



Has Your School Had a Check Up Recently?

Insights

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Now that school has started, it is time to ensure that your house is in order for the school year. Each year we highlight those areas in which we see trends developing or issues with which schools consistently have challenges. It is far better to address these issues preventively rather than waiting for a claim or problem to occur.

Child Abuse Reporting. In the wake of Penn State, many states closely examined their reporting statutes and enhanced penalties for failure to report, expanded the persons required to report, and changed procedures for reporting. Some states, such as Georgia, now require volunteers of schools to report concerns with abuse. Several other states have further clarified that child-on-child abuse is reportable. It is important that you know your state's requirements and that you train everyone on your staff regarding their reporting obligations.

Train Your Staff. At least every other year, the school should train all staff on three fundamental issues (a) appropriate adult/student boundaries; (b) avoiding and reporting harassment; and (c) student safety and supervision. Ideally, the best time for this training is during the staff back to school week each year. It ensures that you have everyone's attention while they are fresh and ready for the year and you can easily document that you performed this very important training if you need to rely on the information later.

Get Your Wage Hour House in Order. Wage Hour claims continue to grow for all types of employers, including schools. Although many of a school's employees fall into the professional exemption (such as teachers whose primary duty is teaching, instructing, or imparting of knowledge), many other school employees may be non-exempt, requiring them to maintain a daily and weekly record of their hours worked, be paid minimum wage, and be paid overtime for all hours over 40 in a workweek.

You should be particularly concerned about those employees who hold more than one job or who perform extra duties for extra pay (like stipends for coaching or after care duties). Our experience with schools also has shown that many schools have a large number of employees misclassified as "exempt" due either to the employee being paid on a salary basis or because of the employee's title. These types of compliance issues are easy to address and can save the school tremendous money and frustration by avoiding ugly claims later.

Be Careful in Counting FMLA Hours. When calculating whether an employee has met the hours threshold for FMLA-eligibility (1,250 hours worked in the 12 month period before leave is to

commence), remember to count hours that exempt employees (e.g. teachers and many administrators) work at home. Otherwise, if you rely upon the employee's normal working schedule (rather than the actual hours the employee has worked), you may inadvertently determine that an employee who has in fact met the hours threshold is not eligible for leave. This error could result in an FMLA interference claim.

Review and Update your Legal Documents. If you have not had your contracts (enrollment and employment) and handbooks (student and employee) reviewed and updated internally and by counsel in the last few years, put it on the list for this year. Laws, experiences, and best practices change over time. You want to ensure your documents capture these changes, are protective of the school's interests, and provide the school with maximum flexibility and discretion to make hard decisions. Don't wait until the last minute to have the documents reviewed. It is far better to get them reviewed earlier in the year so you are not rushing to complete the project.

Ensure You Properly Address Students with Disabilities. You need to ensure you understand your school's obligations regarding students who may have mental, learning, psychological, or physical disabilities. This is an area where you should use legal counsel to help guide your school through the complicated processes in both analyzing which laws apply to your institution and to determine when and whether you must provide a reasonable accommodation.

Many schools mistakenly believe that they have the right to require students to be psychologically evaluated as a condition to return to school after engaging in misconduct. This may be appropriate in some cases, but likely violates the student's rights and establishes a dangerous precedent in other cases. These situations are made especially difficult because student disability issues is an area in which parents become extremely emotional and aggressive in pursuing their child's rights. The financial and public relations toll can be significant if these issues are not handled properly and sensitively.

Watch for Skeletons Coming Out of Your Closets. Many schools have experienced an increase in allegations of old sexual abuse issues since Penn State. Schools should ensure that all inquiries are handled appropriately, with advice of counsel. There may be situations in which the statute of limitations has not yet expired on old claims. In addition, the school may have some type of reporting obligation. It is far better to talk through the best approach with counsel rather than sitting silent, hoping the issue will go away.

If you need assistance in any of these areas, contact your Fisher Phillips lawyer or the author at SBogdan@fisherphillips.com or 954.847.4705.

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