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LEGAL UPDATE

October 24, 2017

To: Superintendents, Member School Districts (K-12)
From: Ellie R. Austin *ERA*
Schools Legal Counsel
Subject: Clarification on AB 119 – Mandatory Union Access to New Employee Orientation & Minor Updates Recently Signed Into Law Memo No. 31-2017

Since issuing Legal Update No. 19-2017 in July, we have received a number of questions regarding what specific information must be disclosed to exclusive representatives under Assembly Bill (“AB”) 119. In addition, Governor Brown recently signed into law small changes to AB 119.

As a reminder, AB 119 requires public employers subject to the Educational Employment Relations Act (“EERA”), including school districts and county offices of education (“COE”), to provide representatives of recognized employee organizations and exclusive representatives¹ mandatory access to new employee orientations. Please refer to Legal Update No. 19-2017 for an overview of AB 119.

I. Clarification on AB 119

a. Information Disclosure Requirements

There are two separate information disclosure requirements under AB 119, which are subject to the limitations described in subsection (b) below.

1. 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 all newly hired employees.²

¹ As used herein and under the statute, “exclusive representative” means the exclusive representative or recognized employee organization for the bargaining unit. (Gov’t Code § 355.5(b)(1).)

² Gov’t Code § 3558.



2. Every 120 days, unless negotiated otherwise, 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 all employees in the bargaining unit.³

b. Employees' Ability to Limit Disclosure of Information Required under AB 119

An employee may submit a written request to the employer to limit disclosure of the employee's home address, home telephone number, personal cell phone number, personal email address, and date of birth to an employee organization.⁴ Moreover, victims of domestic violence, sexual assault, and stalking who participate in a victims' assistance program may utilize an address designated by the Secretary of State to serve as their address for purposes of public records requests.⁵ This law applies to information produced to the union pursuant to AB 119.⁶

c. Information Not Required to be Disclosed under AB 119

In recent weeks, we have seen a number of AB 119 proposals from exclusive representatives requesting information that is not required under the new law, including: date of birth, last four digits of social security number, and retirement (PERS/STRS) status.

Disclosure of these items of information (date of birth, last four digits of social security number, and retirement (PERS/STRS) status) is not required under AB 119, and therefore we recommend districts do not agree to disclose it as part of the automatic disclosures under the new law. For each of these items, we recommend consulting with legal counsel if you receive a request for the information. Depending on the circumstances, it is possible that such information may be withheld from disclosure or subject to disclosure as information "necessary and relevant" to the union's duty to represent its members in their employment relations with public school employers.⁷

d. Information of Employees Performing Law-Enforcement Related Functions

Employers should not disclose the home addresses and any phone numbers on file with the employer of employees performing law enforcement-related functions to an employee organization.⁸

e. Applicability of Compulsory Interest Arbitration

The plain language of the statute appears to render compulsory interest arbitration applicable only to "the failure to reach agreement on the structure, time, and manner of the access" to new employee orientation.⁹ In other words, after the parties reach an agreement, compulsory interest

³ Gov't Code § 3558.

⁴ See, Gov't Code § 6254.3(c).

⁵ See, Gov't Code §§ 6205 *et seq.*

⁶ See, Gov't Code § 3558.

⁷ Gov't Code § 3543.1(a).

⁸ Gov't Code § 6254.3(a)(3).

⁹ Gov't Code § 3557(a).



arbitration is not appropriate for resolving disputes or grievances over the agreement's interpretation or application.

A number of proposals proffered by employee organizations in recent weeks have included a provision making the interpretation and application of any agreement on AB 119 subject to the compulsory interest arbitration process outlined in section 3557. We strongly recommend declining to memorialize this provision in any MOU or side letter. Instead, we recommend that any disagreement regarding the interpretation or application of an agreement on AB 119 be subject to the grievance procedures in the applicable collective bargaining agreement.

II. Recent Updates to AB 119

In September, Governor Brown signed into law small changes to AB 119, specifically with respect to Government Code section 3557 as it pertains to compulsory interest arbitration.¹⁰ An updated version of section 3557 is attached to this Legal Update.

Subsection (b)(1)(A) has been revised to provide,

The arbitrator selection process described in paragraph (2) shall commence within 14 days of a party's demand for compulsory interest arbitration. The party demanding compulsory interest arbitration shall be responsible for requesting a panel of arbitrators from the State Mediation and Conciliation Service.

(Gov't Code § 3557(b)(1)(A); changes underlined.)

The revisions remove the strict 14-day deadline by which either party must request to engage in compulsory interest arbitration after the end of the 45- or 60-day negotiations timeline provided in the same section. Under the new language, there is no deadline by which a party must request to engage in compulsory interest arbitration regarding a dispute in negotiations over the structure, time, and manner of union access to new employee orientation. The revisions also obligate the party requesting compulsory interest arbitration to request the list of arbitrators from the State Mediation and Conciliation Service.

Subsection (b)(2) has been slightly modified to fix what appears to be a typographical error, changing "within not less than 30 days" to "within 30 days," pertaining to the time by which arbitration must be completed once commenced.

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.

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¹⁰ SB 112 (2017-18).



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Proposed Legislation

West's Annotated California Codes

Government Code (Refs & Annos)

Title 1. General

Division 4. Public Officers and Employees (Refs & Annos)

Chapter 11.5. Public Employee Communication (Refs & Annos)

West's Ann.Cal.Gov.Code § **3557**

§ **3557**. Structure, time, and manner of access of exclusive representative to new employee organization

Effective: September 28, 2017

[Currentness](#)

(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 within 14 days of a party's demand for compulsory interest arbitration. The party demanding compulsory interest arbitration shall be responsible for requesting a panel of arbitrators from the State Mediation and Conciliation Service. 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 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.

Credits

(Added by [Stats.2017, c. 21 \(A.B.119\)](#), § 2, eff. June 27, 2017. Amended by [Stats.2017, c. 363 \(S.B.112\)](#), § 3, eff. Sept. 28, 2017.)

West's Ann. Cal. Gov. Code § [3557](#), CA GOVT § [3557](#)

Current with urgency legislation through Ch. 434 of 2017 Reg.Sess