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Public Entities, Officers, and Employees

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Public Entities, Officers, and Employees

Public Entities, Officers, and Employees; comparable worth—salaries

Government Code §19827.2 (new); §18852 (amended).
SB 459 (Carpenter); STATS. 1981, Ch 722

Chapter 722 establishes, as a matter of state policy, an objective of setting salaries¹ for female-dominated jobs on the basis of the comparability² of the value of the work in relation to the value of the work of any other class or salary range within state service.³ This objective is supported by a finding that it is necessary to reassess the basis on which salaries in state service are established to prevent the perpetration of inequities created by the historical segregation of women into undervalued occupations where wages have been depressed.⁴ The Bennett Amendment⁵ to the federal Equal Pay Act⁶ generally has been considered to require equal pay for equal work,⁷ and a United States Court of Appeals has held that the Equal Pay Act is violated when wages for females are intentionally set, on the basis of sex, lower than wages for males who hold different but substantially equal jobs.⁸

Prior law required only that the prevailing wage rates for comparable service in other public employment and private business be *given consideration* in setting salaries and that like salaries be paid for comparable duties and responsibilities.⁹ Prior law did not designate experience or education as factors in establishing salary classifications.¹⁰ In fact, salaries were established proportionally according to gradations of

1. See CAL. GOV'T CODE §19827.2(c)(1) (definition of salary).

2. See *id.* §19827.2(c)(2) (definition of comparability).

3. See *id.* §19827.2.

4. *Id.* §19827.2(a) (1980 statistics from the U.S. Department of Labor indicate that 60% of all women 18 to 64 are in the workforce; that most women are in the workforce because of economic need and that the average working woman earns less than the average working man); *A Business Group Fights 'Comparable Worth'*, BUSINESS WEEK, Nov. 10, 1980, at 100 (on the average, women earn 59¢ for every \$1 earned by men).

5. 42 U.S.C. §2000e (1976) (equal pay for equal work concept).

6. 29 U.S.C. §206 (1976).

7. See generally *Lemons v. The City and County of Denver*, 620 F.2d 228, 229 (10th Cir. 1980).

8. See *International Union of Electrical, Radio & Machine Workers v. Westinghouse Electric Corp.*, 631 F.2d 1094, 1107 (3rd Cir. 1980). See also *Gunther v. County of Washington*, 602 F.2d 882, 889 (9th Cir. 1979).

9. CAL. GOV'T CODE §18850.

10. See *id.*

authority.¹¹

In contrast, Chapter 722 permits the readjustment of salary ranges for state civil service classes that have a female work force of at least seventy percent.¹² The Department of Personnel Administration may take into consideration the comparability of the work with the work of the other classes of state employees as measured by the skill,¹³ effort,¹⁴ responsibility,¹⁵ and working conditions normally required in the performance of the work.¹⁶

Existing law provides minimum and maximum salary limits for classes of state employees.¹⁷ The State Personnel Board may establish more than one salary range within a class for positions with unusual conditions or hours of work, and to meet prevailing rates for comparable services in other public employment.¹⁸ Chapter 722 would also permit the state to establish a salary range within a class when necessary to meet state law recognizing differential qualifications within a profession.¹⁹

11. *Id.*

12. *Id.* §19827.2(b).

13. *Id.* §19827.2(c)(3) (definition of skill).

14. *Id.* §19827.2(c)(4) (definition of effort).

15. *Id.* §19827.2(c)(5) (definition of responsibility).

16. *Id.* §19827.2(b). *See also id.* §19827.2(e) (if any provisions of this new law conflict with the provisions of an existing memorandum of understanding, the memorandum shall be controlling unless it requires expenditures in excess of existing budget appropriations).

17. *Id.* §18852(a).

18. *Id.*

19. *Id.*

Public Entities, Officers, and Employees; agency shops

Government Code §§1157.7, 3502.5, 3508.5 (new).

AB 1693 (Tucker); STATS. 1981, Ch 612

Support: Department of Finance

The Meyers-Milius-Brown Act¹ (hereinafter referred to as MMBA), adopted by the California Legislature in 1968, is designed to promote the improvement of relations between public agency employers and employees.² By permitting collective bargaining to take place between public agency employers and employee organizations based on the model supplied by the federal Labor Management Relations Act (hereinafter referred to as LMRA), the MMBA attempts to promote orderly

1. *See* CAL. GOV'T CODE §§3500-3510. *See also id.* §3510 (short title of Act).

2. *Id.* §3500. *See also id.* §3501(d) (definition of public employee).

and uniform communication between employees and their employers.³ Although in many respects the MMBA closely follows the LMRA model, prior law did not include the LMRA's authorization of union shop agreements.⁴ Despite the absence of express authorization, public agency employers and employee organizations were entering into agency shop⁵ agreements.⁶ A California appellate court recently ruled that this practice was illegal on the basis of an MMBA provision that granted public employees the option to refuse to join employee organizations or participate in organization activities.⁷ The court found that under the existing provisions of the MMBA this statutory right would be rendered meaningless if the payment of agency fees was made a condition of continued employment.⁸ Moreover, when union security devices such as agency shop agreements have been authorized, the right was expressly conferred by statute.⁹ The court, therefore, held that absent specific statutory authorization, agency shop agreements are not permitted between public agency employers and employee organizations.¹⁰

Chapter 612 amends the MMBA by specifically authorizing the establishment of agency shop agreements between public agencies¹¹ and public employee organizations¹² that have been recognized as exclusive or majority bargaining agents.¹³ Under Chapter 612, an individual employee retains the right to refuse to join an employee organization only

3. See Grodin, *Public Employee Bargaining in California: The Meyers-Milias-Brown Act in the Courts*, 23 HASTINGS L.J. 719 (1972) [hereinafter cited as Grodin]. Compare 29 U.S.C. §151 (1976) with CAL. GOV'T CODE §3500. See generally Schneider, *An Analysis of the Meyers-Milias-Brown Act of 1968*, 1 CAL. PUB. EMP. REL. A-1—A-20 (1969).

4. See 29 U.S.C. §§157, 158(a) (1976). See also Grodin, *supra* note 3, at 727.

5. See CAL. GOV'T CODE §3502.5(a) (definition of agency shop). See also *Rae v. Bay Area Rapid Transit Supervisory Ass'n*, 114 Cal. App. 3d 147, 153, 170 Cal. Rptr. 448, 451 (1980) (defining an agency shop as a union security provision which is the practical equivalent of a union shop); Kerner & Rehmus, *The Agency Shop After Abood: No Free Ride, But What's the Fare?* 47 CAL. PUB. EMP. REL. 2 (1980) [hereinafter cited as Kerner & Rehmus].

6. See generally *City of Hayward v. United Pub. Employees Local 390*, 54 Cal. App. 3d 761, 126 Cal. Rptr. 710 (1976).

7. See *id.* at 767, 126 Cal. Rptr. at 713. See also CAL. GOV'T CODE §3502 (under this section, public employees may join or abstain from participating in the activities of employee organizations and are additionally granted the right to represent themselves individually in their employment relations with the public agency).

8. See 54 Cal. App. 3d at 765, 766, 126 Cal. Rptr. at 712, 713.

9. See *id.*

10. See *id.* at 713, 126 Cal. Rptr. at 766-67.

11. See CAL. GOV'T CODE §3501(c) (definition of public agency).

12. See *id.* §3501(a) (definition of employee organization). But see *id.* §3501(d), *Public Employees of Riverside County v. County of Riverside*, 75 Cal. App. 3d 882, 890, 142 Cal. Rptr. 521, 525 (1977). Although supervisory personnel are considered to be public employees under the MMBA and therefore possess the right to be represented by a recognized employee organization, Chapter 612 excludes supervisory, management, and confidential employees from any agency shop agreement which may be negotiated by a public employee organization.

13. See CAL. GOV'T CODE §§3502.5(a), 3507(d) (procedure for establishing an exclusive employee bargaining agent).

until an organization has been recognized as an exclusive or majority bargaining agent.¹⁴ Once an exclusive bargaining agent has been selected, an employee must, as a condition of continued employment, either join the recognized employee organization, or pay a service fee to the organization.¹⁵ The total service fee may not exceed the standard initiation fee, periodic dues, and general assessments of the organization,¹⁶ and must be paid throughout the duration of the agency shop agreement, or for three years from the agreement's effective date, whichever occurs first.¹⁷

Additionally, Chapter 612 provides for an alternative fee arrangement,¹⁸ evidently in response to the provisions of the California Fair Employment and Housing Act.¹⁹ Under the California Fair Employment and Housing Act, it is an unlawful employment practice to bar a person from employment on religious grounds,²⁰ or for a labor organization²¹ to restrict, exclude, or discriminate against a person because of their religious beliefs.²² Chapter 612, therefore, provides that any employee who is a member of a bona fide religion, body, or sect which has historically held conscientious objections to joining or financially supporting public employee organizations is exempted from paying service fees to the employee organization.²³ The employee may, however, be required to pay the equivalent sum to a nonreligious, nonlabor charitable fund, selected by the employee from a list provided by the public agency and the employee organization²⁴ or, if a list is not provided, to any fund of the employee's own choosing.²⁵

Chapter 612 also allows an agency shop agreement to be rescinded by a majority vote of all employees in a unit.²⁶ Before a rescission vote is taken, a request for a vote must be supported by a petition signed by at least thirty percent of the employees in a unit.²⁷ The petition may be signed by, and the rescission vote may be taken of, only those employees in the unit covered by the memorandum of understanding²⁸ between

14. *See id.* §3502.5(a). *See also id.* §3502.

15. *Id.* §3502.5(a).

16. *Id.*

17. *Id.*

18. *See id.*

19. *See generally id.* §§12900-12996.

20. *See id.* §12940(a).

21. *See id.* §12926(e) (definition of labor organization).

22. *See id.* §12940(3)(b).

23. *Id.* §3502.5(a).

24. *Id.* (list must designate at least three funds).

25. *Id.*

26. *Id.* §3502.5(b).

27. *Id.* §3502.5(b)(1).

28. *See id.* §3505.1 (definition of memorandum of understanding). *See also Willis v. City of*

the public agency and the public employee organization, therefore giving member and nonmember employees the opportunity to participate in a recission attempt.²⁹ All voting must be by secret ballot,³⁰ and no more than one vote may be taken during a term of the memorandum of understanding.³¹

Existing law facilitates the payment of dues or service fees to an employee organization by allowing a county employing more than 20,000 persons, other than a city and county, to make authorized wage deductions for payment to a public employee organization.³² Under Chapter 612, ethnic minority employees of a public agency employing more than 20,000 persons, other than a city and county, who are members of an ethnic minority organization which was operating within the public agency prior to January 1, 1981, may also authorize the public agency to make wage deductions, providing that the organization's primary purpose is representing member ethnic minority employees regarding their employment civil rights.³³

COMMENT

Agency shop agreements have recently come under judicial scrutiny in response to arguments by "right to work" advocates that conditioning employment on the payment of agency fees violates First Amendment guarantees of freedom of association.³⁴ The United States Supreme Court addressed this issue in *Abood v. Detroit Board of Education*,³⁵ and held that although compelled financial support of a collective bargaining representative *does* have an impact on First Amendment interests, this interference is justified in the interest of promoting peaceful labor relations.³⁶ Agency shop agreements, therefore, are constitutionally permissible; the conclusion is the same when the agreement is between an employee organization and a public agency.³⁷

The *Abood* court held that all employees in a bargaining unit may be compelled to financially support union activities that have some bear-

Garden Grove, 93 Cal. App. 3d 208, 213, 155 Cal. Rptr. 493, 495 (1979) (memorandum of understanding becomes binding upon a vote of governmental body).

29. See CAL. GOV'T CODE §3502.5(b)(1), (2); Los Angeles Daily J., Sept. 23, 1981, at 1, col. 2.

30. CAL. GOV'T CODE §3502.5(b)(2).

31. *Id.* §3502.5(b)(3).

32. *Id.* §1157.3.

33. *Id.* §1157.7. See generally *id.* §§12900-12996 (California Fair Employment and Housing Act).

34. See Kerner & Rehms, *supra* note 5, at 3. See generally *Abood v. Detroit Bd. of Educ.*, 431 U.S. 209 (1977).

35. 431 U.S. 209 (1977).

36. See *id.* at 222; See also Kerner & Rehms, *supra* note 5, at 2; Grodin, *supra* note 3, at 747.

37. See 431 U.S. at 232.

ing upon collective bargaining, contract negotiation, and grievance administration,³⁸ because *all* employees in the unit benefit from these activities.³⁹ Employee organizations, however, legitimately spend collected dues and agency fees to finance activities unrelated to the collective bargaining procedure, including activities that support and advance political candidates and causes.⁴⁰ When employees are required to indirectly support *these* activities as a condition of continued employment, their First Amendment rights are clearly violated.⁴¹ This consideration prompted the Court to hold that an employee organization's political expenditures must be financed by employees who are not coerced into contributing to a political cause by the threat that they may lose their jobs.⁴²

Chapter 612 lacks a procedural safeguard designed to prevent an employee organization from spending agency fees on non-collective bargaining activities in the event of employee objections. It appears, however, that this is not required by *Abood*. In its holding, the Court stated that "dissent is not to be presumed,"⁴³ thereby implying that employees may be compelled to contribute to the union's non-collective bargaining activities until they can demonstrate their dissatisfaction with particular union expenditures.⁴⁴

A possible ground for attacking agency shop agreements in the public sector, not discussed in *Abood*, is that they may violate the First Amendment's guarantee of freedom of religion. Chapter 612, however, anticipates this argument and forecloses constitutional attack by exempting persons with religious objections to union involvement from compelled support of *any* union activities.⁴⁵ It appears, therefore, that Chapter 612's agency shop provision is constitutionally sound.

38. *See id.* at 225-26.

39. *See id.* at 221.

40. *See id.* at 235-36.

41. *See id.* at 234-35.

42. *See id.* at 235-36.

43. *Id.* at 238.

44. *See id.* at 245 (concurring opinion).

45. *See* CAL. GOV'T CODE §3502.5(a).

Public Entities, Officers, and Employees; civil actions against peace officers

Government Code §945.3 (new).

SB 511 (Davis); STATS. 1981, Ch 285

Support: California Peace Officers Association

Opposition: California Attorneys for Criminal Justice

Under the 1963 California Tort Claims Act,¹ a public entity² has limited civil liability³ for injuries⁴ proximately caused by the act or omission of a public employee⁵ acting within the scope of employment.⁶ While a public entity is not liable under existing law for failure to enforce a law⁷ or for injuries occurring when a peace officer uses due care in the enforcement of a law,⁸ a peace officer and the employing public entity may be civilly liable for false arrest,⁹ false imprisonment,¹⁰ or assault and battery.¹¹ As a condition to filing a civil action, existing law requires that a claim¹² must be presented¹³ to the local public entity not later than 100 days from the accrual of the cause of action.¹⁴ Prior to the enactment of Chapter 285, compliance with this requirement permitted a person charged with a criminal offense to bring a civil action for damages against a peace officer or public entity while the charges against the complainant were pending in a justice, municipal, or superior court. Chapter 285 precludes a person accused of a criminal offense from bringing a civil action relating to the offense with which the accused is charged against the public entity or a public employee until the trial court proceedings are terminated.¹⁵ Chapter 285 suspends the running of the claim period while charges are pending at the trial level,¹⁶ and apparently also suspends the running of the statute of limitations for prosecuting the civil action during the same period.¹⁷

1. *See generally* CAL. GOV'T CODE §§810-996.6; A. VAN ALSTYNE, CALIFORNIA GOVERNMENT TORT LIABILITY PRACTICE 31-173 (1980).

2. *See* CAL. GOV'T CODE §811.2 (definition of public entity).

3. *See id.* §815.

4. *See id.* §810.8 (definition of injury).

5. *See id.* §811.4 (definition of public employee).

6. *See id.* §815.2(a). *See also id.* §945.

7. *Id.* §818.2.

8. *See id.* §820.4.

9. *See* CAL. PENAL CODE §146 (definition of false arrest).

10. *See id.* §§236 (definition of false imprisonment), 237 (penalty for false imprisonment).

11. *See* CAL. GOV'T CODE §§815.2(a), 820.4. *See generally* *Scruggs v. Haynes*, 252 Cal. App. 2d 256, 60 Cal. Rptr. 355 (1967) (discussing claim against a public entity for assault and battery by a peace officer).

12. *See* CAL. GOV'T CODE §§905, 910.

13. *See generally id.* §§910-915.4 (presentation and consideration of claims).

14. *See id.* §911.2. *See also id.* §§905.2, 945.4, 945.6.

15. *See id.* §943.3 (including an act or omission in investigating and reporting the offense or arresting or detaining the accused).

16. *See id.*

17. *See id.* Compare *id.* with *id.* §946.6(b) (a person prevented from commencing suit within statutory limitations period because of legal infirmity is granted a six month extension within which suit may be commenced after infirmity is removed).

Public Entities, Officers, and Employees; public employees' retirement system benefits

Government Code §§20022.2, 20462, 20652, 20891, 20891.1, 20892, 20930.7, 21201.5, 21364.2, 21381, 21382.1, 21382.3, 21382.5 (repealed); §§20047, 20161, 20462, 20652, 21206 (new); §§20004.5, 20022.3, 20023.6, 20160, 20862.8, 20892.5, 20894, 21150, 21222.4, 21230, 21252.45, 21263, 21263.4, 21263.5, 21339, 21363.3, 21363.5, 21363.6, 21364, 21365.6, 21367.53, 21382, 21382.2, 21404, 22005, 22310 (amended).

AB 2018 (Tucker); STATS. 1981, Ch 963

SB 736 (Russell); STATS. 1981, Ch 609

Prior to the enactment of Chapter 963, when members¹ of the Public Employees' Retirement System² died before retirement, their eligible children³ received continuing benefit payments under the 1959 survivor allowance⁴ or special death benefit program⁵ until the age of eighteen.⁶ If the child was a full-time student, benefits could be received until the age of twenty-two.⁷ If the child was disabled,⁸ however, and the disability occurred before the age of eighteen, the 1959 survivor allowance allowed for benefits to be paid as long as the disability continued.⁹ Chapter 963 provides that *all* children will receive benefits until the age of twenty-two.¹⁰ Disabled children who were disabled before the age of twenty-two will receive benefits as long as the disability continues.¹¹ Additionally, for certain members¹² who die after service¹³ or disability¹⁴ retirement, prior law provided that all their eligible children

1. See CAL. GOV'T CODE §20013.

2. See generally *id.* §§20000-21500.

3. See *id.* §21382 ("unmarried children" includes stepchildren).

4. See *id.* §§21380, 21382, 21382.2 (a program enacted under the Public Employees' Retirement System in 1959 that provides for a monthly allowance to the surviving beneficiaries of members who die before retirement).

5. See CAL. STATS. 1980, c. 1102, §22, at — (amending CAL. GOV'T CODE §21364). See also CAL. GOV'T CODE §§21363 (special death benefit is payable if the deceased was a patrol, state safety, state industrial, or local safety member, if the death was industrial), 21383 (when the survivor is entitled to receive a monthly allowance as a special death benefit and under the 1959 survivor allowance, the survivor allowance is reduced by the amount of the special death benefit payable).

6. See CAL. STATS. 1980, c. 316, §5, at — (amending CAL. GOV'T CODE §21382).

7. See *id.* 1977, c. 70, §6, at 474 (amending CAL. GOV'T CODE §21382.5).

8. Compare CAL. GOV'T CODE §20047 with CAL. STATS. 1980, c. 316, §4, at — (amending CAL. GOV'T CODE §21381).

9. See CAL. STATS. 1980, c. 316, §5, at —.

10. See CAL. GOV'T CODE §21364.

11. See *id.* §§21382, 21382.2.

12. See *id.* §§21263-21263.81.

13. See generally *id.* §§21250-21264.6.

14. See generally *id.* §§21290-21307.

would receive benefit payments until the age of eighteen, whether disabled or not.¹⁵ Under Chapter 963, if the children are disabled before the age of eighteen, they will continue to receive benefit payments until the disability ceases.¹⁶ Chapter 963 also states that the natural parent of a qualified child does not have to become the child's guardian to receive the payments in the child's behalf.¹⁷ Previously, if the qualified child was over the age of eighteen, the natural parent was required to become the child's guardian in order to receive the child's payments.¹⁸

Prior law only permitted retired members of the Public Employees' Retirement System who originally named their spouse as beneficiary under optional settlement two,¹⁹ three,²⁰ or four²¹ to elect a new option and select a new beneficiary if the spouse predeceased the member and the member remarried.²² Chapter 963 extends this privilege to all members regardless of the relationship of the member to the original or subsequent beneficiary.²³ Additionally, Chapter 963 states that when a member dies before retirement and the surviving spouse would have been eligible for a service retirement benefit,²⁴ the spouse *must* instead take optional settlement two.²⁵ If the surviving spouse would have been eligible to receive a special death benefit in lieu of the service retirement, the spouse may *elect* to take optional settlement two.²⁶ Formerly, the surviving spouse could elect to take optional settlement two whether eligible for a service retirement *or* special death benefit.²⁷

15. See CAL. STATS. 1980, c. 1102, §16, at — (amending CAL. GOV'T CODE §21263).

16. See CAL. GOV'T CODE §§21263, 21263.4, 21263.5.

17. See *id.* §21206. See also CAL. STATS. 1981, c. 609, §§29, 30, at — (repealing CAL. GOV'T CODE §§21382.1, 21382.3).

18. See generally CAL. STATS. 1980, c. 1102, §§6, 17, 18, 20, 22, 23, at — (amending CAL. GOV'T CODE §§21263, 21263.4, 21263.5, 21363.5, 21364, 21382.3); CAL. STATS. 1977, c. 394, §3, at 1390 (amending CAL. GOV'T CODE §21382.1).

19. See CAL. GOV'T CODE §21333 (retirement allowance paid to the member until death and to the beneficiary for life).

20. See *id.* §21334 (retirement allowance paid to the member until death and one-half paid to the beneficiary for life).

21. See *id.* §21335 (selected benefits that are the actuarial equivalent of the member's retirement allowance and beneficiary payments equal to what would be received under optional settlement 2).

22. See *id.* §21339.

23. Compare *id.* §21339 with CAL. STATS. 1975, c. 234, §9, at 620.

24. See CAL. GOV'T CODE §21365.5.

25. See *id.* §21365.6.

26. See *id.*

27. See CAL. STATS. 1979, c. 110, §36, at 4038 (amending CAL. GOV'T CODE §21365.6).

