FEATURED STORY
RLS Secures Major Victory in PERB Affirming the Right to Bargain Law Enforcement Oversight

Q&A:
How to Preserve Your Rights to an On-Duty Third Party Injury Claim

Table of Contents

<table>
<thead>
<tr>
<th>FEATURED ARTICLE</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>RLS Secures Major Victory in PERB Affirming the Right</td>
<td>3</td>
</tr>
<tr>
<td>to Bargain Law Enforcement Oversight</td>
<td></td>
</tr>
<tr>
<td>Q&amp;A/PERSONAL INJURY</td>
<td>5</td>
</tr>
<tr>
<td>How to Preserve Your Right to an On-Duty Third Party</td>
<td></td>
</tr>
<tr>
<td>Injury Claim</td>
<td></td>
</tr>
<tr>
<td>LABOR</td>
<td>6</td>
</tr>
<tr>
<td>RLS Prevails on PERB Unfair Labor Practice Charge</td>
<td></td>
</tr>
<tr>
<td>When Employers Overpay Their Employees – Revisited</td>
<td>7</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>LEGAL DEFENSE</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Outline of Implementation of AB 1506</td>
<td>8</td>
</tr>
<tr>
<td>When an Experienced Criminal Defense Lawyer Meets a</td>
<td>10</td>
</tr>
<tr>
<td>Prosecutor With Cold Feet</td>
<td></td>
</tr>
<tr>
<td>RLS Rebukes City Effort to Unfairly Terminate Sergeant</td>
<td>11</td>
</tr>
<tr>
<td>WORKERS’ COMP CORNER</td>
<td>13</td>
</tr>
<tr>
<td>PERSONAL INJURY</td>
<td>15</td>
</tr>
<tr>
<td>On-Duty Injury Checklist</td>
<td></td>
</tr>
</tbody>
</table>
We are pleased to present Issue No. 4 of The Ultimate Backup.

Highlighting this edition are articles discussing two of the firm’s most recent wins by the Collective Bargaining Group before the Public Employment Relations Board (PERB) – one win each from RLS North and RLS South. From the north, in “RLS Secures Major Victory in PERB Affirming the Right to Bargain Law Enforcement Oversight,” Senior Associate Zachery Lopes describes the firm’s big win on behalf of the Sonoma County Deputy Sheriffs’ Association. PERB held Sonoma County accountable for violating state labor law in its frantic attempt to steam-roll drastic new oversight measures through a ballot measure ahead of the November 2020 election. PERB made the right call and voided no less than 12 material provisions of the measure, all of them having to do with independent oversight powers. From the south, in “RLS Prevails on PERB Unfair Labor Practice Complaint,” Partner Richard Levine discusses our win on behalf of the Ventura County Criminal Justice Attorneys’ Association. In the Ventura case, the union successfully stopped Ventura County’s efforts to unilaterally implement tax withholdings on accrued but unused leave time. Rounding out the labor news is Senior Associate Brian Ross, who provides an update on the seemingly evolving legal issue of employer deductions of overpaid wages in “When Employers Overpay Their Employees – Revisited.”

For Legal Defense, Senior Associate Nicole Pifari recounts yet another trial win in “When a Trial-Experienced Criminal Defense Lawyer Meets a Prosecutor With Cold Feet…,” an amusing courthouse tale of what happens when a charge-happy prosecutor tries to intimidate a serious trial lawyer into settling half-hearted allegations. Associate Andrew Ganz details his successful administrative fight against small-town ego-driven tactics levied against his wrongfully charged client in “RLS Rebukes City’s Effort to Unfairly Terminate Sergeant.” Principal Mike Rains lays out what peace officers need to know in the roll-out of AB 1506’s implementation.

Workers’ Comp Corner welcomes Associate Curtis Wheaton as its new author – and the firm’s newest workers’ compensation attorney. Curtis discusses the importance of finding a competent primary treating physician, the doctor responsible for both treating your injuries successfully and protecting your statutory rights to coverage.

On the Injury Resource side of the shop, Principal Eustace de Saint Phalle shares his “checklist” on how to preserve your right to an on-duty third party injury claim. We believe our clients could benefit from greater awareness of the potential for employees to receive compensation for injuries suffered on-duty and caused by third parties in addition to workers’ compensation benefits. Take note of Eustace’s advice to protect a potential claim.

To clients and friends of RLS, we hope you enjoy Issue No. 4. Stay safe!
FEATUED ARTICLE

RLS Secures Major Victory in PERB Affirming the Right to Bargain Law Enforcement Oversight

Zachery A. Lopes

On June 23, 2021, the Public Employment Relations Board (“PERB”) issued a decision voiding the vast majority of provisions in a recently enacted ballot measure (“Measure P”) broadening the powers of an independent law enforcement oversight body in Sonoma County. The decision, Sonoma County Deputy Sheriffs’ Association, et al. v. County of Sonoma (2021) PERB Decision No. 2772-M, strongly affirms the labor rights of law enforcement associations to bargain proposed oversight schemes.

For approximately five years Sonoma County’s Independent Office of Law Enforcement Oversight (“ILOERO”) served as an informal auditor of Sheriff’s Office operations, providing non-binding advice and recommendations on policy and procedures. ILOERO’s role was set to drastically change with the County Board of Supervisors’ adoption of a ballot measure for voter consideration for the November 2020 election.

Measure P sought to grant ILOERO the authority to, among other things: independently investigate misconduct complaints against members of the Sonoma County Deputy Sheriffs’ Association (“DSA”) and make disciplinary determinations, independently subpoena DSA members for testimony and documents, directly access member personnel file information (to include prior complaints), independently release body worn camera video, and attend internal affairs interrogations. The voters overwhelmingly approved the ballot measure.

The County, however, never provided advance notice to the DSA, nor the opportunity to meet and confer, before the Board of Supervisors presented Measure P to the voters. Pursuant to the Meyers-Milias-Brown Act, Government Code section 3500 et seq. (“MMBA”), the County was required to provide the DSA with advance notice and meet and confer in good faith.

Prior to the Board of Supervisor’s action, the DSA informed the County that it was obligated to meet and confer and demanded that it do so. In response, the County asserted it was “not in the community’s interest” to meet and confer, and it would not do so because the Board of Supervisors needed to act promptly in order to meet the legal deadline to enact a ballot measure prior to the November election. The County’s dismissive rejection of the DSA’s demand was based on its politicians’ preference for immediate action, in violation of its duty to proceed prudently and in accordance with the law. After all, the ballot measure deadline was politically self-imposed – there was no actual mandate forcing the County to bypass the DSA’s collective bargaining rights. Essentially, the
RLS Secures Major Victory in PERB Affirming the Right to Bargain Law Enforcement Oversight (cont.)

County just ignored the law because of the perceived political necessity of acting immediately before an election.

RLS Principal Timothy Talbot and Senior Associate Zachery Lopes filed an unfair practice charge with PERB on behalf of the DSA, alleging the County violated its obligations under the MMBA. During the proceedings, the County argued that its only obligation was to negotiate the “effects” of the ballot measure after it had already been adopted. The County also argued that the impending legal deadline for placing Measure P on the ballot constituted an “emergency” which excused its compliance with the MMBA.

Somewhat unusually, the full PERB Board decided the matter, instead of the usual route of an administrative law judge issuing a proposed decision for adoption by the PERB Board. PERB issued a unanimous decision agreeing with the DSA’s contention that the County violated the MMBA. Of note, PERB held that “taken together, [the amendments] establish a parallel investigative scheme for County peace officers,” for which the DSA had the “right to bargain before the County subjects employees they represent to such a parallel investigatory process....” With respect to the County’s argument that it need only bargain the “effects” after action had already been taken, PERB rightly found that such an approach would amount to “fait accompli” and undermine the collective bargaining process. PERB also rejected the County’s baseless assertion that the ballot measure deadline constituted an “emergency” excusing compliance with the MMBA.

PERB held that "taken together, [the amendments] establish a parallel investigative scheme for County peace officers," for which the DSA had the "right to bargain before the County subjects employees they represent to such a parallel investigatory process..."

PERB found no less than 12 provisions of Measure P void – including those affording IOLERO the expanded authority to independently investigate, interrogate, and subpoena DSA members, access their personnel files, and release body worn camera video. In short, all provisions which concerned IOLERO’s authority and ability to conduct independent investigations were declared void for failure to comply with the MMBA. The DSA’s victory serves as an important reminder to employers – and associations – that no matter the political landscape, collective bargaining rights matter and will be enforced.

About the author

Zachery A. Lopes is a Senior Associate with the RLS Collective Bargaining and Labor Litigation groups. Zachery represents labor association clients in all matters of collective bargaining and related litigation. Zachery and Principal Timothy K. Talbot represented the Sonoma County Deputy Sheriffs’ Association in the above case.
Q&A / PERSONAL INJURY

How to Preserve Your Right to an On-Duty Third Party Injury Claim

Eustace de Saint Phalle

Eustace de Saint Phalle has established himself as one of California’s top personal injury trial lawyers, having personally litigated multiple cases to settlement, verdict, or judgment. In the following Q&A with Eustace, he discusses the RLS Personal Injury Group’s must-have simplified checklist for you to keep on hand to preserve your right to a third party claim.

What have you seen as one of the biggest problems for employees who want to maximize the economic relief to which they may be entitled following a work-related injury?

Most employees are not aware of the fact that they have a right to benefits within the Workers’ Compensation (WC) system and to additional benefits outside the WC system. People often don’t realize that they may be able to sue the responsible third party for the accident and recover economic damages in addition to their WC benefits.

What’s an example of when someone might have benefits outside the Workers’ Compensation system?

A classic example is when someone gets hit in a motor vehicle accident while on duty, then they have both a WC claim and a civil third party claim.

If someone gets hurt in an on-duty incident, what should they do?

They should immediately contact an attorney. Our team has developed a standard policy to make sure they get WC coverage while simultaneously exploring the possibility of third party civil claims as well.

If you could give only one piece of advice what would it be?

Plan ahead so you don’t have to think about what you need to do when you are involved in an accident. One of the most frequent comments I hear from someone after they were involved in an accident is “if I had only known what to do.” I recommend people familiarize themselves with our “checklist,” keep it somewhere accessible and then forget about it until you need it.

[See p.15 for our "On-Duty Injury Checklist"]

Check our events calendar regularly for new trainings and symposiums. Example topics:

- Collective bargaining strategies
- Compliance with recent new legislation
- Officer-involved shooting investigations
- Use-of-force investigations

www.RLSLawyers.com/Events
RLS Prevails on PERB Unfair Labor Practice Charge

Public Employment Relations Board Finds That Ventura County Engaged In Unfair Labor Practices By Implementing Income Tax Withholding On Accrued But Unused Paid Leave Time Without Completing Negotiations In Good Faith Over The Negotiable Effects

Richard Levine

In August 2016, the Ventura County Auditor-Controller advised all County employees that, beginning in tax year 2017, the County would change its current payroll policies and report as taxable income the maximum amount of paid leave that an employee is eligible to redeem in a year, regardless of whether the employee actually elects to cash-out that leave. This was a dramatic change to long-standing past practice.

The County justified the change based on its newfound interpretation of an existing tax principle known as “constructive receipt.” The County’s interpretation of the constructive receipt doctrine was not based on any change in IRS law or regulations, nor was any decisional law cited in support of the County’s interpretation. Nevertheless, County Counsel opined that prudence dictated that the County act to reform its leave redemption plans. Acknowledging that the County could not unilaterally amend the collectively bargained plans which had not yet expired, County Counsel arrogantly assumed that the unions were “likely to agree to collective bargaining” on the subject.

According to established case law, a claim of bad faith bargaining may be established by evidence of a party’s misrepresentation of facts; failure to explain a bargaining position in sufficient detail or to provide requested information supporting a bargaining position, without an adequate reason for such failure; failure to prepare adequately for negotiations; failure to take one’s bargaining obligation seriously; and making a time-limited, i.e., “exploding” offer without a legitimate basis.

In this case, during the course of successor memorandum of agreement (“MOA”) negotiations with the County’s Criminal Justice Attorneys Association (“Association”), the County advised the Association’s representatives that if it did not agree to amendments to its annual leave plan, the County would report, but not withhold, income taxes on reported constructively received income. However, in direct contradiction to such representations, the County later proceeded to treat accrued annual leave hours attributable to such tax year as income and withhold taxes on such accrued leave as if the employee had actually received cash for the maximum cash-out allowed under the MOA. As a consequence, the County proceeded to garnish employees’ paychecks for income tax withholdings respecting so-called constructively received annual paid leave income, resulting in significantly reduced paychecks for employees for the last three (3) payroll periods of the year; in some cases, this led to zero or near zero paychecks for employees.

In response to the County’s improper actions, RLS Partner Richard Levine filed an Unfair Practice Charge with the California Public Employment Relations Board (“PERB”), alleging that the County engaged in bad faith bargaining when meeting and conferring over changes to the Association’s paid leave plan. Following a 10-day hearing, a proposed decision was issued by the PERB Administrative Law
RLS Prevails on PERB Unfair Labor Labor Practice Charge (cont.)

Judge which found that the County committed violations of the Meyers-Milias-Brown Act by breaching its duty to meet and confer in good faith, both by implementing its tax withholdings decision without completing negotiations over the negotiable effects of that decision, and by its overall bargaining conduct during negotiations regarding amending the leave plan.

The PERB Board adopted the proposed decision and concluded that the County “failed to exhibit the central aspects of good faith bargaining, including honesty, preparation, thoroughness, seriousness, and reasonable attempts to answer the other side’s questions. Moreover... the record shows that this conduct frustrated negotiations by leading the Association to rely on the fact its members would not experience increased tax withholding.”

Among other remedies, the PERB Board ordered the County to resume bargaining with the Association over modifying the leave redemption plan to avoid constructive receipt taxation and to reimburse bargaining unit members for any accountancy and/or related professional fees incurred as a result of the County’s constructive receipt tax withholding decision.

About the author

Richard A. Levine is a partner at RLS. Richard frequently represents public employees in highly publicized civil and administrative proceedings. He represented the Criminal Justice Attorneys Association of Ventura County throughout the PERB hearings in the above case (Criminal Justice Attorneys Association of Ventura County v. County of Ventura, Unfair Practice Case Nos. LA-CE-1260-M and LA-CE-1268-M).

LABOR
When Employers Overpay Their Employees - Revisited

Brian Ross

In June of 2020, The Ultimate Backup discussed what rights employees have when their employer claims to have overpaid wages. At that time, the law generally prevented local government employers from unilaterally deducting overpaid wages from employee paychecks. Rather, the law required the employer – like any other creditor – to comply with state wage garnishment law, which requires either advance consent from the employee or compliance with the relevant claim procedures.

For state employees, Government Code section 19838 gives the State the right to make deductions from employee paychecks in order to recover an overpayment, although the employee must be given an opportunity to respond, the recovery action must be taken within three years of the overpayment, and the recovery is limited to 25% of each paycheck.

Since we last visited this topic, a recent appellate decision has complicated the issue. In Association for Los Angeles Deputy Sheriffs v. County of Los Angeles (2021) 60 Cal.App.5th 327 (“ALADS”), the Court of Appeal concluded that charter counties and cities are not subject to the state wage garnishment law, and therefore those public employers are not limited by state law in their efforts to recover alleged overpayments. The Court of Appeal concluded that, if
When Employers Overpay Their Employees - Revisited (cont.)

the State can pass a law giving itself the power to recover overpayments through unilateral deductions (i.e., Government Code section 19838), charter counties and cities can too. In ALADS, the union and County had agreed as part of their memorandum of understanding (“MOU”) to a recoupment procedure. However, the reasoning of the decision indicates that the procedure need not be included in an MOU, and can even be adopted as an ordinance.

So, in sum – the state can unilaterally deduct overpaid wages pursuant to Government Code section 19838, and charter counties and cities may pass a law (or negotiate an agreement) allowing such unilateral deductions.

As a result of the ALADS decision, we expect charter counties and cities (as well as non-charter counties and cities) to have renewed interest in overpayment remedies, and start insisting during collective bargaining for a procedure to recover overpayments that does not require the public employer to comply with state wage garnishment law. When negotiating such policies, associations representing employees in charter counties and cities should insist on the protections provided by state law.

About the author

Brian P. Ross is a Senior Associate with the RLS Labor Litigation Group in Southern California. Brian’s practice primarily involves writs of mandate, appellate litigation, and general labor and employment legal issues.

LEGAL DEFENSE

Outline of Implementation of AB 1506

The New Law Dealing with Fatal Shootings of Unarmed Civilians

Michael L. Rains

On September 30, 2020, Governor Newsom signed AB 1506, requiring the California Department of Justice (“DOJ”) to investigate incidents of an officer involved shooting (“OIS”) resulting in the death of an unarmed civilian and, upon request of a law enforcement agency, to review the use of force policy of the agency and make recommendations. The legislation, effective on July 1, 2021, enacted section 12525.3 of the Government Code.

In the lead up to July 1, there was much discussion as to how the legislation would be implemented. I participated in various working groups which included local and state law enforcement agencies as well as members of DOJ. While there’s been an effort to clarify DOJ’s role and responsibilities, especially as it relates to the investigations of an OIS resulting in the death of an unarmed civilian, it is safe to say that there is still some confusion concerning how Government Code section 12525.3(b)(1) will be implemented. In an effort to assist our clients in gaining a better understanding of the relevant portions of AB 1506, and how to prepare for implementation, we have prepared the following outline of the essential provisions with our recommendations:
Outline of Implementation of AB 1506 (cont.)

- The new law only pertains to an OIS which results in the death of “an unarmed civilian.” (Government Code section 12525.3(b)(1).) An OIS which results in a suspect being injured and hospitalized, but recovering from the injuries, even if the person was “unarmed” within the meaning of the law, is not a “qualifying event.”
- Understand the nuances of the definition of “unarmed civilian.” In a nutshell, here is what you should be aware of:
  - An unarmed civilian is anyone “not in possession of a deadly weapon.” A deadly weapon would include such objects as screwdrivers, hammers, baseball bats, and clubs of various sorts. In addition, all firearms and BB/pellet guns, even if unloaded or inoperable, are considered “deadly weapons.”
  - However, “replica firearms” are not considered deadly weapons unless used in a manner to cause death or great bodily injury (for instance, as a bludgeon).
  - In our opinion, this law will require DOJ’s involvement when an individual is shot and killed by a law enforcement officer following a “furtive” movement of hands, when the suspect was unarmed, or even reaching for a cell phone. Similarly, DOJ will investigate an officer involved fatal shooting of an individual who suddenly produces a “shiny object” which turns out to be, for example, a cell phone.
- If a law enforcement officer is involved in a “qualifying event” as defined in this new law, the law enforcement agency is required to call the DOJ hotline at 800-522-9327.
- DOJ will be considered the “lead investigating agency” in an investigation in any one of these qualifying events.
- DOJ will be working in concert with the local District Attorney’s Office of the county where the OIS occurred, and will also be working with the employing law enforcement agency of the officer who used the deadly force.
- Since it is possible, if not likely, that the arrival of DOJ investigators at the incident scene or location of the sequestered involved officer(s) may take substantial time, interviews of the involved officer(s) may be delayed by agreement 24-48 hours following the event.
- Crime scene work will be performed by the local agency, i.e., either the local District Attorney’s Office, the county crime lab, or crime scene technicians of the employing agency.
- The Attorney General’s Office will be reviewing reports prepared by investigators in the case and will make a decision whether or not to criminally charge an officer involved in the fatal shooting of an unarmed civilian.
- If criminal charges are filed, the State Attorney General’s Office will prosecute the criminal case.
- The employing agency of the officer(s) involved in the fatal shooting of an unarmed civilian will still be required to conduct an administrative investigation to determine whether or not the shooting was in violation of department policy, in order to comply with the provisions of Penal Code section 835(a).
- Law enforcement labor organizations should formally request to meet and confer with their respective employers to discuss how AB 1506 will be implemented and the extent to which current OIS protocols will be modified.

Please feel free to contact Mike Rains, or any one of our attorneys, if you or members of your association have any questions concerning the new law and its implementation.

**Find a more expansive discussion of the law in an article by Mike Rains, and a recent 33-page DOJ Guidelines document, at RLSLawyers.com.

About the author
Mike Rains is a Principal and
Outline of Implementation of AB 1506 (cont.)

founding member of RLS. He heads the firm’s Criminal Defense and Legal Defense of Peace Officers Practice Groups. Mike is one of California’s top trial attorneys.

LEGAL DEFENSE

When a Trial-Experienced Criminal Defense Lawyer Meets a Prosecutor with Cold Feet ...

Sometimes, what a person needs is a lawyer with the guts to take a case to trial. One such person was Pete Williams, and he found the lawyer he needed in Nicole Pifari.

When Pete hired Nicole, his criminal case in Santa Cruz County had been neglected and floundering for months under the so-called care of a public defender. Pete explained his public defender had opined his case was hopeless, and advised Pete to roll over and plead guilty to the felony he was charged with.

Pete picked up the criminal charge while working nights as a bouncer in a night club. He was working near the front door when a sloppy drunk patron acting foul and belligerent stepped into him so that their faces were inches apart. Pete pushed the drunkard away from him and, as he did, the man landed a punch on the side of Pete’s head. Pete responded with a flurry of swings, grabbing his assailant in a rear bear hug-type hold, dragging him to the front door, and tossing him outside. As Pete walked away, the drunkard renewed his attack by jumping on Pete’s back and attempting further blows. Pete peeled the attacker off his shoulders and tossed him on the sidewalk, where he crumpled up and started crying. Turns out the dullard had a broken nose, and Pete was eventually charged with felony battery causing great bodily injury.

The entire incident was captured on surveillance footage, and Nicole’s viewing of the video gave her a completely different opinion of Pete’s case. She felt Pete clearly acted in reasonable self-defense. Pete is a mountain of a man, and Nicole believed that both the District Attorney and Pete’s previous lawyer held his size against him, as if a large and powerful person cannot fear or be harmed by punches from a smaller person, and as if they have no right to defend themselves from such an attack.

Nicole made numerous appeals to the prosecutor to settle the case for a misdemeanor, but the prosecutor adamantly refused, citing Pete’s size, the number of punches he had thrown, and the “great bodily injury” sustained by the drunkard. So Nicole switched approaches; she went on the offense, demanding a speedy trial and rushing the case forward as quickly as possible.

Pete was likeable, articulate, intelligent, warm, and funny – all qualities Nicole felt would play nicely to a jury. On the other hand, her research into the so-called “victim” indicated he was a miserable, conceited jerk with a drinking problem, all qualities she also felt would come through loud and clear to a jury. As the trial date approached, the prosecutor seemed increasingly concerned.

Fifteen minutes before the parties were supposed to confirm for trial and receive a courtroom assignment, the prosecutor suddenly offered the misdemeanor Pete and Nicole and previously asked
When a Trial-Experienced Criminal Defense Lawyer Meets a Prosecutor with Cold Feet… (cont.)

for. Pete found the sudden offer so late in the game to be very suspicious, so he didn’t blink and said he’d rather go to trial. The prosecutor was incredulous, chiding Nicole for her client’s audacity in turning down what she coined “an incredible offer.” Nicole responded that “a misdemeanor conviction offers little consolation to a man who believes he is innocent. See you in court on Monday.”

Within hours, the prosecutor offered to drop the case entirely with no strings attached if Pete would pay $70 to cover the drunkard’s medical copay, an offer Pete gladly accepted.

LEGAL DEFENSE

RLS Rebukes City’s Effort to Unfairly Terminate Sergeant

Andrew M. Ganz

A northern California police department tried to overwhelm and intimidate a police sergeant by opening no less than four separate internal affairs investigations into alleged misconduct, all of which resulted in disciplinary charges. RLS Associate Andrew Ganz got one of the four charges thrown out on both procedural and substantive grounds after a Skelly hearing, and another charge vaguely drifted into obscurity. The Department, however, held fast to allegations levied in the remaining two investigations, and proceeded to terminate the sergeant because of an alleged sexually inappropriate comment and alleged failure to complete and submit police reports.

Ganz took the Department’s allegations to arbitration and won. The arbitrator found that the City did not have “just cause” to terminate the sergeant. Among other findings, the arbitrator recognized that the punishment did not fit the “crime.” The sergeant understood that the comment at issue was not appropriate, but Ganz successfully demonstrated the unfortunate fact that such behavior was long part of established Department culture, and historically never punished. The arbitrator agreed, and found it was unfair to terminate an employee who was lulled into believing certain behavior was acceptable because the employee was trained and supervised by people who regularly made similar or more egregious comments.
RLS Rebukes City's Effort to Unfairly Terminate Sergeant (cont.)

Further, the arbitrator found that the investigator conducting the “sexual harassment” investigation demonstrated a lack of objectivity, and that the city manager had improperly asked investigative questions during an interview. As to any failure to complete or submit reports, the arbitrator disagreed with the Chief’s claim that this alone was a fire-able offense. Rather, the charge was a further attempt by the Department to single out the sergeant without undertaking any effort to determine if there was a widespread issue within the Department.

As to the entire ill-motivated attempt, the arbitrator recognized that after the sergeant was placed on administrative leave for the inappropriate comment, “the City used the ensuing seven (7) months to create a broad indictment of the grievant going well beyond the original charge.” In short, Ganz demonstrated that the disciplinary process in this case was used in a disingenuous and improper way.

About the author
Andrew M. Ganz is an Associate with the RLS Legal Defense Group. Andrew defends public sector employees in criminal matters, administrative investigations, critical incident investigations, and disciplinary appeals.
Work Comp Corner is a regularly occurring column that will provide insight into how workers’ compensation works and address frequently asked questions. It is not meant to be legal advice. Please contact an RLS workers’ compensation attorney should you have specific questions regarding your potential case.

The preceding edition of Work Comp Corner provided a broad overview of the workers’ compensation system and the types of benefits available to injured workers. This edition will focus on medical treatment, and more specifically, the critical importance of carefully selecting a primary treating physician.

Your primary treating physician is one of the most important variables in a workers’ compensation claim, given his or her predominant role in recommending medical treatment to aid recovery from an industrial injury. However, there is a considerable disparity in navigating the treatment authorization process governed by complex workers’ compensation regulations.

Identifying the most effective treating physicians is impossible without significant experience working within the workers’ compensation system, making it a massive challenge for injured workers (absent a significant stroke of good fortune). It’s important to seek advice from workers’ compensation specialists to help direct you to a physician who can most effectively address your injury and establish an effective care plan.

What is the role of a primary treating physician?

The first thing you must understand is that your primary treating physician for workers’ compensation is not the same as your primary care physician. Your primary care physician is the doctor you see for preventative care (check-ups, physicals, etc.) under a personal health plan. A primary treating physician is a physician providing care only for a workers’ compensation claim.

The primary objective of the workers’ compensation system is to provide reasonable medical treatment necessary to cure or relieve the effects of an industrial injury. Talk to any three people who have actually gone through a claim, however, and you will likely get wildly different answers regarding whether the system comes even close to achieving that stated goal. In many (if not most) of those cases, the failure is attributable to the primary treating physician.

The primary treating physician in a workers’ compensation claim is akin to the executive producer of a feature film. A successful movie results from the producer securing sufficient financing, finding the right writers and managing all elements of production from start to finish. The quality of the end result is defined by innumerable smaller actions preceding it.

The same is true for workers’ compensation claims. Effective medical treatment relies on the primary treating physician being able to do more than merely diagnose an injury. They must narratively support their specific treatment requests to withstand peer review, refer to appropriate specialists when necessary, and continually manage work restrictions in order to ensure modified duty doesn’t aggravate the injury.
Workers' Comp Corner (cont.)

What are the attributes of a good primary treating physician?

In addition to their skills as a medical professional, your primary treating physician must be able to accurately diagnose your injury and prescribe a course of treatment to address it using their medical training and experience.

“Bedside manner” is also an essential trait. The most brilliant clinician’s skills are wasted if they cannot empathize with their patient to identify what course of treatment best suits their individual circumstances. This is especially important for public safety professionals, given the unique demands of those careers and increased safety concerns injuries create.

Your primary treating physician needs to be an advocate. Medical treatment in workers’ compensation cases must generally be reviewed and approved by other medical professionals. A treating physician who takes the time and effort to explain in detail the need for treatment is going to win approvals for their patients more consistently. Spread over the life of a claim, that more consistent rate of treatment approvals earned by a diligent treating physician will have a significant impact.

A primary treating physician must be an effective administrator. Their office must be able to consistently submit timely reports and requests for treatment, using the correct forms while issuing them to the correct claims address. A brilliant treatment plan can quickly erode if the treating physician is incapable of working within the system to have it actually administered.

How can you find a great primary treating physician?

Unfortunately, the information age continues to lag behind in this regard. Even the internet, where the most esoteric subjects find a home, continues to lack reliable means of accurately assessing physicians for primary care under a typical healthcare plan. Add in the additional skills noted above for effective treatment in workers’ compensation cases and the task may seem insurmountable.

There remains no effective substitute for actual experience working within the workers’ compensation system and having consistent exposure and interaction to the full variety of treating physicians. That’s precisely what the RLS workers’ compensation team does on a full-time basis and we’re always ready to provide guidance informed by our team’s cumulative experience.

About the author

Curtis D. Wheaton is an Associate with the RLS Workers’ Compensation Group. He specializes in representing injured private and public sector union employees.
On-Duty Injury Checklist

CONTACT AN RLS REPRESENTATIVE (866) 964-4513
In addition to complying with your departmental polices regarding on-duty accidents, the following steps and guidelines should be considered following an accident:

**Safety First**

- **Emergency Brake**
  Be sure to engage the brake so your vehicle doesn't move. You don't want it to roll into a dangerous area, cause injury to another or damage personal property.

- **Emergency Hazard Lights**
  Turn them on to warn others of the accident scene. Many injuries occur in secondary accidents because oncoming traffic is not alerted to the first accident. Place cones, warning triangles or flares when available.

- **Exit Vehicle**
  Following an accident, your vehicle may be damaged and in a potentially dangerous situation. It is often safest to exit the vehicle and move behind a physical barrier so you are not in danger of being hit by other vehicles or traffic.

- **Check for Injuries**
  Check yourself, passengers and others for possible injuries. Provide reasonable assistance to the injured until medics arrive.

- **Notify Dispatch/Call for Medical Assistance if Needed**
  Once in a safe place, notify dispatch and report the accident. Call for medical to provide treatment on scene and transportation to hospital, if needed.
Collect and Preserve Evidence at the Scene

It is likely that you will not be the primary investigating officer, but there are still steps you can take immediately after the accident to help collect and preserve evidence from the accident scene. Much of this will be routine for you since you are tasked with investigating accidents. This will not only be important for your potential civil case, but it will also aid the investigating officer from your agency, or other agency that may be called in to investigate, such as the California Highway Patrol.

Activate Your Body Worn Camera (BWC)

(Appplies to law enforcement agencies with BWC) If your BWC wasn’t automatically activated, make sure that you turn it on as soon as practically possible. The BWC will capture the damage to vehicles, location of vehicles, debris, skid marks, people present and statements of the parties involved.

Identify Witnesses

Keep track of potential witnesses. Write down names, addresses, telephone numbers, which vehicle they were in, and brief statements. If someone drives off, try to capture the license plate number and provide a description of the individual and what he/she would have seen.

Identify Vehicles

Write down the make, year, model, license plate number, vehicle identification number and color of all vehicles involved. Describe any damage.

Obtain Insurance Information

It is critical to obtain the driver’s license and insurance card number for the other driver. This confirms the driver’s identity, the vehicle owner and appropriate insurance company. Get names, addresses, driver’s license numbers, vehicle identification numbers, names and addresses of the vehicle owners (if different from driver) and names, addresses and policy numbers for the insurers.
Create a Diagram

Map out the accident scene, outlining the street, cross streets, driveways, crosswalks, stop signs, traffic lights and street lights. Identify where each vehicle came to rest and any other potential evidence, like skid marks, scratches, damage to the road or physical objects.

Speak to the Investigating Law Enforcement Officer

Be polite and cooperative. You may provide a statement, but stick to the facts (what you saw, heard or felt). Do not speculate about what happened, what other people must have done or thought or who was at fault. Obtain the contact information of the officer and report number. Provide the officer with any of the above evidence that you were able to collect.

Seek Medical Consultation

Go immediately to the emergency room or your personal physician if you think you may be injured. Do not refuse assistance or transportation if emergency personnel suggest you be taken to a hospital. Failure to get medical attention may be used against you if, ultimately, you are forced to seek compensation for your injuries.

What You Need to know About Your Injuries

Most people think they are going to be okay, so they have delayed going to their doctor or getting an MRI. The reality is things can seem minor but progressively get worse.

You should always get medical care right away. Better to be safe than sorry.

Consider taking photos of your injuries, including scrapes, bruises and lacerations. It may also prove helpful to keep a journal to track pain and other symptoms of injury. Jot down the pain location, a description of the sensation, and activities that increase your pain.
REPORT THE INJURY TO YOUR EMPLOYER

It is crucial that you immediately report your industrial injury to your supervisor, regardless of how minor you may think the injury. Request a “Workers’ Compensation Claim Form (DWC 1)” from your supervisor. Your employer is required to provide you with the form.

To properly file the claim, fully and accurately fill out the “Employee” section of the DWC 1 form and immediately return it to your supervisor. It is important that you fully describe your injury and identify all body parts that you are experiencing pain.

Keep a copy of the completed DWC 1 form and ask your employer to return the form to you with the employer section completed. Within one working day after you file the claim form, your employer must complete the “Employer” section, give you a dated copy, keep one copy, and send one to the claims administrator.

The claims administrator, who is responsible for handling your claim, must notify you within 14 days whether your claim is accepted, denied or delayed (if additional discovery/investigation is needed).

You are entitled to Workers’ Compensation benefits including medical care and potentially salary continuation if the claim is accepted. If the claim is delayed, you are entitled to medical care (up to $10,000 in costs). Your employer can control your medical care provider for the first 30 days of treatment, after which you can designate a new treating physician. Since there is such a broad range of available physicians within the Workers’ Compensation system, it is imperative that you contact a Workers’ Compensation attorney at this point for guidance (not necessarily to retain them) on which doctor may be the best for you and your injury.
Contact an Attorney
It is important to contact an attorney as soon as possible regardless of who was at fault. An attorney can advise on which topics are appropriate to discuss and with whom. Further, it may be preferable to have an attorney speak or make statements on your behalf. You should never make a written or recorded statement without first being advised by an attorney.

Contact your Insurance Company
Make this contact as soon as you are able. You will need to provide your insurance policy information and only the most basic details about the incident: date, time, location, vehicles and people involved and a brief description of what occurred. When possible, speak with a lawyer first.

Contact by the Other Driver’s Insurance Company
It is common for insurance company representatives to insist on receiving a written or recorded statement. You are not required to give a statement. You should speak with an attorney before having contact with the other driver’s insurance company if at all possible.

What You Need to Know About Insurance Companies
Do not trust any insurance adjuster or companies; they are not your friend. It is common for insurance company representatives to insist that you provide a written or recorded statement; however, there is no obligation. This step should be taken only after consultation with an attorney who specializes in motor vehicle cases.

Remember: the insurance company representatives do not represent you, they represent the interests of the insurance company

CONTACT AN RLS REPRESENTATIVE
(866) 964-4513

RLS HAS OFFICES THROUGHOUT CALIFORNIA TO SERVE YOU
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NOTICE: Making a false or fraudulent workers’ compensation claim is a felony subject to up to 5 years in prison or a fine of up to $50,000 or double the value of the fraud, whichever is greater, or by both imprisonment and fine. NOTE: Seth Merrick is our firm’s primary workers’ compensation attorney.