



“THE COMMUNICATOR”

2018 Fall Edition

Volume XIII, Issue 1

**Welcome Message ACHRO/EEO President,
 Dr. Cindy Vyskocil**

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GREETINGS ACHRO/EEO! First and foremost, thank you for the confidence you have placed in me to lead ACHRO/EEO for the 2018-2019 term. Diane Fiero (ACHRO/EEO VP) and I are excited about the year ahead and working hard to build upon the great work begun by our Past President Abe Ali. This summer Abe, Gene Huff, and I kicked off the 2018 HR Leadership Academy that is sure to become one of the best programs ever offered by ACHRO/EEO. As your new president, I am dedicated to ensuring that ACHRO provides a vital network of support for new CHRO leaders, works to foster and develop the leaders of the future, and remains a relevant and respected statewide association.

MOVING ACHRO/EEO FORWARD: It is important that I take a moment to discuss a topic that is important to the future of our Association... **EXECUTIVE LEADERSHIP.** As ACHRO/EEO has grown exponentially over the years and our voice is increasingly important in relation to advocacy issues, I feel a thoughtful discussion should be initiated as it relates to a new model for executive leadership. The 4-person model of President, VP, Past President, and Treasurer/Secretary, no longer allows us the ability to do the substantive work that is required to meet the growing demands of the Association. For example, we have no official position that takes a leadership role on EEO/Equity/Inclusion matters or the HR Leadership Academy. We also do not have the structure necessary, nor a defined leadership role related to Legislative Advocacy to ensure our voices are at the table and listened to when new legislation is brought forward for discussion. In addition, we do not seem to be organized in a manner that incorporates our regional structures, which is very common with other statewide organizations. We need representatives from each of our four consortiums, North 14, Bay 10, Central 14, and Southern 30 to form a Board of Directors. This structure will provide wonderful opportunities for our members to become more involved with ACHRO/EEO. They will be able to lend their expertise and insights to the planning and training of the organization members, as well as share in the responsibility of keeping ACHRO/EEO a robust, engaged, and vital association.



As importantly, I believe that we are in need of an Executive Committee that has a President and Vice President with service terms of more than one year. ACHRO/EEO is a large association with a number of statewide roles to fulfil in addition to the HR Leadership Academy and the planning of our annual Conference. In fact,

no other statewide association, that we could find, has a one-year term for the Presidency. To illustrate this point, it is very odd to become President of the organization, yet the conference is already planned by the previous President. You end up planning the conference that the next President will preside over. A two year term for both the President and Vice President positions will allow more long term planning for the conference as well as more consistent support for the HR Leadership Academy.

I feel strongly that it is my responsibility to leave ACHRO/EEO stronger and better equipped than when I began my term as President. I also feel strongly that the Association should have an opportunity to formally vote on the way forward for ACHRO/EEO...or to leave ACHRO/EEO exactly as it is. Therefore, Diane Fiero and I will be sending out an ACHRO/EEO poll that will provide the ability for members to determine whether changes to our governing by-laws are needed or desired. Please know that neither Diane Fiero nor I have a personal interest to benefit from any potential changes to the Executive Cabinet...AND MOST IMPORTANTLY, neither Diane nor I will serve a two-year term. To be clear, I will complete my year as President for 2018-19, Diane will be President, per our current bylaws, for 2019-20. If the membership votes to move to a two year term, it would become effective for the next Vice President of ACHRO/EEO elected for a one year term as Vice President for 2019-2020, and then become President for a two-year term from 2020-2022. We simply want to engage the membership in a vote that contemplates whether (or not) ACHRO/EEO leadership should be re-imagined in a way to better serve and sustain the future of the Association.

Here is what a potential ACHRO/EEO executive committee structure could look like:



President	2-Year Term
Vice President	2-Year Term
Past President	2-Year Term
Treasurer/Secretary	3 years per changes to by law changes
Chair, EEO/Equity/Inclusion	2-Year Term
Chair, Legislative Affairs	2-Year Term
Chair, HR Leadership Academy	2-Year Term

The research on comparable organizations seems to support a Board of Directors type model like the one listed above. A Board of Directors type model could also serve the much needed role of ensuring oversight over our constitutional bylaws and organizational practices. It is our plan to seek your input as to whether a new model is warranted.

So, I would like to outline a plan for examining these issues. **First, please look for the ACHRO/EEO Poll this month** to survey the membership with respect to ACHRO/EEO maintaining the same structure or changing the structure to a model more in line with other statewide associations. Second, should the survey result in over 50% desiring a different model, we will send out draft bylaw changes for consideration by the membership. The bylaw changes will be sent out prior to the October ACHRO/EEO Conference so that any issues can be discussed and questions answered at the conference membership meeting. Finally, after the ACHRO conference (and if bylaw changes are proposed) a new electronic vote will take place to consider new changes to the ACHRO/EEO bylaws.

Though I am not always an advocate of change, we all know that as any organization grows...it must also adapt to a changing environment in order to address changes in organizational demands and stay active and relevant as an Association as well as to the districts we serve.

In service to you,

Cindy

***Update from our ACHRO/EEO Past President ,
Abe Ali***

Aloha Colleagues,

I am looking forward to seeing you at the Institute in October. This is a time that colleagues can take a break from the day to day grind of managing Human Resources to learn how to be better at we do in a safe caring space. The institute will be filled with opportunities grow and network with your colleagues and our faithful corporate sponsors.

There a couple of opportunities that will add on to our outstanding institute. The first project that I have had a chance to work on completing is a written Human Resources reference manual geared toward any Human Resources professional or Compliance Officer wanting to see how our unique legal requirements match up with our recommended best practices from the field. The reference manual was developed in collaboration with Randy Erickson of the Erickson Law Firm. We will make an announcement at the Institute in October regarding how to receive a copy of the reference manual. We also will take down names of interested members to develop state regional presentations spread throughout the year. The second project that I have been working on is in collaboration with Laura Schulkind and Eileen O'Hare Andersen of Liebert Cassidy Whitmore. We have developed an advanced Human Resources training program to develop those members who have the motivation to be a Chief Human Resources Officer or Compliance Officer in California Community Colleges. I am so honored that LCW is willing to be supporters of growing our Human Resources and Compliance department professional to be the next generation of Chief Human Resources and Equal Employment Compliance Officers. After announcement at the Institute in October, we will solicit an interest list and recommended nominations to the program. We will provide particular details at the Institute for members to consider participating in this year long program.

Abe Ali

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



I would like to thank the ACHRO membership for this opportunity to serve as the ACHRO/EEO Secretary/Treasurer. I am honored and look forward to working with each one of you. This year is an exciting time for Community Colleges and ACHRO is a fabulous opportunity for Human Resources Professional to be a part of dynamitic organization. Members not only enjoy empowering information through ACHCRO/EEO Fall Training Institute as well as supreme team of leaders throughout the State with unwavering support for all.

If not already a dues paying member, now is your opportunity to be a part of this great organization who works hard to bring information and value to the everyday life of HR.

Jeannine Stokes

ACHRO/EEO 2018-2019 Officers & Support Staff



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HR changes around our state. . .

◆ **Retirees**

Rose DelGaudio, Vice President, HR; Long Beach City College
 Karen Harada, Executive Assistant; Long Beach City College
 Gary Maehara, HR Director; Ventura CCCD
 Gaye Steil, HR Specialist; Cuesta College
 Judy Wade, HR Specialist; Taft College
 Marcia Wade, Vice President; HR, Santa Monica College

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

Monica Banta, HR Specialist; Cuesta College
 Laura Barroso, HR Director; Ventura CCCD
 Cinda Bitz, Payroll Specialist; Cuesta College
 Gene Durand, Interim Vice President, HR; Long Beach City College
 Corinne Ewing, HR Analyst; Shasta College
 Stephanie Federico, HR Specialist; Cuesta College
 Tracie Green, Vice Chancellor, HR; Rancho Santiago CCD
 Tre'Shan Hall-Baker, Interim Dean, HR; Santa Monica College
 Cathy Hanson, Director, HR; Pasadena City College
 Alex Haver, Sr. HR Generalist; Taft College
 Ericka Jackson, Interim Manager, Classified, HR; Long Beach City College
 Jacob Knapp, Director, Diversity, Compliance & Title IX; Los Rios CCD
 Sherri Lee-Lewis, Interim Vice President, HR; Santa Monica College
 Daniel LeGuen, Executive Asst. to the Associate Vice Chancellor, HR; West Valley-Mission CCD
 Teri-Lyn Leonard, Director, HR/Payroll; Cuesta College
 Heather Meason, Executive Director, HR; Taft College
 Cindi Nguyen, Interim Manager, Academic HR; Long Beach City College
 Kristin Olson, Interim Associate Vice President, HR; Long Beach City College
 Makayla Payne, HR Administration Clerk; Taft College
 Yuri Perez, Assistant Director, HR; Pasadena City College
 Barbara Richardson, HR Faculty Specialist; West Valley-Mission CCD
 Tiffany Rowden, HR Analyst Coordinator; Taft College
 Prachi Samant, HR Analyst; West Valley-Mission CCD
 Kimberly Slany, Interim Manager, Academic HR; Long Beach City College
 Gregory Smith, Associate Vice President, HR; Shasta College
 Sokha Song, Ed.D., Director, EEO Programs & Title IX Coordinator; Mt. San Antonio College
 Amy Westlund, Lead HR Specialist; Shasta College
 Brianna Whitmore, HR Assistant; Cuesta College
 Paul Williams, Director, Compliance, Training & Employee Relations; West Valley-Mission CCD

◆ **Degrees/Certificates**

Gregory Smith, Master's in Public Administration, USC; Shasta College



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10 Essential Practices for Conducting Investigations



September 7, 2018

There are many situations in which community college districts are tasked with investigating complaints. These complaints may involve employee and student misconduct, in general, as well as complaints of discrimination, including allegations of sexual harassment and violence. While different types of investigations will have their own nuances, there are many practices that are essential for all investigations:

1. **Determine What Policies and Procedures Apply**
2. **Choose The Appropriate Investigator**
3. **Special Considerations**
4. **Identify The Specific Allegations And Consider How To Document The Investigation**
5. **Timely Notices**
6. **Collect and Review All Relevant Documents**
7. **Prepare Necessary Admonitions**
8. **Conduct Thorough and Objective Interviews**
9. **Complete A Thorough Report**
10. **Send Completion Notices**

Since an effective investigation can prevent costly litigation and liability, following these 10 essential practices described below can help ensure your investigation protocol measures up.

Determine What Policies and Procedures Apply

The first step to a legally compliant investigation is to determine which statutes, policies and procedures apply, keeping in mind that certain complaints may be governed by both federal and state laws, the Education Code, applicable collective bargaining agreements, and the college's policies and procedures. These statutes, policies and procedures serve as the roadmap for the entire investigation and will determine important investigation procedures, including timelines and the rights of the involved parties during and after the investigation. Make sure, too, you are caught up on the differences between Title 5 of California Code of Regulations ("Title 5") and Federal Title IX of the Education Amendments of 1972 ("Title IX"). Once you have determined the correct policy or procedure, start by breaking it down into individual steps with deadlines. Then you're ready to decide who will handle the investigation.



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Choose The Appropriate Investigator

Next, you need to decide whether the investigation can be appropriately conducted by an internal investigator or should be referred to an outside investigator or attorney. Many complaints can be appropriately handled by properly trained college staff or administrators. However, if there is any potential for bias of an internal investigation, for example if the case involves a high level employee of the college, outside investigators should be considered. Additionally, for complaints involving numerous or complex legal issues, an attorney may be advisable. Colleges may also wish to keep in mind that by retaining an attorney-investigator, certain investigation reports and documents may be protected by attorney-client privilege. (See *City of Petaluma v. Superior Court* (2016) 248 Cal.App.4th 1023.)

Special Considerations

For complaints involving claims of sexual misconduct, the college's Title IX Coordinator should determine whether interim measures may be put into place, before the investigation has commenced, to protect the complainant and accused and to ensure equal access to the college's educational programs and activities. Interim measures may include: physically separating the complainant and accused, which may include placing the accused on administrative leave; issuing "no contact" orders; and offering medical, counseling, security escort, or other support services to the complainant and accused. Interim measures should not retaliate against the complainant or limit either party's right to access their education.

Identify The Specific Allegations And Consider How To Document The Investigation

Before beginning the investigation, the investigator should clearly identify the specific allegations that he or she is investigating. Often, complaints are unfocused or rambling, so this step is crucial. It will serve as an outline for the interviews, help identify potential sources of information, and define the scope of the investigation. Additionally, the investigator should consider how to document the investigation, including whether or not to use audio or video recordings or to obtain signed declarations or affidavits from witnesses. Community college districts should consult legal counsel about what may or may not be subject to disclosure under the Public Records Act.

Timely Notices

As quickly as possible after the commencement of the investigation, notification letters should be sent to the complainant, the accused, and any potential witnesses. The complainant should be notified that his or her complaint is being investigated and given information regarding the procedures. The complainant should also be reassured regarding protections against retaliation if the allegations include discrimination or harassment based on being a member of a protected class. The accused should be notified, at a minimum, that the complaint has been lodged against him or her, and reminded that he or she may not retaliate in any way against the complainant. All recipients should also be given appropriate admonishments about the need for confidentiality and protection from retaliation for participating in the investigation.

Collect and Review All Relevant Documents

All relevant documents and records should be collected and reviewed prior to beginning the interviews, if possible. Such documents may include: complaints, police reports, personnel files, collective bargaining agreements, board policies and procedures, written communications (including emails), statements from witnesses, site files, logs, handwritten notes, social media, and phone records, where available. Each witness should be asked if they have relevant documents such as emails or print-outs of text messages relevant to the complaint.

Prepare Necessary Admonitions

Before conducting the interviews, the investigator should prepare form admonitions to provide the witnesses, as needed. This may include *Lybarger/Spielbauer* warnings (for the accused if s/he may exercise the right to remain silent), *Banner* admonition (for the accused to assure that they are able to communicate freely with their union), confidentiality admonishments, and statements regarding protection against retaliation.

Conduct Thorough and Objective Interviews

When conducting the interviews, the investigator should generally begin with the complainant first, to ensure that all details about the allegations are known and the scope of the investigation is clear. The complainant will likely identify potential witnesses to interview. It is usually helpful to interview the accused last, so that the investigator can get his or her response to the statements of the complainant and other witnesses. The accused should also be asked for names of potential witnesses. The order of interviews may need to be changed depending on the nature of the investigation. Prior to concluding the interviews, the investigator should do any necessary follow up interviews to ensure that the investigation is complete. If, during the course of the investigation, additional issues or allegations come up, the investigator should consider whether the issues can appropriately be included within the same investigation, or whether the issues require separate investigation.

Complete A Thorough Report

The investigator should make every attempt to prioritize the completion of the final report promptly after concluding the interviews. Timelines required by statutes, college policies or other procedures should be adhered to, except in exceptional circumstances. All documents relied upon and any affidavits or witness statements should be included with the final report. While it may be difficult, the investigator should make a reasoned and informed effort to reach a conclusion regarding each disputed material fact. It is often helpful to have an Executive Summary of the report to highlight the key allegations and findings.

Send Completion Notices

Once the investigation is complete, the college will need to inform both the complainant and the accused regarding the outcome of the investigation. It is recommended to consult with legal counsel regarding what documents and information to provide and whether names need to be redacted from documents. Additionally, both the complainant and the accused should be notified of any appeal rights and procedures.

Conclusion

No two investigations will ever be alike, but the above best practices will put you on the road to performing a thorough and complete investigation. As in any potentially litigious situation, colleges should work closely with their own legal counsel, even when conducting an internal investigation, to ensure that all legal requirements are met.

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

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FSA, HSAs & HRAs: What You Need to Know.

Sample Employer Savings

Total # of FSA participants	200
Avg. annual employee election	\$1,500
Estimated annual employer tax savings	\$22,950

*For illustrative purposes only. Based on 7.65% FICA. Individual tax situations may vary. Please consult a tax advisor.

When it comes to reimbursement accounts, the differences can be confusing. Between Healthcare Flexible Spending Accounts (HCFSAs), Health Savings Accounts (HSAs) and Health Reimbursement Arrangements (HRAs), how do you know which to offer employees? How do you determine which type pairs best with your health plan offering(s)?

Likely, you know that, in general, reimbursement accounts offer tax benefits and a way to pay for eligible medical expenses with money that has been set aside.

Still, the accounts may run together. Let's try to clear up some confusion on the account types and look at which account is most appropriate for sample health plans.

Healthcare Flexible Spending Account

An HCFSAs is a tax-advantaged account that allows employees to save for eligible healthcare costs for the current plan year. Employees and the employer may contribute to or "fund" the account.

What you need to know:

- Can be paired with a High Deductible Health Plan (HDHP) or a PPO
- Full election amount is available first day of the plan year
- Election changes (or adjusting contribution amount) require a qualifying event
- "Use or lose" applies
- Account stays with the employer if the employee terminates employment

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(Continued on page 11)

An HRA is a tax-advantaged account that is generally used to help employees pay for healthcare expenses and help offset certain out-of-pocket costs not covered by the employees' major medical plan.

Health Savings Account

An HSA is an individually owned, tax-advantaged account that allows employees to save for eligible healthcare costs now, and into the future. Employees and the employer may contribute to or "fund" the account.

What you need to know?

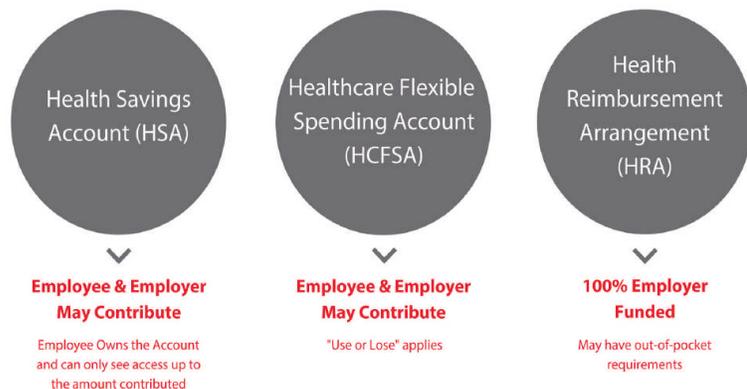
- Must be paired with a qualified HDHP
- Triple tax advantage: money goes in tax-free, savings grow tax-free, and withdrawals are tax-free if used for eligible items
- Account stays with employees, even if they change jobs
- May adjust contribution amount at any time (subject to employer's plan)
- No "use or lose" rule - save what's not spent
- Generally, an employee can invest savings for growth, just like a 401(k)

Health Reimbursement Arrangement

An HRA is a tax-advantaged account that is generally used to help employees pay for healthcare expenses and help offset certain out-of-pocket costs not covered by the employees' major medical plan. The account is 100% employer funded.

What you need to know?

- Contributions are non-taxable to employees
- May have a Rollover and/or Run off period
- Does not have to be paired with a qualified HDHP, but it does have to be paired with the employer's medical plan
- Offers a multitude of plan design options, allowing employers to control the total cost of offering the HRA
- Since HRAs are not required to be pre-funded, employers can decide to pre-fund or to pay only when an employee files a claim



Choosing the Best Plan for Your Needs

The good news is, no matter your situation, there is a tax advantaged reimbursement account that can work for your employees. By asking yourself the following question, you can help determine the best fit for your business.

What issue are you trying to solve?

- Want to offer a benefit that saves for the future. Consider an HSA.
- Want to offer an employer paid benefit that reduces out-of-pocket health costs today. Consider an HRA.
- Looking to allow employees to save pre-tax for out-of-pocket health costs - offer an HCFSAs.

Name of traditional PPO plan	+	Healthcare Flexible Spending Account (HCFSAs)
Name of HSA-eligible plan	+	Healthcare Savings Account (HSA)
Name of HRA-eligible plan	+	Health Reimbursement Arrangement (HRA)

This chart may also help you and your employees understand some of the high-level account differences.

If American Fidelity Assurance Company is your benefits provider and you'd like further education on account types, contact your local account manager. If you don't currently offer a Section 125 Plan and are interested in getting one set up, contact us. We're here to help.



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What does the district need to do? It is as easy as 1-2-3!

- 1 Make the decision to offer Long-Term Care Insurance as an employee paid, voluntary benefit
- 2 Reserve rooms for workshops and personal consultation appointments
- 3 Send out tailored communication pieces to employees

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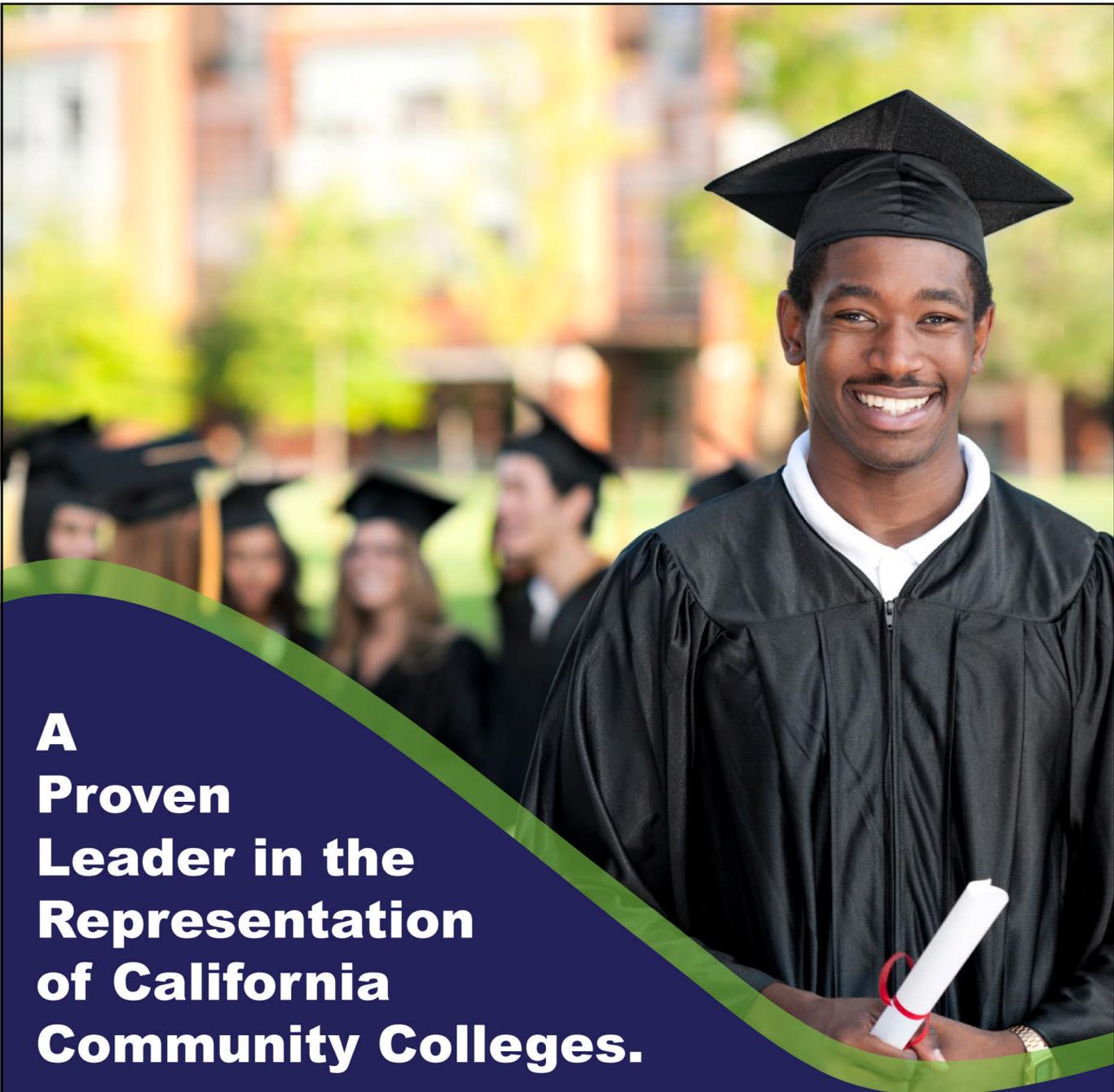
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How to Modernize Your Benefits Package

With employee retention and talent acquisition critical in today's competitive recruiting environment, employees expect benefits outside of traditional insurance programs. Modern benefits packages now take into account employee financial wellness, as well as meet the different generational expectations of your workforce.

Four components that make your benefits package modern and more desirable:



Benefits outside of traditional insurance programs

Traditional benefits typically include medical and dental coverage, perhaps vision and basic life and/or accident coverage. Modern structures include these core benefits and include benefits in the form of **discounted services that employees use year-round**. For example, this might include pre-paid legal services that cover everything from will creation to review of rental agreements or pet insurance that offsets the cost of pricey medications for furry family members.



Voluntary and tertiary benefits

While jumbo employers typically offer more benefits, smaller employers often compete for the same talent, yet aren't able to provide the same level of benefits or a similarly attractive benefits package. Today's employees are keenly aware of benefits, particularly with the increasing shift of costs (such as around medical coverage) to their own pockets. **Voluntary and tertiary benefits help you make your package more appealing** by adding programs such as accident insurance, discounted auto insurance, and other enticing benefits.



Financial wellness

Financial issues can overwhelm employees, impacting their productivity and their health. **Modern benefits offer more than just accessibility to a 401(k) or similar retirement plan**. Whether it's debt counseling services or financing alternatives via a purchasing program for bigger ticket items such as appliances; these are the options today's employees want in their benefits package.



Workforce generational expectations met

Does your workforce have a large percentage of millennials? Or perhaps you've got a large percentage of baby boomers getting close to retirement. Each generation has different benefit needs and desires. Your package should **align with the generational expectations of your workforce** to be most effective.

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9/7/2018 | Prepared for ACHRO Fall Institute



Using Technology to Remove Financial Data Silos

When the need arises to hire additional employees mid-year and you are seeking approval for the additional hires, what steps do you take to secure approval and funding? Do you run between buildings and departments to figure out funding just to get the runaround? Do you log in to four different software systems or look at multiple spreadsheets to understand the budget allocation? Do you know upfront what funds are available or if you need to look at using grant money?

It can be challenging to make informed decisions when the information you need is in disparate systems. If this sounds familiar to you, it may be time to consider implementing new technology and upgrading software solutions.

Even seeing the word 'technology' can be daunting, but it doesn't need to be. Here are five tips on how to search for and implement the software solution right for you:

1. **Understand your current systems.** Take a look at the software or paper systems you currently use and note what each is used for. Take time to understand who uses each system for what and how often the system is used. If the system is accessed once a quarter, think about how else this could be managed.
2. **Evaluate your processes.** Write down and identify the benefits and challenges with the current systems and processes. By writing this information down, you can visualize your workflow and form a clear idea of where things start and where they end. It is important to make note of any changes to the current processes you would like to implement. Use this information to develop a "need-to-have" list for a new software solution. Software should help advance your processes – not add additional steps and be more time-consuming.
3. **Think about integrations.** Use the information you gleaned in the first two steps to make a list of needed integrations. This is important to help remove the financial data silos you may be experiencing now. Integrations you may want to consider include sharing data between your talent management system, HRIS and payroll software. It's important to work with a vendor that understands the importance of managing as much information as you can in one interface and can update in near real-time.
4. **Research vendors who can meet your needs.** This in itself requires dedication and consideration. When looking at vendors be sure to gain an understanding of the company culture. You are buying more than just software, so you want to know they have good references, are easy to work with and can support you in the long term. There may be many similarities between vendors, whether it's everyone is a "nice guy" to solutions that at least partially meet your needs. Your institution, processes and standards are not static; they evolve based on new insights, changing standards or revised strategies. Choose a vendor that allows you to grow and expand into more areas. Consider what you may want to accomplish in the future. Evaluate what is important to you, and select a vendor that matches your goals.
5. **Conduct thorough demonstrations.** Implementing new software and processes is an investment, and this step should not be taken lightly. Be sure to give vendors the same criteria and ask the same questions so you can compare apples-to-apples and truly understand which solution works for you. Take the time to ask yourself the following questions:

- a. Can I see the data I need in a snapshot?
- b. Does this integrate with my other systems?
- c. Will I understand my budget allocation or grant funding?
- d. Does the system adapt to my processes or do I need to change mine to fit the software?
- e. Is it possible to manage funds in relation to positions, employees and departments?

The possibilities are endless for what you can ask vendors. Make a list of what is important to your institution and what can make life a bit easier for everyone involved. Software should help advance your processes – not add additional steps and be more time-consuming. An integrated system can truly make a difference in your university and department, especially when it comes down to needing accurate data now.



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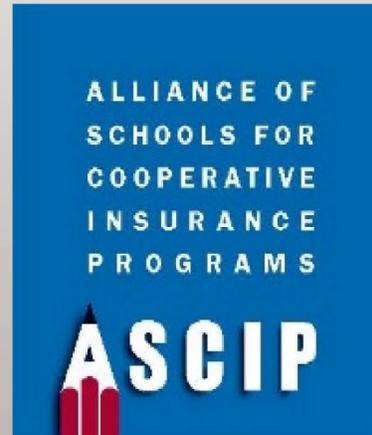
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memo

To: ACHRO Membership
Date: 8/31/2018
From: Regina Horton, Legal Counsel
Re: “The ACA’s Employer Mandate and IRS Letter 226J”

Under the Affordable Care Act (ACA), an Applicable Large Employer (ALE) may be subject to a penalty if it fails to offer its ACA defined full-time employees, and their dependents, minimum essential coverage that is affordable and provides minimum value. An employer is an ALE if it employed an average of at least 50 full-time employees on business days during the preceding calendar year. In general, the number of full-time employees is determined by taking the total number of full-time employees, full-time equivalents and seasonal workers for each calendar month in the preceding calendar year and dividing by 12. An ACA defined full-time employee is one who averages at least 30 hours of service per week (or 130 hours of service per month).

ALE’s face two potential penalties under the Employer Mandate:

1. *Does Not Offer Minimum Essential Coverage – the “A” Penalty.* If an ALE does not offer minimum essential coverage to at least 95% of its ACA defined full-time employees, and their dependents, and just one full-time employee receives a premium tax credit to purchase coverage through Covered California, the applicable penalty is \$2,000 per calendar year per full-time employee multiplied by the entire full-time workforce (excluding the first 30 full-time employees).
2. *Offers Minimum Essential Coverage – the “B” Penalty.* An ALE may still be subject to a penalty even if it offers minimum essential coverage to at least 95% of its full-time workforce if the coverage is not offered to all ACA defined full-time employees, it is unaffordable or if it does not provide minimum value. The applicable penalty is \$3,000 per calendar year for each full-time employee who receives a premium tax credit to purchase coverage through Covered California. However, the total penalties assessed under “B” cannot exceed the maximum amount the ALE would pay under the “A” penalty for not offering minimum essential coverage.

Both penalty amounts are indexed annually. For 2018, the “A” penalty is \$2,320 and the “B” penalty is \$3,480. Although both penalties are reported and payable on a calendar year basis, they are assessed on a calendar month basis. For example, if an ALE offered coverage to at least 95% of its full-time employees, and their dependents, for 11 calendar months in 2018 but offered coverage to only 92% for one calendar month, the amount of the “A” penalty for 2018 would be one twelfth of \$2,320 (i.e., \$193.33) multiplied by the entire full-time workforce (excluding the first 30 full-time employees).

Enforcing the Mandate – IRS Letter 226J

Although the Employer Mandate went into effect on January 1, 2015, the Internal Revenue Service (IRS) did not start enforcing the mandate until late 2017. Specifically, the IRS is sending Letter 226J if it determines that, for at least one month in the year, one or more of the ALE's full-time employees was enrolled in Exchange coverage, the employee claimed a premium tax credit and the ALE did not qualify for an affordability safe harbor or other relief. The determination is based on information reported to the IRS on Forms 1094-C and 1095-C plus information reported by the Exchanges.

Letter 226J includes a summary table itemizing the proposed penalty month-by-month, including whether liability is for the "A" or "B" penalty. It also includes a list of employees on Form 14765 that indicates, by calendar month, each ACA defined full-time employee who claimed a premium tax credit and the indicator codes, if any, the ALE reported on lines 14 and 16 of the employee's Form 1095-C. The ALE is also given the name and contact information for a specific IRS employee who will be available to answer questions about the letter.

Responding to IRS Letter 226J

The IRS explains in the letter what actions the ALE should take if it agrees or disagrees with the proposed penalty and provides Form 14764 for the ALE to respond. The ALE's response is due by the date shown on Letter 226J, which will generally be 30 days from the date of letter. The IRS will acknowledge receipt of the ALE's response by sending a Letter 227 that will describe further actions the ALE may need to take.

If, after receipt of Letter 227, the ALE disagrees with the proposed or revised penalty, the ALE may request a pre-assessment conference with the IRS Office of Appeals. Instructions for filing an appeal will be provided in Letter 227. If the ALE does not respond to either Letter 226J or Letter 227, the IRS will assess the penalty and issue a notice and demand for payment.

Next Steps – Be Prepared

At this point, the IRS has sent out penalty assessment notices for the 2015 calendar year only but notices for the 2016 calendar year are expected to follow shortly. Even though Congress effectively repealed the Individual Mandate that requires most individuals to have health insurance, the Employer Mandate remains in effect and the IRS is actively enforcing it. Employers subject to the mandate need to be prepared to receive and respond, if necessary, to Letter 226J and they need to be ready to respond quickly to meet the 30-day deadline.

If you have not already done so, identify who in your organization will be responsible for receiving and responding to these notices. Advise mailroom staff to keep an eye out for these notices to ensure they get to the right person in a timely manner. Employers using third-party vendors for tracking and reporting should work with their vendor to: (1) ensure records are readily accessible, including information about eligibility, offers of coverage and affordability, and (2) to identify what services, if any, the vendor will provide to assist in responding to the IRS. Finally, employers should consult with their legal counsel and tax advisor for guidance.



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With Budget Uncertainty, How Early Retirement Incentives Can Help

This year's state budget introduced some noticeable changes to community college district funding with the new funding formula. Districts will be affected by the increased weight of student performance and low-income student enrollment as the changes fully implement over the next couple of years. The slower rollout allows community colleges time to explore effective ways to adjust their budgets.

On top of that, a number of districts some already addressing declining enrollments and budget shortfalls.

One proven, successful tool that community college districts have used to reduce their budgets and manage their workforces is an early retirement incentive. When done right, a well-crafted early retirement incentive can be a win-win approach for districts and their employees. It can help reward long-term employees while mitigating layoffs, addressing declining enrollment, creating promotion opportunities, and restructuring departments. Below are some recommendations to maximize the success of an incentive program:

1. Carefully Consider a Plan Design That Will Help Your District Meet Its Objectives

It is crucial to design a plan that will allow you to meet the objectives you are seeking. Should you target the incentive for a specific employee group or offer it to all employees? What benefit level should you provide? Should there be one or two window periods? Offer it at the end-of-the-year or at mid-year? The answers to these questions are different at every district depending on your goals. Implementing a one-size-fits-all program will not allow you to tailor your plan to your district's needs.

2. Remember the Faculty Obligation Number (FON) and the 50% Rule

The Faculty Obligation Number and the 50% Rule are very important considerations for every community college district to consider before offering a plan. Will the plan adversely impact these numbers if you hire too many Adjunct Faculty or if too many Faculty Members participate, thereby decreasing the compensation related to the classroom? Creative plan designs can often be used to mitigate this impact.

3. Involve Your Collective Bargaining Units to Get Buy-In on the Program

It is very important to get buy-in from your collective bargaining units so they are fully supportive of the program and process. The determination to bargain all or some aspects of the plan is between you and your labor attorneys; however, ignoring your units during the process can have negative consequences. The more the bargaining units support the plan, the more confidence the employees will have in it and the more employees will sign-up as a result.

4. Conduct a Proper Analysis to Determine Whether the Incentive Will Work

One of the biggest mistakes districts make is failing to properly analyze the projected savings/costs of an incentive over time, thereby implementing a program that does not truly save dollars in the long-term. Poorly analyzed incentive programs can give them a bad reputation and often end up being reported unfavorably in local media. Make sure that a comprehensive analysis is conducted that takes into account costs such as pension, retiree health care, current natural attrition, future loss of natural attrition, and the incentive itself. The feasibility of offering an incentive should also be analyzed based on different benefit levels, eligibility criteria, workforce demographics, and realistic replacement salaries for projected retirees.

5. A Successful Plan Should Generate Significantly More Retirements than Natural Attrition

An early retirement incentive only works, and creates savings, if a district offers enough of a benefit to significantly accelerate natural retirement attrition. This means that if your district has on average 10 retirements a year and an incentive causes 25 to retire, the savings are generated *only* from the additional 15 who retire. The 10 who would have retired anyway are considered “natural attrition” and must be considered a cost, not a savings, in your analysis. Consider what your district’s natural attrition has been on average going back five years or more and do not make the mistake of offering too little of a benefit.

6. Cost Savings are Created by Substantial Salary Differentials

Early retirement incentives in community college districts generally target near-retirement employees that are clustered at higher salary levels and protected by seniority. Fiscal savings are achieved by replacing these retiring or resigning employees with those lower on the salary scale, by temporarily or permanently not replacing some positions and/or for Faculty replacing with Adjunct Faculty for a period of time. The salary differentials, particularly the large differentials common for Faculty, make the savings happen. Narrow salary differentials (like those for Management and Classified) often do not create enough savings to merit implementation of an incentive. Creative replacement for these groups such as cutting positions or holding positions open for a period of time are typically necessary.

PARS is proud to have worked with California community college districts on early retirement incentive plans for over 30 years and to have been a long-time partner with ACHRO-EEO. PARS also offers the Pension Rate Stabilization Program in partnership with Community College League of California, the OPEB (Retiree Healthcare) Prefunding Trust and Alternative to Social Security Programs. We look forward to seeing you at the ACHRO-EEO Fall Institute in Sacramento in October.

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Three Tips For An Effective Campus Security Plan

By: Melanie Chaney, Partner, Liebert Cassidy Whitmore

Recent national events remind us that violence on college campuses has been, and continues to be, a huge issue for employers. The beginning of a new school year is a great time for reflection on events from the previous year, identifying any lessons learned, and making any necessary adjustments.

In California, the law imposes a duty on all employers to provide a safe workplace and educational environment. All districts are required to have a workplace security and campus safety plans. If your district does not have these plans, or if the plans have not been reviewed recently, we recommend taking the time now to address the matter. Here are a few preventative measures employers should incorporate into an effective workplace security and campus safety plan.

1. Demonstrate a strong management commitment to preventing violence on campus.

All employees and students should be made aware that the district is committed to providing a safe campus that is free of violence and that the district will not tolerate violence, or the threat of violence, against or by any student or employee.

The plans should provide that supervisory staff will investigate and appropriately deal with any reported act of violence or threat of violence. Dealing with threats of violence can be particularly challenging. In the majority of cases, a threat will not lead to a violent act. However, a threat affects campus security and requires a response. No threat should be taken lightly. All threats, whether idle or serious, should be taken seriously and investigated. Every case should be examined and evaluated on the basis of its particular nature and circumstances. Even if, after investigation, it is determined that a threat was made in jest, a record of the threat should be made. If a pattern develops, threats that appear harmless in the beginning may turn out to be indicative of a more serious problem.

2. Provide clear, written anti-violence policies to employees and students.

It is critical to ensure that all employees and students know the workplace and campus violence policies and understand that all claims of violence on campus will be investigated and remedied promptly. Accordingly, the workplace violence policy should be provided to all employees and the campus safety plans should be provided to students and be easily accessible. These policies should make clear to all employees and students that engaging in violence or the threat of violence is unacceptable and could lead to discipline, up to and including termination or expulsion, or criminal prosecution.

The policy should also provide a system for employees or students to communicate information about campus security hazards, including means by which employees and students can inform the district of hazards without fear of reprisal. The policy should expressly state that any person, acting in good faith, who initiates a complaint or reports an incident under the policy, will not be subject to retaliation or harassment.

3. Provide workplace violence prevention training and education for all employees and students.

Training is a key factor in effective workplace and campus security plans. The district should regularly train and educate all employees and supervisors regarding risk factors, crime awareness, assault and rape prevention, how to diffuse hostile situations, and what steps to take during an emergency. State law also requires districts to train students about particular types of campus violence, methods of reporting, and the district’s response.

If you need any assistance with developing or reviewing your workplace security plan or anti-violence policies, attorneys at all LCW offices are available to consult.



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Tips for Controlling Rising Workers' Compensation (WC) Costs

By Nidra Kumaradas – Senior Director of Workers' Compensation for ASCIP

The rising costs of workers' compensation (WC) is a concern for every employer. Following are some steps you can take to mitigate these ballooning costs.

Provide Prompt, Quality Medical

Care—Using a nurse triage program assures that injured employees are quickly directed to the appropriate care. Prompt care reduces chances of complications and leads to faster healing. Plus, be sure to review your designated medical panel providers. Select quality care facilities, and medical specialists, that have good outcomes, then create employer specific protocols with the treating physicians. Finally, develop an ongoing relationship with the medical facilities by visiting periodically, calling with your questions on reports or treatment plans and to let the providers know you are actively concerned and engaged in your employees' care.

Minimize Off-Work Time—Every day an employee is absent drives claims costs up, delays recovery and reduces productivity. Implementing a return-to-work (RTW) program with pre-established, productive, safe tasks is one of the best and fastest ways to reduce claims costs. If you don't have a formal RTW program, consider talking to other colleagues or colleges who have one in place to determine what works, then implement one right away.

Be Compassionate—Stay in communication with injured workers'. Let them know you care about them and are their advocate to help them through the complicated process of workers' compensation. Even consider sending a get-well card if they do require time off. Injured workers' who feel cared for and believe they have an advocate they can call with questions are less likely to get an attorney.

Avoid Excessive Claim Denials—Workers' compensation is a no fault system with most claims being accepted. In a recent Business Insurance article "Claim denials, not report lag, lead to rising comp costs"* the author points to a recent Lockton Cos. L.L.C. study which shows that "67% of those initial claim denials were eventually paid", with the denied claims costing 55% more on average. Unless there is strong evidence to support a fraudulent



claim, avoid needless denials and delays in medical care which cause the injured to treat outside established Medical Provider Networks. Also, these claims are more likely to become litigated with additional lost time costs.

Close Claims Quickly—Do everything you can to move claims toward resolution. The longer the claim is open, the more the costs increase. The length of time an

injured worker is off work is the number one driver of claim costs.

If you are not a member of ASCIP's Workers' Compensation program, contact us today to learn more about how the Alliance of Schools for Cooperative Insurance Program's (ASCIP) WC team helps bend the curve of rising workers' compensation costs. ASCIP members have enjoyed years of stable rates and even received premium rebates. ASCIP's expert team is here to help California's colleges and schools manage claims efficiently, reduce costs and ease WC burdens.

*Read *Business Insurance* – June 13, 2018 to learn more. <https://www.businessinsurance.com/article/20180613/NEWS081912321979/Claim-denials-not-report-lag-lead-to-rising-workers-compensation-costs>



Nidra Kumaradas, ASCIP's Senior Director of Workers' Compensation has managed the ASCIP workers' compensation program since 2015 and assists members identify and achieve their workers' compensation goals. Nidra has a Bachelor of Science degree from Dalhousie University, plus holds a California Self-Insured Competency

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#MeToo Movement Updates In California: Social Media, Viral Complaints, and Free Speech

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When the #MeToo Movement gained momentum during the 2017-18 school year, many university and college officials predicted a rise in sexual harassment complaints by students and employees. Many of our clients have seen this to be true. It is realistic to expect the rise in complaints to continue throughout the 2018-19 school year as well. Universities and colleges can best prepare for these complaints and all the intricacies that come with them by reviewing sexual harassment policies, procedures, and practices that may be outdated, underused, or inconsistently implemented. With the new spotlight on #MeToo in the media and on social networks, it is crucial that entities understand the rights of individuals to have a voice in the process. Both complainants and respondents must be given the opportunity to be heard and continue to have access to their educational setting or work environments. National organizations have continued to see entities inappropriately using explicit or implicit “gag orders” to silence complainants and respondents, and their advocates, during the investigation process. This practice can violate free speech rights and is contrary to Title IX and Title VII. On the other hand, social media and electronic news media can quickly get out of hand if not properly monitored and navigated. Moreover, universities and colleges should inform themselves regularly of any legislative updates that may affect their sexual harassment policies. Below are a few legal updates and pending legislation in California in response to the #MeToo Movement.

- **AB 2770:** Governor Brown signed AB 2770 on July 9, 2018, to protect sexual harassment victims and employers from being sued for libel, slander, or defamation by alleged harassers. The bill passed the legislature with unanimous, bipartisan support and expanded the definition of “privileged publication or broadcast,” as defined in Civil Code section 47, subdivision

(c). The definition now includes the following as privileged communications: (1) a complaint of sexual harassment by an employee, without malice, to an employer based on credible evidence, and (2) communications between the employer and interested persons regarding a complaint of sexual harassment. AB 2770 also authorizes an employer to answer, without malice, whether the employer would rehire an employee and whether a decision not to rehire is based on the employer's determination that the former employee engaged in sexual harassment. Prior to AB 2770, the fear of defamation, libel, and/or slander silenced many sexual harassment victims. Now, victims may be inspired to come forward due to the protections afforded them by AB 2770.

- **California Property Service Workers Act:** Any business that provides janitorial services or contracts for such services must provide all covered workers a copy of the Department of Fair Employment and Housing pamphlet "DFEH-185, *Sexual Harassment*" starting July 1, 2018. Starting January 1, 2019, covered employers will be required to provide **in-person** "sexual violence and harassment prevention training" every two years.

The proposed bills listed below are being considered by the California Legislature and will greatly affect employers if enacted:

- **S.B. 820, THE STAND TOGETHER AGAINST NON-DISCLOSURE ACT:** Seeks to eliminate non-disclosure agreements in sexual harassment settlements altogether unless the victim requests such a provision.
- **A.B. 1867, ON RECORDKEEPING:** Proposes requiring public and private employers of more than 50 employees to maintain records of all employee sexual harassment complaints for at least 10 years.
- **A.B. 1870, THE STOP THE HARASSMENT AND REPORTING EXTENSION ACT:** Seeks to extend the statute of limitations from 1 year to 3 years for filing *any* type of claim with the Department of Fair Employment and Housing.

Other measures that have been enacted in the last year throughout the nation in response to the #MeToo Movement include:

- **"Promising Practices for Preventing Harassment" by the Equal Employment Opportunity Commission ("EEOC"):** In response to the #MeToo Movement, the EEOC published new informal guidelines regarding harassment in November 2017. While this publication does not have the force of formal regulations or rules, the EEOC makes a number of novel suggestions for harassment prevention that employers may consider adopting as best practices.
- **Tax Cuts and Jobs Act (IRC Section 162q):** In response to the #MeToo Movement, a new Internal Revenue Code section was added on December 22, 2017. This new law was enacted out of a concern that confidentiality provisions could potentially protect sexual predators and enable them to offend again. This

new law is extremely broad in that it prohibits an employer from taking a deduction for certain settlements or payments, including attorneys' fees related to such settlements or payments, in defending sexual harassment/abuse claims if the payments are subject to a nondisclosure agreement. Employers settling lawsuits or threatened lawsuits involving sexual harassment or sexual abuse are now faced with a decision—settle the claim without a confidentiality provision and retain the ability to take the deduction for the settlement and related attorneys' fees, or include a confidentiality provision in the settlement agreement and lose the deduction.

Operating in this environment of heightened awareness requires employers to ensure that their policies and procedures relating to workplace harassment are in compliance with the ever-changing laws. Given the tide of the #MeToo Movement, universities and colleges are wise to explore enhanced preventative measures to combat the climate.

For more information concerning sexual harassment training obligations, updates to policies and forms, and preventative measures, contact the author or your trusted counsel at AALRR.

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