

New School Development: Employment Issues and Hiring a School Leader

Colorado League of Charter Schools

Nora Flood, Vice President of School Services
Jessica Johnson, Director of Advocacy Programs

nflood@coloradoleague.org

jmjohnson@coloradoleague.org

(303) 989-5356

Today's Webinar

- Introductions
- Overview of webinar technology
 - Asking questions
 - Raising your hand
 - Muting/unmuting

Overview

- Drafting a Job Description
- Advertising for an Open Position
 - Interview Do's and Don'ts
 - Selecting a Candidate
- Basic Review of State and Federal Employment Laws
 - Preventative Policies and Documents: Effective Employee Handbooks and Policies
 - Discipline and Discharge



Why Should Board Members Care About the School's Employment Practices?

- Board is responsible for ensuring that the school adopts and applies proper employment policies and procedures
- Employment law issues can be an expensive liability for a school
 - Recent U.S. District Ct. decision out of Colorado \$303,178 discrimination verdict
- Proper employment policies and procedures can improve employee relations for a school



Importance of Job Descriptions

Pre-Hire

- Advertisement
- Screening Applicants
- Interviewing

Post-Hire

- Clearly defined Expectations
- Evaluation Process
- Disciplinary Action

Compliance

- Americans with Disabilities Act
- Fair Labor Standards
- Equal Employer Opportunity
 - State and Federal
- Wrongful Termination



Importance of Job Descriptions

Job Description Development

- Clear and Concise
- Essential Duties/Primary Responsibilities
- Secondary Responsibilities
- Ancillary Duties
- Minimum Education Level
- Minimum Experience Required
- Supervisory Relationships
- Other?

Re-evaluation & Change

- Realistic time frame for re-evaluation
- How does current job description compare to actual tasks being performed?
- What needs to be added/deleted?



Advertising for Open Positions

Where to Advertise for Quality Candidates?

- Peak to Peak Charter Job Fair (Contact Jen Dauzvardis at jennifer.dauzvardis@bvdsd.org.)
- CLCS Website
- Network with Other Charter Schools
- Universities
- Sites specific to the School Model
- Teach in Colorado: <http://www.teachincolorado.org>
- Denver Public Schools: www.dpsk12.org
- National Alliance for Public Charter Schools: <http://jobs.publiccharters.org/>
- Teach for America: <http://teachforamerica.org/>
- Craigslist!

Applications and Resumes

- Identify point person
- State how applicants should contact school
- Confidentiality
- What do you Want?
 - Standard Application, Resume, Writing Sample, References, other?
- Acknowledge Receipt of Materials



Interview Do's and Don'ts

First Impressions Count, So Be Prepared!

Before the Interview

- Train Interviewers (especially volunteers!)
- Understand Confidentiality
- Familiarize Yourself with all Relevant Materials
 - Job Description, Mission Statement, Goals, Resume, etc.,
- Prepare List of Structured Questions in Advance- Stick to Script!
- Allow Sufficient Time- no back to back

Interview Do's and Don'ts

During the Interview

- Opening- Make the candidate feel comfortable.
- Job Highlights- Tell the candidate about the job (limit 5 minutes).
- **Do Ask** Individualized Questions-Clarifying questions regarding candidate's materials
- **Do Ask** Structured Questions- Can candidate perform the essential functions of the job?
 - Questions to see if candidate possesses the knowledge, skills and abilities required – ask same questions to all!

DO NOT ASK!!

- Race, National Origin
- Religion
- Sex, Gender, Sexual Orientation
- Disability
- Age
- Lawful activities away from work (*except* BFOQ's)
- Political affiliations
- Membership in employee/professional organizations



Selecting a Candidate

Do Your Due Diligence!!

- Is there a qualified candidate?
- Required Background Check- All charters must comply!
 - C.R.S. §22-30.5-110.5: Background investigation, at a minimum, must include:
 - (1) Inquiry with CDE- Has license/certification been revoked for any reason? Has candidate been dismissed or resigned from school as a result of any allegation; (2) Fingerprint based criminal history check as provided by C.R.S. § 22-30.5-110.7; (3) Inquiries to previous employers to obtain information that may be relevant to fitness for employment.
- Upon **request** CDE will provide all information it has on candidate
- Check References!
 - Immunity provision C.R.S. § 22-30.5-110.5(5)(a)&(b) regarding employer information



The Employment Relationship

Employee vs. Independent Contractor

- A person hired to perform services for pay is presumed by law to be an **employee** unless the individual meets the definition of an independent contractor or qualifies under a specific exemption provided by law.
- **Independent Contractor**
 - Individual primarily free from control and direction in the performance of contracted labor or services
 - Customarily engaged in an independent trade, occupation, profession, or business related to the service performed



The Employment Relationship

At- Will Employment vs. Employment Contracts

- **Employment Contracts**
 - Employment lasts for a definite period of time
 - Parties must end the employment relationship according to the terms of the contract
 - Termination Provisions
 - Define “cause”
 - Notice period
 - Contractual employment relationship, or terms of that relationship, can also be found based on language in employee handbook



The Employment Relationship

At- Will Employment vs. Employment Contracts

- **At- Will Employment**

- Colorado follows the legal doctrine of “at-will employment”
- Either party can terminate the employment relationship at any time without advance notice or cause
- Not a defense to unlawful termination claims (e.g. discrimination or harassment)
- Employers should consult an attorney before terminating any employee, including “at-will” employees



Essential Policies: Basic Overview of State and Federal Employment Laws

Federal Employment Laws

- **Age Discrimination in Employment Act (ADEA):** prohibits discrimination against persons 40+ due to age
- **Americans with Disabilities Act (ADA):** Prohibits employment discrimination against qualified individuals with disabilities. Disability: A physical or mental impairment that substantially limits one or more major life activities; record or history of impairment; regarded as having impairment.
- **Equal Pay Act:** Forbids paying men and women different rates for “equal work.”
- **Pregnancy Discrimination Act:** prohibits discrimination on basis of pregnancy



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Federal Employment Laws

- **Section 504 of Rehabilitation Act:** Prohibits disability discrimination only in federally funded programs
- **29 U.S.C § 1981:** Gives all persons the same right to make and enforce contracts, to sue, be parties, give evidence and the full and equal benefit of all laws and proceedings
- **29 U.S.C. § 1983:** Allows private civil enforcement of federal laws against state or local government agencies (charter schools)



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Federal Employment Laws

- **Title VI:** Prohibits any federally funded program from discriminating on the basis of “race, color, national origin”
- **Title VII:** Prohibits discrimination on the basis of “race, color, religion, sex, or national origin.” Prohibits retaliation against employees. Religious discrimination includes failure to “reasonably accommodate.”
 - Retaliation: adverse employment action against any employee who opposed any practice made unlawful or who has filed a charge, testified, assisted or participated in any manner
- **Title IX:** Prohibits the discrimination on the basis of sex in any educational program that receives federal funds.



Essential Policies: Basic Overview of State and Federal Employment Laws

Colorado Employment Laws

- **Colorado Anti-Discrimination Act (CADA)**
(Colo.Rev.Stat. § 24-34-402, et seq.)
 - Prohibits discrimination and retaliation on basis of disability, race, creed, color, age, sex, national origin, ancestry, or *sexual orientation*
 - Applies to all employers
 - Age - Colorado's anti-discrimination law prohibits discrimination on the basis of age 40-69
 - Federal law defines “age” as 40+



Essential Policies: Basic Overview of State and Federal Employment Laws

Colorado Employment Laws

- Sexual Orientation:
 - Defined as a person's orientation toward heterosexuality, homosexuality, bisexuality, or transgender status, or an employer's perception of that orientation
 - Transgender Status- umbrella terms that describes an individual whose gender identity or gender expression is different from that traditionally associated with that individual's sex at birth



Essential Policies: Basic Overview of State and Federal Employment Laws

Colorado Employment Laws

- Legal-Off Duty Activities (“Lifestyle Discrimination” “Smoker’s Bill of Rights”)
 - Prohibits termination of an employee because the employee engaged in any lawful activity off the premises of the employer during nonworking hours
 - Example- Used to collect damages for termination on basis of sexual orientation and for termination due to requesting a reimbursement for voluntary participation in work seminar
 - Employer may raise a defense if the conduct that was the basis of termination:
 - (1) relates to a bona fide occupational qualification; (2) is reasonably and rationally related to the employer’s work activities; or (3) is necessary to avoid a conflict of interest with any responsibilities to the employer or the appearance of a conflict of interest
 - Example: Termination upheld on basis of employee writing letter critical to employer that was published in newspaper. Court found implied duty of loyalty a bona fide occupational requirement for employee



Employment Laws: Terminology

- Religion/Creed - Defined as “a religious, moral or ethical belief which is sincerely held and includes all aspects of religious observance and practice”
- National Origin - Involves treating people (applicants or employees) unfavorably because they are from a particular country or part of the world, because of ethnicity or accent, or because they appear to be of a certain ethnic background (even if they are not)
- Disability - A physical or mental impairment that substantially limits one or more major life activities; record or history of impairment; regarded as having impairment
- Race- Discrimination on the basis of an immutable characteristic associated with race, such as skin color, hair texture, or certain facial features
- Color- Commonly understood meaning – pigmentation, complexion, or skin shade or tone. Color discrimination occurs when a person is discriminated against based on the lightness, darkness, or other color characteristic of the person



Why Do You Need to Know EEO Laws?

- Noncompliance is **expensive!**
- **What can your school do to prevent employment related liability??**
 - Develop and consistently apply employment policies
 - Make the policies known to all employees
 - Administrative staff should have basic understanding of State and Federal employment laws
 - Remember: It is the employer's responsibility—and managers represent the employer—to maintain a workplace free of discrimination and harassment for its employees



Suggested Employment Policies

- Anti-Discrimination (State and Federal)- including sexual harassment
- Family and Medical Leave Act
- Applicable Labor Laws
- Grievance/Complaint
- Leave- Birth/Adoption, jury duty, bereavement, voting, Colorado domestic violence leave (50+), Colorado parental involvement leave (50+), holidays, pto, etc.,
- Normal work hours
- Drug Free Workplace
- Professional Conduct
- Use of School Property
- Professional Development
- Visitors
- Technology/Internet/Social Media/Blogging
- Emergency
- Intellectual Property
- Discipline
- Termination



Preventative Policies and Documents

Employee Handbook

- Informs employees of their rights and school's expectations
- If **properly** drafted and up-to-date, it can protect the school and provide defenses to employment related claims
- Promotes fairness and equality in the workplace
- **Application of policies must match handbook and be consistent**



Preventative Policies and Documents

Things to Do Before You Draft a Handbook

- Review existing policies
- Understand current practices
- Determine needs and goals
 - Decide what works
 - Opportunity for change
- Obtain input from administrators and employees
- Consider all applicable laws and regulations
 - EEO, state and federal leave laws, immigration compliance, etc.,



Preventative Policies and Documents

Employee Handbook

- State that all changes must be in writing and signed by specific personnel
 - e.g., Head of School, Executive Director
- Reserve right to add, delete, suspend and/or modify policies at School's discretion
- Repeat at-will language if applicable
- **Obtain written employee acknowledgement of handbook**
- Update regularly
- Consult legal counsel



Managing Risk

- A Charter School has several areas of risk for which it will need insurance coverage:
 - Property/Casualty (Buildings), Workers' Compensation (Employee Injuries), Management Liability -Error's & Omissions (Charter School mistakes), Directors & Officers (Protection for the Board), EPL- (Employment Practices Coverage), Cyber Risk-(Risk through electronic data on laptops or on the internet), Fiduciary Bond
- In order to compete as an employer, there are several coverages you will want to make available for employees:
 - Health Insurance (How do I maximize benefit while keeping cost low?)
 - Long Term Disability (Does your LTD coordinate with PERA Disability?)
 - Dental Insurance (Should the school pay for it or make it voluntary?)
 - Life Insurance (Is this common and how much should the school pay for?)
 - What about Voluntary Life Insurance? Short Term Disability?



Manage Your Responsibility!

- Purchasing insurance is just the beginning!
- Other areas that need attention:
 - Legislative Compliance
 - Human Resource Issues
 - Safety Training
 - Employee Communication
 - Wellness Programs
 - Employee Assistance with Claim Issues

...to name a few

League Endorses **HUB
International**

- **Expertise** - Health Insurance Trust, Knowledgeable in all insurance coverages that Charter Schools need
- **Support**- In-house legal counsel for specific legal questions, Assist with legal reviews of more than 15 Federal laws including FMLA, ADA, etc., Unlimited telephonic support for ANY human resource issue, safety training to keep Workers' Compensation premiums down, Customized employee benefit website, Individualized employee benefit statements (hidden paycheck), and more!
- Employees have direct access to HUB's Colorado customer service team for all employee benefit issues



RESOURCES

- Colorado Charter Schools Human Resources Handbook
(2004) <http://www.cde.state.co.us/cdechart/download/HREmploymentManual.pdf>.
- Administrator's Guide to Leading a Colorado Charter School <http://www.cde.state.co.us/cdechart/adminguide.htm>.
- Colorado Department of Labor
<http://www.colorado.gov/cs/Satellite/CDLE-Main/CDLE/1240336821467>
- United States Department of Labor <http://www.dol.gov/>
- Atlantic Legal's Guide to Employment Law Issues for Charter Schools
(February 2009) <http://www.coloradoleague.org/uploaded-files/EmploymentLawResource02062009.pdf>
- HUB International (Gary Clark: 303-893-0300)
<http://www.hubinternational.com/>

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Questions???

