

July 23, 2018

TO: ERMA Members

FROM: Jennifer Jobe, Executive Director, & Kathy Maylin, Litigation Manager

SUBJECT: Important Information Regarding ERMA's 2018/19 Program Year

Welcome to ERMA's 19th Program Year! We proudly continue as the first and only state-wide public sector employment practices liability risk sharing pool with a membership of over 200 agencies. The following information provides key program highlights and developments of interest to all members:

New Member

Please join us in welcoming the City of San Jacinto (PERMA), effective July 1, 2018.

2018/19 Memorandum of Coverage

The Memorandum of Coverage (MOC) for the 2018/19 Program Year may be viewed on the ERMA website within the member portal. A few important coverage reminders:

- ERMA's MOC defines "Occurrence" as "an act, policy, or course of conduct by a Covered Party during the Coverage Period which results in a Claim for Wrongful Employment Practice during the Coverage Period if the <u>first act, policy or course of conduct occurred during the Coverage Period.</u>"
- As a condition of coverage, all claims must be reported to ERMA within 30 days of receipt of the written claim. "Oral' claims may also be memorialized in writing and submitted to begin coverage. The MOC states, "any claim reported after 30 days, except one which the Litigation Manager has discretion to accept, will be denied as untimely". For all late-reported claims for which the Covered Party's appeal of the denial of coverage is granted, the Board shall increase the Covered Party's Retained Limit as noted within the MOC.

If you have questions regarding what constitutes a claim or reporting requirements, please contact Kathy Maylin, Litigation Manager, at (800) 541-4591, ext. 19181 or kmaylin@bickmore.net.

2018/19 Excess Coverage

Following the addition of two JPAs (ERMAC & CalTIP) and several underlying members belonging to existing primary JPA members, the Board approved increased limits to the optional excess insurance coverage structure. For those members participating in ERMA's excess program, effective July 1, 2018, the per claim limit will increase from \$1M to \$2M and the per member limit will increase from \$2M to \$4M. The policy aggregate will remain at \$10M.

2018/19 Training Program

A list of scheduled trainings to-date, for the 2018/19 Program Year, is available for viewing on the ERMA website. Each year, a slate of topical and relevant employment related trainings are offered to the



membership. This year's training topics include: AB 1825; Term or Not to Term; Performance Management; Bias in the Workplace; Human Resources for Non-HR Managers; Making the Most of Your Multi-Generational Workforce; and Leading the Charge to Change.

Staff is scheduling training sessions through June 30, 2019. If your Agency is interested in serving as a host site, please contact Jennifer Jobe, Executive Director, at (800) 541-4591, ext. 19141 or jjobe@bickmore.net.

Email notifications are sent to your Agency's designated training contact(s) approximately one month prior to the scheduled training date. All pertinent information, along with a link to register for participation, is provided within these notifications. To view the 2018/19 Program Year training schedule, please visit the Programs page on the ERMA website.

New ERMANet Training Registration

Members will utilize the *ERMANet* platform to register for trainings. The new registration system will streamline processes and ensure efficient tracking. An *ERMANet* account login and password is required to access the registration system. Members with access to ERMA's weekly training bulletins and online training modules through *in2vate*, should use existing login credentials. For those who do not typically access *ERMANet* through *in2vate*, will be required to self-register prior to obtaining login access. Detailed self-registration instructions will be sent with each training session notification message throughout the year and is included with this communication. If you experience any issues accessing *ERMANet*, please contact Jennifer Jobe, Executive Director, at (800) 541-4591, ext. 19141 or jjobe@bickmore.net.

Important Reminders Regarding AB 1825 Compliance

ERMA <u>does not</u> maintain training records; this is each individual Agency's responsibility.

Members unable to provide documentation evidencing substantial compliance with AB 1825 requirements will be subject to a 100% increase of their self-insured retention for the submitted claim. Substantial compliance is defined as having 90% of all managers, supervisors and elected officials trained as of the date of occurrence.

For additional information regarding the Training Program, please refer to the attached Training Program FAQ. Members may also contact us directly at (800) 541-4591, ext. 19141, or jjobe@bickmore.net.

Financial Update

At the May 1, 2018, meeting, the Board of Directors declared a dividend in the amount of \$3,000,000 and a contribution to the Capital Contribution Fund in the amount of \$150,000. This dividend brings the total amount returned to ERMA members over the past five years to \$19.5M. ERMA's healthy financial position is a direct result of the strong focus by the membership on training and risk avoidance, as well as the strong business partnerships across the membership that assist in managing litigation as it occurs.

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Quick Reference Handbook

The attached Quick Reference Handbook provides information regarding the various services ERMA offers to its members, important information regarding AB 1825 compliance and claims reporting, and contact information for all ERMA staff.

Attachments

- 1. ERMANet Access Instructions
- Training Program FAQ
 Quick Reference Handbook

ERMA 2018-28



Quick Reference Guide



WELCOME TO ERMA

On behalf of the Board of Directors of the Employment Risk Management Authority (ERMA), we would like to welcome you to ERMA. As set forth in our mission statement, ERMA is the premier authority for employment liability coverage protecting California public entities. ERMA reduces employment practices liability (EPL) risk through comprehensive and innovative training and the valuable resources it provides to its members.

This Quick Reference Guide contains information about the scope of services available to members, ERMA's Litigation Management Program, Claim Reporting Procedures, and other important information about the program. We are also very pleased to offer an up-to-date and user-friendly website that allows members to view the ERMA training calendar, register for workshops, access ERMA governing documents, obtain claim reporting forms, and print agendas and minutes of the Board of Directors' meetings. Staff is also available to answer any questions you may have.

Through its commitment to preventative training, member relationships, and active litigation management, ERMA is fulfilling its mission. We look forward to working with you!

Scott Ellerbrock, President Jennifer Jobe, Executive Director

ABOUT ERMA

ERMA is a Joint Powers Authority (JPA) organized and existing in accordance with the laws of the State of California. For more information on ERMA, the services available to members, and the scope of the program, visit the ERMA <u>website</u>. To register for access to the member portal, select "<u>Reach Us</u>" and complete the requested fields.

ERMA Staff:

Jennifer Jobe, Executive Director (800) 541-4591, ext. 19141, jjobe@bickmore.net

Kathy Maylin, Litigation Manager (800) 541-4591, ext. 19181, kmaylin@bickmore.net

Julia Byrd, Legal Analyst (800) 541-4591, ext. 19185, jbyrd@bickmore.net

Nancy Broadhurst, Finance Manager (800) 541-4591, ext. 19171, nbroadhurst@bickmore.net

Chee Xiong, Senior Accountant (800) 541-4591, ext. 19020, <u>cxiong@bickmore.net</u>

ERMA MEMBER SERVICES

ERMA is pleased to offer our members a variety of services to help them reduce and manage their EPL risk.

Attorney Hotline

ERMA partners with the law firms Liebert Cassidy Whitmore and Jackson Lewis LLP, both of which specialize in employment law, to provide ERMA's Attorney Hotline Service. The Hotline provides members' upper-level management with an avenue to ask questions and receive professional consultation regarding labor and employment law related issues. Each member is assigned to one of ERMA's two contract law firms for Hotline Services and receives up to one hour of free legal advice per month.

Both contract law firms will assist ERMA members with day-to-day employment related issues. Hotline questions should be those of a routine nature regarding terminations, leaves of absence, harassment allegations, etc., and are restricted to the issues and areas of law that could become covered occurrences under the ERMA Memorandum of Coverage (MOC). The attorney will inform the caller if the subject of a Hotline call is not covered by the Hotline Service. The firms will not provide policy or handbook reviews, conduct legal research on more than a simple question, or write letters of opinion, etc., as part of the Hotline Service. The list of attorney firm assignments for each member, along with the contact information, can be found on the ERMA website. The direct link may be accessed here.

Attorney Hotline contact information for Liebert Cassidy Whitmore and Jackson Lewis, P.C.:

Liebert Cassidy Whitmore

Northern California: (800) 585-4529

Southern California: (800) 645-2696

Jackson Lewis, P.C.

(888) 375-3762

Training

Employment-related training is a hallmark of ERMA's loss prevention program. ERMA offers live training through a combination of individual and regional workshops, as well as comprehensive and informative workshops on topical issues which are conducted by ERMA's law firm partners. ERMA also provides members access to several online training modules.

Live Training (Individual/Regional)

During each program year, ERMA offers regional trainings throughout the state on harassment and discrimination prevention. The workshops are AB 1825 compliant and focus on preventing the behaviors that can lead to harassment and discrimination claims, as well the problem-solving skills necessary for creating positive workplace environments. A schedule of the regional dates and locations is distributed to the members at the beginning of each program year and is also available on ERMA's website. Please consult the ERMA website for a complete list of all of the workshops offered for the current Program Year.

Additionally, to meet the needs of individual members to have workshops on harassment and discrimination, as well as other topics that meet ERMA's loss prevention goals, conducted onsite, ERMA offers a limited number of individual trainings each program year. These workshops will be scheduled based on member requests, availability, and input from the Litigation Manager.

Finally, our attorney partner firms, (Liebert Cassidy Whitmore and Jackson Lewis, P.C.) present workshops at regional locations throughout California on specialized EPL topics. The topics vary from year to year and are designed to help our members respond to the rapidly evolving legal environment. We welcome your input on training topics.

Online Training

ERMA also offers several on-line training modules through our partner, *in2vate*. These include AB 1825 sexual harassment training, AB 1234 ethics training, and a suite of modules related to human resources and supervisory skills, including *Interviewing Strategies*, *Personnel Files*, *Sensitivity Basics*, *and Workplace Investigation*. All of the online trainings can be accessed by visiting <u>ERMANet</u>. Each entity is provided with a username and password by *in2vate*. The online training webinars are available to all ERMA members 24/7.

Employee Reporting Line

ERMA provides its members' employees with a toll-free number to report incidents of employment-related workplace misconduct such as harassment, discrimination and retaliation. Posters have been provided to each member to display in an area accessible to employees. Additional posters may be obtained by contacting ERMA staff.

Each entity is assigned a code by *in2vate* for use with the Employee Reporting Line. Employees may make anonymous reports if they choose to do so, but need to report their entity code. The message will be transcribed and transmitted to the appropriate representative of the caller's employer. If you are uncertain as to your Agency's reporting line code, please contact ERMA staff.

The toll-free Employee Reporting Line is (877) 651-3924.

Employees may also make a report online.

Compliance with AB 1825

Pursuant to Government Code section 12950.1 (AB 1825), and ERMA Resolution No. 2017-7, all ERMA members are required to comply with state-mandated sexual harassment and discrimination prevention training AND training record retention requirements. ERMA members are required to maintain the required records of all AB 1825 training; ERMA does not separately maintain these records. Information regarding AB 1825 regulations can be accessed from the home page on ERMA's website.

Effective July 1, 2010, for any claim that is submitted to ERMA which relates to sexual harassment, the member is required to provide ERMA with documentation evidencing they have substantially complied with sexual harassment training as mandated by Government Code Section 12950.1. Substantial compliance is defined as having 90% of all managers, supervisors and local agency officials trained as of the date of occurrence of the claim. For members with less than ten but more than one manager, supervisor or local agency official, substantial compliance is defined as having all but one manager, supervisor or local agency official trained. Any member that fails to comply with the mandated sexual harassment training or that fails to provide ERMA with documentation evidencing compliance will have its self-insured retention (SIR) increased by 100% for the submitted claim. In addition, the Board of Directors will have discretion to consider lack of compliance as a factor in determining whether a member should be subject to a risk assessment.

Since the live trainings are sponsored by ERMA, members are strongly encouraged to make an effort to attend regional trainings in their area.

Regular training of manager, supervisors and local agency officials in the area of EPL prevention has the positive effect of improving the identification, response, and prevention of wrongful employment conduct.

Please consult the ERMA website for other resources and services.

REPORTING CLAIMS

Notifying ERMA of a Claim

Members have a duty and obligation to notify ERMA in writing of a claim within thirty (30) days of receipt by the member of such notice by an employee. The definition of a Claim is set forth in ERMA's Memorandum of Coverage in Section II. Claim is generally defined to mean a written demand or notice brought by an Employee, or an oral demand or notice by an Employee memorialized in writing by the member, which asserts allegations of Wrongful Employment Practices (including but not limited to harassment, discrimination, wrongful termination or demotion, invasion of privacy, violation of constitutional rights and defamation).

Claims include, for example, notice of an administrative charge filed with the California Department of Fair Employment and Housing, the federal Equal Employment Opportunity Commission, the California Department of Labor, a Government Tort claim that alleges a Wrongful Employment Practice as defined in the MOC (such as harassment, discrimination, or wrongful termination), a letter from an attorney or other employee representative alleging a Wrongful Employment Practice, and internal claims by an employee of harassment, discrimination, retaliation, or other Wrongful Employment Practices. In general, union grievances and administrative appeals by employees are not covered by ERMA; however, if a grievance or appeal of a disciplinary decision alleges a Wrongful Employment Practice, it is advisable to notify the Litigation Manager for an evaluation as to whether the claim should be reported to ERMA.

The written notice to ERMA shall contain the following information and a Claim Reporting Form can be found on our <u>website</u>.

- Member entity
- Identity of the claimant employee(s) and the identity of any accused employee(s)
- Time, place and circumstances surrounding the incident
- Names and addresses of witnesses (if any)

Notifying ERMA of a Lawsuit

If a member is served with a lawsuit, in addition to the information above, the member is obligated to immediately forward to ERMA every demand, notice, summons, or other process received by it or its representative. In practically all circumstances, ERMA will be aware of potential litigation by a previously reported claim; however, ERMA must be immediately notified of any employment-related lawsuit filed against a member. Please email your notice to kmaylin@bickmore.net or jbyrd@bickmore.net. If email is unavailable, please mail to:

ERMA Litigation Manager c/o Bickmore 1750 Creekside Oaks Drive, Suite 200 Sacramento, California 95833

Late Reporting

Pursuant to ERMA's MOC, failure to comply with the reporting requirements can result in a claim or lawsuit not being covered by ERMA. Therefore, it is important to *notify ERMA of all claims within the 30-day time period*. If a claim is deemed late, you will be notified by ERMA, and you will have a right to appeal the determination to ERMA's Board of Directors. For further information, the MOC and other governing documents can be accessed by members at ERMA's website.

In order to assist members in reporting claims on a timely basis and to answer questions you may have regarding what types of employee complaints are covered by ERMA, and how and when to report a claim, please contact the Litigation Manager.

INVESTIGATION AND DEFENSE OF A CLAIM

Investigations

In cases where investigation of a claim by an independent third party is warranted, members must first report the claim to ERMA and obtain approval from the Litigation Manager prior to engaging an investigator, in order for any expenses related to the investigation to count toward the member's SIR. ERMA limits the hourly rate that may be charged by independent investigators. Please submit the desired investigator's resume to the Litigation Manager prior to retention. Upon approval of the investigator by the Litigation Manager, the member will be provided a form "Scope of Investigation" letter which will set forth the parameters of the investigation. ERMA has a list of investigators on its website who have experience in employment-related investigations and who have agreed to ERMA's contract rates. The ERMA Investigators list is provided as a resource for members when choosing a workplace investigator. This is <u>not</u> a pre-approved list, and approval for the use of an investigator is provided on a claim-by-claim basis. Please note that fees incurred for the use of a non-approved investigator will not apply to the member's SIR for the claim.

Defense of the Claim

When a claim is reported to ERMA, ERMA will acknowledge the claim and open a file. The Litigation Manager will assign defense counsel to the claim after consulting with the member entity. ERMA maintains a panel of Approved Defense Counsel, all of whom are employment law experts. All panel defense firms have been appointed by the ERMA Board of Directors and have agreed to bill for their services at ERMA-approved billing rates. Members must use a member of the Defense Panel on all ERMA claims in order for any legal fees and costs to count toward the member's SIR. ERMA's governing documents provide that if a member retains its own counsel who is not one of the defense panel firms, the member shall be solely responsible for that counsel's fees and costs, and the member shall be deemed to have waived any rights to defense and indemnity coverage from ERMA for that particular litigation.

Please contact the Litigation Manager for further information.

LITIGATION MANAGEMENT

Pursuant to ERMA's MOC, claims and litigation are directed and managed by ERMA's Litigation Manager. A Litigation Management Program (LMP) which establishes guidelines to ensure professional, competent, and cost-effective handling of the defense of claims and lawsuits has been established pursuant to Board Resolution 2014-3.

The following are some of the requirements of the LMP:

- Member must use ERMA-approved service providers.
- Assignment to defense counsel shall be made by the Litigation Manager after consultation with the entity.
- Member shall bear the financial responsibility of the defense expenses, including fees, until such time as its retained limit is exhausted.
- Defense Counsel must agree to and comply with the requirements of the LMP (status reports, billing guidelines, prior approval for certain expenses, self-performance evaluations, etc.).
- Settlements must have prior approval of both the entity and the Litigation Manager.

PROCEDURE FOR TRACKING EXHAUSTION OF SIRS (NON-VCJPA MEMBERS)

Every member has a self-insured retention (SIR) limit established each year at the time of the adoption of the MOC.

Each member is responsible for all fees, costs, and expenses associated with the defense of a claim until the member's SIR has been satisfied. ERMA-approved defense firms are required to provide ERMA with copies of all billings, including those within the members' SIR, in order to ensure that ERMA can properly track the expenditures on all claims. Once a member has satisfied their SIR, ERMA will begin making claim expense payments on behalf of the member. If a member is required to make a payment that exceeds the SIR in order to fully satisfy the SIR, ERMA will reimburse the member for any overpayments.

Expenses and costs incurred by a member will only be credited toward the member's SIR if they used ERMA-approved service providers (*e.g.*, investigators, defense counsel, etc.). <u>Failure to use ERMA-approved counsel or service providers may not only result in no credit being given toward SIR satisfaction but also may result in loss of coverage for the claim.</u>

PROCEDURE FOR TRACKING EXHAUSTION OF SIRS (VCJPA MEMBERS ONLY)

Participating VCJPA members have a self-insured retention (SIR) limit of \$25,000, which is paid by the VCJPA general liability pool.

The VCJPA is responsible for all fees, costs, expenses, etc., associated with the defense of a VCJPA claim until the member's SIR has been satisfied. ERMA-approved defense firms provide both the member district and ERMA with copies of all billings, including those within the member's SIR, in order to ensure that ERMA can properly track the expenditures on all claims. Once the VCJPA SIR has been satisfied, ERMA will begin making claim expense payments on behalf of the member.

IT IS IMPORTANT TO NOTE THAT NO VCJPA MEMBER SHOULD PAY OUT OF POCKET FOR ANY ERMA-COVERED CLAIM.

Expenses and costs incurred by a member will only be credited toward the VCJPA SIR if the member used ERMA-approved service providers (*e.g.*, investigators, defense counsel, etc.). Failure to use ERMA-approved counsel or service providers may not only result in no credit being given toward SIR satisfaction but also may result in loss of coverage for the claim.

ERMA staff will work with all members to resolve any SIR tracking issues and to answer any questions you may have.



Training Program FAQs

Who do we contact regarding training matters?

- ERMA Executive Director
 Jennifer Jobe
 jjobe@bickmore.net
 (800) 541-4591, ext. 19141
- ERMA Litigation Manager
 Ms. Kathy Maylin
 kmaylin@bickmore.net
 (800) 541-4591, ext. 19181

What training topics are available through ERMA?

- Live Trainings Available by program year, July 1 June 30
 - AB 1825 Prevention of Harassment, Discrimination, Retaliation and Bullying
 - Select topical workshops (please note these trainings vary from year to year) offered by ERMA's attorney partners, Liebert Cassidy Whitmore and Jackson Lewis, and vendor partners such as:
 - Performance Management
 - Bias in the Workplace
 - To Term or Not To Term
 - Human Resources for Non-HR Managers
 - Making the Most of Your Multi-Generational Workforce
 - Leading the Charge to Change

Online Trainings (provided through <u>in2vate</u>)

- AB 1825 Prevention of Harassment, Discrimination, and Retaliation
- AB 1234 Ethics Training
- Interviewing Strategies
- Personnel Files
- Sensitivity Basics
- Workplace Investigation

Is there a list of scheduled trainings, and are there any close to my agency?

For a schedule of regional workshops, please visit the 2018/19 Live Regional Trainings page on the ERMA <u>website</u> under About Us - Services.

Does everyone at my agency receive the ERMA training announcements?

No, each agency has a designated Training Contact responsible for disseminating training information to agency employees. For regional trainings, the date, time, location, and a registration link are also available on the ERMA website.



Can we use someone other than ERMA to provide AB 1825 training?

If you wish to seek reimbursement from ERMA for an AB 1825 training provided by an outside vendor, the training request must first be approved by ERMA's Litigation Manager before the training is scheduled. Please contact Jennifer Jobe at jjobe@bickmore.net (800) 541-4591, ext. 19141 or Kathy Maylin at kmaylin@bickmore.net, ext. 19181. Please note that ERMA will only reimburse up to \$1,800, if approved and training are funds available. If you do not wish to receive reimbursement, you may use whomever you wish.

What other training vendors are available?

- o ERMA Attorney Defense Panel please visit the ERMA <u>website</u> under About Us Services and contact the firms directly for any training they may provide.
- Vendor Partners please contact Jennifer Jobe at <u>jjobe@bickmore.net</u> (800) 541-4591, ext.
 19141, for training topics and quotes.

Who is responsible for tracking compliance? Are Sign-In Sheets provided?

ERMA does not track member compliance and does not provide sign-in sheets. It is each Member's responsibility to keep track of who has completed their AB 1825 requirement. It is encouraged that Members create their own sign-in sheets and maintain them for verification.

What if my agency is out of compliance with AB 1825?

Members should consult with legal counsel regarding any legal consequences for not being in compliance with AB 1825. For purposes of ERMA coverage, if a claim is submitted to ERMA that is within the subject matter of AB 1825 and the Member is not in substantial compliance with this statute, the Member's self-insured retention for that claim will be doubled. Please refer to the ERMA Memorandum of Coverage (MOC) and Resolution 2017-7 for further information. The MOC can be found on the ERMA website within the member portal. Please note that a login is required to access this page. If you have not already registered for a username and password, please register to receive such.

Who do we contact about compliance questions?

Please contact Kathy Maylin at kmaylin@bickmore.net or (800) 541-4591, ext. 19181.

Who should attend these trainings? Are elected officials required to attend?

AB 1825 requirements state that all supervisors are required to participate in AB 1825 Sexual Harassment Training every two years. ERMA highly encourages employees of all levels to attend this important training. In addition, pursuant to AB 1661, elected officials must also participate in Sexual Harassment Training every two years. Any training designated for a specific audience will be noted in the email announcement and online registration survey.



What if our agency needs more than one training session?

ERMA provides numerous regional training sessions and, on occasion, individual, on-site trainings. Fee-based trainings are also available. If you have any questions, please contact Jennifer Jobe at jiobe@bickmore.net (800) 541-4591, ext. 19141.

What if we have questions on AB 1825 or other employment liability issues?

For more information on AB 1825 training requirements, including agency-specific questions, please feel free to utilize the ERMA Attorney Hotline for legal consultation. Every month, each Member has access to a free one-hour consultation with their designated attorney firm. More information about the Attorney Hotline is available on the ERMA <u>website</u>.

• What do we need to know if our agency would like to host training?

Please note that we must have your commitment within four weeks of initial contact.

- o **Regional or Individual** Let us know if you would like to host and allow neighboring ERMA Members to attend, or if you prefer this training just for your agency.
- Room capacity Capable of accommodating at least 40-50 people if hosting a regional training.
- Training Dates Please let us know if you would like the training conducted during a specific time frame to assist with the scheduling process.
- Number of Attendees Please provide an estimate of the number of people you expect to attend from your agency. For regional trainings, you may either track the number of attendees internally and let us know the total closer to the date of the training, or each attendee may utilize the online registration survey.
- Address of training location and mailing address Please provide us with the exact address
 of the training location, as well as a mailing address for any training materials if the mailing
 address is different from the training location. Also please provide us with any parking
 instructions.
- o IT Equipment Please provide a computer/laptop, projector, screen, and a microphone and speakers, if requested. Some presenters may bring their own laptop; others may bring their presentation on a flash drive or it will be emailed to the training contact. Please let us know if your agency prefers a presenter not use their own equipment.
- o **Refreshments** We ask the host entity to provide light refreshments, such as water, coffee, sodas, and snacks. ERMA will reimburse for the costs of refreshments (up to \$10/per person) upon submission of a copy of the receipt(s) and total number of attendees.