

## WORKLOAD NARRATIVE

### FIELD OPERATIONS

#### September 2015

**Workload:** In September, the number of new cases for all programs was 18,915. This was the lowest number since February and 7% below the average for the year. Dispositions in September [18,743] were 10% fewer than average for the year and represented the lowest output since November 2014. Several factors led to the lower production, primarily the high number of judges on leave and a large influx of reasonable assurance cases that reduced the split rate over the past three months. The open balance [26,541] is 3% above average levels for 2015.

**UI.** In September, the number of new UI cases [17,611 cases; 10,672 appellants] was 6% below the average so far this year and represented the smallest intake since February. Closed cases [17,577 cases; 10,652 appellants] were the fewest since November for the reasons cited above. The open balance [16,183 cases; 9,807 appellants] fell slightly.

**DI.** In September, verifications of disability cases [1,004] were 7% below the average for the year and also represented the smallest intake since February. Dispositions [906] were 17% below the average for 2015, which caused the open inventory [1,737] to rise to its highest level since January.

**Tax, Rulings, Other.** New tax petitions in August [177] were the fewest since January and 18% below the yearly average. However, intake exceeded output. The open inventory [4,223] hit a three year high. Verifications of new ruling cases [110] were 55% below the average for 2015. Dispositions [189] were 28% below the norm, but exceeded intake. The inventory of ruling cases [4,374] is right where it was two months ago and just 1% greater than the average this year.

**Case Aging and Time Lapse.** This was the seventh consecutive month in which all timeliness measures far exceeded DOL requirements. Average case age was 24.0 days; 30-day time lapse was at 69.9%, and 45-day time lapse was at 89.3%. This was the last month before we began tracking timeliness of extension appeals. In September 35.1% of these cases were resolved within 30 days; 74.0 within 45 days; and 98.3% within 90 days. The average age of these cases was 34 days.

**ALL PROGRAM CY TRENDS - FO**

**NEW OPENED CASES**

CY	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	TOTAL	Avg.	% Chg of Avg	Yr-Yr AvgChg		
2012	35,262	32,109	38,944	35,539	36,576	34,012	33,820	39,560	35,059	38,330	32,377	27,469	419,057	<b>34,921</b>				
2013	35,188	32,990	35,462	34,280	35,060	30,208	31,649	31,789	26,509	29,993	24,703	26,488	374,319	<b>31,193</b>	89%	-3,728		
2014	30,651	25,592	27,945	32,463	28,565	26,278	26,130	23,655	23,363	22,861	17,201	21,439	306,143	<b>25,512</b>	82%	-5,681		
2015	18,740	17,502	21,282	23,417	19,659	21,153	21,735	20,095	18,915				182,498	<b>20,278</b>	79%	-5,234		
Multi:	2												22	47	6			
All Programs registrations Sep to date are down 25% from 2014, down 38% from 2013, and down 43% from 2012																		
All Programs registrations monthly average is down 21% from 2014, down 35% from 2013, and down 42% from 2012																		

**CLOSED CASES**

CY	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	TOTAL	Avg.	% Chg of Avg	Yr-Yr AvgChg
2012	35,665	39,521	46,692	30,554	36,743	33,437	32,226	37,179	31,752	41,106	34,450	33,674	432,999	<b>36,083</b>		
2013	34,777	34,753	39,525	30,992	31,139	27,467	37,227	35,005	31,214	29,718	25,437	24,098	381,352	<b>31,779</b>	88%	-4,304
2014	27,304	26,789	28,051	28,143	28,600	26,672	27,086	25,897	22,225	25,206	18,498	20,377	304,848	<b>25,404</b>	80%	-6,375
2015	20,925	22,273	22,494	21,249	20,206	20,759	21,282	19,088	18,743				187,019	<b>20,780</b>	82%	-4,624
Multi:	1/4												7/20			
All Programs dispositions Sep to date are down 22% from 2014, down 38% from 2013, and down 42% from 2012																
All Programs dispositions average is down 18% from 2014, down 35% from 2013, and down 42% from 2012																

**BALANCE OPEN CASES**

CY	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	TOTAL	Avg.	% Chg of Avg	Yr-Yr AvgChg			
2012	55,113	47,540	39,388	44,228	43,982	44,458	45,980	48,183	51,402	48,515	46,318	40,048		<b>46,263</b>					
2013	40,368	38,419	34,291	37,401	41,214	43,875	38,202	34,844	30,062	30,217	29,380	31,701		<b>35,831</b>	77%	-10,432			
2014	34,463	33,209	33,026	37,269	37,183	36,725	35,656	33,331	34,401	31,980	30,632	31,633		<b>34,126</b>	95%	-1,706			
2015	29,381	24,557	23,290	25,400	24,815	25,127	25,470	26,422	26,541					<b>25,667</b>	75%	-8,459			
Multi:	7												7	25	69	64	43		
All Programs balance Sep to date is down 27% from 2014, down 32% from 2013, and down 45% from 2012																			
All Programs balance monthly average is down 25% from 2014, down 28% from 2013, and down 45% from 2012																			

**DI CY TRENDS - FO**  
Program Codes 7, 10, 11, 12, 16 & 20

**NEW OPENED CASES**

CY	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2012	1,395	1,490	1,611	1,256	1,362	1,382	1,206	1,122	1,233	1,069	845	754	14,725	<b>1,227</b>		
2013	982	811	995	971	970	884	1,043	991	1,046	1,086	941	945	11,665	<b>972</b>	79%	-255
2014	1,004	958	979	1,158	1,088	1,131	1,352	1,027	1,113	1,102	815	1,062	12,789	<b>1,066</b>	110%	94
2015	1,104	990	1,035	1,085	1,019	1,141	1,205	1,158	1,004				9,741	<b>1,082</b>	102%	17
													2014	102%	99%	
													2013	111%	112%	
													2012	88%	81%	
														chg 2015 avg	chg 2015 YTD	

DI registrations Sep to date are down 1% from 2014, up 12% from 2013, and down 19% from 2012  
DI registrations monthly average is up 2% from 2014, up 11% from 2013, and down 12% from 2012

**CLOSED CASES**

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2012	1,334	1,547	1,456	1,424	1,460	1,140	1,079	1,220	999	1,452	938	1,039	15,088	<b>1,257</b>		
2013	1,083	906	1,186	734	758	860	1,026	1,098	1,223	1,298	749	822	11,743	<b>979</b>	78%	-279
2014	835	891	958	927	1,047	1,038	1,024	1,101	1,241	1,165	965	1,073	12,265	<b>1,022</b>	104%	44
2015	1,144	1,230	1,376	1,045	939	978	1,149	1,052	906				9,819	<b>1,091</b>	107%	69
													2014	107%	108%	
													2013	111%	111%	
													2012	87%	84%	
														chg 2015 avg	chg 2015 YTD	

DI dispositions Sep to date are up 8% from 2014, up 11% from 2013, and down 16% from 2012  
DI dispositions monthly average is up 7% from 2014, up 11% from 2013, and down 13% from 2012

**BALANCE OPEN CASES**

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Avg.	% Chg of Avg	Yr-Yr AvgChg	
2012	1,815	1,757	1,905	1,734	1,636	1,877	2,005	1,906	2,139	1,755	1,663	1,379	<b>1,798</b>			
2013	1,277	1,182	991	1,227	1,437	1,462	1,481	1,374	1,198	986	1,177	1,300	<b>1,258</b>	70%	-540	
2014	1,469	1,536	1,557	1,788	1,830	1,922	2,250	2,176	2,048	1,984	1,834	1,823	<b>1,851</b>	147%	594	
2015	1,782	1,542	1,198	1,237	1,318	1,480	1,534	1,639	1,737				<b>1,496</b>	81%	-355	
													2014	81%	81%	
													2013	119%	116%	
													2012	83%	80%	
														chg 2015 avg	chg 2015 YTD	

DI balance Sep to date is down 19% from 2014, up 16% from 2013, and down 20% from 2012  
DI balance monthly average is down 19% from 2014, up 19% from 2013, and down 17% from 2012

**UI CY TRENDS - FO**

Program Codes 1, 2, 3, 4, 5, 6, 8, 23, 24, 28, 29, 30, 31, 33, 34, 35, 36, 37, 38, 41, 42

**NEW OPENED CASES**

CY	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg		
2012	33,339	30,233	36,391	33,590	34,531	31,871	32,132	37,791	33,363	36,746	31,266	26,393	397,646	<b>33,137</b>				
2013	33,691	31,654	33,967	32,876	33,258	28,418	29,941	30,154	24,997	28,576	23,320	25,020	355,872	<b>29,656</b>	89%	-3,481		
2014	29,259	24,091	26,279	30,284	26,654	24,702	24,330	22,177	21,805	21,462	16,062	19,991	287,096	<b>23,925</b>	81%	-5,731		
2015	17,415	16,163	19,647	21,674	18,055	19,418	20,036	18,448	17,611				168,467	<b>18,719</b>	78%	-5,206		
Multi	2												22		47		6	
UI registrations Sep to date are down 27% from 2014, down 40% from 2013, and down 44% from 2012																		
UI registrations monthly average is down 22% from 2014, down 37% from 2013, and down 44% from 2012																		
<b>CLOSED CASES</b>																		
CY	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg		
2012	33,604	37,167	44,615	28,383	34,802	31,915	30,672	35,346	30,299	38,963	32,844	32,269	410,879	<b>34,240</b>				
2013	33,153	33,375	37,440	29,390	29,752	26,058	35,658	33,322	29,065	27,591	24,375	22,868	362,047	<b>30,171</b>	88%	-4,069		
2014	26,057	25,250	26,573	26,957	27,140	25,221	25,688	24,541	20,520	23,658	17,228	18,900	287,733	<b>23,978</b>	79%	-6,193		
2015	19,584	20,754	20,060	19,749	18,729	19,303	19,666	17,767	17,577				173,189	<b>19,243</b>	80%	-4,735		
Multi	1/4												7/20					
UI dispositions Sep to date are down 24% from 2014, down 40% from 2013, and down 44% from 2012																		
UI dispositions monthly average is down 20% from 2014, down 36% from 2013, and down 44% from 2012																		

**BALANCE OPEN CASES**

CY	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg						
2012	45,315	38,225	29,603	34,674	34,327	34,188	35,578	37,843	40,820	38,495	36,792	30,853		<b>36,393</b>								
2013	31,303	29,396	25,859	29,169	32,572	34,851	29,038	25,729	21,580	22,445	21,288	23,364		<b>27,216</b>	75%	-9,177						
2014	25,994	24,779	24,421	27,670	27,131	26,548	25,113	22,670	23,888	21,619	20,404	21,447		<b>24,307</b>	89%	-2,909						
2015	19,211	14,570	14,111	15,981	15,268	15,304	15,571	16,198	16,183					<b>15,822</b>	65%	-8,485						
Multi	7												7		25		69		64		43	
UI balance Sep to date is down 38% from 2014, down 45% from 2013, and down 57% from 2012																						
UI balance monthly average is down 35% from 2014, down 42% from 2013, and down 57% from 2012																						

**TAX CY TRENDS - FO**  
Program Codes 15, 17, 18, 32, 46, 47, 48

**NEW OPENED CASES**

CY	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2012	346	141	196	117	78	335	253	229	254	200	215	214	2,578	<b>215</b>		
2013	223	245	299	199	243	321	233	264	247	242	307	411	3,234	<b>270</b>	125%	55
2014	232	320	285	230	222	217	217	234	255	178	253	253	2,896	<b>241</b>	90%	-28
2015	124	197	271	194	189	300	247	235	177				1,934	<b>215</b>	89%	-26
													2014	89%	87%	
													2013	80%	85%	
													2012	100%	99%	
														chg 2015 avg	chg 2015 YTD	

Tax registrations Sep to date are down 13% from 2014, down 15% from 2013, and down 1% from 2012  
Tax registrations monthly average is down 11% from 2014, down 20% from 2013, and even with 2012

**CLOSED CASES**

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2012	227	352	322	492	267	217	236	290	284	357	234	195	3,473	<b>289</b>		
2013	299	222	475	590	375	301	214	263	352	231	151	185	3,658	<b>305</b>	105%	15
2014	208	265	232	129	257	300	200	149	195	174	145	120	2,374	<b>198</b>	65%	-107
2015	81	150	143	212	252	272	196	93	64				1,463	<b>163</b>	82%	-35
													2014	82%	76%	
													2013	53%	47%	
													2012	56%	54%	
														chg 2015 avg	chg 2015 YTD	

Tax dispositions Sep to date are down 24% from 2014, down 53% from 2013, and down 46% from 2012  
Tax dispositions monthly average is down 18% from 2014, down 47% from 2013, and down 44% from 2012

**BALANCE OPEN CASES**

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Avg.	% Chg of Avg	Yr-Yr AvgChg
2012	4,711	4,498	4,371	3,995	3,803	3,918	3,931	3,871	3,841	3,683	3,664	3,683	<b>3,997</b>		
2013	3,606	3,629	3,453	3,062	2,930	2,949	2,967	2,965	2,861	2,872	3,028	3,253	<b>3,131</b>	78%	-866
2014	3,276	3,328	3,381	3,482	3,447	3,363	3,379	3,463	3,523	3,526	3,633	3,766	<b>3,464</b>	111%	333
2015	3,808	3,854	3,979	3,961	3,897	3,923	3,969	4,112	4,223				<b>3,970</b>	115%	506
													2014	115%	117%
													2013	127%	126%
													2012	99%	97%
														chg 2015 avg	chg 2015 YTD

Tax balance Sep to date is up 17% from 2014, up 26% from 2013, and down 3% from 2012  
Tax balance monthly average is up 15% from 2014, up 27% from 2013, and down 1% from 2012

**RULING-OTHER CY TRENDS - FO**  
Program Codes 9, 13, 14, 19, 21, 22, 40, 44

**NEW OPENED CASES**

CY	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2012	182	245	746	576	605	424	229	418	209	315	51	108	4,108	<b>342</b>		
2013	292	280	201	234	589	585	432	380	219	89	135	112	3,548	<b>296</b>	86%	-47
2014	156	223	402	791	601	228	231	217	190	119	71	133	3,362	<b>280</b>	95%	-16
2015	97	152	329	464	396	294	247	254	123				2,356	<b>262</b>	93%	-18
Ruling/Other registrations Sep to date are down 22% from 2014, down 27% from 2013, and down 35% from 2012													2014	93%	78%	
Ruling/Other registrations monthly average is down 7% from 2014, down 11% from 2013, and down 24% from 2012													2013	89%	73%	
													2012	76%	65%	
													chg 2015 avg		chg 2015 YTD	

**CLOSED CASES**

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2012	500	455	299	255	214	165	239	323	170	334	434	171	3,559	<b>297</b>		
2013	242	250	424	278	254	248	329	322	574	598	162	223	3,904	<b>325</b>	110%	29
2014	204	383	288	130	156	113	174	106	269	209	160	284	2,476	<b>206</b>	63%	-119
2015	116	139	915	243	286	206	271	176	196				2,548	<b>283</b>	137%	77
Ruling/Other dispositions Sep to date are up 40% from 2014, down 13% from 2013, and down 3% from 2012													2014	137%	140%	
Ruling/Other dispositions monthly average is up 37% from 2014, down 13% from 2013, and down 5% from 2012													2013	87%	87%	
													2012	95%	97%	
													chg 2015 avg		chg 2015 YTD	

**BALANCE OPEN CASES**

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Avg.	% Chg of Avg	Yr-Yr AvgChg	
2012	3,272	3,060	3,509	3,825	4,216	4,475	4,466	4,563	4,602	4,582	4,199	4,133	<b>4,075</b>			
2013	4,182	4,212	3,988	3,943	4,275	4,613	4,716	4,776	4,423	3,914	3,887	3,776	<b>4,225</b>	104%	150	
2014	3,724	3,566	3,667	4,329	4,775	4,892	4,914	5,022	4,942	4,851	4,761	4,597	<b>4,503</b>	107%	278	
2015	4,580	4,591	4,002	4,221	4,332	4,420	4,396	4,473	4,398				<b>4,379</b>	97%	-124	
Ruling/Other balance Sep to date is down 1% from 2014, up 1% from 2013, and up 10% from 2012													2014	97%	99%	
Ruling/Other balance monthly average is down 3% from 2014, up 4% from 2013, and up 7% from 2012													2013	104%	101%	
													2012	107%	110%	
													chg 2015 avg		chg 2015 YTD	

**California Unemployment Insurance Appeals Board**  
**Board Appeal Summary Report**  
**Average Days in Transfer from FO Received Date to Date Received at AO**

	September, 2015	August, 2015	July, 2015	June, 2015
	Average Days in Transfer			
	Case Count	Case Count	Case Count	Case Count
Fr	0.94	0.91	1.44	1.54
	32	99	93	135
Ing	2.95	1.77	4.82	3.24
	78	122	186	238
Inl	1.54	2.81	1.64	2.73
	92	181	162	190
LA	1.32	0.88	1.27	0.85
	109	122	107	185
Oak	1.21	1.22	2.94	4.92
	39	58	105	119
OC	0.16	1.45	0.28	0.25
	86	118	153	138
Ox	0.15	0.39	0.97	0.22
	59	69	67	78
Pas	3.24	7.76	6.77	5.28
	42	55	83	88
Sac	1.85	1.68	1.57	1.55
	39	115	157	146
SD	3.40	3.18	2.67	2.20
	52	111	123	104
SF	1.04	1.78	0.70	2.68
	28	32	56	72
SJ	1.58	0.98	1.04	1.74
	55	87	73	108
Tax	1.00		1.00	1.50
	2		1	2
<b>Total</b>	<b>1.57</b>	<b>1.97</b>	<b>2.27</b>	<b>2.24</b>
	<b>713</b>	<b>1169</b>	<b>1366</b>	<b>1603</b>

AO REPORT TO BOARD -- MONTH OF SEPTEMBER 2015

	# Cases	Last Month	Calendar Yr Avg	Last Yr Avg	2011
REGISTRATIONS	1088	1586	1389	1642	3318
DISPOSITIONS	1432	1597	1494	1680	2994
OPEN BALANCE	1137	1483	1789	1662	5814

CASE AGING (40days) 29.8 32.9

TIME LAPSE		
45 Days (50%)	68.00%	69.00%
75 Days (80%)	95.00%	95.00%
150 Days (95%)	99.00%	100.00%

OTHER INFORMATION

FO to AO Transfer Rate 1.57 days  
 FO ALLs working in AO 1  
 Appeal Rate FO to AO 5.70%

**WEEKLY AO WORKLOAD REPORT**  
**September 2015**

<u>Week</u>	<u>Unreg total</u>	<u>Appeals Rec'd</u>	<u>Registrations</u>	<u>Dispositions</u>	<u>Open Balance</u>	<u>Change</u>
9/4/2015	193	206	183	263	1404	-79
9/11/2015	253	272	178	203	1378	-26
9/18/2015	286	284	272	305	1343	-35
9/25/2015	315	321	279	376	1247	-96
9/30/2015						

**9/1-9/30/2015**  
**Running Total**

**1083**      **912**      **1147**

<u>Week</u>	<u>Average Case age</u>	<u>45-Day (50%) Time Lapse</u>	<u>75-Day (80%) Time Lapse</u>	<u>150-Day (95%) Time Lapse</u>
9/4/2015	31	56.59%	95.12%	100.00%
9/11/2015	32.7	66.67%	95.32%	99.42%
9/18/2015	33.1	74.32%	98.05%	99.61%
9/25/2015	30.6	72.51%	91.75%	97.59%
9/30/2015				

**9/1-9/30/2015**





**FY DI TRENDS-AO**  
**Program Codes 7, 10, 11, 12, 16 & 20**

**REGISTRATIONS**

	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	April	May	June	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
12/13	85	92	78	85	65	57	52	121	55	118	84	46	938	78		
13/14	37	61	74	88	55	43	35	45	36	60	48	57	639	53	68%	-25
14/15	55	39	59	69	52	71	59	54	57	72	56	51	694	58	109%	5
15/16	52	91	72										215	72	124%	14
													14/15	124%	141%	
													13/14	135%	125%	
													12/13	92%	84%	

DI registrations Jan to date are up 41% from 14/15, up 25% from 13/14, down 16% from 12/13.  
 DI registration monthly average is up 24% from 14/15, up 35% from 13/14, and down 8% from 12/13.

chg 14/15 avg	chg to 14/15 YTD
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**DISPOSITIONS**

	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	April	May	June	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
12/13	79	95	79	87	77	71	69	60	117	88	71	65	958	80		
13/14	53	69	52	44	56	78	59	37	38	50	45	46	627	52	65%	-28
14/15	45	50	50	55	45	56	59	74	53	59	74	52	672	56	107%	4
15/16	80	56	101										237	79	1268%	23
													14/15	141%	163%	
													13/14	151%	136%	
													12/13	99%	94%	

DI dispositions Jan to date are up 63% from 14/15, up 36% from 13/14, down 6% from 12/13.  
 DI disposition monthly average is up 41% from 14/15, up 51% from 13/14, and down 1% from 12/13.

chg 14/15 avg	chg to 14/15 YTD
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**BALANCE OPEN CASES**

	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	April	May	June	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
12/13	102	97	97	95	82	68	51	110	50	78	91	72		83		
13/14	55	49	71	116	115	79	52	61	60	68	71	82		73	89%	-10
14/15	92	81	91	106	112	82	127	107	111	125	109	106		104	89%	31
15/16	77	112	82											90	28%	-14
													14/15	87%	103%	
													13/14	123%	155%	
													12/13	109%	92%	

Open Balance of DI case to date is up 3% from 14/15, up 55% from 13/14, and down 8% from 12/13.  
 Open Balance monthly average down 13% from 14/15, up 23% from 13/14, and up 9% from 12/13.

chg 14/15 avg	chg to 14/15 YTD
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**FY TAX TRENDS-AO**  
 Program Codes 15, 17, 18, 32, 45, 46, 47, 48

**REGISTRATIONS**

	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
12/13	2	13	11	9	44	6	27	0	0	53	24	17	206	17		
13/14	12	12	5	42	9	27	24	11	18	9	1	8	178	15	86%	-2
14/15	0	5	10	5	11	9	3	8	9	5	6	1	72	6	40%	-9
15/16	6	5	10										21	7	117%	1
													14/15	117%	140%	
													13/14	47%	72%	
													12/13	41%	81%	

Tax registrations Jan to date are up 40% from 14/15, down 28% from 13/14, and down 19% from 12/13  
 Tax registration monthly average is up 17% from 14/15, down 53% from 13/14, and down 59% from 12/13

**DISPOSITIONS**

	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
12/13	35	34	43	16	2	18	25	11	15	16	15	10	240	20		
13/14	28	38	18	20	13	39	8	16	12	7	13	32	244	20	102%	0
14/15	6	10	0	5	7	5	5	13	0	12	10	3	76	6	31%	-14
15/16	7	9	4										20	7	105%	0
													14/15	105%	125%	
													13/14	33%	24%	
													12/13	33%	18%	

Tax dispositions Jan to date are up 25% from 14/15, down 76% from 13/14 and down 82% from 12/13.  
 Tax disposition monthly average is up 5% from 14/15, down 67% from 13/14, and down 67% from 12/13.

**BALANCE OPEN CASES**

	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
12/13	100	78	46	39	82	70	72	61	46	83	92	97		72		
13/14	82	58	48	67	68	51	74	63	69	71	59	35		62	86%	-10
14/15	22	18	28	27	31	35	33	28	37	30	26	25		28	46%	-34
15/16	24	20	26											23	82%	-5
													14/15	82%	103%	
													13/14	38%	37%	
													12/13	32%	31%	

Tax balance of open cases to date is up 3% from 14/15, down 63% from 13/14, and down 69% from 12/13  
 Tax balance monthly average is down 18% from 14/15, down 62% from 13/14, and down 68% from 12/13

**FY OTHER TRENDS-AO**  
Program Codes 9,13, 14, 19, 21,22, 40, 44

**REGISTRATIONS**

	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	April	May	June	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
12/13	1	3	3	2	7	2	2	4	6	9	13	5	57	5		
13/14	11	4	4	14	7	4	2	2	8	7	2	4	69	6	121%	1
14/15	2	9	4	4	1	5	6	1	5	13	14	8	72	6	104%	0
15/16	1	10	7										18	6	100%	0
													14/15	100%	120%	
													13/14	104%	95%	
													12/13	126%	257%	

Other registrations Jan to date is are up 20% from 14/15, down 5% from 13/14, and up 157% from 12/13.  
Other registration monthly average is equal to 14/15, up 4% from 13/14, and up 26% from 12/13.

**DISPOSITIONS**

	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	April	May	June	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
12/13	1	0	5	3	1	7	4	3	3	2	15	4	48	4		
13/14	4	7	10	2	9	8	7	2	4	3	4	8	68	6	142%	2
14/15	6	1	4	5	5	5	3	5	4	4	5	10	57	5	84%	-1
15/16	19	5	9										33	11	232%	6
													14/15	232%	300%	
													13/14	194%	157%	
													12/13	275%	550%	

Other dispositions Jan to date are up 200% from 14/15, up 57% from 13/14, and up 450% from 12/13.  
Other disposition monthly average up 132% from 14/15, up 94% from 13/14, and up 175% from 12/13.

**BALANCE OPEN CASES**

	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	April	May	June	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
12/13	2	5	3	2	8	1	0	2	2	5	2	11		4		
13/14	18	13	7	19	19	13	1	1	9	13	11	7		11	305%	7
14/15	3	11	11	10	6	7	10	6	7	15	24	22		11	101%	0
15/16	4	9	8											7	64%	-4
													14/15	64%	84%	
													13/14	64%	55%	
													12/13	195%	210%	

Other balance of open cases is down 16% from 14/15, down 45% from 13/14, and up 110% from 12/13.  
Other balance monthly average is down 36% from 14/15, down 36% from 13/14, and up 95% from 12/13.



**APPELLATE OPERATIONS TL & Case Aging TRENDS**

	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Avq.
Standard	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%
Standard	80%	80%	80%	80%	80%	80%	80%	80%	80%	80%	80%	80%	80%
Standard	95%	95%	95%	95%	95%	95%	95%	95%	95%	95%	95%	95%	95%
<b>09/10 45-Day</b>	42.4%	41.8%	39.5%	28.6%	35.6%	28.8%	29.2%	37.3%	40.6%	43.3%	59.4%	80.5%	42.2%
<b>09/10 75-Day</b>	76.2%	85.2%	69.7%	75.9%	78.5%	74.2%	83.2%	88.0%	92.9%	93.3%	91.3%	94.7%	83.6%
<b>09/10 150-Day</b>	82.6%	98.8%	96.7%	99.1%	99.3%	99.3%	99.0%	99.5%	99.6%	99.7%	99.8%	99.4%	97.7%
<b>Case Aging</b>	42	45	41	39	39	39	37	38	34	35	29	26	37
<b>10/11 45-Day</b>	83.1%	80.3%	80.9%	81.5%	83.4%	86.7%	85.9%	77.0%	48.1%	28.8%	11.4%	12.9%	63.3%
<b>10/11 75-Day</b>	97.5%	98.2%	97.5%	98.0%	96.9%	97.2%	98.4%	97.7%	95.6%	89.3%	88.1%	90.1%	95.4%
<b>10/11 150-Day</b>	99.8%	99.9%	99.9%	100.0%	99.4%	99.9%	99.7%	99.8%	99.7%	99.9%	99.6%	99.8%	99.8%
<b>Case Aging</b>	26	28	27	27	25	28	28	33	38	38	36	34	31
<b>11/12 45-Day</b>	5.2%	6.9%	4.6%	10.1%	10.6%	10.5%	11.6%	11.7%	17.2%	16.6%	47.9%	70.0%	18.6%
<b>11/12 75-Day</b>	89.2%	87.9%	60.8%	43.9%	40.0%	43.1%	72.7%	86.4%	89.5%	85.5%	91.0%	90.8%	73.4%
<b>11/12 150-Day</b>	99.7%	99.4%	99.4%	97.3%	98.9%	99.0%	98.9%	99.2%	99.5%	99.3%	99.3%	99.1%	99.1%
<b>Case Aging</b>	39	45	43	47	48	44	39	38	39	37	32	30	40
<b>12/13 45-Day</b>	66.4%	57.4%	20.5%	12.8%	28.7%	40.7%	25.5%	22.1%	14.3%	13.1%	24.0%	53.3%	31.6%
<b>12/13 75-Day</b>	94.0%	91.8%	81.7%	80.9%	80.6%	76.4%	75.4%	83.2%	75.3%	82.7%	76.6%	90.6%	82.4%
<b>12/13 150-Day</b>	99.3%	99.5%	99.4%	99.7%	99.2%	99.0%	99.0%	99.6%	98.3%	99.7%	99.8%	99.7%	99.4%
<b>Case Aging</b>	31	38	44	48	44	49	45	45	41	41	35	29.1	41
<b>13/14 45-Day</b>	62.3%	76.0%	72.4%	56.6%	77.4%	80.5%	74.5%	52.4%	52.5%	51.0%	59.1%	77.1%	66.0%
<b>13/14 75-Day</b>	92.1%	94.4%	90.7%	90.3%	94.8%	96.3%	97.3%	93.1%	92.3%	91.6%	93.3%	96.3%	93.5%
<b>13/14 150-Day</b>	99.7%	99.7%	99.8%	99.8%	99.6%	99.9%	99.9%	99.5%	99.6%	99.4%	99.6%	99.9%	99.7%
<b>Case Aging</b>	30.1	31.0	32.2	30.1	28.4	24.0	31.1	35.0	33.8	31.8	27.8	29.3	30.4
<b>14/15 45-Day</b>	77.9%	79.7%	69.8%	42.1%	48.6%	56.9%	38.5%	39.7%	42.4%	45.1%	20.5%	57.5%	51.6%
<b>14/15 75-Day</b>	96.9%	96.4%	95.7%	96.1%	90.6%	93.4%	91.3%	88.8%	82.1%	67.8%	77.4%	93.6%	89.2%
<b>14/15 150-Day</b>	99.2%	99.8%	99.8%	99.8%	99.7%	99.8%	99.5%	99.5%	99.0%	99.9%	99.8%	99.8%	99.6%
<b>Case Aging</b>	28.3	30.3	32.3	35.1	35.9	37.6	36.0	41.1	38.8	41.5	33.4	33.9	35.4
<b>15/16 45-Day</b>	43.2%	21.1%	35.0%	40.2%	69.0%	68.4%							46.2%
<b>15/16 75-Day</b>	92.4%	94.6%	88.0%	89.1%	95.3%	94.6%							92.3%
<b>15/16 150-Day</b>	99.6%	99.8%	100.0%	99.4%	99.8%	98.9%							99.6%
<b>Case Aging</b>	37.3	40.9	42.2	33.1	32.9	29.8							36.0

**UI TRENDS-AO**  
**Program Codes 1, 2, 3, 4, 5, 6, 8, 23, 24, 28, 29, 30, 31, 33, 34, 35, 36, 37, 38, 41, 42**

**REGISTRATIONS**

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2012	2,661	2,205	3,383	2,517	2,307	1,875	2,319	2,824	2,338	2,632	2,260	2,091	29,412	2,451		
2013	2,708	2,596	2,942	3,223	2,614	2,014	1,997	1,978	2,276	2,233	1,541	1,591	27,713	2,309	94%	-142
2014	1,620	1,608	1,558	1,883	1,572	1,743	1,790	1,676	1,563	1,795	1,234	1,332	19,374	1,615	70%	-695
2015	1,027	1,225	1,534	1,518	1,394	1,056	1,583	1,480	999				11,816	1,313	81%	-302
													2014	81%	79%	
													2013	57%	53%	
													2012	54%	53%	

UI registrations Jan to date are down 20% from 2014, down 46% from 2013, and down 46% from 2012  
 UI registration monthly average is down 16% from 2014, down 41% from 2013, and down 45% from 2012

**DISPOSITIONS**

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2012	2,780	2,960	3,237	2,626	2,211	1,747	2,538	2,958	2,582	2,235	2,247	2,512	30,633	2,553		
2013	2,823	2,240	3,363	2,704	2,504	1,920	2,173	2,602	2,040	1,787	1,582	2,083	27,821	2,318	91%	-234
2014	1,443	1,490	1,689	1,817	1,599	1,548	1,518	1,752	1,871	1,503	1,381	1,571	19,182	1,599	69%	-720
2015	1,348	1,285	1,212	1,271	1,231	1,733	1,782	1,527	1,318				12,707	1,412	88%	-187
													2014	88%	86%	
													2013	61%	57%	
													2012	55%	54%	

UI dispositions Jan to date are down 11% from 2014, down 44% from 2013, and down 46% from 2012  
 UI disposition monthly average is down 11% from 2014, down 39% from 2013, and down 44% from 2012

**BALANCE OPEN CASES**

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2012	3,398	2,671	2,785	2,703	2,784	2,910	2,744	2,578	2,363	2,727	2,722	2,199	2,199	2,715		
2013	1,933	2,279	1,809	2,336	2,432	2,491	2,329	1,684	1,923	2,373	2,360	1,827	1,827	2,148	79%	-567
2014	1,994	2,106	1,936	1,986	1,979	2,166	2,432	2,349	2,047	2,340	2,181	1,937	1,937	2,121	99%	-27
2015	1,613	1,549	1,873	2,120	2,277	1,599	1,394	1,342	1,021				14,788	1,643	77%	-478
													2014	77%	78%	
													2013	76%	77%	
													2012	61%	59%	

UI balance of open cases Jan to date are down 19% from 2014, down 20% from 2013, and down 39% from 2012  
 UI balance monthly average is down 19% from 2014, down 20% from 2013, and down 37% from 2012

**DI TRENDS-AO**  
Program Codes 7, 10, 11, 12, 16 & 20

**REGISTRATIONS**

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2012	99	82	120	66	74	62	85	92	78	85	65	57	965	80		
2013	52	121	55	118	84	46	37	61	74	88	55	43	834	70	86%	-11
2014	35	45	36	60	48	57	55	39	59	69	52	71	626	52	75%	-17
2015	59	54	57	72	56	51	52	91	72				564	63	120%	11
													2014	120%	130%	
													2013	90%	87%	
													2012	78%	74%	

DI registrations Jan to date up 31% from 2014, down 14% from 2013, down 28% from 2012.  
DI registration monthly average up 18% from 2014, down 12% from 2013, and down 24% from 2012.

**DISPOSITIONS**

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2012	113	116	140	88	73	55	79	95	79	87	77	71	1,073	89		
2013	69	60	117	88	71	65	53	69	52	44	56	78	822	69	77%	-21
2014	59	37	38	50	45	46	45	50	50	55	45	56	576	48	70%	-21
2015	59	74	53	59	74	52	80	56	101				608	68	141%	20
													2014	141%	69%	
													2013	99%	45%	
													2012	76%	73%	

DI dispositions Jan to date down 24% from 2014, down 51% from 2013, down 33% from 2012.  
DI disposition monthly average up 32% from 2014, down 7% from 2013, and down 29% from 2012.

**BALANCE OPEN CASES**

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	End of yr Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2012	163	130	109	87	89	97	102	97	97	95	82	68	68	101		
2013	51	110	50	78	91	72	55	49	71	116	115	79	79	78	77%	-23
2014	52	61	60	68	71	82	92	81	91	106	112	127	127	84	107%	6
2015	127	107	111	125	109	106	77	112	82					106	127%	23
													2014	127%	145%	
													2013	136%	152%	
													2012	105%	98%	

Open Balance of DI Jan to date up 54% from 2014, up 57% from 2013, and equal to 2012.  
Open Balance monthly average up 31% from 2014, up 40% from 2013, and up 8% from 2012.

**TAX TRENDS-AO**  
 Program Codes 15, 17, 18, 32, 45, 46, 47, 48

**REGISTRATIONS**

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2012	22	20	39	23	34	21	2	13	11	9	44	6	244	20		
2013	27	0	0	53	24	17	12	12	5	42	9	27	228	19	93%	-1
2014	24	11	18	9	1	8	0	5	10	5	11	9	111	9	49%	-10
2015	3	8	9	5	6	1	6	5	10				53	6	64%	-3
													2014	64%	62%	
													2013	31%	35%	
													2012	29%	29%	

Tax registrations Jan to date are down 43% from 2014, down 70% from 2013, and down 75% from 2012  
 Tax registration monthly average down 42% from 2014, down 72% from 2013, and down 74% from 2012

2014	64%	62%
2013	31%	35%
2012	29%	29%

**DISPOSITIONS**

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2012	15	23	21	24	17	13	35	34	43	16	2	18	261	22		
2013	25	11	15	16	15	10	28	38	18	20	13	39	248	21	95%	-1
2014	8	16	12	7	13	32	6	10	0	5	7	5	121	10	49%	-11
2015	5	13	0	12	10	3	7	9	4				63	7	69%	-3
													2014	69%	61%	
													2013	34%	36%	
													2012	32%	28%	

Tax dispositions Jan to date are down 43% from 2014, down 63% from 2013 and down 68% from 2012  
 Tax disposition monthly average down 27% from 2014, down 64% from 2013, and down 66% from 2012

2014	69%	61%
2013	34%	36%
2012	32%	28%

**BALANCE OPEN CASES**

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2012	92	89	108	107	124	132	100	78	46	39	82	70	70	89		
2013	72	61	46	83	92	97	82	58	48	67	68	51	51	69	77%	-20
2014	74	63	69	71	59	35	22	18	28	27	31	35	35	44	64%	-24
2015	33	28	37	30	26	25	24	20	26					28	62%	-17
													2014	62%	57%	
													2013	40%	39%	
													2012	31%	28%	

Tax balance of open cases Jan to date is down 46% from 2014, down 62% from 2013, and down 73% from 2012  
 Tax balance monthly average is down 37% from 2014, down 59% from 2013, and down 69% from 2012

2014	62%	57%
2013	40%	39%
2012	31%	28%



**ALL PROGRAM TRENDS-AO**

**REGISTRATIONS**

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2012	2,789	2,316	3,555	2,608	2,418	1,958	2,407	2,932	2,430	2,728	2,376	2,156	30,673	2,556		
2013	2,789	2,721	3,003	3,403	2,735	2,082	2,057	2,055	2,359	2,377	1,612	1,665	28,858	2,405	94%	-151
2014	1,681	1,666	1,620	1,959	1,623	1,812	1,847	1,729	1,636	1,873	1,298	1,417	20,161	1,680	70%	-725
2015	1,095	1,288	1,605	1,608	1,470	1,116	1,642	1,586	1,088				12,498	1,389	83%	-291
													2014	83%	80%	
													2013	58%	54%	
													2012	54%	53%	

Registrations Jan to date down 14% from 2014, down 45% from 2013, and down 46% from 2012.  
 Registration monthly average down 15% from 2014, down 41% from 2013, and down 44% from 2012.

chg to '14 avg

chg to '14 YTD

**DISPOSITIONS**

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2012	2,917	3,106	3,407	2,747	2,310	1,816	2,653	3,087	2,709	2,341	2,327	2,608	32,028	2,669		
2013	2,921	2,314	3,498	2,810	2,605	1,999	2,258	2,716	2,120	1,853	1,660	2,208	28,962	2,414	90%	-256
2014	1,517	1,549	1,743	1,877	1,661	1,634	1,583	1,813	1,925	1,568	1,438	1,637	19,945	1,662	69%	-751
2015	1,415	1,377	1,269	1,346	1,320	1,798	1,888	1,597	1,432				13,442	1,494	90%	-169
													2014	90%	81%	
													2013	62%	144%	
													2012	56%	54%	

Dispositions Jan to date are down 10% from 2014, up 58% from 2013, and down 46% from 2012.  
 Disposition monthly average down 10% from 2014, down 38% from 2013, and down 44% from 2012.

chg to '14 avg

chg to '14 YTD

**BALANCE OPEN CASES**

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg	
2012	3,872	3,870	4,984	5,543	5,814	5,356	6,020	6,423	5,566	5,057	4,265	3,792	3,792	5,047			
2013	3,663	2,902	3,018	2,906	3,014	3,141	2,948	2,758	2,509	2,863	2,894	2,340	2,340	2,913	58%	-2,134	
2014	2,057	2,452	1,910	2,509	2,625	2,671	2,484	1,804	2,049	2,575	2,562	1,970	1,970	2,306	79%	-607	
2015	1,783	1,690	2,028	2,290	2,436	1,752	1,499	1,483	1,137					1,789	78%	-517	
														2014	78%	78%	
														2013	61%	60%	
														2012	35%	34%	

Open Balance Jan to date is down 19% from 2014, down 39% from 2013, and down 64% from 2012.  
 Open Balance monthly average down 19% from 2014, down 36% from 2013, and down 63% from 2012.

chg to '14 avg

chg to '14 YTD

**APPELLATE OPERATIONS TL & Case Aging TRENDS**

	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Avg.
Standard	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%
Standard	80%	80%	80%	80%	80%	80%	80%	80%	80%	80%	80%	80%	80%
Standard	95%	95%	95%	95%	95%	95%	95%	95%	95%	95%	95%	95%	95%
<b>09/10 45-Day</b>	42.4%	41.8%	39.5%	28.6%	35.6%	28.8%	29.2%	37.3%	40.6%	43.3%	59.4%	80.5%	42.2%
<b>09/10 75-Day</b>	76.2%	85.2%	69.7%	75.9%	78.5%	74.2%	83.2%	88.0%	92.9%	93.3%	91.3%	94.7%	83.6%
<b>09/10 150-Day</b>	82.6%	98.8%	96.7%	99.1%	99.3%	99.3%	99.0%	99.5%	99.6%	99.7%	99.8%	99.4%	97.7%
<b>Case Aging</b>	42	45	41	39	39	39	37	38	34	35	29	26	37
<b>10/11 45-Day</b>	83.1%	80.3%	80.9%	81.5%	83.4%	86.7%	85.9%	77.0%	48.1%	28.8%	11.4%	12.9%	63.3%
<b>10/11 75-Day</b>	97.5%	98.2%	97.5%	98.0%	96.9%	97.2%	98.4%	97.7%	95.6%	89.3%	88.1%	90.1%	95.4%
<b>10/11 150-Day</b>	99.8%	99.9%	99.9%	100.0%	99.4%	99.9%	99.7%	99.8%	99.7%	99.9%	99.6%	99.8%	99.8%
<b>Case Aging</b>	26	28	27	27	25	28	28	33	38	38	36	34	31
<b>11/12 45-Day</b>	5.2%	6.9%	4.6%	10.1%	10.6%	10.5%	11.6%	11.7%	17.2%	16.6%	47.9%	70.0%	18.6%
<b>11/12 75-Day</b>	89.2%	87.9%	60.8%	43.9%	40.0%	43.1%	72.7%	86.4%	89.5%	85.5%	91.0%	90.8%	73.4%
<b>11/12 150-Day</b>	99.7%	99.4%	99.4%	97.3%	98.9%	99.0%	98.9%	99.2%	99.5%	99.3%	99.3%	99.1%	99.1%
<b>Case Aging</b>	39	45	43	47	48	44	39	38	39	37	32	30	40
<b>12/13 45-Day</b>	66.4%	57.4%	20.5%	12.8%	28.7%	40.7%	25.5%	22.1%	14.3%	13.1%	24.0%	53.3%	31.6%
<b>12/13 75-Day</b>	94.0%	91.8%	81.7%	80.9%	80.6%	76.4%	75.4%	83.2%	75.3%	82.7%	76.6%	90.6%	82.4%
<b>12/13 150-Day</b>	99.3%	99.5%	99.4%	99.7%	99.2%	99.0%	99.0%	99.6%	98.3%	99.7%	99.8%	99.7%	99.4%
<b>Case Aging</b>	31	38	44	48	44	49	45	45	41	41	35	29.1	41
<b>13/14 45-Day</b>	62.3%	76.0%	72.4%	56.6%	77.4%	80.5%	74.5%	52.4%	52.5%	51.0%	59.1%	77.1%	66.0%
<b>13/14 75-Day</b>	92.1%	94.4%	90.7%	90.3%	94.8%	96.3%	97.3%	93.1%	92.3%	91.6%	93.3%	96.3%	93.5%
<b>13/14 150-Day</b>	99.7%	99.7%	99.8%	99.8%	99.6%	99.9%	99.9%	99.5%	99.6%	99.4%	99.6%	99.9%	99.7%
<b>Case Aging</b>	30.1	31.0	32.2	30.1	28.4	24.0	31.1	35.0	33.8	31.8	27.8	29.3	30.4
<b>14/15 45-Day</b>	77.9%	79.7%	69.8%	42.1%	48.6%	56.9%	38.5%	39.7%	42.4%	45.1%	20.5%	57.5%	51.6%
<b>14/15 75-Day</b>	96.9%	96.4%	95.7%	96.1%	90.6%	93.4%	91.3%	88.8%	82.1%	67.8%	77.4%	93.6%	89.2%
<b>14/15 150-Day</b>	99.2%	99.8%	99.8%	99.8%	99.7%	99.8%	99.5%	99.5%	99.0%	99.9%	99.8%	99.8%	99.6%
<b>Case Aging</b>	28.3	30.3	32.3	35.1	35.9	37.6	36.0	41.1	38.8	41.5	33.4	33.9	35.4
<b>15/16 45-Day</b>	43.2%	21.1%	35.0%	40.2%	69.0%	68.4%							46.2%
<b>15/16 75-Day</b>	92.4%	94.6%	88.0%	89.1%	95.3%	94.6%							92.3%
<b>15/16 150-Day</b>	99.6%	99.8%	100.0%	99.4%	99.8%	98.9%							99.6%
<b>Case Aging</b>	37.3	40.9	42.2	33.1	32.9	29.8							36.0

APPELLATE OPERATIONS ~ REPORT SUMMARY

APPELLATE		2015												AO		Appellants	
WORKLOAD	Jan	Feb	March	April	May	June	July	Aug	Sep	Oct	Nov	Dec	Average	Current Mo. % of Avg.	TOTAL	Current Mo.	Appellants
<b>Registrations</b>																	
UI TL	1,027	1,225	1,534	1,518	1,394	1,056	1,583	1,480	999				1,313	76%	11,816		
DI	59	54	57	72	56	51	52	91	72				63	115%	564		
Ruling & T-R	2	0	2	12	13	7	0	9	7				6	121%	52		
Tax	3	8	9	5	6	1	6	5	10				6	170%	53		
Other	4	1	3	1	1	1	1	1	0				1	0%	13		
Total	1,095	1,288	1,605	1,608	1,470	1,116	1,642	1,586	1,088	0	0	0	1,389	78%	12,498	708	
<i>Multi Cases</i>																	
<b>Dispositions</b>																	
UI TL	1,348	1,285	1,212	1,271	1,231	1,733	1,782	1,527	1,318				1,412	93%	12,707		
DI	59	74	53	59	74	52	80	56	101				68	150%	608		
Ruling & T-R	1	4	0	2	5	7	18	4	6				5	115%	47		
Tax	5	13	0	12	10	3	7	9	4				7	57%	63		
Other	2	1	4	2	0	3	1	1	3				2	159%	17		
Total	1,415	1,377	1,269	1,346	1,320	1,798	1,888	1,597	1,432	0	0	0	1,494	96%	13,442	876	
<i>Multi Cases/CI</i>																	
<b>Balance - Open Cases</b>																	
UI TL	1,613	1,549	1,873	2,120	2,277	1,599	1,394	1,342	1,021				1,643	62%			
DI	127	107	111	125	109	106	77	112	82				106	77%			
Ruling & T-R	5	1	3	12	20	20	2	7	8				9	92%			
Tax	33	28	37	30	26	25	24	20	26				28	94%			
Other	5	5	4	3	4	2	2	2	0				3	0%			
Total	1,783	1,690	2,028	2,290	2,436	1,752	1,499	1,483	1,137	0	0	0	1,789	64%		649	Estimate
<i>Multi Cases</i>																	
<b>FO to AO Appeal Rate</b>																	
UI TL	5.4%	6.3%	7.4%	7.6%	7.1%	5.6%	8.2%	7.5%	5.6%				6.7%	83%			
DI	5.5%	4.7%	4.6%	5.2%	5.4%	5.4%	5.3%	7.9%	6.8%				5.7%	121%			
Ruling & T-R	0.7%	0.0%	1.9%	1.3%	6.1%	2.5%	0.0%	3.5%	4.2%				2.3%	188%			
Tax	2.5%	9.9%	6.0%	3.5%	2.8%	0.4%	2.2%	2.6%	10.8%				4.5%	238%			
Other	36.4%	2.4%	9.7%	4.3%	3.2%	12.5%	6.3%	6.3%	0.0%				9.0%	0%			
Overall Rate	5.4%	6.2%	7.2%	7.1%	6.9%	5.5%	7.9%	7.5%	5.7%				6.6%	86%			

APPELLATE OPERATIONS ~ REPORT SUMMARY

APPELLATE	Jan	Feb	March	April	May	June	July	Aug	Sep	Oct	Nov	Dec	Average	AO Current Mo. % of Avg.
<b>TIME LAPSE</b>														
45 Day-50 %	45	21	58	43	21	35	40	69	68				44	154%
75 Day- 80 %	68	77	94	92	95	88	89	95	95				88	107%
150 Day- 95 %	100	100	100	100	100	100	99	100	99				100	99%
<b>CASE AGE</b>														
Avg Days-UI (mean)	41.5	33.4	33.9	37.3	40.9	42.2	33.1	32.9	29.8				36.1	83%
Avg Days-UI (median)	36.5	30.0	32.0	37.0	39.0	39.0	31.0	28.0	26.0				33.2	78%
<b>Over 120 days old</b>														
UI Cases	6	4	5	5	7	10	9	3	16				7	222%
UI %	0%	0%	0%	0%	0%	1%	1%	0%					0%	
UI % w/out Multis	0%	0%	0%	0%	0%	1%	1%	0%					0%	
<b>NET PYS USED</b>														
ALJ	9.67	12.61	10.74	8.49	9.39	10.12	11.97	10.46					10.4	100%
AO Non ALJ	21.19	21.73	21.34	21.78	20.29	19.26	20.06	20.42					20.8	98%
CTU Non ALJ	2.79	2.69	2.76	2.75	2.33	2.71	3.68	3.16					2.9	111%
Net Pys	33.65	37.03	34.84	33.02	32.01	32.09	35.71	34.04	0.00	0.00	0.00	0.00	34.0	100%
<b>RATIOS</b>														
AO w/o transcribers	2.19	1.72	1.99	2.57	2.16	1.90	1.68	1.95					1.99	98%
AO with transcribers	2.48	1.94	2.24	2.89	2.41	2.17	1.98	2.25					2.26	100%
<b>TRANSCRIPTS</b>														
	39	32	49	40	23	28	52	39	40				38	105%
<b>PAGES</b>														
	2,555	2,011	3,828	3,258	1,660	2,762	3,539	3,676	3,845				3,015	128%
AVG PGS Per T/S	66	63	78	81	72	99	68	94	96				66	147%
<b>PRODUCTIVITY</b>														
ALJ Disp/wk	38.5	27.3	28.1	36.0	35.1	40.4	35.8	34.7					38.5	90%
Trans Pgs/day	48.20	37.38	66.05	53.85	35.62	46.33	43.71	52.88					48.2	1.097/0657

APPELLATE OPERATIONS ~ REPORT SUMMARY

APPELLATE												2015-2016												AO		Appellants			
WORKLOAD												July	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Average	Current Mo. % of Avg.	TOTAL	Current Mo.	Appellants	
Registrations																													
UI TL												1,583	1,480	999											1,354	74%	4,062		
DI												52	91	72											72	100%	215		
Ruling & T-R												0	9	7											5	131%	16		
Tax												6	5	10											7	143%	21		
Other												1	1	0											1	0%	2		
Total												1,642	1,586	1,088	0	0	0	0	0	0	0	0	0	1,439	76%	4,316	708		
Multi Cases																													
Dispositions																													
UI TL												1,782	1,527	1,318											1,542	85%	4,627		
DI												80	56	101											79	128%	237		
Ruling & T-R												18	4	6											9	64%	28		
Tax												7	9	4											7	60%	20		
Other												1	1	3											2	180%	5		
Total												1,888	1,597	1,432	0	0	0	0	0	0	0	0	0	1,639	87%	4,917	876		
Multi Case/Ch																													
Balance - Open Cases																													
UI TL												1,394	1,342	1,021											1,252	82%			
DI												77	112	82											90	91%			
Ruling & T-R												2	7	8											6	141%			
Tax												24	20	26											23	111%			
Other												2	2	0											1	0%			
Total												1,499	1,483	1,137	0	0	0	0	0	0	0	0	0	1,373	83%		649	Estimate	
Multi Cases																													
FO to AO Appeal Rate																													
UI TL												8.2%	7.5%	5.6%											7.1%	79%			
DI												5.3%	7.9%	6.8%											6.7%	102%			
Ruling & T-R												0.0%	3.5%	4.2%											2.6%	164%			
Tax												2.2%	2.6%	10.8%											5.2%	208%			
Other												6.3%	6.3%	0.0%											4.2%	0%			
Overall Rate												7.9%	7.5%	5.7%											7.0%	81%			



# Monthly Board Meeting Litigation Report - September 2015

AGENDA ITEM 9

<u>LITIGATION CASES PENDING</u>	TOTAL = 148
· SUPERIOR COURT: Claimant Petitions.....	109
Employer Petitions.....	16
EDD Petitions.....	0
Non-benefit Court Cases .....	5
APPELLATE COURT: Claimant Appeals.....	12
Employer Appeals.....	3
EDD Appeals.....	0
Non-benefit Court Cases .....	1
ISSUES: UI.....	124
DI.....	10
Tax.....	6
Non-benefit Court Cases .....	8

## 2015 CALENDAR YEAR ACTIVITY - Benefit & Tax Cases

<u>LITIGATION CASES FILED</u>	<u>YTD</u>	<u>September</u>
SUPERIOR COURT: Claimant Petitions.....	23	0
Employer Petitions.....	6	1
EDD Petitions.....	0	0
APPELLATE COURT: Claimant Appeals.....	7	1
Employer Appeals.....	1	0
EDD Appeals.....	0	0
<u>LITIGATION CASES CLOSED</u>	<u>YTD</u>	<u>September</u>
SUPERIOR COURT: Claimant Petitions.....	141	12
Employer Petitions.....	25	1
EDD Petitions.....	2	0
APPELLATE COURT: Claimant Appeals.....	4	0
Employer Appeals.....	2	0
EDD Appeals.....	0	0

## 2015 Decision Summary

<u>Claimant Appeals</u>		<u>Employer Appeals</u>		<u>CUIAB Decisions</u>		
Win: 8	Loss: 136	Win: 3	Loss: 20	Affirmed: 157	Reversed: 8	Remanded: 2

# CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

## SEPTEMBER 2015 PERFORMANCE INDICATORS

### FIELD OPERATIONS

#### MEETING DOL STANDARDS

##### UI TIMELAPSE CASES

	<u>Closed</u>	<u>DOL Standard</u>
Closed Cases		
% Closed in <= 30 Days	69.9%	≥60%
% Closed in <= 45 Days	89.3%	≥80%

	<u>Avg. Days</u>	<u>DOL Standard</u>
Pending Cases		
Case Aging	24.0	≤30

##### WORKLOAD

	<u>UI</u>	<u>ALL</u>
Opened	17,611	18,915
Closed	17,577	18,743
Balance of Open Cases	16,183	26,541

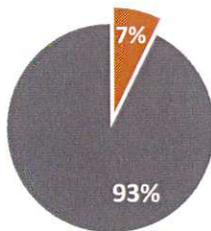
#### CYCLE TIME: AVERAGE DAYS TO CLOSE APPEALS

UI Timelapse Appeals	35 days
DI Appeals (including PFL)	66 days
All Programs	43 days

#### UI WORKLOAD COMPOSITION AT INTAKE (OPENED)

Regular UI Appeals as % of All UI	95%
UI Extensions as % of All UI	5%

#### UI WORKLOAD COMPOSITION AT END OF MONTH OPEN BALANCE:



UI Extensions made up 7% of UI Open Balance, and Regular UI cases made up 93%.

### APPELLATE OPERATIONS

#### MEETING DOL GUIDELINES & STANDARDS

##### UI TIMELAPSE CASES

	<u>Closed</u>	<u>DOL Guideline</u>
Closed Cases		
% Closed in <= 45 Days		≥50%
% Closed in <= 75 Days		≥80%

	<u>Avg. Days</u>	<u>DOL Standard</u>
Pending Cases		
Case Aging	29.8	≤40

##### WORKLOAD

	<u>UI</u>	<u>ALL</u>
Opened	999	1,088
Closed	1,318	1,432
Balance of Open Cases	1,021	1,137

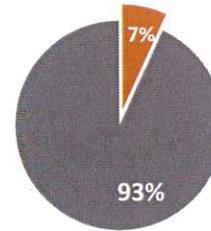
#### CYCLE TIME: AVERAGE DAYS TO CLOSE APPEALS

UI Timelapse Appeals	49 days
DI Appeals (including PFL)	61 days
All Programs	50 days

#### UI WORKLOAD COMPOSITION AT INTAKE (OPENED)

Regular UI Appeals as % of All UI	90%
UI Extensions as % of All UI	10%

#### UI WORKLOAD COMPOSITION AT END OF MONTH OPEN BALANCE:



UI Extensions made up 7% of UI Open Balance, and Regular UI cases made up 93%.

**California Unemployment Insurance Appeals Board**  
**FO Cycle Time Summary Report**  
**For Cases Closed in September 2015**

<b>PFL CASES</b>	<b>Average Days to Process an Appeal</b>	<b>Case Creation Date to Verified Date</b>	<b>Verified Date to Scheduled Date</b>	<b>Scheduled Date to Hearing Date</b>	<b>Hearing Date to Decision Mailed Date</b>
<b>Jurisdiction</b>	<b>Average</b>	<b>Average</b>	<b>Average</b>	<b>Average</b>	<b>Average</b>
Fresno	30	5	7	17	1
Inglewood	69	10	29	13	4
Inland	53	5	22	14	2
Los Angeles	47	5	20	16	0
Oakland	53	5	37	11	1
Orange County	80	6	47	28	6
Oxnard	8	7			
Pasadena	60	5	15	14	2
Sacramento	58	5	25	20	8
San Diego	42	7	3	15	3
San Francisco	24	6			
San Jose	41	6	23	11	2
<b>Statewide</b>	<b>52</b>	<b>6</b>	<b>24</b>	<b>15</b>	<b>3</b>

<b>DI CASES (No PFL)</b>	<b>Average Days to Process an Appeal</b>	<b>Case Creation Date to Verified Date</b>	<b>Verified Date to Scheduled Date</b>	<b>Scheduled Date to Hearing Date</b>	<b>Hearing Date to Decision Mailed Date</b>
<b>Jurisdiction</b>	<b>Average</b>	<b>Average</b>	<b>Average</b>	<b>Average</b>	<b>Average</b>
Fresno	40	6	9	13	2
Inglewood	67	11	28	13	3
Inland	63	6	28	15	9
Los Angeles	81	6	50	15	4
Oakland	60	6	27	13	3
Orange County	78	7	33	16	8
Oxnard	88	6	49	15	2
Pasadena	72	6	31	16	3
Sacramento	80	4	19	17	6
San Diego	45	7	7	13	4
San Francisco	63	8	26	14	4
San Jose	54	8	15	12	3
<b>Statewide</b>	<b>67</b>	<b>7</b>	<b>29</b>	<b>14</b>	<b>4</b>

**California Unemployment Insurance Appeals Board  
FO Cycle Time Summary Report  
For Cases Closed in September 2015**

<b>UI Timelapse CASES</b>	<b>Average Days to Process an Appeal</b>	<b>Case Creation Date to Verified Date</b>	<b>Verified Date to Scheduled Date</b>	<b>Scheduled Date to Hearing Date</b>	<b>Hearing Date to Decision Mailed Date</b>
<b>Jurisdiction</b>	<b>Average</b>	<b>Average</b>	<b>Average</b>	<b>Average</b>	<b>Average</b>
Fresno	33	3	9	14	1
Inglewood	36	5	8	14	2
Inland	31	3	6	15	1
Los Angeles	34	3	8	16	2
Oakland	36	4	12	12	1
Orange County	36	4	8	15	3
Oxnard	36	3	12	15	0
Pasadena	37	2	10	15	2
Sacramento	37	3	11	15	1
San Diego	34	4	9	14	1
San Francisco	36	3	12	13	1
San Jose	34	3	11	13	0
<b>Statewide</b>	<b>35</b>	<b>3</b>	<b>9</b>	<b>14</b>	<b>1</b>

<b>ALL CASES</b>	<b>Average Days to Process an Appeal</b>	<b>Case Creation Date to Verified Date</b>	<b>Verified Date to Scheduled Date</b>	<b>Scheduled Date to Hearing Date</b>	<b>Hearing Date to Decision Mailed Date</b>
<b>Jurisdiction</b>	<b>Average</b>	<b>Average</b>	<b>Average</b>	<b>Average</b>	<b>Average</b>
Fresno	35	4	10	14	1
Inglewood	42	6	11	14	3
Inland	33	3	7	15	2
Los Angeles	37	3	10	16	2
Oakland	46	5	13	16	1
Orange County	52	4	9	15	3
Oxnard	41	3	14	15	0
Pasadena	38	3	11	15	2
Sacramento	39	3	12	16	2
San Diego	42	4	9	15	1
San Francisco	38	3	13	13	1
San Jose	65	3	12	13	1
Tax Office	561	N/A	N/A	167	516
<b>Statewide</b>	<b>43</b>	<b>4</b>	<b>11</b>	<b>15</b>	<b>2</b>



STATE OF CALIFORNIA – GOVERNOR  
EDMUND G. BROWN, JR.

LABOR AND WORKFORCE DEVELOPMENT AGENCY  
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

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Sacramento, CA 94244-2750  
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September 18, 2015

Proposal to Adopt as Precedent the Board's Previously Issued Decision  
in Case No. AO-359822 Concerning the Issue of the Benefit Ineligibility of IHSS  
Workers Under Section 631 of the Unemployment Insurance Code.

By a decision issued on March 30, 2015, in Case No. AO-359822, copy enclosed, the Appeals Board addressed the benefit ineligibility, under section 631 of the Unemployment Insurance Code, of a claimant whose wages were derived from work as an In-Home Supportive Services (IHSS) caregiver for the claimant's son, daughter or spouse. That decision held that a claimant's wages from "employment" specified in code section 631 for services performed in the employ of a claimant's children or spouse, would not support the claimant's unemployment insurance benefit claim.

The California Unemployment Insurance Code, section 409 provides, in pertinent part:

The appeals board, acting as a whole, may designate certain of its decisions as precedents. Precedent decisions of the appeals board are subject to Section 11425.60 of the Government Code. The appeals board, acting as a whole, may, on its own motion, reconsider a previously issued decision solely to determine whether or not the decision shall be designated as a precedent decision. Decisions of the appeals board acting as a whole shall be by a majority vote of its members. The director [of the Employment Development Department] and the appeals board administrative law judges shall be controlled by those precedents except as modified by judicial review. If the appeals board issues decisions other than those designated as precedent decisions, anything incorporated in those decisions shall be physically attached to and be made a part of the decisions. The appeals board may make a reasonable charge as it deems necessary to defray the costs of publication and distribution of its precedent decisions and index of precedent decisions.

Government code section 11425.60 governs criteria for designating decision as a precedent and provides, in pertinent part:

An agency may designate a decision or part of a decision that contains a significant or policy determination of general application that is likely to recur. (Gov. Code, § 11425.60, subd. (b).)

CUIAB regulations go further in setting out the criteria we must apply in determining whether a case is an appropriate vehicle for a precedent decision:

§ 5109. Precedent Decision.

(a) A majority of the board acting as a whole may designate all or part of a decision as a precedent decision if it contains a significant legal or policy determination of general application that is likely to recur.

(b) A legal or policy determination is significant if it establishes a new rule of law or policy, resolves an unsettled area of law, or overrules, modifies, refines, clarifies, or explains a prior precedent decision.

(c) A legal or policy determination is of general application if the facts are sufficiently common to give guidance to future cases, clearly illuminate the legal or policy determination, and are significant to the parties, the public, the taxpayers, or the operation of the department or the agency.

(d) A legal or policy determination is likely to recur if it is of continuing public interest because of the frequency or the ongoing likelihood of occurrence.

(e) A precedent decision shall be clearly identified as such and published in such a manner as to make it available for public use. Information identifying any party, except the party's name, shall be removed prior to publication.

(f) The agency shall maintain an index of significant legal and policy determinations made in precedent decisions, in accordance with the requirements of Government Code section 11425.60.

(Cal. Code. Regs, tit. 22, § 5109.)

*Staff believes that the above-referenced decision meets the criteria set forth in the California Unemployment Insurance Code and section 5109 of title 22, California Code of Regulations for a precedent decision. The matter will be presented to the Board at its upcoming meeting on **October 13, 2015**. The public, and especially those knowledgeable about IHSS, are invited to submit public comment at the board meeting and/or submit written comments regarding the advisability of the Board's adopting this case as a precedent decision. Written comments are requested to be received by the Appeals Board no later than **5 p.m. on October 9, 2015**. Those comments should be entitled, "Comments on Case No. AO-359822 Being Designated a Board Precedent" and mailed to Elise S. Rose, Chief, Appellate Operations, California Unemployment Insurance Appeals Board, 2400 Venture Oaks Way, Suite 310, Sacramento, CA 95833 or faxed to Elise S. Rose, Chief, Appellate Operations, California Unemployment*

Insurance Appeals Board at 916-263-6837. Any written comments should include a certification that you have mailed a copy of your comments to each of the other addressees on the following list of entities that have participated in this particular case or in the Board's prior actions on this particular legal issue.

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Cc: Ralph Lightstone, Legislative Director,  
Labor and Workforce Development Agency

Mark Woo-Sam,  
General Counsel,  
Labor and Workforce Development Agency

Case No.: AO-359822  
Claimant: MERCEDES W CALDERA

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The Employment Development Department (EDD) appealed from the decision of an administrative law judge that held the claimant's earnings from services as an In-Home Supportive Services (IHSS) worker caring for her son were wages that supported the claimant's unemployment insurance benefit claim notwithstanding the provisions of section 631 of the Unemployment Insurance Code.

#### ISSUE STATEMENT

The issue presented in this case is whether the wages earned by the claimant as an IHSS worker caring for her son can be used to support the claimant's benefit claim.

#### FINDINGS OF FACT

The claimant opened an unemployment insurance benefit claim effective April 6, 2014. The base period for that benefit claim consists of the four consecutive calendar quarters ending December 31, 2013. During that base period the claimant earned \$19,000 as an IHSS worker caring for her son. EDD determined that those wages could not be used to support the claimant's benefit claim because they were derived from service performed by the claimant in the employ of her son.

The claimant resides in Imperial County. We take official notice of the fact that Imperial County has established the Imperial County In-Home Supportive Services Public Authority for the purpose of assisting in the delivery of IHSS services.

We also take official notice of the following documents that have been served on the parties:

1. December 3, 2014 comment from EDD concerning the possible adoption of the decision issued in Case No. AO-336919 as a precedent decision.
2. December 3, 2014 comment from the Department of Social Services concerning the possible adoption of the decision issued in Case No. AO-336919 as a precedent decision.

Those documents are entered into the record of this case with the following comments that are accepted as written argument and have also been served on the parties:

1. March 11, 2015 comment from SEIU-ULTCW.
2. March 12, 2015 comment from Legal Services of Northern California.
3. March 12, 2015 comment from The Legal Aid Society-Employment Law Center.
4. March 12, 2015 comment from Imperial County IHSS Public Authority.
5. March 9, 2015 comment from San Francisco IHSS Public Authority.

### REASONS FOR DECISION

The issue presented by this case is an issue that has concerned the Appeals Board for some time and we acknowledge that, over time, inconsistent decisions have been issued by the Appeals Board on this topic. While we sympathize with the plight of individuals in situations similar to those of this claimant and we have carefully considered the rationale that has been proposed for reaching the result reached by the administrative law judge in this case, we have concluded that the plain language of code section 631 requires a reversal of the administrative law judge's decision.

In defining services that are excluded from the unemployment insurance program, code section 631 (enacted in 1953 and amended in 1971) provides as follows:

“Employment” does not include service performed by a child under the age of 18 years in the employ of his father or mother, or service performed by an individual in the employ of his son, daughter, or spouse, except to the extent that the employer and the employee have, pursuant to Section 702.5, elected to make contributions to the Unemployment Compensation Disability Fund.

A separate provision, code section 683 (enacted in 1978), sets forth a statutory definition of “employer” that applies to caregivers working through the IHSS program. That statute provides as follows:

“Employer” also means any employing unit which employs individuals to perform domestic service comprising in-home supportive services under Article 7 (commencing with Section 12300), Chapter 3, Part 3, Division 9 of the Welfare and Institutions Code and pays wages in cash of one thousand dollars (\$1,000) or more for such service during any calendar quarter in the calendar year or the preceding calendar year, and is one of the following:

- (a) The recipient of such services, if the state or county makes or provides for direct payment to a provider chosen by the recipient or to the recipient of such services for the purchase of services, subject to the provisions of Section 12302.2 of the Welfare and Institutions Code.
- (b) The individual or entity with whom a county contracts to provide in-home supportive services.
- (c) Any county which hires and directs in-home supportive personnel in accordance with established county civil service requirements or merit system requirements for those counties not having civil service systems.

Neither code section 631 nor code section 683 is vague or ambiguous. The pertinent portion of code section 631 in plain language provides that employment "does not include...service by an individual in the employ of [her] son" and the pertinent portion of code section 683 in plain language provides that, for claimants who perform work under the IHSS program, the term "employer" also means the "recipient of such services." Read in conjunction, these two statutes clearly confirm that IHSS caregivers who care for their own children are employed by that care recipient with the consequence that the wages earned in that work cannot be used to support a claim for unemployment insurance benefits. Thus, whether or not some entity other than the claimant's son might possibly represent an additional employer of the claimant does not alter the fact that the claimant's son is still one of her employers. Since the claimant was undeniably working "in the employ" of her son, pursuant to code section 631 the wages that the claimant received for that work cannot be used to support the claimant's unemployment insurance benefit claim. The administrative law judge's decision must therefore be reversed.

Having explained our decision, we feel obliged to address the rationale that has typically been advanced for reaching an opposite result on this topic inasmuch as that theory was apparently utilized to reach the decision issued by the administrative law judge. Our review of this issue has led us to ultimately conclude that such rationale is not viable.

The rationale proposed for effectively cancelling the unequivocal exclusion set forth in code section 631 rests on the theory that the state, the county, or the county's IHSS public authority occupies the role of an additional, "joint employer" of the claimant separate and apart from the claimant's son, daughter or spouse. Under this theory, the wages from the IHSS services provided by the claimant to the claimant's son, daughter, or spouse are no longer excluded from the claimant's unemployment benefit claim because those wages are also derived from this additional employer.

As proposed, that rationale often relies, at least in part, upon decisions affirming the joint employment of IHSS workers in other legal venues. It is then asserted that the concept of joint employment of IHSS workers should also be introduced into the unemployment insurance program for the purpose of effectively invalidating code section 631. Such is the instance in the case at hand with the administrative law judge citing the decision in *Guerrero v. Superior Court of Sonoma* (2013) 213 Cal. App. 4<sup>th</sup> 912 as authority for the proposition that the claimant's wages should not be disallowed under code section 631. The decisions issued in *In-home Supportive Services v. Workers' Compensation Appeals Board* (1984) 152 Cal. App.3d 720 ) ("*IHSS v. WCAB*"), and *Bonnette v. California Health and Welfare Agency* 704 F.2d 1465 ( 9<sup>th</sup> Cir. 1983) have also been cited in similar cases as supporting the contention that an IHSS worker claiming unemployment insurance benefits may have joint employers.

We do not think that the decisions in *Guerrero*, *Bonnette* and *IHSS v. WCAB* can be reasonably considered to support that contention. The *Guerrero* and *Bonnette* decisions addressed the question of whether it is possible for an IHSS worker to have joint employers for purposes of the Fair Labor Standards Act (29 U.S.C. section 201 et seq.) and the *IHSS v. WCAB* decision held that an IHSS provider was a dual employee of both the IHSS recipient and the state for purposes of workers' compensation coverage. Each of those decisions concerns a statutory scheme very different from the unemployment insurance statutes and relies upon a definition of "employer" that differs from the definition used in the unemployment insurance law. Moreover, neither of those statutory schemes contains any exclusion similar to that set forth in code section 631. Since those decisions concern entirely different programs and do not address or relate to the unemployment insurance program, we do not find those decisions to be apposite to the issue before us.

Under the "joint employer" rationale, code section 683 essentially carves out an exception to code section 631 by providing authorization for an IHSS public authority to serve as a joint employer of the claimant. Section 12301.6 of the Welfare and Institutions Code authorizes counties to create public authorities, corporate public entities separate from the county, for the purpose of facilitating the delivery of IHSS services. That provision provides a public authority with substantial control over the training, referral, background investigation of qualifications, pay and benefits of an IHSS worker, but also confirms that the recipients of the IHSS services retain the right to hire and discharge the IHSS worker as well as supervise the work performed by that worker.

It has been argued that, in cases such as this, the IHSS public authority is a joint employer of the claimant with the consequence that the wages received from that joint employer can be used to support the claimant's unemployment insurance

benefit claim notwithstanding the fact that those earnings were also derived from work "in the employ" of her son. For the following reasons, we do not find that argument to be persuasive.

First, the plain language of code section 631 is clear and unambiguous in specifically excluding from the definition of "employment" all services performed by a claimant in the employ of his or her son, daughter or spouse. There is thus no justification for interpreting or parsing that statutory language in a fashion that would reach a different result. On the subject of statutory interpretation the California Supreme Court described the role of judicial review as follows:

As in any case involving statutory interpretation, our fundamental task is to determine the Legislature's intent so as to effectuate the law's purpose. Statutory interpretation begins with an analysis of the statutory language. If the statute's text evinces an unmistakable plain meaning, we need go no further. (*Olson v. Automobile Club of Southern California* (2008) 42 Cal. 4<sup>th</sup> 1142, 1147 [internal quotes and citations omitted].)

Second, code section 683 does not reference code section 631, cannot reasonably be read to invalidate code section 631, and otherwise exhibits no hint of a legislative intent to nullify code section 631 either fully or in part. Indeed, code section 683 can easily be read to harmonize with code section 631 and therefore must be interpreted in that fashion. Section 1858 of the Code of Civil Procedure provides as follows:

In the construction of a statute or instrument, the office of the Judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all.

Code section 683 does not in any way address family-member employment and it therefore cannot be viewed as narrowing the reach of the statute that specifically addresses such employment. Since code sections 631 and 683 can obviously be interpreted in a fashion that will "give effect" to both provisions, those statutes must be interpreted in that manner and not in a way that would have one statute cancel the other.

Third, code section 631 already includes one express exception and under the accepted rules of statutory interpretation another exception therefore cannot be presumed. Code section 631 provides an exception that allows the child or spouse and claimant to opt into the state disability program by electing to make contributions to the Unemployment Compensation Disability Fund. Code section

631, however, does not include an exception that would allow a claimant's IHSS services for a son, daughter or spouse to be deemed employment for purposes of the unemployment insurance program. Legislative silence on this point must therefore be regarded as intentional omission. "Under the maxim of statutory construction, *expressio unius est exclusio alterius*, if exemptions are specified in a statute, we may not imply additional exemptions unless there is a clear legislative intent to the contrary." (*Sierra Club v. State Bd. of Forestry* (1994) 7 Cal. 4<sup>th</sup> 1215, 1230.)

Fourth, while the courts have not specifically addressed the question of whether an IHSS worker can have more than one employer for purposes of the unemployment insurance law, an opinion of the California Attorney General concluded that there is no joint employment of IHSS workers in the context of the unemployment insurance law. (68 *Ops. Cal. Atty. Gen.* 194 (1985).) That opinion observed that "the concept of dual employments is not to be found in the area of unemployment insurance coverage" and concluded that IHSS workers were "the employees of only the IHSS aid recipient for purpose of unemployment insurance coverage."

Fifth, we also think that there are significant questions as to whether an IHSS public authority truly represents an "entity with whom a county contracts to provide in-home supportive services" within the meaning of code section 683(b). While a public authority is established by a county board of supervisors to provide for the delivery of IHSS services pursuant to a county enabling ordinance and an interagency agreement, it is unclear to us as to whether such a public authority contracts to itself provide IHSS services to recipients. We believe that such questions as to the status and reach of a public authority would have to be more definitively addressed before a public authority could be held to be an employer of an IHSS worker for purposes of code section 683(b).

Sixth, even assuming a public authority was deemed to be an employer under code section 683(b), the joint employer theory would yield inconsistent results. Specifically, only those IHSS providers whose services were rendered for their excluded family members in counties that administer their IHSS program through a public authority would be eligible for benefits, whereas IHSS providers whose services are rendered in counties that administer their program through county departments would be excluded with no rational basis for the distinction or legislative history to support it.

Finally, we note that Precedent Decision P-B-111 has been cited as supporting the supposition that an IHSS worker has joint employers for purposes of code section 631. In P-B-111, however, the claimant did not work for several employers. The claimant in that case worked for only a single employer, a

partnership between the claimant's father and a corporation owned by an uncle. That decision rested on the following language of section 631-1(e), title 22, California Code of Regulations:

Services performed in the employ of a partnership by a spouse, father, mother, or child under the age of 21 of a partner are excluded when such services would be excluded if performed for each partner individually.

Since one of the partners was a corporation, and not one of the claimant's relatives, the claimant's wages were not excluded under code section 631. Inasmuch as the claimant in Precedent Decision P-B-111 only had one employer and that employer was a partnership specifically covered by a regulation, we do not consider that decision to be applicable to the case before us or supportive of the contention that an IHSS caregiver has joint employers insofar as the unemployment insurance law is concerned. It has not been alleged in this case, nor do the facts support a finding, that a partnership existed between the claimant's son and the public authority. We therefore do not consider Precedent Decision P-B-111 to have a bearing on this matter.

For all the reasons set forth above, we hold that the claimant's wages as an IHSS worker caring for her son cannot be used to support her unemployment insurance benefit claim under code section 631. We recognize that a trend now appears to exist for concluding that IHSS workers have joint employers for the purpose of obtaining benefits or protection under various social welfare programs. We also acknowledge that cogent arguments have been advanced for reaching a similar conclusion with regard to the unemployment insurance program. Given the clear and unambiguous provisions of code section 631, however, we do not believe that acceptance of the joint employer argument would warrant a result different from the one we have reached in this matter.

We recognize that interesting public policy arguments have been made for allowing IHSS workers who care for their children or their spouse to be eligible for unemployment insurance benefits as a result of that work. It has been contended that the workers in this low wage field who are struggling to "put food on the table and keep a roof overhead" would be greatly assisted in those efforts by the receipt of unemployment insurance benefits when they are out of work. As it presently stands, however, the law does not permit that result and the decision as to whether that law should be changed rests with the Legislature and not with this board.

## DECISION

The decision of the administrative law judge is reversed. The claimant's wages as an IHSS worker caring for her son cannot be used to support the claimant's unemployment insurance claim because code section 631 excludes from the definition of "employment" services performed by an individual in the employ of her son. Whether or not those services might also be deemed to have been in the employ of another employer is immaterial to the operation of the exclusion under code section 631.

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# Fax

**To:** Elise S. Rose, Chief, Appellate Operations  
CA Unemployment Insurance Appeals Board

**From:** Ali Mansfield, Senior Assistance Chief Counsel  
CA Department of Social Services, Legal Division

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**Fax:** (916) 263-6837

**Pages:** 4, including cover page

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**Phone:** (916) 263-6803

**Date:** October 8, 2015

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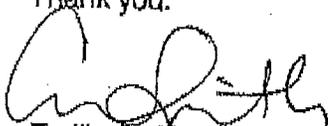
**Re:** Comments on Case No. AO-359822  
Being Designated A Board Precedent

**cc:**

Urgent     For Review     Please Comment     Please Reply     Please Recycle

● **Comments:**

If you have any questions regarding the transmittal of this fax, please contact Emilie Smith of the CDSS Legal Division, at (916) 654-1462. Thank you.



Emilie Smith  
Senior Legal Typist

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OCT 08 2015



WILL LIGHTBOURNE  
DIRECTOR

STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY  
**DEPARTMENT OF SOCIAL SERVICES**  
744 P Street • Sacramento, CA 95814 • [www.cdss.ca.gov](http://www.cdss.ca.gov)



EDMUND G. BROWN JR.  
GOVERNOR

October 8, 2015

Elise S. Rose, Chief  
Appellate Operations  
California Unemployment Insurance Appeals Board  
2400 Venture Oaks Way, Suite 310  
Sacramento, CA 95833  
Fax: (916) 263-6837

Dear Ms. Rose:

**SUBJECT: COMMENTS ON CASE NO. AO-359822  
PROPOSED PRECEDENTIAL DECISION**

The California Department of Social Services (CDSS) is in support of the California Unemployment Insurance Appeals Board's (Board) proposal to designate as a precedential decision Case No. AO-359822 regarding In-Home Supportive Services (IHSS) providers' ineligibility for unemployment benefits pursuant to section 631 of the Unemployment Insurance Code (UIC).

CDSS previously provided written comments related to Case No. AO-336919 (Nellya Ostapenko) which clarified the relevant IHSS statutes and how those statutes are interpreted in context of sections 631 and 683 of the UIC (enclosed). CDSS requests that the Board consider these previously submitted comments in context of the above-noted matter. CDSS respectfully requests that Case No. AO-359822 be designated as a precedential decision.

Please contact Ali Mansfield, Senior Assistant Chief Counsel, if further information is needed. She may be reached at (916) 654-0852 or [ali.mansfield@dss.ca.gov](mailto:ali.mansfield@dss.ca.gov).

Sincerely,

  
EILEEN CARROLL

Deputy Director  
Adult Programs Division

Enclosure

cc: David Lanier, Secretary, Labor & Workforce Development Agency  
Mark Woo-Sam, General Counsel, Labor & Workforce Development Agency  
Patrick Henning, Director, Employment Development Department  
Sandra V. Clifton, General Counsel, Employment Development Department  
Jerry Scribner, General Counsel, Health & Human Services Agency  
Keely Bosler, Chief Deputy Director, Budget, Department of Finance  
Will Lightbourne, Director, Department of Social Services



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EDMUND G. BROWN JR.  
GOVERNOR

### CERTIFICATION

I certify that on October 9, 2015, copies of the written comments submitted to Elise S. Rose by Eileen Carroll on October 8, 2015 with subject line "Written Comments on Case No. A0-359882 Proposed Precedential Decision" were placed in the United States mail at Sacramento California, postage prepaid, and addressed to each of the entities designated by the California Unemployment Appeals Board in the letter sent to the Department dated September 18, 2015.

Executed October 9, 2015 at Sacramento, California.

Emilie Smith  
Senior Legal Typist  
Legal Division



CDSS

WILL LIGHTBOURNE  
DIRECTOR

STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY  
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EDMUND G. BROWN JR.  
GOVERNOR

December 3, 2014

California Unemployment Insurance Appeals Board (CUIAB)  
Attention: Cathy Vandeleur, Legal Analyst  
2400 Venture Oaks Way, Suite 300  
Sacramento, CA 95833

Dear CUIAB Members:

Re: *Nellya Ostapenko* Decision, Case No.: AO-336919

The California Department of Social Services (CDSS) recently became aware of the decision of the California Unemployment Insurance Appeals Board (CUIAB) in the matter of *Nellya Ostapenko* (Legal Services of Northern California), Case No.: AO-336919. The CUIAB, on pages 8, 9 and 10 of the decision, analyzed and concluded that the Sacramento County In-Home Supportive Services Public Authority (PA), established pursuant to Welfare and Institutions Code (WIC) § 12301.6 by Sacramento County (County), “contracted” with the County to provide in-home supportive services (IHSS) and therefore, is to be considered an “employer” pursuant to Unemployment Insurance Code (UIC) § 683(b). Based on this finding and a joint employment analysis, CUIAB concluded that an employment relationship exists between a parent providing IHSS to their child, and the PA, thereby making the parent eligible for unemployment benefits. This decision is contrary to prior CUIAB decisions, upheld by the superior court, holding that a parent providing IHSS to a child is not eligible for unemployment benefits pursuant to UIC § 631. Further, the *Nellya Ostapenko* decision was made without full consideration of all the relevant WIC statutes and a recognition of the terms of art used in this body of law, resulting in the misinterpretation and misapplication of the authority of a public authority in context of UIC § 683(b).

CDSS has been apprised that CUIAB is considering the adoption of the *Nellya Ostapenko* decision as a precedential decision and hopes to assist CUIAB in understanding the laws governing IHSS. Based on the following information, CDSS requests that CUIAB refrain from adopting the decision as a precedential decision.

CDSS is the state agency responsible for the administrative oversight and implementation of the IHSS program to ensure compliance with federal and state program rules (WIC § 12300 *et seq.*). The IHSS program is administered by the 58 counties in California and each county is obligated to ensure the delivery of IHSS is provided to all eligible recipients. To fulfill this obligation to deliver services, WIC § 12302 sets forth that a county may:

- 1) "Hire homemakers and other in-home supportive personnel in accordance with established county civil service requirements" (i.e., '**Homemaker Mode**'); or
- 2) "Contract with a city, county, or city and county agency, a local health district, a voluntary nonprofit agency, a proprietary agency" (i.e., '**Contract Mode**'); or
- 3) "Contract with "an individual" (i.e., '*Individual Provider*' or '**IP Mode**'); or
- 4) "Make direct payment to a recipient for the purchase of services" (i.e., '**Advanced Pay Mode**').

Similarly UIC § 683, specifically citing "Article 7 (commencing with § 12300), Chapter 3, Part 3, Division 9 of the Welfare and Institutions Code," the article containing WIC § 12302, sets forth the same service delivery modes of WIC § 12302 in determining who, in context of the IHSS program, may be considered an "employer" pursuant to UIC § 683.

UIC § 683 provides that:

"Employer" also means any employing unit which employs individuals to perform domestic service comprising in-home supportive services under Article 7 (commencing with § 12300), Chapter 3, Part 3, Division 9 of the Welfare and Institutions Code and pays wages in cash of one thousand dollars (\$1,000) or more for such service during any calendar quarter in the calendar year or the preceding calendar year, and is one of the following:

- (a) The recipient of such services, if the state or county makes or provides for direct payment to a provider chosen by the recipient (i.e., **IP Mode**) or to the recipient of such services for the purchase of services (i.e., **Advanced Pay Mode**), subject to the provisions of § 12302.2 of the Welfare and Institutions Code.
- (b) The individual or entity with whom a county contracts to provide in-home supportive services (i.e., **Contract Mode**).
- (c) Any county which hires and directs in-home supportive personnel in accordance with established county civil service requirements or merit system requirements for those counties not having civil service systems (i.e., **Homemaker Mode**).

On page 9 of the decision, CUIAB opined:

“Since, as described more fully above, the County in this case did establish a Public Authority and did enter into a contract (the interagency agreement) under which the Public Authority provides IHSS services, we find that the Public Authority is an “entity with whom a county contracts to provide in-home supportive services” under UIC § 683(b) and is therefore, an employer of the claimant.”

While the decision found that the relationship between the County and the PA satisfied the requirements of UIC § 683(b) based on an interagency agreement, it is imperative that the concepts and terms used in UIC § 683(b) be properly interpreted within the context of the laws governing the IHSS program. (*Clean Air Constituency v. California State Air Resources Bd.* (1974) 11 Cal.3d 801, 814 [Statutes are to be read “with reference to the entire scheme of law of which it is part so that the whole may be harmonized and retain effectiveness.”])

When a county elects to ensure the delivery of IHSS to qualifying recipients pursuant to the Contract Mode (as described in UIC § 683(b) and WIC § 12302), the county and the entity (contractor) must enter into a contract that complies with WIC § 12302.1 which sets forth the contract terms and requirements, renewal or extension requirements, rate of reimbursement, and the application of CDSS purchase of services regulations. The contractor then provides the authorized services directly to the IHSS recipients. That contract (i.e., Contract Mode), as described in UIC § 683(b) and WIC §§ 12302 and 12302.1, is not the interagency agreement between a county and public authority. The purpose of the interagency agreement is to further describe the duties and responsibilities to be performed by the PA on behalf of the County pursuant to WIC § 12301.6.

A public authority is established by a county board of supervisors pursuant to an approved county ordinance, in accordance with WIC § 12301.6, to “provide for the delivery of IHSS.” The powers and responsibilities of a public authority are set forth in WIC § 12301.6, the county enabling ordinance, and also an interagency agreement to further detail the responsibilities to be performed by the public authority on behalf of the county. A public authority is not a contractor as described above. This interagency agreement is not a contract within the meaning of the Contract Mode specified in WIC § 12302 and incorporated into UIC § 683(b) to directly provide IHSS to recipients. For example, the interagency agreement does not include a rate of pay for direct delivery of IHSS to recipients as required in a contract pursuant to WIC § 12302.2. To interpret the interagency agreement as a contract to require the Public Authority to provide IHSS directly to recipients misinterprets and exceeds the statutory authority and responsibilities of a public authority pursuant to WIC 12301.6. A public authority is not authorized by law to provide IHSS directly to recipients which is the responsibility of the “individual or entity” contracting with a county pursuant to § 683(b).

WIC § 12301.6(d) further illustrates this:

- (d) A public authority established pursuant to this section...., when providing for the delivery of services under this article by contract in accordance with §§ 12302 and 12302.1 (*i.e.*, *Contract Mode*) or by direct payment to a provider chosen by a recipient in accordance with § 12302 (*i.e.*, *IP Mode*) or § 12302.2 (*i.e.*, *Advanced Pay Mode*), shall comply and be subject to, all statutory and regulatory provisions applicable to the respective delivery mode.

In context of UIC § 683(b), the above statute specifically authorizes a public authority to contract for the delivery of IHSS to recipients pursuant to Contract Mode, just as a county is authorized under WIC §§ 12302 and 12302.1 and as specified in UIC § 683(b). Thus, while the *Nellya Ostapenko* decision references WIC § 12301.6(b)(2)(B) as granting a public authority the statutory authority to provide for the delivery of IHSS, the decision errs in construing this authority as an authority to "contract" with the **county** to provide these services. (*Nellya Ostapenko*, p.9, "The public authority has the power to contract with the county to provide such services and the law sets forth the specific employer functions to be performed by the public authority.") As shown above, authority to provide for services is distinct from the statutorily governed contract to provide direct services. Fundamentally then, as these terms of art are utilized within the IHSS program, a public authority cannot enter into a contract with the county to provide IHSS services; instead a public authority may contract with a contractor to provide those services. As a consequence, because the county cannot contract with a public authority to provide those services, the required elements of UIC § 683(b) cannot be met.

Based on the specific application of UIC § 683 to the IHSS program, UIC § 683 is required to be read in the context of the governing and implementing WIC statutes of the IHSS program. In the *Nellya Ostapenko* decision, the CUIAB incorrectly interpreted the WIC statutes and if the WIC statutes had been correctly applied in context of UIC § 683(b), the PA would not have been found to be the employer of the parent provider.

CDSS appreciates the opportunity to clarify this complicated area of law and respectfully requests that the decision not be adopted as a precedential decision.

Please contact Ali Mansfield, Senior Assistant Chief Counsel, if further information is needed. She may be reached at (916) 654-0852 or [ali.mansfield@dss.ca.gov](mailto:ali.mansfield@dss.ca.gov).  
Sincerely,



Greta Wallace  
Chief Counsel

cc: David Lanier, Secretary, Labor & Workforce Development Agency  
Mark Woo-Sam, General Counsel, Labor & Workforce Development Agency  
Patrick Henning, Director, Employment Development Department  
Sandra V. Clifton, General Counsel, Employment Development Department  
Jerry Scribner, General Counsel, Health & Human Services Agency  
Keely Bosler, Chief Deputy Director, Budget, Department of Finance  
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**CDSS**

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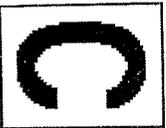
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From: Stephen Goldberg

Subject: Comments on Case No. A0-359822

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October 9, 2015

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BY FAX to (916) 263-6837 – Original will not follow

RE: Comments on Case No. AO-359822 Being Designated a Board Precedent

Dear Judge Rose:

On behalf of our client Nellya Ostapenko, this letter comments on Case No. AO-359822 being designated a precedent. Ms. Ostapenko opposes designation of Case No. AO-359822 as precedent. Case AO-359822 is incorrect that Unemployment Insurance Code Section 631 precludes Unemployment Insurance eligibility for In Home Supportive Services (IHSS) workers who provide care for their children or spouse because IHSS workers are joint employers with the IHSS Public Authority and excluding such workers from Unemployment Insurance eligibility causes the absurd result of workers for whom unemployment insurance contribution is paid being ineligible for benefits. Case No. AO-359822 should not be designated as precedent and instead the correctly decided decision Case No. AO-336919 should be designated as precedent.<sup>1</sup>

**I. IHSS WORKERS WHO ARE PROVIDERS FOR THEIR CHILDREN OR SPOUSES ARE ELIGIBLE FOR UNEMPLOYMENT INSURANCE AS JOINT EMPLOYEES.**

IHSS workers have joint employment with the public authority and the recipient. This joint employment with the public authority is covered employment which allows for Unemployment Insurance coverage and any exclusions that may apply to the recipient as an employer are irrelevant as to the public authority as an employer.

**A. CALIFORNIA UNEMPLOYMENT INSURANCE COVERAGE INCLUDES JOINT EMPLOYMENT.**

For several reasons, California Unemployment Insurance law includes joint employment. First, California unemployment insurance law uses the common law to determine employee status. (Unemp. Ins. Code § 621(b); 22 Cal.Code Regs. § 4304-1.) The common law includes joint employment. (*National Labor Relations Board v. Town & Country Electric* (1995) 516 U.S. 85, 94; *Kelley v. Southern Pacific Co.* (1974) 419 U.S. 318, 324; *State ex. rel. Dept. of Highway Patrol v. Superior Court* (2015) 60 Cal.4<sup>th</sup> 1002, 1008; *Marsh v. Tilley Steel Co.* (1980) 26 Cal.3d 486, 494.)

<sup>1</sup> For the record, the decision in Case No. 336919 is attached as Exhibit 1.

The Restatement of Agency also contemplates joint employment relationships. (Restatement (Third) of Agency §§ 3.14(b), 3.16, 7.03 comment d; Restatement (Second) of Agency § 226 comment b, each attached as Exhibit 9.) California unemployment insurance cases consistently rely on the Restatement of Agency when determining employment relationships. (*Messenger Courier Ass'n v. CUIAB* (2009) 175 Cal.App.4<sup>th</sup> 1074, 1089; *Santa Cruz Transportation Inc. v. CUIAB* (1991) 235 Cal.App.4<sup>th</sup> 1363, 1371; P-T-404 at p.8; P-T-100 at p.4.) The Restatement of Agency provides a strong foundation for joint employment in California's unemployment insurance program.

Additionally, joint employment is established in the context of California workers' compensation particularly for IHSS providers. (*In-Home Supportive Services v. Workers Compensation Appeals Board* (1984) 152 Cal.App.3d 720,732.) Case No. AO-3598222 dismisses *In Home Supportive Services* because it addresses workers compensation coverage instead of Unemployment Insurance. However, California unemployment law follows workers compensation law in determining employment relationships. (*Messenger Couriers, supra* at 175 Cal. App.4<sup>th</sup> at pp. 1091-92 [following *S.G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341]; *Santa Cruz Transportation, supra*, 235 Cal.App.4<sup>th</sup> at 1371 [following *Borello*].) Workers Compensation law as stated in *In Home Supportive Services* also supports that joint employment is a part of California unemployment insurance law.

The Federal Fair Labor Standards Act (FLSA) also supports joint employment in the context of IHSS workers. (*Guerrero v. Superior Court* (2013) 213 Cal.App.4<sup>th</sup> 912, 928; *Bonnette v. California Health and Welfare Agency* (9<sup>th</sup> Cir. 1983) 704 F.2d 1465, 1469-70.) Case No. AO-3598222 also dismisses *Guerrero* and *Bonnette* because they address a different statutory scheme. Case No. AO-3598222 is correct that the definition of employer for purposes of FLSA is more expansive than the common law. (*Guerrero, supra*, 213 Cal.App.4<sup>th</sup> at pp.927-28.) However, the FLSA definition of joint employment is similar to California Workers Compensation law. The FLSA definition of joint employment includes when employers share control over an employee. (29 C.F.R. § 791.2(b)(3).) California workers compensation law defines joint employment as when an employee is subject to control of two employers. (*In-Home Supportive Services, supra*, 152 Cal.App.3<sup>rd</sup> at p.732.) Since California Unemployment Insurance law follows California workers compensation law, and the FLSA definition of joint employment is similar to California workers compensation law, the FLSA inclusion of and definition of joint employment support that there is joint employment in California Unemployment Insurance law.

Lastly, Case No. AO-3598222 relies on 68 Ops. A.G. 194 (1985) to support its claim that California Unemployment Insurance law does not include joint employment. This reliance is misplaced. Attorney General opinions are only advisory and do not carry the weight of law. (*People v. Vallerga* (1977) 67 Cal.App.3d 847, 870.) 68 Ops. A.G. 194 should not be followed for several reasons. Initially, 68 Ops. A.G. 194 does not consider the common law which Unemployment Insurance Code Section 621 uses to define employee for purposes of Unemployment Insurance. As explained above, the common law includes joint employment.

68 Ops. A.G. 194 relies on several code sections and *B.P. Schulberg Prod. v. Cal. Emp. Com.* (1944) 66 Cal.App.2d 831 as support for its claim California Unemployment Insurance coverage does not include

joint employment. However, none of these authorities discuss joint employment. In its discussion of the definition of employer and employee, *B.P. Schulberg* states that common law was not incorporated into those definitions for purposes of Unemployment Insurance. (*B.P. Schulberg, supra*, 66 Cal.App.2d at pp.834-35.) 68 Ops. A.G. 194 does not consider that this changed 27 years later when Unemployment Insurance Code Section 621 was enacted in 1971 that defines employee using the common law. This statutory change invalidates reliance on *B.P. Schulberg* and substantially undercuts the unemployment insurance discussion in 68 Ops. A.G. 194.

68 Ops A.G. 194 also opines that Unemployment Insurance Code Section 683 that defines employer for purposes of unemployment insurance for IHSS workers, is exclusive and precludes joint employment of IHSS workers for purposes of Unemployment Insurance. 68 Ops A.G. 194 fails to recognize that Section 683 states "Employer also means . . ." (Unemp. Ins. Code § 683 [emphasis added].) The use of the word "also" means that Section 683 is not exclusive and in fact contemplates joint employment of IHSS workers for purposes of Unemployment Insurance.

Finally, 68 Ops. A.G. 194 rejects the joint employment findings for IHSS workers in *In-Home Supportive Services* and *Bonnette* because they are different statutory schemes. However, as explained above, the workers compensation law is used to determine employment status for purposes of Unemployment Insurance, and the Fair Labor Standards Act uses a joint employment definition similar to California workers compensation. 68 Ops. A.G. 194's failure to follow in *In-Home Supportive Services* and *Bonnette* is a final reason why its conclusion that there is no joint employment in California Unemployment Insurance law is wrong.

In addition, Section 631 indicates that persons "in the employ of" a minor child or spouse are excluded from unemployment insurance coverage. The phrase "in the employ of" is not exclusive and does not preclude that such persons can also be "in the employ of" another person or entity at the same time. Additionally, P-B-111 confirms that when there is additional covered employment, that fact that Section 631 may apply does not preclude Unemployment Insurance coverage. (P-B-111 at p.2.) In that situation, the public authority as the other employer would not be excluded and would support unemployment insurance eligibility.

Moreover, an entity covered by Section 683 can be an employer in addition to another individual because entities under Section 683 are "also" employers. This further supports that an entity covered by Section 683 supports unemployment insurance coverage even when another employer is excluded under Section 631.

#### B. IHSS WORKERS WHO ARE PROVIDERS FOR THEIR CHILDREN OR SPOUSES ARE JOINTLY EMPLOYED BY THE PUBLIC AUTHORITY.

IHSS workers who are providers for their children or spouses are also employed by the public authority both under Unemployment Insurance Code Section 683(b) and under common law. As a result, the provider's employment is covered employment for purposes of Unemployment Insurance eligibility.

1. IHSS Workers Who Are Providers For Their Children Or Spouses Are Employed By The Public Authority Under Unemployment Insurance Code Section 683(b).

Under Unemployment Insurance Code Section 683, employer includes an entity with whom a county contracts to provide IHSS. (Unemp. Ins. Code § 683(b).) The public authority is established "to provide for the delivery of" IHSS. (Welf. & Inst. Code § 12301.6(a)(2); accord California Department of Social Services (CDSS) Manual of Policy and Procedure (MPP) § 30-767.23 [the public authority "shall provide the following minimum services . . ."]]) The public authority is an entity separate from the county. (Welf. & Inst. Code § 12301.6(b)(2)(A).) Prior to the public authority providing services, the county must enter into an agreement with the public authority for such services. (MPP § 30-767.214.)<sup>2</sup> Agreements between public entities are contracts. (*Housing Authority of the City of Oakland v. City of Oakland* (1963) 222 Cal.App.2d 771, 773.) This means that the public authority is an entity with whom the county contracts to provide IHSS.

Legislative history supports that all IHSS workers, including workers who are providers for their children or spouses, are employees of the public authority (or the county if the county does not have a public authority). Section 683 and Welfare and Institutions Code Section 12302.2 which requires Unemployment Insurance contributions by CDSS on behalf of IHSS workers were enacted as AB 3028 in 1978. The reason for the bill was federal and state decisions taking the position that IHSS workers were county employees. (Memorandum from Dan Brunner, Chief Counsel, Department of Benefit Payments, attached as Exhibit 3.) The concern was that in order to avoid liability for unemployment insurance, counties would contract out the entire IHSS program which would cost the state \$80 million because the state would be responsible for the entire cost of the program. (*Id.*; see also Ways and Means Staff Analysis, AB 3028, attached as Exhibit 4.) Instead, the bill had CDSS pay unemployment insurance for all IHSS providers, which cost the state only \$13 million. (*Id.*) Enrolled Bill Reports for AB 3028 reflect that this is what the bill did. (Enrolled Bill Report, Department of Finance, AB 3028, attached as Exhibit 5; Enrolled Bill Report, AB 3028, Employment Development Department, attached as Exhibit 6.)

Nothing in the establishment of the public authorities changed this obligation for the state to cover Unemployment Insurance. The statute regarding the public authorities continued CDSS' obligation to make Unemployment Insurance contributions on behalf of all IHSS workers by stating "Nothing in this section shall be construed to affect the state's responsibility with respect to . . . unemployment insurance . . . for providers of in-home supportive services." (Welf. & Inst. Code § 12301.6(i)(1); CDSS All County Letter (ACL) 98-20 at p.3, attached as Exhibit 7.) This legislative history strongly supports that all IHSS workers are entitled to Unemployment Insurance under Section 683, including workers in counties with public authorities.

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<sup>2</sup> An example of an agreement between a county and a public authority to provide IHSS services is the agreement between Sacramento County and the Sacramento County Public Authority, attached as Exhibit 2. The Interagency Agreement supports that the public authority is an employer of IHSS workers because it makes the Sacramento County Public Authority the "employer of record" for IHSS workers. (Interagency Agreement at p.2.)

Case No. AO-359822 claims that finding the public authority to be an employer for Unemployment Insurance purposes would create inconsistent results because IHSS providers in counties where the county administers IHSS would be excluded from Unemployment Insurance coverage. Case No. AO-359822 is incorrect that providers in county administered counties would be ineligible when providers in public authority counties would be eligible. When Section 683 and Welfare and Institutions Code Section 12302.2 were enacted, only county administered programs existed. The legislative history of those sections is clear that there would be Unemployment Insurance eligibility for IHSS workers in county administered counties. The public authority system was an addition 20 years later that expressly follows the same rules. (Welf. & Inst. Code § 12301.6(i)(1); CDSS All County Letter (ACL) 98-20 at p.3.) Contrary to creating an inconsistency, finding the public authority to be an employer under Section 683 would prevent an inconsistency.

Entities described in Section 683 are employers for purposes of Unemployment Insurance. Such entities are by definition employers of IHSS providers even if the IHSS recipient is also considered an employer. This dual relationship is contemplated by Section 683 which states that entities deemed employers under that section are "also" employers. Section 683 continues that an employer is "any employing unit" which meets its criteria. This means that the legislature foresaw that multiple entities might be employers in a particular case, any one of which could meet the criteria in Section 683. The public authority is therefore an employer of IHSS workers under Section 683;<sup>3</sup> and all IHSS workers, including those who are providers for their spouse or children, are eligible for Unemployment Insurance.

## 2. IHSS Workers Who Are Providers For Their Children Or Spouses Are Employed By The Public Authority Under Common Law.

In general, joint employment is defined as when an employee is subject to control of two employers. (*In-Home Supportive Services, supra*, 152 Cal.App.3<sup>rd</sup> at p.732 [stating that dual employment "has long been recognized" and relying on several secondary sources to support its definition].) All providers must be referred to the public authority for wages, benefits and other terms and conditions of employment. (*Guerrero, supra*, 213 Cal.App.4<sup>th</sup> at p.930; Welf. & Inst. Code § 12301.6(h).) Although the IHSS recipient can choose a provider, that choice is only given a preference by the public authority and is not binding. (Welf. & Inst. Code § 12304.1.) The public authority investigates the qualifications and background of all prospective IHSS providers and provides training for all providers. (*Guerrero* at p.935; Welf. & Inst. Code § 12301.6(e)(2),(4); *see also* CDSS ACIN I-69-09, attached as Exhibit 8 [describing requirements for fingerprinting, background check, provider orientation and provider agreement with the public authority or county].) The County determines the exact amount of time the provider works and the exact tasks done down the tenth of an hour. (*Guerrero* at p. 935; MPP § 30-764.1 *et. seq.*)

The public authority is the provider's employer for purposes of collective bargaining. (Welf. & Inst. Code § 12301.6(c)(1); *Guerrero* at p. 924.) The public authority is also designated "employer" for

<sup>3</sup> Case No. AO-359822 does not decide whether a public authority is an entity with which the county contracts to provide IHSS services because it is unclear whether a public authority can "contract to itself." Case No. AO-359822 does not consider that the public authority is an entity separate from the county. (Welf. & Inst. Code § 12301.6(b)(2)(A).) This means that a county contract with a public authority is a contract with a separate entity and not with itself.

purposes of obtaining fingerprints of applicants for IHSS provider positions. (Welf. & Inst. Code § 15660(a)(1).) Additionally, the county and the state maintain all employment records and handles payroll for all providers. (*Guerrero* at p.333; MPP § 30-769 *et. seq.*) Finally, the county investigates claims of fraud and takes action against providers in accordance with such investigations. (MPP § 30-769.92, .93.)

The public authority also establishes a registry to assist recipients in finding providers, a referral system for caregivers to providers, and performs "any other functions related to the delivery of" IHSS. (Welf. & Inst. Code § 12301.6(e); MPP § 30-767.2 *et. seq.*)

All of these public authority functions, taken together, mean that the public authority exercises control over IHSS providers such that they are at least their joint employer.<sup>4</sup>

## II. SECTION 631 DOES NOT PRECLUDE UNEMPLOYMENT INSURANCE FOR IHSS WORKERS WHO PROVIDE FOR THEIR CHILDREN OR SPOUSES.

Case No. AO-359822 holds that Section 631 precludes Unemployment Insurance eligibility for IHSS providers for their spouse or children even if such workers have joint employment. Each of Case No. AO-359822's justifications for this conclusion fails.

First, AO-359822 states that the plain language of Section 631 excludes IHSS providers for their spouse or children from "employment" for purposes of Unemployment Insurance eligibility. In fact, the opposite is true. Section 631 excludes "services performed in the employ of" a spouse or child. The phrase "in the employ of" is not exclusive and does not preclude that such persons can also be "in the employ of" another person or entity at the same time.

Moreover, while excluding certain employment from Unemployment Insurance coverage, Section 631 does not override the common law incorporated into Unemployment Insurance law by Section 621 that includes joint employment. If IHSS providers for their spouse or children are in fact jointly employed, then Section 631 does not preclude Unemployment Insurance eligibility based on joint employment with the public authority.

Second, Case No. AO-359822 avers that allowing IHSS employment under Section 683 would invalidate Section 631. Case No. AO-359822 claims that the only way to harmonize Section 683 and Section 631 is to find Section 631 precludes Unemployment Insurance eligibility for IHSS providers for their spouse or children. This is wrong for several reasons. As explained above, neither Section 631 nor Section 683 precludes joint employment. The best way to harmonize Sections 631 and Section 683 is to focus on the "in the employ language" in Section 631 and the "also" in Section 683 to conclude that joint employment justifies Unemployment Insurance eligibility based on employment by the public authority.

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<sup>4</sup> Finding that IHSS workers are common law joint employees is an additional reason why the alleged inconsistency with county administered counties is illusory. IHSS workers in county operated counties are common law joint employees of the county for the same reasons that IHSS workers in public authority counties are common law joint employees with the public authority because in county operated counties, the county performs all functions that the public authority performs.

In addition, legislative history supports that Section 631 should not preclude Unemployment Insurance eligibility for IHSS workers. As explained above, Section 683 was intended to provide Unemployment Insurance to all IHSS workers because failure to do so would cost the state \$80 million. The only conclusion that is consistent with the legislative history is Section 631 does not preclude Unemployment Insurance eligibility based on joint employment with the public authority.

Finally, finding Section 631 precludes Unemployment Insurance eligibility of IHSS workers who provide for their spouse or children when a joint employment interpretation would also harmonize Section 631 and Section 683 would be contrary to the policy of liberal construction in favor of Unemployment Insurance eligibility. A fundamental policy underlying the Unemployment Insurance Act is "to promote public and private enterprise by . . . providing benefits for persons unemployed through no fault of their own, and to reduce involuntary unemployment and suffering caused thereby to a minimum." (*Metric Man, Inc. v. CUIAB* (1997) 59 Cal.App.4<sup>th</sup> 1041, 1051 [quoting Unemp. Ins. Code § 100].) This policy is ill served by finding Section 631 precludes eligibility for IHSS workers when a joint employment interpretation allows such eligibility.

Case No. AO-359822 also states that Section 631 includes an exception to opt in to Unemployment Insurance eligibility by making Unemployment Insurance contributions and therefore cannot include a second exception. The premise of this claim is flawed because allowing Unemployment Insurance eligibility for IHSS providers for their spouse or children is not an exception to Section 631. It is instead a recognition of joint employment, and while the employment by the provider is precluded under Section 631, employment by the public authority is not.

This claim also demonstrates why relying on Section 631 to preclude Unemployment Insurance eligibility for IHSS providers for their spouse or children is an absurd result. A goal of statutory interpretation is to avoid absurd results. (*In Re Greg F.* (2012) 55 Cal.4<sup>th</sup> 393, 406; *Smith v. Superior Court* (2006) 39 Cal.4<sup>th</sup> 77, 83.) CDSS is legally required to pay the unemployment contribution for all IHSS providers, including providers who work in counties with public authorities. (Welf. & Inst. Code §§ 12302.2, 12301.6(i)(1); *Guerrero, supra*, at pp. 924-25.) The IHSS recipient cannot opt-in to pay Unemployment Insurance contributions that are already being paid by CDSS. This supports that IHSS providers for their spouse or children must be considered joint employees with the public authority.

### III. INELIGIBILITY FOR UNEMPLOYMENT INSURANCE FOR IHSS WORKERS WHO PROVIDE FOR THEIR CHILDREN OR SPOUSES IS AN ABSURD RESULT.

CDSS is legally required to pay the unemployment contribution for all IHSS providers, including providers who work in counties with public authorities. (Welf. & Inst. Code §§ 12302.2, 12301.6(i)(1); *Guerrero, supra*, at pp. 924-25.) A goal of statutory interpretation is to avoid absurd results. (*In Re Greg F.* (2012) 55 Cal.4<sup>th</sup> 393, 406; *Smith v. Superior Court* (2006) 39 Cal.4<sup>th</sup> 77, 83.) Denying coverage to IHSS providers for their spouse or children under Section 631 would be an absurd result because workers for whom unemployment contribution is paid would be ineligible for benefits. (Welf. & Inst. Code §§ 12302.2, 12301.6(i)(1); MPP § 30-769.82; *Guerrero, supra*, at pp. 924-25.) Moreover, Section 631 allows excluded employers and employees to opt in to eligibility and make contributions to the fund. But that possibility makes no sense in this context because the contributions are already

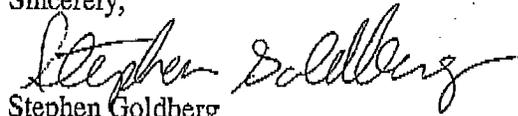
required to be made by CDSS. Finding that IHSS providers for their spouse or children are joint employees with the public authority avoids these absurd results.

#### CONCLUSION

For the reasons stated, IHSS providers for their spouse or children should be found eligible for Unemployment Insurance because they are joint employees with the public authority, and that joint employment is covered employment that supports eligibility.

Thank you for your consideration of these comments.

Sincerely,



Stephen Goldberg

Acting Regional Counsel

Legal Services of Northern California

# **EXHIBIT 1**



CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD  
 P O Box 944275  
 SACRAMENTO CA 94244-2750

NELLYA OSTAPENKO  
 LEGAL SERVICES OF NORTHERN CALIFORNIA  
 Claimant-Appellant

Case No.: **AO-336919**

OA Decision No.: 4893615

EDD: 0190 BYB: 01/13/2013

**DECISION**

Attached is the Appeals Board decision in the above-captioned case issued by Board Panel members:

**ROBERT DRESSER**

**MICHAEL ALLEN**

**JOHN ADKISSON**

**ROY ASHBURN, Written Dissent**

This is the final decision by the Appeals Board. The Appeals Board has no authority to reconsider this decision. If you disagree with the decision, please refer to the information attachment which outlines your rights.

LEGAL SERVICES OF NORTHERN  
 CALIFORNIA  
 515 12TH ST  
 SACRAMENTO, CA 95814

Date Mailed:

**AUG 27 2014**

**Case No.:** AO-336919  
**Claimant:** NELLYA OSTAPENKO

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The claimant appealed from the decision of the administrative law judge that held the wages earned by the claimant for providing caregiver services for her son through the In-Home Supportive Services (IHSS) program were insufficient to establish a claim under sections 1275 and 1281 of the Unemployment Insurance Code (UIC)<sup>1</sup>, given that the claimant's services were exempt from employment under code section 631.

### ISSUE STATEMENT

The issue before us is whether the wages the claimant earned through the IHSS program for providing care to her disabled son constitute wages in covered employment under code sections 1275 and 1281, or whether the wages were for services exempt from the definition of employment based on familial relationship under code section 631.

### FINDINGS OF FACT

The In-Home Supportive Services Program is a state social welfare program established in 1973 and designed to avoid institutionalization of incapacitated persons. The program is funded by a combination of federal, state and county dollars. It provides supportive services to aged, blind or disabled persons who cannot perform the services themselves and who cannot safely remain in their homes unless the services are provided to them. The program compensates persons who provide the services to a qualifying incapacitated person.<sup>2</sup> IHSS workers are eligible for unemployment insurance (UI) benefits if their wages are not statutorily exempt and they are otherwise eligible for benefits under the UIC.

In 1992, the California Legislature enacted a series of statutes providing for the use of public authorities by counties providing IHSS services.<sup>3</sup> In 1998, in a letter to all counties, the Department of Social Services (DSS) mandated that all counties using a public authority to provide IHSS services enter into an interagency agreement specifying the services to be provided. In 2000, Sacramento County established the Sacramento County In-Home Supportive Services Public Authority (Public Authority) to assist in the delivery of IHSS

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<sup>1</sup> Unless otherwise noted, all statutory references are to the Unemployment Insurance Code.

<sup>2</sup> *Basden v. Wagner* (2010) 181 Cal.App.4<sup>th</sup>, 929, 931.

<sup>3</sup> Welfare and Institutions Code, section 12301.6

services<sup>4</sup> and entered into an interagency agreement (the contract) with the Public Authority to provide those services. The agreement provides that the Public Authority acts as the "employer of record" for individual providers serving IHSS recipients, providing assistance to recipients in finding IHSS personnel through a registry, establishing a referral system to refer IHSS personnel to recipients, investigating qualifications and background of potential IHSS providers, providing recipient input through the IHSS Advisory Committee, and providing for training for IHSS providers and recipients. The Public Authority also agreed to provide Sacramento County with the information and materials needed for billing services to the DSS and for approval of DSS and the California Department of Health Services of the reimbursement rate for the Public Authority and any rate adjustment. In addition, the Public Authority agreed to use county administrative, legal, financial, labor relations and clerk services, as well as accounting and clerical support and other county services as deemed necessary.

The claimant worked as an IHSS personal caregiver for her disabled son from the time he was four years old until he died at age 23. There was no evidence that the county hired the claimant, or any of its IHSS workers as county employees pursuant to civil service laws and rules. The claimant was paid directly through direct deposit by the state of California, with deductions for union dues and health insurance. The state did not withhold personal income taxes and the record does not establish whether or not the state made contributions for unemployment insurance for this or other claimants.

After her son died, the claimant filed a claim for unemployment insurance benefits which was effective January 13, 2013. Based on the claim effective date, the Employment Development Department (EDD) determined a base period of October 1, 2011 through September 30, 2012. The base period is prescribed by statute<sup>5</sup> and used to determine if the claimant has sufficient wages to establish a claim and the amount of the claim. The only wages during the base period of October 1, 2011 through September 30, 2012 were paid to her through the IHSS program for caring for her son. Her wages totaled more than \$1,000 in each quarter of 2012.

The Employment Development Department issued a Notice of Determination finding that the claimant had insufficient wages in her base period to establish a

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<sup>4</sup> The parties having been noticed and having expressed no objection, we take official notice of All County Letter 98-20, issued by the Department of Social Services on March 17, 1998, requiring counties using public authorities to enter into interagency agreements with the public authorities pursuant to Social Services Standards, section 30-767, subdivision .214. We also take judicial notice of the interagency agreement entered into between Sacramento County and the Public Authority on September 12, 2000. Both documents are added as exhibits to the record of this case. Evidence Code, section 452, subdivisions (b), (c) and (h); California Code of Regulations, title 22, section 5009.

<sup>5</sup> Unemployment Insurance Code, section 1275.

claim. The decision of the administrative law judge affirmed the Notice of Determination and at least implicitly found the claimant's son was her sole employer, and therefore her IHSS wages were excluded from employment under code section 631.

### REASONS FOR DECISION

Because we find the claimant's son was not her sole employer, and for other reasons discussed below, we will reverse the conclusion of the administrative law judge that the claimant's wages should be excluded.

The UIC contains several definitions of "employer" and specifies the circumstances under which wages earned from a particular employer can be used to establish an unemployment insurance claim. The UIC also defines wages from some employment as exempt and not available to establish a claim for unemployment benefits.

The primary issue before us is whether the wages the claimant earned through the IHSS program for providing care to her disabled son were for services excluded from the definition of employment under section 631.

Code Section 631 provides:

Employment for purposes of unemployment benefits does not include service performed by a child under the age of 18 in the employ of his father or mother, or services performed by an individual in the employ of his son, daughter, or spouse, except for disability benefits to the extent that the employer and the employee have, pursuant to section 702.5 elected to make contributions to the Unemployment Compensation Disability Fund.

The result in this case depends on whether or not the language "in the employ of" in section 631 applies to service performed by an individual "in the employ of" her son, while also jointly employed for the same work by another employer or employers.

Employer contributions to the Unemployment Fund accrue and become payable by employers "with respect to wages paid for employment." (Unemployment Insurance Code, section 976). Thus, if the claimant's IHSS earnings are not wages paid for "employment," no employer contributions are payable and her earnings are not useable to establish a claim.

Under the IHSS scheme, this premise is obviously tinged with absurdity since, even though these welfare recipients may technically be designated as "employers," the elderly and indigent recipients of the program could hardly be expected to pay employer contributions into the unemployment insurance system. As far as this Board is aware, none do.

Nevertheless, the statutes governing IHSS and even a statute defining "employment" under the Unemployment Insurance Code state that the welfare recipient himself may be considered, under specified circumstances, to be at least one of several possible entities considered to be the "employer" of the IHSS worker. (Welfare and Institutions Code, sections 12301.6, subd. (c)(1), 12302.2 and 12302.25; Unemployment Insurance Code, section 683).<sup>6</sup>

We begin by examining the history, significance and wording of section 631. Section 631 was originally enacted in 1953, twenty (20) years before establishment of IHSS and almost forty (40) years before the statutory creation of public authorities for purposes of delivery of IHSS services. The statute was later amended in 1971, still years before public authorities were in existence. According to the Enrolled Bill Report, one of the purposes of the statute was to protect against unemployment fraud that could arise because of collusion between specific family members with control over the employment relationship.<sup>7</sup> Such collusion, while not impossible in an IHSS recipient/provider relationship, is hardly likely given the fact that it is the responsible government authorities which are financially liable for unemployment insurance benefits which serve in the role of employer with respect to interaction with EDD. This concern is also minimized by the extensive governmental oversight and control of the employment relationship, including the termination of the relationship.

Section 631 does not define the term "in the employ of." The plain language of the statute gives no indication as to whether or not the Legislature intended to exempt wages based solely on the familial relationship between caregiver and

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<sup>6</sup> The Board is also cognizant of the recent decision of the United Supreme Court in *Harris v. Quinn*, 573 U.S. \_\_\_\_, 2014 U.S. Lexis 4504 (decided June 30, 2014). In *Harris*, the Court examined the employment relationship between a worker providing services under the same federal program as described in this decision but under a statutory scheme unique to the State of Illinois. The Court concluded, among other things, that workers such as the claimant in Illinois were not what it called full-fledged public employees, but were merely deemed to be public employees solely for the purpose of unionization and collective bargaining (Id. at p. 38). Nevertheless, nothing in the majority opinion contradicted Justice Kagen's dissenting opinion that, regardless of the full-fledged or partial character of the home care worker's status as a public employee, there was, even under the Illinois statutes, a "joint" employment relationship. (Id. at p. 82). For this reason, and because California's statutory scheme described in this decision is materially distinguishable from the Illinois law, nothing in *Harris* is relevant to the outcome of this Board's adjudication of the matter before it.

<sup>7</sup> Enrolled Bill Report, Governor's Office, Chapter No. 1447, 1971, California State Archives, Office of the Secretary of State, Sacramento.

care recipient, or whether the exemption would apply even if the claimant had joint employers, one or more of which was not a family member.<sup>8</sup>

One UIC provision, Section 683, sets forth an express statutory definition of "employer" that applies to caregivers working through the IHSS program. The statute provides three alternative ways that "any employing unit" can meet the definition of "employer". It specifically provides:

"Employer" also means any employing unit<sup>9</sup> which employs individuals to perform domestic service comprising in-home supportive services under Article 7 (commencing with Section 12300), Chapter 3, Part 3, Division 9 of the Welfare and Institutions Code and pays wages in cash of one thousand dollars (\$1,000) or more for such service during any calendar quarter in the calendar year or the preceding calendar year, and is one of the following:

- (a) The recipient of such services, if the state or county makes or provides for direct payment to a provider chosen by the recipient or to the recipient of such services for the purchase of such services, subject to the provisions of Section 12302.2 of the Welfare and Institutions Code.
- (b) The individual or entity with whom a county contracts to provide in-home supportive services.
- (c) Any county which hires and directs in-home supportive personnel in accordance with established county civil service requirements or merit system requirements for those counties not having civil service systems.

The statute does not, on its face, preclude the possibility of multiple or joint employers. In fact, the statute clearly allows for the possibility of multiple or joint employers under the definition by emphasizing that "employer also means any employing unit [which would include a public authority] which employs" IHSS workers with sufficient earnings, "and is one of the following." By defining the employer as "any employing unit," the plain language of the statute can only be read as being inclusive of "any" employing unit falling within the three listed categories.<sup>10</sup>

<sup>8</sup> As explained in more detail below, the impact of employment by more than one individual on the applicability of the 631 exemption is addressed in Title 22, section 631-1 and was analyzed by this Board in Precedent Benefit Decision (P-B-111).

<sup>9</sup> "Employing unit" includes "any public authority." (Unemployment Insurance Code, section 135 (a)(3)).

<sup>10</sup> Nothing in this decision shall be construed to mean that the definitions in section 683 are the exclusive definitions relevant in construing the meaning of "in the employ of" in section 631. Indeed, section 631 was enacted long before section 683 existed and IHSS workers "related" to recipients within the meaning of 631 may actually be "in the employ of" other employing units not listed in section 683, including counties, public authorities, and the State of California. As discussed in this decision, economic reality

Thus, as a threshold matter, we must determine whether the claimant was employed by one or more than one "employing unit."

### Care Recipient as Employer

Code section 683, subd. (a) provides, in pertinent part, that the care recipient is the employer only if the caregiver is paid directly by the government and was "chosen by the recipient." As noted above, the claimant was paid directly for her services by the state through a check from the State of California with deductions for union dues and health care.<sup>11</sup>

Whether or not the claimant was "chosen by the recipient" is a more difficult question. The claimant's son was only four when the claimant became his caregiver under the IHSS program. Given the age of her son at the beginning of claimant's IHSS employment, it is possible that the claimant initially became her son's caregiver as a matter of parental rights.<sup>12</sup> We have no evidence of record, however, as to how the claimant initially became her son's caregiver, nor do we know whether the recipient had input in choosing to continue the employment relationship prior to the recipient's death decades later. We do know that the claimant remained her son's caregiver during the base period of the claim, through the time he attained the age of majority, and until his death at age 23. The son's death was the occasion for claimant's separation from employment.

Nevertheless, it is unnecessary to remand for a more complete record on whether claimant was "chosen by the recipient" within the mean of Section 683(a) for reasons explained below.

For purposes of this analysis we shall assume that the son as the recipient of IHSS services was one employer of the claimant within the meaning of Section

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dictates that even if benefit recipients who do not pay for the services rendered are considered employers as a statutory construct, IHSS workers are in the employ of at least two and possibly multiple entities which share employer obligations and functions

<sup>11</sup> The State, in fact, is the entity that assumes responsibility for UI contributions for eligible IHSS workers. Welfare and Institutions Code, section 12302.2

<sup>12</sup> The right of parents to the companionship, care, custody, and management of their minor children is an important interest that warrants deference and protection. *Lassiter v. Department of Social Services of Durham County, N.C.*, (1981) 452 U.S.18. The right will not be disturbed except in extreme cases where a parent acts in a manner incompatible with parenthood. *In re Isayah C.* (2004) 118 Cal.App.4<sup>th</sup> 684.

The choice of a caregiver to provide IHSS services for her son is within the claimant's right of care, custody and management. The phrase "chosen by the recipient" could reasonably be construed to mean chosen by the recipient or an individual who had the legal authority to act on behalf of the recipient, such as a parent of a minor child, legal guardian or conservator. The claimant's son was not a minor during the last five years she cared for him, which period includes the base period of the claimant's unemployment claim. Upon reaching the age of 18, the son continued with the claimant as his caregiver.

683(a). There are, indeed, numerous reasons for assuming that the statutory framework for the IHSS program intended, even if as a fiction, to regard recipients as employers.<sup>13</sup>

The facts that Sacramento County has established and contracted with the Public Authority to deliver IHSS services, and that a specific employer's role is set forth in statute for the Public Authority in the delivery of those services, however, raise the issue of whether, under section 683, subdivision (b) or (c), the Public Authority or the County are also employers of the claimant within the definition set forth in section 683.

#### Public Authority as Employer

As noted above, in 1992 the California Legislature enacted section 12301.6 of the Welfare and Institutions Code. That section allowed the counties to create, by ordinance, public authorities, and to contract with them to provide IHSS services on behalf of the county. These contracts resulted in a sharing of responsibilities delineated in the statutes between a number entities and individuals.

Under the statute, a public authority is a corporate public entity, separate from the county, exercising a number of public and essential governmental functions. It has all powers necessary or convenient to carry out the delivery of in-home supportive services, including the power to contract to provide IHSS services in accordance with a county plan. The public authority is charged with making or providing for direct payment to a provider chosen by the recipient for the purchase of services pursuant to Sections 12302 and 12302.2. The statute further specifies that "employees of the public authority are not employees of the county for any purpose." (Welfare and Institutions Code, section 12301.6(b)(2)(B).)

The law provides that any public authority established pursuant to the law shall perform, but not be limited to, the following functions:

- (1) Establishing a registry to assist care recipients to find caregivers.
- (2) Investigating the qualifications and background of potential personnel.
- (3) Establishing a referral system to refer caregivers to care recipients.
- (4) Providing for training for providers and recipients.
- (5) Performing any other functions related to the delivery of in-home supportive services.

<sup>13</sup> For example, subject to the public authorities' rights to assist in the finding of caregivers, to investigate qualifications and background, and to establish referral systems and training, recipients purportedly retain the right to hire, fire and supervise the work of any in-home supportive services personnel providing services to them. (Welfare and Institutions Code, section 12301.6, subds. (c)(1) and (h).)

- (6) Ensuring that the requirements of the personal care option pursuant to Federal law is met.

(Welfare and Institutions Code, section 12301.6(e), Sacramento County Code, section 297.060(a).)

The above statute specifically sets forth the functions of the public authority for which it is deemed to be the employer of IHSS personnel, and also the employer functions reserved to other entities or individuals.

Section 12301.6 establishes that a public authority has substantial control over the training, referral, background investigation of qualifications, pay and benefits of an IHSS worker. The public authority is specifically "deemed to be the employer" of IHSS personnel for the purpose of collective bargaining regarding wages and other terms and conditions of employment.<sup>14</sup> As noted, the claimant had union dues deducted from her paycheck for collective bargaining purposes.

The statute also states that recipients shall retain the right to hire, fire and supervise the work of any in-home supportive services personnel providing services to them. (Welfare and Institutions Code, section 12301.6, subds. (c)(1) and (h).)<sup>15</sup>

Under section 12301.6(b) (2) (B) of the Welfare and Institutions Code, the purpose for the creation of a public authority is "to provide for the delivery of in-home supportive services." The public authority has the power to contract with the county to provide such services and the law sets forth the specific employer functions to be performed by the public authority.

Since, as described more fully above, the County in this case did establish a Public Authority and did enter into a contract (the interagency agreement) under which the Public Authority provides IHSS services, we find that the Public Authority is an "entity with whom a county contracts to provide in-home

<sup>14</sup> Government Code, section 3500 *et seq.* Although a care recipient by statute retains the right to hire a provider who has not been referred by the public authority, that provider must be referred to the public authority "for the purposes of wages, benefits, and other terms and conditions of employment." (Welfare and Institutions Code, section 12301.6, subd. (h).)

<sup>15</sup> This scheme and other statutory provisions raise the serious question not addressed in this decision regarding whether or not a recipient, in fact, actually "chooses" his provider (as is required under section 683) or, on the other hand, merely "recommends" a provider who is normally approved by the State, the County, or the Public Authority. In some instances, the recipient may not have the mental facility or inclination to participate at all in this decision. The answer to this question does not alter the interpretation of UIC Section 631 in this case, and we therefore do not address it.

supportive services" under UIC section 683(b) and is therefore an employer of the claimant.

The County's Role: the County is not the Employer under Section 683.

The county does have a significant role in performing a number of functions related to operation of the IHSS program, including, but not limited to, authorizing services for an IHSS recipient, determining the level and quality of services required, conducting any subsequent assessment of need for services, collecting timesheets and worksheets from the caregiver, and terminating the recipient's participation in the IHSS program. (Title 2, chapter 2.97, section 297.060 of the Sacramento County Code).<sup>16</sup> Indeed, for purposes of the granting or denial of Unemployment Insurance benefits it could be suggested that the most important function of an employer is the counties' function in "terminating the recipient's participation" which is likely to lead directly to the unemployment of the caregiver.

Nonetheless, the record contains no evidence that the county hired the claimant in accordance with county civil service requirements or merit system requirements. Therefore, based on the information of record, and having found the claimant an employee of the Public Authority, we find that Sacramento County is not the claimant's employer within the meaning of Section 683, subdivision (c).

Joint Employers In Other Contexts

Whether a claimant providing IHSS services can have more than one employer, or "joint" employers under section 683 for purposes of unemployment law has not been specifically addressed by the courts.<sup>17</sup> The courts have, however, issued decisions regarding whether there can be joint employers of IHSS workers for purposes of workers' compensation benefits and for purposes of employee rights and benefits under the Fair Labor Standards Act (FLSA) and California's wage and hour laws. While those cases are not necessarily binding in an unemployment law context, they are instructive in our analysis under UIC Section 631.

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<sup>16</sup> Thus, our finding that the County does not meet the definition in Section 683, subdivision (c) should be construed narrowly as it does not affect the County's potential status as employer under different statutes or the common law of employment relationships.

<sup>17</sup> However, as we have noted, the plain language of 683 allows for no other interpretation. Not only is the sentence construction susceptible to no other interpretation other than the possibility that more than one employing entity might qualify, but the statute provides no indication of which qualifying employer would be designated as "the" employer in the situation, where, as here, more than one entity might qualify under the three subdivisions.

In the worker's compensation area, Labor Code section 3351.5 addresses the issue of who is an "employee" for purposes of determining whether IHSS workers are entitled to worker's compensation benefits. That section defined "employee", in pertinent part, to be:

... (b) Any person defined in subdivision (d) of Section 3351<sup>18</sup> who performs domestic service comprising in-home supportive services [citation omitted]. For purposes of Section 3352, such person shall be deemed an employee of the recipient of such services for workers' compensation purposes if the state or county makes or provides for direct payment to such person or to the recipient of in-home supportive services for the purchase of services, subject to the provisions of Section 12302.2 of the Welfare and Institutions Code.

In *IHSS v. WCAB* (1984) 152 Cal.App.3d 720, a case that arose before the statutory creation of public authorities, the IHSS worker was paid directly and worked for three care recipients over the relevant time period. She was injured helping one of the recipients for whom she had not worked enough hours and by whom she had been paid insufficient wages to qualify for worker's compensation.

The court held that for purposes of workers' compensation, IHSS workers are deemed to be employees of the care recipient if the state or county pays the care recipient or the care provider directly. (Id. at p. 732) The court further found that although, by statute, the care provider in that case was an employee of the recipient and did not earn sufficient wages to be eligible for benefits based on the earnings from that one employer, there was nothing in the law that precluded a finding of dual employment. In fact, the court noted, simultaneous employment was not a novelty in the law of worker's compensation.<sup>19</sup> Moreover, the court noted the legislative directive to construe worker's compensation law in favor of coverage where there was ambiguity. (Id. at p.740). The court concluded that the state was also an employer, and the county, in overseeing the program, acted as an agent of the state. The state was found to be a joint employer along with the care recipient, and benefits were payable.

In *Bonnette v. Health and Welfare Agency*, (704 F.2d 1465 (9<sup>th</sup> Cir.1983)) the Ninth Circuit Court of Appeals found that, given their roles in the county's IHSS

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<sup>18</sup> Section 3351, subdivision (d) includes as one definition of "employee" the following: Except as provided in subdivision (h) of Section 3352, any person employed by the owner or occupant of a residential dwelling whose duties are incidental to the ownership, maintenance, or use of the dwelling, including the care and supervision of children, or whose duties are personal and not in the course of the trade, business, profession, or occupation of the owner or occupant.

<sup>19</sup> Neither is the concept of "joint employers" foreign to unemployment law. See P-B-111, discussed p. 12.

program, the state and county were joint employers along with the recipient under the FLSA.

In *Guerrero v. Sonoma County* (213 Cal.App.4<sup>th</sup> 912; 153 Cal Rptr. 3d 315, decided in February of 2013, and modified on March 11, 2013 (2013), review denied June 12, 2013, S210134), the court held that the trial court erred in determining, as a matter of law, that the County and the Public Authority were not joint employers of IHSS workers under the FLSA and California wage law. As to the FLSA claims, the court relied on specific expansive FLSA language regarding who can be an employer.

#### Joint or Multiple Employers in the Unemployment Context

Assuming for purposes of argument that the claimant's son, as the care recipient, is an "employer" of the claimant and that the Public Authority is also the claimant's employer, the issue next to be resolved is whether Section 631 still exempts claimant's wages, even given the fact that claimant was in the employ of, at minimum, two employers, one of which was her son and one of which was a separate governmental entity with very significant control of the actual employment relationship.

Despite the statutory differences, we recognize a judicial trend in the *Bonnette*, *IHSS v. WCAB* and *Guerrero* decisions to find that the state, county and public authority function, in economic reality, as joint employers with the care recipient to effectuate the purposes of those laws. Consequently, while these cases found joint employment under their respective statutory provisions, we must turn to section 631 of the UIC, to determine in this case whether or not the purposes of the unemployment laws support a construction under which the claimant is entitled to benefits.

The UIC was adopted to provide benefits for persons unemployed through no fault of their own, and to reduce involuntary employment and the suffering caused thereby to a minimum. ((Unemployment Insurance Code, section 100).

The Unemployment Insurance Act . . . is a remedial statute, and the provisions as to benefits must be liberally construed for the purpose of accomplishing the objects of the Act. (*Empire Star Mines v. California Employment Commission* (1946) 28 Cal.2d 33).

The purposes of the unemployment insurance system are best served by recognizing the reality of joint employers within the IHSS context. Therefore, we find the claimant had joint employers under section 683, subdivisions (a) and (b),

including the Sacramento Public Authority and, arguably, her son, the care recipient.

Having concluded that the Public Authority was an employer of the claimant under subdivision (b), and assuming that the claimant's son was an employer under subdivision (a), we next consider whether the claimant can rely on having joint employers under section 683 to defeat an argument that her IHSS earnings were earned "in the employ of" her son under section 631.

### The Claimant's Wages From Joint Employers Are Not Exempt Under Code Section 631.

The familial relationship exemption has been in the Unemployment Insurance Code for more than six decades and has never been interpreted by any court, by the Employment Development Department, or by this Board to prohibit a claimant from collecting unemployment insurance benefits unless the claimant's sole employer was a "son, daughter, or spouse." As discussed below, the exemption has been persistently found to be inapplicable where a claimant is employed by an entity controlled by such a family member, but also by a person who is not a "son, daughter, or spouse." Nevertheless, it is a question for the Board's first impression whether the existence of multiple employers will defeat application of the exemption, just as the existence of, for example, an unrelated partner in a partnership would defeat the exemption when a claimant's "son, daughter, or spouse" is one of the other partners. Because we can see no principled reason, consistent with our duty to interpret the code liberally for claimants, to distinguish these types of cases, we will find section 631 inapplicable here.

In another context, the California Unemployment Insurance Appeals Board found the section 631 exemption based on a familial relationship inapplicable where the earnings were attributable not only to the parent of the claimant, but to a third party. In Precedent Decision P-B-111 the Board held that earnings by a minor from a partnership comprised of his father and his uncle's corporation were not exempt and could be used to establish a claim. The Board considered whether, based upon section 631-1(e), title 22, California Code of Regulations,<sup>20</sup> the earnings from each partner would be exempt if earned outside of the partnership.

<sup>20</sup> The regulation which defines "Family Employment" for purposes of code section 631 provides, in pertinent part:

(e) Services performed in the employ of a partnership by a spouse, father, mother, or child under the age of 18 are excluded when such services would be excluded if performed for each partner individually. (emphasis added). For example:

- (1) The services of either spouse employed by a partnership composed of the other spouse and one or more of their children are excluded;
- (2) The services of either parent employed by a partnership composed of their children are excluded.

We find the reasoning in P-B-111 and section 631-1(e) to be helpful in the case before us.<sup>21</sup> Although that case and the regulation involve single legal entities, it seems even more appropriate to apply the test where, as here, the claimant was arguably jointly employed by her son and the Public Authority, whose interests were less closely aligned than those of the partners in P-B-111.<sup>22</sup>

Section 631 excludes from employment "service by an individual in the employ of his son, daughter or spouse . . . ." If the son was the claimant's sole employer, the claimant's services would be exempt, so the wages from those services would not be in covered employment and would not be useable to establish a claim. However, we have found that, at minimum, the Public Authority was also an employer of the claimant.<sup>23</sup>

Using the rationale in P-B-111 and the regulatory interpretation, if the claimant was employed by both her son and the Public Authority, her base period wages while in the employ of the Public Authority would not be exempt under section 631, and her total wages would be useable to establish a claim. If the claimant

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(3) The services of a child under the age of 18 employed by a partnership composed of his or her parents are excluded.

(4) The services of a married child under the age of 18 in the employ of a partnership composed of his or her father and his or her spouse are excluded.

(f) Services performed by an individual in the employ of relatives other than those referred to in Section 631 of the code are not excluded. For example, services performed by an individual in the employ of his or her brother, sister, niece or nephew are not excluded.

(California Code of Regulations, title 22, section 631-1)

<sup>21</sup> It is axiomatic that "[w]hen faced with a problem of statutory construction, [courts show] great deference to the interpretation given the statute by the officers or agency charged with its administration." *Udall v. Tallman*, 380 U.S. 1, 16 (1965).] In P-B-111, earnings paid by the claimant's father would be exempt under UIC section 631 if the claimant worked only for his father because they were earned "in the employ of his father." However, earnings paid by the corporation would not be exempt because earnings from an uncle or an uncle's corporation are not exempt under section 631. This Board found that because the claimant's wages paid by the uncle and the corporation were not exempt, they could be used to establish his claim, notwithstanding the father's involvement in the entity. Similarly, we find today that the claimant's non-familial employer, the public authority, may be used to establish the claimant's claim.

<sup>22</sup> It is also noteworthy that the EDD on-line instructions appurtenant to its regulations regarding familial employers provide additional examples in which multiple employer influences do not fall within the meaning of section 631. Employment Development Department Family Employment Information Sheet, DE231FAM. The information sheet states earnings from corporations and limited liability companies are not excluded, and it specifies the type of partnerships whose paid earnings are excluded. While not addressing joint employers specifically, the information sheet states the principle clearly: "If any partner does not meet the family criteria, the family member would not be excluded." Despite this sweeping interpretation by EDD, a party to this case, the Department has made no attempt to distinguish the facts in the instant matter. It appears that EDD has presumed that the claimant's sole employer was her son.

<sup>23</sup> Even were it not for our analysis under code section 683, given the obligations imposed by economic reality and other statutes, the State and County might arguably be regarded as third and fourth joint employers.

was employed solely by the Public Authority, her wages would, of course, also not be exempt.<sup>24</sup>

For 19 years the claimant acted as caregiver for her disabled son in her home. This benefitted society at large in that her son did not need to enter a care facility, a much costlier option. Moreover, even if the disabled son was an employer under a statutory construct, the reality of the situation is that neither the son nor any other IHSS benefit recipient is a payer into the Unemployment Insurance System or an actual source of income to the provider. They are, by definition, indigent, needy recipients of public assistance.

Since the claimant was not in the sole employ of her son, and at least one of her employers does not meet the family criteria, the claimant's wages are not excluded. To hold otherwise would contradict decades of understanding and interpretation of section 631, under essentially identical circumstances.

In conclusion, considering the plain language of Section 683, subdivision (b), the liberal construction applied to provisions of the UIC, our prior precedents and Title 22, California Code of Regulations, section 631-1, the remedial purpose of the code and its regulations, the public authority's role as a joint employer, and the minimal risk of collusion that existed here at the time of death of claimant's son, we conclude that the claimant's IHSS earnings during the relevant period are not exempt, her services during that time were in covered employment, and those earnings are useable to establish a claim for unemployment insurance benefits.

### DECISION

The decision of the administrative law judge is reversed. The Notice of Determination is reversed. The claimant's IHSS base period earnings are wages in covered employment under code sections 1275 and 1281. Her services as a caregiver are not exempt under section 631 and can be used to establish a claim. The matter is referred to the Employment Development Department to establish the claim.

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<sup>24</sup> This is possible under Section 683 since we have not expressly found that claimant's child initially chose his caregiver within the meaning of Section 683, subdivision (a).

### DISSENTING OPINION

*The Board majority, by approving the decision in this case, disregards an unambiguous legislative decision to deny benefits to those IHSS caregivers who are providing care to their children. In so doing, the Board effectively amends a section of the Unemployment Insurance Code and commits the State of California to paying potentially massive amounts of money in benefits that it can ill afford. Since the Board has provided no legitimate legal argument to support a decision that essentially usurps the legislature's prerogative to decide who is a potential beneficiary of unemployment benefits, I respectfully dissent.*

This precedent assumes that a lengthy analysis of existing law is necessary to unravel a dense statutory and regulatory thicket that obscures the correct resolution of this case. In fact, most of the analysis in the majority opinion is devoted to issues that are either undisputed or irrelevant. The analysis itself unnecessarily complicates the very simple resolution of the only issues that are presented by the facts before us.

Only two statutes actually *apply* to this case; sections 631 and 683 of the Unemployment Insurance Code. Neither statute is complicated or ambiguous. In fact, the relevant part of section 631 is enough to decide this case. It simply states that employment "does not include...service performed by an individual in the employ of [her] son." As the precedent admits, the claimant's son is, if not her only employer, at least one of two employers. The claimant is therefore performing services in the employ of her son and her wages from that service cannot be counted toward the amount needed to be eligible for benefits.

Section 683, as it *applies* to this case, is no more complex than section 631. The relevant part states that, for claimants who perform work under the IHSS program, the term 'employer' "also means...[t]he recipient of such services." In other words, section 683 confirms what is already explicit in section 631: the claimant's son is at least one of her employers.

Taken together, sections 631 and 683 express a simple and straightforward rule. For IHSS caregivers who are taking care of their own children, the child recipient is an employer of the caregiver. As a result, the caregiver is "in the employ" of that child and the wages earned in that work cannot be used to qualify for unemployment insurance benefits. We need go no farther than that to decide this case.

Much of the precedent is devoted to an argument that the Sacramento County Public Authority was also the claimant's employer. That proposition *may* be true, but it is simply irrelevant here. The fact that some entity other than the claimant's son might also be her employer does not change the fact that the claimant was working for her son. No matter how many other employers the claimant might have, her son is still one of them. The term 'employment' therefore does not apply to her work and the wages she receives do not count for unemployment purposes.

The precedent takes two giant leaps to avoid this straightforward result. First, the precedent relies on case law that does not apply in the unemployment context to establish that employment by the son and the public authority constitutes "joint employment." Then, the precedent relies on an earlier precedent in a factually dissimilar case to equate the *fabricated* "joint employment" with the partnership that, through application of a specific regulation, provided the claimant in that case relief from the section 631 exemption.

The first giant leap made by the precedent is its reliance on three cases that it uses to establish its theory that the claimant had "joint employers": *Guerrero v. Sonoma County* (2013) 213 Cal.App.4th 912, *In-Home Supportive Services v. Workers' Compensation Appeals Board* (1984) 152 Cal.App.3d 720 ("IHSS v. WCAB"), and *Bonnette v. California Health and Welfare Agency*, 704 F.2d 1465 (9th Cir. 1983). None of these cases support the decision.

Two of these cases consider whether it is possible to have joint employers in the context of the Fair Labor Standards Act and the third considers the same question in the context of the workers' compensation statutes. These cases also raise an issue of who is the employer for purposes of applying the statute under consideration. Each of them, however, discusses a statutory scheme quite different from our unemployment insurance statutes and uses a definition of "employer" that is not the one *used* for unemployment cases. In *Bonnette* and *Guerrero*, the courts use the definition of employer in the Fair Labor Standards Act. (704 F.2d at 1469; 213 Cal. App 4th at 928.) In *IHSS v. WCAB*, the court uses the definition of employer for workers' compensation cases. (152 Cal.App.3d at 727.) These definitions are all broader than ours and are therefore unhelpful in resolving the issues before us in this case.

The cases themselves recognize this difference and explicitly warn against using their analysis in other contexts. Footnote 12 in *IHSS v. WCAB*, for example, states that "we emphasize this conclusion is grounded on the definition of employee for workers' compensation coverage and has no necessary application to dissimilar contexts." (152 Cal.App.3d at 733 n.12.) *Bonnette* and *Guerrero* are

even less helpful than *IHSS v. WCAB* in establishing the concept of joint employers since the federal FLSA regulations specifically allow for joint employers, (29 C.F.R. § 791.2(a).) There is no similar regulation addressing any type of joint employment in the unemployment insurance context.

The precedent's second giant leap is that *it* equates the factual scenario in Precedent Decision P-B-111 with the facts of this case. In fact, P-B-111 says little or nothing about any of the issues in this case. The claimant in P-B-111 did not work for multiple or joint employers. He worked for a single employer, a partnership between the claimant's father and a corporation owned by his uncle. The partnership operated the laundry that employed the claimant. In P-B-111, we relied on the specific language of section 631-1(e) of Title 22, California Code of Regulations, that states:

...[s]ervices performed in the employ of a partnership by a spouse, father, mother, or child under the age of 21 of a partner are excluded when such services would be excluded if performed for each partner individually. (*Emphasis added*).

The entire analysis in that precedent consists of four sentences that do no more than state the obvious: since one of the partners was a corporation, and not one of the claimant's relatives, the claimant's wages were not excluded under section 631. This precedent is inadequate to support the overbroad interpretation relied on by the majority in this case to reach the conclusion desired.

The precedent uses P-B-111 to claim that we have "persistently" found the section 631 exemption "to be inapplicable where a claimant is employed by an entity controlled by such a family member, but also by a person who is not a son, daughter, or spouse." It goes on to state that it can see "no principled reason" to distinguish this case from those. These statements are both overbroad and incorrect.

While we have undoubtedly applied P-B-111 to cases involving partnerships, *there is* no evidence, and the precedent supplies none, that we have ever applied it outside of that context. There is certainly no evidence that we have ever used P-B-111 in our IHSS cases. The statement that there is no principled basis for distinguishing P-B-111 from this case is simply false. There are, as explained above, several such reasons, not least among which are the lack of a regulation addressing the situation of IHSS caregivers and the explicit statutory language of section 631 which allows for the result in P-B-111 and does not allow for the result reached here.

The logic behind the precedent's reliance on P-B-111 seems to be as follows. In P-B-111, we looked to see if the claimant had an employer who was not excluded by section 631. If one employer was not excluded, the wages were not excluded. Like the claimant in P-B-111, the claimant here has more than one employer and one of them is not excluded. Therefore, the claimant's wages are not excluded.

This line of analysis ignores the fact that the claimant in P-B-111 did not have more than one employer. His only employer was the partnership and the regulations provide a specific rule for dealing with partnerships. The rationale in P-B-111 is inapplicable to the facts before us if only because the relationship between the claimant's son and the Sacramento Public Authority is not a partnership.

The precedent consistently uses the phrase "joint employers" to refer to the relationship between the claimant's son and the Sacramento Public Authority. The reason for this is not obvious from the decision unless this language simply repeats that found in *Bonnette*, *Guerrero*, and *IHSS v. WCAB*. Use of this phrase confuses our issue, however, since it implies that the claimant's son and the public authority together form a single legal entity akin to a partnership that can be considered an employer of the claimant. If that were so, the analogy to P-B-111 might hold water.

Section 683, however, specifically limits the use of the term "employer" to three possibilities; the care recipient, a county, and some entities with which counties contract. It does not allow for the possibility that some combination or hybrid of the three listed possibilities can be an employer. On the contrary, it states that an employer must be "one of the following," and implies that the options are mutually exclusive. Notably, the legislature did not state that the employer could be "one or more of the following," nor did it use any other language that implies that anything other than one of the three possibilities listed could be considered the employer of the IHSS caregiver.

In addition to the problems with its legal argument, the precedent also fails to find support in the record for some of its factual assertions. Foremost among them is the assertion that any contrary conclusion "would contradict decades of understanding and interpretation of section 631, under essentially identical circumstances." There are certainly no court cases interpreting this aspect of section 631 and there is absolutely no evidence that our own decisions fit the bill. An equally unjustified assertion is the precedent's statement that the collusion between parents and their children that formed the Legislature's rationale for adopting section 631 "while not impossible" is now "hardly likely" to occur because government authorities are now financially liable for the benefits paid

and because there is now "extensive governmental oversight and control of the employment relationship." There is no evidence in the record to support this overly optimistic assertion. Moreover, decisions as to the best way to prevent fraud are, in any event, ones for the Legislature to make, not this Board.

For the same reasons, even a good faith effort to advance social policy cannot serve as a basis for extending benefits to those specifically excluded by the legislature. In 1971, the legislature amended section 631 to allow disability insurance coverage for family employment. The original version of the bill also allowed elective coverage for unemployment insurance for family member employees but that coverage was opposed by EDD's predecessor agency because of what was deemed a "collusion hazard." The department withdrew its opposition to the bill once the amendment was limited to disability coverage only; the possibility of collusion in disability benefits cases was considered to be minimal because of the requirement of a physician's certification of the disability claim.<sup>25</sup> At that time, the Legislature decided that concerns about collusion and fraud had more force than arguments for providing benefits. The legislature has revised the code many times since the enactment of those statutes and has never seen fit eliminate the exemption. Whether present conditions call for a different rule is a suitable topic of debate by our Legislature, but our job is to interpret the existing Unemployment Insurance Code, not to re-write it to suit our vision of what the law should be. As our Supreme Court has warned, courts "may not, under the guise of construction, rewrite the law or give the words an effect different from the plain and direct import of the terms used." (California Federal Savings & Loan Assn. v. City of Los Angeles (1995) 11 Cal.4th 342, 349.)

All but a handful of California's smallest counties have public authorities. Under the rationale of this decision, parents who provide IHSS services for their children will virtually always have enough wages to qualify for benefits, exactly the opposite of what the legislature intended when it adopted section 631. The precedent not only ignores the Supreme Court's warning not to "rewrite the law or give [ ] words an effect different from the plain and direct import of the terms used" but gives the words of section 631 a meaning that is the exact opposite of what the section's drafters intended. (11 Cal. 4th at 349.) Decisions like this have

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<sup>25</sup> Cal. Human Res. Dept., Enrolled Bill Rep. on Assem. Bill No. 1420 (1971 Reg. Sess.) November 2, 1971, p.1.

tremendous financial and public policy implications. If the section is in some way unfair or unjust, it is up to the legislature to change it. I therefore dissent from the precedent's attempt to usurp the Legislature's prerogatives.<sup>26</sup>

ROY ASHBURN

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<sup>26</sup> The extent to which the majority asserts an ability to overturn decisions made by the people's elected representatives can be found in many places. One particularly striking example of this can be found in the first sentence on page four of the precedent. This describes the legislature's decision to exempt the wages of familial caregivers as "obviously tinged with absurdity." Whatever powers this Board possesses, they do not extend to vetoing legislative decisions that the Board finds distasteful.

**REFERRAL INFORMATION**

The Board's decision refers the case to the Employment Development Department for appropriate action as set forth in the decision.

The matter is being sent to the Office of the Director at:

**EMPLOYMENT DEVELOPMENT DEPARTMENT  
P O BOX 826880  
SACRAMENTO CA 94280-0001  
1-800-300-5616**

**Any future correspondence should be addressed to that office. It is important that you notify the above office of any change in your address.**

# **EXHIBIT 2**

**INTERAGENCY AGREEMENT BETWEEN COUNTY OF  
SACRAMENTO AND SACRAMENTO COUNTY IN-HOME  
SUPPORTIVE SERVICES PUBLIC AUTHORITY**

This Agreement made and entered into as of this 12<sup>th</sup> day of Sept 2000, by and between COUNTY OF SACRAMENTO, a political subdivision of the State of California, hereinafter referred to as "COUNTY," and SACRAMENTO COUNTY IN-HOME SUPPORTIVE SERVICES PUBLIC AUTHORITY, hereinafter referred to as "AUTHORITY."

**WITNESSETH**

**WHEREAS**, AUTHORITY is an independent and separate legal entity that has been established pursuant to Welfare and Institutions Code Section 12301;

**WHEREAS**, AUTHORITY desires to utilize miscellaneous COUNTY services;

**WHEREAS**, COUNTY desires to provide the services described herein.

**WHEREAS**, it is important to identify the respective roles and responsibilities of COUNTY and AUTHORITY relating to the administration and/or operation of the IHSS program..

**Section 1. TERM OF AGREEMENT**

The term of this Agreement shall run from fiscal year to fiscal year unless otherwise terminated upon ninety (90) days written notice, or less if by mutual written agreement.

**Section 2. ROLES AND RESPONSIBILITIES OF COUNTY AND AUTHORITY RELATING TO THE PROVISION OF IHSS**

1. COUNTY shall have the following responsibilities and obligations in relation to AUTHORITY:

a. The exclusive right to authorize and/or terminate services for an IHSS recipient.

b. The sole authority to determine need for IHSS, the level and quality of services required, and the eligibility of individuals to be served.

c. Initial assessment and reassessment of continuing need for services by the recipient.

d. ~~The exclusive right to terminate the recipient's participation in the IHSS program at any time based on regulatory requirements.~~

e. The referral of all appropriate IHSS recipients to AUTHORITY for AUTHORITY services.

f. The provision of liaison staff to work with AUTHORITY.

g. The provisions of administrative staff for AUTHORITY, including but not limited to accounting and clerical support and other services as deemed necessary.

h. The provision of administrative, legal, financial, labor relations and clerk services under the terms set forth in this Agreement.

2. The following are responsibilities and obligations of AUTHORITY in relation to COUNTY:

a. To act as the "employer of record" for individual providers (IP) serving the IHSS recipients.

b. To provide assistance to recipients in finding IHSS personnel through the establishment of a registry.

c. To establish a referral system under which IHSS personnel shall be referred to recipients.

d. To investigate qualifications and background of potential IHSS providers.

e. To provide recipient input into AUTHORITY program and policy development through the In-Home Supportive Services Advisory Committee.

f. To provide for training for IHSS providers and recipients.

g. To ensure that the requirements of the personal care option pursuant to Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code are satisfied.

h. To provide COUNTY with information needed in preparing COUNTY's billing to the California Department of Social Services (DSS) for State and Federal share of AUTHORITY costs.

i. To assist COUNTY in developing and submitting to DSS and the California Department of Health Services (DHS) materials required for DSS and DHS approval of AUTHORITY reimbursement rate and any rate adjustment.

j. To utilize COUNTY administrative, legal, financial, labor relations and clerk services.

k. To utilize COUNTY administrative staff, including but not limited to accounting and clerical support and other services as deemed necessary.

**Section 3. SERVICES PROVIDED BY COUNTY**

**A. Department of Finance**

1. COUNTY shall provide accounting support to AUTHORITY in the processing of payroll, disbursements, deposits, and journal vouchers, as well as financial reporting.

2. AUTHORITY funds shall remain in the Treasurer's pooled investment fund. AUTHORITY shall be entitled to its proportionate share of any earnings attributable to such pooled investment fund and shall bear its proportionate share of any losses attributable thereto. At such time as AUTHORITY no longer participates in the pooled investment fund, COUNTY shall distribute AUTHORITY's funds based upon the market value of such funds on the date of withdrawal.

3. AUTHORITY's share of the pooled investment fund shall be net of costs including, but not limited to, direct labor and charges for the provision of banking, cash management and investment services, banking fees, and investment inventory system costs.

4. COUNTY Treasurer shall account for AUTHORITY's funds in a separate account. AUTHORITY's proportionate share of any interest earnings or losses shall be allocated to AUTHORITY's separate account.

**B. Department of General Services**

COUNTY, through its Department of General Services, shall provide to AUTHORITY the following services:

1. Mail services.
2. Printing services on an as needed basis.
3. Purchasing services.

**C. Risk Management Services**

1. COUNTY, through its Risk Management Office, shall provide the following services upon AUTHORITY's written request:

a. Identification and evaluation of risks of accidental loss, through inspections, review of liability issues related to contracts, review of losses, and coordination thereof with AUTHORITY and COUNTY.

b. Recommendation of appropriate risk management techniques for resolving liability exposure, including the purchase and administration of insurance for AUTHORITY;

c. Provision of information system for timely and accurate recording of losses, claims, insurance premiums, and other risk-related costs of AUTHORITY.

d. Provision of property and liability insurance program, including recommending the selection of and coordination with all firms that provide services related to administration of AUTHORITY programs.

e. Negotiation of adjustment and settlement of AUTHORITY's insured and uninsured losses.

f. Advice and assistance with respect to risk management and insurance issues.

g. Use of consulting, actuarial, adjuster, and broker services which are contracted to COUNTY Risk Management Office.

2. COUNTY, through its Risk Management Office and its Workers' Compensation Office, shall provide claims adjustment and workers' compensation services as well as legal representation with respect to any workers' compensation claims, tort liability claims, and/or litigation, to the extent that such claims are the responsibility of AUTHORITY, rather than the State of California; provided, however, that AUTHORITY shall be responsible for payment of any costs, attorneys' fees, settlement amounts, benefits and/or Monetary damages awarded with respect to such claims and/or litigation.

**D. Clerk of the Board of Supervisors**

COUNTY, through the Clerk of the Board of Supervisors, shall provide AUTHORITY with 1) access to the chambers of the Board of Supervisors and/or hearing rooms for purposes of conducting AUTHORITY's monthly meetings of AUTHORITY's governing body; and 2) services of the Clerk relating to the conduct of meetings of AUTHORITY.

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**E. Labor Relations**

1. The Office of Labor Relations shall provide the following services:
  - a. Represent AUTHORITY in negotiations for labor contracts with recognized employee organizations that represent AUTHORITY employees.
  - b. Assist in administration and contract implementation of labor agreements covering AUTHORITY employees.
  - c. Conduct meet and confer processes with recognized employee organizations regarding AUTHORITY employment matters.
  - d. Represent the AUTHORITY in any other labor relations matters with recognized employee organizations.

**F. County Counsel**

The Office of the County Counsel will provide legal services and representation to AUTHORITY. The services include, but are not limited to, matters involving AUTHORITY personnel, risk management, and contract development and review.

**G. OFFICE OF COMMUNICATIONS AND INFORMATION TECHNOLOGY (OCIT)**

OCIT shall provide telecommunications services, including, but not limited to the provision of the number of telephones, primarily multi-line units, as may be requested by AUTHORITY; dial tone and local and long-distance access for all AUTHORITY telephone lines; cellular phone activation and service; calling card accounts; voicemail; and 24-hour alarm monitoring services on a month-to-month basis. Any change in the level of service required by AUTHORITY shall be requested by AUTHORITY using COUNTY's "Telephone Service Request" (TSR) form. OCIT shall also provide AUTHORITY with data services, including but not limited to network-WAN and LAN, computers, and similar services.

**H. Other Services**

COUNTY shall provide, on an as needed basis, such other services as are necessary for the operation and administration of AUTHORITY.

**Section 4. TRANSITION SERVICES**

COUNTY shall provide all necessary IHSS information to AUTHORITY to allow it to implement the program components contained herein. The parties

shall cooperate in transitioning responsibility from COUNTY to AUTHORITY for any and all programs, services and contracts relating to AUTHORITY's responsibilities under this Agreement.

**Section 5. INSURANCE**

AUTHORITY agrees to maintain for its own account, the following:

1. Workers' Compensation insurance covering AUTHORITY administrative staff.
2. General and Automobile Liability insurance with a minimum limit of liability in the amount of at least \$2.0 million per occurrence. The General Liability insurance shall include coverage for claims for or arising out of personal injury, property damage, contractual liability and public officials' liability.
3. AUTHORITY shall provide COUNTY with evidence of such insurance; such insurance policies shall be endorsed to include COUNTY as an Additional Insured.

**Section 6. FISCAL PROVISIONS**

1. AUTHORITY will be funded by State, Federal and COUNTY monies based on the statutorily established IHSS cost sharing ratios. All payments to IHSS providers for hourly IHSS services will be issued by the State of California directly to the providers, and all workers' compensation coverage for Individual Providers (IPs) shall be provided through the State of California. COUNTY will be billed by the State of California for COUNTY share of IHSS services according to the cost sharing ratios.
2. AUTHORITY shall compensate COUNTY for services and staff provided to AUTHORITY under this Agreement quarterly, based on actual costs, the COUNTY Allocated Cost Plan or in accordance with Federal A-87 Guidelines, whichever method is ordinarily used by COUNTY to charge COUNTY departments. Notwithstanding the foregoing, COUNTY, upon written notification to AUTHORITY, may alter the methodology utilized to charge AUTHORITY for COUNTY services so long as the rate charged does not exceed the costs of providing similar services to COUNTY departments and the total cost for the agreed upon level of services does not exceed the appropriation reflected in the approved COUNTY budget.

**Section 7. MONITORING/AUDIT PROVISIONS**

Authorized representatives of COUNTY, State and Federal governments shall have the right to monitor and audit all aspects of operations under this Agreement. AUTHORITY shall maintain all required program, fiscal, statistical,

and management records locally and make such records available for inspection by COUNTY, State and Federal representatives at all reasonable times.

AUTHORITY shall also maintain all records pertaining to service delivery and fiscal and administrative controls for a minimum of three years after final payment for a given fiscal year has been made, or until all pending COUNTY, State and Federal audits are completed, whichever is later.

**Section 8. APPLICABLE LAWS**

COUNTY and AUTHORITY shall observe and comply with all applicable federal, state and county statutes, ordinances, regulations, directives, and laws and this contract shall be deemed to be executed within the State of California and construed with and governed by the laws of the State of California.

**Section 9. TERMINATION**

Either party may terminate this Agreement with or without cause upon ninety (90) day written notice served upon the other party; provided, however, that the Agreement may be terminated with less notice if by mutual written agreement of the parties.

**Section 10. ALTERATION AND AMENDMENTS**

No addition to, or alteration of the terms of this Agreement shall be valid unless made in the form of a written amendment to this Agreement which is formally approved and executed by the governing bodies of each of the parties.

**Section 11. WAIVER OF CLAIMS**

Both parties hereby waive any claims against the other, its officers, agents or employees from damage or loss caused by any suit or proceeding directly or indirectly attacking the validity of this Agreement, or any part thereof, or by any judgment or award in any suit or proceeding declaring this Agreement null, void, or voidable or delaying the same or any part thereof from being carried out.

**Section 12. INDEMNIFICATION**

AUTHORITY shall indemnify, hold harmless and defend the COUNTY, its officers, agents and employees from any and all claims, demands, damages, costs, expenses or liability costs including attorney fees, that arise out of, or are alleged to arise out of or are in any way connected with or incident to the duties or obligations of AUTHORITY pursuant to this Agreement, including but not limited to the concurrent active or passive negligence of COUNTY, its officers, agents and employees resulting from performance of any services provided to AUTHORITY pursuant to this Agreement, except to the extent that COUNTY has

been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

**Section 13. INDEPENDENCE OF AUTHORITY**

AUTHORITY is, for all purposes arising out of this Agreement, an independent contractor and neither AUTHORITY nor its employees, shall be deemed COUNTY employees.

**Section 14. SUCCESSORS AND WAIVERS**

This Agreement shall bind the successors of AUTHORITY and COUNTY in the same manner as if they were expressly named. Waiver by either party of any default, breach or condition precedent shall not be construed as waiver of any other default, breach or condition precedent or any other right hereunder.

**Section 15. TIME**

Time is of the essence in each and all the provisions of this Agreement.

**Section 16. INTEGRATION**

All prior or contemporaneous oral Agreements between and among the contracting parties and their agents or representatives that are inconsistent with this Agreement are hereby revoked.

**Section 17. NON-DISCRIMINATION IN SERVICES AND BENEFITS.**

COUNTY certifies that any services provided pursuant to this Agreement shall be without discrimination based on color, race, creed, national origin, religion, sex, age, or physical or mental disability in accordance with Title VI of the Civil Rights Act of 1964, 42 U.S.C. Section 2000d, rules and regulations promulgated pursuant thereto, the Americans with Disabilities Act, or as otherwise provided by other applicable state and federal law; nor on the basis of sexual preference as determined by federal, state, county, or city regulations; except as may be required by federal, state, or other applicable regulations.

**Section 18. DISPUTES.**

1. Whenever the COUNTY and the AUTHORITY disagree as to any matter governed under this Agreement, this dispute resolution process shall govern. Until the dispute is resolved, COUNTY shall continue to provide the services set forth herein and AUTHORITY shall continue to make payment therefor as set forth herein.

2. Within sixty (60) business days of the discovery of the dispute, either party may give the other party a written request for a meeting between AUTHORITY's Executive Officer and the County Executive. The purpose of this meeting shall be to ascertain whether a resolution of the disagreement is possible without third party intervention.

3. If such a meeting is timely requested, the meeting shall be held within ten (10) business days of the receipt of the request. If the meeting fails to resolve the disagreement, then the matter shall be submitted to a neutral arbitrator appointed by the American Arbitration Association ("Arbitrator") for a decision. AUTHORITY and COUNTY may engage in discovery consisting of interrogatories, depositions, and production of documents on matters relevant to the resolution of the dispute which is subject to arbitration. The decision of the Arbitrator shall be controlling between AUTHORITY and COUNTY and shall be final. Except as provided in Code of Civil Procedure Sections 1286.2 and 1286.4, neither party shall be entitled to judicial review of the Arbitrator's decision. The party whose position is not upheld shall pay the Arbitrator's fees and expenses.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

COUNTY OF SACRAMENTO, a political subdivision of the State of California

SACRAMENTO COUNTY  
IN-HOME SUPPORTIVE  
SERVICES PUBLIC AUTHORITY

By *[Signature]*  
Chairman, Board of Supervisors

By *[Signature]*  
Chairman, Board of  
Directors

"COUNTY"

"AUTHORITY"

APPROVAL AS TO FORM:

By *[Signature]*  
Supervising Deputy County Counsel



*[Signature]*  
Clerk of the Board of Supervisors

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**EXHIBIT 3**

STATE OF CALIFORNIA

OFFICE MEMO

STD. 100 (REV. 11-75)

DATE 6/16/78

TO: Krist Lane  
Chief Consultant  
Ways & Means Committee

Krist Lane  
6/16/78  
Page 2

FROM:

Mary Jones  
Deputy Director for Legislation

SUBJECT: AB 3028 (Agnos)

First my apologies for the last minute appeal on Tuesday--some day when you have a little more time I'll explain why that happened.

For now--re: AB 3028--inside intelligence has it that you might find helpful a memo of no more than 1 page in length. The attached (prepared by Dan Brunner, Chief Counsel, Dept. of Benefit Payments, 2-7247) explains how AB 3028, while costing the General Fund \$13 million, will allow us to avoid the alternatives which would cost between \$80 million and \$120 million annually.

I understand that Dan's staff (at the suggestion of Donna Yick of Assemblyman Agnos' Office) is preparing some additional background material

ROOM NUMBER

PHONE NUMBER

SUBJECT:

which will be delivered to you this afternoon. Beyond this we would be delighted to brief you on this if you find a few minutes, or to answer any questions.

ROOM NUMBER

PHONE NUMBER

SUBJECT:

IN-HOME SUPPORTIVE SERVICES  
PROVIDER BENEFIT LEGISLATION

Thousands of California workers employed in the state and federal funded In-Home Supportive Services program (IHSS) are now eligible for such employment benefits as social security, unemployment insurance and workers' compensation. The question has arisen as to whether the counties are the employer of these workers and are legally responsible for the collection and payment of the taxes and premiums for such benefits.

The California IHSS program (also known as homemaker/chore) utilizes over 50,000 low-paid and relatively unskilled workers to provide in-home services to approximately 75,000 aged, blind and disabled recipients of public assistance as an alternative to placement in nursing homes or other institutions. The counties may arrange for the delivery of the services through either county staff (five percent of the total cost), agency contractors (13 percent), or individual providers selected by the recipient and paid directly by the county or via the recipient (82 percent). This latter method has many programmatic advantages since it permits the disadvantaged person the most control over the care which is provided.

Recent changes in federal and state law have made domestic employees, such as IHSS workers, eligible for unemployment and disability insurance (AB 644, effective this year) and workers' compensation (AB 133, effective in 1977). In addition, federal law has required social security coverage of domestic workers for several years. Federal and state enforcement agencies are increasingly taking the position that the counties are responsible for the collection and payment of taxes and premiums for the employment benefits of those IHSS workers who are paid directly by the county or the recipient. The enforcement agencies are basing their decisions on a legal theory that holds that the counties are joint employers of the IHSS workers with the recipients.

In action by the state on this issue will have one of two extremely expensive results. A number of counties have indicated that they will shift to contracting with private agencies for the provision of IHSS rather than utilizing individual providers selected by the recipients because the agency contractor becomes the responsible employer. The additional yearly cost of this alternative is \$80,000,000, entirely in state funds as the state must reimburse the counties for their costs and federal fund participation is already at the maximum. This estimate is based upon the current cost of contract agencies projected to the statewide caseload.

The second costly result of inaction will be that some counties will shift to providing IHSS through civil service employees. This is the most expensive of the three methods of delivery that the county may choose because of the higher level of wages and benefits applicable. Based on an estimate done in conjunction with a recent state/county task force, the additional cost of having all the service provided by civil service employees would be \$116,000,000 annually. This includes \$33 million for state and federal mandated benefits and minimum wage, \$5.6

million in sick leave, \$4.7 million in vacation, \$6.5 million in holiday, \$11.4 million in one-step pay increases, \$21 million in medical insurance, \$21 million in retirement and \$12.4 million in additional administrative costs. Again, the additional costs would have to be reimbursed from state funds.

AB 3028 is being offered as an alternative to the substantial increase in program costs that would be inevitable if no action is taken by the state. The bill preserves the 3 options for delivery of services indicated above and it provides that in those instances where the IHSS worker is selected by the recipient that:

1. The recipient is the employer of the IHSS worker.
2. The state shall assure the collection and payment of the various taxes and premiums in behalf of the recipient-employer through a centralized payroll system.
3. The state shall pay the costs of the employer's share of legally required employment benefits.

The \$13,000,000 general fund appropriation includes \$1.8 million for unemployment insurance, \$8.5 million for workers' compensation for the 78-79 budget year and \$1.8 million for these benefits for January through June of the current year. In addition, the appropriation includes \$.8 million for administrative and support costs.

SECRETARY OF STATE, DEBRA BOWEN  
The Original of This Document is in  
CALIFORNIA STATE ARCHIVES  
1020 "O" STREET  
SACRAMENTO, CA 95814

**EXHIBIT 4**

LEGISLATIVE BOARD STAFF ANALYSIS

BILL NUMBER AB 3028

AUTHOR Amnos

AMENDED 6-8-78

ITEM (103)

INDEX Health

POLICY COMMITTEE Human Resources

CONSULTANT Williams

FISCAL IMPACT:

	FUND	1977/78 FY	1978/79 FY	1979/80 FY
Net State Cost (+) or Savings (-)	G		\$12,000,000	
Appropriation	G		\$13,000,000	

Urgency: Yes (x) No ( )

SUBJECT:

In-Home Supportive Services

SUMMARY:

This Bill would appropriate \$13,000,000 to the State Department of Social Services so that it may assure the performance of all rights, duties and obligations of Homemaker Chore recipients for purposes of unemployment and disability compensation laws in regards to persons who perform domestic services comprising in-home supportive services. The State compensation insurance fund would be authorized to issue one workers' compensation insurance policy to insure such recipients to the extent of the Department's obligation.

COMMENTS:

Proponents of this legislation contend that because thousands of domestic workers employed in the Homemaker Chore Program are now eligible for unemployment and disability insurance and workers' compensation, many counties have indicated that they will shift from the existing situation where they are the employers of these workers and are legally responsible for the collection and payment of taxes and premiums for such benefits to more costly alternatives that would be reimbursable by the State.

Although the provisions of this bill would cost \$13 million, it saves the State from having to assume the fiscal liability for alternatives costing either \$80,000,000 or \$116,000,000 annually as explained in the analysis below.

FISCAL IMPACT:

This bill would appropriate \$13,000,000 from the General Fund to the State Department of Social Services.

\$1.8 million	Unemployment Insurance
\$8.5 million	Workers' Compensation for 1978-79
\$1.8 million	Workers' Compensation for January - June 1978
<u>\$ .8 million</u>	Administrative and Support Costs
\$12.9 million	Total

ANALYSIS:

Existing law requires county welfare departments to develop and submit a plan to the State Department of Social Services for the provision of in-home supportive services (Homemaker Chore) to aged, blind and disabled recipients of public assistance. The departments may as an option: (1) hire homemakers and other in-home supportive personnel; (2) make direct payments to recipients for the purchase of such services; or (3) contract with private agencies or individuals for the provision of such services.

AB 7028  
Page 2

Also, existing law includes Homemaker Chore employees within the provisions of unemployment and disability insurance and workers' compensation. Because Federal and State enforcement agencies are increasingly taking the position that the counties are responsible for the collection and payment of taxes and premiums for the employment benefits of In-Home Supportive Services workers who are paid directly by the county or the recipient, the counties are indicating that they will begin to adopt either options 1 or 3 as specified in the above paragraph because they are reimbursable costs from the State. Option 1 would cost the State \$80,000,000 and option 3, \$116,000,000 annually.

This bill would provide for the least expensive option now available to the State by requiring the Department of Social Services to perform and assure the performance of all rights, duties and obligations of the recipient relating to Homemaker Chore services as required for unemployment compensation, disability benefits, workers' compensation, Federal and State income tax, and Federal old-age survivors and disability benefits if the State or a county makes or provides for direct payment to a provider chosen by a recipient for the purchase of In-Home Supportive Services.

Contributions, premiums, and taxes shall be paid or transmitted on the recipients behalf as the employer for any period beginning January 1, 1978, except income taxes and Federal old-age survivors and disability insurance contributions which shall be paid or transmitted the first full month which begins 90 days after the effective date of this legislation.

This bill also provides that upon request of the State Department of Social Services, the State Compensation Insurance Fund may issue one workers' compensation insurance policy insuring all recipients of In-Home Supportive Services for whom and to the extent that the State Department of Social Services has an obligation to perform or assure the performance of rights, duties and obligations relating to such services as specified in the Welfare and Institutions Code.

Finally, the bill would appropriate \$13,000,000 from the General Fund to the State Department of Social Services for the purposes of this legislation.

RECOMMENDATION:

Approve.

This bill will save the State either \$67 million or \$103 million.

j1 OK

# **EXHIBIT 5**

# ENROLLED BILL REPORT

Form DF-44 (Rev. 5/75 AM)

AGENCY

DEPARTMENT OF FINANCE

AUTHOR

Agnos

BILL NO.

AB 3028

SUBJECT:

DATE LAST AMENDED

6/30/78

Designates the recipient as the employer of individual providers of in-home supportive services for purposes of workers' compensation and unemployment and disability insurance benefits.

Contains an urgency statute and an appropriation of \$13 million.

### HISTORY, SPONSORSHIP, AND RELATED BILLS

Sponsored by Self Help for the Elderly and Coalition for In-Home Services

### ANALYSIS

#### A. Specific Findings

Under existing law, county welfare departments are required to develop and submit a plan to the Department of Social Services for the provision of in-home supportive services (IHSS). To implement the plan, counties may select one or a combination of delivery modes from the following: (a) contract with agencies or individuals; (b) county welfare department staff, and/or (c) direct payments to clients to hire their own providers.

Recently, the issue of extending fringe benefits to IHSS providers has received a great deal of attention. This attention was stimulated by changes in Federal and State law (e.g., PL 94-566, AB 133, Chapter 17/77; AB 644, Chapter 2/78) which expanded eligibility for unemployment insurance and workers' compensation benefits to domestic employees. A related question is who is the employer of IHSS providers for purposes of payment of such fringe benefits? These issues relate primarily to individual providers since other providers are considered the employees of contract agencies or county welfare departments, and already receive fringe benefits.

AB 3028 would designate the IHSS recipient as the employer of individual service providers for purposes of workers' compensation, unemployment insurance and disability insurance benefits. Specific provisions are:

1. Allows the State Compensation Insurance Fund to issue one workers' compensation insurance policy to the Department of Social Services to insure all IHSS recipients.
2. Identifies IHSS individual providers as "employees" of IHSS recipients for purposes of workers' compensation.

(Continued)

### SUMMARY OF REASONS FOR SIGNATURE/VETO

Complies with existing Federal and State law which makes IHSS individual providers eligible for workers' compensation and unemployment and disability insurance benefits. The method contained in this bill for providing such fringe benefits appears to be the least costly.

### RECOMMENDATION

Sign the bill.

ANALYST

DEPARTMENT REPRESENTATIVE

DATE

DIRECTOR

DATE

*Harris*

7/13/78

*Agnes*

*J. Phillips*

7/13/78

**Specific Findings (Continued)**

3. Identifies IHSS recipients as "employers" of individual IHSS providers for purposes of unemployment and disability insurance.
4. Requires the Department of Social Services to perform or assure the performance of all rights, duties, and obligations of the IHSS recipient relating to individual provider benefits (e.g., unemployment and disability insurance, workers' compensation, Federal and State income tax, and OASDI). This is basically a payrolling function to ensure that appropriate employer benefit costs are withheld and paid. The Department may assure the performance of this function by contracting with any individual or public or private agency.
5. Defines an individual provider as one who receives direct payment from the IHSS recipient, or one who is hired by the recipient but receives payment from the State or county.

The IHSS recipients' responsibility to pay benefits as an employer would be effective January 1, 1978 except for payment of State and Federal income taxes and OASDI. The latter would be effective 90 days after the effective date of this bill. The cost of provider benefits would be in addition to the statutory maximum IHSS grant.

The Department indicates that existing employee benefit laws require payment of fringe benefits for IHSS providers. Since benefits must be paid, the Department has defined the major issue as who is the employer and thus must pay for the provision of such benefits?

The employer may either be the IHSS recipient, the county and/or the State. The Department claims that no action will most likely result in the counties being named the employer through legal action. If this were to occur, the counties would immediately file suit enjoining the State as a co-employer. This action could potentially cost \$100 million General Fund. Some counties have indicated that to avoid the whole issue, they will switch to contracting with agencies to provide services. The contract agency would then be designated the employer. This is a much more costly delivery method and could result in an \$80 million cost to the General Fund.

The above options are much more costly than designating the IHSS recipient as the employer at an annual cost of approximately \$13 million General Fund. If fringe benefits as required under existing law are to be paid to IHSS providers, the method contained in this bill appears to be the least costly. However, existing employee benefit laws may need to be reexamined in light of the great General Fund cost impact, the likely possibility that other employee groups may also claim fringe benefits (e.g., child care workers), and the passage of Proposition 13.

Finance staff are concerned that State responsibility for assuring performance of the payrolling function may result in the courts finding the State the "employer" of IHSS providers. Further, the administrative complications that may result from assuming responsibility for performance of this function are numerous. There are approximately 56,000 individual IHSS providers with an extremely high job turnover rate. The payrolling function may result in audits, compliance actions and fines brought about by taxing agencies, etc.

B. Fiscal Effect

AB 3028 requires additional costs to be financed from Federal Title XX funds or the State General Fund. Since Title XX funds are capped, any additional costs would be borne by the General Fund. The Department of Social Services estimates additional first year costs at approximately \$13 million. The annual ongoing cost to the General Fund (for second and subsequent years) is estimated at approximately \$11 million. First year costs were higher due to the inclusion of some retroactive benefits. The cost estimates are approximations and will be adjusted to reflect increases/decreases in the cost of worker benefits. These adjustments cannot be predicted and are partly dependent upon employee experience ratings.

The bill does not contain a "local mandate appropriation" or a disclaimer. A "no new duties" disclaimer is appropriate.

Summary of Fiscal Effect

The following estimates have been prepared by Estimates Bureau staff Department of Social Services.

	<u>1978-79</u>	<u>1979-80</u>	<u>1980-81</u>	<u>Fund</u>
Department of Social Services	\$13 million	\$11 million	\$11 million	General

# **EXHIBIT 6**

**ENROLLED BILL REPORT**

AGENCY <b>HEALTH AND WELFARE</b>	BILL NUMBER <b>AB 3028</b>
DEPARTMENT, BOARD OR COMMISSION <b>EMPLOYMENT DEVELOPMENT DEPARTMENT</b>	AUTHOR <b>AGNOS</b>

SUBJECT AND ANALYSIS

AB 3028, an urgency measure, clarifies who is the employer of In-Home Supportive Service (IHSS) workers. It would appropriate \$15 million from the General Fund to pay for unemployment insurance, disability insurance, social security, and workers' compensation for these workers and in so doing would avoid much higher General Fund costs of between \$67 million and \$103 million. It would also preserve an arrangement that gives IHSS recipients the greatest possible control over who is hired to care for them. This bill passed with the active support of the Departments of Finance, Benefit Payments, Industrial Relations, Health and EDD. We recommend, very strongly, that the Governor sign this bill.

The California IHSS program (previously known as homemaker/chore) employs over 50,000 low-paid and relatively unskilled workers to provide in-home services to approximately 75,000 aged, blind and disabled recipients of public assistance as an alternative to placement in nursing homes or other institutions. Counties, which administer the program, may arrange for the delivery of the services through one of three methods: (1) through county staff (5 percent of the program's current total cost is spent on this option), (2) through agency contractors (13 percent), or (3) through individual providers selected by the recipient and paid directly by the county or the recipient (82 percent). This last method is especially desirable since it permits the disadvantaged person the most control over the care which is provided.

The issue of who is the employer of IHSS workers has been unresolved since the inception of the program. Resolution of the issue is now necessary because of recent changes in Federal and State law mandating unemployment insurance, disability insurance, workers' compensation and social security coverage for domestic workers. Under a series of decisions by enforcement agencies and court cases, counties are being held to be the employers of IHSS workers, and legally responsible for the collection and payment of the taxes and premiums for these benefits even in those instances where the recipient hires the IHSS worker.

If AB 3028 does not become law, there will be one of two extremely expensive results. A number of counties have indicated that they will shift to contracting with private agencies for the provision of IHSS rather than utilizing individual providers selected by the recipients because the agency contractor would then become the responsible employer, thus relieving counties of a significant administrative burden. The additional yearly cost of this alternative is \$80,000,000 (or \$67 million more than AB 3028 will cost), entirely in state funds as the state must reimburse the counties for their IHSS costs and federal fund participation is already at the maximum. (This estimate is based upon the current cost of contract agencies projected to the statewide caseload.)

RECOMMENDATION:

SIGN Department Contact: Mary Matilda Jones/Hugh Fitzpatrick  
 Work: 445-3576 Home: 444-6152/1-758-5041

DEPARTMENT DIRECTOR <i>Martin R. Glick</i> <b>MARTIN R. GLICK</b>	DATE <b>7-10-78</b>	AGENCY SECRETARY <i>Opal Stolley</i>	DATE
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HF:pw

AB 3028, EBR  
Page 2SUBJECT AND ANALYSIS (Contd.)

The second costly result of inaction will be that some counties will shift to providing IHSS through civil service employees. This is the most expensive of the three methods of delivery that the county may choose because of the higher level of wages and benefits (such as sick leave, vacations/holidays, medical insurance, and retirement) applicable. Based on an estimate done in conjunction with a recent state/county task force, the additional cost of having all the service provided by civil service employees would be \$116,000,000 annually, or \$103 million more than AB 3028 will cost.

AB 3028 preserves the three options for delivery of services, but provides that in those instances when the recipient selects the IHSS worker:

1. The recipient is the employer of the IHSS worker.
2. The state shall assure the collection and payment of taxes for four basic benefits -- unemployment insurance, disability insurance, workers' compensation and social security -- through a centralized payroll system.
3. The state shall pay the costs of the employer's share of legally required employment benefits.

FISCAL ANALYSIS

AB 3028 makes a \$13 million General Fund appropriation to the Department of Social Services, including \$1.8 million for unemployment insurance, \$8.5 million for workers' compensation for the 78-79 fiscal year, and \$1.8 million to pay for these benefits for January through June of the current fiscal year. In addition, the appropriation includes \$.8 million for administrative and support costs.

If AB 3028 does not become law, we estimate that the General Fund will have to finance an additional \$67-103 million in IHSS program costs.

HISTORY, SPONSORSHIP, AND RELATED BILLS

AB 3028 is sponsored by Self-Help for the Elderly and the Coalition for In-Home Services. It is strongly supported by the County Welfare Directors Association, the Center of Independent Living, the California Conference of Catholic Charities, the Family Service Agency of San Francisco, American Friends Services, and many other groups. ACR 118 would direct the Secretary of the Health and Welfare Agency to prepare a report for the Legislature on the programmatic, procedural, and legal issues concerning who should be the employer of persons rendering IHSS for purposes of UI and DI. There is no known opposition to this bill.

AB 3028, EBR  
Page 3HISTORY, SPONSORSHIP, AND RELATED BILLS (Contd.)

AB 644 (Chapter 2, Statutes of 1978) extended UI and DI coverage to domestic workers; AB 133 (Chapter 17, 1977) extended workers' compensation coverage to these workers.

VOTE

Assembly: 79-0

Senate: 27-5

# **EXHIBIT 7**

STATE OF CALIFORNIA--HEALTH AND WELFARE AGENCY

PETE WILSON, Governor

## DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814



March 17, 1998

ALL COUNTY LETTER NO. 98-20

TO: ALL COUNTY WELFARE DIRECTORS  
IHSS PROGRAM MANAGERS

## REASON FOR THIS TRANSMITTAL

- State Law Change  
 Federal Law or Regulation Change  
 Court Order or Settlement Agreement  
 Clarification Requested by One or More Counties  
 Initiated by CDSS

SUBJECT: **PUBLIC AUTHORITY AND NONPROFIT CONSORTIUM SERVICE DELIVERY UNDER THE IN-HOME SUPPORTIVE SERVICES AND THE PERSONAL CARE SERVICES PROGRAMS**

The following is information regarding the implementation of Senate Bill (SB) 485 (Chapter 722, Statutes of 1992); SB 35 (Chapter 69, Statutes of 1993); SB 1078 (Chapter 1252, Statutes of 1993); and Assembly Bill (AB) 1354 (Chapter 1029, Statutes of 1994). The Legislature added Section 12301.6 to the Welfare and Institutions Code by Chapter 722, Statutes of 1992. Subsequent to this change, the Personal Care Services Program (PCSP) was implemented. As a consequence, modifications to the original version of Welfare and Institutions Code Section 12301.6 were required. The modifications were accomplished through Chapters 69 and 1252, Statutes of 1993 and Chapter 1029, Statutes of 1994. SB 1780 (Chapter 206, Statutes of 1996) made further modifications to Section 12301.6 by providing counties with guidelines for using a public authority or nonprofit consortium for delivery of In-Home Supportive Services (IHSS). Emergency regulations implementing SB 1780 were effective on June 3, 1997. A copy of the regulations are attached. See Attachment A.

This All-County Letter (ACL) outlines county activities, public authority or nonprofit consortium activities and State activities for counties opting to use a public authority or nonprofit consortium to provide services under the IHSS and PCSP. A description of the ratesetting methodology and claiming and reimbursement instructions are also included. Upcoming Case Management, Information and Payrolling Systems (CMIPS) changes are also described.

**ESTABLISHING A PUBLIC AUTHORITY/NONPROFIT CONSORTIUM**

A county board of supervisors may elect to establish, by ordinance, a public authority or contract with a nonprofit consortium to provide for the delivery of IHSS. A public authority is a

corporate public body separate from the county that has all powers necessary to carry out the delivery of IHSS. A nonprofit consortium is an entity that has among other things a tax exempt status. The county is required to meet the following additional requirements for the public authority or nonprofit consortium:

1. The ordinance for the public authority must specify the membership of the governing body, qualifications for individual members, the manner of appointment, removal of members, tenure and other matters the board of supervisors deems necessary. If the board of supervisors designates itself as the governing body of the public authority, the ordinance shall require the appointment of an advisory committee of no more than 11 members. No fewer than 50 percent of the advisory committee members shall be persons who are current or past users of personal assistance services paid for through public or private funds. If the board of supervisors does not designate itself the governing body of the public authority, it shall specify the membership of the governing body. No fewer than 50 percent of the members of the governing body shall be persons who are current or past users of personal assistance services paid for through public or private funds.
2. A county must enter into an interagency agreement with a public authority or nonprofit consortium to provide IHSS services. The county must submit a copy of the agreement to the California Department of Social Services along with the following information:
  - An organization chart of the public authority;
  - Funding provisions for public authority costs, including how the proposed rate was developed;
  - Public authority staffing classifications and duties; and
  - A description of how the functional requirements will be met.
3. The county or State will not be responsible for any liability or obligation of the public authority or nonprofit consortium whether statutory, contractual or otherwise.
4. Counties will be responsible for any increased costs to the CMIPS attributable to the public authority or nonprofit consortium. The State will determine the amount of any increased costs and will bill an individual county for these costs.

#### **PUBLIC AUTHORITY AND NONPROFIT CONSORTIUM ACTIVITIES**

Any public authority or nonprofit consortium will be deemed to be the employer of IHSS personnel referred to recipients for purposes of collective bargaining. However, recipients will retain the right to hire, fire and supervise the work of any IHSS personnel providing services to them. Attachment B is a model Employer-Employee Relations Policy for Public Authorities. Public authorities and nonprofit consortiums may adopt, reject or modify the policy in part or in its entirety for purposes of collective bargaining.

1. A public authority or nonprofit consortium must provide for the following functions:
  - Assistance to recipients in finding IHSS service providers through the establishment of a registry;
  - Investigation of the qualifications and background of potential personnel.
  - Establishment of a referral system under which IHSS personnel will be referred to recipients;
  - Access to training for providers and recipients;
  - Any other functions related to the delivery of IHSS; and
  - Ensuring that the requirements of the PCSP are met.
2. A public authority or nonprofit consortium cannot duplicate any activities or services performed by the county.
3. A public authority or nonprofit consortium will not be the employer of IHSS personnel for purposes of liability due to the negligence or intentional torts of the IHSS services personnel.
4. The public authority or nonprofit consortium must notify the State of any increases in wages or benefits prior to implementation.

#### **STATE ACTIVITIES**

The State's responsibility for payroll, unemployment insurance, workers' compensation and other provisions remains unchanged. The State will continue the payrolling, unless a public authority or nonprofit consortium opts to do this function.

#### **FUNDING**

The costs of the public authority or nonprofit consortium will be funded from the county's services allocation. The costs must be reimbursed within the county's services allocation.

#### **RATE SETTING METHODOLOGY**

Counties will be responsible for establishing a total public authority rate. The public authority rate should include a rate for services (wages, benefits and taxes) and a rate for administrative costs. The rate should be expressed in a cost per hour for the Individual Provider (IP) mode. The contract mode should not include any PA administration costs. For both PCSP and IHSS, the public authority rate cannot exceed 200 percent of the minimum wage.

The rate development process and public authority hourly rate should be sent to the California Department of Social Services IHSS Fiscal Unit on the enclosed rate setting form for concurrence. See Attachment C. The Department of Health Services will perform the final approval. When any increase in provider wages or benefits is negotiated or agreed to by a public

authority or nonprofit consortium, the county will use county only funds to fund both the county share and the state share, including any portion of employment taxes, unless otherwise provided for in the annual Budget Act or appropriated by statute.

### **CLAIMING AND REIMBURSEMENT**

The CMIPS will be used to do IP payroll and to track wages, benefits and public authority administrative costs. Public authority and nonprofit consortium costs will be invoiced by the counties to the IHSS Fiscal Unit on a quarterly basis. A sample of the public authority invoice and instructions for completing the Federal/State/County Reconciliation is enclosed. See Attachment D. Upon completion of the Federal/State/County Reconciliation, county staff should sum the administrative gross expenditures for the entire quarter (from pages 2 through 4 of the PA invoice) separately for PCSP and for Non-PCSP (lines 2C and lines 8C) and transfer the total amounts for PCSP and Non-PCSP to page 1 of the invoice under the Gross Expenditure column. Invoices should be submitted to the IHSS Fiscal Unit within 30 days after the end of each quarter. The IHSS Fiscal Unit will audit invoices against CMIPS and will monitor the 200 percent of minimum wage cap and any wages and associated costs exceeding minimum wage. Invoices will then be forwarded to CDSS Accounting, which will process only the administrative portion for reimbursement, since the services portion will be processed through CMIPS.

### **CMIPS**

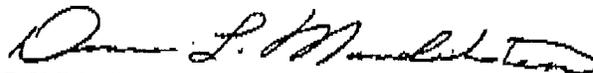
A screen similar to the County Summary (CSUM) screen will be created for Public Authority and Nonprofit Consortium. The Management Statistics Summary report will reflect the input from the new screens statewide and by county. Detailed instructions regarding those changes will be sent to all IHSS Program Managers.

### **FORMS**

Advanced copies of the In-Home Supportive Services Program Public Authority/Nonprofit Consortium Rate (Form SOC 449, Attachment C) and the Public Authority Invoice (Form SOC 448, Attachment D) are attached to this letter. The forms are being finalized, and the IHSS Fiscal Unit will notify PA counties once the forms are available. At that time, camera-ready copies of the forms can be obtained from the DSS Forms Management.

If you have any questions regarding the regulations, please contact Sharen Scott in the IHSS Policy Unit at (916) 229-4597. For questions pertaining to funding, ratesetting or claiming and reimbursement, please contact Lisa Grech in the IHSS Fiscal Unit at (916) 229-4595, and for any questions pertaining to CMIPS, please contact Josie Powers in the CMIPS Unit at (916) 229-4019.

Sincerely,



DONNA L. MANDELSTAM

Deputy Director

Disability and Adult Programs Division

Attachments

# **EXHIBIT 8**



CDSS

JOHN A. WAGNER  
DIRECTOR

STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY  
**DEPARTMENT OF SOCIAL SERVICES**



ARNOLD SCHWARZENEGGER  
GOVERNOR

October 5, 2009

ALL-COUNTY INFORMATION NOTICE NO. I-69-09

TO: ALL COUNTY WELFARE DIRECTORS  
IHSS PROGRAM MANAGERS

SUBJECT: INFORMATIONAL DOCUMENTS FOR IHSS RECIPIENTS AND  
PROVIDERS REGARDING NEW PROVIDER ENROLLMENT  
REQUIREMENTS

REASON FOR THIS TRANSMITTAL

- State Law Change
- Federal Law or Regulation Change
- Court Order
- Clarification Requested by One or More Counties
- Initiated by CDSS

This All-County Information Notice (ACIN) transmits copies of informational documents, which the California Department of Social Services (CDSS) will send to all current In-Home Supportive Services (IHSS) program recipients and providers to inform them of expanded provider enrollment requirements being implemented to meet the mandates of recently passed legislation, Assembly Bill, Fourth Extraordinary Session (ABX4 4) (Chapter 4, Statutes of 2009), and ABX4 19 (Chapter 17, Statutes of 2009). ABX4 4 amended Welfare and Institutions Code (W&IC) section 12305.81 to require that the Provider Enrollment Form (SOC 426) be submitted to the county by all providers in person. In addition, ABX4 19 mandates that prospective providers take the following steps before they can be enrolled as providers and receive payment for providing services:

- Submit fingerprints and undergo a criminal background check;
- Attend a provider orientation which provides information about the rules and requirements for being an IHSS provider; and
- Sign a provider agreement stating that they understand and agree to the rules and requirements for being a provider under the IHSS program.

Current providers must also complete and sign the newly revised Provider Enrollment Form (SOC 426) as well as complete the above steps, by July 1, 2010, in order to continue to receive payment for providing services to IHSS recipients.

The two informational documents, one to recipients (TEMP 2236) and the other to current providers (TEMP 2237), outline the expanded provider enrollment requirements, the investigations and home visits that will be necessary to prevent fraud, and the consequences of committing fraud.

All County Information Notice No. I-69-09  
Page Two

It is anticipated that these informational documents, which are attached for your information, will be sent to all current IHSS recipients and current providers starting Monday, October 5, 2009 through October 12, 2009. A blank SOC 426 will be attached, along with the informational documents, to assist all current providers in beginning the enrollment process.

**CAMERA-READY COPIES AND TRANSLATIONS OF FORMS**

Counties may access camera-ready versions of English forms referenced in this ACIN on CDSS' Forms/Brochures web page at:

<http://www.dss.cahwnet.gov/cdssweb/PG183.htm>.

Questions about accessing the forms may be directed to Forms Management Unit, at [FMUdss@dss.ca.gov](mailto:FMUdss@dss.ca.gov).

We are in the process of translating the forms. Language Translation Services (LTS) will make available camera-ready copies of Spanish, Armenian, and Chinese translated as soon as they have been completed. You may access these translated forms and letters, at [http://www.dss.cahwnet.gov/cdssweb/FormsandPu\\_274.htm](http://www.dss.cahwnet.gov/cdssweb/FormsandPu_274.htm).

Your County Forms Coordinator should distribute translated forms to each program and location. Each county shall provide bilingual/interpretive services and written translations to non-English or limited English proficient populations as required by the Dymally Alatorre Bilingual Services Act (Government Code section 7290 et seq.) and by state regulation (MPP Division 21, Civil Rights Nondiscrimination, section 115).

Should you have any questions regarding these informational documents, contact the Policy, Legislation and Litigation Unit, Adult Programs Branch, at (916) 229-4000.

Sincerely,

***Original Document Signed By:***

EVA L. LOPEZ  
Deputy Director  
Adult Programs Division

Attachments

**TO: IN-HOME SUPPORTIVE SERVICES (IHSS) RECIPIENTS****About you:**

As you may already know, recent changes to California's budget have caused some changes in State law that may affect you.

In these hard fiscal times it has been essential for government to focus resources and increase attention to accountability and fraud prevention...The Budget Act included reforms to significantly strengthen efforts to reduce and prevent fraud in this fast-growing program. Specific reform measures include:

Implementation of rigorous anti-fraud efforts that require: (1) all providers (current and new applicants) to attend an orientation and be fingerprinted during 2009-10, (2) IHSS recipients to be fingerprinted, (3) timesheets to be signed under a statement acknowledging that false timesheets are subject to civil penalties, and (4) fingerprints of both the recipient and provider on timecards. In addition, this reform component would generally disallow provider checks from being sent to post office box addresses, and would authorize case reviews, targeted mailings, and un-announced home visits.

In order to promote program integrity within the IHSS Program, effective immediately, recipients may be subject to unannounced home visits from the county, the California Department of Health Care Services (DHCS) Audits and Investigations staff, and/or the California Department of Social Services (CDSS). Recipients and/or providers may also receive letters identifying program requirement concerns from DHCS, CDSS, and/or the county.

The purpose of the visits and letters is to ensure that program requirements are being followed and that the authorized services are necessary for you to remain safely in your home. The visit will also verify that the authorized services are being provided, the quality of those services is acceptable, and that your well-being is protected:

Therefore it's important to know that if fraud is substantiated it will be prosecuted as Medi-Cal fraud. Please cooperate with the county or State staff conducting the unannounced home visit to avoid possible termination from the IHSS program.

**About your provider(s):**

There has also been a recent change in State law that affects your current IHSS provider(s). Any person who provides services, or who wants to provide services, to an IHSS recipient(s) must complete the following four steps by July 1, 2010 before he/she can receive payment from the IHSS Program for providing services.

1. Complete and sign the newly revised IHSS Program Provider Enrollment Form, and return it in person to the county.

2. Provide fingerprints and undergo a criminal background check by the California Department of Justice. Providers with felonies and serious misdemeanors will not be eligible to be an IHSS provider.
3. Attend an IHSS Program Provider Orientation presented by the county.
4. Sign an IHSS Program Provider Enrollment Statement.

Your current IHSS provider(s) must complete all of these steps by July 1, 2010. The county will notify you when your provider(s) has completed them.

If your provider has not completed all of the steps by July 1, 2010, he/she will no longer be eligible to receive payment from the IHSS Program for providing services for you. If you have not received notice that your provider has completed all of the required steps by July 1, 2010, you will have to choose another person to provide your services. If you need help finding another provider, contact your county IHSS Office or IHSS Public Authority.

Be aware that if you choose to continue to receive services from an ineligible provider after July 1, 2010, you will have to pay for those services from your own money.

Effective November 1, 2009, if you decide to have someone provide services for you who was not an IHSS provider before October 31, 2009, that person must complete the four enrollments steps and be approved by the County or Public Authority before they can receive payment from the IHSS Program for providing services. If you choose to receive services from someone who has not gone through the official approval process, you will have to pay for any services you get from that person with your own money.

If you have any questions about the new provider requirements, contact your county IHSS Office or IHSS Public Authority.

If you do not understand this information or notification, call your county worker. You have the right to interpreter services provided by the county at no cost to you.

Si no entiende la información o notificación, póngase en contacto con el trabajador social de su condado. El condado debe proporcionarle el servicio de interpretación en forma gratuita.  
(Spanish)

Եթե այս ինֆորմացյան չեք հասկանում կաճեցեք կապվել ձեր գաղառի պաշտոնյային. իրավունք ունեք առանց վճարման քարգահանիչի ծառայություն, որ ձեզ կարվի գաղառի կողմից  
(Armenian)

如果您對此份資訊或通知的內容不瞭解，請與貴縣的工作人員聯繫。您有權利要求貴縣所提供的免費口譯人員服務。

(Chinese)

**TO: CURRENT IN-HOME SUPPORTIVE SERVICES (IHSS) PROVIDERS**

As you may already know, recent changes to California's budget have caused some changes in State law that affect you as an IHSS provider, as well as anyone you provide IHSS for.

**About you:**

Any person who provides services to an IHSS recipient(s) must complete the steps outlined below before he/she can continue to receive payment from the IHSS Program for providing services.

You must complete all of the steps by July 1, 2010. If you have not completed all of them by July 1, 2010, you will no longer be eligible to receive payment from the IHSS Program for providing services.

**STEP 1. Complete and sign the newly revised IHSS Program Provider Enrollment Form (SOC 426), and return it in person to the county IHSS Office or IHSS Public Authority.**

- A blank copy of the SOC 426 is enclosed with this notice.
- You must report on the SOC 426 whether you have been convicted of certain crimes that would make you ineligible to receive payment from the IHSS Program for providing services.
- It is important that you read the SOC 426 carefully and that all of your responses are complete and truthful because the information you provide will be verified by a criminal background check that you must also go through as part of the provider enrollment process (See Step 2.).

**STEP 2. Be fingerprinted and go through a criminal background check by the California Department of Justice.**

- The county will give you instructions on how to get fingerprinted when you turn in the completed and signed SOC 426. Do not try to be fingerprinted until you have received instructions from the county.
- You can get fingerprinted at some local law enforcement agencies (Police or Sheriff Department) or at businesses that offer digitally scanned fingerprinting (Live Scan) services. The county will give you a list of nearby locations.
- State law requires that you pay the costs for fingerprinting and the criminal background check from your own money. Fees vary depending where you choose to get fingerprinted; however, the cost is about \$70.
- The background check will verify that you have not been convicted of any crimes that would make you ineligible to receive payment from the IHSS Program for providing services. For example, individuals with felonies and key misdemeanors will not be eligible to be IHSS providers.

**STEP 3. Go to an IHSS Program Provider Orientation given by the county.**

- The county will tell you when and where you can attend an orientation session.
- The orientation will present information about the IHSS Program and the rules and requirements for being a provider.

**STEP 4. At the end of the Provider Orientation session, sign an IHSS Program Provider Enrollment Agreement (SOC 846).**

- By signing the SOC 846, you are stating that you understand and agree to the rules and requirements for being an IHSS provider.

Once you have completed these steps and you have been approved by the County or Public Authority to be an IHSS provider, as long as you are an active provider and your criminal background check remains clear, you will continue to be eligible to provide services for any IHSS recipient.

**About your recipient(s):**

Recipients of IHSS services are receiving a similar mailer to provide information on budgetary and statutory changes.

In these hard fiscal times it has been essential for government to focus resources and increase attention to accountability and fraud prevention... The Budget Act included reforms to significantly strengthen efforts to reduce and prevent fraud in this fast-growing program. Specific reform measures include:

Implementation of rigorous anti-fraud efforts that require: (1) all providers (current and new applicants) to attend an orientation and be fingerprinted during 2009-10, (2) IHSS recipients to be fingerprinted, (3) timesheets to be signed under a statement acknowledging that false timesheets are subject to civil penalties, and (4) fingerprints of both the recipient and provider on timecards. In addition, this reform component would generally disallow provider checks from being sent to post office box addresses, and would authorize case reviews, targeted mailings, and un-announced home visits.

In order to promote program integrity within the IHSS Program, effective immediately, recipients may be subject to unannounced home visits from the county and/or the California Department of Health Care Services Audits and Investigations; and letters identifying possible concerns by the California Department of Social Services (CDSS), the California Department of Health Care Services (DHCS), or a combination of the three. Additionally providers may be subject to letters identifying possible concerns if program requirements are not being followed.

The purpose of the letters and visits is to ensure that program requirements are being followed and that the authorized services are necessary for that recipient to remain safely in his or her home. The visit will also verify that the authorized services are being provided, the quality of those services is acceptable, and that the well-being of the recipient is protected.

~~Therefore if fraud is substantiated it will be prosecuted as Medi-Cal fraud. Please cooperate with the county or State staff conducting the unannounced home visit to avoid possible termination from the IHSS program.~~

If you have any questions about the new provider requirements, contact your county IHSS Office or IHSS Public Authority.

If you do not understand this information or notification, call your county worker. You have the right to interpreter services provided by the county at no cost to you.

Si no entiende la información o notificación, póngase en contacto con el trabajador social de su condado. El condado debe proporcionarle el servicio de interpretación en forma gratuita.

(Spanish)

Եթե այս ինֆորմացյան չեք հասկանում հաճեցեք կապվել ձեր գավառի պաշտոնյային. իրավունք ունեք առանց վճարման թարգմանիչի ծառայությանց, որ ձեզ կարվի գավառի կորմից

(Armenian)

如果您對此份資訊或通知的內容不瞭解，請與貴縣的工作人員聯繫。您有權利要求貴縣所提供的免費口譯人員服務。

(Chinese)

## **IMPORTANT INFORMATION FOR PROSPECTIVE PROVIDERS ABOUT THE IN-HOME SUPPORTIVE SERVICES (IHSS) PROGRAM PROVIDER ENROLLMENT PROCESS**

An IHSS provider is someone who gets paid to provide services to a person who receives in-home supportive services under the IHSS Program. If you want to become an IHSS provider, you must complete all of the steps outlined below before you can be enrolled as a provider and receive payment from the IHSS Program for providing services.

### **STEP 1. Complete and sign the IHSS Program Provider Enrollment Form (SOC 426), and return it in person to the County IHSS Office or IHSS Public Authority.**

- Get a blank copy of the SOC 426 from the County IHSS Office or Public Authority. *Read the information carefully before you complete the form.*
- Complete the SOC 426 form and answer all questions completely and truthfully. You **must report** if you have been convicted of any crimes that would not allow you to provide services.
- Bring a U.S. government issued picture ID **AND** an original Social Security card. If you do not have a Social Security card you may show the original official letter from the Social Security Administration (SSA) showing your Social Security number (SSN).
- The information you provide on the Provider Enrollment Form (SOC 426) will be verified by a criminal background check by the California Department of Justice (DOJ). The criminal background check is required to be a provider (See Step 2).

### **STEP 2. Be fingerprinted and go through a criminal background check by the California Department of Justice.**

- The County IHSS Office or Public Authority will give you instructions on how to get fingerprinted when you turn in the completed and signed SOC 426. *Do not try to be fingerprinted until you have received instructions from the county.*
- You can get fingerprinted at some local law enforcement agencies (Police or Sheriff Department) or at a business that offers digitally scanned fingerprinting (Live Scan) services. The County IHSS Office or Public Authority can give you a list of nearby locations.
- State law requires that you pay the costs for fingerprinting and the criminal background check. Fees vary depending where you choose to get fingerprinted; the costs range from \$40 to \$90.
- If the background check verifies that you have **not** been convicted of any Tier 1 or Tier 2 crimes, **proceed to Step 3.**
- If the background check verifies that you **have been convicted** of any Tier 1 or Tier 2 crimes, please read the sections on the next pages.

If you **have been convicted of, OR** incarcerated following a conviction for, either a **Tier 1 or Tier 2 crime WITHIN THE PAST 10 YEARS**, you are **NOT** eligible to be enrolled as an IHSS provider or to receive payment from the IHSS program for providing supportive services.

**Tier 1 crimes include:**

- Specified abuse of a child (Penal Code (P.C.) section 273a(a);
- Abuse of an elder or dependent adult (P.C. section 368); or
- Fraud against a government health care or supportive services program.

If you have a conviction for any of the **Tier 1 crimes** in the past 10 years, you are **NOT** eligible to be a provider.

- You are **NOT** eligible even if you had a **Tier 1 crime** that was expunged from your record.

**Tier 2 crimes include:**

- A violent or serious felony, as specified in P.C. section 667.5(c), and P.C. section 1192.7(c);
- A felony offense for which a person is required to register as a sex offender pursuant to P.C. section 290(c), and
- A felony offense for fraud against a public social services program, as defined in W&I section 10980(c) (2) and (g) (2).

If you have a conviction for any of the **Tier 2 crimes** in the past 10 years you may be eligible.

- If your Tier 2 crime has been or can be expunged from your record.
- If a recipient requests an individual waiver to hire you;
- If you are approved for a general exception.

*Read sections below for more information.*

*You can ask the County IHSS Office or IHSS Public Authority for a list of the Tier 2 crimes.*

**Expungement for Tier 2 crime:**

- If you have a certificate of rehabilitation or an expungement for a Tier 2 crime, you may be eligible to be an IHSS provider. Provide copies of your certification of rehabilitation or documentation regarding the expungement with your completed SOC 426.
- If you are in the process of having a crime expunged, you should complete the expungement process before continuing the criminal background check.

**Individual Waiver of Exclusion for a Tier 2 crime:**

An individual waiver allows you to provide services **ONLY** to a specific recipient who chooses to hire you in spite of your criminal conviction (s) and he/she requests an individual waiver.

- A recipient must request and submit the Recipient Request for Provider Waiver (SOC 862) to the County IHSS Office to allow you to provide services.
- The IHSS recipient who wants to hire you must be told of your conviction; however, he/she will be directed to keep the conviction information confidential.

**General Exception for a Tier 2 crime:**

An individual who has been found ineligible to be enrolled as a provider based on a conviction for a Tier 2 crime, but who wishes to be listed on a provider registry, may apply for a general exception of the exclusion.

- Apply for a General Exception by completing the IHSS Applicant Provider Request for General Exception (SOC 863) form.
- You will be required to provide backup documentation, e.g., employment history, personal references, etc., to support your request for a general exception.

If you have been disqualified based on a Tier 1 or Tier 2 conviction, you may request a copy of your criminal offender record information (CORI) from the county. Please be advised that the CORI can ONLY be used for this enrollment process.

**If the information on your criminal background is incorrect, you can dispute the information through the DOJ record review process.**

The DOJ record review process includes submitting fingerprints, paying a processing fee and following the instructions found on the DOJ website at <http://ag.ca.gov/fingerprints/security.php>. If there is criminal information on your record, a Claim of Alleged Inaccuracy or Incompleteness (FORM BCII 8706) will be included along with the response.

**STEP 3. Go to an IHSS Program Provider Orientation given by the county.**

- The County IHSS Office or Public Authority will tell you when and where you can attend an orientation session.
- The orientation will give you important information about the IHSS Program and the rules and requirements for you to follow as a provider.

**STEP 4. At the end of the Provider Orientation session, sign an IHSS Program Provider Enrollment Agreement (SOC 846).**

- By signing the SOC 846, you are saying that you understand and agree to the rules and requirements for being a provider in the IHSS Program.

You should maintain copies of all documents you submitted and any that you received from the county for your records.

Once you have successfully completed these four (4) steps and you have been approved by the county or Public Authority to be an IHSS provider, as long as you are an active provider and your criminal background check remains clear, you will continue to be eligible to provide services for any IHSS recipient.

If you have any questions about these provider enrollment requirements, contact your County IHSS Office or IHSS Public Authority.

# **EXHIBIT 9**

# WestlawNext

§ 3.14 Agents with Multiple Principals  
Restatement of the Law - Agency (Approx. 19 pages)

Restatement (Third) Of Agency § 3.14 (2006)

Restatement of the Law - Agency

Database updated March 2015

Restatement (Third) of Agency

Chapter 3. Creation and Termination of Authority and Agency Relationships

Topic 5. Agents with Multiple Principals

§ 3.14 Agents with Multiple Principals

Comment:

Reporter's Notes

Case Citations - by Jurisdiction

**An agent acting in the same transaction or matter on behalf of more than one principal may be one or both of the following:**

- (a) a subagent, as stated in § 3.15; or
- (b) an agent for coprincipals, as stated in § 3.16.

### Comment:

*a. Scope and cross-references.* The sections in this Topic define and differentiate among the relationships that an agent may have with multiple principals with respect to the same transaction or matter. Comment *b* to this section provides a general overview. Comment *c* discusses situations in which parties' relationships are ambiguous. Comment *d* discusses termination of the actual or apparent authority of an agent who acts for multiple principals. Comment *e* discusses relationships in which a principal has multiple agents. The duties owed to a principal by an agent, including an agent who acts for multiple principals, are stated in §§ 8.01- 8.12. See § 7.03, Comments *d*(2) and *d*(3) for discussion of the liability of employers when an employee is directed by one employer to perform services for another employer and the employee's conduct constitutes a tort. Other bodies of regulatory law may be relevant to whether an agent may properly act on behalf of more than one principal. On the position of a lawyer who represents multiple clients in the same matter, see Restatement Third, The Law Governing Lawyers § 60, § 75, §§ 121-122, and §§ 128-131.

A relationship of agency is defined in § 1.01.

*b. General overview.* A person with relationships of agency with more than one principal may, in any particular matter, act as an agent on behalf of only one principal. For example, owners of property, each of whom lists a

### SELECTED TOPICS

Rights and Liabilities as to Third Persons  
Principal and Agent and Third Persons

### Secondary Sources

§ 54:14. Appointment of agent  
19 Williston on Contracts § 54:14 (4th ed.)  
...The relationship of principal and agent is voluntary and contractual in nature, and requires mutual consent. Thus, the issue of the creation and existence of the relationship turns on the intentions of...

### Vicarious Liability under Doctrine of Ostensible or Apparent Agency

8 Am. Jur. Proof of Facts 3d 487 (Ostensible published in 1986)  
...This article shows how to establish the vicarious tort liability of a "deep pocket" through the theory of ostensible agency when respondeat superior and direct negligence theories are not available. Th...

### § 12:21. Agency relationship

Plaintiff's Proof Prima Facie Case § 12:21  
...An agency is the legal relationship which arises when one party, the agent, is authorized to represent and act for another, the principal, to bring or to aid in bringing the principal into contractual ...

### See More Secondary Sources

### Briefs

### BRIEF FOR RESPONDENTS

2002 WL 91190162  
Meyer v. Holley  
United States Supreme Court Respondents Brief,  
September 27, 2002  
...1. The Fair Housing Act ("FHA" or the "Act"), 42 U.S.C. § 3601 et seq., the relevant provisions of which are printed in Respondents' Appendix ("Resp. App.") 11-21, 2, 24 C.F.R. § 100.20 (2002) and form...

### JOINT APPENDICES, VOL. I

1992 WL 939020  
Verlinden B.V. v. Central Bank of Nigeria  
Supreme Court of the United States,  
March 15, 1992  
...Plaintiff, complaining of the defendant by its attorneys, Bailey, Marshall, Hoelinger & Freitag, respectfully shows to this Court and alleges: 1. Federal jurisdiction is founded upon the provisions of §...

### Brief of Appellee

2002 WL 32126256  
Ellen L. BATZEL, a citizen of the State of California, Plaintiff/Appellant, v. Robert SMITH, a citizen of the State of North Carolina; Netherlands Museums Association, an entity of unknown form which is a citizen or subject of the Netherlands; Ton Cremers, a citizen or subject of the Netherlands, Defendant; Mosler, Inc., a Delaware corporation with its principal place of business in Ohio, Defendant/Appellee.  
United States Court of Appeals, Ninth Circuit,  
July 30, 2002

...Pursuant to Rule 25.1 of the Federal Rules of Appellate Procedure, Defendant Mosler, Inc., makes the following disclosure: 1. For non-governmental corporate parties, all parent corporations; Defendant...

See More Briefs

property for sale with the same real-estate agent, have distinct relationships with the listing agent. In contrast, §§ 3.15 and 3.16 concern relationships in which an agent acts on behalf of multiple principals in the same transaction or matter. As stated in § 3.15, a subagent acts for multiple principals that are hierarchically stratified: a subagent is appointed by an agent and owes an agent's duties to the appointing agent; the appointing agent owes an agent's duties to that agent's own principal, to whom the subagent additionally owes an agent's duties. A subagent acts subject to the primary control of the appointing agent and the ultimate control of the appointing agent's principal. For further discussion of control and responsibility within relationships of subagency, see § 3.15, Comment *d*. As stated in § 3.16, an agent for coprincipals acts for more than one principal in the same transaction or other matter. Coprincipals are not hierarchically stratified.

An agent's relationships with multiple principals may evolve. For example, a subagent may become an agent for coprincipals if the subagent's appointing agent and that agent's principal become coprincipals. It is also possible for the same agent to have more than one such relationship as to the same transaction or matter, for example if a subagent is an agent for another party in the same transaction or matter. Under some circumstances, such multiple representation may breach the duties that the agent owes to some or all principals. See § 8.03.

When an agent represents more than one principal, the principals' interests may conflict. For example, an agent who represents only prospective purchasers of property may have more than one customer who is or may be interested in being the sole purchaser of the same property. Conflict among the interests of principals may also be present when an agent acts on behalf of more than one principal in the same transaction or matter, as when a real-estate agent acts on behalf of the seller and the purchaser of a property. An agent who so acts is commonly termed a "dual agent." See § 8.03 and § 3.15, Comment *f*. The interests of an appointing agent in a subagency relationship may also conflict with interests of that agent's principal. See § 3.15, Comment *b*.

An agent who represents principals whose interests conflict may breach the fiduciary duties that the agent owes to principals on whose behalfs the agent undertakes to act. As a fiduciary, an agent may not act without the principal's consent on behalf of another principal when there is a substantial risk that the agent's action on behalf of one principal would be materially and adversely affected by action by the agent to fulfill duties owed to another principal. See § 8.03. By so acting without a principal's consent, the agent risks forfeiting compensation due from that principal. See § 8.03, Comment *d*. On other remedies against the agent available to the principal, see § 8.03, Comment *d*, and § 8.01, Comment *d*.

If a particular intermediary or other actor does not act as an agent as defined in § 1.01, the legal consequences of conflict among parties' interests may be lessened if the actor does not owe an agent's duty of loyalty to parties linked by the actor. Statutes in some states define a category of "transaction brokers" who may act without agents' duties in real-estate transactions. See § 3.15, Comment *f*, for discussion of these statutes.

Like all relationships of common-law agency, relationships among agents and

#### Trial Court Documents

In re White Energy, Inc.

2009 WL 8189023

In re White Energy, Inc.  
United States Bankruptcy Court, D. Delaware.  
May 07, 2009

...FN1. The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: White Energy, Inc. (1083); White Energy Holding Company, LLC (3034); US Energy ...

Ritz Camera & Image, L.L.C.

2012 WL 8893708

Ritz Camera & Image, L.L.C.  
United States Bankruptcy Court, D. Delaware.  
September 10, 2012

...FN1. The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number are: Ritz Camera & Image, L.L.C. (7093) and Ritz Interactive, LLC (4904). ...

In re Global Aviation Holdings Inc., et al.

2013 WL 8144003

In re Global Aviation Holdings Inc., et al.  
United States Bankruptcy Court, D. Delaware.  
November 14, 2013

...Upon the motion (the "Motion"), dated November 12, 2013, of Global Aviation Holdings Inc., North American Airlines, Inc. and World Airways, Inc. (each, a "Borrower"), and New ATA Investment Inc., New A...

See More Trial Court Documents

multiple principals do not exist unless the parties manifest assent or otherwise consent to their creation. See § 1.01, Comment *d*. An agent's relationship with multiple principals may be terminated by a principal or by the agent. See § 3.15, Comment *e*, on termination of subagency and § 3.16, Comment *c*, on termination of authority when an agent represents coprincipals.

*c. Ambiguous relationships.* In some common situations, the legal relationships among parties are ambiguous because it is unclear whether an actor is an agent who acts for one party to a transaction, a subagent, an agent who acts for more than one principal, or is a provider of services who does not act as agent or subagent for any party to the transaction. Popular or commercial usage of the terms "agent" and "broker" does not control how a particular actor is characterized for legal purposes. See § 1.02. Ambiguity may also result when payment for an intermediary's services is not made directly by the person who receives the services.

The same actor may occupy different roles at successive points in an ongoing interaction among the same parties. This fact contributes to ambiguity. It also provides the key to determining the legal relationship that an intermediary actor has with each party because it disaggregates an ongoing interaction into discrete relationships. For example, an insurance intermediary who obtains a policy from an insurer on behalf of a prospective insured acts as the prospective insured's agent. The same intermediary may act as the insurer's agent in receiving premium payments from the insured. Similarly, a travel intermediary who purchases a plane ticket for a prospective traveler acts as the prospective traveler's agent in buying the ticket. If an airline authorizes the intermediary to issue tickets on its behalf and to collect and hold customer payments, the intermediary acts as the airline's agent in so doing.

In the insurance industry in particular, statutes and common practice often reflect well-settled understandings about agency relationships. An insurance intermediary who applies for or procures insurance coverage on behalf of a prospective insured is generally termed an insurance "broker" and characterized as the agent of the prospective insured in the insurance application. Additionally, an insurance broker may subsequently be treated as the insured's agent for purposes of receiving and giving notice. A broker owes no special allegiance to any particular insurer. However, when an insurance policy is issued by an insurer through a broker, the broker is treated as the insurer's agent who may bind the insurer within the scope of the broker's authority. An "independent" insurance agent who represents several insurers is generally, like an insurance broker, characterized as the insured's agent in procuring or applying for insurance. An insurance "agent" (who is not an "independent" one) generally has a fixed relationship with one insurer whom the agent represents and to whom the agent owes duties and allegiances. To determine whether an intermediary acts as an "agent" or as a "broker," it is relevant whether the insurer or the prospective insured calls the intermediary into action, whether the insurer or the prospective insured controls the intermediary's actions, and whether the intermediary represents the insurer's or the prospective insured's interests. Some authority characterizes common relationships in insurance transactions as instances of "dual agency" because an insurance "agency" often represents both insured

and insurer. This practice may be sufficiently common that consent to the agent's dual status may be implied. Moreover, if an insurance agent acts as authorized, the agent may fulfill the duties owed to both insurer and insured.

If characterized as the agent of insurer or insured, an insurance intermediary may become a designated channel for communication between them. As the insurer's agent, the intermediary may receive notifications of claims under the policy made by the insured. As the insured's agent, the intermediary may receive notifications made to the insured by the insurer, such as disclaimers of coverage.

**Illustrations:****Illustrations:**

1. P obtains a policy of car insurance written by T Insurance Co. through A, an insurance broker. A knows that in the application for insurance P has stated that P alone regularly drives the car. A knows that this statement is untrue because A knows that P's child, whose driving record is much worse than P's, also regularly drives the car. T Insurance Co. is not charged with notice of the fact, known to A, that P is not the car's sole driver because A does not act as T Insurance Co.'s agent in obtaining the policy for P. T Insurance Co. may be able to avoid the policy. On imputation to a principal of notice of facts known to an agent, see §§ 5.03 and 5.04.

2. Same facts as Illustration 1, except that P provides accurate information in the policy application, T Insurance Co. issues the policy to P and notifies P that premium payments are to be made to A. As directed, P makes premium payments to A. A does not remit the payments to T Insurance Co. T Insurance Co. seeks to cancel P's policy for nonpayment. T Insurance Co. may not cancel P's policy for nonpayment. P paid the required premiums to A, designated by T Insurance Co. to receive them on its behalf. See § 6.07(2).

Ambiguity about roles may also be present in the group-insurance setting. When an employer administers a group-insurance policy that has been issued by an insurance company, it may be argued that the employer serves as the insurer's agent for some purposes while also serving as its employees' agent for other purposes. For example, an employer may be characterized as the insurer's agent if it performs administrative functions, such as claims processing, on behalf of the insurer. Alternatively, an employer may be characterized as acting to serve its own interests or those of its employees when it participates in the administration of a group-insurance plan. Although cases are divided on how best to characterize the employer's role, when ERISA is applicable to the insurance benefit it may preempt otherwise-applicable state law characterizing the role served by the employer. ERISA gives effect to a plan's designations of fiduciary status and requires that duties be discharged in accordance with the documents and instruments that govern a plan insofar as they are consistent with the statute itself.

For discussion of ambiguous relationships in the context of real-estate transactions, see § 3.15; Comment f.

*d. Termination of actual and apparent authority.* The actual authority of an agent who acts for multiple principals may be terminated on any of the

bases applicable to an agent who acts for a single principal. Each of the multiple principals may terminate the agent's authority to affect that principal's legal relations by a manifestation of revocation, notwithstanding any agreement among the principals or among the principals and the agent. See § 3.10(1) and § 3.16, Comment c. Likewise, the death, cessation of existence, suspension of powers, or loss of capacity of any of the principals terminates the agent's actual authority as to that principal as stated in § 3.07(2) and (4) and § 3.08(1) and (3). For discussion of this point in the context of subagency, see § 3.15, Comment e. Even when one principal has revoked authority, an agent may have actual authority to act on behalf of principals who have not revoked the agent's authority. See § 3.16, Comment c.

Authority may be made irrevocable as stated in §§ 3.12 and 3.13. On revocation by shareholders who are parties to voting agreements, see § 3.16, Comment c.

Terminating the actual authority of an agent for multiple principals does not in itself end any apparent authority that the agent holds. An agent's apparent authority ends when it is no longer reasonable for the third party with whom the agent deals to believe that the agent continues to act with actual authority. See § 3.11.

*e. Multiple agents.* A principal may consent to a relationship of agency with more than one agent, including representation by multiple agents in relation to the same transaction or other matter. Relationships among multiple agents are often hierarchical, as in an organization peopled by superior and subordinate agents. See § 1.03, Comment c. The relationship among superior and subordinate coagents is not a relationship of subagency. See § 1.04, Comments *h* and *i*.

A principal may also structure a relationship among coagents to provide that the agents must act jointly to take action. For example, a corporation may require the signatures of two officers to effect certain transactions.

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#### Reporter's Notes

*a. Comparison with Restatement Second, Agency.* This topic consolidates the treatment of related concepts that appear in more dispersed fashion in Restatement Second, Agency. Except where noted, the substance is comparable. Restatement Second, Agency § 14L covers the "Ambiguous Principal," part of the subject of Comment c.

*c. Ambiguous relationships.* This Comment does not disagree with the analysis in Restatement Second, Agency § 14L, but its coverage is broader in scope. Section 14L(1) provides that "[a] person who conducts a transaction between two others may be an agent of both of them in the transaction, or the agent of one of them only, although the agent of the other for other transactions, or the agent of one for part of the transaction and the agent of the other for the remainder." Section 14L(2) states that

"[u]nless otherwise agreed, one who has received money or other property from another to be paid or transferred to a creditor of the other is the agent of the other and not of the creditor."

Whether a person doing business as a "loan broker" acts as an agent of a prospective borrower is a fact-dependent question. See *Arnold v. United Cos. Lending Corp.*, 511 S.E.2d 854, 865 (W.Va.1998) (loan broker not agent of borrower absent some proof that borrower had right to, or did, exercise some control over broker's conduct).

On the terminology of "broker" and "agent" in the insurance context, see, e.g., *Independent Fire Ins. Co. v. Lea*, 782 F. Supp. 1144, 1157 (E.D. La.), *aff'd*, 979 F.2d 377 (5th Cir.1992) (for purpose of placing insurance coverage for insureds, general insurance agent acted as a broker and as insureds' agent; general insurance agent was licensed by several companies, was not obliged by plaintiff insurer to refrain from soliciting insurance from other insurers, and had no authority to bind with respect to risk for which application was made prior to insurer's approval of a policy); *Dreiling v. Maciuszek*, 780 F.Supp. 535, 539-540 (N.D.Ill.1991) (broker for marine insurance acted as agent for insured and not as agent for insurer, having obtained competitive bids from 3 insurers and recommending lowest to insured); *City of Lawrence v. Western World Ins. Co.*, 626 N.E.2d 477, 480 (Ind.App.1993) (insurance broker who represents several insurers is normally treated as agent of applicant for insurance, but broker may bind insurer within scope of broker's authority when policy is issued).

On the criteria for determining whether an insurance intermediary acts as broker or agent, see *Progressive N. Ins. Co. v. Airborne Express, Inc.*, 2005 WL 1712396, at \*9 (D.Md.2005) (applying Maryland law; determinative whether insurer or insured called intermediary into action, whether insurer or insured controlled intermediary, and whose interests intermediary acted to protect); *Royal Maccabees Ins. Co. v. Malachinski*, 161 F.Supp.2d 847, 852 n.2 (N.D.Ill.2001) (applying Illinois law) (same; court notes that question of who pays intermediary's commission should not be given weight because Illinois permits insurers to pay brokers). If an intermediary acts under the control of an insurer in issuing insurance policies, the intermediary acts as the insurer's agent. See *New York Marine & Gen. Ins. Co. v. Tradellne (L.L.C.)*, 266 F.3d 112, 122 (2d Cir.2001) (company that supplied and shipped commodities authorized by insurer to issue "evidences of insurance" to its customers so that they might make direct claims against insurer for loss of or damage to insured cargo; commodity company acted as insurer's agent in issuing evidences of insurance because it acted under insurer's control, which set premiums when coverage was requested).

Analogizing them to insurance agents, travel agents have been characterized as the agents of airlines and other service providers for whom they issue tickets to customers. This question arises in a variety of contexts. See, e.g., *Illinois Corporate Travel, Inc. v. American Airlines, Inc.*, 806 F.2d 722, 725 (7th Cir.1986) (for purpose of determining whether illegal resale price maintenance has occurred, travel agent acted as agent of airline in booking flight and issuing ticket); *Carnival Cruise Lines, Inc. v. Goodin*, 535 So. 2d 98, 103 (Ala.1988) (for purpose of award of punitive damages against cruise line, travel agent acted as cruise line's agent; knowledge of agent that plaintiff was confined to wheelchair and was concerned about

accommodations aboard ship is imputed to cruise line); *State ex rel. Elson v. Koehr*, 856 S.W.2d 57, 61 (Mo.1993) (for purpose of corporate-venue statute, agents who sold tickets for airline were its agents); *Rappa v. American Airlines, Inc.*, 386 N.Y.S.2d 612, 614 (Civ.1976) (court finds that travel agent acted as agent for airline from whom plaintiff purchased ticket when travel agent and airline had sales-agency agreement; airline liable to pay refund to plaintiff after airline paid refund to agent who went out of business without either returning refund to airline or paying it to plaintiff). In other situations, courts have analogized a travel agent to an insurance broker or, reasoning differently, have characterized a travel agent as the customer's agent. See, e.g., *Hodes v. S.N.C. Achille Lauro ed Altri-Gestione*, 858 F.2d 905 (3d Cir.1988), abrogated on other grounds by *Lauro Lines S.R.L. v. Chasser*, 490 U.S. 495 (1989) (resolving whether a forum-selection clause printed on cruise-ship tickets is enforceable against passenger, court holds that travel agent who sold a cruise package acted as traveler's agent in acquiring and holding tickets); *Simpson v. Compagnie Nationale Air France*, 248 N.E.2d 117, 119-120 (Ill.1969) (court holds that travel agent acted as agent for traveler in acquiring airline ticket when agent lacked duty of loyalty to airline and planned trip for traveler, acquiring numerous services for traveler; airline not liable to refund cost of air travel to traveler after traveler became ill and canceled trip but travel agent, soon to file a voluntary petition in bankruptcy, had never paid any money received from traveler to airline). See also *Al Harby v. Saadeh*, 816 F.2d 436, 438 (9th Cir.1987) (determining that travel agent acted as broker who sold tickets for many airlines and was not controlled by any one airline or group of airlines, court holds that travel agent did not act as agent of airline on which plaintiff purchased "open return" ticket but was not told that return might be difficult to arrange because airline operated only 1 flight per week; no showing of sales agency or other agency agreement). For recognition that a travel agent may act as agent for both traveler and provider of travel services, see *Levine v. British Overseas Airways Corp.*, 322 N.Y.S.2d 119, 122 (Civ.1971) (airline's payment of refund to travel agent does not satisfy airline's obligation to customer; court holds that agency relationship between travel agent and customer ended after customer purchased ticket).

Statutes specifying agency relationships in transactions in insurance are not uniform. Statutes in several states characterize insurance "agents" as the insurer's agent and insurance "brokers" as the insured's agent, while also providing that an insurance broker who is authorized by an insurer to deliver an insurance policy to an insured shall also be deemed to have been authorized by the insurer to receive premium payments on its behalf. See, e.g., D.C. Code § 31-1131.02 (2005); N.C. Gen. Stat. § 58-33-20(a) and (b) (2003 & Supp. 2004). Some statutes provide that any person who solicits an application for insurance shall, in disputes between insured and insurer, be treated as the agent of the insurer who issues a policy. See, e.g., Ohio Rev. Code Ann. § 3929.27 (2004 & Supp. 2005) (treated as insurer's agent despite any contrary provision in policy or application); Or. Rev. Stat. § 744.165 (2003) (contrary provisions in policy or application not effective; inapplicable to contract of group insurance that provides otherwise); W.Va. Code § 33-12-13 (2004 & Supp. 2005). See also *St. Paul Reinsurance Co. v. Commercial Fin. Corp.*, 144 F.Supp.2d 1057, 1076-1078 (N.D.Iowa 2001) (characterizing insurance broker as agent of surplus-lines insurer on basis that broker acted as insurer's soliciting agent under Iowa Code § 515.123

although other provisions in statute applied specifically to surplus-lines carriers). Some statutes explicitly provide that the same insurance intermediary may act both as an insurer's agent and a broker. See, e.g., Cal. Ins. Code § 1732 (1993 & Supp. 2005) ("[a] person licensed as a fire and casualty broker-agent acting as an insurance broker may act as an insurance agent in collecting and transmitting premium or return premium funds and delivering policies and other documents evidencing insurance."). Some statutes provide that an insurance broker may act as an insurer's agent for the purpose of collecting premiums but do not use the "broker-agent" terminology. See N.Y. Ins. Law § 2121 (2000 & Supp. 2005); Va. Code § 38.2-1801 (1950 & Supp. 2005). Some statutes supplant older terminology with new terms, such as "insurance producer." See Minn. Stat. § 60K.31(6) (2005) (defining "insurance producer" as "a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance."); N.J. Stat. Ann. § 17:22A-28 (2006) (defining "insurance producer" as a "person required to be licensed under the laws of this State to sell, solicit or negotiate insurance.").

The fact that a statute requires insurance agents to be licensed does not affect an agent's powers to bind a principal. See *Grand Hotel Gift Shop v. Granite State Ins. Co.*, 839 P.2d 599, 602 (Nev.1992) (out-of-state insurer appointed insurance broker as its "resident agent," as required by licensing statute, and broker countersigned policy issued to plaintiff as required by statute; no principal-agent relationship present between broker and insurer because broker and insurer had no agreement or other manifestation of consent to relationship of agency).

On an insurance agent as a "dual agent," see, e.g., *Appleton Chinese Food Serv., Inc. v. Murken Ins., Inc.*, 519 N.W.2d 674, 679 (Wis.App.1994) (observing that "[t]he concept of dual agency is familiar to Wisconsin and the insurance industry.... As a dual agent, [defendant] is independently liable to the [plaintiffs] for its negligence while acting as their agent.").

On channels of communication between insurer and insured, see *TWBC III, Inc. v. Those Certain Underwriters at Lloyd's London* Subscribing to Policy No. 894, 731 A.2d 1228, 1232 (N.J.Super.App.Div.1999) (insurer provided required notice confirming insurance when its agent sent confirmation to insurance broker who represented insured in obtaining insurance; court states that "[a] clear rule which authorizes an agent representing an insurance company to communicate directly with a broker representing an insured is easy to apply and minimizes the danger of miscommunication. The agent receives its instructions from the broker and responds to that same broker.").

Whether an intermediary had actual or apparent authority to do an act as agent is often dispositive. See, e.g., *Guardian Life Ins. Co. v. Chemical Bank*, 727 N.E.2d 111, 115-116 (N.Y.2000) (under course of dealing established between insurer and broker, broker had authority on behalf of insurer to process requests for policy loans and dividend withdrawals; endorsements forged by broker effective as endorsements of insurer under U.C.C. § 3-405(1)(c)); *Shaw Temple A.M.E. Zion Church v. Mount Vernon Fire Ins. Co.*, 605 N.Y.S.2d 370, 371 (App.Div.1993) (notice of claim given by insured to broker not effective against insurer because policy required that written notice of claim be given to insurer; no evidence that insurer authorized

broker to place sticker on policy directing insured to give notice of claims to it).

Insurance policies generally include a clause on notice of claims or facts that may give rise to a claim that specifies to whom or the place at which notice must be given. Often specified are "the insurer," the "company," the "home office," or the insurer's "duly authorized agent." Representative cases with characteristic policy language include (1) "To the company or its authorized agent": compare *State Sec. Ins. Co. v. Burgos*, 583 N.E.2d 547 (Ill.1991) (court holds broker is an authorized agent to receive notice of claim on basis that broker had apparent authority to receive notice when insured had no contact with insurer and insurer acquiesced in broker's receipt of claims) with *Arthur v. London Guarantee & Accident Co.*, 177 P.2d 625 (Cal.App.1947) (broker did not act as agent of insurer for purpose of receiving notice of claim when insured provided photographs of accident to broker who forwarded them to insurer); (2) "To the Company": see *Guarantee Mut. Fire Ins. Co. v. Jacobs*, 57 So. 2d 845, 848 (Fla.1952) (local agent who has authority to represent insurer in making contracts has authority to receive notice of claim); (3) "To the Company, notice to an agent not excusing notice to Company": compare *State v. Richardson*, 817 F.2d 1203, 1207 (5th Cir.1987) (when insured procured policy through local independent agent who procured policy through wholesaler who procured policy from insurer, notice to agent binds insurer despite policy language to contrary on basis of Miss. Code Ann. § 83-17-1, providing that "every person who solicits insurance on behalf of an insurance company, or who takes or transmits ... an application ... shall be held to be an agent of the company ... whatever conditions or stipulations may be contained in the policy or contract") with *Employers Cas. Co. v. Mireles*, 520 S.W.2d 516, 519 (Tex.Civ.App.1975) (similar statute applicable; court holds that notice of accident given to agent did not bind insurer when servicing agent did not solicit insurance application for insurer but only forwarded application through assigned-risk plan, did not write policies for insurer, and did not collect premiums or perform any other act on insurer's behalf).

On the characterization of an employer's role in a group-insurance setting, compare *Elfstrom v. New York Life Ins. Co.*, 432 P.2d 731, 737-738 (Cal.1967) (holding that an employer that participates in the administration of group-insurance policies acts as the insurer's agent; insurer directs employer's performance of administrative acts, while employees lack knowledge or control over employer's actions, employer does not act entirely for its own benefit or for the benefit of its employees, and insurer benefits from arrangement) with *First Nat'l Bank of Anson County v. Nationwide Ins. Co.*, 278 S.E.2d 507, 514-515 (N.C.1981) (in group-insurance context, employer "ordinarily" acts as agent of employees, not insurer). ERISA was held to preempt state law on this question in *UNUM Life Ins. Co. v. Ward*, 526 U.S. 358, 378 (1999). The relevant provision in ERISA is § 514(a), 29 U.S.C. § 1144(a), which preempts "any and all State laws insofar as they may now or hereafter relate to any employee benefit plan." The Court noted that the group disability policy involved in *UNUM Life* provided that "[f]or all purposes of this policy, the policyholder ... acts on its own behalf or as agent of the employee. Under no circumstances will the policyholder be deemed the agent of the Company ... without a written authorization." *Id.* at 378. Under ERISA, see 29 U.S.C. § 1104(a)(1)(D); subject to statutory

requirements and exclusions, a plan's documents define the duties of its fiduciary. Additionally, 29 U.S.C. § 1102(a)(1) requires that every employee benefit plan "be established and maintained pursuant to a written instrument." The plan instrument must "provide for one or more named fiduciaries who jointly or severally shall have authority to control and manage the operation and administration of the plan." *Id.* Thus, if a plan's instrument provides that an insurer who issues a group-insurance policy shall serve as the plan's fiduciary with authority over plan administration, and provides further that the employer shall not be deemed the insurer's agent without its authorization, characterizing the employer as the insurer's agent is inconsistent with the plan instrument and with the effect that ERISA gives to designations of plan fiduciaries.

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### Case Citations - by Jurisdiction

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C.A.9  
C.A.10,  
E.D.N.Y.  
Ky.  
N.Y. City Civ. Ct.  
Tenn.  
Tex.App.

#### C.A.9

**C.A.9**, 2013. Com. (c) quot. in sup. U.S. citizen who purchased a European rail pass from a Massachusetts travel agency's website, and who was seriously injured while using that pass to travel on a train in Austria, brought negligence claims, inter alia, against Austrian state-owned railroad that operated the train. The district court granted defendant's motion to dismiss for lack of subject-matter jurisdiction based on defendant's sovereign immunity under the Foreign Sovereign Immunities Act of 1976 (FSIA); a panel of this court affirmed. On rehearing en banc, this court reversed and remanded, holding that the commercial-activity exception to the FSIA applied where, as here, a common carrier owned by a foreign state acted through a domestic agent to sell tickets to a U.S. citizen or resident for passage on the foreign common carrier's transportation system. The court reasoned that the Massachusetts travel agency acted as an authorized subagent of defendant, because defendant authorized a marketing organization to act as its agent in selling tickets for its trains, and that organization enlisted subagents like agency to sell passes entitling passengers to board its trains; therefore, the agency's act of selling the pass to plaintiff within the United States could be imputed to defendant. *Sachs v. Republic of Austria*, 737 F.3d 584, 593.

**C.A.10,**

**C.A.10,** 2013. Com. (b) cit. in sup. Retailer of replacement contact lenses brought a claim for service-mark infringement under the Lanham Act against competitor, alleging, among other things, that a third-party marketer hired by competitor, known as an affiliate, had purchased keywords resembling plaintiff's 1800CONTACTS mark and was using the mark in the text of its online ads. The district court granted summary judgment for defendant. Affirming in part, this court held, inter alia, that defendant was not vicariously liable for its affiliate's allegedly infringing actions under agency law, because, even if the affiliate was an agent (or, more precisely, a subagent) of defendant, it lacked actual authority from defendant to include plaintiff's mark in ads for defendant, and defendant did not ratify the affiliate's actions. In making its decision, the court noted that the fact that certain affiliates might have worked for another advertiser at the same time that they were working for defendant did not necessarily mean that they could not have been agents of defendant, because an agent could serve multiple principals at once, even if the principals were competing with one another. *1-800 Contacts, Inc. v. Lens.com, Inc.*, 722 F.3d 1229, 1250.

**E.D.N.Y.**

**E.D.N.Y.** 2007. Com. (c) quot. in ftn. in sup. Ticketed passengers brought a class action against airline for, in part, breach of contract, arising from defendant's failure to operate international flights for which plaintiffs had purchased tickets from charter company. Denying in part defendant's motion for summary judgment, this court held that genuine issues of material fact existed as to whether charter company was defendant's agent, or vice versa, and whether defendant was bound by charter company's acts in entering into contracts with plaintiffs on defendant's behalf. The court noted that a finding that defendant acted as charter company's agent for some purposes did not rule out the possibility that charter company acted as defendant's agent for others, since the same actor could occupy different roles at successive points in an ongoing interaction between the parties. In re Nigeria Charter Flights Contract Litigation, 520 F.Supp.2d 447, 460.

**Ky.**

**Ky.** 2003. Com. (e) cit. in disc. (T.D. No. 3, 2002). After two intoxicated high school students left school together during school-sponsored activity in order to buy more alcohol, student passenger was killed in car accident. His parents and estate sued state Department of Education (DOE) for negligence and wrongful death. Trial court affirmed board of claims' dismissal of suit, and appeals court affirmed. This court affirmed dismissal for loss of consortium but reversed dismissal for wrongful death, holding that DOE could be held vicariously liable, because statutory relationship between DOE and local school board was more akin to that of principal-agent than to that of coagents. Legislative intent was to vest management, operation, and control of schools in DOE, with local boards acting as agents to implement DOE's policies at local level. *Williams v. Kentucky Dept. of Educ.*, 113 S.W.3d 145, 152.

**N.Y. City Civ.Ct.**

**N.Y. City Civ.Ct.** 2008. Quot. in sup. Airline passenger who purchased his

tickets through a travel agent brought action for breach of contract against airline, after airline bumped him from its international flight and failed to arrange alternative transportation. This court entered judgment in favor of plaintiff, holding, *inter alia*, that travel agent was acting as an agent of airline rather than as an independent contractor when it issued the tickets to passenger; thus, airline, as the principal, was responsible for travel agent's error in selling passenger a domestic-flight ticket that made it impossible for him to comply with airline's rule requiring a minimum of three hours check-in time for the international flight. *Rottman v. El Al Israel Airlines*, 18 Misc.3d 885, 849 N.Y.S.2d 431, 433.

#### Tenn.

**Tenn.2011.** Com. (c) cit. in ftn. to conc. and diss. op. Beneficiary who was denied benefits under her deceased husband's life-insurance policy sued insurance agents, alleging that defendants breached their contract with plaintiff and her husband by failing to procure a life insurance policy for husband that was not subject to contest. The trial court entered judgment for plaintiff; the court of appeals affirmed in part and remanded. Affirming in part, this court held that the wrongful conduct or omissions of defendants gave rise to a claim for failure to procure. A concurring and dissenting opinion argued that, while defendants were not liable as agents for plaintiff and her husband on plaintiff's contractual failure-to-procure claim, because there was no evidence that husband requested or that defendants offered to obtain immediately incontestable life insurance policies and because it was undisputed that husband received the insurance he requested, plaintiff's recovery of damages could be sustained based on defendants' breach of their fiduciary duties as insurance agents to exercise reasonable skill, care, and diligence in obtaining insurance coverage for plaintiffs as their clients. *Morrison v. Allen*, 338 S.W.3d 417, 450.

#### Tex.App.

**Tex.App.2013.** Cit. In sup. Inventor and owners of a process for mining potash (potassium-containing ore) sued inventor's former business partner and partner's company's subsidiary, alleging misappropriation of trade secrets and other claims. The trial court entered judgment on a jury verdict for plaintiffs. Affirming, this court rejected subsidiary's argument that, even after partner's company purchased subsidiary and partner became subsidiary's president, partner's alleged use of trade secrets was always on behalf of his own company, of which he was also president. The court held that the evidence supported the conclusion that subsidiary, through partner's conduct as its president in negotiating with potential investors, sought to profit from using plaintiffs' trade secrets, and the jury reasonably could have concluded that partner was acting in the course and scope of his employment with subsidiary, even though he represented himself as an agent of his own company. *Bishop v. Miller*, 412 S.W.3d 758, 773.

End of  
Document

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## WestlawNext

§ 3.16 Agent for Coprincipals  
Restatement of the Law - Agency (Approx. 7 pages)

Restatement (Third) Of Agency § 3.16 (2006)

Restatement of the Law - Agency

Database updated March 2015

Restatement (Thrd) of Agency

Chapter 3. Creation and Termination of Authority and Agency Relationships

Topic 5. Agents with Multiple Principals

§ 3.16 Agent for Coprincipals

Comment:

Reporter's Notes

Case Citations - by Jurisdiction

**Two or more persons may as coprincipals appoint an agent to act for them in the same transaction or matter.**

**Comment:**

*a. Scope and cross-references.* Comment *b* discusses agents who act for coprincipals. Comment *c* discusses termination of actual authority held by an agent for coprincipals.

*b. Agent for coprincipals.* Multiple principals may consent that an agent take action on their behalf in the same transaction or other matter. For example, neighbors may authorize a single lawyer to represent their interests in opposing a proposed change in the zoning of nearby property. Additionally, coprincipals may authorize an agent to take action that will result in a contract that binds them jointly. Unless otherwise agreed, authority given by two or more principals jointly includes only authority to act for their joint account.

**Illustration:**

**Illustration:**

1. P and B own a tract of land as tenants in common. Each also owns a tract of land individually. P and B give A a written power of attorney that authorizes A to "sell and convey all the land we own together." A has actual authority to sell only the land that P and B own as tenants in common.

An agent who acts on behalf of more than one principal in the same matter or transaction owes duties to all principals. When there is no substantial conflict among the principals' interests or their instructions to the agent, the agent may fulfill duties owed to all principals. However, by serving the

**SELECTED TOPICS**

Rights and Liabilities as to Third Persons  
Mere Existence of Relation of Principal and Agent

**Secondary Sources**

§ 417. Generally; actual authority

2A C.J.S. Agency § 417

...It has been said that there are three separate types of agency, any of which are sufficient to bind the principal to a contract entered into by an agent with a third party, and make the principal respo...

§ 66. Generally; express authority

3 Am. Jur. 2d Agency § 66

...Actual authority is such as a principal intentionally confers upon the agent or intentionally or by want of ordinary care allows the agent to believe him- or herself to possess. Actual authority can be...

§ 418. Apparent authority

2A C.J.S. Agency § 418

...Under the theory of apparent authority, also known as ostensible authority or apparent agency, the principal is bound by all the acts of the agent coming within the apparent scope of the authority conf...

See More Secondary Sources

**Briefs**

**BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING AFFIRMANCE**

2002 WL 31016544

Meyer v. Holley

United States Supreme Court Amicus Brief, September 09, 2002

...The Fair Housing Act (FHA), 42 U.S.C. 3601 et seq., prohibits discrimination in housing on the basis of race, color, religion, sex, disability, familial status, and national origin. The Department of H...

**Reply to Brief in Opposition**

1995 WL 17048166

WINBACK AND CONSERVE PROGRAMS, INC., and Alfonso G. Inga, Petitioners, v.

AMERICAN TELEPHONE AND TELEGRAPH COMPANY, Respondent.

Supreme Court of the United States,

April 20, 1995

...The Third Circuits opinion is wrong for the following reasons: 1. It imports common law doctrines of vicarious liability into the Lanham Act which are inconsistent with the statutory text. Precedent l...

**JOINT APPENDICES, VOL. 1**

1992 WL 938020

Verindan B.V. v. Central Bank of Nigeria

Supreme Court of the United States,

March 16, 1992

...Plaintiff, complaining of the defendant by its attorneys, Bailey, Marshall, Hoenlger & Freitag, respectively shows to this Court and alleges: 1. Federal jurisdiction is founded upon the provisions of §...

See More Briefs

**Trial Court Documents**

In re Reichhold Holdings US, Inc

2014 WL 777205

interests of one principal, an agent may serve the interests of others less well when the principals' interests or their instructions to the agent diverge. The relationship among coprincipals may evolve from one of allied interests to one of materially divergent interests. For example, the interests of P and B in Illustration 1 would become adverse if P proposes to purchase the property that P and B own as tenants in common. The interests of P and B may also diverge as a consequence of the dissolution of a marriage or a civil union between them. On the position of an agent who represents multiple principals with adverse interests, see § 8.03. On the duties owed by a lawyer when the lawyer represents coclients whose interests conflict, see Restatement Third, The Law Governing Lawyers §§ 128-131. In some situations, a lawyer may not represent clients whose interests conflict despite the clients' knowledge and consent. See *id.* § 128(2) (clients who oppose each other in litigation) and § 122(2)(c) (circumstances make it reasonably likely that lawyer will not be able to provide adequate service to one or more clients).

An association among persons through which an agent's action may lead to joint liability is not necessarily a relationship among coprincipals. Partnership legislation, which defines a partnership as an association of two or more persons as co-owners to carry on a business for profit, provides that partners shall be jointly or jointly and severally liable for partnership obligations. However, not all of the legal consequences of partnership are fully identical to those of a relationship among coprincipals. Under partnership legislation, partners are agents of the partnership, but not directly of each other. See Unif. Partnership Act (1914) § 9(1) ("[e]very partner is an agent of the partnership for the purpose of its business..."); Unif. Partnership Act (1997) § 301 ("[e]ach partner is an agent of the partnership for the purpose of its business."). This is contrary to an implication that may be drawn from the statement made in Restatement Second, Agency § 20, Comment *f*, that "[a] number of persons, such as the members of a partnership, may act jointly in the authorization of an agent." Characterizing a partnership itself as the principal, as opposed to characterizing individual partners as coprincipals, is relevant to termination of agency authority. See Comment *c* and Illustrations 3 and 4.

*c. Termination of agent's actual authority.* An agent empowered to act on behalf of more than one principal has a relationship of agency as defined in § 1.01 with each principal. As a consequence, an occurrence that would terminate an agent's actual authority when the agent acts for one principal is equally effective when the agent acts for more than one principal. Each principal's manifestation to an agent may state whether the principal consents to be bound by action taken by the agent after the agent's authority on behalf of another principal has terminated. Agreement among the principals that their agent's authority shall be irrevocable or shall be revocable only under stated circumstances does not eliminate the power held by each principal to revoke the agent's authority, although a principal's revocation contravenes the agreement. If an agent is authorized to act only on the joint account of all coprincipals, revocation of authority by one coprincipal terminates the agent's authority to act on the joint account of the other coprincipals.

#### Illustration:

In re Reichhold Holdings US, Inc.  
United States Bankruptcy Court, D. Delaware  
December 04, 2014

...Upon the motion (the "Motion"), dated September 30, 2014 (the "Petition Date"), of Reichhold Holdings US, Inc. ("Reichhold") and its affiliated debtors, as debtors and debtors in possession (collective...

In re Ultimate Escapes Holdings, LLC

2010 WL 6882198  
In re Ultimate Escapes Holdings, LLC  
United States Bankruptcy Court, D. Delaware  
September 20, 2010

...FN1. A list of the Debtors in these chapter cases, along with the last four digits of each Debtor's federal tax identification number, is attached hereto as Schedule "1". Chapter 11 Upon the motion, da...

In re Bigler LP

2009 WL 8188704  
In re Bigler LP  
United States Bankruptcy Court, S.D. Texas  
November 24, 2009

...Chapter 11 Upon the Motion, dated November 17, 2009 (the "Motion"), of Bigler LP ("Bigler"), Bigler Land, LLC ("Land"), Bigler Petrochemical, LP ("Petrochemical"), Bigler Plant Services, LP ("Plant Ser...

See More Trial Court Documents

**Illustration:**

2. P and Q each own 20 percent of the stock of S Corporation. P and Q believe that T, who also owns 20 percent of S Corporation's stock, is interested in acquiring a majority of S Corporation's stock. P and Q, also believing that T will pay more for each share of their stock if T purchases both of their interests in the same transaction, retain A to deal with T on their behalf. P makes a manifestation to A revoking A's authority to deal with T on P's behalf. A no longer has authority to deal with T on Q's behalf, unless Q separately retains A for that purpose, because A's retention by P and Q was to deal on their joint account.

Partnership legislation makes the partnership itself the principal in relationships of agency with each partner and with the partnership's other agents. See Comment *b*. Thus, a partner's manifestation revoking authority is, by itself, ineffective to terminate the actual authority of a fellow partner or other agent to act on behalf of the partnership. How the actual authority of a partner or other agent may be revoked is governed by the partnership agreement, by the mechanisms of governance that it creates, and by partnership legislation. A partner has power to dissolve a partnership or dissociate from it by manifesting an intention to dissolve or dissociate, even when the dissolution or dissociation contravenes terms in the partnership agreement. See Unif. Partnership Act (1914) § 31(2); Unif. Partnership Act (1997) § 602(a) and (b). Dissolution and dissociation carry consequences for the partner and the partnership beyond terminating the actual authority of the other partners and the partnership's other agents to do further acts that bind the dissolving or dissociating partner. However, a single partner's dissent to another partner's proposed course of action may negate the other partner's reasonable belief that the action may be taken with actual authority on behalf of the partnership. Such negation may occur when, for example, the partners' course of prior conduct required consensus prior to taking action.

**Illustrations:****Illustrations:**

3. B, C, and D are the members of a general partnership in the commercial real-estate business. The partnership agreement provides that B shall be the managing partner and shall have authority to make decisions concerning the day-to-day operation of the partnership, including the terms on which the partnership leases its properties to tenants. C learns that B plans to enter into a lease with T on terms that C believes to be unduly favorable to T. C tells T that C will not be bound by such terms and tells B that C revokes B's authority to make leasing decisions. B enters into the lease with T on the terms to which C objects. The partnership is bound by the lease. The partnership agreement allocated authority to make leasing decisions to B. C does not have power to revoke B's authority.

4. Same facts as Illustration 3, except that the partnership employs E to determine the terms on which the partnership shall lease its properties to tenants. The partnership agreement provides that decisions to hire and fire employees shall be made by the partnership's management committee, which is comprised of B and D. Objecting to the terms on

which E plans to lease property to T, C tells E that E is fired. E enters into the lease with T on the terms to which C objects. The partnership is bound by the lease. The partnership employed E to make leasing decisions. C does not have authority, acting unilaterally, to terminate E's employment by the partnership.

A partnership agreement may provide that the withdrawal or dissociation of an individual partner from the partnership shall not dissolve the partnership itself or terminate its existence. Contemporary partnership legislation makes such provisions effective, subject to limits imposed by the statute itself. See Unif. Partnership Act § 103(a) and (b)(8).

In the corporate context, shareholders in a corporation may agree that their shares shall be voted as provided in the agreement and may agree that a person other than the shareholder shall have power to direct how the shares shall be voted. Under some corporation statutes, such a voting agreement may be specifically enforceable despite the opposition of a shareholder who is a party to the agreement, although the agreement does not explicitly confer an irrevocable proxy on the person whose instructions control how the shares shall be voted. See § 3.12, Comment *d*, for discussion of irrevocable proxies.

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#### Reporter's Notes

*a. Comparisons with Restatement Second, Agency, and codifications.* Restatement Second, Agency, does not formally define when an agent acts for coprincipals or joint principals. See Restatement Second, Agency §§ 14D, Comment *c* (distinguishing escrow holder from agent for joint principals, "since [escrow holder's] power to act can not be terminated by either of the parties who created the escrow, in the absence of an agreement otherwise, and is not terminated by the death of either or both"); 20, Comment *e* (discussing agent who acts for an "unincorporated group of persons," who may be an agent of either all members of the group or only certain members); *id.*, Comment *f* (stating that a group of persons, "such as the members of a partnership," may act jointly in the appointment of an agent); 41 (stating principles of interpretation when principals or agents are joint); 123 (stating that death or loss of capacity of 1 of 2 or more joint principals terminates agent's authority to act on their joint account to the same extent as does death or loss of capacity of single principal); 148, 187, and 294 (stating that when an agent is authorized to make a number of individual contracts for different principals, agent lacks power to bind principals jointly to one aggregated contract unless principals have agreed to be jointly liable); 275, Comment *f* (discussing agent's duty to disclose information to joint principals).

Most codes do not deal explicitly with agents who act on behalf of coprincipals. However, Ga. Code § 10-6-23 (1996 & Supp. 2004) provides that "[w]here several persons shall appoint an agent to do an act for their joint benefit, the instructions of one, not inconsistent with the general

directions, shall protect the agent in his act."

*b. Agent for coprincipals.* For the point that multiple principals are not bound by an agent's act in the absence of assent, see *First Nat'l Bank of Omaha v. Acceptance Ins. Cos.*, 675 N.W.2d 689, 702 (Neb.App.2004) (agreement of former shareholders in insurance company to form committee to pursue their interests did not bind any shareholder to accept a settlement that majority might make; dissenting shareholder not bound by settlement reached by committee). It has often been said that partners are each other's agents. This may be explained by the joint or joint and several liability that the law imposes on individual partners in a general partnership. See Unif. Partnership Act § 15; Rev. Unif. Partnership Act § 306. The characterization of partnership as a relationship of mutual agency has also been used to justify the power that partners have to dissolve the partnership or dissociate from it, albeit in contravention of the partnership agreement. See William Draper Lewis, *The Uniform Partnership Act*, 24 Yale L.J. 617, 628 (1915) ("the relation of partners is one of agency. The agency is such a personal one that equity cannot enforce it, even where the agreement provides that the partnership shall continue for a definite time."). In contrast, English partnership law does not recognize the power of a partner to dissolve the partnership in contravention of terms in the partnership agreement. See *id.* at 627-628 n.8; Partnership Act 1890 § 32. Cases that preceded partnership legislation characterized each partner as the agent of copartners. See, e.g., *Cox v. Hickman*, 8 H.L. Cas. 267 (1860). English partnership legislation provides that each partner is an agent "of the firm and his other partners for the purpose of the business of the partnership." The Partnership Act 1890 § 5. Under § 5, a partner's acts "for carrying on in the usual way business of the kind carried on by the firm of which he is a member bind the firm and his partners...." In contrast, § 9(1) of the Uniform Partnership Act (1914) and § 301 of the Uniform Partnership Act (1997) provide that such an act by a partner "binds the partnership." On the implications of these long-standing fundamental differences between partnership law in the United States and England, see Deborah A. DeMott, *Transatlantic Perspectives on Partnership Law: Risk and Instability*, 26 J. Corp. L. 879 (2001).

*c. Termination of agent's actual authority.* For the basic point, see Francis M.B. Reynolds, *Bowstead & Reynolds on Agency* 569 (17th ed. 2001).

On termination of authority within partnerships, disputes involving two-member partnerships are illustrative. Compare *Summers v. Dooley*, 481 P.2d 318 (Idaho 1971) (partner in 2-member partnership lacked authority to hire additional employee when fellow partner voiced dissent to hiring; court interprets Unif. Partnership Act (1914) § 18(e) to give equal rights in the management of partnership business to all partners in the absence of agreement to the contrary and *id.* § 18(h), which requires any difference as to ordinary matters to be decided by a majority of the partners, to mean that in equally divided partnership partners opposed to change prevail) with *National Biscuit Co. v. Stroud*, 106 S.E.2d 692 (N.C.1959) (partner in 2-member partnership told agent of plaintiff that he would not be responsible for additional bread sold to business but plaintiff delivered more bread at other partner's request; court holds that one partner could not restrict authority of fellow partner as to an ordinary matter conducted with partnership business; decision supported by a majority of partners required

to impose restriction on partner's authority to act within scope of partnership business). A helpful generalization is that "each partner has the power to bind the partnership despite the objection of the other, even as to third parties with notice of dissent, if the action is consistent with a decision already made by both the partners, but a partner cannot unilaterally bind the partnership as to a new course of action." Alan R. Bromberg & Larry E. Ribstein, 2 Bromberg & Ribstein on Partnership 6:63 (2001). The underlying rationale requiring a partner to dissolve the partnership to terminate the authority of a copartner is that "an agent exercises authority for the exclusive benefit of the principal, while a partner exercises authority by mutual agreement for the mutual benefit of the partners. It follows that a partner cannot terminate authority without severing this mutual relationship." *Id.* at 6:64-6:65. Additionally, a partner does not have power to terminate the authority of a nonpartner agent of the partnership, acting unilaterally beyond the partnership agreement and the mechanisms of governance it creates, even though a nonpartner agent is not acting for the mutual benefit of the agent and the partners.

On the enforcement of voting agreements, Model Bus. Corp. Act § 7.31(b) provides that a voting agreement between two or more shareholders shall be specifically enforceable. Section 7.31(a) requires the agreement to be in writing. According to the Official Comment, § 7.31(b) "recognizes that damages are not likely to be an appropriate remedy for breach of a voting agreement ..." and that the drafters intended to avoid the result in *Ringling Bros.-Barnum & Bailey Combined Shows v. Ringling*, 53 A.2d 441 (Del.1947). The voting agreement in *Ringling* required the two shareholders who were parties to the agreement to vote according to the instructions of an arbitrator when they were unable to reach agreement but did not designate either the arbitrator or the shareholders as proxies. When one shareholder voted contrary to the arbitrator's instructions, the court held that the appropriate remedy was to disregard those votes; the court refused to imply a power in either the arbitrator or the other shareholder to vote the recalcitrant shareholder's shares according to the arbitrator's instructions. Following *Ringling*, the Delaware statute was amended to add § 218(c), which provides that a written agreement among shareholders "may provide that in exercising any voting rights, the shares held by them shall be voted as provided in the agreement, or as the parties may agree, or as determined in accordance with a procedure agreed upon by them." Voting agreements among shareholders are made specifically enforceable by a majority of contemporary corporation statutes. See 5 Fletcher Cyclopedia of Private Corporations § 2067 (Perm. rev. ed. 1996). Some corporation statutes explicitly provide mechanisms to achieve results tantamount to specific enforcement. See, e.g., Me. Rev. Stat. § 617(3) (providing that voting agreement shall be deemed to constitute an irrevocable proxy to designated arbitrator or umpire unless agreement expressly provides otherwise), discussed in James Zimpritch, *Maine Corporation Law and Practice* § 6.13 (1991 Supp.).

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**Case Citations - by Jurisdiction**

E.D.N.Y.Bkrcty.Ct.

Tex.App.

**E.D.N.Y.Bkrcty.Ct.**

**E.D.N.Y.Bkrcty.Ct.**2011. Cit. and quot. in sup. Debtor/off-track betting corporation challenged racetrack owner's standing to object to debtor's Chapter 9 bankruptcy petition. Dismissing the petition, this court held that racetrack owner, as a party to an executory contract with debtor for the simulcast at debtor's locations of races run on owner's tracks, had standing to object to the entry of an order for relief in this case; although owner was not named as a party in the contract in question, media company entered into that contract, as well as the amended contract, which extended the contract's term, as its agent. This court rejected debtor's argument that, even if media company executed the amended contract as an agent for owner and other principals, owner would not have standing to enforce the contract unless all of the principals joined in the action, explaining that an agent could enter into a single contract on behalf of multiple principals, and each of those principals was a party to the contract with standing to enforce its rights thereunder. In re Suffolk Regional Off-Track Betting Corp., 462 B.R. 397, 410, 411.

**Tex.App.**

**Tex.App.**2013. Cit. in sup. Inventor and owners of a process for mining potash (potassium-containing ore) sued inventor's former business partner and partner's company's subsidiary, alleging misappropriation of trade secrets and other claims. The trial court entered judgment on a jury verdict for plaintiffs. Affirming, this court rejected subsidiary's argument that, even after partner's company purchased subsidiary and partner became subsidiary's president, partner's alleged use of trade secrets was always on behalf of his own company, of which he was also president. The court held that the evidence supported the conclusion that subsidiary, through partner's conduct as its president in negotiating with potential investors, sought to profit from using plaintiffs' trade secrets, and the jury reasonably could have concluded that partner was acting in the course and scope of his employment with subsidiary, even though he represented himself as an agent of his own company. Bishop v. Miller, 412 S.W.3d 758, 773.

**End of  
Document**

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RESTATEMENT (LIMITED) OF AGENCY § 7.03 (2000)

## Restatement of the Law - Agency

Database updated March 2015

## Restatement (Third) of Agency

## Chapter 7. Torts—Liability of Agent and Principal

## Topic 2. Principal's Liability

## § 7.03 Principal's Liability—In General

Comment:

Reporter's Notes

Case Citations - by Jurisdiction

**(1) A principal is subject to direct liability to a third party harmed by an agent's conduct when**

**(a) as stated in § 7.04, the agent acts with actual authority or the principal ratifies the agent's conduct and**

**(i) the agent's conduct is tortious, or**

**(ii) the agent's conduct, if that of the principal, would subject the principal to tort liability; or**

**(b) as stated in § 7.05, the principal is negligent in selecting, supervising, or otherwise controlling the agent; or**

**(c) as stated in § 7.06, the principal delegates performance of a duty to use care to protect other persons or their property to an agent who fails to perform the duty.**

**(2) A principal is subject to vicarious liability to a third party harmed by an agent's conduct when**

**(a) as stated in § 7.07, the agent is an employee who commits a tort while acting within the scope of employment; or**

**(b) as stated in § 7.08, the agent commits a tort when acting with apparent authority in dealing with a third party on or purportedly on behalf of the principal.**

---

**Comment:**

*a. Scope and cross-references.* This section provides an overview of the bases on which a principal may be subject to liability for the conduct of an agent or other actor. The Comments also cover points of general significance throughout this Topic. Comment *b* discusses general differences between a principal's liability based on the principal's own conduct and a principal's vicarious liability for torts committed by an agent. Comment *c* discusses attribution of conduct when a principal is an organization. Comment *d* discusses agents who have more than one principal, including individuals who are officers of interrelated corporations or other entities. Comment *e* discusses a principal's liability for punitive damages when the principal is

discusses agents who have more than one principal, including individuals who are officers of interrelated corporations or other entities. Comment e discusses a principal's liability for punitive damages when the principal is vicariously liable for a tort committed by an agent.

*b. Liability on basis of principal's own conduct; vicarious liability.* A principal's own fault may subject the principal to liability to a third party harmed by an agent's conduct. Often termed "direct liability," such liability stems either from the principal's relationship with an agent whose conduct harms a third party or from the agent's failure to perform a duty owed by the principal to the third party. A principal is subject to liability under § 7.04 when an agent acts with actual authority in committing a tort, that is, when the agent reasonably believes, based on a manifestation of the principal, that the principal wishes the agent so to act. A principal is subject to liability under § 7.05 on the basis of the principal's negligence in selecting, supervising, or otherwise controlling or failing to control the agent. A principal is subject to liability under § 7.06 when the principal owes a duty to protect a third party and an agent to whom the principal has delegated performance of the duty fails to fulfill it.

An agent's tort may, separately, subject a principal to vicarious liability. Under § 7.07, a principal is subject to liability when an agent who is an employee as defined in § 7.07(3) commits a tort while acting within the scope of employment. Under § 7.08, a principal is subject to liability when actions taken by an agent acting with apparent authority constitute a tort or enable the agent to conceal its commission. A principal who is vicariously liable may, additionally, be subject to liability on the basis of the principal's own conduct.

Significant consequences may follow from the distinction between direct and vicarious liability. In particular, a principal's vicarious liability turns on whether the agent is liable. In most cases, direct liability requires fault on the part of the principal whereas vicarious liability does not require that the principal be at fault. The distinction may also be relevant to whether a loss is insurable.

Principals, not agents, are subject to vicarious liability. However, an agent who appoints a subagent is subject to vicarious liability for the subagent's torts on the same bases that subject a principal to vicarious liability for an agent's torts. Comment *d(1)* discusses this aspect of subagency.

*c. Organizational principals.* A principal that is not an individual can take action only through its agents, who typically are individuals. Even when an agent is not an individual, its ability to act derives from its own agents. An organization's tortious conduct consists of conduct by agents of the organization that is attributable to it. An organization may breach a duty of care that it owes to a third party even though the breach cannot be attributed to any single agent of the organization. Thus, an organization's conduct may be tortious when it fails to fulfill a duty that the organization owes to a third party. For example, a custodian owes a duty of reasonable care to third parties with respect to risks created by those in its custody. See Restatement Third, Torts: Liability for Physical Harm § 41(b)(2) (Proposed Final Draft No. 1, 2005). A custodian that is an organization would breach its duty of reasonable care through the action or inaction of its employees and other agents, including the prescription and enforcement by managerial agents of directives and guidelines to be followed by other agents.

*d. Agents with multiple principals.* An agent who commits a tort may have more than one principal for at least some purposes. An agent with multiple

*d. Agents with multiple principals.* An agent who commits a tort may have more than one principal for at least some purposes. On agents with multiple principals in general, see Chapter 3, Topic 5. In the context of a principal's liability on the basis of an agent's tort, it is helpful to distinguish among three different types of relationships: (1) subagency; (2) employees who are "borrowed" by one employer from another employer; and (3) officers of interrelated entities.

RESTATEMENT (SECOND) OF AGENCY § 226 (1950)

Restatement of the Law - Agency

Database updated March 2015

Restatement (Second) of Agency

Chapter 7. Liability of Principal to Third Person; Torts

Topic 2. Liability for Authorized Conduct or Conduct Incidental Thereto

Title B. Torts of Servants

Who Is A Servant

§ 226 Servant Acting for Two Masters

Comment:

Case Citations - by Jurisdiction

**A person may be the servant of two masters, not joint employers, at one time as to one act, if the service to one does not involve abandonment of the service to the other.**

---

**Comment:**

*a. Independent service for two masters.* Since one can perform two acts at the same time, it is possible for each act to be performed in the service of a different master, although ordinarily the control which a master can properly exercise over the conduct of the servant would prevent simultaneous service for two independent persons. Likewise, a single act may be done to effect the purposes of two independent employers. Since, however, the relation of master and servant is dependent upon the right of the master to control the conduct of the servant in the performance of the service, giving service to two masters at the same time normally involves a breach of duty by the servant to one or both of them. A person, however, may cause both employers to be responsible for an act which is a breach of duty to one or both of them. He may be the servant of two masters, not joint employers as to the same act, if the act is within the scope of his employment for both (see § 236); he cannot be a servant of two masters in doing an act as to which an intent to serve one necessarily excludes an intent to serve the other. A subservant necessarily acts both for his immediate employer and the latter's master, who is also his own master. See § 5.

**Illustrations:****Illustrations:**

1. P employs A to drive P's truck, directing him to obey the orders of B, who has hired the truck by the hour for advertising purposes, in the management of colored lights used upon the truck for lighting the display installed thereon. In the driving of the truck, A is P's servant; in the management of the colored lights, A is B's servant. If A injures T by negligently running into him because he dims the headlights in order to make the colored lights more conspicuous, both B and P are subject to liability to T. If A injures T as a result of an explosion caused by the

make the colored lights more conspicuous, both B and P are subject to liability to T. If A injures T as a result of an explosion caused by the materials used in producing the colored lights, B alone is subject to liability.

2. P employs A by the day as a messenger boy, authorizing him to use a bicycle in performing his duties. B also employs A on the same terms. Neither knows of the employment by the other. A, having packages to deliver to the same destination for both P and B, places them on his bicycle and negligently runs into T while on the way to deliver them. Both P and B are subject to liability to T.

3. P engages B to build a house for him for a fixed sum, B to employ his own servants. A is employed by B as a carpenter and also (with B's consent or without it) by P as a general inspector on a fixed salary, to inspect the work as it progresses. While A is measuring a cupboard which he has just built to be sure that the measurements are as specified, he negligently injures T. In doing this, A is the servant of P or B, but not of both.

---

#### Comment:

*b. Where two masters share services. Two persons may agree to employ a servant together or to share the services of a servant. If there is one agreement with both of them, the actor is the servant of both at such times as the servant is subject to joint control. If, however, it is agreed that control shall alternate, the actor is the servant only of the one for whom he is acting at the moment.*

#### Illustrations:

#### Illustrations:

4. P and B set up a bachelor apartment and employ a chauffeur, A, it being understood that A is to receive half his wages from each of them, and is at all times to obey the orders of either of them. A, while driving negligently in a borrowed automobile to deliver P's suit to the tailor, injures T. A is the servant of P and of B at the time.

5. A railroad agrees with a telegraph company that each will separately pay A, one for his work as station agent, the other for his service as telegram dispatcher. While A is selling tickets, he is the servant of the railroad; while he is sending commercial telegrams he is the servant of the telegraph company.

**PROOF OF SERVICE OF DELIVERY BY U.S. MAIL**

I, **Cindy Breninger**, declare that I am over the age of eighteen years and not a party to the action. I am a resident or employed in the county where the mailing took place. My business address is: **515 12<sup>th</sup> Street, Sacramento, CA 95814.**

On, **October 9, 2015**, I mailed from Sacramento, CA, the following document:  
**Comments on Case No. AO-359822 Being Designated a Board Precedent.**

I served the document by enclosing it in an envelope and placing the envelope for collection and mailing following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

The envelope(s) were addressed and mailed as follows:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

---

Date

---

Cindy Breninger

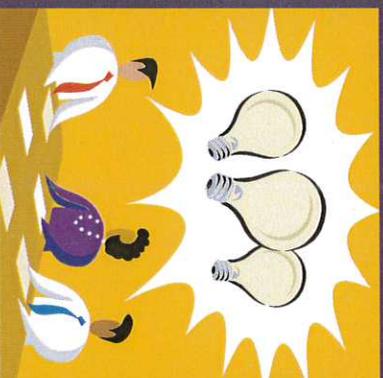


# Bagley-Keene Open Meeting Act

Training for State Bodies

# Purpose of Open Meeting Act

- Promotes an open consensus building model of decision making.
- Ensures the public a seat at the table.



# What is a “state body?”

- A body created by statute or executive order.
- Delegated body created by state body.
  - A body that exercises delegated authority.
  - Two or more members.

# What is a “state body?”

- Advisory body created by state body.
  - Subcommittees, task forces, advisory committees, etc.
  - Three or more members.
  - Created by official action of state body or state body member.

# What is a “state body”?

- Public or private body funded by state body with a state body member representative.
- New members.

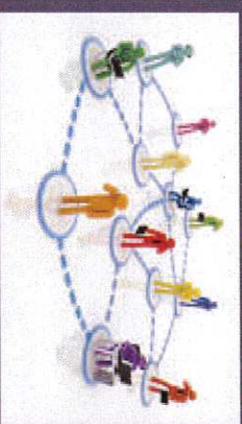
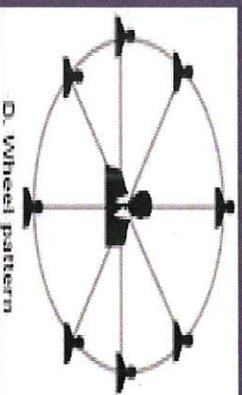
# What is a meeting?

- Gathering of a majority of members of a state body.
- Includes all phases of decisionmaking from information gathering to final vote.



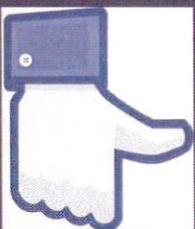
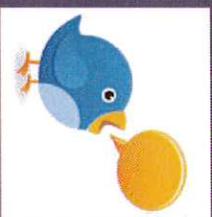
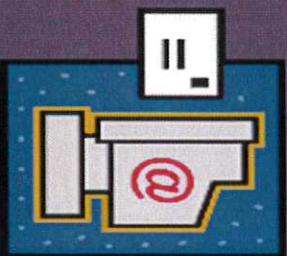
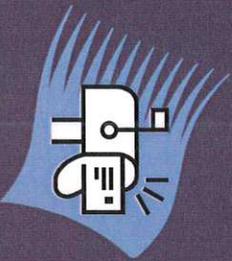
# Serial Communications: Prohibition

- Members of a state body must avoid serial communications outside of a public meeting among a quorum of members or through an intermediary.



# Serial Communications: Prohibition

- Prohibition applies to ALL forms of communication.



# Serial Communications: Exception

- Staff may brief one board member one at a time.
- Must not share communications from other board members during briefing.

# What is “not” a meeting?

- Communication with one other person (but not a serial meeting).
- Exceptions for some events at which a quorum is present (e.g., public conferences, public meetings, social events, standing committee meetings).

# Meeting Notices

- Agenda must be posted on Internet 10 calendar days before meeting
- Must provide notice in writing to anyone who requests it.

# Meeting Notices

- Brief description of particular matters to be discussed.
- Must give the average person enough information to decide whether to attend or participate in the meeting.
- Notice must be provided in alternative formats upon request by any person with a disability.

# Meeting Notices

- May not add items to agenda during 10 day notice period.
- Exceptions: Emergency (majority vote) or need to take immediate action (2/3 vote).

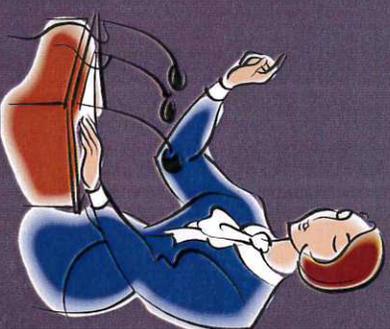
# Teleconference Meetings

- Subject to special notice requirements.
- Teleconference location must be accessible to public and ADA compliant.



# Rights of the Public

- Right to participate at public meetings.
- No identification required.
- Reasonable time limits.



# Rights of the Public

- Right to access public meeting records.
- Best practice is to post agency's public meeting records on website before meeting.
- Some records may be exempt from disclosure.

# Closed Sessions

- List of limited exceptions. Some exceptions are specific to one agency.
- Personnel decisions.
- Pending litigation.

# Closed Sessions: Procedures

- Specific notice requirements on agenda.
- Specific pre-convening and post-convening requirements.
- Special attendance requirements and restrictions.

# Closed Sessions: Procedures

- Board members may not stray into other topics, even if related.
- Board members must keep closed session discussion confidential.

# Penalties and Enforcement

- Violations may result in criminal and civil penalties and attorney fee awards.
- Governmental decision may be invalidated.

