Torrance Professionals & Supervisors Association

November 2018 News

The Nuts & Bolts of Job Reclassifications

Have you been asked to perform work outside your classification? Is this now a regular duty? Do you have a job description, and is it accurate? Most public sector workers at some point in their career perform work outside their classification. Public agencies hire workers to do the job of a specific budgeted position. The pay, specifications, duties, and qualifications are set forth – or at least they should be – in an official job description. You should have this information prior to your hire date. What happens over time is the body of work your Agency asks you to perform evolves. This means that the work you're doing doesn't end up fully matching the scope of the work you were hired to do. You take on more work, but what frequently lags are an updated title, job description, and pay. How do you fix this? The most common ways are (1) a classification study, (2) an out of class grievance, or (3) a desk audit. We'll look at each one in order.

Now that agencies have mostly recovered from the recession, many have completed or are performing agency-wide classification studies. These studies are negotiable. Typically performed by an outside consultant, they look at whether the current classifications are up-to-date. This could mean changing the title of your job to something more commonly used by other agencies. It could mean adding duties to your job description, such as tasks you currently do but are not listed. And it could mean a full reclassification – that your title, pay, duties, and job description all change. A reclassification is an acknowledgement that the job you do today is different than the one you were hired into. But these studies are very labor intensive, expensive, take a long time to fully complete, and can produce some perplexing recommendations that occasionally aren't in your favor.

If it's just your job that's out of date, an out of class grievance may be a way to go. A grievance looks at (1) whether you perform work outside of your classification, and (2) whether this work is of a higher-level position. Out of class grievances are not a good

approach to address understaffing concerns, where the issue is the volume of work versus the type of duties being performed. Out of class grievances frequently arise through attrition. Let's say you belong to a job series and the person in the higher-level position in your series leaves employment. The agency still needs this work done and passes it down to you. This may be temporary, such as during a recruitment, but it's not unusual for the temporary to become permanent. No one tells you this, so it's important to speak up if it happens. There are circumstances other than attrition that cause you to perform higher level work, and it may be that you pick up this work voluntarily without the Agency even knowing about it. Regardless, the time you spend doing the higher-level work must be more than minimal. The agency will argue this work constitutes "other duties as assigned," but if you're performing the higher-level work more than sporadically or occasionally, you'll likely prevail. If successful, the remedy for an out of class grievance is for the agency to either reassign the higher-level duties to someone else or add the duties to your position and give you out-of-class pay, which is usually 5% or the bottom step of the higher-level position. Check your labor contract to be sure. Also, contact professional staff to discuss if this applies to you, and for help in filing and pursuing a grievance.

But what if it's just your job that's out of date, and the work you're now doing is not technically that of a higher-level position? Consider a desk audit. This is a formal request to management that you'd like them to investigate your job specifically and determine whether you should be reclassified. This process is voluntary, at least in the absence of a written procedure. This means there's no way to force the agency to study your classification. But you can ask. Often, management will investigate it even without a legal obligation to do so. As the labor market improves (jobless claims are now at historic lows), and agencies wrestle with recruitment and retention of their workforce (which is happening in many places), they may want to keep you happy. Unfortunately, without strict timelines to keep the process moving, even well intended desk audits can take months or years to finish. The data often sits on a Director's desk for weeks before it gets the necessary attention. Getting final approval can take even longer.

Here are a few suggestions to improve your odds with a desk audit. First, make sure your supervisor or Director are on board. Sometimes, the official request must come from management. Regardless, your manager's opinion about the scope of your work is given great weight and may often be the final word on the matter. Your manager will be looking at the big picture (e.g. Department workflow and efficiencies) and not simply your duties. It really does help to have your manager supporting you, and this may mean knowing what your manager thinks is important. Second, make sure you have everything documented. This includes all the tasks you perform, and the amount of time you spend

on various projects. Management may not fully understand that something they assigned you takes the amount of time that it does. That's why a breakdown of your time is very important. Third, pay attention to your agency's internal structure. Are you a senior or a lead? A manager or a supervisor? An analyst or a project manager? A I or a II? Start with your job series, and then look at any groupings or families of positions. Try to identify a specific position, especially if it's already authorized, that you think fits. It's easier for the agency to reclassify you to an existing position and salary than to create a new position for you. Finally, look at what your counterparts make in other comparable agencies, and be prepared to present this data, both good and bad. If other nearby agencies classify you as something else, if they provide higher pay, title, rank, or prestige, it's helpful to show this. Don't expect management to do your homework for you. They will investigate what you provide them, but it's up to you to point them in the right direction.

If your employee organization is bargaining soon, you may want to bargain for a written job-analysis procedure. The more detailed you can make it, the better. Here are some ideas you might want to include:

- The procedure can be initiated by an employee
- The evaluation period has specific time frames at each step
- An adverse determination is grievable or can be appealed to top management
- The entire job classification is analyzed (pay, title, rank, description, certification, educational requirements, essential duties, etc.)
- The details of any form or questionnaire which the employee or his/her supervisor may be asked to complete
- Reconsideration of whether the position is properly characterized as exempt from overtime under the Fair Labor Standards Act or whether it is overtime eligible
- An analysis of both the overall scope of duties and any specific job tasks
- An investigation of total workload and a reasonable time estimate needed to complete required tasks, including whether certain duties should be reassigned to another position even if it's not technically the work of a higher class
- Recommendations on proper staffing levels and whether the agency should create another position due to an unreasonable workload
- An examination of how any previous redistribution of duties (e.g., after the agency eliminates vacancies or completes layoffs) is working in practice

A written job-analysis procedure can help ensure employees are correctly classified. Proper classification might not always result in more money, but it's still helpful with performance evaluations for employees to know at the outset of the review period the

full body of work that is expected of them and what they ultimately will be rated on. An internal procedure is more cost-effective and streamlined than a full classification study. It's also less adversarial than an out of class grievance. If your agency has a Personnel Commission or Civil Service Commission, you may have a right to appeal an adverse determination to the Commission, or at least negotiate for this type of an appeal process.

It's also wise to memorialize any negotiated agreement into a formal written policy. If the Agency fails to follow it in a subsequent case (e.g., failure to initiate the study, failure to comply with timelines, etc.), you may file a formal grievance to enforce the policy. This is separate and apart from any appeal of an adverse determination. Also, if the Agency changes the policy without negotiating, your employee organization can file a charge with the Public Employment Relations Board for the Agency violating the state bargaining law.

News Release - CPI Increases!

Each month the U.S. Department of Labor, Bureau of Labor Statistics publishes monthly consumer price index ("CPI") figures. The data looks back over a rolling 12-month period at how much goods and services have increased from a year ago. Here are the figures you need to know:

2.3% - CPI for All Urban Consumers (CPI-U) Nationally

3.4% - CPI-U for the West Region

3.9% - CPI-U for the Los Angeles Area

4.3% - CPI-U for San Francisco Bay Area

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

These numbers are important! They're a rough measure of inflation, and elected officials and agency management may look to these numbers in determining "Cost of Living" raises.

Retired Public Employees Association News

The legislative year has officially ended and Governor Jerry Brown has addressed all bills that came across his desk. RPEA has been actively involved in supporting key pieces of legislation and we saw great victories at the close of this year.

AB 1912 (Rodriguez) – We last reported that AB 1912 was awaiting a final decision. RPEA is pleased to announce that Governor Brown has officially signed the bill. AB 1912 deals with JPAs and was a key piece of legislation for RPEA. This bill specifies that the parties to the joint powers agreement may not specify otherwise with respect to retirement liabilities of the agency if the agency contracts with a public retirement system, and would eliminate an authorization for a party to a joint powers agreement to separately contract or assume responsibilities for specific debts, liabilities, or obligations of the agency.

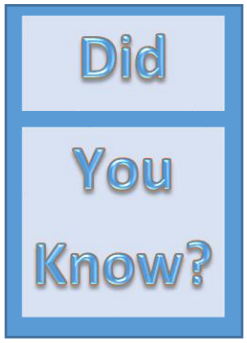
Due to the nature of what occurred to the employees of the East San Gabriel Valley Human Service Consortium, the Governor's signature is a big victory. RPEA went to great lengths to remain at the forefront of this bill, advocating for its advancement and signature.

AB 315 (Wood) – This bill was also placed on the Governor's desk and was signed. AB 315 requires a pharmacy to inform a customer at the point of sale for a covered prescription drug whether the retail price is lower than the applicable cost-sharing amount for the prescription drug, unless the pharmacy automatically charges the customer the lower price. RPEA supported this bill.

ACR 238 (Kalra) – This Assembly Concurrent Resolution was also signed by the Governor. This measure proclaims and acknowledges the month of June 2018 as Elder and Dependent Adult Abuse Awareness Month in California and reiterates the importance of annually recognizing Elder and Dependent Adult Abuse Awareness Month in the state. RPEA supported this resolution as well.

Over these past two years, RPEA has continuously fought for the security of retirees and active employees and, as a result, we have seen great legislative accomplishments. RPEA will not cease in pursuing legislation that advances the rights and well-being of retirees and active employees.

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.](http://www.rpea.com)



According to recent statitstics, approximately 70% of college graduates leave school with an average of at least $30,000 in student loans. The number is considerably higher for those with advanced degrees. Total U.S. student loan debt is now about $1.5 trillion. There's no shortage of news articles about how this causes millenials to wait longer to buy houses, start families, and save for retirement. Individuals can already deduct up to $2,500 in student loan interest on their annual federal taxes, subject to certain income limits. There are also several loan forgiveness programs available. But how do employers help?

Employers can help in a number of ways. If you don't have a Student Loan Repayment Plan in place, you might consider negotiating one during the next round of MOU bargaining, especially if your Agency is having a hard time attracting and retaining younger employees. Contact professional staff to craft or revise any proposals before presenting them to Management. If your Agency does offer the benefit, contact your HR to enroll. If your Agency's benefit falls short in some way, you could suggest and negotiate improvements, or discuss it during a labor management meeting. Many agencies do have tuition reimbursement programs, but they don't typically repay debt you acquired prior to being employed with the Agency.

One approach is a Student Loan Repayment Plan. Offered by only about 4% of employers, and often administered by a third party vendor, this allows the Agency to make monthly contributions directly to your student loan servicer while you continue to make regular payments. Applied directly to the principle, these Agency contributions can shave several years off each loan. But one reason this and other traditional programs fall short is because the IRS treats any employer payments as taxable wages to the employee. Current proposals in the U.S. House of Representatives do seek to update the Tax Code to reflect current student loan issues, and in particular to exclude from taxable income any student loan repayment assistance by employers, up to annual caps.

Recently, the IRS released a Private Letter Ruling in response to an employer's inquiry about adding a student loan benefit program to their 401(k) benefit. The program would permit the employer to make a special contribution (a student loan repayment nonelective contribution) based on the employee's student loan repayments. The idea is for the employer to replace contributions the employee would have made to the retirement plan if he/she didn't have to pay back student loans. The IRS did allow the employer to amend their 401(k) plan to allow for this, but the letter ruling is very limited in scope (essentially to just that employer). It doesn't apply to public agencies or 457 plans (public sector deferred compensation accounts), but it does signal that the IRS is willing to consider student loan repayment options as part of a larger benefits regime.

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 your professional staff.

Question: I'm a supervisor and unfortunately, we had to let a very difficult employee go. He was my subordinate employee and I documented all the complaints we received. I worked with HR and made sure we did everything how we are supposed to. The Agency officially separated his employment and provided the Skelly meeting and the evidentiary appeal. The former employee then filed a complaint with the State and got the green light to file a civil lawsuit for discrimination and retaliation. He then filed suit and named both the agency and me as defendants. My manager said the Agency will provide counsel for me, but I've never been sued before and don't know how this works. Can the employee come after my savings and my assets? What do I need to do to protect myself? I'm worried.

Answer: While it sounds like you and HR did everything properly in basing the disciplinary action on cause, supported by documentation and with proper notice and due process afforded to the employee, it is not uncommon for separated employees to allege some form of unlawful termination. But rest assured that even if an employee meets their burden in a civil lawsuit to prove the separation was somehow illegal, you will not be held personally liable. Plaintiffs will often name everyone under the sun in a lawsuit, but the employer should ultimately be on the hook for any damages. The Agency is required by law to indemnify you from any liability if you were acting within the scope of your employment, which it sounds like you were. They also will pay for a lawyer to defend both you and the Agency in the case. This attorney should be successful in filing an early motion to have you removed as a defendant in the lawsuit. Keep in mind that it's possible something you tell the Agency's attorney may be shared with Agency management or HR. Consult professional staff if you think there may be a conflict, or you believe there's other reasons why you should hire your own separate attorney. Also know that even if you are held personally liable, some assets are exempt from any judgment or garnishment, such as your home or certain retirement accounts.

Question: Our Agency is investigating one of our Police Officers for misconduct. I am a Non-Sworn employee who was in a ride-along with the Officer and a cadet. The Officer made some comments about using pepper spray on me (I didn't know at

that time that he was upset about something I said). He then unloaded his firearm and set it on my lap. I'm afraid of guns and this made me very uncomfortable. The cadet must have said something to the Agency because they've temporarily reassigned the Officer to another area and are bringing in an outside investigator. I'm extremely anxious and off work and my boss has said I can use my own leave for as long as I need to. When I'm called back in to meet with the investigator, do they have to credit me my leave time back? I don't want to go back to work until this is resolved, but I also don't feel I should have to use my own leave time if they are requiring me to attend the investigatory meeting.

Answer: It certainly sounds like the Officer subjected you to a wholly inappropriate (and maybe even illegal) situation. The good news is the Agency is taking the matter seriously (or so it appears) by properly investigating the Officer's actions and making sure you are allowed time to deal with the trauma. Your interview with the investigator should be on Agency time, and you should not have to burn time from your own leave bank to attend. If you're using your own paid leave at the time of the interview, the Agency should credit you back the time spent interviewing, but they probably aren't legally required to.

You may want to discuss this with a Workers' Compensation Attorney. If the stress and anxiety from the event is preventing you from working, then you may be entitled to have all your leave time restored. And depending on how much you are traumatized by the event, you may suffer from lasting effects. This could further delay your return to work and may require medical care. You may be entitled to compensation for all of this, if you have an accepted workers' comp claim. You don't usually need a Workers Comp Attorney unless you've had a claim denied, but stress claims are an exception because they are unique from the more common claims involving physical injuries. Call professional staff for referrals to good Workers' Comp Attorneys who can counsel you on your rights and will put your long-term interests first.

Question: I'm one of 6 employees in our Association who opts-out of the Agency's medical (cafeteria plan). I receive the full $1,100 minus dental and vision coverage which is mandatory. I use the balance to purchase a medical plan on the individual market that is much cheaper than what is offered through the Agency. Our cheapest family coverage (through CalPERS medical) is around $1,400 per month and my individual marketplace family coverage is around $700. The Agency is now telling the 6 of us that we can no longer opt out of medical unless we provide proof of other "group" medical insurance. This is a new condition to opt

out, they never required that we provide this in the past. We also negotiated a new MOU less than a year ago and this was not something that was brought up or changed. Is this allowed? Can they restrict me from getting my own insurance or take away the opt-out pay? I don't want to be forced to select a more expensive plan from the Agency and pay out of pocket.

Answer: The short answer is no. Your question presents two issues. First, one of meet and confer. There seems to be a clear existing provision regarding medical "opt-out". The Agency may not end this benefit, or even put new conditions on the use of the benefit, without first negotiating with the Association. Depending on the contract language, you may or may not have grounds to delay negotiations until the MOU expires. Regardless, there may be good reasons to bargain now, and not wait. Especially if the Agency could incur tax penalties or the cafeteria plan is at risk of being deemed "non-qualified."

The second part of the question deals with whether the federal Affordable Care Act requires this "proof of 'group' coverage". The current state of the law suggests that no, it is not required. But it is something subject to review and may change, which is why the Association may want to consider negotiating some benefit in exchange for agreeing to the Agency's proposed change now.

Bottom line, the Agency cannot make any changes to this benefit without meeting and conferring with the Association over the proposed change. So, unless that has happened, the Agency cannot unilaterally add a new condition.

Question: Our Agency is finishing up with a classification study that has dragged on for years. There are three of us who work in my Department plus a now-vacant Manager position. They want to write our job specs broadly to include work our former Manager used to do, and one of my co-workers had previously done, and even received out of class pay for. We aren't getting a salary bump. They are recruiting for the Manager position. We've protested to the Agency about writing the duties so broadly. They've said that they, and the consultant who did the study, both agree that these are the proper specs. Is there a way to challenge this and get the duties removed? It seems like our voice was not considered.

Answer: Yes, there is a way to challenge this and possibly get the duties removed. The law deems job specifications, particularly the job duties assigned to your classification, as terms and conditions of employment. And terms and conditions of employment may not be changed without affording the Association an opportunity to negotiate. In negotiations, the Association can propose to remove the new job duties or demand a fair increase in pay as a

condition of accepting the new duties. Now, it is true that the Agency may exhaust good faith negotiations, declare impasse, complete impasse procedures (which can include mediation and fact finding) and then ultimately impose the changes. But that is a long process, and we can usually work out some acceptable compromise on the proposed changes before we get there. As with the prior question, the Agency can't simply move forward unilaterally with these changes without negotiating. Your Association can make sure your voice is heard.

Question: I'm a Parks Maintenance Worker. There are lots of homeless in our parks, the situation just keeps getting worse. Many are mentally disturbed. I'm afraid of some of them, and so are my co-workers. We don't want to confront them, but it's making our job of maintaining the Parks difficult. Is there something that can be done? It feels like an unsafe work environment and the Agency is not doing anything to fix it. We aren't trained to do homeless removal and we feel it's a public safety issue.

Answer: Unfortunately, this is an issue that is becoming more and more common across many different communities. As you know, employees working to keep Parks clean and safe for our communities are on the front lines. Often you are stuck in the middle of safely doing your job and the local politics surrounding homelessness. But as you correctly point out, your Agency has an obligation to provide a safe work environment for you. There should be an official policy and procedure providing direction on how you should safely deal with the issues you are likely to encounter. This can include your initial interactions with the homeless and who to call if you feel threatened. If there is not a policy in place, then your employee organization can schedule a Labor Management meeting to negotiate this with your Agency. If management refuses or if you are still put in unsafe situations, then you can file a formal grievance and force the Agency to provide for your safety.