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

**Annual Legal Update for
California Independent
Schools**

1/28/2017

PRESENTED BY:

Michael Blacher & Donna Williamson

Annual Legal Update for California Independent Schools


California Association of Independent Schools (CAIS) Trustee/School Head Conference
Presented by: Michael Blacher and Donna Williamson | January 28, 2017

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Agenda

- Harassment by Parent
- Disability Discrimination
- Board of Directors Liability
- Defamation
- Student Discipline
- Arbitration Agreements
- Tuition Contracts
- Electronic Signatures
- Investigations
- Anti-Poaching Laws
- Unemployment Insurance
- Wage and Hour
- Negligent Supervision
- Negligence
- Premises Liability
- New Statutes and Regulations

2 | LCW LIEBERT CASSIDY WHITMORE

Harassment by Parent

- Restraining Order Appropriate Where Parent Threatened Administrator.
 - *Harris v. Stampolis*, (2016) 248 Cal.App.4th 484.

3 | LCW LIEBERT CASSIDY WHITMORE

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Disability Discrimination

- Employee's Claim Can Proceed Based on His Association with Disabled Family Member.
 - *Castro-Ramirez v. Dependable Highway Express, Inc.*, (2016) 2 Cal.App.5th 1028.

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Disability Discrimination

- Employee's Claims Survive Summary Judgment Where Employer On Notice of Medical Issue and Failed To Engage In Interactive Process.
 - *Soria v. Univision Radio Los Angeles, Inc.*, 5 Cal.App.5th 570.

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Disabilities

- EEOC issued Q&A regarding mental health disabilities.
- Good reminder to employers that ADA covers mental health the same as physical health.
- EEOC says in fiscal year 2016 almost 5,000 charges settled that involved mental health disabilities.
- https://www.eeoc.gov/eeoc/publications/mental_health.cfm

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Board of Directors Liability

- Board President Not Protected by Business Judgment Rule Where Evidence Shows She May Not Have Acted in Good Faith.
– *Palm Springs Villas II Homeowners Association, Inc. v. Parth*, (2016) 248 Cal.App.4th 268.

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Defamation

- Coach On Yearly Contract Can't Bring Claim Where Contract Expired By Its Own Terms But Can Proceed With Defamation Charge Based On Public Relations Statement.
– *McCullough v. Noblesville Schools*, 63 N.E.3d 334.

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Student Discipline

- Student's Claim Survives Motion to Dismiss Where Evidence Showed School's Disciplinary Process Was Unfair.
– *B.S. v. Noor-Ul-Iman School*, 2016 WL 4145921.

9 | LCW LIEBERT CASSIDY WHITMORE

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Student Discipline

- Student Can Be Disciplined for Off-Campus Speech That Violated Harassment Policy.
– *C.R. v. Eugene School District 4J*, (2016) 835 F.3d 1142.

10 | LCW LIEBERT CASSIDY WHITMORE

Arbitration Agreements

- Ninth Circuit Rules Arbitration Agreement Cannot Contain Waiver of Right to Bring Class Action Lawsuits.
– *Morris et al. v. Ernst & Young LLP*, (2016) 834 F.3d 975.

11 | LCW LIEBERT CASSIDY WHITMORE

Arbitration Agreements

- Arbitration Agreement in Handbook Not Enforceable Where Handbook Purports Not to be a Contract.
– *Esparza v. Sand & Sea, Inc.*, (2016) 2 Cal.App.5th 781.

12 | LCW LIEBERT CASSIDY WHITMORE

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Tuition Contracts

- School Successful in Suit Against Parents with Outstanding Tuition Balance Where Contract Contained Liquidated Damages Clause.
 - *Sisters of the Holy Child Jesus Old Westbury Inc. v. Corwin*, (2016) 29 N.Y.S.3d 736, 2016 WL732909.

13 | LCW LIEBERT CASSIDY WHITMORE

Electronic Signatures

- Employer Properly Authenticated Electronic Signature By Citing Security Process.
 - *Espejo v. Southern California Permanente Medical Group et al.*, (2016) 246 Cal.App.4th 1047.

14 | LCW LIEBERT CASSIDY WHITMORE

Investigations

- The Attorney-Client Privilege Protects Impartial Attorney-Investigator's Report.
 - *City of Petaluma v. Superior Court of Sonoma County (Waters)*, (2016) 248 Cal.App.4th 1023.

15 | LCW LIEBERT CASSIDY WHITMORE

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Anti-Poaching Laws

- DOJ will investigate agreements by employers not to solicit or hire each other's employees or to fix wages.
- Even informal verbal agreements may violate anti-trust laws.
- Agreements entered into with third-party intermediaries also banned.
- Guidance can be found at: <https://www.justice.gov/atr/file/903511/download>.

16 | LCW LIEBERT CASSIDY WHITMORE

Unemployment Insurance Benefits

- Court Rules That Teachers Who Have Jobs For The Following School Year Cannot Earn Unemployment Over The Summer.
 - *United Educators of San Francisco AFT/CFT, AFL-CIO, NEA/CTA v. California Unemployment Insurance Appeals Board and San Francisco Unified School District* (2016) 247 Cal.App.4th 1235.

17 | LCW LIEBERT CASSIDY WHITMORE

Wage and Hour: New FLSA Salary Basis Test

- New FLSA "Salary Basis" Test (**CURRENTLY ON HOLD**):
 - Must be paid a set, predetermined amount greater than **\$913/Week (\$47,476/Year)** on a regular basis.
 - Amount adjusted every three (3) years to 40th percentile of weekly earnings of full-time non-hourly workers in the lowest-wage Census region – first adjustment will be Jan. 1, 2020.
 - Limited exemption for teachers, attorneys, and doctors unchanged.
 - **Duties test still applies.**

18 | LCW LIEBERT CASSIDY WHITMORE

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Wage and Hour

- California minimum wage increased to \$10.50 on January 1, 2017; \$11 per hour on January 1, 2018, and it increases \$1 per year until it reaches \$15 an hour on January 1, 2022.
- Exception for employers with 25 or fewer employees.
- Local minimum wage may be higher.

19 | LCW LIEBERT CASSIDY WHITMORE

Wage and Hour

- AB 2230 Changes the Salary Necessary for Teachers at Private Schools to be Exempt Effective July 1, 2017. In Order to be Exempt from Overtime a Teacher Must Earn the Greater of:
 - No less than 100% of the lowest salary offered by any school district to a person in a position that requires a valid California teaching credential and is not employed in that position pursuant to an emergency permit, intern permit or waiver; or:
 - The equivalent of no less than 70% of the lowest schedule salary offered by the school district or county in which the private school is located to a person who is in a position that requires a valid California teaching credential and is not employed in that position pursuant to an emergency permit, intern permit or waiver.

20 | LCW LIEBERT CASSIDY WHITMORE

Wage And Hour

- Landmark Case on Mandated Rest Breaks Holds Employees May Not Be On-Call During Rest Breaks.
 - *Augustus v. ABM Security Services*, (2016) 385 P.3d. 823.

21 | LCW LIEBERT CASSIDY WHITMORE

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Negligent Supervision

- Court Assesses School's Negligence in Supervising Students Breakdancing in the Classroom.
– *Jimenez v. Roseville City School District*, (2016) 247 Cal.App.4th 594.

22 | LCW LIEBERT CASSIDY WHITMORE

Negligence

- Fitness Club Protected by Waiver Where Member Could Not Show Gross Negligence.
– *Anderson v. Fitness International, LLC*, (2016) 4 Cal.App.5th 867.

23 | LCW LIEBERT CASSIDY WHITMORE

Premises Liability

- Church Has Duty to Member Injured While Crossing Street After Being Instructed to Park in Overflow Lot.
– *Vasilenko v. Grace Family Church*, (2016) 248 Cal.App.4th 146.

24 | LCW LIEBERT CASSIDY WHITMORE

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New DFEH Regulations - Overview

- New DFEH Regulations Effective on April 1, 2016 Cover Wide Range of Employment Discrimination and Leave Protections Under FEHA.
 - Protections for Unpaid Interns and Volunteers.
 - Personal Liability for Unlawful Harassment.
 - Employer's Duty to Prevent and Correct Discriminatory/Harassing Conduct/Revisions to Written Policies.
 - Compliance with AB 1825 Sexual Harassment Training Requirements to Include Abusive Conduct.

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Sick Leave: Local Laws

- Local ordinances in 2016: Los Angeles, Santa Monica, San Diego, Berkeley.
- Earlier laws in effect in San Francisco, Emeryville and Oakland.
- Local laws entitle employees to more paid sick leave than state law and often for broader purposes.
- Accrual caps often different in local laws.

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Mandated Reporting: SB 1178

- Requires Superintendent of Public Education to create a poster notifying children of the phone number to report abuse or neglect.
- Encourages private schools to display the poster in an area where students congregate.
- Urgency legislation that went into effect immediately.

27 | LCW LIEBERT CASSIDY WHITMORE

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Prop. 64: Legal Recreational Marijuana

- Voters approved Prop. 64 on November ballot, legalizing recreational marijuana for adults who are at least 21 years old.
- Schools can still require a drug-free workplace.
- Prohibiting off-duty use is less clear.
- Medical marijuana use case law may evolve.

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Athletics: AB 1639

- AB 1639 requires schools to provide information regarding sudden cardiac arrest.
- Applies to schools that conduct athletic activities, which do not include P.E. class.
- Student must sign and return information sheet and coaches must undergo training every two years.

29 | LCW LIEBERT CASSIDY WHITMORE

Questions?

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30 | LCW LIEBERT CASSIDY WHITMORE
