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**CALIFORNIA ASSOCIATION OF
INDEPENDENT SCHOOLS (CAIS)
TRUSTEE/SCHOOL HEAD
CONFERENCE**

**Annual Legal Update for
California Independent Schools**

2/2/2013

PRESENTED BY:

Michael Blacher & Donna Williamson

Annual Legal Update for California Independent Schools

CAIS Trustee/School Head Conference | February 2, 2013


Presented by: Michael Blacher & Donna Williamson

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Agenda

- Breach of Contract
- Discrimination
- Pupil Records
- Immunizations
- Personnel Records
- Mandated Reporter
- Social Media
- Arbitration
- Wage and Hour

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Breach of Contract

Student Who Was Dismissed From Physician Assistant Program Brought Plausible Claim for Breach of Contract After Raising Serious Questions About Whether Her Dismissal Was Arbitrary and Capricious.

Paulin v. George Washington University School of Medicine
(2012) 878 F.Supp.2d 241.

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Breach of Contract

Former Law Professor Could Not Demonstrate Breach of Contract Where Law School Employer Eventually Complied with Contractual Dismissal Procedure.

Branham v. Thomas M. Cooley Law School (2012) 689 F.3d 558.

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Termination in Violation of Public Policy

An Employee Cannot Bring Tort Action for Termination in Violation of Public Policy if Employer Did Not Terminate, But Instead Simply Chose Not to Renew an Employment Contract.

Touchstone Television Productions v. Superior Court (2012) 208 Cal.App.4th 676 [145 Cal.Rptr.3d 766].

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At-Will Employment

New Ruling by NLRB Holds That Certain At-Will Employment Clauses May Interfere with Employee Rights.

American Red Cross Arizona Blood Services Region (April 12, 2011) NLRB Case No. 28-CA-23443 (Decision by Board on April 20, 2012) and Hyatt Corporation and Unite Here International Union (July 12, 2011) NLRB Case No. 28 CA-061114 (Decision by Board on December 27, 2011).

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FMLA/Discrimination

Private Academy Did Not Violate FMLA or Title VII When it Terminated Teacher Who Missed Classes Without Permission.

Ghawanmeh v. Islamic Saudi Academy (2012) 857 F.Supp.2d 22.

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Disability Discrimination

New Regulations

- Took Effect December 30, 2012
 - Definitions of Disability
 - Standard for Discrimination
 - Reasonable Accommodation Requirements

The new regulations became effective December 30, 2012, Cal. Code Regs., tit. 2, § 7293.5 et seq., and can be found online at:
http://www.dfeh.ca.gov/res/docs/FEHC%20Disability%20Regs/FEHC%20FINAL_DISABILITY_REGS_12-18-12%20_2_.pdf

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Disability Discrimination

Department of Justice Settles with Pennsylvania Private School That Refused Admission to HIV Positive Eighth Grader.

The full settlement can be accessed at http://www.ada.gov/milton-hershey_sa_aids.htm (September 12, 2012).

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Disability Discrimination

Teacher Who Failed to Meet Job Requirements Was Not a "Qualified" Individual with a Disability.

Johnson v. Board of Trustees of the Boundary County School District No. 101 (9th Cir. 2011) 666 F.3d 561.

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Disability Discrimination

School Did Not Violate ADA By Terminating Allegedly Alcoholic Employee Where Employee Unable to Prove He Was Disabled Within the Meaning of the ADA.

Kennedy v. Glen Mills School, Inc. (E.D.Pa.,2011) Slip Copy, 2011 WL 5552865.

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Pregnancy Disability

New Regulations

- Took Effect December 30, 2012
 - Maintain Health Benefits for Four Months
 - Definition of "Disabled by Pregnancy"
 - Clarification of Reasonable Accommodation and Transfer
 - Distinct from CFRA Leave
 - Notice Requirements

The new regulations became effective December 30, 2012, Cal. Code Regs., tit. 2, § 7291.2 et seq., and can be found online at:
http://www.dfeh.ca.gov/res/docs/FEHC%20Pregnancy%20Regs/FINAL_APPROVED_PREG_REGS_CLEAN_11_30_12.pdf

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Pupil Records

Request for Transfer

- New Legislative Intent Regarding Transfer of Pupil Records.
- Permanent Record Must be Transferred within 10 Schooldays Request is Received.
- Specific Definition of "Schoolday."

AB 1799

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Immunizations

Objection to Immunizations

- Letter or Affidavit
 - > Which Immunizations were Given; and
 - > Which Immunizations were Contrary to Belief
- January 1, 2014 – State Department of Public Health Form
 - > Signed by Health Care Provider
 - > Signed by Parent

AB 2109

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Personnel Records

Right to Inspect or Receive a Copy

- Current and Former Employees (and Representatives).
- 30 Calendar Days from Date Written Request is Received.
 - > May Agree to Give up to 35 Calendar Days
- Must Maintain Records At Least Three Years After Termination.
- Penalties for Non-Compliance.

AB 2674

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Mandated Reporter

Athletic Personnel

- Mandated Reporters Include:
 - Athletic Coach
 - Athletic Administrator; or
 - Athletic Director

AB 1435

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Mandated Reporter

School Nurse at Religious School Could Proceed With Whistleblower Retaliation Claim When Fired for Reporting Suspected Abuse Against School's Wishes.

Villarin v. Rabbi Haskel Lookstein School (NY,2012) 96 A.D.3d 1 [942 N.Y.S.2d 67].

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Social Media

Access and Policies – Public and Private Colleges and Universities

- May Not Require:
 - Student;
 - Prospective Student; or
 - Student Group
- To Disclose Social Media.
- Must Post Social Media Policy on Internet Website.

SB 1349

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Social Media

Disclosure of Username or Password

- May Not Require or Request an Employee to:
 - Disclose Username or Password.
 - Access Personal Social Media in Presence of Employer.
 - Divulge Any Personal Social Media.
- *Exception:* Investigations into Misconduct.

AB 1844

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Social Media

NLRB Releases Report Regarding Employer Social Media Policies.

<http://www.nlr.gov/news/acting-general-counsel-releases-report-employer-social-media-policies>

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Arbitration

Contractual Arbitration Provisions Must Clearly Refer to Applicable Arbitration Rules and Can Only Impose Attorneys' Fees If They Are Recoverable in Court.

Mayers v. Volt Management Corp. (2012) 137 Cal.Rptr.3d 657.

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Arbitration

School Cannot Compel Arbitration Against Former Employee When Arbitration Clause Appeared Within Handbook and No Specific Acknowledgement Form was Signed.

Sparks v. Vista del Mar Child and Family Services (2012) 207 Cal.App.4th 115 [145 Cal.Rptr.3d 318].

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Wage and Hour

Employers have a duty to provide meal and rest periods to employees but need not ensure that no work is performed during the breaks.

Brinker Restaurant Corporation v. Superior Court (2012) 53 Cal.4th 1004 [139 Cal.Rptr.3d 315].

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Wage and Hour

“Time Rounding” To Calculate Time Worked Does Not Violate California Law.

See's Candy Shops, Inc. v. Superior Court (2012) 210 Cal.App.4th 889 [148 Cal.Rptr.3d 690].

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Wage and Hour

Wage Statement

Promptly and Easily Determine From Statement:

- Amount of Wages
- Deductions
- Name of Employer
- Name of Employee and
 - Only Last Four Digits of Social Security Number or
 - Other Number

SB 1255

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Wage and Hour

Fixed Salary for Non-Exempt Employees

- May Not Include Overtime
- No Written Agreement to the Contrary
 - Overturns *Arechiga v. Dolores Press* (2011) 192 Cal.App.4th 567

AB 2103

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THANK YOU!

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