Overview

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

Overview

- Charter Flexibility?
  - Full flexibility waiver
  - Specific waivers from state and local personnel related laws, regulations and policies

- Charter School Contracting with an EMO?
  - Who is the decision maker?
  - Charter school legal liability
At-Will vs. Employment Contracts

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

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

Independent Contractors vs. Employees

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

- Selected Statutory Claims
  - Title VII (race, color, gender, religion, national origin) (15 employees)
  - ADEA (40 years and older) (20 employees)
  - ADA & ADAAA (actual or perceived disability) (15 employees)
  - FMLA (protected family or medical leave for eligible employees) (50 employees in 75 mile area)
  - GINA (genetic information) (15 employees)
  - FLSA (wage and hour / overtime)
- Selected Common Law Claims
  - Emotional Distress
  - Negligent hiring, training, supervision
  - Breach of contract

Hiring Basics

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

- Post-Hire Stage
  - I-9 Form
  - New Hire Reporting
  - Employee Handbook Acknowledgment Form
Issues During Employment

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

Issues During Employment

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

Issues During Employment

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

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

Discipline

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

Discipline

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

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

**Employment Law Issues for Charter Schools**

Questions?

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