



Proposal to Provide Independent  
Police Auditor Investigation  
Services to the

## **TOWN OF LOS GATOS**

Proposed Lead Attorney  
Timothy L. Davis

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Submitted March 10, 2021



March 10, 2021

Via email to [manager@losgatosca.gov](mailto:manager@losgatosca.gov)

Laurel Prevetti  
Town Manager  
Town of Los Gatos  
110 E. Main Street  
Los Gatos, California 95030

Re: Statement of Qualifications to Provide Independent Police Auditor Investigation  
Services to the Town of Los Gatos

Dear Ms. Prevetti:

On behalf of Burke, Williams & Sorensen, LLP ("Burke"), I am pleased to submit this response to the Request for Qualifications issued by the Town of Los Gatos ("Town"). Burke is extremely interested in the possibility of providing independent police auditor investigation services to the Town.

Burke was founded in 1927, and is a diverse, dynamic, and preeminent public law firm. For nearly 80 years, the representation of public agencies has been the cornerstone of Burke's legal practice. The firm currently serves the legal needs of over 200 local governmental entities, including cities, counties, joint powers authorities, and water and school districts. We take pride in our long-standing tradition of providing excellent legal services at reasonable rates and believe our team at Burke offers the depth, expertise, and commitment that the Town seeks from its counsel. Ours is a rich tradition of providing high quality advice and services to public agencies. We are prepared to work closely with you in budgeting, performing, reporting on, and updating the legal services you need.

Our background and experience in conducting workplace investigations is extensive. We have conducted investigations in response to internal grievances and complaints, inquiries by state and federal agencies, and complaints of misconduct filed by members of the public. We have also conducted investigations for public agencies that involved high-level employees, elected officials, and political issues, as well as conducting administrative or personnel investigations in the private sector.

As described in the attached materials, we propose that Sally Trung Nguyen and I serve as investigators. Sally and I each have significant experience handling complex workplace investigations involving both sworn and non-sworn employees.

Laurel Prevetti  
March 10, 2021  
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We have reviewed the Town's contract template and do not have any exceptions or requested changes to the contract provisions.

Thank you for considering us. If you have any questions regarding this proposal, or if you would like additional information, please feel free to contact me at the number listed above. I look forward to hearing from you.

Very truly yours,

Burke, Williams & Sorensen, LLP



Timothy L. Davis  
Partner and Chair  
Labor and Employment Law Practice Group

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## SCOPE OF SERVICES

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We understand that each complaint is different and can lend itself to a different investigatory approach. Because of this, we will tailor each investigation to the needs of the Town. Our attorneys will familiarize themselves with any internal investigation protocols to ensure that the investigation complies not only with the special statutory and due process requirements for those employees, but also with the Town's internal procedures.

We will work directly with the Town to identify the best investigator(s) and to determine the appropriate process for each investigation. Ultimately, Burke will always strive to provide the best service to the Town at the most reasonable cost.

While the details of each investigation process may vary, there are some general approaches that will be followed in every investigation. Each investigation will begin with appropriate fact-gathering, including the review of relevant Town policies and procedures, review of relevant records and evidence, and interviews of the complaining employee(s), any witnesses, and the accused employee(s).

In keeping with any applicable legal or Town standards, Burke attorneys develop interview admonitions that are provided to all witnesses which cover topics such as confidentiality of interview (to the extent allowed by law), right to representation, and no retaliation. When necessary, each investigator will make credibility assessments of the witnesses and involved parties. In order to assess credibility and make findings of fact, we conduct in-person interviews unless circumstances are such that a telephonic interview is the only option available.

We have interviewed dozens of represented and unrepresented employees and are familiar with sources of representation rights. We will inquire into and adhere to any standard practices or contractual obligations that the Town may have with respect to representation. Further, our attorney investigators are familiar with the procedural requirements of the POBRA and FBRA, and will adhere to all necessary legal requirements for police and fire employees.

The assigned attorney may or may not use a digital recorder during an investigation, depending on the circumstances of the investigation. When utilizing a recorder, Burke's standard practice is to have working transcripts of those recordings created internally. We do not routinely provide transcripts or recordings of interviews (unless required to do so by law), but instead provide summaries of those interviews. Exceptions to this standard practice can be evaluated on a case-by-case basis.

After fact-gathering has been completed, the assigned attorney(s) will analyze all information gathered and provide a comprehensive written report of findings of fact to the individual designated as the point of contact by the Town. Our reports will be limited to making factual determinations. At the request of the Town, we can also evaluate whether any applicable Town rule or policy has been violated. We do not make legal findings or recommendations for discipline or any related issues.

At the request of the Town, we can meet with appropriate staff or officials to present our findings.

We are also mindful of confidentiality and privilege issues, and our retainer is specially drafted to establish the attorney-client privilege pursuant to *City of Petaluma v. Superior Court*. Our team of attorney investigators will be sensitive to privilege and confidentiality throughout the investigation process. We are also committed to being responsive, timely, and will keep you updated throughout the investigation.

## EXPERIENCE AND EXPERTISE

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Members of Burke's Labor and Employment Law Practice Group understand the frequent and unique challenges facing public entity employers in California. Burke's employment attorneys have been providing public sector investigative services for over 25 years.

Because Burke's employment attorneys regularly oversee workplace investigations by outside investigators, interact with union representatives, advise on discipline and remedial measures stemming from misconduct investigations, represent employers in disciplinary appeals, and defend investigations in litigation, we bring critical experience and perspective to performing timely, high-quality investigations that will withstand subsequent scrutiny.

Our background and experience in conducting workplace investigations is extensive. Our investigations have involved allegations of workplace harassment, discrimination and retaliation, threats of violence, inappropriate or unlawful hiring practices, bullying, insubordination and conduct unbecoming, whistleblower retaliation, general workplace misconduct, and conflict of interest, among other issues. We have conducted investigations in response to internal grievances and complaints, inquiries by state and federal agencies, and complaints of misconduct filed by members of the public.

Burke attorneys are familiar with investigations that require compliance with special rules for peace officers and firefighters and the unique procedural rights that apply to investigations involving public employees. We are always mindful of statutory deadlines, representation considerations, proper admonitions, and other procedural and substantive considerations.

Our experience includes investigations for public agencies involving high-level employees, elected or appointed officials, and sensitive personnel and political issues. We have also been involved in multi-party investigations, and we are well-equipped to handle the complications involved when there are cross-allegations made during investigations.

Additionally, our attorneys regularly teach Human Resource Professionals and other in-house investigators on appropriate investigation techniques and preparing effective investigation reports.

We offer the investigatory skills of very experienced labor and employment attorneys with knowledge and expertise of investigations of workplace misconduct of all types.

A copy of an actual investigative report written by Tim and Sally is included as Attachment C to this proposal.

## QUALIFICATIONS OF KEY PERSONNEL

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We are committed to keep the same personnel throughout the Project and propose that Timothy Davis and Sally Nguyen serve as investigators. Tim is an owner of the firm and has been with Burke since 1994. Sally is a partner who joined the firm in 2018.

### Timothy L. Davis

Timothy Davis is an equity partner of Burke and serves as Chair of Burke's Labor and Employment Law Practice Group. He has been with Burke his entire legal career, starting at the firm as a summer clerk. Tim has handled internal investigations of employment complaints involving discrimination and harassment, as well as grievances. He also trains Human Resources professionals and managers regarding proper investigation techniques.

Tim is an experienced workplace investigator, who has handled complex and high-profile investigations. For example, Tim, along with Katy Suttorp, was retained to conduct an investigation for a public agency into ten concurrent allegations of race harassment and discrimination, including three employees who had submitted their complaints to the Department of Fair Employment and Housing. One employee pursued her DFEH complaint and lawsuit against the agency, and Tim was called upon to defend their investigative work during deposition. Tim and Katy were retained a second time to investigate additional allegations of race discrimination in the agency's hiring practices.

In June 2012, the City of Oakland retained Tim to conduct internal affairs investigations for the Oakland Police Department in response to Occupy Oakland related protests in October 2011. The protests led to confrontations between protesters and the police and resulted in 1,127 citizen complaints alleging excessive use of force and other policy violations. To assist with the significant influx of cases and meet a court imposed deadline to complete the investigations, the Police Department organized the complaints into 150 different cases and assigned 16 cases with over 20 complainants to the Burke team. With only three months to complete the investigations, the Burke team followed the Police Officers Bill of Rights requirements and identified potential rule violations, noticed and interviewed a total of 60 subject and witness officers, analyzed every alleged use of force by Oakland police officers at different locations and times, including use of specialty impact less lethal munitions, chemical agents, and long batons, and brought to findings all allegations of use of force. As part of the investigations, the Burke team also analyzed collateral policy issues relating to use of force in crowd control situations and made training and policy recommendations for future crowd management and police planning.

Tim's practice also includes development of personnel rules and policies including discipline and grievance procedures, and the investigation of grievances. He advises management clients on labor and employment law compliance matters. He has also served as legal adviser during grievance proceedings. Additionally, Tim has negotiated numerous labor agreements between cities and their employee groups, including police, fire, general employees, and management groups. He currently serves as lead negotiator in collective bargaining for the cities of San Diego, Roseville, Santa Cruz, San Rafael, and Tracy, as well as the Santa Cruz Port District, and he has advised numerous other public agencies throughout the state of California on

collective bargaining issues. An experienced litigator, his reported decisions include *Alhambra Police Officers Association v. City of Alhambra*, (2003) 113 Cal.App.4th, 413.

Tim received his B.A. degree cum laude in Integral Studies from Saint Mary's College of California in 1992 and his J.D. degree from the University of the Pacific, McGeorge School of Law in 1995.

### **Sally Trung Nguyen**

Sally Nguyen is an income partner and a member of the firm's Labor and Employment Law Practice Group. She has been practicing exclusively labor and employment law for over a decade. She frequently handles work-related investigations involving both sworn and non-sworn employees. She has successfully completed the Association of Workplace Investigators' (AWI) Training Institute for Workplace Investigations and earned her AWI Certificate (AWI-CH).

Sally has conducted a wide-variety of workplace investigations, including complex matters involving numerous complainants and subjects. Recently, Sally conducted an investigation for a public agency involving four complainants alleging, collectively and separately, sex discrimination and abusive conduct against one subject. Eighteen individuals were interviewed as part of that investigation. Shortly after that investigation concluded, the same public agency retained Sally to conduct another workplace investigation. The second investigation involved cross-complaints between a manager and subordinate, each alleging abusive conduct and personnel policy violations by the other.

In addition, Sally has conducted workplace investigations involving violations of a various department policies, race discrimination, sex discrimination, age discrimination, harassment, and retaliation. She regularly advises public agencies on the Public Safety Officers Procedural Bill of Rights, Weingarten rights, and the *Skelly* process. Sally has also advised public agencies on how to conduct workplace investigations that may involve potential crimes, including the *Garrity* and *Lybarger* warnings that must be provided. Moreover, Sally has represented public agencies in administrative proceedings concerning appeals of disciplinary actions taken against sworn officers and other employees.

Sally received her B.A. degree from the University of Berkeley in 2005 and her J.D. degree from the University of California, Hastings College of Law in 2009.

### **DISCLOSURE OF LITIGATION/DISCIPLINE**

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*City of Industry v. Burke, Williams & Sorensen, LLP*, LASC Case No. KC 068777 – The parties and insurer settled this matter in November 2019 and the settlement agreement is subject to a non-disclosure agreement.

*Jane Doe v. Burke, Williams & Sorensen, LLP*, LASC Case No. BC553797 – In 2014, plaintiff Doe filed a meritless class action complaint against Burke alleging various causes of action regarding its contingency fee agreement. Thereafter, in response to numerous adverse court rulings, the plaintiff filed three different amended complaints. The court ruled in favor of Burke and dismissed the class action portion of the third amended complaint. The case regarding the



individual plaintiff's action was stayed because it related to a separate legal action in which Burke was awarded substantial attorney's fees against the plaintiff. The plaintiff's appeal of the court's ruling in favor of Burke was denied on September 30, 2020 and the case is subject to a protective order. The stay in the individual plaintiff's action has been lifted now and the plaintiff has hired her fourth new attorney to pursue the matter. There is a status conference set for March 9, 2021.

## REFERENCES & CERTIFICATION FORMS

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Burke's completed Reference Form and Certification Forms are included as Attachment A.

## INSURANCE

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Burke maintains a comprehensive insurance program with high limits through carriers which are rated A or A+ by A. M. Best rating service. The General Liability Policy provides primary limits of \$1 Million per Occurrence, including Personal Injury, followed by a \$10 Million Umbrella Policy limit. Where indemnification is required, the firm's policy includes contractual liability, blanket additional insured pro-visions, primary and non-contributory wording, severability of interests, and blanket waiver of subrogation (applicable to the workers compensation policy also). As the firm owns no automobiles, liability coverage is written to include hired or non-owned autos which may be used by the firm or its employees.

The Lawyers Professional Indemnity program provides no less than \$5 Million in coverage for each claim and no less than \$10 Million in the aggregate for all claims made during the policy period in connection with acts by or on behalf of the firm by its attorneys, employees and others in the firm's capacity as Attorneys, Counselors at Law, or Notaries; subject to the policy's terms, conditions, exclusions and limitations.

## FEE SCHEDULE

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We believe that the rates quoted below are reasonable and competitive.

### Hourly Rates

Staffing	Hourly Rate
Timothy L. Davis	\$350
Sally Trung Nguyen	\$325
Associate Attorneys	\$290

### Adjustments

The rates for legal services quoted in this proposal will remain in effect for the first year of the contract. Thereafter, unless otherwise negotiated, rates may be adjusted based on a standard annual adjustment upon consultation with the Town Manager and approved by the Town

Council as part of the Council's standard budget adoption process, equal to the greater of the average Consumer Price Index for the previous four quarters or any across the board salary increase granted to represented management personnel within the district.

### Reimbursements

We routinely charge our clients for our direct out-of-pocket expenses and costs incurred in performing the services. These costs and expenses commonly include such items as reproduction of documents, facsimile, mileage reimbursement for travel at the IRS approved rate, and other costs reasonably and necessarily incurred in performing services for the Town. We do not charge a service fee or overhead for cost reimbursement items. We also do not charge for computer or word processing time. Reimbursement amounts may be adjusted annually.

Expense	Rate
In-house reproduction charges	
black and white	20¢ per page
color	\$1 per page
Mileage	56¢ per mile (or current IRS rate)
Facsimile	\$1 per page
All other costs reasonably and necessarily incurred in performing services for the Town	at cost

### Billing Format and Procedure

Bills are sent out each month invoicing charges for the prior month. Fees for our services are charged in increments of 1/10th of an hour. The bills provide a specific description of the work performed by all attorneys, the time actually spent on the work item, and the billing rate of the attorney. These bills also contain itemized descriptions of any out-of-pocket expenses incurred during the prior month.

## **ATTACHMENT B – RESUMES**

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# Timothy L. Davis

## Partner

Pronouns: he, him, his

### Silicon Valley

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San Jose, California 95113

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## PRACTICE GROUPS

Labor and Employment  
Litigation  
Public

## EDUCATION

J.D., University of the Pacific, McGeorge  
School of Law, 1995

B.A., *cum laude*, Integral Studies, Saint  
Mary's College of California, 1992

## ADMISSIONS

State Bar of California  
United States District Court for the Central  
District of California

Timothy Davis is a partner in Burke, Williams & Sorensen's Silicon Valley office and is Chair of the firm's Labor and Employment Law practice group.

Tim has tried to verdict employment cases in both federal and state court, and has conducted over 70 employment arbitrations. Tim routinely defends employers in litigation matters in actions involving state and federal law, such as Title VII, the California Fair Employment and Housing Act, Americans with Disability Act, Age Discrimination and Employment Act, Family and Medical Leave Act, California Family Rights Act, California Pregnancy Disability Act, Public Safety Officers Procedural Bill of Rights, and wage and hour issues, including wage and hour class actions. He has represented employers in claims of wrongful termination, breach of fiduciary duty, breach of loyalty, unlawful interference with prospective economic advantage, unfair competition, and constitutional rights violations. His practice also includes the representation of employers before state, federal, and local administrative proceedings, including the Department of Labor, local civil service commissions, PERB, EEOC, and OSHA. Tim's reported decisions include *Alhambra Police Officers Association v. City of Alhambra*, (2003) 113 Cal.App.4th, 413.

Tim also represents both public and private employers as a lead negotiator during collective bargaining with their employee groups, including police, fire, general employees, and management groups. Additionally, his practice includes internal investigations of employment complaints involving discrimination and harassment, as well as the presentation of seminars on how to prevent discrimination and harassment and investigate allegations of discrimination and harassment. He also trains human resources professionals and managers regarding proper investigation techniques. His practice includes development of personnel rules and policies including discipline and grievance procedures, and the investigation of grievances. He advises management clients on labor and employment law compliance matters. He has also served as legal advisor during grievance proceedings.

Tim's commitment and experience in public law began in law school, where he co-authored the article, "Does a Public Law Attorney Owe a Duty to Third Parties?" which appeared in the Summer 1994 issue of the *Public Law Journal*.

## RESULTS

- *Torrance et al. v. City of Alhambra*. Public Safety Officers Procedural Bill of Rights litigation. Prevailed at trial; employee writ and request for injunction denied; affirmed on appeal.
- *Flannagan v. City of Alhambra*. Police First Amendment litigation. Federal jury trial verdict for plaintiff limited to \$8,000 damages.

- *Alhambra Police Officers Association v. City of Alhambra*. Public Safety Officers Procedural Bill of Rights litigation. Prevailed at trial; affirmed on appeal.

### Employment-Related Litigation

- *Tony Reeves v. City of Alhambra*. Race discrimination litigation. Prevailed on summary judgment.
- *Anthony Jones v. City of Alhambra*. Race discrimination litigation. Prevailed on summary judgment.
- *Earl Botke v. City of Alhambra*. Race discrimination litigation. Prevailed on summary judgment.
- *Alhambra Firefighters Association v. City of Alhambra*. Employment litigation. Prevailed on summary judgment.
- *Edith Lopez v. City of Alhambra*. Police discrimination litigation - race, gender, religion. Settled at mediation.
- *Isaac Amey v. City of South Gate, et al.* Race discrimination/ harassment litigation. Settled at mediation.
- *Sonia Clayton v. City of South Gate, et al.* Pregnancy and gender discrimination litigation. Settled after mediation.
- *Armando Castillo v. Ventura County Community College Dist.* Race and age discrimination litigation. Settled at mediation.
- *Ray Centeno v. Ventura County Community College District.* Race discrimination and harassment litigation. Settled at mediation.

### Arbitrations Involving Public Employee Claims

- *Peter Nava v. City of Alhambra*. Wrongful termination arbitration. Prevailed at arbitration; employee writ denied; affirmed on appeal.
- *Daniel Humphreys v. City of Alhambra*. Wrongful termination arbitration. Prevailed at arbitration; employee writ denied.
- *Philip Sheriden v. City of Alhambra*. Wrongful termination. Prevailed at arbitration; employee writ denied.
- *Pfau v. City of Alhambra*. Employment arbitration. Prevailed at arbitration.
- *Jose Feliciano v. City of Glendale*. Wrongful demotion arbitration. Prevailed at arbitration.
- *Mike Briedert v. City of Santa Clarita*. Wrongful termination. Prevailed at arbitration.
- *R.P. Brar v. City of Banning*. Wrongful termination. Prevailed at arbitration; writ of mandate denied.
- *Cecelia Costlano v. City of Moorpark*. Wrongful suspension and wrongful termination. Prevailed at arbitration on both matters.
- *Celia Hernandez v. City of Moorpark*. Wrongful termination arbitration. Prevailed at arbitration.
- *Anthony Smith v. City of Chino Hills*. Wrongful termination arbitration. Prevailed at arbitration.
- *Michael Johnson v. Port Hueneme*. Wrongful termination arbitration. Prevailed at arbitration.
- *John Harbor v. City of Santa Paula*. Wrongful termination. Prevailed at arbitration.
- *Larry Blinn v. Port Hueneme*. Wrongful termination. Prevailed at arbitration.
- *Israel Reyes v. Port Hueneme*. Wrongful termination. Prevailed at arbitration.
- *Myrna Kassack v. City of Hemet*. Termination. Prevailed at arbitration; upheld on writ before in Superior Ct.

## INSIGHTS

### Presentations

“Health Insurance Opt-Outs After the Affordable Care Act and Flores v. City of San Gabriel Decision,” County Counsels' Association of California Employment Law Conference, Santa Barbara, November 2016

“Essentials of Workplace Investigations,” CALPELRA Annual Training Conference, Monterey Conference Center, November 2016

“Firefighters Procedural Bill of Rights and the Police Officer Bill of Rights: At the Intersection of Labor Relations and POBR/FPBRA,” CALPELRA Annual Training Conference, Monterey Conference Center, October 2015

“Going with the Flow: Managing Multiple Bargaining Units to Obtain Optimal Settlements,” CALPELRA Annual Training Conference, Monterey Conference Center, November 2014

“Preparing for Factfinding: Tools to Navigate the Impasse Process Under the MMBA,” CALPELRA Annual Training Conference, Monterey Conference Center, November 20, 2013

“Preparing for Factfinding: Tools to Navigate the Impasse Process Under the MMBA,” County Counsels Association of California Employment Law Fall Conference, November 7, 2013

“Negotiating Changes to Pension Benefits,” San Diego Taxpayers Association, September 12, 2013

“Predict a Better Future: Dealing with Difficult Employees,” 2013 Western Region IPMA Annual Training Conference, May 1, 2013

“Creating Effective Documentation,” California Joint Powers Insurance Authority's Human Resources Academy, April 23, 2013



# Sally Trung Nguyen

## Partner

Pronouns: she, her, hers

### Silicon Valley

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## PRACTICE GROUPS

Labor and Employment

## EDUCATION

J.D., University of California, Hastings  
College of the Law, 2009

B.A., University of California, Berkeley  
2005

## ADMISSIONS

State Bar of California

State Bar of New York

United States District Court for the  
Northern District of California

United States District Court for the Central  
District of California

United States District Court for the Eastern  
District of California

## AFFILIATIONS

Association of Workplace Investigators

National Association of Women Lawyers

Vietnamese American Bar Association of  
Northern California

## RECOGNITIONS

Selected to Northern California Super  
Lawyers, Rising Stars 2015-2019

First Place Team, 2008 International  
Academy of Dispute Resolution Mediation  
Competition

Sally Trung Nguyen is a partner in the firm's Silicon Valley office and is a member of Burke's Labor and Employment Practice Group. She is experienced in handling a wide-range of labor and employment disputes, including wage and hour compliance (individual and collective actions), employment discrimination, harassment, retaliation, FMLA/CFRA, and disability accommodations.

Sally has devoted her legal career to helping others resolve their disputes and has a special affinity in representing clients in labor and employment law matters. She regularly provides advice and counseling to management pertaining to labor and employment law compliance, as well as serves as the lead negotiator for various agencies. She also frequently handles investigations concerning allegations of, among other things, harassment, discrimination, retaliation, abusive conduct, and policy violations. Additionally, she regularly reviews investigation files and advises management on appropriate and strategic remedial actions. She has successfully completed the AWI's Training Institute for Workplace Investigations and earned her AWI Certificate (AWI-CH).

Prior to joining Burke, Sally worked at multiple law firms in the San Francisco Bay Area where she represented clients in individual and class action employment cases in state, federal, and administrative proceedings before the California Division of Labor Standards Enforcement (DLSE), the California Department of Fair Employment and Housing (DFEH), and the Equal Employment Opportunity Commission (EEOC). In addition, Sally has earned a mediation certificate with Community Boards.

## INSIGHTS

### Presentations

"How to Document an Employee File," Webinar, December 19, 2017

"Maternity and Pregnancy Legal Rights Program," San Jose, CA, September 10, 2016

Monthly Radio Segments on Various Worker's Rights Topics, Viet Tribune, San Jose, 2013-2014