

JONES & MAYER

Attorneys at Law

3777 N. Harbor Blvd.

Fullerton, CA 92835

Telephone: (714) 446-1400 ** Fax: (714) 446-1448 ** Website: www.Jones-Mayer.com

CLIENT ALERT MEMORANDUM

To: All Sheriffs & Chiefs of Police

From: Martin J. Mayer, Esq.

AGENCIES MAY RECOVER CERTAIN COSTS OF TRAINING IF OFFICERS LEAVE EMPLOYMENT SHORTLY AFTER GRADUATING FROM THE ACADEMY

On August 31, 2015, the California Court of Appeal, Fourth District, certified for publication *In Re: Acknowledgment Cases*. The case involved a coordinated action involving 43 former officers of the LAPD who were successfully sued by the city for breach of an "acknowledgment" - an agreement which stated that the officer intended to maintain employment with the LAPD for at least 60 continuous months after graduating from the LAPD academy.

In addition, the officers agreed to reimburse the city for the direct and indirect costs of training if the officer left the LAPD within those five years, and became employed by another law enforcement agency within one year after leaving the LAPD.

On appeal, the officers argued, among other things, that the acknowledgment was unenforceable as contrary to multiple state and federal laws. The Court of Appeal stated that "we agree in part with appellants'

contention that LAAC Section 4.1700 violates Labor Code Section 2802, and we conclude that, *under the particular circumstances of this case*, the acknowledgment is entirely void pursuant to Labor Code Section 2804." (Emphasis added.)

Facts

"The City of Los Angeles (the city), requires that all newly hired police officers attend and graduate from the Los Angeles Police Academy. In the early 1990's, the city realized that many officers who graduated from the academy were leaving within a few years to join other law enforcement agencies. The city sought to find a way to curtail the attrition. The city enacted Los Angeles Administrative Code Section 4.1700 (hereafter LAAC § 4.1700), which provides, in part, that any police officer hired by the Los Angeles Police Department (LAPD) is required to reimburse the city a

prorated portion of the cost of training at the academy if he or she voluntarily leaves the LAPD after serving less than 60 months following graduation and goes to work for another law enforcement agency within one year after terminating employment with the LAPD.” The agreement, signed by the recruits, is called “the acknowledgment.”

On August 9, 2001, the city filed a complaint in the San Bernardino County Superior Court for breach of contract, quantum meruit, and fraud against Anthony Alvo, a resident of that county, alleging that Alvo was required by the terms of the acknowledgment to reimburse the city \$34,000. Alvo answered the complaint, denying the allegations and asserting multiple affirmative defenses, including the assertion that the acknowledgment violated Labor Code Section 2802.

The city then filed breach of contract claims in Los Angeles County against additional defendants, eventually totaling 43 former officers. Subsequently, cases were coordinated and, ultimately, four cases were selected for trial. The trial was conducted primarily on the parties' briefing, exhibits and argument. The parties stipulated to allow testimony limited to cross-examination of opposing witnesses. The parties stipulated that the judgment would apply to all pending cases.

Following trial, the court issued its statement of decision and entered judgment in favor of the city against the representative defendants. The appeal to the Court of Appeal followed.

Court's Analysis

“Labor Code Section 2802, subdivision (a), provides, in pertinent part: ‘An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the

discharge of his or her duties’ Appellants contend that because the LAPD requires all newly hired officers to attend its academy, the cost of the academy is a necessary expenditure incurred as a direct consequence of the discharge of the officer's duties, and that LAAC Section 4.1700 and the acknowledgment are therefore void. The city . . . contends that Labor Code Section 2802 does not apply because the training recruits receive is mandated by law under the Peace Officer Standards and Training (POST) legislation.”

“We have found no cases addressing training as a cost covered by Labor Code Section 2802. Accordingly, the statute contains an unresolved ambiguity on this point. In interpreting a statute, a court's task is to attempt to discern and give effect to the Legislature's intent.”

“With respect to the question of liability for training costs under Labor Code Section 2802, the Department of Industrial Relations, Division of Labor Standards Enforcement, or DLSE, has stated as follows: ‘There is generally no requirement that an employer pay for training leading to licensure or the cost of licensure for an employee. While the license may be a requirement of the employment, it is not the type of cost encompassed by Labor Code [Section] 2802. The most important aspect of licensure is that it is required by the state or locality as a result of public policy. It is the employee who must be licensed and unless there is a specific statute which requires the employer to assume part of the cost, the cost of licensing must be borne by the employee.’”

“(W)here an individual must, as a matter of law, have a license to carry out the duties of his or her employment, the employee must bear the cost of obtaining the license. It is

also consistent with this purpose to ***require an employer to bear the cost of training which is not required to obtain the license but is intended solely to enable the employee to discharge his or her duties.*** A POST certificate is a statutory prerequisite to exercising the powers of a peace officer in California. . . .” (Emphasis added.)

“(W)e conclude that basic POST certification training is not employer-mandated training, as described by the Division of Labor Standards Enforcement, and is not an expense of discharging the duties of employment, within the meaning of Labor Code Section 2802, but is rather an expense which is to be borne by the individual officer.”

However, “(l)ocal police agencies may . . . establish standards for selection and training of peace officers which exceed the minimum standards established by the POST commission. At trial, the city emphasized that its academy provides training in excess of the basic POST training that is available through community colleges. The city's academy training consists of 644 hours of POST training and 420 hours of ‘department required’ training.”

“Labor Code Section 2802 precludes the city from requiring recruits to reimburse it for the cost of the portion of the training which is in excess of that required for basic POST certification. And the city cannot avoid application of Labor Code Section 2802 by requiring recruits to enter into a contract such as the acknowledgment: A contract which purports to waive the protection of Labor Code Section 2802 is void.” (Emphasis added.)

“The case was tried on an all-or-nothing basis - either the acknowledgement was enforceable or it was not. Accordingly, no

evidence was admitted at trial which would permit apportionment of the cost of the academy between the basic POST certification training and the employer-mandated training. For that reason, we conclude that the acknowledgment is entirely void as to all defendants in this case.”

HOW THIS AFFECTS YOUR AGENCY

It is not improper to enter into an agreement with prospective employees similar to that used by LAPD. What would be improper, would be to attempt to recover cost of training which is not required for the individual to become eligible for a certification or license.

In addition, demanding reimbursement of portions of compensation paid to the academy trainee during the time of training is not lawful. The California Labor Code prohibits such recovery, but reimbursement of the cost of training is allowed, as long as it is done in accordance with this decision.

As with all legal issues, it is imperative that you seek out and follow the advice of your agency's legal counsel. However, as always, if you wish to discuss this case in greater detail, feel free to contact me at (714) 446 – 1400 or via email at mjm@jones-mayer.com.

Information on www.jones-mayer.com is for general use and is not legal advice. The mailing of this Client Alert Memorandum is not intended to create, and receipt of it does not constitute an attorney-client relationship.