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**CALIFORNIA ASSOCIATION OF
INDEPENDENT SCHOOLS (CAIS)
2015 TRUSTEE/SCHOOL HEAD
CONFERENCE**

**Legal Update for California
Independent Schools**

1/31/2015

PRESENTED BY:

Michael Blacher & Donna Williamson

Legal Update for California Independent Schools

California Association of Independent Schools Trustee/School Head Conference | January 31, 2015

Presented by: Michael Blacher & Donna Williamson

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California Association of Independent Schools (CAIS) Trustee/School Head Conference
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Agenda

- Student Contracts
- Social Host Liability
- Arbitration Agreements
- Reasonable Accommodation
- Mandated Reporting
- Labor Relations
- FMLA
- Paid Sick Leave
- Wage and Hour
- Social Media
- TB Testing

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Student Contracts

Student's dismissal upheld where she could not show school violated any contractual obligation or procedure.

McDade v. Cleveland State University, 2014 WL 4557015

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Social Host Liability

Parents may be liable where daughter served alcohol at party where cover fee was charged.

Ennanbe v. Manosa (Cal.App.Ct. 2014) 319 P.3d 201

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Arbitration Agreements

Arbitration agreement not enforceable where it was part of an online Terms of Use agreement.

Nguyen v. Barnes & Noble, Inc. (9th Cir. 2013) 763 F.3d. 1171

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Arbitration Agreement

Arbitration agreement held unenforceable because defendant could not prove electronic signature was an “act attributable” to plaintiff required by California Civil Code section 1281.2.

Ruiz v. Moss Bros. Auto Group, Inc., --- Cal.Rptr.3d ---, 2014 WL 7335221

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Arbitration Agreements

- AB 2617
 - Prohibits contractual waivers of rights under the Ralph Civil Rights Act and the Bane Civil Rights Act
 - Acts protect individuals from hate-based crimes of violence
- AB 2638
 - Companion bill which expands the relief available for violations of individuals rights to include equitable and declaratory relief
 - Individual whose rights have been interfered with may bring a civil action for damages, injunction relief, or appropriate equitable relief

(AB 2617 amends Sections 51.7, 52, and 52.1 of the Civil Code.
AB 2634 amends Sections 52.1 of the Civil Code).

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Reasonable Accommodation

Transfer to a different supervisor is not considered a reasonable accommodation under the ADA.

Lu v. Longs Drug Stores, [2013 WL 5607166].

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Reasonable Accommodation

Court holds that working from home can be a reasonable accommodation.

E.E.O.C. v. Ford Motor Company, --F.3d--, [2014 WL 1584674].

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Mandated Reporting

High school principal convicted of failure to report under mandated reporter law when student raped by another student.

Smith v. State of Indiana (Ind. 2014) 8 N.E.3d 688.

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Mandated Reporting

Requires the State Department of Education to provide statewide guidance on the responsibilities of mandated reporters and establishes annual training requirements for public schools.

AB 1432
(Amends Section 44691 of the Education Code and Section 11165.7 of the Penal Code)

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Labor Relations

National Labor Relations Board (NLRB) finds that at-will clause in employee handbook could not reasonably be interpreted to prohibit protected concerted activity under the National Labor Relations Act (NLRA).

NLRB Advice Memorandum, Lionbridge Technologies, Case 19-CA-115285

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Labor Relations

Employee handbook requiring employee to, “agree that the at-will employment relationship cannot be amended, modified or altered in any way” violated employee concerted activity right under the NLRA.

American Red Cross Arizona Blood Services Region and Lois Hampton, Case 28-CA-23443

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Labor Relations

Confidentiality and non-disclosure policy could be interpreted as prohibiting employees from exercising their rights under the NLRA.

Muse School and Trudy Perry, Case 31-CA-108671

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Labor Relations

NLRB rules that employers cannot ban use of work email systems for organizing purposes during nonworking hours.

Purple Communications, Inc. and Communications Workers of America, AFL-CIO, Cases 21-CA-095151, 21-RC-091531, and 21-RC-091584, 361 N.L.R.B. No. 126 (December 11, 2014).

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Labor Relations

NLRB reformulates test for jurisdiction over religious colleges and universities.

Pacific Lutheran University and Service Employees International Union, Local 925, Petitioner. Case 19-RC-102521, 361 NLRB No. 157 (2014).

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Family Medical Leave Act (FMLA)

Employee could not show the non-review of contract was retaliation for FMLA request based on accurate and thorough document of prior performance problems.

Housel v. Rochester Institute of Technology
(W.D.N.Y. 2014) 6 F.Supp.3d 294

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Family Medical Leave Act (FMLA)

Employee could not prevail in FMLA claim because she had declined leave.

Escriba v. Foster Poultry Farms, Inc. (9th Cir. 2014)
743 F.3d 1236.

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Family Medical Leave Act (FMLA)

Employee's claim survives summary judgment where employer cannot demonstrate it provided employee with notice of FMLA rights.

Lupyan v. Corinthian Colleges Inc., --F.3d--, 2014 WL 3824309

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Paid Sick Leave

Enacts the Healthy Workplaces, Healthy Families Act of 2014 to establish mandatory paid sick leave.

Updated Wage Theft Protection Act Form:
http://www.dir.ca.gov/dlse/Publications/LC_2810.5_Notice_%28Revised-11_2014%29.pdf

AB 1522
(Amends Section 2810.5 of, and adds Article 1.5 to Chapter 1, Part 1 of Division 2 of the Labor Code)

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Wage and Hour

Non-exempt employees entitled to pay for on-call time and sleep time.

Mendiola v. CPS Sec. Solutions, Inc. -- P.3d --, 2015 WL 107082.

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Social Media

Former employee not entitled to settlement payment where his daughter posted information on Facebook.

Gulliver Schools Inc. v. Snay, --So.3d--, 2014 WL 769030.

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TB Testing

TB Testing for School Employees and Volunteers:
Requires that an employee undergo a TB risk assessment within the prior 60 days and every four years. If the assessment reveals risk factors, then the person needs to undergo testing.

The forms can be found at:
http://ctca.org/fileLibrary/file_664.pdf
http://ctca.org/fileLibrary/file_665.pdf

AB 1667

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THANK YOU!

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To access the bills referenced in this presentation, please visit: www.leginfo.ca.gov

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