



Looking Forward to 2016!

At the beginning of the year, we like to foreground changes in the law that will impact California charter schools - sometimes significantly, sometimes less so. Read on for an update of what to expect in 2016!

Attorney General Opinion Pending

Pending Attorney General Opinion No. 11-201 (assigned to Deputy Attorney General Manuel M. Medeiros) is currently under review by the California Attorney General. The specific question under review is: "Is a California charter school and its board of directors subject to: a) the Ralph M. Brown Act; or b) the California Public Records Act; or c) the Political Reform Act of 1974; or d) Government Code section 1090; or e) the review and inspection of books and records, by a Grand Jury formed pursuant to Penal Code section 888? (Most notably, the Grand Jury whose function it is to investigate and inquire into county functions of civil concern, see also, Penal Code section 933.6)?"

We will be monitoring the status of the opinion carefully and plan to update readers as soon as the opinion is issued. If you would like to review all of the pending opinions, you can visit the [Legal Opinions web site of the California Attorney General](#).

Every Student Succeeds Act

We will provide a comprehensive update in our February newsletter; suffice it to say, however, the "ESSA" has been long awaited and is far reaching in its implications. Among some notable changes are the following:

- The charter school state grant program can now be administered by governors and charter support organizations in addition to state educational agencies.
- The charter school state grant program prioritizes funding to states that provide equitable resources to charter schools and that assist charters in accessing facilities.
- Charter school grant program recipients will have more flexibility to use a weighted lottery to increase access to charter schools for disadvantaged students and use feeder patterns to prioritize students that attended earlier grades in the same network of charter schools.
- The highly qualified teacher requirement has been repealed.

We'll provide more details soon!

Minimum Wage Increase

On January 1, 2016, California's minimum wage increases to \$10 per hour from the existing minimum wage of \$9 per hour. This is the second increase to the state minimum wage in the past year and a half.

Employers need to be ready for the minimum wage increase. Also, employers should remember that state enforcement agencies have made it a top priority to stop employers from engaging in so-called "wage theft," which includes not paying the minimum wage for all hours worked. Practices that may need review include overtime rates of pay, exempt/nonexempt classifications, meal and lodging credits, commission issues, notice requirements and more.

Affordable Care Act

The Affordable Care Act (ACA) imposes significant reporting requirements on many employers, even if they do not offer health coverage to their employees. Section 6055 of the ACA requires health insurers, self-insuring employers, and other providers of health coverage to report information that will be used to determine which individuals are eligible for health insurance premium subsidies and which employers qualify for small-employer tax credits. Section 6056 of the ACA requires all Applicable Large Employers -- even those that do not offer health coverage -- to report information that will be used to determine whether the employer is responsible for shared responsibility penalties. In addition to reporting the required information to the IRS, employers must also provide individual statements to employees.

On December 28, 2015, the IRS issued [Notice 2016-4](#), which extends the ACA reporting deadlines for 2015 as follows:

(1) The due date for employers to provide the 2015 Form 1095-B, *Health Coverage*, and the 2015 Form 1095-C, *Employer-Provided Health Insurance Offer and Coverage* to employees is extended from **February 1, 2016, to March 31, 2016**.

(2) The due date for employers to file with the IRS the 2015 Form 1094-B, *Transmittal of Health Coverage Information Returns*; the 2015 Form 1095-B, *Health Coverage*; the 2015 Form 1094-C, *Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns*; and the 2015 Form 1095-C, *Employer-Provided Health Insurance Offer and Coverage* is extended from **February 29, 2016, to May 31, 2016** (if not filing electronically), and from **March 31, 2016, to June 30, 2016** (if filing electronically).

All applicable large employers (employers with 50 or more full-time and full-time equivalent employees) and employers sponsoring self-funded plans must comply with the ACA's applicable reporting requirements.

School Activities Leave

SB 579 amends Section 230.8 of the Labor by expanding the ability of employees to take protected time off from work for school or child care related activities. The new law further allows an employee protected time off to find a school or a licensed child care provider and to enroll or re-enroll a child, and time off to address child care provider or school emergencies. SB 579 also expands the categories of employees eligible to take time off for a child. This law applies to employers with 25 or more employees. The law also incorporates amends the definition of "sick leave" for purposes of the Healthy Workplaces, Healthy Families Act. SB 579 also makes technical amendments to California's "kin care" law to conform to the mandatory paid sick leave law. SB 579 allows employees to use kin care for the same purposes specified by the paid sick leave law and defines "family member" under the kin care law the same as under the paid sick leave laws. **All charter schools would be urged to revisit their sick leave and time off policies in light of this new law.**

National Guard Leave and Protections

AB 583 amends Section 395.06 of the Military and Veterans Code to expand the list of employees eligible for California's military leave protections, such as return rights and other job protections.

Gender Wage Equality

SB 358 (the "Fair Pay Act") revises Labor Code section 1197.5, which deals with

gender pay inequality or disparity. Under existing California law, employers cannot pay an employee less than the rate paid to an opposite-sex employee in the same establishment for equal work on jobs that require equal skill, effort and responsibility, and could face a lawsuit for such disparity.

The Fair Pay Act revises and expands this prohibition. It eliminates the requirement that the pay difference be "within the same establishment" and eliminates use of the terms "equal work" for "equal skill, effort, and responsibility."

Instead, SB 358 prohibits an employer from paying any of its employees less than employees of the opposite sex for "substantially similar work, when viewed as a composite of skill, effort and responsibility." In addition, the legislation places specific requirements on employers to affirmatively show that any wage differential is not unlawful but is instead based entirely and reasonably upon one or more of the acceptable listed factors, including seniority and merit systems or other bona fide factors coupled with a showing of "business necessity," as defined.

The Fair Pay Act prohibits employers from terminating, discriminating or retaliating against an employee who exercises his/her rights under the Act or assists others in exercising their rights. Employers also can't prohibit employees from disclosing their wages, discussing the wages of others or asking about another employee's wages. The Act does not obligate anyone to disclose wages when asked. It's important to remember that the ability of employees to discuss wages is already protected by other existing state and federal laws, even though the Fair Pay Act also includes this same protection.

This law creates a private right of action for retaliation and discrimination. We will be monitoring this law closely as case law further refines the scope of this important new law.

Reasonable Accommodation and Retaliation

AB 987 amends Section 12940 of the Government Code to clarify that an employer can't retaliate or discriminate against an employee for requesting a reasonable accommodation for a disability or religion, regardless of whether the request was granted. The law clarifies that the mere act of making the request is protected conduct under the Fair Employment and Housing Act.

Unlawful Use of E-Verify

AB 622 adds Section 2814 to the Labor Code by prohibiting employers from using the federal E-Verify system at a time or in a manner not required by federal law to

check the employment authorization status of an existing employee or of an applicant who has not received an offer of employment. AB 622 also requires employers who use E-Verify to comply with specific employee notification requirements when they receive notice from a federal agency that the submitted E-Verify information does not match federal records. There is a penalty of \$10,000 for each violation.

A New Web Site Coming Soon!

We're looking forward to unveiling a new, more responsive and user-friendly web site in the coming weeks! Check in at www.hkschoollaw.com when you have the time to see the latest.

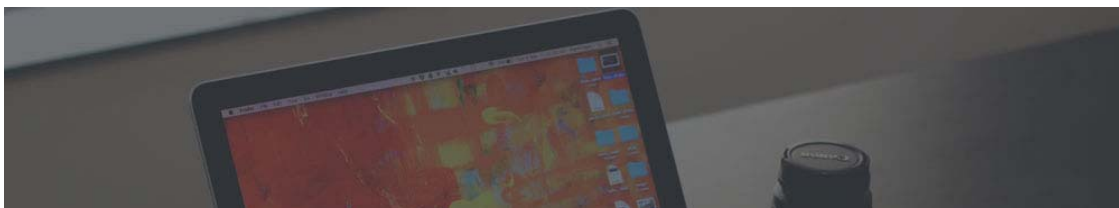


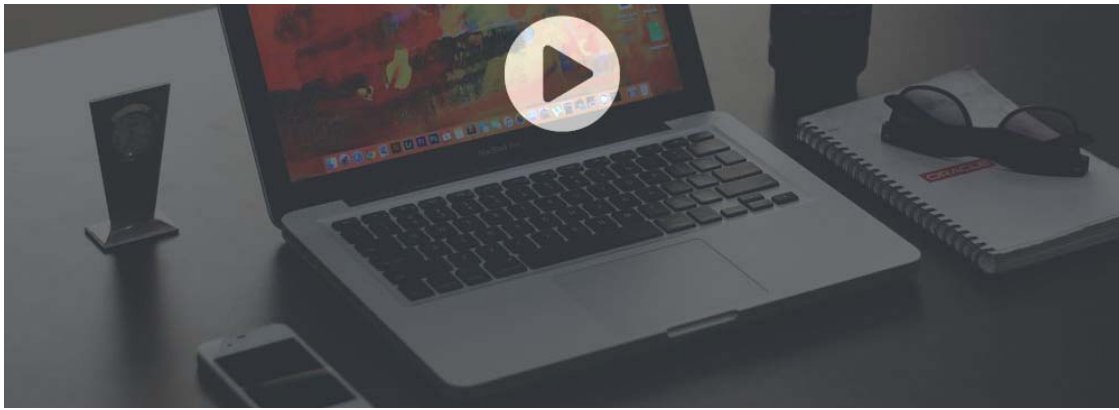
See You At CCSA!

We'll see you March 14-17 in Long Beach, California for the 23rd annual CCSA conference. [Click here](#) for more information about the event.

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