Torrance Professionals & Supervisors Association

March 2018 News

Younger Workers Support Union Membership

Last month, the Federal Bureau of Labor Statistics (BLS) released data on changes in union membership from 2016 to 2017. And it's good news! The total number of union workers grew in 2017 (+262,000). 76% (+198,000) were workers under 35, who account for less than 40% of total employment. There were also sizable gains in the age 55-64 bracket (129,000). The age group with the biggest decrease was the age 45-54 bracket (-75,000). The changes for the age 65 & over cohort (+12,000) and age 35-44 bracket (-2,000) were minimal. Overall, union membership participation was strong in the public sector, compared to other industries.

Over 16 million working people in the U.S. are exercising their right to bargain collectively by joining unions. One in nine workers is represented by a union. The overall representation makes organized labor one of the largest institutions in America today.

Historically, younger workers have been less likely than older workers to support union membership. But last year, about 23% of the net new jobs created for workers under age 35 were a union job. A recent Economic Policy Institute (EPI) paper reasoned that one reason younger workers are joining unions is to address current workforce trends that are increasing work insecurity, from the rise of

part-time work and unpaid internships to increased numbers of contract workers. Younger workers are quickly realizing that collective bargaining is how people gain a voice at work and the power to shape their working lives; from securing wage increases, saving for retirement, better access to health care, improving workplace safety, and reasonable and consistent work hours, to an internal process for settling workplace disputes with managers.

According to the EPI paper, 48.1% of workers covered by a union contract are public sector workers. The variety of industries and occupations that are unionized today dispel the frequently held belief that a typical union member is a middle-aged white male working on the manufacturing line in the Midwest. The EPI paper notes that over 42% of union workers have a bachelor's degree or more in education, and over 65% are women and people of color. This shows that unions are a dynamic and ever-evolving institution of the American economy and collective bargaining is indispensable to achieving shared prosperity.

As the workplace evolves and retirements and turnover create new opportunities for younger workers, it's important for everyone to reach out and encourage membership in the Association. The BLS data illustrates that all workers – and especially those under age 35 – are becoming more receptive to union participation. Welcome them with open arms, dispel any outdated beliefs and perceptions about unions and their role in society, and encourage them to exercise their collective voice in the workplace.

Legal Updates

Public Employee Must File EEO Complaint Before Pursuing Civil Action in Court

A recent California Appellate Court decision reaffirms that public employees must exhaust their administrative remedies prior to filing a civil claim in state court.

Shawn Terris was one of 35 employees the County laid off during the nearly $11 million budget shortfall for the fiscal year 2009-2010. Terris filed a complaint with the County's Civil Service Commission. The County ruled that it could not decide her discrimination claims under the County's Civil Service Rules because she had

not exhausted her administrative remedy of filing a discrimination complaint with the Equal Employment Opportunity Office. Terris then filed claims in state court.

Terris argued that she was not required to exhaust administrative remedies because of Labor Code §244. This state law says that an individual does not have to exhaust administrative remedies before bringing a civil action under the Labor Code unless that provision specifically requires it. The court cited California Supreme Court precedent that holds that public employees must pursue appropriate internal administrative remedies before filing a civil action against their employer. The court ruled that §244 applies only to claims before the Labor Commissioner, not to EEO discrimination claims under the County's civil service rules. Terris was therefore required to file the EEO complaint before filing suit. Since she did not, her claims were barred.

Public employees are governed by a variety of laws, including federal, state and local rules, collective bargaining agreements, judicial and administrative decisions, and the state and federal constitution. Federal and State discrimination law requires discrimination claims based on a protected class to be filed first with the Federal Equal Employment Opportunity Commission or California Department of Fair Employment and Housing, before filing a civil claim. The California Tort Claims Act requires claims presentation to the local governing body before taking certain causes of actions against public entities to court.

This case is a reminder that it's best to contact professional staff at the earliest possible moment to best preserve your legal rights for later filing suit in court, if necessary. The case is *Terris v. County of Santa Barbara*, 2nd App. Dist., No. B268849 (February 16*, 2018)*.

News Release - CPI Increases!

Each month the U.S. Department of Labor, Bureau of Labor Statistics publishes monthly consumer price index figures. The data looks back over a rolling 12-month period at how much goods and services have increased from a year ago.

These numbers are important! They're a rough measure of inflation, and elected officials and agency management often look to these numbers in determining "Cost of Living" raises. Here are the important figures you need to know:

2.1% - CPI for All Urban Consumers (CPI-U) Nationally

3.1% - CPI-U for the West Region

3.5% - CPI-U for the Los Angeles Area

2.9% - CPI-U for San Francisco Bay Area (12 months ending December 2017)

2.8% - CPI-U for San Diego Area (6 months ending December 2017)

Retired Public Employees Association News

With the new legislative year underway, RPEA remains a steadfast voice for active employees and retirees. We are in discussions regarding what legislation RPEA should support this session.

CalPERS is looking at legislation that will clear up issues where agencies voluntarily terminate their contract and fail to pay to maintain their agreement. This has resulted in a reduction of the benefits promised to the workers in those agencies. Of specific concern is how CalPERS will respond when a Joint Powers Authority (JPA) disbands and then refuses to accept responsibility for workers in that agency. The members of the JPA claim no responsibility for maintaining the contract for employee benefits. We will support legislation that corrects these problems. RPEA is also looking at a way to make the calculation of Cost of Living Adjustment better reflect the residents of California. It is currently calculated using the nationwide Cost of Living Index (CPI). RPEA believes that for Californians it should be based on the Cost of Living Index for California. We will continue to have discussions with CalPERS about legislation that will accomplish this change.

Here is an update of some of the bills that RPEA has been monitoring:

- **SB 32 (Senator John Moorlach)** – This bill would create the Citizens' Pension Oversight Committee to serve in an advisory role to the Teachers' Retirement Board and the Board of Administration of PERS. It would also require the committee, on or before January 1, 2019, and annually thereafter, to review the actual pension costs and obligations of PERS and STRS and report on these

costs and obligations to the public. **This bill is dead as of 1/13/2018. RPEA was in opposition.**

- **SB 454 (Senator John Moorlach) –** This bill would, for state employees who are first employed and become members of the retirement system on or after January 1, 2018, limit the employer contribution for annuitants to 80% of the weighted average of the health benefit plan premiums for an active employee enrolled for self alone, during the benefit year to which the formula is applied, for the 4 health benefit plans with the largest state civil service enrollment, as specified. **This bill is dead as of 1/13/2018. RPEA was in opposition.**

- **SB 681 (Senator John Moorlach)** – This bill would require the Board of Administration of PERS to allow a contracting agency to terminate its contract with the system in a manner that does not result in excessive costs or penalties to the contracting agency. The bill would allow the contracting agency to withdraw its net assets paid into the system, less payments made to its members and their beneficiaries. This would ensure that the contracting agency remains responsible for its unfunded liabilities so that those liabilities are not shifted onto other PERS members or employers. **This bill is dead as of 1/13/2018. RPEA was in opposition.**

As more details develop in the legislative year, RPEA will continue to pursue and share those agendas that are in the best interest of the active employees and retirees in California.

Since the beginning, RPEA has been actively involved in enhancing the lives of retirees. We are the only statewide association representing all PERS retirees. RPEA works tirelessly to safeguard and promote the retiree benefits of California's public employees. For more information regarding retiree pensions and health benefits or to learn more about the Retired Public Employees' Association of California, check out our website www.rpea.com.

Questions & Answers about Your Job

Each month we receive dozens of questions about your rights on the job. The following are some GENERAL answers. If you have a specific problem, talk to a Board Rep or CEA Staff at (562) 433-6983 or cea@cityemployees.net.

Question: What exactly can the agency change or not change regarding job descriptions without a meet and confer? I have been told

they can change whatever wording they want as long as it does not change the requirements. I've also been told that they can't change any wording whatsoever. I need clarification.

Answer: While there are some gray areas, management certainly can't change whatever they want in a job description without meeting and conferring. In technical terms, the Meyers-Milias-Brown Act requires management to negotiate over any change that affects terms and conditions of employment.

In plain terms for job specifications, this means management must provide the Association an opportunity to negotiate *before* making any material changes to the job duties, certification requirements, educational requirements and/or pay ranges.

The gray area comes in mostly with job duties and whether the change is actually adding new or more complex essential functions, or just updating existing ones.

[NOTE: Just because employees have been performing the duties doesn't mean it's an existing job duty; what matters is what is actually listed in the job spec.]

At a minimum, we always recommend sharing these proposed changes with the members actually working in the affected job classifications. If there are any concerns, contact professional staff and we can assert the right to negotiate.

Question: I'm an exempt employee. I'm having problems with my manager, who is treating me like an hourly employee and hassling me about leave slips. I'm being forced to submit leave slips for coming in late or leaving early. Or for taking a little extra time at lunch. This is ridiculous! I've worked overtime without compensation. I've worked through lunches, stayed late, or worked after hours. Can they do this? What are my rights as an exempt employee?

Answer: Federal law (the Fair Labor Standards Act) is clear that employers may not deduct *pay* from exempt employees for absences less than a full day.

What is less than clear under FLSA is whether employers can require exempt employees to use *accrued leave* for less than a full day.

The Federal Department of Labor views this as ok, but over the years

several courts have disagreed, including in California. However, California has slowly moved closer to Federal Law. And under the current state of the law, your employer may require even exempt employees to use accrued leave for partial-day absences *as long as it is consistent with your local work policy*.

Your MOU or past practice may be different and could be a determining factor here. What is clear is your manager may not single you out but must treat you the same in accordance with the MOU, past practice, and/or Agency policy.

Question: I'm in a job class with one other co-worker. Our employer modified one of the positions to include additional responsibilities and extra pay and gave it to my co-worker. I want to have those same duties and pay. Why should one of us get it and not the other? My job is watered down now, with less responsibility. I feel like the job I hired into is no longer the job I'm asked to perform. Can they do this?

Answer: There are really two parts to this question. First, your employer is required to negotiate with the Association before modifying a position that belongs to the Association. Hopefully, that happened here. If not, then your association may have the ability to grieve the unilateral modification of this new job class and pay. Even if the Association agrees to the changes, your employer is likely required to go through an open recruitment to fill the new classification for which you would have an opportunity to compete. If this did not happen, then we may have a right to grieve the recruitment process.

The second part of your question really addresses whether your employer can remove duties from your day-to-day work as long as it doesn't affect your pay and benefits. The short answer is yes, your employer probably has a management right not to assign the full range of duties in your job spec. However, if you are no longer performing the vast majority of your essential job functions, then we may have grounds to grieve, whether on punitive/retaliatory grounds or a constructive layoff. There are a lot of moving parts to this issue, and you really need professional staff to help navigate these complicated waters.

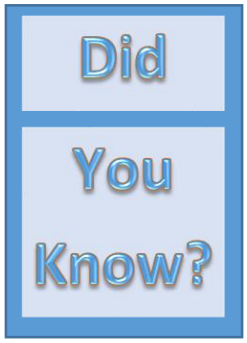
Question: What exactly is grievable? My Director denied my vacation request. I have plenty of leave accrued. Actually, I have to use

hours every month or I will hit the cap and stop accruing. My Director didn't say why he denied it. It wasn't a coverage issue. I like to request my Friday off. If I have the leave on the books, what difference does it make which day I request? Can they really force me to take vacation leave on a day that I don't want to be off? I feel like this is a denial of my right to use vacation leave that I've rightfully earned. Can I file a grievance?

Answer: When it comes to the use of accrued vacation, there is a balance between management's right to approve/deny requests based on operational need and the employee's right to reasonably use leave properly earned. Federal law (again, FLSA) views vacation leave as a form of compensation. And although there is no requirement that employers offer vacation time, once accrued, it can't be taken. But the law doesn't speak much to the use of that leave, other than making clear whatever is not used upon separation must be paid out in full. Your MOU likely establishes the parameters to actually use the leave, and even there, probably only in very general terms. And then it falls back to your right to make reasonable requests and the operational needs of the job. Management certainly can't prohibit you from taking any vacation time, or never on a certain day. But depending on the operation, management does have the discretion to deny some requests as long as reasonable alternate days are available. You certainly have a right to grieve, but whether we can be successful depends on the balancing test between the reasonableness of your request and the demands of your job operation.

Question: I've taken a promotion in another agency. HR said that my leave cash-outs will all be included in my final check and that I won't get this until the payroll period ends. I thought the law said they have to pay this out on my last day? Do I have to wait over a week to get my money?

Answer: State Law (California being one of the most pro-employee on this issue) requires employers to issue final paychecks, with all cash-outs, within at least 72 hours of separation. Which is great news, unless you are a public employee. In which case, unfortunately, this strict law does not apply. So, in your case (as with most public employees), you likely need to wait until the next regular payroll period.



The federal U.S. Department of Transportation (DOT) announced late last year that they will begin testing truck drivers and other "safety-sensitive" transportation employees for 4 new semi-synthetic opioid drugs starting on January 1st, 2018. These are hydrocodone, hydromorphone, oxymorphone, and oxycodone. The DOT's actions are intended to address a nationwide epidemic of opioid abuse.

These drugs are already tested in many transit employers' non-DOT testing programs because of their widespread use and potentially impairing effect. DOT will now be able to detect a broader range of drugs being used illegally by transportation employees. But officials are not just reacting to the nationwide opioid epidemic. DOT has stated that adding the substances to the drug panel (urine testing) is also consistent with the Department of Health and Human Services (HHS) mandatory guidelines.

About 6.3 million DOT-regulated drug tests are administered annually. Since 1988, federal regulations have required cocaine and marijuana to be screened by certain employees working at federal agencies, and HHS has authorized federal agencies to test for amphetamines and opiates. HHS added these semi-synthetic opioids to the federal program in May 2015.

Critics to the new DOT rule have said that it would increase circumstances in which drivers innocently using opioids – for example, via prescription pain medicine – could be unfairly treated as drug abusers, with positive tests harming their careers. This is particularly so, given the frequency with which opioids are prescribed. The DOT stopped short of adding other substances to the panel, such as synthetic cannabinoids, saying that DOT does not have authority to add substances without the scientific and technical expertise of the HHS as expressed in the HHS mandatory guidelines.

DOT and HHS guidelines frequently serve as a blueprint for public agencies in California in determining which substances should be tested and under what circumstances. This is often memorialized in the agency's local drug testing policies. Agencies cannot change existing policies, though, without first notifying the association and allowing meet and confer prior to implementing.