



PRIVATE SCHOOL MATTERS

NEWS AND DEVELOPMENTS IN SCHOOL AND EMPLOYMENT LAW FOR CALIFORNIA INDEPENDENT AND PRIVATE SCHOOLS

May 2010

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Private School Matters

Private School Matters is published monthly for the benefit of the clients of Liebert Cassidy Whitmore. The information in *Private School Matters* should not be acted on without professional advice.

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STUDENTS AND PARENTS

BREACH OF CONTRACT

Appeals Court Affirms Trial Court's Judgment that Law Student Is Not Entitled To A Certificate Of Good Standing Because Of Outstanding Tuition.

Barbara Burns attended Quinnipiac University as a law student from approximately January 1999 to July 2000. On multiple occasions during that period, Burns requested that the University issue certificates of good standing to other designated institutions, including the University of Minnesota Law School, in order for her to enroll and take classes as a visiting student for transfer credits and ultimately, to transfer to another law school. In the fall of 1999, the bursar's records showed that Burns had an unpaid tuition balance. The University believed that Burns was not entitled to a certificate of good standing unless she maintained the requisite grade point average, had not had any disciplinary actions taken against her, and was current in her financial obligations with regard to tuition. Burns, however, maintained she was entitled to a certificate of good standing because the law school's student handbook defined good standing only in terms of academics. Burns also argued that she would have been in financial good standing if the University had properly applied her financial aid.

On May 12, 2000, Associate Dean David King advised Burns that she owed the University \$11,810. Dean King further advised Burns that the University would not issue her transcripts or letters of good standing until the outstanding tuition balance was paid. Burns was also prohibited from registering for additional courses at the University. On May 24, 2000, Dean King informed Dean Thomas Sullivan of the University of Minnesota that Burns was no longer in good standing and that the University would no longer accept transfer credits on Burns' behalf.

In May 2002, Burns sued Dean King, arguing that his May 24, 2000 letter to Dean Sullivan contained defamatory statements. The case proceeded to a jury trial in January 2005. At the close of the trial, Dean King filed a motion for judgment as a matter of law, which is a request for a judgment in the moving party's favor because the opposing party has put forth insufficient evidence to reasonably support its case. The United States District Court for the District of Connecticut granted Dean King's motion, finding that Burns failed to present any credible evidence that could support a finding that Dean King's statement regarding Burns' lack of good standing was false in light of the uncon-

troverted evidence that Burns' University account reflected an outstanding balance and that financial delinquency was a ground for the denial of the issuance of a certificate of good standing. Burns appealed and the U.S. Court of Appeals for the Second Circuit affirmed the District Court's holding.

On May 11, 2006, Burns sued the University, alleging breach of contract, promissory estoppel, negligence, fraud, intentional infliction of emotional distress and defamation. The trial court found that good standing encompassed academic, behavioral and financial components, Burns was not in good financial standing at all times during the controversy, there was no evidence that the University breached any promise to Burns with regard to its handling of her financial aid, Burns' claims that the University made oral promises to her to facilitate transfer applications were not credible, Burns failed to prove that the University representatives made any false representations to her or to any third party, Burns failed to prove the factual elements to support a claim of intentional infliction of emotional distress, and Burns' claim of defamation was time-barred. Burns appealed.

Burns first claimed that the trial judge exhibited bias against her at trial. The Court noted that Burns did not raise her claim of judicial bias during the actual trial. Citing to prior case law and Connecticut statute, the Court stated that Burns should have raised her claim during the trial and requested that the judge recuse himself. The Court nevertheless addressed Burns' claim of bias. Burns first argued that the number of rulings made against her during the trial demonstrated the trial judge's bias against her. The Court quickly dismissed this argument and citing to prior caselaw, stated that adverse rulings by themselves do not establish bias.

Burns also argued that the trial judge's statement that he was unable to make sense of the figures in one of Burns' trial exhibits demonstrated that he was incapable of understanding Burns' claims. The Court also quickly dismissed this argument, stating that the trial

judge's statement was taken out of context.

Burns next argued that the trial court improperly found that a certificate of good standing encompassed financial good standing. Burns claimed that the University's handbook states the specific requirements for a certificate of good standing, and that the handbook governs all matters pertaining to the University and its students. The Court began by explaining that the relationship between a student and a private university is contractual in nature. The contractual relationship is determined by the catalogues, bulletins, circulars and regulations of the school. Moreover, in analyzing a breach of contract claim, a court must analyze the contract in light of the policies and customs of the particular institution.

The University put forth evidence that Burns received a financial aid award letter and an eight-page document entitled "Policies and Procedures Concerning Financial Aid Awards." This policy, which was signed by Burns, stated in bold print that "[a]ny student who owes a balance to the Law School will not be issued a transcript and will not be allowed to register for the subsequent semester. In addition, no certification will be forwarded to external organizations, including the Bar Admissions Boards, that degree requirements have been completed." In addition, several University representatives, including the dean, associate dean, the registrar and bursar testified that a student had to be in good financial standing in order to be given permission for transfer credits or to receive a certification of good standing. The Court thus determined that the contractual relationship between the University and Burns encompassed both the handbook and the financial aid policy. Accordingly, it could not find any error in the trial court's ruling.

Burns next argued that the trial court improperly found that she was not in financial good standing because the University mishandled her financial aid. The Court, however, found that there was not any credible evidence that any University representative breached any specific promise to Burns with regard to the handling of her financial aid. In fact, the evidence showed

that the change in the processing of her financial aid was done at Burns' express direction.

Finally, Burns argued that the trial court's judgment violated public policy. Burns, however, did not cite to any statutory authority or case law in her argument, and thus the Court declined to review it. As a result, the Court affirmed the trial court's judgment.

Burns v. Quinnipiac University (2010) 991 A.2d 666.

Note:

This case confirms that the relationship between a student and private school is contractual in nature. Contrary to Ms. Burns' argument in this case, the contractual obligations of both parties are not defined just by the express terms of the enrollment or tuition agreement, but also by the handbooks, publications, bulletins, and published policies and procedures of the school.

Expelled Student Allowed To Continue With Contract Based Claims Against Private University For Failure To Adhere To Discipline Review Procedures And Miscalculation Of Grade Point Average.

In September 2003, Alison Moe began studying at Seton Hall University's three-year Physician Assistant (PA) program. During Moe's first year and part of her second year, she maintained an average GPA of an "A." Moe then, however, received an arbitrarily low grade for a group research project by one of her instructors, Ellen Mendel. Mendel gave Moe a "C" grade, even though all the other students in her group project received "B+" grades, Moe was the only student to present the group's project during a mandatory symposium, and Moe had received an award for her presentation. Moe complained about the grade to the PA program's Director, Joseph Monoco.

Monoco did not take any action, and as a result, the "C" grade was applied to Moe's overall GPA. However, because of arithmetic error, Moe fell below the minimum 3.0 GPA

required to maintain good standing in the PA program. Moe complained to Monoco and other University representatives, all of whom did not take any action. Moe was resultantly unable to graduate on time.

The University allowed Moe to complete her studies if she completed two clinical rotations while maintaining a "B" average. Moe and Monoco, acting on behalf of the University, entered into a written agreement detailing the conditions of Moe's re-enrollment in the PA program. Following this, Moe began serving on a clinical rotation. Moe then requested that she be excused from the rotation for two days in order to attend her own wedding, which ultimately did not take place. Moe received approval of her request from her professors and rotation leaders, and notified the University's administrators in compliance with the procedures in the University's handbook.

Moe was then accused of misconduct by Monaco, who then sought to have Moe dismissed from the program on the alleged grounds that Moe's absence constituted professional misconduct and a failure to meet the requirements of the program. Moe appeared before the Student Performance Review Grievance Committee (SPRGC) and explained that her absences had been excused. The SPRGC refused to accept proof that Moe's absences had been excused and found her guilty of misconduct. Moe then appealed to the University's Dean, who denied her appeal. Moe was then dismissed from the Program. Following her dismissal, Moe attempted to complete her PA studies at other schools, however all the other schools denied her admission upon receiving Moe's transcript from the University, which stated that Moe had been dismissed for academic reasons, as well as unacceptable professional behavior. Moe then sued the University, alleging, among other claims, violations of due process under federal and state law, negligence, breach of contract, breach of quasi-contract, breach of implied contract, promissory estoppel, breach of the duty of good faith and fair dealing, unjust enrichment, intentional misrepresentation and fraud, and intentional infliction of emotional distress.

The University filed a motion to dismiss. In analyzing a motion to dismiss, the Court will only dismiss if, after accepting all of the facts alleged in the complaint to be true, the plaintiff has failed to plead enough facts to state a claim to relief.

With regard to Moe's state and federal due process claims, the Court explained that these causes of action only protect individuals from government action. Here, the University is a private institution, and does not constitute a state actor. Moe argued that because the University accepts state aid and state funding, it should be deemed a state actor. The Court, however, stated that the U.S. Supreme Court has already held that a school's receipt of public funds, without more, is not enough to make the school's decisions that of the state. Thus, the Court dismissed Moe's state and federal due process claims.

With regard to Moe's general due process or fundamental fairness claim and her common law due process claim, the Court stated that in the context of a private university, no traditional due process claim is available. However, a contract claim is viable. The contract claim is one grounded in fundamental fairness, which the Court stated is akin to the review of an agency action under the arbitrary and capricious standard. Namely, a student in a private university will not be successful when challenging a disciplinary action if the university adhered to its own rules, the procedures were fundamentally fair, and the decision was based on sufficient evidence. Here, the Court stated that it did not believe the New Jersey Supreme Court would allow a fundamental fairness claim to proceed on these facts. The Court noted that Moe could not proffer any cases where a claimant brought this type of claim and was awarded monetary relief, which is what Moe was seeking here. Rather, the Court stated that this type of claim usually supports only injunctive relief. As such, the Court dismissed these claims as well.

Moe's claims that were grounded in contract or quasi-contract principles (breach of contract, breach of quasi-contract, breach of implied

contract, promissory estoppel, breach of the covenant of good faith and fair dealing, and unjust enrichment), were not dismissed. The Court explained that Moe was able to point out specific defects in the procedures used prior to her expulsion. Accepting that all of Moe's pled facts are true, which is the standard of review on a motion to dismiss, Moe had alleged sufficient facts to withstand the University's motion.

With regard to Moe's negligence claim, the University argued that courts should not interfere with grading determinations, which are best left to the academic institutions. The Court noted, however, that the actual grades and discretionary evaluations of Moe's work are not in dispute. Rather, Moe argues that the Academy miscalculated her overall GPA. Thus, the Court determined that Moe could proceed with her negligence claim.

The Court would not dismiss Moe's intentional misrepresentation and common law fraud claims. The Court stated that Moe's argument, as the Court understood it, was that the University's action of not applying the handbook procedures regarding time off was a material misrepresentation by omission. The Court understood this claim to be one of promissory fraud, namely a promise to perform a contract when there is no actual intent to do so. As the issue of promissory fraud was not briefed by the parties and the Court noted an absence of case law directly on point, the Court would not dismiss this claim.

The Court did, however, dismiss Moe's intentional infliction of emotional distress, stating that Moe did not plead a valid emotional distress claim, as Moe did not allege that she suffered any emotional distress.

Moe v. Seton Hall University (2010) Slip Copy, 2010 WL 1609680.



SEX DISCRIMINATION

University Students Were Not Required To Provide Notice Of Alleged Violation And An Opportunity To Cure Before Filing Title IX Claim Challenging Elimination Of Women's Athletic Opportunities.

Three female students attended the University of California, Davis, and participated in the University's acclaimed wrestling program. The University did not have separate men's and women's varsity wrestling teams. Instead, the women practiced with the majority-men team and received coaching from the coach of the men's team. However, during the 2000-2001 academic year, the University changed its policy and only permitted women to participate in varsity wrestling if they were able to beat male wrestlers in their weight class. As a result of this new requirement, the female students were unable to participate on the wrestling team and lost their varsity athlete status. The students sued the University, seeking damages for violations under Title IX and for equal protection claims under 42 U.S.C. § 1983.

The District Court granted the University's motion for summary judgment, holding that the students were required to give the University notice in advance of filing the suit of the alleged Title IX violation and an opportunity to cure it. The Ninth Circuit Court of Appeals reversed the motion for summary judgment and remanded the case.

As a matter of first impression, the Ninth Circuit held that there is no requirement to give pre-litigation notice for Title IX claims that are based on an institution's affirmative decision, such as a university's decision to change the participation requirements for varsity wrestling.

In its defense, the University claimed that it satisfied the requirements of Title IX by showing a history and continuing practice of expanding collegiate participation opportunities

for women. In 1970, the University had seven women's varsity teams; it added one more in 1974. The University did not add more female varsity teams until 1996, when it added three. However, starting in 2000, the number of female athletic opportunities fell even while female enrollment increased.

Given this backdrop, the Court determined that the University's exclusion of women from its wrestling team in 2000-2001 was part of an overall contraction of female athletic participation at the University. Therefore, the University had not met its requirements under Title IX. The Court also held that Title IX does not preclude equal protection suits under Section 1983.

Mansourian v. Regents of the University of California (2010) 602 F.3d 957.

Note:

Title IX of the Education Amendments of 1972 prohibits the exclusion of, the denial of benefits to, or discrimination against any individual on the basis of sex by any educational program that receives federal financial assistance. (20 U.S.C. § 1681 et seq.) Generally, it applies to any public or private preschool, elementary school, secondary school, or institution of vocational, professional, or higher education that receives federal funds. It is administered by the U.S. Department of Education. Title IX also applies to schools controlled by a religious organization, but only to the extent that its application is not inconsistent with the religious tenets of the school. (29 U.S.C. § 1681(a)(3).) A school wishing to claim this religious exemption must submit a written statement by the highest ranking official of the school to the Assistant Secretary of the U.S. Department of Education explaining the provisions of Title IX that conflict with a specific tenet of the religious organization. (34 C.F.R. § 106.12(b).)



■ EMPLOYMENT

BREACH OF CONTRACT

Where Teacher Employed Pursuant To "For Cause" Employment Contract Was Discharged For Refusing To Refrain From Reporting Suspected Abuse, Teacher Was Allowed To Proceed With Wrongful Discharge Claim.

Michael Keveney was a teacher employed by Missouri Military Academy. Keveney was employed pursuant to a written employment contract, which provided that the Academy could terminate Keveney's employment for cause. In October 2003, the Academy terminated Keveney for cause.

Keveney sued the Academy, alleging that he was terminated for his insistence that his supervisors report to the Division of Family Services (DFS) that a student was possibly being physically abused. Keveney had observed bruises on the student's arm and reported this to the Academy's administrators. Keveney argued that his supervisors refused to report the bruises, and told Keveney that his job would be jeopardized if Keveney reported the bruises to DFS. That same day, the Academy terminated Keveney's employment.

Keveney sued the Academy for wrongful discharge in violation of public policy and breach of contract. Keveney also sought punitive damages and damages for emotional distress under both claims. The court dismissed Keveney's wrongful discharge claim. The court also would not allow Keveney to submit his claim for punitive damages or damages for emotional distress for his breach of contract claim. Keveney's breach of contract claim proceeded to a trial. The Academy moved for a directed verdict, which is a jury verdict that is based on the specific direction of the trial judge that the jury must bring in that verdict because one of the parties has not proved his or her case as a matter of law. The court overruled the

Academy's motion. The jury awarded Keveney \$13,300 in damages.

The Academy appealed, arguing that the court erred in overruling its motion for a directed verdict. Keveney cross-appealed, arguing that wrongful discharge claims should be available to contract employees. Keveney also alternatively argued that contract employees should be able to obtain punitive damages and damages for emotional distress.

The Court first analyzed Keveney's wrongful discharge claim. The Court began by explaining that the wrongful discharge in violation of public policy claim may be available to an at-will employee who has been terminated in violation of a clear mandate of public policy. In Missouri, courts have declined to extend the wrongful discharge claim to contract employees, or those employees who could only be terminated for cause, rather than on an at-will basis. Thus, the issue for the Court was to determine whether the wrongful discharge cause of action should be available to contract employees.

The Court stated that there were three compelling reasons to allow contract employees to pursue a wrongful discharge claim. First, there is a distinct underlying purpose for the wrongful discharge cause of action that supports allowing contract employees to pursue it. A breach of contract action seeks to enforce a privately negotiated agreement regarding the terms and conditions of employment. The wrongful discharge claim, however, is based on an employer's attempt to base terms and conditions of employment on the violation of a public policy that is expressed in constitutional, statutory or regulatory provisions. The Court stated that to deny the wrongful discharge cause of action to contract employees incorrectly assumes that the public policy at issue can be limited through private contracts. Rather, an employer's legal obligation to refrain from terminating an employee for reasons that violate public policy does not depend on the terms of an employment contract.

Second, the remedies for a breach of contract action do not vindicate the public policy that was violated by an employer's wrongful discharge, nor does it serve as a deterrent against future violations. Rather, when an employer discharges an employee in violation of public policy, the employer is liable for two breaches - one in contract and the other in tort, which is a wrongful act. Third, the Court stated that allowing only at-will employees to pursue a wrongful discharge action illogically grants at-will employees greater protection than contract employees. For these reasons, the Court held that contract employees could pursue a claim for wrongful discharge.

The Court next analyzed whether Keveney had successfully stated a cause of action for wrongful discharge. The Court found that when Keveney observed the student's bruising and suspected abuse, Keveney was not only under a statutory obligation to report the abuse to DFS, but could have been subject to criminal liability for the failure to report. The Court further found that the mandatory reporting obligations constitute a clear public policy mandate. As such, Keveney's claim that the Academy terminated him because of his refusal to refrain from reporting the suspected abuse sufficiently stated a cause of action for wrongful discharge. The Court held that the lower court erred in dismissing Keveney's wrongful discharge claim.

The Court then analyzed Keveney's breach of contract claim. The Academy claimed that the evidence showed Keveney failed to perform his contractual obligations and that Keveney engaged in misconduct, which constituted cause for termination. Specifically, the Academy argued that Keveney was disrespectful during the conversation regarding the suspected abuse, which constituted cause for termination. The Court noted that Keveney presented evidence that he performed all of his duties as required by the contract and that while his conversation with his superiors regarding the suspected abuse became heated, it was not disrespectful. The Court further stated that the jury is the sole judge of credibility of the witnesses, and the jury had found that Keveney did perform his duties under the contract. As such, the Court stated that the lower court did not err in overruling the

Academy's motion for a directed verdict.

Keveney v. Missouri Military Academy (2010) 304 S.W.3d 98.

Note:

California has also recognized the public policy exception to at-will employment, which places a legal obligation on employers to refrain from discharging employees for reasons that violate a clear mandate of public policy. (Stevenson v. Superior Court (1997) 16 Cal.4th 880, 887.) This exception is enforced through tort law, rather than through contract law. (Id.) California has also similarly held that the public policy cause of action arises ex delicto, or outside of the contract, and that "an employer's obligation to refrain from discharging an employee who refuses to commit a criminal act does not depend upon any express or implied 'promise[s] set forth in the [employment] contract', but rather reflects a duty imposed by law upon all employers in order to implement the fundamental public policies embodied in the state's penal statutes. (Citations.)" (Foley v. Interactive Data Corp. (1980) 47 Cal.3d 654, 667 citing Tameny v. Atlantic Richfield Co. (1980) 27 Cal.3d 167, 176.)

CREDENTIALS

Elementary School Teacher Determined Unfit To Teach After Third DUI Conviction.

Shirley Marie Broney works as a fifth grade teacher for a public school. In 1987, when she did not yet have her teaching credentials, she was convicted of one count of driving under the influence (DUI) during the weekend while away from school. Ten years later, when she was a student teacher, Broney was again convicted of DUI on the weekend and away from school. She was sentenced to three years probation. In 2001, Broney was convicted of DUI with a prior and an enhancement (because her blood-alcohol level was .20 percent or greater). She was sentenced to thirty days in jail, which she fulfilled by wearing an ankle bracelet at home and at work, and to three years probation.

The Commission on Teacher Credentialing alleges that Broney's conviction constitutes unprofessional conduct, rendering her unfit to teach. The Commission rejected the hearing officer's recommended determination that Broney's conduct did not violate any rules or ethical codes of the teaching profession, and suspended her credentials for sixty days. Broney appealed and the trial court denied Broney's petition for review, ruling that Broney's DUI convictions showed, as a matter of law, that she was unfit to teach.

The Court of Appeals held that the trial court incorrectly applied a *per se* test to Broney's conduct, but nonetheless agreed with the trial court in ultimately upholding the 60-day suspension. The Court refused to apply a *per se* analysis to her conduct because the DUI statutes involved did not impose automatic sanctions on a teacher's credentials. The Court instead applied six of the seven factors set out in *Morrison v. State Board of Education* to determine if she was fit to teach: (1) her conduct of wearing an ankle bracelet may have adversely affected students or teachers; (2) her DUI convictions were recent and occurred at intervals of ten and five years; (3) her credentials were for teaching elementary school children; (4) her aggravating circumstance of a blood-alcohol content of .25 percent; (5) the lack of praiseworthiness of her conduct; and (6) some probability of recurrence. The Court concluded that because, when analyzed under the Morrison factors, Broney's conduct made her unfit to teach, the trial court's error was harmless, and upheld the trial court's decision.

Broney v. California Commission on Teacher Credentialing (2010) __ Cal.Rptr.3d __, 2010 WL 1803848.

Note:

Although this case concerns a public school teacher, we include a discussion of this case as the Court's analysis of the factors governing fitness to teach may be helpful in analyzing teacher misconduct in the private school context.

FAIR LABOR STANDARDS ACT

Department Of Labor Will Now Only Issue Administrator Interpretations Instead Of Opinion Letters.

On March 24, the United States Department of Labor, Wage and Hour Division (DOL) announced that it would no longer issue fact-specific opinion letters regarding wage and hour issues. The DOL will only respond to requests for opinion letters with references to statutes, regulations, interpretations and cases that are relevant to the specific request but without an analysis of the specific facts presented. Instead, the DOL will periodically publish "Administrator Interpretations" which will set forth a general interpretation of the law and regulations, applicable across-the-board to all those affected by the provision in issue.

The DOL believes that this will be a much more efficient and productive use of resources than attempting to provide definitive opinion letters in response to fact-specific requests submitted by individuals and organizations, where a slight difference in the assumed facts may result in a different outcome.

This is a fundamental shift in how the DOL operates in that the DOL has issued opinion letters to employers for decades. In addition, because the DOL will no longer issue opinion letters to specific employers, employers will no longer be able to ask the DOL to verify that it is in compliance with the law.



DISCRIMINATION - DISABILITY

Disciplinary Termination Of Police Chief for Drinking And Driving While Off-Duty Was Not Unlawful Disability Discrimination.

Charles Budde was the police chief for the Kane County Forest Preserve District in Illinois. While off duty one day, he decided to drive home after having several glasses of wine. He rear-ended another vehicle and injured the driver and the passenger. His blood alcohol level was almost three times the legal limit. Consequently Budde's driver's license was revoked. And the District terminated his employment.

Budde sued the District for disability discrimination in violation of the Americans with Disabilities Act based on his alcoholism. The district court granted summary judgment in favor of the District. The Seventh Circuit Court of Appeals affirmed.

To state a disability discrimination claim, a plaintiff must first establish that he is a qualified individual with a disability. A qualified individual with a disability is someone who (1) satisfies the requisite skill, experience, education, and other job-related requirements of his employment position, and (2) can perform the essential job functions with or without reasonable accommodation.

Budde could not perform the essential job functions. Violation of a workplace rule, even if it is caused by a disability, is no defense to discipline. Here Budde's misconduct violated the District's rules prohibiting officers from being publicly intoxicated and prohibiting officers from violating public laws. In addition, the District had a general order stating that the ability to operate a vehicle is an essential job function, and Budde was unable to lawfully operate a vehicle. Accordingly, the District terminated Budde because of his misconduct, and not due to discrimination.

Budde v. Kane County Forest Preserve (7th Cir. 2010) 597 F.3d 860.

PREGNANCY DISABILITY LEAVE

The Fair Employment And Housing Commission Publishes Proposed Regulations Regarding Pregnancy Disability Leave.

On April 16, the Fair Employment and Housing Commission (FEHC) issued an initial draft of revised regulations regarding California's Pregnancy Disability Law (PDL). The FEHC is seeking written comments on the proposed regulations through June 2. The proposed regulations do not contain many significant substantive changes. The changes primarily clarify the language of the existing regulations. Some of the regulations have been revised to conform with the recent changes to the federal Family and Medical Care Leave Act (FMLA) regulations.

The most significant change is that the FMLA and California Family Rights Act (CFRA) regarding intermittent leaves and reduced leave schedules will now be applied to the PDL. This will potentially allow disabled pregnant employees to take off more PDL time than before as employees will be able to use their PDL in hourly increments and not simply in weeks.

Moreover, the FEHC also revised the regulations to reflect a pregnant woman's right to reasonable accommodation to reflect the 2000 legislative change adding pregnancy as a disability under the Fair Employment and Housing Act, which includes a reasonable accommodation requirement.

A copy of the proposed regulations can be found at:
http://www.fehc.ca.gov/act/pdf/pregnancyregulations/TEXT_OF_PREGNANCY_REGS.pdf



BACKGROUND CHECKS

Employers May Not Use Information From "Megan's Law" Website As A Basis For Not Hiring Applicant.

William Mendoza submitted an application for employment. The Company hired ADP Screening and Selection Services, Inc. (SASS) to conduct a pre-employment background check on Mendoza. As part of its investigation, SASS accessed the Megan's Law website which identifies registered sex offenders. The Company did not hire Mendoza as a result of the information SASS obtained from the Megan's Law website.

Mendoza sued SASS for violation of Penal Code section 290.46, which prohibits the use of any information that is disclosed on the Megan's Law website for purposes relating to employment. SASS filed a motion to strike the complaint. The district court granted the motion, and the California Court of Appeal affirmed.

The Court found that Section 290.46 was intended to create liability for damages against employers who use information disclosed on the Megan's Law website as a basis for an employment decision. The statute does not create a cause of action against an employment-screening business which reproduces or republishes information.

Mendoza v. ADP Screening and Selection Services, Inc.
(2010) 182 Cal.App.4th 1644.

LAYOFF BENEFITS

COBRA Premium Subsidy Extended To May 31, 2010.

The American Recovery and Reinvestment Act (ARRA) included a 65% COBRA subsidy for employees involuntarily terminated from their employment between September 1, 2008 and December 31, 2009. The federal government has since passed a number of bills extending the COBRA premium subsidy for a few months at a time.

Under the last extension, the COBRA premium subsidy ended on March 31, 2010. On April 15, President Barack Obama signed a bill extending the COBRA premium subsidy - again - to May 31, 2010. The President also urged Congress to renew the extension through the end of 2010.

The premium reduction applies to periods of health coverage that began on or after February 17, 2009 and lasts for up to 15 months.



Wage and Hour Laws

Is Your School in Compliance?



- Is your school engaged in best practices for compliance with Wage and Hour Laws?
- Do you know which employees are exempt from overtime (and what it means to be exempt)?
- Do you know the legal requirements and best practices for timekeeping?
- Do you know how to properly compensate employees for supervising student trips and attendance at conferences?

The application of California's complex wage and hour laws to the unique educational environment of independent schools, including religious and non-profit organizations, can be challenging and frustrating.

Liebert Cassidy Whitmore can help you navigate the complexities of this ever-changing area of the law:

- **Audits** of your current policies and practices – audits allow you to rectify any errors that may be occurring before a claim is filed
- **Training** – understanding the requirements and best practices is the first step in compliance
- **Guides** – LCW has a reference book specifically addressing Wage and Hour Issues for Independent Schools

For more information on this topic or our services, please contact any of our offices.



FIRM PROFILE
Siobhan H. Cullen
Associate

Siobhan Cullen provides representation and legal counsel to Liebert Cassidy Whitmore clients out of our Los Angeles office. She assists clients with litigation, disciplinary appeals, grievance and due process hearings and day to day advice on education, employment and labor law.

Siobhan works with K-12 and Community College districts throughout California, offering advice and counsel related to special education, student discipline matters, formation of student and personnel policies, employment and personnel management and certificated and classified layoffs. She has represented education clients in due process, layoff and disciplinary hearings as well as guided clients through mediation and a variety of employment matters.

Prior to joining Liebert Cassidy Whitmore, Siobhan clerked at several education-based non-profit law centers as well as the Office of the General Counsel of the Los Angeles Unified School District. Prior to entering Law School, Siobhan was a secondary school teacher in Virginia and Connecticut.

Siobhan received her Juris Doctorate from Pepperdine University School of Law. She received her Master of Arts in Teaching from Sacred Heart University in Fairfield, Connecticut and her Bachelor of Arts in English from Cornell University in Ithaca, NY.

When not practicing law, Siobhan enjoys traveling; hiking; yoga; cooking; exploring Southern California's beaches, mountains, markets and restaurants; laughing with friends and family; and live music and comedy.



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If you have any questions, call Cynthia Weldon at (310) 981-2000.



Firm Publications

Brianne Marriott of our Fresno office authored the article, "Judicial Review of Employment Arbitration Decisions" which appeared in the May 17, 2010 issue of the Los Angeles/San Francisco Daily Journal. The complete article can be read online at <http://www2.lcwlegal.com/newspublications/newsandpubsearch.asp> and search for the keyword "Arbitration."

Steven Berliner and **Camille Townsend** of our Los Angeles office co-authored the article, "H1N1 in the Workplace: 'Go Home'" which appeared in the May issue of the California Public Employee Relations Journal (CPER). The complete article can be read online at <http://www2.lcwlegal.com/newspublications/newsandpubsearch.asp> and search for the keyword "H1N1."

Jeffrey Freedman of our Los Angeles office authored the article, "New Jersey Company Unlawfully Accesses Employee's E-mails " which appeared in the April 27, 2010 issue of the Los Angeles/San Francisco Daily Journal. The complete article can be read online at <http://www2.lcwlegal.com/newspublications/newsandpubsearch.asp> and search for the keyword "E-mails."



New
to the
Firm

Liebert Cassidy Whitmore Welcomes a New Associate

Sang-Jin (SJ) Nam joins LCW's Fresno Office. SJ has an extensive background representing and advising school and college districts, and some local agencies, in all aspects of employment, labor and education law. He is also experienced in handling special education and student expulsion as well as business and facilities. SJ can be contacted at (559) 256-7800 or e-mailed at sjnam@lcwlegal.com.

MANAGEMENT TRAINING WORKSHOPS

Firm *Activities*

Consortium Workshop Training

- June 3 **"Privacy Issues in the Workplace"**
Gateway Public ERC | Santa Fe Springs | Pilar Morin
- June 4 **"Disability Discrimination, Family and Medical Care Leave Acts, Workers' Compensation and Disability Retirement: Administering Overlapping Laws"**
Central Coast Personnel Council Consortium | Santa Barbara | Peter Brown and Doug Bray
- June 16 **"Managing Leave Laws and the Discipline Process"**
Orange County ERC | Anaheim | Peter Brown

Customized Training Presentations

- June 1, 9, 24 **"Preventing Workplace Harassment, Discrimination and Retaliation and Violence in the Workplace"**
City of El Segundo | Scott Tiedemann
- June 3, 14, 29 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Monrovia | Donna Evans
- June 8, 9 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Inglewood | Laura Kalty
- June 9 **"Guide for Supervisors on Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Fontana | Jennifer Hong
- June 9 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Torrance | Donna Evans
- June 10, 11 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
Town of Truckee | Jack Hughes
- June 10 **"Disability Discrimination"**
Monjaras & Wismeyer Group | Oxnard | Peter Brown
- June 11 **"Freedom of Speech and Right to Privacy"**
Labor Relation Information System - LRIS | Las Vegas | Mark Meyerhoff
- June 15 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Fresno | Gage Dungy
- June 16 **"Handling Grievances and Preventing Discrimination"**
County of Sonoma | Santa Rosa | Jack Hughes
- June 22 **"A Supervisor's Employment Relations Primer"**
Dublin San Ramon Services District | Dublin | Jack Hughes
- June 28 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Chico | Jack Hughes
- July 12 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Fresno | Gage Dungy
- July 15 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Glendale | Jennifer Hong
- July 16 **"Freedom of Speech and Right to Privacy for Firefighters"**
Labor Relation Information System - LRIS | Las Vegas | Mark Meyerhoff

- July 21 **"Finding the Facts: Disciplinary and Harassment Investigations"**
Yuba Community College District | Marysville | Laura Schulkind & Eileen Anderson O'Hare
- July 29 **"Preventing Workplace Harassment, Discrimination and Retaliation"**
City of Chico | Jack Hughes
- July 30 **"Ethics in Public Service"**
County of San Luis Obispo | San Luis Obispo | Donna Evans

Speaking Engagements

LCW appreciates the invitation to address professional organizations and associations. To learn how you can have an LCW presentation at your association meeting, contact info@lcwlegal.com.

- June 4 **"City of Glendora Team Building Workshop"**
City of Glendora | Palm Springs | Richard Kreisler
- June 10 **"Progressive Discipline and Skelly Hearings"**
Cooperative Organization for the Development of Employee Selection Procedures | Webinar | Laura Schulkind
- June 11 **"Hiring and Keeping Great Employees"**
Special Districts Association | San Diego | Judith Islas
- June 11 **"*Tucker v. Grossmont Unified School District*"**
Equal Employment Equity & Diversity Consortium Year End Luncheon | Huntington Beach | Peter Brown
- June 16 **"12 Steps to Avoiding Liability"**
California Special Districts Association (CSDA) Education Workshop | Ontario | Laura Kalty
- June 16 **"Negotiations and Employment Trends"**
San Gabriel City Managers Conference | San Gabriel | Richard Kreisler
- June 16 **"Trial and Deposition Testimony"**
Independent Cities Risk Management Authority Meeting | Downey | Melanie Poturica and Mark Meyerhoff
- June 18 **"Social Media and Harassment in the Workplace"**
Riverside County Bar Association Meeting | Riverside | Michael Blacher
- June 23 **"The Foundation of Labor Relations"**
Public Employer Labor Relations Association of California - Academy I | San Diego | Donna Williamson
- June 23 **"Understanding the Brown Act and Your Responsibilities"**
CSDA | Goleta | Mark Meyerhoff
- June 30 **"Common Labor Relations Mistakes/Due Process"**
Public Employer Labor Relations Association of California (PELRAC) | Clovis | Gage Dungy
- June 30 **"Employment Litigation Update" and "The Top 5 Things You Need To Know About Being An Effective Negotiator During These Challenging Times"**
PELRAC | Clovis | Shelline Bennett
- July 28 **"What Can Be Done About Reducing Pension Costs and Retirement Benefits"**
Northern California County Counsels Association Meeting | Mt. Shasta | Cepideh Roufougar



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