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May 14, 2025

The Honorable Patrick Ahrens
Member, California State Assembly
1021 O Street, Room # 6110
Sacramento, CA 95814

**RE: AB 340 (Ahrens) Employer-Employee Relations Confidential Communications
Notice of OPPOSITION (As Amended March 5, 2025)**

Dear Assemblymember Ahrens:

On behalf of the City of Cupertino, I am writing to express our opposition to your Assembly Bill (AB) 340. This bill would restrict an employer's ability to conduct internal investigations to the detriment of employees' and the public safety and well-being, adding new costs and liability for public employers. Moreover, the substantive provisions of the bill create restrictions mirroring a privilege.

Previous Legislation and Previous Veto

Our concerns with AB 340 are consistent with the issues raised in response to previously introduced legislation, AB 2421 (Low, 2024), AB 729 (Hernandez, 2013), AB 3121 (Kalra, 2018) and AB 418 (Kalra, 2019). The issues are succinctly captured in the AB 729 veto message from Governor Brown, which states: "I don't believe it is appropriate to put communications with a union agent on equal footing with communications with one's spouse, priest, physician or attorney. Moreover, this bill could compromise the ability of employers to conduct investigations into workplace safety, harassment and other allegations."

New Costs and Added Liability for the State, Local Governments, and Schools

In order to conduct proper investigations that uphold the public's trust, protect against the misuse of public funds, and ensure the safety and well-being of both public

employees and the public at large, it is critical that a public employer has the ability to interview all individuals with relevant information to ascertain the facts and understand the matter fully. AB 340 would increase investigation and litigation costs for the state as well as local governments and schools by creating incomplete investigations, since all appropriate employees with relevant information cannot be questioned. Costs and risks may also increase as conduct challenged as unlawful under the bill's provisions is adjudicated before the Public Employment Relations Board (PERB). For schools, this is a drain of Proposition 98 funding.

Inconsistent with PERB Decision

AB 340 states that its prohibition on employer questioning is intended to be consistent with, and not in conflict with, William S. Hart Union High School District (2018) PERB Dec. No. 2595. This is problematic for two reasons. First, the bill is inconsistent with that PERB decision. That decision engaged in a circumstantial analysis to determine whether employer questioning was prohibited or not, while weighing the employee's and the employer's interests. AB 340 goes far beyond that, forgoing any circumstantial analysis or weighing of interests. It categorically prohibits questioning of confidential employee representative communications, except for narrow, limited exceptions. Second, we are not aware of evidence that PERB is denying the interests of employees on this issue, raising the question of whether a legislative solution is warranted.

Expansion of New One-Sided Standard

AB 340 would create a de facto prohibition on employers requesting a court to compel disclosure of purportedly confidential communications, which is the same outcome as if communication was privileged in those circumstances. This will have a significant impact on judicial and administrative proceedings.

Endangers Workplace Safety

AB 340 interferes with the ability to interview witnesses because it would prohibit public agencies from questioning any employee or "representative of a recognized employee organization, or an exclusive representative" about communications between an employee and a "representative of a recognized employee organization, or an exclusive representative." While AB 340 includes a narrow exception for criminal investigations, and provides that it does not supersede Gov. Code 3303, many necessary investigations are still subject to the bill's limitations, putting safety at risk. This bill would hinder employees who wish to voluntarily report an incident or testify in front of necessary misconduct investigations since an employer would be prohibited

from certain lines of questioning. It would also limit the ability of public employers to carry out the requirements of the recently enacted law, Senate Bill 553 (Cortese, 2023), which includes conducting investigations into workplace safety, harassment, and other allegations. As of January 1, 2025, SB 553 allows collective bargaining representatives standing to seek temporary restraining orders (TRO) in connection with workplace violence. AB 340 will create a problematic scenario wherein a TRO may be obtained but an employer could not fully investigate the underlying facts. AB 340 lacks guardrails to prevent potential conflicts of interest that could arise during employee safety issues.

Making matters worse, employers may not even know they are acting contrary to AB 340's restrictions by communicating with staff, because only the employee or the representative would know or could decide when a communication was made "in confidence." This could affect day-to-day activities and critical government operations.

For these reasons, the City of Cupertino opposes AB 340.

Sincerely,

A handwritten signature in black ink that reads "Liang Chao". The signature is written in a cursive, flowing style.

Liang Chao

Mayor

City of Cupertino

cc. The Honorable Josh Becker
The Honorable Patrick Ahrens