**Public Sector Employee Orientation Law (AB 119)**

**Summary of Law**

On Tuesday, June 27, 2017, Governor Brown signed Assembly Bill 119 into law, which included new laws requiring an exclusive representative (*e.g.*, recognized public employee unions, employee associations) the right to access new employee orientations and to compel collective bargaining processes related to the structure, time and manner of such orientation access. Because AB 119 is a budget trailer bill, its provisions went into effect immediately upon the Governor’s signature.

The Legislature noted their intent for this new law as follows:

*The Legislature finds and declares that the ability of an exclusive representative to communicate with the public employees it represents is necessary to ensure the effectiveness of state labor relations statutes, and the exclusive representative cannot properly discharge its legal obligations unless it is able to meaningfully communicate through cost-effective and efficient means with the public employees on whose behalf it acts. In most cases, that communication includes an opportunity to discuss the rights and obligations created by the contract and the role of the representative, and to answer questions. That communication is necessary for harmonious public employment relations and is a matter of statewide concern. Therefore, it is the Legislature’s intent that recognized exclusive representatives of California’s public employees be provided meaningful access to their represented members as described in this chapter unless expressly prohibited by law.*

AB 119 also requires that a public employer provide an exclusive representative with the name, job title, department, work location, contact information (work/home/personal cellular telephone numbers; personal email addresses; and home address) of any newly hired employee in the bargaining unit within 30 days of the date of hire or by the first pay period of the month following hire. The public employer is also required to provide that same information for all employees in the bargaining unit at least every 120 days unless more frequent/detailed list disclosures have been agreed to otherwise with the exclusive representative.

**Questions and Answers Regarding the Public Sector Employee Orientation Law:**

**Q: *What is considered a “new employee orientation”?***

A: “New employee orientation” means the onboarding process of a newly hired public employee in which employees are advised of their employment status, rights, benefits, duties and responsibilities, and any other employment related matters. It does not matter which medium the orientation takes place in, whether it is in person, online, or through other mediums.

**Q: *Who is considered a “newly hired public employee”?***

A: The definition includes any new employee regardless of whether they are being hired to a permanent, temporary, full time, part time, or seasonal position.

**Q: *Does the employer need to provide the exclusive representative with any information about the newly hired public employees?***

A: Yes. Within 30 days of hiring the employee the employer must provide the representative with the name, job title, department, work location, work, home, and personal cellular telephone numbers, person email addresses on file with the employer, and the home address of the new hire. The employer must also provide the representative with a list of all of that information for all employees in the bargaining unit at least every 120 days unless more frequent or more detailed lists are required by an agreement with the exclusive representative.

**Q: *How far in advance does an employer need to let the exclusive representative know about the new employee orientation?***

A: Employers are required to provide the exclusive representative with at least 10 days notice of the new employee orientation. Employers do not have to give 10 days notice of an orientation if there is an urgent need that is critical to the employer’s operations that was not reasonably foreseeable. The purpose of this notice period is to give the employer and representative an opportunity to negotiate over the details of the new employee orientation.

**Q: *In what way does an employer have to provide the exclusive representative access to new employee orientations?***

A: While this new law mandates that a public employer provide an exclusive representative access to new employee orientations, it does not mandate any specifics as to how such access is provided. Rather, the new law requires that a public employer and the exclusive representative negotiate over the “*structure, time, and manner*” of the access of the exclusive representative to a new employee orientation. Generally speaking, this would encompass the following issues:

* At what time during the employee orientation an exclusive representative will be provided access to new employees (beginning, middle, end, etc.).
* How much time the exclusive representative is provided to meet with the new employees.
* The content of what the exclusive representative will discuss with new employees
* Whether new employees are required to attend the part of the orientation with the exclusive representative.
* How to address exclusive representative access where new employee orientations include employees from multiple bargaining units.

**Q: *What if a public employer does not currently provide a new employee orientation? Does this law compel a public employer to start conducting new employee orientations?***

A: This is somewhat unclear. The statutory text appears to presume that a public employer provides a new employee orientation of some form. As noted above, the definition of “*new employee orientation*” in the law is defined broadly to include various means of interaction with a new employee – “*whether in person, online, or through other means or mediums” –* where the new employee is advised of their employment status, rights, benefits and duties and responsibilities, or any other employment-related matters.” Therefore, even if a public employer is not conducting a traditional new employee orientation meeting in-person, this new law would still most likely require collective bargaining over how to provide an exclusive representative access to the new employee through the means used by the agency.

**Q: *Is a public employer now obligated to immediately begin negotiating with exclusive representatives regarding new employee orientation access now that this new law is in effect?***

A: Not necessarily. While a public employer is not automatically obligated to begin negotiating with exclusive representatives over new employee orientation access, a public employer is obligated to begin negotiations on this issue upon request of the exclusive representative.

**Q: *What if a public employer and an exclusive representative already have collectively bargained an agreement regarding access to new employee orientations? Does this law compel the parties to change such existing agreements regarding orientation access?***

A: Not necessarily. This new law notes that it does not prohibit agreements between a public employer and exclusive representative that vary from the requirements of the new law to the extent they are not inconsistent. Otherwise, the requirements of this new law would apply.

**Q: *What if a public employer already has an existing MOU agreement in place with the exclusive representative? Does this law compel the parties to reopen the existing MOU agreement?***

A: Yes, but only for the sole purpose to collectively bargain the “*structure, time, and manner*” of an exclusive representative’s access to new employee orientation meetings. The law also provides that the parties can elect to negotiate a side letter or similar agreement on this issue in lieu of reopening the existing MOU agreement.

***Q: What happens if the public employer and the exclusive representative cannot reach an agreement about the structure, time, and manner of access of the representative to a new employee orientation?***

A: If the two parties do not reach agreement within 45 days of the first meeting to negotiate, or within 60 days after the initial request to negotiate – whichever comes first – either party can make a demand to participate in interest arbitration to resolve the dispute and determine what the policy will be. The parties can also mutually agree to submit their dispute to compulsory interest arbitration at any time.

***Q: What is interest arbitration?***

A: Interest arbitration is a process where the public employer and the exclusive representative submit a dispute concerning the terms of access to the new employee orientations for resolution to a third-party arbitrator who is then authorized to approve either the employer or the representative’s proposal. The arbitrator can also approve a proposal that uses both or modifies the employer’s and the representative’s final proposals. The proposals submitted by the employer or representative must be the final proposal submitted during the parties’ original negotiations.

***Q: How is the interest arbitrator selected?***

A: The State Mediation and Conciliation Service (SMCS) will provide a panel of arbitrators within seven (7) days of a request for interest arbitration. The parties will get a list of seven (7) arbitrators to make a selection. The parties have seven (7) days to decide on an arbitrator. The parties will select the arbitrator by going back and forth striking one name from the list until only one name remains. The parties will toss a coin to determine who gets to strike the first name. The parties do not have to do this if they mutually agree on an arbitrator. If a party does not participate, they waive the right to select an arbitrator.

***Q: Are there any alternatives to the use of an interest arbitrator?***

A: If a City or County objects to the procedure for appointing an third-party interest arbitrator, that City or County can request to the Public Employment Relations Board (PERB) within five (5) days of an exclusive representative’s request for interest arbitration that a PERB Administrative Law Judge or other PERB employee serve as the arbitrator in lieu of an arbitrator appointed by SMCS. The same procedure for the interest arbitration would apply, except that the City or County would be responsible for the full cost of the PERB ALJ or employee serving as an arbitrator.

***Q: When does arbitration start and how long does it last?***

**A:** The arbitration starts either at the arbitrator’s earliest available date or any date that the parties agree on. The arbitration must be completed within 30 days of its commencement and a final and binding decision must be issued by the arbitrator within 10 days of the completion of the arbitration.

***Q: How will the arbitrator decide which proposal to adopt?***

**A:** The arbitrator shall consider weigh, and be guided by the following eight (8) criteria as noted in Government Code section 3557(b)(2):

1. The ability of the exclusive representative to communicate with the public employees it represents.
2. The legal obligations of the exclusive representative to the public employees.
3. State, federal, and local laws that are applicable to the employer.
4. Stipulations of the parties.
5. The interests and welfare of the public and the financial condition of the public agency.
6. The structure, time, and manner of access of an exclusive representative to a new employee orientation in comparable public agencies, including the access provisions in other memoranda of understanding or collective bargaining agreements containing those provisions.
7. The Legislature’s findings and declarations under Section 3555.
8. Any other facts that are normally or traditionally taken into consideration in establishing the structure, time, and manner of access of an exclusive representative to a new employee orientation.

***Q: Who pays for arbitration?***

A: The parties equally share the costs.

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**Statutory Text (Government Code sections 3555-3559)**

**CHAPTER  11.5. – Public Employee Communication**

**Government Code section 3555.**

The Legislature finds and declares that the ability of an exclusive representative to communicate with the public employees it represents is necessary to ensure the effectiveness of state labor relations statutes, and the exclusive representative cannot properly discharge its legal obligations unless it is able to meaningfully communicate through cost-effective and efficient means with the public employees on whose behalf it acts. In most cases, that communication includes an opportunity to discuss the rights and obligations created by the contract and the role of the representative, and to answer questions. That communication is necessary for harmonious public employment relations and is a matter of statewide concern. Therefore, it is the Legislature’s intent that recognized exclusive representatives of California’s public employees be provided meaningful access to their represented members as described in this chapter unless expressly prohibited by law.

**Government Code section 3555.5.**

(a) This chapter shall only apply to public employers subject to Chapter 10 (commencing with Section 3500), Chapter 10.3 (commencing with Section 3512), Chapter 10.7 (commencing with Section 3540), or Chapter 12 (commencing with Section 3560) of, or Chapter 7 (commencing with Section 71600) or Chapter 7.5 (commencing with Section 71800) of Title 8 of, this code, or Chapter 7 (commencing with Section 99560) of Part 11 of Division 10 of the Public Utilities Code.

(b) For purposes of this chapter:

(1) “Exclusive representative” means the exclusive representative or recognized employee organization for the bargaining unit.

(2) “Interest arbitration” means a process whereby an employer and an exclusive representative submit a dispute concerning the terms of access to new employee orientations for resolution to a third-party arbitrator who is then authorized to approve either party’s proposal in its entirety, to approve a proposal using both the employer’s and exclusive representative’s final proposals, or to modify the proposals by the parties.

(3) “New employee orientation” means the onboarding process of a newly hired public employee, whether in person, online, or through other means or mediums, in which employees are advised of their employment status, rights, benefits, duties and responsibilities, or any other employment-related matters.

(4) “Newly hired public employee” means any employee, whether permanent, temporary, full time, part time, or seasonal, hired by a public employer, to which this chapter applies and who is still employed as of the date of the new employee orientation.

(c)

(1) Except as provided in paragraph (2), the Public Employment Relations Board shall have jurisdiction over violations of this chapter. The powers and duties of the board described in Section 3541.3 shall apply, as appropriate, to this chapter.

(2) The employee relations commissions established by the County of Los Angeles and the City of Los Angeles shall have jurisdiction over violations of this chapter in the County of Los Angeles and the City of Los Angeles, respectively.

**Government Code section 3556.**

Each public employer described in subdivision (a) of Section 3555.5 shall provide the exclusive representative mandatory access to its new employee orientations. The exclusive representative shall receive not less than 10 days’ notice in advance of an orientation, except that a shorter notice may be provided in a specific instance where there is an urgent need critical to the employer’s operations that was not reasonably foreseeable. The structure, time, and manner of exclusive representative access shall be determined through mutual agreement between the employer and the exclusive representative, subject to the requirements of Section 3557.

**Government Code section 3557.**

(a) Except as provided in subdivision (g), upon request of the employer or the exclusive representative, the parties shall negotiate regarding the structure, time, and manner of the access of the exclusive representative to a new employee orientation. The failure to reach agreement on the structure, time, and manner of the access shall be subject to compulsory interest arbitration pursuant to this section.

(b)

(1)

(A) Except as provided in subparagraph (B), when negotiating access to a new employee orientation, if any dispute has not been resolved within 45 days after the first meeting of the parties, or within 60 days after the initial request to negotiate, whichever comes first, either party may make a demand for compulsory interest arbitration, and if a demand is made, the procedure prescribed by this subdivision shall apply. The arbitrator selection process described in paragraph (2) shall commence not later than 14 days prior to the end of the negotiation period provided in this subdivision. A party shall not submit any proposal to compulsory interest arbitration that was not the parties’ final proposal during the parties’ negotiations. In the case of a school district employer whose administrative offices are closed during the summer, the timeline on this subdivision shall commence on the first day that the district administrative office reopens.

(B) Notwithstanding subparagraph (A), the parties may mutually agree to submit their dispute to compulsory interest arbitration at any time.

(2) The appointment of an arbitrator for compulsory interest arbitration shall be made by the State Mediation and Conciliation Service using its process to obtain a panel of arbitrators, except as provided in paragraph (4). Within seven days of receipt of a request for a panel, the State Mediation and Conciliation Service shall send the parties a list of seven arbitrators selected from its roster. Within seven days following the receipt of the list, the parties shall make their selection. Unless the parties agree on an alternate selection procedure, they shall alternatively strike one name from the list provided by the service until only one name remains. A coin toss shall determine which party shall strike the first name. In lieu of this process, the parties may mutually select any individual to serve as the arbitrator. Any party that fails to participate in the selection of an arbitrator within the prescribed period waives its right to strike names from the list. Interest arbitration shall commence either on the arbitrator’s earliest available date or any other date to which the parties agree, and shall be completed within not less than 30 days. The decision of the arbitrator shall be issued within 10 days and shall be final and binding on the parties. The decision shall provide the exclusive representative with reasonable access to new employee orientations. The arbitrator shall consider, weigh, and be guided by the following criteria:

(A) The ability of the exclusive representative to communicate with the public employees it represents.

(B) The legal obligations of the exclusive representative to the public employees.

(C) State, federal, and local laws that are applicable to the employer.

(D) Stipulations of the parties.

(E) The interests and welfare of the public and the financial condition of the public agency.

(F) The structure, time, and manner of access of an exclusive representative to a new employee orientation in comparable public agencies, including the access provisions in other memoranda of understanding or collective bargaining agreements containing those provisions

(G) The Legislature’s findings and declarations under Section 3555.

(H) Any other facts that are normally or traditionally taken into consideration in establishing the structure, time, and manner of access of an exclusive representative to a new employee orientation.

(3) The parties shall equally share all costs of arbitration.

(4) If a city or county objects to the procedure for appointment of an arbitrator pursuant to paragraph (2), that city or county, within five days of a demand for arbitration by the exclusive representative, may request that the Public Employment Relations Board appoint a PERB Administrative Law Judge or other PERB employee to serve as the arbitrator in lieu of an arbitrator appointed by the State Mediation and Conciliation Service. The city or county shall pay for the cost of that arbitrator. The board shall appoint the arbitrator within five days of receiving that request. The same procedures, criteria, and timeline for arbitrations set forth in paragraph (2) shall apply.

(c) During the period between the effective date of this section and the expiration of an existing memorandum of understanding or collective bargaining agreement between the parties, a request to meet and confer pursuant to subdivision (a) shall reopen the existing memorandum of understanding or collective bargaining agreement solely for the limited purpose of negotiating an agreement regarding access of the exclusive representative to new employee orientations. Either party may elect to negotiate a side letter or similar agreement in lieu of reopening the existing memorandum of understanding or collective bargaining agreement. This section, however, does not abrogate existing agreements between public agencies and recognized employee organizations.

(d) This section does not prohibit agreements between a public employer and an exclusive representative that provide for new employee orientations that vary from the requirements of this chapter. If such an agreement is negotiated, the requirements of this chapter shall not apply to the extent that they are inconsistent with the agreement. In the absence of a mutual agreement regarding new employee orientations, all of the requirements of this chapter shall apply.

(e) A public employer identified in subdivision (a) of Section 3555.5 does not unlawfully support or favor an employee organization or encourage employees to join any organization in preference to another as prohibited by subdivision (d) of Section 3506.5, subdivision (d) of Section 3519, subdivision (d) of Section 3543.5, or subdivision (d) of Section 3571 of this code, or subdivision (d) of Section 99563.7 of the Public Utilities Code, or any other state law, by permitting a recognized employee organization or an exclusive representative the opportunity to present at new employee orientations as required by this section or consistent with a negotiated agreement pursuant to this section.

(f) This section is not intended to modify the scope of bargaining or representation under any applicable employer-employee relations statute.

(g) A provision in a memorandum of understanding reached pursuant to Section 3517.5, and in effect on the effective date of the act adding this section, regarding the access of an exclusive representative to a new employee orientation shall control for the duration of that agreement, and the rights and duties established by this section shall apply only upon expiration of the agreement. The provisions of Section 12301.24 of the Welfare and Institutions Code regarding the access of representatives of a recognized employee organization to an orientation shall control with respect to public employers and exclusive representatives who are governed by the provisions of that section.

**Government Code section 3558.**

Subject to the exceptions provided here, the public employer shall provide the exclusive representative with the name, job title, department, work location, work, home, and personal cellular telephone numbers, personal email addresses on file with the employer, and home address of any newly hired employee within 30 days of the date of hire or by the first pay period of the month following hire, and the public employer shall also provide the exclusive representative with a list of that information for all employees in the bargaining unit at least every 120 days unless more frequent or more detailed lists are required by an agreement with the exclusive representative. The information identified in this section shall be provided to the exclusive representative regardless of whether the newly hired public employee was previously employed by the public employer. The information under this section shall be provided in a manner consistent with Section 6254.3 and in a manner consistent with Section 6207 for a participant in the address confidentiality program established pursuant to Chapter 3.1 (commencing with Section 6205) of Division 7. The provision of information under this section shall be consistent with the employee privacy requirements described *in County of Los Angeles v. Los Angeles County Employee Relations Com.* (2013) 56 Cal.4th 905. This section does not preclude a public employer and exclusive representative from agreeing to a different interval within which the public employer provides the exclusive representative with the name, job title, department, work location, work, home, and personal cellular telephone numbers, personal email addresses, and home address of any newly hired employee or member of the bargaining unit.

**Government Code section 3559.**

The provisions of this chapter are severable. If any provision of this chapter or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.