

SWACC

Statewide Association of Community Colleges

WELCOME TO THE 2024 SWACC ANNUAL CONFERENCE



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EVOLVING
WITH CHANGING TIMES:

SOLUTIONS
FOR THE FUTURE

Back to Basics Navigating the World of Liability
Claims



Claims / Litigations Processing Steps

Non-Litigated Government Tort Claims (GL/EPL)

- If a Government Tort Claim is filed on any GL/EPL matter with the District, the District should provide a copy of the Tort Claim to Property & Liability Claims Administration (PLCA). Thereafter, PLCA will provide their recommended action that will be taken within the 45-day window.
 - If the Government Tort Claim is filed within the six (6) month Government Statute and possesses all the requirements to suffice as a Tort Claim, the District can either place the matter on the District Board Agenda for rejection or have the matter be deemed rejected by Operation of Law on the 45th day of receipt of the Government Tort Claim.
 - If the Government Tort Claim does not meet the requirements to suffice as a Tort Claim, the District can return the document as insufficient, and the complainant has 15 days to amend the documentation. Thereafter, action will need to be taken on the insufficient document to protect the District's defenses.
 - If the matter is filed after the six (6) month Government Statute, the matter should be Returned as Untimely. Thereafter, the complainant has the opportunity to file an Application for Relief to Present a Late Claim and the District can determine if it falls in the guidelines of a denial or acceptance of the Late Claim.

EPL related matters:

Prior to a DFEH/OCR (State Related) Complaint is filed, the Complainant / Employee has up to three (3) years from the incident date due to the SHARE Act being passed on 10/10/2019.

Prior to a EEOC (Federal Related) Complaint is filed, the Complainant/Employee has up to 180 days from the accrual date to file the Federal Complaint The 180-calendar day filing deadline is extended to 300 calendar days if a state or local agency enforces a law that prohibits employment discrimination on the same basis.

1. Traditional District Processes when EPL Complaint filed :

Step 1: Human Resources becomes aware of the potential EPL Issue;

Step 2: HR engages with District's General Counsel to obtain directive and recommendation;

Step 3: General Counsel and/or HR investigates the complaints presented by the complainant/employee.

***If the matter is Non-Litigated and a Right to Sue Notice is received, PLCA will review and determine if there is any potential liability exposure. Thereafter, PLCA assigns matter to counsel to conduct an early triage to reduce the unnecessary Legal fees and potential additional exposure.

Reasons for Early Intervention:

1. Reduce out of pocket (Non-reimbursed) expenses to member agencies;
2. Allows a potential educational example regarding the subject matter and provide training and awareness to prevent future EPL losses and create better practices.

If the District receives an EEOC Right to Sue Notice, the Complainant/Employee has up to one (1) year from the EEOC Right to Sue Notice to file a lawsuit.

If the District receives a DFEH/OCR Right to Sue Notice, the Complaint/Employee has up to one (1) year from the OCR Right to Sue Notice to file a lawsuit.

Now There's a Lawsuit

What You Need to Know – First Steps

- How do you find out there is a lawsuit
 - Types of Service of a lawsuit
- What is the first thing to do?
- What is a party to a lawsuit
 - Who can be a party?
- How much time do we have to respond?
- Who responds and what do they do?
 - It should be in the hands of defense counsel

Now There's a Lawsuit

What You Need to Know – Our Response

- Defense counsel reviews the lawsuit to decide how to respond
 - Is it timely?
- Did they exhaust the pre-lawsuit requirements?
 - Govt claim?
 - DFEH/EEOC right to sue letter
 - Complaint to the Labor Board?
- Are they making claims they can't make against you?

Now There's a Lawsuit

What You Need to Know – Our Response

- Responding/Answering the lawsuit
 - If no reason to contest it in anyway
- File a “demurrer” and/or “motion to strike” part of the lawsuit
 - This means we are asking the judge to throw out some of the claims or requests because they can't make those claims at all against you
 - i.e. Did not exhaust pre-lawsuit requirements
 - Made a claim for punitive damages against the entity
 - Not timely
 - Other legal reasons
 - Should only be done if positive it will remove certain claims
 - Otherwise we may educate them on what they are missing
- “Anti-SLAPP” motion
 - Great weapon if applicable
 - What is it ?

Now There's a Lawsuit

What You Need to Know – Gathering Data

- What does the attorney need?
 - Personnel file
 - WC file
 - Mailbox
 - Any other files kept relating to the employee
 - Payroll, benefits
 - EEOC/FEHA complaints
 - Internal complaints and investigations
- Information on “key players”
 - Who are they?
 - Are they still employed
 - If not, are they disgruntled?
- How much time do we have to respond?
- Who responds and what do they do?

Now There's a Lawsuit

What You Need to Know – Discovery

- What is discovery?
 - Verbal and written information gathering by both sides to evaluate the case and prepare for trial
- Written Discovery
 - Interrogatories – Us and Them
 - Written questions to answer
 - About the Plaintiff and You
 - Requests for documents – Us and Them
 - Personnel File
 - Mailbox
 - Any docs about the Plaintiff
 - Subpoenas we submit to gather information
 - From outside agencies- i.e. EEOC/DFEH, WC TPA, Medical providers, Past and new employers
 - Subpoenas they send for information for them
 - WC records
 - EEOC/DFEH

Now There's a Lawsuit

What You Need to Know – Written Discovery

- Do we have anything to do?
 - Need assistance answering Interrogatories and Request for Documents
 - There is a time deadline
 - We start but you finish
 - Who is best to do this?
- Verifications
 - Someone has to state that the answers and documents are all we have and are true and accurate under penalty or perjury
 - Who does that?
 - What does this mean for later?

Now There's a Lawsuit

What You Need to Know – Other Discovery

- Depositions – what to expect?
- Plaintiff
 - We take this
 - Require a rep from client and the “key player” i.e. Alleged harasser or supervisor
- Key Players
 - They do this
 - We prepare them and represent them – most of the time
 - Unless disgruntled or adverse to the employer
 - Past and present employees
- The always problematic “PMK” deposition
 - Law allows them to have you provide the persons that are most knowledgeable on certain topics
 - i.e. Policies and procedures, plaintiff's employment, termination or investigation
 - Not always the same person
 - The “PMK” not always still there – then what?
- Medical providers
- Experts

Now There's a Lawsuit

What You Need to Know – Discovery is Over

Now What?

- Pre-trial motion for summary judgement
 - Try to get all or part of the case thrown out before trial
 - Based upon all the evidence, they can't meet their burden of proving their case

Now There's a Lawsuit

What You Need to Know – Settlement Options Pros & Cons

- MSC
 - Settlement conference by a judge thru the courts
- Court ordered mediation
 - Volunteer mediator
- Private mediation
 - Parties pay to have a mediator to settle the case
 - Retired judge or former attorney in the field

Now There's a Lawsuit

What You Need to Know – Going to Trial

- Last possible option
- Usually demand is too high
- Current employee
- Always a jury
- Verdicts right now are nuclear
- Usually take at least 2-3 weeks
- Need a rep there the entire time
- Need to prep all potential witnesses
- Not fun for you!

Thank You!