



SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

*A Joint Powers Authority
serving school and
college districts
throughout the state.*

5350 Skylane Boulevard
Santa Rosa, CA 95403

Tel: (707) 524-2690
Fax: (707) 578-0517
santarosa@sclscal.org
www.sclscal.org

General Counsel
Carl D. Corbin

Attorneys
Ellie R. Austin
Monica D. Batanero
Nancy L. Klein
Damara L. Moore
Jennifer E. Nix
Steven P. Reiner
Mia N. Robertshaw
Loren W. Soukup
Erin E. Stagg
Frank Zotter, Jr.

Of Counsel
Robert J. Henry
Margaret M. Merchat

LEGAL UPDATE

July 12, 2017

To: Superintendents/Presidents/Chancellors, Member Community
College Districts

From: Ellie R. Austin *ERA*
Schools Legal Counsel

Subject: Union Access to New Employee Orientation (AB 119)
Memo No. 16-2017(CCD)

With the adoption of the state budget on June 27, 2017, Governor Brown signed into law Assembly Bill (“AB”) 119, which requires public employers subject to the Educational Employment Relations Act (“EERA”), which includes community college districts, to provide representatives of recognized employee organizations and exclusive representatives mandatory access to new employee orientations. AB 119 adds sections 3555-3559 to the Government Code, and amends sections 6253.2 and 6254.3 of the California Public Records Act.

New Government Code sections 3555-3559 are attached to this Legal Update for ease of reference.

1. What is new employee orientation?

New employee orientation is defined as the “onboarding process” in which new employees are advised of their employment status, rights, benefits, duties, responsibilities, and other employment-related matters.¹ The onboarding process may be in person, online, or via other means.²

2. What must the employer do?

- a. The employer must negotiate with the exclusive representative the structure, time, and manner of access to new employee orientation, subject to the provisions in Government Code section 3557. If the parties fail to reach an agreement, the dispute shall be subject to

¹ Cal. Gov’t Code § 3555.5(b)(3).

² *Id.*



compulsory interest arbitration.³ (See section 3 for more details regarding the required arbitration.)

- b. The employer must provide the exclusive representative at least 10 days' advance notice of the orientation, unless there is an "urgent need critical to the employer's operations that was not reasonably foreseeable."⁴
- c. Within 30 days of hire or by the first pay period of the month following hire, the employer must provide the exclusive representative with the name, job title, department, work location, work, home, and personal cellular telephone numbers, personal email addresses on file with the employer, and home address of newly hired employees.⁵ A newly hired employee is defined as "any employee, whether permanent, temporary, full time, part time, or seasonal, hired by a public employer, to which this chapter applies and who is still employed as of the date of the new employee orientation."⁶
- d. The employer must also provide the exclusive representative with a list of that contact information identified in subsection (c) above, for all employees in the bargaining unit at least every 120 days, unless the parties agree otherwise.⁷ We recommend districts negotiate that such information will be provided only upon the union's request.

3. What is the process for negotiating union access to new employee orientation?

Subject to new Government Code section 3557, the parties must negotiate the structure, time, and manner of exclusive representative access to new employee orientation.

If the parties cannot resolve a dispute regarding access to new employee orientation within 45 days of the parties' first meeting, or within 60 days of the initial request to negotiate (whichever comes first), either party may demand to participate in compulsory interest arbitration.⁸ This timing requirement means that if the exclusive representative requests to negotiate, the district must do so outside of the normal negotiations cycle.

Note that compulsory interest arbitration is not the typical statutory impasse process available for disputes related to collective bargaining. Rather, it is a separate arbitration procedure provided for in the new section 3557 (attached). Under this process, the arbitrator is appointed by the State Mediation and Conciliation Service using its process to obtain a panel of arbitrators.⁹ Section 3557 outlines the procedure for selecting an arbitrator.¹⁰ The arbitrator's decision must consider

³ Cal. Gov't Code § 3557(a).

⁴ Cal. Gov't Code § 3556.

⁵ Cal. Gov't Code § 3558.

⁶ Cal. Gov't Code § 3555.5(b)(4).

⁷ Cal. Gov't Code § 3558.

⁸ Cal. Gov't Code § 3557(b)(1)(A).

⁹ Cal. Gov't Code § 3557(b)(1)(B)(2).

¹⁰ *Id.*



the criteria outlined in the statute,¹¹ must provide the exclusive representative with reasonable access to new employee orientations,¹² and is final and binding on the parties.¹³ The parties bear the costs of arbitration equally.¹⁴

If the parties currently have a memorandum of understanding (“MOU”) or collective bargaining agreement (“CBA”) article related to union access to new employee orientation, the union’s request to meet and confer on this subject will reopen the existing MOU or CBA article for negotiation.¹⁵ The parties may agree to negotiate a side letter or similar agreement in lieu of reopening the existing MOU or CBA.¹⁶

4. Can the parties negotiate different terms by which to grant union access to new employee orientations?

Yes, the public employer and exclusive representative may enter into an agreement that deviates from the statute. However, in the absence of such an agreement, the new provisions of the statute apply.¹⁷

5. Who enforces this statute?

The Public Employment Relations Board (“PERB”) has jurisdiction to hear alleged violations of Government Code sections 3555-3559.¹⁸

Please contact our office with questions regarding this Legal Update or any other legal matter.

The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.

© 2017 School and College Legal Services of California

All rights reserved. However, SCLS grants permission to any current SCLS client to use, reproduce, and distribute this Legal Update in its entirety for the client’s own non-commercial purposes.

¹¹ *Id.*
¹² *Id.*
¹³ *Id.*
¹⁴ Cal. Gov’t Code § 3557(b)(3).
¹⁵ Cal. Gov’t Code § 3557(c).
¹⁶ *Id.*
¹⁷ Cal. Gov’t Code § 3557(d).
¹⁸ Cal. Gov’t Code § 3555.5(c)(1).

State of California

GOVERNMENT CODE

Section 3555

3555. The Legislature finds and declares that the ability of an exclusive representative to communicate with the public employees it represents is necessary to ensure the effectiveness of state labor relations statutes, and the exclusive representative cannot properly discharge its legal obligations unless it is able to meaningfully communicate through cost-effective and efficient means with the public employees on whose behalf it acts. In most cases, that communication includes an opportunity to discuss the rights and obligations created by the contract and the role of the representative, and to answer questions. That communication is necessary for harmonious public employment relations and is a matter of statewide concern. Therefore, it is the Legislature's intent that recognized exclusive representatives of California's public employees be provided meaningful access to their represented members as described in this chapter unless expressly prohibited by law.

(Added by Stats. 2017, Ch. 21, Sec. 2. (AB 119) Effective June 27, 2017.)

State of California

GOVERNMENT CODE

Section 3555.5

3555.5. (a) This chapter shall only apply to public employers subject to Chapter 10 (commencing with Section 3500), Chapter 10.3 (commencing with Section 3512), Chapter 10.7 (commencing with Section 3540), or Chapter 12 (commencing with Section 3560) of, or Chapter 7 (commencing with Section 71600) or Chapter 7.5 (commencing with Section 71800) of Title 8 of, this code, or Chapter 7 (commencing with Section 99560) of Part 11 of Division 10 of the Public Utilities Code.

(b) For purposes of this chapter:

(1) “Exclusive representative” means the exclusive representative or recognized employee organization for the bargaining unit.

(2) “Interest arbitration” means a process whereby an employer and an exclusive representative submit a dispute concerning the terms of access to new employee orientations for resolution to a third-party arbitrator who is then authorized to approve either party’s proposal in its entirety, to approve a proposal using both the employer’s and exclusive representative’s final proposals, or to modify the proposals by the parties.

(3) “New employee orientation” means the onboarding process of a newly hired public employee, whether in person, online, or through other means or mediums, in which employees are advised of their employment status, rights, benefits, duties and responsibilities, or any other employment-related matters.

(4) “Newly hired public employee” means any employee, whether permanent, temporary, full time, part time, or seasonal, hired by a public employer, to which this chapter applies and who is still employed as of the date of the new employee orientation.

(c) (1) Except as provided in paragraph (2), the Public Employment Relations Board shall have jurisdiction over violations of this chapter. The powers and duties of the board described in Section 3541.3 shall apply, as appropriate, to this chapter.

(2) The employee relations commissions established by the County of Los Angeles and the City of Los Angeles shall have jurisdiction over violations of this chapter in the County of Los Angeles and the City of Los Angeles, respectively.

(Added by Stats. 2017, Ch. 21, Sec. 2. (AB 119) Effective June 27, 2017.)

State of California

GOVERNMENT CODE

Section 3556

3556. Each public employer described in subdivision (a) of Section 3555.5 shall provide the exclusive representative mandatory access to its new employee orientations. The exclusive representative shall receive not less than 10 days' notice in advance of an orientation, except that a shorter notice may be provided in a specific instance where there is an urgent need critical to the employer's operations that was not reasonably foreseeable. The structure, time, and manner of exclusive representative access shall be determined through mutual agreement between the employer and the exclusive representative, subject to the requirements of Section 3557.

(Added by Stats. 2017, Ch. 21, Sec. 2. (AB 119) Effective June 27, 2017.)

State of California

GOVERNMENT CODE

Section 3557

3557. (a) Except as provided in subdivision (g), upon request of the employer or the exclusive representative, the parties shall negotiate regarding the structure, time, and manner of the access of the exclusive representative to a new employee orientation. The failure to reach agreement on the structure, time, and manner of the access shall be subject to compulsory interest arbitration pursuant to this section.

(b) (1) (A) Except as provided in subparagraph (B), when negotiating access to a new employee orientation, if any dispute has not been resolved within 45 days after the first meeting of the parties, or within 60 days after the initial request to negotiate, whichever comes first, either party may make a demand for compulsory interest arbitration, and if a demand is made, the procedure prescribed by this subdivision shall apply. The arbitrator selection process described in paragraph (2) shall commence not later than 14 days prior to the end of the negotiation period provided in this subdivision. A party shall not submit any proposal to compulsory interest arbitration that was not the parties' final proposal during the parties' negotiations. In the case of a school district employer whose administrative offices are closed during the summer, the timeline on this subdivision shall commence on the first day that the district administrative office reopens.

(B) Notwithstanding subparagraph (A), the parties may mutually agree to submit their dispute to compulsory interest arbitration at any time.

(2) The appointment of an arbitrator for compulsory interest arbitration shall be made by the State Mediation and Conciliation Service using its process to obtain a panel of arbitrators, except as provided in paragraph (4). Within seven days of receipt of a request for a panel, the State Mediation and Conciliation Service shall send the parties a list of seven arbitrators selected from its roster. Within seven days following the receipt of the list, the parties shall make their selection. Unless the parties agree on an alternate selection procedure, they shall alternatively strike one name from the list provided by the service until only one name remains. A coin toss shall determine which party shall strike the first name. In lieu of this process, the parties may mutually select any individual to serve as the arbitrator. Any party that fails to participate in the selection of an arbitrator within the prescribed period waives its right to strike names from the list. Interest arbitration shall commence either on the arbitrator's earliest available date or any other date to which the parties agree, and shall be completed within not less than 30 days. The decision of the arbitrator shall be issued within 10 days and shall be final and binding on the parties. The decision shall provide the exclusive representative with reasonable access to new employee orientations. The arbitrator shall consider, weigh, and be guided by the following criteria:

(A) The ability of the exclusive representative to communicate with the public employees it represents.

(B) The legal obligations of the exclusive representative to the public employees.

(C) State, federal, and local laws that are applicable to the employer.

(D) Stipulations of the parties.

(E) The interests and welfare of the public and the financial condition of the public agency.

(F) The structure, time, and manner of access of an exclusive representative to a new employee orientation in comparable public agencies, including the access provisions in other memoranda of understanding or collective bargaining agreements containing those provisions.

(G) The Legislature's findings and declarations under Section 3555.

(H) Any other facts that are normally or traditionally taken into consideration in establishing the structure, time, and manner of access of an exclusive representative to a new employee orientation.

(3) The parties shall equally share all costs of arbitration.

(4) If a city or county objects to the procedure for appointment of an arbitrator pursuant to paragraph (2), that city or county, within five days of a demand for arbitration by the exclusive representative, may request that the Public Employment Relations Board appoint a PERB Administrative Law Judge or other PERB employee to serve as the arbitrator in lieu of an arbitrator appointed by the State Mediation and Conciliation Service. The city or county shall pay for the cost of that arbitrator. The board shall appoint the arbitrator within five days of receiving that request. The same procedures, criteria, and timeline for arbitrations set forth in paragraph (2) shall apply.

(c) During the period between the effective date of this section and the expiration of an existing memorandum of understanding or collective bargaining agreement between the parties, a request to meet and confer pursuant to subdivision (a) shall reopen the existing memorandum of understanding or collective bargaining agreement solely for the limited purpose of negotiating an agreement regarding access of the exclusive representative to new employee orientations. Either party may elect to negotiate a side letter or similar agreement in lieu of reopening the existing memorandum of understanding or collective bargaining agreement. This section, however, does not abrogate existing agreements between public agencies and recognized employee organizations.

(d) This section does not prohibit agreements between a public employer and an exclusive representative that provide for new employee orientations that vary from the requirements of this chapter. If such an agreement is negotiated, the requirements of this chapter shall not apply to the extent that they are inconsistent with the agreement. In the absence of a mutual agreement regarding new employee orientations, all of the requirements of this chapter shall apply.

(e) A public employer identified in subdivision (a) of Section 3555.5 does not unlawfully support or favor an employee organization or encourage employees to join any organization in preference to another as prohibited by subdivision (d) of Section 3506.5, subdivision (d) of Section 3519, subdivision (d) of Section 3543.5,

or subdivision (d) of Section 3571 of this code, or subdivision (d) of Section 99563.7 of the Public Utilities Code, or any other state law, by permitting a recognized employee organization or an exclusive representative the opportunity to present at new employee orientations as required by this section or consistent with a negotiated agreement pursuant to this section.

(f) This section is not intended to modify the scope of bargaining or representation under any applicable employer-employee relations statute.

(g) A provision in a memorandum of understanding reached pursuant to Section 3517.5, and in effect on the effective date of the act adding this section, regarding the access of an exclusive representative to a new employee orientation shall control for the duration of that agreement, and the rights and duties established by this section shall apply only upon expiration of the agreement. The provisions of Section 12301.24 of the Welfare and Institutions Code regarding the access of representatives of a recognized employee organization to an orientation shall control with respect to public employers and exclusive representatives who are governed by the provisions of that section.

(Added by Stats. 2017, Ch. 21, Sec. 2. (AB 119) Effective June 27, 2017.)

State of California

GOVERNMENT CODE

Section 3558

3558. Subject to the exceptions provided here, the public employer shall provide the exclusive representative with the name, job title, department, work location, work, home, and personal cellular telephone numbers, personal email addresses on file with the employer, and home address of any newly hired employee within 30 days of the date of hire or by the first pay period of the month following hire, and the public employer shall also provide the exclusive representative with a list of that information for all employees in the bargaining unit at least every 120 days unless more frequent or more detailed lists are required by an agreement with the exclusive representative. The information identified in this section shall be provided to the exclusive representative regardless of whether the newly hired public employee was previously employed by the public employer. The information under this section shall be provided in a manner consistent with Section 6254.3 and in a manner consistent with Section 6207 for a participant in the address confidentiality program established pursuant to Chapter 3.1 (commencing with Section 6205) of Division 7. The provision of information under this section shall be consistent with the employee privacy requirements described in *County of Los Angeles v. Los Angeles County Employee Relations Com.* (2013) 56 Cal.4th 905. This section does not preclude a public employer and exclusive representative from agreeing to a different interval within which the public employer provides the exclusive representative with the name, job title, department, work location, work, home, and personal cellular telephone numbers, personal email addresses, and home address of any newly hired employee or member of the bargaining unit.

(Added by Stats. 2017, Ch. 21, Sec. 2. (AB 119) Effective June 27, 2017.)

State of California

GOVERNMENT CODE

Section 3559

3559. The provisions of this chapter are severable. If any provision of this chapter or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

(Added by Stats. 2017, Ch. 21, Sec. 2. (AB 119) Effective June 27, 2017.)