



**Employment Law Issues  
for Charter Schools**

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**Overview**

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

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**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

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## The Employment Relationship

### ■ 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




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## The Employment Relationship

### ■ At-Will vs. Employment Contracts

- 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 a employee with a contract

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## The Employment Relationship

### ■ 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

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## 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



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## 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 3<sup>rd</sup> party)

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## Hiring Basics

### Post-Hire Stage

- I-9 Form
- New Hire Reporting
  - <http://newhire-reporting.com/GA-Newhire/default.aspx>
- Employee Handbook Acknowledgment Form

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### 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](http://www.dol.state.ga.us/em/required_posters.htm)

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### 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

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### 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

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## 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

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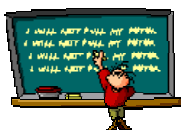
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## Discipline

- 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




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## 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




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## 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

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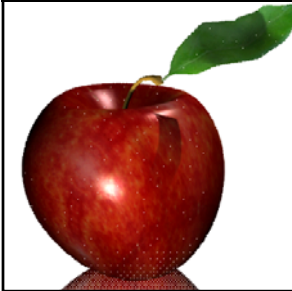
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## Employment Law Issues for Charter Schools



### Questions?

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