

BAY AREA CHAPTER MEETING

TUESDAY, MAY 15, 2018

Meeting Agenda

8:30 – 9:00 Registration and Networking Breakfast

9:00 - 9:15 Welcome

9:15 - 10:15 Reducing the Risk of Costly Disability Discrimination Claims

Recommendations for Employer Best Practices

Presenter: Bernadette M. O'Brien, SPHR/SHRM-SCP, Floyd, Skeren & Kelly, LLP

When an employee is injured, all California employers must comply with workers' compensation laws, and all employers with five or more employees must comply with the overlapping disability discrimination laws under the Fair Employment and Housing Act (FEHA), which are likely triggered when an employee sustains a work-related injury. Failure to understand the employer's obligations under both sets of laws can turn a straightforward workers' compensation case into a FEHA lawsuit. And, the number of disability discrimination lawsuits filed in California continues to skyrocket. California employers must therefore understand their obligations under both workers' compensation law and the FEHA.

Key Topics Will Include: •Case law and legislative update; •Strategies for preventing work comp cases from evolving into costly FEHA lawsuits; •Best practices for complying with FEHA in workers' compensation cases; •What to expect (and do) if a work case becomes a FEHA disability discrimination lawsuit; •What are an employer's interactive process obligations in work comp cases? •What accommodations are required? •Multiple medical opinions on restrictions-which one may an employer rely on?



Bernadette M. O'Brien is a partner at Floyd, Skeren & Kelly, LLP and is a certified SPHR/SHRM-SCP Human Resources Executive. Ms. O'Brien serves as general counsel and executive advisor to the law firm's Human Resources (HR) Department and is managing attorney of the firm's employment law department. She is a published author, distinguished speaker, and website content developer.

Ms. O'Brien has been a speaker on a variety of employment law topics for numerous organizations including CalPelra, CWC, Ag-Safe, EAC, Northern California Workers' Comp Forum, Intercare, National Interstate Insurance, CASBO, PIHRA, Strafford Webinars and the Employer's Fraud Task Force. You can reach Bernadette O'Brien at bernadette.obrien@fsklaw.com, (818) 206-9222, or (916) 838-3332

10:15-10:30 Break/Announcements/Networking

10:30-11:30 HOT TOPICS: Workers' Comp and Liability Claims

Presenters: Keith Epstein, Atty. and Christina Forst, Atty.

- Big Oak Flat-Groveland Unified School District v. Superior Court of Tuolumne County; Jane Joe (tort claims presentation)
- City of Jackson vs WCAB (Rice) (2017) – Apportionment to genetics
- The Regents of the University of California v. Superior Court (Los Angeles) (duty of care to protect students)
- Hikida vs WCAB (2017) – Disability caused by bad treatment results
- Arvizu v. City of Pasadena (trail immunity)
- Morgan vs Saint Mary's Medical Center (2018) - vocational based permanent disability

BAY AREA CHAPTER MEETING

TUESDAY, MAY 15, 2018

Big Oak Flat-Groveland Unified School District v. Superior Court of Tuolumne County; Jane Joe – Childhood sexual molestation/abuse claims are exempted from the claim presentation requirement of the California Government Tort Claims Act under Government code section 905. However, local entities are permitted to impose their own claim presentation requirements under Government Code section 935.

City of Jackson vs WCAB (Rice) (2017) – Apportionment allowed to genetics and heredity: this 2017 case was a victory for the defense, as the court allowed doctors to apportion away permanent disability that the reporting physicians feel is caused by pre-existing genetics and heredity

The Regents of the University of California v. Superior Court (Los Angeles) – The special relationship between a college/university and its students establishes a duty that the university owes to students to protect them from foreseeable violence during curricular activities.

Hikida vs WCAB (2017): Disability caused by bad treatment results. The Court of Appeals in a published decision has ruled that if treatment for the work injury causes a new and different injury, that the injured worker is entitled to recover workers' compensation permanent disability for that new injury.

Arvizu v. City of Pasadena – Plaintiff was going "ghost hunting" with his friends and took a short cut to reach a trail. While taking a shortcut to the trail, Plaintiff lost his footing, careened across the trail, and fell over the wall. He sustained devastating personal injuries. The City of Pasadena asserted trail immunity under Government Code section 831.4(b). The court rejected any contention that trail immunity does not apply because the injury occurred outside the immediate confines of the trail.

Morgan vs Saint Mary's Medical Center (2018) – Vocational Evaluation Expert Reports are Admissible to Rebut DFEC for Injuries Post 1/1/2013 – LC 4660 was amended in 2012 to provide that for injuries after 01/01/2013, the factors to be considered in determining permanent disability did not include the "diminished ability of such injured employee to compete in an open labor market". There is now a 2018 board level findings and award that states that vocational evaluation expert reports are admissible, despite the 2012 amendment to LC 4660.



Keith A. Epstein has been practicing law for more than thirty years. He has practiced for more than 20 years with Hanna Brophy in the Oakland office, and he is a certified specialist in workers' compensation.

Many of Keith's cases involve the defense of public entities. He works directly with risk managers and third-party administrators as he defends the Firm's clients in all aspects of workers' compensation. He does an extensive amount of public speaking, educating insurance carriers, third party administrators and public entities on workers compensation and discrimination laws, and has presented the Workers Compensation Legal Update for the PARMA annual conference for the past 14 years.

Christina Forst is an attorney with the law firm Allen, Glaessner, Hazelwood and Werth. Her practice focuses on public entities defense. She is admitted to practice in California as well as in the United States District Court for the Central and Eastern Districts of California. Ms. Forst is a graduate of Pacific McGeorge School of Law and Santa Clara University.

Ms. Forst has represented a wide variety of clients on various issues, including dangerous condition of public property under Government Code section 835 and under multiple governmental statutory immunities.



Date: Tuesday, May 15, 2018

Time: 8:30 a.m.-11:30 a.m.

Location: Paradise Valley Golf Course

3990 Paradise Valley Drive, Fairfield



Please RSVP by 5/8/18 to Heather Davidson at HeatherD@nbsia.org

Cost: Public Agency Members are FREE/Associates \$25 (*this can be paid in advance or at the door*)

For questions, please contact Chapter Chair Steve Schwarz at sschwarz@fremont.gov

PAYMENT OPTIONS

If paying by check, please mail check made payable to PARMA and mail to:

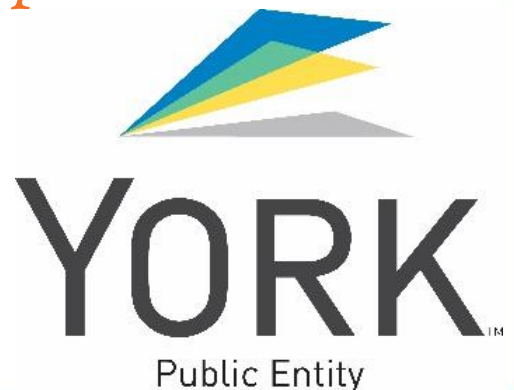
Heather Davidson
North Bay Schools Insurance Authority
380A Chadbourne Road, Fairfield, CA 94534

Credit Card # _____

Exp. Date _____ Billing Zip Code _____ CCV# _____

Signature: _____

Special thanks to our sponsors:

The logo for Hanna Brophy, featuring a stylized blue and green 'H' followed by the name "HANNA BROPHY" in black capital letters.The logo for York Public Entity, featuring a stylized blue and yellow graphic above the word "YORK" in large black capital letters, with "Public Entity" in smaller black text below it.