LIEBERT CASSIDY WHITMORE

PRIVATE EDUCATION MATTERS

News and developments in education law, employment law, and labor relations for California Independent and Private Schools and Colleges.

APRIL 2022

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LCW NEWS

NEGLIGENCE

Court Permits Baseball Game Spectator's Negligence Action Against University To Proceed.

In April 2018, Monica Mayes (Mayes) was struck in the face by a foul ball while attending a baseball game between Marymount University and La Sierra University. Mayes suffered skull fractures and brain damage, among other injuries. Mayes was seated in grassy area along the third-base line behind the dugout, which extended eight feet from the ground, and there was no protective netting above the dugout.

Mayes sued La Sierra University (La Sierra) for negligence, alleging La Sierra failed to: (1) install protective netting over the dugouts, (2) provide a sufficient number of screened seats for spectators, (3) warn spectators that the only available screened seats were in the area behind home plate, and (4) exercise crowd control in order to remove distractions in the area along the third-base line that diverted spectators' attention from the playing field.

La Sierra moved for summary judgment and the trial court agreed, holding that Mayes assumed the inherent risk of being hit by a foul ball by attending a baseball game. Mayes appealed.

The Court of Appeal disagreed with the trial court. The Court of Appeal explained that some sports and recreational activities are inherently dangerous and imposing a duty to eliminate or mitigate those risks inherent in these activities could alter their nature or chill participation in them, called the assumption of risk doctrine. However, those operating an activity have (1) a duty to not to increase the risk of injury over that inherent in the activity, and (2) a duty to take reasonable steps to increase safety and minimize risks of injury of its participants, if such steps could be taken without altering the nature of the activity. Therefore, the assumption of risk doctrine does not absolve operators of any obligation to protect the safety of its participants.

The Court of Appeal explained that the trial court did not consider La Sierra's duty to take reasonable steps to increase safety and minimize the risk of injury to spectators at its baseball games, if it could do so without changing the nature of the game or activity of watching the game. Additionally, La Sierra did not attempt to show that there were no reasonable steps it could have taken to minimize the risk of being injured by foul falls because it explained no such steps could have been taken without changing the nature of the game or adversely affecting spectators' enjoyment of the game. Therefore, La Sierra did not meet its burden of showing it is entitled to summary judgment.

The Court of Appeal also held there were disputes of fact concerning the scope of La Sierra's duty of care to spectators at its baseball games and whether La Sierra breached its duty to Mayes by failing install protective netting, warn spectators that there was no protective netting over its dugouts, provide a greater number of screened seats at its April 22, 2018 game, or at its playoff games, and exercise

crowd control, in order to remove distractions and reduce the risk that spectators who sat in the unscreened areas along the first-and third-base lines would be hit by balls leaving the field of play.

Ultimately, the Court reversed the trial court's judgment in favor of La Sierra.

Mayes v. La Sierra Univ. (2022) 73 Cal.App.5th 686.

Note:

While the Court of Appeal did not answer the question of whether La Sierra University was liable for Mayes' injuries, this case indicates that there was at least a reasonable question about whether La Sierra should have taken steps to reduce or eliminate the risk of spectators being hit by foul balls. This is a common analysis in these cases so schools and colleges should assess their athletic programs and risks to spectators to ensure that safety measures meet the standards that are generally accepted among sports of that type.

EMPLOYEES

NEGLIGENCE

Employer Not Liable For Accident That Occurred On Employee's Commute From Work To Home.

Allied Universal Corporation (Allied) provided security guard services at several University of California, San Francisco (UCSF) medical facilities. Allied hired security guards and assigned them to a particular location. UCSF was responsible for supervising the security guards.

Clanisha Villegas worked for Allied from about February 2015 to May 2016. Thereafter, she had a baby. She then reapplied for a security guard position and requested the overnight shift. During her job interview, Villegas disclosed that she did not have daytime childcare for her infant.

Allied hired Villegas and assigned her to work the overnight shift - from 11pm to 7am - five nights a week. Allied did not require Villegas to use her car for work and did not dictate how she traveled to and from work. Using Villegas's personal vehicle, Villegas's mother often drove Villegas from their shared home in the East Bay to UCSF and picked up Villegas when her shift ended. Villegas would then drop her mother off work in the Inner Richmond Neighborhood.

Villegas's first shift was on July 10, 2017. She frequently requested extra shifts and often worked six shifts per week instead of five. On August 21, Villegas began her fourth straight day of work. When her shift ended the following morning, Villegas's mother picked Villegas up. Villegas dropped her mother off at work, then began driving home. About an hour after finishing her shift, and as she neared her home, Villegas fell asleep and drove into oncoming traffic, hitting and severely injuring Lucy Feltham, who was riding a motorcycle. Feltham's husband, Mathieu A. Leonelli - who was also riding a motorcycle - witnessed the accident.

Feltham and Leonelli (Feltham) filed a complaint against Allied, alleging various claims of negligence. Feltham alleged that Allied, as Villegas's employer, negligently required and allowed Villegas to work excessive hours so as to fatigue her and tire her to the point of falling asleep at the wheel in the course and scope of her employment. Feltham also alleged Allied failed to provide transportation for Villegas and therefore, caused the accident and Lucy Feltham's injuries.

Allied moved for summary judgment, arguing that it was not liable because employers cannot be liable for torts committed by employees commuting to and from work, called the coming and going rule. Allied also argued that there was no causal connection between Villegas's work and the accident. Feltham argued that Allied negligently supervised and hired Villegas because it knew she had daytime childcare obligations that would keep her from sleeping. The trial court agreed with Allied, and Feltham appealed.

The Court of Appeal agreed with the trial court, and held that the going and coming rule applied in this case. The Court of Appeal explained that Villegas did not use her car for work and she was not acting within the scope of her employment at the time of the accident, which occurred well after Villegas finished her shift and while she was driving home in her personal vehicle.

The Court of Appeal also rejected Felham's argument that Villegas's conduct fell within the special risk exception to the coming and going rule. That exception applies when an employee endangers others with a risk arising from or related to work, and plaintiffs must establish a casual nexus between the injury and the employee's job. Here, Villegas worked a regular eight-hour shift before the accident, and before starting that shift she had 16 hours off. Therefore, Allied had every reason to assume that Villegas had sufficient rest during her time off. Additionally, Villegas's job as a security guard and working overnight shifts did not create a "special risk" that Villegas would injure someone by falling asleep while driving home. The Court of Appeal further reasoned that there was no evidence that Villegas's fatigue was caused by Allied and therefore, caused the traffic accident.

The Court of Appeal also rejected Feltham's argument that Villegas's conduct fell within the "special errand" exception to the coming and going rule, which applies when an employee commits a negligent act while engaged in a special errand or a business errand for the benefit of the employer while commuting. The Court of Appeal rejected Feltham's argument that Villegas's extra shifts constituted a special errand because Villegas had not worked extra shifts before the accident and commuting to work is not a "special errand."

Ultimately, the Court of Appeal ruled in favor of Allied.

Feltham v. Universal Prot. Serv., LP (2022) 76 Cal.App.5th 1062.

NOTE:

While employers are generally not liable for wrongful acts that happen on an employee's commute to work, employers can be liable for injuries an employee causes while driving within the scope of employment.

Duty To Provide Safe Workplace Did Not Apply At Off-Site, Private Residence.

In March 2017, three employees of Colonial Van & Storage (Colonial) and a business associate gathered at the private family residence of two married Colonial employees (Carol Holladay and Jim Willcoxson). While in the home, Holladay and Willcoxon's son, a war veteran with PTSD, opened fire with a handgun, killing Wilcoxson and injuring the remaining attendees. The injured employee (Dominguez) and injured business associate (Schindler) filed lawsuits against Colonial for personal injury damages via a negligence cause of action.

Colonial moved for summary judgment against the negligence claim because Colonial did not own, possess, or control the home where the shooting occurred. The trial court denied this summary judgment motion. Colonial appealed, and the California Court of Appeal overturned the trial court and granted summary judgment. The trial court held that Colonial had no duty to ensure that an off-site meeting place for coworkers and business associates -- like an employee's private residence -- is safe from third-party criminal conduct.

In a typical negligence claim, a person must prove that: they were owed a duty of care; the person they are suing breached that duty of care; and the breach directly and proximately caused harm to the person suing. This case focused on whether the employer, Colonial, owed a duty of care to the injured people.

California Labor Code Section 6400 gives an employer an affirmative duty to provide employees with a safe place to work. On the other hand, the Court of Appeal noted that a duty of care is not absolute. Generally, a person does not owe a duty to: protect others from the conduct of a third person; or warn those who may be endangered by third-party conduct. It is these competing principles that the Court of Appeal needed to balance and harmonize to decide this case.

The injured employee, Dominguez, and the injured business associate, Schindler, claimed that Colonial owed them a duty of care because Colonial controlled the home where the shooting occurred. Generally, a person's or entity's control over property is sufficient to create that duty of care. However, the Court of Appeal held that Colonial did not control the home in this case.

In reaching that determination, the Court of Appeal used a common legal definition of "control", which is the power to prevent, remedy, or guard against a dangerous condition. Absent ownership or possession, an entity can control a property in the legal sense if it takes an overt action directed at the property to modify or improve it, beyond simple upkeep. Examples of overt actions include: building a fence around the property; or erecting a neon sign to illuminate it. The Court of Appeal found no evidence that Colonial had ever taken an overt action to modify or improve the property. Thus, Colonial did not control the property and could not possibly owe Dominguez and Schindler a duty of care.

Dominguez and Schindler also argued that because Holladay had often teleworked from the home on behalf of Colonial, Colonial controlled the home. The Court of Appeal disagreed, holding that deriving a commercial benefit from the use of a home does not create a duty to protect. In coming to this conclusion, the Court stated that if they sided with Dominguez and Schindler, "employers would have the onerous task of ensuring … employees maintained the safety of their private residences and the mental health of their fellow residents and invitees."

The Court also found that, because Colonial had no knowledge of the son's violent past and mental disorder, the son's eventual attack was entirely unforeseeable. So, not only did Colonial not owe Dominguez and Schindler a duty of care, but the attack was also unforeseeable, which further rendered the claim untenable.

Colonial Van & Storage v. Superior Court (Dominguez) (2022) 76 Cal.App.5th 487.

NOTE:

This case makes it clear that so long as an employer does not own, possess, or take overt action directed towards a property to modify or improve it, an employer does not control such property, and therefore does not owe a duty of care to those present on the property. Further, if an employer has no knowledge of anything that would hint at a future liability or dangerous situation, then the harm is not foreseeable and cannot support a negligence claim.

ARBITRATION AGREEMENTS

One-Sided Arbitration Agreement That Lacked Mutuality And Awarded Attorneys' Fees Contrary To FEHA Is Unenforceable.

All employees at Charter Communications (Charter) are required to agree to participate in an arbitration program for employee related disputes, called Solution Channel. All individuals applying for a position with Charter are required to agree to participate in Solution Channel as well as Charter's mutual arbitration agreement. Individuals who applied and received an offer from Charter were then required to complete a web-based onboarding process as a condition of employment that included accepted the arbitration agreement and the Solution Channel program guidelines.

After agreeing to submit to all employment-related disputes with Charter to arbitration, Angelica Ramirez (Ramirez) was hired as an employee in July 2019. In May 2020, Charter terminated Ramirez. Ramirez sued, alleging various claims under the Fair Housing and Employment Act (FEHA) and wrongful discharge.

Charter filed a motion to compel arbitration and sought attorneys' fees. Ramirez argued that the arbitration agreement was procedurally unconscionable because it was a contract of adhesion. She also argued the agreement was substantively unconscionable for several reasons, including that it shortened the statute of limitations, broadened Charter's ability to recover attorney fees against an employee, unduly limited discovery, and favored Charter in defining the scope of the claims covered. She also argued that because unconscionability permeated the agreement, severance was not permissible. Lastly, Ramirez argued Charter was not entitled to attorneys' fees and in any event, the request for fees was itself substantially unconscionable. Charter responded that the arbitration agreement's terms were not unconscionable and, even if specific terms were unconscionable, the trial court should sever them and enforce the parties' agreement to arbitrate. The trial court denied Charter's motion to compel. Charter appealed.

The Court of Appeal agreed with the trial court and held that the arbitration agreement was a contract of adhesion. The Court of Appeal also held that the agreement contained a high degree of substantive unconscionability.

The doctrine of unconscionability has both a procedural and substantive element. Procedural unconscionability focuses on unequal bargaining power and whether the contract is a contract of adhesion. However, a contract of adhesion does not render the contract automatically unenforceable. Substantive unconscionability focuses on overly harsh or one-sided terms. Here, the Court of Appeal held that arbitration agreement was a contract of adhesion because it was mandatory as a condition of employment.

The Court of Appeal also held that the shortened statute of limitations period was unconscionable. While parties to an arbitration agreement may shorten the applicable statute of limitations period for bringing an action, that period must still be reasonable. Here, the arbitration agreement provided that the period for an employee to file a FEHA claim is one year. However, FEHA grants the Department of Fair Housing and Employment one year to investigate and issue a "right-to-sue letter," and then grants the employee one year after the right-to-sue letter to file an action in court. Therefore, the Court of Appeal held that the practical effect of the arbitration agreement shortens the period an employee can to file a FEHA action in court.

The Court of Appeal held that the provision in the agreement that awarded attorneys' fees to the prevailing party on a motion to compel was unenforceable. Other California decisions have held that employment arbitration agreements cannot alter the fee-shifting provisions provided by statute. Under FEHA, an employer may only recover attorneys' fees if a plaintiff's lawsuit was "frivolous, unreasonable, or groundless." The arbitration agreement here allowed Charter to recover fees without meeting this burden, and therefore this provision of the agreement was contrary to FEHA.

The Court of Appeal also held that the arbitration agreement was unfairly one-sided because it compels arbitration of claims that more likely to be brought by an employee but exempts from arbitration claims that are more likely to brought by the employer. Specifically, the agreement excludes claims for workers' compensation, unemployment benefits, and severance/non-compete agreements.

The Court of Appeal held that the limitations on discovery were unconscionable. Specifically, the arbitration agreement limited each side to four depositions. Ramirez estimated that she would need to take at least seven depositions, and therefore demonstrated that the guidelines were inadequate to fairly allow Ramirez to pursue her claims.

Finally, the Court of Appeal rejected Charter's argument that the Court could sever the unconscionable provisions of the agreement and allow the case to proceed to arbitration. The Court reasoned that the agreement had several unconscionable provisions, in additional to procedural unconscionable, and therefore it could not simply sever those portions of the agreement.

The Court affirmed the trial court's order denying Charter's motion to compel and ordered that Ramirez is entitled to her costs on appeal.

Ramirez v. Charter Commc'ns, Inc. (2022) 75 Cal. App. 5th 365.

Note:

This case shows that arbitration agreements should not substantively alter an employee's rights provided by FEHA and other employment statutes. Private K-12 schools, colleges, and universities should consult with their attorney when drafting arbitration agreements.

STUDENTS

DUE PROCESS

Private University Violated Student's Right To Fair Process Where Student Was Not Allowed To Cross Examine Witnesses On Statements The University Relied On To Expel Student When Code Of Conduct Allowed Cross-Examination.

California Western School of Law (CWSL) conducted an investigation into several incidents in which explicit sexual, racist, and inappropriate emails were sent to faculty, students, and an alumnus. On February 7, 2018, CWSL's Vice Dean of Academic Affairs, Donald Smythe, sent Christopher Teacher (Teacher), a CWSL student, a letter accusing Teacher of obtaining unauthorized access to the accounts of two CWSL students to send these inappropriate emails in violation of CWSL's Code of Student Professional Conduct. The letter also stated Teacher printed various documents to CWSL computers from one of the students' account. Dean Smythe informed Teacher that a formal Professional Responsibility Committee hearing would be held to consider the allegation in accordance with CWSL's student conduct code regulations. Under CWSL's procedures, the accused student or the student's representative has the right to cross-examine witnesses at the formal hearing.

On February 12, 2018, a panel of the Professional Responsibility Committee (Panel) held a hearing to consider the matter. There was no verbatim transcript of the hearing, and the administrative record contains notes summarizing the hearing. The notes indicated the hearing consisted of a discussion among the Panel members, Teacher, and Dean Beshant about the documents contained in the administrative record. The record contained emails and other documentary evidence pertaining to CWSL's investigation. Teacher also submitted a post-hearing response to the matters discussed and email evidence presented at the hearing.

In late February 2018, the Panel issued its report. In the report, the Panel found there was sufficient evidence to conclude that Teacher was responsible for accessing the email accounts of the two students without their authorization, and used those accounts to send offensive and inappropriate emails and to print a number of documents. The Panel recommended expulsion given the serious nature of Teacher's violations of the student conduct code.

After the Panel issued the Report, CWSL expelled Teacher from the law school. Teacher filed a writ of administrative mandate and alleged that CWSL did not provide Teacher with a fair hearing for several reasons, including that CWSL failed to afford Teacher with the opportunity to cross-examine witnesses. The trial court denied Teacher's request for writ relief, holding that CWLS followed its policies and procedures. The trial court also noted that a CWSL security guard could have testified about Teacher's whereabouts at the time of one of the unauthorized uses, and Teacher could have had an opportunity to cross-examine. Teacher appealed.

The Court of Appeal first addressed CWLS's arguments that Teacher failed to object to the lack of cross-examination at the administrative hearing and therefore, forfeited this claim on appeal and that Teacher's right to cross examine witnesses was not violated because there were no witnesses at the hearing to cross-examine. The Court of Appeal rejected CWLS's arguments, and held that Teacher did not forfeit his claim because any request for Teacher to assert his right to cross examine would have been futile under CWLS's own interpretation of its procedures.

The Court of Appeal also found that even assuming Teacher forfeited his right to cross-examine witnesses, CWSL affirmatively discouraged Teacher (who represented himself throughout the proceedings) from presenting witnesses and seeking to cross-examine witnesses. Dean Smythe sent Teacher a letter before the hearing informing him that the hearing would "not be a trial and it will not be similar to a trial" and that CWSL did not "anticipated that there will be any witnesses or other persons who will be present to provide additional information." Additionally, at the beginning of the hearing, Dean Bashant stated that "no courtroom procedures apply" and "questions can be answered by the committee or by [Teacher]."

The Court of Appeal then considered Teacher's argument on the merits. The Court of Appeal held that CWLS procedures generally grant an accused student the right to cross-examine any person who makes a statement to those investigating the alleged misconduct on which the panel relies in reaching its determination. The Court of Appeal rejected CWSL's argument that its procedures only provide the right to cross-examine witnesses

who CWLS calls to provide live testimony at a panel hearing. The Court of Appeal found CWSL procedures contain no language limiting the witnesses who the student has the right to cross-examine. Additionally, the term "witness" is not limited to persons who provide live testimony. Therefore, CWSL's interpretation of its procedures would undermine the very right to cross-examine CWLS adopted in its procedures, and CWSL provided no other evidence that supported its interpretation of its procedures. Rather, its interpretation would circumvent an accused student's right to cross-examination witnesses.

The Court of Appeal also held that CWSL violated Teacher's right to cross-examination. The Panel expressly relied on witness statements made to CWSL administrators during the investigation. Additionally, the administrative record includes numerous documents that contain witness statements or summaries related to the alleged misconduct.

Finally, the Court of Appeal held that CWSL denied Teacher a fair process in expelling Teacher. While private colleges have wide discretion to determine how it conducts disciplinary hearings, CWSL violated Teacher's right to a fair process leading to Teacher's expulsion because it failed to comply with its own procedures that allowed for cross-examination of witnesses.

The Court ordered the trial court to ensure that CWLS hold a new hearing and that the Panel permit Teacher to cross-examine any witnesses who the Panel relies in determining whether Teacher was responsible for the misconduct.

Teacher v. California Western Sch. of Law (2022) 77 Cal.App.5th 11.

Note:

Private K-12 schools, colleges, and universities in California must provide a fair process (i.e., fundamental fairness) to students who are accused of misconduct and facing disciplinary action. This case highlights the necessity to closely follow internal procedures and avoid statements that circumvent a student's fair process rights as outlined in internal procedures.

DID YOU KNOW...?

Each month, LCW provides quick legal tidbits with valuable information on various topics important to private K-12 schools, colleges, and universities in California:

- On April 6, 2022, the California Department of Public Health (CDPH) updated its student quarantine recommendations for those exposed to COVID-19. Students who are exposed to COVID-19 and are asymptomatic may be permitted to continue taking part in all aspects of K-12 schooling, including sports and extracurricular activities. The CDPH strongly recommends that exposed students wear a well-fitting mask indoors for at least 10 days following the date of last exposure. For more information, see the April 21, 2022 LCW Special Bulletin, "CDPH Updates Isolation and Quarantine Recommendations – K-12 Schools."

- On April 5, 2022, the Department of Justice issued guidance on opioid use disorder and the Americans with Disabilities Act. The guidance explains how the Americans with Disabilities Act protects people with opioid use disorder who are in treatment or recovery from discrimination in a number of settings, including employment. The publication covers a wide range of topics, including when opioid use disorder is considered a disability.

- The U.S. Equal Employment Opportunity Commission (EEOC) now allows individuals the option to select a nonbinary "X" gender marker during the voluntary self-identification questions that are part of the intake process for filing a charge of discrimination. The Biden Administration also published a Fact Sheet outlining its commitment to equality and visibility for transgender, non-binary, and gender non-conforming Americans. The Fact sheet also reiterates the Biden Administration's commitment to protecting transgender and non-binary students.

LCW BEST PRACTICES TIMELINE

Each month, LCW presents a monthly timeline of best practices for private and independent schools. The timeline runs from the fall semester through the end of summer break. LCW encourages schools to use the timeline as a guideline throughout the school year.

FEBRUARY- EARLY MARCH

□ Issue enrollment/tuition agreements for the following school year.

□ Review field trip forms and agreements for any spring/summer field trips.

□ Tax documents must be filed if School conducts raffles:

- Schools must require winners of prizes to complete a Form W-9 for all prizes $600 and above. The School must also complete Form W-2G and provide it to the recipient at the event. The School should provide the recipient of the prize copies B, C, and 2 of Form W-2G; the School retains the rest of the copies. The School must then submit Copy A of Form W2-G and Form 1096 to the IRS by February 28th of the year after the raffle prize is awarded.

□ Planning for Spring Fundraising Event:

□ Summary Program:

- Consider whether summer program will be offered by the school and if so, identify the nature of the program and anticipated staffing and other requirements.

- Review, revise, and update summer program enrollment agreements based on changes to the law and best practice recommendations.

MARCH- END OF APRIL

□ The budget for next school year should be approved by the Board.

□ Issue contracts to existing staff for the next school year.

□ Issue letters to current staff who the School is not inviting to come back the following year.

□ Assess vacancies in relation to enrollment.

□ Post job announcements and conduct recruiting.

- Resumes should be carefully screened to ensure that applicant has necessary core skills and criminal, background and credit checks should be done, along with multiple reference checks.

□ Summer Program:

- Advise staff of summer program and opportunity to apply to work in the summer, and that hiring decisions will be made after final enrollment numbers are determined in the end of May.

- Distribute information on summer program to parents and set deadline for registration by end of April.

- Enter into Facilities Use Agreement for Summer Program, if not operating summer program.

□ Transportation Agreements:

- Assess transportation needs for summer/next year.

- Update/renew relevant contracts.

MAY

□ Complete hiring of new employees for next school year.

□ Complete hiring for any summer programs.

□ If service agreements expire at the end of the school year, review service agreements to determine whether to change service providers (e.g., janitorial services if applicable).

- Employees of a contracted entity are required to be fingerprinted pursuant to Education Code sections 33192, if they provide the following services:
  - School and classroom janitorial.
  - School site administrative.
  - School site grounds and landscape maintenance.
  - Pupil transportation.
  - School site food-related.

- A private school contracting with an entity for construction, reconstruction, rehabilitation, or repair of a school facilities where the employees of the entity will have contact, other than limited contact, with pupils, must ensure one of the following:
    - That there is a physical barrier at the worksite to limit contact with pupils.
    - That there is continual supervision and monitoring of all employees of that entity, which may include either:
- Surveillance of employees of the entity by School personnel; or
- Supervision by an employee of the entity who the Department of Justice has ascertained has not been convicted of a violent or serious felony (which may be done by fingerprinting pursuant to Education Code Section 33192). (See Education Code Section 33193).

□ If conducting end of school year fundraising through raffles:

- Qualified tax-exempt organizations, including nonprofit educational organizations, may conduct raffles under Penal Code section 320.5.
- In order to comply with Penal Code Section 320.5, raffles must meet all of the following requirements:
    - Each ticket must be sold with a detachable coupon or stub, and both the ticket and its associated coupon must be marked with a unique and matching identifier.
    - Winners of the prizes must be determined by draw from among the coupons or stubs. The draw must be conducted in California under the supervision of a natural person who is 18 years of age or older
    - At least 90 percent of the gross receipts generated from the sale of raffle tickets for any given draw must be used by to benefit the school or provide support for beneficial or charitable purposes.

□ Auctions:

- The school must charge sales or use tax on merchandise or goods donated by a donor who paid sales or use tax at time of purchase.
    - Donations of gift cards, gift certificates, services, or cash donations are not subject to sales tax since there is not an exchange of merchandise or goods.
    - Items withdrawn from a seller's inventory and donated directly to nonprofit schools located in California are not subject to use tax.
- Ex: If a business donates to the school for the auction items from its inventory that it sells directly, the school does not have to charge sales or use taxes. However, if a parent goes out and purchases items to donate to an auction (unless those items are gift certificates, gift cards, or services), the school will need to charge sales or use taxes on those items.

CONSORTIUM CALL OF THE MONTH

Members of Liebert Cassidy Whitmore's consortiums are able to speak directly to an LCW attorney free of charge to answer direct questions not requiring in-depth research, document review, written opinions or ongoing legal matters. Consortium calls run the full gamut of topics, from leaves of absence to employment applications, student concerns to disability accommodations, construction and facilities issues and more. Each month, we feature a Consortium Call of the Month in our newsletter, describing an interesting call and how the issue was resolved. All identifiable details will be changed or omitted.

Question: A school administrator asked whether an employee who worked at the school less than a period of 12 months can be eligible for a paid family leave for baby-bonding.

Answer: The attorney explained to the school administrator that "paid family leave" (PFL) means the wage replacement benefits when an employee is taking family care leave to care for a child when a child is born, like the employee in this case. The attorney explained that the employee is eligible for PFL at the time they start employment. Unlike the FMLA or CFRA, an employee is not required to wait a year or work a minimum number of hours to be eligible for paid family – they are eligible immediately upon employment. The attorney advised the school administrator that if the employee is eligible for FMLA/CFRA leave, they must take paid family leave concurrently with leave taken under the FMLA and CFRA.

NEW TO THE FIRM!

Nicholas (Nick) M. Grether is an associate in our Los Angeles office. Nick has devoted his legal career to providing labor and employment advice and representation to organizations across California. An experienced litigator, he has represented dozens of clients in arbitration, as well as in state and federal court, concerning alleged violations of employment laws.

Danny Ivanov Danny is an associate in LCW's Los Angeles office where he provides representation and counsel to clients in all matters pertaining to labor and employment law. He also provides support in litigation claims for discrimination, harassment, retaliation, and other employment matters.

CAL ISBOA

Join our LCW attorneys at the upcoming 2022 Cal-ISBOA HR Workshop and Annual Conference!

May 1 - 2, 2022
The Omni Los Angeles Hotel at California Plaza

Connect with your California Business Office colleagues and participate in professional learning focused on our State's unique legal, compliance, and economic environment. Engage with experts and colleagues to share information that will help drive strategic discussions as well as ensure your school operates safely and efficiently. Develop supportive relationships with colleagues. Share your experiences and benefit from some of the most experienced people in your profession.

Don't Let Laws Leave You Confused!
May 1, 1:20pm – 3:30pm
Human Resources Workshop (Pre-Conference)
Presented by: Brian Walter & Julie Strom

Ethics and the Role of the Business Officer
May 2, 1:45pm – 3:00pm
Annual Conference
Presented by: Michael Blacher & Janet Peddy & Jane Davis

For more information, visit Cal-ISBOA's website here.

MANAGEMENT TRAINING WORKSHOPS

Firm Activities

Consortium Trainings

May 10 **"Private School Office Hour"**

ACSI Consortium, BJE Consortium, CAIS Consortium & Golden State Independent School Consortium | Webinar | Michael Blacher & Grace Chan

Speaking Engagements

May 1 **"Don't Let Laws Leave You Confused"**

California Independent Schools Business Officers Association - Human Resources (Cal-ISBOA-HR) Workshop | Los Angeles | Brian P. Walter & Julie L. Strom

May 2 **"Ethics and the Role of the Business Officer"**

California Independent Schools Business Officers Association - Human Resources (Cal-ISBOA-HR) Workshop | Los Angeles | Michael Blacher, Janet Peddy & Jane Davis

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