

**WEST  
COAST  
REGIONAL  
FIELD  
MEETING  
Union  
Lawyers  
Alliance**

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# TOPICS

- 1. Public Employee  
Communication Chapter  
(PECC)**
- 2. Prohibition on Public Employers  
Deterring or Discouraging  
(PEDD)**
- 3. Remedies**

# Access to New Employee Orientations (NEO)

Gov. Code §§ 3555-3557



# **Legislative Findings and Declarations**

- **Union's ability to communicate with bargaining unit employees is necessary for effectiveness of labor relations laws.**
- **Union must communicate with bargaining unit employees to fulfill its legal obligations.**
- **Union must have meaningful, cost-effective, efficient means to communicate with bargaining unit employees.**
- **Union must have opportunity to discuss rights and obligations of the contract and role of union – and to answer questions.**

# Mandatory Access to NEO

- **Unions have mandatory access to NEOs.**
- **Employer must provide union with at least 10-day's advance notice of NEOs. Shorter notice allowed if there is an “urgent need critical to the employer's operations that was not reasonably foreseeable.”**
- **Employer must negotiate about the “structure, time, and manner” of access to NEOs to reach a mutual agreement.**



# Interest Arbitration

**Either party may demand negotiations about the “structure, time and manner” of access to new employee orientations.**

**If no mutual agreement, dispute can be referred to compulsory, expedited interest arbitration.**

# SB 191 (2022):



**If employer has not conducted an in-person NEO within 30 days of the employee's start date, and the employee is working in person:**

- **Union is entitled to schedule an in-person meeting at the worksite during employment hours.**
- **Employee “shall have the opportunity to attend.”**
- **Employee “shall...be relieved of other duties for the purpose of attending the meeting.”**

# **S.B. 191 also requires:**



- **A “make up” NEO by the union: Union is permitted to communicate directly with the employee for up to 30 minutes on paid time. (Union and employer can agree to more time.)**
- **Employer must provide appropriate on-site meeting space within 7 days of the union making the request.**



# Using S.B. 191 strategically:

**Insist on the same “make-up” NEO right for fully-remote and hybrid employees, not just in-person employees.**

**Bargain to get more than 30 minutes to present (if you want more time).**

**Although attendance is not mandatory, the employer should: 1) schedule the employee, 2) tell them that attending the NEO is their only assignment during that time, and 3) explain that the time is paid.**

# What should we bargain for?

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Employer to provide union with list of employees who should/will attend NEO (and their contact information)

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Release time for stewards or other member leaders to present

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Managers to be excluded from room when union speaks

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Access to audio/visual equipment, if needed

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Employer to provide union with list of employees who attended NEO (and their contact information)

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Union membership card included in new hire packet

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Contract language regarding NEO rights so it is grievable

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# “A.B. 119 report”

## Government Code §3558:

- **Contact information (name, job title, department, work location, work, home, and personal cellular telephone numbers, personal email addresses *on file with the employer*, and home address)**
- **Provide within 30 days of hire, and every 120 days**
- **Don't settle for anything less than what you're entitled to**
- **Work location: building, floor, suite**

# **If employer doesn't provide a complete report of contact information:**

- **Notice to employer: 20 days to “cure”**
- **File an unfair practice charge with PERB (or ERCOM or ERB, if applicable)**
- **Seek from PERB: Penalties of \$10K + Attorneys' Fees**

# **“Lost time” for member leaders**

## **Gov. Code § 3558.8**

- **Employer shall grant employee, upon request of union, “reasonable leaves of absence without loss of compensation or other benefits” to do union work**
- **Full-time, part-time, or intermittent**
- **Employee shall continue to receive retirement service credit**
- **Union to reimburse agency**
- **Union must indemnify agency**
- **Bargain over this at any time, even if there is a closed contract**

# PEDD

Gov. Code §§ 3550-3553

# Gov. Code § 3550

Shall not deter or  
discourage

Employees or applicants

- From becoming or remaining members of the union
- Authorizing representation by a union
- Authorizing dues or fee deductions to a union



# Remedies

- **Penalty deposited in General Fund of the State – a max of \$100K (\$1K per affected employee)**
- **Attorneys' fees and costs to a union that prevails**



# How has PERB interpreted 3550?

- Deter or discourage means “tends to influence” - which requires an objective evaluation of whether the challenged conduct or communication is reasonably likely to deter or discourage employee free choice.
- Only applies to the 3 specific categories of prohibitions, so it is narrower than the “interference” cause of action.
- However, the charging party is not required to show that the employer made a threat or promised a benefit.



# Gov. Code § 3553 “Mass Communication”



Mass communications by employer to employees or applicants re rights to join or support an employee org, or to refrain from joining or supporting an employee org



Must meet and confer with union first



If no agreement, must include union’s message along with employer’s message

# PERB decisions re 3550/3553



The following communications violated the law:

- An FAQ from the UC Office of the President addressing the impact of *Janus* on public employees' rights, without meeting and conferring with any of the certified bargaining representatives that represent UC employees prior to sending the documents via email to all UC employees.

*Regents of the University of California* (2021) PERB Dec. No. 2755-H.

- A document posted on the UC website during an organizing campaign, comparing salary increases between represented and non-represented staff and making claims about UC's efforts to compensate, protect, and support unrepresented employees.

*Regents of the University of California* (2021) PERB Dec. No. 2756-H.

- Emails sent by human resources and charter school principals and assistant principals, about a union's organizing drive at various charter schools, praising the union-free atmosphere of the schools. Some unlawful emails contained statements about the union, its organizing tactics, how it spends dues money, and asserted the union takes money while providing very little in return.

*Alliance Marc & Eva Stern Math & Science High School, et al.* (2021) PERB Dec. 2795.

# Always Push for Effective Remedies!

Attorneys' fees: PERB usually follows the "American Rule" – normally, no fee shifting. Must show opponent maintained a claim, defense, or motion, or engaged in another action or tactic, that was without arguable merit and pursued in bad faith.

Attorneys' fees incurred in separate legal proceeding: *Sacramento City USD* (2020) PERB Decision No. 2749-M; *Palomar Health* (2024) PERB Decision No. 2895-M, judicial appeal pending.

Reimbursement of bargaining-related costs: *City & County of San Francisco* (2023) PERB Decision No. 2858-M.

Employer must pay the union lost dues: *County of Butte* (2016) PERB Decision No. 2492-M; *Bellflower USD* (2022) PERB Decision No. 2544a.

Spoken notice of violation: *Mt. San Jacinto Community College District* (2023) PERB Decision No. 2865; *Hacienda La Puente USD* (2024) PERB Decision No. 2930.

Compounding daily interest: *El Centro Regional Medical Center* (2024) PERB Decision No. 2890-M.

Recovery for direct or foreseeable harms (*Thryv, Inc.*): PERB case law is summarized in *County of Santa Clara* (2024) PERB Decision No. 2900-M, judicial appeal pending.

**Thank you**

