



# 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 provided to our members.

This Quick Reference Handbook 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 pleased to offer an up-to-date and user-friendly website that allows members to view the calendar, access governing documents, access claim reporting forms, and print agendas and minutes of the Board of Directors' meetings. Staff is always available to answer any questions you may have.

Through our commitment to preventative training, member relationships, and active litigation management, ERMA is fulfilling its mission. We look forward to working with you!

John Gillison, President  
Rob Kramer, Executive Director

## ABOUT ERMA

ERMA is a Joint Powers Authority organized and existing in accordance with the laws of the State of California. For more information about the program and the services available to members, visit our [website](#). To register for access to the member portal, select “[Reach Us](#)” and complete the requested fields.

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*For training-related inquiries, please email [ERMATraining@sedgwick.com](mailto:ERMATraining@sedgwick.com).*

## **MEMBER SERVICES**

We are 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 of firms Liebert Cassidy Whitmore and Jackson Lewis, P.C., both of whom specialize in public entity employment law, to provide an attorney hotline service. The hotline provides members with an avenue to ask questions and receive professional consultation regarding labor and employment law related issues. Each member is assigned to one of the two law firms for hotline services and receives up to one-hour of free legal advice per month.

Both law firms will assist 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 Memorandum of Coverage (MOC). The attorney will inform the caller if the subject of a hotline call is not covered by the 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. If you are uncertain as to your assigned attorney firm, please contact [ERMATraining@sedgwick.com](mailto:ERMATraining@sedgwick.com).

Attorney Hotline contact information for Liebert Cassidy Whitmore and Jackson Lewis, P.C.:

**Liebert Cassidy Whitmore**  
(800) 645-2696

**Jackson Lewis, P.C.**  
(888) 375-3762

## **Training**

Employment-related training is a hallmark of our loss prevention program. We offer live training workshops on topical employment-related issues conducted by staff and our partner law firms. We also provide members with access to a host of online training modules via [ERMANet](#).

### **Live Training (Individual/Regional)**

Each program year, we offer in-person or webinar-based regional trainings throughout the state on harassment and discrimination prevention. The workshops are AB 1825 and SB 1343-compliant and focus upon 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 available on the [website](#).

Additionally, to meet the needs of individual members, we offer a limited number of individual trainings each program year. These workshops will be scheduled based upon member needs, requests and availability.

### **Online Training**

We also offer several on-line training modules through [ERMANet](#). These include AB 1825 and SB 1343 (English & Spanish) harassment training, AB 1234 ethics training, and a suite of modules related to human resources and supervisory skills

### **Training & Risk Management Program**

ERMA provides member agencies with access to a training and loss control reimbursement program. Each member is allowed reimbursement of up to \$2,500 annually for eligible human resource and employment-related training and loss control expenditures. Please visit the [ERMA website](#) to review Frequently Asked Questions and/or submit a request for reimbursement. If you are uncertain if your expenditure is eligible for reimbursement, please review the contact [ERMATraining@sedgwick.com](mailto:ERMATraining@sedgwick.com).

## **Anonymous Employee Reporting**

ERMA provides employees of member agencies with a toll-free number to report anonymous incidents of employment-related workplace misconduct such as harassment, discrimination, and retaliation.

Each agency is assigned a unique code for use of the Employee Protection Line (“reporting line”). Employees may make anonymous reports, but will need to supply their designated entity code so the report may be routed to the appropriate agency.

Any messages received are transcribed and transmitted to the appropriate agency representative. Each member’s designated reporting line contact may download a variety of materials and resources from [ERMANet](#), including a poster that populates a QR code with unique entity code.

If you are uncertain as to your agency’s reporting line code or would like assistance with accessing these resources, please contact [ERMATraining@sedgwick.com](mailto:ERMATraining@sedgwick.com).

The toll-free Employee Protection Line may be accessed by calling **(800) 576-5262**.

Employees may also make a report [online](#).

## **Compliance with AB 1825 and SB 1343**

**Pursuant to Government Code §12950.1, and ERMA Resolution No. 2021-5, all members are required to comply with state-mandated harassment and discrimination prevention training AND training record retention requirements. Members are required to maintain the required records of all AB 1825 and SB 1343 training, ERMA does not separately maintain these records.**

Effective July 1, 2010, for any claim that is submitted which relates to sexual harassment, the member is required to provide documentation evidencing they have substantially complied with harassment training as mandated by Government Code Section 12950.1. Substantial compliance is defined as having 90% of all supervisory, non-supervisory and elected and/or appointed officials trained as of the date of occurrence of the claim. For members with less than ten supervisory and non-supervisory employees and/or local agency official, substantial compliance is defined as having all but one employee or local agency official trained. any member that fails to comply with the mandated harassment training or that fails to provide documentation evidencing compliance shall be subject to an increase imposed upon its self-insured retention (SIR) 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.

As the live trainings are sponsored by ERMA, members are strongly encouraged to attend regional trainings in their area.

Regular training of all employees and local agency officials in the area of EPL prevention has the positive effect of improving the identification, response and prevention of wrongful employment conduct.

Please consult the [website](#) for additional resources and services as well as a link to the training compliance survey (open from January 1<sup>st</sup> – June 30<sup>th</sup>).

# 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 the MOC in Section II. *Claim* is generally defined to mean an oral or written notice to the covered party, 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; however, if a grievance or appeal of a disciplinary decision alleges a wrongful employment practice, it is advisable to notify the Litigation Manager for an evaluation as to whether the claim should be reported.

The written notice to ERMA (Claim Reporting Form) shall contain the following information:

- 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 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 Stacey Sullivan, ERMA Litigation Manager, at [stacey.sullivan@sedgwick.com](mailto:stacey.sullivan@sedgwick.com).



## **Late Reporting**

Pursuant to the MOC, failure to comply with the reporting requirements can result in a claim or lawsuit not being covered. 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, and you will have a right to appeal the determination to the Board of Directors. For additional information, the MOC and other governing documents may be accessed on the [website](#).

**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, and how and when to report a claim, please contact the [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 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 resume to the 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 contract rates. The 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, 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 panel defense firms have been appointed by the Board of Directors and have agreed to bill for their services at approved billing rates. Members must use a member of the Defense Panel on all claims 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 for that particular litigation.

Please contact the [Litigation Manager](#) for further information.

## **LITIGATION MANAGEMENT**

Pursuant to the MOC, claims and litigation are directed and managed by the 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 Resolution 2020-3.

The following are some of the requirements of the LMP:

- Member must use 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.); and
- Settlements must have prior approval of both the entity and the Litigation Manager.

## **PROCEDURE FOR TRACKING EXHAUSTION OF SIR (NON-VCJPA MEMBERS)**

Every member has an SIR 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. 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 approved service providers (e.g., investigators, defense counsel, etc.). Failure to use 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 SIR (VCJPA MEMBERS ONLY)**

Participating VCJPA members have an SIR 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. Approved defense firms provide both the member agency and ERMA with copies of all billings, including those within the member's 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 approved service providers (e.g., investigators, defense counsel, etc.). Failure to use 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.

**Staff will work with all members to resolve any SIR tracking issues and to answer any questions.**