prentice|LONG PC

WINTER 2025

NEWSLETTER

Prentice|LONG PC - a law firm founded on the principle of service.

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Top Photo: Partners (L to R) David Prentice, Margaret Long, Amanda Uhrhammer and Sean Cameron
Bottom Photo: Our amazing staff

A DECADE LATER...

Welcome to a special edition of the PLPC newsletter. Special, because this newsletter marks the firm's ten-year anniversary of collaboration of the founding partners, David Prentice and Margaret Long. Dave and Margaret believed that they could provide first-class legal services to small and medium-sized public entities at a reasonable cost. They were correct, as attested to by the growth of the firm. In the last ten years, the firm has grown from three attorneys, two support staff, and four clients, to fourteen attorneys, nine support staff, and over forty public agency clients including counties, cities, and special districts. We are extremely proud of the people who signed on to be part of the firm's vision over the last ten years, by adopting a service-first attitude. Everyone, whether attorneys or staff, is dedicated to the welfare of our clients. We believe that the basis of our success is that we live up to our founding principle, which is service.

Due to the incredible dedication of PLPC attorneys and staff, the firm has thrived; however, we do not take for granted that it is our clients that make us successful. We become part of the communities we serve, and hope to make them just a little better through expert legal advice and counsel. The bottom line is that we care, and the first ten years are testament to that. We will continue for many more years to put the act of service above self. Thank you for your support.

CONTRACT INDEMNIFICATION

By Sean Cameron, Partner

Indemnification is a common provision in contracts. It acts to address the risk of potential costs from damages stemming from the goods or services that are the subject of the contract, and is particularly important for municipalities to address potential risks stemming from third-party claims that may result from the services being provided.

In California, indemnification is defined by statute: "Indemnity is a contract by which one engages to save another from the legal consequence of the conduct of one of the parties, or of some other person." (Cal. Civ. Code, Section 2772.) As described by the California Court of Appeals: "Indemnity is the obligation resting on one party to make good a loss or damage another party has incurred. Parties to a contract may define their duties to one another in the event of a third-party claim against one or both arising out of their relationship. In general, an indemnity agreement is construed under the same rules as govern the interpretation of other contracts [or other contract provisions]. Effect is given to the parties' mutual intent, as ascertained from the contract's language if it is clear and explicit. Unless the parties have indicated a special meaning, the contract's words are to be understood in their ordinary and popular sense." (*First American Title Ins. Co. v. Spanish Inn, Inc.* (2015) 239 Cal.App.4th 598, 603; internal citations omitted.) In other words, it is important to not only include an indemnification provision, but to also pay attention to the provision's particulars, as what is covered depends on the explicit language in the contract.

It is not uncommon for contractors and those counterparties being asked to indemnify the municipality to limit the responsibility to indemnify, to willful misconduct and negligent acts/omissions (generally defined as the failure to act as a reasonably prudent person in the same or similar circumstances), or even grossly negligent acts/omissions (willful, wanton, and reckless conduct). This obviously limits the protection of the indemnified party, and also raises potential issues with respect to determining whether the act was in fact negligent or grossly negligent. If this limitation is added, then there needs to be an acknowledgement or a finding that the action/omission was negligent/grossly negligent in order for indemnification to attach and trigger that obligation on the indemnitor.

Also, often included in an indemnification contract or provision is the term "hold harmless." In the United States, there are differing views on the effect of including hold harmless language. Some states view indemnification and hold harmless as one and the same, so the addition of the use of the phrase, "indemnify and hold harmless" are duplicative and the use of "hold harmless" is essentially superfluous. However, California does not take that view. The California Court of Appeal described it this way: "Are the words 'indemnify' and 'hold harmless' synonymous? No. One is offensive and the other is defensive – even though both contemplate third-party liability situations. 'Indemnify' is an offensive right – a sword – allowing an indemnitee to seek indemnification. 'Hold harmless' is defensive. The right not to be bothered by the other party itself seeking indemnification." (*Queen Villas Homeowners Assn v. TCB Property Management* (2007) 149 Cal.App.4th 1, 9.) The Court went on to explain that the inclusion of "hold harmless" served as a basis to prevent the other party from suing them, so that there was not just the ability of the party to seek indemnification from the other party, but also the ability to shield themselves from being sued by that party. (Id.) The Court also noted that this is consistent with the legal canon against surplusage and the principle that, when interpreting a statue or contract and there are terms that can be interpreted to be either duplicative or additive, that they should be interpreted as additive; otherwise, the drafter would not have included the term. (Id.)

Another key piece to consider in the context of indemnification is whether to include the obligation to defend and how to define that obligation. As discussed above, the obligation to indemnify protects the indemnified party from damages caused by the other party, but important to consider is the fact that litigation work and costs may arise prior to that obligation being determined by a court. By including the obligation to defend, the party can protect itself against such work and costs. In California it is less critical that the basic obligation to defend is explicitly spelled out in the contract itself as the obligation to defend is incorporated into the contract by statute. Pursuant to the California Civil Code: "The person indemnifying is bound, on request of the person indemnified, to defend actions or proceedings brought against the latter in respect of the matters embraced by the indemnity, but the person indemnified has the right to conduct such defenses, if he chooses to do so[.]" (Cal. Civ. Code, Section 2778(4).) Notwithstanding, it is often helpful to explicitly call out this obligation in the contract itself and make clear the responsibilities of the indemnifying party.

Contracts are meant to establish the responsibilities and obligations of each party, and indemnification provisions, and how they are spelled out, are key to addressing potential risks and allocating those risks between the parties. Such provisions and the particular language used in them can protect municipalities from potential risks when they contract for services to be performed on their behalf and should be carefully considered, particularly when the other party is seeking to curtail or narrow the obligation to indemnify.

SPOTLIGHT
IRISH C. TAPIA
Associate

Working out of our Hollister office, please join us in welcoming Associate Irish Tapia to PLPC, whose practice includes dependency law, public guardianships, conservatorships, contract law, and restraining orders. Prior to joining our team, Ms. Tapia was employed with California Rural Legal Assistance for over a decade and had previously served as a Deputy District Attorney for Monterey County, in misdemeanors. Ms. Tapia attended Golden Gate University School of Law, with a focus on social justice.

Ms. Tapia is an Aztec Dancer and has been involved for over 20 years. She describes it as the core of her life, and enjoys sharing the lifestyle with her children, keeping them all busy and fit. Ms. Tapia also does Indigenous and Native American beadwork and once ran an on-line page that assisted in paying for extra Bar Prep! She has a very old kitty-cat, loves live music and travels to Mexico often -with a desire to visit new places and try the food of different regions.

Currently, Ms. Tapia is the vice-president to her local chapter of the District English Learner Advisory Committee parent group, remaining committed to bridging the gap between underserved community members and education access. Additionally, she serves as a board member for a local arts council, focusing on youth access to the arts and community engagement. "I became a lawyer to better serve my community," states Ms. Tapia, "and to be of service in general, because it is what I have been taught is the path with the most heart. And, so here I am... being of service at PLPC."

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Enhanced Protection of Local Officials' Private Information and the California Public Records Act Amendment

By Gretchen Dugan, Law Clerk

AB 1785

A bill authored by California State Assemblymember Blanca Pacheco (D) and enacted last September, Assembly Bill ("AB") 1785 has broadened the scope of protection available for public officials and their families in terms of California Public Records Act ("CPRA") requests submitted to government entities such as counties, cities, and special districts. Pacheco sought to enact this bill in response to a rising number of threats and violence against elected and appointed public officials. For example, the U.S. Marshals Service reported nearly 6,000 inappropriate threats of violence towards judges and court commissioners in 2021-2022.

In addition to the existing preclusion set forth in California Government Code section 7928.205 regarding the release of home address or telephone number of any elected or appointed official on the internet without first obtaining the written consent of said official, AB 1785 adds to this particular statute by also prohibiting state agencies from releasing both the name and assessor parcel number ("APN") associated with any elected or appointed official without the official's express permission. However, the application of the bill does not apply to a state or local agency public posting a legally required notice or publication regarding an elected or appointed official on the internet.

The legislative intent of AB 1785 is to underpin the need for further protection of public officials' personal safety in averting the public's access to private information by cutting off the loophole created with the release of APNs. This is since, in just a matter of minutes, any keen public researcher with a computer and internet access may peruse a county assessor's website, search for an individual's name, and obtain conveyance documents recorded with the county containing both names and home addresses associated with APNs.

As a result, this recent amendment of California Government Code section 7928.205 regarding the production of CPRA records imposes additional limitations on the public's right to access public records, but it is clear that this restraint on information is outweighed by public policy's interest in safeguarding elected and appointed officials from potential harm.

SPOTLIGHT
SHANDELL CORREA
Paralegal

PLPC extends a warm welcome to Shandell Correa, our newest paralegal, who lives and works out of our office in San Benito. Since joining the firm last year, Ms. Correa has been involved in a diverse range of legal areas. She earned her Associate's Degree in Social Science from Reedley College and a Paralegal Certificate from Auburn University. She takes pride in her customer service skills and a longstanding commitment to serving others. Growing up in the small town of Madera, Ms. Correa understands rural culture, enhancing her ability to connect with clients.

Ms. Correa describes herself as a 'True Crime Enthusiast' and is always up for a true crime documentary marathon…"the more twists and turns, the better!" She is also a Conspiracy Theory Buff and loves diving deep into wild conspiracy theories and exploring all the mind-bending possibilities. "Let's get into the rabbit hole together!" Alas, she firmly stands by the belief that banana splits should never be split… "they're meant to be enjoyed in whole, by one person!"

"As for what I love about my job at PLPC," states Ms. Correa, "I really appreciate the collaborative environment and the opportunity to work alongside such talented and passionate colleagues. The projects we take on are always exciting and challenging, and it's rewarding to see the positive impact we have in the community. Plus, the supportive and inclusive culture at PLPC makes it a great place to grow and contribute."

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COUNTY EMPLOYEE HEALTHCARE WAGES UNDER SB 525

By Rebekah Mojica, Associate

SB 525

Background:
Senate Bill 525 (SB 525) is a California law that establishes a new minimum wage specifically for healthcare workers, aimed at addressing workforce shortages and improving compensation for healthcare employees across the state.

Brief Question:
Are California Counties required to pay wage minimums under SB 525 for all employees, including ancillary positions, such as janitorial, landscaping, and IT staff?

Brief Answer:
It depends. SB 525 requires wage minimums for employees in county health care facilities, including clinics and LPS facilities. However, public sector employees are only covered if their primary duties involve supporting patient care. Ancillary staff like janitors, landscapers, and IT workers may be covered if their duties support patient care. It is important to assess the specific job duties of each employee to determine applicability.

Are County Outpatient Clinics Under Behavioral Health Services Included Under SB 525?
LPS Designated Facilities: The Department of Health Care Services (DHCS) defines Lanterman-Petris-Short (LPS) designated facilities as "mental health treatment facilities that are designated by the county for evaluation and treatment, approved by the State Department of Health Care Services, and licensed as a health facility as defined in subdivision (a) or (b) of Section 1250 or 1250.2 of the Health and Safety Code or is certified by the State Department." [1]

SB 525 Covered Facilities: SB525 amends the Labor Code, in part, by adding Section 1182.14. Subsection (b)(3)(A) identifies covered health care facilities, including (xiv) community clinics and clinics operated by a county, (xix) county correctional facilities providing health care services, and (xx) county mental health facilities. Additionally, SB 525 applies to general acute care hospitals, acute psychiatric hospitals, skilled nursing facilities, and special hospitals defined under subdivisions (a), (b), (c), and (f) of Sections 1250 and 1250.2 of the Health and Safety Code. The section does not define county mental health facilities. Subsection (b)(3)(B) outlines exclusions for hospitals owned, controlled, or operated by the State Department of State Hospitals, and for Tribal Clinics or outpatient facilities conducted, maintained, or operated by a federally recognized Indian tribe or tribal organization.

Application to LPS and County Clinics: SB 525's legislative digest includes that, beginning January 1, 2025, it is applicable to a county-owned, affiliated, or

[1] https://www.dhcs.ca.govprovgovpart/Pages/County-LPS-Facilities.aspx

Article continues on next page

operated covered health care facility, which is mirrored in subparagraph (c)(5). This, alongside the bill defining an employer to include the State, subdivisions, and municipalities, shows a recognition of the legislator's intent that this bill does extend to counties.

The broad definition of covered health care facilities in Section 1182.14 encompasses facilities governed by Sections 1250 and 1250.2 of the Health and Safety Code, which include LPS facilities. Clinics, including those operated by counties, are explicitly included as covered health care facilities. Even if a facility does not qualify as an LPS facility or clinic, facilities described as "county mental health facilities" fall under SB 525.

No exclusions apply to county-operated outpatient clinics or behavioral health facilities.

Conclusion: County outpatient clinics providing behavioral health services are covered under SB 525 as:

- LPS facilities governed by Sections 1250 and 1250.2 of the Health and Safety Code.
- Clinics explicitly included in Section 1182.14(b)(3)(A).
- County mental health facilities.

While these facilities are covered, special provisions may apply to government-operated facilities.

Are Auxiliary Employees for County Outpatient Facilities Covered by the Wage Minimum Set In SB 525?

Covered Employees: SB 525 adds Section 1182.14 to the labor code, which defines a "covered health care employee" in Subsection (b)(2)(A)(i) to mean:

(i) An employee of a health care facility employer who provides patient care, health care services, or services supporting the provision of health care, which includes, but is not limited to, employees performing work in the occupation of a nurse, physician, caregiver, medical resident, intern or fellow, patient care technician, janitor, housekeeping staff person, groundskeeper, guard, clerical worker, nonmanagerial administrative worker, food service worker, gift shop worker, technical and ancillary services worker, medical coding and medical billing personnel, scheduler, call center and warehouse worker, and laundry worker, regardless of formal job title.

Excluded Employees: Subsection (b)(2)(C)(ii) clarifies that "covered health care employee" does not include "any work performed in the public sector where the primary duties performed are not health care services."

Health Care Services: Further, Subsection (b)(8) of the same Section states,

(8) "Health care services" means patient care-related services including nursing; caregiving; services provided by medical residents, interns, or fellows; technical and ancillary services; janitorial work; housekeeping; groundskeeping; guard duties; business office clerical work; food services; laundry; medical coding and billing; call center and warehouse work; scheduling; and gift shop work; but only where such services support patient care.

Importantly, these services must support patient care to be included in the definition.

Minimum Wage for Covered Health Care Employees: Subdivision (c) of Section 1182.14 outlines minimum wage provisions for covered health care employees.

Waiver: These rates are delayed until January 1, 2025, for counties. However, healthcare facilities facing financial hardships can apply for annual waivers, delaying the implementation of the increased minimum wage. To qualify, facilities must demonstrate financial constraints, such as a showing that compliance would raise doubts about the facility's ability to continue under generally accepted accounting principles.

Application to Auxiliary Positions: SB 525 defines "covered health care employee" expansively, including administrative, technical, ancillary, and support service roles. However, for public sector employees, the definition is limited to those whose primary duties are health care services.

The bill further clarifies that health care services include "technical and ancillary services" and a wide array of tasks but clarifies that these are only covered "where such services support patient care." The bill does not define what it means for services to "support patient care," which leaves some ambiguity. To determine whether a public employee qualifies as a "covered health care employee," their primary duties must be related to health care services, and their work must support patient care.

NEW CLIENTS

Prentice|LONG PC welcomes our newest clients.

City of Isleton, County of Siskiyou and Northern California Child Development, Inc.

Click *here* to see a list of all our clients.