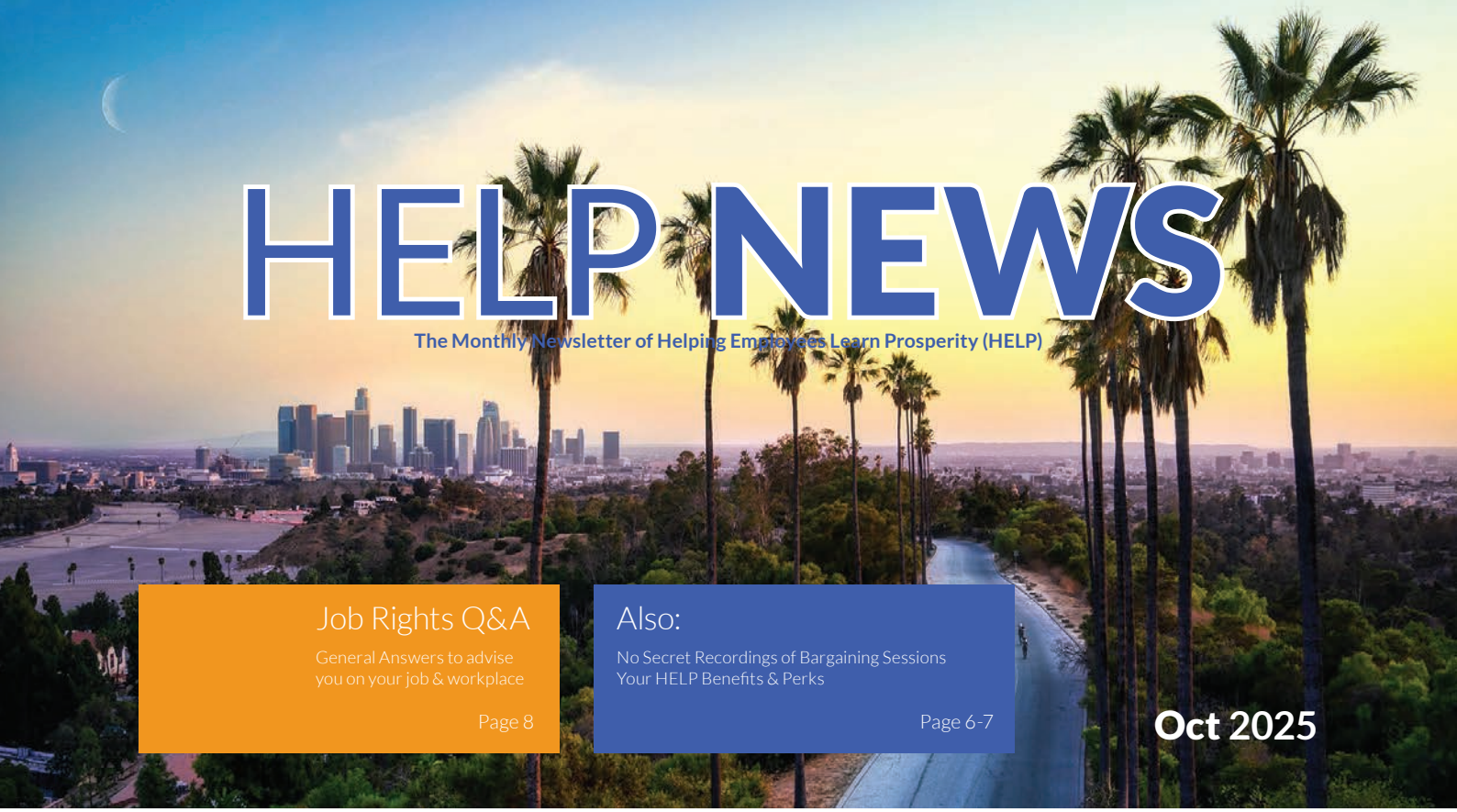

HELP NEWS

The Monthly Newsletter of Helping Employees Learn Prosperity (HELP)

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Oct 2025

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HELP is a Registered Employee Organization with the County of Los Angeles and has a County assigned payroll deduction code.

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Public Employee Free Speech

As innovative technology continues to transform the workplace, and society more generally, one long held principle still rings true for public employees in California. Public employees do not surrender their First Amendment rights to free speech by accepting public employment. (*Lane v. Franks* (2014) 573 U.S. 228). Public employees have the right to speak as private citizens on matters of public concern. (*Garcetti v. Ceballos* (2006) 547 U.S. 410). This month, we look at public employee free speech rights, including a recent legal decision in a case brought by a former local government employee.

The First Amendment.

Conversations about hot-topic issues, which used to occur in break rooms or at water coolers, now happen with greater regularity through text messages, social media, smart phone apps, and video conferencing and chat features. These conversations include hot button topics such as race, immigration, taxes, gender identity, and reproductive rights. Public employees do not lose their constitutional right to engage with others and to speak freely about matters of public concern just because they are employed by the government. However, public employees may be disciplined or even terminated for speech that disrupts or could disrupt operations.

Regardless of where the speech occurs, public employees are only protected when they speak as private citizens on matters of public concern. Although straightforward in principle, it is often fact-specific in practice. For example, in

Lane v. Franks (2014) 573 U.S. 228, the court held that an employee was protected and spoke as a private citizen when testifying under subpoena to federal authorities about information learned through public employment. In other cases, courts determined that employees were not protected because they were not acting as private citizens. (*Garcetti v. Ceballos* (2006) 547 U.S. 410) (exposing government inefficiency and misconduct in a work memo to supervisors); (*Hagen v. City of Eugene* (9th Cir. 2013) 736 F.3d 1251, 1257-1258) (raising safety concerns pursuant to official job duties).

Even if a public employee speaks as a private citizen on a matter of public concern, courts use a balancing test to weigh the free speech rights with the employer's legitimate interests. Protected speech must be a substantial or motivating factor for any personnel action. (*Pickering v. Board of Education* (1968) 391 U.S. 563). A public employer can prevail by establishing that it had adequate justification for treating the employee differently from members of the general public, or that it would have taken the action regardless of the employee's protected speech. (*Barone v. City of Springfield* (9th Cir. 2018) 902 F.3d 1091, 1098). The public employer must reasonably believe the speech is disruptive, show it resulted in an actual disruption or a reasonable likelihood of disruption, and establish that the adverse action is based on the disruption and not the speech. (*Waters v. Churchill* (1994) U.S. 661, 681).

Speech occurring in non-work areas and on the employee's own time weigh in the employee's favor, but threats are clearly not protected. (*Lovell v. Poway Unified School District* (9th Cir. 1996) 90 F.3d 367, 371). Speech which contains mere "hyperbole" of the sort found in "nonmainstream political invective" is not considered a true threat even if it is crude or insulting and includes some violent content. (*Bauer v. Sampson* (9th Cir. 2001) 261 F.3d 775); (*Rodriguez v. Maricopa County Community College Dist.* (9th Cir. 2010) 605 F.3d 703) (disparaging remarks were not a threat). However, speech must touch on a matter of public concern, and it must not harm the employer's reputation. (*City of San Diego v. Roe* (2004) 543 U.S. 77) (no protection for police officer who posts sexually explicit videos of himself in uniform proclaiming that he is in law enforcement).

Adams
forced to resign
over texts

The Adams Case.

A recent legal case looked more closely at this issue of when speech is on a matter of public concern. (*Adams v. County of Sacramento* (2025) No. 23-15970). Kate Adams began working for the Sacramento County Sheriff's Office in 1994. She became the Police Chief for the City of Rancho Cordova in March 2020. In 2021, she was forced to resign from the City over allegations that she sent racist text messages on New Year's Eve back in 2013 to other Sheriff's Department employees.

Adams was having a friendly, casual text message conversation with her co-worker and then-friend. At one point, she sent him a message stating "Some rude racist just sent this!!" along with two images she had received. One of the images depicted a white man spraying a young black child with a hose and contained a superimposed offensive racial epithet. The other message included an image of a comedian, with superimposed text containing an offensive racial slur. Her friend responded, "That's not right." Adams replied, "Oh, and just in case u think I encourage this . . ." The remainder of the conversation was not in the record, but that same evening, she sent the same images to another co-worker and then-friend. Adams's messages were not posted on social media and remained private and did not circulate beyond the original recipients.

However, in July 2020, after Adams reported one of the co-workers for misconduct, that individual disclosed the 2013 text messages during an internal investigation. The Department then investigated Adams, and the other co-worker provided his 2013 text messages. The Department gave Adams a choice to "resign quietly" or "be terminated and publicly mischaracterized as a racist." Adams chose to resign in September 2021. In March 2022, the President of the Sacramento chapter of the NAACP published an open letter stating that Adams had sent racially charged pictures to other Sheriff's Depart-

ment employees. The Sacramento Bee later published an article repeating those allegations. As a result, Adams had to resign from her adjunct teaching position at a local university, and two prospective employers withdrew their consideration of her. She sued the County, alleging violations of her First Amendment right to free speech.

The district court dismissed her case, finding that the text messages identified in her lawsuit did not constitute speech on a matter of public concern. Adams appealed. The appeals court upheld the dismissal, also finding that the text messages did not address a matter of public concern. According to the court, the focus must be on whether the public or community is likely to be truly interested in the expression. If it is essentially self-interested, with no public import or a subject of legitimate news interest, then it is merely a private grievance and not a public concern. The court said this distinction "applies even against the backdrop of controversial issues like racism."

Court: private texts not public speech

Protesting racial discrimination is a matter of public concern where an employee speaks out as a citizen on a matter of general concern. However, speech that complains about private, out-of-work, offensive individual contact by unknown parties does not. Adams's exasperation at being sent the images, in private text messages to two friends and co-workers, is an issue of personal – not public – concern. Adams was not protesting generally applicable policies and practices that she believed to be racially discriminatory, nor was she suggesting her receipt of the images was connected to wrongful governmental activity in the Department.

"Something more than discussing an offensive racial comment, communicated in a private text, is required for speech to involve a matter of public concern," the court said. First Amendment protection is grounded in the value of the public's interest in receiving the well-informed views of government employees engaging in civic discussion. Disputes over racial, religious, or other discrimination by public officials are a matter of public concern if they involve the public's deep and abiding interest in governmental conduct that affects society's interest. In this case, the subject matter – private receipt of offensive images – was not substantively relevant to the process of democratic self-governance. Although Adams's dismissal may or may not be fair, the court said that "unfairness alone does not create the right to transform

everyday employment disputes into matters for constitutional litigation in the federal courts."

Speech May Be Protected Under State Labor Relations Laws.

Speech that lacks First Amendment protection may still be protected under other laws. For example, public employees have the right to form, join, and participate in the activities of employee organizations for the purpose of representation on all matters of employer-employee relations. (*Gov't Code* §3502). This can include discussing wages, hours, and other terms and conditions of employment. (*Gov't Code* §3500, 3504). An employee engages in protected concerted activity when acting with or on the authority of other employees, and not solely on their own behalf. Workers who are targeted or fired for engaging in protected concerted activity may have legal recourse. Unfortunately, as with the First Amendment, the line is not as clear as you may believe. For example, workers can be fired for communications that are defamatory or that disparage the employer. This includes communications that are intended to harass, threaten, or bully other employees, as well as those that constitute illegal harassment or retaliation. Workers can also be fired for communications that are considered "individual gripes" and do not call for or initiate any employee group action. However, an employee is protected if they seek mutual aid and protection from other workers regarding working conditions.

Speech rights extend beyond the First Amendment

Public Employees Can Use the Employer's Technology

Under state law, public employees and public employee organizations have the right to use the public employer's email system for union purposes if employees have legitimate access to the email system and the use occurred outside of work time. (*Napa Valley Community College District* (2018) PERB Decision No. 2563). This tracks an earlier National Labor Relations Board (NLRB) decision. (*Purple Communications, Inc.* (2014) 361 NLRB No. 126). This was reaffirmed in a subsequent decision, where the state Public Employment Relations Board (PERB) held that an employee's speech was protected under the state's labor relations law when he used the district's e-mail to communicate to all teachers about the conduct of the district's Human Resources Director. (*Chula Vista Elementary School District* (2018) PERB Decision No. 2586).

The district had argued the e-mail violated the district's e-mail policy and practices, which permitted only short informational e-mails via its e-mail system. PERB rejected that defense. According to PERB, the district's restrictions on employees' non-business use of its e-mail system could only be justified if there are "special circumstances." The Board did not say what constitutes "special circumstances." It did say that the district lacked "special circumstances" in this case. Therefore, the district could not prohibit the employee from using district e-mail to send his communication, and his communication did not lose protection under the state's labor relations law. In short, PERB presumes that employees who have rightful access to their employer's email system in the course of their work have the right to use that email system to engage in protected communications on nonworking time. This includes employee organizations using the email system to communicate with members about meetings and other union activities. A public employer's existing e-mail use policy cannot restrict this, absent "special circumstances."

Be Careful When Using a Public Employer's Equipment.

Public employees should be careful when using the employer's equipment because the employer may have the ability to review and monitor such communications even when the employee intended the communication to be private. For example, in *City of Ontario v. Quon* (2010) 560 U.S. 746, the Supreme Court held that a city's review of transcripts of an employee's private text messages on a city-provided device was not an unreasonable search under the Fourth Amendment. The city argued that it conducted the search to ensure it was not paying for extensive personal communications. The Court found the review was permissible. It concluded that the city's review of two billing cycles' worth of text message transcripts,

News Release - CPI Data

The U.S. Department of Labor, Bureau of Labor Statistics, publishes monthly consumer price index figures that look back over a rolling 12-month period to measure inflation.

2.9% - CPI for All Urban Consumers (CPI-U) Nationally

3.2% - CPI-U for the West Region

3.3% - CPI-U for the Los Angeles Area

2.5% - CPI-U for San Francisco Bay Area

3.5% - CPI-U for the Riverside Area (from July)

4.0% - CPI-U for San Diego Area (from July)

with redactions for text messages sent during off-duty hours, was not excessively intrusive and was an appropriate way to make that determination. Public employees should be mindful of this when using the employer's equipment and devices. Using the employer's equipment will not protect employees from discipline for speech that management has a right to address, such as harassment or bullying. This holding may expand beyond just text messages. For example, the holding in this case may apply to communications on other employer-issued devices and applications, such as Zoom chats.

Conclusion.

Although public employees have the right to free expression, and may be able to use employer equipment, workers should be mindful of what they say and how they say it. As the Adams case illustrates, one can never be sure that communications that were intended to be private will remain so. It may be that those communications are not protected under the First Amendment or state labor relations laws.

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No Secret Recordings of Bargaining Sessions

Secret recordings violate good faith bargaining

On June 25, 2025, William B. Cowen, the Acting General Counsel for the National Labor Relations Board (NLRB), and former Regional Director for Region 21 in Los Angeles, issued Memorandum GC 25-07, to warn parties who might secretly record bargaining sessions under the NLRA (National Labor Relations Act). Although the NLRB only has jurisdiction over private sector bargaining, the California Public Employment Relations Board (PERB), which enforces violations of state bargaining laws covering public employees, often looks to the NLRB for guidance. PERB will likely take a similar approach towards parties who secretly record bargaining sessions. Technology has given parties the ability to easily record bargaining sessions, and to do so secretly and accurately. Artificial intelligence can accurately transcribe recordings into searchable text, create meeting action items, and can identify individuals by their voices. In today's world, the proliferation of recording devices and AI enhancements can affect the ability of parties to engage in free, open good faith bargaining when recordings are done without knowledge or consent. Mr. Cowen said that a party who secretly records collective bargaining sessions commits a per se violation of the duty to bargain in good faith. Other per se violations of the duty to bargain in good faith include insisting on non-mandatory subjects as a condition to agreement, making unilateral changes to mandatory subjects of bargaining without bargaining to impasse, bypassing the union and bargaining directly with employees, and refusing to meet at reasonable times.

A prior case, *Bartlett-Collins Co.* (1978) 237 NLRB 770, 772, held that it is a per se violation for a party to insist on recording/transcribing collective bargaining sessions. In that case, the Board said that a proposal to require the presence of a court reporter during negotiations is not a mandatory subject of bargaining and neither party could insist on that point to impasse. Treating secret recordings of collective bargaining sessions as a per se violation "is a logical extension" of this case. Mr. Cowen issued the memo because he believes parties need the clarity of a brightline rule so they have assurances that they are not being recorded and can freely engage in open dialog at

the bargaining table. He said secretly recording bargaining sessions "is inconsistent with the openness and mutual trust necessary for the process to function as contemplated by the Act." Mr. Cowen told NLRB Regional Directors to issue an unfair labor practice complaint if an investigation shows that a party secretly recorded a bargaining session.

The memo serves as a reminder of how secretly recording a negotiations meeting undermines good faith bargaining. If insisting on recording bargaining sessions is illegal, secretly recording those same sessions is even more objectionable. The deceptive nature and brazen disregard for the reasonable expectations of professional behavior shows a disdain for the collective bargaining process itself. It is a breach of trust, undermining the integrity of relationships and eroding the basic principles of mutual respect and dignity that form the foundation of healthy interactions. Knowing that there may be the possibility of secret recordings would hinder open bargaining by pressing parties to be more guarded, potentially to one party's advantage. The presence of a recording device may inhibit free and open discussions. This may be especially true if sensitive or confidential matters are discussed. The spontaneity and flexibility that are often present during bargaining may be lost. Open and honest dialogue may be replaced by a formalistic monologue of posturing and speechmaking. Parties may talk "for the record" and not for the purpose of advancing negotiations. The recording party may try and take advantage of the other party's candor. Secret recordings foster a culture of suspicion and fear, discouraging open and honest communication. Trust is essential in both personal relationships and professional environments; when individuals fear their words may be secretly captured and used against them, they may become guarded, which stifles genuine dialogue and collaboration. It is important to keep these considerations in mind when someone suggests secretly recording bargaining sessions.

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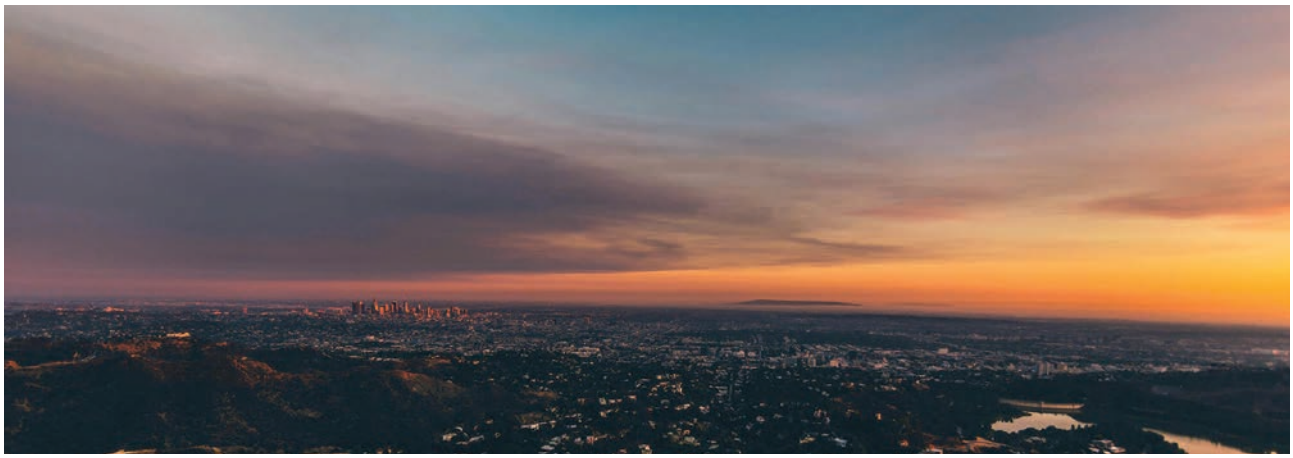
Questions & Answers about Your Job

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 received a notice from my employer saying that I am a witness in a personnel investigation. I understand that I may not have the right to union representation if I am not the subject. However, I have attended one of these investigatory meetings as a witness before. At one point during the meeting, I feel like the questioning turned to where I was under investigation. How should I handle it if that occurs again? Is there any advice you can give me for situations like that?

Answer: In a meeting where you are initially called as a witness, and the questioning turns against you, you can assert your right to union representation. Tell the investigator that you do not want to answer any further questions on that matter until your union representative is present. You might also suggest the interview may violate your Weingarten rights. Weingarten is the name of the party in the U.S. Supreme Court case that established the right to a union representative in investigatory meetings that could reasonably lead to discipline. Invoking your "Weingarten" rights will inform the investigator that you know what your rights are, and that they should stop insisting on your responses. Refuse to answer any line of questioning



that you believe could reasonably lead to your discipline. The investigator may then move on to other questions or end the interview and reschedule the interview to a time when your union representative can be there.

In terms of how to answer questions in investigatory meetings, be concise. Do not volunteer information. Answer the question being asked. Tell the truth. If you do not understand the question, ask the investigator to rephrase it. If you do not know the answer to a question, do not guess. Simply tell the investigator you do not know. Let the investigator ask any follow-up questions if needed.

Question: I am in our mid-management group. I need help regarding my salary. Staff that work under me make as much or more than I do. They are in a different union, but I feel like salaries and pay should be equitable throughout the organization. Subordinates should not make more than the employees who manage them. What avenues does someone in a situation like me have to correct this? My salary range does top out at more than theirs, but there is only about a 5% difference in the salary ranges, and they receive certification pay and other specialty pay that I am not afforded. Some of them are also at the top of their range and I am only in the middle of mine.

Answer: First, check your MOU and personnel rules. Some provide for superior-subordinate differential pay. This is a premium that is paid when supervisors or managers make less than their subordinates. Review the language carefully, as some may only apply if the difference between the ranges is less than a set minimum compaction level. The premium pay that is provided is often the amount that would be needed to maintain that minimum level of compaction. Sometimes that figure can be as low as 5%, in which case, you might not get any additional pay. Also, when considering what subordinates are paid, you should not consider items such as certification pay or overtime pay. Only the base rate is used in comparing wages. Specialty pays also are typically not included in calculating the range adjustment or the differential pay.

If your MOU does not provide for this differential pay, contact your employee organization. They may be able to negotiate a way to fix this disparity in the next MOU negotiation. They may also be able to bring the issue to management's attention. Ultimately, the only way to ensure that you and others like you have a guaranteed pay difference over your subordinates is to negotiate for it, either in the form of an overall higher pay range, or with language that provides differential pay and guarantees a set amount over a highest paid subordinate.

Question: Our attendance policy allows for discipline based on the number of unexcused absences during a rolling 12-month period. An unexcused absence is an absence that is not approved or recognized in the list of excused absences (e.g., pre-approved vacation, holidays, bereavement, jury duty). The list of excused absences specifically includes "pre-approved doctor's appointments" and "protected sick leave use under California Sick Leave Law and Kin Care Law (half of an employee's annual sick leave accrual)." Unexcused absences are defined to also include "unapproved illness or injury" and "doctor's appointments that did not receive prior approval." Is it lawful to get an occurrence under the attendance policy if I used sick leave for sick leave purposes, even though I did not get "approval." I understand the staffing challenges in our department, but I cannot plan when I am going to be sick, and I do not feel like I should have to share my calendar of doctor's appointments with my supervisor.

Answer: It may be lawful for the employer to discipline employees for inappropriate or excessive use of sick leave, but only if there is a pattern of usage (i.e. every Friday), or if sick leave is used for purposes other than a qualifying reason (i.e. going on a vacation rather than being sick). It also appears that your employer's policy may be missing some key protections such as any leave protected by State law such as the California Family Rights Act (CFRA) or Federal law such as the Family and Medical Leave Act (FMLA). It may also be missing protection for any leave related to disability under the Americans with Disabilities Act (ADA) or the Fair Employment and Housing Act (FEHA). The policy should not identify "unapproved illness or injury" as it is not within the employer's authority to approve illness or injury. However, when it comes to planned medical needs such as a doctor's appointment or surgery, an employee is required to give "reasonable" notice under the law.

There is no bright line figure for what constitutes "excessive" sick leave usage. Arguably, employees should be allowed to use their full annual accrual as negotiated in the MOU before sick leave is considered excessive. The policy also cannot violate the clear terms of the MOU. More sick leave may be permissible if the time qualifies under state or federal law. If you receive discipline, even though you used accrued sick leave for sick leave purposes, and you gave appropriate advance notice, contact your professional staff for help. You may be able to contest the discipline.

Question: Yesterday was my last day of service for the City. I had an exit interview with HR that went well. I feel I was able to say what I wanted to say about the reason I resigned. HR mentioned I would get my final pay with leave cash outs on the next pay day, two weeks out. Is this correct? I gave more than two weeks' notice. Please advise.

Answer: State law requires employers to pay final wages and leave cash outs immediately upon separation or within 72 hours, depending on whether an employee quits or is fired. (Labor Code §201). However, that section of the labor code does not apply to local government employees. Local public agencies, including cities, can issue final paychecks on the next regular payday following an employee's last day of service. This means that even if you gave more than two weeks' notice and completed your exit interview, the public employer is not legally obligated to provide your final wage or leave cash outs right away. However, check your MOU or personnel rules. You might find provisions that require a faster timeline. If that is the case, the employer must follow those terms. If you do not receive your final paycheck or leave cash outs as required, contact your HR department.

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