



Update

CEMETERY OF THE YEAR 2020

MADERA CEMETERY DISTRICT

During the Board of Directors meeting in October 2019, the Directors discussed changing the method of selecting the recipient of the prestigious PCA Cemetery of the Year award. It was decided that the fairest and most objective process would assess potential recipients against a single set of criteria. Then-President John Anderson assigned Mark Marshall and Rick Beale to develop criteria for selection of the PCA Cemetery of the Year award. A lengthy set of criteria was presented to the Board at its January 2020 meeting. Following much discussion the list was narrowed down to five criteria and approved by the Board.

The criteria developed and used for selecting the recipient of the Cemetery of the Year Award are:

1. District Board members and management actively participate in the District’s business as well as PCA affairs.
2. The District provides educational opportunities for their employees and promoting education for all PCA members.
3. Consideration of the maintenance and appearance of the District’s cemeteries.
4. Development of innovative revenue generation alternatives for the District as well as for the PCA organization.
5. Overall involvement in the PCA organization.

After review and consideration of a number of PCA member districts, pursuant to the criteria outlined above four finalists were nominated and presented to the Board for consideration and selection. Two of the nominees had representation on the PCA Board of Directors—John Anderson of the Madera Cemetery District and Cindy Summers of the Visalia Cemetery District. To prevent any appearance of favoritism or conflict, both Cindy and John left the room and did not participate in discussions or voting.

The remaining Directors discussed each of the candidates and the evaluation criteria in detail. There was even discussion of disqualifying districts which have people serving on the PCA’s Board. That thought was rejected because at least two of the approved selection criteria envisioned exactly that kind of participation in PCA. Finally, after considerable deliberation, the voting members of the Board of Directors selected the Madera Cemetery District as Cemetery of the Year.

Madera operates five beautiful cemeteries in Madera, Oakhurst, Raymond and North Fork, all always in immaculate condition. The District’s Board and its managers, Belva Bare and John Anderson, are committed to providing continuing educational opportunities for their employees, and employees of other districts as well. One example is the Safety Day the District holds each February, attended by nearly 100 people in 2020, some of whom came over 100 miles to participate. And Belva and John have been very active in our cemetery associations, John having served as PCA President for three years and Belva as CAPC President for the past two years.

Congratulations, Madera!



North Fork Willow Creek Cemetery, North Fork, CA

If you believe your district or a neighboring district merits recognition, the PCA Board would like to hear from you. Please submit your candidate for consideration to receive the Cemetery of the Year award to any of the Directors (see page 2). Review and screening of potential recipients takes place during most of the year, so get your candidates in soon.

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

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PCA PRESIDENT'S AWARD 2020

By John Anderson

The President's award is given to an individual or group that exhibits exceptional service and support of the Public Cemetery Alliance membership and programs. The first award was given to Pat Teague in 2006 for her dedication to the PCA in her role as secretary. Other recipients include Golden State Risk Management Authority, Mel Lewis, Ray Young, Cheryl Smith, Bob Hunt, John Anderson, Arnie Brinton, Brian Connealy, Art Leonard, Fair Oaks Cemetery, Mary Shaw, John Wilkes and Robert Ohanesian.

The recipient of this year's President's Award is a person who has and still is supporting the PCA and its members. This person has been a public servant most of his life and has been an integral part of the Public Cemetery Alliance for many years. The PCA is today moving forward due to people like this who are "all in", one who has committed himself to the success of the organization. This person has shown us, inspired us and has helped us to see how important it is to develop relationships with people, to show others they are valued and cared about. This person has gone beyond that by being available to anyone. This person is an

encourager, one who has a genuine heart for people, an eye for potential, a consistent source of hope and one who has set a positive and inspiring example for others to follow.

The PCA President's Award for 2020 goes to **Mark Marshall!**

Congratulations, Mark!



Outgoing President John Anderson and Mark Marshall

DRUG TESTING IN THE WORKPLACE, CAN YOU TEST?

By Megan Robertson



Recently, drug testing in the California workplace has become mired in questions and confusion. Here’s a typical scenario: Your agency has a random drug testing program in place. At random times employees are selected at random for testing. Following your program, employee #1 is drawn and sent to your designated site for testing. You saw no evidence that she was under the influence of drugs or alcohol. She tests positive, but states she used marijuana legally the previous night. What do you do? What if a positive test result affects a license or certification she holds?

Over the past few years, medicinal and recreational marijuana have become more and more socially acceptable. Not only is medicinal marijuana legal in 33 states and the District of Columbia, recreational marijuana has also become legal in 11 states and the District of Columbia. This shift in acceptance has forced this area of the law to constantly and rapidly change, resulting in challenges and many questions regarding regulating the use of marijuana in the workplace.

Legalization of Marijuana

California was one of the first states to legalize medical marijuana through the Compassionate Use Act in 1996. (Cal. Health & Safety Code § 11362.5.) In

2016 Proposition 64 expanded Californians’ access to marijuana by legalizing recreational use for people who are 21 or older. However, marijuana is still illegal under federal law, whether used for medicinal purposes or for recreation. (21 U.S.C. § 812.) Because marijuana is still illegal under federal law, no state law can completely legalize marijuana. (*Ross v. Raging Wire Telecomms., Inc.*, (2008) 42 Cal. 4th 920, 926.)

Drug Testing

There is no law in California that articulates specific procedures or protocols for testing for drugs. Instead, in order to determine whether a drug test was done legally, California courts will balance the employer’s reason for testing against the employee’s expectation of privacy. (*Smith v. Fresno Irrigation Dist.* (1999) 72 Cal. App. 4th 147, 158.) Recall that in our hypothetical scenario, the employer’s reason for testing the employee was simply to conform to its random drug testing policy. Would this pass the *Fresno Irrigation* balancing test?

Conducting random drug tests is no longer considered the best practice in California, particularly given the conflict in federal and state law regarding the legality

of marijuana. As in our scenario, a drug test could come back positive even though the employee was not impaired or using while at work, but had used marijuana legally while off the job. So what’s an employer to do?

Looking back to the balancing test referred to above, it appears that California courts will uphold random drug testing only when the employee is in a safety-sensitive position. (*Loder v. City of Glendale* (Cal. 1997) 927 P.2d 1200, 1206.) Moreover, local jurisdictions may have different, stricter guidelines and requirements. For example, San Francisco has entirely banned suspicionless random drug testing. Of course, this presents yet another conflict in the law—will courts uphold California law or bow to local standards like those established in San Francisco?

Currently in California, however, an employer can still take lawful action against an employee who tests positive regardless of when they used or for what purpose. (*Shepherd v. Kohl’s Department Stores, Inc.* (2016) WL 4126705, (E.D. Cal.) Although marijuana’s legal status is

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PROHIBITED PERKS

By Karen A. O'Neil

Henry Clay once said, "Government is a trust, and the officers of the government are trustees; and both the trust and the trustees are created for the benefit of the people." Henry Clay died in 1852, but his words still reflect the expectation of the public today.

As the reader knows, local officials are required to complete ethics training every two years to help them navigate the laws relating to government transparency, fairness, conflicts of interest, and prohibited perks. The Fair Political Practices Commission (FPPC) provides training online as well as a certificate of completion. This article addresses one of these issues in greater depth, relevant to public cemeteries – prohibited perks.

One of the greatest strengths of a special district is its ability to focus on a particular service tailored to the local community. The mission of a public cemetery is "to provide for the respectful and cost-effective interment of human remains to meet the cultural, economic, religious, and social needs of California's diverse communities." (See Health and Safety Code section 9001.) In other words, public cemeteries require the local leaders, appointed as

trustees, to work together to meet the unique needs of the local community.


To ensure that local officials are responsive to the community they serve, California law prohibits trustees from accepting or exercising special privileges. The purpose of these limitations is to ensure members of the public have an equal voice. When members of the public participate on equal footing, special districts stay informed and can better meet the needs of their community. Otherwise, the voices of those the district is expected to serve may be drowned out or muted, because others have captured the attention of the trustee through lavish gifts or special privileges.

As a general rule, public cemetery trustees may not accept compensation for attending conferences, conventions, meetings, publishing articles, or making speeches. Such payments, often called honoraria, do not include items of nominal value such as pens, pencils, and notepads. Trustees may, however, accept payment for presenting on topics relating to the trustee's occupation such as insurance, real estate, law, and medicine, but not for issues relating to the interment industry. For example, if a trustee was paid to attend and speak at a conference for flower companies specializ-

ing in funeral services, the implication is that there is an ulterior motive for the apparent generosity of the convention hosts. It appears to the public that the flower industry is ingratiating itself to the trustee in the hopes of some favor down the road. Such actions undermine the public's trust in the decision making of the district, which is precisely why honoraria are banned.

The prohibition on honoraria does not apply to district-related conventions and conferences. Cemetery trustees may be reimbursed for reasonable expenses incurred to attend educational seminars relating to governing and managing the district. In contrast to honoraria, sending trustees and staff to educational conferences benefits the district, because information learned at the conferences helps them to better serve their community.

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INTERRING NON RESIDENTS

By Cindy Summers



no longer resident in your district, it is important to disclose that possibility at the time of purchase.)

Interring nonresidents in district cemeteries is an issue faced by all districts. The threshold question is whether your district will inter nonresidents at all—it’s not a requirement. Health & Safety Code section 9061’s use of the word “*may*” indicates that interment of nonresidents is at the discretion of your Board. Assuming your Board has decided to inter nonresidents, does it have to inter all of the nonresidents defined in Section 9061? Probably not; there is no inference in the law that it’s an “all or nothing” proposition. Most importantly, however, your district must have a written policy covering interment of nonresidents.

Interment of nonresidents can sometimes be confusing. It’s not simple, but it doesn’t have to be that hard! Health & Safety Code section 9061 specifies the rules for interring a non-resident in a district cemetery. There are five parts of Section 9061—(a) through (e)—read and understand each one separately.

First things first—the basics. There are Board decisions to be made:

1. The district **must have** an endowment care fund that requires contributions of at least the minimum amounts set forth in Health & Safety Code section 8738 (see Section 9065).

2. The Board **must determine** if there is “adequate space for the foreseeable future”. This is a judgement call by the Board based on available spaces, types of spaces, land available for additional development, and the number and types of burials expected over some future period of years. This is not a one-and-done decision, this determination needs to be reviewed on an ongoing basis. (*Note: This determination is required only for categories 2 and 3 below [Armed Forces and previous resident], but it would seem to be a prudent action for the Board in every case.*)
3. There **must** be a non-resident fee charged of at least 15% over the charges a resident would pay for the same interment. Can you charge more? Yes, you can! (*See section 9068.*)
4. Can you waive the non-resident fee? Yes, but only for people that purchased an interment right (pre-need) while a resident or taxpayer of the district, and only if the Board has adopted a written policy permitting such waivers. (*If your Board intends to charge an additional nonresident fee for those who purchased interment rights while eligible residents, but are*

Okay, so you have met all the requirements of Section 9061(a). Now comes the tricky part—who the heck is an “eligible non-resident” anyway? There are only four categories of eligible nonresidents. The first two types are the most straight forward and easy to figure out. After that it does get a little trickier.

1. **Family Member** – The deceased is the family member of someone already interred in your cemetery or they are a family member of someone that has acquired interment rights (pre-need). (*See 9002(f) for definition of “family member”.*)
2. **Armed Forces, Police and Fire** – The deceased died **while serving** in the Armed Forces or the active militia or they died **in the line of duty** as a peace officer or firefighter.

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Ask Bob . . .

By Bob Hunt

Question:

What happened to “at will” employment?



I’ve made a couple of presentations recently regarding “Hiring & Firing” employees. When discussing the procedures, risks, and employee protections involved, several people have asked about an employer’s right to terminate “at will” employees. So let’s look into that concept.

Where does “at will” come from? It is set forth in Labor Code § 2922 which provides that

“An employment, having no specified term, may be terminated at the will of either party on notice to the other. Employment for a specified term means an employment for a period greater than one month.”

What this generally means is that the employment relationship may be terminated by either party at any time, for any reason or no reason (but, of course, not an

illegal reason). The law remains valid and employers may terminate an at-will employee for no reason, i.e., at the “convenience of the employer”.

The first issue, which we won’t discuss here, is that a management employee has at some point indicated to the employee that she has a job for as long as she wants it, or some such statement. Such statements may be interpreted as converting her employment from at-will to employment for a “specified term”.

The more serious and common problem arises from the combination of the plethora of employee protections in California, the litigious world in which we live and work, and the natural skepticism of judges and juries. They question whether an employer would really terminate a good employee who has apparently done nothing to justify termination, or is there really an unspoken

impermissible reason behind it?

Therefore, although an employer may rely on the “at will” presumption to terminate an employee, doing so raises the risk of being sued to an almost unacceptable level. If you have valid reasons to terminate an employee, document them and state those reasons as the basis for the action.

However, like most plans the devil is in the details. We find that most often the reason an employer wants to rely on the “at will” presumption to terminate an employee is they have failed to properly document a history of performance or other problems with the employee. The file is empty, there

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FROM THE PRESIDENT

BY CHERYL SMITH, PRESIDENT
PUBLIC CEMETERY ALLIANCE



Hello Again PCA Members!

I don't know about you, but I'm over the phrase "uncertain times." Are we ever 100% certain of anything, like the outcome of the World Series or Kentucky Derby? The definition of "certain" is "known for sure, established beyond doubt." You can work towards a certain outcome but there is always going to be uncertainty in EVERYTHING WE DO! We have been living with uncertainty our whole lives and we're still here, from the uncertain times of the Great Depression, through two World Wars, 9-11 and now COVID-19. So, as always, we need to re-focus and navigate through this "current time," continue giving our best to serve our communities safely while allowing families to honor their deceased.

As a way of serving our members within the restrictions imposed by the current environment, the PCA has scheduled our

first "mini-conference" on January 22, 2021, at Granzella's in Williams. We hope the current restrictions will be relaxed by then allowing the mini-conference to be held. Our goal is to book three more mini-conferences next year providing education and training to districts in the north, mid-state and southern regions. In addition to the mini-conferences, PCA will be conducting Zoom trainings as well. We will also be distributing "News & Notes," a periodic one- or two-pager addressing current issues and needs, such as the one just issued with information about safely dealing with wildfire smoke. Watch your inbox for more details and dates.

We want to hear from you! What issues does your district have? Do you need to update your policies, review your agenda format, deal with employee performance, board members participation, etc. Our goal is to provide our members with information and guidance for success. It seems

there are a lot of new managers and trustees in our districts and we would like to hear your needs. If you have a topic you would like to learn more about please share that with us. These newsletters, "Notes & News", Zoom trainings and conferences are for the MEMBERS, PCA's success is measured by MEMBER success.

I look forward to serving the PCA as President for the next two years alongside a strong Board of Directors: Vice President Cindy Summers/Visalia, John Anderson/Madera, Rick Beale/Orland, Mark Marshall/GSRMA, Matt Melugin/Nevada, Ken Moeller/Hills Ferry, and Don Neufeld/Fair Oaks.

You can reach Cheryl at oroville.district@att.net or 530-533-2920.

New Website!

The PCA is updating it's website. Although still a work in progress—here's what it will look like. There will be a new "Members" section in which PCA members will have access to sample policies, sample forms, recent legal updates and other helpful information. Also, instead of typing in the current long address, you will be able to access the site at a much shorter address: calpac.com. We hope to have it on-line by December.





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DRUG TESTING IN THE WORKPLACE

(Continued from page 3)

complicated, being impaired or using marijuana while at work does not have to be and should not be allowed. (Cal. Health & Safety Code § 11362.785(a).) An employer can still have policies prohibiting the use of marijuana by employees or prospective employees. (Cal. Health & Safety Code § 11362.45(f).) This is similar to an employer's treatment of alcohol; even though consuming alcohol off the job is legal for anyone over the age of 21, employers may still prohibit consumption during work hours and may discipline an employee who comes to work under the influence. Therefore, employers may conduct drug tests based on *reasonable suspicion* of working while impaired. (Loder, *supra*, 927 P.2d at 1221 n.12.)

But what is *reasonable suspicion*? Reasonable suspicion is an articulable belief that an employee uses or is under the influence of certain drugs or alcohol which is drawn from facts and reasonable inferences. Such a belief may be based on:

- *Observable phenomena* such as direct observation of the use or possession of illegal drugs or *physical symptoms* of being under the influence;
- A pattern of abnormal conduct or erratic behavior;
- An arrest or conviction for a drug-related offense while employed;
- Information from reliable sources or corroborated independently;
- Or evidence that an employee has tampered with a drug test in the past. (10 C.F.R. § 707.10.)

Employers should train managers and supervisors to look for the signs of impairment and what to do if they suspect an employee is under the influence. Having more than one manager or supervisor trained on the signs helps to ensure truly objective observations as well as encouraging your managers and supervisors to document their independent observations. Online "reasonable suspicion" training courses are available (and required for managers and supervisors of employees

with certain licenses and certifications, such as a commercial driver's license). However, common sense observation of such things as slurred speech, stumbling, inability to focus, erratic behavior which is uncharacteristic for the individual, and so forth are sufficient to have the employee undergo drug testing. If supervisors or managers have a "reasonable suspicion" testing is permissible and advisable even if the test shows the employee is not under the influence. Remember, the safety of all of your employees is your paramount concern.

Medical Marijuana Accommodations

Currently in California, even if an employee uses medicinal marijuana, employers have no duty to accommodate on-the-job usage or impairment. (Cal. Health & Safety Code § 11362.785(a); *Ross, supra*, 42 Cal. 4th at 920.) However, on February 18th 2020, AB 2355 was proposed to amend the California Fair Employment and Housing Act. This bill would designate medical marijuana users as a legally protected class. Such a designation requires reasonable accommodations and would provide protection from employment discrimination. Nonetheless, under this bill

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INTERRING NON RESIDENTS

(Continued from page 7)

- 3. **Previous Resident** - The deceased was resident or paid property taxes for a continuous 5-year period and at least 1 day of that time was not more than 10 years before the deceased's date of death. The cemetery must get a written request for the interment from a current resident or taxpayer, and that person cannot be a trustee or employee of the district or a funeral director or employee of a funeral home.
- 4. **No private cemetery within 15 miles** - The deceased must be a resident of California at the time of their death. There must be no private cemetery within a straight-line radius of 15 miles from their residence, and there is no private cemetery nearer to their residence than your district cemetery.

Here are a few examples of determining whether a deceased is an eligible non-resident.

- A. Mr. Smith lived in our district for 6 years. He moved away 9 years ago. His sister lives in our district and she wrote a note asking us to allow him to be buried here. Mr. Smith is an eligible non-resident because (1) he lived in the district for at least 5 continuous years, (2) not more than 10 years ago, and (3) we received a written request from a current resident.
- B. Mr. Jones has owned a rental house in our district for the last 6 years. He has been living in Arizona for 11 years. His renter wrote a note asking us to allow him to be buried in our district. Mr. Jones is actually not considered a

nonresident; as a taxpayer in our district he is eligible as a "resident" under Health & Safety Code 9060 and eligible for interment in a district cemetery.

- C. Mrs. Smith lives in California, but not in our district. She lives over 100 miles away from our cemetery, but the nearest private cemetery is over 150 miles from her home. She is an eligible nonresident because our cemetery is closer to her residence than the private cemetery. (NOTE: *Your policy should specify private cemeteries that will accept the individual—there are many small, private cemeteries that will not accept all comers.*)

Perhaps these examples will help to clear up some of the questions regarding determining the eligibility of nonresidents for interment in your cemetery.

Of course, it is crucial that your district have a written policy addressing all of the issues surrounding interment of nonresidents. Start with the requirements of Section 9061(a):

- 1. Your district has an endowment care fund and requires contributions of at least those specified in Section 8738. (Do you want a higher contribution from nonresidents, similar to the required nonresident fee [3 below]?)
- 2. The Board has determined there is adequate space for the foreseeable future.
- 3. You require payment of the nonresident fee of at least 15% over resident fees.
- 4. If there is a waiver of fees for those no

longer resident (Section 9061(a)(2)), that explanation is included.

- 5. Which of the 4 types of non-resident will your district accept for interment.

When staff members are getting the service information from the family they need to:

- A. Obtain the address of the deceased at the time of death. If not a resident -
 - i. Consult the district adopted policy for nonresidents.
 - ii. Does the deceased qualify for any of the 4 types of eligible non-resident categories pursuant to Section 9061 and district policy?
 - iii. Charge the approved non-resident fee established by the Board pursuant to Health & Safety Code section 9068 (b).
 - iv. Determine whether there is an available fee waiver, if adopted by the Board?
- B. Obtain any documentation necessary to support any of the 4 items above.

Helpful hint - We at Visalia included the names and cities of the 3 private cemeteries closest to our cemetery in our procedures to use as a guide.

I hope this article is helpful to you in understanding this area of the code.

Cindy Summers is the Manager of the Visalia Cemetery District and Vice President of the PCA. She can be reached at (559) 734-6181 or csummers@visaliacemetery.com.

PROHIBITED PERKS

(Continued from page 5)

Like the restriction on perks, Government Code section 1090 prohibits trustees from entering into agreements with their district if the trustee will financially benefit. The prohibition applies even when the terms of the proposed contract are fair or when they are to the district's advantage. There are some rare exceptions for remote interests, but as a general rule, agreements in violation of section 1090 are void.

This rule will not apply if the agreement with the district is for the same services (and at the same price) as is available to the public. In other words, if the

trustee is not receiving any special treatment by virtue of being a trustee and if he is treated the same as any other member of the public, the agreement will be valid. For example, a trustee may enter into a preneed burial contract with the district as long as the services, and the cost of those services, are the same for the public. On the other hand, if a district manager sells a niche at a discount to a trustee, and if that discount is not readily available to the public, the contract for the niche is improper and invalid. More importantly, such special treatment would likely erode the confidence and trust the public has in the governance of the district.

My experience is that trustees want to do what is right and to uphold the public's trust, which is why I encourage training and education to prevent inadvert-

ent missteps. Ralph Waldo Emerson wrote, "The purpose of life is not to be happy. It is to be useful, to be honorable, to be compassionate, to have it make some difference that you have lived and lived well." Public cemeteries are governed and managed by compassionate and honorable people, working together to provide a vital service to their community.

Karen A. O'Neil is a Principal with the firm of Kirk & Simas. Karen serves as Counsel to a number of Public Cemetery Districts throughout the state. She can be reached at koneil@kirksimas.com or 805-934-4600.



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Ask Bob . . .

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is no documentary support for the termination, thus the reliance on the “at will” ability to terminate the employee for the “convenience of the employer.”

So what happens if the employee sues for wrongful termination, or discrimination, retaliation or any other of a number of possible claims? The employer is left with but one option—to try to defend the lawsuit.

First, of course, the jury will expect to know the true reason the employee was terminated. When the employer explains the real reasons for the termination, jurors are skeptical—if those reasons were there, why weren’t they documented? So the employer is already in a bit of a pickle in the eyes of the jury.

Then the employer must attempt to disprove whatever claims the employee is asserting. Disproving the employee’s claims comes with its own risks—what will other employees and witnesses say? Will off-color comments come out, or

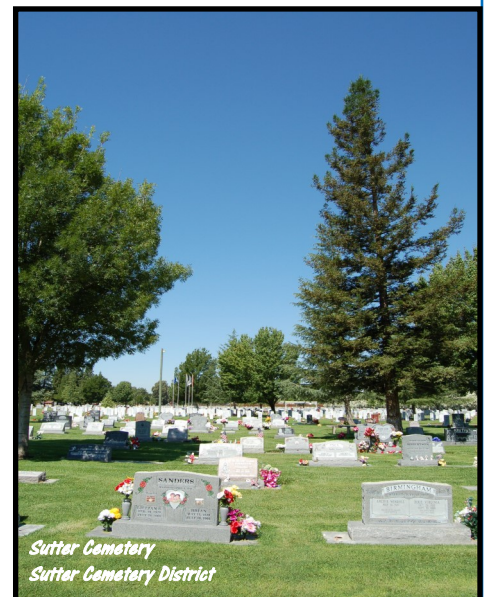
risqué cartoons and jokes that have been circulated on emails? Will there be evidence of harassment, favoritism, nepotism or discrimination, or perhaps questionable financial transactions? (And, remember, your credibility is already suspect because you failed to be honest about the reasons for the termination.)

These scenarios demonstrate why an employer should no longer rely on the “at will” presumption for terminating an employee. If you’re having problems with an employee, it’s crucial to **document** those problems. It’s also important to work with the employee. Make sure they understand exactly what your expectations are and how they have failed to meet them. **Document** it. Give them a chance to correct the problem—juries want to hear that you’ve worked with the employee and given them an opportunity to succeed. Documentation of your efforts and the employee’s failures support the termination. And those are the reasons you give the employee for the termination—don’t rely on “at will.”

Terminating an at-will employee for the “convenience of the employer” is one of the most high risk employee actions any employer can take. Don’t take that risk—

don’t leave your fate in the hands of a jury.

Now retired from the firm he founded over 20 years ago, as PCA General Counsel Bob continues to field questions from PCA members. He may be contacted at 916-801-4401 or hunt@pacbell.net.





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DRUG TESTING IN THE WORKPLACE

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accommodation would only be required for off-duty use and does not diminish the employer’s ability to take lawful actions against an employee for using or being impaired by medical marijuana while working. (EDITOR’S NOTE: AB 2355 was held up in committee in March and was not enacted by the 2020 deadline. Whether it will come forward again in 2021 is unknown.)

Although some employers may fear that the passage of Proposition 64 requires them to modify their drug-free workplace policies or accommodate employee marijuana use, Proposition 64 provides explicit protections for employers. Specifically, Proposition 64 does not amend, repeal, affect, restrict, or preempt:

the rights and obligations of public and private employers to maintain a

drug and alcohol free workplace or require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or growth of marijuana in the workplace, or affect the ability of employers to have policies prohibiting the use of marijuana by employees and prospective employees, or prevent employers from complying with state or federal law.

(Health and Safety Code section 11362.45 (f).)

Employers should follow current best practices in this area. Random drug testing programs are usually counter-productive and inadvisable in the current environment. (Caveat: Such programs may be required by Federal law where employees hold certain licenses or certifications.) Educate your managers and supervisors how to be aware of “observable phenomena” or

“physical symptoms” indicating an employee may be under the influence of drugs or alcohol. Document your observations. Establish an arrangement with a nearby medical facility to conduct drug testing when necessary.

Because of the conflicts between California and Federal laws in this area, as well as developing California regulations and recent court holdings, it is imperative that every agency contact legal counsel for advice in this arena.

Megan Robertson is a third-year law student at University of the Pacific, McGeorge School of Law, currently serving as an intern at the Porter Scott law firm in Sacramento. Thank you very much, Megan, for all the time and effort you invested in writing this article for the Update



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Mark Your Calendars!

October 8 – 10:00 a.m. – GSRMA Training Webinar “Customer Service for Public Entities (“Give ‘em the pickle”)

November 5 – 10:00 a.m. – CAPC “Construction & Public Works” w/Mark Velasquez, BB&K

November 12 – 10:00 a.m. – GSRMA: An Overview of Programs & Services

December 10 – 10:00 a.m. – GSRMA – The Power of Words

January 22, 2021 – PCA Mini-Conference, Williams, California

February 3, 2021 – Safety Training Day, Madera Cemetery District

“MINI-CONFERENCE”

As you all know, PCA had to cancel its annual conference this year. COVID-19 has disrupted PCA’s plans and programs, just as it has those for everyone else.

Nonetheless, PCA continues its commitment to serve its members, albeit in new and different ways. We continue to publish the *Update* newsletter quarterly, and we have started issuing regular “*News & Notes*” with timely items of particular interest. PCA is also presenting occasional Zoominar educational programs, as well making GSRMA and CAPC presentations available to its members.

In addition, presuming the current pandemic eases up to permit us to do so, PCA plans on holding 3 or 4 “mini-conferences” during 2021. It is anticipated that these will be 1-day programs comprised of 4–6 presentations.

These “mini-conferences” will be held throughout the state in order to (1) reach as many PCA members as possible, (2) reduce

the travel necessary to get to a conference, (3) cut down the time members spend away from the job or home, and (4) significantly reduce the costs incurred by members when attending a 3- or 4-day conference.

Assuming the current pandemic eases up, the **first PCA Mini-Conference will be held on January 22, 2021 in Williams, California.** More information will be provided later.

Other areas being considered by the PCA Board of Directors for other mini-conferences during 2021 include Central California, Southern California, and possible the Central Coast. The Board asks for your input on suggested specific locations and venues for mini-conferences later in 2021. Simply contact one of the Board members with your suggestions.

Area Meetings

And, remember, if your district is planning to hold an area meeting, please let us know. PCA wants to help! Let President John Anderson or one of the PCA Board members know if you’re planning an area meeting, and PCA will be happy to assist you.



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