member benefits and services occurs, staff and the Board will examine the salary ranges of the dues structure currently being used (which are now over ten years old) and if necessary, adjust them to more accurately and fairly reflect data from the current salary survey of members. Members will be advised well in advance if a change in their dues level is warranted, however, with event revenue projected to decline in 2012-13, other options to support member benefits and services will need to be explored. Said our newest member of the Board, **Wyman Fong**:

"My first ACCCA Board planning session was one of the best and most organized experiences I have had with a non-profit organization. It was evident early on that each and every individual (board and staff) is fully committed to this organization and our members. [The meeting] was an intense and fruitful planning session, and I am excited that this is a board that is open to new ideas from a diverse group of individuals, and based on the planning that occurred, ACCCA will definitely continue to get bigger and better."

Our staff and the Board would like to sincerely thank our nearly 1100 members around the state that continue to support ACCCA and who enjoy the benefits and services, not to mention the networking that ACCCA provides. We invite you to join us, to get more involved and find out what ACCCA can do for YOU!

ASSOCIATION OF CALIFORNIA COMMUNITY COLLEGE ADMINISTRATORS

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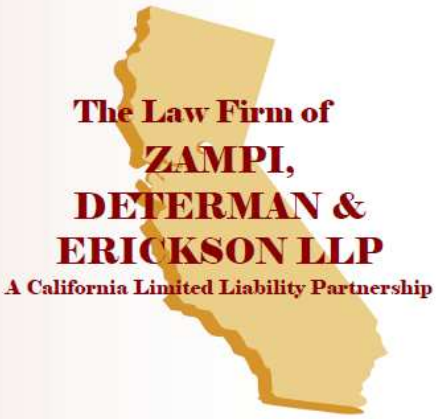

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COMMUNITY COLLEGE DISTRICTS MUST TAKE NOTE OF COURT RULING ON K-12 CATEGORICALLY FUNDED CERTIFICATED EMPLOYEES

By: Warren Kinsler, Partner & Aaron O'Donnell, Partner

In March, 2012, the Court of Appeal held in *Stockton Teachers Association v. Stockton Unified School District* (2012) 204 Cal.App.4th 446, that certificated employees hired into categorically funded positions pursuant to temporary contracts may nevertheless have the rights of probationary employees with respect to seniority, eligibility for tenure, and rehire rights after layoff. Although the case involved certificated employees of a K-12 district, the case has significant implications for community college districts as well. Faculty previously considered in some districts to be temporary based on service in categorically funded programs of indeterminate duration pursuant to Education Code section 87470 (excluding EOPS and DSPS) may now have new arguments available to claim the rights of contract (probationary) or regular (tenured) faculty. In the short term, the case will require community college districts to reassess their plans for layoffs and release of temporary employees, in order to determine whether, in light of the court's holding, any additional resolutions should be adopted or notices sent by March 15, 2013. In the longer term, the case may require some districts to re-think their approach to the use of categorically funded temporary employees as a means of maintaining staffing flexibility.

Over the years, several decisions by the courts have, to varying degrees, supported temporary classification of categorically funded employees. See, for example, *Haase v. San Diego Community College District* (1980) 113 Cal.App.3d 913 (permitting the release of a temporary employee before the end of the categorically funded program); and *Zalac v. Governing Bd. of Ferndale Unified School Dist.* (2002) 98 Cal.App.4th 838 (finding that teachers in a district's class size reduction were properly classified as temporary due to the categorical nature of the funding supporting the position in question). Other decisions supported a contrary conclusion, such as *Hart Federation of Teachers v. William S. Hart Union High School Dist.* (1977) 73 Cal.App.3d 211 (teachers in classes conducted for adult county jail prisoners under contract with the county were entitled to procedural rights of probationary teachers unless their discharge is due to the expiration of the contract or specially funded project). The trend in the more recent case law mitigates in favor of treating categorically funded employees as probationary except when certain specific conditions are satisfied.

(continued on page 9)

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The trend that started with *Hart* became even more apparent when the Court of Appeal ruled in *Bakersfield Elementary Teachers Ass'n v. Bakersfield City School District* (2006) 145 Cal.App.4th 1260, that notwithstanding the temporary nature of their positions, categorically funded employees may be entitled to the same procedural rights as permanent or probationary employees in the event of a layoff - i.e., a March 15 layoff notice and the right to request a hearing. As a result, many districts for several years have had a practice of sending categorically funded temporary employees "precautionary" layoff notices - maintaining that categorically funded employees are properly classified as temporary, while also affording procedural layoff rights.

The *Stockton* case, however, goes several steps further. The court identified several elements of proof that must be met to sustain a temporary classification based on categorical funding. Specifically, a district is required to:

1. Prove its employees were hired to perform services conducted under a contract with public or private agencies or categorically funded projects which are not required by federal or state statutes.
2. Identify the particular contract or project for which services are performed.
3. Establish that the particular contract or project expired.
4. Show that the employee was hired for the term of the contract or project.

Although not the focus of the *Stockton* ruling, under prior precedents, it is also necessary to ensure that the categorically funded employee receives written notice of temporary classification (preferably in the form of an employment contract) *before* starting work.

If you have categorically funded employees and you are not sure you can establish that each of the above requirements is satisfied for each of your categorically funded employees, your categorically funded employees may have seniority rights, tenure rights, and/or the procedural rights of contract (probationary) faculty, and you should consult with legal counsel.

The requirement that the employee must be employed for the same duration as the categorically funded program presents significant practical problems. The court's ruling has the potential to call into question the temporary classification of any categorically funded employee who has (or previously had) a temporary employment contract that specifies a term of employment that is different from the length of the categorically funded program for which he or she was hired.

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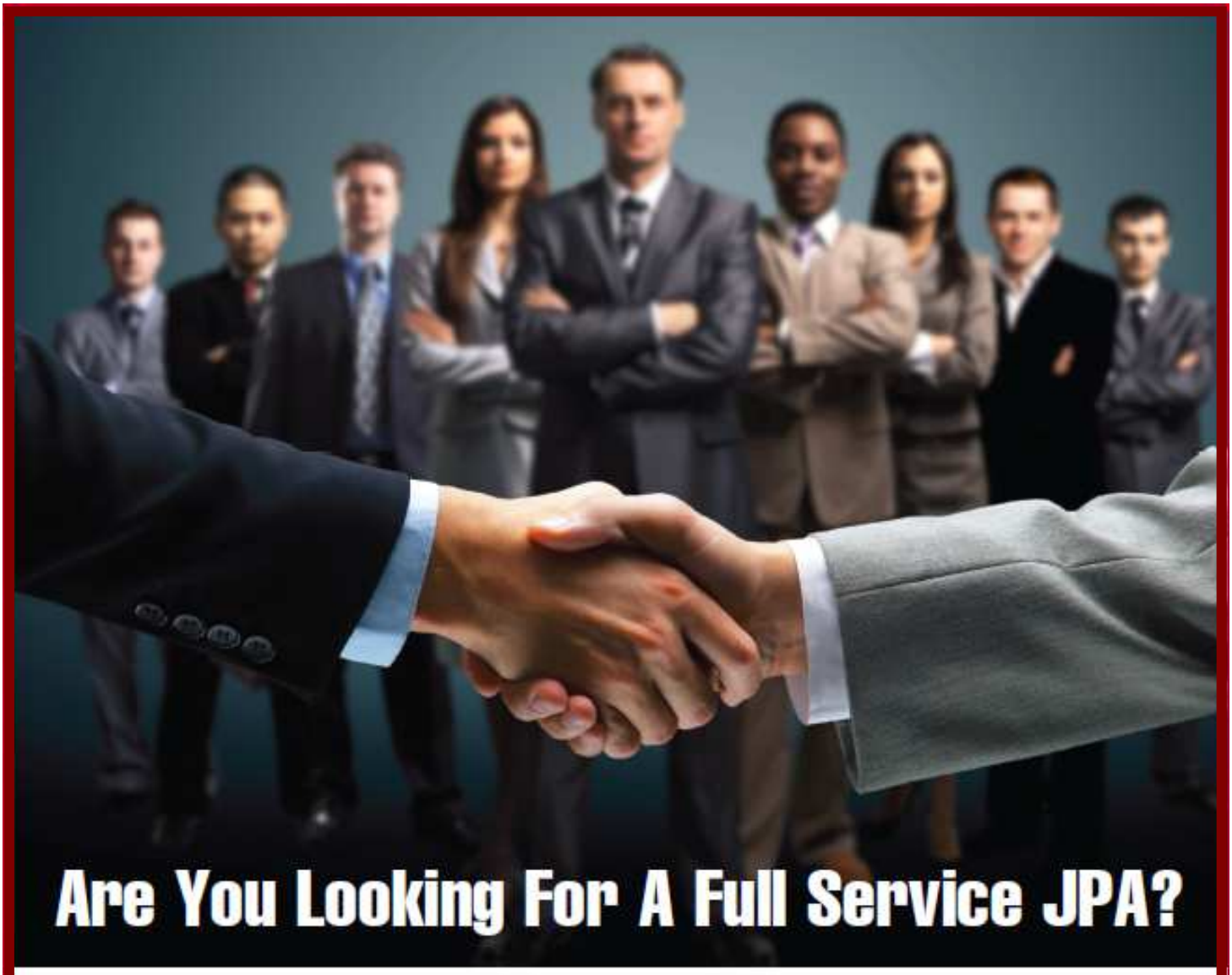
For example, if an employee is hired pursuant to a series of one-year temporary contracts to work as a faculty member in a categorical program with a multi-year grant funding source, or a federal funding source that operates on a fiscal year that is different from the July 1- June 30 academic year, that employee may now have new arguments available to challenge his or her temporary classification. This is not to say that such arguments would necessarily prevail - there are counterarguments to be made, and the particular circumstances would matter - but the court's holding introduces a new and significant element of uncertainty.

Therefore, going forward community college districts should consider not only their plans for sending notices by March 15, 2013, (it is not too early to be thinking about this possibility) but also their employment practices with respect to categorically funded employees more generally for the 2012-2013 academic year and beyond. Districts should consult with legal counsel as to whether any change in the employment contracts issued to categorically funded employees is advisable, and also as to whether those employees previously considered to be categorically funded still meet the court's test as articulated in the *Stockton* case.

Also, keep in mind that academic administrators employed in categorically funded positions do not have the right to become first year probationary employees when their service in the categorical program is terminated. Education Code section 87458.

Despite all of the uncertainties in education funding of recent years, many community college districts have been able to avoid the necessity of formal layoffs of tenured and contract faculty because they have been able to employ and release faculty classified as temporary based on either their part-time status (an option not available to K-12 districts except in the adult school context) or their categorical funding. In light of the court's ruling in *Stockton*, all community college districts, even (or especially) those that had not planned on any formal layoff, should reassess their plans and employment practices.

March 15



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AOE / COE INVESTIGATIONS

By: Edward Saucerman and Art Gonzales
The Titan Group, Professional Investigations

The Workers' Compensation Fraud Program was created in California by Senate Bill 1218 (Chapter 116) in 1991. The bill made workers' compensation fraud a felony and required insurers to report suspected fraud. It also launched a process for funding enforcement and prosecution for these cases.

In fiscal year 2009-10, the California Department of Insurance reported that state district attorneys prosecuted 1,339 workers' compensation fraud cases on 1,506 suspects. Restitution in the amount of $120,977,446 was ordered in connection with these cases. The total chargeable fraud for FY 2009-10 was $370,320,520. As we know, this represents only a small fraction of actual fraud occurring in the state, since many fraudulent activities are not identified or investigated.

In an article on Workers' Compensation, the Orange County Register cited there were 14.4 million employees covered by workers' compensation in 2009 with a wage cover of $738 billion. Workers' compensation benefits paid for that year totaled $9.3 billion. $5.1 billion was in medical benefits and 4.2 billion was cash. This was a decline of 1.6% from 2006.

The decline may be attributed to an aggressive anti-fraud campaign by the Department of Insurance and state district attorneys, who have done much to reduce this crime; however, the principal force in this effort is and must remain the insurance companies and state employers.

State employers can contribute to this effort by knowing the red flags associated with workers' compensation fraud. Of course, these red flags can only indicate a possibility of fraud. The top ten indicators are:

1.) Injury occurs after some type of disciplinary action, notice of demotion or pass over for promotion.
2.) There are no witnesses to the injury.
3.) Previous history of workers' compensation claims or personal injury.
4.) The location of injury is not the usually work site for employee.
5.) The report of injury is not timely - may be a week or more after occurrence.
6.) There is information employee is working elsewhere while drawing benefits.
7.) There are inconsistencies with the employee's description of injury.
8.) Doctors treating injury have conflicting diagnoses.
9.) The injury is related to a preexisting medical condition.
10.) Injuries occur on Friday afternoon, Monday morning, before a holiday, before a strike, or pending layoff or termination.

(continued on page 13)

California employers suspecting fraud should report their concerns to their workers' compensation insurers. Chapter 4.5 Division of Workers' Compensation, Subchapter 1.5 Injuries on or after January 1, 1990, reads:

> §10109. Duty to Conduct Investigation; Duty of Good Faith.
>
> (a) To comply with the time requirements of the Labor Code and the Administrative Director's regulations, a claims administrator must conduct a reasonable and timely investigation upon receiving notice or knowledge of an injury or claim for a workers' compensation benefit.
>
> (b) A reasonable investigation must attempt to obtain the information needed to determine and timely provide each benefit, if any, which may be due the employee.
>
> (1) The administrator may not restrict its investigation to preparing objections or defenses to a claim, but must fully and fairly gather the pertinent information, whether that information requires or excuses benefit payment. The investigation must supply the information needed to provide timely benefits and to document for audit the administrator's basis for its claims decisions. The claimant's burden of proof before the Appeal Board does not excuse the administrator's duty to investigate the claim.
>
> (2) The claims administrator may not restrict its investigation to the specific benefit claimed if the nature of the claim suggests that other benefits might also be due.
>
> (c) The duty to investigate requires further investigation if the claims administrator receives later information, not covered in an earlier investigation, which might affect benefits due.
>
> (d) The claims administrator must document in its claim file the investigatory acts undertaken and the information obtained as a result of the investigation. This documentation shall be retained in the claim file and available for audit review.
>
> (e) Insurers, self-insured employers and third-party administrators shall deal fairly and in good faith with all claimants, including lien claimants.

A workers' compensation investigation will examine the details that encompass an alleged injury. An "Arising out of Employment" and "Course Of Employment" (AOE/COE) investigation can determine if the employee's injury is indeed work related and occurred in the course and scope of their employment. In the early stages of a workers' compensation claim, employers may want to establish causation and determine other factors that may dispute the claim or validate the claim. An initial investigation into the circumstances of the claim provides essential documentation for employers. AOE/COE investigations also examine the claimant's employment, social, and medical history, as well as many other aspects that may affect the determination of outcome on the claim, especially in stress claims.

Proper investigation and aggressive prosecution can help lower workers' compensation premiums for employers statewide.

Edward Saucerman is a Private Investigator with more than twenty-three years of combined experience in law enforcement and investigations. He currently owns and manages The Titan Group, Professional Investigations a company licensed in four states. Serving a diverse clientele, Edward Saucerman and his team of experienced investigators and surveillance specialists, offer a vast range of services.

Can a Faculty Member Receive a Disability Retirement After Termination for Cause?

By Frances Rogers, Liebert, Cassidy Whitmore

It is now clear that if a Public Employees' Retirement System ("PERS") employer terminates a PERS member before a right to a disability retirement has "matured," the member is not eligible for a disability retirement. "Matured" means an unconditional right to immediate payment (i.e., PERS has made a determination to grant the disability retirement application). This understanding comes from two important cases on the subject, *Haywood v. American River Fire Protection District* and *Smith v. City of Napa*.

Yet, there is still an outstanding question as to whether a member of the State Teachers' Retirement System ("STRS") would similarly be found ineligible for a disability retirement or allowance if a community college district terminates him or her for cause before the member is granted a disability retirement or allowance. Although it is for STRS to decide if a member is eligible and qualified for a disability retirement or allowance, employers who are dealing with a faculty member facing discipline may still have questions about the effect of a termination.

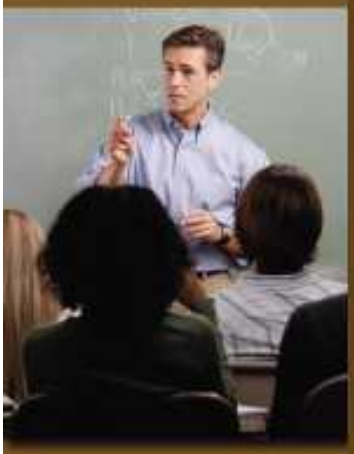
As an initial matter, STRS members who are "Coverage A" only receive a disability allowance until the member reaches the age of service retirement (60), at which time they convert to a service retirement allowance. Accordingly, should a district terminate a Coverage A member at or near the age of 60, it is irrelevant as to whether the dismissal would deny the member a right to a disability allowance. On the other hand, STRS members who are "Coverage B," may receive a disability retirement as long as they remain disabled, even beyond the age of service retirement. The coverage that applies to the member will depend on his or her initial membership in STRS.

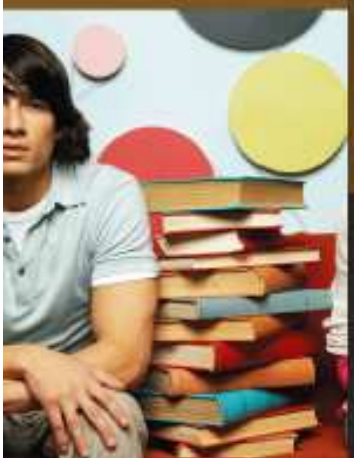
Second, the definition of "disability" for purposes of STRS, found in Education Code section 22126, is distinctly different from the definition in PERS. A member of STRS is qualified for a disability retirement or allowance if he or she has a "medically determinable physical or mental impairment that is permanent or that can be expected to last continuously for at least 12 months . . . that prevents a member from performing the member's usual duties ***for the member's employer***, the member's usual duties ***for the member's employer*** with reasonable modifications, ***or*** the duties of a comparable level position for which the member is qualified or can become qualified within a reasonable period of time by education, training, or experience…"

The statute provides that a member is entitled to a disability retirement if an impairment prevents him or her from performing his or her usual duties or usual duties with reasonable modifications *for his or her employer*. Accordingly, if a district terminates a member for cause before STRS determines the member qualified for a disability retirement or allowance, then the disability does not prevent the member from performing his or her usual duties with or without reasonable accommodation for the non-existent employer. The dismissal for cause prevents the member from performing his or her usual duties, not the disability.

However, the last clause of the above-quoted provisions of Education Code section 22126 omits the words "for the member's employer" as is found in the first two clauses. For this reason, arguably, a STRS member may be eligible for a disability retirement or allowance despite a preceding dismissal for cause if a disability prevents him or her from performing the duties of a comparable level position for which the member is qualified or can become qualified within a reasonable period of time by education, training, or experience. Thus, if a STRS member could prove that, despite his or her termination from their employing district, he or she would not be able to perform the duties of a similar position for which the member is qualified or can become qualified somewhere else in the state, the member may qualify for a disability retirement.

A final caveat, however, is that a termination of a member *because of* a disabling condition will likely not effect the ability to obtain a disability retirement or allowance under any circumstances.





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Reasons to Consider Long-Term Care Insurance

By: Karen Marblestone Perry, President

It should come as no surprise that a growing number of colleges and universities have embraced long-term care (LTC) insurance as an important component of their benefits portfolios. The many issues surrounding long-term care are of national concern. Our population is aging and the ability of government programs to keep up with increasing demand is in doubt.

By offering LTC insurance to your faculty and staff as a voluntary benefit, you can provide them with insurance protection not generally offered by either medical or disability benefits. You can also help employees and their family members preserve the savings they have worked so hard to acquire from the high cost of long-term care services. LTC insurance pays benefits in a variety of settings, so that insured individuals that need long-term care services can choose the level of care they need, in the setting that is best for them.

In addition to the advantages LTC insurance brings to your employees, its introduction can help your college attract the best and brightest, with a benefits package that stands out from the rest. Even more important, LTC insurance can provide a solution to the employee productivity that is lost as a result of caregiving responsibilities. Employees may spend hours on the telephone making care arrangements or miss work entirely to assist a loved one in need.

Karen Marblestone Perry, CLTC, is President of **Marblestone Insurance Services, LLC**, a firm committed to providing retirement and long-term care solutions for individuals, and long-term care benefits through employers and associations. Building on her background in gerontology and work in senior services, Karen changed her career to focus on financial needs related to aging.
Contact: kperry@jhnetwork.com 650-341-5050 ext.118, CA Insurance License # 0E43572

FAREWELL AND BEST WISHES ACHRO/EEO

It is difficult to write a “final” communication to you. However, I want to first thank everyone who sent me best wishes on my next chapter in life. I was very touched. It will not be easy transitioning to my new life as fully retired. However, I am looking forward to all the new adventures that full retirement will bring with it. I will look forward to spending more time with my family and retired friends; exercise more often; complete more house projects; and do more traveling.

I wish the very best to you all and ACHRO/EEO. I am especially grateful to all the many colleagues that I have met and especially those who I had the pleasure to work with over the last 20 years. There have been many policies and projects that have come and gone but the work of Equal Employment Opportunity (EEO) and diversity will continue to have its challenges. I hope that you will continue to be a strong voice and promoter of EEO and diversity. It is important work that needs your vigilant attention.

Finally, I want to wish ACHRO/EEO continued excellence in achieving its goals. We need a strong and vibrant ACHRO/EEO to assist colleagues during these most difficult challenging times. Please volunteer & contribute to ACHRO/EEO to ensure that it remains a valuable organization. See you at the ACHRO/EEO Conference. **Go ACHRO/EEO, EEO & Diversity!!!**

Sincerely,

Tosh Shikasho

Karen Marblestone Perry, CLTC

o 650.341.5050 EXT 118

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Insurance Services, LLC

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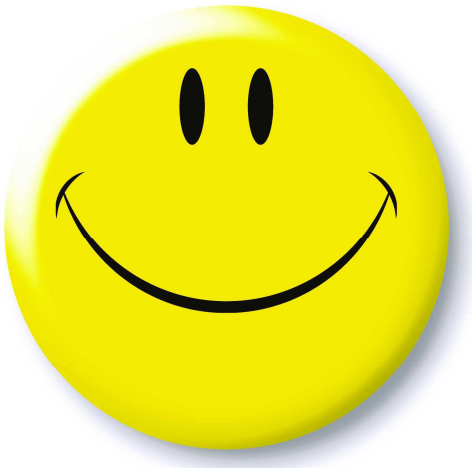
Update from ACHRO/EEO Consultant Ron Cataraha . . .

I hope many of you, if not all of you, will be able to attend our annual ACHRO/EEO Conference at Harrah's in South Lake Tahoe on October 23-26. I understand that some of you have been told, because of the financial state of your districts, that you will not be able to travel out of state. However, I hope you will be able to convince, persuade, or whatever you can do to explain to your supervisor or Board of Trustees the reason we scheduled the conference at Harrah's in South Lake Tahoe Nevada is the low and reasonable costs of hosting a conference there. The rooms at Harrah's are very nice and comfortable for a rate of $79 a night. Meals, audio-visual, and other charges are much more reasonable and affordable as compared to other locations in Northern California. I've heard complaints that it's too far and not easily accessible—that's not true. If one flies into Reno/South Lake Tahoe International Airport one can use the shuttle service at the airport that will take you directly to South Lake Tahoe at a very reasonable rate. Air fares to Reno/South Lake Tahoe International Airport are also very reasonable for that time of year.

Although I have not yet done site visits for our 2013 conference scheduled to be held somewhere in the Southland, I'll be looking at properties in Orange County and Los Angeles County (downtown Long Beach) and hope I can find a nice property that can accommodate our needs and with affordable reasonable rates that will fit all of your budgets in these tough financial times. If you have some properties you've had other conferences at that you feel is reasonable and affordable and can accommodate our group, please email me the name and address, including contact person (if you have available) at rcatsr@aol.com.

A big welcome to the Executive Committee goes out to Dr. David Bugay, Vice Chancellor of Human Resources at South Orange County Community College District. David is the 2012-13 Vice President and Training Committee Chair for ACHRO/EEO. Congratulations on your election! I look forward to working with you in the years to come. A fond farewell to Randy Rowe, the past-president of ACHRO/EEO who also served as our representative on the State Chancellor's Office Consultation Council. Randy retired as Associate Vice Chancellor of Human Resources from the State Center CCD on June 30, 2012, and now joins the rank of us 'happily' retired CHROs. (Smile!) To Wyman Fong, who is now the past-president of ACHRO/EEO, congratulations on a job well done as president the past two years. It's been a pleasure working with you. And lastly, to Cindy Hoover, the new president of ACHRO/EEO, good luck as the leader of our organization. You did a marvelous job as vice president and chair of the training committee the past two years and I'm sure you'll continue to do the same in your new position and role. I look forward to continuing to work with you this year.



A big THANK YOU to my two very hardworking assistants—Ruth Cortez and Reneé Gallegos—for the work they do all year long. Without these two individuals I wouldn't be able to do the work I do for the organization. These two deserve all the credit.

Respectfully,

Ron Cataraha

Ron Cataraha, ACHRO/EEO Consultant
rcatsr@aol.com

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Cost Control Strategies for Complex Benefits Administration

By: Chirayu V. Patel, *Vice President, Client Development, Secova, Inc. (chirayu.patel@secova.com)* and
Karen Kerns, *Account Executive, Secova, Inc. (karen.kerns@secova.com)*

The California Association of Health Plans' Issue Brief from June 2012 reports some startling realities behind health care in America. Health spending in California, which tripled between 1991 and 2009 to over $230 billion, is expected to more than double before the end of this decade, to $552 billion a year by 2020. That will add up to nearly $15,000 a year in health care costs for every Californian.

These costs are compounded by culprits like poor eligibility management and absence and disability costs. Health care reform has added complexity and uncertainty to the benefits administration landscape. It has becoming increasingly difficult for organizations to target savings in benefits administration to ensure good benefits delivery while maintaining or reducing costs and staying compliant. Three primary issues and proposed solutions are outlined below.

Problem: Poor Eligibility Management

Business has come to a point where most organizations, private and public, have either already conducted a Dependent Eligibility Verification Audit (DEVA) or are planning one. In light of new ERISA legislation and changes to the definition of dependent eligibility, it's important to regularly verify dependent eligibility.

A fiduciary's primary responsibility is to run the plan for the exclusive benefit of participants and eligible beneficiaries. ERISA requires fiduciary responsibility: employers must ensure that plan dollars are used for the sole benefit of employees and their eligible dependents. This means, by extension, that employers are duty-bound to ensure that everyone enrolled in the plan is actually eligible.

Solution: Dependent Eligibility Verification Audits

Due to ERISA requirements, a yearly dependent eligibility audit makes tremendous sense to ensure that only those eligible for the benefit plan are enrolled. Additionally, an audit assists many employers in cutting financial waste. Removing ineligible parties from the roster better serves those who are eligible.

Best practices for conducting a DEVA:

- Allow adequate response time. A DEVA requires a response unlike, say, passive enrollment. It also requires proof of eligibility. Gathering the necessary documents represents an inconvenience for employees, but 100 percent compliance is essential, so allow 60 days to respond. This also benefits organizations, as it allows time to send multiple messages that explain why an audit is being conducted and why it's important. Employees don't typically respond to the first communication, so multiple messages over a period of weeks greatly increase the likelihood of 100 percent response.
- Customize the communications. If the majority of your employees have families, for example, focus on the documents required to prove eligibility for children.
- Clarify the consequences of non-compliance. Communicate that the audit is not an opportunity for the organization to kick people off the plan; it is a mechanism to ensure all eligible dependents do receive coverage. Mention that you are bound by ERISA to manage the fund for everyone's benefit. You may even consider offering an amnesty period for employees to self-report if they know or suspect that a dependent is no longer eligible.
- Make responding as convenient as possible. Establish a call center, either in-house or with your benefits administration vendor, where employees can call any time with questions. Enable employees to respond in a variety of ways: by mail with a prepaid envelope, by faxing documents or by uploading them to an online portal. There are different types of documents required for each type of dependent, so make these details very clear. Create a process that is as easy as possible for your population to comply.

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Problem: Absence and Leave Costs

Sick time, vacation, FMLA, military leave, jury duty—each has its own regulations and restrictions. Absence and leave management can be complex and time-consuming. The U.S. Department of Labor reports that three to five percent of employees nationwide are absent on any given day, and that absences cost companies about $100 billion per year. Approximately $21 billion of that comes from FMLA compliance alone. Mercer reports that the direct costs of absences equals 12.2 percent of payroll. Yet most organizations do not track the costs of absences.

FMLA compliance costs companies an estimated $21 billion per year, yet the DOL reports a misuse rate of 25 percent for all FMLA leaves. That means companies spend about $5 billion more than they need to each year. In addition, inconsistent application or simple clerical errors can result in disgruntled employees and even lawsuits. Fear of litigation coupled with lack of understanding or incomplete training lead to over-entitlement. There's far too much at stake, both for the employee and the employer, to not track and measure this important employee benefit category.

Solution: Automated Absence Management to End Over-Entitlement

Because of the cost and risk inherent in absence and leave management, an automated, centralized system is a critical solution. Workforce planning and productivity improve dramatically as absence information is collected, administered and evaluated, freeing managers to focus on the core business and minimizing the impact of absence on the organization. Organizations that effectively manage absences stand to save tens of thousands to millions of dollars, depending on the size of their workforce, as well as the legal fees and settlements that could result from lawsuits.

Organizations have two broad choices: acquire absence management software or outsource the function. Outsourcing holds the obvious advantage of handing over this detailed and complex sector of HR to experts who already have all the necessary infrastructure in place. HR staff can focus on other priorities and play a more strategic part in the organization's future. Some organizations also choose to outsource segments of their absence and leave management while handling the rest in-house.

Whether you choose to handle absence management in-house, outsource it, or do a combination of the two, here are best-practice features to look for.

- Integration with payroll: Ensure that all the good data collected and calculated can get through to your payroll process.
- Eligibility verification: As referenced earlier, about one quarter of FMLA leaves alone are misused, so it's critical that your system automatically and accurately calculates current balances and eligibility for absences and leaves of all types.
- Automatic regulation updates: Absence management is a dynamic field, with regulations, definitions and laws changing constantly. Make sure the solution you choose keeps current to keep you compliant.
- Automated form/letter generation: Continue to streamline the absence management process with a system that generates all the necessary letters and notifications.

Problem: PPACA Legislation

The Patient Protection and Affordable Care Act (PPACA) expects that most workers will receive coverage through their employers, and Congress has created a system of subsidies and penalties to encourage this. The legislation eliminates lifetime caps on benefits, requires large employers to provide workers with insurance, covers young adults up to age 26 on a parent's policy, subsidizes low- and moderate-income employees, and supports preventive health care.

The comprehensive nature of this reform will induce benefit re-designs, increased administrative and compliance costs, eligibility rules restructuring, increased taxes and health insurance exchange management.

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Organizations will need to update and fine-tune their operations to meet compliance requirements set by the legislation.

Solution: Update Support, Reduce Complexity

The key to improving benefits administration in light of this new legislation is to contemporize support while reducing complexity. Modifications to systems, communications and support infrastructure are continuously needed to keep pace with the changing landscape. An effective and efficient solution is to reduce the costs of supporting benefits by driving communications, support and enrollment activities to high-tech and high-touch employee self-service solutions supported by a call center.

Informed, dedicated benefits administration is critical as employer-based benefits are increasingly transitioning to subscriber-focused benefits. As employees bear a greater financial responsibility, they will want to be well-informed, so acting as a benefits educator is key. Educate employees about what benefits they are eligible for and what resources they have to make decisions. Provide an online information portal and a call center to address specific questions.

One area that consumers could use education about is wellness initiatives. Preventative care is a cornerstone of the new healthcare legislation, and benefits administrators are recognizing the need to integrate with voluntary insurance carriers and assist with wellness initiatives. Getting employee buy-in on health screenings can provide the data needed to craft customized wellness programs. Healthier employee groups can lead to both a reduction in claim costs AND lower premiums—saving your organization as well as your employees money.

To meet these many challenges, consider outsourcing all or part of your benefits administration function. The Everest Group's Benefits Administration Outsourcing (BAO) Annual Report 2011 reveals that in 2011, the global BAO market witnessed a growth of 12.5 percent to reach $5.4 billion in annual revenue. This growth has been spurred in the U.S. by the sharp rise in benefit costs, healthcare reform legislation and increasingly complex compliance requirements—all of which contribute to greater employer costs. The move toward BAO is a move toward cost savings. Technology innovation and global outsourcing have increased the value proposition of BAO as well, making it well worth considering as a valuable business partner.

About Secova

Secova is an acronym for "**Se**rvice is Our **Co**re **Va**lue". Headquartered in Newport Beach, CA with offices spread globally, Secova provides customized solutions for the administration of employee benefits and human resources. Enrollment technology, 24/7 call center, eligibility management, and billing management are a few of the services offered by Secova. Since its inception, Secova has worked with Fortune 500 companies, mid-size corporations, multi-employers, and state/local governments.

Secova's solution whether dealing with large clients or otherwise centers around its unique ability to bring together the objective and subjective elements of High Tech + High Touch to provide the perfect fit for the client both, as an employer and an employee. We accomplish this by focusing on our operating philosophy of "Engage, Empower, and Ensure" and by leveraging our 3Ps: People, Process, and Platform.

Have You Considered A Dependent Verification Review?

By: Raelene Walker, American Fidelity Assurance Company

Many employers are discovering the potential benefits of a dependent verification review (DVR) by realizing reduced premiums and lower claims costs. American Fidelity has been conducting reviews since 2006 in many states throughout the country and has assisted more than 450 California educational institutions with their reviews.

A dependent verification review helps to determine if all of the dependents carried on your district's medical/dental/vision plans are qualified dependents, according to the negotiated contract language between you and your carriers. We do this by sitting down one-on-one with each of your employees to verify their information.

Benefits of a DVR Include:

Cost savings by elimination of non-qualified dependents.

Reduced plan usage can have a positive effect on future plan ratings.

Impartial third party facilitates information, without having to enlist help of a school benefits employee.

If you are still unsure whether your District would benefit from a dependent verification review, consider these statistics:

Some estimate that anywhere from 7% to 20% of dependents are ineligible for health coverage.

Employees' dependents drive up to 70% of a company's health care costs.

How a DVR Works

Employees are notified of the review through letters and/or e-mail. They are also given handouts of current eligibility guidelines, sample Q&A pieces, and other pertinent timing information. Meetings are private and confidential to help preserve employees' privacy.

During your DVR, an American Fidelity representative will visually inspect documentation provided by employees to confirm that each covered dependent is eligible under the terms of your plan(s). He or she will also provide your benefits office with weekly reports to help you track the effectiveness of your review. Plus, if the DVR occurs during open enrollment, your representative will review your District's voluntary benefits with your employees, giving them the opportunity to enroll in whichever plans they choose.

The best part is that DVRs may be available at no cost to you![*] Please contact Raelene Walker at 866-523-1857 extension 216 or Raelene.Walker@af-group.com if you are interested in a DVR.

HRAdvance: "The Importance of Dependent Eligibility Audits Now", January 11, 2010.
AON Hewitt Dependent Verification Services. Retrieved August 8, 2012, from http://www.aon.com/human-capital-consulting/hrbpo/dependent_verification_services.jsp.
[*]Unless otherwise prohibited.

SB-22757-0812

Improving HR Efficiency and Effectiveness through Consortium Membership

By: Marianne Tonjes, CODESP

Strategic HR is the key to aligning talent management with the goals of the district so that employees, who possess the necessary competencies, are available to provide for efficient college operations. Such practices not only help districts meet their objectives, but it also emphasizes HR's role as a "business partner" with college administration. Effective use of resources to recruit, hire and retain talent requires college districts to re-examine their HR practices. With reduced budgets they must continue to ensure that they will attract the right mix of people with the skills that will be needed to respond to changing organizational needs. As the economy takes its toll on staff size, HR will have to become more fiscally creative to maintain quality hiring practices.

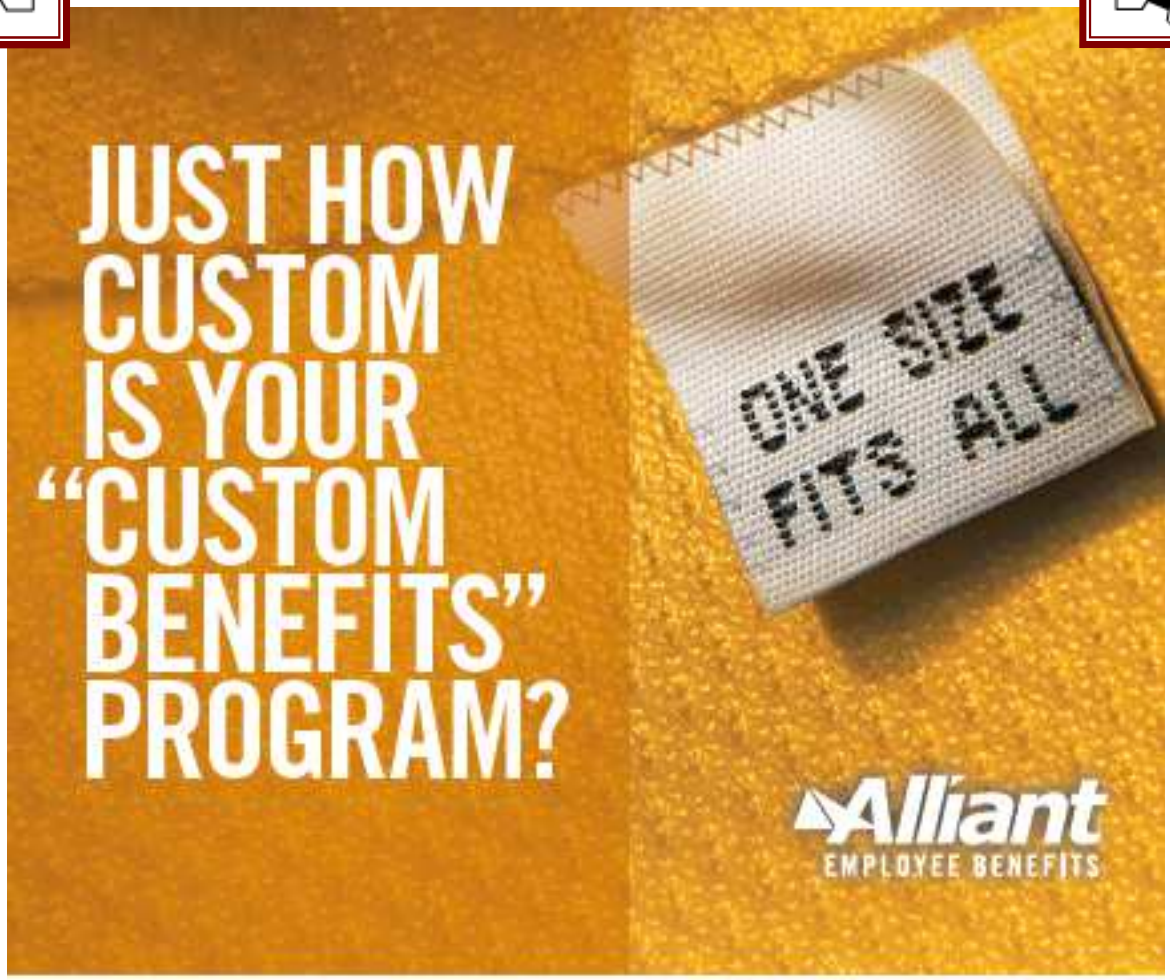
Reduced budgets have changed the focus of HR from legal watchdogs to proactive team players who need to deliver "bottom-line" results. With limited staff they must hire more effectively, reduce operating costs and increase their use of technology to demonstrate their value to district administration and their ability to be budget savvy. An HR based consortium can provide a solution to compensate for less staff and limited department resources by providing technology tools and low-cost training and employee selection products and services.

A consortium takes similar processes and functions that are performed at numerous districts and consolidates them into one central organization. This results in increased efficiency and lower costs by sharing resources and eliminating redundancies and unnecessary job duties. For example, a private employment test vendor typically charges more for one "off-the-shelf" test than a HR consortium's annual fee. The private vendor may also charge additional fees for editing and test rental. Better budget control is more attainable through a HR consortium's low yearly fee for a wide range of products and services.

Web-based tools can improve HR department efficiency by streamlining many employee selection and job analysis tasks. By using these tools HR departments can save time and resources to become more strategic so they can focus on higher value services and employee needs. Due to the high cost of developing technology tools using consortium developed software can make it affordable.

Furthermore, training solutions to address a wide range of HR skills required to maintain relevancy must be continued, especially when budgets are slashed. Pooling resources to purchase webinar services and attract speakers and develop training programs and webinars are further advantages of belonging to a consortium.

While the quest for effectiveness is always critical, in the current economic climate it is equally important to simultaneously focus on methods to increase efficiency. Don't go it alone, use the power and expertise of the group to optimize HR resources and effectiveness. Minimize costs and enhance HR efficiency by joining a consortium.



Healthcare has changed. Why hasn't your benefits strategy?

With dramatic healthcare reform, unyielding medical inflation, and tightening company budgets, shopping around each year to find the cheapest benefits program is a strategy that's beyond outdated. (Did it really ever work to begin with?) It's not just about finding the lowest cost. It's about creating a value-rich benefits program tailored to your organization's specific needs. Alliant can help you craft a personalized benefits program that fits you. Just you.

Jacquelyn Stevenson
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Christine Kerns
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Drug Addiction, Alcoholism, and Reasonable Accommodations Under ADA and FEHA,

By: Brent M. Douglas, Associate at Stutz Artiano Shinoff & Holtz

It is every human resource manager's worst nightmare. A teacher comes into your office and admits that she has a history of drug abuse. Although she has previously entered rehab and kicked the habit, she has suffered a recent relapse and needs time off work. What do you do? Can you fire her on the spot for failing company drug policies? Is she disabled? Must you afford her a reasonable accommodation just like you would provide a ramp for someone in a wheelchair?

This scenario is horrifying because it throws a human resource department knee-deep into the Americans with Disabilities Act (ADA) and, in California, into the Fair Employment and Housing Act (FEHA). Both of these laws are replete with pitfalls for even the careful employer and expose organizations to expensive litigation and attorney's fees.

The ADA and FEHA are a boxing match where, in one corner, sits the employer's affirmative duty to create a "reasonable accommodation" for the disabled employee, and in the other corner sits the employee's duty not to create an "undue hardship" on his or her employer. This brief paper is designed to aid community college human resource departments in understanding one increasingly common disability: drug addiction.

Brief Background on Reasonable Accommodation

The ADA and FEHA create an affirmative duty on employers to make reasonable accommodations to disabled employees. (42 U.S.C. § 12111(8); Govt. § 12940(m).) To be sure, the duty to create a reasonable accommodation forces college districts to make exceptions to the rules and practices that otherwise would apply to everyone. "The essence of the concept of reasonable accommodation that, in certain instances, employers must make special adjustments to their policies." (*McAlindin v. County of San Diego* (9th Cir. 1999) 192 F3d 1226, 1236.)

Of course, neither the ADA nor FEHA defines "reasonable accommodation." That would make it too easy. Instead, the ADA lists examples of reasonable accommodations, and, in turn, the courts have over the years established times when an employee was simply requesting too much. The statutes list seven types of reasonable accommodations employers are expected to make:

Physically altering facilities for access and use
Job restructuring
Part-time or modified work schedules
Reassignment to a vacant position for which the employee is skilled
Adjustments to examinations and training materials
Providing readers or interpreters; and
Similar accommodations

(42 U.S.C. § 12111(9); Govt. § 12926(o).)

Simply put, a reasonable accommodation "is one that would enable an employee with a disability to enjoy and equal opportunity for benefits and privileges of employment as are enjoyed without disabilities." (*Howell v. Michelin Tire Corp.,* (MD Al. 1994) 860 F.Supp. 1488, 1492.)

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Conversely, no employer must create an accommodation that "would impose an undue hardship on the operation of the business." (42 U.S.C. § 12112(b)(5)(A); Govt. § 12926(t).) Similar to "reasonable accommodation," however, neither the ADA nor FEHA specifically defines "undue hardship." Instead, both laws vaguely call an undue hardship any "action requiring significant difficulty or expense," and both simply list factors to be considered in determining whether a proposed accommodation creates an undue burden:

> A cost-benefit analysis between the efficacy of the accommodation and its cost
> The financial resources of the employer
> The impact the accommodation would have on the operation of the business
> The overall size of the business; and
> The type of business

(42 U.S.C. § 12111(10)(A) ; Govt. § 129269(s); s*ee also Vande Zande v. State of Wisonsin Dept. of Admin.* (Wis. 1995) 44 F3d 538, 543.)

Left with this vague instruction manual, courts over the last 20 years have attempted to establish boundaries as to what an employer need not do. First, an employer need not create a new job for a disabled employee or applicant. (*Howell, supra*, 860 F.Supp at 1492.) Nor must an employer change the essential functions of an existing job. (*Larkins v. CIBA Vision Corp.* (ND Ga. 1994 85 F.Supp. 1572, 1583.) That is, the essence of the reasonable accommodation mandate is the creation of something that enables a disabled person to perform the essential functions of her job – not the removal of essential job functions to conform to the disability. (*Id.*) For example, a customer service representative whose essential job function is to answer calls is not entitled to the creation of a job without telephone duties even though the telephone causes her to have panic attacks. (*Id.*)

Also, because attendance at the job site is a basic requirement of work, an employee is not entitled to an indefinite leave of absence. (*Rogers v. International Marine Terminals, Inc.* (5th Cir. 1996) 87 F3d 755, 799.) "In most instances the ADA does not protect persons who have erratic, unexplained absences, even when those absences are the result of a disability." (*EEOC v. Yellow Freight System* (7th Cir. 2001) 253 F3d 943, 948; *see also Hanson v. Lucky Stores, Inc.* (1999) 74 Cal.App.4th 215, 226-227 [applying FEHA].) An employer need not assign other employees to assist the disabled employee perform the functions that he or she can no longer perform. (EEOC Technical Assistance Manual 2.3(a); *Robertson v. Neuromedical Ctr.,* (La 1998) 161 F3d 292, 295.)

Finally, an employer need not provide the "best" accommodation to an employee, and the employer has the ultimate discretion on which proposed accommodation that restores the employee's ability to perform her essential job functions is most practical. (*Kiel v. Select Artificials, Inc.,* (8th Cir. 1999) 169 F3d 1131, 1137; 29 CFR Pt. 1630, App. § 1630.9.)

Unique Challenges with Alcohol and Drugs

Drug and alcohol dependency, however, present unique and often conflicting challenges for community college districts. Even the relatively simple task of identifying the existence of disability suddenly becomes difficult. Several special rules apply to this field.

Perhaps the most complicated aspect of the interplay between the ADA, FEHA, and substance abuse is that only past drug users who have been successfully rehabilitated are considered disabled. (42 U.S.C. § 12114(a),(b); Govt. § 129269(l)(6),(m).)

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That is, the reasonable accommodation requirement does not prevent an employer from refusing to hire or from discharging an employee who, because of current alcohol or drug use, is unable to perform his or her duties or who endangers others. (Lab.C. 1025; *see Gosvener v. Coastal Corp.* (1996) 51 C.A.4th 805, 815.)

"Current" drug use means recent enough to justify the employer's reasonable belief that drug abuse remains an ongoing problem. Thus, employees who had drug use weeks or months before termination were found to be "current" drug users for ADA purposes, even though they were clean on the day of termination. (*Collings v. Longview Fiber Co.* (9th Cir. 1995) 63 F3d 828, 832; 29 CFR Pt. 1630, App. § 1630.3(a).)

Community college districts may drug test any job applicant to ensure such drug use is in the past, and districts may drug test current employees who demonstrate a suspicion of current drug or alcohol use. (Cal. Govt. § 12114(b)(3); *Loder v. City of Glendale*, (1997) 14 Cal. 4th 846, 874-875.) Such testing does not violate the California Constitution's right to privacy so long as it is applied uniformly to all applicants for the position or to all employees who raise such suspicion. (*Pilkington Barnes Hind v. Superior Court,* (1998) 66 Cal. App. 4th 28, 32.)

Another bizarre twist in the ADA and FEHA protection of people with substance abuse histories is that to qualify as a disabled person under the law, the past drug use must currently limit the employee's ability to work. (Govt. § 12926(l); 42 U.S.C. § 12102(1)(A) [ADA higher standard is "substantially limit"].) This seems a bit oxymoronic, doesn't it? To be protected by the disability acts, one must already be successfully rehabilitated but must simultaneously be impaired. This further complicates the employer's ability to identify the disability.

In California, medical marijuana muddles this picture even more, as an employee may have a doctor's prescription for cannabis use that does not violate state law. (*See* Health & Safety Code §§ 11362.7-11362.83.) However, because marijuana possession and use is still a federal crime, employers are protected from adverse employment actions against current marijuana users – even if that marijuana use is recommended to treat another, recognized disability. (*Ross v. Ragingwire Telecomm., Inc.,* (2008) 42 Cal. 4th 920, 930.)

If an employer is aware of an employee's qualified drug-related disability, the employer bears an affirmative duty to reasonably accommodate the disability; the employee need not ask for help. (*Prillman v. United Airlines, Inc.,* (1997) 53 Cal.App.4th 935, 949-950.) However, if an employee is not manifestly disabled, it is the employee's burden to demonstrate the existence of a qualified disability, and neither the ADA nor FEHA requires clairvoyance on the part of the employer to identify an employee in need. (*Hedberg v. Indiana Bell Tel. Co.* (7th Cir. 1995) 47 F3d 928, 934; *see* 42 U.S.C 12112(b)(5)(A).)

After a drug-related disability has been established, the employer must engage in a good faith "interactive process" to identify potential reasonable accommodations. (Govt. § 12940(n).) Of course, with drug addiction the reasonable accommodation is rarely the alteration of district property, a change in job duties, or a transfer to another position – it is time off. Here, the rule is simple: an employer must allow an employee time off to voluntarily enter a drug or alcohol rehabilitation program, provided it does not impose an undue hardship on the employer. (Cal. Labor § 1025.) The employer need not pay the employee during the leave, but it must allow the employee to use available sick time. (*Id.* at § 1027.)

Regardless of the employee's desired accommodation, during the interactive process the employer must (1) analyze the particular job involved and identify its essential job functions; (2) consult with the disabled individual to ascertain the precise job limitations; (3) identify potential accommodations that solve the limitation;

(continued on page 31)

and (4) select the accommodation most appropriate for the employer, if any. (29 CFR Pt. 1630, App. § 1630.9.) The employee bears the burden of proving that particular accommodation would allow him or her to perform the job's essential functions and that the suggested accommodation is reasonable in light of the difficulties or expense to the employer. (*Earl v. Mervyns, Inc.,* (11th Cir. 2000) 207 F3d 1361, 1367.)

Finally, the presumption "is that the accommodation is required unless the employer can demonstrate the accommodation would impose an undue hardship." (*McAlindin, supra,* 192 F3d at 1237; *see also Walton v. Mental Health Ass'n of Southeastern Pa.* (3rd Cir. 1999) 168 F3d 661, 670.) That is, the employer bears the burden of establishing that proposed accommodation creates an undue hardship. (29 CFR Pt. 1630, App. § 1630.2(p).)

Thus, although drug disabilities provide unique challenges, as with most other ADA and FEHA accommodation cases, the central issue is rarely whether an employee is actually disabled but really what defines the job position itself vis-à-vis the proposed accommodation. Can a district internet support technician answer support calls from home? Can an hourly janitor shift a schedule from 8-5 to 10-7? In these cases, likely yes, unless the employer can demonstrate that a flexible work schedule imposes an undue hardship. Perhaps some unique aspect of that division of the college requires attendance during those hours. (*See Ward v. Massachusetts Health Research Institute, Inc.,* (1st Cir. 2000) 209 F3d 29, 35-37.)

Can a teacher demand that the proximity and scheduling of her rehab sessions for a past drug problem entitle her to teach all her classes online? Could a teacher claim that the exposure to the homeless surrounding the school's downtown campus reminds her of her former drug dependency and demand a transfer to another district campus? This paper is merely a brief overview of a field fraught with privacy interests and potential pitfalls for community college district human resource personnel. For answer to these questions and many more, feel free to give me a call at any time.

Brent M. Douglas is an associate at Stutz Artiano Shinoff & Holtz in San Diego, California. He specializes his practice in employment litigation, construction, and personal injury defense for California public entities. He can be reached at 619-232-3122 or bdouglas@stutzartiano.com.

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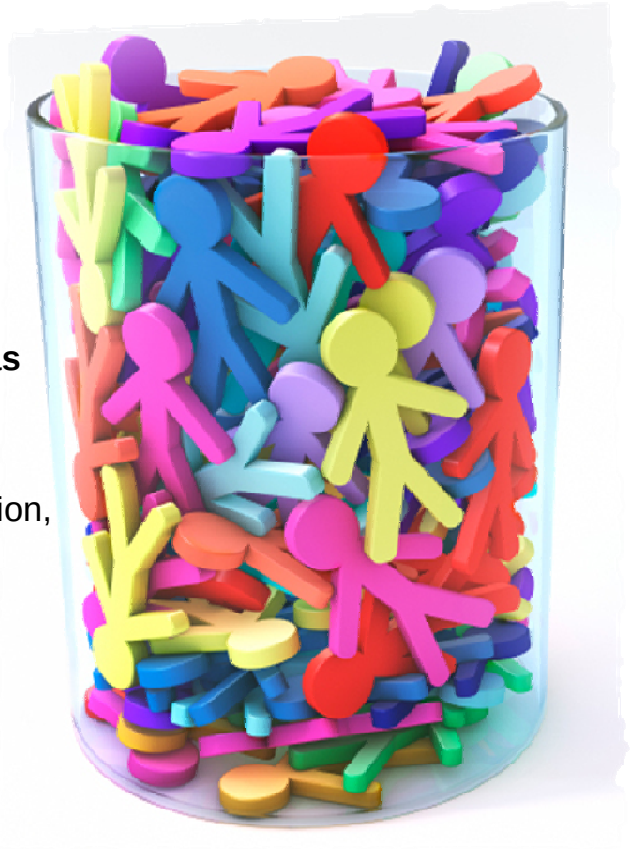
Article from ACHRO/EEO VP David Bugay . . .

Group Therapy for Human Resource People

The Association of California Community College Administrators is a partner to us in many ways. ADMIN 101 is a premier program for administrators who are new to the California community college system. Its goal is to address the "nuts and bolts" of administration and it does just that. In preparing to present a segment regarding Human Resources, a survey was conducted on the CHRO list-serv. It was a true experience in mass group therapy! My objective was to find ten solid "Things" that drive HR people crazy. We ended up with over 40, which have been condensed to:

TOP TEN THINGS THAT DRIVE HR PEOPLE CRAZY!

1. Personnel File says employee **ROCKS**. Supervisor says the employee **is a ROCK**.
2. Document, Document, **DOCUMENT**!!
3. Some managers' emails should have a permanent footer entitled: ***"EXHIBIT #1."***
4. Supervision is **NOT** harassment.
5. "Hired two months ago, why have I **not been paid yet?" (No paperwork ever turned in to HR!) (Reinterpretation: I didn't say it was your fault, I said I was going to BLAME you!)**
6. "I'm **too busy** to attend training."
7. "I know that I gave my employee a great evaluation, but it was because I **didn't want to hurt** their feelings and **tell them the truth**."
8. **Curses** to retroactive personnel actions to legally pay folks!
9. "My manager told me to keep a **separate set of records** for my overtime/comp time rather than turn them into HR."
10. "I didn't do it, and even if I did, ***it wasn't my fault!"***



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Advanced Training for Human Resource Professionals

Your ACHRO Officers plus several past officers met on August 7, 2012 to discuss the possible formulation of an advanced training program for future vice presidents and vice chancellors in human resources for the California community college system. Additional information will be coming out in the near future as we complete a survey to define the needs that exist, build a proposed curriculum and prepare a program outline to present at the October ACHRO Conference.

Some of the areas of training being considered include: Executive Leadership, Recruitment, Investigations, Negotiations, Building the Board Agenda, Staff Development, HR Files, ADA Accommodation, the Interactive Process, Discrimination and Board Policies.

If you want to be part of building this exciting program, where we can work together to build the future leaders of human resources in California, you should plan on attending the lunch meeting we will be hosting for the Training Committee on Friday, the last day of the ACHRO Conference in Lake Tahoe. If you are interested in helping to develop this program, please let Ruth know.

Student Success Task Force Implementation Update

SB 1456 (Lowenthal) is moving forward to implement the recommendations in the Student Success Task Force into Education Code. Below is a link if you desire to read the text of the bill.

http://www.aroundthecapitol.com/billtrack/text.html?bvid=20110SB145694AMD

The SSTF recommendations strengthen the previous provisions by requiring students to engage in and complete various student success components. The SSTF will affect every aspect of community colleges in California including human resources. We have two members in ACHRO serving on our behalf for the Professional Development part of the SSTF: Cynthia Hoover of Antelope Valley (our President of ACHRO) and Abe Ali of Bakersfield CCD. Details about the SSTF can be accessed at:

http://www.californiacommunitycolleges.cccco.edu/PolicyInAction/StudentSuccessTaskForce.aspx.

Sincerely,

David Bugay

ACHRO/EEO Vice-President & Training Committee Chair
So. Orange County CCD
dbugay@socccd.edu

Summary of CalSTRS and CalPERS Developments

By Maureen Toal, PARS

Public Agency Retirement Services (PARS) is pleased to contribute this article for the "The Communicator" highlighting recent retirement-related legislative and regulatory developments of interest to Human Resources Officers in California's community colleges. This article summarizes CalSTRS and CalPERS developments. For ongoing public employee retirement-related news including the latest on pension reform, you can also go to PARS News Center at www.pars.org.

CALPERS and CALSTRS REPORT LOW EARNINGS

California's public pension funds continue to struggle as the economy recovery and the stock market have been shaky. At the end of the fiscal year, both CalPERS and CalSTRS reported investment returns far shy of their anticipated rates. CalPERS reported a 1% annual return while CalSTRS return was a little better at 1.8%. Both systems now use a discount rate of 7.5%, which is what the funds expect their investments to return in the long term. These low earnings will likely lead to higher contribution rates, on top of contribution rates that continue to rise from the smoothing of the market losses of 2008-09. However, while CalPERS has authority to impose higher contributions, CalSTRS needs the Legislature's permission to raise rates and made just such an appeal in July.

NEW GASB PENSION RULES

The Government Accounting Standards Board (GASB) released new rules recently overhauling how public pension funds report on their financial health, requiring government employers to recognize costs earlier and, in certain cases, make more conservative projections of future fund earnings. The changes will increase transparency, but could further negatively impact on funding levels. According to a recent study, CalPERS would be 65% funded under the new rules. CalSTRS would have dropped to 60% or below under the new rules, based on 2010 actuarial valuations. The new rules go into effect in two years. In addition the new rules may require community college and school districts to identify their STRS liabilities on their financial statements in the future.

INVESTMENT RETURN ASSUMPTION CHANGES

CalPERS gave final approval in March to reducing its investment return forecast a quarter-point from 7.75% to 7.5%. CalPERS actuarial staff proposed lowering the discount rate to 7.25% but the Board of Administration decided against the larger decrease due to the fiscal pressure it would put on local governments. CalPERS is planning a two-year phase in of rate increases using the "smoothing" approach they have used in the past to soften the impact. For school/CCD plans, the first year of the employer rate increase due to the discount rate change began July 1, 2012.

The CalPERS contribution rate for school employers of 11.417% was approved by the CalPERS Board at its May meeting. That rate is an increase of nearly 0.5% percent from the current 10.923% in 2011-12. The new rate went into effect July 1.

CalSTRS cut its assumed investment return rate in February from 7.75% to 7.5% on recommendation from its actuaries. The CalSTRS board's action marks the second time in a year and a half that it has lowered the investment forecast by a quarter percent – and reflects a new realization that CalSTRS can't rely on the high annual return that the pension fund has assumed. The last decade's returns has dampened optimism.

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CALSTRS FUNDING SITUATION

The recently adopted CalSTRS actuarial valuation (as of June 30, 2011) reflects a two-percent decrease in the funding status from the previous year, as the final impact of the extraordinary losses in 2008-09 was recognized. This year was the 3rd and final of the three-year smoothing period CalSTRS used to phase in the investment losses. The latest valuation revealed a funding level of 69%, leaving the fund with a $64.5 billion funding shortfall.

SPONSORED LINKS

The $152.2 billion system had an $8.5 billion increase in pension obligations during the 12-month period, according to report by Milliman, the retirement system's actuary. The funding shortfall is due primarily to CalSTRS' lackluster investment returns, which averaged 5.5% a year over the last 10 years. This was significantly less than the retirement system's 7.5% rate of return assumption, according to the Milliman report.

CalSTRS' board in February lowered the assumed rate from 7.75%, which added $3.5 billion to the funding gap, the report said. CalSTRS' assets would be depleted in about 35 years if additional funding is not secured, Millman said.

Neither the state Legislature nor Gov. Jerry Brown has responded to CalSTRS' pleas for more funding over the last year. Both the legislature and the governor must approve any change to the current funding formula, in which academic employees pay 8% of their annual pay; community college districts 8.25%; and the state, around 2%.

STRS POST RETIREMENT EARNINGS EXEMPTIONS EXTENDED

AB 178 was signed by the governor as Chapter 135 on July 17 and immediately became law as a result of an urgency clause. The bill extends certain STRS postretirement earnings limit exemptions until June 30, 2013. Eligible exempted positions include retired members approved by the Superintendent of Public Instruction, California Community College Board of Governors, or a county superintendent to serve as a trustee, administrator, or fiscal advisor for districts to address academic or financial weaknesses. Also exempted are retired members that do not work for at least 12 consecutive months after retirement and then return to perform CalSTRS-eligible work.

PARS specializes in customized retirement plans and trusts for public agencies, including early retirement incentives, OPEB trusts, Social Security Alternative plans for part-time employees, and other supplemental plans. If you have any questions on these issues call Maureen at (800) 540-6369 ext. 135 or email to mtoal@pars.org.

Please also email Maureen if you want to be put on our monthly PARS Legislative Email Alert list.

ACHRO/EEO Past-President's Column . . . . .

After serving two terms as your ACHRO/EEO President, I am pleased that **Cynthia Hoover**, Director of Human Resources, Antelope Valley Community College District , is our new ACHRO/EEO President. I also warmly welcome **David Bugay**, Vice Chancellor, Human Resources, South Orange County Community College District, as our new ACHRO/EEO Vice President. Both individuals, along with our Executive Committee, are committed to developing and supporting our organization and future leaders from within. Congratulations to our former ACHRO/EEO Past President, **Randy Rowe**, on his well deserved retirement this year!

A WORLD OF THANKS!

This has been a very challenging year for all of us. My local Academic Senate President associated our duties and responsibilities to that of climbing a waterfall – impossible! With that, I need to thank all that continue to be that shield while climbing my local waterfall.

A special thanks to **Dr. Susan Cota** (Interim Chancellor, Chabot-Las Positas Community College District), **Dr. Frank Chong** (Superintendent/President, Santa Rosa Junior College), **Dr. Audrey Yamagata-Noji** (Vice President, Student Services, Mt. San Antonio College), **Mr. Henry Gee** (Vice President, Student Services, Rio Hondo College), and **Dr. Christine Hall** (District Director of Equity, Opportunity and Engagement, Maricopa Community College District) for your support and mentorship. I am simply a very lucky person. You all are the best!

While the thank you list is endless, I must thank all the members of the Bay 10, as well as those outside this "counseling" network**: Abe Ali (My brother), Fusako Yokotobi**, **Marcia Wade**, **Cindy Hoover, Trinda Best, Irma Ramos, Pat Demo, Connie Carlson, David Bugay, Randy Rowe, Ron Cataraha** *(back from retirement and now at State Center Community College District)***, Ruth Cortez**, and **Reneé Gallegos.**

ACHRO/EEO ACTION!

Over the past years, ACHRO/EEO has strengthened its partnerships with other community college based organizations as well as businesses to increase our visibility and effectiveness.

- **COMMUNITY COLLEGE LEAGUE OF CALIFORNIA (CCLC)**

  Specifically, our partnership and discussions last October with the Community College of League of California has led to the fruition of regional Human Resources Policy and Procedure workshops throughout California, starting this June and concluding with my district as the host district on August 8, 2012. I was able to attend the last workshop and co-presenters Jane Wright and Eileen O'Hare Anderson did a fantastic job! Thanks to Kimi Shigetani, *Vice President of CCLC, for working with ACHRO/EEO to make this happen for us!*

- **THE LAW ROOM**

  The ACHRO/EEO Executive Committee has also partnered with The Law Room to offer special packages and services to our membership. Additional information is forthcoming!

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- **THE ASSOCIATION OF CALIFORNIA COMMUNITY COLLEGE ADMINISTRATORS (ACCCA)**

Lastly, I am appreciative of the support and myriad exposures provided to ACHRO/EEO from ACCCA! Thank you Susan Bray!

As you may know, I was recently elected (thank you for your vote!) as a member of the ACCCA Board of Directors. I am pleased to join other ACHRO/EEO members that also serve as ACCCA Board members:

Linda Beam, VP of Human Resources, El Camino Community College District (President)

David Bugay, Vice Chancellor of Human Resources, South Orange County CCD

Rose DelGaudio, Vice President of Human Resources, Long Beach City College

I look forward to working with the above to develop partnerships as it pertains to our ACHRO/EEO members. If you have not done so, please join us by being a member and voice with ACCCA. Please see www.accca.org to join now.

As we are working on more benefits and discounts for ACHRO/EEO membership, please also visit www.achroeeo.com to be either an institutional or individual member.

For those of you who continue to invest your time and efforts for ACHRO/EEO and/or the development of others – despite your regular workload – I think the following quote is apropos:

"What we do for ourselves dies with us.
What we do for others and the world remains and is immortal."
- Albert Pine, ca. 1851

With that said, thank you for joining us for our 2012 Fall Training Institute! We are glad you are here!

Wyman M. Fong

Wyman M. Fong,
Vice Chancellor, Human Resources
Chabot-Las Positas Community College District
& ACHRO/EEO Past President
wfong@clpccd.org

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DISTRICT OPTIONS UNDER STRS EARNING LIMITS
by Donald F. Averill, President

Using retirees as interim employees under STRS has dramatically changed with the sunsetting of waivers and exemptions to the STRS earning limits. As of July 30, 2012 the maximum a retiree can earn as an employee in a creditable service assignment is now $40,022. This represents one/half the median retirement earnings during the last 12 month fiscal year..

Legislation was signed by Governor Brown to extend some exemptions, but while the bill, AB 178 (Gorrell) will provide some clarification to the earnings limit, it is very restrictive. The bill was urgency legislation that becamee effective upon the signature of the Governor. Under the provision of this bill,, retirees will have the following new options:

- Maximum earnings will raise to $40,022
- If you are working as a "Special Trustee" appointed by the State Superintendent of Public Instruction, the Chancellor of the CC Community Colleges, or a County Superintendent of Schools, you can work for a year without earning limits. However, your salary cannot exceed the salary of the predecessor in the position.
- Retirees who are willing to return to the STRS system do not need to stay out of the STRS System for a full year to be eligible to retire again from the system.
- The bill allows a retiree to work for a third party contractor for a school district or community college provided the assignment is not engaged in creditable service. This option already exists, but the language in the bill may serve its purpose if you are using a retiree as a third party contractor.

AB 178 is very restrictive and has limited ability to work in a creditable position as a retiree. The language for "Special Trustees" is very limited and for the community colleges basically requires the college to be under some form of receivership with the Chancellor's Office. This is an option that is not recommended by PPL. There are other options for districts that need to fill temporary positions. The basic options are listed below:

- Use Internal Candidates – The clearest option is to use internal staff to fill your interim assignment needs. There are no restrictions other than having met EEO selection processes and ensuring that the candidates meet the minimum qualifications to serve in the interim position.
- Use personnel who may wish to make a move to another district prior to retirement from either STRS or PERS. At the present time, we are familiar with administrators who, for one reason or another, are desirous of spending their last

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year as interims prior to retirement. (This could be to earn a higher salary such that the retirement formula is more desirable with a single, higher salary included in the calculations.) Obviously, in a case like this, no restrictions apply.

- Use Outside Sources that are willing to Reinstate into STRS – There are a number of eligible candidates that have retired under the retirement age of 65 or are willing to return to the retirement system. Currently, Retirees who make this choice may now reinstate without waiting for one year. Be aware of STRS guidelines for returning to STRS coverage and re-entering retirement.
- Use Outside Sources that are in the PERS Retirement System – A retiree who is currently in the PERS retirement system can work in an STRS assignment with no earning limits being applied. This might include state employees and retirees from the CSU retirement system
- Use Outside Sources from other States – It is possible for you to bring a person in from out-of-state who can enter the STRS retirement system. If you are using this resource it might be advantageous to allow them to apply for the permanent assignment.
- Use an Inter-Jurisdictinal Agreement (IJA) –You might be able to arrange to use a current STRS covered employee from another distrait and use an IJA where you get the services of the employee and the employee retains their rights to employment in the host district.
- Define the Employment Opportunity so it is not a Creditable Service Position – There is an employment classification in the education code that is not defined as a creditable service position under STRS or PERS. This classification is "Professional Expert" and can be appointed for a full year for a determined time period without the position being subject to retirement services. Obviously, this option must be designed carefully so that the position cannot be determined to be creditable service in an audit.
- Consider using Consultants who can Provide Assessment, Program Evaluation or Coaching Services – If you have a problem with unqualified applicants internally, you might consider setting up a consultant position that can work with the campus while you go through the selection process for a permanent replacement. Under this option you would provide existing staff with an intern experience under a coaching setting.
- Use an Outside Source Willing to Work at the Earning Limit with Options – There are a number of potential options where additional allowances can be given to an interim employee that would not be considered creditable compensation. These options must be used with care and should be cleared with district counsel, County Office of Education and STRS before completing contracts. Some potential options may include;

    - Annuities – employees can be issued annuities under a 403b or a 457 account without it being considered creditable compensation
    - Structuring Expenses – Expenses of the interim assignment may be structured in such a way that it is not considered creditable compensation
    - Make a portion of the assignment a "Professional Expert" – You can make a portion of the assignment so it is clearly a professional expert assignment so that they are identified as an employee of the district;

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Interim Assignments

PPL has had a long working relationship with PERS and STRS and was instrumental in advocating the former waivers and exemptions that allowed STRS retirees to do interim assignments. PPL is working closely with ACCCA on the current pension reform legislation, seeking to extend the exemptions and waivers that ended on June 30, 2012. *Since AB 178 is a one year bill, ACCCA will be working on this issue and pension reform changes to ensure that districts will have the ability to have interim employees that can meet your needs..*

Some of the basic rules on working in public employment after retirement are listed below:

1. Employment Status.

An interim administrator is an employee of the district. The interim contract will be between the interim employee and the District. Nevertheless, PPL has a vital interest in their successful employment. As the referring agent, PPL receives a placement fee for professional services. This fee is not deducted from the employee's salary but is paid to PPL above the salary. The district contracts the employ and the district contracts with PPL for its services. Districts have looked to PPL for referrals because of the following reasons:

- ♦ PPL maintains a database of interims and knows who is available and interested in this level of work
- ♦ PPL will assist the district in doing background checks on referrals.
- ♦ PPL evaluates our referrals after an assignment and knows the quality of service provided.
- ♦ PPL is interested in the interim's success and will work with the District to help with referral arrangements. *Note: PPL will work with the district to find options to the earning limits, but we ask the districts to confirm these options with STRS, PERS or legal counsel.*

Most districts do not provide health and dental coverage for interim employees. An STRS retiree usually does not have to pay into STRS; however, they will probably have a Social Security deduction to cover Medicare. They may also be required to have a TB skin test.

Compensation for sick leave, vacation, and holiday days may vary for interim employees, though most districts will treat interims and regular employees the same in that respect. (This practice may result in a payout of unused vacation days at the end of the assignment.) The interim employee should be informed about district's policies on this issue prior to the assignment.

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2. **Changes in STRS Earnings Limitation.**

If you employ a retiree under STRS, it is important that you be aware of STRS earnings limitations when working in a creditable STRS position and how they apply to current employment. The following options exist under STRS legislation and rules:

Restricted Earnings

- As of June 30, 2012, you can earn up to $40,022 with no effect on your allowance.
- A person working in a STRS creditable assignment may not work for their former employer as an interim, if they are under the retirement age of 65 years. This exception applies for the first six months after retirement. *This rule does not change regardless of the status of AB 178*

Unrestricted Earnings

- If you are an STRS retiree you can work under PERS for the State of California or the CSU System without earning limits, however, you cannot work in any other PERS position.
- If you are a PERS retiree you can work in a STRS position with no earning limit.
- If you are working for a District as a "Professional Expert" this is not considered to be creditable work and is not subject to the earning limitations. However, care must be taken in designing the position so it cannot be interpreted as creditable compensation.

3. PERS Earning Limitations

PERS is much less restrictive than STRS. The basic rule is that an employee can work 960 hours per fiscal year, July 1 through June 30. As long as the employee abides by that limitation, they can still earn whatever the regular position earns. The work hours can be determined between the employer and the interim employee, and many districts offer a lot of flexibility regarding the interim's work schedule. If you work normal work hours and days, the limitation permits 120 days, but you could spread those days over many months.

Waivers under PERS that will allow the employee to work over the 960 hours are possible, but they have been used primarily in city and county government and are harder to get approved for work in community colleges. *It has been reported that PERS is auditing public schools and county offices of education for compliance with this rule.*

PERS retirees may work in interim creditable positions under other retirement systems with fewer restrictions than they would have if they were STRS retirees. However, a retiree whose retirement is coordinated or blended from both systems is unlikely to enjoy the same freedom.

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There are five different groups under PERS. Generally, these assignments are limited to one year. There are no restrictions under PERS currently, if you are working in a position considered creditable service in another retirement system. The restriction for STRS is codified in the Education Code and not in the retirement statutes.

4. Consider Consulting Assignment Options

Consultants differ from interim administrators in that they are not employees of the district, but independent contractors. Consulting assignments must be performed within the guidelines of the Internal Revenue Service for independent contractors. In addition, consultants may not serve in creditable positions under STRS or PERS, and so STRS and PERS earning restrictions do not apply to them. It is worth noting that both retirement systems are vigilant about the type of work performed by retirees: If your employees are in a creditable position, they cannot evade the earnings limitations merely by calling them an independent contractor, or by working through a third-party contractor.

Generally, consulting assignments are defined in a scope of services that describes the services to be performed and/or products to be prepared. Consultants have a working relationship with the administrators, staff, and constituencies of the college, but cannot provide direct supervision, be a signatory or serve as an agent for the college. .

Note: On January 1, 2012, AB 459 became law and established hefty fines for both employees and employers that improperly define an employee as an independent contractor. It is important that independent contractors ensure that they are following the IRS guidelines for working as independent contractors.

5. Professional Personnel Leasing (PPL)

These recommendations have been developed by PPL based on interpretation of the changes in current state legislation. PPL cannot make legal decisions for a district and recommends that all arrangements with interims and/or independent contractors are done in concert with legal counsel.

PPL maintains a web page with a wealth of information about our services and officers and directors. You can access this information at www.PPLPros.com. If you are

If you are interested in working with us as to obtain an interim candidate or consultant, please call PPL President Donald F. Averill at (909) 790-5056 or email him at daverill@pplpros.com.

Fall 2012

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Brown Act 2011 Amendments

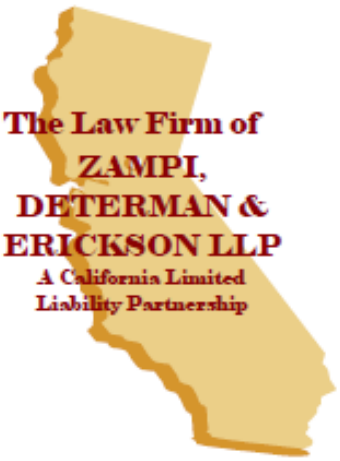
The Ralph M. Brown Act is the open meeting law that applies to legislative bodies, including governing boards of school and community college districts. This is an update of recent legislation that has been signed into law that altered provisions of the Brown Act.

Govt. Code §59452.3 - As part of AB 23, this section of the Brown Act has been added to require that, where two meetings are held simultaneously or in serial order, and the second meeting has at least a quorum of the legislative body that convened in the first meeting, a member of a legislative body or the clerk must announce prior to the meeting how much compensation or stipend the members will receive for the second meeting. The most common situations where this might be at issue are governing boards for foundations and subcommittees where there are common members of both the governing board and foundations or subcommittees. In those instances the Brown Act now mandates disclosure of compensation to those board members for the second meeting.

Govt. Code §59454.2 and 54956 - Both sections of the Brown Act now mandate that legislative bodies provide notice of each meeting, including special meetings, on the local agency's internet website if it has one. Also, Govt. Code §54956 prohibits any legislative body from holding special meetings regarding the salary, salary schedule, or other form of compensation for its executives. This law may impose significant burdens where special meetings are called to select interim executives to replace those that have recently left their post.

Govt. Code §54954.6 - This section, amended by SB 194, modifies existing public notice requirements for local agencies regarding taxes and assessments. Prior to this law, local agencies were required to issue a joint notice for a public meeting and public hearing for any new or increased tax or assessment. Govt. Code §54954.6 now requires that when an assessment is being imposed on a business, the notice must specify the proposed method and basis of levying the assessment in sufficient detail to permit each business owner to calculate the amount of the proposed assessment.

Several of these changes are in response to the City of Bell scandal where abuses of the provisions of the Brown Act resulted in city officials awarding themselves exorbitant salaries. However, the burdens now placed upon local agencies include those that acted appropriately. Should you need assistance in ensuring compliance with these new provisions, please do not hesitate to contact our office.



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