# The Part-time Faculty Paradox

PRESENTED BY:
Diane Fiero, Vice Chancellor, Human Resources
Coast Community College District
&
Sharon Ormond, Senior Partner, AALRR
September 24, 2025

aalrr Atkinson, Andelson Loya, Ruud & Romo
A Professional Law Corporation

Coast Colleges
COASTLINE COMMUNITY COLLEGE
GOLDEN WEST COLLEGE GWC HUNTINGTON BEACH, CA
ORANGE COAST COLLEGE
Inspiration. Innovation. Graduation.

# Agenda

- Introductions
- How did Wage and Hour law develop to create the Paradox?
- What are some options moving forward to fix issues and mitigate damages?

# Pending Litigation

- 2022: Roberts v. Long Beach CCD
- 2022: Martin v. California Community Colleges ("Martin I")
  - Board of Governors of the California Community Colleges; Shasta-Tehama Trinity Joint CCD; Butte-Glenn CCD; Yuba CCD; Los Rios CCD; Mt. San Jacinto CCD; San Diego CCD; Cerritos CCD; Los Angeles CCD; San Joaquin Delta CCD; Mt. San Antonio CCD; Foothill-Deanza CCD; Yosemite CCD; Pasadena Area CCD; Santa Clarita CCD

# Pending Litigation

- 2023: Brewer and Folayan v. North Orange County CCD
- 2023: Folayan v. Coast CCD
- 2025: Sacramento County 25CV004823
  - Board of Governors of the California Community Colleges; Sierra Joint CCD; Monterey Peninsula CCD; Sequoias CCD; Desert CCD; San Mateo CCD; Peralta CCD; Mendocino-Lake CCD.

IN THE
BEGINNING

The Fair Labor
Standards Act of 1938

# The Fair Labor Standards Act

- Background and General Provisions:
  - Enacted by President Franklin D. Roosevelt
  - Established a federal minimum wage (currently $7.25 per hour)
  - Overtime pay (1.5 times regular pay) for hours worked over 40 per week
  - Exemptions for administrative, executive, and professional employees, and later for certain computer employees
  - Compensatory time off
  - Recordkeeping requirements

# The Fair Labor Standards Act

- The FLSA <u>does not</u> impose:
  - An 8-hour day or overtime for hours worked over 8 per day
  - Double time for hours worked over 12 per day
  - Overtime for work on the sixth or seventh consecutive day
  - A maximum work week
  - Rest or meal breaks
  - Reporting time pay

# The Fair Labor Standards Act

- What hours do we pay for?
  - **ALL** Hours Worked:
    - Employees must be paid for all hours worked.
    - "Hours Worked" includes all time an employee must be on duty, or on the employer's premises or at any other prescribed place of work, from the beginning of the first principal activity of the work day to the end of the last principal work activity of the workday.
    - Also included is any additional time the employee is allowed (i.e., suffered or permitted) to perform work even if outside of "scheduled" shift.

# FLSA Exemptions

- To be exempt from overtime under the FLSA, the employee must meet:
  - The “duties test”:
    - Executive
    - Administrative
    - Professional
  - The “salary basis” test, and
  - The “salary level” test

# FLSA Exemptions – Duties Test

- **Executive** - Primary duties typically include selection, evaluation, discipline, and regular **direction over two (2) or more employees**.
- **Administrative** – Primary duties typically include office or non-manual work that is **directly related to the management policies or general business operations** of the employer or its customers; involves the exercise of independent judgment and discretion.
- **Professional** - Primary duties typically include work requiring **advanced knowledge in a field of science or learning**, involving the exercise of creative talent. This includes:
  - Teaching, tutoring, instructing, or lecturing if employed in such activities as a teacher in a school system or similar institution. (29 CFR § 541.300.)

# FLSA Exemptions – Salary Basis Test

- **The "salary basis" test** requires:
  - The employee regularly receives each pay period
  - A predetermined amount constituting all or part of his or her compensation on a weekly or less frequent basis
  - That cannot be reduced because of variations in the quality and quantity of work. (29 C.F.R. § 541.602.)
  - Administrative and professional employees may be paid on a fee basis (a sum for a single project or task)

# FLSA Exemptions – Salary Level Test

- **The "salary level" test** requires that the employee be compensated on a salary basis at a rate per week of not less than:
  - Beginning on January 1, 2025, $1,128 per week (~$58,656 annually)
  - As of July 1, 2027, the level will be recalculated by Secretary of Labor (29 C.F.R. § 541.600.)
- Exceptions for certain professionals, **including teachers** (29 C.F.R. § 541.600(g).)

# FLSA Effect on Part-Time Instructors

- Fit within the Professional Exemption
- Excluded from salary level test

Outcome:

- Colleges have long considered part-time faculty to be exempt employees AND have paid on a fee (per unit) basis
- The per unit basis translated into an hourly rate for the purpose of addressing issues related to leaves

# California's Labor Code and Industrial Wage Orders

In the beginning, public entities did not need to worry about most wage and hour provisions in the California Labor Code and none of regulations issued by the Industrial Wage Commission in the form of IWC Wage Orders.

This changed in 2001.

# IWC Orders

- Wage Order 4 applies to ““Professional, Technical, Clerical, Mechanical, and Similar Occupations”

- Prior to 2001, Wage Order 4 stated, “The provisions of this Order shall not apply to employees directly employed by the State or any county, incorporated city or town or other municipal corporation, or to outside salespersons.”

# IWC Orders

- In 2001, the IWC revised Wage Order 4 to state:

- "(B) Except as provided in Sections 1, 2, 4, 10, and 20, the provisions of this order shall not apply to any employees directly employed by the State or any political subdivision thereof, including any city, county, or special district."

  - Section 1 - definitions
  - Section 2 - exemptions
  - Section 4 - minimum wage for all hours worked
  - Section 10 - meals and lodging provided (not meal breaks)
  - Section 20 - penalties

# IWC Orders

- Like the FLSA, the exemptions are for Administrative, Executive, or Professional employees who meet the salary basis test

- **Professional**: An employee who meets all requirements:
  - **Licensed or certified** by the State of California and is primarily engaged in the practice of one of the following recognized professions: law, medicine, dentistry, optometry, architecture, engineering, **teaching**, or accounting; or
  - Primarily engaged in an occupation commonly recognized as a learned or artistic profession; and
  - Customarily and regularly exercises discretion and independent judgment.

# IWC Orders

- **Salary basis**
  - To qualify for an exemption, employee must earn a monthly salary equivalent to no less than two times the state minimum wage for full-time employment (i.e., 40-hours/week).
  - Based on the current minimum wage, employees must receive a salary of at least $1,320 per week beginning January 1, 2025, to qualify for the exemption.

# Sheppard v. NOCROP (2010) 191 Cal.App.4th 189

- Factual Overview:
  - Sheppard was required to sign Notice of Offer documents annually, which stated in part: “full-time work and salary schedules are based upon an 8 hour day/40 hour week. A full-time classroom/lab schedule is 30 hours per week with 10 hours per week of preparation time. Part-time assignments require 20 minutes of *unpaid* preparation time for each hour of classroom/lab instruction.”
  - Sheppard filed suit, arguing he was not paid for the 20 minutes of prep time

# Sheppard v. NOCROP (2010) 191 Cal.App.4th 189

- Holdings:
  - The IWC is authorized to regulate public sector employers
  - Public employees must be paid at least minimum wage for all hours worked
- Lessons:
  - Contracts should not provide for unpaid work time
  - If compensation meets the “salary basis test,” teachers/instructors may be paid a flat salary rate (piece rate) for all work performed, including direct instruction and preparation

# Labor Code Section 1182.12 Amended

- Section 1182.12 was enacted in 2006 to set a minimum wage; but it said nothing about applicability to public entities
- SB 3 (2016) Amended Section 1182.12 (eff. 1/1/2017):
  - Builds increases to minimum wage each year
  - Adds language:

(b)(3) For purposes of this subdivision, “employer” means any person who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of any person. For purposes of this subdivision, **“employer” includes the state, political subdivisions of the state, and municipalities**.

# The Class Actions Start Against CCDs

- **There are many, but we'll review rulings in two of them**
- **Roberts v. LBCCD (adjudication 2/19/25)**
  - Part-time faculty in their own unit
  - Adjuncts are paid an hourly rate, which is multiplied by 18 hours per "lecture unit" or "teaching unit" -- 54 hours of pay for teaching one three-unit class (contract was silent about teaching-related activities outside class)
  - Full-time faculty, meanwhile, receive a salary based on a 45-hour work week, including in-class time for a 15-unit teaching load and out-of-class time for "classroom preparation, grading, record keeping, curriculum development and review, and professional contacts that are college assignment related."
  - Part-time faculty asserted they were not being paid for the teaching-related activities outside class

# The Class Actions Start Against CCDs

- **Roberts v. LBCCD, Cont'd**
  - Court evaluated whether the compensation adjuncts received paid for all hours worked, as follows:
  - A full-time assignment is teaching 15 units per semester. Per Education Code section 87482.5, adjunct teach no more than 67% of the hours per week of a full-time assignment, which is 10 units.
  - One teaching unit equals 18 lecture hours per semester, so the maximum number of lecture hours adjunct may teach per semester is 180 hours.
  - For an 18-week, 180-lecture-hour semester, the maximum amounts payable ranged from $14,632.20 in 2019 ($81.29 times 180 hours) to $16,873.20 in 2024 ($93.74 times 180 hours).
  - Twice the relevant minimum wage is more by any calculation: $17,280 in 2019 to $23,040 in 2024 (Court took the hourly minimum wage, multiplied by 40 for a week, then by 18 for the weeks in the semester, then by 2, to arrive at the relevant threshold).
  - **No adjunct could possibly earn enough monthly salary to qualify for the professional exemption**.

# The Class Actions Start Against CCDs

- **Martin v. California Community Colleges (ruling 3/14/25)**
  - Part-time faculty employed at various colleges and paid pursuant to CBAs; they alleged they were not paid for all hours worked
  - Held:
    (1) The BOG's "power of the purse" (via obtaining the compensation paid to adjuncts and disbursing funds to the respective CCDs, and setting the minimum standards and advising districts on implementation of state law) means the BOG indirectly controls wages to adjuncts and, therefore, is an "employer" for purposes of the wage claim
    (2) The Education Code does not preempt the Labor Code in relation to wages; IWC Wage Order 4-2001 does apply
    (3) "Plaintiffs were required to comply with the Community College District Defendants' claims procedures enacted pursuant to Government Code section 935(a) – including for claims brought under Labor Code section 1194 – before initiating this action against the Community College District Defendants." (MSJ ruling 5/30/25)

# Key Rules to Know

- Non-exempt hourly employees must be paid at least minimum wage for all time worked.
- Wage borrowing (averaging) is illegal under California law.
  - "borrowing compensation contractually owed for one set of hours or tasks to rectify compensation below the minimum wage for a second set of hours or tasks." (*Oman v. Delta Airlines, Inc.* (2020) 9 Cal.5th 762.)
- Piece rate compensation is legal but still subject to minimum wage requirements.

WHERE DO
WE GO
FROM HERE?

Be Calm
You Can Ride this Wave

# Steps CCDs Should Take – Legislative Fix

- Meetings have occurred involving CCLC and Capital Advisors
- CTA working its network

**Example - Private Univ. - AB 736 (2020) (Labor Code § 515.7)**

Faculty is classified as exempt from the wage and hour provisions of Wage Order No. 4-2001 as well as specified provisions of the Labor Code, if that person meets specified criteria:

- Employed in a professional capacity
- Paid on a salary basis, and
- Receiving one of alternative minimum compensations
  - At least 2x state minimum wage for full-time employment
  - A minimum payment per classroom hour that covers class/lab time + teaching-related activities (**currently $148.51/hour**; increases every year)
- ***CTA likes this latter model***

# Steps CCDs Should Take – Legislative Fix

**But CCDs cannot necessarily afford $148.51/Hour+, so an alternative fix might be:**

- Potential Revision to Education Code § 87804

  (a) The governing board of a community college district may employ such temporary employees of the district as it deems necessary and shall adopt and make public a salary schedule setting the daily or pay period rate or rates for temporary employees.

  (b) This section shall not be construed as modifying or repealing any law fixing a minimum annual salary for employees of district.

  (c) Notwithstanding any other law, regulation, or Wage Order of the Industrial Welfare Commission, the governing board of a community college district satisfies its obligation to pay temporary and part-time academic employees for all hours worked when they are compensated pursuant to the terms of a collective bargaining agreement negotiated in accordance with Chapter 10.7 of Division 4 of Title 1 of the Government Code. This subdivision is declaratory of existing law.

# Steps CCDs Should Take – Engage the Unions

**Review and, if needed, negotiate a "fix" to the adjunct compensation structure going forward**

(a) Hourly pay

- Timesheets for everything
- Timesheets for teaching-related activities and other work outside the classroom (e.g., training, committees)
- Timesheets for only work outside teaching-related duties

(b) Pay per unit

- Per unit rate defined to be pay for up to X hours devoted to in-class time and teaching-related activities outside the classroom

# Per Unit + Hourly Example (Butte-Glenn CCD)

Associate instructional faculty assigned as the instructor of record will be **compensated per unit of credit for credit courses or the credit hour equivalent for noncredit courses**. **This rate includes payment for assigned teaching hours and all teaching-related activities**, including preparation, grading, assessment, student communication, textbook selection, lesson planning, LMS preparation, and all other duties in the associate faculty job description. **Teaching-related activities represent a maximum of 1 hour of outside work for every student contact hour, prorated for activity, lab, and noncredit courses.** Each unit of lecture includes 17 student contact hours and 17 outside hours. Each unit of activity includes 34 student contact hours and 17 outside hours. Each unit of lab includes 51 student contact hours and no outside hours. Per unit payment will be no less than .5 unit increments. **Outside hours in excess of this maximum is not permitted**. Associate faculty compensated at the per unit rate **must sign and turn in monthly certifications of hours worked**. **Office hours, service on committees, hiring committees, professional development, and other elective tasks are subject to prior administrator approval and are compensated separately at an hourly rate** as specified in this CBA.

# Per Unit + Hourly Example (NOCCCD)

11.5.1 The Parties agree to define the compensation as delineated on the Adjunct Faculty Salary, Schedule A and Schedule C. **The amount of compensation is to fulfill the academic assignment including lecture, lab, out of class preparation and other outside related instructional duties for Credit and Non-Credit Instructional Unit Members.** This is consistent with the parties past practice for compensation of instructional Unit Members.

11.5.2 Out of class preparation and other outside related duties may include, but are not limited to, course and instructional material preparation, lecture preparation, lab preparation, instructor initiated/course outline of record field trips, exam preparation, grading, regular and substantive interaction with students, classroom syllabi preparation, selecting course texts and other instructional materials, Student Learning Outcomes activities, learning management system, completing legally required training, evaluation process participation, and communication with District employees and external partners in your role with the District.

# Per Unit + Hourly Example (NOCCCD cont'd)

11.5.3 Instructional Unit Members are not permitted to work in excess of the assigned course units or non-credit hours. Prior written approval from the IMS is required before performing any additional work. If additional work is authorized, … paid at twenty dollars ($20.00) an hour.

11.5.4 **Acknowledgment/Certification** - Instructional Unit Members will sign an acknowledgment that their professional rate of pay includes lecture, lab, out of class preparation, and other outside related instructional duties as delineated in 11.5.2. This acknowledgment shall be **submitted with the instructional assignment offer**.

The Instructional Unit Member will submit a **certification that compensation was received** in accordance with this section. This certification shall **be submitted on a District form by the last day of instruction.** The 2025/2026 academic year is dedicated to implementing this new section. Commencing … 2026/2027 …, if an Instructional Unit Member fails to submit the certification by the deadline, the … Member will be provided with a reminder. … may lose their teaching assignment(s) if the certification is not submitted after the reminder.

11.5.7 Any dispute related to this article shall be subject to the grievance procedure ….

# Per Unit + Hourly Example (NOCCCD cont'd)

7.8.2 **Ancillary activities** include, but are not limited to, the following: ….

7.8.4 Compensation for ancillary duties listed in this section will **be paid fifty ($50.00) per hour**, unless otherwise authorized per section 7.8.5.

7.8.5 Unit Members may be compensated for other ancillary duties as approved in advance by the Vice Chancellor of Human Resources or designee.

13.4 The District and [union] acknowledge that **office hours** for part-time faculty contribute to student success. The District shall set aside the amount not to exceed four hundred twenty thousand dollars ($420,000.00) annually for the purpose of funding adjunct faculty office hours. Two hundred ten thousand dollars ($210,000) shall be allocated for each fall and spring semester. Unused funds shall not carry over to future semesters.

13.5 Approved office hours shall be **paid at the rate of forty-five dollars ($45.00) per hour**.

13.5.1 Missed hours may not be rescheduled and shall not be compensated. The Unit Member may not use accrued sick leave or other paid leaves for office hours.

# Steps CCDs Should Take – Liability Mitigation

## Consider negotiating contract language to limit class claims

- Sample language from Shasta CCD

**7.5 GRIEVANCE AND ARBITRATION AS EXCLUSIVE REMEDY FOR DISPUTES REGARDING THE PAYMENT OF WAGES**

Salary schedules are not subject to grievance since they are negotiated between the District and the Association. However, placement and advancement on the salary schedule is grievable, so long as stated timelines are met. Grievances regarding salary schedule placement and advancement shall be resolved in accordance with the grievance procedure in Article 10 and not this procedure. **Grievances for disputes and claims relating to wages and hours alleging solely a violation, misinterpretation, or misapplication of this Agreement shall be resolved in accordance with the grievance procedure in Article 10 and not this procedure. Unit members may exercise their rights under Board Policy and Administrative Procedures 3810 related to monetary claims against the District.**

**It is the parties' intent that all claims and disputes related to wages and hours, including but not limited to unpaid wages, minimum wages, overtime wages, double time wages and any applicable penalties, whether arising under this Agreement, the Labor Code, the Fair Labor Standards Act, or any other municipal or other regulation be resolved through the grievance procedure in Article 10 as modified by this Article.**

# Steps CCDs Should Take – Liability Mitigation

**Review your District's policies for claims against the District and revise, if needed, to ensure:**

- **Wage claims are explicitly included**
- **Wage claims are subject to a one-year filing deadline**

- Government Code section 910 provides that before lawsuits can be filed against a public entity, a claim must first be presented to the entity within 12 months. (911.2.) Employee wage claims are not covered. (905.)
- However, Government Code section 935 permits "a public entity to prescribe its own rules for presentation of claims that would otherwise fall within the exemptions, as long as the procedures for such claims are not governed by any other statutes or regulations." (Gov. Code § 935(a).)

# Steps CCDs Should Take – Liability Mitigation

- **Sample BP Language (Coast CCD):**

**Any claims against the District for money or damages, which are not governed by any other statutes or regulations expressly relating thereto, shall be presented and acted upon in accordance with the California Tort Claims Act, Government Code Sections 900 et seq.**

Claims must be presented according to this Policy and related Procedures as a prerequisite to filing a lawsuit against the District.

**Pursuant to Sections 905 and 935 of the Government Code, claims that are subject to the requirements of this Policy include, but are not limited to, the following:**

- Claims by the State, by a State department or agency, by another public entity, or by a judicial entity
- **Claims by public employees for fees, salaries, wages, mileage, or other expenses and allowances. Applications or claims for money or benefits under any public retirement or pension system.**
- Claims for principal or interest upon any bonds, notes, warrants, or other evidences of indebtedness.
- Claims for property damage, loss, or impairment.

# Steps CCDs Should Take – Liability Mitigation

- **Sample AP Language (Coast CCD):**

TIME LIMITATIONS

Claims for money or damages relating to a cause of action for death, injury to a person, or personal property, must be presented to the District not later than six months after the accrual of the cause of action.

**Claims for money or damages relating to a cause of action other than that stated above, must be presented to the District not later than one year from the accrual of the cause of action.**

**…**

RETROACTIVITY

This Procedure shall apply retroactively to any causes of action or claims for money or damages that accrued prior to the revision of this Procedure.

# Steps CCDs Should Take – Liability Mitigation

**(4) Establish clear process/policies regarding timekeeping**

**(5) Provide clear directives regarding use of technology after hours**

# Concluding Thoughts

- Remain Calm
- Limit Liability on claims
- Limit future liability by negotiating language regarding clear work responsibilities
  - Hourly with clear process
  - Per TLU/LHE with clear definition
  - Flexibility for lawsuit outcomes
- When the call for advocacy comes, be ready
- If lawsuits, work with legal counsel to ensure they understand how adjunct pay works and where it came from and talk to your colleagues who have been through it already to limit liability/damages.

# Thank You

**For questions or comments, please contact:**


Sharon Ormond

(562) 653-3536
sormond@aalrr.com

Diane Fiero, Ed.D.

(714) 438-4707
dfiero@cccd.edu


aalrr Atkinson, Andelson Loya, Ruud & Romo
A Professional Law Corporation

Cerritos • Fresno • Irvine • Marin • Pasadena • Pleasanton • Riverside • Sacramento • San Diego

Coast Colleges
COASTLINE COMMUNITY COLLEGE
GOLDEN WEST COLLEGE GWC HUNTINGTON BEACH, CA
ORANGE COAST COLLEGE
Inspiration. Innovation. Graduation.