

HELP NEWS

The Monthly Newsletter of Helping Employees Learn Prosperity (HELP)

Job Rights Q&A

General Answers to advise you on your job & workplace

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Your HELP Benefits & Perks

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July 2026

Welcome!



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Important Legal Updates for Public Employees

Late spring is a time when appellate courts often issue important legal decisions. This month, we look at two recent legal decisions that affect local government employees.

Agencies Must Engage in a Timely Good Faith Interactive Process Under the ADA.

Most employees will need a medical accommodation at some point in their career, whether temporary or permanent. The federal Americans with Disabilities Act (ADA) affirmatively requires employers to engage in a good faith interactive process to reasonably accommodate an employee's disability. Whether an accommodation is "reasonable" depends on the specific circumstances. An accommodation is considered not reason-

able if it places an "undue hardship" on the employer. The employer does not have to provide the specific accommodation requested by the employee, but it must reasonably accommodate an employee's disability, when required. Those who have navigated the medical accommodation process can relate to Alisha Strife, who sued her employer after being denied the ability to bring her service dog to work. (*Strife v. Aldine Independent School District* (2026) 5th Cir No. 24-20269). The district ultimately granted her request to bring her service dog, but then filed a motion to dismiss the case, which the trial court granted. Strife appealed. The Court of Appeal reversed and reinstated her lawsuit. The facts are important in understanding the impact of this case. Strife, a 38-year-old mother, had previously served in the U.S. Army.

She was deployed to the Middle East in late 2003, where she sustained shoulder, leg, and brain injuries during her service. She was later diagnosed with Post-Traumatic Stress Disorder (PTSD) and was medically discharged from the Army in May 2005. She began working for the district in 2012 as a fifth- and sixth-grade teacher. She later transferred to a Testing Coordinator position and was then promoted to Human Resources in 2021. On August 30, 2022, Strife requested an accommodation. She asked that she be allowed to bring her service dog to work. The district met with her on September 16 and requested additional information. The district wanted to know what specific job functions were impacted by her disabilities and if there were other accommodations the district could provide. Strife submitted a letter from her treating physician saying the service dog was “invaluable” to her mental and physical health recovery. The district responded that the treating physician was not “board-certified.” Strife then provided a letter from her treating psychiatrist, which said the same thing. The district asked the psychiatrist to complete a questionnaire, including identifying any reasonable accommodation that would help Strife overcome her functional limitations. The psychiatrist said, “having the support of a service animal.” The district then told Strife that a physician working on behalf of the district would perform an examination and review the medical information. Frustrated by the District’s extended delays and repeated requests for additional documentation, Strife sought legal help. On November 11, the organization that certified Strife’s service dog advised the district that requiring a medical exam constituted discrimination under the ADA. The district responded by asking Strife if she was abandoning the interactive process. On November 18, Strife’s lawyer wrote a letter outlining the ADA violations. The district’s lawyer responded that an exam is necessary to “determine additional accommodations.” Strife’s lawyer asked the district what “additional accommodations” the district envisioned. The district’s lawyer responded that the doctor letters were unreliable because they were not

on letterhead, had conflicting doctor titles, and because Strife admitted she wrote at least one letter herself. On December 23, the District scheduled Strife’s medical exam.

On January 6, 2023, Strife’s lawyer provided three letters, including correspondence from two other physicians, confirming limitations and urging the district to approve the request. That same day, Strife filed a discrimination charge with the Equal Employment Opportunity Commission. On January 10, Strife underwent a VA-led examination that confirmed the service dog was required in all settings (including at work) to avoid balance-related injuries. Strife’s attorney sent the letters to the district.

The district’s lawyer said the evaluating doctor’s notes were not included. When Strife’s lawyer provided those notes, the district said the letters were insufficient because they did not identify any alternative accommodation.

On February 1, 2023, Strife filed her ADA case in federal court. She also sought a temporary restraining order and preliminary injunction. The court denied the restraining order but directed the parties to complete the interactive process “as soon as possible.” The district’s lawyer then asked Strife’s lawyer if a walker, cane, or wheelchair would be an effective accommodation. Strife’s lawyer said no, and they would be of no benefit if/when she falls. The district then granted Strife’s accommodation request. The district moved to dismiss the case, which the trial court granted. Strife appealed.

The Court of Appeal reversed and reinstated her case. The question for the court was whether a six-month delay in the district granting Strife’s accommodation request was, in and of itself, a failure to accommodate. The Court of Appeal said an employer cannot “circumvent the ADA’s protections by forcing an aggrieved employee to endure an endless interactive process.” “Ultimately,” the Court said, “Strife’s allegations do not merely concern delay; they intimate a lack of good faith from [the district] to meaningfully evaluate her request in an appropriate and timely manner.”

Unreasonable delays in providing reasonable accommo-



Months
of delay
preceded approval



dition may be considered evidence that an employer has not engaged in a good faith interactive process under the ADA. A party that obstructs or delays the interactive process is not acting in good faith. The Court of Appeal said Strife's allegations met this standard. The Court of Appeal said that Strife did not ask the district to procure the dog or modify her workplace, and the district's delay in granting the request forced Strife to work under "suboptimal conditions" for six months. The district also failed to offer "any" alternative accommodation and only granted Strife's request after she initiated litigation.

The Court of Appeal said a motion to dismiss was not appropriate because a jury could conclude that the district acted unreasonably by (1) insisting that Strife undergo an independent medical exam, and (2) claiming that it needed to determine if alternative accommodation was available. The Court of Appeal also rejected the district's arguments that it was not liable because the delay did not injure Strife in any way, that Strife was disabled before requesting accommodation, and that the district did not change any

terms and conditions of her employment. The Court of Appeal said the relevant question was whether the district failed to reasonably accommodate after being informed of Strife's limitations.

The Strife case is a relief for workers who often find themselves in similar situations. The employer does not have to provide the specific accommodation requested by the employee, but it also cannot insist on the employee proposing other accommodations if the accommodation that the employee requested was reasonable. Also, the employer cannot use the interactive process to delay providing reasonable accommodation. Even if the employer ultimately provides reasonable accommodation, the employer can still be liable for not engaging in the interactive process in good faith. Since Strife's case was a reversal of a motion to dismiss, it is not clear what damages may be awarded in her case. If she prevails in her lawsuit, she could receive money damages, attorneys' fees, and costs. The Strife case is an important reminder to public agencies of their obligation under the ADA to engage in a timely good faith

Delays
can violate
the ADA

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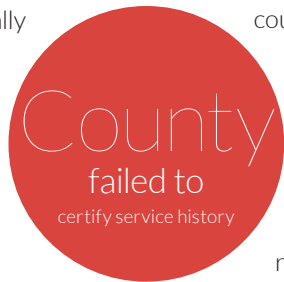
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interactive process.

Agencies Must Timely Enroll Employees in the Retirement System

Kay Marie Gibbs was a court reporter for the Humboldt County Superior Court for almost 40 years. As she neared retirement, she learned that the county had failed to enroll her in the California Public Employees' Retirement System (CalPERS) during her early years when she was working for the court. She tried to resolve the problem, but the county was not cooperative. She sued. The trial court granted the county's motion to dismiss. Gibbs appealed. The Court of Appeal reversed. The Court of Appeal held that Gibbs stated viable causes of action. (Gibbs v. County of Humboldt (2026) 1st App Dist A173637). Gibbs began working for the county in June 1982. In December 1983, she became eligible to be enrolled in CalPERS. The county failed to enroll her until November 1989. In 2019, as she began preparing to retire (in early 2020) she discovered she would not receive CalPERS service credit for the early years she worked for the court. CalPERS told her it could not adjust her employment benefits without a certification from the county of her full employment history with the court. Gibbs tried, but failed, to have the county provide the certification to CalPERS or to obtain her employment records herself.

After repeated promises by county employees to continue searching for the records, the county finally sent CalPERS an incomplete compilation of her pay period details in October 2020. The compilation was missing large gaps of work from December 1983 through November 1989. Gibbs filed a notice of claim against the county for failing to enroll her in CalPERS and for failing to certify to CalPERS or to provide her with the requested employment information. She received no response. She also attempted to purchase service credit for time spent working in government service while not enrolled in CalPERS. She was unsuccessful because the county would not certify to CalPERS or give Gibbs a record of her full employment history. Gibbs filed legal claims alleging the county failed to discharge man-



datory duties under Government Code §815.6. Section 815.6 says:

Where a public entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is liable for an injury of that kind proximately caused by its failure to discharge the duty unless the public entity establishes that it exercised reasonable diligence to discharge the duty.

Gibbs alleged four causes of action under §815.6, including that the county:

- (1) failed to maintain CalPERS-related records (Government Code §31599);
- (2) failed to allow her to inspect her personnel records (Government Code §31011) and failed to maintain them (Labor Code §1198.5(c)(1));
- (3) failed to timely enroll her in CalPERS (Government Code §20283); and
- (4) failed to properly maintain her employment information (Government Code §26205 and 26205.1).

The county moved to dismiss her lawsuit, which the trial court granted. Gibbs appealed.

The Court of Appeal reversed. There was no dispute that Gibbs was not receiving the full retirement benefit she is entitled to. Every time she sought assistance from the county to fix the problem, she was met with an unhelpful response or no response at all. The

county did not claim that Gibbs was not working or not entitled to be enrolled in CalPERS during the relevant periods. Instead, the county failed to enroll her in CalPERS through no fault of her own. The trial court ruled that Gibbs had no claim against the county because the county – again, through no fault of her own – lost or destroyed her employment records. The Court of Appeal found this result to be untenable.

The Court of Appeal held that Gibbs stated viable causes of action against the county under Government Code §815.6 for violation of its mandatory statutory duties. Specifically, the Court of Appeal held that the Public

News Release - CPI Data

<p>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.</p>	<p>4.2% - CPI for All Urban Consumers (CPI-U) Nationally (May)</p> <p>3.5% - CPI-U for the West Region (from May)</p> <p>3.6% - CPI-U for the Los Angeles Area (from May)</p>	<p>3.8% - CPI-U for San Francisco Bay Area (from May)</p> <p>3.4% - CPI-U for the Riverside Area (from May)</p> <p>3.8% - CPI-U for San Diego Area (from May)</p>
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Employees Retirement Law (PERL) (Government Code §20283) imposes a mandatory duty on the part of public agencies that contract with CalPERS to timely enroll employees and that this duty can be enforced under Section 815.6. To read the obligation as discretionary, and therefore unenforceable, would render the statutes' benefit "illusory." The Court of Appeal said that "the mandatory obligation seems clearly intended to protect against the evident risks of not enrolling employees, including denying employees their pension rights and undermining the system's solvency. The county has presented nothing to suggest that the statutes were not designed at least in part to ensure that public employees receive the pension benefits they are due."

The Gibbs case is a relief for workers who find themselves in similar situations. Employees who have service records going back decades, who have prior work experience as a part time employee before working full time, or who worked as a "contractor" or "consultant" before becoming an employee, often do not learn of gaps in their reporting history until shortly before retirement. Getting the proper documentation from the employer can be challenging. The Gibbs case clarifies that employees may have a viable cause of action if the public agency fails to provide the pension system with the necessary records.

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Questions & Answers about Your Job

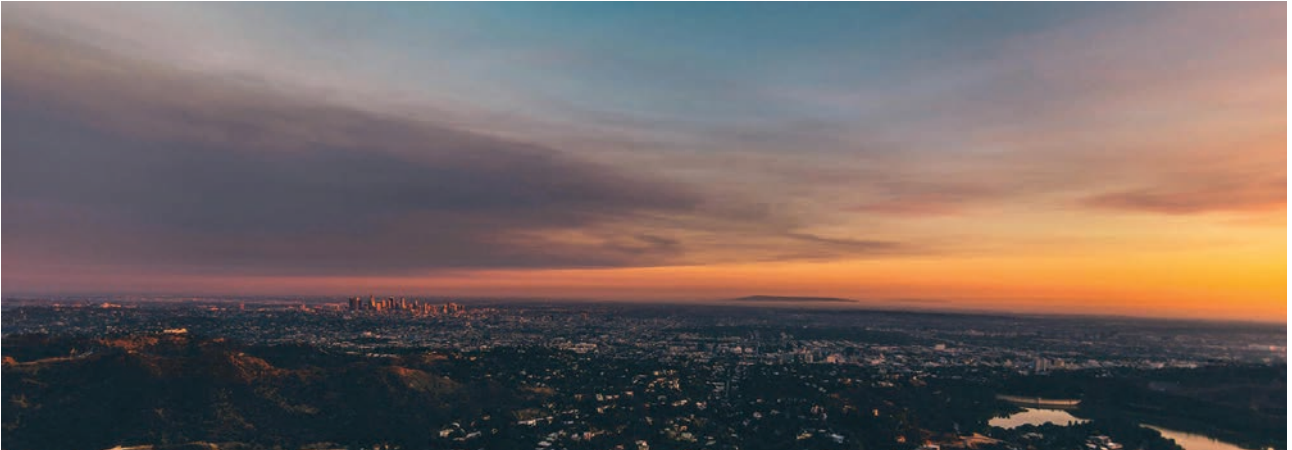
*Each month we receive dozens of questions about your rights on the job.
The following are some GENERAL answers.
If you have a specific problem, talk to your professional staff.*

Question: Is there any benefit in probationary employees being allowed to join as a member of the employee organization? I thought the employer could separate a probationary employee without having to follow the discipline procedure. It seems like there is nothing an employee organization can do in that case. Why should probationary employees join if we cannot assist them upon termination?

Answer: Yes, typically probationary employees can be terminated at any time without cause or right to appeal. However, employee organization membership

still provides benefits. For example, in the event of a probationary separation, this includes guidance on obtaining unemployment benefits, inquiring further with the employer regarding the basis for the separation and what will be reported to future employers and/or memorialized in the personnel file, pursuing a claim with the Public Employment Relations Board if the termination is for engaging in protected union activity, and offering referrals to an employment litigator if the separation appears to be for an unlawful reason.

It is important to note that most MOU's and agency pol-



icies give probationary employees the same right to representation as permanent employees in all other aspects of employment, such as investigative interviews, medical accommodation meetings, and grievances, and they are usually covered by the same pay, benefits, and working conditions as permanent employees. The employee organization can also provide guidance on other work concerns, such as addressing performance deficiencies, dealing with an abusive supervisor, navigating a leave of absence, working out of classification, and possible recruitment violations, to name a few.

Probationary employees also have rights under the same laws that protect other employees. For example, probationary employees cannot be subject to racial, sexual or age discrimination by the employer. Nor can they be made to work in unsafe conditions. If that happens, the employee organization can intervene on their behalf. Especially if the employee is probationary, having the employee organization pursue the matter can be better than a probationary employee pursuing the matter individually.

Probationary employees are covered by the MOU and are entitled to the same benefits and working conditions as permanent employees, including negotiated salary increases, medical benefits, and vacation accruals. Since probationary employees benefit from the terms and conditions of employment that the employee organization secures in

collective bargaining, it is important they have a voice in those negotiations and financially contribute to the cause just like other bargaining unit members. Probationary employees who join an employee organization increase the organization's membership and strengthen the organization's position at the bargaining table. Members contribute to MOU negotiations and only members can vote to ratify a new MOU. If the employer violates the MOU, the employee organization can also seek to enforce those rights, both through the grievance procedure and at the Public Employment Relations Board.

Probationary employees should also join so they can fully participate in other employee organization activities. This includes electing officers and voting on amendments to by-laws, changes that – like the MOU – will affect them once they attain permanent status. Many probationary employees pass probation, become permanent, and go on to a long career in public service. Signing up for membership upon hire, and not waiting until a probationary employee reaches permanent status, is the best way to ensure continuity of membership and allow for the fullest participation in the organization.

It is illegal for an employer to retaliate against an employee for joining an employee organization. If they are enrolled as a member, their employee organization can and will support them.

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Question: Is there a time limit on how long an employee is required to work? For example, I was on a mainline repair and worked 26 hours, then had to drive home. Is that legal? I was exhausted by the end of that time. I didn't feel comfortable driving home.

Answer: Unfortunately, in most public sector settings, there is no limit on the number of consecutive hours an employee may be required to work. Mainline breaks, power outages, natural disasters, and similar events often require extended shifts to restore critical public services. Some MOUs and agency policies address employee fatigue caused by extended shifts. Fatigue policies typically limit the number of consecutive hours an employee can work so that employees are able to safely perform their work and drive home. They often require mandatory rest periods between shifts, so employees have time to come back to work rested and able to perform their work safely. If you are required to work shifts that are too long for you to drive home safely, you should report that to both management and the employee organization when it occurs. Requiring an exhausted employee to operate a vehicle creates a safety risk for the employee and liability risk for the employer. Your employer is required to provide a safe workplace, and your employee organization can challenge unsafe working conditions and bargain for improvements to make the workplace safer.

Working through an emergency is a part of public service, but no employee should be required to compromise their safety to do so. If you feel you are working under fatigue, you should notify your supervisor and use the wording that you feel unsafe to continue working.

Question: Several of us are subject to after-hours call outs. We each rotate taking one week to be responsible for the calls. We are paid a weekly stipend for being on standby, and we are paid our hourly rate for any time worked. I was researching online and it appears this might constitute "controlled" standby and, if so, that the

employer would have to pay minimum wage for all time on standby. Is that correct?

Answer: The federal Fair Labor Standards Act (FLSA) and your MOU and employer policy determine what an employer must pay to employees for after-hours call outs and being on standby. If you are an hourly employee under the FLSA, at a minimum, you must be compensated for all hours worked. This includes any time spent responding to call outs, both at home and in the field. Typically, this is at your hourly rate of pay, and time-and-one-half pay for all hours worked over 40 in an FLSA workweek.

The FLSA does not require standby pay. However, this is often negotiated by employee organizations into the MOU or employer policy. Standby pay is intended to compensate employees for having to be responsible after hours by phone and being available and in work-ready condition to respond to emergency requests for service. Your weekly standby stipend compensates you for being available after hours; it does not replace FLSA-required pay for actual time worked. It is compensation in addition to what is owed under the FLSA. It generally is compensation for time that is otherwise not compensable under the FLSA.

Standby assignments may be "controlled" or "uncontrolled." The difference depends on whether the employee can engage in their own pursuits while on standby. It also may depend on the size of the service area and how restrictive the response time is on the employee's personal pursuits. Most standby assignments require that employees not use alcohol during the assignment period, and that they be able to respond to calls and respond to a field location within a specific timeframe. These requirements do not make the standby assignment "controlled," though it might certainly feel that way to the person who is on standby. If the employee is free to go to family events, out to eat, run errands, etc., they are likely not in "controlled" standby, even if you are required to drive the employer's vehicle and respond during the negotiated time limit.

Being on a weekly standby rotation, by itself, does not



make the time standing by compensable under the FLSA. However, if your employer's standby policy is so restrictive that you cannot engage in personal activities when you are standing by, then your employer may owe you for that time. For example, if the assignment requires the employee to remain at the worksite after-hours, the standby assignment could rise to the level of "controlled" standby. The significance is that if the requirements are so restrictive that they rise to controlled standby, under the FLSA, the time spent standing by becomes compensable time, even though the employee is not actually performing work during that time. In that case, the employer must pay the employee for the time spent standing by, in addition to any time performing work.

The FLSA does not say what rate of pay employees must be paid for standing by if it is considered compensable time, but it must be no less than the minimum wage and could be an employee's regular rate of pay. Most employers do not want to pay either rate for time spent standing by, so their policies are designed to be as restrictive as possible without rising to the level of controlled standby such that any time spent standing by would be compensable under the FLSA.

Whether standing by is compensable time is determined by looking at the employer's control over the employee while on standby. Are you required to live on-site, stay at work,

or stay within a short distance to respond to calls? Can you easily trade standby assignments? How quickly are you required to report back to work? How frequent are the calls? Are you constantly interrupted with work requests? Can you engage in personal activities while on standby?

In one case, firefighters were directed to remain within a certain radius of the fire station so they could respond to a call within about 7 minutes of being paged. This meant they needed to reside within a 3.5 road-mile radius of the fire station. The city is a small rural community and is easily traversed within the 7-minute response time. The firefighter is not required to report in uniform and may engage in personal pursuits if they can respond in a timely manner in the case of an emergency. The Department of Labor said the time spent by firefighters on call is not hours worked under the FLSA unless or until they must respond to a call to duty. However, if such calls are so frequent that the employee is not free to use the off-duty time effectively for the employee's own benefit, the intervening periods as well as the time spent responding to calls would be counted as compensable time. (FLSA - 1162).

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