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# Public Entities, Officers, and Employees

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# Public Entities, Officers, and Employees

## Public Entities, Officers, and Employees; fair share fees

Government Code §§3515.7, 3515.8 (new); 3512, 3513, 3515 (amended).

SB 1419 (Dills); STATS. 1982, Ch 1572

Support: California State Employees Association; Department of Finance; Department of Personnel Administration

Existing law provides that state employees<sup>1</sup> have the right to form, join, and participate in the activities of employee organizations,<sup>2</sup> but membership can not be a condition of employment.<sup>3</sup> Furthermore, existing law permits state employees to select one employee organization as the exclusive representative of the employees in an appropriate unit.<sup>4</sup> Chapter 1572 authorizes a recognized employee organization<sup>5</sup> to enter into fair share fee<sup>6</sup> agreements with management that require all employees, including nonmembers of the employee organization to financially support the organization.<sup>7</sup> Fair share payments would be deducted by the state in the same manner as membership dues and paid directly to the employee organization.<sup>8</sup>

Chapter 1572 permits those employees who are members of a religious body whose traditional tenets or teachings include objections to joining or financially supporting employee organizations to have the State deduct and pay sums equal to the fair share fee to a nonreligious, nonlabor organization approved by the State Board of Control.<sup>9</sup> In addition, Chapter 1572 permits an employee who has a conscientious objection to membership to request individual representation by the employee organization in grievance, arbitration, or administrative

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1. CAL. GOV'T CODE §3513(c) (definition of state employee).

2. *Id.* §3513(a) (definition of employee organization).

3. *See id.* §3515.

4. *See id.* §§3515.5, 3520.5.

5. *Id.* §3513(b) (definition of recognized employee organization).

6. Fair share fee means the fee deducted by the state employer from the salary or wages of a state employee who does not become a member of the recognized employee organization, that is used to defray the costs incurred by the employee organization in fulfilling its duty to represent the employees in their employment relations with the state. *Id.* §3513(j). The fair share fee must not exceed the standard initiation fee, membership dues, and general assessments of the recognized employee organization. *Id.*

7. *Id.* §3515.7(a).

8. *Compare id.* §3515.7(b) with *id.* §3515.6.

9. *Id.* §3515.7(c).

hearings.<sup>10</sup> The organization, however, may charge the employee for the reasonable cost of the representation.<sup>11</sup>

Furthermore, Chapter 1572 requires employee organizations that establish a fair share fee provision to maintain and make available annually, an adequate itemized record of their financial transactions.<sup>12</sup> The report must contain a detailed written financial report in the form of a balance sheet and an operating statement, certified as to accuracy by the employee organization's president and treasurer or comparable officers.<sup>13</sup>

A fair share provision, created pursuant to Chapter 1572 may be rescinded by a majority vote of all employees in the unit covered by the memorandum of understanding provided that (1) the request for the vote is supported by a petition containing the signatures of at least 30 percent of the unit's employees, (2) the vote is by secret ballot, and (3) there has not been a vote already taken within the term of the memorandum of understanding.<sup>14</sup> Finally, Chapter 1572 permits any employee who pays a fair share fee to receive a return of any part of the fee that represents their pro rata share of expenditures by the organization that are (1) in aid of activities of a partisan political nature only incidentally related to the terms and conditions of employment, (2) applied toward the cost of benefits available only to members of the employee organization, or (3) otherwise determined by the Public Employment Relations Board to be subject to refund under this provision.<sup>15</sup>

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10. *Id.* §3515.7(f).

11. *Id.*

12. *Id.* §3515.7(e). In the event the employee organization fails to provide the annual fiscal report, any employee in the unit may petition the board for an order compelling compliance, or the board may issue a compliance order on its own motion. *Id.*

13. *Id.*

14. *Id.* §3515.7(d).

15. *Id.* §3515.8.

## **Public Entities, Officers, and Employees; liability for the torts of National Guard members**

Government Code §816 (new); Military and Veterans Code §642.1 (new); §§321, 640, 641, 642, 643, 643.1 (amended).

SB 1705 (Alquist); STATS. 1982, Ch 616

Support: California Trial Lawyers Association; Department of Finance; Department of the Military

The California Tort Claims Act of 1963<sup>1</sup> specifies the extent to which a public entity<sup>2</sup> will be liable for tort claims.<sup>3</sup> Initially, federal law had been interpreted to require that the state and federal governments share liability for any injury<sup>4</sup> caused by a member of the California National Guard<sup>5</sup> while engaged in specific training exercises or duties.<sup>6</sup> Recent federal legislation defines National Guard members, while engaged in the specified training exercises or duties mentioned above, as employees of the federal government.<sup>7</sup> Consequently, the federal government now assumes liability for the torts of National Guard members within the parameters of the Federal Tort Claims Act.<sup>8</sup>

The intent of the Legislature, in enacting Chapter 616, was to conform state law to the federal law.<sup>9</sup> Chapter 616 provides that a public entity is not liable for injury caused by a National Guard member when federal liability applies and federal compensation is made.<sup>10</sup>

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1. CAL. GOV'T CODE §§810-996.6. *See generally* 4 B. WITKIN, SUMMARY OF CALIFORNIA LAW *Torts* §79 (8th ed. 1974) [hereinafter cited as WITKIN].

2. CAL. GOV'T CODE §811.2 (definition of public entity). *See generally* WITKIN, *supra* note 1, §81, at 2387.

3. *See* CAL. GOV'T CODE §815.2(a) (a public entity is liable for the injury proximately caused by an act or omission of its employees when committed within the scope of employment). *See generally* *Susman v. City of Los Angeles*, 269 Cal. App. 2d 803, 75 Cal. Rptr. 240 (1969) (all government tort liability in California is governed by statutory law); WITKIN, *supra* note 1, at §93.

4. CAL. GOV'T CODE §810.8 (definition of injury). *See generally* WITKIN, *supra* note 1, §81.

5. 32 U.S.C. §101(3) (1976) (definition of National Guard); CAL. MIL. & VET. CODE §210 (composition of the National Guard).

6. *See* 32 U.S.C. §715(a)(3) (1976) (the specific exercises and duties include required drill and field exercises; attendance in National Guard, Army, or Air Force school; competition in small arms use; and duty as an instructor at a rifle range); Letter from Deputy Attorney General Thomas K. McGuire to Victor A. Bradshaw, Jr., Assistant Insurance Officer, Department of General Services, Sept. 20, 1973 (copy on file at the *Pacific Law Journal*). *See generally* CALIFORNIA ARMY NATIONAL GUARD ADMINISTRATIVE LAW HANDBOOK c. 7.2 (1979); Letter from Col. Robert D. Hamel, JAGC, to Victor A. Bradshaw, Jr., Assistant Insurance Officer, Department of General Services, Sept. 21, 1981 (copy on file at the *Pacific Law Journal*).

7. 28 U.S.C.A. §2671 (West Supp. 1981).

8. *See* 28 U.S.C. §2671 (1976) (generally, the U.S. is liable for injury caused by the negligent or wrongful act or omission of employees acting within the scope of their office or employment). *See generally* 28 U.S.C.A. §2671 (West Supp. 1981) (members of the National Guard are acting within the scope of their office or employment when they act in the line of duty). *See generally* WITKIN, *supra* note 1, §74.

9. CAL. GOV'T CODE §816.

10. *Id.*

## **Public Entities, Officers, and Employees; Political Reform Act revisions**

Government Code §91005.5 (new); §91005 (amended).

AB 1249 (Imbrecht); STATS. 1982, Ch 727

Support: Department of Finance; Fair Political Practices Commission

Chapter 727 was enacted to further the purposes of the Political Reform Act of 1974<sup>1</sup> by clarifying the public officials who are subject to civil penalties for official decisions that are made in conflict with the public interest.<sup>2</sup> Under existing law, every state agency must adopt and promulgate a Conflict of Interest Code (hereinafter referred to as a Code).<sup>3</sup> Each Code must specifically designate the positions within the agency which involve decision-making powers that may have a material effect on any financial interest.<sup>4</sup> All designated employees must file statements that disclose investments, interests in real property, or sources of income that may be materially affected by any governmental decision made or participated in by the designated employee.<sup>5</sup> Under a Code, the specified employees must disqualify themselves from making decisions that may materially affect their reported financial interests.<sup>6</sup> An employee who realizes an economic benefit as a result of a violation of a disqualification provision in a Code is liable in a civil action brought by the civil prosecutor or by a person residing within the jurisdiction for an amount up to three times the value of the benefit.<sup>7</sup>

Existing law specifically excludes elected state officers, judges of courts of record, members of specified state<sup>8</sup> and local commissions,<sup>9</sup> district attorneys, specified officers of local government<sup>10</sup> and candi-

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1. CAL. STATS. 1982, c. 727, §3, at —; *see* CAL. GOV'T CODE §§81000-91014 (Political Reform Act of 1974).

2. CAL. GOV'T CODE §91005(b); *see id.* §87302. *See generally id.* §81002(c).

3. *Id.* §87300.

4. *Id.* §87302(a).

5. *Id.* §87302(b).

6. *Id.* §87302(c).

7. *Id.* §91005(b).

8. The state commissions excluded are the following: Public Utilities Commission, State Energy Conservation and Development Commission, Fair Political Practices Commission, and the California Coastal Commission. *Id.* §§87302(b), 87200.

9. The local commissions excluded are planning commissions and regional coastal commissions. *Id.* §§87302(b), 87200.

10. The local government officers excluded are the following: members of boards of supervisors, members of city council, mayors, city managers, and chief administrative officers of counties. *Id.* §§87302(b), 87200.

dates for these offices from filing statements that disclose reportable sources of income,<sup>11</sup> although they must file a statement disclosing investments and interests in real property.<sup>12</sup> Chapter 727 expands the scope of the Political Reform Act by providing that the above mentioned political officials, except elected state officers, who realize an economic benefit by using or attempting to use their official position, in violation of statutory provisions,<sup>13</sup> to influence a governmental decision in which they have a financial interest<sup>14</sup> are liable in a civil action brought by the civil prosecutor or by a person residing within the jurisdiction for an amount up to three times the value of the benefit.<sup>15</sup>

Chapter 727 also provides that any person who violates a provision of the Political Reform Act<sup>16</sup> that contains no specific penalty, except for requirements concerning political mass mailings<sup>17</sup> and separation of campaign and personal funds,<sup>18</sup> will be liable in a civil action brought by the Fair Political Practices Commission,<sup>19</sup> the Attorney General,<sup>20</sup> a district attorney,<sup>21</sup> or the elected city attorney<sup>22</sup> for an amount up to \$2000.<sup>23</sup> A civil action alleging a violation of this title, however, may not be filed against a person if the criminal prosecutor is maintaining a criminal action against the person for violations of this provision.<sup>24</sup>

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11. *Id.* §§87302(b), 87200.

12. *Compare id. with id.* §§87201, 87202.

13. *See id.* §87100.

14. *See id.* §87103 (definition of financial interest).

15. *Id.* §91005(b).

16. CAL. GOV'T CODE §§81000-91014 (Political Reform Act of 1974).

17. *See id.* §§84305, 89001 (requirements of a mass mailing).

18. *See id.* §84307 (1) commingling campaign contributions and a candidates' personal funds is prohibited).

19. The Commission is the civil prosecutor with respect to the state or any state agency, except itself. *Id.* §91001(b).

20. The Attorney General is the civil prosecutor with respect to the Commission. *Id.*

21. The district attorney is the civil prosecutor with respect to agencies other than those belonging to the city of state. *Id.* §91001(b).

22. In any case in which a district attorney could act as the civil prosecutor, the elected city attorney of any charter city may act as the civil prosecutor with respect to any violations occurring within the city. *Id.* §91001.5.

23. *Id.* §91005.5.

24. *Id.*

