

NEW LAW REQUIRES UNION ACCESS TO EMPLOYEE ORIENTATION SESSIONS

Governor Jerry Brown recently signed legislation that requires public agency employers to give union representatives access to new employees during orientation sessions.

The bill, which goes into effect immediately, is part of Assembly Bill (AB) 119, a budget trailer bill.

The bill is a product of the efforts by unions representing public employees to mitigate the impact of an anticipated United States Supreme Court decision that could make union dues in public agencies voluntary. Under current law, public agency employees who opt out of participating in their union may be required to pay fees to cover union services including collective bargaining.

AB 119 requires public agency employers to grant union representatives access to new employee orientations, which are defined as onboarding processes conducted in person, online or by other means in which new employees are advised of their employment status, rights, benefits, duties and responsibilities. The structure, time and manner of access is subject to negotiations. This new law also requires that negotiations must be conducted during the period between the effective date of the bill and the expiration of a union's existing contract.

The public agency employers must give their unions at least 10 days' notice of a new employee orientation session, unless the employer and the bargaining unit reach an alternate agreement or in specific cases where an urgent, unforeseeable need prevents it. It also requires public agency employers to provide the names, job and contact information for new employees to unions within 30 days of hire or by the first pay period

of the month following a hire, even if the employee previously worked for the district. Public agencies must provide the same information about all bargaining unit members every 120 days, though public agency employers and unions may negotiate the provision of more detailed lists or different time intervals for providing the information regarding new employees or bargaining unit members.

If a public agency and a union are unable to reach an agreement on the structure, time and manner of access, the dispute is subject to compulsory interest arbitration which means that that arbitrator has the authority to dedicate the terms of the agreement. Alleged violations of the new law may be addressed by the Public Employment Relations Board (PERB).

The budget trailer bill is less prescriptive than last year's Assembly Bill (AB) 2835, which would have required public agency employers to hold in-person new employee orientations every four months during work hours, and also to allow unions to conduct 30-minute presentations during the first half of these orientations. That bill would also have required public agency employers to provide contact and job description information about bargaining unit members to unions every 90 days.

AB 119 gives public agency employers the opportunity to work with their labor partners to negotiate terms for access to employee orientations that are workable for the employer and meaningful to the union. There are a variety of options for implementing the requirements of this legislation, including airing a videotaped presentation from the union during employee orientations or allowing for an in-person presentation by a union representative. Public agency employers are encouraged to review existing collective bargaining agreements to determine if existing language conflicts with AB 119 and negotiate any necessary change, or develop, through negotiations, language to implement the terms of AB 119.

{SR258791}

FREQUENTLY ASKED QUESTIONS – ASSEMBLY BILL 119

Q: What does this bill require public agencies to do?

A: Assembly Bill (AB) 119 requires public agencies to provide unions with access to new employee orientation sessions. It also requires public agencies to provide unions with names and contact information of new employees in bargaining unit positions.

Q: What was the reason for this bill?

A: Unions representing public employees sought this legislation because there is at least one case pending before the United States Supreme Court that could result in the Court ruling that union dues are voluntary, which could greatly reduce revenues for public employee unions. Currently, public employees who opt out of union membership are often required to pay service fees to cover the cost of negotiations and other union-provided services.

Q: When does the bill go into effect?

A: The bill went into effect immediately after the Governor signed it on June 26, 2017.

Q: Does the bill require public agencies to conduct face-to-face orientations?

A: No. Orientations may be conducted in person, online or by other means.

Q: Does the bill spell out when and how access must be provided?

A: No. The structure, time and manner of access are all subject to negotiations. However, the bill does, in the absence of an alternate agreement, require public agency employers to give unions at least 10 days' notice before holding an employee orientation, except in specific instances where there is "an urgent

need critical to the employer’s operations that was not reasonably foreseeable.”

Q: When should negotiations over access take place?

A: Negotiations must take place between the effective date of the bill and the expiration of a union’s contract.

Q: What happens if we can’t reach an agreement with the union on the structure, time and manner of access?

A: If any dispute that occurs during negotiations over access is not resolved within 45 days after the first meeting of the parties or 60 days after the initial request to negotiate, either side may make a demand for compulsory “interest arbitration.”

Q: What is “interest arbitration”?

A: “Interest arbitration” is one in which the arbitrator has the authority to determine the terms that will resolve the dispute, i.e. dictate the terms of the resolution to the parties.

Q: Couldn’t unions demand to bargain their role in employee orientations prior to AB 119?

A: Yes, unions could bargain their role in employee orientations prior to AB 119 taking the position that such participation was necessary in order to fulfill their representational rights under the EERA and because it impacted terms and conditions of employment.

Q: My agency hires new employees continuously, which will make it difficult to provide the notice and access the bill requires. How can I comply?

A: The bill permits public agencies and unions to reach an agreement that differs from the requirements of the new law. For example, public agencies could seek to negotiate an arrangement with their labor unions to provide access via a video aired at all in-person orientations or provided along with other orientation materials if orientations are conducted online.

Q: What information does the bill require public agencies to provide to unions?

A: Public agencies must provide the union a new employee's name; job title; department; work location; work, home and personal cell phone numbers; personal email addresses on file with the agency; and home address, within 30 days of hire or by the first pay period of the month following the hire, even if the employee previously worked for the district. The bill also requires public agencies to provide the same information about all bargaining unit members every 120 days, though public agency employers can negotiate agreements with their unions to provide more detailed lists of information or different intervals for providing information about new employees and bargaining unit members. Public agency administrators may wish to work with their human resources departments to find out whether the generation of these lists can be automated to save time and ensure consistent compliance.

Q: What if an employee doesn't want to stay to hear from the union?

A: The law only requires public agency employers to provide unions with access to new employees and to information on new employees and bargaining unit members. It does not require that an employee stay to hear from the union. This would be the employee's choice.

Q: What happens if the union believes the public agency is violating the law?

A: Disputes may be submitted to the Public Employment Relations Board (PERB).