BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM:

Penal Code Section 13519.7,

As Amended by Statutes of 1993, Chapter 126; and

Filed on December 23, 1997;

By the County of Los Angeles, Claimant.

NO. CSM 97-TC-07

Sexual Harassment Training in the Law Enforcement Workplace

STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7

(Adopted on September 28, 2000)

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates is hereby adopted in the above-entitled matter.

This Decision shall become effective on September 29, 2000.

Paula Higashi, Executive Director

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STATEMENT OF DECISION

On August 24, 2000 the Commission on State Mandates (Commission) heard this test claim during a regularly scheduled hearing. Mr. Leonard Kaye appeared for the County of Los Angeles. Captain Tom Laing and Lieutenant Randy Olson appeared as witnesses for the Los Angeles County Sheriff's Department. Mr. James W. Miller and Ms. Amber D. Pearce appeared for the Department of Finance. Mr. Hal Snow appeared for the Commission on Peace Officer Standards and Training (POST). Mr. Allan Burdick appeared on behalf of the California State Association of Counties (CSAC).

At the hearing, oral and documentary evidence was introduced, the test claim was submitted, and the vote was taken.

The law applicable to the Commission's determination of a reimbursable state mandated program is Government Code section 17500 et seq. article XIII B, section 6 of the California Constitution, and related case law.

The Commission, by a vote of 6 to 1, partially approved this test claim.

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BACKGROUND

The test claim statute, Penal Code section 13519.7, addresses the implementation of complaint guidelines and training on sexual harassment in the workplace for local law enforcement officers. The test claim statute became effective on January 1, 1994, and requires the Commission on Peace Officer Standards and Training (POST) to develop complaint guidelines by August 1, 1994 to be followed by local law enforcement agencies for peace officers who are victims of sexual harassment in the workplace. The test claim statute also requires the course of basic training for law enforcement officers to include instruction on sexual harassment in the workplace no later than January 1, 1995. Peace officers that completed basic training before January 1, 1995 are required to receive supplementary training on sexual harassment in the workplace by January 1, 1997.

In the past, the Commission has decided three test claims addressing training for peace officers and firefighters. In 1991, the Commission denied a test claim filed by the City of Pasadena requiring new and veteran peace officers to complete a course regarding the handling of domestic violence complaints as part of their basic training and continuing education courses (*Domestic Violence Training*, CSM-4376). The Commission reached the following conclusions:

- The test claim legislation does not require local agencies to implement a domestic violence training program and to pay the cost of such training;
- The test claim legislation does not increase the minimum number of basic training hours, nor the minimum number of advanced officer training hours and, thus, no additional costs are incurred by local agencies; and
- The test claim legislation does not require local agencies to provide domestic violence training.

In January 1998, the Commission denied a test claim filed by the County of Los Angeles requiring veteran law enforcement officers below the rank of supervisor to complete an updated course of instruction on domestic violence every two years (*Domestic Violence Training and Incident Reporting*, CSM-96-362-01). Although the statute imposed an express continuing education requirement upon individual officers and not local agencies, the last sentence of the test claim statute stated that "it is the intent of the Legislature not to increase the annual training costs of local government." Thus, the Commission recognized the Legislature's awareness of the potential impact of the training course upon local governments and found that the continuing education activity was imposed upon local agencies. The Commission denied the test claim, however, based on the finding that local agencies incur *no* increased "costs mandated by the state" in carrying out the two-hour course for the following reasons:

- *Immediately before and after* the effective date of the test claim legislation, POST's minimum required number of continuing education hours for the law enforcement officers in question *remained the same at 24 hours*. After the operative date of the test claim statute these officers must still complete at least 24 hours of professional training every two years,

- The two hour domestic violence training update may be credited toward satisfying the officer's 24-hour minimum,
- The two hour training is *not* separate and apart nor "on top of" the 24-hour minimum,
- POST does not mandate creation and maintenance of a separate schedule and tracking system for this two hour course,
- POST prepared and provides local agencies with the course materials and video tape to satisfy the training in question, and
- Of the 24-hour minimum, the two hour domestic violence training update is the only course that is legislatively mandated to be continuously completed every two years by the officers in question. The officers may satisfy their remaining 22-hour requirement by choosing from *the many elective courses* certified by POST.

In December 1998, the Commission approved a test claim filed by the County of Los Angeles and remanded by the court, which required new and veteran firefighters to complete a training course on Sudden Infant Death Syndrome (*Sudden Infant Death Syndrome (SIDS) for Firefighters*, CSM-4412). The test claim statute further authorized local agencies to provide the instruction and training, and to assess a fee to pay for the costs of the training. In its order, the court found that there were no state training programs available to provide SIDS training to new and veteran firefighters. Thus, the court concluded that the SIDS training program was a new program imposed on the county. The court remanded the case to the Commission to determine if the fee authority provided by the statute could be realistically recovered from firefighters. In this respect, the Commission recognized that local agencies have the unilateral authority to impose changes regarding terms of employment, such as training fees, on employees. However, based on the evidence presented at the hearing, the Commission found that the fee authority could not be realistically exercised. The Commission also recognized that, unlike POST, an agency charged with overseeing peace officer training, there is no state agency charged with developing and overseeing firefighter training. Accordingly, the Commission reached the following conclusions:

- The SIDS training program is a new program imposed on local agencies and does not impose requirements on firefighters alone.
- When SIDS instruction is provided by a private facility, local agencies still incur "costs mandated by the state" in the form of salaries, benefits, and other incidental expenses for the time that its employees spend in training (trainee time), registration and materials.
- When SIDS training is provided by the local agency, the local agency incurs "costs mandated by the state" for the development of the training, trainee time, trainer time and materials since the fee authority provided in the statute cannot be realistically exercised.

COMMISSION FINDINGS

In order for a statute or an executive order to impose a reimbursable state mandated program under article XIII B, section 6 of the California Constitution and Government Code section 17514, the statutory language must first direct or obligate an activity or task upon local governmental agencies. If the statutory language does not direct or obligate local agencies to perform a task, then compliance with the test claim statute or executive order is within the discretion of the local agency and a reimbursable state mandated program does not exist.

In addition, the required activity or task must constitute a new program or create an increased or higher level of service over the former required level of service. The California Supreme Court has defined a "new program" or "higher level of service" as a program that carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the State. To determine if the "program" is new or imposes a higher level of service, a comparison must be made between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation. Finally, the newly required activity or increased level of service must impose "costs mandated by the state".[1]

This decision addresses the following issues:

- Do the sexual harassment complaint guidelines developed by POST in response to Penal Code section 13519.7, subdivision (a), constitute a reimbursable state mandated program for local agencies?
- Does the requirement that the course of basic training for law enforcement officers include instruction on sexual harassment in the workplace no later than January 1, 1995 constitute a reimbursable state mandated program?
- Does the requirement for peace officers that completed basic training before January 1, 1995 to receive supplementary training on sexual harassment in the workplace by January 1, 1997 constitute a reimbursable state mandated program?

The Commission's findings on these issues are presented below.

Issue 1: Do the sexual harassment complaint guidelines developed by POST in response to Penal Code section 13519.7, subdivision (a), constitute a reimbursable state mandated program for local agencies?

Penal Code section 13519.7, subdivision (a), states the following:

> "On or before August 1, 1994, [POST] shall develop complaint guidelines to be followed by city police departments, county sheriffs' departments, districts, and state university departments, for peace officers who are victims of sexual harassment in the workplace. In developing the

[1] Article XIII B, section 6 of the California Constitution; *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Carmel Valley Fire Protection Dist.* v. *State of California* (1987) 190 Cal.App.3d 521, 537; *City of Sacramento* v. *State of California* (1990) 50 Cal.3d 51, 66; *Lucia Mar Unified School Dist.* v. *Honig* (1988) 44 Cal.3d 830, 835; Gov. Code, § 17514.

complaint guidelines, [POST] shall consult with appropriate groups and individuals having an expertise in the area of sexual harassment."

The Department of Finance contended that this provision does not constitute a reimbursable state mandated program because it is not unique to local government. The Department contended that the test claim statute affects all peace officers in the State, including those in the University of California and California State University systems. The Department cites the *County of Los Angeles* v. *State of California* and *City of Sacramento* v. *State of California* cases in support of its position.[2]

The claimant disagreed. The claimant argued that the test claim statute is unique to government and that the cases cited by the Department are not applicable here. The claimant also submitted with the test claim a document prepared by POST entitled "Sexual Harassment in the Workplace, Guidelines and Curriculum, 1994" in support of its position that Penal Code section 13519.7, subdivision (a), imposes reimbursable state mandated activities on local agencies.

The Commission found that POST's "Sexual Harassment in the Workplace, Guidelines and Curriculum, 1994" constitutes an executive order under Government Code section 17516. That section defines an "executive order," in relevant part, as any order, plan, requirement, rule, or regulation issued by any agency, department, board, or commission of state government.

The Commission also found that the Department's reliance on the *County of Los Angeles* and *City of Sacramento* cases, to support its argument that sexual harassment complaint guidelines for peace officers is not unique to government, is misplaced. Both cases involved state-mandated increases in workers' compensation benefits, which affected public and *private* employers alike. The California Supreme Court found that the term "program" as used in article XIII B, section 6, and the intent underlying section 6 "was to require reimbursement to local agencies for the costs involved in carrying out functions *peculiar to government*, not for expenses incurred as an incidental impact of law that apply generally to all state residents and entities." (Emphasis added.)[3] Since the increase in workers' compensation benefits applied to all employees of private and public businesses, the court found that no reimbursement was required.

Here, on the other hand, the sexual harassment complaint guidelines are to be followed by city police departments, county sheriffs' departments, districts, and state university departments. They do not apply "generally to all state residents and entities" in the state, such as private businesses. In addition, the Court of Appeal, Third Appellate District, has recognized that police protection is a peculiarly governmental function.[4] Accordingly, the Commission found that the sexual harassment complaint guidelines developed by POST in response to Penal Code section 13519.7, subdivision (a), are unique to government and constitute a "program" within the meaning of article XIII B, section 6 of the California Constitution.

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[2] *County of Los Angeles* v. *State of California*, supra; 43 Cal.3d 46; *City of Sacramento* v. *State of California*, *supra*, 50 Cal.3d 51.

[3] *County of Los Angeles, supra*, 43 Cal.3d at 56-57; *City of Sacramento, supra*, 50 Cal.3d at 67.

[4] *Carmel Valley Fire Protection Dist., supra*, 190 Cal.App.3d 521, 537.

The Commission further found that the complaint guidelines prepared by POST in response to Penal Code section 13519.7, subdivision (a), constitute a "new program" and impose "costs mandated by the state" on local law enforcement agencies. The document lists twelve guidelines, nine of which *require* local agencies to develop a formal written complaint procedure containing specified procedures. The nine required guidelines state the following:

- "Each law enforcement agency . . . *shall* develop a formal written procedure for the acceptance of complaints from peace officers who are the victims of sexual harassment in the work place."
- "Each law enforcement agency . . . *shall* provide a written copy of their complaint procedure to every peace officer employee."
- "Agency sexual harassment complaint procedures *shall* include the definitions and examples of sexual harassment as contained in the Code of Federal Regulations (29 CFR 1604.11) and California Government Code Section 12950."
- "Agency sexual harassment complaint procedures *shall* identify the specific steps complainants should follow for initiating a complaint."
- "Agency sexual harassment complaint procedures *shall* address supervisory/management responsibilities to intervene and/or initiate an investigation when possible sexual harassment is observed in the work place."
- "Sexual harassment complaint procedures *shall* state that agencies must attempt to prevent retaliation, and, under the law, sanctions can be imposed if complainants and/or witnesses are subjected to retaliation."
- "[T]he agency procedure *shall* identify parties to whom the incident should/may be reported . . . , *shall* allow the complainant to circumvent their normal chain of command in order to report a sexual harassment incident [and] *shall* include a specific statement that the complainant is always entitled to go directly to the California Department of Fair Employment and Housing (DFEH) and/or the Federal Equal Employment Opportunity Commission (EEOC) to file a complaint."
- "Agency sexual harassment complaint procedures *shall* require that all complaints shall be fully documented by the person receiving the complaint."
- "All sexual harassment prevention training *shall* be documented for each participant and maintained in an appropriate file."

The Commission determined that local law enforcement agencies were not required to follow the sexual harassment guidelines developed by POST prior to the enactment of the test claim statute.

Accordingly, the Commission found that the sexual harassment complaint guidelines entitled "Sexual Harassment in the Workplace, Guidelines and Curriculum, 1994," which were developed by POST in response to Penal Code section 13519.7, subdivision (a), constitute a reimbursable state mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

Issue 2: Does the requirement that the course of basic training for law enforcement officers include instruction on sexual harassment in the workplace no later than January 1, 1995 constitute a reimbursable state mandated program?

Penal Code section 13519.7, subdivision (b), states the following:

> "The course of basic training for law enforcement officers shall, no later than January 1, 1995, include instruction on sexual harassment in the workplace. The training shall include, but not be limited to, the following:
>
> (1) The definition of sexual harassment.
>
> (2) A description of sexual harassment, utilizing examples.
>
> (3) The illegality of sexual harassment.
>
> (4) The complaint process, legal remedies, and protection from retaliation available to victims of sexual harassment.
>
> In developing this training, [POST] shall consult with appropriate groups and individuals having an interest and expertise in the area of sexual harassment."

Article XIII B, section 6 of the California Constitution states that "whenever the Legislature or any state agency *mandates* a new program or higher level of service *on any local government*, the state shall provide a subvention of funds." (Emphasis added.)

Thus, in order for a statute to be subject to article XIII B, section 6 of the California Constitution, the statutory language must direct or obligate an activity or task upon local governmental agencies. If the statutory language does not mandate local agencies to perform a task, then compliance with the test claim statute is within the discretion of the local agency and a reimbursable state mandated program does not exist.

The claimant contended that local agencies are required to provide basic training, including sexual harassment training, to new recruit employees. Even if an agency hires persons who have already obtained the training, the claimant states that the first law enforcement agency that actually provides the training should be reimbursed. The claimant is requesting reimbursement for the salaries, benefits and other incidental expenses for the time that its new recruit employees spend in training and the costs incurred to present the course at its basic training academy.

At the hearing, Mr. Leonard Kaye, Certified Public Accountant, Office of Auditor-Controller, testified on behalf of the claimant. Mr. Kaye acknowledged that local agencies are not specifically required by state law to be responsible for basic training. However, he contended that when the Legislature requires a new basic training component or course, the basic training academies, which include cities, counties, and community colleges, are required to provide the new basic training course.[5]

The Department of Finance contended that Penal Code section 13519.7, subdivision (b), does not impose a new program or higher level of service since there is no obligation

[5] Hearing Transcript (August 24, 2000), page 35, lines 4-15.

imposed on any local law enforcement agency to provide the training. Rather, the Department contended that the statute imposes a training obligation on recruits alone. Since the statute applies to new recruits, the Department contended that the local agency has the option of hiring only those persons who have already obtained the sexual harassment training. Thus, the Department concluded that if a local agency trains its recruit employees on sexual harassment, the local agency does so at its option.

POST did not submit any written comments on the issue of whether Penal Code section 13519.7, subdivision (b), mandates a new program or higher level of service on local agencies. However, Mr. Hal Snow, Assistant Executive Director of POST, provided testimony at the hearing. Mr. Snow testified that POST certifies about 39 academies in the state as basic training institutions. Mr. Snow stated that the academies are not required to be certified. Rather, it is an option on the part of the entity. Mr. Snow's testimony is as follows:

> "We certify about 39 academies around the state, and they are certified voluntarily; that is, no agency or community college or other organization is required to be certified. For those who are certified, they, of course, incur substantial costs in operating those academies, most of which are not reimbursable by POST. Some of them are subvented by community college funding, but, in every case, it is - - it's an option on the part of the entity, whether it's an agency or a community college, to be certified as a basic training institution."[6]

Mr. Snow further testified that roughly 6,000 people graduate from basic academy per year. Of the 6,000 graduates, about 2,000 are unemployed and pay for their own training.[7]

For the reasons stated below, the Commission found that Penal Code section 13519.7, subdivision (b), does not impose any activities or duties upon local law enforcement agencies. Rather, the requirement to complete the basic training course on sexual harassment is a mandate imposed on the individual who seeks peace officer status.

The test claim statute states that "the course of basic training for law enforcement officers" shall include sexual harassment in the workplace. The test claim statute itself does not mandate local agencies to provide the course of basic training to recruits. Rather, the statute is silent in this respect and does not specify who is required to provide the basic training course.

In addition, the Commission determined that there are no provisions in other statutes or regulations issued by POST that require local agencies to provide basic training. Since 1959, Penal Code section 13510 and following have required POST to adopt rules establishing minimum standards relating to the physical, mental and moral fitness governing the recruitment of new local law enforcement officers.[8] In establishing the standards for training, the Legislature instructed POST to permit the required training to

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[6] Hearing Transcript (August 24, 2000), page 36, lines 18-25, and page 37, lines 1-2.

[7] Hearing Transcript (August 24, 2000) page 32, lines 8-21.

[8] These standards can be found in Title 11 of the California Code of Regulations.

be conducted at *any* institution approved by POST.[9] For those "persons" who have acquired prior equivalent peace officer training, POST is required to provide the opportunity for testing instead of the attendance at a "basic training academy or accredited college."[10] Moreover, "each *applicant* for admission to a basic course of training certified by [POST] who is *not* sponsored by a local or other law enforcement agency . . . shall be required to submit written certification from the Department of Justice . . . that the applicant has no criminal history background. . . . "

Since 1971, Penal Code section 832 has required "every *person* described in this chapter as a peace officer" to satisfactorily complete an introductory course of training prescribed by POST before they can exercise the powers of a peace officer.[11] Any "*person*" completing the basic training course "who does *not become employed* as a peace officer" within three years is required to re-take and pass the basic training examination. Since 1994, POST has been authorized to charge a fee for the basic training examination to each "*applicant*" who is *not* sponsored or employed by a local law enforcement agency.[12]

The Commission acknowledged that some local law enforcement agencies, including the claimant, employ persons who have not yet completed their basic training course, and then sponsor or provide the training themselves.[13] Based on the statutory and regulatory scheme outlined above, however, the state has *not* mandated local agencies to do so.

In fact, the Commission recognized that there are several community colleges approved by POST offering basic training academy courses, including the course on sexual harassment in the workplace, that are open to any interested individual, whether or not employed or sponsored by a local agency. The colleges charge an average of $2000 to cover their costs for law enforcement basic training and financial assistance is available to those students in need.[14]

Thus, the Commission found that the test claim statute does not mandate local agencies to provide basic training, including the course on sexual harassment, and does not mandate local agencies to incur costs to send their new employees to basic training.

The Commission further disagreed with the claimant's arguments contained in its comments to the Draft Staff Analysis submitted on February 10, 2000, and comments to the Final Staff Analysis submitted on July 19, 2000. The claimant contended that the Commission's past decisions regarding training are precedential and hold that when the Legislature imposes training, it is a mandate upon the local law enforcement agency. The

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[9] Pen. Code, § 13511.

[10] *Id.*

[11] See also POST's regulation, tit. 11, Cal. Code Regs., § 1005, subd. (a)(9).

[12] Pen. Code, § 832, subd. (g), added by Stats. 1994, c. 43.

[13] Other agencies, however, require the successful completion of POST Basic Training *before* the applicant will be considered for the job. (See, Job Announcement for Amador County Deputy Sheriff.)

[14] POST Certified Basic Training Academies including Los Medanos College Basic Training Academy, charging $2200 for California State residents and offering financial assistance; Allan Hancock College Law Enforcement Academy stating that "the course is open to law enforcement agency 'sponsored' recruits and other interested students"; and Golden West College, whose mission statement promises that "90% of the academy graduates received jobs within three years of completion of the academy course."

claimant cited the Commission's decisions in *Domestic Violence Training and Incident Reporting* (CSM – 96-362-01) and *SIDS* (CSM – 4412). The Commission determined that these prior Commission decisions are distinguishable from this test claim and should not be applied.

Domestic Violence Training and Incident Reporting involved a statute that required *veteran* law enforcement officers below the rank of supervisor to complete an updated course of instruction on domestic violence every two years. The Commission denied the test claim finding no increased "costs mandated by the state".

The Commission recognized that the test claim statute at issue here, on the other hand, involves basic training for recruits who may or may not be employed. Thus, the Commission found that its findings in *Domestic Violence Training and Incident Reporting* do not apply to this test claim.

The Commission further determined that the statutory scheme presented by this test claim is different than the *SIDS* training test claim approved by the Commission in 1998 following the remand from the court. In *SIDS*, the Commission found that the training program for both new and veteran firefighters was a new program imposed on local agencies and not on firefighters alone. In contrast to the present claim, the *SIDS* statute expressly authorized local agencies to provide the instruction and training, and to assess a fee to cover their costs. Furthermore, unlike the training provided for law enforcement recruits, the court found *no* state training programs available to provide SIDS training to new and veteran firefighters. Thus, the Commission concluded that its findings in *SIDS* do not apply to this test claim.

Based on the foregoing, the Commission found that Penal Code section 13519.7, subdivision (b), is not subject to article XIII B, section 6 of the California Constitution because it does not impose any mandated duties or activities on any local governmental agency to provide basic training, including the course on sexual harassment, or to incur costs to send their new employees to basic training. Rather, the requirement to complete the basic training course on sexual harassment is a mandate imposed on the individual who seeks peace officer status.

Issue 3: Does the requirement for peace officers that completed basic training before January 1, 1995 to receive supplementary training on sexual harassment in the workplace by January 1, 1997 constitute a reimbursable state mandated program?

Penal Code section 13519.7, subdivision (c), states the following:

> "All *peace officers* who have received their basic training before January 1, 1995, shall receive supplementary training on sexual harassment in the workplace by January 1, 1997."

A. Is Penal Code section 13519.7, subdivision (c), subject to article XIII B, section 6 of the California Constitution?

In order for a statute to be subject to article XIII B, section 6 of the California Constitution, the statutory language must direct or obligate an activity or task upon local governmental agencies. If the statutory language does not mandate local agencies to

perform a task, then compliance with the test claim statute is within the discretion of the local agency and a reimbursable state mandated program does not exist.

The claimant contended that Penal Code section 13519.7, subdivision (c), requires local agencies to provide supplementary sexual harassment training to veteran officers. The claimant is requesting reimbursement for the salaries, benefits and other incidental expenses for the time that its veteran employees spend in training and the costs incurred to present the course.

The Department of Finance contended that reimbursement is not required under article XIII B, section 6 since Penal Code section 13519.7, subdivision (c), does not impose any obligations on any local law enforcement agency to provide the training. Rather, the Department contended that the statute imposes a training obligation on law enforcement officers alone.

Penal Code section 13519.7, subdivision (c), requires veteran peace officers to receive continuing education training on sexual harassment by January 1, 1997. The plain language of the test claim statute does not mandate or require local agencies to provide or pay for the supplemental training. In addition, there are no other state statutes or executive orders requiring local agencies to pay for continuing education training.

Nevertheless, Penal Code section 13519.7, subdivision (c), specifically refers to "peace officers." Section 830.1 of the Penal Code defines "peace officers" as those persons who are "*employed*" by a public safety agency of a county, city or special district.

Since peace officers, by definition, are employed by local agencies, the Commission agreed with the claimant that the federal Fair Labor Standards Act (FLSA), which requires local agencies to compensate their employees for training under specified circumstances, is relevant to this claim.

Generally, the FLSA provides employee protection by establishing the minimum wage, maximum hours and overtime pay under federal law. In 1985, the United States Supreme Court found that the FLSA applies to state and local governments.[15] The FLSA is codified in title 29 of the Code of Federal Regulations (CFR).

The requirement to compensate employees for training time under the FLSA is described below.

Training Conducted During Regular Working Hours

The claimant contended that since sexual harassment training is required by the state, is not voluntary, and is conducted during regular working hours, training time needs to be counted as compensable working time under 29 CFR section 785.27 of the FLSA and treated as an obligation imposed on the local agency. Section 785.27 states the following:

> "Attendance at lectures, meetings, training programs and similar activities need not be counted as working time if the following four criteria are met:
>
> (a) Attendance is outside of the employee's regular workings hours;

[15] *Garcia* v. *San Antonio Metropolitan Transit Authority et al.* (1985) 469 U.S. 528.

(b) Attendance is in fact voluntary;

(c) The course, lecture, or meeting is not directly related to the employee's job; and

(d) The employee does not perform any productive work during such attendance."

The Commission agreed with the claimant that local agencies are required under the FLSA to compensate their employees for mandatory training *if* the training occurs during the employee's regular working hours. However, this raises the issue whether the obligation to pay for sexual harassment training is an obligation imposed by the state, or an obligation arising out of existing federal law through the provisions of the FLSA.

The Commission found that there is no federal statutory or regulatory scheme requiring local agencies to provide sexual harassment training to veteran officers. Rather, what sets the provisions of the FLSA in motion requiring local agencies to compensate veteran officers for sexual harassment training is the test claim statute. If the state had not created this program, veteran officers would not be required to receive sexual harassment training and local agencies would not be obligated to compensate their veteran employees for such training.

Accordingly, the Commission found that local agencies are mandated by the state though subdivision (c) of the test claim statute to provide sexual harassment training to veteran officers *if* the training occurs during the employee's regular working hours.

Training Conducted Outside Regular Working Hours

The Commission noted, however, that an exception to the FLSA was enacted in 1987, which provides that time spent by employees of state and local governments in training required for certification by a higher level of government that occurs outside of the employee's regular working hours is noncompensable. In this regard, 29 CFR section 553.226 states in pertinent part the following:

> "(a) The general rules for determining the compensability of training time under the FLSA are set forth in §§ 785.27 through 785.32 of this title.
>
> (b) While time spent in attending training required by an employer is normally considered compensable hours of work, following are situations where time spent by employees of State and local governments in required training is considered to be *noncompensable*:
>
> (2) *Attendance outside of regular working hours at specialized or follow-up training, which is required for certification of employees of a governmental jurisdiction by law of a higher level of government (e.g., where a State or county law imposes a training obligation on city employees), does* ***not*** *constitute compensable hours of work.*" (Emphasis added.)

The Commission found that 29 CFR section 553.226, subdivision (b)(2), applies when the sexual harassment training is conducted outside the employee's regular working hours. In such cases, the local agency is not required to compensate the employee. Rather, the cost of sexual harassment training becomes a term or condition of

employment subject to the negotiation and collective bargaining between the local agency and the employee.[16]

Collective bargaining between local agencies and their employees is governed by the Meyers-Milias-Brown Act. (Gov. Code, §§ 3500 et al.) The Act requires the governing body of the local agency and its representatives to meet and confer in good faith regarding wages, hours and other terms of employment with representatives of employee organizations. If an agreement is reached, the parties enter into a collective bargaining agreement, or memorandum of understanding (MOU). Only upon the approval and adoption by the governing board of the local agency, the MOU becomes binding on the local agency and employees.[17]

Although providing or paying for sexual harassment training conducted outside the employee's regular working hours is an issue negotiated at the local level, the Commission recognized that the California Constitution prohibits the Legislature from impairing obligations or denying rights to the parties of a valid, binding contract absent an emergency.[18] In the present case, the test claim statute became effective on January 1, 1994, and was not enacted as an urgency measure.

Accordingly, the Commission found that providing sexual harassment training outside the employee's regular working hours is an obligation imposed on those local agencies that, as of January 1, 1994 (the effective date of the statute) are bound by an existing MOU, which requires that the agency provide or pay for continuing education training.

However, when the existing MOU terminates, or in the case of a local agency that is not bound by an existing MOU on January 1, 1994 requiring that the agency pay for continuing education training, sexual harassment training conducted outside the employee's regular working hours becomes a negotiable matter subject to the discretion of the local agency. Thus, under such circumstances, the Commission found that the requirement to provide or pay for sexual harassment training is not an obligation imposed by the state on a local agency.

Conclusion

Based on the foregoing, the Commission found that Penal Code section 13519.7, subdivision (c), is subject to article XIII B, section 6 of the California Constitution because it imposes an obligation on local agencies to provide sexual harassment training under the following circumstances:

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[16] The claimant contended that 29 CFR section 553.226 is not relevant since that section addresses overtime pay. While Commission agreed that many of the 1985 amendments to the FLSA involved overtime pay for state and local governmental employees, section 553.226 addresses the compensability of training only. (52 Federal Register 2012.)

[17] Gov. Code, §§ 3500, 3505, and 3505.1. The Commission analyzed the Meyers-Milias-Brown Act in the *SIDS* test claim to determine if the fee authority established in the statute could realistically be imposed on firefighter employees. Based on evidence presented at the hearing, the Commission found that even though local agencies have the unilateral authority to impose changes regarding the terms of employment, the use of the unilateral authority is rare. Therefore, the Commission determined that the authority to impose fees upon firefighters in the SIDS case could not be realistically exercised by local agencies.

[18] Cal. Const., art. 1, § 9.

- When the sexual harassment training occurs during the employee's regular working hours; and
- When the sexual harassment training occurs outside the employee's regular working hours *and* there is an obligation imposed by an MOU existing on January 1, 1994 (the effective date of the statute), which requires that the local agency provide or pay for continuing education training.

B. Does Penal Code section 13519.7, subdivision (c), constitute a new program or higher level of service, and impose "costs mandated by the state"?

Veteran peace officers were not required to receive sexual harassment training before the enactment of the test claim statute. Thus, the Commission found that Penal Code section 13519.7, subdivision (c), constitutes a new program or higher level of service under article XIII B, section 6 of the California Constitution. The Commission continued its inquiry to determine if there are any "costs mandated by the state."

Government Code section 17514 defines "costs mandated by the state" as any *increased* costs which a local agency is required to incur as a result of any statute or executive order that mandates a new program or higher level of service.

The claimant contended that Penal Code section 13519.7, subdivision (c), results in increased costs mandated by the state in the form of salaries, benefits and other incidental expenses for the time that its veteran employees spend in training and the costs incurred to present the course. The claimant submitted cost data and records to support its claim. The claimant further contended that the costs are reimbursable, regardless of whether the county's annual training costs increase, since the test claim statute results in work being redirected by the state.

On July 19, 2000, the claimant submitted supplemental comments to the Final Staff Analysis further describing its sexual harassment training program. Attached to the supplemental comments is a document signed by Lt. Randy Olson, which states that the claimant's approved sexual harassment curriculum requires eight (8) hours of training for chiefs and above, eight (8) hours of training for managers (area and unit commanders), six (6) hours of training for supervisors (lieutenants, sergeants, and civilian equivalents), and four (4) hours of training for line personnel. The claimant has also hired a consultant to design and implement a sexual harassment prevention program.

POST stated that it developed a two-hour telecourse on sexual harassment for in-service, or veteran officers and made the telecourse available to local agencies. POST contended that since it developed the telecourse, POST estimates *no* increased costs to local agencies to present the training. However, POST estimates increased costs to local agencies for the salaries of the veteran officers attending the two-hour training while on duty.

The Department of Finance did not provide any comments on the issue of whether Penal Code section 13519.7, subdivision (c), imposes costs mandated by the state.

In order to determine if there are any costs mandated by the state, the Commission first determined the scope of the mandate.

The test claim statute expressly requires POST to develop the sexual harassment training. In this regard, the test claim statute states the following:

> "In developing this training, the commission [i.e., POST] shall consult with appropriate groups and individuals having an interest and expertise in the area of sexual harassment."

Therefore, the Commission found that local agencies are *not* required by the state to incur costs to develop or design the training course and, thus, such costs are not reimbursable under article XIII B, section 6 of the California Constitution.

The Commission further found that a *one-time, two-hour course* for each veteran officer is mandated by the state. The test claim statute requires veteran officers to receive supplemental training on sexual harassment *by* January 1, 1997. Based on the express completion date for training, the Commission found that the Legislature intended to require sexual harassment training on a one-time basis. Additionally, the sexual harassment training course developed by POST consists of two hours of training. Thus, any training on sexual harassment beyond two hours is within the discretion of the local agency.

The Commission also found that local agencies may have incurred increased costs mandated by the state to present the training in the form of materials provided to employees and/or trainer time during the two-hour course. The POST document entitled "Sexual Harassment in the Workplace, Guidelines and Curriculum" states that a written copy of the complaint procedure shall be provided to every employee. The POST document further suggests that "all instructors should have training expertise regarding sexual harassment issues."

The question remains, however, if there are increased costs mandated by the state for the time the veteran employees spend in training.

In 1998, the Commission analyzed whether a statute requiring continuing education training for peace officers imposed "costs mandated by the state" in the *Domestic Violence Training and Incident Reporting* test claim. That test claim statute included a the following language: "The instruction required pursuant to this subdivision shall be funded from existing resources available for the training required pursuant to this section. It is the intent of the Legislature not to increase the annual training costs of local government."

Thus, the Commission determined in the *Domestic Violence Training and Incident Reporting* test claim that if the domestic violence training course caused an increase in the total number of required continuing education hours, then the increased costs associated with the new training course were reimbursable as "costs mandated by the state". On the other hand, if there was no overall increase in the total number of continuing education hours, then there were no increased training costs associated with the training course. Instead, the cost of the training course was accommodated or absorbed by local law enforcement agencies within their existing resources available for training.

The Commission recognized POST regulations, which provide that local law enforcement officers must receive at least 24 hours of Advanced Officer continuing education training every two years. POST regulations state in pertinent part the following:

> "Continuing Professional Training (Required).
>
> "(1) Every peace officer below the rank of a middle management position as defined in section 1001 and every designated Level 1 Reserve Officer as defined in Commission Procedure H-1-2 (a) *shall satisfactorily complete the Advanced Officer Course of* ***24 or more hours*** *at least once every two years after meeting the basic training requirement."*
>
> "(2) The above requirement may be met by satisfactory completion of one or more Technical Courses totaling 24 or more hours, or satisfactory completion of an alternative method of compliance as determined by the Commission..."
>
> "(3) Every regular officer, regardless of rank, may attend a certified Advanced Officer Course and the jurisdiction may be reimbursed."
>
> "(4) Requirements for the Advanced Officer Course are set forth in the POST Administrative Manual, section D-2."[19]

The Commission found that there were no costs mandated by the state in the *Domestic Violence Training and Incident Reporting* test claim and, thus, denied the claim for the following reasons:

- *Immediately before and after* the effective date of the test claim legislation, POST's minimum required number of continuing education hours for the law enforcement officers in question *remained the same at 24 hours*. After the operative date of the test claim statute these officers must still complete at least 24 hours of professional training every two years,
- The two hour domestic violence training update may be credited toward satisfying the officer's 24-hour minimum,
- The two hour training is *not* separate and apart nor "on top of" the 24-hour minimum,
- POST does not mandate creation and maintenance of a separate schedule and tracking system for this two hour course,
- POST prepared and provides local agencies with the course materials and video tape to satisfy the training in question, and
- Of the 24-hour minimum, the two-hour domestic violence training update is the only course that is legislatively mandated to be continuously completed every two years by the officers in question. The officers may satisfy their remaining 22-hour requirement by choosing from *the many elective courses* certified by POST.

[19] Cal.Code Regs., tit. 11, § 1005, subd. (d).

The Commission found that the facts of this case are different than the facts in the *Domestic Violence Training and Incident Reporting* test claim. Unlike the test claim statute in *Domestic Violence Training and Incident Reporting*, the test claim statute here does not contain legislative intent language that sexual harassment training shall be funded from existing resources and that the annual training costs of local government should not be increased.

Additionally, in *Domestic Violence Training and Incident Reporting*, the Commission recognized a bulletin issued by POST recommending that local agencies make the required updated domestic violence training part of the officer's continuing education. Moreover, POST interpreted the *Domestic Violence Training* statute to require the inclusion of the domestic violence training within the 24-hour continuing education requirement. These facts are not present here. Rather, POST estimates increased costs to local agencies for the sexual harassment training for the officer's salaries in the approximate amount of $2,839,208.00.

Further, the Commission recognized that the purpose of the *Domestic Violence Training* course, as well as the other courses mandated by the Legislature during the training period in question, is to provide training to officers in their role as peace officers in the community. Sexual harassment training in the workplace, on the other hand, addresses internal employment issues and relationships with fellow co-workers.

Moreover, the Commission agreed with the claimant that a substantial number of officers may have already met their 24-hour requirement before they had to take sexual harassment training.

Thus, the Commission found that the two-hour sexual harassment training is not accommodated or absorbed by local law enforcement agencies within their existing resources available for training. Rather, the Commission determined that local agencies incur increased "costs mandated by the state" for the time spent by veteran officers in the one-time, two-hour sexual harassment training course. In this regard, the Commission found that Penal Code section 13519.7, subdivision (c), does impose "costs mandated by the state".

Conclusion

Based on the foregoing, the Commission found that Penal Code section 13519.7, subdivision (c), constitutes a reimbursable state mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 when the sexual harassment training occurs during the employee's regular working hours, or when the sexual harassment training occurs outside the employee's regular working hours *and* is an obligation imposed by an MOU existing on

January 1, 1994 (the effective date of the statute), which requires that the local agency provide or pay for continuing education training, for the following increased "costs mandated by the state":

- Salaries, benefits, and incidental expenses for each veteran officer to receive a one-time, two-hour course on sexual harassment; and
- Costs to present the one-time, two-hour course in the form of materials and trainer time.

CONCLUSION

Based on the foregoing, the Commission concluded the following:

Issue 1

The sexual harassment complaint guidelines, entitled "Sexual Harassment in the Workplace, Guidelines and Curriculum, 1994," which were developed by POST in response to Penal Code section 13519.7, subdivision (a), constitute a reimbursable state mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514;

Issue 2

Penal Code section 13519.7, subdivision (b), which requires that the course of basic training include instruction on sexual harassment, does not constitute a reimbursable state mandated program within the meaning of article XIII B, section 6 of the California Constitution since it does not impose any mandated duties on the local agency; and

Issue 3

Penal Code section 13519.7, subdivision (c), which requires peace officers to receive a one-time, two-hour course on sexual harassment by January 1, 1997, constitutes a reimbursable state mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 when the sexual harassment training occurs during the employee's regular working hours, or when the sexual harassment training occurs outside the employee's regular working hours *and* is an obligation imposed by an MOU existing on January 1, 1994 (the effective date of the statute), which requires that the local agency provide or pay for continuing education training, for the following increased "costs mandated by the state":

- Salaries, benefits, and incidental expenses for each veteran officer to receive a one-time, two-hour course on sexual harassment; and
- Costs to present the one-time, two-hour course in the form of materials and trainer time.

DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 350, Sacramento, California 95814.

September 29, 2000, I served the:

Adopted Statement of Decision
Sexual Harassment Training (CSM - 97-TC-07)
Penal Code Section 13519.7
Statutes of 1993, Chapter 126
County of Los Angeles, Claimant

by placing a true copy thereof in an envelope addressed to:

Mr. Leonard Kaye
Department of Auditor-Controller
County of Los Angeles
Kenneth Hahn Hall of Administration
500 West Temple Street, Suite 603
Los Angeles, CA 90012

State Agencies and Interested Parties (See attached mailing list);

and by sealing and depositing said envelope in the United States mail at Sacramento, California, with postage thereon fully paid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on September 29, 2000, at Sacramento, California

Julie Shelton