



CALIFORNIA DEPARTMENT OF HUMAN RESOURCES

PUBLIC EMPLOYMENT
RELATIONS BOARD
HEADQUARTERS OFFICE

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November 12, 2013

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Re: ***IHSSEERA Regulations***

Dear Counsel:

Thank you for the opportunity to provide additional comments on the Public Employment Relations Board's (PERB) proposed emergency regulations for the In-Home Supportive Services Employer-Employee Relations Act (IHSSEERA). (Gov. Code, § 110000, et seq.) We agree with most of the proposed emergency regulations with the exception of the proposed amendment to PERB regulation 32602, subdivision (a), and the proposed PERB regulations 32610, subdivision (g), and 32611, subdivision (e). We do not believe there is statutory authority in IHSSEERA that would support processing a violation of a rule adopted by the Statewide Authority as an unfair labor practice.

The proposed amendment to regulation 32602, subdivision (a) states:

Alleged violations of the EERA, Ralph C. Dills Act, HEERA, MMBA, TEERA, Article 3 of the Trial Court Act, the Court Interpreter Act and IHSSEERA, and alleged violations of local rules adopted pursuant to the MMBA, Trial Court Act or Court Interpreter Act, and alleged violations of rules or regulations adopted by the Statewide Authority pursuant to IHSSEERA, shall be processed as unfair practice charges.

Proposed regulation 32610, subdivision (g) states:

In any other way violate IHSSEERA or any rule or regulation adopted pursuant to Government Code section 110035.

Proposed regulation 32611, subdivision (e) states:

In any other way violate IHSSEERA or any rule or regulation adopted pursuant to Government Code section 110035.

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CalHR disagrees with the addition of “and any alleged violations of rules or regulations adopted by the Statewide Authority pursuant to IHSSEERA” to PERB regulation 32602; subdivision (g) of PERB regulation 32610; and subdivision (e) of PERB regulation 32611, for the reasons set forth below.

Although In-Home Supportive Services (IHSS) providers historically and currently fall under the jurisdiction of the Meyers-Milias-Brown-Act (MMBA), IHSS providers in the eight demonstration counties will fall under the jurisdiction of the newly enacted IHSSEERA upon the county implementation date, as defined in Government Code section 110005 and Welfare and Institutions Code section 12300. While the IHSSEERA follows the MMBA in many respects, the IHSSEERA differs significantly in regards to the adoption of rules and regulations.

Under the MMBA, Government Code section 3507 provides various enumerated areas where a local agency may adopt rules. The MMBA also expressly provides in Government Code section 3509 that a violation of a rule adopted under section 3507 shall be processed as an unfair practice charge.¹

However, the IHSSEERA does not contain a similar statutory provision that parallels MMBA section 3509. Given the other parallel provisions between the two acts, the deliberate exclusion of a parallel authority in IHSSEERA is particularly significant. Thus, it cannot be said that the Legislature intended for violations of rules adopted by the Statewide Authority to be processed as unfair practice charges.

Indeed, regarding the authority to adopt rules, the IHSSEERA more closely parallels the Ralph C. Dills Act (Dills Act). (See Gov. Code, § 3520.7.) The IHSSEERA and the Dills Act have nearly identical language regarding the respective employer’s ability to adopt reasonable rules.² The Dills Act, like the IHSSEERA, does not contain a section permitting a violation of a rule to be processed as an unfair practice charge. This lack of statutory authority is also reflected in PERB’s current regulatory scheme as there is no regulation permitting a violation of a rule to be processed as an unfair practice charge for Dills Act parties. Likewise, as there is no statutory authority permitting violations of a rule adopted by the Statewide Authority to be processed as unfair labor charges under the IHSSEERA, there should be no PERB regulation that permits such an unfair practice charge.

The IHSSEERA does, however, permit the challenge of the adoption or enforcement of a rule or regulation as a violation of the IHSSEERA. (Gov. Code, § 110035, subd. (d).) This process is

1 See also the Trial Court Act and the Court Interpreter Act, which like the MMBA, contain express provisions permitting the violations of rules adopted by the respective employer to be processed as unfair practices. (See Gov. Code, §§ 71639.1 and 71825.)

2 CalHR acknowledges the IHSSEERA contains an additional area of rulemaking authority the Dills Act does not. (See Gov. Code, § 110035, subd. (a)(4), which does not have a counterpart in the Dills Act.)

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currently captured in the proposed PERB regulations and conveys that adoption or enforcement of a rule that is not in conformance with the IHSSEERA shall be an unfair practice. (Proposed PERB regulation 32610, subd. (f).)

Accordingly, although violations of the IHSSEERA itself may be processed as an unfair practice charge and the adoption or enforcement of a rule that does not conform with the IHSSEERA may also be processed as an unfair practice, there is no statutory support for the proposition that a violation of a rule or regulation adopted by the Statewide Authority is an unfair practice. The proposed regulatory language permitting a violation of a rule to be processed as an unfair practice charge is therefore impermissible as it would be inconsistent with the IHSSEERA. (*See Harris Transportation Co. v. Air Resources Board* (1995) 32 Cal.App.4th 1472, 1479 ["Where a statute empowers an administrative agency to adopt regulations, such regulations must be consistent, not in conflict with the statute, and reasonably necessary to effectuate its purpose."].)

We look forward to working with PERB on the implementation of the IHSSEERA. If you have any questions or concerns, please do not hesitate to contact us.

Sincerely,



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JMG:lo

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