



# Update

## HOW PROPER DOCUMENTATION CAN PROTECT YOU

By: Dylan de Wit



Dylan de Wit

The first things employment lawyers seek from their clients are the employee's personnel file and any supporting documents. For attorneys, documents are worth their weight in gold, and often-times valued more highly than witness testimony. This is because memories fade and are fallible. Documents generated at or near the time of an event are the best way to chronicle an employee's tenure with an organization and provide a solid shield when defending an employment claim. Conversely, it is equally important to recognize that the lack of documentation makes an employment claim very difficult to defend.

### What Should You Document?

Although the types of documents you maintain may vary, most employment lawyers will request a copy of your employee's personnel file, and more specifically request performance evaluations and any warnings issued to the employee.

#### Performance Evaluations

Performance evaluations are invaluable to your attorney if they are prepared consistently, honestly, accurately, and

with adequate detail. Well-written and honest performance evaluations give the reader a holistic understanding of the employee's performance, placing the organization in the best position to defend against the employee's claims.

To create an *honest* evaluation, supervisors need to take a realistic view of their employee's performance. All too often, supervisors gloss over an employee's deficiencies to avoid hurt feelings or avoid tension in the workplace. However, failing to document performance issues leaves the employer vulnerable to claims of unlawful ulterior motives for future disciplinary actions.

Evaluations should also include a section for the employee to sign to acknowledge receipt. Some entities take it further and provide check boxes for the employee to either: (1) approve the evaluation; (2) refuse to sign; and/or (3) include a response. By including a "refuse to sign" box but still requesting a separate signature to acknowledge receipt, the evaluation verifies that the employee received the evaluation and had the opportunity to respond.

In cases where the employee refuses

to sign, it is best to document the employee's refusal and

immediately email the evaluation to the employee. By keeping a copy of the email, you can unequivocally confirm that the employee received a copy of their evaluation.

#### Warnings

All warnings - including written and verbal warnings - should be documented. Some supervisors may feel verbal warnings or conversations about performance are inconsequential and unworthy of being preserved. However, in the event of a lawsuit brought by an employee, well-detailed, consistent verbal warnings can play a major role in successfully defending the case, as it shows the employee was counseled about their deficiencies before corrective action was taken.

Like performance evaluations, written warnings should include a place for the employee to sign and date to

*(Continued on page 5)*

### In this issue of the *Update*:

Page	
1	How Proper Documentation Can Protect You
3	2022 Legislative Update
7	PCA President's Award
9	Let it Snow!
11	From the President—Cheryl Smith
15	Endowment Care—New Laws
17	Employees' Salaries & Names
19	"Ask Bob" - Vacant Trustee Positions

*(Please let us know if you have particular issues or questions you would like to see addressed in a future edition of the Update.)*

## **ANNOUNCING!**

### PCA REGION ONE SEMINAR

**APRIL 27, 2022**

*Hosted by:*

**SOUTH SHASTA  
CEMETERY DISTRICT  
COTTONWOOD, CA**



### **Sandra Hedstrom Wheeler**

Vice President/Investments

**(805) 783-2921**

**(877) 816-1231** Toll-free

**sandra.wheeler@stifel.com**

**www.sandrahedstromwheeler.com**

4460 Broad Street, Suite 210  
San Luis Obispo, California 93401

# STIFEL

## **SPECIAL DISTRICTS HAVE SPECIAL NEEDS**

Over the years, I have developed a niche market, providing advisory services for over 36 cemetery endowments and preneed funds in California.

At Stifel, we have established ourselves as one of the nation's leading wealth management and investment banking firms. With more than 400 offices across the nation, our philosophy on investing is grounded on a more than 130-year-old tradition of trust, understanding, and solid, studied advice. Established in 1890, our company provides a comprehensive portfolio of financial services designed to address the varied needs of a broad range of investors. We believe in strong individual relationships that stand the test of time.

# 2022 Legislative Update

*by Derek J. Haynes, Partner  
Porter Scott Attorneys*



**Derek Haynes**

With the new year comes new laws that will impact public agencies moving forward. As is often the case, most of the new laws are in the areas of employment management and litigation. This article highlights some of the most important developments.

## **Assembly Bill 1033 - Expanding CFRA**

Under the California Family Rights Act (CFRA), employers with 5 or more employees must grant employees up to 12 weeks of job protected leave to bond with a new child, care for a serious medical condition, or care for the serious medical condition of a family member.

Prior to the adoption of AB 1033, an employee could only take leave to care for a family member if the family member was the employee's parent, child, spouse, registered domestic partner, grandparent, grandchild or siblings. AB 1033 now expands the law so that employees can also take up to 12 weeks of leave to care for a parent-in-law who is suffering from a serious medical condition. Employers should update their

policies and practices to reflect this change.

## **Senate Bill 657 - Electronic Posting**

Employers are required to physically post certain employee notices at their worksites. The most common example is the Equal Employment Opportunity poster that employers typically post in break rooms.

With more employees working remotely, the Legislature adopted SB 657, which now allows employers to distribute the information electronically. The new law provides that employers may distribute any required notices by attaching the notices to emails sent to their employees. Employers are still required to physically post the notices at their worksites. The new law simply allows employers to also send the notices electronically, primarily for employees who work remotely.

The best practice is to physically post the notices and email them to all employees even if you do not anticipate

them working remotely.

## **Senate Bill 807 - Record Retention**

The Government Code requires that employers preserve copies of application and personnel records. Prior to the adoption of SB 807, employers were required to maintain those records for two years. SB 807 now extends that obligation to four years.

The law specifically states that employers must preserve the records for a minimum of four years after the records are initially created or received. Once an individual's employment ends, the employer must then preserve any existing records for another four years after the employment relationship ends.

## **Senate Bill 331 - Silenced No More Act**

Employers occasionally decide to settle employment cases. When that

*(Continued on page 13)*

A combined 30 years of experience in cemetery and commercial risk management.

Pre-Need Cemetery Funding

General Liability / Errors & Omissions

Group Health/Ancillary Benefits

Commercial Property / Auto / Umbrella

Medicare / Life Insurance



**MODERN EDGE**  
INSURANCE BROKERS, INC.

525 West Main St. Suite 130  
Visalia, CA 93291  
(559) 713-6130  
modern-edge.net



# ASCO PACIFIC

## "One Call Does It All"

Your Distributor for  
Cemetery · Mausoleum · Crematory · Funeral Home Needs

800-521-1112 · Fax 310-534-0574

[www.ascopacific.com](http://www.ascopacific.com)



# Insurance services you can count on.

## You deserve a Risk Pool that puts you first.

You need insurance services to protect your employees, property and the public you serve. We understand when you choose an insurance team, it is a long-term commitment built on a foundation of trust between you and your insurer.

Your organization's success means finding financial stability through individualized insurance that offers in-house claims, personalized service, and an experienced team on your side.

Our team of cemetery insurance professionals are committed to providing:

- Personalized, on-site services
- Cemetery-specific regional trainings and risk control services
- Broad coverage at a competitive price

### Contact your trusted advisor today!

Jennifer Peters  
memberservices@gsrma.org  
530.934.5633  
[gsrma.org/pca-cemetery](https://gsrma.org/pca-cemetery)



## HOW PROPER DOCUMENTATION CAN PROTECT YOU

*(Continued from page 1)*

acknowledge receipt and give the employee an opportunity to respond.

### What Should Documentation Include?

When documenting issues for employment matters, the key is to provide as much information as necessary so the author can recall the event at a later date, and so a person completely unrelated to the entity - like your lawyer - can understand what was going on at the time. Although typed documents are preferred, handwritten documents are acceptable so long as they are clearly legible. Always date the document and, if the situation warrants it, include the time. Identify any witnesses, and if possible, secure written statements from those witnesses as well.

Steer clear of personal attacks; stick to the facts. Include quotes from the participants, if appropriate, but avoid commentary like "Eddie Employee is a jerk." A better description would be to say, "two co-workers, Carrie Coworker and Carl Colleague, complained that Eddie Employee called them 'old timers.'"

### When You Should Document?

The most effective documentation is made at or close in time to the events in question. This minimizes memory gaps and provides the most accurate account. Additionally, contemporaneous documentation bolsters the report-writer's credibility.

### Conclusion

Protecting your organization from liability begins on day one. Employers with the strongest defenses have consistent, detailed, and contemporaneous documents that allow an unrelated third party to understand the issue at hand. If you have questions about what, when, or how to document an employee situation, contact your employment lawyer immediately.

*Dylan de Wit, is an Associate Attorney with Porter Scott. Dylan can be reached at [ddewit@porterscott.com](mailto:ddewit@porterscott.com), or 916-929-1481.*



BB&K helps California's **public cemetery districts** by delivering effective, timely and service-oriented solutions to the complex legal issues they face. This includes comprehensive guidance on **labor and employment** issues, including employee and retirement benefits. BB&K also helps public agencies navigate **Public Records Act** compliance with our new Advanced Records Center. To learn more, email [ARC@bbklaw.com](mailto:ARC@bbklaw.com).



**BEST BEST & KRIEGER** LLP  
ATTORNEYS AT LAW



Offices throughout California and in Washington, D.C.

[www.BBKlaw.com](http://www.BBKlaw.com)



# BAKER SUPPLIES AND REPAIRS

WE HAVE BEEN A FAMILY RUN BUSINESS SINCE 1993. WE SELL AND REPAIR ALL OUTDOOR POWER EQUIPMENT. WE STRIVE TO GIVE YOU THE BEST CUSTOMER SERVICE. WE CAN PICK UP AND DELIVER, MAKING YOUR JOB A LITTLE BIT EASIER.

WE HAVE THREE LOCATIONS TO BETTER SERVE YOU.

1576 E PACHECO BLVD. LOS BANOS, CA 93635

209-827-9252

281 SAN FELIPE D STE.E HOLLISTER, CA 95023

831-265-7868

2913 GIBSON ST. BAKERSFIELD, CA 93308

661-370-5929



OUR TRAVELING SALES REPS.

SERVING NORTHERN CALIFORNIA, TODD.  
831.261.7259

SERVING CENTRAL CALIFORNIA AND BAY AREA, NICOLE. 831.524.2937

SERVING CENTRAL CALIFORNIA AND SOUTHERN CALIFORNIA, TERRY.  
209.704.8809



# PCA President's Award

After repeated pandemic delays over the past two years, President Cheryl Smith was finally able to present the 2021 PCA President's Award to Cindy Summers, District Manager at Visalia Cemetery District.

In selecting Cindy for the award, Cheryl said that Cindy has contributed tremendously to the Public Cemetery Alliance and to public cemetery districts in general. Without any prior cemetery experience Cindy stepped in as Manager at Visalia and capably dealt with a number of extraordinary situations. She quickly earned the respect of her Board and many other Districts for her willingness to dig in and learn about our industry. She has become a valuable resource for many new district managers across the region. Most recently, Cindy is helping the Woodlake Cemetery District with its myriad problems and issues.

Despite everything else on her plate, Cindy was elected as a PCA Director. She has been invaluable on the Board, serving as Vice President and Secretary. She brings her years of business experience to the table, and always has fresh ideas. Her commitment to the PCA has helped the organization grow and offer more to its members.

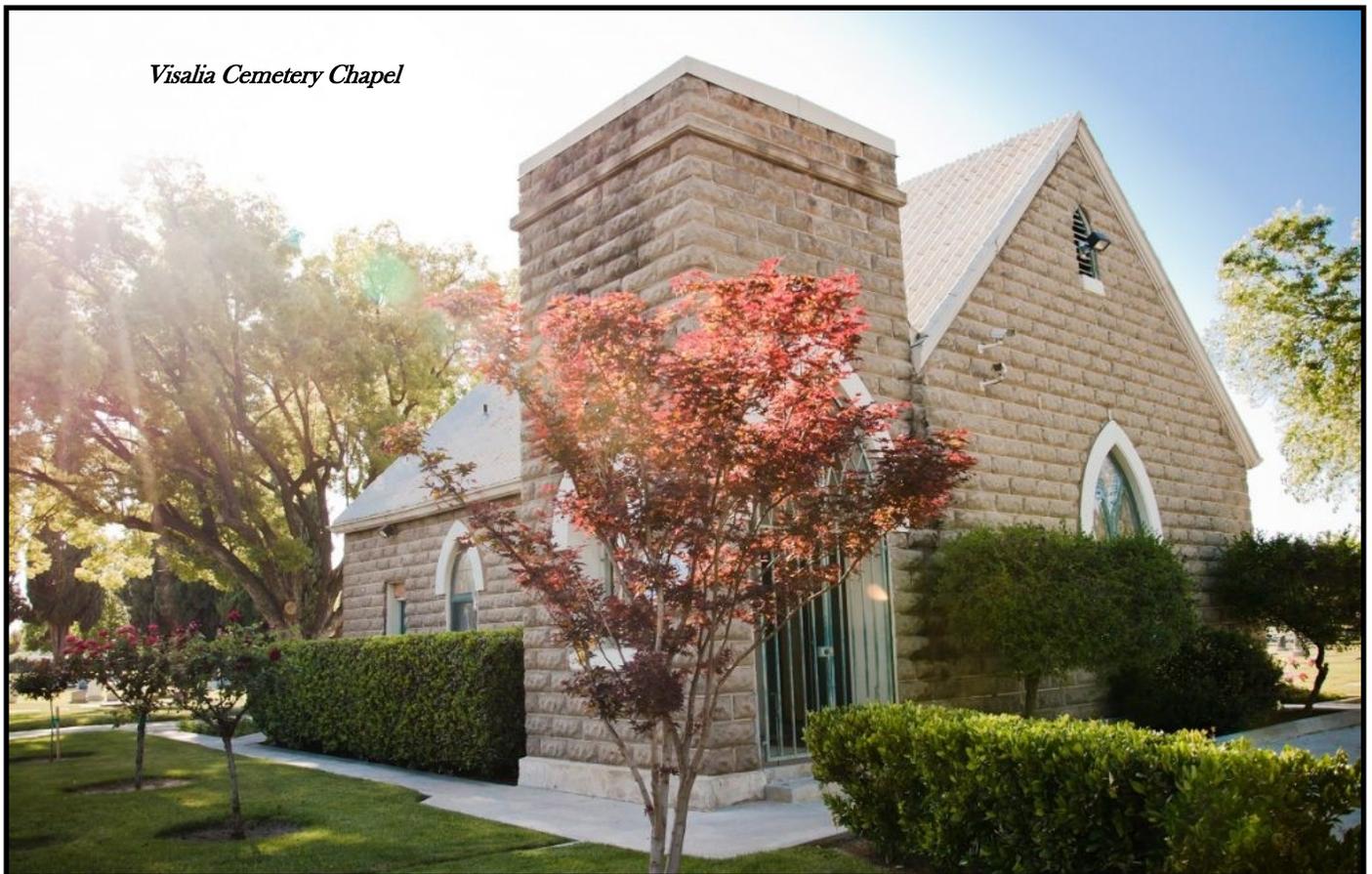
In 2021 Cindy volunteered to host the PCA's first regional seminar—the Region 9 Seminar. Again, as we have come to expect of Cindy, she made arrangements for nearly everything—morning coffee and pastries, box lunches, beverages throughout the day, tables and chairs, and on and on. She contacted and brought in vendors that were previously unfamiliar with the PCA, helping to bring in over 16 vendors attending the Seminar. As if that wasn't enough, she prepared and presented a 1 1/2 hour presentation. Despite several COVID postponements, the Seminar finally went off without a hitch on April 6th.

Cindy's selection to receive the 2021 PCA President's Award is well deserved—



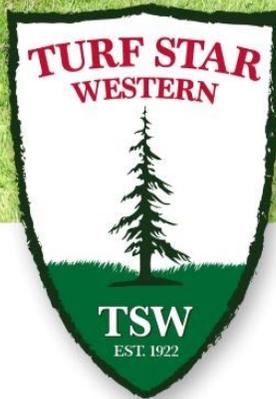
**CONGRATULATIONS, CINDY!**

*Visalia Cemetery Chapel*



# Introducing the New Toro Proline H800

A Direct Collect Rotary Mower with High-Lift Dump Mechanism



**800-585-8001**

Six California Locations to Serve You

[www.turfstar.com](http://www.turfstar.com)

Hayward • Rancho Cordova • Fresno • Brea • Vista • Bermuda Dunes

# LET IT SNOW!

By Adria Nkala

## *Let it Snow! Maintaining Old Equipment is the Key!*

It's now April, and California is in the midst of a terrible drought and facing a brutal summer. Who can remember December?

Yet December saw record-breaking snowfall in the Tahoe area. The last snowstorm of the month pushed December 2021 to the record as the snowiest December ever with more than 202 inches falling!

Happy Homestead Cemetery, nestled along a meadow amid the towering pines in beautiful South Lake Tahoe, has seen its fair share of snowfall over the years. I believe we are the only high-country California cemetery district that operates and interments remains year-round.



Jeff Hobby

Happy Homestead is a small district with a District Manager, a full time Grounds Foreman, and a Summer seasonal Groundskeeper. We serve not only the families of South Lake Tahoe and eastern El Dorado County, we also serve the Nevada communities around the eastern and southern side of Lake Tahoe.

Back-to-back snowstorms like we experienced in December present special challenges. It is very important to clear the property and niche structures immediately after each storm, and sometimes even during the snowstorms. Because we get so much snow it can be overwhelming and allowing it to build up can shut down access until Spring. Not only must we clear the snow, we have to be careful not to damage paved roadways, walkways, and niche structures. It is a lot of work to keep the property open, safe, and clean during and after these massive storms.

Our Grounds Foreman, Jeff Hobby, worked tirelessly to keep the cemetery cleared and open. We were even able to conduct a full casket burial surrounded by 5 standing feet of snow covering most of the cemetery. As a small district with limited resources, much of our equipment has been around for a very long time. Maintaining this aging machinery is of upmost importance and made even moreso in an area with a Winter climate like South Lake Tahoe.



Adria Nkala

Jeff has been with our District for 5 years and has done an exceptional job of maintaining our equipment. For snow removal we use a Trackless MT5 with a Pronovost P740-60" Snow Blower attachment and extra turf tires. It was purchased in 2000 and still runs like a charm. Good, regular maintenance is absolutely essential—doing so reduces wear on the equipment, reduces future costs, and will keep it running well for longer.

Jeff saw the fruits of his labor during the last and biggest storm of the month as "Ole Betsy" cut right through all the snow, creating a beautiful snow maze for families and friends to come to the Happy Homestead Cemetery to remember their loved ones during the Holiday Season.

*Adria is the District Manager at the Happy Homestead Cemetery in South Lake Tahoe. She can be reached at: h.dist@att.net or 530-541.7070.*





# COLE | HUBER<sub>LLP</sub>

ATTORNEYS

ADVANCING YOUR AGENDA



Cole Huber LLP provides cost-effective and efficient advice on the full spectrum of laws affecting cemetery districts throughout California. Our firm was founded on a commitment to excellence. Our attorneys are accessible, engaged, and knowledgeable about the unique matters facing public cemeteries. The firm's motto, "Advancing Your Agenda," is more than just a tagline; *it's what we do.*

[colehuber.com](http://colehuber.com)

## FROM THE PRESIDENT

BY CHERYL SMITH, PRESIDENT



Spring is here and the PCA has been on the move!

It started on March 16, with our Equipment Show hosted by the Roseville Cemetery District. Mark Marshall from Golden State Risk Management presented Heat Illness & Prevention training.

This was an *Equipment Show* and our vendor's brought truckloads of equipment to view and test, including the new battery operated equipment brought in by Mean Green and DRPower. We are fortunate to have vendors that generously support the PCA and sponsor our events. At the Equipment Show GSRMA and Pape' Machinery were Gold Sponsors, Silver Sponsors included Cordeiro Vault Co. and Citrus Heights Saw & Mower. Other exhibitors were Baker Supplies & Repairs, Cemetery360.com, Exmark Mfg., Grasshopper Mowers, Mean Green, PriorityWest Lowering Devices, Sprinkler Service & Supply, Sunbelt Rentals, Toro, Whited Cemetery Service and Wilbur-Ellis.

The afternoon included a Corn Hole tournament, which came down to a nail biting finish. Ronnie Sheffield and Jacob Johnson from Sutter Cemetery District won and received \$100.00 dollars, while James Hamilton and Kelly Ehrman from Roseville Cemetery District finished second and won \$50.00.

After a couple of 2021 pandemic postponements, the first PCA Region Nine Seminar, hosted by the Visalia Cemetery District, finally got underway on April 6,

2022. It was attended by over 110 people. The morning started off with a welcome by Visalia Manager Cindy Summers.

The first classes started at 9:15; topics included "A-Z Measuring, Marking, Verification & Digging" by Will Lopez, "Making Interment Arrangements" by Cindy Summers, and "Evaluations, Discipline & Documentation" by Bob Hunt.

Other sessions throughout the day included "Budgeting, Audits & Financial Controls" by Cindy Summers, and attorney Karen O'Neil discussed "Brown Act Closed Sessions & AB992 (social media)". The outside crew were given tips on controlling gophers, squirrels and mosquitos by Matt Melugin and Will Lopez. Ron Greenlee gave a tour of the cemetery, and Mark Marshall finished off the day talking about Customer Service.

Thank you to GSRMA, our Diamond Sponsor, and Gold Sponsors Baker Supplies & Repairs, Modern Edge Insurance, Stifel, Zero-Nox, Garcia's Lowering Devices, Cal Turf and Polyguard.

If you have never been to Visalia's Cemetery, you need to plan a trip. The grounds crew and office staff produce a well organized and maintained operation. Kudos to the entire Visalia team for putting on such a smashing event!

PCA's next Seminar, Region One, is set for Wednesday, April 27, 2022, beginning at 8:00-9:00 a.m. with coffee and pastries. This Seminar is hosted by the

new South Shasta Cemetery District, the result of consolidating the Cottonwood and Anderson Cemetery Districts.

A whole range of topics will be covered, including grave digging procedures with Dusty Lewis, and Arnie Brinton will talk about district consolidations to start the day. The morning will continue with Mark Velasquez discussing "DIR Construction Project Requirements and Minimum Wages", "Cyber Security" with Brian Edinger, and Matt Melugin talking about outside pest management. Afternoon topics include Bob Hunt discussing Brown Act Closed Sessions, and Mark Marshall addressing Customer Service. A couple of general Q&A sessions will end the day.

*Cheryl*

Contact Cheryl at:

530-533-2920 or  
[oroville.district@att.net](mailto:oroville.district@att.net)





# EXPERIENCE PEACE OF MIND

GROUNDS EQUIPMENT   PARTS, SERVICE & SUPPLIES   T&O INPUTS

Being a grounds supervisor is stressful because your work is always on display. When you partner with Cal Turf, you can relax knowing we'll supply you and your team with everything you need to keep your green spaces beautiful—and your bosses impressed.



We don't think comfort should be compromised. Exmark has taken comfort to a whole new level, becoming experts in the game changing science of ergonomics. The Lazer Z seating system provides vertical and lateral motion, driving the development of mower comfort.

Most utility carts are not built with work in mind. Columbia Vehicles are designed for work and are have been built in the USA for over 70 years. Experience the custom solutions Columbia has to offer by scheduling a fleet walk through with your Cal Turf representative.



## CALIFORNIA TURF EQUIPMENT & SUPPLY, INC

VISIT OUR TULARE, CA LOCATION

**956 N "J" TULARE**

PARTS & SALES DESK

**559.688.2505**

SINCE

**1984**

# 2022 Legislative Update

(Continued from page 3)

happens, employers often want the settlement agreement to include a confidentiality provision that prohibits the employee who filed the legal action from publicizing what the employer views as the employee's baseless allegations.

The ability to secure that confidentiality has been limited over the last several years as the Legislature adopted a series of laws designed to prohibit "victim silencing." The Legislature has now expanded those protections further with the adoption of SB 331, which is known as the Silenced No More Act.

Over the last couple of years the Legislature adopted statutes that prohibit settlement agreements from precluding the disclosure of factual information regarding sexual harassment, sexual assault, workplace sexual harassment, workplace sexual discrimination and retaliation for reporting sexual harassment or discrimination.

With the adoption of SB 331, those protections now go beyond *sexual* harassment and *sexual* discrimination. Settlement agreements are now prohibited from precluding the disclosure of factual information relating to all forms of harassment, all forms of discrimination and retaliation for reporting all forms of harassment and discrimination.

The practical impact of the new law is that employers can no longer insist that employees and former employees refrain from disclosing allegations of harassment, discrimination or retaliation as a condition of settlement.

## Whistleblower Retaliation - Summary Judgment Standard

Whistleblower retaliation lawsuits have been on the rise over the last few years. A new decision from the California Supreme Court will now make those lawsuits even more difficult for employers to defend.

The whistleblower retaliation statute, Labor Code § 1102.5, prohibits employers from retaliating against employees for reporting or complaining about suspected unlawful conduct.

Employers facing whistleblower retaliation lawsuits often file motions for summary judgment/adjudication, which allow judges to dismiss the lawsuits before they go to a jury. For years, the law has been clear regarding what evidentiary showing governs motions for summary judgment/adjudication in whistleblower retaliation cases. The initial burden is on the employee-plaintiffs to establish a prima facie case of retaliation. That generally requires that they submit evidence establishing: (1) they complained about conduct that they reasonable believed was unlawful; (2) they thereafter suffered an adverse employment action; and (3) there is some evidence indicating a causal connection between their complaint and the adverse employment action. If the employee-plaintiffs meet that burden then the burden shifts to the employer to articulate a legitimate reason for subjecting the plaintiff-employees to an adverse employment action. The burden then shifts back to the



plaintiff-employees to submit evidence proving the explanation offered by the employer is merely pretext and the adverse employment action was actually motivated by retaliatory animus.

The California Supreme Court in *Lawson v. PPG Architectural Finishes* rejected that approach. The Court announced a significantly higher burden on employers to secure summary judgment/adjudication. Specifically, the Court held that employee-plaintiffs need only show that their complaints contributed in some way to an adverse employment action. The burden then shifts to the employers to prove by "clear and convincing evidence" that they would have subjected the plaintiff-employees to the adverse employment actions even if the plaintiff-employees had not complained.

Imposing such a heightened standard on employers will make it even more difficult for employers to prevail on motions for summary judgment/adjudication and secure dismissals before whistleblower retaliation cases are decided by juries.

Derek is a Partner at the Porter Scott law firm. He can be reached at:

916-929-1481, or  
dhaynes@porterscott.com

Articles in this issue of the *Update* are for informational purposes only and not for the purpose of providing legal advice. You should contact your attorney to obtain advice with respect to any particular issue or problem. Use of any information contained in these articles does not create an attorney-client relationship between the reader and any attorney or author.

keep it clean.



throw clippings  
out back

Evenly Controlled  
Dispersion Field



4XRD decks provide a level, uniform cut while evenly distributing clippings behind the mower. Shields channel clippings out back and **keep debris away from headstones**, the operator and the engine. Users **save time** by trimming with both sides of the deck.

Learn more at [Grasshopper4XRD.com](http://Grasshopper4XRD.com)

**GRASSHOPPERMOWER.COM**  
LOCATE YOUR NEAREST DEALER



Committed to the Cut.®

# ENDOWMENT CARE: NEW LAWS

*By Bob Hunt*

Are you aware of the changes to required endowment care contributions? In 2021 the Legislature enacted significant changes—instead of contributions being based on the size of a plot, or per niche, contributions now must be based on the purchase “price,” except for scattering. The Legislature enacted three separate versions, the first being effective only through 2022, the second is effective through 2023, and the third becoming January 1, 2024.

Although these changes appear in Health & Safety Code section 8738, the part of the law governing private cemeteries, it is important to remember why these changes matter to you. They matter because Section 9065, which applies to our public cemetery districts, incorporates Section 8738. It appears there was little thought given to how they might impact public cemetery districts.

Health & Safety Code section 9065 provides that:

*The board of trustees shall require a payment into the endowment care fund for each interment right sold. The amount of the payment shall be not less than the minimum amounts set by Section 8738.*

The new versions of Section 8738 are below. Every district should review price lists are updated them accordingly.

## **The First:**

*(Effective January 1, 2022. Repealed as of January 1, 2023.)*

8738. (a) For purposes of this section, “net price” means the retail price less any discounts the cemetery provides to consumers for the purchase of an interment space.

(b) An endowment care cemetery is one which has deposited in its endowment care fund the minimum amounts heretofore required by law and shall hereafter have deposited in its endowment care fund at the time of or not later than completion of the initial sale not less than the following amounts for plots sold or disposed of:

(1) Either 3 percent of net price or one hundred fifty dollars (\$150), whichever is greater, with a required deposit not to exceed three thousand dollars (\$3,000), for each grave.

(2) Either 3 percent of net price or seventy-five dollars (\$75), whichever is greater, with a required deposit not to exceed three thousand dollars (\$3,000), for each niche.

(3) Either 3 percent of net price or one hundred fifty dollars (\$150), whichever is greater, with a required deposit not to exceed three thousand dollars (\$3,000), for each crypt.

(4) Either 3 percent of net price or seventy-five dollars (\$75), whichever is greater, for the cremated or hydrolyzed remains of each deceased person scattered in the cemetery at a garden or designated open area that is not an interment site subject to paragraph (1).

(c) This section shall remain in effect only until January 1, 2023, and as of that date is repealed.

## **The Second:**

*(Effective January 1, 2023. Repealed as of January 1, 2024.)*

8738. (a) For purposes of this section, “net price” means the retail price less any discounts the cemetery provides to consumers for the purchase of an interment space.

(b) An endowment care cemetery is one which has deposited in its endowment care fund the minimum amounts heretofore required by law and shall hereafter have deposited in its endowment care fund at the time of or not later than completion of the initial sale not less than the following amounts for plots sold or disposed of:

(1) Either 6 percent of net price or two hundred dollars (\$200), whichever is greater, with a required deposit not to exceed six thousand dollars (\$6,000), for each grave.

(2) Either 6 percent of net price or one hundred dollars (\$100), whichever is greater, with a required deposit not to exceed six thousand dollars (\$6,000), for each niche.

(3) Either 6 percent of net price or two hundred dollars (\$200), whichever is greater, with a required deposit not to exceed six thousand dollars (\$6,000), for each crypt.

(4) Either 6 percent of net price or one hundred dollars (\$100), whichever is greater, for the cremated or hydrolyzed remains of each deceased person scattered in the cemetery at a garden or designated open area that is not an interment site subject to paragraph (1).

(c) This section shall become operative on

January 1, 2023.

(d) This section shall remain in effect only until January 1, 2024, and as of that date is repealed.

## **The Third:**

*(Effective January 1, 2024 and thereafter.)*

8738. (a) For purposes of this section, “net price” means the retail price less any discounts the cemetery provides to consumers for the purchase of an interment space.

(b) An endowment care cemetery is one which has deposited in its endowment care fund the minimum amounts heretofore required by law and shall hereafter have deposited in its endowment care fund at the time of or not later than completion of the initial sale not less than the following amounts for plots sold or disposed of:

(1) Either 10 percent of net price or two hundred fifty dollars (\$250), whichever is greater, with a required deposit not to exceed ten thousand dollars (\$10,000), for each grave.

(2) Either 10 percent of net price or one hundred fifty dollars (\$150), whichever is greater, with a required deposit not to exceed ten thousand dollars (\$10,000), for each niche.

(3) Either 10 percent of net price or two hundred fifty dollars (\$250), whichever is greater, with a required deposit not to exceed ten thousand dollars (\$10,000), for each crypt.

(4) Either 10 percent of net price or one hundred fifty dollars (\$150), whichever is greater, for the cremated or hydrolyzed remains of each deceased person scattered in the cemetery at a garden or designated open area that is not an interment site subject to paragraph (1).

(c) This section shall become operative on January 1, 2024.

Districts still have the option of assessing endowment care contributions in excess of those specified in Section 8738, and we encourage you to do so. Review your price lists and update them accordingly.

Copyright © 2022 by the Public Cemetery Alliance. No part of this publication may be used or reproduced in any manner whatsoever without written permission of the PCA.



# STREAMLINE

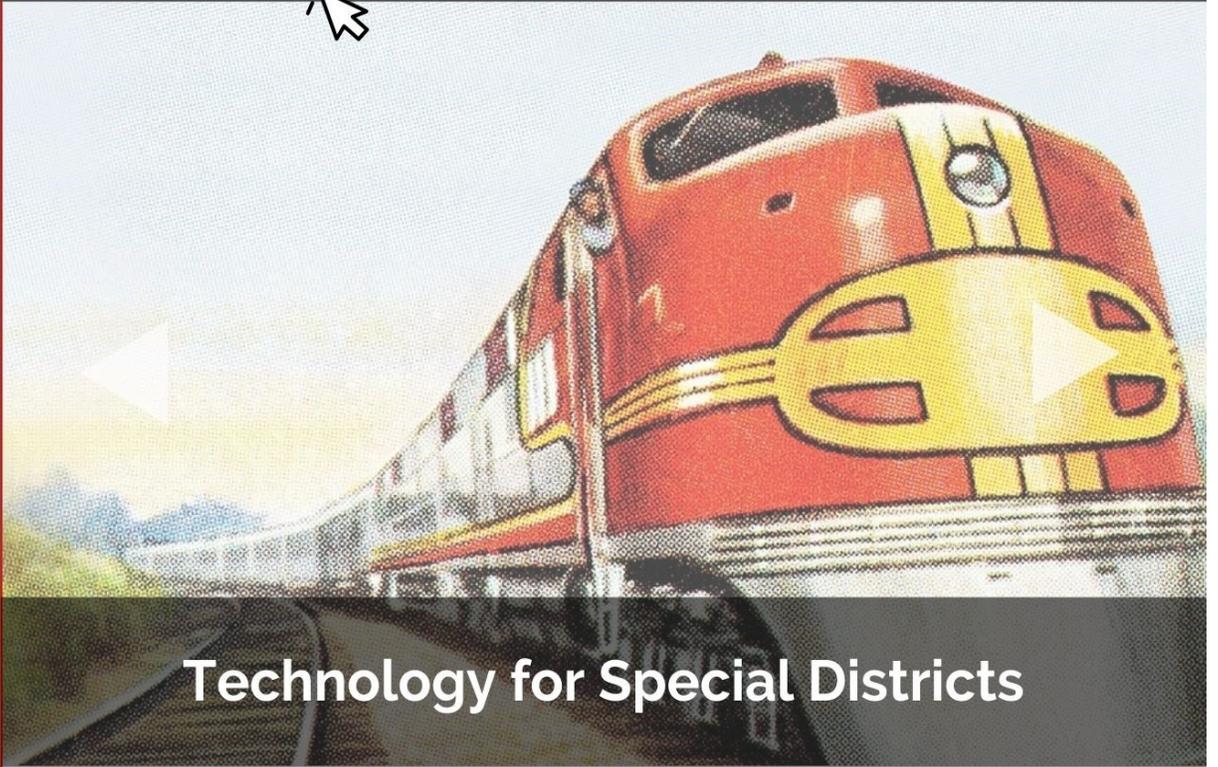


Technology

Resources

Education

About Us



## Technology for Special Districts



**Web**



**Engage**



**Portal**



**Payments**

Streamline's **Special District Platform** has the tools you need for transparency, accessibility, compliance, website content management, email marketing, online payments, and more... easy-to-use & all in one place.

**Email [annelise@getstreamline.com](mailto:annelise@getstreamline.com) to get your first 3 months free!**

COPYRIGHT © 2022  
[www.getstreamline.com](http://www.getstreamline.com)  
TELEPHONE (916) 900-6619

POWERED BY STREAMLINE | SIGN IN

# Employees' Salaries & Names

By Bob Hunt

Are the names and salaries of California public employees exempt from disclosure? That's a question I have been asked several times over the past few months, presumably because agencies are getting public records requests for the information.

The answer is "no." Absent a few very narrow exceptions, salaries and names of public employees are not privileged information and must be disclosed. That was made clear in 2007 by a California Supreme Court case (*International Federation of Professional and Technical Engineers v. The Superior Court of Alameda County*, 42 Cal.4th 319).

The Court reiterated long-held ideas that "[o]penness in government is essential to the functioning of a democracy. Implicit in the democratic process is the notion that government should be accountable for its actions." Of course, one of the most important governmental actions is stewardship of public funds and, accordingly, how public employees are paid with those funds.

The Court acknowledged that "some public employees may expect their salaries to remain a private matter," but ruled that such an "expectation is not a reasonable

one." Although the California Public Records Act holds many exceptions to the obligation to produce public records, the Court held that public employees names and salaries doesn't fall under any of those exceptions.

Well before the Public Records Act was adopted, the California Attorney General ruled that "*the name of every public officer and employee, as well as the amount of his salary, is a matter of public record.*" (25 Ops.Cal.Atty.Gen. 90, 91 (1955).) Successive Attorneys General have followed this holding in the years since.

In addition, every public agency has to file a report with the State Controller every year of all employee compensation. As a result several districts have responded to public records requests by telling the requestor to get the information from the Controller. That is an impermissible response—a requestor is entitled to the records in your possession. Assuming you don't have any such records, which is difficult to accept when it comes to employee compensation, the agency is required to tell the requestor where the information might be obtained.



Not responding or failing to produce this information is a high-risk tactic. In the event the requestor sues your agency, you will be liable for paying not only your own legal costs but the attorneys fees and costs incurred by the other side.

The message is clear: Public money and how you spend it is the public's business.



## GOLDEN STATE RISK MANAGEMENT AUTHORITY ANNUAL CONFERENCE 2022

### GSRMA Announces 16th Annual Conference

GSRMA is excited to announce that plans for its 16th Annual Conference are moving ahead. The conference will be held March 24th and 25th, at Rolling Hills Resort in Corning, CA. The Conference will feature Keynote Speaker Paul Krismer doing a session on Resiliency in the Midst of Uncertainty, while our other speakers will be doing a variety of informative sessions.

# Cordeiro VAULT CO.

VALLEJO, CA

ELK GROVE, CA

(800) 310-1045

## PREBURY



## BURIAL VAULTS

## COLUMBARIA



Quality & Service Since 1969



Catholic Cemeteries and  
Funeral Services of the West



# Ask Bob . . . Question:

By Bob Hunt

## Two Trustees' terms have expired and the Supervisor hasn't made new appointments. What do we do?



Let's remember the basic rule about Trustee's terms. As set forth in Health & Safety Code section 9024(a): *"the term of office for a member of the board of trustees shall be for a term of four years and until the appointment and qualification of the successor. Terms of office commence at noon on the first Monday in January."* This means that even after the usual end of a term a Trustee remains in office until his or her successor takes office, or until they resign.

Government Code section 1770 sets forth the reasons why a board position might otherwise become vacant. (Due to space limitations I won't set them forth here.)

There is no provision in the law requiring a special district whose board members are appointed to notify the Board of Supervisors (the "appointing authority") of a vacancy. However, there is an analogous provision in Section 1780 pertaining to notification of vacancies on *elective* boards. Districts might want to incorporate this 15-day limit into their Bylaws as a matter of practice.

The "appointing authority" is required to make an appointment filling a vacant position on a special district (Gov. Code section 1778) within 90 days (Gov. Code section 1779). And here's where it gets sticky—Section 1779 says that if the "appointing authority" fails to make the appointment within

90 days, then the county board of supervisors shall make the appointment. But for cemetery districts the board of supervisors is the very "appointing authority" which, presumably, failed to act within 90 days in the first place.

Unfortunately, there is no provision in the law authorizing cemetery district trustees to appoint replacement trustees themselves to fill vacant positions.

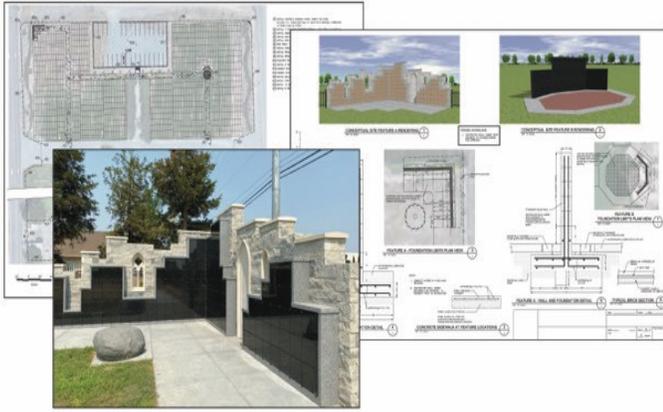
Having unfilled Trustee seats highlights a significant issue with 3-person boards. An unfilled vacancy on a 3-person board means that holding a meeting or taking any action requires the presence and vote of both of the remaining trustees. Moreover, any discussion between the two outside of a duly-noticed meeting may well be a violation of the Brown Act. For these reasons, among others, it has been my practice over the years to recommend that districts move to a 5-member Board of Trustees.

So the answer to the question asked is: Struggle along as best you can and keep pestering the supervisors to make that appointment!



# CEMETERIES101

We Build Stronger Organizations



CONCEPTUAL RENDERINGS & ENGINEERING DESIGN INCLUDED IN OUR WORK

## SERVICES AVAILABLE

### COUNSELING & TRAINING

We counsel and train your staff to make quality presentations to families, and increase revenue sources.

### COLUMBARIUM DEVELOPMENT

Assistance with columbarium planning and development.

### FINANCIAL PLANNING

Review and discuss your current pricing model for your current inventory and evaluate the gaps between the prices.

### TECHNOLOGY PARTNERS

Introductions into new technology advancements in the industry.

SCHEDULE YOUR FREE CONSULTATION TODAY!

EMAIL: SALES@CEMETERIES101.COM

PHONE: (530) 518-6185

WWW.CEMETERIES101.COM

*Mark Your Calendars!*



**April 27, 2022 – PCA Region One Seminar, Cottonwood, CA**

**October 19, 2022 – PCA Annual Meeting, Corning, CA**

**October 20 -21, 2022 – GSRMA Annual Conference, Corning, CA**