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

**Annual Legal Update for
California Independent
Schools**

1/25/2014

PRESENTED BY:

Michael Blacher and Donna Williamson

Annual Legal Update for California Independent Schools

CAIS Trustee/School Head Conference | January 25, 2014

Presented by: Michael Blacher & Donna Williamson

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Annual Legal Update for California Independent Schools

California Association of Independent Schools (CAIS) Trustee/Head of School Conference
January 25, 2014

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Agenda

- Breach of Contract
- Discrimination
- Harassment
- Retaliation
- Leaves
- Wage and Hour
- Background Checks
- Reasonable Accommodations
- Arbitration
- Tuition
- Student Athletes
- Student Discipline
- Waivers
- Online Privacy
- Operations During Emergencies
- Immunizations

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Breach of Contract

Former Faculty Member's Claims for Breach of Contract Can Proceed Where Based on Different Actions Than Harassment Claims.

Ping Zhao v. Bay Path College (2013)
-- F.Supp.2d --, [2013 WL 6069437]

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Associational Discrimination

Court Should Have Allowed Former Employee to Pursue Claim of Discrimination by Association.

Rope v. Auto-Chlor System of Washington, Inc.
(2013) 220 Cal.App.4th 635.

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Disability Discrimination

University Did Not Discriminate Against or Fail to Accommodate Employee with ADD Where Diagnosis Came After Her Termination.

Fuoco v. Lehigh University (2013) --F.Supp.2d--, [2013 WL 5964016]

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Religious Discrimination

Employee Who Was Terminated for Travelling to His Home Country for Father's Burial Ceremonies Could Bring Claim of Religious Discrimination.

Adeyeye v. Heartland Sweeteners, LLC (2013)
721 F.3d 444.

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Military and Veteran Status Discrimination

Adds "military and veteran status" to the list of categories protected from employment discrimination, harassment and retaliation under FEHA.

AB 556
(Amends Sections 12920, 12921, 12926, and 12940 of the Government Code)

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Harassment

Expands the definition of "sexual harassment" under FEHA:

- Clarifies that harassment does not need to be motivated by sexual desire to be considered sexual harassment.

SB 292
(Amends Section 12940 of the Government Code)

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Harassment

Supreme Court Holds that "Supervisor" for Purposes of Title VII Must Have Power to Take Tangible Employment Actions Against Victim.

Vance v. Ball State University (2013) 133 S.Ct. 2434.

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Retaliation

Supreme Court Holds That In Title VII Retaliation Cases, Plaintiff Must Show That Retaliatory Motive Was The "But-For" Cause of the Harm Suffered.

University of Texas Southwestern Medical Center v. Nassar (2013) 133 S.Ct. 2517.

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Retaliation

Co-Worker's Sexual Comments Did Not Create Hostile Work Environment, But Employee's Termination Following Her Complaints May Constitute Unlawful Retaliation.

Westendorf v. West Coast Contractors of Nevada, Inc. (9th Cir. 2013) 712 F.3d 417.

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Leaves

Termination for Failure to Comply with Employer's Absence Notice Policy Not Considered Interference with FMLA Rights.

Srouder v. Dana Light Axle Manufacturing, (2013) 725 F.3d 608.

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Leaves

Expands the Scope of EDD Paid Family Leave Benefits:

- Effective July 1, 2014.
- Allows Leave to Care for a Seriously Ill Grandparent, Grandchild, Sibling, or Parent-in-Law.

SB 770
(Amends Section 3300, amends, repeals, and adds sections 2708, 3301, 3302, and 3303 to the Unemployment Insurance Code.)

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Leaves

San Francisco Adopts a “Family Friendly Workplace” Ordinance:

- Employers with 20 or More Employees.
- Employee Eligible after being Employed for Six Months.
- May Request Flexible or Predictable Working Arrangement.
- Caregiving for: spouse, domestic partner, child, parent, sibling, grandchild, or grandparent.
- May Only be Denied for “Bona Fide Business Reason.”
- Posting and Record Keeping Requirements.

(Family Friendly Workplace Ordinance, Number 130785.)

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Wage and Hour

Raises Minimum Wage:

- Effective July 1, 2014, minimum wage will increase to \$9.00 per hour.
- Effective January 1, 2016, minimum wage will increase to \$10.00 per hour.
- May affect which employees are exempt from overtime pay.

AB 10
(Amends Section 1182.12 of the Labor Code)

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Wage and Hour

Expands Penalties for Minimum Wage Violations:

- Expands jurisdiction of Labor Commissioner to recover liquidated damages from an employer based on a citation issued for minimum wage violations without having a civil action filed to recover any such applicable liquidated damages.

AB 442
(Amends Sections 1194.2 and 1197.1 of the Labor Code)

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Wage and Hour

Reminder:

- The Wage Theft Prevention Act:
 - Rate of Pay.
 - Overtime.
 - Workers' Compensation Information.
 - http://www.dir.ca.gov/dlse/LC_2810.5_Notice.pdf
 - <http://www.dir.ca.gov/dlse/FAQs-NoticeToEmployee.html>

AB 469
(Amends Sections 98, 226, 240, 243, 1174, and 1197.1 and adds Sections 200.5, 1194.3, 1197.2, 1206, and 2810.5 to, the Labor Code)

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Background Checks

New Background Check Requirements:

- All job applicants for positions requiring contact with minor pupils must be fingerprinted.
- Deletes exception for applicants with teaching credentials.

AB 389
(Amends Education Code §§ 44237 and 56366.1)

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Social Media

Employer Violated National Labor Relations Act by Terminating Employee Based on Facebook Posts Regarding Working Conditions.

Butler Medical Transport, LLC and Michael Rice and William Norvell, Case 5-CA-97810.

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Reasonable Accommodations

School Did Not Violate ADA When It Did Provide Reasonable Accommodations for Disabled Student.

McInerney v. Rensselaer Polytechnic Institute, -- F.Supp.2d --, 2013 WL 5614263.

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Arbitration

Agreement to Arbitrate Found Unconscionable Where Employee Forced to Sign and Several Provisions Favored Employer.

Vega v. Frandeli Group LLC, 2013 WL 5652489.

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Tuition

School's Tuition Agreement Requiring Full Year's Tuition if Student Withdraws After Deadline is Permissible.

W. Res. Academy v. Franklin, 2013 WL 5569210.

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Student Athletes

Concussion / Head Injuries:

- Extends protections that public school athletes have regarding head injuries/concussions to private school athletes.
- If concussion/head injury suspected, student must be removed from activity for remainder of the day.
- Student may not return to activity until cleared from trained medical professional.
- Schools must provide concussion and head injury information sheet to parents of student athletes each year.

AB 588
(Amends Section 49475 of the Education Code)

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Student Discipline

Former Student Could Bring Claim of Discrimination After Being Disciplined for Plagiarism.

Gabriel v. Albany College of Pharmacy and Health Sciences—Vermont Campus, 2013 WL 4556690.

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Breach of Contract

Student Could Proceed With Breach of Contract Claim When University Revealed He Received Testing Accommodations.

Tecza v. University of San Francisco, 2013 WL 3186572.

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Waivers

Court Excludes School's Trip Waiver and Release Agreement As Void As a Matter of Public Policy and Unenforceable.

Munn v. Hotchkiss School (2013) 933 F.Supp.2d 343.

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Online Privacy

Operators of websites to provide additional notices to consumers:

- Must disclose how it responds to "do not track" signals.
- Must disclose whether other parties may collect personally identifiable information when a consumer uses the school's website or services in its notice.

AB 370
(Amends Section 22575 of the Business & Professions Code)

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Online Privacy

Online privacy law for minors:

- Operators of websites directed to minors may not advertise certain products.
- Operator of website with actual knowledge that a minor is using the website must:
- Permit minor to remove or request removal of content or information posted on website and provide notice to minor of this right.
- Provide clear instructions to a minor on how s/he may request and obtain removal of content or information.
- Effective January 1, 2015.

SB 568

(Adds Chapter 22.1 to Division 8 of the Business and Professions Code)

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Immunizations

Reminder:

- As of January 1, 2014:
- New Form to Accompany Parent's Objection to Immunizations;
- Signed by Health Care Practitioner;
- Benefits and Risks of Immunizations and Specified Communicable Diseases; and
- Written Statement by Parent or Guardian.

AB 2109

(Amends Section 120365 of the Health and Safety Code, relating to communicable disease.)

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THANK YOU!

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