



# Top 6 Workplace Law Predictions for Education Employers – and What You Should Do to Prepare

Insights

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*We recently provided our predictions for what education employers could expect to see in the area of workplace law over the next year as part of our FP Forecast series – but we had too many insights to fit into that edition. So we've taken things to the next level and developed a comprehensive piece that provides education employers with the top six trends you can expect to see for the remainder of 2022 – and offers guidance on how you should proactively prepare*

## 1. Culture Wars Will Continue to Rage

We will see a continuation of the culture wars that are raging in several states throughout 2022. The debate will center around three main areas: prohibitions or limitations on the discussion of sexual and gender identity issues in schools; whether to allow transgender girls to play in girls' sports; and education – including employee training – on race discrimination and implicit bias. Many existing laws in these areas presently apply to public schools, but private schools should expect that debate about these restrictions will bleed into their programs as well. You should expect parents to make demands for more disclosure or restrictions in 2022. As various groups have challenged many of these laws as violating free speech and civil rights, schools will be left in limbo until the courts sort through the claims. And since many of these laws carry personal liability for the teachers, administrators, or counselors, expect to field questions and concerns from your staff as well.

## 2. Gender Identity Accommodation Requests Will Continue to Skyrocket

Meanwhile, schools will continue to see an exponential increase in gender identity accommodation requests – for both students and employees. Your administration will be at the forefront of tackling these challenging issues in 2022. Many of the requests will be made on behalf of very young students, which will present confidentiality challenges – not to mention the need to properly frame boundaries around appropriate discussion of sexual topics at school. If you haven't yet created a game plan for how you will handle such requests, you need to do so immediately to prepare for the inevitable.

## 3. Religious Rights Will Be Pushed as Never Before

Just as we'll see more movement in the culture wars, we'll also see more activity with religious schools wanting to strengthen and understand their rights to uphold their tenets in both employee

schools wanting to strengthen and understand their rights to uphold their tenets in both employee and student relationships and behavior standards. As gender identity issues become more prevalent and the Biden administration re-implements stronger protections for transgender students in 2022, we'll see more challenges to laws that do not presently contain exemptions for religious institutions in the coming year. We will also see more cases where religious schools and institutions assert their rights claiming the ministerial exception permits them to terminate teachers and other functional ministers who fail to comply with important religious guidelines established by the school.

#### **4. Name, Image, and Likeness Controversy Will Land at K-12 Schools**

It's a popular belief is that the NIL issues working their way through the court system – where athletes are able to compensated by third parties for their name, image, and likeness – are limited to the higher education context. Not so. We are now seeing athletes challenging the prohibitions that exist at the K-12 athletic association level regarding a student's right to receive compensation based on their NIL while also participating in competitive athletics at the pre-college level. How these challenges will work themselves out in 2022 is uncertain at this point, but we expect you may soon see a change in the dynamic between students and their families and their interactions with your school in this area. Be prepared for how you will adjust to this new world.

#### **5. Expect Scrutiny of Your Child Abuse Reporting Practices**

The law enforcement authorities in some states are ramping up their efforts to hold schools accountable for not appropriately reporting child abuse activity – and it's becoming a disturbing trend when these states are aggressively scrutinizing behavior that most schools would perceive as reasonable. You can expect to see this scrutiny spread to other states, and you can expect child abuse authorities to focus on student-on-student sexual abuse allegations. Your immediate focus as you begin to plan your back-to-school training sessions in the next few months should be on child abuse reporting. Make sure you cover the nuances of assessment, especially because the details about what may or may not be reportable may still be a little gray. You should also consider combining this with your boundaries and harassment training to ensure that all of these important and inter-related subjects are covered at least once yearly.

#### **6. Time for a Pay Equity Audit**

A final area of liability we expect to hit schools with renewed vigor in 2022 relates to pay equity challenges. Schools have not been as systematic as they should in ensuring equity exists for pay and benefits when compared to employers in other industries. You should spend a portion of the rest of the year considering the differences that may arise in total compensation when considering additional degrees, overloads, stipends, housing, and other benefits. Because this is an area of heightened interest for the EEOC, you should take the time to assess your pay equity status – but make sure to do so with the advice of legal counsel – to identify and correct any areas of concern. It would also be wise to include a wage hour audit at the same time, as wage claims continue to be one of the most common – and costly – types that all employers face nationwide.

## Conclusion

If you have any questions, please contact your Fisher Phillips lawyer, the author of this Insight, or any member of [our Education Practice Group](#). Fisher Phillips will continue to monitor further developments and provide updates related to the education community, so make sure you are subscribed to [Fisher Phillips' Insight System](#) to gather the most up-to-date information.

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