



**Employment Law Issues
for Charter Schools**



GCSA Annual Conference
March 10, 2010

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Overview

- The Employment Relationship
- Hiring Basics
- Issues During Employment
- Discipline & Discharge

Overview

- Charter Flexibility?
 - Full flexibility waiver
 - Specific waivers from state and local personnel related laws, regulations and policies
- Charter School Contracting with an EMO?
 - Who is the decision maker?
 - Charter school legal liability

The Employment Relationship

At-Will vs. Employment Contracts

- At-will employment
 - Either party can end the relationship for any legal reason and at any time without notice
 - It is not a defense to unlawful termination claims, such as discrimination, harassment or retaliation
 - Consult an attorney before terminating an at-will employee



The Employment Relationship

At-Will vs. Employment Contracts

- Employment contracts
 - Employment for a stated period of time
 - Parties end the relationship according to the terms of the contract
 - Consider using for teachers and other employees that you want to have commit to working at the charter school for at least one year
 - Consult an attorney when drafting the contract and before terminating a employee with a contract

The Employment Relationship

Independent Contractors vs. Employees

- Consider legal issues prior to hiring an independent contractor
 - Numerous laws and regulations govern the determination of this relationship
- Extremely rare cases where regulatory agencies and courts find that a true independent contractor relationship exists
 - Example might include hiring a contractor to paint a room in your facility
- Severe tax and other penalties

The Employment Relationship

Selected Statutory Claims

- Title VII (race, color, gender, religion, national origin) (15 employees)
- ADEA (40 years and older) (20 employees)
- ADA & ADAAA (actual or perceived disability) (15 employees)
- FMLA (protected family or medical leave for eligible employees) (50 employees in 75 mile area)
- GINA (genetic information) (15 employees)
- FLSA (wage and hour / overtime)



Selected Common Law Claims

- Emotional Distress
- Negligent hiring, training, supervision
- Breach of contract

Hiring Basics

Pre-Hire Stage

- Job Description / Application
 - Ensure both are up to date
- Interview
 - Be careful not to ask questions that reveal information such as age, national origin, religion, marital and familial status, military status, disability, medical information, etc.
- Background Checks
 - Conditional offers of employment
 - Fair Credit Reporting Act compliance (if using 3rd party)

Hiring Basics

Post-Hire Stage

- I-9 Form
- New Hire Reporting
 - <http://newhire-reporting.com/GA-Newhire/default.aspx>
- Employee Handbook Acknowledgment Form

Issues During Employment

- Employee Handbook
 - Informs employees of their rights and your expectations
 - If properly drafted, it can help protect the charter school – have counsel review regularly
- Required Postings
 - Obtain from the Department of Labor
 - http://www.dol.state.ga.us/em/required_posters.htm

Issues During Employment

- Equal Employment Opportunity Policy
 - Prohibit discrimination in hiring, termination, compensation and all other employment decisions
- Policy Against Discrimination, Harassment and Retaliation
 - Include specific reporting procedure
 - Provide alternative reporting avenues
 - Note charter school's obligation to investigate and respond as appropriate
 - Clear policy against retaliation

Issues During Employment

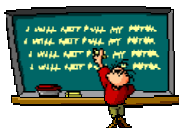
- Disability Laws - ADA & ADAAA
 - Charter schools have a duty to provide reasonable accommodations to applicants and employees with disabilities
 - Charter schools must engage in an interactive process with applicant or employee to determine reasonable accommodation
 - Charter school must maintain all medical information in a separate and confidential file
 - Consult your legal counsel

Issues During Employment

- Leave Laws
 - Leave laws overlap and have different obligations – determine which ones apply to your charter school
 - FMLA / ADA & ADAAA / Workers' Compensation / USERRA / Charter School Personnel Policies
 - Suspected leave abuse should be investigated
 - Consult your legal counsel

Discipline

- How / What to document?
 - Be honest and use specific facts
 - Instead of "insubordination," document that the employee refused to complete specific assigned task
 - Instead of "attitude problem," document employee's failure to cooperate with other employees, use of foul or inappropriate language, etc.
 - Cite specific charter school policy that has been violated
 - Include time to improve and expectation of improvement (unless serious misconduct) and discipline imposed
- When to document?
 - As soon as possible after the poor performance or misconduct occurs



Discipline

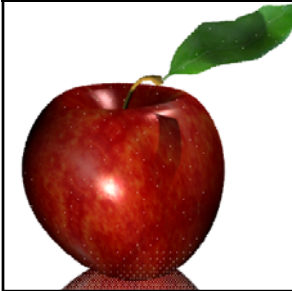
- Importance of Documentation
 - Evidence that employee had notice of problem and time to improve
 - The DOL, judge or jury likely will not believe you if it's not in writing
 - Failure to document places the charter school's credibility at issue, instead of focusing on the employee's issues
 - Decreases the legal and financial risks of the charter school



Discharge Basics

- Follow same guidelines for documenting discipline
- Complete Georgia Separation Notice for all employees who leave regardless of reason (Form DOL 800)
 - Do not check "LACK OF WORK" unless true
- Exit Interview
- Be aware of record retention requirements and charter school's duty to maintain personnel files

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Questions?

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