

HK School Law Monthly Newsletter



Greetings!

Thank you for your interest in the HK School Law Monthly Newsletter.
We look forward to hearing from you soon!

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IN THE NEWS



CCSA Issues Report Showing Charters Making Significant Academic Gains

This past August, the California Charter Schools Association released its fourth annual [*Portrait of the Movement: Five Year Retrospective - A Charter Sector Growing in Numbers and Strength*](#). Click the link above to read the report and accompanying fact sheet.

Appeals Court Backs Student Over Violent Rap Produced Off Campus

A [federal appeals court has ruled](#) that a high school student's rap song using vulgar and violent lyrics to criticize two male coaches at his school, on the grounds that they allegedly sexually harassed female students, is protected by the First Amendment.

ANNUAL EMPLOYMENT LAW UPDATE - 2015

WHAT'S NEW IN EMPLOYMENT LAW FOR 2015?

HR professionals, school principals and executive directors know that California's employment law landscape changes frequently. Every year, new issues arise and new legislation is passed that impacts school operations and employee relations - sometimes dramatically.

In our annual roundup of some of the most important new or revised employment laws, we highlight what you need to know (and do) to remain compliant. As always, if you have any questions about these new or revised laws, please don't hesitate to contact us at any time.

Posting and Notice Requirements

Effective January 1, 2015, California Employers must post the new [Healthy Workplaces, Healthy Families Act of 2014](#) notice advising employees of their paid sick leave rights. The Division of Labor Standards Enforcement has provided this free poster template here: [http://www.dir.ca.gov/DLSE/Publications/Paid_Sick_Days_Poster_Template_\(11_2014\).pdf](http://www.dir.ca.gov/DLSE/Publications/Paid_Sick_Days_Poster_Template_(11_2014).pdf)

Recruiting and Hiring

Required Information Regarding Healthy Workplaces, Healthy Families Act

Non-exempt employees must be provided information regarding California's *Healthy Workplaces, Healthy Families Act of 2014* in the wage information notice upon hire. The requirements include:

- The rate(s) of pay and basis (hourly, by shift, day, week, salary, piece, commission or otherwise) including applicable overtime rates
- Allowances, if any, claimed as part of minimum wage, including meal or lodging allowances
- The regular payday designated by the employer
- The name of the employer, including any "doing business as" names used
- The physical address of the employer's main office or principal place of business, and, if different, a mailing address
- The employer's phone number
- The name, address and phone number of the employer's workers' compensation carrier
- That an employee may accrue and use paid sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of paid sick leave; and has a right to file a complaint against an employer who retaliates

The employer must notify employees, in writing, of any changes to the information above, **within seven (7)** calendar days after the time a change was made, unless: a) All changes are reflected on a timely wage statement (meeting all legal requirements); b) Notice is provided in another writing required by law within seven (7) days of the change.

AB 60 Drivers License

A general practice of requiring all new hires to show a driver's license can violate the law. The Fair Employment and Housing Act (FEHA) prohibits employers from discriminating against individuals who possess a driver's license issued to persons unable to prove their presence in the United States is authorized under federal law, i.e. persons who hold a California Drivers License issued as what is known as an "AB 60 DL." (See also reference in *Verifying Eligibility to Work* below). Further, an employer is prohibited from requiring a person to present a driver's license, unless possessing a driver's license is:

- Required by law
- Required by the employer and the employer's requirement is otherwise permitted by law

Exempt and Non-Exempt

California's minimum wage rate increased to \$9.00/hour on July 1, 2014, affecting the minimum salary for exempt employees. The minimum monthly salary for most exempt employees is no less than two (2) times the state minimum wage for full-time employment -- \$3,120 per month. To calculate, multiply the state minimum wage (\$9) by the number of hours a full-time employee works in one year (40 hours/week x 52 hours/year) and divide by 12 months.

Verifying Eligibility to Work

AB 60 Drivers Licenses and Form I9

Effective January 1, 2015, Assembly Bill (AB) 60 requires the California Department of Motor Vehicles (DMV) to issue a driver's license to undocumented persons who can prove identity, CA residency and meet all other licensing requirements, such as behind the wheel exams. This card however, will have a notation stating that it is not acceptable for federal purposes such as verifying eligibility for employment. In other words it is not acceptable for *Form I-9* verification. (See also reference in *Recruiting and Hiring*). A worker with an AB 60 license must have other documents he/she can use to verify eligibility for employment and complete the I-9 requirements.

- AB 60 cannot be used as a basis for an investigation, arrest, citation, or detention, regardless of whether a matter is civil or criminal in nature.

Completing Form I-9

United States Citizenship and Immigration Services *Handbook for Employers, Guidance for Completing the Form I-9* offers these tips to help employers avoid discrimination during the I-9 process:

DO:

- Treat employees equally when recruiting and hiring and when verifying employment authorization and identity during the Form I-9 process
- Allow each employee to choose the documents she/he will present from the list of acceptable Form I-9 documents

DON'T:

- Set different employment eligibility verification standards or require that different documents be presented by employees because of their national origin and citizenship status
- Request to see employment eligibility verification documents before hire and completion of a Form I-9 because someone looks or sounds “foreign” or because someone states that he/she is not a U.S. citizen
- Refuse to accept a document or refuse to hire an individual because a document has a future expiration date
- Request that, during re-verification, an employee present a new unexpired *Employment Authorization Document (Form I-766)* if he/she presented one during initial verification. For re-verification, each employee must be free to choose to present any document either from List A or List C.
- Limit jobs to U.S. citizens unless U.S. citizenship is required for the specific position by law, regulation, executive order, or federal, state or local government contract.

Personnel Records and Privacy

Any driver's license information obtained by an employer shall be treated by private as confidential. Driver's license information cannot be disclosed to any unauthorized person or used for any purpose other than to establish identity and authorization to drive.

Hours of Work and Recording Time Worked

Legislation was passed in 2014 to clarify that rest and recovery periods are paid breaks and count as hours worked. This reiterates existing law and was passed simply to clear up any confusion that employers may have had.

- Employers must give non-exempt employees an opportunity to take a 10-minute paid rest break for every four hours worked, or major fraction thereof. You may not

employ an employee for a work period of more than five hours per day without providing him/her with a 30-minute unpaid meal break.

- If one or more rest breaks are not given, you owe the employee one hour of pay. You also owe the employee one hour of pay if the employee is unable to take a meal break. The additional pay for a missed meal or rest break must be included in employee's next paycheck.
- A significant source of litigation has centered on the question of whether employers must ensure that breaks are taken or must simply provide breaks. In 2012 the CA Supreme Court ruled that employers do not have to ensure employees take their meal breaks.
- However, it is employer's responsibility to have specific meal and rest break policies which specify the timing of breaks as well as to document that the meal break was provided. The safest course of action is to have a timesheet that an employee signs indicating when each break was taken.

Minimize the risk of litigation for "off the clock work" with the implementation of strong policies and consistent enforcement of those policies.

- Be specific about what is meant by "off-the-clock work," such as no checking emails at home, no performing work in the morning before logging in and no running work errands after logging out.
- Observe how employees work and let them know exactly what you mean by "off-the-clock-work".
- If you learn an employee worked off the clock in violation of the policy, you should report the off-the-clock work to HR as a disciplinary matter.
- Train supervisors to not permit or encourage off-the-clock work. Supervisors who violate your policy should also be subject to discipline.

State Disability Insurance (SDI) and Paid Family Leave (PFL)

Beginning July 1, 2014, "family member" also includes grandparent, grandchild, sibling or parent-in-law for purposes of PFL wage replacement benefits.

Sexual Harassment

Effective January 1, 2015, employers subject to the mandatory sexual harassment prevention training requirement must now include a component on the prevention of "abusive conduct."

This new law does not mean an employee can sue for abusive conduct, or bullying, in the workplace, unless it becomes discrimination or harassment against a protected class. Abusive conduct is specifically defined under the new legislation as "conduct of any employer or employee in the workplace, with malice, that a reasonable person would find hostile, offensive, and unrelated to an employer's legitimate business interests."

Disabilities in the Workplace

An impairment need not last a particular length of time to be considered substantially limiting under the ADAAA (the Americans with Disabilities Act Amendments Act). California law can provide protection to transitory impairments that “limit” a major life activity. The focus should be on the nature and severity of the impairment and its effect on any major life activity.

- Major Life Activities Defined: Caring for oneself, performing manual tasks, walking, lifting, bending, seeing, hearing, speaking, breathing, sleeping, reproduction, learning, thinking, concentrating, reading, interacting with others, communicating, working, participating in community activities.

In a federal case of first impression, the court ruled that “a sufficiently severe temporary disability” may be protected under the amendments to the ADAAA. The court noted that the ADAAA was intended by Congress to liberalize the ADA “in favor of broad coverage,” and Congress specifically directs courts to interpret the amended statute as broadly as possible.

Disciplining and Terminating At-Will Employees

Performance Reviews and Termination

Firing a long-term employee with a history of positive performance reviews can lead to lawsuits – especially if the decision to fire the employee is based on poorly documented performance issues. Training supervisors to write meaningful performance reviews and document poor performance is highly recommended. No procedure guarantees freedom from exposure to wrongful discharge liability. Even the best discipline procedures cannot guarantee that you won’t face wrongful termination lawsuits, nor guarantee you are free from liability relating to wrongful termination.

- Your best defense against such claims is an ongoing proactive approach including well- articulated, updated personnel policies and procedures that are consistent with California and federal labor laws. Apply consistently and fairly.
- Before terminating an employee, answer questions on a *Termination Decision Checklist* which should alert you to the possible negative repercussions that could follow termination.

Delivery of Final Paycheck to Retiring Employee

California Court of Appeals held that for purposes of delivering a final paycheck, a retirement is equivalent to “quitting” under the Labor Code.

WHAT YOU SHOULD DO

- Make sure your internal policies and procedures take into account these recent additions/revisions to the law.
- Update your employee handbooks as necessary to include relevant information about any new or revised laws.
- Train supervisors and staff, as necessary, on new or revised laws that may create the risk of liability for the school if the laws are not followed properly

QUESTIONS?

As always, if you have questions about this newsletter or any other matter, please call us at any time for guidance.

Looking for some assistance?

We have heard great things about [Evergreen Associates](#).

Evergreen Associates provides management consulting to schools in all stages of organizational growth and assists educators in key areas, including operations, leadership development, and lender relations.

- How do I develop a high-functioning board?
- What policies do start-up schools need to have on day one?
- Is my meal program optimizing revenue?
- We want to refinance our property. How do we tell our story to a lender?
- How can we increase parent engagement?
- What do we need to do to increase visibility (and enrollment)?

If these questions keep you up at night, they can help.

Services include:

- Board Training
- Budget & Operations
- Charter Development & Renewal
- Communications
- Leadership Coaching
- Lender Negotiations
- Fund Development

Hansberger & Klein, LLP is a law firm representing public charter schools. This newsletter is not intended to be legal advice. If you are seeking legal advice, please contact us or your attorney for guidance. We look forward to working with you!

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