



# 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.ermajpa.org](http://www.ermajpa.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:

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## **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](http://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](http://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](http://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](http://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](mailto:kmaylin@bickmore.net) or [lgerber@bickmore.net](mailto: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.ermajpa.org](http://www.ermajpa.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.**