



City Council

Staff Report

TO: Honorable Mayor and City Council

FROM: Steve Huntley, Director of Finance
John Jansons, City Manager *[Signature]*

DATE: April 25, 2016

SUBJECT: Adoption of Resolution 2016-017: Application for Membership in ERMA

RECOMMENDED ACTION:

It is respectfully recommended that the City Council adopt draft Resolution 2016-017 authorizing application to the Employment Risk Management Authority (ERMA).

BACKGROUND / DISCUSSION:

One of the most important aspects of effective municipal administration is to identify and reduce risk(s) to the City. Currently, the City is a member of the Central San Joaquin Valley Risk Management Authority (CSJVRMA) which offers Farmersville a total of ten coverage programs. Some of the programs are self-insured, some are group purchased, and others are a combination of both.

The CSJVRMA currently offers members the following coverage programs:

- Liability,
- Workers Compensation,
- Employment Practices Liability,
- Property and Auto, Safety and
- Loss Control.

There are only two programs that require mandatory participation; the Pooled Liability Program and the Employee Assistance Program.

In order to bolster our risk management program, the opportunity to join Employment Risk Management Authority (ERMA) exists, which would address risk(s) associated with personnel. To do so, the City Council must adopt a resolution (**Attachment 1**) to approve application (**Attachment 2**) for membership in ERMA.

Summary of Coverage Provided by ERMA:

ERMA is a statewide joint powers authority designed to provide broad coverage and tailored loss prevention services to reduce employment practices liability exposure. There is coverage to

\$1,000,000 per occurrence for both indemnity and defense and various retention levels are offered between \$25,000 and \$500,000.

ERMA provides coverage for:

- Harassment
- Discrimination
- Wrongful Termination
- Retaliation
- Workplace Torts

Benefits of Membership in ERMA:

ERMA is a resource center for member cities with technical assistance, best practices education and mandated training opportunities.

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.

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.

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.

ERMA partners with the law firms Liebert Cassidy Whitmore and Jackson Lewis LLP, both of whom specialize in employment law, to provide ERMA's Attorney Hotline Service.

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).

Application and Acceptance Process:

Any public agency acceptable to the Board of Directors shall be eligible for membership in ERMA. Agencies may request a preliminary premium indication by providing ERMA with total payroll for the last completed calendar year to mirror data collection for the annual budget process.

Approval for membership will be contingent upon the review of a formal submission of the required documents by the Underwriting Committee (Committee), the Committee's recommendation for membership to the Board of the Directors, and membership approval by the Board of Directors, at a regular or special Board meeting.

A prospective member may select from a variety of Self-Insured Retention (SIRs), but any selection of an SIR outside the guidelines' recommendations must be specifically approved by the Board of Directors.

The member's SIR must be exhausted prior to ERMA paying any defense or indemnity to which the member may become liable. The applicant must have the financial ability to pay for all claims that fall under their SIR.

Formal Submittal Documents Required:

1. Completed ERMA Liability Coverage Application (including desired SIR) and the entity's most recent audited financial statements;
2. Payroll for the most current seven calendar years;
3. Valued loss runs for wrongful employment practices coverage, employment practices liability insurance, and self-insured losses including SIRs and deductibles; and
4. Signed Resolution acknowledging acceptance of the rules and regulations set forth in the ERMA Governing Documents and the minimum three-year participation period.

Self-insured Retention (SIR) Options and ERMA recommended SIRs Payroll Range:

Self-insurance retention option (or "deductible") levels are based upon an entity's total payroll and are as follows:

<u>SIR (or "Deductible")</u>	<u>Total Payroll</u>
<u>\$25K</u>	<u>< \$10,000,000</u>
<u>\$50K</u>	<u>< \$25,000,000</u>
<u>\$75K</u>	<u>< \$30,000,000</u>
<u>\$100K, \$250K, or \$500K</u>	<u>< \$50,000,000</u>

With Farmersville's total annual payroll being less than \$10,000,000, the recommended membership level for Farmersville includes a \$25,000 SIR ("deductible") that would serve as the cap for any costs to the City before ERMA coverage begins to pick-up remaining costs related to a serious claim against the City.

If Farmersville's application is approved by City Council for submission, the City would expect to hear if Farmersville has been accepted for membership following the May 2016 ERMA Board of Directors meeting.

COORDINATION AND REVIEW:

The recommended action has been coordinated with the City Attorney, Finance and Personnel Departments and staff of the CSJVRMA.

FISCAL IMPACT:

The Fiscal Year 16/17 expense beginning July 1, 2016 would be approximately \$15,228 annually, and requires a three-year initial term of membership with anticipated increases to the premium in line with payroll increase over time.

CONCLUSION:

It is respectfully recommended that the City Council adopt draft Resolution 2016-017 authorizing application to the Employment Risk Management Authority (ERMA).

ATTACHMENT(S): 3

1. Draft Resolution 2016-017
2. ERMA Application
3. ERMA Handbook

Prepared By:

Steve Huntley
Director of Finance

Approved By:



John Jansons
City Manager

RESOLUTION No. 2016-017

**BEFORE THE CITY COUNCIL OF THE CITY OF FARMERSVILLE
A RESOLUTION AUTHORIZING PARTICIPATION IN
THE EMPLOYMENT RISK MANAGEMENT AUTHORITY**

WHEREAS, the City of Farmersville wishes to obtain Employment Practices Liability coverage for the period beginning July 1, 2016; and

WHEREAS, the Employment Risk Management Authority (ERMA) is a self-insured joint powers authority created for the sole purpose of Employment Practices Liability Coverage. ERMA is comprised of various public entities who risk share up to \$1 million against potentially unlawful employment practices and discrimination claims; and

WHEREAS, ERMA formed primarily due to the fact that government entities have not historically been able to secure Employment Practices Liability (EPL) coverage at a competitive cost through the commercial insurance marketplace; and

WHEREAS, ERMA has met all of the high professional standards established by the California Association of Joint Powers Authorities (CAJPA) in the areas of governance, finance, claims control, safety and loss control and ERMA is fully accredited by CAJPA. CAJPA's accreditation process requires reviews by independent consultants in the areas of accounting, claims adjusting, and actuarial analysis; and

WHEREAS, ERMA provides services to both Joint Powers Insurance Authorities and individual public entities; and

WHEREAS, the City of Farmersville has determined that it is in the best interest to become a member of ERMA for the purpose of obtaining Employment Practices Liability coverage; and

WHEREAS, ERMA requires the City of Farmersville to pass a resolution expressing the desire and commitment of the City of Farmersville's participation in ERMA, which requires a three year minimum participation period; and

WHEREAS, The City of Farmersville also understands our entity will be bound by the provisions in the ERMA Joint Powers Agreement just as though it were fully set forth and incorporated herein whether our entity had signed it individually or through an underlying Joint Powers Insurance Authority.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF FARMERSVILLE:

1. The foregoing recitals are adopted as true and correct; and
2. The City of Farmersville approves participation in ERMA (effective July 1, 2016); and

3. The City Manager, or his/her designee on behalf of the City of Farmersville is hereby authorized to take any and all actions necessary to implement the foregoing resolution.

THE FOREGOING RESOLUTION WAS ADOPTED by motion of _____ with a second by _____ at a regular meeting on this 25th day of April, 2016.

AYES: 0

NAYS: 0

ABSTAIN: 0

ABSENT: 0

BY:

ATTEST:

Gregorio Gomez, Mayor

Paul Boyer, City Clerk Pro Tempore

Employment Risk Management Authority (ERMA) *Intent to Participate*

Entity or JPA Name: CITY OF FARMERSVILLE

Contact Person: STEVE HUNTLEY, FINANCE DIRECTOR

Mailing Address: 909 W VISALIA ROAD
FARMERSVILLE CA 93223

Telephone: (559) 747-0458 FAX:(559) 747-6724

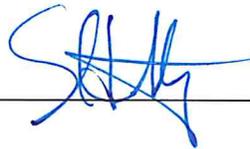
E-mail: SHUNTLEY@CITYOFFARMERSVILLE-CA.GOV

Please check the appropriate box(s):

Having received an indication for membership participation in the ERMA program, we agree to participate effective JULY 1 , 2016, at the following retention level.

\$25K \$50K \$75K \$100K \$250K \$500K

We are presently unable to commit to program participation but would appreciate receiving additional information concerning ERMA. Please provide us with: _____



Signature of representative authorized to bind the entity or JPA: _____

Please return this form to:

Bickmore
1750 Creekside Oaks Drive, #200, Sacramento, CA 95833
Attention: Rob Kramer, Executive Director
FAX: (916) 244-1199

**EMPLOYMENT RISK MANAGEMENT AUTHORITY
PREMIUM INDICATION
CSJVRMA**

Name of Entity	City of Farmersville
2014 Payroll	\$1,829,600
Coverage Period	July 1, 2015 to June 30, 2016

PRIMARY CALCULATION

JPA Experience Mod Factor		1.250			
JPA Off-Balance Factor		1.009			
Member Retained Limit Options		\$25,000	\$50,000	\$75,000	\$100,000
Retained Limit Factor		1.14	1.00	0.90	0.81
Retained Limit Rate		0.499	0.438	0.394	0.355
Defense & Indemnity		\$9,136	\$8,014	\$7,212	\$6,491
Administration	0.0598	1,095	1,095	1,095	1,095
Loss Prevention & Training	0.0075	137	137	137	137
Subtotal		\$10,367	\$9,245	\$8,444	\$7,723
Net JPA Deposit Premium					
Including JPA Participation Credit	5.87%	\$9,758	\$8,702	\$7,948	\$7,269

SECONDARY CALCULATION

Individual Experience Mod Factor *		1.000			
Individual Off-Balance Factor		1.498			
Individual ERMA Premium		\$14,619	\$13,037	\$11,907	\$10,890
Excess Insurance \$1 million x \$1 million		609	609	609	609
TOTAL ERMA PREMIUM		\$15,228	\$13,646	\$12,516	\$11,499

* New members are assigned an experience modification factor of 1.000 their first year in ERMA.

** Premium will be prorated based on date of inception of coverage

**EMPLOYMENT RISK MANAGEMENT AUTHORITY (ERMA)
LIABILITY COVERAGE APPLICATION**

If completed electronically, this application will adjust to allow space for any answers. If not completed electronically, then additional sheets may be needed.

ENTITY NAME: <u>CITY OF FARMERSVILLE</u>		Date: <u>4/20/2016</u>
EMPLOYMENT PRACTICES INFORMATION		
A. Policies and Procedures		
1.	Does the Entity have written personnel policies and procedures?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
2.	Does the Entity distribute the manual/rules to all employees?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
3.	Does the Entity have employees sign an acknowledgement form indicating they have read and understood the above-referenced policies?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
4.	Are the following policies or procedures included in the manual? Check all that apply:	
	<input checked="" type="checkbox"/> Hiring	<input checked="" type="checkbox"/> Termination <input checked="" type="checkbox"/> Suspension
	<input checked="" type="checkbox"/> Medical Leave	<input checked="" type="checkbox"/> Unpaid Leave <input checked="" type="checkbox"/> Grievance Procedures
	<input type="checkbox"/> Drug & Alcohol Testing	<input checked="" type="checkbox"/> Discipline <input checked="" type="checkbox"/> Attendance
	<input type="checkbox"/> Family Medical Leave Act	<input type="checkbox"/> Anti-Harassment Policies
	<input type="checkbox"/> Written Job Description for all Positions	<input checked="" type="checkbox"/> Workplace Violence Policies
	<input checked="" type="checkbox"/> Annual Written Performance Evaluations for all employees	
	<input type="checkbox"/> Employee Hotline/Complaint Procedure	
5.	Do the policies/rules include all protected categories under the Fair Employment and Housing Act (FEHA), Ca. Gov't. Code section 12940)?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
6.	Does the Entity have legal counsel regularly review the manual/rules/?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
7.	Have the above-referenced policies been updated within the past five years?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	If no, when was the manual or rules last reviewed?	OCTOBER 1985
8.	Were the above-referenced policies formally approved and adopted by council/governing board?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
9.	Does the Entity have legal counsel to provide advice regarding disciplinary matters?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
11.	Does the entity have an orientation program for all employees that addresses workplace conduct, EPL policies and practices, and grievance procedures?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
12.	<i>If you answered no to any of the above, please use this space to provide more information:</i>	
	THE POLICY AND PROCEDURES FOR THE CITY NEEDS TO BE UPDATED. THE LAST FULL REVISION WAS MADE IN 1985. ALL MODIFICATIONS SINCE THEN WERE NEVER FINALIZED OR ADOPTED TO OUR KNOWLEDGE. THIS IS OUR PRIORITY TO CORRECT RIGHT AWAY.	
B. Employee Information		
1.	Number of Full Time Employees: 32	
2.	Number of Part time Employees: 0	
3.	For each of the past five years, what has been your annual percentage turnover rate of employees?	
	2012 10%	2013 16% 2014 7% 2015 3% 2016 6%

EMPLOYMENT PRACTICES INFORMATION			
4.	How many involuntary employment terminations have occurred in the past two years?		
	20 15	0	20 16 2
	<i>Involuntary employment termination with respect to this questionnaire means notification to an employee that such employee will no longer be employed whether such notification is effective immediately or in the future. Involuntary employment termination shall also include actual or alleged constructive discharge.</i>		
5.	Percentage of Employees with salaries less than \$100,000 90 %		Should = 100%
6.	Percentage of Employees with salaries greater than \$100,000 10 %		

C. Employment Practices Claims Handling			
1.	Who in the Entity has been designated to handle claims? CITY MANAGER		
2.	(a) With respect to oral or written claims, do you have a written procedure for obtaining information and conducting required follow up on the claim?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
	(b) Do you require written claims for EEO-related complaints?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
	If yes to 2(a), describe the policy and procedure for receiving, reviewing, and responding to claims: CLAIMS AND GREIVANCES SUBMITTED TO PERSONNEL OFFICER & ESCALATED AS NEEDED		
3.	Does the Employment Claims handler coordinate with the workers' compensation administrator on all claims involving actual or potential industrial injuries? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
4.	Has your entity received any claim in the previous 7 completed fiscal years, including the partial current fiscal year, (including but not limited to Tort Claim, any and all claims filed with the DFEH, EEOC, Department of Labor or Federal Department of Justice, any civil lawsuit or other written claim) alleging the following?		
	(a) allegations of discrimination or harassment under FEHA, Title VII or any other federal or state law relating to discrimination based on race, sex, religion, disability, national origin, marital status, age, sexual orientation, retaliation or any other protected legal status;	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
	(b) allegations of retaliation relating to an Employee engaging in protected activity involving any EEO-related complaint, protected leave status, worker's compensation claim, or any other protected activity or status;	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
	(b) actual or alleged constructive termination of an employment relationship in a manner which is alleged to have been against the law or wrongful, or in breach of an implied employment contract or breach of the covenant of good faith and fair dealing in the employment contract;	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

EMPLOYMENT PRACTICES INFORMATION		
	(c) allegations of negligent or wrongful evaluation, wrongful demotion, wrongful discipline, failure to promote, failure to grant tenure, or wrongful deprivation of career opportunity;	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	(d) allegations of misrepresentation or defamation made by an <i>Employee</i> which arise from an employment decision to hire, fire, promote, demote or discipline;	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	(e) allegations of infliction of emotional distress, mental injury, mental anguish, shock, sickness, disease or disability made by an <i>Employee</i> which arise from an employment decision to hire, fire, promote, demote or discipline;	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	(f) allegations of false imprisonment, detention, or malicious prosecution made by an <i>Employee</i> which arise from an employment decision to hire, fire, promote, demote or discipline;	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	(g) allegations of libel, slander, defamation of character, invasion of privacy made by an <i>Employee</i> which arise from an employment decision to hire, fire, promote, demote or discipline; and	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	(h) other personal injury allegations made by an <i>Employee</i> which arise from an employment decision to hire, fire, promote, demote or discipline.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
If the answer is yes to any of the above, please attach a listing of the loss(es) showing a full description of each claim, including the date filed, the substance of the allegations, the disposition of the claim, and any monetary amounts paid in connection with the claim.		

D. Employment Practices Risk Management		
1.	Does the applicant have a Human Resources or Personnel Department?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
If no, please describe handling of this function: THESE FUNCTIONS ARE HANDLED BY THE OFFICE OF THE CITY MANAGER AND FINANCE		
2.	Do you have any established set of grievance or complaint procedures as an effective means of resolving disputes prior to litigation?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
3.	Do you anticipate any "layoffs" during the next 24 months?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
If yes, please provide details		
4.	Have you had any "layoffs" in the past 36 months?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
If yes, please provide details		
5.	Is your entity in full compliance with the training requirements set forth in AB 1825?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
If no, please explain.		

6.	Briefly describe the procedure for maintaining AB 1825 training records: ONCE ESTABLISHED, AB 1825 TRAINING RECORDS WILL BE RETAINED IN THE PERSONNEL OFFICE.
7.	Does your entity provide AB 1825 training for non-supervisory employees (i.e., “top to bottom” training)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
8.	Are elected officials trained on the entity’s policy regarding harassment, discrimination, and retaliation? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

E. DESIRED SELF-INSURED RETENTION					
<input checked="" type="checkbox"/> \$25K	<input type="checkbox"/> \$50K	<input type="checkbox"/> \$75K	<input type="checkbox"/> \$100K	<input type="checkbox"/> \$250K	<input type="checkbox"/> \$500K

<p><i>Please attach a copy of the following:</i></p> <ul style="list-style-type: none"> • <i>Employment practices liability individual loss information (including Date of Loss and total incurred) for the previous 7 completed fiscal years, including the partial current fiscal year;</i> • <i>Payroll information for the previous 7 completed calendar years;</i> • <i>Completed resolution authorizing participation in ERMA;</i> • <i>Completed intent to participate; and</i> • <i>Most Recent Financial Audit</i>
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The undersigned declares that no fact, circumstance, or situation indicating the probability of a claim or action is now known to any person proposed for this coverage; and it is agreed by all concerned that if there be knowledge of any such fact, circumstance or situation, any claim or action subsequently emanating therefrom shall be excluded from coverage under the coverage for herewith being applied. The undersigned being authorized by, and acting on behalf of, the applicant and all persons or concerns seeking coverage, has read and understands this application, and declares all statements set forth herein are true, complete, and accurate, and include all material information.

The undersigned further declares and represents that any occurrence taking place prior to the inception of the coverage for which is being applied, which may render inaccurate, untrue or incomplete any statement made herein will immediately be reported in writing to ERMA. The undersigned acknowledges and agrees that the submission and ERMA's receipt of such report, prior to the inception of the coverage for which being applied, is a condition precedent to coverage.

The undersigned acknowledges:

- (1) ERMA does not require the submittal of the aforementioned policies and procedures. ERMA does, however, rely on the information provided by the applicant in review of the application and the undersigned, therefore, declares and represents that the policies and procedures as represented above are the current policies and procedures of the entity.
- (2) ERMA's Board of Directors may recommend a risk assessment of any new member within 60 days of joining ERMA and/or a higher self-insured retention from what was requested, if an application for membership is approved.

The undersigned further acknowledges and agrees this application contains requests for information and requests for data on a range of exposures, but such requests do not imply that coverage is afforded in the program for which is being applied.

City of Farmersville, CA

Agency or Entity Name

John Jansons

Applicant's Name (please print)

City Manager

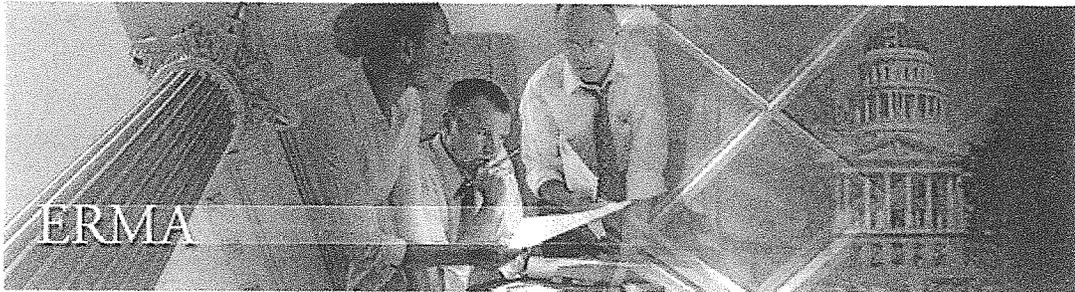
Title



Applicant's Signature

04-25-16

Date



Quick Reference Handbook



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!

Debra Stutsman, President
Rob Kramer, Interim 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 website at www.ermaipa.org. To register for access to the Members Only area of the website, select “Register” under “Account Login” and fill out the requested fields.

ERMA Contacts:

Rob Kramer, Interim Executive Director
(800) 541-4591, ext. 1117, rkramer@bickmore.net

Jaesa McCulligan, Board Secretary/Analyst
(800) 541-4591, ext. 1130, jmcculligan@bickmore.net

Kathy Maylin, Litigation Manager
(800) 541-4591, ext. 1181, kmavlin@bickmore.net

Lance Gerber, Legal Analyst
(800) 541-4591, ext. 4639, lgerber@bickmore.net

Nancy Broadhurst, Finance Manager
(800) 541-4591, ext. 1171, nbroadhurst@bickmore.net

Chee Xiong, Staff Accountant
(800) 541-4591, ext. 4620, cxiong@bickmore.net

Ashley Chapman, Training Coordinator
(800) 541-4591, ext. 1147, achapman@bickmore.net

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 at www.ermajpa.org. The direct link is:

<http://www.ermajpa.org/ProgramServices/AttorneyHotline.aspx>

Attorney Hotline contact information for Liebert Cassidy Whitmore and Jackson Lewis, LLP:

Liebert Cassidy Whitmore

Northern California:

(800) 585-4529

Southern California:

(800) 645-2696

Jackson Lewis, LLP

(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 contract firms (Liebert Cassidy Whitmore and Jackson Lewis, LLP) 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 (formerly the Agos Group). 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 training can be accessed by visiting www.in2vate.com/erma. 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 are available on the ERMA website at www.ermajpa.org under:
<http://www.ermajpa.org/ProgramServices/EmployeeReportingLine.aspx>

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.

The toll-free Employee Reporting Line is **1-877-651-3924**.

Employees may also make a report via the web at www.employeeprotectionline.com.

Compliance with AB 1825

Pursuant to Government Code section 12950.1 (AB 1825), and ERMA Resolution No. 2010-02, 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 and supervisors trained as of the date of occurrence of the claim. For members with less than ten but more than one manager or supervisor, substantial compliance is defined as having all but one manager or supervisor 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 managers and supervisors 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 ERMA 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 ERMA Litigation Manager or Assistant 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 website at:

<http://www.ermajpa.org/ProgramServices/ReportaClaimEmployerInitialReportForm.aspx>

- 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 lgerber@bickmore.net. If email is unavailable, please mail to:

ERMA, Litigation Manager
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 (www.ernaipa.org).

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 or Assistant 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 resumé to the Assistant 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 not 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 of the panel defense firms have been appointed to the panel 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 2008-1.

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.). 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.

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 members' 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.