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Private Education Matters

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

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Index

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STUDENTS

CHILDHOOD SEXUAL ASSAULT

California Court Of Appeal Applies AB 218 To Permit Previously Time-Barred Claims Of Childhood Sexual Assault To Proceed.

On January 3, 2020, a California Court of Appeal issued a decision analyzing whether the California Code of Civil Procedure Section 340.1 (Section 340.1), as amended by Assembly Bill 218 (AB 218) effective January 1, 2020, permitted the court to revive two non-final claims of childhood sexual assault which were held untimely under the prior version of Section 340.1. The Court of Appeal consolidated two similar cases, which each alleged liability for childhood sexual assault against MJJ Productions, Inc. and MJJ Ventures, Inc. (the Entities).

Section 340.1 permits a victim to, among other things, bring a claim of liability for childhood sexual assault against a third party non-perpetrator if (1) the third party owed a duty of care to the victim and (2) its wrongful, negligent, or intentional act was a legal cause of the childhood sexual assault that resulted in the injury to the victim. However, prior law required the victim to bring his/her claim against the third party non-perpetrator before the victim's 26th birthday unless a very limited exception applied, which could extend the statute of limitations; i.e., where the person or entity knew, had reason to know, or was on notice of unlawful sexual conduct by an employee, volunteer, representative, or agent, and failed to take reasonable steps and implement reasonable safeguards, to avoid acts of unlawful sexual conduct in the future by that person.

Effective January 1, 2020, AB 218 revised Section 340.1 to extend the time for victims to bring claims of childhood sexual assault against third party non-perpetrators from the victim's 26th birthday to the victim's 40th birthday. A similar limited exception still applies; i.e., where the person or entity knew, had reason to know, or was on notice, of "any misconduct that creates a risk of childhood sexual assault by an employee, volunteer, representative, or agent, or the person or entity failed to take reasonable steps or to implement reasonable safeguards to avoid acts of childhood sexual assault."

The facts of the consolidated cases are as follows:

In May 2013, Wade Robson, who was 30 years old at the time, filed a lawsuit against the Entities, two corporations founded and owned by Michael Jackson until Jackson's death in June 2009. Robson contended that the Entities were liable for alleged acts of childhood sexual assault perpetrated by Jackson against Robson occurring from 1990 until 1997. The Entities filed a motion for summary judgment, arguing that Robson's claim was not timely under Section 340.1 because he filed the lawsuit after his 26th birthday. The trial court granted the motion for summary judgment because Robson was 30 years old when he filed the lawsuit and because Robson was unable to satisfy the limited exception to extend the statute of limitations. Robson appealed.

Similarly, in May 2014, then 36-year-old James Safechuck filed a lawsuit against the Entities also contending that they were liable for alleged acts of childhood sexual assault perpetrated by Jackson against Safechuck occurring from 1988 until 1992. The Entities filed a demurrer, asserting that Safechuck's lawsuit was untimely under Section 340.1 because he filed the lawsuit after his 26th birthday. The trial court sustained the demurrer, finding that Safechuck's lawsuit was untimely because he did not file it until he was 36 years old and that Safechuck was unable to satisfy the limited exception to extend the statute of limitations. Safechuck appealed.

In reviewing the cases on appeal, the Court of Appeal explained that Robson and Safechuck both filed their original lawsuits before their 40th birthdays, so the lawsuits would be timely under the revised Section 340.1 if the newly extended statute of limitations period applies to their claims. The Court of Appeal next explained that the plain language of the revised Section 340.1 indeed expressed the Legislature's intent to preserve and revive all non-final claims. Because Robson and Safechuck's cases remain pending on appeal, their cases had not reached finality and the revised Section 340.1 applied to permit their cases to proceed. Accordingly, the Court of Appeal reversed the summary judgment and the demurrer, and remanded the cases to the trial court.

Safechuck v. MJJ Productions, Inc. (Cal. Ct. App., Jan. 3, 2020, No. B284613) 2020 WL 38357.

NOTE:

> *This case illustrates the way courts may apply the newly revised Code of Civil Procedure Section 340.1 to revive previously time-barred claims of childhood sexual assault and abuse against third-party non-perpetrator defendants, such as private schools.*

NEGLIGENCE

Student's Claim Of Negligence Against College Proceeds Where College Arranged Study Abroad Trip, Maintained A Presence During The Trip, And Assumed Responsibility Over Student's Health And Safety During The Trip.

Rhode Island School of Design (RISD) coordinated and sponsored a four-week study abroad program to Ireland during the summer of 2016. RISD arranged for housing accommodations for the student participants with the help of a host school in Ireland, the Burren College of Art (Burren). Burren located accommodations for the students in three adjacent houses, which were part of a local hotel, and RISD approved the accommodations. RISD did not provide Burren any expectations or requirements for necessary security measures.

RISD permitted students to select either a single or double occupancy room and used that information to assign students to accommodations in one of the three houses. RISD required student participants to reside in the designated housing accommodations. The cost of the housing accommodations was included in the tuition cost of the study abroad program.

An RISD faculty advisor and a teaching assistant/student resident accompanied the students on the trip. Among the teaching assistant/student resident's job duties was to orient students to their housing accommodations and to assist students with their health and safety during the trip.

Once in Ireland, the RISD faculty advisor and the teaching assistant/student resident met with their contact at Burren, who told them that each of the three houses only had one key to lock and unlock its exterior door. The contact at Burren recommended that they decide on a hiding place for the keys and seek input from the students. The three did not discuss whether the bedrooms inside the houses had locks or keys. The teaching assistant/student resident stayed in one of the three houses with the students.

Jane and John were among the group of students who participated in the study abroad program. On the first night in Ireland, the students went out for drinks to celebrate their arrival and John's birthday. Afterward, John walked Jane back to her room. Jane kissed John on the cheek, John left, and Jane closed the door to her room. Jane was unable to lock her bedroom door, so Jane had to sleep with the door unlocked.

Later that night, Jane awoke to find that John was sexually assaulting her. Jane reported the incident to the teaching assistant/student resident and to RISD's Title XI Office. John, who admitted to the sexual assault, was dismissed from the study abroad program and was suspended from RISD for three years.

Jane filed a lawsuit against RISD, alleging that RISD was negligent for failing to provide her with reasonably safe housing accommodations while participating in the study abroad trip. To prove her negligence claim under Rhode Island law, Jane had to show (1) RISD owed her a legally cognizable duty; (2) there was a breach of that duty; (3) there was proximate causation between the alleged conduct and the resulting injury; and (4) an actual loss or damages resulted.

RISD argued that Jane's lawsuit could not proceed because RISD did not owe Jane a legally cognizable duty to protect against John's illegal acts and, therefore, Jane could not fulfill the first element of her negligence claim. The main issue before the court was whether RISD owed Jane a legally cognizable duty.

The court found that the circumstances surrounding RISD's arrangement and coordination of housing accommodations for Jane during the study abroad program gave rise to a special relationship between RISD and Jane. RISD selected the housing accommodations, and required Jane and the other students to stay in the selected housing. Students had no control or input over where they stayed during the program other than to select a single or double occupancy room. RISD provided the service of arranging the housing as part of the study abroad program and received compensation for that service through the tuition costs collected from students for the program. Moreover, RISD maintained a presence at the location where the students stayed and made its employees responsible for the health and safety of the students staying there.

Because RISD undertook to provide housing accommodations for Jane in a foreign country, the court found that it was reasonable for Jane to expect that RISD would exercise reasonable care in providing such housing and for Jane to rely on that expectation. The court also noted that it was reasonably foreseeable that one of RISD's students could be the victim of an attack if RISD did not provide reasonably safe housing accommodations. Not only is it generally foreseeable that "an atmosphere of violence could exist in housing shared among university students," a student participating in an RISD study abroad program in Rome two years earlier was sexually assaulted in shared housing under similar circumstances.

The court opined that if a university undertakes to provide housing for its study abroad programs, "safety should be at the forefront of its considerations." The court allowed Jane's claim of negligence against RISD to proceed, which will be decided by a jury.

Doe v. Rhode Island School of Design (D.R.I., Dec. 18, 2019, No. CV 18-10-JJM-LDA) 2019 WL 6896660.

NOTE:

While this case is not binding in California, the California Supreme Court has held that universities have a special relationship with their students and a duty to protect them from foreseeable violence during curricular activities. This case highlights the importance of taking steps to protect students from foreseeable harms during school-sponsored activities where the school has some measure of control over students and the activity.

TITLE IX INVESTIGATIONS

Court Dismisses Students' Title IX Claim For Failure To Plead A Viable Theory Of Liability.

In December, a United States District Court in Louisiana dismissed a complaint brought by two former male students (Plaintiffs) against Dillard University in which they alleged the university violated Title IX by suspending them pending the outcome of its Title IX investigation into allegations of sexual misconduct brought against them by a female student and by delaying its investigation pending a criminal investigation. The Court accepted all of the factual assertions in Plaintiffs' complaints as true, which is customary when ruling on a motion to dismiss. Those facts are as follows:

While Plaintiffs were juniors at the university, they engaged in a sexual encounter with a female student. Plaintiffs alleged that the sexual encounter was consensual, but the female student alleged that the Plaintiffs raped her. The university suspended the Plaintiffs pending the completion of a criminal investigation by the local police department and a Title IX investigation by the university. The terms of the suspension prohibited the Plaintiffs from being on campus and participating in activities that involved the university. The university permitted the Plaintiffs to complete their spring semester coursework through electronic communications with their professors. The terms of the suspension also permitted Plaintiffs to request to meet with the university's Vice President for Student Success to appeal their suspensions. The Plaintiffs' counsel requested a meeting on their behalf, but the request was not granted.

In preparation for fall classes, the Plaintiffs registered for classes and on-campus housing using the university's registration system. The university also contacted the Plaintiffs and informed them of their financial aid status and accepted Plaintiffs' scholarships, grants, and loans for payment for the upcoming school year. The university permitted the Plaintiffs to be on campus to visit the administrative offices to take the steps needed to start classes for the fall semester. Shortly thereafter, the university then informed the Plaintiffs that they were being dropped from classes for non-attendance and may potentially lose the tuition they paid for the semester. At that time, the District Attorney had neither accepted nor refused the criminal charges against the Plaintiffs.

Title IX prohibits educational institutions that receive federal financial assistance from excluding or discriminating against an individual based on sex. There are four theories of liability that a student can assert under Title IX to challenge a university's disciplinary proceeding: (1) erroneous outcome; (2) selective enforcement; (3) deliberate indifference; and (4) archaic assumptions. However, the court found that the Plaintiffs failed to allege that the university treated them unequally or discriminated against them based on their sex by delaying its investigation and suspending them pending the investigation, which was fatal to their Title IX claim.

Specifically, the court found that the Plaintiffs erroneous outcome theory failed because the university was still investigating the sexual misconduct allegation and had not reached a decision (i.e., an outcome had yet to occur). Their selective enforcement theory failed because Plaintiffs did not allege the university decided to investigate the complaint because of Plaintiffs' sex or that any female students were treated more favorably in a similar situation. Further, Plaintiffs' deliberate indifference theory failed because they did not show that the university was deliberately indifferent to sexual harassment, sexual discrimination, or sexual assault on campus. Finally, Plaintiffs' archaic assumptions theory failed because Plaintiffs did not allege that the university's actions in delaying its investigation and imposing an interim suspension were based on archaic assumptions about the roles or behavior of men and women.

Therefore, the court concluded that the Plaintiffs failed to provide any facts to support their assertion that the university violated Title IX.

Givens v. Dillard University (E.D. La., Dec. 3, 2019, No. CV 19-12448) 2019 WL 6492850.

EMPLOYEES

LABOR RELATIONS

NLRB Overrules Banner Estrella Decision, Applies Boeing Standard, And Allows Employers To Forbid Employees From Discussing Workplace Investigations.

In a recent decision, *Apogee Retail LLC*, the National Labor Relations Board (Board), by a 3-1 majority, held that investigative confidentiality rules are lawful, so long as they are time-limited to the investigative period. The Board held that investigative confidentiality rules that are not time-limited are subject to additional scrutiny.

The decision overrules the Board's Obama-era approach to investigative confidentiality rules as set forth in *Banner Estrella Medical Center*, 362 NLRB 1108 (2015). Under that analytical framework, the Board placed the burden on the employer to determine, on a case-by-case basis, whether the business interests in preserving the integrity of an investigation outweighed the presumptive right that employees have under Section 7 of the National Labor Relations Act ("Act") to discuss discipline or ongoing disciplinary investigations. In *Apogee Retail LLC*, the Board concluded that the *Banner Estrella* test failed for three separate reasons: (1) it did not account for precedent recognizing the Board's duty to balance an employer's legitimate business justifications against employees' Section 7 rights; (2) it did not properly recognize the importance of confidentiality assurances to both employers and employees; and (3) it was inconsistent with other Federal statutes because it required an employer to evaluate the need for confidentiality on a case-by-case basis.

In *Apogee Retail LLC*, the Board concluded that the more appropriate test for assessing workplace rules was the test that it established in *Boeing Co.*, 365 NLRB No. 154 (2017). Under the *Boeing* standard, the Board evaluates the nature and extent of the potential impact of a workplace rule on NLRA rights and the legitimate business justifications that may be associated with such a rule. After conducting such analysis, the Board will designate the rule into one of three categories: (1) Category 1, which includes rules that the Board deems lawful either because the rule either does not interfere with NLRA rights or because the potential adverse impact is outweighed by the rule's justifications; (2) Category 2, which includes rules that warrant individualized scrutiny in each case as to whether the rule would interfere with NLRA rights, and if so, whether the adverse impact is outweighed by the rule's justifications; and (3) Category 3, which includes rules that the Board will designate as unlawful because they would prohibit or limit NLRA-protected conduct, and because the potential adverse impact is not outweighed by the rule's justifications.

The *Apogee Retail LLC* case came as the result of dispute between Apogee Retail, a thrift store operator, and its employees concerning two workplace rules: (1) requiring employees to "maintain confidentiality" regarding workplace investigations into "illegal or unethical behavior"; and (2) prohibiting "unauthorized discussion" of investigations or interviews "with other team members." The Apogee policy did not provide that either rule was limited to the investigative period.

Applying the test for workplace rules established in *Boeing*, the Board held that investigative confidentiality rules are lawful and fall within Category 1 where the rule is limited in its duration to the investigative period. Further, the Board held that investigative confidentiality rules that are not clearly time limited, like those at issue with Apogee Retail, fall into Category 2, and are subject to additional scrutiny.

As a result, the Board, after overruling the *Banner Estrella* test and reinstating the *Boeing* standard, remanded the case for further proceedings to determine whether Apogee's rules interfered with its employees' NLRA rights, and if so, whether the legitimate business justifications for such rules outweighed the impact of such interference.

Apogee Retail LLC d/b/a Unique Thrift Store & Kathy Johnson (Dec. 16, 2019) 368 NLRB No. 144.

NOTE:

The NLRA grants private sector workers the right to organize and be represented by labor unions and gives significant protections to employees whether or not they work in a unionized environment. This case represents a departure from the past few years of NLRB cases that were highly protective of employees and challenging for employers. This is an evolving area of the law and we recommend seeking legal counsel with specific questions regarding workplace rules and policies.

NLRB Overturns Purple Communications, Reinstates Register Guard, And Authorizes Employers To Deny Access To Employer Computer Systems For Non-Business Activity.

In another December decision overturning an Obama-era decision, the Board, in *Caesars Entertainment,* held that an employer does not need to provide employees access to their email systems for non-work activities, including those protected by Section 7 of the NLRA.

The Board held that an employer does not violate the Act by restricting employees' non-business use of its computer systems absent proof that the employees would otherwise by deprived of any reasonable means of communicating with each other.

The decision overrules the Board's decision in *Purple Communications, Inc.* (2014) 361 NLRB 1050, which held that employees have a right to use employer-owned equipment for non-work purposes. The *Purple Communications* decision relied on and extended long held Supreme Court precedent, articulated in *Republic Aviation Corp. v. NLRB* (1945) 324 U.S. 793 (*Republic Aviation*), that permitted face-to-face solicitation and distribution in the workplace. In *Purple Communications*, the Board held that email was a "natural gathering place" for employees akin to a breakroom or employee cafeteria, the use of which was governed by the *Republic Aviation* framework.

In *Caesars Entertainment,* the Board concluded that the more appropriate standard was that articulated in *Register Guard* (2007) 351 NLRB 1110, which was the first decision in which the Board considered whether employees have a Section 7 right to use employer-provided email systems. In *Register Guard*, the Board analyzed a long line of Board decisions concerning the use of employer-provided equipment before concluding that employees do not have a right to use employer-provided email resources. Like *Purple Communications*, the Board in *Register Guard* analyzed the potential applicability of the balancing test articulated in *Republic Aviation*, but reached a different conclusion, holding that employees do not have a right to "the most convenient or the most effective means of conducting those communications." The Board limited the *Republic Aviation* holding to communications "that involve only the employees' own conduct during non-work-time and do not involve the use of the employer's equipment."

The *Caesars Entertainment* case came as the result of the Las Vegas casino and hotel imposing "computer rules" that restricted its employees' use of Caesars' email system to send and receive "non-business information." Employees filed a complaint alleging that the casino and hotel's "computer rules" violated Section 8(a)(1). In 2015, the Board remanded the "computer rules" portion of the case for further consideration in light of the *Purple Communications* decision. In 2016, an ALJ, applying that decision, concluded that the rules were presumptively unlawful. Caesars then filed exceptions opposing the ALJ's proposed decision.

Before the Board, the employees argued that *Purple Communications* appropriately balanced management interests and employee rights. The employees also argued that the email was central to modern office life and that the employees' use of the employer's email system imposed negligible costs on the employer. Caesars argued that the Board should overrule *Purple Communications* and reinstate *Register Guard*, contending that *Purple Communications* attached too little weight to the employer's property interest in their email systems, and that enforcing the restrictions was unworkable. Further, Caesars contended that *Purple Communications* violated the First Amendment by requiring employers to subsidize hostile speech.

The Board ultimately concluded that employees possess no statutory right to use employer-provided email for non-work purposes, including those protected by Section 7, and because employers possess a property right in their email systems, they are entitled to control the use of such systems as they see fit. The Board then dismissed the complaint.

Caesars Entm't d/b/a Rio All-Suites Hotel & Casino & Int'l Union of Painters & Allied Trades, Dist. Council 16, Local 159, Afl-Cio (Dec. 16, 2019) 368 NLRB No. 143.

NLRB Overrules Lincoln Lutheran, Reinstates Bethlehem Steel, And Allows Employers To Cease Deducting Union Dues After Contract Expiration.

In yet another decision reversing an Obama-era decision, the Board held that, after the expiration of a contract, an employer may unilaterally stop deducting (or checking-off) from the employees' paychecks union dues and stop remitting such dues to the employee organization.

In *Valley Hospital Medical Center*, the contract between the medical center and one of its employee organizations lapsed. Thereafter, the parties continued to operate under the terms of the expired contract, including a provision that provided that the employer would deduct and remit union dues from employees' paychecks to the employee organization. However, thirteen months after the contract expired, and without any bargaining on the subject, the medical center unilaterally stopped the dues deductions and remittances to the employee organization. Employees filed an unfair practice charge alleging that that the post-expiration unilateral change constituted an unfair practice in violation of the NLRA.

In reaching its conclusion that the employer acted lawfully, the Board overruled it's holding in *Lincoln Lutheran* (2015) 362 NLRB 1655, which established that an employer has a statutory obligation under Section 8(a)(5) to continue checking off and remitting union dues even after the expiration of the contract. *Lincoln Lutheran* held that the unilateral change doctrine, articulated in *NLRB v. Katz* (1962) 369 U.S. 736 and extended in *Litton Financial Printing Division v. NLRB* (1991) 501 U.S. 190 to include post-expiration changes, also included post-expiration unilateral changes to dues checkoffs such that an employer could not permissibly end such practice without first bargaining the change.

In the *Valley Hospital Medical Center* decision, the Board reinstated the standard from *Bethlehem Steel* (1962) 136 NLRB 1500, which *Lincoln Lutheran* overruled in 2015, but which had, for more than 50 years prior to that, held that an employer could lawfully take unilateral action to discontinue checking off and remitting union dues after the contract expired. In reinstating *Bethlehem Steel*, the Board found that the employer's obligation to check off and remit dues is rooted in and dependent on the existence of a contract. The Board distinguished such dependent contractual provisions from other contractual provisions, including wages, benefits, hours, and working conditions, which it concluded do not arise with or necessarily depend on the existence of a contract, but rather exist from the commencement of the bargaining relationship. With respect to contractual deduction and remittance provisions, the Board concluded that such obligations are coterminous with the contracts that give rise to them.

The Board then assessed whether *Lincoln Lutheran* or *Bethlehem Steel* conflicted with statutory bargaining principles articulated in the NLRA, concluding that *Lincoln Lutheran* conflicted with such principles because it impermissibly removed an economic weapon – dues deduction and remittance – that an employer could legitimately use as leverage in its bargaining position. The Board stated that, requiring an employer to deduct and remit union dues for the employee organization, constituted interference in the bargaining process and should be disallowed.

The Board concluded that *Bethlehem Steel* represented the more appropriate view of an employer's statutory dues checkoff obligations post-expiration. The Board then dismissed the complaint on that basis.

Valley Hosp. Med. Ctr., Inc. d/b/a Valley Hosp. Med. Ctr. & Local Joint Executive Bd. of Las Vegas (Dec. 16, 2019) 368 NLRB No. 139.

Board Reverses Course On Standard For Deferring To Arbitration, Overrules Babcock And Restores Spielberg/Olin, United Technologies And Alpha Beta.

In yet another decision reversing an Obama-era decision, the Board overruled the standard for deferring to arbitral decisions in unfair practice cases articulated in *Babcock & Wilson Construction Co., Inc.* (2014) 361 NLRB 1127 and reinstated prior Board policy and standards for pre- and post-arbitral deferral and for deferral to pre-arbitral settlement. The Board considered these issues in the context of a UPS driver and Teamsters shop steward who filed a grievance following his discharge. The grievance arbitration panel reviewing the discharge denied the grievance, upholding the discharge, and the grievant filed charges with the Board, contending that the discharge violated the NLRA.

The Board began by analyzing the *Babcock* decision and the significant contraction of deferral practices that that decision required.

Under *Babcock*, the Board would not defer to a post-arbitral decision in an unfair practice case unless: (1) the arbitrator was specifically authorized to decide the unfair labor practice issue; (2) the arbitrator was presented with and considered the statutory issue; and (3) Board law reasonably permitted the award. This represented a significant change from the Board's prior deferral policy, which it established in *Olin Corp.* (1984) 268 NLRB 573 and the substantive review standard for post arbitral deferral set forth in *Spielberg Mfg. Co.* (1955) 112 NLRB 1080. In *Spielberg*, the Board found deferral appropriate where the arbitral proceedings "appear to have been fair and regular, all parties had agreed to be bound, and the decision of the arbitration panel is not clearly repugnant to the purposes and policies of the Act." In *Olin*, the Board held that would defer to an arbitral award "if (1) the contractual issue is factually parallel to the unfair labor practice issue; and (2) the arbitrator was presented generally with the facts relevant to resolving the unfair labor practice." The *Babcock* decision overruled both *Olin* and *Spielberg.*

The *Babcock* decision also significantly altered the pre-arbitral standard for deferral to grievance arbitration proceedings and to pre-arbitral grievance settlements in unfair labor practice cases. *Babcock* held that the Board would no longer defer to grievance arbitration proceedings unless the parties in a collective bargaining relationship explicitly authorized the arbitrator to decide the unfair labor practice issue, and that it would not defer to settlement agreements unless they comported with the new requirements for post-arbitral deferral. This represented a change from the Board's pre-arbitral deferral standard articulated in *United Technologies Corp.* (1984) 268 NLRB 557 and the deferral to pre-arbitral settlement established in *Alpha Beta Co.* (1985) 273 NLRB 1546. Under *United Technologies*, the Board held that it would be appropriate to defer litigation of Section 8(a)(1) and (3) unfair labor practice charges to the contractual grievance arbitration procedure. Under *Alpha Beta,* the Board permitted pre-arbitral grievance settlement with little, if any, showing that the parties intended to settle the unfair labor practice, that the unfair labor practice was addressed in the settlement agreement or that Board law necessarily permitted such settlement. The *Babcock* decision overruled both *United Technologies* and *Alpha Beta.*

The Board then analyzed the *Babcock* decision, finding that it was premised on two fundamental and mistaken concepts: (1) that there is an "excessive risk" that arbitrators will not adequately consider statutory issues implicated in discharge and discipline cases unless they are expressly authorized to do so and required to make specific findings as to those issues; and (2) that individual statutory rights remain unaffected by grievance arbitration provisions in collective bargaining agreements and are independent of contractual rights, and that the Board retains in full its primary adjudicatory role to protect those rights.

The Board concluded that the *Spielberg/Olin* post-arbitral standard and the related pre-arbitral standards in *United Technologies* and *Alpha Beta* represent a cohesive policy choice that is more commensurate with the role contemplated by Congress for arbitration of statutory claims and for Board deference to the grievance arbitration procedure and its results. As a result, the Board overruled *Babcock*, reinstated the prior deferral standards, and dismissed the complaint.

United Parcel Service, Inc. and Robert Atkinson Jr. (Dec. 23, 2019) 369 NLRB No. 1.

NOTE:

This case represents a return to the Board's prior, longstanding arbitral deferral standards and makes it less likely for the Board to second-guess arbitrators in labor disputes. Under the reinstated standard, the Board will defer to an arbitrator's prior resolution of a grievance concerning an employee's discipline or discharge that has been alleged to violate the NLRA where (1) the arbitral proceedings appear to have been fair and regular; (2) all parties have agreed to be bound; (3) the arbitrator considered the unfair labor practice issue; and (4) the arbitrator's decision is not clearly repugnant to the Act.

Board Holds That Employer's Prohibition On Union Logos Was Overbroad And That Special Circumstances Must Be Present In Order To Permit Infringement Of Employees' Section 7 Rights.

In another decision, the Board considered whether Walmart violated Section 8(a)(1) by maintaining two dress code policies that limit, but do not prohibit, the wearing of union insignia. The policies are content-neutral and explicitly grant employees the right to wear "small, non-distracting logos and graphics." Under these policies, employees are allowed to display union insignia. Walmart applied the policy to prohibit employees from wearing a pro-union logo button as well as a button with the photograph of a deceased former employee. The Administrative Law Judge considering the charge brought by Walmart employees concluded that Walmart failed to show "special circumstances" for requiring that the logos and graphics be "small" and "non-distracting."

On appeal to the National Labor Relations Board, the Board determined that the appropriate analytical framework for determining the lawfulness of Walmart's logos and graphics policies is the Board's test for facially neutral employer policies set forth in *Boeing Co.* (2017) 365 NLRB 154.

The Board applied the *Boeing* test, and concluded that the policies were lawful so far as they applied to areas of Walmart stores where the employees encounter customers in the course of performing their respective job duties. The Board concluded that where the employer's legitimate justifications for maintaining such policies – to enhance customer shopping experience and to protect merchandise from theft – outweighed the adverse impact on the employees' Section 7 rights. However, the Board also determined that Walmart's justification for prohibiting employees from wearing such logos and graphics in areas away from the selling floor was much weaker. Accordingly, the Board concluded that Walmart violated Section 8(a)(1) by maintaining its policies in areas where employees are unlikely to encounter customers.

In reaching this conclusion, the Board analyzed the Supreme Court's decision in *Republic Aviation Corp. v. NLRB* (1945) 324 U.S. 793, which affirmed the Section 7 right of employees to wear union buttons and other insignia. The Board provided that, under the *Republic Aviation* test, where the infringement on Section 7 rights is incontrovertible, the employer must prove "special circumstances" justifying the infringement in order for it to be lawful. The Board stated that the "special circumstances" test is inherently a balancing of employees' Section 7 rights and the employer's legitimate business justifications, and that finding of special circumstances means that the employer's justifications are sufficiently weighty that the balance must tip in favor of permitting the infringement.

The Board then applied the *Republic Aviation* analytical framework to Walmart's actions, and justifications for its actions. The Board concluded that Walmart lawfully maintained its logos and graphics policies on the selling floors of its stores where employees are free to wear union insignia and messages subject to the size and appearance limitations. The Board found that Walmart had a legitimate business interest in making it easy for customers and loss prevention personnel to identify sales associates and that such interest supported finding a special circumstance to justify the prohibition on wearing large or distracting logos or graphics on the selling floor of Walmart stores.

However, the Board, applying the same framework, concluded that Walmart's justifications for the policy were much weaker where the policy applied to areas where employees were unlikely to encounter customers or loss prevention personnel (e.g., loading docks and other "employees only" areas). The Board concluded that, in such areas, there was no need for customers to be able to easily identify sales staff, and that loss prevention personnel could assume that every individual was an employee. As such, the Board concluded that there was no special circumstance permitting the application of the policy to employees' display of such logos or graphics in these areas.

In conclusion, the Board held that Walmart's policies were not narrowly tailored to serve its legitimate business interest as to areas other than the selling floor. The Board held that Walmart's policies were overly broad and violated Section 8(a)(1) to the extent that they are not limited to the selling floor.

Wal-Mart Stores, Inc. & the Org. United for Respect at Walmart (Our Walmart) (Dec. 16, 2019) 368 NLRB No. 146.

TITLE VII LIABILITY & FEHA RELIGIOUS ENTITY EXEMPTION

Church And Subordinate Conference Center Were Single Employer For Title VII Liability, And Were Exempt From The FEHA.

The Community of Christ Church (Church) is a Missouri nonprofit with around 250,000 members in over 60 countries. The Church is separated geographically into Mission Centers. One of the Church's subordinate affiliates, Happy Valley Conference Center, Inc. (Happy Valley) is located in the Church's Sierra Pacific Mission Center. Happy Valley hosts seminars, retreats, and camps on a 30-acre property. The bylaws of Happy Valley state that it is "an integral subordinate unit and part of the [Church]" and is accountable to Church and Sierra Pacific Mission Center leadership. Happy Valley is run by a volunteer board of directors comprised of members elected by the Sierra Pacific Mission Center Conference and ex officio members, i.e., the President and Financial Officer of the Sierra Pacific Mission Center.

At all times relevant to the case, Happy Valley had three full time employees, Executive Director Melinda Gunnerud, Food Services Manager Amanda McKnight, and Maintenance Supervisor Jeremiah Matthews, and part-time and seasonal employees. After a younger, male employee confided in Matthews that Gunnerud had been sending him sexually inappropriate text messages, Matthews reported the allegation to McKnight. McKnight asked for help from Happy Valley Board member Karen Ardito, who then asked individuals in the Church for guidance. Ardito was advised to contact the Church's General Counsel Karen Minton. Matthews and McKnight then reported the alleged sexual harassment to Minton. Minton contacted Sierra Pacific Mission Center President and Happy Valley board member Ronald Smith and asked him to investigate. Smith conducted an investigation. Gunnerud admitted sending the text messages. Smith concluded the text messages were jokes in poor taste and not sexual harassment. Gunnerud was reprimanded, but was allowed to continue supervising Matthews and the younger male employee. Matthews was terminated one month after reporting the harassment.

Matthews sued Happy Valley and the Church for retaliatory termination under multiple causes of action, including Title VII and the FEHA. Title VII prohibits employers with 15 or more employees from retaliating against an employee because he or she opposed any practice that Title VII makes an unlawful employment practice. Similarly, the FEHA prohibits an employer from retaliating against an employee for opposing any practice forbidden by the FEHA. However, the FEHA excludes from the definition of employer a religious association or corporation not organized for private profit, referred to as the religious entity exemption.

Before the jury trial, the court found that Happy Valley and the Church had waived and were estopped from asserting the religious entity exemption. Subsequently, the jury found in favor of Matthews on all his causes of action. Notably, the jury determined that the Church and Happy Valley were a single employer for purposes of Title VII liability.

The Church and Happy Valley appealed, arguing, among other things, that the trial court erred in holding that they had waived and were estopped from asserting the religious entity exemption from the FEHA. The Church and Happy Valley further argued that they could not be liable under Title VII because Happy Valley did not meet the 15-employee threshold and the Church was not liable under Title VII despite meeting the threshold because it was not the entity that terminated Matthews.

In analyzing the Church and Happy Valley's appeal, the court first considered whether sufficient evidence supported the finding that the Church and Happy Valley were a single employer for purposes of Title VII liability. The Integrated Enterprise Test is used to determine whether two corporations should be considered a single employer for Title VII purposes. It has four factors: (1) interrelation of operations, (2) common management, (3) centralized control of labor relations, and (4) common ownership or financial control. The court found that the factors weighed in favor of finding that Happy Valley and the Church were a single employer for purposes of Title VII liability.

First, the facts demonstrated that there was an interrelation of operations between Happy Valley and the Church. Happy Valley is an integral subordinate unit and part of the Church that is accountable to General Church Officers and the Sierra Pacific Mission Center. The General Counsel for the Church also testified that there is no legal distinction between the Church, Mission Centers, or other facilities such as Happy Valley. Second, the facts demonstrated that there was common management between Happy Valley and the Church. The Happy Valley's Board consisted of members elected by the Sierra Pacific Mission Center Conference or who served by virtue of their positions with the Sierra Pacific Mission Center.

Third, the facts demonstrated that there was centralized control of labor relations between Happy Valley and the Church. Testimony from Happy Valley employees and board members revealed that sexual harassment reports originating at Happy Valley travel up the chain of command to the Church and the President of the Sierra Pacific Mission Center had extensive involvement in Matthew's termination despite not being the person who ultimately fired him. Fourth, the facts demonstrated that Happy Valley and the Church shared common ownership and financial control due to their parent-subsidiary relationship and the Church's financial control and oversight over Happy Valley.

Next, the court analyzed whether the Church and Happy Valley waived or were estopped from asserting the FEHA religious entity exemption by including discrimination, harassment, and retaliation language in the Happy Valley Employee Handbook, which was created using Cal Chamber software with sample policies not written specifically for religious entities. The Happy Valley Employee Handbook contains policies that prohibit discrimination and harassment based on a list of protected classifications; identify harassment as unlawful; prohibit retaliation; state a commitment to comply with all applicable equal employment opportunity laws; and notify employees that the Equal

Employment Opportunity Commission (EEOC) and the Department of Fair Employment and Housing (DFEH) investigate and prosecute complaints of prohibited harassment in employment.

The Court noted that a waiver of the religious entity exemption must be knowing and voluntary and nothing in the Employee Handbook amounted to a knowing and voluntary waiver of the religious entity exemption. The Employee Handbook only referred to being bound by "applicable" laws and never explicitly referenced the FEHA or made a promise that Happy Valley or the Church would be bound by FEHA. Further, the creation of the Employee Handbook using sample policies not written specifically for religious entities further opposed a finding of a knowing and voluntary waiver.

Matthews also argued that Happy Valley and the Church were estopped from asserting the religious entity exemption from the FEHA because they failed to assert it as a defense during the original EEOC administrative proceedings on his Title VII claims. However, the Court concluded that the EEOC was only investigating a potential Title VII violation, not a FEHA violation, and so it was reasonable for Happy Valley and the Church not to assert the FEHA religious entity exemption at that time. Regardless, there was no indication that Matthews relied to his detriment on Happy Valley and the Church's silence about pursuing a religious entity exemption from the FEHA. Accordingly, the court concluded that the Church and Happy Valley were exempt from the FEHA.

Mathews v. Happy Valley Conference Center, Inc. (Cal. Ct. App., Dec. 12, 2019, No. H043723) 2019 WL 6769659.

NOTE:

This case demonstrates that one entity can be held liable under Title VII for actions of its subordinate entities where there is a sufficient interrelation between the entities in their operations, management, and control. This case also highlights the importance of thoughtful personnel policies that are customized for the specific entity. While the Church and Happy Valley prevailed on this matter here, had the court found that the language in the Employee Handbook was a knowing and voluntary waiver of the FEHA religious entity exemption, they would have yielded a valuable defense to the FEHA claims against them.

DFEH REQUIRED POSTERS

CA Department Of Fair Employment And Housing Releases New, Required Posters For Employers.

In December 2019, the California Department of Fair Employment and Housing (DFEH) released new, required posters, which became effective on January 1, 2020, including:

- Employment Discrimination
- Family Care and Medical Leave (CFRA Leave) and Pregnancy Disability Leave
- Sexual Harassment Prevention: The Facts about Sexual Harassment
- Transgender Rights in the Workplace
- Your Rights and Obligations as a Pregnant Employee

DFEH states that the revisions made to the Family Care and Medical Leave (CFRA Leave) and Pregnancy Disability Leave poster were merely a design change, which "does not change the posting obligation." The DFEH notes that employers may post any version of the Family Care and Medical Leave (CFRA Leave) and Pregnancy Disability Leave poster from March 2019 to the present.

As a reminder, employers must display all DFEH required posters conspicuously where all employees and job applicants can easily see and read them. Posters must be displayed (1) at each location where an employer has employees; (2) at employment agencies, hiring offices, and union halls; and (3) on computers as long as the posters are posted electronically in a conspicuous place where employees will tend to see it. The text of the displayed posters must be large and legible enough for employees and job applicants to read them. In addition to displaying required posters in English, the employer must also display the poster in any other language spoken by 10 percent or more of the employer's workforce.

The new, required posters are located on the DFEH website, which is available here: https://www.dfeh.ca.gov/resources-2/posters-and-brochures-and-fact-sheets/poster-and-brochure-tab-list/?target=Required%20Materials

ARBITRATION

EEOC Rescinds 1997 Policy Opposing Mandatory Arbitration.

On December 17, 2019, the U.S. Equal Employment Opportunity Commission (EEOC) issued a press release announcing that it had rescinded a 22-year-old policy that strongly opposed the use of mandatory binding arbitration of employment discrimination claims. The EEOC first adopted the now rescinded policy, titled *Policy Statement on Mandatory Binding Arbitration of Employment Discrimination Disputes as a Condition of Employment* (Policy Statement), on July 10, 1997.

The EEOC stated that it rescinded the Policy Statement because it no longer reflects current law. Since 1997, the U.S. Supreme Court has issued numerous decisions that conflict with the Policy Statement. In particular, the Supreme Court has ruled that agreements to arbitrate employment-related disputes are enforceable under the Federal Arbitration Act (FAA) including, on several occasions, disputes involving allegations of employment discrimination or related federal labor and employment laws. The Supreme Court has also held that an arbitration agreement between an employer and an employee does not preclude the employee from filing a charge with the EEOC or bar the EEOC from pursuing victim-specific relief in litigation on behalf of the employee who files a timely charge of discrimination.

The press release concluded by stating EEOC staff will no longer rely upon the Policy Statement in investigations or litigation, but the rescission should not be "construed to limit the ability of the Commission or any other party to challenge the enforceability of a particular arbitration agreement."
This rescission will have a negligible, if any, effect on employers because they have already been able to rely on U.S. Supreme Court precedent to support the lawfulness and enforceability of their employment arbitration agreements for federal employment discrimination claims.

https://www.eeoc.gov/eeoc/newsroom/wysk/recission_mandatory_arbitration.cfm

ADMINISTRATION / GOVERNANCE

FERPA/HIPAA

Federal Agencies Release Joint Guidance Explaining Application Of FERPA and HIPAA To Student Records.

In joint guidance, the U.S. Department of Health and Human Services (HHS) and the U.S. Department of Education clarify how the Family Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule applies to student records and addresses the disclosures permitted without written consent of the parent or eligible student.

FERPA is a federal law that applies to educational agencies and institutions (Schools) that receive Federal funds through the U.S. Department of Education. FERPA protects the privacy of students' "education records" and provides to parents specific rights to those records, including the right to access, the right to seek amendment, and the right to consent to disclosure of personally identifiable information (PII) unless an exception applies. Once a student reaches 18 years of age or attends a postsecondary institution at any age, the student becomes an "eligible student," and the rights transfer to him or her.

Schools subject to FERPA may not disclose students' education records or PII from students' education records without the prior written consent of the parent or, if applicable, the eligible student, unless an exception applies. For instance, generally, Schools may disclose this information to teachers or other school officials within the School without prior written consent if these individuals have "legitimate educational interests" in the information. In addition, Schools may disclose this information without prior written consent to appropriate parties in an emergency if it is necessary for these parties to know this information to protect the health or safety of the student or other individuals. Education records are those (1) directly related to a student, and (2) maintained by a School or by a party acting for the School. "Treatment records," which generally are records on a student 18 years of age or older receiving psychological treatment from a professional at the School, are excluded from the definition of education records and have their own maintenance and disclosure requirements under FERPA.

The HIPAA Privacy Rule requires covered entities to establish appropriate safeguards to protect the privacy of individuals' protected health information (PHI) (i.e., health records and personal health information) the entities maintain or transmit and sets limits and conditions on the uses and disclosures of PHI without an individual's consent with limited exceptions. Covered entities are health plans, health care clearinghouses, and health care providers that transmit health information in electronic from in connection with covered transactions. The Privacy Rule also gives rights to patients to their PHI, such as the right to examine and the right to obtain a copy.

According to the joint guidance, in a few limited circumstances, Schools subject to FERPA can also be subject to HIPAA. For example, a School that "provides health care to students in the normal course of business, such as through a health clinic" would be a health care provider under HIPAA, and if that School also "transmits any PHI electronically in connection with a transaction for which HHS has adopted a transaction standard, it is then a covered entity under HIPAA." Yet, the joint guidance goes on to explain that "many schools that meet the definition of a HIPAA covered entity do not have to comply with the requirements of the HIPAA Rules because the school's only health records are considered "education records" or "treatment records" under FERPA, which are expressly excluded from the HIPAA Privacy Rule. Further, most Schools that employ nurses, physicians, psychologists, or other health care providers do not engage in HIPAA covered transactions, such as billing a health plan electronically for their services.

However, private schools that do not receive funds from the U.S. Department of Education are not subject to FERPA. Accordingly, the joint guidance notes that if a private school is a covered entity under HIPAA, but not subject to FERPA, the school must comply with HIPAA as to all individually identifiable health information it has about students. Also, when a student is placed in a private school for Individualized Education Program (IEP) services by a school or school district subject to FERPA, the student's education records, even those maintained by the private school, are subject to FERPA and confidentiality requirements under the Individuals with Disabilities Education Act (IDEA).

Here are some other highlights from the joint guidance:

- Health records maintained by a health care provider who is a third party contractor acting on behalf of a FERPA-covered elementary or secondary school would qualify as education records subject to FERPA.
- Patient records maintained by a hospital affiliated with a university who is not providing services to students on behalf of the university are subject to HIPAA if the hospital is a HIPAA covered entity.
- HIPAA allows covered health care providers to disclose PHI about students to school nurses, physicians, and other health care providers without the authorization of the student or student's parents in certain circumstances, including for treatment purposes. For example, where a physician provides information on medication and administering medication to a school nurse who will provide such medication to the student during the school day.
- FERPA allows Schools to disclose PII from a student's education records, including student health records, to appropriate parties in connection with a health or safety emergency, without the consent of the parent or eligible student, if knowledge of the information is necessary to protect the health or safety of the student or other individuals.

Note:

FERPA and HIPAA remain complex laws. While the joint guidance is a good resource for schools, universities, and colleges, FERPA and HIPAA's applicability and the overlap between the two can be murky. While FERPA does not apply to many of our private schools and colleges the standards set by FERPA may still establish standards that should be followed to reduced exposure to negligence and other claims. We recommend seeking legal counsel for specific questions concerning your school, university, or college's obligations under FERPA and HIPAA. For more information, the joint guidance is available here: https://studentprivacy.ed.gov/sites/default/files/resource_document/file/2019%20HIPAA%20FERPA%20Joint%20Guidance%20508.pdf

BUSINESS & FACILITIES

NONPROFIT PARKING TAX

Repeal Of "Nonprofit Parking Tax" Signed In To Law, Eliminating Income Tax On Expense Of Providing Parking And Transportation Benefits To Employees.

LCW previously reported that the 2017 Tax Cuts and Jobs Act included a remarkable and confusing new tax on certain parking and transportation benefits provided by nonprofits, including schools, to their employees. Specifically, the Act added section 512(a)(7) to the Internal Revenue Code (IRC), imposing a 21 percent unrelated business income tax on qualified transportation fringe benefits, including the provision of parking to employees. In other words, the Act created an income tax on the expense of providing basic transit and parking benefits to nonprofit employees, which some called the Nonprofit Parking Tax.

The week before Christmas 2019, both the House of Representatives and the Senate passed a bipartisan tax bill to strike the Nonprofit Parking Tax retroactively, as if it never existed. The bill was part of a larger spending package, which the President subsequently signed into law, officially eliminating this confounding and administratively burdensome tax. The repeal was the result of a sustained and extensive effort by organizations across the nonprofit sector to advocate for the elimination of this tax since its enactment in late 2017.

The repeal intends to eliminate the compliance challenges and administrative burdens associated with attempting to figure out how to pay an income tax on an expense. Additionally, since the bill is retroactive, schools that have filed returns paying the tax for 2018 may amend those returns to obtain refunds. The IRS is also expected to provide further guidance on the refund process.

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.

NOVEMBER THROUGH JANUARY

□ Issue Performance Evaluations
- We recommend that performance evaluations be conducted on at least an annual basis, and that they be completed before the decision to renew the teacher for the following school year is made. Schools that do not conduct regular performance reviews have difficulty and often incur legal liability terminating problem employees - especially when there is a lack of notice regarding problems.
  - Consider using Performance Improvement Plans but remember it is important to do the necessary follow up and follow through on any support the School has agreed to provide in the Performance Improvement Plan.

□ Compensation Committee Review of Compensation before issuing employee contracts
- The Board is obligated to ensure fair and reasonable compensation of the Head of School and others. The Board should appoint a compensation committee that will be tasked with providing for independent review and approval of compensation. The committee must be composed of individuals without a conflict of interest.

□ Review employee health and other benefit packages, and determine whether any changes in benefit plans are needed.

□ If lease ends at the end of the school year, review lease terms in order to negotiate new terms or have adequate time to locate new space for upcoming school year.

□ Review tuition rates and fees relative to economic and demographic data for the School's target market to determine whether to change the rates.

□ Review student financial aid policies.

□ Review and revise enrollment/tuition agreements.

□ File all tax forms in a timely manner:
- Forms 990, 990EZ
  - Form 990:
    - Tax-exempt organizations must file a Form 990 if the annual gross receipts are more than $200,000, or the total assets are more than $500,000.
  - Form 990-EZ
    - Tax-exempt organizations whose annual gross receipts are less than $200,000, and total assets are less than $500,000 can file either form 990 or 990-EZ.
  - A School below college level affiliated with a church or operated by a religious order is exempt from filing Form 990 series forms. (See IRS Regulations section 1.6033-2(g)(1)(vii)).
  - The 990 series forms are due every year by the 15th day of the 5th month after the close of your tax year. For example, if your tax year ended on December 31, the e-Postcard is due May 15 of the following year. If the due date falls on a Saturday, Sunday, or legal holiday, the due date is the next business day.
  - The School should make its IRS form 990 available in the business office for inspection.
- Other required Tax Forms common to business who have employees include Forms 940, 941, 1099, W-2, 5500

□ Annual review of finances (if fiscal year ended January 1st)
- The School's financial results should be reviewed annually by person(s) independent of the School's financial processes (including initiating and recording transactions and physical custody of School assets). For schools not required to have an audit, this can be accomplished by a trustee with the requisite financial skills to conduct such a review.
- The School should have within its financial statements a letter from the School's independent accountants outlining the audit work performed and a summary of results.
- Schools should consider following the California Nonprofit Integrity Act when conducting audits, which include formation of an audit committee:
  - Although the Act expressly exempts educational institutions from the requirement of having an audit committee, inclusion of such a committee reflects a "best practice" that is consistent with the legal trend toward such compliance. The audit committee is responsible for recommending the retention and termination of an independent auditor and may negotiate the independent auditor's compensation. If an organization chooses to utilize an audit committee, the committee, which must be appointed by the Board, should not include any members of the staff, including the president or chief executive officer and the treasurer or chief financial officer.

If the corporation has a finance committee, it must be separate from the audit committee. Members of the finance committee may serve on the audit committee; however, the chairperson of the audit committee may not be a member of the finance committee and members of the finance committee shall constitute less than one-half of the membership of the audit committee. It is recommended that these restrictions on makeup of the Audit Committee be expressly written into the Bylaws.

JANUARY/FEBRUARY

□ Review and revise/update annual employment contracts.
□ Conduct audits of current and vacant positions to determine whether positions are correctly designated as exempt/non-exempt under federal and state laws.

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.

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 will 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.

ISSUE: An administrator of a private school that operates a day camp during the summer break called an LCW attorney and explained that the school is considering hiring 13 to 15 year old students of the school to work as junior counselors for the day camp's visual and performing arts programming. The administrator asked whether there were any legal restrictions he should be aware of concerning the hours that minors in this age group may work during the summer months.

RESPONSE: The LCW attorney explained that when school is not in session, 13 to 15 year olds may work no more than 8 hours per day and no more than 40 hours per week. The LCW attorney further explained that these hours of work may only occur between the hours of 7 am and 7 pm, except that from June 1 through Labor Day, these hours of work may occur between the hours of 7 am and 9 pm.

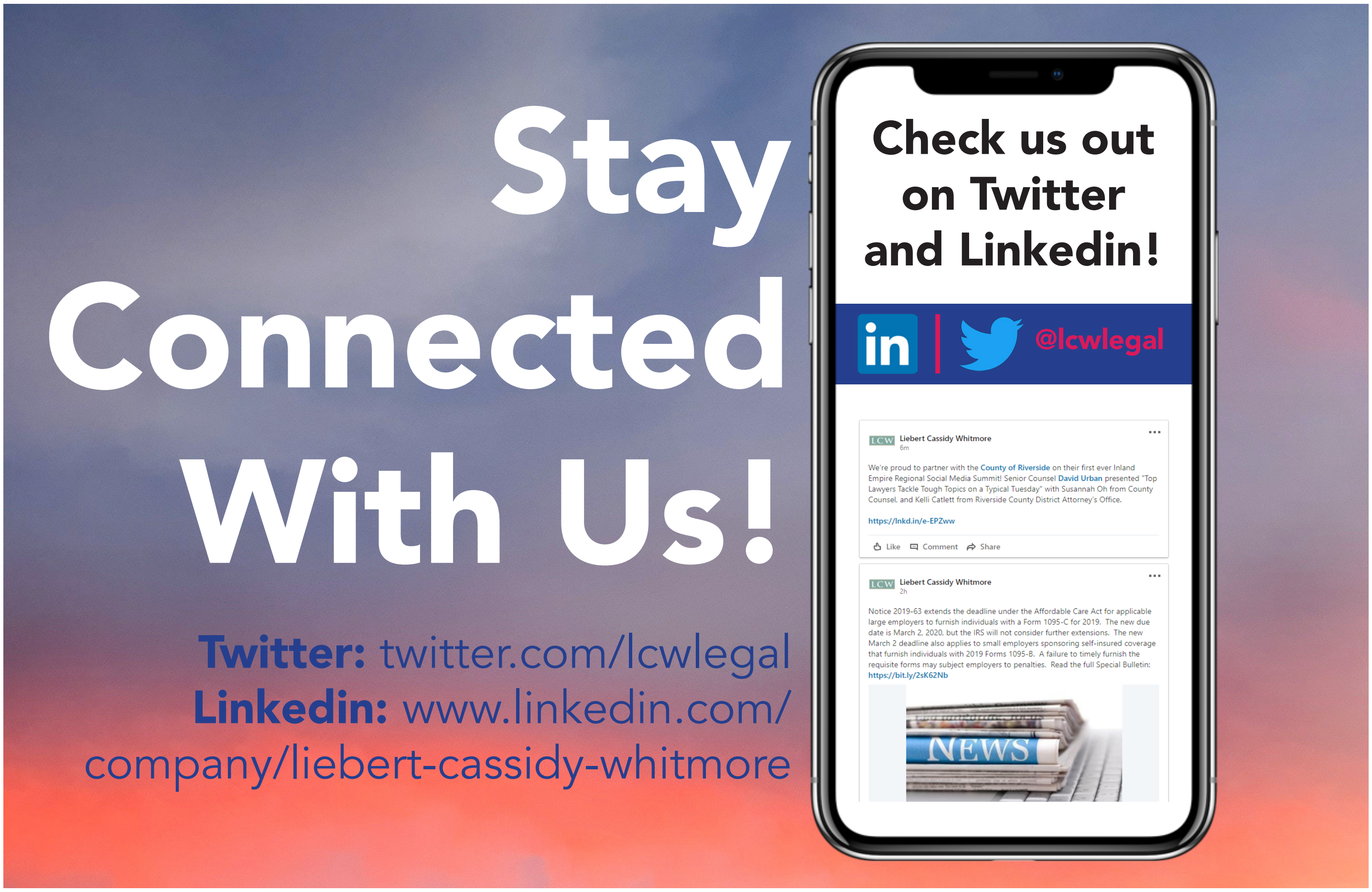
FIRM PUBLICATIONS

To view these articles and the most recent attorney-authored articles, please visit: **www.lcwlegal.com/news.**

Los Angeles Partner Michael Blacher and San Francisco Associate Stacy Velloff authored an article for NAIS' Newsletter "Legal Tip of the Week," titled "What Have They Done to Us This Year? New California Laws Take Effect in 2020."

Sacramento Partner Gage Dungy and Associate Savana Manglona authored an article for the *Daily Journal*'s annual New Law Supplement on SB 778, which clarifies harassment training requirements and extends the compliance deadline.

Sacramento Partner Gage Dungy and Associate Savana Manglona authored an article for *Daily Journal*'s annual New Law Supplement on AB 9, which extends the statute of limitations to file a FEHA employment discrimination claim from 1 to 3 years."



Management Training Workshops

Firm Activities

Consortium Training

Feb. 11 **"Hiring: To Include Volunteers, At-Will Employment and Record Keeping"**
CAIS | Webinar | Stacy Velloff

Feb. 25 **"Requirement for Utilizing Volunteers Under California Law"**
ACSI Consortium | Webinar | Linda K. Adler

Speaking Engagements

Feb. 24 **"Envisioning a Safe Future for Our Schools"**
National Business Officers Association (NBOA) Annual Meeting | Kissimmee | Heather DeBlanc & Chris Joffe & Jane Davis

Feb. 24 **"Preventing Future Claims of Student Sexual Abuse"**
NBOA Annual Meeting | Kissimmee | Michael Blacher & Darrow Milgrim & Constance Neary

Feb. 27 **"Five Essential Steps for Conducting an Investigation"**
National Association of Independent Schools (NAIS) Annual Conference | Philadelphia | Michael Blacher

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