Colorado Charter Schools:

Human Resources Handbook

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Colorado Department of Education

Organizational Commitment

The Colorado Department of Education dedicates itself to increasing achievement levels for all students through comprehensive programs of education reform involving three interlocking elements: A) High Standards for what students must know and be able to do; B) Rigorous Assessments that honestly measure whether or not students meet standards and tell citizens the truth about how well our schools serve children; C) Rigorous Accountability Measures that tie the accreditation of school districts to high student achievement.

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The information in this document is primarily obtained from governmental and public domain sources. It is not intended, nor should it be used, to replace advice from professional legal counsel.

HR HANDBOOK

Chapter One – Before a School Hires

Any complete human resources program includes procedures and policies to facilitate employment from the origination of hiring through the completion of employment. One of the most over-looked steps in this process, particularly in education, is the planning prior to hiring.

School Hiring Policy

A school governing body should adopt a basic hiring policy that can be included in a school general policy book as well as the employee handbook.

The hiring policy should include:

- Selection Criteria and Procedures outlining who makes the hiring decision and whether or not this decision is subject to board approval prior to making a final employment offer;
- A statement regarding non-discrimination and nepotism;
- How qualifications for employment positions will be determined and subsequently posted or advertised;
- Essential qualifications for specific job descriptions;
- Other requirements (should align with a school required documents in the HR checklist);
- Procedure for determining when a position is added or removed from the existing staffing.

Sample Hiring Policy

Littleton Academy Policy

The support of the highest quality classified employees is crucial to the success of Littleton Academy. Therefore, the Governing Board will make every effort to attract and retain the very best people in all of the Academy's classified positions.

Selection criteria and procedures

The principal shall select the best-qualified applicant for each position, without regard to age, race, color, creed, sex, marital status, national origin, religion, ancestry or place of residence.

Qualifications

Classified employees shall be qualified by their training, experience and general competence, as determined by the Governing Board. They shall hold such licenses, certificates or special qualifications required by Colorado law or Littleton Public Schools policy, unless such matters have been waived. Classified employees shall also set an example of self-motivation and self-discipline for students, staff and community and demonstrate honesty, personal responsibility and respect for others in the performance of their duties.

Other requirements

Upon employment, classified employees shall file with the Littleton Public Schools:

- A tax form W-4
- A health certificate signed by a physician on a form provided by the Littleton Public Schools
- A Public Employees Retirement Association membership application form
- Authorization and application for any other form of payroll deduction
- US Department of Justice (Immigration and Naturalization Service) Employment Eligibility Verification form I-9
- Food service employees shall have a valid TB test certificate before employment.
- No Littleton Academy employee shall be assigned to a position, which makes him/her the direct supervisor or evaluator of a member of his or her immediate family. Members of an immediate family for the purpose of this policy are: spouses, children, stepchildren, parents, stepparents, siblings, stepsiblings, mothers-in-law, fathers-in-law, grandparents, grandchildren and persons residing in the same quarters as an Academy employee at least one-half of each month in the immediately preceding twelve month period or receiving at least one-half of their financial subsistence from an Academy employee each month in the immediately preceding twelve month period, regardless of their legal relationship to the Academy employee.

Employment Posting Requirements

Is a school employee-friendly and complying with state, federal and local employment posting laws?

Before a school enters into any employment situation, federal and state law requires that a school prominently post specific information about employees' rights and mandated laws and rules. These notices should be posted in open, accessible areas where all employees have access to them. They should be available in English and other languages for employees who are not English speakers or readers. Failure to post can result in fines of up to $100.

Federal requirements:

- Minimum wage and hour law
- Equal Employment Opportunity (EEO) statement of non-discrimination
- Employee rights under the Americans with Disabilities Act (ADA)
- Employee rights under the Family Medical Leave Act (FMLA),
- Federal Labor Standards Act (FLSA),
- Notice of regular paydays and time and place of payment

State requirements

- Notice that "This establishment complies…with Colorado's anti-discrimination laws." (Employment, housing, accommodations)
- Unemployment Insurance CRS 8-70 information "Notice to Employees…Colorado Employment Security Act"
- Workers' Compensation CRS 8-40 information WC 49 – "Notice to Employees…Workers' Compensation Act WC 50" "Notice to Employer of Injury" rules and regulations

Other recommended postings

- Reporting requirements regarding suspected child abuse
- Notice regarding harassment

To obtain posters or for more information about poster requirements or other compliance assistance matters, a school may contact the U.S. Department of Labor by telephone at 1-888-9-SBREFA, by email at Contact-OSBP@dol.gov, or a school may visit the DOL poster page at http://www.dol.gov/osbp/sbrefa/poster/main.htm.

A school may contact the following offices:

Office of Small Business Programs
(202) 693-6489
(888) 9-SBREFA

Employment Standards Administration
Wage and Hour Division
(202) 693-0067

Employment Standards Administration
Office of Federal Contract Compliance Programs
(202) 693-0023

Employment Benefits Security Administration
(202) 219-8776

One of the easiest ways to accomplish this goal is to obtain a composite state and federal employee guideline poster. One source for federally required posters is www.dol.gov/osbp/sbrefa/poster/main.htm. State information regarding poster requirements can be obtained at www.coworkforce.com.

State laws affecting employment and posting requirements

Complimentary information provided by labor standards office

Minimum Wage Law CRS 8-6

- CO Minimum Wage Order # 22-regulates retail and service; food & beverage; commercial support service; and health & medical industries.

Available from:

CO Minimum Wage Poster
Division of Labor Standards
1515 Arapahoe St., Tower 2, Ste. 375
Denver, CO 80202-2117
(303) 572-2241
Web site: http://www.state.co.us

Wage Payment Law CRS 8-4

- Employers shall post and keep posted a notice specifying the regular paydays and the time and place of payment. Each employer is responsible for printing necessary notices.

Civil Rights Law CRS 24-34 "This establishment complies…with Colorado's anti-discrimination laws." (Employment, housing, accommodations)

Available from:

Colorado Civil Rights Division Rights
1560 Broadway, Rm. 1050
Denver, CO 80202
(303) 894-2997

Unemployment Insurance CRS 8-70 – "Notice to Employees…" Colorado Employment Security Act

Available from:

Colorado Division of Employment and Training Liability Section
1515 Arapahoe Street, Tower 3, Suite 200
Denver, CO 80202-2117
(303) 603-8231

Workers' Compensation CRS 8-40
WC 49 – "Notice to Employees…Workers' Compensation Act"
WC 50 – "Notice to Employer of Injury"

Obtain from a school private insurance carrier, **or** one can be purchased from:

Bradford Publishing
1743 Wazee
Denver, CO 80202
(303)292-2590

Subject Statute Poster Order Form
Minimum Wage Fair Labor Standards Act (FLSA)
Minimum Wage (WH-1088)

Available from:

U. S. Dept of Labor
Wage & Hour Division
Federal Office Building
1801 California, Room 935
Denver, CO 80204
(303) 844-4405

Public Contracts Walsh-Healy Act – Notice to Employees Working on U.S. Government Contracts (WH-1313)

Available from:
U. S. Dept of Labor
Wage & Hour Division
Federal Office Building
1801 California, Room 935
Denver, CO 80204
(303) 844-4405

Polygraph Tests – Prohibited Employee Polygraph Act Notice – Employee Polygraph Protection Act (WH-1462)

Available from:
U. S. Dept of Labor
Wage & Hour Division
Federal Office Building
1801 California, Room 935
Denver, CO 80204
(303) 844-4405

Family and Medical Leave Family and Medical Leave Act of 1993 –
A school Rights Under the Family and Medical Leave Act of 1993 (WH- 1420)

Available from:
U. S. Dept of Labor
Wage & Hour Division
Federal Office Building
1801 California, Room 935
Denver, CO 80204
(303) 844-4405

Immigration Reform and Control Act of 1964 – I-9 Forms Applications

Available from:
U.S. Immigration Service
Forms Request Line 1- 800 - 870-3676

Civil Rights Act Of 1964 – "Equal Employment Is the Law"

Available from:
EEOC
303 E. 17th Ave., Suite 510
Denver, CO 80203
(303) 866-1300

Age Discrimination Act of 1967 – "Equal Employment Is the Law"

Available from:
EEOC
303 E. 17th Ave., Suite 510
Denver, CO 80203
(303) 866-1300

Americans with Disabilities – "Equal Employment Is the Law"
Non-Discrimination, Handicapped Workers, Other Civil Rights Titles, Rehabilitation Act of 1973

Available from:
EEOC
303 E. 17th Ave., Suite 510
Denver, CO 80203
(303) 866-1300

Veterans Vietnam Era – Veterans Readjustment Act of 1974
"Equal Employment Is the Law"

Available from:
EEOC
303 E. 17th Ave., Suite 510
Denver, CO 80203
(303) 866-1300

Safety Occupational Safety and Health Act (OSHA) – "Job Safety & Health" (OSHA-2203); Log of Occupational Illness/Injury (Form - 200)

Available from:
OSHA Administration
1999 Broadway, Suite 1690
Denver, CO 80202-5716
(303) 844-1600 or, (303) 843-4500 (Southern Colorado)

Job Descriptions – A Must

Every position should have a written job description

A truly effective hiring program begins with a comprehensive job description. A job description should be general enough to provide the employer and employee with a working guideline and specific enough to provide a clear understanding between the employer and employee regarding the essential functions necessary to effectively and successfully fulfill the requirements of the position. It should describe the main objective of a job, its essential and nonessential functions, job qualifications, and other information on the job.

These descriptions help define relationships among individuals and among departments and can be used to evaluate performance, minimize conflicts, and improve communications. Complete and accurate job descriptions can also help determine which positions may be eliminated when workforce reductions become necessary.

They provide the only genuinely reliable and defensible foundation for job evaluation, as well as a basis for compensation for an equitable wage and salary.

Job descriptions, the ADA and the "Essential Functions" requirement

According to the ADA, employers may not refuse to hire an otherwise qualified individual with a disability as long as that individual can perform the "essential functions" of the job "with or without reasonable accommodation."

"Essential functions" are those duties that an individual must be able to perform, i.e., fundamental rather than marginal duties, and this is where job descriptions come in. In determining whether a function is essential, one of the things that the Equal Employment Opportunity Commission (EEOC) will look at is a written job description prepared by the employer before advertising the position or interviewing applicants. Job descriptions are not required under the ADA, and some employers may choose not to use them. But for most employers detailing the essential functions in a job description will help ensure that applicants with disabilities are not rejected because they cannot perform marginal job duties.

Every job description needs to include the following elements:

- Job Title
- Location(s) where work is to be performed
- Title of immediate supervisor and reporting responsibilities
- Number of hours of work required per week and which days or time frames that work is required
- Required years of experience
- Required education, degree, certificate, license, registration or special training
- Essential functions (see ADA requirements listed above)
- Specific job duties and detailed work activities
- Starting Salary or compensation
- Benefits available

Requirements for highly qualified teachers

The new No Child Left Behind Act and ESEA requires that all teachers, including those who came to teaching through alternative licensing, be "Highly Qualified" in the subjects they teach by the end of the 2005-06 school year. For a complete CDE definition of this requirement see the Certification and Licensing Section of the HR handbook or visit the CDE website at: http://www.cde.state.co.us/cdeunified/download/tiia_HQ0903.pdf. It is important to modify all educator job descriptions to include language consistent with the requirements for "Highly Qualified Teachers."

To meet the "Highly Qualified" definition, charter school teachers may or may not have a Colorado license depending on whether or not their charter school has received certain waivers from state law. Many charter schools have waivers from licensure laws that may affect High Qualified requirements.

New teachers

New elementary teachers must have at least a Bachelor's degree and pass a state test demonstrating subject knowledge and teaching skills in reading, writing, math, and other areas of basic elementary school curriculum.

New middle school or high school teachers must have at least a Bachelor's degree and demonstrate competency in each of the academic subjects they teach or complete an academic major or coursework equivalent to a major or a graduate degree in each of the academic areas in which they teach or earn advanced licenses in the same areas.

Current teachers

Current teachers at all levels (elementary, middle, and high school) must have at least a Bachelor's degree and meet the requirements for new teachers **or** demonstrate their competency in all subjects they teach.

If the "competency demonstration" is used, a uniform state evaluation standard must be the judge of competency. The evaluation standard must provide objective information about the teacher's knowledge of the subjects taught and can consider – but cannot use as a primary measure – time spent teaching the subject. The evaluation standard must be applied uniformly to all teachers in the same subject and grade level throughout the state.

The timeline

The first timeline began in the 2002-03 school year. New teachers who were hired in that year and later to work in programs supported by Title I funding were required to meet the "Highly Qualified" requirements. The state and school districts were required to begin reporting their progress toward ensuring that all teachers are Highly Qualified.

By the end of the 2005-06 school year, **all teachers in core academic subjects** must be Highly Qualified. The core academic subjects, under ESEA, include every subject taught except physical education, computer science, and vocational courses.

Colorado's definition of "Highly Qualified"

Colorado offers the following four options for teachers to be considered "highly qualified," in compliance with Sec. 1119, of the No Child Left Behind Act.

Option I

Initial (Provisional) License and Endorsement = "Highly Qualified"

A Colorado "highly qualified" teacher shall mean a teacher who holds a Colorado initial (provisional) or professional teacher license. To qualify for such license, the teacher must:

- Hold a bachelor's or higher degree.
- Have completed an approved teacher preparation program, or is participating in an alternative teacher preparation program, in elementary or secondary education, as appropriate.

For elementary education

The elementary education teacher shall have passed the State's K-8 elementary education content test, which includes content assessment in English/language arts, science, mathematics, social studies, humanities, wellness, and physical education.

For middle school education: (Note: Colorado does not have a middle school license.)

If the middle school teacher is a generalist, responsible for teaching all content areas, s/he shall have passed the State's K-8 elementary education content test, which includes content assessment in English/language arts, science, mathematics, social studies, humanities, wellness, and physical education.

If the middle school teacher is responsible for teaching in a specific secondary content area(s), s/he shall have passed the State's secondary, or K-12, content-area test(s), in the content area(s) being taught.

For secondary education (excluding middle school – see above):

The secondary education teacher shall have passed the State's secondary, or K-12, content-area test(s), in the secondary content area(s) being taught.

An educator who possesses a Colorado initial (provisional) or professional license, but who is teaching outside of his/her endorsed content area(s), may be considered "highly qualified," if that educator:

- Has 24 semester hours of credit in the additional content area(s) being taught, as verified by the school district (charter school) of employment. The 24 semester hours of credit may be accumulated, as follows:
  1. **College/university credit.** Coursework must be relevant and applicable to the teacher's non-endorsed content area(s) being taught. College /university credit must be awarded by an accepted two or four-year institution of higher education. **Note:** Certification of this requirement is the responsibility of the educator's employing school district (charter school). The school district (charter school) is required to keep all college transcript credits on file, as evidence of successful completion of coursework.
  2. **Professional development activities.** Professional development must be relevant and applicable to the teacher's non-endorsed content area(s) being taught, and may include, but not be limited to: district and other approved professional development activities, in-services, and curriculum development. The teacher must provide documented evidence of the professional development activities relevant and applicable to the acquisition of knowledge and skills in the non-endorsed content area(s) being taught. **Note:** Certification of this requirement is the responsibility of the educator's employing school district (charter school). The school district (charter school) is required to keep, on file, documented evidence of successful completion of professional development.
  3. **Relevant travel.** The teacher must have prior approval from the school district (charter school), which authorizes that the travel is appropriate to the enhancement of skills and knowledge in the non-endorsed content area(s) being taught. The teacher must provide evidence, including, but not limited to reports, materials, or work products, to document the relevance and applicability of the travel to increasing educator's knowledge and skills in the relevant non-endorsed content area(s) being taught. One-semester hour of credit may be awarded for each 15-clock hours of documented travel, up to a maximum of 6-semester hours. Travel time to and from the intended destination will not be included. **Note:** Certification of this requirement is the responsibility of the educator's employing school district (charter school). The school district (charter school) is required to keep, on file, documented evidence of relevant travel experiences**.**

Or…passage of the State's content test or national certification organization content test, in the additional content area(s) being taught. Note: Certification of this requirement is the responsibility of the educator's employing school district (charter school). The school district (charter school) is required to keep, on file, the teacher's assessment results, as evidence that the test has been passed.

The information contained in the definition of meeting the 24 semester hours of credit was adopted from the Colorado Code of Regulations 301-37. These rules establish the standards and criteria for the issuance of licenses and authorizations to teachers, special services providers, principals, and administrators.

Note: Teachers who fulfill any of the options cited above are encouraged to complete the requirements for endorsement in any additional content area(s) in which they teach. Information regarding Colorado educator licensing is available on-line, at: www.cde.state.co.us , then click on Educator Licensing.

Sample job descriptions

These descriptions are a guideline and should be edited to meet specific needs.

Job specifics should be included in any job descriptions. Following is an example:

Job Specifics

- Job location
- Starting salary
- Hours/week
- Education at highest level
- Degree or training, licenses, certificates needed for the position
- Years of experience
- Position start date
- Pay periods
- Benefits include: (such as) 401k, clothing/uniform allowance, dental insurance, health insurance, holidays, sick leave, vacation

School Secretary

Perform clerical and administrative functions within the school such as writing and typing correspondence, scheduling appointments, organizing and maintaining paper and electronic files, communicating with parents, teachers and students and providing information to callers.

Job responsibilities include:

- Coordinate conferences and meetings.
- Compose and type meeting notes, routine correspondence, and reports.
- Learn to operate new office technologies as they are developed and implemented.
- Operate office equipment such as fax machines, copiers, and phone systems, and use computers for spreadsheet, word processing, database management, and other applications.
- Collect and record funds from cash accounts, and make disbursements as needed.
- Complete forms.
- Order and dispense supplies.
- Arrange conferences, meetings, and travel reservations for school staff.
- Open, read, route, and distribute incoming mail and other material.
- Mail newsletters, promotional material, and other information.
- Locate and attach appropriate files to incoming correspondence requiring replies.
- Set up and maintain paper and electronic filing systems for records, correspondence, and other materials.
- Greet parents and visitors, handle their inquiries, and direct them to the appropriate persons according to their needs.
- Prepare and mail checks.
- Help students.
- Maintain scheduling and event calendars.
- Supervise other clerical staff, and provide training and orientation to new staff.

- Establish work procedures and schedules, and keep track of the daily work of clerical staff.
- Answer telephones and give information to callers, take messages, and transfer calls to appropriate individuals.
- Make copies of material when needed.
- Schedule and confirm appointments for administrators or staff.

The following skills are required:

- Knowledge of administrative and clerical procedures and systems such as word processing, managing files and records, designing forms, and other office procedures. Knowledge of the structure and content of the English language including the meaning and spelling of words, rules of composition, and grammar.
- Knowledge of principles and processes for providing customer services.

School Registrar/Records Manager

Compile, process, and maintain school records of students in a manner consistent with administrative, ethical, legal, and regulatory requirements of the local educational system and the Colorado Department of Education. Process, maintain, compile, and report student information.

Job responsibilities include:

- Enter data, such as demographic characteristics, attendance records, and multiple student records into the computer.
- Process and prepare business and government forms.
- Plan, develop, maintain and operate a variety of health record indexes and storage and retrieval systems to collect, classify, store and analyze information.
- Review records for completeness, accuracy and compliance with regulations.
- Release information to persons and agencies according to regulations.
- Resolve/clarify codes and diagnoses with conflicting, missing, or unclear information by consulting with teachers or others to get additional information.
- Develop in-service educational materials.
- Protect the security of all records to ensure that confidentiality is maintained.

The following skills are required:

- Knowledge of administrative and clerical procedures and systems such as word processing, managing files and records, stenography and transcription, designing forms, and other office procedures and terminology.
- Knowledge of principles and processes for providing customer services.
- Knowledge of the structure and content of the English language including the meaning and spelling of words, rules of composition, and grammar.

Custodian

Keep buildings in clean and orderly condition. Perform heavy cleaning duties, such as cleaning floors, shampooing rugs, washing walls and glass, and removing rubbish. Duties may include tending furnace and boiler, performing routine maintenance activities, notifying management of need for repairs, and cleaning snow or debris from sidewalk.

Job responsibilities include:

- Cleans or polishes walls, ceilings, windows, plant equipment and building fixtures, using steam cleaning equipment, scrapers, brooms and variety of hand and power tools.
- Sprays insecticides and fumigants to prevent insect and rodent infestation.
- Cleans chimneys, flues, and connecting pipes, using power and hand tools.
- Prepares cleaning solutions, according to specifications.
- Cleans and restores building interiors damaged by fire, smoke, or water, using commercial cleaning equipment.
- Notifies management personnel concerning need for major repairs or additions to building operating systems.
- Applies waxes or sealers to wood or concrete floors.
- Requisitions supplies and equipment used in cleaning and maintenance duties.
- Sets up, arranges, and removes decorations, tables, chairs, ladders, and scaffolding, for events such as banquets and social functions.
- Gathers and empties trash.
- Mows and trims lawns and shrubbery, using mowers and hand and power trimmers, and clears debris from grounds.
- Moves items between departments, manually or using hand truck.
- Sweeps, mops, scrubs, and vacuums floors of buildings, using cleaning solutions, tools and equipment.
- Dusts furniture, walls, machines, and equipment.
- Removes snow from sidewalks, driveways, and parking areas, using snowplow, snow blower, and snow shovel, and spreads snow melting chemicals.
- Drives vehicles, such as van, industrial truck or industrial vacuum cleaner.
- Services and repairs cleaning and maintenance equipment and machinery and performs minor routine painting, plumbing, electrical, and related activities.
- Cleans laboratory equipment, such as glassware and metal instruments, using solvents, brushes, rags, and power cleaning equipment.
- Tends, cleans, adjusts and services furnaces, air conditioners, boilers and other building heating and cooling systems.

The following skills are required:

- Knowledge of machines and tools, including their designs, uses, repair, and maintenance.
- Knowledge of principles and processes for providing services.
- Knowledge of asbestos abatement rules and regulations.

Teaching Assistant

Perform duties that are instructional in nature or deliver direct services to students or parents. Serve in a position for which a teacher or another professional has ultimate responsibility for the design and implementation of educational programs and services.

Job responsibilities include:

- Presenting subject matter to students, using lecture, discussion, or supervised role-playing methods.
- Plans, prepares, and develops various teaching aids, such as bibliographies, charts, and graphs. Confers with parents on progress of students.
- Prepares, administers, and grades examinations.
- Discusses assigned teaching area with classroom teacher to coordinate instructional efforts.
- Helps with recording attendance.
- Helps students, individually or in groups with lesson assignments to present or reinforce learning concepts.
- Prepares lesson outline and plan in assigned area and submits outline to teacher for review.
- Supervises children inside and outside the classroom.

The following skills are preferred but not necessary:

- Knowledge of principles and methods for curriculum and training design, teaching and instruction for individuals and groups, and the measurement of training effects.
- Knowledge of the structure and content of the English language including the meaning and spelling of words, rules of composition, and grammar.
- Knowledge of arithmetic, algebra, geometry, calculus, statistics, and their applications.
- Knowledge of administrative and clerical procedures and systems such as word processing, managing files and records, stenography and transcription, designing forms, and other office procedures and terminology.
- Knowledge of human behavior and performance; individual differences in ability, personality, and interests; learning and motivation; psychological research methods; and the assessment and treatment of behavioral and affective disorders.

Elementary Teacher

Teach pupils at the elementary grade level basic academic, social, and other formative skills.

Job responsibilities include:

- Lectures, demonstrates, and uses audiovisual aids and computers to present academic, social, and motor skill subject matter to class.
- Teaches rules of conduct and maintains discipline and suitable learning environment in classroom and on playground.
- Develops lesson plans.
- Supervises students inside and outside classroom.

- Keeps attendance and grade records and prepares reports as required by school.
- Counsels pupils when adjustment and academic problems arise.
- Assigns lessons, corrects papers, and hears oral presentations.
- Teaches subject of expertise.
- Evaluates student performance and discusses pupil academic and behavioral attitudes and achievements with parents.
- Attends staff meetings, serves on committees, and attends workshops or in-service training activities.
- Prepares, administers, and corrects tests, and records results.
- Coordinates class field trips.
- Prepares course objectives and outline for course of study, following curriculum guidelines or requirements of state and school.
- Prepares bulletin boards.
- Participates in one extra-curricular after school activity.
- Takes responsibility for student achievement.

The following skills are required:

- Knowledge of principles and methods for curriculum and training design, teaching and instruction for individuals and groups, and the measurement of training effects.
- Knowledge of the structure and content of the English language including the meaning and spelling of words, rules of composition, and grammar.
- Knowledge of area of teaching and ability to communicate that knowledge in.
- Knowledge of human behavior and performance; individual differences in ability, personality, and interests; learning and motivation; psychological research methods; and the assessment and treatment of behavioral and affective disorders.
- Knowledge of principles and processes for providing customer (students/parents) service. This includes customer needs assessment, meeting quality standards, and evaluation of customer satisfaction.
- Knowledge of historical events and their causes, indicators, and effects on civilizations and cultures.
- Knowledge of different learning styles and ability to use that knowledge to better student achievement.

Middle School Teacher

Teach students in one or more subjects at the middle, intermediate, or junior high level, which falls between elementary and senior high school as defined by applicable State laws and regulations.

Job responsibilities include:

- Maintains discipline in classroom.
- Takes responsibility for student achievement.
- Evaluates, records, and reports student progress.
- Assigns lessons and corrects homework.
- Keeps attendance records.
- Confers with students, parents, and school counselors to resolve behavioral and academic problems.

- Uses audiovisual aids and other materials to supplement presentations.
- Prepares course outlines and objectives according to curriculum guidelines or state and local requirements.
- Develops and administers assessments.
- Performs advisory duties, such as sponsoring student organizations or clubs, helping students select courses, and counseling students with problems.
- Instructs students, using various teaching methods, such as lecture and demonstration.
- Participates in faculty and professional meetings, educational conferences, and teacher training workshops.
- Selects, stores, orders, issues, and inventories classroom equipment, materials, and supplies.
- Develop lesson plans.

The following skills are required:

- Knowledge of principles and methods for curriculum and training design, teaching and instruction for individuals and groups, and the measurement of training effects.
- Knowledge of the structure and content of the English language including the meaning and spelling of words, rules of composition, and grammar.
- Knowledge of arithmetic.
- Knowledge of area of teaching and ability to communicate that knowledge.
- Knowledge of human behavior and performance; individual differences in ability, personality, and interests; learning and motivation; different learning styles.

Secondary School Teacher

Instruct students in secondary charter schools in one or more subjects at the secondary level, such as English, mathematics, or social studies. May be designated according to subject matter specialty, such as typing instructors, commercial teachers, or English teachers.

Job responsibilities include:

- Maintains discipline in classroom.
- Evaluates, records, and reports student progress.
- Prepares lesson plans.
- Assigns lessons and corrects homework.
- Keeps attendance records.
- Confers with students, parents, and school counselors to resolve behavioral and academic problems.
- Uses audiovisual aids and other materials to supplement presentations.
- Prepares course outlines and objectives according to curriculum guidelines or state and local requirements.
- Develops and administers performance assessments.
- Performs advisory duties, such as sponsoring student organizations or clubs, helping students select courses, and counseling students with problems.
- Participates in faculty and professional meetings, educational conferences, and teacher training workshops.

- Selects, stores, orders, issues, and inventories classroom equipment, materials, and supplies.
- Instructs students, using various teaching methods, such as lecture and demonstration.

The following skills are required:

- Knowledge of principles and methods for curriculum and training design, teaching and instruction for individuals and groups, and the measurement of training effects.
- Knowledge of the structure and content of the English language including the meaning and spelling of words, rules of composition, and grammar.
- Knowledge of arithmetic, algebra, geometry, calculus, statistics, and their applications.
- Knowledge of human behavior and performance; individual differences in ability, personality, and interests; learning and motivation.

Special Education Instructor

Teach school subjects to educationally and physically handicapped students. Includes teachers who specialize and work with audibly and visually handicapped students and those who teach basic academic and life processes skills to the mentally impaired. The Special Education Instructor shall possess, or be in the process of possessing, a valid Colorado license.

Job responsibilities include:

- Meets with parents to provide support, guidance in using community resources, and skills in dealing with student's learning impairment.
- Works with students to increase motivation.
- Instructs students in academic subjects, utilizing various teaching techniques, such as phonetics, multi-sensory learning, and repetition, to reinforce learning.
- Administers and interprets results of ability and achievement tests.
- Confers with other staff members to plan programs designed to promote educational, physical, and social development of students.
- Teaches socially acceptable behavior, employing techniques such as behavior modification and positive reinforcement.
- Instructs students, using special educational strategies and techniques to improve sensory-motor and perceptual-motor development, memory, language, and cognition.
- Provides consistent reinforcement to learning, and continuous feedback to student.
- Participates in staffings.
- Confers with parents, administrators, testing specialists, social workers and others to develop individual educational plan for student.
- Plans curriculum and other instructional materials to meet student's needs, considering such factors as physical, emotional, and educational abilities.
- Instructs students in daily living skills required for independent maintenance and economic self- sufficiency, such as hygiene, safety, and food preparation.

- Observes, evaluates, and prepares reports on progress of students.
- Selects and teaches reading material and math problems related to everyday life of individual student.

The following skills are required:

- Knowledge of principles and methods for curriculum and training design, teaching and instruction for individuals and groups, and the measurement of training effects.
- Knowledge of human behavior and performance; individual differences in ability, personality, and interests; learning and motivation; psychological research methods; and the assessment and treatment of behavioral and affective disorders.
- Knowledge of principles, methods, and procedures for diagnosis, treatment, and rehabilitation of physical and mental dysfunctions, and for career counseling and guidance.
- Knowledge of the structure and content of the English language including the meaning and spelling of words, rules of composition, and grammar.
- Ability to use proven methods to help students increase achievement.

School Counselor

Counsel individuals and provide group educational and vocational guidance services.

Job responsibilities include:

- Addresses community groups and faculty members to explain counseling services.
- Establishes and maintains relationships with employers who may wish to hire or allow students to become an intern.
- Refers qualified counselees to employer or employment service for placement.
- Compiles and studies occupational, educational, and economic information to assist counselees in making and carrying out vocational and educational objectives.
- Conducts follow-up interviews with counselees and maintains case records.
- Plans and conducts orientation programs and group conferences to promote adjustment of individuals to new life experiences.
- Collects and evaluates information about counselees' abilities, interests, and personality characteristics, using records, tests, and interviews.
- Advises students to assist them in understanding and overcoming personal and social problems.
- Advises students to assist them in developing their educational and vocational objectives.

- Interprets program regulations or benefit requirements and assists counselees in obtaining needed supportive services.
- Teaches vocational and educational guidance classes.
- Conducts the Senior Seminar class.
- Communicates important issues concerning students with teachers and parents
- Helps administer CSAPs.
- Attends all faculty meetings.
- Collects student data as it applies to counseling.

The following skills are required:

- Knowledge of principles, methods, and procedures for diagnosis, treatment, and rehabilitation of physical and mental dysfunctions, and for career counseling and guidance.
- Knowledge of principles and methods for curriculum and training design, teaching and instruction for individuals and groups, and the measurement of training effects.
- Knowledge of human behavior and performance; individual differences in ability, personality, and interests; learning and motivation; psychological research methods; and the assessment and treatment of behavioral and affective disorders.
- Knowledge of the structure and content of the English language including the meaning and spelling of words, rules of composition, and grammar.

Coach

Instruct or coach groups or individuals in the fundamentals of sports. Demonstrate techniques and methods of participation. May evaluate athletes' strengths and weaknesses as possible recruits or to improve the athletes' technique to prepare them for competition. Those required to hold teaching degrees should be reported in the appropriate teaching category.

Job responsibilities include:

- Evaluates athletes' skills, and review performance records.
- Teaches good sportsmanship.
- Plans strategies and choose team members for individual games and/or sports seasons.
- Adjusts coaching techniques based on the strengths and weaknesses of athletes.
- Explains and enforce safety rules and regulations.
- Monitors athletes' use of equipment in order to ensure safe and proper use.
- Arranges and conduct sports-related activities such as training camps, skill-improvement courses, clinics, and/or pre-season try-outs.
- Selects, acquires, stores, and issues equipment and other materials as necessary.
- Explains and demonstrates the use of sports and training equipment.
- Serves as organizer, leader, instructor, or referee for outdoor and indoor games.

- Analyzes the strengths and weaknesses of opposing teams in order to develop game strategies.
- Keeps records of athlete, team, and opposing team performance.
- Performs activities that support a team or a specific sport.
- Develops and arranges competition schedules and programs.
- Keeps abreast of changing rules, techniques, technologies, and philosophies relevant to their sport.
- Plans and directs physical conditioning programs that will enable athletes to achieve maximum performance.
- Instructs individuals or groups in sports rules, game strategies, and performance principles such as specific ways of moving the body, hands, and/or feet in order to achieve desired results.
- Plans, organizes, and conducts practice sessions.
- Gives input on sports fund-raising events.

Education Administrators

Plan, direct, or coordinate the academic, clerical, or auxiliary activities of public elementary or secondary level schools.

Job responsibilities include:

- Coordinates outreach activities with businesses, communities, and other institutions or organizations to identify educational needs, and establish and coordinate programs.
- Reviews and approves new programs or recommends modifications to existing programs.
- Oversees curriculum choice and implementation.
- Counsels and provides guidance to students regarding personal, academic, or behavioral problems.
- Responsible for student/staff safety issues.
- Conducts regular staff evaluation with feedback to individual being evaluated.
- Prepares and submits budget requests or grant proposals to solicit program funding.
- Recruits, hires, trains and evaluates primary and supplemental staff and recommends personnel actions for programs and services.
- Confers with parents and staff to discuss educational activities, policies, and student behavioral or learning problems.
- Establishes program philosophy plans, policies, and academic codes of ethics to maintain educational standards for student placement and needs.
- Reviews and interprets government codes and develops programs to ensure facility safety, security, and maintenance.
- Determines allocations of funds for staff, supplies, materials, and equipment and authorizes purchases.
- Plans and coordinates consumer research and educational services to assist organizations in product development and marketing.
- Writes articles, manuals, and other publications and assists in the distribution of promotional literature.

- Completes, maintains, or assigns preparation of attendance, activity, planning, or personnel reports and records for officials and agencies.
- Organizes and directs committees of specialists, volunteers, and staff to provide technical and advisory assistance for programs.
- Collects and analyzes survey data, regulatory information, and demographic and employment trends to forecast enrollment patterns and curriculum changes.
- Plans, directs, and monitors instructional methods and content for educational, vocational, or student activity programs.
- Determines scope of educational program offerings and prepares drafts of course schedules and descriptions to estimate staffing and facility requirements.
- Evaluates programs to determine effectiveness, efficiency and utilization and to ensure activities comply with federal, state, and local regulations.
- Contacts and addresses commercial, community, or political groups to promote educational programs and services or lobby for legislative changes.
- Teaches classes or courses to students.
- Reports required information to the charter governing board.
- Makes sure that all state and federal regulations and requirements are being followed.
- Works with district superintendent to foster a mutually beneficial relationship.

The following skills are required:

- Knowledge of principles and methods for curriculum and training design, teaching and instructional methods for individuals and groups, and the measurement of training effects.
- Knowledge of the requirements and expectations of No Child Left Behind and Colorado's educational standards.
- Knowledge of business and management principles involved in strategic planning, resource allocation, human resources modeling, leadership technique, production methods, and coordination of people and resources.
- Knowledge of the structure and content of the English language including the meaning and spelling of words, rules of composition, and grammar.
- Knowledge of principles and procedures for personnel recruitment, selection, training, compensation and benefits, labor relations and negotiation, and personnel information systems.

School Finance Manager

Direct, coordinate, monitor and report on financial activities.

Job responsibilities include:

- Analyzes and classifies risks as to frequency and financial impact of risk on school.
- Prepares financial and regulatory reports required by law, regulations, and board of directors.
- Prepares operational and risk reports for management analysis.

- Directs and coordinates activities to implement institution policies, procedures, and practices concerning granting or extending lines of credit and loans.
- Directs insurance negotiations, selects insurance brokers and carriers, and places insurance.
- Writes grants.
- Evaluates data pertaining to costs to plan budget.
- Evaluates effectiveness of current policies and procedures.
- Reports financials to Board of Directors at each meeting.
- Attends each board meeting.
- Works with outside auditors.
- Responsible for petty cash and credit cards.
- Analyzes expenditures and revenue.
- Responsible for purchase orders and purchases.

The following skills are required:

- Knowledge of economic and accounting principles and practices, the financial markets, banking and the analysis and reporting of financial data.
- Knowledge of business and management principles involved in strategic planning, resource allocation, human resources modeling, leadership technique, production methods, and coordination of people and resources.
- Knowledge of financial mathematics and its applications.
- Knowledge of laws, legal codes, court procedures, precedents, government regulations, executive orders, agency rules, and the democratic political process.

Determining the Hiring Timeline

Before posting and advertising a school defined open position a school should first establish a hiring timeline and checklist. This should include the following elements:

1. First date for advertising and posting
2. Last date for accepting applications
3. Contact person who will accept applications and most acceptable form of applying- phone, fax, email, postal.
4. Person or team responsible for reviewing applications
5. First date for interviews
6. Person or team responsible for interviewing
7. Final date for first interviews
8. Deadline for checking references, licensure, etc.
9. Initial and final date for second interviews
10. Deadline date for making offer
11. Date for pre-employment processing by HR department
12. First date of active employment

Posting Job Openings and Advertising Positions

To assure equal opportunity for open positions and eliminate any concerns of discrimination, it is important the job opportunities be posted in a central area in a school. A failure to post and/or advertise open positions can lead to criticism that there was not a fair and consistent effort to find the best person for a specific position.

The job posting and advertising should include a summary of the job description including the key elements of job title, essential functions, required experience and/or education and a description of primary job duties. The job posting should also specify where resumes and/or applications should be forwarded and indicate a closing date for accepting applications if a specific deadline for the interviewing and hiring process has been established.

Any and all job advertising or posting should include the terms **"Equal Opportunity Employer"** to reiterate that a school is non-discriminatory and follows the guidelines established by EEOC.

Advertising for teachers can take many forms. Free online posting of positions open can be made at the following websites:

- Colorado Department of Education – www.teachincolorado.org
- Colorado League of Charter Schools – www.coloradoleague.org
- www.thereview.com/
- www.educatorjobs.com
- www.teacherjobs.com
- www.k12jobs.com
- www.teaching-jobs.org
- www.teachers.net/jobs
- www.academploy.com
- www.teachers-teachers.com
- www.jobs.edufind.com

- www.educationjobs.com
- www.recruitingteachers.org

Additional advertising opportunities include local and regional newspapers. When placing any job advertising a school should always ask about availability of discount prices for school employment ads or employment ads for non-profit organizations.

Key position recruiting

Effective recruiting is an essential part of any effective hiring program. Recruiting for employees is the proactive effort to seek out potential employees as opposed to having them find a school as the result of a job posting or advertisement.

In the cases of specialized positions such as administration, health officials, special education, finance, counseling and technology recruiting can be accomplished through networking and participation in professional groups that represent individuals in these career areas. Colleges and universities that offer advanced degrees in these areas can also be fertile ground for seeking out individuals with specialized training and skills.

Teacher job fairs

In the case of teachers, teacher job fairs have proven very rewarding for many charter schools.

Links to Educator Recruitment Fair Information

Greater Denver Teacher Fair
http://www.colorado.edu/careerservices/specialevents/fairteacher.html

CSU Education Fair
http://career.stuser.colostate.edu

Fort Lewis College
http://cso.fortlewis.edu/teacherfairhome.htm

Mesa State College
http://www.mesastate.edu/

University of Northern Colorado
http://www.unco.edu/careers/ted.htm

University of Southern Colorado
http://www.uscolo.edu/publicevents/ViewEvent.asp?EventID=3932&BookID=14399

Urban League of Denver
http://www.denverurbanleague.org/JOB%20FAIR.HTM

Project Promise
http://promise.cahs.colostate.edu/

University of Colorado teacher fair
http://www.colorado.edu/careerservices/specialevents/fairteacher.html

U. of Montana Educators' Career Fair
http://www.umt.edu/career/fairs.htm

U. of Wyoming Teacher Fair
www.uwyo.edu/cacs

When participating in a teacher job fair it is important to have the following information available which will attract interest in a school and also provide key information for potential candidates as they engage in the application, interview and selection process.

Make certain a school information kit includes:

- A checklist of the number and types of positions open with brief job descriptions
- Description of a school educational program and its strengths. This should also include quotes from some of the school's best educators about why they enjoy being part of you school's program.
- Key contact names, addresses, phone numbers, fax numbers, emails
- Application forms which can be filled out and turned in for later reference
- Business cards and brochures

It is also effective when possible to have key staff representatives in addition to a school lead administrator, present at the job fairs. Some schools have had parents and board members participate in this process.

Final Checklist before Planning the Interview

Paperwork prior to the interview must be kept on file

Prior to any interview, a prospective employee should fill out an application for employment. The school should maintain this application and any related employment inquiries or documents from a prospective employee, regardless of whether or not the employee is hired, for a period of three years. A failure to maintain these records can result in future problems with the EEOC if there is reason to believe that employment discrimination has taken place.

It is also prudent to keep interview notes with this paperwork.

Only the HR manager and/or the supervisor for a specific position must keep these files, like all human resource files, confidential and open to review.

Files for employment candidates for open positions should be maintained in an active file and not placed in an archive file until a candidate has accepted employment for the open position.

Setting Up A School Personnel Filing System

Pre-employment requirements

Written Job Descriptions should be prepared for every employee in the school

Application, Interview Stage

Job Application	Signed and dated
Resume, Letter of application, references	These must be retained in files for 3 years, regardless of whether or not the person is hired
Interview notes	
Offer of position letter from school	

Initial employment stage – Must be done prior to starting to work

At-will agreement	Signed and dated by supervisor, employee and board
Background check, fingerprint waiver form	
Fingerprints	Can be obtained through local law enforcement
Background report from CBI	Usually takes 4-6 weeks
Drug Screening, if required	
Acknowledgement of receipt of handbook	Signed and dated
	Signed and dated
Drug Free School policy	
EEOC policy	Signed and dated
Sexual harassment	Signed and dated
Drug free workplace policy	Signed and dated
ADA requirements	Signed and dated
Computer and internet usage policy	Signed and dated
Mandatory reporting of sex abuse, physical abuse	Signed and dated

Educational requirements

Teacher license (if applicable)	
Degree	
College transcripts	
School vehicle authorization (if applicable)	Drivers license & proof of insurance

Payroll & Benefits

W-2	
I-9	Social security card and photo id copied
PERA packet	
Life insurance	
Health insurance application	
Disability insurance	
Section 125- Cafeteria plan if applicable	
Dental insurance	
Optical insurance	
COBRA notice	
401 K	
Other benefits	
FMLA	
USSERA	
Workmen's Compensation	

Miscellaneous records to be maintained

Health Records	
Employee Reviews	
Emergency contacts	two with name, address, relationship, phone, email

Forms for HR department

Personnel folder inclusions new employee checklist

Pre-employment

- Employment application
- Job description - signed
- I-9 forms and relevant proof of ID
- Drug test request forms
- Interview comments form
- Reference check form

Point of hiring requirements

- At-will agreements
- Qualified teacher notification
- CBI fingerprint and background waiver forms
- Proof of licensure
- Proof of certification
- College transcripts

Hiring form requirements

- Payroll authorization/payroll change form
- W-4

Benefit forms

- Health insurance application
- Life insurance application
- 401-K or 403-B application
- Automatic payroll deposit form
- Health insurance provider directory
- PERA forms & booklets

Hiring signed notifications

- HIPPA notice
- EEOC notice
- FMLA notice
- ADA notice
- Sexual harassment notice
- Drug free workplace notice
- Suspected child abuse reporting notice
- Termination policies

Supplemental forms

- Employee disciplinary notice
- COBRA notification form
- Excused absence form

- FMLA leave form
- Vacation request form
- Job posting form
- Attendance records
- Vehicle usage approval form
- Credit card usage approval
- Termination notice

Claim forms

- Workers Comp claim forms
- Cafeteria plan reimbursement form
- Medical claim forms
- Dental claim forms
- Prescription claim forms

Time cards (may not be required)
Employee handbooks
Required posters
Student handbooks
Board policy book

Links

Primary Information Sites

Colorado Dept. of Labor – http://www.coworkforce.com/
Colorado Unemployment – http://www.coworkforce.com/UIB/
U.S. Department of Labor- http://www.dol.gov
US Department of Labor – Labor compliance tools and E-Law advisor program
http://www.dol.gov/dol/compliance/compliance-comptools.htm
Department of Labor First Step Law Advisor – http://www.dol.gov/elaws/FirstStep
U.S. Dept. of Labor – HR Advisor – http://www.dol.gov/elaws/aud_hr.asp
Equal Employment Opportunity Commission (EEOC) – http://www.eeoc.gov/

Other helpful links

Americans with Disabilities Act (ADA) – http://www.eeoc.gov/policy/ada.html
Age Discrimination in Employment Act (ADEA) –
http://www.eeoc.gov/policy/adea.html
Colorado Bureau of Investigations – http://cbi.state.co.us/
Colorado Labor Standards – Wages – http://www.coworkforce.com/LAB/
Colorado Unemployment Employer Handbook –
http://www.coworkforce.com/UIT/EmployersHandbook/default.asp
Colorado Workers Compensation – http://www.coworkforce.com/DWC/
EEOC compliance manual – http://www.eeoc.gov/policy/compliance.html
EEOC and small business links, Q&A page –
http://www.eeoc.gov/employers/overview.html
Family Medical Leave Act (FMLA) – main site –
http://www.dol.gov/dol/compliance/comp-fmla.htm
FMLA compliance guide – http://www.dol.gov/esa/regs/compliance/whd/1421.htm
FMLA fact sheet – http://www.dol.gov/esa/regs/compliance/whd/whdfs28.htm
Fair Labor Standards Act (FLSA) and compliance issues –
http://www.dol.gov/dol/compliance/compliance-majorlaw.htm
FLSA Federal wage and hour rules –
http://www.dol.gov/dol/compliance/compliance-majorlaw.htm#wagesworkhours
Federal Drug Free Workplace advisor – http://www.dol.gov/elaws/drugfree.htm
Harassment rules – http://www.eeoc.gov/types/sexual_harassment.html
HIPAA advice – http://www.dol.gov/ebsa/publications/top15tips.html
I-9 form and guidance – http://uscis.gov/graphics/formsfee/forms/i-9.htm
OSHA workplace safety poster – http://www.osha.gov/Publications/poster.html
Posters for workplace – Federal – http://www.dol.gov/elaws/posters.htm
U.S. Citizenship & Immigration services – http://uscis.gov
U.S. Department of Labor federal forms –
http://www.dol.gov/libraryforms/FormsByAgency.asp
U.S. employment law guide – http://www.dol.gov/asp/programs/guide.htm

Chapter Two – Interviewing, Reference and Background Checking and Hiring the New Employee

The Art and Science of Interviewing

A wise, experienced personnel manager once advised that the very best employment interviewer usually made good hiring decisions 2/3 of the time. He added that the very worst interviewers usually made good decisions 1/3 of the time.

In order to make good hiring selections a school must take time, gather as much information as possible and try to avoid employers' greatest mistakes.

Do not hire a person to fill a job. Hire the best possible person to successfully become a part of your school's team AND fill the position needed.

Charter school managers often report that experience and skills are not nearly as important for successful team members as are teamwork and passion for the program you offer. Remember, it is relatively easy to teach skills to an employee. It is nearly impossible to teach desire, compassion, work ethic, integrity or communication.

Therefore, make certain that your interview questions are in-depth and revealing enough to evoke true information – not just responses that the interviewee believes you may want to hear.

The best indicator of future success is past behavior and resulting actions. Avoid hypothetical questions.

Try to avoid asking hypothetical questions. These "what if" questions open the door for conjecture and often lead the interviewee to answer in a manner they anticipate will meet your favor.

The best types of questions are definitive with actual examples of past behaviors and outcomes. When asking these questions, push the candidate to respond with actual, detailed examples.

Don't ask: "What do you think are the key elements of a good lesson plan?"

Instead, ask: "Can you show me a lesson plan you have used in the classroom? What worked about it? Based on the actual experience, what did you do to improve it?"

Don't ask: "What do you like about teaching?"

Instead, ask: "Give me an example of a recent time when you left the classroom and felt really positive about what you accomplished. What did you feel about the experience? Why?"

Don't ask: "What is the biggest challenge to success in the classroom?"

Instead, ask: "What do you feel is your greatest weakness as a teacher? Give an example from your past that makes you believe that. How have you offset this weakness?"

Remember **GSE (Get Specific Examples)** as responses for all questions. Don't accept theories, wishes, hopes or intentions. Nearly every candidate will agree on what they would like to do in a given situation – it's your job to discover what they've actually done in specific situations.

Here are some possible interview questions that focus on past behavior and resulting actions:

Sample Teacher Interview Questions

Teacher Relationships with Students

1. Give me an example of how you have dealt with a student who complains about a homework assignment.
2. Tell me about times when you helped students experience success.
3. How do you individualize instruction for students?
4. What procedures do you use to evaluate student progress besides using tests?
5. How have you challenged the slow learner and the advanced learner within the same class?
6. Describe step-by-step how you set behavioral standards at the beginning of the year?
7. How have you gotten students to do what you want them to do? Describe your system of classroom management.
8. Who should be responsible for the discipline in the school?
9. Give a specific example of a student disrupting your classroom; what steps did you take to solve this problem? Did this resolve it? What further steps did you take?
10. What is your attitude towards individual vs. total class punishment?
11. Compare negative and positive reinforcement and describe effects of each.
12. Describe an elementary child (junior high/senior high) at a grade level of your choosing – his personality, study habits or attitude toward learning and behavior characteristics.
13. Tell me about your classroom's physical appearance.
14. What mistakes have you made with students?

Teacher Relationships with Colleagues

1. Describe how you communicate with parents.
2. Describe one or more teachers you've preferred to work with. Why?
3. What in-school activities outside of the classroom have you enjoyed?
4. What quality or qualities do you have that would enhance our teaching staff?
5. Tell me about a co-worker you've had difficulty in dealing with. What happened? How did you resolve the situation?
6. What has your administrator done to help you? Give me an example of when you didn't receive the support you expected. How did you deal with that?

Teacher Relationships with Parents

1. How have you communicated with parents in past situations? Describe how you have used this/these technique(s).
2. What have been your guiding reasons to contact parents?
3. Outline your Open House presentation to parents?
4. What community activities have you been associated with? Which of these was your favorite association and why?
5. Tell me some ways you have involved parents in your classroom.

Instructional Techniques

1. Describe any school experience you have had, particularly in student teaching (or in another teaching position) that has prepared you for a full-time position at our school.
2. How have you integrated technology into the curriculum you teach?
3. Describe any innovative projects you have been involved in developing and their outcomes.
4. Give an example of how you have used cooperative learning in your classroom.
5. What four words do students use to describe your teaching strategies?
6. What are your five primary rules for your classroom?
7. Describe your teaching style and give specific examples of how you accommodate the different learning styles of the students in your classes.
8. What do you consider to be your strengths and how have you used them in your teaching?
9. How do you teach reading?
10. What is your favorite subject to teach and why?
11. What is your least favorite subject to teach and why?
12. Give an example of how you help those who are performing below grade level.
13. How do you help those who are above level?
14. Describe a typical lesson in your classroom. What would I see you and your students doing?
15. What questions do you ask when planning lessons or units?
16. Give an example of how you differentiate instruction to meet various learning styles.
17. What assessments do you use, other than CSAP?
18. How do you feel about inclusion?
19. Teach me how to write.
20. What reading series have you used?
21. What are some of your favorite children's books?
22. Describe the language acquisition of a child.
23. How are you going to serve the needs of second language students?
24. How do you determine what your students' attitudes and feelings are about your class?
25. How do you decide what it is that should be taught in your class?
26. How do you determine each individual student's potential?

27. Do you like to teach with an overall plan in mind for the year, or would you rather teach interesting things and let the process determine the results? Explain your position.
28. Is it ever okay to force a student to learn something? Give me an example.
29. Tell me how you use standards in your curriculum.
30. How do you define an at-risk student?
31. What recent professional readings have you done?
32. Describe an ideal literary program.
33. How have you involved literacy in math?
34. How do you teach kids to read?
35. Define whole language instruction.
36. What do you understand the inquiry method to be in science or social sciences?
37. What does individualized teaching mean to you? Give an example of how you've implemented it.
38. Are there learning centers in your classroom? If so, what kind of learning centers do you have? How do the learning centers work in your classroom? (Do they rely on computers, independent study, group study, etc.?) Why do you use learning centers? What is your best recommendation to new teachers as to how they should go about creating their own learning centers? If you don't use learning centers, please explain why not.
39. Explain how you can tell students are learning. Evaluation techniques?
40. How have you individualized the learning process in your classroom?
41. Name some ways that a student in a group has shown you he has the concept.
42. In which curriculum area do you feel particularly strong?
43. What goals do you hope to achieve in your subject?
44. If you were asked to get in-service training in one area of the curriculum, which area would you choose?
45. What are the various ways for materials to be presented to students, such as in social science?
46. Describe what diagnostic and proscriptive learning means.
47. What four key components do you believe you must include in your lesson plan?
48. What two core teaching strategies do you most use to achieve this result?
49. Are children born with the ability to learn, or do you, the teacher, provide that?
50. What was your best lesson?
51. What was your worst lesson?
52. What was the last educational article you read?
53. Do you use thematic units? If so, why do you use thematic units? Please describe how you use thematic units in your classroom. What is an example of a recent thematic unit used in your classroom? If you don't use thematic units, please explain why not?
54. How do you organize math and science into yearly and daily schedules? Do you follow district curriculum guides and state frameworks? Why or why not?
55. What techniques do you administer in your classroom for teaching mathematics? (Open ended questions, schema, constructivism, etc.)
56. How do you keep enforcing student involvement?

57. Do you incorporate technology into your instruction? What's been more effective/less effective?
58. What manipulatives do you use? How effective are they?
59. How do you provide instruction for a culturally diverse classroom? What modifications are made?
60. Describe the developmental stages of a middle school student.
61. How do you define success in learning?
62. Name some educational theorists and describe how they influence your practice.
63. Tell me about curriculum development.

Respond to and define the following educational terms

1. Constructivism–Piaget
2. Cooperative learning
3. At-risk students
4. Assertive Discipline
5. Madeline Hunter
6. Grouping practices (tracking)
7. Schools of choice
8. CSAP
9. Ungraded/non-graded
10. Higher level thinking
11. Gifted education (Gifted and Talented program)
12. Authentic assessment
13. Whole language
14. Peer coaching
15. Parent involvement
16. National goals
17. Interdisciplinary curriculum
18. Portfolios
19. Developmental appropriateness
20. Learning styles
21. Special education (mainstreaming and inclusion)
22. Outcome-based education

Interview Questions — What to Avoid

Here are the basic "dos" and "don'ts" for collecting information about job applicants.

Topics to avoid

State and federal laws protect job applicants and employees against various forms of discrimination.

At the federal level, there are prohibitions on employment discrimination based on:

- race
- color
- religion
- sex
- national origin
- pregnancy
- age
- citizenship status
- disability
- military status
- union membership

State and local laws may protect characteristics such as sexual orientation, marital status, and even smoking habits. If application forms or interviewers ask questions that are not clearly job-related, or that tend to reveal an applicant's membership in any of these protected classes, you are risking a potential discrimination claim. You also may be leaving the impression that your organization is unprofessional.

Make certain all questions are related to an applicant's ability to perform the job and suitability for the position. In addition, you should analyze questions for their potential to "screen out" certain groups disproportionately and consider alternative questions, if necessary. According to the EEOC, a "screening out" question is allowable only if: (1) the information sought is necessary for the safe and efficient operation of the business; (2) the question effectively targets this information; and (3) there is no other less discriminatory way to obtain this information.

In particular, you should review application forms and interview questions to eliminate questions that indicate:

1. **Race and ethnic origin.** Questions about an applicant's race or ethnic origin should be excluded. Application forms should not request a photograph or inquire about physical attributes (such as color of eyes and hair). Do not ask for information about the social organizations or clubs to which the candidate belongs.
2. **National origin.** Do not try to determine whether a person is from another country by asking applicants to reveal their national origin or citizenship. However, you may require evidence of eligibility to work in the United States. Questions regarding the birthplace of an applicant's spouse or parents should be avoided, as should those about the origin of

the applicant's name. In addition, you should not request an applicant's Social Security number at this stage and should wait until after an offer is made (see below). In addition, unless English-language proficiency is a bona fide job requirement, do not rate a candidate on this skill.

3. **Disability.** The Americans with Disabilities Act (ADA) prohibits all pre-employment medical inquiries. So, don't ask questions about specific diseases or illnesses, the number of days the applicant was sick in the previous year, workers' compensation injuries or claims, mental health problems and history, past addiction to drugs or extent of past illegal drug use, and prescription drug use. However, you may inquire about the candidate's total number of absences in the previous year, as well as about current use of illegal drugs. Also, you may ask all applicants about their ability to perform the functions of the job.
4. **Gender.** Do not ask about a person's maiden name or gender; marital status; spouse; preference for "Miss," "Mrs.," or "Ms."; pregnancy; family plans; or childcare arrangements. You can ask if an applicant has ever been known by another name, in order to facilitate accurate background checks.
5. **Age.** Do not ask about age or date of birth. You are allowed to verify that the applicant is of legal age to work. Avoid asking for age-related information such as graduation dates, unless such information is necessary for the job and you intend to verify it.
6. **Religion.** Do not inquire about religious holidays observed. You may ask about the ability to work on weekends or holidays, if such availability is job-related. However, you may have to accommodate applicants whose religious observance conflicts with work schedules, if it is not an unreasonable burden to do so.
7. **Union membership.** Do not attempt to determine an applicant's current or intended union affiliation.
8. **Military status.** While you may ask about job-related military experience or training, you should not inquire about a candidate's military status or type of military discharge. In addition, you should not inquire about future military commitments (e.g., reserve status) that may require time off from work.
9. **Arrest or criminal record.** Asking about arrests (as opposed to convictions) is probably inappropriate, as it may lead to an inference of discrimination based upon race. Asking about convictions is not only appropriate, but for non-licensed employees Colorado law requires it.
10. **Financial status.** Do not ask about a candidate's financial status (unless job-related), past pay garnishments, or bankruptcy. You may, however, perform credit checks if you follow the Fair Credit Reporting Act regulations.
11. **Legal off-duty activities.** Do not inquire about smoking, drinking, or other legal activities that the applicant may engage in off-duty. More than half of the states protect smokers against employment discrimination based on smoking off-duty, and a growing number prohibit discrimination based on any lawful off-duty activity.

12. **Equal employment opportunity information.** Do not ask about prior equal opportunity claims, sexual orientation, or nonprofessional memberships, since these inquiries may indicate the applicant's protected class.

As a further precaution, it is also good practice to include an equal employment opportunity statement on your application that states you do not discriminate against applicants based on membership in a protected class. Some employers go a step further and specifically instruct applicants not to list any organizations or activities that may indicate they belong to a protected class.

Post-Offer Inquiries

There are situations where you may ask questions that could elicit information about protected class membership: (1) to conduct post-offer medical examinations; and (2) to complete necessary paperwork before employment begins.

1. **Post-offer medical inquiries.** The ADA allows you, after you make a job offer, to require medical examinations and make medical inquiries before a candidate begins work. These post-offer examinations and inquiries do not have to be job-related. However, all similarly situated candidates must be subject to the same requirements, and the ADA limits your ability to revoke a job offer based on any medical information revealed.
2. **Post-offer employment paperwork.** Many questions that are inappropriate at the screening stage become legitimate after an offer is made and need to be answered before employment begins. Examples of such necessary information include the Social Security number, date of birth, and work eligibility documents which may be needed to verify employment eligibility, process pay, or perform a background check.

Train Interviewers

Clearly, the application and interview screening process can be a legal minefield if not approached carefully. Even a question that appears to be neutral can reveal an applicant's protected class or be considered to screen out certain individuals improperly. For example, asking about the dates of graduation may be used to prove age bias, and questions about arrests or credit history are generally thought to have a disparate impact on minorities.

There is no single federal, state, or local agency or court that defines for all cases which interview questions are appropriate and which are inappropriate. Instead, a plethora of court rulings, legislative decisions, agency regulations, and constitutional laws combine to produce the often confusing and frequently changing list of what you may be asked and what should not be asked a job applicant.

How can you be sure that your list of questions passes legal muster in your locality? We recommend that you write out all interview questions in advance and have them checked by an attorney familiar with labor law at local, state, and federal levels.

Unfortunately, the simple reality is that an improper question can expose you to a discrimination claim. So, it's imperative that you carefully review applications and train all managers to avoid asking improper questions. Your questions should focus on past experience, relevant education, prior employment, and the job duties of the particular position. These precautions will help reduce your legal exposure while enhancing the professionalism of your screening process.

Questions to Ask and Not to Ask During the Interview

A particular question that elicits information regarding a person's protected status is not necessarily illegal in itself. It is discrimination based upon the protected status that is illegal. One might reasonably ask, therefore, "If my organization does not discriminate based upon the protected status, what is the harm in asking the question?"

The answer is that while you may know that you do not intend to use information regarding a person's membership in a protected class to discriminate, the job applicant may not be so certain. When an interviewer elicits information concerning an applicant's protected status (e.g., disability status), it could lead to an inference in the mind of the applicant that the interviewer intends to use that information. This inference is perfectly reasonable, because people do not usually ask for information for no purpose. If the applicant does not get the job, he or she might further conclude that the interviewer did in fact use the information regarding his or her membership in a protected group as a ground for unlawful discrimination.

Based upon this conclusion the applicant might file a claim of employment discrimination against your organization even though you might have had perfectly defensible and non-discriminatory reasons for your employment decision.

In summary, when an interviewer asks an inappropriate question s/he gains no useful information. Instead, s/he exposes the organization to potentially costly and protracted employment litigation. Hence, while asking a question that elicits information about an applicant's membership in a protected status is not necessarily illegal, it is certainly foolish.

Please review the following information and questions to help you to develop the appropriate interview questions.

Address

Appropriate:

- Applicant's address and length of residence in this city/state.

Inappropriate:

- Questions regarding foreign addresses which would indicate national origin.
- Whether applicant owns or rents home or lives in an apartment.
- Names and relationships of persons with whom applicant resides.

Age/Date of Birth

The Age Discrimination in Employment Act (29 U.S.C. 621-34) prohibits discrimination on the basis of age against individuals who are between the ages of 40 and 70, inclusive.

Appropriate:

- Questions as to whether or not applicant meets minimum/maximum age requirements.
- Do you meet the minimum age requirement set by law in our area?
- If hired, can you produce proof of your age?
- If the employee is a minor, can you provide proof of age in the form of a work permit or certificate of age?

Inappropriate:

- How old are you?
- When did you graduate from college?
- What is your birthday?

Arrests

Asking about arrests may lead to an inference of discrimination on the grounds of race, because racial minorities are arrested at a rate that is disproportionate to the population as a whole. Moreover, information concerning an arrest (as opposed to a conviction) is not relevant to a job qualification, because an arrest does not establish guilt for any crime. Accordingly, since the information has marginal utility and may lead to an untoward inference, it is probably best to avoid questions about arrests (as opposed to convictions).

Inappropriate:

- Have you ever been arrested?

Citizenship

Obviously, a non-citizen must be eligible to accept work and remain in the country. However, it is illegal to discriminate on the basis of national origin, including against an alien applicant with a current work authorization. Therefore, while it is illegal to discriminate on the grounds of citizenship, it is not inappropriate to ask questions about citizenship if the purpose of the questions is to elicit information regarding eligibility to work.

Appropriate:

- Are you a citizen of this country?
- If not a citizen, are you legally eligible to accept work and remain in this country?
- Statement that, if hired, applicant must furnish proof of citizenship or appropriate visa.
- After employment, can you provide verification of your legal right to work in the U.S.?
- Do you have language abilities other than English that may help in performing this job?
- After hiring, are you aware that a photograph may be required for identification?

Inappropriate:

- Whether other members of applicant's family are U.S. citizens.
- Of what country are you a citizen?
- Require proof of citizenship prior to employment.
- Where were your parents born?
- What is your "native tongue"?

Convictions (other than for traffic violations)

Colorado law requires all non-licensed school employees to certify whether they have been convicted of a crime (other than minor traffic violations). Therefore, it is appropriate to obtain this information.

Appropriate:

- Have you ever been convicted of a crime?

Credit Record

Because minority persons are poorer on the average than whites, consideration of these factors may have an adverse impact on minorities and is probably inappropriate unless required by considerations of business necessity. See EEOC Decision 72-9427(1971), CCH Employment Practices Guide par. 6312.

Inappropriate:

- All questions regarding credit rating, charge accounts, garnishments, or other indebtedness.

Education

Appropriate:

- Schools attended.
- Degrees acquired.
- Transcripts, if required of all applicants for similar work.

Inappropriate:

- Questions regarding national, racial, or religious affiliation of schools attended.

Experience

Appropriate;

- Inquiries regarding previous work experience.
- Foreign countries visited.

Handicap/Disability

The Americans with Disabilities Act (ADA) prohibits discrimination against individuals with disabilities. All employers with 25 or more employees are covered. The ADA prohibits covered employers from discriminating against qualified disabled individuals in any aspect of employment, including hiring, promotion, dismissal, compensation, training, or any other term, condition, or privilege of employment.

Specific prohibitions include limiting, segregating, or classifying job applicants or employees in ways that adversely affect the opportunities or status of such individuals because of a disability; using standards or criteria that have the effect

of discriminating against the disabled; denying job benefits or opportunities to someone because of association or relationship with a disabled individual; not making reasonable accommodations; using employment tests or selection criteria that screen out the disabled and are not job-related; and failing to use tests that accurately measure job abilities rather than the impairment of a disabled individual.

Appropriate:

- If an applicant has an obvious disability, you may ask the applicant to explain how he or she would perform the tasks with or without reasonable accommodations.
- Will you be able to carry out in a safe manner all job assignments necessary for this position?

Inappropriate:

- Do you have any disabilities, physical defects, or on-the-job injuries?
- Do you have any disabilities?
- Please complete the following medical history.
- Have you had any recent or past illnesses or operations? If yes, list and give dates.
- What was the date of your last physical exam?
- How's your family's health?
- When did you lose your eyesight?

Height and weight

Some employers have imposed minimum height and weight requirements for employees, which are not related to the job to be performed, and which have the effect of excluding above-average percentages of women and members of certain nationality groups. Unless height or weight is directly related to the job requirement, these questions should not be asked.

Inappropriate:

- Questions regarding height and weight are inappropriate unless based on a bona fide occupational qualification (B.F.O.Q.), and such instances are rare.

In Case of Emergency

Appropriate:

- Names of persons to be notified in case of emergency.

Inappropriate:

- Names of relatives to be notified in case of emergency.

Maiden Name

This is not relevant to a person's ability to perform a job and could be used for discriminatory purposes. For example, a woman's maiden name may be used as an indication of her religion or national origin. This item also constitutes an inquiry into marital status that is discussed separately.

Appropriate:

- First, middle, last name.

- Use of any other names or nicknames for checking previous work experience or education.

Inappropriate:

- Requirements of prefix Mr., Miss, Ms., Mrs.
- Inquiries about names that would indicate national origin.
- Inquiries regarding names changed by marriage, divorce, court order, etc.

Marital Status

Some employers have refused to hire a married woman for certain jobs. Most airlines, for example, refused for many years to permit a married woman to be a flight attendant, though other employees could be married. This practice was held to violate Title VII of the Civil Rights Act of 1964 in *Sprogis v. United Airlines*, 444 F. 2nd 1194 (7th Cir. 1971), and par. 1604.4 (a) of the Commission's Guidelines on Discrimination Because of Sex. An employer may not refuse to hire a married woman because of the employer's beliefs concerning morality or family responsibility.

Appropriate:

- Whether applicant can meet specified work schedules.
- Whether applicant has any responsibilities that would interfere with proper attendance.
- Do you have responsibilities or commitments that will prevent you from meeting specified work schedules?
- Do you anticipate any absences from work on a regular basis? If so, please explain the circumstances.

Inappropriate:

- Whether applicant is married, single, divorced, separated, engaged, etc.
- Number and ages of dependent children.
- All questions related to pregnancy or methods of family planning.
- Questions regarding child care arrangements.
- Who do you live with?
- Do you plan to have a family? When?
- How many kids do you have?
- What are your childcare arrangements?

Medical Examination

Appropriate:

- Require medical examinations prior to employment only if required of all applicants and necessary to assess ability to perform job safely and effectively.

Military History

Appropriate:

- Experience/education in military services that would relate to the job applicant is seeking.

Inappropriate:

- Type of discharge.
- Military disciplinary record.

- If you've been in the military, were you honorably discharged?

Organization
Appropriate:
- Names of professional organizations to which applicant belongs.
- Offices held in professional organizations.

Inappropriate:
- "List all clubs or organizations to which you belong."
- Requesting other information about membership in organizations if this information would indicate race, religion, or national origin of applicant.

Photograph
Appropriate:
- May be required after hiring if necessary for business purposes.

Inappropriate:
- Requirement that applicant attach photo to application. State that attaching photo is optional.

Race
Inappropriate:
- Inquiry into color of eyes, hair.
- Questions regarding race.
- Other questions which would indicate race.

References
Appropriate:
- Names and addresses of persons willing to provide references for applicant.

Inappropriate:
- Require references from pastor, priest, rabbi, or other religious associates.

Religion/Available for Saturday and Sunday work

This question may serve to discourage applications from persons of certain religions, which prohibit their adherents from working on Saturday or Sunday. On the other hand, it may be necessary to know whether an applicant can work on these days. Section 701 (j) of Title VII, as amended in 1972, prohibits discrimination on the basis of religion and defines religion to include "all aspects of religious observance and practice, as well as belief, unless an employer demonstrated that it is unable to reasonably accommodate an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business." If this kind of question were asked, it would be desirable to indicate that a reasonable effort will be made to accommodate the religious needs of employees.

Appropriate:
- Questions regarding religious denomination or beliefs if based on bona fide occupational qualification (B.F.O.Q.) as in the case of ministers, teachers, or other employees of specific religious organizations.

- Questions regarding availability for work during specific time periods. (Reasonable accommodations must be made for employees whose religious practices interfere with work schedules.)

Inappropriate:

- Questions regarding religious beliefs if not based on B.F.O.Q.
- Questions such as "What religious holidays do you observe? (if asked prior to employment.)

Sex

Title VII prohibits discrimination in employment on the basis of sex except in the few instances in which sex may be a B.F.O.Q. reasonably necessary to the normal operation of the employer's business. There are virtually no jobs that can be performed by only one sex or the other.

Appropriate:

- We want you to know that both men and women are being considered equally for this position. As you understand the job requirements, are you aware of any circumstances or conditions that may prevent you from successfully performing the job?

Inappropriate:

- All questions regarding sex of the applicant unless based on B.F.O.Q., which could occur in cases such as men's locker room attendant, etc.

Most of this information was reprinted from U.S. Equal Employment Opportunity Commission Guidelines for Title VII of the Civil Rights Act of 1964. Adapted with permission from Richard D. Howe, Director, Office of Equal Opportunity Programs, Appalachian State University, Boone, North Carolina.

Checking References before Making an Offer

Before employing any person, a Colorado public school shall conduct a reference check with previous employers pursuant to Section 22-32-109.7 (2), Colorado Revised Statutes.

Understand the limitations of information being provided by references

Although reference checking is an essential part of any hiring process, it's important to realize that there are fears of liability and other factors that limit the information the reference provider will offer. A good question to ask which will often result in a clear, unscreened response is, "Is (the candidate) eligible for rehiring with your school?"

When to check

Checking references is usually done at or near the end of the interview process. Too often it is not done well or thoroughly enough. When you have reached the stage in which you are close to making a decision on a candidate, ask him or her to supply up to five references, at least one reference from every job that he or she has held.

Who should check

If your school is large enough to have a professional human resources specialist, he or she should do the reference checking. In most situations, the Principal or his or her designee will probably need to check references. By the final stage, you, the hiring manager, should call at least one reference if you are the direct supervisor. Reference checking should not be done in writing because you will get little in the way of verification.

References by phone

When calling a reference, establish rapport, and get him or her to feel comfortable. Assure them that everything will be held in the strictest confidence and that you want to make certain you are doing right by the candidate and the school.

Requirements for Background Screening through CDE

Before employing <u>any person</u>, a Colorado public school shall conduct a background inquiry with the Colorado Department of Education pursuant to Section 22-32-109.7(1), Colorado Revised Statutes.

Please know that the information CDE provides to a public school in response to its inquiry is considered confidential and that penalties exist for unauthorized disclosure and inappropriate use of this information.

To make a required background inquiry to CDE, a public school may use a computer or telephone.

<u>Computer inquiry</u>

Public school hiring officials are encouraged to contact the Colorado Department of Education educator-licensing database via remote terminal to conduct required pre-employment background inquiries. Background and licensure information is available by entering an applicant's social security number in the appropriate blank on the "Licensure Information Screen." (Please note that an inquiry cannot be made using an applicant's name.)

When the message "Background Check: Cleared" appears on the information screen for a particular applicant, it means CDE has no adverse information concerning the applicant that meets the dissemination criteria provided in Section 22-2-119, Colorado Revised Statutes. If the message "Background Check: Call CDE (866-6966)" appears on the information screen, the inquiring public school official should contact the licensing unit via telephone prior to proceeding with the hiring of the applicant. If the response to an inquiry is "No records were selected," it means CDE has no information in the database filed under the social security number input for the applicant. In such an instance, the inquiring public school may consider an applicant for a position not requiring a Colorado educator license or authorization to have a "cleared" background check status and proceed with the hiring process.

Assistance in accessing the educator-licensing database and obtaining operating instructions, technical specifications and the necessary password is available by calling the CDE Help Desk at (303) 866-6833.

Telephone inquiry

In those public schools without terminal access to the educator-licensing database, hiring officials must call the licensing unit at (303) 866-6966 to obtain background information on an applicant. (Please note that such an inquiry should be performed for the finalist(s) for a position, not for all those who applied for a position.) When calling for background information, the hiring official must leave a message stating the applicant's name, social security number and date of birth, as well as the hiring official's name, name of school and school district and telephone number. A licensing unit staff member will retrieve the message, access the educator-licensing database and contact the hiring official with information regarding the applicant.

Required Criminal History Disclosure

Each person applying to a Colorado public school for a position of employment for which a license or authorization issued by CDE is not required and who is selected for such position of employment by the school shall submit to the school a notarized, completed form as follows.

On a form provided by the school, a selected applicant shall certify, under penalty of perjury, either:

a) That he/she has never been convicted of committing any felony or misdemeanor; but not including any misdemeanor traffic offense or traffic infraction; or
b) That he/she has been convicted of committing any felony or misdemeanor; but not including any misdemeanor traffic offense or traffic infraction. Such certification shall specify such felony or misdemeanor for which convicted, the date of such conviction, and the court entering the judgment of conviction.

(See Sections 22-32-109.8(1) and (2), C.R.S.)

A person who is enrolled as a student in the school and who is applying for a non-licensed position there does not have to submit a notarized, completed form concerning criminal history. (See Section 22-32-109.8(10), C.R.S.)

Required Fingerprint-Based Criminal History Record Checks

Each person applying to a Colorado public school for a position of employment for which a license or authorization issued by CDE is not required and who is selected for such position of employment by the school shall submit a complete set of his/her fingerprints taken by a qualified law enforcement agency or authorized employee of the school. (See Section 22-32-109.8(1), C.R.S.)

A person who is enrolled as a student in the school and who is applying for a non-licensed position there does not have to submit a complete set of his/her fingerprints. (See Section 22-32-109.8(10), C.R.S.)

Conducting fingerprint-based criminal history record checks

A public school may obtain blank fingerprint cards from the State Forms Center at (303) 370-2165.

Print on each fingerprint card the school's CBI account number and the reason for fingerprinting in the designated areas. The reason for fingerprinting must include the applicable Colorado Revised Statute number (e.g., School Employee, Section 22-32-109.8, C.R.S.)

Provide the applicant with a blank fingerprint card and instructions for properly completing the card.

Inform the applicant that the completed fingerprint card will be submitted to the CBI for the purpose of conducting a state and national fingerprint-based criminal history record check using the records of the CBI and FBI.

Direct the applicant to have his/her fingerprints taken by a qualified law enforcement agency or authorized school employee and return the completed fingerprint card to the school.

Submit the completed fingerprint card to CBI for processing through the Colorado and Federal Bureaus of Investigation.

To set up an account with CBI, contact the CBI Identification Unit at (303) 239-4300.

Mail completed fingerprint cards to:

Colorado Bureau of Investigation
Attn: Identification Unit
690 Kipling Street
Denver, CO 80215

Background Check Notification Prior to Making an Offer

Due to the Colorado law requiring fingerprinting and criminal background checks for all school employees, it is important to notify any interviewee of this requirement and a drug-screening requirement if applicable.

It is recommended that no person be allowed to start employment until the necessary background checks are complete. Generally, you should allow 4-6 weeks for this process. Background checks are done through the Colorado Bureau of Investigation (CBI). For more information, contact the teacher licensure unit at the Colorado Department of Education at 303-866-6628.

****WARNING** Conducting a name and date-of-birth-based search criminal history record check as described in the following paragraphs is optional and does not meet the requirements for a fingerprint-based criminal history background check indicated in Section 22-32-109.8, C.R.S.**

Colorado Statutes Regarding Fingerprints and Background Checks for Convictions

22-32-109.8. Applicants selected for non-licensed positions – submittal of form and fingerprints – prohibition against employing persons failing to comply.

(1) Except as otherwise provided in paragraph (a) of subsection (10) of this section, any person applying to any school district for any position of employment for which a license issued pursuant to article 60.5 of this title is not required and who is selected for such position of employment by such school district shall submit a complete set of fingerprints of such applicant taken by a qualified law enforcement agency or authorized employee of such school district and a notarized, completed form as specified in subsection (2) of this section. Said fingerprints and form shall be submitted to the school district at the time requested by such school district.

(2) On a form provided by the school district, a selected applicant shall certify, under penalty of perjury, either:
   a) That he has never been convicted of committing any felony or misdemeanor; but not including any misdemeanor traffic offense or traffic infraction; or
   b) That he has been convicted of committing any felony or misdemeanor; but not including any misdemeanor traffic offense or traffic infraction. Such certification shall specify such felony or misdemeanor for which convicted, the date of such conviction, and the court entering the judgment of conviction.

(3) In addition to any other requirements established by law, the submittal of fingerprints and the form pursuant to subsection (1) of this section shall be a prerequisite to the employment of any person in a non-certificated position in you district, and no person shall be so employed who has not complied with the provisions of subsection (1) of this section.

(4) Any school district to which fingerprints are submitted pursuant to subsection (1) of this section shall forward such fingerprints to the Colorado Bureau of Investigation for the purpose of conducting a state and national fingerprint-based criminal history record check utilizing the records of the Colorado Bureau of Investigation and the Federal Bureau of Investigation.

(5) A school district may employ any person in a non-certificated position in such school district prior to receiving the results regarding such selected applicant's fingerprints; however, the school district may terminate the employment of such person if the results are inconsistent with the information provided by the person in the form submitted pursuant to subsection (1) of this section. The school district shall notify the proper district attorney of such inconsistent results for purposes of action or possible prosecution.

(6)
   a) When any school district finds good cause to believe that any non-licensed personnel employed by such school district has been convicted of any felony or misdemeanor other than a misdemeanor traffic offense or traffic infraction subsequent to such employment, such school district shall require such person to submit to the school district a complete set of his or her fingerprints taken by a qualified law enforcement agency. Said fingerprints shall be submitted within twenty days of receipt of written notification from the school district. The school district shall forward the fingerprints of such person to the Colorado Bureau of Investigation for the purpose of conducting a state and national fingerprint-based criminal history record check utilizing the records of the Colorado Bureau of Investigation and the Federal Bureau of Investigation.

b) School districts shall not charge non-certificated personnel any fees for the direct and indirect costs of such school district for fingerprint processing performed pursuant to the provisions of this subsection (6).

(7) For purposes of this section, a person is deemed to be convicted of committing a felony or misdemeanor if such person has been convicted under the laws of any other state, the United States, or any territory subject to the jurisdiction of the United States of an unlawful act which, if committed within this state, would be a felony or misdemeanor.

(8) For purposes of this section:

a) "Convicted" means a conviction by a jury or by a court and shall also include the forfeiture of any bail, bond, or other security deposited to secure appearance by a person charged with a felony or misdemeanor, the payment of a fine, a plea of nolo contendere, and the imposition of a deferred or suspended sentence by the court.

b) "Position of employment" means any job or position in which any person may be engaged in the service of a school district for salary or hourly wages, whether full time or part time and whether temporary or permanent.

(9) All costs arising from the taking of fingerprints and from any fingerprint processing performed by the Colorado Bureau of Investigation pursuant to the provisions of this section shall be borne by school districts. Except as otherwise provided in paragraph (b) of subsection (6) of this section, school districts may charge such selected applicants a nonrefundable fee in an amount equal to the direct and indirect costs of such school district for the administration of this section. Said fees shall be credited to the fingerprint processing account and shall be used for the purposes set forth in this section and may not be expended by the school district for any other purpose; however, said fees shall not be used for the purposes set forth in subsection (6) of this section. Any moneys in said account that are not expended during a budget year shall be carried forward and budgeted for the purposes set forth in this section in the next budget year. Such fee may be paid by the selected applicant over a period of sixty days after employment.

(10)

a) The provisions of this section shall not apply to any person who is enrolled as a student in any school district and who is applying to the same school district in which such student is enrolled for a position of employment for which a license issued pursuant to article 60.5 of this title is not required.

b) (Deleted by amendment, L. 2002, p. 974, § 9, effective June 1, 2002.)

Source: L. 90: Entire section added, p. 1113, § 3, effective June 7. L. 92: (1), IP(2), (5), (8), and (9) amended and (10) added, p. 517, § 1, effective July 1. L. 93: (10) amended, p. 71, § 1, effective March 26. L. 2000: (1) and (10)(a) amended, p. 1856, § 57, effective August 2. L. 2002: (1), (4), (6)(a), and (10) amended, p. 974, § 9, effective June 1.

22-32-109.9. Licensed personnel – submittal of fingerprints.

(1)

a) When any school district finds good cause to believe that any licensed personnel employed by such school district has been convicted of any felony or misdemeanor, other than a misdemeanor traffic offense or traffic infraction, subsequent to such employment, such school district shall require such person to submit a complete set of his or her fingerprints taken by a qualified law enforcement agency. Said fingerprints shall be submitted within twenty days of receipt of written notification from the school district.

b) For purposes of this subsection (1), a person is deemed to be convicted of

committing a felony or misdemeanor if such person has been convicted under the laws of any other state, the United States, or any territory subject to the jurisdiction of the United States of an unlawful act which, if committed within this state, would be a felony or misdemeanor.

c) For purposes of this subsection (1), "convicted" means a conviction by a jury or by a court and shall also include the forfeiture of any bail, bond, or other security deposited to secure appearance by a person charged with a felony or misdemeanor, the payment of a fine, a plea of nolo contendere, and the imposition of a deferred or suspended sentence by the court.

(2) Any school district to which fingerprints are submitted pursuant to subsection (1) of this section shall forward such fingerprints to the Colorado Bureau of Investigation for the purpose of conducting a state and national fingerprint-based criminal history record check utilizing the records of the Colorado Bureau of Investigation and the Federal Bureau of Investigation.

(3) All costs arising from the taking of fingerprints and from any fingerprint processing performed by the Colorado Bureau of Investigation pursuant to the provisions of subsection (1) of this section shall be borne by school districts. School districts shall not charge licensed personnel any fees for the direct and indirect costs of such school district for fingerprint processing performed pursuant to the provisions of subsection (1) of this section.

Source: L. 90: Entire section added, p. 1113, § 3, effective June 7. L. 93: (1)(a)(I) amended, p. 71, § 2,effective March 26. L. 2000: (1)(a) and (3) amended, p. 1856, § 58, effective August 2. L. 2002: (1)(a) and (2)amended, p. 975, § 10, effective June 1.

Requirements for Public School Notification to CDE

Colorado public schools are required by state statute and/or regulation to report to CDE a current or former public school employee's misconduct in the following circumstances.

1. Upon initial investigation of a report alleging abuse or neglect in which the suspected perpetrator was acting in his official capacity as an employee of a school district, if the county department [of social services] or the local law enforcement agency reasonably believes that an incident of abuse or neglect has occurred, it shall immediately notify the superintendent of the school district who shall consider such report to be confidential information; except that the superintendent shall notify the department of education of such investigation. (Section 19-3-308(5.7), Colorado Revised Statutes)
2. If an employee of a school district is dismissed or resigns as a result of an allegation of unlawful behavior involving a child, including unlawful sexual behavior, which is supported by a preponderance of the evidence, the board of education of such school district shall notify the department of education and provide any information requested by the department concerning the circumstances of the dismissal or resignation. The district shall also notify the employee that information concerning the employee's dismissal or resignation is being forwarded to the department of education unless such notice would conflict with the confidentiality requirements of the "Child Protection Act of 1987," part 3 of article 3 of title 19, C.R.S. (Section 22-32-109.7(3), C.R.S.)

3. Whenever a school district learns from a source other than the department of education that a current or past employee of the school district has been convicted of, pled nolo contendere to, or has received a deferred sentence or deferred prosecution for a felony or a misdemeanor crime involving unlawful sexual behavior or unlawful behavior involving children, the school district shall notify the department of education. (Section 22-32-109.7(3.5), C.R.S.)
4. The local board of education, charter school, board of cooperative services or its designee shall immediately notify the Department when any dismissal action or acceptance of resignation concerning a district, charter school or BOCES employee is based upon a violation resulting in a conviction, guilty plea, plea of nolo contendere or deferred sentence as set forth in Sections 15.00 (2) (d) – 15.00 (2) (h) and 15.00 (3) (a) – 15.00 (3) (c) of these Rules. The local board, charter school, BOCES or its designee shall provide any information requested by the Department concerning the circumstances of the employee's dismissal or resignation. (1 Colorado Code of Regulations 301-37, 22-60.5-R-15.05(1))
5. The local board of education, charter school, board of cooperative services or its designees shall notify the Department when the local board, charter school or BOCES reasonably believes that one of its employees is guilty of unethical behavior or professional incompetence as set forth in sections 15.01 and 15.02 of these Rules. The local board, charter school, BOCES or its designee shall provide any information requested by the Department concerning the employee's behavior or competence. (1 Colorado Code of Regulations 301-37, 22-60.5-R-15.05(4))

A public school making a required report should use the CDE Notification Form on the following page.

CONFIDENTIAL

Colorado Department of Education Notification Form

Colorado school districts are required to notify the Colorado Department of Education regarding current or former district employees in the circumstances listed on the back of this form. A district providing such notice to the department must complete this form and send it, along with any attachments, to: Colorado Department of Education, Educator Licensing Unit, 201 E. Colfax Ave., Room 105, Denver, CO 80203.

School district:

Name

Address

Person notifying:

Name Title Telephone No.

Subject of notice:

Name Social Security Number Date of Birth

Address

Title and Assignment in District

Date of Hire Date and Type of Disciplinary Action Date of Separation

Incident(s) precipitating notification (provide detailed information)**:**

Did the school district investigate? ☐ no ☐ yes*****

Did a social service agency investigate? ☐ no ☐ yes*****

Name of Agency

Did a law enforcement agency investigate? ☐ no ☐ yes*****

Name of Agency

Was a criminal charge filed? ☐ no ☐ yes*****

Name of Court *Case No.*

Signature of Person Notifying Date of Notice

* Attach a copy of the investigation report
5/03

The Job Offer and At-Will Hiring

Once the interviewing, background checking and internal hiring policy requirements are met, it is time to offer the candidate the position. It is important to review that these steps have been appropriately taken and are part of the candidate's file:

1. Candidate's application (formal application using a school application form)
2. Candidate's resume or other documents provided during the pre-offer process
3. Notes regarding the interview
4. Notice or signed confirmation that candidate has reviewed job description, understands responsibilities and agrees that he/she is capable of performing the tasks required with the job
5. Copies of all essential documents such as certificates, license, etc.
6. Signed waiver from candidate authorizing background check and fingerprinting
7. Notes from reference check process
8. Any other related documents which may affect job performance
9. If policy dictates, written approval for the job offer by appropriate supervisors and/or board of directors

Making the offer

The official offer should be general in describing:

- the name of the entity making the offer to employ
- the position offered
- the effective start date
- the rate of compensation
- a deadline to accept the offer
- a re-notification of mandatory employment requirements such as background checks, certification, drug testing, etc.
- a statement explaining that other details will be included in the at-will agreement (do not refer to this as a contract)

Use At-Will to Defend School Policies, Not as a Reason to Terminate

What "at-will" means

To use the at-will relationship most effectively, a school needs to understand what it means. Generally, employees who do not have contracts guaranteeing employment for a specific period of time (such as one year) are considered to be at-will employees. Under the at-will doctrine, employers have the right to terminate employees without these types of contracts at any time and for any legally permissible reason. Employees also have a similar right to resign whenever they want. In other words it is a legal concept that says both parties can terminate the relationship at any time.

However, an at-will statement does not really give employers free reign to terminate employees for no reason. There are two general reasons for this. First, Colorado has restricted the at-will doctrine in some limited contexts. For example, employees have claimed that their employer's policies were contracts which the employer breached, that their termination violated some public policy, that their termination violated a "whistleblower" statute or statutory anti-retaliation provision; or that the employer's action constituted a wrongful act (or, in legal jargon, a "tort").

The second reason is that many employees are specially protected under federal or state discrimination laws (e.g., race, gender). At-will employment status does not give the employer the right to engage in illegal employment discrimination.

The limitations on the at-will concept can sometimes be complicated. Therefore, if a school is unsure whether the at-will employment law applies in a particular situation, a school should consult an attorney.

What the at-will statement should include

Most courts will find an at-will relationship if the following criteria are met:

- The at-will statement is written in clear, understandable language, not legalese.
- It thoroughly explains what the at-will relationship means.
- It clearly states that no school representative may change the at-will relationship through oral or written promises.
- It explains that the organization's policies and practices are not intended to create a contract.
- It is prominently displayed, such as in bold type, a separate introductory policy, or set apart in other policies.
- It is repeated where appropriate in other policies, particularly those outlining work rules and disciplinary procedures.
- It is included in other employment documents, such as application forms and offer letters.

Sample At-Will Employment Agreements

This agreement is made and entered into effective the ____ day of July, 2003 by and between _____ ("School") and _____ (the "Employee"). This agreement is entered into in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration.

1.0 Nature/Term of the Employment Relationship.

1.1 This agreement shall commence as of July 1, 2003 and shall continue through June 30, 2004 unless otherwise terminated as provided herein.

1.2 The Employee recognizes that School may seek and receive waivers of certain laws, regulations, and policies that might otherwise prescribe the employment status or rights and is not subject to all laws governing employment of personnel by Colorado school districts.

1.3 Any provision herein to the contrary notwithstanding, employee and School agree that this employment contract is not a contract for employment for any minimum term. All employees at School are at-will employees. This means that either the employee or School may terminate the employment relationship at any time for any reason. Employee acknowledges and agrees that no representative or agent of School has any authority to modify the at-will status of the employment relationship unless such modification is in writing and specifically approved by the School board of directors.

1.4 While, as set forth above, the Employee has the right to terminate the employment relationship at any time, the Employee specifically acknowledges that it is her present intention to stay at School for at least _____.

2.0 Policies Not Incorporated. The Employee acknowledges receipt of the Employment Policies of School, which are in effect at the time this agreement is executed. The parties acknowledge that such policies are in no way contractual and may be amended or repealed by School in its sole and absolute discretion.

3.0 Professional Relationship. School is employing the Employee in a professional capacity. The professional duties of the Employee shall include involvement in the full life of the School community. School employees are invited and encouraged to be involved in the development of both the academic program and their future terms and conditions of employment. School expects that the Employee will make professional needs (including professional development needs or desires) known to it.

3.1 Certification. The Employee agrees to have or seek a master's degree or the appropriate Colorado license to perform the required job descriptions. The Employee shall document her progress toward this goal. School may, at its option, provide the Employee with financial assistance to help her meet this requirement.

3.2 Full-time and Administrative Position. This is a contract for a full-time administrative position at School. The Employee shall devote her attention to the functions of School at all times during the term of this contract. These services shall generally be performed in accordance with the dates and times prescribed in the school calendar as it may be amended from time to time, for up to 230 full days, both during the said school year and during School's summer break. Though it is not ordinarily contemplated that the Employee will perform services on weekends or legal holidays, it is intended that the Employee shall usually remain available on such days to meet administrative responsibilities. Employee's summer hours shall be: Every business day for the two weeks after the last day of school and prior to the first day of school and one day per week throughout the remaining weeks of the summer.

3.3 Reviews. The Employee shall receive formal performance reviews from time to time and at least annually. No right to continued employment is created by the provision of periodic evaluations of performance.

4.0 Compensation. Compensation for the administrative position is outlined as follows:

4.1 Salary. The Employee's salary rate shall be $45,000 per year. Deductions for retirement shall be made from this salary. Payments for the Employee's benefits, which include health, dental, and accidental death, shall be made in addition to this salary if the Employee elects these coverages.

4.2 Additional Compensation. The Employee will be entitled to additional compensation, as earned through development and awards of grant monies for School. Each grant will be negotiated separately with input from the School Board as well as the Employee.

4.3 Prior Hours Worked. Hours worked prior to the contract start date will be paid under a separate contract as an independent consultant. Compensation will be at $30 per hour, not to exceed $10,000. Taxes and benefits will not be paid from this compensation, but will be the responsibility of the Employee.

5.0 Non-discrimination. The Employee agrees to abide by the School non-discrimination policy, which is incorporated by reference as if restated in full herein. The Employee recognizes that this policy may give parents, students, and other employees, as well as herself, rights going beyond those otherwise guaranteed in law.

6.0 Entire Agreement. This agreement constitutes the entire agreement between the parties, and there are no other oral or written agreements, understandings, restrictions, warranties, or other representations between the parties relating to this subject matter other than those set forth. This agreement supersedes all prior agreements, understandings, discussions, or negotiations relating to this subject matter.

_____ _____

Employee Date

_____ _____

School Rep

Woodrow Wilson Academy
SAMPLE Teacher Employment Contract

THIS AGREEMENT ("Agreement") is made and entered into this_____day of_____, 2000 by and between Woodrow Wilson Academy (WWA) and_____("Teacher").

I. General

The principal of Woodrow Wilson Academy ("Principal") discussed the philosophy and curriculum focus of Woodrow Wilson Academy and the Teacher expressed his/her belief that he/she could embrace the philosophy and curriculum of Woodrow Wilson Academy without reservation. The Teacher further has read and understands the Academy's mission and vision statements and agrees to support them.

II. Areas of Responsibility

It is presumed by the Teacher and the Principal that the Teacher will teach at the grade level and in the subjects contemplated by the parties at the time of execution hereof. Notwithstanding the contemplation of the parties in this regard, during the term hereof Teacher agrees to teach any grade level, subject matter and combination of classes as may be required by the Principal in his/her sole and absolute discretion. Teacher understands that he/she might never teach in the areas originally contemplated.

III. Duties and Responsibilities

Unless otherwise terminated as provided here in, Teacher shall well and faithfully serve WWA in the position of teacher and shall devote his/her time, attention and energies to that position, including, but not limited to, the following:

Teacher shall work the _____ days indicated on the WWA training and school calendars, or such other number of days set forth on those calendars, as they may be amended from time to time. Such workdays include, without limitation, student contact days, parent-teacher conferences, and teacher pre-service, in-service and workdays.

Teacher shall attend assigned Parent/Teacher Organization ("PTO") meetings, faculty meetings, and training sessions. Absence from any of noted functions will require approval in advance, by the Principal. Teacher shall be thoroughly prepared for his/her teaching responsibilities, meetings and all other WWA functions as set forth herein as otherwise required in accordance with the staff handbook.

Teacher shall abide by and be subject to the guidelines and principles stated in the WWA staff handbook.

IV. Effective Dates

This Agreement is effective beginning _____ and shall be in effect until _____ ("Effective Period").

Notwithstanding the Effective Period of this Agreement, Teacher may be terminated by the Principal, in his/her sole and absolute discretion with or without cause. Teacher specifically acknowledges that he/she is an at-will employee and that there have been no promises of continued employment, from WWA or any of its agents or representatives.

The Board of Directors or the Teacher may terminate this Agreement at any time, with or without cause, for any reason or no reason.

V. Compensation

Teacher shall receive a base salary of $_____ per annum, payable in twelve monthly installments, subject however to termination before the end of the Effective Period in which event Teacher shall be paid only through his/her last date of work.

Teacher shall receive _____ paid sick days and _____ paid personal days per school year. The full amount of personal/sick days are provided at the start of each year's contract. Teacher may roll over up to 3 sick days per year with a maximum of 10 days per year. Unused days are not compensated for.

A flex benefit package for health, dental, vision and life insurance, up to $_____ per month will be provided to the Teacher by the Academy. The Teacher may purchase other benefits from the package at his/her own expense.

The Teacher shall receive such other and additional fringe benefits, if any, as may from time to time be made available by WWA.

VI. Additional Agreements

WWA and Teacher mutually agree:

a) That deductions authorized by law or policy shall be made by WWA from the monthly installments of the salary due the Teacher;
b) That this Agreement shall at all times be conditioned upon and subject to the requirements that at the time the Teacher enters into this Agreement, the Teacher shall hold a valid Colorado Teacher's Certification or letter of authorization issued in the manner prescribed by law, and that during the entire time the Teacher performs services pursuant of this Agreement that Teacher shall maintain a valid Colorado Teacher's Certificate or letter of authorization issues in the manner prescribed by law, or is actively pursuing Colorado certification with a certification date which is not later than three years after Teacher is initially employed by WWA; and upon failure of Teacher to meet any of these requirements, this Agreement, without further actions by either WWA or Teacher is automatically terminated;
c) That notwithstanding any specification or reference herein, this Agreement is subject to and includes all applicable laws of the federal and state governments and all duly adopted policies, rules and regulations of WWA as are in effect at any time during the term of this Agreement.
d) That this Agreement and WWA's obligations are conditioned upon the approval by WWA of all background checks of the Teacher.

e) That this Agreement and WWA's obligations are conditioned upon WWA actually being and remaining in operation for the term of the Agreement.
f) Except for teachers who are on leave from Jefferson County School District R-1, no employee of Woodrow Wilson Academy has employment or other rights with the school district.

VII. Complete Agreement

This Agreement contains the complete agreement between the parties concerning Teacher's employment at WWA, hereunder, and supersedes all other agreements (whether oral or written) between the parties with respect to the subject matter hereof.

Teacher acknowledges and represents that he/she has not relied upon any representation with respect to the subject matter of this Agreement except as set forth herein and that he/she has relied upon his/her own judgment in entering into this Agreement.

Teacher acknowledges and represents that he/she has not been induced to enter into this Agreement as a result of any representations by WWA, its agents or representatives, regarding the availability of additional employment opportunities at WWA.

VIII. Representations

WWA and the Principal have relied upon Teacher's representations made in the Teacher's employment application and interview(s) with regard to the Teacher's education and work experience, in offering Teacher employment at WWA. Teacher's representations to WWA are a material factor in its entering into this Agreement.

Teacher

_____ Date:_____
(Teacher Name - printed)
(Address)

_____
(Teacher Name – Signed)

WOODROW WILSON ACADEMY

_____ Date:_____
(President, Woodrow Wilson Academy)
_____ Date:_____
(Principal, Woodrow Wilson Academy)

First Day of Employment Checklist

It is essential that any new employment is a mutually beneficial opportunity. Therefore it is essential that thorough detailed communications between employer and employee begin immediately. Below is a sample "New Hire" checklist that can be modified for your school.

The most important factor here is that **all** necessary communication takes place and all necessary records are in place **before** the new employee starts in their new role.

New Employee
First Day Orientation Checklist
Full-time Employees

Employee's name _____

Employment date _____

Job Title _____

Items to review/discuss

- Obtain verification of identity and employment eligibility (I-9 form) – retain in local office separate from personnel file.
- Name by which employee wishes to be addressed_____
- Photo and biography for newsletter, news release
- Personal appearance and dress (local policy)
- Explain benefit enrollment process; give Benefits communication booklet. (Complete beneficiary forms for life, accidental death and business travel accident insurance.)
- Explain retirement plan and show or schedule Retirement Plus videotape—complete enrollment/beneficiary forms
- Explain vacation, holidays, sick leave, birthdays and other paid time off
- Explain Tuition Reimbursement policy
- Explain Employee Assistance Program and give toll-free number
- Explain job posting policy
- Advise employee of Family Medical Leave policy and Medical Leave, which is effective immediately and Long-Term Disability coverage, effective after one year of employment
- Explain time card procedure, overtime policy and work schedule (i.e. bereavement, jury duty pay excluded from overtime calculation
- Explain pay day and pay review procedures
- Obtain verification of personal automobile insurance for employees who use personal vehicle for school business
- Give copy of Sexual Harassment policy, explain key points…obtain signature
- Give copy of computer and internet usage policy, explain key points…obtain signature

- Give copy of mandatory reporting of student abuse policy, explain key points and obtain signature
- Review Guidelines for Appropriate Behavior
- Explain safety/accident policy, Workers' Compensation Insurance
- Offer Direct Deposit – provide form
- Give employee the Employee Handbook. Ask employee to read the handbook and agree on a time to discuss any questions. Date_____
- Have employee sign the form acknowledging receipt of the handbook/supplies.
- Schedule training for _____ and "Proper Work Practices" (if applicable) Date_____

Other: _____

_____ _____
Signature of person conducting orientation Date

_____ _____
Employee signature Date

Welcome to the Team!

The 10 Biggest Mistakes Made in Hiring

Compliments of the Employer Advisor Network

"If workers are carefully selected, the problems of discipline will be negligible."
-Johnson & Johnson Co. Employee Relations Manual, 1932

Employee turnover, wrongful hiring, sexual harassment, violence in the workplace, employee theft…the list goes on. *A lot can go wrong when you hire the wrong person!* The wrong person is under-qualified, litigious, controlling, insubordinate and detrimental to an entire organization. The seeds of many failures are planted in the hiring process.

Below are some of the common mistakes companies make. It makes no difference whether the school is large or small, whether they are hiring a janitor or an executive. A convalescent home unknowingly hired a violent felon as a janitor who kidnapped, raped and then killed one of the patients. Companies have hired multimillion-dollar executives – and that's not what they cost the companies in salary, but how much damage they did. *Don't make the same mistakes these companies did!*

1. ***The failure to identify school needs***

   When searching for a job candidate, your school has to clearly define what it is a looking for in terms of skills, character and competency. What objective standards must they meet, what education should they have, what should their prior work experience be and what technology should they be able to master? What are the short- and long-term needs going to be? How will this affect the hiring decision? Many times a school's needs can be more efficiently met through outsourcing or strategic partnering. Don't just assume a school needs a certain type of employee. Test assumptions. Begin your breakthrough management thinking with the hiring process.

2. ***The failure to test their skills***

   Skills-testing is a must. Every job has some form of objective standard. *Identify it* and *test for it*. There is a great deal of difference between a secretary who types 60 words per minute with mistakes and one who types 80 words per minute without any. Unless you test an applicant's skills, you're taking a gamble that they can perform. It's a bet you just may lose.

3. ***Hiring out of desperation***

   Many times hiring decisions are made out of *desperation*. Your secretary quits and you need someone to replace him or her now. Your school is growing so fast that you'll just throw in the bodies and worry about them later. It's so hard to find programmers that anyone will do. Because of desperation, we've all had situations where we brought someone into a relationship who we later found out couldn't be trusted. Don't fall prey to fear-based hiring. Again, think of alternatives. If you can't go through a hiring process in a timely manner, then hire a temporary or leased employee. Borrow an employee from another school. Don't hire in haste – you may end up with waste.

4. We are lazy

That's right, we get lazy. Most of us don't want to have to "deal with" going through the hiring process. After all, we have jobs to do. Employers have to fight this very human tendency to want do less rather than more. Managers who are desperate or lazy typically take the first person that walks through the door. If you don't want do go through the *process*, then hire somebody else to do it for you!

5. Watch out for infatuation

A series of surveys reveal that during the interview process, most interviewers made the hiring decision within the first 10 minutes of the interview, and then spent the next 50 minutes justifying the decision. We buy cars the same way. We know the car we want to buy from an emotional standpoint, and then search for objective data to justify the emotional decision. We all know that "facts tell, but emotions sell." Remember that the best con artists attract infatuation. Just because someone "looks" right for the role does not mean they will be. You can guard against this by having co-interviews, follow-up meetings, and co-employee interviews.

6. There's some baggage that gets in the way

Everyone has some baggage somewhere. For some of us, the baggage is the belief that a woman can't operate a forklift, a man cannot be a nurse, or a minority cannot be an executive. This baggage has nothing to do with reality. Orchestras were traditionally dominated by men. To remove any preconception about what makes a better musician from the hiring process, orchestras began to engage in "blind auditions" where a curtain is literally placed in front of the performers. As a result of these blind auditions, women started being hired at twice the rate as before – based on the quality of their sound, not the way they look. The fact is, the best and brightest are not going to always look and act the way **you** think they should! Seeking out diversity is not just important to placate the EEOC (Equal Employment Opportunity Commission). It's an absolute necessity in today's competitive economy.

7. They were recommended by a friend

Just because someone thinks somebody they know is a great worker, that doesn't mean they are. Perhaps they were just in the right place at the right time. We have seen many occasions where a person was hired without going through a hiring process simply because they were recommended by someone else. Don't let someone else make your hiring decision for you. Go through a *process* with *anyone* who comes into your organization.

8. ***Blindly promoting from within***

We are firm believers in looking to promote your own people. But sometimes your best person isn't necessarily the best person for the job. This happens particularly in promotion to the management level. Just because someone is good at performing a particular service, does not mean they are good at managing other people. We have seen many a career go downhill after a supposed promotion. Make sure your school goes through a complete hiring analysis when making promotions. Promoting solely from within can create inbreeding and stagnation. You should fill at least one-third of your new positions from the outside.

9. ***The failure to do extensive background and reference checking***

If it's out there in the street, it's in the workplace. We are often asked to investigate a claim of harassment, theft, threatened violence, or other workplace misconduct. As part of our investigation, we always review the employee file and look to find out what form of background investigation was done on the offending employee. Not surprisingly, there is usually little or no background information collected. Employees with drug problems are never drug tested prior to hire. Security guards that conspire against their employer are never checked for criminal records. Intoxicated drivers in 18-wheel trucks never have their driving records checked. Employees who engaged in wrongful conduct at previous places of employment never had their prior employer contacted. Many employers are spooked away from engaging in extensive background investigations because of their concern for EEOC and legislative privacy guidelines. Don't be. Poor hiring decisions are not caused by barring EEOC-prohibited questions. They are caused by forgetting to ask all those other questions.

10. ***The failure to recognize you have made a poor hiring decision***

Many companies will realize they have made a fatal hiring mistake within the first three months of the employment relationship, yet they don't terminate the employee. You must fire poorly performing employees! If you make a poor hiring decision, then do your best to keep that person on his or her feet. This means that you put such employees in at least the same position that you found them. Try to help them with outplacement assistance, and a small severance package, so you don't end up with a bitter ex-employee or, even worse, a lawsuit.

Conclusion

When you get the chance sometime, go back and look at some of your turnover and poor performance problems. Ask, "How did we hire this person? What process did we go through? Did we make any of the mistakes outlined above?" Remember, if you want to hire the right employee, you have to go through a systemic process that allows you to do so. When you hire the best, you will have high productivity, loyalty, innovation, team players and a healthy bottom line.

Links

ADA – http://www.eeoc.gov/policy/ada.html
ADEA – Age Discrimination in Employment Act – http://www.eeoc.gov/policy/adea.html
Colorado Bureau of Investigations – http://cbi.state.co.us/
EEOC laws – http://www.eeoc.gov/abouteeo/overview_laws.html
Definition of discriminatory practices – all areas K Title VII, ADA, Age Discrimination. http://www.eeoc.gov/abouteeo/overview_practices.html
EEOC compliance manual – http://www.eeoc.gov/policy/compliance.html
U.S. Department of Labor federal forms – http://www.dol.gov/libraryforms/FormsByAgency.asp
Immigration and Naturalization Act Employment Law guide – http://www.dol.gov/asp/programs/guide/aw.htm
I-9 form and guidance – http://uscis.gov/graphics/formsfee/forms/i-9.htm
US Citizenship & immigration services – http://uscis.gov

Chapter Three – Laws and Regulations for the HR Department

Summary of Federal Statutes

The most challenging aspect of building and maintaining a human relations department is keeping informed of the various state, local and federal laws and regulations that affect employment. This chapter contains information from the primary government agencies that define and monitor these laws and regulations.

This list is a summary and is not intended to provide information about all situations. In situations where there is doubt or a question, you should contact you legal counsel.

Primary sources of information also include:

- Colorado Dept. of Education – http://www.cde.state.co.us/
- Colorado Dept. of Labor – http://www.coworkforce.com/
- Colorado Employment Security Administration
- Colorado Workers Compensation Administration – http://www.coworkforce.com/DWC/
- United States Department of Labor – http://www.dol.gov
- United States Equal Employment Opportunity Commission – http://www.eeoc.gov/

This section includes federal statutes that may directly impact the manner in which a charter school operates its employment program. It is advisable to review each statute and determine how a school charter school will comply with the law, if it is applicable to a school situation.

- EEOC laws – http://www.eeoc.gov/abouteeo/overview_laws.html
- EEOC and small business links , Q&A page – http://www.eeoc.gov/employers/overview.html

Federal statutes and regulations applicable to charter schools

I. Laws applicable to charter schools whether or not they receive federal funding. The following summaries are of laws that generally apply to businesses, employers or schools.

The information that is most relevant to charter schools has been included. The statutory reference is provided for each Act for anyone who wishes to review the entire text. Specific questions regarding applicability or exceptions should be referred to legal counsel for the charter school.

1. No Child Left Behind Act is the reauthorization of the Elementary and Secondary Education Act, which contains provisions for defining a "highly qualified" teacher, testing and reporting requirements for states, and all of the federal programs. http://www.nochildleftbehind.gov/ .

2. Age Discrimination in Employment Act, (ADEA) 29 U.S.C. §§621-634. Prohibits an employer from failing or refusing to hire or to discharge any individual or otherwise discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of the individual's age. The act prohibits limiting, segregating or classifying employees in such a manner as to adversely affect the employee's status because of age, or reducing the wage rate of any employee in order to comply with this law. Generally, persons protected by the act are those who are 40 and over. Information: Equal Employment Opportunity Commission 202-663-4900 or http://www.eeoc.gov/policy/adea.html .

3. Americans with Disabilities Act (ADA), 42 U.S.C. §12101-12213. Prohibits discrimination against persons with disabilities and requires affirmative action, including mandatory accommodations, to ensure that discrimination does not occur in employment, public access to facilities and services, transportation, communication and government services. The requirements apply to all governmental entities and private employers of 15 or more employees. Information: Equal Employment Opportunity Commission (202)663 4900 or Office of the Americans with Disabilities Act, Civil Rights Division of the Department of Justice 202-514-4609. http://www.dol.gov/odep/pubs/misc/summada.htm .

4. Family and Medical Leave Act requires employers with 50 or more workers in a 75-mile radius to provide eligible employees up to 12 work weeks of leave in a 12 month period when the leave is requested for (1) birth, adoption or foster care placement, (2) care for a sick spouse or parent, or (3) a personal serious health condition. 29 U.S.C.§2611 et. seq. (l993). Information: Wage & Hour Administrator of the U.S. Department of Labor 1-866-4USWAGE or http://www.dol.gov/esa/regs/compliance/whd/1421.htm . (Request referral to regional Wage &Hour office.)

5. Title VII of the Civil Rights Act of 1964 forbids employers from discriminating against individuals in all areas of the employment relationship if the action is based on race, color, religion, sex, or national origin.42 U.S.C.§2000e et. seq. (1993). Information: Equal Employment Opportunity Commission 202-663-4900.

6. Title IX of the Education Amendments of 1972 prohibits gender-based discrimination by an educational institution that receives federal financial assistance. 20 U.S.C.1681 Information: Office of Civil Rights, U.S. Department of Education 202-205-5413.

7. Employment Retirement Income Security Act (ERISA), 29 U.S.C. §§1001-1461, including changes made by the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), 29 U.S.C. §§1161-1169. Provisions of ERISA generally apply to sponsors of and participants in group pension plans; provisions of COBRA generally apply to sponsors of and participants in group health plans.

8. Equal Educational Opportunities Act (EEO), 20 U.S.C. §§ 1701-1758. Prohibits the denial of equal educational opportunity to an individual based on race, color, sex or national origin by the deliberate segregation by an educational agency of students among or within schools. The prohibition extends to: the failure of an educational agency which has formerly practiced deliberate segregation to take affirmative steps to remove the vestiges of a dual school system; the assignment of students in such a manner as to promote segregation, unless assigned to the neighborhood school; discrimination in employment, employment conditions or assignment of faculty or staff; the transfer of a student from one school to another if the purpose and effect is to increase segregation, or the failure of an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in instructional programs. The Act does not require the assignment or transportation

9. Fair Labor Standards Act (FLSA), 29 U.S.C. §§201-219. Addresses minimum wages, maximum work hours, child labor provisions, prohibited acts, penalties, etc. Information: Wage and Hour Administrator of the U.S. Department of Labor 1-866-4USWAGE. (Request referral to regional office.)

10. Equal Pay Act prohibits employers from paying wages to employees of one sex at rates of pay less than the rates they pay employees of the opposite sex for work requiring equal skill, effort, and responsibility, and which is performed under similar working conditions. 29 U.S.C.§206(d). Information: Wage and Hour Administrator of the U.S. Department of Labor 1-866-4USWAGE. (Request referral to regional office.)

11. Immigration Reform and Control Act, 8 U.S.C. §§1324a, 1324b. Prohibits any person or entity from hiring, recruiting or referring for a fee for employment in the United States an alien, knowing the alien is unauthorized. Hiring such a person through a contract, subcontract or exchange is also prohibited. Also prohibits discrimination on the basis of national origin against an individual, other than an unauthorized alien, in hiring, recruiting or referring for a fee or discharging from employment. Information: contact local Immigration & Naturalization Service. (Request information regarding Form I-9.)

12. Occupational Safety and Health (OSH or OSHA), 29 U.S.C. §§651, et seq. Requires employers to furnish employment and a place of employment, which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to employees. Requires employers to comply with safety and health standards promulgated under the statute and requires employees to comply with standards and rules, regulations and orders which are applicable to their individual actions. Information: Occupational Health and Safety Administration, U.S. Department of Labor 1-800-321-6742 or http://www.dol.gov/dol/compliance/comp-osha.htm.

13. Omnibus Transportation Employee Testing Act of 1991 requires the employer to conduct pre-employment/pre-duty, reasonable suspicion, random and post-accident alcohol and controlled substances testing of each applicant for employment or employee who is required to obtain a commercial driver's license.49 U.S.C.§2717. Information: Department of Transportation Office of Drug Enforcement and Program Compliance 202-366-3784.

14. Drug-Free Workplace Act of 1988. 20 U.S.C. §§702-707. Provides that no person, shall be considered a responsible source for the purposes of being awarded a contract for the procurement of any property or services of a value of $25,000 or more from any Federal agency unless the person has certified that it will provide a drug-free workplace by taking specified steps and providing assurances to the Federal agency that the employer has complied with the terms of the Act.

In Depth Review of Americans with Disabilities Act (ADA)

What is the ADA?

The ADA is a federal civil rights law designed to prevent discrimination and enable individuals with disabilities to participate fully in all aspects of society.

Practice tip: The Equal Employment Opportunity Commission (EEOC) enforces the employment provisions of the ADA. The EEOC is headquartered in Washington, DC and has offices throughout the United States, including Puerto Rico. If you have any questions concerning the EEOC or the ADA, please

- Call the EEOC at 1-800-669-4000/1-800-669-6820 (TTY).
- Contact one of the small business liaisons. You can find out who they are on the web site – http://www.eeoc.gov/policy/ada.html
- ADA Handbook – http://www.eeoc.gov/ada/adahandbook.html

Who is protected by the ADA?

The ADA applies to a person who has a physical or mental impairment that substantially limits one or more major life activities (like sitting, standing, or sleeping).

The ADA covers more than just people who are deaf, people who are blind, or people who use wheelchairs.

- People who have physical conditions such as epilepsy, diabetes, HIV infection or severe forms of arthritis, hypertension, or carpal tunnel syndrome may be individuals with disabilities.
- People with mental impairments such as major depression, bipolar (manic-depressive) disorder, and mental retardation may also be covered.

The ADA also protects a person with a record of a substantially limiting impairment.

Example: A person with a history of cancer that is now in remission may be covered.

And the ADA protects a person who is regarded (or treated by an employer) as if s/he has a substantially limiting impairment.

- Sometimes, a person may be covered even if s/he has no impairment or has a minor impairment, particularly if the employer acts based on myths, fears, or stereotypes about a person's medical condition.

Example: An employer may not deny a job to someone who has a history of cancer because of a fear that the condition will recur and cause the employee to miss a lot of work.

The ADA only protects a person who is qualified for the job s/he has or wants.

- The individual with a disability must meet job-related requirements (for example, education, training, or skills requirements).
- S/he must be able to perform the job's essential functions (i.e., its fundamental duties) with or without a reasonable accommodation.

Practice tip: Employers do not have to hire someone with a disability over a more qualified person without a disability. The goal of the ADA is to provide equal access and opportunities to individuals with disabilities, not to give them an unfair advantage.

What does the ADA require an employer to do?

Employers covered by the ADA have to make sure that people with disabilities:

- have an equal opportunity to apply for jobs and to work in jobs for which they are qualified;
- have an equal opportunity to be promoted once they are working;
- have equal access to benefits and privileges of employment that are offered to other employees, such as employer-provided health insurance or training; and
- are not harassed because of their disability.

Practice tip: Harassing someone because of a disability is just as serious as harassing someone because of race, sex, religion, or national origin. If an employee complains to you that s/he is being harassed because of a disability, respond to the complaint right away by conducting an appropriate investigation and, if necessary, taking action to correct the situation.

As discussed in the sections that follow, the ADA also limits the kinds of medical information that you can get from a job applicant or employee and requires you to provide reasonable accommodations to the known limitations of qualified individuals with disabilities.

Getting medical information from employees

Once a person with a disability has started working, actual performance, and not the employee's disability, is the best indication of the employee's ability to do the job.

Basic rule: The ADA strictly limits the circumstances under which you may ask questions about disability or require medical examinations of employees. Such questions and exams are only permitted where you have a reasonable belief, based on objective evidence, that a particular employee will be unable to perform essential job functions or will pose a direct threat because of a medical condition.

Sometimes you may have observed the employee's job performance or you may have received reports from others who have seen the employee's behavior. These observations or reports may give you a reasonable belief that the employee's ability to perform essential job functions is impaired by a medical condition or that the employee poses a direct threat because of a medical condition.

Practice tip: If an employee with a disability is having trouble performing essential job functions, or doing so safely, do not immediately assume that the disability is the reason. Poor job performance is often unrelated to a medical condition and, when this is the case, it should be handled in accordance with your existing policies concerning performance (e.g., informal discussions with the employee, verbal or written warnings, or termination where necessary). On the other hand, if you have information that reasonably causes you to conclude that the problem is related to the employee's disability, then medical questions, and perhaps even a medical examination, may be appropriate.

Example: A normally reliable employee who is making frequent mistakes tells you that the medication she has started taking for her lupus makes her lethargic and unable to concentrate. Under these circumstances, you may ask her some questions relating to her medical condition, such as how long the medication can be expected to affect job performance.

Inquiries or exams always allowed: Certain types of inquiries or examinations are always permitted, even if they disclose some medical information. For example, you may:

- Ask all employees to provide a doctor's note to support a request for leave.
- Ask about an employee's medical condition and conduct medical examinations that are required by another federal law.

Confidentiality

Basic rule: With limited exceptions, you must keep confidential any medical information you learn about an applicant or employee. Information can be confidential even if it contains no medical diagnosis or treatment course and even if it is not generated by a health care professional.

Example: An employee's request for a reasonable accommodation would be considered medical information subject to the ADA's confidentiality requirements.

Practice tip: Do not place medical information in regular personnel files. Rather, keep medical information in a separate medical file that is accessible only to designated officials. Medical information stored electronically must be similarly protected (e.g., by storing it on a separate database).

The ADA recognizes that employers may sometimes have to disclose medical information about applicants or employees. Therefore, the law contains certain exceptions to the general rule requiring confidentiality. Information that is otherwise confidential under the ADA may be disclosed:

- to supervisors and managers where they need medical information in order to provide a reasonable accommodation or to meet an employee's work restrictions;
- to first aid and safety personnel if an employee would need emergency treatment or require some other assistance (such as help during an emergency evacuation) because of a medical condition;
- to individuals investigating compliance with the ADA and with similar state and local laws; and pursuant to workers' compensation laws (e.g., to a state workers' compensation office in order to evaluate a claim) or for insurance purposes.

Reasonable accommodation and undue hardship

What is reasonable accommodation?

Reasonable accommodations are adjustments or modifications provided by an employer to enable people with disabilities to enjoy equal employment opportunities.

Accommodations vary depending upon the needs of the individual applicant or employee. Not all people with disabilities (or even all people with the same disability) will require the same accommodation. For example:

- A deaf applicant may need a sign language interpreter during the job interview.
- An employee with diabetes may need regularly scheduled breaks during the workday to eat properly and monitor blood sugar and insulin levels.
- A blind employee may need someone to read information posted on a bulletin board.
- An employee with cancer may need leave to have radiation or chemotherapy treatments.

A step-by-step guide to ADA accommodations

Four basic principles of accommodation

Under the ADA, employers with 15 or more employees must accommodate qualified individuals with disabilities to allow them to perform the essential functions of the job, unless doing so would create an "undue hardship". According to the Equal Employment Opportunity Commission's (EEOC) Technical Assistance Manual, a reasonable accommodation is "a modification or adjustment to a job, the work environment, or the way things usually are done that enables a qualified individual with a disability to enjoy an equal employment opportunity." Generally, accommodations must be provided to ensure equal access to the application process, to allow a disabled person to perform the essential functions of the job, and to ensure equal benefits and privileges of employment. For example, an employer may have to provide a reader to a blind applicant to fill out an application form or put in a ramp to allow an employee in a wheelchair to access the workplace.

The EEOC, in its Technical Assistance Manual, suggests four basic principles that employers should apply to every accommodation decision:

1. The accommodation must be effective. In other words, it must provide an opportunity for the disabled person to achieve the same level of performance or enjoy equal benefits or privileges as an average, similarly situated, non-disabled person would.
2. The accommodation does not have to be the best accommodation or the one preferred by the disabled person.
3. The employer does not have to provide an accommodation that is primarily for the disabled individual's personal use (such as a wheelchair or eyeglasses).
4. The ADA sets minimum guidelines for accommodation. Employers, of course, can do more.

Step One: The request for accommodation

The accommodation process typically begins when the disabled individual requests some change to the application process, the way he performs the job, or to the provision of employment benefits. The person does not have to mention the ADA or use any "trigger" words like "reasonable accommodation" to initiate the process. Instead, he only has to use "plain English" and give you enough information to alert you to the fact that he needs an adjustment or change at work because he has a medical condition. So, for example, if an employee tells you he needs a change in his scheduled start time because of medical treatments, that statement is an accommodation request. However, if the employee simply asks for a change in his start time for "personal reasons," this request is insufficient to put you on notice of his need for accommodation. Note also that the request does not have to be in writing or take any particular form.

Generally, it is the disabled individual's responsibility to alert you to any need for an accommodation. You are not expected to be clairvoyant and, therefore, are not required to accommodate any disability you do not know about. However, you may initiate the accommodation process if you have noticed a change in the ability of a person with a known disability to perform the job. For example, if an employee who has never been tardy begins to come into work late and you suspect the tardiness may be related to a medical condition, you may want to discuss this possibility with the employee and evaluate your duty to accommodate.

Step Two: Certifying the disability

Since an employer only has to accommodate disabled individuals, the next step in the accommodation process is to determine whether the individual is disabled and to confirm the need for accommodation. Not every medical condition is considered an ADA disability. Therefore, according to the EEOC's guidance on accommodation, you may require the individual to provide reasonable documentation from an appropriate health care or rehabilitation professional that certifies the disability and any functional limitations requiring accommodation. Appropriate professionals who may provide the documentation include doctors, psychologists, nurses, physical and occupational therapists, speech therapists, vocational rehabilitation specialists, and licensed mental health professionals.

Reasonable documentation may include information that supports the existence of the disability, its functional limitations, and the need for an accommodation so the individual may perform the job. To help the health professional determine if the individual is disabled for the purposes of the ADA, you should explain the ADA's definition of disability (i.e., a physical or mental condition that substantially limits a major life activity) and ask the health professional to identify specifically what the condition is, what major life activity it affects, and how it substantially limits that activity. In addition, you should provide a job description specifying the person's essential job functions so the professional can verify that an accommodation is needed.

If the disabled individual does not provide the requested medical documentation, you may refuse to provide the accommodation. However, if the individual provides insufficient information to determine whether he has a disability and needs accommodation, you must give him an opportunity to provide the missing information.

The ADA also does not allow you to require documentation that is unrelated to the particular accommodation or disability, such as requesting that the individual provide a complete medical history. Further, if the individual has an obvious disability, you may not require him to provide medical certification of his disability. However, a school may be able to request information to verify the need for an accommodation, unless that need is also obvious. For example, if a person in a wheelchair requests a desk the wheelchair will fit under, a school cannot ask him to document his disability or the need for the accommodation since both are apparent.

Because of the difficulty of determining whether a particular medical condition meets the criteria of a disability under the ADA, some employers choose to accommodate any individual with a serious health problem, not just those who meet the ADA definition of disabled. The advantage to this approach is twofold. First, it may be better employee relations to accommodate all employees with legitimate medical problems rather than only those who are legally disabled under the ADA. Second, any efforts at accommodation can be used as proof of the employer's attempts to comply with the ADA if its decisions are later challenged. This approach also has drawbacks, however. In particular, the employer could set a precedent that it must accommodate anyone with medical problems and not just those who are disabled.

Step Three: The interactive process

Once a school has established that the person is disabled and needs an accommodation, the EEOC encourages a school to engage in a flexible, interactive process with the disabled individual. Working with the individual, a school should attempt to identify both the precise limitations resulting from the disability and the potential reasonable accommodations that could overcome those limitations. To this end, the EEOC, in its Interpretive Guidance to the ADA regulations, recommends the following process:

1. Analyze the particular job involved and determine its purpose and essential functions;
2. Consult with the individual to determine the precise job-related limitations imposed by the disability and how the limitations could be overcome with a reasonable accommodation;
3. With the individual, identify potential accommodations and assess the effect each would have in enabling the employee to perform the essential functions of the position; and
4. Consider the individual's preference for a particular accommodation and select and implement the accommodation that is most appropriate for both the individual and the employer.

In addition, in order to find possible accommodations, a school may need to consult the individual's doctor, rehabilitation specialists, and others with expert knowledge about dealing with the particular disability. Reasonable accommodations may include:

- Modifying the application process;
- Making existing facilities readily accessible to and usable by employees with disabilities;
- Job restructuring;
- Part-time or modified work schedules and leaves of absence;
- Acquisition or modifications of equipment or devices;
- Appropriate adjustment or modifications of examinations, training materials, or policies;
- Provision of qualified readers or interpreters; and
- Reassignment to a vacant position. Reassignment to a vacant position should be considered only when an accommodation in the disabled person's current position would pose an undue hardship.

Step Four: Determine the appropriate accommodation

In some cases, the interactive process will yield more than one potential accommodation, so that the next step in the process is to choose one that will allow the disabled person to perform the job. Although the EEOC regulations suggest that a school should give consideration to the preference of the disabled individual, a school does not have to provide the best accommodation available or the one specifically requested by the disabled individual. A school only has to provide an effective accommodation that meets the job-related needs of the individual. Thus, if one accommodation is less expensive or easier to provide, it will be acceptable as long as it allows the person to perform the job effectively.

In addition, a school does not have to provide an accommodation if doing so would create an "undue hardship." The undue hardship standard is very tough to meet and requires employers to show that the accommodation involves significant difficulty or expense; is unduly extensive, substantial, or disruptive; or would fundamentally alter the nature or operation of the business. In determining whether an accommodation would impose an undue hardship on the employer, the EEOC generally will consider several factors, including:

1. The nature and net cost of the accommodation needed, taking into consideration the availability of tax credits and deductions and outside funding;
2. The overall financial resources of the facility or facilities involved in providing the reasonable accommodation, the number of persons employed at the facility, and the effect on expenses and resources;
3. The overall financial resources of the covered entity, the overall size of the business of the covered entity with respect to the number of its employees, and the number, type, and location of its facilities;

4. The type of operation or operations of the covered entity (including the composition, structure, and functions of the workforce of the entity) and the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the covered entity; and
5. The impact of the accommodation upon the operation of the facility, including the impact on the ability of other employees to perform their duties and the impact on the facility's ability to conduct business.

Step Five: Implement the accommodation

Once the accommodation has been identified, a school should implement it as soon as possible to allow the disabled individual to function effectively in the job. Although the ADA does not specify a particular time period for responding to accommodation requests and providing accommodations, the EEOC has indicated that employers should "act promptly." Any unnecessary delays could result in an ADA violation.

When providing an accommodation, the ADA prohibits a school from disclosing to other employees any medical information, including the fact that an employee has a disability that is being accommodated. Thus, a school cannot explain why it is making the job modifications or treating an employee differently. However, according to the ADA regulations, a school can tell the disabled employee's supervisor about necessary restrictions on the work or job duties and about necessary accommodations.

Note, too, that a school cannot require a disabled individual to accept an accommodation. However, if the person cannot perform the essential functions of the job without the accommodation, he is not considered qualified for the position and therefore may be terminated. If the person refuses the accommodation, document school attempts to provide the accommodation. In fact, as a general practice, a school should document all of the steps a school takes to accommodate a disabled individual.

Accommodating can be painless, good business

The idea of accommodating a disabled individual under the ADA can be overwhelming. In addition to having to master a new vocabulary, a school may feel as though it must be a legal expert, a physical therapist, and a building accessibility specialist to determine what accommodations are appropriate. However, as a practical matter, disabled individuals often know what accommodations they need to work effectively, and most accommodations are relatively inexpensive. Thus, by following the steps above, a school can both comply with the requirements of the ADA and show disabled individuals its commitment to providing a productive and accessible workplace.

For additional information see, EEOC Enforcement Guidance on reasonable accommodation, EEOC Office of Communications and Legislative Affairs, 1801 L Street, NW, Washington, DC, 20507, 800-669-3362, www.eeoc.gov/docs/accommodation.html and EEOC Technical Assistance Manual, same contact information, no web site access.

For free assistance identifying appropriate accommodations, see The Job Accommodation Network, P.O. Box 6080, WV, 26506-6080, 800-526-7234, www.jan.wvu.edu/

Questions and answers about reasonable accommodation

When do I have to provide an accommodation?

- A school must provide a reasonable accommodation if a person with a disability needs one in order to apply for a job, perform a job, or enjoy benefits equal to those a school offers other employees. A school does not have to provide any accommodation that would pose an undue hardship.

What is undue hardship?

- Undue hardship means that providing the reasonable accommodation would result in significant difficulty or expense, based on a school resources and the operation of a school business.

Note: If providing a particular accommodation would result in undue hardship, consider whether another accommodation exists that would not.

Lessons learned - most accommodations are not expensive:

- One-fifth cost nothing.
- More than half of them only cost between $1 and $500.
- The median cost is approximately $240.
- Technological advances continue to reduce the cost of many accommodations.
- Some employees provide their own accommodations in the form of assistive devices or equipment.

Note: To offset the cost of accommodations, a school may be able to take advantage of tax credits, such as the Small Business Tax Credit and other sources, such as vocational rehabilitation funding. Regardless of cost, a school does not need to provide an accommodation that would pose significant difficulty in terms of the operation of a school business.

Example: A store clerk with a disability asks to work part-time as a reasonable accommodation, which would leave part of one shift staffed by one clerk instead of two. This arrangement poses an undue hardship if it causes untimely customer service.

Example: An employee with a disability asks to change her scheduled arrival time from 9:00 a.m. to 10:00 a.m. to attend physical therapy appointments and to stay an hour later. If this accommodation would not affect her ability to complete work in a timely manner or disrupt service to clients or the performance of other workers, it does not pose an undue hardship.

Other limitations on the obligation to provide reasonable accommodation:

In addition to actions that would result in undue hardship, a school does not have to do any of the following:

- Provide an employee with an adjustment or modification that would assist the individual both on and off the job, such as a prosthetic limb, wheelchair, or eyeglasses;
- Remove or alter a job's essential functions;
- Lower production or performance standards;
- Or excuse violations of conduct rules necessary for the operation of a school business.

Example: A grocery store bagger develops a disability that makes her unable to lift any item weighing more than five pounds. The store does not have to grant an accommodation removing its fifteen-pound lifting requirement if doing so would remove the main job duty of placing items into bags and handing filled bags to customers or placing them in grocery carts.

Example: A hotel that requires its housekeepers to clean 16 rooms per day does not have to lower this standard for an employee with a disability.

Example: A school does not have to tolerate violence, threats of violence, theft, or destruction of property, even if the employee claims that a disability caused the misconduct.

How does an employee ask for an accommodation?

- An employer generally does not have to provide a reasonable accommodation unless an individual with a disability has asked for one.
- A request can be a statement in "plain English" that an individual needs an adjustment or change in the application process or at work for a reason related to a medical condition. The request does not have to include the terms "ADA" or "reasonable accommodation," and the request does not have to be in writing, although a school may ask for something in writing to document the request.
- A family member, friend, health professional, rehabilitation counselor, or other representative also may request a reasonable accommodation on behalf of an individual with a disability.

Example: A doctor's note indicating that an employee can work "with restrictions" is a request for a reasonable accommodation.

Practice tip: Even though a school does not have to initiate discussions about the need for a reasonable accommodation, if a school believes that a medical condition is causing a performance or conduct problem, a school certainly may ask the employee how it can help to solve the problem and even may ask if the employee needs a reasonable accommodation.

What should I do when an employee requests an accommodation?

- Once a reasonable accommodation is requested, a school and the individual should discuss his/her needs and identify the appropriate reasonable accommodation. Where more than one accommodation would work, a school may choose the one that is less costly or that is easier to provide.
- "Interactive process" is a formal way of saying that a school and the employee or applicant should talk about the request for a reasonable accommodation, especially where the need for the accommodation might not be obvious. A conversation also helps where there may be a question regarding what type of accommodation might best help the individual apply for a job or perform the essential functions of a job.

Can I ask for information about an employee's disability?

- If the need for an accommodation is not obvious, a school may ask for documentation describing the individual's disability and why the requested accommodation is needed.

What a school may do:

- Specify what types of information a school is seeking about the disability and needed accommodation.
- Explain what a school will need to know (e.g., the type of impairment the individual has, how the impairment limits a major life activity (like sitting, standing, performing manual tasks, or sleeping).
- Request information about how an accommodation would enable the employee to perform job-related tasks.
- Consider providing the employee's health care professional with a description of the job's essential functions to increase the likelihood that a school will get accurate and complete information the first time a school asks for it.

Not enough information?

- If a school doesn't get sufficient information in response to a school's initial request for documentation, explain what additional information a school needs and then allow the individual an opportunity to provide it.

Note that there are limitations on the amount of documentation an employer may obtain. For example, a school may not ask for an individual's entire medical record or for information about conditions unrelated to the impairment for which accommodation has been requested.

Practice tip: A school also may make an accommodation without requesting any documentation at all. A school is free to rely instead on an individual's own description of his or her limitations and needs.

Procedures for providing reasonable accommodation

Basic rule: The ADA does not require an employer to have a particular type of procedure in place for providing reasonable accommodations.

Practice tip: Consider putting procedures for providing reasonable accommodations in writing (though this may not be necessary, particularly if a school is a very small employer and has one person designated to receive and process accommodation requests).

As an alternative to written procedures, a school might include a short statement in an employee handbook indicating that a school will provide reasonable accommodations for qualified individuals with disabilities, along with the name and telephone number of the person designated to handle requests.

A school also may want to indicate on written job applications that a school will provide reasonable accommodations for the application process and during employment.

And bear in mind, whether a school has written procedures or not:

- Develop time frames within which accommodations generally will be provided, remembering that a school must respond promptly to a request.
- Keep lines of communication open, particularly when it will take longer than expected to provide an accommodation or when a school need more supporting documentation from the individual.
- Use outside resources to identify and provide reasonable accommodations.
- Explain a school decision – share a school reasons with an applicant or employee so that s/he understands why a school denied the request.

Types of reasonable accommodations

Basic rule: There are many accommodations that enable individuals with disabilities to apply for jobs, be productive workers, and enjoy equal employment opportunities. In general, though, they can be grouped into the following categories.

- **Equipment.** Purchasing equipment or modifying existing equipment is a form of reasonable accommodation.

Example: A medical clinic could purchase amplified stethoscopes for use by hearing-impaired nurses, physicians, and other members of the health care staff.

- **Accessible materials.** A school may have to make written materials accessible to an individual with a disability who may not be able to read or understand them. Simple accommodations could include having someone read a list of employee conduct rules to an employee with a visual impairment or providing a simpler explanation of the rules for an employee with a cognitive disability.
- **Changes to the workplace.** Making changes to school facilities or work areas is a form of reasonable accommodation.

Example: A small retail store could lower a paper cup dispenser near the water fountain and reconfigure store displays so that an employee in a wheelchair can get water and have access to all parts of the store.

- **Job-restructuring.** Job restructuring includes shifting responsibility to other employees for minor tasks (or "marginal functions") that an employee is unable to perform because of a disability and altering when and/or how a task is performed.

Example: If moving boxes of files into a storage room is a function that a secretary performs only from time to time, this function could likely be reallocated to other employees if the secretary's severe back impairment makes the secretary unable to perform it.

But: A school does not have to remove the essential functions (i.e., fundamental duties) of the job.

Example: Where an employee has to spend a significant amount of time retrieving heavy boxes of merchandise and loading them into customers' cars as part of his job, he probably cannot be relieved of this duty as an accommodation.

Where a school workforce is small and all workers must be able to perform a number of different tasks, job restructuring may not be possible.

- **Working at home.** If this accommodation is requested, consider whether any or all of the job's essential functions can be performed from home. Computers, internet access, telephones, and fax machines make it possible to do many kinds of jobs from home at least some of the time.

Example: A telemarketer, proofreader, researcher, or writer may have the type of job that can be performed at least partly at home.

But: Where the work involves use of materials that cannot be replicated at home, direct customer and co-worker access is necessary, or immediate access to documents in the workplace is necessary and cannot be anticipated in advance, working at home likely would present an undue hardship.

- **Modified work schedules.** This may involve adjusting arrival or departure time, providing periodic breaks, or altering when certain job tasks are performed.

Example: An accountant for a small employer whose medication for depression causes extreme grogginess in the morning may not be able to begin work at 9:00 a.m., but could work from 10:00 until 6:30 without affecting her ability to complete tasks in a timely manner.

Example: It may be an undue hardship to adjust the arrival time for someone on a construction crew if it would affect the ability of others to begin work.

- **Leave.** Allowing an employee to use accrued paid leave, and providing additional unpaid leave once an employee has exhausted all available leave, is also a form of reasonable accommodation. Leave may be provided for a number of reasons related to a disability: for example, to allow an employee to receive or recover from treatment related to a disability or recover when a condition "flares up."

What to do if someone asks for leave related to a medical condition:

- Determine whether the request is covered by a school general leave policy for all employees. If yes, grant the leave according to a school policy.
- If an employee requests more leave than would be available under a school policy, consider whether additional leave could be provided as a reasonable accommodation, absent undue hardship.

But: Not all requests for leave, as a reasonable accommodation must be granted. For example, where a job is highly specialized, so that it will be difficult to find someone to perform it on a temporary basis, and where the employee cannot provide a date of return, granting leave and holding the position open may constitute undue hardship.

Example: If the Executive Chef at a top restaurant requests leave for treatment of her disability but cannot provide a fixed date of return, the restaurant can show undue hardship because of the difficulty of replacing, even temporarily, a chef of this caliber. Moreover, it leaves the restaurant unable to determine how long it must hold open the position or to plan for the chef's absence.
Example: A restaurant food server requests 10 to 14 weeks off for disability-related surgery with the date of return depending on the speed of recuperation. The employer must decide whether granting this amount of leave, and doing so without a fixed date of return, would cause an undue hardship.

- **Policy modifications.** Modifying a workplace rule because of an employee's disability may be a form of reasonable accommodation.

Example: A retail store that does not allow its cashiers to drink beverages at the checkout and limits them to two 15 minute breaks per day may need to modify one rule or the other to accommodate an employee with a psychiatric disability who needs to drink a beverage once an hour due to dry mouth, a side effect of some psychiatric medications.

- **Modifying supervisory methods.** Simple modifications of supervisory methods may include communicating assignments in writing rather than orally for someone whose disability limits concentration or providing additional day-to-day guidance or feedback. An employer is not required, however, to change someone's supervisor.
- **Job coaches.** A job coach who assists in training or guiding the performance of a qualified individual with a disability may be a form of reasonable accommodation.

Example: A custodian with mental retardation might have a job coach paid for by an outside agency to initially help, on a full-time basis, the worker learn required tasks and who then, periodically thereafter, returns to help ensure he is performing the job properly.

- **Reassignment.** Reassignment may be necessary where an **employee** can no longer perform his or her job because of a disability.
    - The employee must be qualified for the new position.
    - A school does not have to bump another employee, promote an employee with a disability, or create a position for the individual.
    - Reassignment should be to a position that is equal in pay and status to the one held or as close as possible if an equivalent position is not vacant.

Example: After being injured, a construction worker can no longer perform his job duties, even with accommodation, due to a resulting disability. He asks a school to reassign him as an accommodation to a vacant, higher-paid construction foreman position for which he is qualified. A school does not have to offer this reassignment because it would be a promotion.
Example: The host responsible for escorting diners to their seats at one of three restaurants operated by a school business can no longer perform the essential functions of her position because a disability requires her to remain mostly sedentary. However, she is qualified to perform the duties of a vacant cashier position, which has the same salary, at one of the school's other restaurants. A school must offer her reassignment to the cashier position at the other restaurant as a reasonable accommodation.

But: Reassignment is not available to **applicants**; therefore, a school would not have to look for a job for a person with a disability who is not qualified to do the job for which he or she applied, unless the school does this for all applicants for other available jobs.

Safety Concerns

Basic rule: The ADA allows a school to ask questions related to disability and even require a medical examination of an employee whose medical condition appears to be causing performance or safety problems.

Direct threat: A school also may reject a job applicant with a disability or terminate an employee with a disability for safety reasons if the person poses a direct threat (i.e., a significant risk of substantial harm to self or others). Employers have legitimate concerns about maintaining a safe workplace for all employees and members of the public and, in some instances, the nature of a particular person's disability may cause an unacceptable risk of harm.

Practice tip: A school must be careful not to exclude a qualified person with a disability based on myths, unsubstantiated fears, or stereotypes about that person's ability to safely perform the job.

Examples of what to consider:

- Assess the particular applicant's or employee's present ability to safely perform the essential functions of the job based on objective evidence and reasonable medical judgment.
- Consider the duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the imminence of the potential harm.

Examples of what to be careful about:

- The determination cannot be based on **generalizations** about the condition.

Example: A school cannot automatically prohibit someone with epilepsy from working around machinery. Some forms of epilepsy are more severe than others or are not well controlled. On the other hand, some people with epilepsy know when a seizure will occur in time to move away from potentially hazardous situations. Sometimes seizures occur only at night, making the possibility of a seizure on the job remote.

- The determination cannot be based on unfounded fears about the condition.

Example: A restaurant could not deny someone with HIV infection a job handling food based on customers' fears that the condition could be transmitted, since there is no real risk of transmitting HIV through food handling.

Food safety – a special rule: Under the ADA, the Department of Health and Human Services annually issues a list of the infectious or communicable diseases transmitted through the handling of food. (Copies of the list may be obtained from Center for Infectious Diseases, Centers for Disease Control & Prevention, 1600 Clifton Road, N.E., Mailstop C09, Atlanta, GA 30333 (404) 639-2213).

- If an individual with a disability has one of the infectious or communicable diseases included on the list, an employer can refuse to assign the individual to a job involving food handling.

- If the individual is a current employee, the employer must consider whether the individual can be accommodated, absent undue hardship, by reassignment to a vacant position not involving food handling.
- The harm must be serious and likely to occur, not remote and speculative.

Example: An employer may not reject an applicant who had been treated for major depression but had worked successfully in stressful jobs for several years based on speculation that the stress of the job might trigger a future relapse.

- There must be no reasonable accommodation that would reduce the risk.

Example: A deaf mechanic cannot be denied employment based on the fear that he has a high probability of being injured by vehicles moving in and out of the garage if an accommodation would enable him to perform the job duties with little or no risk, such as allowing him to work in a corner of the garage facing outward so that he can see any moving vehicles.

Drug & alcohol use

- Current illegal use of drugs is not protected by the ADA. A school does not need to hire or retain someone who is currently engaging in the illegal use of drugs. Tests for the current illegal use of drugs are permitted at any time prior to or during employment.
- While people with alcoholism may be individuals with disabilities, the ADA still allows employers to hold them to the same performance and conduct standards as all other employees, including rules prohibiting drinking on the job.

Example: An employer may fire an employee who is drinking alcohol while on the job if it has a uniformly applied rule prohibiting such conduct.

But: There may be times when a school may have to accommodate an employee with alcoholism. For example, an employer may have to modify a rule prohibiting personal phone calls at work for an employee with alcoholism who periodically has to contact his "AA sponsor," if the employee has a need to do so during work hours.

What to do if a charge is filed against a school business

Basic rule: A charge means only that someone has alleged that a school business discriminated against him/her on a basis that is protected under Federal equal employment opportunity law: race, color, national origin, religion, sex, age, or disability. A charge does not constitute a finding that a school did, in fact, discriminate.

What's the process?

- The EEOC will send a school a copy of the charge and request a response and supporting documentation. The EEOC may investigate the charge. If it finds reasonable cause to believe that the school discriminated against the charging party, it will invite the school to conciliate the charge (i.e., the EEOC will offer the school a chance to resolve the matter informally). In some cases, where conciliation fails, the EEOC will file a civil court action. If the EEOC finds no discrimination, or if conciliation fails and the EEOC chooses not to file suit, it will issue a notice of a right to sue, which gives the charging party 90 days to file a civil court action.

- For a detailed description of the process, check out the EEOC website, www.eeoc.gov , and click on the link to "Small Business Information," and then on the link to "When a charge is filed against my school."
- The EEOC notice may offer mediation as a method for dealing with the charge even before it investigates the charge. We encourage a school to use this process as a less expensive and time-consuming way of resolving an employment dispute.

Practice tip: EEOC's mediation program is free. The program is voluntary and all parties must agree to take part. The mediation process also is confidential. Neutral mediators provide employers and charging parties the opportunity to reach mutually agreeable solutions. If the charge filed against a school it is eligible for mediation, and will be notified by the EEOC of an opportunity to take part in the mediation process. In the event that mediation does not succeed, the charge is referred for investigation. The EEOC notice will caution a school that it is unlawful to retaliate against the charging party for filing the charge.

Example: An employee filed a charge against her supervisor alleging disability discrimination, which the employer believed to be without merit. After receiving the charge, the employer told the employee that she would be fired if she filed another meritless charge against it. The employee filed another charge against the employer and she was fired. Even assuming the charges of discrimination were without merit, the employee has a strong claim that the employer unlawfully retaliated against her.

Practice tip: Even if a school believes that the charge is frivolous, submit a response to the EEOC and provide the information requested. If the charge was not dismissed by the EEOC when it was received, that means there is some basis for proceeding with further investigation. There are many cases where it is unclear whether discrimination may have occurred and an investigation is necessary. Schools are encouraged to present any facts that you believe show the allegations are incorrect or do not amount to an ADA violation.

Information on reasonable accommodations

Below are a few of the most frequently consulted resources for accommodating qualified individuals with disabilities. Many other resources exist both nationally and locally, such as organizations of and for individuals with particular types of disabilities. Finding one of these organizations in your area may be as simple as consulting your local phone book. Additionally, the federal government has a web site, www.disabilitydirect.gov , which provides links to many federal resources.

Job Accommodation Network (JAN) – provides lists based on specific disabilities as well as links to various other accommodation providers.
P.O. Box 6080
Morgantown, WV 26506-6080
(800) 526-7234 or (304) 293-7184
www.jan.wvu.edu

U.S. Department of Labor
For written materials: (800) 959-3652 (voice); (800) 326-2577 (TTY)
To ask questions: (202) 219-8412
www.dol.gov

ADA Disability and Business Technical Assistance Centers (DBTAC) 10 federally funded regional centers to provide assistance on all aspects of the ADA.
(800) 949-4232

RESNA Technical Assistance Project – can refer individuals to projects offering technical assistance on technology-related services for individuals with disabilities.
(703) 524-6686 (voice); (703) 524-6639 (TTY)
www.resna.org

Access for All – Program on Employment and Disability
School of Industrial and Labor Relations
106 ILR Extension
Ithaca, NY 14853-3901
(607) 255-7727 (voice); (607) 255-2891 (TTY)
ilr_ped@cornell.edu

Business Leadership Network
1331 F Street, N.W.
Washington, D.C. 20004-1107
(202) 376-6200, ext. 35 (voice); (202) 376-6205 (TTY)
dunlap-carol@dol.gov
www.usbln.com

Finding qualified workers with disabilities

Many businesses say that they would like to hire qualified individuals with disabilities, but do not know where to find them. The following resources may be able to help. In addition, you may contact organizations of and for individuals with specific disabilities in your area and consult www.disabilitydirect.gov.

RISKON – executive recruitment firm committed to helping people with disabilities find jobs:
15 Central Avenue
Tenafly, NJ 07670
(201) 568-7750
(201) 568-5830 (fax)
www.riskon.com

National Business & Disability Council – provides full range of services to assist businesses successfully integrate people with disabilities into the workplace:
201 I.U. Willets Road
Albertson, NY 11507
(516) 873-9607 or (516) 465-1501
www.business-disability.com
www.abletowork.org
www.ncds.org

Job Accommodation Network (JAN) – provides a variety of resources for employers with employees with disabilities and those seeking to hire employees with disabilities:
P.O. Box 6080
Morgantown, WV 26506-6080
(800) 526-7234 or (304) 293-7184
www.jan.wvu.edu

Employer Assistance Referral Network (EARN) – a national toll-free telephone and electronic information referral service to assist employers in locating and recruiting qualified workers with disabilities. EARN is a service of the U.S. Department of Labor, Office of Disability Employment Policy with additional support provided by the Social Security Administration's Office of Employment Support Programs:
1-866- EARN NOW (327-6669)
www.earnworks.com

CDE comments on ADA employment practices

Subpart B: Employment Practices

No qualified person shall, on the basis of a disability, be subjected to discrimination in employment by any program or activity that receives federal funds or is a public entity. The school must make reasonable accommodations for qualified applicants or employees with known physical and mental impairments unless the accommodation would impose an undue hardship on the operation of the school's program.

Examples of reasonable accommodations would include: making facilities accessible to and usable by persons with disabilities, job restructuring, part time or modified work schedules, and acquisition or modification of equipment or devices. In some cases, the Office for Civil Rights will consider undue hardships on the employing agency.

The regulations mention the following factors to consider in determination of "undue hardship":

- The overall size of the school's program with respect to the number of employees, number and type of facilities, and size of budget;
- The type of the school's operation, including the composition and structure of its workforce; and
- The nature and cost of the accommodation needed.
- The burden of proof is always on the school.

Subpart C: Program Accessibility

No individual with a disability shall be denied the benefits of, be excluded from participation in, or be otherwise subjected to discrimination under any program or activity because facilities are inaccessible or unusable. Building and program accessibility is applicable to any individual with disabilities accessing any activities or programs in that school building.

The regulations contain two standards to be used in determining whether programs and activities are accessible to individuals with disabilities. One standard deals with "existing" facilities; the other deals with "new" construction. The term "existing facility" means the facility was in existence or in the process of construction before June 3, 1977, the effective date of the regulation. The term "new construction" means groundbreaking that took place on or after the effective date of the regulation. Existing facility under ADA was January 26, 1992.

At-Will Policy Guidance

Paraphrased from Bill Bethke's section in Personnel Policies and Practices: Understanding Employment Law (2000, Charter Friends National Network)

General rule

Colorado is a strong "at-will" employment state, which means that, as a general matter, unless an employee has a contract that guarantees a specific period of employment, both s/he and the employer have the right to terminate the employment relationship at any time for any reason or no reason. This law was summarized by the court in *Wisehart v. Meganck*, 66 P.3d 124 (Colo.App. 2002) as follows:

> In Colorado, an agreement of employment that is for an indefinite term is presumed to be at-will. Either the employer or the employee may terminate at-will employment at any time with or without cause, and such termination generally does not give rise to a claim for relief. *Martin Marietta Corp. v. Lorenz*, 823 P.2d 100 (Colo.1992); *Continental Air Lines, Inc. v. Keenan*, 731 P.2d 708 (Colo.1987). The at-will nature of the employment relationship reflects a matter of public policy. *Crawford Rehabilitation Services v. Weissman*, 938 P.2d 540 (Colo.1997). The at-will employment doctrine promotes flexibility and discretion for employees to seek the best position to suit their talents and for employers to seek the best employees to suit their needs. By removing encumbrances to quitting a job or firing an employee, the at-will doctrine promotes a free market in employment analogous to the free market in goods and services generally. *See Mackenzie v. Miller Brewing Co.*, 241 Wis.2d 700, 623 N.W.2d 739 (2001).

The "improper reason" exception

The "improper reason" is an important exception to the general rule of at-will employment. An employer may still fire an at-will employee for any reason or no reason, but cannot fire the employee for an improper reason, such as unlawful racial discrimination. The court in *Wisehart v. Meganck* explained this rule as well:

> At the same time, strict application of the at-will doctrine may invite abuse and lead to injustice. Accordingly, legislation and the common law have restricted application of the at-will doctrine to balance the interests of employers and employees. *See Martin Marietta Corp. v. Lorenz, supra*. For example, certain federal and state statutes have created private claims for relief for wrongful discharge based on discrimination with respect to race, color, gender, national origin, ancestry, religious affiliation, disability, and age. State statutes also permit such claims in cases of termination resulting from an employee engaging in lawful activity off premises during nonworking hours, responding to a jury summons, and certain activities of "whistleblowing." *See Crawford Rehabilitation Services v. Weissman, supra*. Colorado also recognizes a

claim for relief for wrongful discharge in violation of public policy. This judicially crafted exception restricts an employer's right to terminate when the termination contravenes accepted and substantial public policies as embodied by legislative declarations, professional codes of ethics, or other sources. *Rocky Mountain Hospital & Medical Service v. Mariani*, 916 P.2d 519 (Colo.1996)(approving wrongful discharge claim based on accountant's refusal to violate code of professional conduct); *see also Martin Marietta Corp. v. Lorenz, supra* (proscribing termination for refusing to engage in illegal conduct); *Johnson v. Jefferson County Board of Health*, 662 P.2d 463 (Colo.1983)(government employer may not terminate at-will employee for exercising right of free speech); *Jones v. Stevinson's Golden Ford*, 36 P.3d 129 (Colo.App.2001)(approving wrongful discharge claim based on employee's refusal to violate Consumer Protection Act and Motor Vehicle Repair Act); *Lathrop v. Entenmann's, Inc.*, 770 P.2d 1367 (Colo.App.1989)(employer's retaliatory termination against employee for exercising right to apply for and receive workers' compensation benefits provided grounds for wrongful discharge claim).

These exceptions address societal concerns, while honoring the general rule that employment affects private interests, and therefore parties generally are free to bargain for conditions of employment. *See Crawford Rehabilitation Services v. Weissman*, *supra* (claims that relate to a private contract or promise between an employer and an employee do not raise public policy concerns, other than the general interest society has in the integrity of the employment relationship).

The policy manual as a contract

Another important exception to the at-will doctrine is the "policy manual as contract" or the "surprise contract." The courts have held that even though an employer may have thought that it had an at-will relationship with its employees, its policy manual created an implied contract. In other words, where an employer has implemented its employment manual in such a way as to create a reasonable expectation that it will follow certain procedures before terminating employment.

A properly crafted employment contract and employee manual can avoid the application of the so-called "Keenan exception" to the at-will employment relationship by having the specific contract and the policies themselves make it expressly clear that they did not modify the at-will relationship for the employee.

Eliminate at-will confusion

There are a number of proactive steps that you can take to help avoid misunderstandings and pitfalls in the at-will relationship:

- Add a statement to school employee policies stating that all employees are employed at the will of the school for an indefinite length of time, unless they have a written contract for a definite period of employment. The statement needs to be highly visible so that employees are sure to read it.
- Explain that no statements made in any of the school's policies will alter the at-will relationship.

- Have prospective employees sign a statement acknowledging they understand they are applying for an at-will job.
- Let employees know that completion of any introductory period of employment does not change their status as an at-will employee.

These steps and careful supervisory training can help you preserve your at-will status. However, schools still need to remember that the at-will status will not protect a school against all employment legal actions as described above.

Drug-Free Workplace

All organizations covered by the Drug-Free Workplace Act of 1988 are required to provide a drug-free workplace by taking the following steps:

Publish and give a policy statement

Publish and give a policy statement to all covered employees informing them that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the covered workplace and specifying the actions that will be taken against employees who violate the policy.

The employer's policy statement should be clear about which employees are covered by the policy. For example, will the policy apply to all employees or only to those covered by the Act? The employer must make it a requirement that every employee who is engaged in the performance of the covered contract or grant be given a copy of the policy statement. Some employers may choose to have each employee sign a statement acknowledging receipt of the policy. Although this is not specifically required by the Act, it would provide evidence that each employee was given a copy of the policy and that the organization was making a good faith effort to comply with the provisions of the Act.

The policy statement should specify what substances are prohibited. The Act only requires that the policy address controlled substances. Although the Act does not require the inclusion of alcohol or prescription drugs in the policy, many companies choose to include provisions in their policies that prohibit on-the-job use of alcohol or the inappropriate use of prescription drugs. Such a provision should be made in accordance with state and local law.

The policy statement must also be clear about the consequences of violating the policy, as well as the process for determining what actions may be taken in response to a violation. The permitted actions include either referral to treatment or appropriate disciplinary action. Regardless of which action an employer chooses, the response should be applied consistently and fairly. Although each case is unique, it is in the employers' best interest, particularly legally, to treat similar offenses with similar consequences. Many employers provide an employee with the opportunity to seek treatment before initiating disciplinary action.

Establish a drug-free awareness program

Establish a drug-free awareness program to make employees aware of a) the dangers of drug abuse in the workplace; b) the policy of maintaining a drug-free workplace; c) any available drug counseling, rehabilitation, and employee assistance programs; and d) the penalties that may be imposed upon employees for drug abuse violations.

In addition to publishing a policy statement, the Act requires employers to establish a drug-free awareness program to educate employees about the dangers of drug abuse as well as about the specifics of their policy. The Act does not specify a particular format for the awareness program, although it does state that the education effort must be ongoing and not just a one-time event. Some options that employers may wish to consider include (1) educational seminars delivered by substance abuse professionals, local law enforcement officials, and/or school staff, (2) brochures and/or posters, (3) video materials, (4) interactive computer programs, (5) home mailings and/or payroll stuffers, (6) brown-bag lunches, or any combination of these.

Employers should keep in mind that although some "off-the-shelf" products may be sufficient to communicate the dangers of drug use in the workplace, the drug-free awareness program required by the Act must also include information about the school's policy, the consequences of violating the policy, as well as information about any available drug counseling or employee assistance program services. School personnel may accomplish this through the use of discussion groups about the school's policy and its provisions and through the communication of available health benefits for substance abuse treatment.

1. Notify employees that as a condition of employment on a Federal contract or grant, the employee must
   a) abide by the terms of the policy statement; and
   b) notify the employer, within five calendar days, if he or she is convicted of a criminal drug violation in the workplace.
2. Notify the contracting agency within 10 days after receiving notice that a covered employee has been convicted of a criminal drug violation in the workplace.
3. Impose a penalty on or require satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is convicted of a reportable workplace drug conviction.
4. Make an ongoing, good faith effort to maintain a drug-free workplace by meeting the requirements of the Act.

Note: A contractor or grantee that fails to comply with these requirements is subject to certain penalties. A contractor or grantee that fails to carry out the requirements of the Drug-free Workplace Act of 1988 can be penalized in one or more of the following ways:

- Payments for contract or grant activities may be suspended.
- Contract or grant may be suspended or terminated.
- Contractor or grantee may be prohibited from receiving, or participating in, any future contracts or grants awarded by any Federal agency for a specified period, not to exceed five years.

Compliance with the Act's requirements is reviewed as part of normal Federal contract and grant administration and auditing procedures.

The Federal agency head is responsible for deciding whether a violation has occurred. If the contract or grant officer determines – in writing – that cause exists, an appropriate action shall be initiated and conducted in accordance with the Federal Acquisition Regulation and applicable agency procedures. For further information about compliance monitoring procedures, please contact the contract or grant officer in the agency from which the contract/grant was awarded.

A school organization, if it is covered by the Drug-Free Workplace Act of 1988, will be subject to penalties if it:

- Fails to implement the six steps required to establish a drug-free workplace; or
- Employs individuals convicted of a criminal drug offense in a school workplace.
- Although the exact number of convicted employees is not specified in the Act, the contract or grant officer makes the determination on a case-by-case basis.

Making a Sexual Harassment Policy Work

Recent court decisions emphasize that it is not enough just to have a written harassment policy. A school also must make sure that it is implemented in an "effective" manner. This standard means a school must be proactive and take steps to apply a school policy properly.

A school probably should have a sexual harassment policy in place. But, will it protect a school organization against legal claims? Is it an "effective" policy as defined in the Supreme Court's 1998 decisions? Does it include a complaint and resolution procedure? Have you trained your employees on how to use it? Does it promote positive employee relations? Does it cover all forms of harassment, not just sex? If you answered "no" to any one of these questions, it may be time for you to review your policy. The Editors have made the job easy by providing a step-by-step analysis of how to create and implement an effective harassment policy.

Clear reasons for a policy

There are two primary reasons why all employers should have a harassment policy:

- **To create a productive work environment.** A strong and consistently enforced policy against sexual and other forms of harassment shows your commitment to a productive work environment. Harassment that is unchecked has the very real potential to debilitate school operations through decreased morale and productivity and increased employee turnover.
- **To prevent liability**. Court decisions and guidance's from the Equal Employment Opportunity Commission (EEOC) consistently show that a company can decrease its liability for hostile work environment harassment, when it involves coworkers, by maintaining and enforcing internal policies to prevent and deal with harassment.

It is, however, more difficult to avoid liability when supervisors are involved. According to the Supreme Court in Burlington Industries v. Elbert, 524 U.S. 742 (1998), and Faragher v. City of Boca Raton, Fla., 524 U.S. 775 (1998), if a supervisor's harassment results in a tangible employment action (such as termination or discipline), the employer is always liable. No consideration is even given to factors such as whether the employer condoned the behavior or took steps to prevent it. However, if the harassment does not result in a tangible employment action, the employer can defend itself by showing:

1. It has taken reasonable care to prevent and properly correct sexual harassment (such as by adopting and disseminating an effective policy and complaint procedure); and
2. The affected employee unreasonably failed to take advantage of the preventive or corrective opportunities provided.

What makes a policy effective?

Although the Supreme Court did not spell out specifically what makes a policy and complaint procedure effective, HR experts agree that the policy generally should include the following elements:

- **A strong statement prohibiting all forms of harassment.** Specifically, you should prohibit sexual harassment and also harassment based on race, gender, national origin, religion, disability, pregnancy, age, and military status. In addition, you should include any other categories protected by your state's equal opportunity laws (such as sexual orientation if a school organization is in Denver or any other jurisdiction that prohibits discrimination on this ground).
- **A definition of harassment, and in particular, sexual harassment.** This section should include the EEOC's legal definition of both "quid pro quo" and "hostile environment" sexual harassment.
- **An explanation of what conduct is prohibited.** A school policy should prohibit at least the following conduct:
  - quid pro quo threats or promises by a supervisor (loss or promise of job, promotion, or other employment benefit);
  - offensive touching;
  - verbal harassment (lewd comments, sexual jokes or references, offensive or inappropriate personal questions, or negative comments based on the person's protected class status);
  - "girlie" or other offensive pictures displayed in the workplace; and
  - offensive or inappropriate written materials (letters, e-mail messages, or graffiti).

Note that some of the prohibited conduct included above may not technically be considered illegal harassment by a court or agency, but it still warrants disciplinary action since it can have a negative effect on a school workplace. For example, a school can discipline an employee who uses obscene language or tells off-color jokes, even though that conduct generally would not be considered illegal sexual harassment unless the employee engaged in it on an ongoing basis.

- **A viable complaint and resolution procedure.** This procedure should include a bypass mechanism so that an employee does not have to complain to a supervisor or other person who may be involved in the harassment. It also should provide for an investigative process and a specific time frame for resolving complaints. If a school already has a complaint procedure in place that covers workplace problems, a school can use that as long as it includes these safeguards.

- **Specific disciplinary procedures.** The policy should make clear the consequences for any employee who violates the policy or who brings false accusations. For example, it should specify that discipline up to and including termination may be imposed depending on the nature and severity of the situation and the number of occurrences.
- **A "no retaliation" statement.** This reassurance helps employees trust the policy and believe that they will be protected if they make a complaint or cooperate in an investigation. However, employees also must understand that false complaints will be grounds for disciplinary action. It is important to convey this information in a way that does not discourage good-faith reports.

Training and enforcement is key

Even the most carefully worded and explicit policy will not prevent harassment and limit liability if a school does not ensure that it is followed in a consistent manner. To implement the harassment policy properly, a school should:

- **Distribute the policy.** Make sure all employees receive a copy. In addition, publish it in any employee handbook or manual and consider posting it on bulletin boards.
- **Select an appropriate person (or persons) to oversee the policy.** Usually this person is an HR manager or other person well versed in handling harassment complaints.
- **Anticipate situations that can develop into harassment.** By analyzing where a school organization may be at risk for abuses, a school can allocate resources (such as training) to these areas to help prevent foreseeable problems. For example, trouble areas may include relationships between supervisors and their subordinates and the integration of women into a predominantly male workforce.
- **Train supervisors and employees.** In particular, explain the policy and describe specifically what conduct may be considered harassment, how to use the complaint procedures, and what discipline will be imposed on employees who violate the policy. In addition, a school should train supervisors as to their particular obligations under the policy and instruct them to report any incidents of harassment to the designated contact person.
- **Conduct prompt investigations.** Take all complaints seriously and investigate them in a timely manner, generally within a few days. Interview all involved parties and, to the extent possible, maintain confidentiality.

Tips for investigating harassment

Most employers now have an explicit policy against sexual harassment. Although having a clear policy is a good start, it is just the beginning of putting an effective program in place. Many employers have not planned an approach to the problem beyond creating a written policy. Advance planning helps employers achieve the goal of a prompt and appropriate response. This article is a roadmap of strategies to avoid panic when a claim of sexual harassment is made.

Complaint procedures

The complaint procedure for allegations of harassment can be incorporated into the employer's normal grievance procedure or it can be a separate process. Using the normal grievance procedure can be the most efficient for administrative purposes, but special procedures may be needed for highly sensitive situations. For example, employees should not be required to make a complaint to their immediate supervisor if the supervisor is the alleged harasser or has allowed or condoned the alleged harassment. Employees should be permitted to complain directly to a neutral, uninvolved party, such as the HR Manager. At times, such as when senior management or the CEO is accused, it may be necessary to have the Board of Directors or some outside investigator handle the complaint. It generally helps to have a specially trained person oversee all harassment grievances. Complaints of harassment require quick action, objectivity, thorough investigation, timely and appropriate resolution, and (to the extent that is possible) confidentiality.

Investigation procedures

Investigations must be conducted promptly for several reasons. The disruption caused by actual harassment or rumors can be substantial. Evidence and memories of witnesses may be less accurate as time passes. A complaining employee or unjustly accused individual may suffer increasing emotional distress the longer any resolution is delayed. This delay may lead to subsequent legal action and claims of damages for emotional distress. Furthermore, the courts have established that employers are liable for failing to eliminate sexual harassment about which they were, or should have been, aware. Thus, employers should investigate all complaints, even when they are skeptical. The following steps can help ensure an effective investigation:

1. **HR Department receives the complaint.** Supervisors or others who receive the complaint refer it to the HR Department without delay.
2. **HR Department chooses an investigator.** The investigator typically should be a human resources professional who is specially trained to conduct investigations and who understands both the legal and organizational definitions of harassment. Having the same person handle all these complaints can standardize the process and reveal whether other complaints have been received about the same person or department.
3. **Contact between the parties is reduced or eliminated**. Both the complaining employee and the alleged harasser should be told to avoid contact with one another, and ways to minimize contact should be implemented. A transfer of either person may be appropriate during the investigation as long as neither suffers a reduction in pay or benefits.

4. **Parties and witnesses are interviewed.** The complaining employee and the alleged harasser should each be given a chance to tell their versions of the facts. Generally, the complaining party should be interviewed first to identify important details and witnesses. She should be told that details, although possibly embarrassing, are needed for an accurate investigation. The complaining employee should be offered counseling or other assistance in order to deal with the emotional aspects of the case. She should also be encouraged to report any forms of retaliation or continuing harassment.

   The interview with the alleged harasser should be approached objectively. He should be allowed to respond to each allegation and should be told about the type of disciplinary action that may be taken if the allegations are true. The investigator should emphasize that no decision has yet been reached and that his account is crucial for making the correct determination. If the alleged harasser is uncooperative, he should be told in a non-threatening way that his failure to cooperate will be considered as obstructing the investigation and may result in discipline, regardless of the investigation's outcome.

   Witnesses should be told as little as possible about the details of the complaint in order to protect confidentiality and reduce the employer's exposure to defamation claims. They should also be informed that failure to cooperate can lead to discipline and that they will not be retaliated against for cooperating.

   Each person who is interviewed should prepare and sign a statement outlining the information they have provided, if they do not object. If they object to signing, a neutral individual should witness the objection. If the session is tape recorded or videotaped, the person being interviewed should be informed before questioning begins. When physical violence or sexual assault is alleged, both parties should be told that reports would be made to the appropriate legal authorities.

   Once the initial interviews have been conducted, individuals should be questioned again based on the corroborating or conflicting testimony of other witnesses. Stories may change when the parties are confronted with evidence that they hoped would not be presented.

   The following are some other points to remember when conducting an investigative interview:

   a) Remind the person being interviewed that there will be no retaliation for cooperation;
   b) Be and appear as nonjudgmental and neutral as possible;
   c) Ask open-ended questions and do not suggest answers to questions;
   d) Get as much detail as possible;
   e) Do not show outrage or dismay at any answer (this reaction may cause the story to change);
   f) Do not promise complete confidentiality or anonymity, or that punishment will be less severe if the employee confesses;
   g) Document as much as possible about the interview, including the person's answers, gestures, appearance, accuracy of memory, and overall credibility.

5. **Records are separated from other personnel files.** Investigation records should be kept separate from personnel files in a "department file." The only item from the investigation that should be kept in an individual's personnel file is a written recommendation of disciplinary action. This notation should appear in the harasser's file only. Employers should note that these precautions are aimed at curbing the spread of sensitive information within the organization. The opposing side in subsequent legal action may obtain investigation files.

Evaluating evidence and communicating the decision

At the conclusion of the investigation, the employer must decide whether the alleged conduct occurred and whether the conduct was a violation of its harassment policy. An employer's policy may prohibit conduct that is offensive even if it is not actually illegal. In cases where there is no corroborating evidence, the employer may still be able to make a decision based on the credibility of the two parties. For example, contradictory statements by the same person, or changes in one person's story, may make a conclusion possible. However, there may be cases when the employer should not take action against either party because the evidence is inconclusive. Otherwise, the employer may find it is facing claims of wrongful discharge, defamation, infliction of emotional distress, or retaliation. Either party should be given the chance to appeal an unfavorable decision and to submit additional evidence. In communicating a final determination, the employer should: (1) document and list each reason for the decision; and (2) limit the communication to those individuals who are directly involved and any members of management who have a legitimate need to know.

Disciplinary action

Disciplinary action should be taken if the employer concludes that its harassment policy has been violated. The discipline should reflect whether it is the first violation of the policy or part of a pattern of harassment. The nature and seriousness of the behavior should also be considered. The organization's standard disciplinary procedures should be used and discipline should follow appropriate past practices.

Employers should avoid the heavy-handed approach of suspending or terminating all violators without regard to the nature and degree of the offense. On the other hand, a weak response to severe harassment is likely to cause the complaining party to sue and may increase the amount of damages. Employees also should understand that false accusations and false information about harassment would be grounds for discipline, and possibly termination. However, it is important to convey this information in a way that does not discourage good-faith reports.

Written records of a finding of harassment should not state that the employee committed legally impermissible harassment. The harasser's record should reflect only that he violated the employer's sexual harassment policy or conduct policy. Stating that the employee was guilty of sexual harassment, rather than focusing on the policy violation, provides the harasser a chance to argue about whether his actions met the legal definition of harassment.

Final word: stay on top of it

All claims of harassment must be taken seriously and investigated. Naturally, there may be some situations when it is clear that the behavior did not violate the employer's policy even if it upset the complaining party. For example, a male employee may have done nothing more than show too much interest in a female employee's personal life. These situations do not require a full investigation but will need some type of resolution that is understood by both individuals. Addressing every complaint prevents misunderstandings from turning into larger conflicts. It also sends a message to all employees about the organization's commitment to protecting its workforce from harassment.

The courts are regularly churning out decisions that find fault with employer harassment policies and set new compliance standards. These cases clearly demonstrate that having a well-written policy is not enough. A school also needs to train school employees as to what the policy prohibits and how to make a complaint. And, as always, you have to implement the policy consistently, making sure that all complaints are taken seriously and resolved quickly and fairly. As a final safeguard, you (and a school legal counsel) should review the school policy on a regular basis to ensure that it still meets the evolving standards of what is a legally effective harassment policy. These steps will help ensure that the school policy both serves as an effective employee relation's tool and provides meaningful protection from legal liability.

Occupational Safety and Health

The Occupational Safety and Health Act of 1970 (OSHA) (29 USC §651 et seq.; 29 CFR 1900 to end)

In general, the Act covers all employers in the United States. The Act assigns OSHA two regulatory functions: setting standards and conducting inspections to ensure that employers are providing safe and healthful workplaces. OSHA standards may require that employers adopt certain practices, means, methods or processes reasonably necessary and appropriate to protect workers on the job. Employers must become familiar with the standards applicable to their establishments and eliminate hazards. Even in areas where OSHA has not set forth a standard addressing a specific hazard, employers are responsible for complying with the OSH Act's "general duty" clause. The general duty clause [Section 5(a)(1)] states that each employer "shall furnish…a place of employment which is free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees."

Charter schools are relatively low risk with regard to OSHA regulations, and a detailed description of the Act and its highly complicated regulations is beyond the scope of this work. If you suspect that you have an OSHA workplace safety issue, contact legal counsel.

Rules Regarding Giving References

Defamation is defined as the act of harming another's reputation by libel (in writing) or slander (verbally). For example, an employer may be liable for defamatory post-employment references if your official calls a former worker "untrustworthy, a liar, and a slacker." Because of the potential liability for unguarded remarks, many organizations limit reference information to verifying the former employee's position and dates of employment. However, this policy is difficult to enforce since some supervisors ignore it and divulge more information, typically because they want prospective employers to be aware of an applicant's employment history. This departure from established policy exposes the employer to defamation claims. In addition, individuals making the comments can be personally liable for defamatory remarks.

Employers can defend themselves from these claims in several ways. First, truth is the best defense against any defamation claim. In addition, employers can use "qualified privilege" as a defense. A "qualified privilege" defense recognizes that post-employment references are not defamatory unless the employer discloses information it knows is false or makes the disclosure regardless of the employee's rights.

If an employer "glosses over" problem areas, it may trigger a different risk by providing a negligent reference. Under this theory, which is a fairly new trend, former employers can be liable for inaccurate or untrue references. Most successful negligent reference claims have involved subsequent employers that place the employee in a position where others can be harmed easily, such as in a nursing home, daycare, or school.

For example, in a recent California case, *Randi W. v. Muroc Joint Unified School Dist.*, 929 P.2d 582 (Cal. Sup. Ct. 1997), an employer was held liable when a former employee sexually assaulted a student because it unqualifiedly recommended the employee for a position in a school district even though it knew of the employee's past sexual improprieties. Although the law in this area is still evolving, employers may be able to prevent claims of negligent references by providing truthful, detailed responses to questions from prospective employers.

For example, if a nursing home employer terminates an employee for harming a patient and that fact has been accurately documented in the employee's personnel file, that information should be disclosed to prospective employers if the employee would be in a position to repeat the harmful behavior. However, if the employer is not sure about a former employee's involvement in an injurious act, it should only confirm that it would not rehire the employee to prevent claims of defamation.

Educator Conviction Reporting Requirements

Educators are required to disclose on their license and license renewal applications any felony or misdemeanor convictions, excepting misdemeanor traffic offense or infraction convictions (pursuant to Section 22-60.5-103, C.R.S.).

Courts are required to notify CDE when a person whom the court knows holds an educator license or is a current or former school district employee is convicted of unlawful behavior involving children or unlawful sexual behavior (pursuant to Section 13-1-130, C.R.S.).

School districts are required to notify CDE when they learn from a source other than CDE that a current or former employee has been convicted of a felony offense or a misdemeanor offense involving unlawful behavior involving children or unlawful sexual behavior (pursuant to Section 22-32-109.7(3.5), C.R.S.).

Human Resource Record Retention

Adequate record retention is a key responsibility for any HR department. Make certain that the school not only retains the proper records but that they are maintained in a fireproof safe and are secure enough to maintain confidentiality.

Here is a list of records that must be retained. In addition to these HR records, the school must have similar record retention policies and rules for all student records.

- **Job advertisements and postings:** Pursuant to the Americans with Disabilities Act (ADA), Age Discrimination in Employment Act (ADEA), and Fair Labor Standards Act (FLSA), job advertisements and internal postings should be retained for a minimum of one year.
- **Resumes and applications:** The ADA, Rehabilitation Act, Title VII of the Civil Rights Act, and ADEA require employers to keep all resumes and job applications on file for one year. Because the ADEA further stipulates a two-year retention period for paperwork for individuals over the age of 40 (something that may be difficult to determine and is, of course, illegal to ask), consider making it a school policy to hold onto all resumes and applications for that long.
- **Employment action records:** Records relating to promotions, demotions, transfers, and terminations must be retained for one year according to the ADA, ADEA, and Title VII. While training records, in general, should also be kept on file for one year, those related to safety and health must be retained for three years in accordance with the Occupational Safety and Health Act (OSHA).
- **Wage and hour records:** The FLSA and Equal Pay Act oblige a school to keep basic employment and earnings records for two years and payroll records for three years.

What records are required?

Every covered employer must keep certain records for each non-exempt worker. The Act requires no particular form for the records, but does require that the records include certain identifying information about the employee and data about the hours worked and the wages earned. The law requires this information to be accurate. The following is a listing of the basic records that an employer must maintain:

1. Employee's full name and social security number.
2. Address, including zip code.
3. Birth date, if younger than 19.
4. Sex and occupation.
5. Time and day of week when employee's workweek begins.
6. Hours worked each day.
7. Total hours worked each workweek.
8. Basis on which employee's wages are paid (e.g., "$6 an hour", "$220 a week", "piecework")
9. Regular hourly pay rate.
10. Total daily or weekly straight-time earnings.
11. Total overtime earnings for the workweek.
12. All additions to or deductions from the employee's wages.
13. Total wages paid each pay period.
14. Date of payment and the pay period covered by the payment.

What about timekeeping?

Employers may use any timekeeping method they choose. For example, they may use a time clock, have a timekeeper keep track of employee's work hours, or tell their workers to write their own times on the records. Any timekeeping plan is acceptable as long as it is complete and accurate.

- **Employees on fixed schedules:** Many employees work on a fixed schedule from which they seldom vary. The employer may keep a record showing the exact schedule of daily and weekly hours and merely indicate that the worker did follow the schedule. When a worker is on a job for a longer or shorter period of time than the schedule shows, the employer must record the number of hours the worker actually worked, on an exception basis.

Tax records

Information relating to income tax withholdings must be retained for four years according to the Federal Insurance Contribution Act (FICA) and Federal Unemployment Tax Act (FUTA).

Retirement and pension records

The Employee Retirement Income Security Act (ERISA) mandates that employee benefit plan information, including summary plan descriptions (SPDs) and annual reports, be kept on file for six years.

Leave records

Information relating to leaves of absence under the Family Medical Leave Act (FMLA), such as time off and medical certification, must be retained for three years.

I-9 forms

Under the Immigration Reform and Control Act of 1986 (IRCA), I-9 forms must be retained for three years after employment begins or one year following termination (whichever is later).

Job-related illness and injury records

OSHA requires that information pertaining to job-related illness and injury be kept on file for five years. In cases of exposure to toxic substances or blood-borne pathogens, medical exam results must be retained for 30 years after the employee's termination.

Uniformed Services Employment and Reemployment Rights Act

Who is covered?

The Uniformed Services Employment and Reemployment Rights Act (38 USC §§4301 through 4333) (USERRA) was signed on October 13, 1994. The Act applies to persons who perform duty, voluntarily or involuntarily, in the "uniformed services," which include the Army, Navy, Marine Corps, Air Force, Coast Guard, and Public Health Service commissioned corps, as well as the reserve components of each of these services. Federal training or service in the Army National Guard and Air National Guard also gives rise to rights under USERRA.

In addition, under the Public Health Security and Bioterrorism Response Act of 2002, certain disaster response work (and authorized training for such work) is considered "service in the uniformed services" as well.

Uniformed service includes active duty, active duty for training, inactive duty training (such as drills), initial active duty training, and funeral honors duty performed by National Guard and reserve members, as well as the period for which a person is absent from a position of employment for the purpose of an examination to determine fitness to perform any such duty.

USERRA covers nearly all employees, including part-time and probationary employees. USERRA applies to virtually all U.S. employers, regardless of size.

Basic provisions/requirements

The pre-service employer must reemploy service members returning from a period of service in the uniformed services if those service members meet five criteria:

- The person must have held a civilian job;
- The person must have given notice to the employer that he or she was leaving the job for service in the uniformed services, unless giving notice was precluded by military necessity or otherwise impossible or unreasonable;
- The cumulative period of service must not have exceeded five years;
- The person must not have been released from service under dishonorable or other punitive conditions; and

- The person must have reported back to the civilian job in a timely manner or have submitted a timely application for reemployment.

USERRA establishes a five-year cumulative total on military service with a single employer, with certain exceptions allowed for situations such as call-ups during emergencies, reserve drills and annually scheduled active duty for training.

USERRA also allows an employee to complete an initial period of active duty that exceeds five years (e.g., enlistees in the Navy's nuclear power program are required to serve six years).

Employee rights

Under USERRA, restoration rights are based on the duration of military service rather than the type of military duty performed (e.g., active duty for training or inactive duty), except for fitness-for-service examinations. The time limits for returning to work are as follows:

- Less than 31 days service: By the beginning of the first regularly scheduled work period after the end of the calendar day of duty, plus time required to return home safely and an eight hour rest period. If this is impossible or unreasonable, then as soon as possible.
- 31 to 180 days: The employee must apply for reemployment no later than 14 days after completion of military service. If this is impossible or unreasonable through no fault of the employee, then as soon as possible.
- 181 days or more: The employee must apply for reemployment no later than 90 days after completion of military service.
- Service-connected injury or illness: Reporting or application deadlines are extended for up to two years for persons who are hospitalized or convalescing.

USERRA guarantees pension plan benefits that accrued during military service, regardless of whether the plan is a defined benefit plan or a defined contribution plan. Also, USERRA provides health benefits continuation for service members and their families during military service for up to 18 months. In addition, USERRA prohibits employment discrimination against a person on the basis of past military service, current military obligations, or an intent to serve.

Compliance assistance available

The Veterans' Employment and Training Service (VETS) enforces USERRA. However, the law also allows an employee to enforce his or her rights by filing a court action directly, without filing a complaint with VETS.

VETS has published a fact sheet (OASVET 97-3) about USERRA. Copies of this and/or other VETS' publications, or answers to questions about USERRA, may be obtained from the local VETS office. The elaws Uniformed Services Employment and Reemployment Rights Act (USERRA) Advisor (www.dol.gov/elaws) helps veterans understand employee eligibility and job entitlements, employer obligations, benefits and remedies under the Act. VETS has also published a non-technical USERRA Guide that contains general information about the law. Information on USERRA and other VETS programs may be found on the VETS Web site (www.dol.gov/vets).

Penalties/sanctions

A court may order an employer to compensate a prevailing claimant for lost wages or benefits. USERRA allows for liquidated damages for "willful" violations. Relation to State, Local and Other Federal Laws USERRA does not preempt state laws providing greater or additional rights, but it does preempt state laws providing lesser rights or imposing additional eligibility criteria.

Discrimination

USERRA protects all members of the uniformed services from discrimination in employment regardless of whether their uniformed service was in the past, present or future. For example, a Vietnam era veteran remains protected against most discriminatory employment actions even though that person's uniformed service preceded an employment relationship by many years. If that person is subsequently denied a benefit of employment, motivated even in part by that service in the uniformed services, then that person may have rights under USERRA.

The discrimination provisions of USERRA, set forth in section 4311, address problems regarding initial employment, reemployment, retention in employment, promotion, or any other benefit of employment.

Links

Americans with Disabilities Act ADA – http://www.eeoc.gov/policy/ada.html
ADA handbook – http://www.eeoc.gov/ada/adahandbook.html
ADA – http://www.eeoc.gov/policy/ada.html
ADEA – Age Discrimination in Employment Act – http://www.eeoc.gov/policy/adea.html
Colorado Labor Standards – Wages – http://www.coworkforce.com/LAB/
EEOC laws – http://www.eeoc.gov/abouteeo/overview_laws.html
Definition of discriminatory practices – all areas – Title VII, ADA, Age Discrimination. http://www.eeoc.gov/abouteeo/overview_practices.html
EEOC compliance manual – http://www.eeoc.gov/policy/compliance.html
EEOC and small business links, Q&A page – http://www.eeoc.gov/employers/overview.htm
Family Medical Leave Act (FMLA) – main site – http://www.dol.gov/dol/compliance/comp-fmla.htm
FMLA compliance guide – http://www.dol.gov/esa/regs/compliance/whd/1421.htm
FMLA fact sheet – http://www.dol.gov/esa/regs/compliance/whd/whdfs28.htm
Federal Labor Standards Act (FLSA) and compliance issues – http://www.dol.gov/dol/compliance/compliance-majorlaw.htm
Federal child labor – FLSA – http://www.dol.gov/dol/compliance/comp-flsa-childlabor.htm
Federal Drug Free Workplace advisor – http://www.dol.gov/elaws/drugfree.htm
Federal wage and hour rules – http://www.dol.gov/dol/compliance/compliance-majorlaw.htm#wagesworkhours
Harassment rules – http://www.eeoc.gov/types/sexual_harassment.html
HIPAA advice – http://www.dol.gov/ebsa/publications/top15tips.html
Immigration and Naturalization Act Employment Law guide – http://www.dol.gov/asp/programs/guide/aw.htm
I-9 form and guidance – http://uscis.gov/graphics/formsfee/forms/i-9.htm
Occupational Safety and Health Act – (OSH) http://www.dol.gov/dol/compliance/comp-osha.htm
OSHA workplace safety poster – http://www.osha.gov/Publications/poster.html
Posters for Workplace – Federal – http://www.dol.gov/elaws/posters.htm
U.S. Citizenship & immigration services – http://uscis.gov
U.S. employment law guide – http://www.dol.gov/asp/programs/guide.htm
Uniformed Services Employment and Reemployment Rights Act (USERRA) Advisor – http://www.dol.gov/elaws/userra0.htm

Chapter Four – Payroll, I-9, FLSA and Garnishment

This chapter will review the requirements, rules and laws related to payroll and employment rules. We have included additional information about payroll rules because many HR managers must be aware of these regulations in order to answer employee questions and to see that payroll is handled within the rules of the Department of Labor.

Immigration Reform and Control Act (IRCA)

Who is covered

The Immigration and Nationality Act (INA) includes provisions addressing employment eligibility, employment verification and nondiscrimination. These provisions apply to all employers.

Basic provisions/requirements

Under IRCA, employers may hire only persons who may legally work in the U.S. (i.e., citizens and nationals of the U.S. and aliens authorized to work in the U.S.). The employer must verify the identity and employment eligibility of anyone to be hired, which includes completing the Employment Eligibility Verification Form (I-9). Employers must keep each I-9 on file for at least three years, or one year after employment ends, whichever is longer.

Employee rights

The INA protects U.S. citizens and aliens authorized to accept employment in the U.S. from discrimination in hiring or discharge on the basis of national origin and citizenship status.

Compliance assistance available

More detailed information, including copies of explanatory brochures and regulatory and interpretative materials, may be obtained from local offices of the Employment Standards Administration's Wage and Hour Division (www.wagehour.dol.gov) and the Office of Federal Contract Compliance Programs (www.dol.gov/esa/ofccp).

Hiring alien workers

As a general rule all workers must be United States citizens or otherwise authorized to accept employment in the United States. This does not mean that it is always illegal to hire foreign workers. For example, resident aliens and workers with certain types of visas are eligible to accept employment.

Generally, workers with H-2B Visas (temporary workers) and H-1B Visas (professional workers) may be hired. Also, an employer may assist a foreign worker to obtain a green card by filing the appropriate forms with the Department of Labor. A detailed discussion of these rules is beyond the scope of this work, and you are strongly advised to consult legal counsel any time the employment of a foreign worker becomes an issue.

The Immigration and Nationality Act (INA) & I-9 Form

Frequently asked questions about employment eligibility

Do citizens and nationals of the U. S. need to prove, to their employers, they are eligible to work?

Yes. While citizens and nationals of the U.S. are automatically eligible for employment, they too must present proof of employment eligibility and identity and complete an Employment Eligibility Verification form (Form I-9). Citizens of the U.S. include persons born in Puerto Rico, Guam, the U.S. Virgin Islands, and the Northern Mariana Islands. Nationals of the U.S. include persons born in American Samoa, including Swains Island.

Do I need to complete a Form I-9 for everyone who applies for a job with my school?

No. You need to complete Form I-9 only for people you actually hire. For purposes of the I-9 rules, a person is "hired" when he or she begins to work for you for wages or other compensation.

I understand that I must complete a Form I-9 for anyone I hire to perform labor or services in return for wages or other remuneration. What is "remuneration"?

Remuneration is anything of value given in exchange for labor or services rendered by an employee, including food and lodging.

Can I fire an employee who fails to produce the required document(s) within three (3) business days?

Yes. You can terminate an employee who fails to produce the required document(s), or a receipt for a replacement document(s) (in the case of lost, stolen or destroyed documents), within three (3) business days of the date employment begins. However, you must apply these practices uniformly to all employees. If an employee has presented a receipt for a replacement document(s), he or she must produce the actual document(s) within 90 days of the date employment begins.

What happens if I properly complete a Form I-9 and the BICE discovers that my employee is not actually authorized to work?

You cannot be charged with a verification violation; however, you cannot knowingly continue to employ this individual. You will have a good faith defense against the imposition of employer sanctions penalties for knowingly hiring an unauthorized alien unless the government can prove you had actual knowledge of the unauthorized status of the employee.

What is my responsibility concerning the authenticity of document(s) presented to me?

A school must examine the document(s) and, if they reasonably appear on their face to be genuine and to relate to the person presenting them, you must accept them. To do otherwise could be an unfair immigration-related employment practice. If a document does not reasonably appear on its face to be genuine and to relate to the person presenting it, you must not accept it. You may contact you local BICE office for assistance. To get the address and telephone number of the BICE office nearest you, please click the BICE district office directory.

May I accept a photocopy of a document presented by an employee?

No. Employees must present original documents. The only exception is an employee may present a certified copy of a birth certificate.

Information about W-2s

For general questions about W-2s contact:
Denver Regional Office
Colorado, Montana, North Dakota,
South Dakota, Utah, Wyoming
Mike Sharrett
(303) 844-1233
Mike.Sharrett@ssa.gov

Each year, employers must send Copy A of Form W-2 (Wage and Tax Statement) to the Social Security Administration (SSA) by the last day of February (or last day of March if you file electronically) to report the wages and taxes of you employees for the previous calendar year.

In addition, you must give a W-2 to each employee by January 31 (for individual income tax purposes.) W-2s are sent to SSA along with a Form W-3 (Transmittal of Income and Tax Statements).

Employers are required to file Form W-2 for wages paid to each employee from whom:

- Income, social security, or Medicare taxes were withheld, or
- Income tax would have been withheld if the employee had claimed no more than one withholding allowance or had not claimed exemption from withholding on Form W-4, Employee's Withholding Allowance Certificate.

Also, every employer engaged in a trade or business that pays remuneration for services performed by an employee, including non-cash payments, must furnish a W2 Form to each employee even if the employee is related to the employer.

W2 Forms – penalties

The following penalties generally apply to the person required to file the W2 Forms. The penalties apply to paper filers as well as to magnetic media/electronic filers.

Use of a reporting agent or other third-party payroll service provider does not relieve an employer of the responsibility to ensure that W2 Forms are furnished to employees and filed correctly and on time.

Failure to file correct information returns by the due date

If a school fails to file a correct W2 Form by the due date and cannot show reasonable cause, a school may be subject to a penalty. The penalty applies if a school:

- Fail to file timely,
- Fail to include all information required to be shown on the W2 Form,
- Include incorrect information on the W2 Form,
- File on paper when a school is required to file on magnetic media,
- Report an incorrect TIN,
- Fail to report a TIN, or
- Fail to file paper W2 Forms that are machine-readable.

The amount of the penalty is based on when a school files the correct W2 Form. The penalty is:

- **$15** per W2 Form if a school correctly files` within 30 days (by March 30 if the due date is February 28); maximum penalty $75,000 per year ($25,000 for small businesses, defined later).
- **$30** per W2 Form if you correctly file more than 30 days after the due date but by August 1; maximum penalty $150,000 per year ($50,000 for small businesses).
- **$50** per W2 Form if you file after August 1 or you do not file required W2 Forms; maximum penalty $250,000 per year ($100,000 for small businesses).

If you do not file corrections and you do not meet any of the exceptions to the penalty stated below, the penalty is **$50** per information return.

Exceptions to the penalty

The following are exceptions to the failure to file penalty:

1. The penalty will not apply to any failure that you can show was due to **reasonable cause** and not to willful neglect. In general, you must be able to show that your failure was due to an event beyond your control or due to significant mitigating factors. You must also be able to show that you acted in a responsible manner and took steps to avoid the failure.
2. An inconsequential error or omission is not considered a failure to include correct information. An inconsequential error or omission does not prevent or hinder the SSA/IRS from processing the W2 Form, from correlating the information required to be shown on the form with the information shown on the payee's tax return, or from otherwise putting the form to its intended use. Errors and omissions that are never inconsequential are those relating to:

a. A TIN,
b. A payee's surname, and
c. Any money amounts.

3. **De minimis rule for corrections.** Even though you cannot show reasonable cause, the penalty for failure to file correct W2 Forms will not apply to a certain number of returns if you:
   a. Filed those W2 Forms,
   b. Either failed to include all the information required on the form or included incorrect information, and
   c. Filed corrections of these forms by August 1. If you meet all the conditions in a, b, and c, the penalty for filing incorrect W2 Forms (but not for filing late) will not apply to the greater of 10 W2 Forms or ½ of 1% of the total number of W2 Forms you are required to file for the calendar year.

Lower maximum penalties for small businesses

For purposes of the lower maximum penalties shown in parentheses above, you are a small business if your average annual gross receipts for the 3 most recent tax years (or for the period you were in existence, if shorter) ending before the calendar year in which the W2 Forms were due are $5 million or less.

Intentional disregard of filing requirements

If any failure to file a correct W2 Form is due to intentional disregard of the filing or correct information requirements, the penalty is at least $100 per W2 Form with no maximum penalty.

Failure to furnish correct payee statements

If you fail to provide correct payee statements (W2 Forms) to your employees and you cannot show reasonable cause, you may be subject to a penalty. The penalty applies if you fail to provide the statement by January 31, you fail to include all information required to be shown on the statement, or you include incorrect information on the statement. The penalty is $50 per statement, no matter when the correct statement is furnished, with a maximum of $100,000 per year. The penalty is not reduced for furnishing a correct statement by August 1.

Exception

An inconsequential error or omission is not considered a failure to include correct information. An inconsequential error or omission cannot reasonably be expected to prevent or hinder the payee from timely receiving correct information and reporting it on his or her income tax return or from otherwise putting the statement to its intended use. Errors and omissions that are never inconsequential are those relating to:

1. A dollar amount,
2. A significant item in a payee's address, and
3. The appropriate form for the information provided (i.e., whether the form is an acceptable substitute for the official IRS W2 Form).

Intentional disregard of payee statement requirements

If any failure to provide a correct payee statement (W2 Form) to an employee is due to intentional disregard of the requirements to furnish a correct payee statement, the penalty is at least $100 per W2 Form with no maximum penalty.

Civil damages for fraudulent filing of W2 Forms

If you willfully file a fraudulent W2 Form for payments you claim you made to another person, that person might be able to sue you for damages. You may have to pay $5,000 or more.

Minimum Wage and Overtime Pay – FSLA

This section concerns rules under the Fair Labor Standards Act of 1938 (FLSA), as amended (29 USC §201 et seq.; 29 CFR 510-794)

Fair Labor Standards Act (FLSA)

The Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, record keeping, and child labor standards affecting full-time and part-time workers in the private sector and in Federal, State, and local governments.

The Wage and Hour Division (Wage-Hour) administers and enforces FLSA with respect to private employment, State and local government employment, and Federal employees of the Library of Congress, U.S. Postal Service, Postal Rate Commission, and the Tennessee Valley Authority. The FLSA is enforced by the U.S. Office of Personnel Management for employees of other Executive Branch agencies, and by the U.S. Congress for covered employees of the Legislative Branch.

Special rules apply to State and local government employment involving fire protection and law enforcement activities, volunteer services, and compensatory time off instead of cash overtime pay.

Basic wage standards

Covered nonexempt workers are entitled to a minimum wage of not less than $5.15 an hour, effective September 1, 1997. Overtime pay at a rate of not less than one and one-half times their regular rates of pay is required after 40 hours of work in a workweek.

Wages required by FLSA are due on the regular payday for the pay period covered. Deductions made from wages for such items as cash or merchandise shortages, employer-required uniforms, and tools of the trade, are not legal to the extent that they reduce the wages of employees below the minimum rate required by FLSA or reduce the amount of overtime pay due under FLSA.

The FLSA contains some exemptions from these basic standards. Some apply to specific types of businesses; others apply to specific kinds of work.

While FLSA does set basic minimum wage and overtime pay standards and regulates the employment of minors, there are a number of employment practices, which FLSA does not regulate.

For example, FLSA does not require:

- Vacation, holiday, severance, or sick pay;
- Meal or rest periods, holidays off, or vacations;

- Premium pay for weekend or holiday work;
- Pay raises or fringe benefits; and
- A discharge notice, reason for discharge, or immediate payment of final wages to terminated employees.

The FLSA does not provide wage payment or collection procedures for an employee's usual or promised wages or commissions in excess of those required by the FLSA. However, some States do have laws under which such claims (sometimes including fringe benefits) may be filed.

Also, FLSA does not limit the number of hours in a day or days in a week an employee may be required or scheduled to work, including overtime hours, if the employee is at least 16 years old.

The above matters are for agreement between the employer and the employees or their authorized representatives.

Who is covered?

All charter schools should assume this law covers them.

Sub-minimum wage provisions

The FLSA provides for the employment of certain individuals at wage rates below the statutory minimum. Such individuals include student-learners (vocational education students), as well as full-time students in retail or service establishments, agriculture, or institutions of higher education. Also included are individuals whose earning or productive capacity is impaired by a physical or mental disability, including those related to age or injury, for the work to be performed. Employment at less than the minimum wage is authorized to prevent curtailment of opportunities for employment.

Youth minimum wage

A minimum wage of not less than $4.25 an hour is permitted for employees less than 20 years of age during their first 90 consecutive calendar days of employment with an employer. Employers are prohibited from taking any action to displace employees in order to hire employees at the youth minimum wage. Also prohibited are partial displacements such as reducing employees' hours, wages, or employment benefits.

Exemptions

Some employees are exempt from the overtime pay provisions or both the minimum wage and overtime pay provisions.

Because exemptions are generally narrowly defined under FLSA, an employer should carefully check the exact terms and conditions for each. Detailed information is available from local Wage-Hour offices.

Following are examples of exemptions that are illustrative, but not all-inclusive. These examples do not define the conditions for each exemption.

Exemptions from both minimum wage and overtime pay

Executive, administrative, and professional employees (including teachers and academic administrative personnel in elementary and secondary schools), outside sales employees, and employees in certain computer-related occupations (as defined in Department of Labor regulations)

Partial exemptions from overtime pay

Employees who lack a high school diploma, or who have not attained the educational level of the 8th grade, can be required to spend up to 10 hours in a workweek engaged in remedial reading or training in other basic skills without receiving time and one-half overtime pay for these hours. However, the employees must receive their normal wages for hours spent in such training and the training must not be job specific.

Child Labor provisions

The FLSA child labor provisions are designed to protect the educational opportunities of minors and prohibit their employment in jobs and under conditions detrimental to their health or well-being. The provisions include restrictions on hours of work for minors under 16 and lists of hazardous occupations orders for both farm and non-farm jobs declared by the Secretary of Labor to be too dangerous for minors to perform. Further information on prohibited occupations is available from local Wage-Hour offices.

Nonagricultural jobs (Child Labor)

Regulations governing youth employment in non-farm jobs differ somewhat from those pertaining to agricultural employment. In non-farm work, the permissible jobs and hours of work, by age, are as follows:

- Youths 18 years or older may perform any job, whether hazardous or not, for unlimited hours;
- Youths 16 and 17 years old may perform any non-hazardous job, for unlimited hours; and
- Youths 14 and 15 years old may work outside school hours in various non-manufacturing, non-mining, non-hazardous jobs under the following conditions: no more than 3 hours in a day, 18 hours in a school week, 8 hours on a non-school day, or 40 hours in a non-school week. Also, work may not begin before 7 a.m., nor end after 7 p.m., except from June 1 through Labor Day, when evening hours are extended to 9 p.m. Under a special provision, youths 14 and 15 years old enrolled in an approved Work Experience and Career Exploration Program (WECEP) may be employed for up to 23 hours in school weeks and 3 hours on school days (including during school hours).

Fourteen is the minimum age for most non-farm work. However, at any age, youths may deliver newspapers; perform in radio, television, movie, or theatrical productions; work for parents in their solely owned non-farm business (except in manufacturing or on hazardous jobs); or, gather evergreens and make evergreen wreaths.

Colorado Law

When both the FSLA and a state law apply, the law setting the higher standards must be observed. In Colorado the following state law rules apply:

On school days, during school hours, minors under the age of sixteen can't work without a Release Permit. After school hours, minors under the age of sixteen can't work in excess of six hours or between the hours of 9:30 PM and 5 AM unless the next day is not a school day.

No employer can work a minor (under 18) more than forty hours in a week or more than eight hours in any twenty-four hour period.

Record keeping

The FLSA requires employers to keep records on wages, hours, and other items, as specified in Department of Labor record keeping regulations. Employers in ordinary business practice and in compliance with other laws and regulations of the kind generally maintain most of the information. The records do not have to be kept in any particular form and time clocks need not be used. With respect to an employee subject to the minimum wage provisions or both the minimum wage and overtime pay provisions; the following records must be kept:

- Personal information, including employee's name, home address, occupation, sex, and birth date if under 19 years of age;
- Hour and day when workweek begins;
- Total hours worked each workday and each workweek;
- Total daily or weekly straight-time earnings;
- Regular hourly pay rate for any week when overtime is worked;
- Total overtime pay for the workweek;
- Deductions from or additions to wages;
- Total wages paid each pay period; and
- Date of payment and pay period covered.

Records required for exempt employees differ from those for nonexempt workers. Special information is required for home workers, for employees working under uncommon pay arrangements, for employees to whom lodging or other facilities are furnished, and for employees receiving remedial education.

Terms used in FLSA

Workweek — A workweek is a period of 168 hours during 7 consecutive 24-hour periods. It may begin on any day of the week and at any hour of the day established by the employer. Generally, for purposes of minimum wage and overtime payment, each workweek stands alone; there can be no averaging of 2 or more workweeks. Employee coverage, compliance with wage payment requirements, and the application of most exemptions are determined on a workweek basis.

Hours worked — Covered employees must be paid for all hours worked in a workweek. In general, "hours worked" includes all time an employee must be on duty, or on the employer's premises or at any other prescribed place of work. Also included is any additional time the employee is allowed (i.e., suffered or permitted) to work.

Computing overtime pay

Overtime must be paid at a rate of at least one and one-half times the employee's regular rate of pay for each hour worked in a workweek in excess of the maximum allowable in a given type of employment. Generally, the regular rate includes all payments made by the employer to or on behalf of the employee (except for certain statutory exclusions). The following examples are based on a maximum 40-hour workweek.

- **Hourly rate** — (regular pay rate for an employee paid by the hour). If more than 40 hours are worked, at least one and one-half times the regular rate for each hour over 40 is due.

  Example: An employee paid $8.00 an hour works 44 hours in a workweek. The employee is entitled to at least one and one-half times $8.00, or $12.00, for each hour over 40. Pay for the week would be $320 for the first 40 hours, plus $48.00 for the four hours of overtime – a total of $368.00.

- **Piece rate** — The regular rate of pay for an employee paid on a piecework basis is obtained by dividing the total weekly earnings by the total number of hours worked in that week. The employee is entitled to an additional one-half times this regular rate for each hour over 40, plus the full piecework earnings.

  Example: An employee paid on a piecework basis works 45 hours in a week and earns $315. The regular rate of pay for that week is $315 divided by 45, or $7.00 an hour. In addition to the straight-time pay, the employee is also entitled to $3.50 (half the regular rate) for each hour over 40 – an additional $17.50 for the 5 overtime hours – for a total of $332.50.

Another way to compensate pieceworkers for overtime, if agreed to before the work is performed, is to pay one and one-half times the piece rate for each piece produced during the overtime hours. The piece rate must be the one actually paid during non-overtime hours and must be enough to yield at least the minimum wage per hour.

- **Salary** — the regular rate for an employee paid a salary for a regular or specified number of hours a week is obtained by dividing the salary by the number of hours for which the salary is intended to compensate.

If, under the employment agreement, a salary sufficient to meet the minimum wage requirement in every workweek is paid as straight time for whatever number of hours is worked in a workweek, the regular rate is obtained by dividing the salary by the number of hours worked each week. To illustrate, suppose an employee's hours of work vary each week and the agreement with the employer is that the employee will be paid $420 a week for whatever number of hours of work are required. Under this agreement, the regular rate will vary in overtime weeks. If the employee works 50 hours, the regular rate is $8.40 ($420 divided by 50 hours). In addition to the salary, half the regular rate, or $4.20 is due for each of the 10 overtime hours, for a total of $462 for the week. If the employee works 60 hours, the regular rate is $7.00 ($420 divided by 60 hours). In that case, an additional $3.50 is due for each of the 20 overtime hours, for a total of $490 for the week.

In no case may the regular rate be less than the minimum wage required by FLSA.

If a salary is paid on other than a weekly basis, the weekly pay must be determined in order to compute the regular rate and overtime pay. If the salary is for a half month, 24 and the product must multiply it divided by 52 weeks to get the weekly equivalent. A monthly salary should be multiplied by 12 and the product divided by 52.

Enforcement

Wage-Hour's enforcement of FLSA is carried out by investigators stationed across the U.S. As Wage-Hour's authorized representatives, they conduct investigations and gather data on wages, hours, and other employment conditions or practices, in order to determine compliance with the law. Where violations are found, they also may recommend changes in employment practices to bring an employer into compliance.

It is a violation to fire or in any other manner discriminate against an employee for filing a complaint or for participating in a legal proceeding under FLSA.

Willful violations may be prosecuted criminally and the violator fined up to $10,000. A second conviction may result in imprisonment.

Violators of the child labor provisions are subject to a civil money penalty of up to $10,000 for each employee who was the subject of a violation.

Employers who willfully or repeatedly violate the minimum wage or overtime pay requirements are subject to a civil money penalty of up to $1,000 for each such violation.

The FLSA prohibits the shipment of goods in interstate commerce that were produced in violation of the minimum wage, overtime pay, child labor, or special minimum wage provisions.

Recovery of back wages

Listed below are methods that FLSA provides for recovering unpaid minimum and/or overtime wages.

- The Secretary of Labor may bring suit for back wages and an equal amount as liquidated damages.
- An employee may file a private suit for back pay and an equal amount as liquidated damages, plus attorney's fees and court costs.
- The Secretary of Labor may obtain an injunction to restrain any person from violating FLSA, including the unlawful withholding of proper minimum wage and overtime pay.

An employee may not bring suit if he or she has been paid back wages under the supervision of Wage-Hour or if the Secretary of Labor has already filed suit to recover the wages.

A 2-year statute of limitations applies to the recovery of back pay, except in the case of willful violation, in which case a 3-year statute applies.

Exempt vs. non-exempt employees

Are you sure you are classifying your exempt employees correctly? If you are not paying them on a "salary basis," as defined by the FLSA, you may owe up to three years of back pay and even be personally liable for penalties.

Exemption from the Fair Labor Standards Act (FLSA) and the concept of "exempt" status employees seem simple enough at first glance. If an employee performs certain defined job duties and is paid on a "salary basis," the employee is then considered "exempt" from the FLSA's requirements, freeing you from obligations concerning the minimum wage or overtime. However, even if you initially classify employees correctly, you must continue to treat them as exempt on an ongoing basis. Many common practices, such as the tracking of hours worked or not giving paid sick days, may affect whether the employee is considered to be paid on a salary basis and, therefore, can adversely impact the exemption classification.

1. What does it mean to be paid on a "salary basis"?

To be exempt from the FLSA, and not entitled to overtime, an employee must meet certain job duty requirements, generally involving the use of independent judgment and discretion, and be paid on a "salary basis." The FLSA provides for five broadly used classifications of exemptions, including:

1. bona fide administrative employees, including principals, deans,
2. bona fide executive employees,
3. bona fide professional employees, including teachers, counselors
4. outside sales employees, and
5. highly skilled computer-related employees.

Salary basis is defined as the payment on a weekly or less frequent basis of a predetermined amount that constitutes all or part of compensation, without reductions for variations in the quality or quantity of the work performed. Under this definition, exempt employees generally must receive their full salary for any week in which they perform work, without regard to the number of days or hours worked. Deductions may be made from their salary, but only in limited circumstances. (See questions 2 through 7, below.) It should be noted, however, that the FLSA regulations indicate that doctors, lawyers, and teachers (typically categorized as professional exempt employees) do not have to be paid on a salary basis to be considered exempt.

2. Does a school have to give paid vacation days, sick days, and holidays to exempt employees?

Paid time off generally is considered a benefit given at the employer's discretion. However, if a school makes deductions from an exempt employee's salary for unpaid time off, the school should be sure that they do not violate the salary basis test or the school may lose the exemptions. The type and amount of time off taken determines whether a school can make the deductions. According to the FLSA regulations, a school may make a pay deduction when an employee is absent for a full day for personal reasons. Thus, if a school does not provide paid vacation or personal days, a school may deduct the day off from the employee's salary. Similarly, if a school gives paid vacation days and the employee has used them all, a school may deduct any additional personal time off.

A school also may make deductions for a day's absence due to illness or injury if a school has a bona fide plan, policy, or practice that provides compensation for loss of salary due to sickness or disability, such as a policy that allows employees to accrue paid sick leave. This deduction is permissible even if the exempt employee has not yet qualified for the plan or has exhausted the plan's sick leave allowance. However, according to the regulations, if a school does not have a paid sick leave plan, a school may not deduct the day from the employee's salary if the employee has worked any day that week. An exception to this rule is sick leave taken under the Family and Medical Leave Act (FMLA). The FMLA allows deductions from an exempt employee's salary for leave required by the FMLA.

The FLSA regulations do not specifically allow deductions for holidays. Therefore, a school should not make deductions from an exempt employee's pay for unworked holidays

3. Does a school have to pay exempt employees when work is not available?

If the exempt employee is ready, willing, and able to work, deductions may not be made for time when work is not available.

4. What about for jury duty and military leave?

Deductions for partial week absences caused by jury duty, attendance as a witness, or temporary military leave are not permitted. A school may offset any military pay or monetary payments received as jury or witness fees for a particular week against the employee's salary for that same week. Remember, however, that payment usually is not required if the employee does not work the entire week.

5. Do we have to pay exempt employees on days they cannot work because of inclement weather?

The FLSA regulations do not specifically allow employers to reduce an exempt employee's pay for time off related to inclement weather. Therefore, exempt employees generally should be paid for absences resulting from bad weather if they have worked during any of the workweek in which the absences occur.

6. Can deductions be made from an exempt employee's salary for partial day absences?

No. Generally, the regulations indicate that if a school makes deductions from an exempt employee's pay for absences of less than a day, a school is considered to be treating the employee as an hourly worker, instead of an exempt employee paid on a salary basis. (As discussed in question 2, above, a school may make deductions for certain full day absences.)

Many employers have attempted to avoid the partial day pay docking issue by requiring exempt employees to use paid leave for these absences. The Department of Labor (DOL), the agency that enforces the FLSA, traditionally has permitted this type of arrangement since the employee does not experience an actual reduction in salary. There also are special rules for exempt public sector employees that allow them to be considered exempt even if their pay is reduced for partial day absences.

A number of courts have sided with the DOL's position on this issue. However, other courts have disagreed and have determined that this practice does, in fact, treat an exempt employee like an hourly, nonexempt employee and, therefore, causes loss of the exemption.

Because of the split in the courts, a school should consult legal counsel on this matter if you are a private sector employer. As a practical matter, you may find that exempt employees resent being required to use paid leave for partial day absences, particularly if they regularly work more than 40 hours per week. Under this type of policy, they are not entitled to additional pay when they put in long hours, but are required to use vacation or sick leave if they need a few hours off.

Finally, as discussed in question 2, above, the FMLA allows employers to require the use of accrued paid leave for partial day absences for any hours taken as intermittent or reduced FMLA leave, without affecting the employee's exempt status.

7. Can you make deductions for disciplinary reasons, such as a suspension?

No, unless you suspend the exempt employee for a full week. However, you may make deductions for penalties imposed for infractions of "safety rules of major significance." These infractions include rules relating to the prevention of serious danger to the worksite or to other employees, such as no smoking rules in explosives plants, oil refineries, and coalmines. Remember, you can suspend an exempt employee for less than a week as long as you pay him. Since a suspension is often the final step before termination, the employee will most likely understand the seriousness of the suspension even if he does not lose any pay.

8. Can you pay exempt employees extra compensation?

Generally, you may pay extra compensation to exempt employees without affecting the salary basis qualification. The FLSA regulations give only limited examples of acceptable additional compensation, and these include the payment of commissions and "bonuses."

Some employers pay exempt employees additional compensation that is based on the number of hours the employees work in excess of 40 in a single workweek. The regulations do not specifically discuss this practice; however, the courts that have addressed the issue disagree. Some courts have held that an otherwise exempt employee who receives extra payments based on the number of hours worked in excess of 40 is not "paid on a salary basis" and must therefore be paid overtime. Other courts, however, have determined that payment of an hourly rate in addition to the salary does not affect the exempt status of the employee. Because of this split in the courts, most experts recommend paying extra compensation in the form of bonuses or other lump sum payments so that it does not look like overtime pay.

9. Can you keep track of the number of hours exempt employees work?

Employers that require exempt employees to account for their work time on an hourly basis may jeopardize the status of these employees if the accounting has the effect of treating them like hourly workers. For example, if the employee's salary fluctuates based on the number of hours worked, the employee most likely will not be considered exempt. However, you generally may keep track of hours worked for other purposes unrelated to the employee's pay, such as to account for work time to be billed to clients or under a federal contract. A school also may record daily attendance.

Penalties for misclassification are severe

As indicated in the above discussion, if an employee is classified as exempt but does not meet the necessary salary basis tests, a school may lose the exemption. Under the FLSA, the employer can be liable for back overtime pay of up to two years for any employee who is misclassified as exempt. This back pay liability typically is extended to three years if the FLSA is determined to have been willfully (intentionally) violated. In addition, a single misclassification can trigger a loss of exemption for a whole group of employees if the rest of the group has been treated similarly under the organization's policies and practices. And as a final legal wake-up call, some recent court decisions interpreting the FLSA have found that the individual decision maker can be personally liable for any violations under the Act. In other words, a school could be personally responsible for any back pay and other penalties.

As a practical matter, it is unlikely that a school will be assessed personal remedies by the DOL or a court unless a school intentionally violates the FLSA. However, a school needs to realize that many disgruntled employees and their attorneys threaten legal action against the individual decision maker as a way to put pressure on the employer. Therefore, a school should make sure a school are not exposing a school organization or a school self to unnecessary legal actions. The best way to do this is to be familiar with the FLSA regulations, in particular the regulations dealing with the salary basis requirements, and then document a school exempt classification decisions. A good starting point is to compare school policies that affect exempt employee pay with the ten questions and answers addressed above. A final common sense tip to help ensure that exempt employees are paid on a salary basis is to focus on their job duties and completed work, not on the number of hours worked or their arrival and departure times.

A Wage and Hour IQ Quiz

Calculating overtime

When calculating overtime, can a school consider the average number of hours an employee works over several weeks?

Generally, no. The FLSA requires employers to pay overtime for all hours worked over 40 in a single workweek period; the hours may not be averaged over two or more weeks. A workweek is defined as a fixed period of 168 hours or seven consecutive 24-hour days. Thus, if an employee works 30 hours one week and 50 hours the next, he must receive overtime compensation for the hours over 40 that he worked in the second week (even though the average number of hours for the two weeks is 40). This is the case regardless of whether the employee is paid on a daily, weekly, biweekly, monthly, or other basis.

There are two exceptions to this rule: (1) hospitals and residential care facilities are permitted to establish a 14-day period in lieu of the seven-day workweek for purposes of computing overtime, if the affected employees agree; and (2) public agencies may elect to pay fire protection and law enforcement employees overtime after they have worked a set number of hours (212 hours for fire protection employees and 171 hours for law enforcement employees) per work period (defined as 28 consecutive days) instead of after 40 hours in a single workweek.

How does a school calculate pay and overtime for a salaried, nonexempt employee?

For employees who are not paid a regular hourly rate (such as those whose compensation is determined on a salary, piece-rate, or commission basis), a school must determine what their regular hourly rate would be based on their total compensation. The regular hourly rate is computed by dividing the salary by the number of hours the salary is intended to compensate. For example, if an employee is hired at a salary of $350 and this salary is compensation for a regular workweek of 35 hours, the employee's regular rate of pay is $350 a week divided by 35 hours, or $10 an hour. If the employee works overtime, he is entitled to receive $10 for each of the first 40 hours and $15 (one and one-half times $10) for each hour thereafter.

How does a school calculate overtime for a nonexempt employee who works two jobs with different pay rates?

There are two methods for determining an employee's overtime rate when he works two jobs at different pay rates. The first way involves calculating the employee's regular rate of pay by taking the weighted average of the two jobs. To find the weighted average, a school computes the employee's total earnings for the week and divides this by the total number of hours spent on both jobs. Once a school has determined the weighted average, overtime will be calculated as one and one-half times this average. For example, the regular rate of an employee who works 35 hours per week at $15 per hour as a machine operator ($525) and works 10 hours that same week at $7 per hour cutting the grass outside the plant ($70) is $595 divided by 45 hours or $13.22 per hour. Thus, the overtime rate for this employee is one and one-half times $13.22, or $19.83 per hour, regardless of which job the employee performs during the extra hours. The employee's regular and overtime rates will vary from week to week with the number of hours spent performing each job.

Alternatively, an employer and employee may agree (before the work is performed) that the overtime rate will be based on the regular rate that applies to the type of work performed during the hours in excess of forty. Therefore, if an employee spends 35 hours in a week working as a machine operator at $15 per hour, and five hours a week cutting the grass at $7 per hour, the overtime rate for any additional hours spent cutting the grass is $10.50 per hour (one and one-half times $7). Conversely, the overtime rate for any additional hours spent working as a machine operator is $22.50 (one and one-half times $15). This method of computation is available for hourly employees only and does not apply to nonexempt salaried employees.

How do bonuses and incentives affect a nonexempt employee's overtime pay?

Bonuses and incentives that are dependent on hours worked, productivity, or efficiency must be included in determining an employee's "regular rate" of pay, since the "regular rate" is the basis for determining the overtime rate. For example, an hourly employee who earns $7 per hour in a 40-hour workweek has a "regular rate" of pay of $7 per hour and an overtime rate of $10.50 (one and one-half times $7). If that same employee received a $50 production bonus for that week, the employee's regular rate of pay would be $8.25 per hour ($50 plus the regular weekly rate of $280, divided by 40 hours) and the overtime rate is $12.38 per hour for that week.

Under some bonus plans, the bonus is paid less than weekly. In this case, the employer may disregard the bonus until the time when the bonus may be determined and may pay compensation for overtime at one and one-half times the employee's hourly rate, exclusive of the bonus. When the amount of the bonus is known, it must be allocated over the period it covers, and a revised overtime rate must be applied to any hours in excess of 40 that were worked during that period. The employee then should receive additional compensation for each workweek that he worked overtime during the period equal to one-half of the hourly rate of pay allocable to the bonus for that week multiplied by the number of overtime hours worked during the week.

Other examples of bonuses or incentives that must be included in an employee's regular rate of pay are nondiscretionary bonuses paid according to contract; efficiency bonuses for completing work in less than the allotted time; attendance bonuses; and bonuses paid to employees to work in undesirable locations. Bonuses that are not included in the regular rate of pay are those received on special occasions (such as Christmas) as a reward for service and which are not measured by, or dependent on, hours worked, productivity, or efficiency. In addition, premium pay for working on holidays, Saturdays, or Sundays does not have to be included in overtime calculations if it is at least one and one-half times the employee's regular rate of pay.

Can a school give nonexempt employees compensatory (comp) time-off in lieu of paying them overtime?

Private employers may not give comp time-off in lieu of overtime. However, state and local governments can give nonexempt employees compensatory time off at the rate of one and one-half hours for each hour of overtime worked, with certain defined limits.

When Employees Must Be Paid

Do employees have to be paid extra for working weekends, nights, or holidays?

Generally, no. Nonexempt employees must be paid the overtime rate only for each hour actually worked in excess of 40 hours during a workweek. Thus, employers are not required to pay the overtime rate for work performed on a holiday, weekend, or evening, as long as the employee's total hours worked in that workweek are less than 40. Employers that voluntarily pay at least time and one-half for time worked on a holiday, weekend, or evening also may be able to credit the extra compensation towards overtime payments for the same week. A few states (such as Rhode Island), however, require payment of at least time and one-half for employees who work on certain holidays.

Do on-call employees have to be paid for the time spent waiting to work?

Generally, a school has to pay employees who are on-call only for the time when they are called in to work. The FLSA requires waiting time to be paid only if the employees must remain on or so close to the employer's premises, or are otherwise restricted, that they cannot use the time effectively for their own purposes. For example, if the employees only have to leave word about where they may be reached, they generally are not considered to be working while on-call since the time can be used for their own purposes.

In determining whether an employee must be paid for time spent on-call, courts look at how much control the employer has over the employee and whether the employee can effectively use the on-call time for personal purposes. The Ninth Circuit Court of Appeals, in Owens v. Local 169, 971 F.2d 347, amended by 30 WH Cases 1728 (9th Cir. 1992), provided an instructive list of seven factors that courts have looked at in deciding whether an employee has use of on-call time for personal purposes:

(1) whether there was an on-premises living requirement;
(2) whether there were excessive geographic restrictions on the employee's movements;
(3) whether the frequency of calls was unduly restrictive;
(4) whether a fixed time limit for response was unduly restrictive;
(5) whether the on-call employee could easily trade on-call responsibilities;
(6) whether use of a pager could ease restrictions; and
(7) whether the employee had actually engaged in personal activities during on-call time.

Does a school have to pay employees when they work unauthorized hours?

According to Department of Labor (DOL) regulations, if a school is aware that an employee is working more time than is required, the school must compensate the employee, even if the school did not specifically request the additional work. For example, an employee voluntarily may continue to work at the end of the shift to finish an assigned task. If the employer knows or has reason to believe that the employee is continuing to work, the time is considered working time that must be paid. It is management's duty to prohibit employees, through discipline or other means, from working additional time if it does not want to pay for the work time. Merely having a rule against extra work is not enough. A school also must make every effort to enforce the rule.

In addition, employers should not use misleading phrases such as "employees are not permitted to begin work more than 15 minutes before their scheduled starting times or to stop work more than 15 minutes after their scheduled quitting times." This wording may imply that employees may work up to an extra 30 minutes each day without counting the time as working time. The Supreme Court recognized (in Anderson v. Mt. Clemens Pottery Co., 328 U.S. 680 (1946)) the "de minimis" rule that an insignificant amount of time does not have to be counted as work time, such as when an employee spends a few extra seconds or minutes at work. However, according to the DOL, this rule applies only where "there are uncertain and indefinite periods of time involved of a few seconds or a few minutes duration and where the failure to count such time is because of considerations justified by industrial realities."

Wage Garnishment

This section will discuss wage garnishment and the related provisions in Title III, Consumer Credit Protection Act (CCPA) (15 USC §1671 et seq.; 29 CFR 870)

Who is covered

Title III of the Consumer Credit Protection Act (CCPA) protects employees from discharge by their employers because their wages have been garnished for any one debt, and it limits the amount of an employee's earnings that may be garnished in any one week. Title III applies to all employers and individuals who receive earnings for personal services (including wages, salaries, commissions, bonuses and income from a pension or retirement program, but ordinarily not including tips).

Basic provisions/requirements

Wage garnishment occurs when an employer withholds the earnings of an individual for the payment of a debt as the result of a court order or other equitable procedure. Title III prohibits an employer from discharging an employee because his or her earnings have been subject to garnishment for any one debt, regardless of the number of levies made or proceedings brought to collect it. Title III does not, however, protect an employee from discharge if the employee's earnings have been subject to garnishment for a second or subsequent debt.

Title III also protects employees by limiting the amount of earnings that may be garnished in any workweek or pay period to the lesser of 25 percent of disposable earnings or the amount by which disposable earnings are greater than 30 times the federal minimum hourly wage prescribed by Section 6(a)(1) of the Fair Labor Standards Act of 1938. This limit applies regardless of how many garnishment orders an employer receives. As of September 1, 1997, the federal minimum wage is $5.15 per hour.

In court orders for child support or alimony, Title III allows up to 50 percent of an employee's disposable earnings to be garnished if the employee is supporting a current spouse or child, and up to 60 percent if the employee is not doing so. An additional five percent may be garnished for support payments over 12 weeks in arrears. The restrictions noted in the preceding paragraph do not apply to such garnishments.

"Disposable earnings" is the amount of earnings left after legally required deductions (e.g., federal, state and local taxes, Social Security, unemployment insurance and state employee retirement systems) have been made. Deductions not required by law (e.g., union dues, health and life insurance, and charitable contributions) are not subtracted from gross earnings when the amount of disposable earnings for garnishment purposes is calculated.

Title III specifies that garnishment restrictions do not apply to bankruptcy court orders and debts due for federal and state taxes. Nor do they affect voluntary wage assignments, i.e., situations where workers voluntarily agree that their employers may turn over a specified amount of their earnings to a creditor or creditors.

Employee rights

In most cases, Title III gives wage earners the right to receive at least partial compensation for the personal services they provide despite wage garnishment. This law also prohibits an employer from discharging an employee because of garnishment of wages for any one indebtedness. The Wage and Hour Division of the Employment Standards Administration accepts complaints of alleged Title III violations.

Compliance assistance available

The Wage and Hour Division administers and enforces Title III. More detailed information, including copies of explanatory brochures and regulatory and interpretative materials, may be obtained by contacting the local Wage and Hour offices (1–866–4USWAGE). Compliance assistance information is available from the Wage and Hour Division's Web site (www.wagehour.dol.gov).

Penalties/sanctions

Violations of Title III may result in reinstatement of a discharged employee, payment of back wages, and restoration of improperly garnished amounts. Where violations cannot be resolved through informal means, the Department of Labor may initiate court action to restrain violators and remedy violations. Employers who willfully violate the discharge provisions of the law may be prosecuted criminally and fined up to $1,000, or imprisoned for not more than one year, or both.

Relation to state, local and other federal laws

If a state wage garnishment law differs from Title III, the employer must observe the law resulting in the smaller garnishment, or prohibiting the discharge of an employee because his or her earnings have been subject to garnishment for more than one debt.

What is a wage garnishment?

A wage garnishment is any legal or equitable procedure through which some portion of a person's earnings is required to be withheld by an employer for the payment of a debt. Most garnishments are made by court order. Other types of legal or equitable procedures include IRS or state tax collection agency levies for unpaid taxes and federal agency administrative garnishments for non-tax debts owed the federal government.

Wage garnishments do not include voluntary wage assignments - that is, situations in which employees voluntarily agree that their employers may turn over some specified amount of their earnings to a creditor or creditors.

Which Federal law regulates wage garnishment?

Title III of the Consumer Credit Protection Act limits the amount of an employee's earnings that may be garnished and protects an employee from being fired if pay is garnished for only one debt. Title III is administered by the Wage and Hour Division of the Department of Labor's Employment Standards Administration. The Wage and Hour Division has no other authority with regard to garnishments. Questions over issues other than the amount being garnished or termination should be referred to the court or agency initiating the withholding action. For example, questions regarding the priority given to certain garnishments over others are not matters covered by Title III and may be referred to the court or agency initiating the garnishment action.

To whom does the law apply?

The law protects everyone receiving personal earnings, i.e., wages, salaries, commissions, bonuses, or other income - including earnings from a pension or retirement program. Tips are generally not considered earnings for the purposes of the wage garnishment law.

The law applies in all 50 states, the District of Columbia, and all U.S. territories and possessions.

What is the protection against discharge when wages are garnished?

The CCPA prohibits an employer from firing an employee whose earnings are subject to garnishment for any one debt, regardless of the number of levies made or proceedings brought to collect that debt, because of the single garnishment. The Act does not prohibit discharge because an employee's earnings are separately garnished for two or more debts.

What are the restrictions on wage garnishment?

The amount of pay subject to garnishment is based on an employee's "disposable earnings," which is the amount left after legally required deductions are made. Examples of such deductions include federal, state, and local taxes, the employee's share of State Unemployment Insurance and Social Security. It also includes withholdings for employee retirement systems required by law.

Deductions not required by law – such as those for voluntary wage assignments, union dues, health and life insurance, contributions to charitable causes, purchases of savings bonds, retirement plan contributions (except those required by law) and payments to employers for payroll advances or purchases of merchandise – usually may not be subtracted from gross earnings when calculating disposable earnings under the CCPA.

The law sets the maximum amount that may be garnished in any workweek or pay period, regardless of the number of garnishment orders received by the employer. For ordinary garnishments (i.e., those not for support, bankruptcy, or any state or federal tax), the weekly amount may not exceed the lesser of two figures: 25 percent of the employee's disposable earnings, or the amount by which an employee's disposable earnings are greater than 30 times the federal minimum wage (currently $5.15 an hour).

For illustration, if the pay period is weekly and disposable earnings are $154.50 ($5.15 X 30) or less, there can be no garnishment. If disposable earnings are more than $154.50 but less than $206.00 ($5.15 X 40), the amount above $154.50 can be garnished. A maximum of 25 percent can be garnished, if disposable income earnings are $206.00 or more. When pay periods cover more than one week, multiples of the weekly restrictions must be used to calculate the maximum amounts that may be garnished. The table and examples at the end of this fact sheet illustrate these amounts.

What about child support and alimony?

Specific restrictions apply to court orders for child support or alimony. The garnishment law allows up to 50 percent of a worker's disposable earnings to be garnished for these purposes if the worker is supporting another spouse or child, or up to 60 percent if the worker is not. An additional 5 percent may be garnished for support payments more than l2 weeks in arrears.

Are there any exceptions to the law?

The wage garnishment law specifies that the garnishment restrictions do not apply to certain bankruptcy court orders, or to debts due for federal or state taxes.

If a state wage garnishment law differs from the CCPA, the law resulting in the smaller garnishment must be observed.

What about non-tax debts owed Federal Agencies?

The Debt Collection Improvement Act authorizes federal agencies or collection agencies under contract with them to garnish up to 15% of disposable earnings to repay defaulted debts owed the U.S. government. The Higher Education Act authorizes the Department of Education's guaranty agencies to garnish up to 10% of disposable earnings to repay defaulted federal student loans. Such withholding is also subject to the provisions of the federal wage garnishment law, but not state garnishment laws. Unless the total of all garnishments exceeds 25% of disposable earnings, questions regarding such garnishments should be referred to the agency initiating the withholding action.

Examples of amounts subject to garnishment based on the $5.15 an hour minimum wage

The following examples illustrate the statutory tests for determining the amounts subject to garnishment.

1. An employee's gross earnings in a particular week are $235.00. After deductions required by law, the disposable earnings are $205.00. In this week $50.50 may be garnished, since only the amount over $154.50 may be garnished where the disposable earnings are $206.00 or less. The employee would be paid $154.50.
2. An employee's gross earnings in a particular workweek are $240.00. After deductions required by law, the disposable earnings are $210.00. In this week 25 percent of the disposable earnings may be garnished. ($210.00 X 25% = $52.50) The employee would be paid $157.50.

3. A garnishment order is received after the second workday of the week. It requires a garnishment based on wages earned up to that day be withheld. The employee is paid $60.00 a day. Since less than $154.50 has been earned, no garnishment is permitted. However, if another garnishment is received when the workweek is complete, or in states where continuing garnishments are issued, the employer withholds wages on the basis of the earnings for the entire week.
4. An employee paid every other week has disposable earnings of $400.00 for the first week and $40.00 for the second week of the pay period, for a total of $440.00. In a biweekly pay period, when disposable earnings are above $412.00 for the pay period 25% may be garnished. It does not matter that the disposable earnings in the second week are less than $154.50 – 25% of the $440.00 ($110.00) is subject to garnishment.
5. An employee on a $320.00 weekly draw against commissions has disposable earnings each week of $285.00. Commissions, paid monthly, total $2,000.00 for July after deductions required by law. Each draw and the balance due at the monthly settlement are separately subject to the law's restrictions. Thus, 25% ($71.25 in this example) of each draw may be garnished. At the end of the month, the $1,140.00 previously drawn is subtracted from the $2,000.00 settlement figure, and 25% of the balance may be garnished. In this example, the garnishable amount is $215.00.
6. Pursuant to a garnishment order (with priority) for child support an employer withholds $90.00 a week from the wages of an employee who has disposable earnings of $240.00 a week. A garnishment order for the collection of a defaulted student loan is also served. The limit for normal garnishments of 25% applies to the debt for the outstanding student loan. Under the formula for normal garnishments, a maximum of $60.00 (25% of $240.00) is garnishable. The $90.00 support payments may be withheld, because the normal restrictions do not apply to court orders for support. No withholding for the defaulted student loan may be made, because the amount already withheld is more than the amount that may be withheld for normal garnishments. Additional withholdings could be made to collect support, delinquent federal or state taxes and certain bankruptcy court ordered payments

Where to Obtain Additional Information

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

For additional information, visit our Wage-Hour website: http://www.wagehour.dol.gov and/or call our Wage-Hour toll-free information and helpline, available 8am to 5pm in a school time zone, 1-866-4USWAGE (1-866-487-9243).

Links

Colorado Labor Standards – Wages – http://www.coworkforce.com/LAB/ Federal overtime wage requirements – Definition of discriminatory practices – all areas – Title VII, ADA, Age Discrimination.
http://www.eeoc.gov/abouteeo/overview_practices.html
Federal child labor – FLSA - http://www.dol.gov/dol/compliance/comp-flsa-childlabor.htm
Federal wage and hour rules – http://www.dol.gov/dol/compliance/compliance-majorlaw.htm#wagesworkhours
http://www.dol.gov/esa/regs/compliance/whd/whdfs23.htm
Immigration and Naturalization Act Employment Law guide – http://www.dol.gov/asp/programs/guide/aw.htm
Wage garnishment – http://www.dol.gov/esa/whd/garnishment/index.htm
Wage and Hour Exempt employees proposed definition – http://www.dol.gov/esa/regs/fedreg/proposed/2003033101.htm

Chapter Five – Benefits

This section will only apply to state and federal benefits. It will only address public benefits including Public Employees Retirement Act (PERA), Family Medical Leave Act (FMLA), Consolidated Omnibus Budget Reconciliation Act (COBRA), Workmen's Compensation and Unemployment Insurance.

Other benefits, such as 401K programs, 403B programs, Cafeteria Plans, Section 125 programs, health insurance, dental insurance, optical insurance and disability insurance are provided through private companies and may or may not be offered through your charter school. It is important when obtaining information about any benefit program that you obtain multiple bids and references from other businesses/schools that have used their services.

Public Employees Retirement Association PERA

For information on PERA, refer to the Public Employee's Retirement Association (PERA) Benefits website at www.co**pera**.org

COBRA Benefits

COBRA coverage

A. COBRA defines a group health plan as any plan of, or contributed by, an employer to employees, either directly or through insurance, reimbursement, or some other means.
   a. Group health plans may include hospitalization, surgical, medical, dental, and vision plans as well as the direct treatment at an on-site facility and self-funded plans.
   b. Life insurance and disability benefit plans are not covered by COBRA.

Persons covered by COBRA

A. Employees, spouses and dependent children covered by the group health plan are called qualified beneficiaries and are covered by COBRA. Such persons may include retirees, independent contractors, partners, or self-employed individuals who are covered by the group health plan.
B. The only exception to offering COBRA continuation coverage is if the covered employee is terminated for gross misconduct. Employers do not need to offer COBRA continuation coverage to the employee who committed gross misconduct, but covered family members of the employee must still be given the opportunity to elect continued coverage. However, situations, which may warrant the denial of COBRA coverage due to gross misconduct are limited and an employer is urged to contact MSEC for further guidance.
C. When a covered spouse and dependent children become eligible for coverage, each person has an independent right to continuation coverage even if the covered employee does not choose COBRA continuation coverage. For this reason, it is important to send all COBRA notices to the

covered employee's home to ensure that dependents are made aware of their COBRA rights.

D. Under existing COBRA law, the only dependents who can become "qualified beneficiaries" are dependents covered the day before a qualifying event. Individuals who become dependents of qualified beneficiaries after COBRA coverage is in effect can become covered, but only according to the plan rules on open enrollment. They do not acquire the COBRA rights of qualified beneficiaries.

HIPAA amends the definition of "qualified beneficiary" to include a child born to, or placed for adoption with, the covered employee during the period of COBRA coverage. These individuals could presumably continue COBRA coverage on their own, even if the other qualified beneficiaries chose not to do so. Also, these individuals could benefit from an extension under COBRA's "multiple qualifying event rule."

Duration of coverage

A. The length of time COBRA coverage may be extended to qualified beneficiaries depends on the reason for the loss of coverage, called the qualifying event.

B. **Qualified beneficiaries** who lose coverage due to reduction of hours or termination of employment for any reason other than for gross misconduct, may continue coverage up to 18 months from the qualifying event.

   1. If any qualified beneficiary is **disabled** at anytime during the first 60 days of COBRA coverage, COBRA coverage for all family members may be extended to 29 months from the qualifying event rather than the standard 18 months. The disabled individual must obtain a determination of disability from the Social Security Administration within the initial 18-month COBRA period.

C. **Spouses and dependent children** covered by the group health plan may continue their coverage up to 36 months for the following qualifying events:

   1. The death of the covered employee;
   2. Divorce or legal separation from the covered employee;
   3. The covered employee becomes entitled to Medicare; or
   4. The child ceases to be a dependent under the provisions of the group health plan.

If any of the above qualifying events occurs during the 18-month period, the continuation period for the spouse and dependent children is extended to 36 months from the date of the first qualifying event (i.e., the covered employee's termination or reduction of hours). Except for rare circumstances involving the employer's bankruptcy, the maximum duration for COBRA continuation is 36 months.

D. Regardless of the maximum coverage period listed above, a qualified beneficiary loses COBRA continuation coverage when any of the following occurs:

   1. Termination of the employer's health plan. Termination of a health plan terminates COBRA rights under that plan provided the employer does not replace the health plan and does not maintain any other health plan at any of its other locations.

2. Failure to pay premiums. COBRA coverage terminates if the qualified beneficiary does not pay the applicable premium by the end of the applicable grace period. Coverage need not be reinstated once a premium payment is missed.
3. Coverage under another employer's plan. Qualified beneficiaries who become covered under another group health plan after the date of their COBRA election, may lose their eligibility for COBRA coverage, except for beneficiaries who have preexisting conditions that are not covered under the new group health plans. Mere eligibility for a new group health plan is not sufficient to end the qualified beneficiary's COBRA coverage; the qualified beneficiary must be enrolled in the new plan before COBRA coverage can cease.
4. Medicare. COBRA beneficiaries who enroll in Medicare after the date of their COBRA election may lose their COBRA eligibility.
5. Ceasing to be disabled. COBRA coverage beyond 18 months can be terminated if the Social Security Administration makes a final determination that a qualified beneficiary is no longer disabled.

E. If the health plan offers participants an option to convert from group coverage to individual coverage, a qualified beneficiary must be offered such an option during the last 180 days of the applicable maximum coverage period.

Payment of premiums

A. An employer can charge up to 102% of the applicable premium. The premium is the employee share plus the employer share plus a 2% administrative fee.
B. Individuals and their families entitled to extend coverage beyond 18 months because of a disability may be charged 150% of the applicable premium for coverage from month 19 through 29. The higher premium, however, only applies to family groups that contain the disabled individual. If only the non-disabled qualified beneficiaries in a family group elect the disability extension, the maximum rate they may be charged is 102%.
C. The initial COBRA premium payment must be made within 45 days of the election of continuation coverage. Subsequent payments are timely if made within 30 days of the due date. COBRA beneficiaries are not required to pay premiums any earlier than the date required of employees to pay premiums or the date the employer is required to pay its insurer or HMO for employee coverage, whichever is longer.
D. Qualified beneficiaries are allowed to pay for coverage on a monthly basis.
E. An employer must accept payment from a third party (such as a hospital or another employer).

Health insurance benefits provided under COBRA

A. The coverage provided by COBRA must be the same as the coverage provided to active employees and their dependents ("similarly situated non-COBRA beneficiaries".) If the coverage under the group health insurance plan is modified during the COBRA continuation period, COBRA coverage may also be modified. If new options under the group health insurance plan are made available to employees, the same must be made available to COBRA beneficiaries.
B. If the employer grants its employees choices during an open enrollment period, the same choices must be made to the COBRA beneficiaries.
C. Health Flexible Spending Accounts (FSAs, Sec. 125 plans) The proposed regulations of 1999 state that employers do not have to offer COBRA for health flexible spending accounts after the plan year in which the qualifying event occurred, if two conditions are met:
    1. The benefits provided under the health FSA are excepted benefits under HIPAA and are not subject to HIPAA's certification and other rules. This means that the employer provides other health insurance coverage subject to HIPAA and the maximum amount available under the FSA is less than two times either the employee's salary reduction amount or, if greater, the salary reduction amount plus $500; and
    2. In the plan year in which the qualifying event occurs, the maximum amount that can be required as payment for the FSA under COBRA is greater than the maximum benefit available to the beneficiary. This will likely be met because the 2% administrative fee that most employers charge would increase the amount to be paid above the amount to be received. For example, the beneficiary would pay $102 to receive $100 under COBRA for the health Section 125 plan.

An employer can choose not to offer COBRA on health FSAs at all, even in the year the qualifying event occurs, if a third condition is also met:

    3. The maximum benefit amount available for the remainder of the plan year is less than the maximum the employer can require as payment under COBRA. For example, an employee before termination elected $1000 for a FSA for the year. At the time of the qualifying event the employee had contributed $600 to the FSA but had been reimbursed for $750. The qualified beneficiary would have to pay $400 (plus 2% administrative fee) to receive only $250 in reimbursement. Therefore, the employer does not need to offer COBRA on the health FSA.

Election of coverage

A. Each qualified beneficiary is entitled to a separate election of continuation coverage. For example, an employee may elect coverage for a dependent child while not electing coverage for him or herself.
B. A qualified beneficiary has 60 days to elect COBRA coverage from the date the health insurance coverage ends or the date the Notice and Election Form was mailed to the qualified beneficiary, whichever is later.
C. The qualified beneficiary then has 45 days to pay the first premium.

D. Claims incurred during the election period are not paid until the qualified beneficiary makes the first premium payment. Once the COBRA premium is paid within the applicable grace period, all claims retroactive to the qualifying event must be processed for payment.

Notification rules

A. Employers are legally obligated to ensure that employees and covered dependents are fully aware of their rights under COBRA.
    1. Group health summary plan descriptions (SPD) booklets must include statements advising employees of their COBRA rights.
    2. Some employers include a statement concerning COBRA in the employee handbook, although this is not required. If an employer chooses to provide information about COBRA in the handbook, such statements are not sufficient to replace the Initial Notice and Notice and Election Form that are required.

B. Initial Notice – Employees, spouses and dependents must be notified in writing of their rights under COBRA at the time they become covered by the group health plan. Because the notice must also be given to spouses and dependents, it is strongly recommended that the Initial Notice be mailed to the employee's home.

C. Notice and Election Form – To insure all qualified beneficiaries are notified of their COBRA rights after the loss of coverage, election forms must be mailed to the last known address with a business record of the mailing. While not required by law, certified mailing or return receipt requested would establish proof that the election notice was mailed by the employer. (See MSEC sample entitled Notice and Election Form.)

While not required by COBRA regulations, a letter notifying qualified beneficiaries that their COBRA coverage is being terminated and the reason for the termination (i.e., premium not paid, etc.) may prevent future claim disputes.

Record keeping for COBRA compliance

A. There are severe penalties for failing to advise an employee of COBRA rights. To avoid such penalties, employers need records to establish that notice has been given in a timely fashion and that the employee has either elected or rejected coverage.

B. The following suggestions may be considered to aid in designing such a record keeping program:
    1. Record terminations as soon as they occur.
    2. Track terminations of employees covered by group health plans.
    3. Track reductions of hours of employees covered by group health plans.
    4. Track deaths of employees covered by group health plans.
    5. Track leaves of employees covered by group health plans, as leaves that result in a reduction of hours and cause the employee to lose coverage constitute a qualifying event.
    6. Track Medicare eligibility of employees covered by group health plans.
    7. Track retirees covered by group health plans.
    8. Maintain current addresses of employees.

9. If employees are asked to sign a form during exit interviews establishing that they have been advised of their COBRA rights, remember a school cannot also require them to make a decision electing or rejecting COBRA continuation at this time, but a school can require them to acknowledge the school has told them of their rights.
10. Create a system to record notices sent to plan administrators (if applicable).
11. Create a system to compare notices sent to plan administrators with a list of qualified beneficiaries and qualifying events.
12. Send a letter, return receipt requested, to the last known address of any employee for whom the school does not have a signed form acknowledging notification of COBRA rights in order to document that the school has given the proper notice or maintain other business records to prove the school has sent an Election Notice.
13. Establish a system in the school's payroll procedures to generate a list of employees who have zero pay, zero hours, have not been terminated, and participate in a school group health plans. This will reveal individuals who may have been terminated, be on a leave of absence, have a reduction of hours, or otherwise qualify for COBRA continuation.
14. Create a system to establish who has paid premiums on time.
15. Maintain records of notice given of lapse of coverage due to failure to pay a premium. Maintain a copy of the letter sent to qualified beneficiaries concerning lapse of coverage.
16. Maintain a telephone log of calls received about COBRA to document verbal notice given in addition to the written notice. NEVER accept verbal notification of election or waiver of COBRA.
17. Maintain a log of help given to qualified beneficiaries, such as translations into foreign languages.
18. Establish a system to show that the school provided all individuals who continued coverage with the notices required under ERISA. (For example, they are entitled to announcements concerning material modifications of the plan, premium changes, and any other general materials distributed to plan participants who are similarly situated active employees).
19. Set up a system to record any oral communications from a qualified beneficiary concerning COBRA continuation coverage; however, require written confirmation from the qualified beneficiary before affecting any
20. Maintain a log of changes in the school plan.
21. Maintain a record of how premiums are calculated.
22. Maintain a record of what coverage is requested (i.e., family, individual, and which plans were elected).
23. Maintain a log of those covered employees who were denied COBRA coverage and why (e.g., fired for gross misconduct, failure to pay premium, failure to make an election, failure to give notice of a divorce, etc. With respect to gross misconduct, such records will also aid a school in being consistent).

Sanctions and Penalties under COBRA

A. Employers who fail to comply with notification obligations (election forms and initial notices) may be fined a minimum IRS excise tax of $100.00 for each day a plan is not in compliance with COBRA. Additionally, ERISA contains a $100.00 a day fine for violations before July 29, 1997 and a $110.00 a day fine for violations after July 29, 1997. An employer may also be subject to a civil lawsuit and liable for the costs of medical expenses incurred by an individual who would otherwise have been covered.

Employers who do not comply with COBRA may be disallowed from claiming group health plan costs as a business expense for tax purposes.

Unemployment Insurance

Colorado's Employment Security Program includes Job Service and Unemployment Insurance. Its management depends upon the cooperation between the Division of Employment and Training and the employer.

To manage the program, the Division needs certain reports from employers. This includes quarterly tax returns, wage lists, and employee separation information.

Unemployment insurance is an important part of Colorado's Employment Security Program. It acts as an income stabilizer for both the worker and the economy.

Unemployment insurance (UI) is for workers who lose their job through no fault of their own. It is not a "handout," "welfare assistance," "rocking chair money," or a form of social security. Unemployment insurance is paid to a claimant who meets the terms and conditions of the CESA.

Employee rights

It is unlawful for an employer to require an employee to release, repay, pay into, or waive any unemployment insurance benefit rights, for any reason. An employer may be prosecuted for doing so.

Who must pay unemployment insurance tax?

An employer is required to pay unemployment insurance tax if he or she:

- Employs and pays one worker. This does not apply to an employer who employs agricultural labor or domestic workers, or to an employer that is a nonprofit 501 (c)(3) organization. (See agricultural, domestic, and nonprofit 501 (c)(3) organization criteria below.)
- Voluntarily elects to participate in the Unemployment Insurance (UI) Program.
- Acquires all of the Colorado trade, business, organization, or acquires a substantial portion of the assets from a predecessor employer.
- Acquires part of the organization, trade, or business of an employer that, if considered separately, would be an employer as defined in the law.
- Is an employing unit that is subject to the Federal Unemployment Tax Act (FUTA).

- Is a religious, educational, or charitable nonprofit organization described in the Federal Internal Revenue Code Section 501 (c)(3) and has four or more employees for 20 weeks during the calendar year, even though exempt from federal unemployment taxes under FUTA, Section 3306 (c)(8).
- Is a state agency, state-operated hospital or school of higher education, or a political subdivision of the state.
- Employs domestic help in a private home and pays cash wages of $1,000 or more to one or more workers in any calendar quarter. This provision also applies to local college clubs and/or local chapters of a college fraternity or sorority.
- Is an employer of agricultural labor and pays either cash wages of $20,000 or more to one or more workers in any one calendar quarter, or employs ten workers for 20 weeks during the calendar year.

Whenever an employer becomes liable for the first time in a given year, the employer is liable for the tax starting with the first paid payroll in that year.

Which workers are required to be in covered employment for Unemployment Insurance?

Generally, an individual who is paid wages and performs a service for an employer who is required to pay the unemployment insurance tax is in covered employment. However, there are specific exemptions under the law that are explained in the section "Which Workers Are Not Covered by Unemployment Insurance?" In addition, FUTA Section 3306(i) requires a corporation officer to be in covered employment.

Which payments are considered wages for Unemployment Insurance?

Payments included in the definition of wages for unemployment insurance are:

- Any payment defined as wages in the FUTA.
- Payments for personal services, including anything other than cash which has cash value. However, the payments to an agricultural worker or domestic worker must be in cash to be considered wages.
- An employee contribution under a Section 401 (k) plan of the Federal Internal Revenue Code.
- Payments due to sickness or accident disability paid to an employee in the first six calendar months following the last calendar month in which the employee worked for the employer.
- Employee contributions to a simplified employee pension (SEP) plan in Section 219 (b)(2) of the Federal Internal Revenue Code.
- Payments made by a public school or a 501 (c)(3) nonprofit organization into an annuity contract described in Section 403 (b) of the Federal Internal Revenue Code, if the purchase of the contract is made by reason of a salary-reduction agreement.
- Payments made by a governmental entity into a deferred compensation plan described in Section 414 (h)(2) of the Federal Internal Revenue Code, if the purchase of the contract is made by reason of a salary-reduction agreement.

Payments which are not included in the definition of wages for unemployment insurance are:

- Employer matching contributions under a 401(k) plan of the Federal Internal Revenue Code.
- An employer contribution made on behalf of an employee or any dependents into a plan that makes provisions for payments due to sickness, accident, disability, medical or hospitalization expense, or death.
- Employer matching contributions to a simplified employee pension (SEP) plan in Section 219 (b)(2) of the Federal Internal Revenue Code.
- Payments made by a governmental entity into a deferred compensation plan described in Section 3121 (v) of the Federal Internal Revenue Code.
- Payments made under a cafeteria plan described in Section 125 of the Federal Internal Revenue Code.
- Payments for moving expenses made to or on behalf of an employee, if a deduction is allowed in Section 217 of the Federal Internal Revenue Code.
- Amounts paid or incurred by an employer for a dependent care plan provided to an employee in Section 129 of the Federal Internal Revenue Code.
- Amounts paid or incurred by an employer for educational assistance programs provided to an employee in Section 127 of the Federal Internal Revenue Code.
- The value of meals or lodging furnished for the convenience of the employer, if such items are excluded from income in Section 119 of the Federal Internal Revenue Code.

Who is employing the worker?

Ordinarily, the employer of a worker is the organization for which the employee performs services. However, there are situations where the organization receiving the benefit of the worker's services is not considered to be the employer for Colorado unemployment insurance tax purposes. This includes an employee who performs services through a temporary-help-contracting firm, employee leasing school, or an agricultural crew leader. There could also be situations where it is unclear who is employing a worker.

Employee leasing company, co-employers, or temporary-help-contracting firm

A worker can have two employers for the same services when paid by a temporary-help-contracting firm or employee leasing company and performing services for a worksite employer. The temporary-help-contracting firm or employee leasing company and the worksite employer are called co-employers.

An employee leasing company or a portion of any business that meets the following two conditions is considered to be in the business of employee leasing:

1. Provide services to a worksite employer under a written contract that provides that it will procure or receive responsibilities for specified employees of a worksite employer.

–and–

2. Designates itself as the employer of such employees and retains the right of direction and control of such employees with regard to such responsibilities with the intent to employ the specified employees on a long-term basis and not assign the employees to a series of limited-term assignments.

Such responsibilities include the right to:

- Assign employees to the worksite employer's locations.
- Set the employee's rate of pay.
- Pay the employee from its own accounts.
- Discharge, reassign, or hire employees for the worksite and itself.
- Report, withhold, and pay any applicable taxes with respect to the employees' wages.
- Aggregate all employees for the purpose of sponsoring and administering workers' compensation plans, and any employee benefit plan.
- Maintain employees' records.
- Provide programs such as professional guidance including employment training, safety, and compliance matters.
- Address complaints, claims, or requests related to the employees.
- Such specified employees must know and consent to the staffing contract.

Since temporary-help contracting is characterized by a series of limited-term assignments of an employee to other organizations, it is not considered to be employee leasing. However, a portion of a temporary-help-contracting firm's business can be considered as employee-leasing activity if that portion of the business meets the above two conditions.

If a business engages in employee-leasing activity and fails to file the reports or taxes due to the Division, the worksite employer becomes liable for the reports and taxes due for the employees who performed service for them. The worksite employer is not liable when contracting for temporary help. For this reason, it is important for worksite employers to be aware of potential liability for unemployment taxes when contracting for leased employees.

Who is an employee and not an independent contractor?

Concerning independent contractors, Section 8-70-115, Colorado Revised Statutes as amended, states:

> Employment – "Federal Unemployment Tax Act." (1)(a) "Employment", subject to other provisions of this subsection (1), includes any service performed prior to January 1, 1972, which was employment as defined in this subsection (1) prior to such date and service performed after December 31, 1971, by an employee as defined in section 3306(i) of the "Federal Unemployment Tax Act" and any service performed after December 31, 1977, by an employee, as defined in subsection (o) of section 3306 of the "Federal Unemployment Tax Act", including service in interstate commerce.
> (b) Notwithstanding any other provision of this subsection (1) and notwithstanding the provisions of section 8-80-101, service performed by an individual for another shall be deemed to be employment, irrespective of whether the common-law relationship of master and servant exists, unless and until it is shown to the satisfaction of the division that such individual is free

from control and direction in the performance of the service, both under his contract for the performance of service and in fact; and such individual is customarily engaged in an independent trade, occupation, profession, or business related to the service performed. For purposes of this section, the degree of control exercised by the person for whom the service is performed over the performance of the service or over the individual performing the service, if exercised pursuant to the requirements of any state or federal statute or regulation, shall not be considered.

(c) To evidence that such individual is engaged in an independent trade, occupation, profession, or business and is free from control and direction in the performance of the service, the individual and the person for whom services are performed may either show by a preponderance of the evidence that the conditions set forth in paragraph (b) of this subsection (1) have been satisfied, or they may demonstrate in a written document, signed by both parties, that the person for whom services are performed does not:

(I) Require the individual to work exclusively for the person for whom services are performed; except that the individual may choose to work exclusively for the said person for a finite period of time specified in the document;

(II) Establish a quality standard for the individual; except that such person can provide plans and specifications regarding the work but cannot oversee the actual work or instruct the individual as to how the work will be performed;

(III) Pay a salary or hourly rate but rather a fixed or contract rate;

(IV) Terminate the work during the contract period unless the individual violates the terms of the contract or fails to produce a result that meets the specifications of the contract;

(V) Provide more than minimal training for the individual;

(VI) Provide tools or benefits to the individual; except that materials and equipment may be supplied;

(VII) Dictate the time of performance; except that a completion schedule and a range of mutually agreeable work hours may be established;

(VIII) Pay the individual personally but rather makes checks payable to the trade or business name of the individual; and

(IX) Combine his business operations in any way with the individual's business, but instead maintains such operations as separate and distinct.

(d) A document may satisfy the requirements of paragraph (c) of this subsection (1) if such document demonstrates, by a preponderance of the evidence, the existence of such factors listed in subparagraphs (I) to (IX) of paragraph (c) of this subsection (1) as are appropriate to the parties' situation.

(2) Where the parties use a written document pursuant to paragraph (c) of subsection (1) of this section, such document may be the contract for performance of service or a separate document. Such document shall create a refutable presumption of an independent contractor relationship between the parties, where such document contains a disclosure, in type which is larger than the other provisions in the document or in boldface or underlined type, that the independent contractor is not entitled to unemployment insurance

benefits unless unemployment compensation coverage is provided by the independent contractor or some other entity, and that the independent contractor is obligated to pay federal and state income tax on any moneys paid pursuant to the contract relationship.
(3) Where the parties use a written document pursuant to paragraph (c) of subsection (1) of this section, and one of the parties is a professional whose license to practice a particular occupation under the laws of the state of Colorado requires such professional to exercise a supervisory function with regard to an entire project, such supervisory role shall not affect such professional's status as part of the independent contractor relationship.

The definition of employment in the unemployment compensation act is broad and inclusive and is not limited by the meaning of the master-servant relationship as used by the Internal Revenue Service.

If there is an employer-employee relationship, it makes no difference how it is described. It does not matter if the individual is called an employee, partner, co-adventurer, subcontractor, agent, contract laborer, or independent contractor. It does not matter how the payments are measured or what they are called or whether the individual is a full-time, part-time, or a temporary employee.

The following factors may be considered in determining the relationship:

- Such individual is free from control and direction in the performance of the service, both under his contract for the performance of service; – and –
- Such individual is customarily engaged in an independent trade, occupation, profession, or business related to the service performed.

The weight given to the factors is not always constant. The degree of importance may vary depending on the occupation being considered. All factors do not apply to every situation and the order in which the factors appear is not significant.

1. **Instructions:** A person who is required to comply with instructions about when, where, and how to work is ordinarily an employee. Some employees may work without receiving instructions because they are highly proficient in their line of work and can be trusted to work to the best of their abilities. However, the control factor is present if the employer has the right to instruct. The instructions may be oral or written procedures that show how the desired result is to be accomplished.
2. **Training:** Training of a person by an experienced employee, by correspondence, by required attendance at meetings, or other methods involve control because it is an indication that the employer wants the services performed in a particular method or manner. This is especially true if the training is given periodically or at frequent intervals. An independent contractor ordinarily uses his or her own methods and receives no training from the purchaser of services.
3. **Integration of services:** Integration of another person's services into the business operations generally shows that the person is subject to direction and control. In determining whether integration exists, the scope and function of the business are identified and then a determination is made as to whether the services of the individual are merged into it. When the

success or continuation of a business depends upon the performance of certain kinds of services, the people who perform those services may be subject to a certain amount of control by the owner of the business.

4. **Personal services:** When the services must be rendered personally, it indicates that the employer is interested in the methods as well as the results. The employer is interested not only in getting a desired result, but also in who does the job. Lack of control may be indicated when an individual has the right to hire a substitute without the employer's knowledge.
5. **Assistants:** Hiring, supervising, and paying assistants by the employer generally shows control over all persons on the job. Sometimes one worker may hire, supervise, and pay the other workers. This person may do so as the result of a contract in which the worker agrees to provide materials and labor and accepts the responsibility only for the attainment of a result. In this case, the person may be an independent contractor. On the other hand, if that person does so at the direction of the employer, the worker may be acting as an employee in the capacity of a foreman or representative of the employer.

6. **Continuing services:** The existence of a continuing relationship between an individual and the person for whom the services are performed is a factor indicating the existence of an employer-employee relationship. Continuing services may include work performed at frequent, recurring intervals, either on-call or whenever the work is available. If the arrangement requires continuing or recurring work, the relationship is considered permanent. It makes no difference if the services are rendered on a part-time basis are seasonal in nature, or are only for a short time.
7. **Set hours:** The establishment of set hours of work by the employer is a factor indicative of control. This condition bars the worker from controlling his or her own time, which is a right of an independent contractor. When fixed hours are not practical because of the nature of the occupation, a requirement that the worker work at certain times is an element of control.
8. **Full-time services:** The worker must devote full time to the employer's business. The employer has control over the amount of time the worker spends working. An independent contractor, on the other hand, is free to work when and for whom he or she chooses. Full-time employment does not necessarily mean an 8-hour day or a 5-day week. Its meaning may vary with the intent of the parties or the nature of the occupation. These conditions should be considered in defining "full-time." Full-time services may be required even though not specified verbally or in writing. For example, workers may be required to produce a minimum volume of business that compels them to devote all of their working time to that business.
9. **Location of services:** Doing the work on the employer's premises is not control in itself. However, it does imply that the employer has control, especially if the work could be done elsewhere. A person working in the employer's place of business is physically within the employer's direction and supervision. The use of desk space, telephone, and stenographic services provided by an employer places the worker within the employer's direction and

supervision. The fact that work is done off the premises does indicate some freedom from control. However, it does not by itself mean that the worker is not an employee. In some occupations, the services are necessarily performed away from the premises of the employer. This is true for employees of construction contractors.

10. **Set order of services:** If a worker must perform services in an order or sequence set by the employer, it shows that the worker may be subject to control. This person is not free to follow his or her own pattern of work, but must follow the established routines and schedules of the employer. Often, because of the nature of an occupation, the employer does not set the order of the services or sets them infrequently. It is sufficient to show control, however, if the employer retains the right to do so.
11. **Reports:** Control is indicated if the worker is compelled to account for his or her actions by verbal or written reports submitted to the employer.
12. **Payment for services:** An employee is usually paid by the hour, week, or month. Independent contractors are paid a lump sum agreed upon for the total job. The guarantee of a minimum salary or the granting of a drawing account at stated intervals with no requirement for repayment of the excess over earnings tends to indicate the existence of an employer-employee relationship.
13. **Expenses:** Payment by the employer for the worker's business or traveling expense is a factor indicating control over the worker. Conversely, a lack of control is indicated when the worker is paid on a job basis and has to take care of all incidental expenses.
14. **Tools and materials:** The furnishing of tools, materials, etc., by the employer is indicative of control over the worker. When the worker furnishes the tools, materials, etc., it indicates a lack of control but consideration must be given to the fact that in some occupational fields, it is customary for employees to use their own hand tools.
15. **Investment:** A person who invests a significant amount into the facilities used to perform services for another tends to show an independent status. On the other hand, the furnishing of all necessary facilities by the employer indicates the absence of an independent status on the part of the worker. Facilities include equipment on the premises necessary for the work, but not tools, instruments, clothing, etc., that are provided by employees as a common practice in their particular trade.
16. **Profit/loss:** A person who is in a position to realize a profit or suffer a loss as a result of his or her services is generally an independent contractor, while the individual who is an employee is not in such a position. Opportunity for profit or loss may be established by one or more of a variety of circumstances; for example, the individual:
    - Hires, directs, and pays assistants.
    - Has personal office, equipment, materials, or other facilities for doing the work.
    - Has continuing and recurring liabilities or obligations and the success or failure depends on the relation of receipts to expenditures.
    - Agrees to perform specific jobs for prices agreed upon in advance and pays expenses incurred in connection with the work.

17. **Multiple independent services:** A person that works for a number of persons or firms at the same time can indicate an independent status, if the worker is free from control by any of the firms. However, it is possible that a person may work for a number of people or firms and still be an employee of one or all of them.
18. **Offer of services to general public:** The fact that a person makes services available to the general public is usually indicative of an independent contractual relationship. An individual may offer services to the public in a number of ways. The individual may have his or her own office and assistant; hang out a "shingle" in front of the home or office; hold business licenses; be listed in business directories or maintain business listings in telephone directories; or advertise in newspapers, trade journals, magazines, etc.
19. **Discharge without liability:** The right to discharge is an important factor in indicating that the person possessing the right is an employer. An independent contractor cannot be fired as long as he or she produces a result that measures up to the contract specifications. Sometimes an employer's right to discharge is restricted because of a contract with a labor union. Such a restriction does not detract from the existence of an employment relationship.
20. **Quit without liability:** An employee has the right to end the relationship with the employer at any time without incurring liability for breach of contract. An independent contractor usually agrees to complete a specific job, is responsible for its satisfactory completion, or is legally obligated to make good for failure to complete the job.

A complete list of determining factors is impossible. The facts in each case determine who are employees or independent contractors. In doubtful cases, a Form UITA-9, Worker/Contractor Status Questionnaire (Firm), and a Form UITA-9(a), Worker/Contractor Status Questionnaire (Worker), must be submitted to the Colorado Department of Labor and Employment, Division of Employment and Training. Based on these forms and information obtained from the workers and the firm, an official ruling will be made whether an individual is an employee or independent contractor.

How must workers be notified about Unemployment Insurance?

Covered employers are required to display Form 502, Notice to Workers, where all employees can see it. The Division mails this form to every new employer. Additional posters may be obtained from the Colorado Department of Labor and Employment, Division of Employment and Training, Liability Unit, P.O. Box 8789, Denver, Colorado 80201-8789; telephone (303) 318-9100 (Denver-metro area) or 1-800-480-8299 (toll-free).

To which state must a multi-state worker be reported?

When an employee works in Colorado as well as in another state or states, the following criteria determines whether his or her services are Colorado employment:

- **Location** — An employee's services are considered Colorado employment if the work is in Colorado or most of the work is in Colorado with incidental services performed out-of-state. Service is considered incidental if it is temporary, transitory, or consists of isolated transactions.
- **Base of Operations** — Base of operations means the place from which the employee starts work and to which he or she usually returns to perform the terms of the contract with the employer. An individual is considered a Colorado employee if some of an employee's services are performed in this state and the base of operations is here.
- **Place of Direction and Control** — When part of an employee's services are performed in the state and the place from which the employer exercises general direction and control over the employee is Colorado, he or she is considered a Colorado employee.
- **Residence of Employee** — An individual is considered a Colorado employee if the employee performs some services in Colorado and resides in Colorado.

What is the taxable wage base?

Unemployment insurance taxes must be paid on the first $10,000 (before deductions) paid each employee during each calendar year.

How is a tax rate determined?

The following is a list of the types of rates that are assigned to a business depending on the status of the business:

- **Standard tax rate** — Effective July 1, 1997, an employer newly subject to unemployment tax will pay at the standard rate of 1.7 percent (.017) or at a computed rate, whichever is higher. Also effective July, 1997, a newly subject employer cannot develop an experience rating until the account has been chargeable for benefits 12 consecutive calendar months prior to the July 1 computation date. (The experience rating computed July 1 becomes effective the following January 1.)
- **Industry rate** — Effective January 1, 1992, newly subject employers in the construction industry are assigned an average industrial rate based on the 2-digit industry code (codes 15, 16, and 17) found in the Standard Industrial Classification Manual.
- **Tax surcharge** — A tax surcharge for benefits paid out and not chargeable to any specific, active employer will be added to employers' rates. These benefits are divided by the total taxable payroll estimated to be paid by all employers in the next calendar year. This resulting percentage, rounded to the nearest one-tenth of one percent, is the surcharge tax rate and is added to an employer's standard or computed tax rate. The surcharge does not affect an employer who has a computed rate and no benefits charged to his or her account.

  Benefits are not charged to any one employer, but the employer "pool" as a whole, when:
  - The wages earned by the claimant are less than $1,000.

- The Colorado share of an out-of-state claim exceeds the one-third maximum of the weekly wage permitted by Colorado law. The difference between the one-third maximum and the Colorado share is the amount charged to the employer pool.
- The claimant quit his or her construction job for another construction job under certain circumstances.
- The claimant voluntarily quit or was discharged, and was disqualified for all but one benefit payment. This payment is charged to the employer pool unless the employer is reimbursable.

- **Computed rate** — Employers are eligible for a computed rate, based on the reserve in the employer's experience rating account and the balance in the unemployment insurance trust fund on July 1 of each year.

The following example shows how a rate is computed:

Total taxes paid before July 31 for all past periods were (A) $2,803.29. Total benefits charged to a school account for unemployment before July 1 were (B) $1,747.00. The excess is found by subtracting total benefits (B) from total taxes (A) and would be (C) $1,056.29. The average annual payroll for the appropriate number of fiscal years ending June 30 was (D) $19,897.00. The percent of excess would be (C) divided by (D), which equals 5.31, or rounded to 5%.

Note: Section 8-76-103 (3)(b)(II)(A) of the CESA defines percent of excess as the percentage that results from dividing the excess of taxes paid over the benefits charged by the average annual payroll, computed to the nearest 1%.

To compute total taxable wages from July 1, 1993 through July 31, 1996 (36 months), the total taxable wages are divided by 36 and multiplied by 12 to determine the average annual payroll. The percent of excess is then computed by dividing the average annual payroll (in this example, $19,897) into the excess of taxes over benefits ($1,056.29). The result is 5.31, rounded to 5%. As an example, if the balance of the unemployment insurance trust fund on June 30 is $98 million plus and the percent of excess is 5%, the rate for the next calendar year would be .013. (See the table on page 12 of the printed document).

Employers are notified annually of the rate for the current calendar year on Form UITR-7, Notice of Employer's Tax Rate. Form UITR-7 shows the employer account number, taxes paid, benefits paid, average annual payroll, percent of excess, and the rate. It also gives information on making a voluntary tax payment. If there are questions on any item on the notice, the law requires written notification within 15 calendar days after the notice was mailed.

The effect of an unemployment insurance claim for benefits on the experience rate cannot be determined until the claim is terminated. However, a potential effect can be determined immediately. The Division notifies employers of the potential charge to an account on Form UIF-290, Notice of Wages Reported/Potential Charge. The potential charge is approximately one-third of the wages the claimant earned during the base period of the claim. The base period is the first four of the last five completed calendar quarters preceding the date the claim is filed. The wage credits earned by the claimant during this period are used to determine the weekly benefit amount.

Employers can estimate the potential effect on the experience rating account by adding the potential charge to any benefits previously charged and then re-

computing the rate. However, the fund balance may change on July 1 of the next computation date. The potential rate computed is based on the last available fund balance. The rate table is shown on the most recent Form UITR-7, Notice of Employer's Tax Rate.

501 (c)(3) Nonprofit organizations or political subdivision

For employers on a reimbursement method of payment, "ORB" appears in the space for the rate on the quarterly tax report, Form UITR-1, and the yearly rate notice, Form UITR-7.

Solvency tax surcharge

A surcharge is assessed when the trust fund balance, as of June 30 of any year, is equal to or less than nine-tenths of 1 percent of the total wages reported by ratable employers for the calendar year, or the most recent available four consecutive quarters prior to the last computation date (June 30). This solvency tax surcharge is then added to all ratable employers' standard or computed tax rates beginning with the next calendar year. This surcharge can never exceed the rate schedule (see the solvency tax surcharge schedule on this page). The surcharge is not assessed on state agencies, political subdivisions, or nonprofit organizations that are reimbursable employers.

Why should a voluntary tax payment be made?

An employer may lower a tax rate for a particular year by making a voluntary tax payment. Only employers with computed rates are eligible to make a voluntary tax payment. This payment MUST be made on or before March 14 to qualify for a rate reduction for that year. Any payments made under this provision are first applied to penalty, interest, and delinquent taxes. The Form UITR-7, which is mailed to each employer at the end of the calendar year, includes a formula for computing a voluntary tax payment. A voluntary tax payment must be accompanied by a letter stating the reason for submitting the check. For additional information or help in computing the amount of a voluntary tax payment, employers may call (303) 318-9100 (Denver-metro area) or 1-800-480-8299 (toll-free).

How is the quarterly tax report completed?

All items must be completed on the Form UITR-1, Unemployment Insurance Tax Report. The cents should not be eliminated when reporting these figures.

The monthly employment data reported on item 8 should be a count of all full-time and part-time workers in covered employment (subject to Colorado's unemployment insurance law), who worked during the payroll period that includes the 12th of the month. If there is no employment in the payroll period, a zero should be entered.

"Wages paid for covered employment" means all gross wages paid to an employee, whether paid in cash or other type of remuneration.

"Taxable wages" means the first $10,000 in gross wages paid to an employee during a calendar year. Employers who fail to enter the correct amount on Form UITR-1 may pay a higher tax to the State of Colorado and the federal government than is necessary.

Other account numbers, such as the federal employer identification number (FEIN), Department of Revenue number, etc., should not be used. The total of all employees' gross wages must match the amount entered on item 9 of the UITR-1. Total gross wages are to be listed, not taxable wages. Each page must have the wage column totaled and the final page must be the total of all gross wages for the quarter. An incomplete or incorrect report may be considered a delinquent report and subject to the same penalties as if the employer had failed to submit a report.

The Unemployment Insurance Report of Worker Wages is available free of charge. It is designed with detachable one-half (1/2) inch pin-feed strips for personal computer printer use. To order continuation sheets, or for help with any questions on preparing the forms, contact Wage Correction, P.O. Box 8789, Denver, Colorado 80201-8789; telephone (303) 318-9100 (Denver-metro area) or 1-800-480-8299 (toll-free), or complete the order form mailed quarterly with the tax and wage reporting forms.

Special wage reports for seasonal employers

Employers who have been granted seasonal status are furnished special wage forms for listing all seasonal workers. The seasonal print format is the same as the standard wage list. Seasonal wages may not be reported on forms other than those issued by the agency, and additional pages are available upon request.

How can paper reports be scanned properly?

Forms reporting UI tax and wage information are scanned on an optical character reader. Scanning success relies on the condition of the forms and the proper placement of the data.

The employer account number must be located in the optical character read (OCR) field. This is a white box surrounded by a blue border in the upper left portion of the form, approximately 2" from the top edge and approximately 1/2" from the left edge. The seasonal wage list print format requirements for scanning completion are identical.

For optimal speed in feeding through the scanner, documents must be sized 8 1/2" x 11", printed on 24-pound bond paper, and undamaged.

To satisfy these requirements, employers must:

- Machine print and return only original reports. The scanner will not read carbon copies, photocopies, or handprint.
- Print the data with machines using 10 or 12 characters-per-inch with good ink quality. The 10characters-per-inch is preferred whenever possible.
- Correct errors with correction fluid or completely erase.
- Place and format data correctly. Scannable data areas are shaded in blue. All information should be entered in the white space within the blue-shaded area.
- Use either the forms distributed or approved by the Division. These are manufactured with drop-out ink not visible to the scanner, so only data entered is detected. Substitution forms not specifically manufactured for scanning, or pre-approved and certified by the Division cannot be used.
- Fold reports using original fold lines when re-mailing completed forms to us. Most employers are able to use the return envelope provided by the Division.

- Always enter dollars and cents in appropriate columns. The scanner is programmed to assure the last two characters are cents. When there are no cents, enter zeros (00) in the cents column not dashes (--).

The wage report should not be used to reflect adjusted wages or to report negative earnings. Adjustment forms are available for this purpose. To obtain these forms, employers may call (303) 318-9100 (Denver-metro area) or 1-800-480-8299 (toll-free).

Note: If unable to type or machine print these reports, print entries neatly. While these forms are more costly to process, clear handprint will reduce key entry errors.

How can quarterly wage information be reported without using a paper report?

Employers of 250 or more workers, reporting quarterly employee wage information, are encouraged to report on magnetic tape or diskette.

Hard-copy forms, UITR-1(a), need not be submitted if reporting worker wages on magnetic tape or diskette; however, a supporting computer listing of the tape or diskette may be provided.

To submit wage data on magnetic tape or diskette, contact the Division at:

Colorado Department of Labor and Employment
Wage Correction Unit
P.O. Box 8789
Denver, Colorado 80201-8789
Phone: (303) 318-9100 (Denver-metro area) or 1-800-480-8299 (toll-free)

When are quarterly reports and taxes due?

Employers are required to file a Form UITR-1, Unemployment Insurance Tax Report. The Division mails this form to each active employer the third month of each quarter. Reports are to be filed according to the following schedule:

REPORT FOR PERIODS	*DELINQUENT IF NOT FILED BY*
January, February, March	April 30
April, May, June	July 31
July, August, September	October 31
October, November, December	January 31

If the due date falls on a Saturday, Sunday, or legal holiday, payment is considered on time if postmarked on the next working day.

Important! Form UITR-1 must be filed on time each quarter even though taxes may not be owed. No wages have been paid during the quarter, or the reimbursement plan has been chosen.

How can an employer avoid penalties and interest?

To avoid penalty and interest charges, Form UITR-1, Unemployment Insurance Tax Report, must be postmarked on or before the last day of the month following the end of the calendar quarter. If this day falls on a Saturday, Sunday, or a legal holiday, the report must be postmarked the next working day.

Reports filed after the due date, accrue interest charges at a rate of 18 percent (.18) a year or 1½ percent (.015) per month or any part of a month. In addition, a penalty of fifty dollars ($50) is assessed for each tax report filed after the due date. Each additional quarter that the report is late results in an assessment of an additional $50. Interest accrues on this penalty at the rate of 1.5 percent per month. Billing statements are mailed monthly. Effective January 1, 1997, a newly-subject employer is assessed a penalty of $10 during the first four quarters of coverage instead of the penalty of $50.

Any employer having delinquent taxes as of the computation date (July 1) is assessed an additional penalty equal to the amount of delinquent taxes or 1 percent of the taxable payroll, whichever is less. This penalty is billed and payable in four quarterly installments during the current calendar year. The billing is mailed separately in the month following the end of the quarter. Interest accrues on this penalty at the rate of 1.5 percent per month. Filing all late reports and paying all delinquent taxes by July 1 each year avoids assessment of this additional penalty.

When a delinquency exists in an employer's account, the Division applies the payment in the following sequence:

1. Penalties owed, starting with the earliest quarter in which such penalty was charged.
2. Interest already charged, beginning with the earliest quarter in which such interest is due.
3. Interest accrued on unpaid taxes as of the date of the payment, beginning with the earliest quarter in which taxes are due.
4. Unpaid taxes, starting with the earliest quarter in which taxes are due.

What records are employers required to keep?

Employers are required to keep work records for at least five years. These records must show:

For each payroll period

1. Beginning and ending dates.
2. Total wages paid during the period and the date when wages were paid.
3. The date in each calendar week on which the largest number of workers were employed and the total number of workers.
4. A reporting pay period not to exceed 31 days.

For each worker:

1. Name, state of residence, and social security number. It is important to note that a school should:
   - Require all new workers to show their social security cards when hired.
   - If a worker has no social security number, employers must require a receipt of application for a number within seven days after hiring.
2. Date of hire, rehire, or return to work after a temporary layoff.
3. Date and reason separated from employment.
4. State or states in which the worker's services are performed.
5. If services are performed outside Colorado, the worker's base of operations. If there is no base of operations, report the place from which the services are directed or controlled.

6. If a worker is paid:
   - A salary, keep a record of the rate and period covered.
   - A fixed hourly or daily rate, keep a record of the rate and the usual scheduled days per week used by a school for the occupation.
   - A piece rate or other variable pay basis, keep a record of the method by which the wages are computed.
7. If an employee works less than full-time hours during any payroll period, the following must be kept:
   - The amount of time lost.
   - The reason, including the non-availability for work.
   - If there is more than one reason, the amount of time for each reason.
8. Wages paid during each payroll period and date of payment must be kept with separate entries for:
   - Money wages.
   - Reasonable cash value of wages paid in any medium other than money.
   - Amounts paid to the worker that exceed travel and other business expenses actually incurred or accounted for.
   - Tips reported to the employer.

Can records be audited?

The Division's field auditors perform regular examinations of records. This means a detailed audit of all records. A complete payroll audit involves an examination of any subsidiary records, including examination of records of payments for services that were not classified as employment or wages. The CESA requires that all records must be open for inspection so they may be audited and verified at any reasonable time and as often as necessary.

What are the obligations for federal unemployment tax?

Under federal law, employers are required to file the Form 940, Employer's Annual Federal Unemployment Tax Return. This form is filed with the District Director of the U.S. Internal Revenue Services by January 31 of each year with the required payment.

The federal tax rate is 6.2 percent (.062), with a credit of 5.4 percent (.054) if taxes have been paid to the state. This results in a net tax of .8 percent (.008). The 5.4 percent credit is allowed regardless of the rate assigned by the state if state unemployment taxes have been paid on time.

What are the important dates to remember?

Due dates for Forms UITR-1, Unemployment Insurance Tax Report, and UITR-1(a), Unemployment Insurance Report of Worker Wage:

REPORT FOR PERIODS	***DELINQUENT IF NOT FILED BY***
January, February, March	April 30
April, May, June	July 31
July, August, September	October 31
October, November, December	January 31

- March 14 — Voluntary tax payment deadline.
- January 31 — Last day of any year for which voluntary election by an employer to be covered under the law will be accepted for the preceding year.
- Employers have 15 **calendar days** after the mailing date of Form UITR-7, Notice of Employer's Tax Rate, to protest the tax rate for the current year.
- Employers have 15 **calendar days** after the mailing date of the liability status determination to appeal the determination.

What are the commonly used tax forms?

This section describes the commonly used forms that are completed by employers.

- Form CR 100, Colorado Business Registration. An employer with one or more employees in Colorado is required to file this form with the Department of Revenue immediately after starting a business in Colorado.
- Form RC-1, Employer's Election to Cover Multi-State Workers under the CESA.
- Form RC-2, Notice to Employee for Colorado Unemployment Insurance Coverage.
- Form UITA-9, Worker/Contractor Status Questionnaire (Firm), and Form UITA 9(a), Worker/Contractor Status Questionnaire (Worker). These forms must be filed with the Division when there is a question about a worker being an employee or an independent contractor.
- Form UITL-2, Employer Change Request. Employers that cease operation in Colorado or sell the business must file this form with the Division to make the account inactive within ten days of cessation or sale. A partnership that incorporates is classified as a change in ownership even if the owners are the same. This provision also applies to a sole proprietorship that becomes a partnership or a corporation that becomes a sole proprietorship, etc. This form is also used for address change notification.
- Form UITL-5, Request for Seasonal Determination.
- Form UITR-1, Unemployment Insurance Tax Report (see "How is the Quarterly Tax Report Completed?" page 14).
- Form UITR-1(a), Unemployment Insurance Report of Worker Wages Continuation Sheet (see "How is the Quarterly Wage Report Completed?" page 14).
- Form UITR-3, Unemployment Insurance Tax Report Adjustment. This form is used to correct errors on gross wages or taxable wages previously reported on the Form UITR-1, Unemployment Insurance Tax Report.
- Form UITR-6(a), Multiple Quarter Adjustment of Worker Wages. This form must be completed whenever gross wages, a name, or social security number have been reported incorrectly on the UITR-1(a) wage report. Corrections to a previous quarter can be made on Form UITR-6(a).
- Form UITR-14, Application for Transfer of Experience Rate.

Note: The above forms may be obtained by calling (303) 318-9100 (Denver-metro area) or 1-800-480-8299 (toll-free).

This section lists the forms most frequently sent to employers.

- Form UITD-1, Notice of Delinquent Unemployment Insurance Tax Reports.
- Form UITD-4, Installment Payment Agreement.
- Form UITD-14, Notice and Demand for Payment.
- Form UITR-2, Unemployment Insurance Tax Statement.
- Form UITR-7, Notice of Employer's Tax Rate.
- Form UITR-37, Unemployment Insurance Delinquent Tax Penalty Statement.

How does the division make a decision on benefits?

If a job separation is for any reason other than lack of work, the Division must determine the claimant's entitlement to benefits. The CESA requires that the Division, at all times, be guided by the following principles:

Unemployment insurance is for persons unemployed through **no fault** of their own. Everyone has the right to leave a job for any reason, but the reasons for separation are considered in determining whether benefits are allowed.

Individuals may cause their own unemployment and certain acts may result in a disqualification of benefits. An individual discharged for gross misconduct may receive a complete denial of benefits.

Each party provides information on how the job separation occurred. The claimant usually provides the information to the customer service representative when filing a claim. In certain circumstances, the Division may mail a request for information to the claimant. Employers are requested to complete the Form UIB-290, Request for Job Separation Information.

Timely return of the form UIB-290, request for job separation information

Employers must complete and return the Form UIB-290 to the Division within 12 calendar days of the mailing date on the form. If the form is not postmarked within 12 calendar days, the Division's staff (deputy) cannot review the response and the right to participate in hearings regarding the job separation of the claimant is forfeited.

An employer may appeal the denial of protest rights due to an untimely response. If filed timely, the deputy reviews both responses. If further fact-finding is needed, the deputy may contact either party by telephone or in writing.

State the reason(s) for separation clearly

The deputy must have adequate information to make a determination to pay benefits under the CESA. State the reason for the job separation in detail to ensure that entitlement to benefits is properly determined.

If the claimant was separated for any reason other than lack of work, employers must furnish the Division with detailed information. The statement should contain all-important facts such as:

- The names of witnesses.
- Exact dates, times, and places in which incidents occurred.
- Reference to union contracts, commission agreements, school policies, medical reports, etc.
- Copies of other pertinent documents may be submitted.

The deputy determines benefit entitlement under the terms and conditions of the CESA, and a Form UIB-6, Notice of Decision, is mailed to both parties.

What are the decisions an employer may receive?
Full award

A claimant is entitled to a full award if the claimant has been laid off due to lack of work or has left a job for any of the following reasons, along with other factors that may be pertinent to the determination:

- Health. If a health problem forced the claimant to quit a job temporarily or to seek a new occupation or if the claimant's health or the health of a spouse/dependent child, requires that the claimant leave the area of employment, benefits may be allowed.
- If the claimant's health, or that of a spouse/dependent child, has caused the separation from work, the claimant must have complied with the following requirements to be entitled to a full award:
- Before quitting the job, the worker must have informed the employer of the health condition and, if requested, have submitted to the employer a physician's statement. In case of injury or sudden illness, the worker must notify the employer as soon as practicable.
- In addition, the claimant must submit a physician's statement to the Division, if requested.
- Substance abuse. If alcoholism or drug addiction has caused the separation from work, the claimant must have complied with the following requirements to be entitled to a full award:
    - Must have declared the addiction to the Division; and
    - Substantiated the addiction with a medical statement signed by a physician and/or substantiated current (or proposed) participation in an approved treatment program or successful completion of such a program.

Note: If an employer learns that the claimant has failed to comply with the treatment program, the information must be reported to the Division within fifteen (15) days from the date of discovery. The Division will reconsider the original decision and determine whether a disqualification is warranted.

Unsatisfactory or hazardous working conditions. In determining whether the claimant's working conditions were unsatisfactory, the Division will consider the degree of risk to health, safety and morals, physical fitness, prior training and experience, and prior earnings. Other factors considered are the distance of the work from the claimant's home, and working conditions of employees engaged in the same or similar work for the same employer and other employers in the locality.

Hazardous working conditions are those that could have endangered the worker's physical or mental well being. In determining whether conditions were hazardous, the Division will consider safety measures used or the lack thereof, the condition of equipment, or lack of proper equipment.

No work shall be considered hazardous if the claimant's working conditions were substantially the same as those prevailing among workers performing the same or similar work for other employers engaged in the same or similar type of activity.

A substantial change in the claimant's working conditions when the change was less favorable. If, for example, the employer required the claimant to work a different shift, such change will not be considered substantial unless the employer

violated seniority rights which could have entitled the worker to a shift preference. The claimant must prove his or her seniority rights were violated.

Disqualifications

A claimant may receive a postponement and/or reduction of up to 25 of the 26 possible weeks of benefits. The employer will be relieved of all or part of the liability for benefits payable if the claimant quit or was discharged for any of the following reasons:

- Dissatisfaction with prevailing rates of pay, standard hours of work, standard working conditions, regularly assigned duties, or dissatisfaction with opportunities for advancement.
- Dissatisfaction with normal supervision.
- Quitting to marry.
- Moving to another area unless for health reasons.
- Lack of transportation. The worker is responsible for transportation whenever an employer offers him or her suitable work. However, a claimant will not be denied an award if, in the opinion of the Division, it would have been unreasonable to require him or her to transfer to a new job site.
- Quitting to seek or accept other work, unless quitting a construction job to accept a different construction job when specific criteria are met.
- Insubordination. Examples include: refusal to obtain or renew licenses required to perform the job; failure to keep in good standing with the union by nonpayment of dues; and repeated acts of agitation against the employer's working conditions, pay, policies, or procedures. Orderly action by an employee, or through union negotiation, will not be considered insubordinate if the activities do not interfere with work performance. Disobedience of a reasonable instruction of an employer or representative is considered insubordination.
- Violation of a law or a school rule that resulted, or could have resulted, in serious damage to the employer's property or interests, or could have endangered the worker's life or the lives of other employees. Examples include: mistreatment of patients in a hospital or nursing home, serving liquor to minors, selling prescription drugs without a prescription, and immoral conduct which affects the employee's job status. Divulging confidential information, failure to observe conspicuously posted safety rules, intentional falsification of expense accounts, inventories or other records/reports, or removal/attempted removal of employer's property from the work place without proper authority.
- Off-the-job use of intoxicating beverages or nonprescription, controlled substances, resulting in interference with job performance.
- On-the-job use or distribution of intoxicating beverages or nonprescription, controlled substances.
- The presence in an individual's system, during working hours, of not medically prescribed controlled substances.

- Incarceration after conviction of violating any law, or loss of license, certification, credential, condition, or other professional designation that is essential to job performance.
- Theft.
- Assaulting or threatening to assault under circumstances such as to cause a reasonably emotionally stable person to become concerned as to his physical safety.
- Willful neglect or damage to the employer's property or interests.
- Rudeness, insolence, or offensive behavior to a customer, supervisor, or fellow worker.
- Careless or shoddy work.
- Failure to safeguard, properly maintain, or account for the employer's property.
- Taking unauthorized vacations or failing to return to work as scheduled.
- Refusal to work a different shift without good cause.
- Refusal without good cause to accept transfer to another department which does not involve a substantial change in working conditions or a substantial loss in wages.
- Quitting for personal reasons not otherwise specified in the CESA.
- For other reasons, including but not limited to, excessive tardiness or absenteeism, sleeping or loafing on the job, and failure to meet established job performance or other defined standards.

What if a claimant refuses work?

- Benefits may be denied by the Division if a claimant refuses to accept suitable work.
- Work is not considered suitable if:
  - The position offered is vacant due directly to a strike, lockout, or other labor dispute.
  - The wages, hours, or working conditions are substantially less favorable than those prevailing for similar work in the locality.
  - If the employer requires that the claimant join a school union, requires resignation from any bona fide labor organization, or prohibits the claimant joining such a labor organization.
  - Benefits would not be denied an individual more than once for failing to apply for or to accept the same or similar position with the same employer.

How does other remuneration paid at the time of separation affect Unemployment Insurance benefits?

A claimant's UI benefits may be reduced and/or postponed if the employer pays certain types of remuneration to the claimant after separation from employment.

Severance allowance can cause both a reduction and/or postponement of benefits. Severance allowance is a remuneration an individual receives as compensation for weeks not worked after separation. Severance allowance does not include payment specifically designated by an employer as separation bonus.

Payments such as: Wages in lieu of notice, vacation pay, and separation bonus may cause the claimant's benefits to be postponed from the date the remuneration was received.

Payments such as an employer-contributed pension, retirement pay, annuity, etc., may cause the claimant to receive a reduced weekly benefit amount. In addition holiday pay, lump-sum payments, disability, and other cash payments may also affect the claimant's receipt of UI benefits.

All types of payments made to the claimant should be noted on the Form UIB-290, Request for Job Separation Information.

How are benefits calculated?

An unemployed worker can qualify for benefits if he or she has worked and earned at least $1,000 in wages during the base period.

Weekly Benefit Amount (WBA)

Colorado uses one of two formulas in determining the weekly benefit amount (WBA):

- Formula 1: 60% of one twenty-sixth (1/26) of the highest wages earned in two consecutive calendar quarters during the base period.
- Formula 2: 50% of one fifty-second (1/52) of the total base-period wages.

There is a maximum amount of benefits allowed in Colorado. This amount is adjusted every twelve months and is based upon the average weekly wage in Colorado. The adjusted amount effective July 2003 is:

- $361-based on 60% of 1/26 of the highest wages in two consecutive calendar quarters during the base period.
- $398-based on 50% of 1/52 of total base period wages.

The formula giving the claimant the highest WBA, not exceeding the maximum amount, is used.

A new policy based on Public Law 103-465 allows the withholding of federal and/or state income taxes from unemployment payments. If claimants choose to have income taxes withheld, withholding is done for payments made after December 31, 1996. Federal income tax will be withheld at 15% and state income tax will be withheld at 4%.

What is the maximum benefit charged?

If a worker's base-period wages are high enough, he or she may draw as much as 26 times the weekly benefit amount. However, an account is never charged with benefits in excess of one-third of the base-period wages reportable to the Division (see "What Information Does an Employer Receive and What Action Is Necessary?" page 27 in the printed booklet).

What if wages paid are less than $1,000?

An employer's account is not charged when the total amount of base-period wages paid to an employee by a base-period employer is less than $1,000: Such wages are included in the computation of wage credits.

Benefits paid with respect to such wages are not charged against the employer's account but are charged against the fund (unless a school is a reimbursable employer).

A separation from such employers, other than the last employer or a reimbursable employer, is not used to determine unemployment insurance entitlement.

Can a worker receive unemployment insurance benefits and work part-time?

According to Colorado law, an individual may work and earn up to 25% of his or her weekly benefit amount without affecting unemployment benefits. Anything earned above the 25% is deducted dollar-for-dollar from the claimant's weekly benefit amount. This amount is rounded to the lower whole dollar amount.

- Example: A claimant has a weekly benefit amount of $140 and has gross earnings of $49.87.

WBA	$140.00
Earnings	$49.87
25% of WBA=$35 minus -	$35.00
	$14.87
WBA	$140.00
Minus -	$14.87
Amount of benefits (rounded down)	$125.00

An individual working 32 hours or more during any week or earning as much as or more than the weekly benefit amount is not eligible for benefits during that period.

What if the employer has a job for the claimant?

Employers that have work for a claimant should contact him or her directly. In the event the claimant refuses a job offer or the employer is unable to contact the claimant, the Division should be immediately informed at (303) 318-9035 or in writing. The information must include the specifics of the job offer and the claimant's social security number.

The CESA provides that a claimant's unemployment benefits may be postponed and reduced if the claimant refuses to accept a suitable job offer.

What happens when fraud is suspected or determined?

The Division conducts a vigorous fraud prevention program. An employer can help prevent fraud by reporting to the Division any claimant who is receiving benefits for which the claimant is not eligible.

It is important that reports to the Division concerning wages, reasons for separation, dates of employment, etc., be timely, accurate, and complete. There are severe penalties for any employer who falsely reports or who fails to disclose required information.

If an employer submits false information that causes a delay in the payment of benefits, the worker may receive one and one half times the benefit to which he or she was otherwise entitled. These extra benefits and all other benefits the claimant receives are chargeable to the employer's account.

What information does an employer receive and what action is necessary?

The following is a simplified explanation of how information provided by employers is used:

- **UITR-1(a), Unemployment Insurance Report of Worker Wages:** This information is used to establish a wage history for an employee by social security number. If a former employee applies for benefits, the wage history is used to establish monetary eligibility for the claimant.
- **UIF-290, Notice of Potential Charge**: This form is sent by the Division to inform employers that a former employee has filed a claim for benefits. Based upon information submitted on the UITR-1(a), wages paid by the employer are listed and a potential charge to the account is determined. This form is sent to the employer to verify that the wages listed are accurate. The employer should complete and submit the reverse of this form if changes are necessary.
- **UIB-290, Request for Job Separation Information:** The claimant's most-recent employer and all applicable base-period employers receive this notice. The UIB-290 provides the employer an opportunity to protest the payment of benefits to a claimant based upon the reason for job separation. The form also provides space to report other payments (such as vacation or severance payments) made to a worker upon separation from employment. Such payments may affect the employer's potential charges. This is a dated document that must be returned to the Division within a specified time period to be a valid protest of the payment of benefits.
- **UIB-6, Notice of Decision:** The Division notifies employers of its decision regarding the claimant's receipt of benefits. The determination should be reviewed carefully. Both the claimant and employer have the right to appeal this decision. If either party feels that the Division's decision is incorrect, the objection or appeal must be filed with the Division within 15 calendar days from the date mailed indicated on the notice. The appeal must be in writing, specifying the errors or omissions of the determination. Failure to appeal on time causes either party to lose rights to protest the decision.
- **UIA-20, Statement of Benefit Charges:** The Division sends employers this statement on a quarterly basis showing the total amount charged to an account during the prior quarter. These charges are the basis for computing an employer's future tax rate. The form lists former employees who received benefits, the total amount of charges for each claimant to the account, and totals for the quarter. An entry on this statement could be based on wages paid as long ago as 36 months. Payroll records should be checked if there is doubt that a claimant worked for a school.

  The statement should be carefully reviewed for correctness of charges and the Division should be immediately notified, in writing, of any errors or corrections. If no protest is made within 60 days, the charges as shown on the Form UIA-20 will be considered correct. Employers cannot protest separation reasons based on this form; that opportunity was given on the Form UIB-290. If there has not been any action on an employer's account during the quarter, this form is not mailed.

Appeals

What if an employer disagrees with the decision?

If an employer disagrees with a decision, the employer has the right to appeal that decision and obtain a fair hearing before an appeals referee. A written statement, which indicates the school's intent to appeal, must be submitted within 15 calendar days from the mailing date shown on the decision. If the 15th day falls on a weekend or a state holiday, the appeal period is extended to the first working day following the weekend or holiday. An appeal submitted beyond the 15-day time limit is considered late and, unless good cause is shown as to why the appeal was not filed on time, is dismissed. Good cause generally means an employer was prevented from making the deadline by circumstances that were beyond his or her control and could not have been reasonably anticipated.

Form UIB-6, Notice of Decision, and some other forms, include a form on the reverse side that can be used to appeal the decision. If an employer wishes to appeal, he or she must provide the information requested and mail the completed form to: Appeals Section, P.O. Box 8988, Denver, CO 80201-8988. An appeal may also be submitted by personal letter to the same address or by fax at (303) 318-9247. However, an appeal submitted in this manner must include the employer's name and the claimant's name and social security number on the letter; and **a copy of the decision** being appealed must be attached.

What happens after a decision is appealed?

The Division sends a Form AS-41, Notice of Hearing, prior to the hearing. This document should be reviewed carefully when it arrives; the time, date, location of the hearing, and whether participation is by telephone should be noted.

If a job separation is appealed, both parties receive copies of all relevant information in the claim file that was considered by the deputy. A review of all documents should be completed to identify what issues may be discussed at the hearing so that all pertinent facts are adequately presented.

An interested party may not present evidence before a referee on factual issues that have not been provided to the other interested parties as exhibited in the claim file or as provided in the notice of appeal, unless the interested party has good cause for not raising the issue prior to the hearing. If good cause is demonstrated, the hearing may be continued until a later time so that all may prepare their responses to the new issue.

Can a hearing be postponed?

A postponement of a hearing is granted only upon showing of necessity. A postponement is not granted if it is merely inconvenient for the employer or one of his other witnesses to attend on the scheduled date. The employer must be prepared to show a compelling reason why the hearing should be rescheduled. Requests for postponements should be made as far in advance of the hearing as possible.

What happens if the employer is late for a hearing or does not show up?

Hearings start promptly at the time scheduled; therefore, it is important to be at the scheduled place or telephone at the scheduled time. If the party appealing the decision fails to appear or call at the scheduled time of the hearing, the appeal is dismissed for nonappearance.

How does an employer prepare for a hearing?

An employer appealing a job separation receives copies of all relevant information in the claim file that was considered by the deputy. All documents should be reviewed carefully to identify what issues may be discussed at the hearing.

Can witnesses or documents be brought to the hearing?

The best form of evidence to an event is the testimony of an eyewitness. Employers often make the fundamental mistake of sending only a personnel official who has no firsthand knowledge of key events. The employer is better off sending the foreman who can give firsthand testimony rather than someone to appear only for the purpose of presenting the foreman's written statement.

Similarly, the best evidence of the contents of a document is the document itself. Do not hesitate to bring the original copy of the document to the hearing. Unless special circumstances require that the original be kept in the appeal file, the appeals referee makes a copy for the appeals file and returns the original at the conclusion of the hearing.

Documents submitted are marked as exhibits and become part of the official hearing record.

If the employer is participating by telephone and wishes to introduce any documents, copies must be sent to the appeals referee and to any other interested party or their representative. Also, the employer must send copies of the documents to the other party if the other party is participating by phone, even if the employer participates in person. This must be done in time for them to be received prior to the date of the hearing.

Can documents or witnesses be subpoenaed?

Each party to the appeals hearing may have a witness or witnesses testify on his or her behalf. Witnesses should have personal knowledge of the facts. If a witness is considered critical to the case and is unwilling to testify, a party may request a subpoena to require attendance. Also, documents important to the case may be subpoenaed. Requests for subpoenas must be made as early as possible to the Appeals Section. Requests must specify the reason for the subpoena and the full address of the witness(es).

Can an employer be represented by an attorney or another party?

An employer may be represented at the hearing by an attorney or other authorized party. Representation is not required; it is entirely up to the employer as to whether an attorney or other representation is obtained. The employer is responsible for paying an attorney or authorized representative.

What if I need an interpreter?

Each interested party has the right to have an interpreter present to assist that party with any language difficulties. The Appeals Section must be informed prior to the hearing that an interpreter is needed. The Division provides someone who can interpret, if possible; otherwise, the requesting party may have to bring his or her own interpreter.

What can be expected at the hearing?

Hearing process

The hearing is the only opportunity to present any testimony, witnesses, or documents that are deemed necessary, so preparation is necessary to present the entire case at this hearing. The record may not be supplemented later.

Informal recorded administration of oath

All hearings are informal and conducted in a courteous manner. The referee begins the hearing by identifying the case name and by referring to the decision that was appealed. The referee identifies all persons present at the hearing and administers an oath or affirmation to all persons who intend to testify. All witnesses must testify truthfully. The hearing is tape recorded and a transcript is typed from this tape if the referee's decision is appealed by either party.

Taking testimony

The referee presides at the hearing. The referee's responsibilities include:

- Explaining the issues involved.
- Explaining the procedures to be followed, including the order in which persons testify and the right to cross-examine.
- Ensuring clarity of questions that witnesses are asked.
- Explaining the meaning of terms that are not understood.
- Questioning parties and witnesses in order to obtain necessary facts.
- Entering documents as exhibits.

Direct/cross examination

During the hearing the claimant is permitted to question the employer and/or witnesses. Similarly, the employer is permitted to question the claimant and/or witnesses.

Telephone hearings

Presently, all parties are scheduled to participate at hearings by telephone. However, each party has the option, if he or she so chooses, to appear at the hearing in person. The referee must be called or the party must appear at the time of the scheduled hearing. Any witnesses should also be close to a telephone at the appointed time so they will be available when the referee calls them.

Whether participation is by telephone or appearing in person, and documents are to be introduced (including subpoenaed documents), copies must be sent to the appeals referee (at the office location indicated on the hearing notice) and to any other interested party or his or her representative. The documents must be received prior to the date of the hearing. If this procedure is not followed, these documents may be excluded from the record.

Closing of hearing

At the close of the hearing, the referee advises all parties that a written decision is mailed to all parties. The referee advises all parties of their rights to appeal any adverse ruling.

Mailing the referee's decision

A verbal decision is not issued at the hearing; a written decision is mailed to all parties. The effect of this decision can be to keep the original decision the same (an affirmation), to change the original decision in some manner (a modification), or to reverse the original decision entirely (a reversal). If dissatisfied with the referee's decision, an appeal must be filed within 15 calendar days from the mailing date shown on this decision. The written appeal is sent to the Industrial Claim Appeals Office.

Can information be added after the hearing?

If an interested party disagrees with the decision rendered by the appeals referee, the decision may be appealed to the Colorado Industrial Claim Appeals Office. This level is simply a review of the evidence taken at the hearing and written arguments. No additional evidence can be considered.

What happens if an interested party disagrees with the referee's decision?

If an interested party disagrees with the decision rendered by the appeals referee, an appeal may be submitted to the Colorado Industrial Claim Appeals Office within 15 days from the date the decision was mailed.

After an appeal is filed, all interested parties receive a document entitled A Notice of Appeal to Industrial Claim Appeals Office of Colorado." A copy of the transcript of all the testimony taken before the referee and a notice of deadline for filing a written argument is sent.

When preparing a written argument, the name and identifying number of the case, along with the claimant's name and social security number should be included. The argument should be made on the basis of evidence, which appears in the transcript. The Industrial Claim Appeals Office does not schedule a hearing. It renders a decision based on its review of the transcript and written arguments.

The Industrial Claim Appeals Panel reviews the evidence taken at the hearing before the referee and issues another decision that can affirm, modify, or reverse the referee's findings. The Industrial Claim Appeals Panel reviews the evidence taken at the hearing before the referee and issues another decision that can affirm, modify, or reverse the referee's findings. The Panel may also remand a referee's decision for a variety of reasons. This level is simply a review of the evidence taken at the hearing. No additional evidence can be considered.

Individuals still not satisfied with the outcome may petition the Colorado Court of Appeals to review the case within 20 days from the FINAL Order of the Industrial Claim Appeals Office. However, the Industrial Claim Appeals Office decision may be set aside only on the following grounds:

- The Industrial Claim Appeals Panel acted without or in excess of its power.
- The decision was procured by fraud.
- The findings do not support the decision.
- The decision is erroneous as a matter of law.

The Court of Appeals cannot change any findings of fact; it also cannot consider any facts or documents that are not part of the record. In most cases, the ruling of the Court of Appeals is final. Rule 49 of the Colorado Appellate Rules spells out the reasons which the Colorado Supreme Court uses to decide if it will consider a case and Rule 51 and subsequent rules list how to seek Supreme Court Review.

Appeal Rights

The appeal

If an employee does not agree with the monetary determination, or if an employee disagrees with a determination that the employee is ineligible / disqualified for benefits, the employee may request a hearing before a referee. The employee may submit a request for a hearing in person or by writing to a school local office. Requests for Appeals must be filed in person or be postmarked within 10 days of the date of the Notice of Determination.

Scheduling

A hearing is usually scheduled within a few weeks after an appeal is filed. All parties will receive a Notice of Hearing, including the time, date, location and issues to be covered in the hearing. The hearing site will be chosen by the Lower Authority Appeals Unit for the convenience of all parties.

If there is a scheduling problem with you hearing, requests must be made to the Lower Authority Appeals Unit at least 3 days prior to the hearing to be considered. Your former employer may also request a postponement if he or she has a scheduling problem.

If you submit your request for a postponement in writing, provide your complete name, address and telephone number, as well as your Social Security number. If possible, list some alternative dates convenient to you. Be sure to make a copy of the letter for a school records.

Division of Unemployment Insurance
Lower Authority Appeals Unit
P.O. Box 9950
4425 North Market Street
Wilmington, Delaware 19809
Phone:(302)761-8418
Fax:(302)761-6635

General information about Unemployment Insurance appeals

Q. Do I need a lawyer?

A. Usually not. By carefully following the instructions in this pamphlet, an unrepresented employer should be able to gather the necessary evidence. The Referee will assist you in presenting your case. However, you have the right to be represented by an attorney or other representative of your choice. If you have a representative, you are responsible for paying your representative's fee. If you do not have a representative at the Referee's hearing and later decide that you should have one, this will not provide good cause for another Referee's hearing.

If you have an authorized agent representing you for a fee, that agent must register with the Board of Review and comply with the code of conduct promulgated by the Board.

If you have other legal disputes with your employee, such as arbitration, workers' compensation, or discrimination cases and you are represented in these disputes, you should inform your attorney or representative about the unemployment claim. Although an unemployment compensation decision cannot be used against you in any other case, what happens in your unemployment appeal may affect other disputes with you employee.

Q. Can an employee collect benefits while working part-time?

A. Yes. The employee may be eligible for partial benefits. Two-thirds of the employee's earnings will be deducted from his or her benefits for the weeks during which the employee works part-time. An employee can continue collecting partial benefits until the weekly earnings from part-time employment exceed 150% of the weekly benefit rate.

Q. How can the claimant collect benefits if he or she was such an unsatisfactory worker?

A. An employee's eligibility and your chargeability are determined solely by the Unemployment Compensation Act. You may have been entirely justified in discharging an employee, but the claimant will not be disqualified from collecting benefits unless you prove disqualifying conduct under the Act. Once benefits have been awarded, they will continue unless and until the award is reversed by a higher authority.

Q. What if my former employee agrees to give up the right to benefits?

A. The law prohibits you from asking your employees to give up their benefits. If an employee made such an agreement, it is void and the employee is not bound by it. You may not interfere with an employee's claim for benefits or appeal.

The law protects any employee who files a claim for benefits or who testifies as a witness from retaliation by an employer. An employee who is disciplined or discriminated against because of participation in an unemployment compensation proceeding can file a complaint with the Labor Commissioner. Remedies include reinstatement, back pay, and attorney's fees.

Q. Do I have to allow my former employee access to his or her personnel file?

A. Yes. State law says that you must permit a former employee to review and copy his or her personnel file, including medical records, for at least one year after separation from employment. You can require that the employee put the request in writing, but do not delay providing access. The Referee may insist you provide access prior to the hearing. See Section 31-128b of the General Statutes for more information.

Q. Where can I get more information about the appeals process?

A. From the Appeals Division, any Job Center or the Merit Rating Unit, in person, by mail, or by phone at the Call Center between 8:30 A.M. and 4:30 P.M., Monday through Friday. Every effort will be made to answer any questions and to take appropriate action on your request or appeal. If you have questions about your tax liability, contact the Merit Rating Unit at (860) 263-6705.

However, such inquiries will not stay the appeal period or delay a hearing unless the Referee specifically grants a postponement request.

You may also wish to visit the Appeal Division's Internet site at www.ctboard.org. In addition to general information, this site contains the Online Hearing Docket; ADLIB, an electronic index of Board of Review decisions; a form for filing an appeal; and the unemployment compensation statutes and regulations.

The Appeals Division also has a twenty-minute videotape explaining the appeals process and showing you what goes on at the Referee's hearing. For a copy of the video, call the Appeals Division office nearest you.

Q. What happens once an appeal is filed?

A. It is forwarded to the appropriate office of the Appeals Division for the scheduling of a hearing before an Appeals Referee.

Q. What are the steps in an unemployment compensation appeal?

A. The initial decision to award benefits and to assess a charge against an employer's account is made by the Administrator. The losing party can appeal the Administrator's decision to the Appeals Referee. The Referee's decision can be appealed to the Board of Review, and the Board's decision can be appealed to the Superior Court.

Q. Who can file an appeal?

A. You, your former employee (the claimant), or any other base period employer of your former employee who is affected by a decision of the Administrator.

Q. What can be appealed?

A. Any determination of the Administrator can be appealed. Whenever you receive a decision with which you disagree, you should file an appeal at once. The only exceptions are for tax assessments due to delinquent reporting of wages and administrative penalties for intentional misrepresentation. Pursuant to Section 31-270 of the General Statutes, these decisions must be appealed directly to the Superior Court. All other tax issues should be appealed to the Referee like any other decision of the Administrator.

Q. What if the claimant is not claiming benefits against my account?

A. Neither you nor the claimant has a choice about which employer is charged for a claim. This is determined by law. A separation from your employment within the applicable period may affect the claimant's eligibility for benefits or your unemployment tax rate.

Q. What if the claimant has returned to work?

A. The appeal will still determine the claimant's entitlement to benefits (and your chargeability) during the time when the claimant was unemployed and filed for benefits. Moreover, if the claimant is not fully unemployed, he or she may be eligible for partial benefits. (See the second question under General Information.) Your potential liability remains in effect if the claimant collects partial benefits.

Q. Will an appeal affect the payment of benefits?

A. If a decision by the Administrator or the Referee awards benefits, the claimant will receive payments even though a further appeal is pending. If a decision rules that a claimant is ineligible, benefits will cease unless and until that decision is overturned on appeal. If the final decision is not in the claimant's favor, the claimant may have to pay back the benefits received. No charges will be assessed against your account while an appeal is pending.

Q. What if I receive another notice of liability from the Administrator regarding the same employee while an appeal is pending?

A. You should file another appeal unless the new notice specifically tells you not to. If you are in doubt, file the appeal. If you fail to file an appeal within twenty-one (21) days, the decision will become final.

Q. Can an appeal be withdrawn?

A. Yes. A claimant or employer who files an appeal may withdraw it at any time before the Referee's decision is issued. You should withdraw your appeal only if you decide that the Administrator's initial decision is correct.

Q. What if an appeal is late?

A. It may be dismissed, in which case the Administrator's decision will be unchanged. If you wish to appeal, do so promptly in person, by mail, by fax, or by Internet at any Job Center or Appeals Division office. Do not wait for information or documents. You can obtain whatever you need while the appeal is being processed. If your appeal is late, you must indicate the reason. If it is determined that you had good cause for filing a late appeal, the Referee will be able to hear your case.

An appeal filed by mail must be postmarked by the United States Postal Service or received within twenty-one (21) **calendar** days of the date the first notice of potential liability was mailed to you. Private postage meters are not acceptable. If you use a private delivery service, it must be one approved by the IRS: Airborne Express, DHL Worldwide Express, Federal Express, or United Parcel Service. If the offices of the Unemployment Compensation Department are closed on the twenty-first day, you have until the next business day to file an appeal

Once an appeal is filed

Q. How will I be notified of the hearing?

A. A Notice of Hearing will be mailed to you, the claimant and the Unemployment Compensation Department indicating the time, date, place, and the issues to be covered. Attached to the Notice of Hearing may be relevant documents, such as the claimant's fact finding statement or appeal, if these documents were not previously provided to you. Read these documents carefully. They will help you prepare your case. By law, the notice need only be mailed to you five calendar days before the scheduled hearing. In practice, the Appeals Division tries to provide notice of a week or more. Because the notice is so short, you should start to prepare your case as soon as you are aware of an appeal.

The Appeals Division's Internet site contains the Online Hearing Docket, which lists all hearings within twenty-four hours of their being scheduled. If you lose your hearing notice or want the quickest possible notice of when your appeal is scheduled, you should check this site.

Q. What should I do if I am unable attend the hearing?

A. Notify the Appeals Division **immediately** and request a postponement. The telephone number of the Appeals Division office is printed at the top of the Notice of Hearing. Postponements are granted only for very good reasons. If you or a key witness are unable to attend for any reason, make sure that you notify the Appeals Division as soon as possible before the hearing to see if any other arrangements are possible.

Q. What happens if one of the parties fails to attend the hearing?

A. If the party that appealed does not attend, the appeal will probably be dismissed and the Administrator's decision will stay the same. If the claimant appealed and you fail to attend the hearing, the Referee's decision may be based solely on the claimant's testimony. Therefore, it is very important that you attend the hearing unless a postponement is granted.

Q. What if I have a speech, hearing or language problem?

A. Notify the Appeals Division and everything possible will be done to provide assistance. If you need an interpreter, notify the Appeals Division at once, and an interpreter will be provided for you.

Preparing for the hearing

Q. How should I prepare for the hearing?

A. Start immediately to gather any papers relating to the issues such as correspondence from the claimant, union contracts, warning notices or medical statements. Also, be certain that any witnesses who have direct knowledge of the events in question are available to attend the hearing.

If you plan to hire a lawyer or other representative, do so as soon as possible, so that person will have time to prepare. Notify the Appeals Division of the name and address of your representative so that person can be informed of hearings or other proceedings. You must decide before the hearing whether you need representation. You will not be given a new hearing just because you later decide that you should have been represented.

It is your responsibility to present evidence and testimony to prove your case. The Referee does not investigate or contact witnesses for you. He or she will act on the basis of information in the file and evidence and testimony presented at the hearing. The Referee will not usually be able to consider evidence provided after the hearing.

The hearing before the Referee is the only chance that you will have to tell you story. Be prepared to tell the Referee everything you think is important and to present all witnesses and evidence at the hearing. The Referee will limit the testimony to issues that are relevant to the case. You will

not be allowed another hearing to present evidence that you failed to offer the first time unless you had good cause for your failure.

Q. What if I need to subpoena a witness?

A. If you have an attorney, that person will issue any necessary subpoenas. Otherwise, notify the Appeals Division immediately. The Referee will determine whether a subpoena is necessary and, if so, arrange for it to be served.

Q. When should I arrive for the hearing?

A. At least ten minutes early. If you wish to review the case file, make arrangements to do so before the day of the hearing. In some cases, it may be possible to review the file on the day of the hearing, but you must confirm this with the Appeals Division. The case file contains statements made by you and the claimant, copies of the Administrator's determination and the appeal statements, and any other documents submitted by any party to the appeal. This information will help you prepare for the hearing.

Q. May I talk to the referee before the hearing?

A. The Referee generally will have no contact with you or any party outside of the hearing. Other members of the Appeals Division staff will advise or assist you with procedural matters.

Q. May I send information to the referee before the hearing?

A. Yes. This information will be made part of the record. It must contain your name, your employer identification number, the case number, and the claimant's name so it can be placed in the proper file. You should also mail a copy of such material to the claimant and the Administrator. **Remember, however, that documentary evidence submitted to the Referee before the hearing is not a substitute for live, first-hand testimony.**

Be on time for your hearing. If you absolutely can't attend, call at once to request a postponement. If you don't attend the hearing, you are likely to lose.

What goes on at the hearing?

Q. How will the hearing be conducted?

A. Hearings are informal. The Referee explains the procedure and reads into the record the relevant information on file. This may include the fact finding report and all other documentation from the first hearing at the Job Center. You are not bound by the statements in the fact finding report and will be given an opportunity to present your version of the facts fully. However, if your testimony differs from your fact finding statement, you should be prepared to explain why. All parties and witnesses must testify under oath.

Proper decorum is expected. The Appeals Division has zero tolerance for violence. Threatening language or actions toward staff or customers are not tolerated. Weapons are banned from all Department of Labor buildings.

Q. What record is made of the hearing?

A. The hearing will be recorded on a cassette tape, which will be the official record of the proceeding. Make every effort to speak clearly enough to be heard and understood. Do not interrupt when others are speaking. Do not attempt to speak to the Referee "off the record." The Referee is required to record the entire proceeding. You may obtain a copy of the tape recording by contacting the Referee.

Q. Are the rules of the hearing the same as in court?

A. No. The rules of evidence do not apply. The law allows the Referee to question the parties and review written or printed records to ensure justice for all interested parties.

Hearsay testimony, that is, repetition of statements made by persons who are not present at the hearing, may be acceptable. However, direct testimony is considered better evidence. If the claimant offers direct testimony on an issue and you reply with only hearsay evidence, the Referee will probably give greater weight to the testimony of the claimant. Whenever possible, bring to the hearing the person or persons who witnessed the events in question or who have **first-hand knowledge.** This means that the testimony of the foreman or supervisor is usually more valuable than that of the personnel director or an executive.

Q. How can I best prove my case?

A. Present the best evidence possible, including a description of events and circumstances by the individual primarily involved, any documents concerning the issue, and any witnesses who observed or were directly involved in what happened. If the claimant's separation was the result of an incident involving a supervisor or a co-worker, the testimony of the personnel director will usually not be sufficient.

Depending on the issues involved, you may need to bring any of the following: the claimant's personnel file, medical records, job description, employment application, attendance and payroll records, warning notices, union contract, school rules and procedures, and police or witness reports. You must provide copies of any documents you intend to submit to the Referee and to the claimant. Bring these copies with you to the hearing.

If the claimant left work voluntarily, then it is the claimant's responsibility to prove that the separation was for good cause attributable to the employer or for other reason permitted by law. However, if you discharged the claimant, you must prove that you did so for one of the following disqualifying reasons as defined by the Unemployment Compensation Act: willful misconduct, larceny, felonious conduct, participation in an illegal labor dispute, or failure of a legally permitted drug test. Unless you are a reimbursable employer (for which there are special rules), you will be relieved of charges if you establish one of these disqualifying causes. **Be sure you know all the elements that you must establish in order to prove your case, and be prepared to offer testimony and evidence on each element.** Make sure that you present to the Referee all evidence, such as warnings and attendance records that support your charges against the employee.

Q. Who else will be at the hearing?

A. The claimant will usually be present, and the Unemployment Compensation Department may also be represented. Although the hearing will be open to the public, and anyone who is interested may attend, usually only the parties are present. If you believe that the hearing involves sensitive matters that would constitute an invasion of your privacy, you can ask the Referee to close the hearing to the public.

Q. How will I know what to tell the referee?

A. The referee will ask questions designed to obtain the necessary information. Listen carefully, and answer directly and plainly. Give complete and accurate information, without rambling or bringing in unrelated issues. You will be permitted to question the other parties and witnesses. Before the end of the hearing, the referee will provide you an opportunity to add anything you feel is important and to make a closing statement.

Q. What if I fail to bring something or need to obtain more evidence?

A. You should ask the referee to continue the hearing so that you can get whatever is needed. The Referee will grant your request only if he or she determines the information is relevant and you have a good reason for not having it with you. The Referee will consider only information, evidence, and testimony presented prior to or at the hearing. **You will not be allowed to introduce additional evidence once the hearing is over unless the Referee has agreed to keep the record open.**

The referee's hearing is your only chance to tell your story. Make sure that you present all the witnesses and evidence you need to win. You are not likely to be given another hearing.

The referee's decision

Q. What will the referee's decision be based on?

A. Only information admitted into the record by the Referee is used to decide the case. It is your responsibility to present this information. The referee will not investigate or contact witnesses. The statutes, regulations, and decisions of the Board of Review and the courts guide the Referee in deciding the issues.

Q. Is financial need a factor in the decision?

A. No. The claimant's financial need has nothing to do with the decision. The Unemployment Compensation Act is an insurance program designed to pay benefits to people who are unemployed through no fault of their own and who are actively seeking work.

Q. How will I be informed of the decision?

A. The Referee will mail a written decision to you, your representative, and other interested parties and their agents, including the Unemployment Insurance Department, as soon as possible. The decision will explain your right of appeal.

Family and Medical Leave Act

This section concerns the Family and Medical Leave Act of 1993 (FMLA) (29 USC §2601 et seq.; 29 CFR 825)

Who is covered

The Family and Medical Leave Act (FMLA) provides a means for employees to balance their work and family responsibilities by taking unpaid leave for certain reasons. The Act is intended to promote the stability and economic security of families as well as the nation's interest in preserving the integrity of families.

The law covers all public agencies (state and local governments) and local education agencies (schools, whether public or private). These employers do not need to meet the "50 employee" test.

To be eligible for FMLA leave, an individual must (1) be employed by a covered employer and work at a worksite within 75 miles of which that employer employs at least 50 people; (2) have worked at least 12 months (which do not have to be consecutive) for the employer; and (3) have worked at least 1,250 hours during the 12 months immediately before the date FMLA leave begins.

Basic provisions/requirements

The FMLA provides an entitlement of up to 12 weeks of job-protected, unpaid leave during any 12-month period for the following reasons:

- Birth and care of the employee's child, or placement for adoption or foster care of a child with the employee;
- Care of an immediate family member (spouse, child, parent) who has a serious health condition; or
- Care of the employee's own serious health condition. If an employee was receiving group health benefits when leave began, an employer must maintain them at the same level and in the same manner during periods of FMLA leave as if the employee had continued to work. Usually, an employee may elect (or the employer may require) the use of any accrued paid leave (vacation, sick, personal, etc.) for periods of unpaid FMLA leave.

Employees may take FMLA leave in blocks of time less than the full 12 weeks on an intermittent or reduced leave basis when medically necessary. Taking intermittent leave for the placement, adoption, or foster care of a child is subject to the employer's approval. Intermittent leave taken for the birth and care of a child is also subject to the employer's approval except for pregnancy-related leave that would be leave for a serious health condition.

When the need for leave is foreseeable, an employee must give the employer at least 30 days notice, or as much notice as is practicable. When the leave is not foreseeable, the employee must provide such notice as soon as possible.

An employer may require medical certification of a serious health condition from the employee's health care provider. An employer may also require periodic reports during the period of leave of the employee's status and intent to return to work, as well as "fitness-for-duty" certification upon return to work in appropriate situations. An employee who returns from FMLA leave is entitled to be restored to the same or an equivalent job (defined as one with equivalent pay, benefits, responsibilities, etc.).

The employee is not entitled to accrue benefits during periods of unpaid FMLA leave, but the employer must return him or her to employment with the same benefits at the same levels as existed when leave began.

Employers are required to post a notice for employees outlining the basic provisions of FMLA and are subject to a $100 civil money penalty per offense for willfully failing to post such notice. Employers are prohibited from discriminating against or interfering with employees who take FMLA leave.

Employee rights

The FMLA provides that eligible employees of covered employers have a right to take up to 12 weeks of job-protected leave in any 12-month period for qualifying events without interference or restraint from their employers. The FMLA also gives employees the right to file a complaint with the Wage and Hour Division, file a private lawsuit under the Act (or cause a complaint or lawsuit to be filed), and testify or cooperate in other ways with an investigation or lawsuit without being fired or discriminated against in any other manner.

Compliance assistance available

The Wage and Hour Division of the Employment Standards Administration administers FMLA. More detailed information, including copies of explanatory brochures, may be obtained by contacting the local Wage and Hour offices.

In addition, the Wage and Hour Division has developed the elaws Family and Medical Leave Act Advisor (www.dol.gov/elaws), which is an online resource that answers a variety of commonly asked questions about FMLA, including employee eligibility, valid reasons for leave, notification responsibilities of employers and employees, and rights and benefits of employees. Compliance assistance information is also available from the Wage and Hour Division's Web site (www.wagehour.dol.gov).

Penalties/sanctions

Employees and other persons may file complaints with the Employment Standards Administration (usually through the nearest office of the Wage and Hour Division).

The Department of Labor may file suit to ensure compliance and recover damages if a complaint cannot be resolved administratively. Employees also have private rights of action, without involvement of the Department of Labor, to correct violations and recover damages through the courts.

Relation to state, local and other federal laws

A number of states have family leave statutes. Nothing in the FMLA supersedes a provision of state law that is more beneficial to the employee, and employers must comply with the more beneficial provision. Under some circumstances, an employee with a disability may have rights under the Americans with Disabilities Act.

Purposes of the FMLA

The FMLA allows employees to balance their work and family life by taking reasonable unpaid leave for certain family and medical reasons. The FMLA seeks to accomplish these purposes in a manner that accommodates the legitimate interests of employers, and minimizes the potential for employment discrimination on the basis of gender, while promoting equal employment opportunity for men and women.

Employer coverage

FMLA applies to all public agencies, including state, local and federal employers, and local education agencies (schools)

Employee eligibility

To be eligible for FMLA leave, an employee **must work for a covered employer and**:

- have worked for that employer for at least 12 months; and
- have worked at least 1,250 hours during the 12 months prior to the start of the FMLA leave; and,
- work at a location where at least 50 employees are employed at the location or within 75 miles of the location.

Leave entitlement

A covered employer must grant an eligible employee up to a total of **12 workweeks of unpaid leave** in a 12 month period for one or more of the following reasons:

- for the birth of a son or daughter, and to care for the newborn child;
- for the placement with the employee of a child for adoption or foster care, and to care for the newly placed child;
- to care for an immediate family member (spouse, child, or parent -- but not a parent "in-law") with a serious health condition; and
- when the employee is unable to work because of a serious health condition.

Leave to care for a newborn child or for a newly placed child must conclude within 12 months after the birth or placement. (See CFR Section 825.201)

Spouses employed by the same employer may be limited to a **combined** total of 12 workweeks of family leave for the following reasons:

- birth and care of a child;
- for the placement of a child for adoption or foster care, and to care for the newly placed child; and,
- to care for an employee's parent who has a serious health condition.

Intermittent/reduced schedule leave

The FMLA permits employees to take leave on an intermittent basis or to work a reduced schedule under certain circumstances. CFR Section 203)

- Intermittent/reduced schedule leave may be taken when medically necessary to care for a seriously ill family member, or because of the employee's serious health condition.

- Intermittent/reduced schedule leave may be taken to care for a newborn or newly placed adopted or foster care child only with the employer's approval.

Only the amount of leave actually taken while on intermittent/reduced schedule leave may be charged as FMLA leave. Employees may not be required to take more FMLA leave than necessary to address the circumstances that cause the need for leave. Employers may account for FMLA leave in the shortest period of time that their payroll systems use, provided it is one hour or less. (See CFR Section 825-205)

Employees needing intermittent/reduced schedule leave for foreseeable medical treatment must work with their employers to schedule the leave so as not to unduly disrupt the employer's operations, subject to the approval of the employee's health care provider. In such cases, the employer may transfer the employee temporarily to an alternative job with equivalent pay and benefits that accommodate recurring periods of leave better than the employee's regular job.

Substitution of paid leave

Employees may choose to use, **or** employers may require the employee to use, accrued **paid** leave to cover some or all of the FMLA leave taken. Employees may choose, or employers may require, the substitution of accrued **paid** vacation or personal leave for any of the situations covered by FMLA. The substitution of accrued sick or family leave is limited by the employer's policies governing the use of such leave.

Serious health condition

"Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves:

- any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility; or
- a period of incapacity requiring absence of more than **three calendar days** from work, school, or other regular daily activities that also involves continuing treatment by (or under the supervision of) a health care provider; or
- any period of incapacity due to pregnancy, or for prenatal care; or
- any period of incapacity (or treatment therefore) due to a chronic serious health condition (e.g., asthma, diabetes, epilepsy, etc.); or
- a period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective (e.g., Alzheimer's, stroke, terminal diseases, etc.); or,
- any absences to receive multiple treatments (including any period of recovery there from) by, or on referral by, a health care provider for a condition that likely would result in incapacity of more than three consecutive days if left untreated (e.g., chemotherapy, physical therapy, dialysis, etc.).

Medical certification

An employer may require that the need for leave for a serious health condition of the employee or the employee's immediate family member be supported by a certification issued by a health care provider. The employer must allow the employee at least **15 calendar days** to obtain the medical certification.

An employer may, at its own expense, require the employee to obtain a second medical certification from a health care provider. The employer may choose the health care provider for the second opinion, except that in most cases the employer may not regularly contract with or otherwise regularly use the services of the health care provider. If the opinions of the employee's and the employer's designated health care providers differ, the employer may require the employee to obtain certification from a third health care provider, again at the employer's expense. This third opinion shall be final and binding. The third health care provider must be approved jointly by the employer and the employee. The "Certification of Health Care Provider" (optional form **WH-380**) may be used to obtain the certifications.

Health care provider

Health care providers who may provide certification of a serious health condition include:

- doctors of medicine or osteopathy authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices;
- podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the State and performing within the scope of their practice under State law;
- nurse practitioners, nurse-midwives, and clinical social workers authorized to practice under State law and performing within the scope of their practice as defined under State law;
- Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts;
- any health care provider recognized by the employer or the employer's group health plan's benefits manager; and,
- a health care provider listed above who practices in a country other than the United States and who is authorized to practice under the laws of that country.

Maintenance of health benefits

A covered employer is required to maintain group health insurance coverage, including family coverage, for an employee on FMLA leave on the same terms as if the employee continued to work.

Where appropriate, arrangements will need to be made for employees taking unpaid FMLA leave to pay their share of health insurance premiums. For example, if the group health plan involves co-payments by the employer and the employee, an employee on unpaid FMLA leave must make arrangements to pay his or her normal portion of the insurance premiums to maintain insurance coverage, as must the employer. Such payments may be made under any arrangement voluntarily agreed to by the employer and employee.

An employer's obligation to maintain health benefits under FMLA stops if and when an employee informs the employer of an intent not to return to work at the end of the leave period, or if the employee fails to return to work when the FMLA leave entitlement is exhausted. The employer's obligation also stops if the employee's premium payment is more than 30 days late and the employer has given the employee written notice at least 15 days in advance advising that coverage will cease if payment is not received.

In some circumstances, the employer may recover premiums it paid to maintain health insurance coverage for an employee who fails to return to work from FMLA leave.

Other benefits

Other benefits, including cash payments chosen by the employee instead of group health insurance coverage, need not be maintained during periods of unpaid FMLA leave.

Certain types of earned benefits, such as seniority or paid leave, need not continue to accrue during periods of unpaid FMLA leave provided that such benefits do not accrue for employees on other types of unpaid leave. For other benefits, such as elected life insurance coverage, the employer and the employee may make arrangements to continue benefits during periods of unpaid FMLA leave. An employer may elect to continue such benefits to ensure that the employee will be eligible to be restored to the same benefits upon returning to work. At the conclusion of the leave, the employer may recover only the employee's share of premiums it paid to maintain other "non-health" benefits during unpaid FMLA leave.

Job restoration

Upon return from FMLA leave, an employee must be restored to his or her original job, or to an **"**equivalent" job, which means virtually identical to the original job in terms of pay, benefits, and other employment terms and conditions.

In addition, an employee's use of FMLA leave cannot result in the loss of any employment benefit that the employee earned or was entitled to before using (but not necessarily during) FMLA leave.

"Key" employee exception

Under limited circumstances where restoration to employment will cause "substantial and grievous economic injury" to its operations, an employer may refuse to reinstate certain highly-paid, salaried "key" employees. In order to do so, the employer must notify the employee in writing of his/her status as a "key" employee (as defined by FMLA), the reasons for denying job restoration, and provide the employee a reasonable opportunity to return to work after so notifying the employee.

Employee notice 29CFR825.302

Eligible employees seeking to use FMLA leave **may** be required to provide:

- 30-day advance notice of the need to take FMLA leave when the need is foreseeable;
- notice "as soon as practicable" when the need to take FMLA leave is not foreseeable ("as soon as practicable" generally means at least verbal notice to the employer within **one or two business days** of learning of the need to take FMLA leave);
- sufficient information for the employer to understand that the employee needs leave for FMLA-qualifying reasons (the employee need not mention FMLA when requesting leave to meet this requirement, but may only explain why the leave is needed); and,
- where the employer was not made aware that an employee was absent for FMLA reasons and the employee wants the leave counted as FMLA leave, timely notice (generally within **two business days** of returning to work) that leave was taken for an FMLA-qualifying reason.

Employer notices 29CFR825.300

Covered employers must take the following steps to provide information to employees about FMLA:

- post a notice approved by the Secretary of Labor (**WH Publication 1420**) explaining rights and responsibilities under FMLA;
- include information about employee rights and obligations under FMLA in employee handbooks or other written material, including Collective Bargaining Agreements (CBAs); or
- if handbooks or other written material do not exist, provide general written guidance about employee rights and obligations under FMLA whenever an employee requests leave (a copy of Fact Sheet No. 28 will fulfill this requirement); and
- provide a written notice designating the leave as FMLA leave and detailing specific expectations and obligations of an employee who is exercising his/her FMLA entitlements. The employer may use the "Employer Response to Employee Request for Family or Medical Leave" (optional form **WH-381**) to meet this requirement. This employer notice should be provided to the employee within **one or two business days** after receiving the employee's notice of need for leave and include the following:
- that the leave will be counted against the employee's annual FMLA leave entitlement;
- any requirements for the employee to furnish medical certification and the consequences of failing to do so;
- the employee's right to elect to use accrued paid leave for unpaid FMLA leave and whether the employer will require the use of paid leave, and the conditions related to using paid leave;
- any requirement for the employee to make co-premium payments for maintaining group health insurance and the arrangement for making such payments;

- any requirement to present a fitness-for-duty certification before being restored to his/her job;
- rights to job restoration upon return from leave;
- employee's potential liability for reimbursement of health insurance premiums paid by the employer during the leave if the employee fails to return to work after taking FMLA leave; and
- whether the employee qualifies as a "key" employee and the circumstances under which the employee may not be restored to his or her job following leave.

Unlawful acts

FMLA makes it unlawful for any employer to interfere with, restrain, or deny the exercise of any right provided by this law. It is also unlawful for an employer to discharge or discriminate against any individual for opposing any practice, or because of involvement in any proceeding, related to FMLA.

Employers cannot use the taking of FMLA leave as a negative factor in employment actions, such as hiring, promotions, or disciplinary actions; nor can FMLA leave be counted under "no fault" attendance policies.

Enforcement

FMLA is enforced by the Wage and Hour Division of the U.S. Department of Labor's Employment Standards Administration. This agency investigates complaints of violations. If violations cannot be satisfactorily resolved, the Department may bring action in court to compel compliance.

An eligible employee may bring a private civil action against an employer for violations. An employee is not required to file a complaint with the Wage and Hour Division prior to bringing such action.

Other provisions

Some special rules apply to **employees of local education agencies**. Generally, these rules provide for FMLA leave to be taken in blocks of time when the leave is needed intermittently or when leave is required near the end of you term (semester).

Several States and other jurisdictions also have family or medical leave laws. If both the Federal law and a State law apply to an employer's operations, an employee is entitled to the most generous benefit provided under either law.

Employers may also provide family and medical leave that is more generous than the FMLA leave requirements.

The FMLA does not modify or affect any Federal or State law that prohibits discrimination.

Questions and Answers about FMLA

Q: How much leave am I entitled to under FMLA?

If an "eligible" employee, you are entitled to 12 weeks of leave for certain family and medical reasons during a 12-month period.

Q: How is the 12-month period calculated under FMLA?

Employers may select one of four options for determining the 12-month period:

- the calendar year;
- any fixed 12-month "leave year" such as a fiscal year, a year required by State law, or a year starting on the employee's "anniversary" date;
- the 12-month period measured forward from the date any employee's first FMLA leave begins; or
- a "rolling" 12-month period measured backward from the date an employee uses FMLA leave.

Q: Does the law guarantee paid time off?

No. The FMLA only requires unpaid leave. However, the law permits an employee to elect, or the employer to require the employee, to use accrued paid leave, such as vacation or sick leave, for some or all of the FMLA leave period. When paid leave is substituted for unpaid FMLA leave, it may be counted against the 12-week FMLA leave entitlement if the employee is properly notified of the designation when the leave begins.

Q: Does workers' compensation leave count against an employee's FMLA leave entitlement?

It can. FMLA leave and workers' compensation leave can run together, provided the reason for the absence is due to a qualifying serious illness or injury and the employer properly notifies the employee in writing that the leave will be counted as FMLA leave.

Q: Can the employer count leave taken due to pregnancy complications against the 12 weeks of FMLA leave for the birth and care of my child?

Yes. An eligible employee is entitled to a total of 12 weeks of FMLA leave in a 12-month period. If the employee has to use some of that leave for another reason, including a difficult pregnancy, it may be counted as part of the 12-week FMLA leave entitlement.

Q: Can the employer count time on maternity leave or pregnancy disability leave as FMLA leave?

Yes. Pregnancy disability leave or maternity leave for the birth of a child would be considered qualifying FMLA leave for a serious health condition and may be counted in the 12 weeks of leave so long as the employer properly notifies the employee in writing of the designation.

Q: If an employer fails to tell employees that the leave is FMLA leave, can the employer count the time they have already been off against the 12 weeks of FMLA leave?

In most situations, the employer cannot count leave as FMLA leave retroactively. Remember, the employee must be notified in writing that an absence is being designated as FMLA leave. If the employer was not aware of the reason for the leave, leave may be designated as FMLA leave retroactively only while the leave is in progress or within two business days of the employee's return to work.

Q: Who is considered an immediate "family member" for purposes of taking FMLA leave?

An employee's spouse, children (son or daughter), and parents are immediate family members for purposes of FMLA. The term "parent" does not include a parent "in-law". The terms son or daughter do not include individuals age 18 or over unless they are "incapable of self-care" because of a mental or physical disability that limits one or more of the "major life activities" as those terms are defined in regulations issued by the Equal Employment Opportunity Commission (EEOC) under the Americans With Disabilities Act (ADA).

Q: May I take FMLA leave for visits to a therapist, if my doctor prescribes the therapy?

Yes. FMLA permits you to take leave to receive "continuing treatment by a health care provider," which can include recurring absences for therapy treatments such as those ordered by a doctor for physical therapy after a hospital stay, or for treatment of severe arthritis.

Q: Which employees are eligible to take FMLA leave?

Employees are eligible to take FMLA leave if they have worked for their employer for at least 12 months, and have worked for at least 1,250 hours over the previous 12 months, and work at a location where at least 50 employees are employed by the employer within 75 miles.

Q: Do the 12 months of service with the employer have to be continuous or consecutive?

No. The 12 months do not have to be continuous or consecutive; all time worked for the employer is counted.

Q: Do the 1,250 hours include paid leave time or other absences from work?

No. The 1,250 hours include only those hours actually worked for the employer. Paid leave and unpaid leave, including FMLA leave, are not included.

Q: How do I determine if I have worked 1,250 hours in a 12-month period?

Your individual record of hours worked would be used to determine whether 1,250 hours had been worked in the 12 months prior to the commencement of FMLA leave. As a rule of thumb, the following may be helpful for estimating whether this test for eligibility has been met:

- 24 hours worked in each of the 52 weeks of the year; or
- over 104 hours worked in each of the 12 months of the year; or
- 40 hours worked per week for more than 31 weeks (over 7 months) of the year.

Q: Do I have to give my employer my medical records for leave due to a serious health condition?

No. You do not have to provide medical records. The employer may, however, request that, for any leave taken due to a serious health condition, you provide a medical certification confirming that a serious health condition exists.

Q: Can my employer require me to return to work before I exhaust my leave?

Subject to certain limitations, you employer may deny the continuation of FMLA leave due to a serious health condition if you fail to fulfill any obligations to provide supporting medical certification. The employer may not, however, require you to return to work early by offering you a light duty assignment.

Q: Are there any restrictions on how I spend my time while on leave?

Employers with established policies regarding outside employment while on paid or unpaid leave may uniformly apply those policies to employees on FMLA leave. Otherwise, the employer may not restrict your activities. The protections of FMLA will not, however, cover situations where the reason for leave no longer exists, where the employee has not provided required notices or certifications, or where the employee has misrepresented the reason for leave.

Q: Can my employer make inquiries about my leave during my absence?

Yes, but only to you. You employer may ask you questions to confirm whether the leave needed or being taken qualifies for FMLA purposes, and may require periodic reports on your status and intent to return to work after leave. Also, if the employer wishes to obtain another opinion, you may be required to obtain additional medical certification at the employer's expense, or recertification during a period of FMLA leave. The employer may have a health care provider representing the employer contact your health care provider, with your permission, to clarify information in the medical certification or to confirm that the health care provider provided it. The inquiry may **not seek additional information** regarding your health condition or that of a family member.

Q: Can my employer refuse to grant me FMLA leave?

If you are an "eligible" employee who has met FMLA's notice and certification requirements (and you have not exhausted you FMLA leave entitlement for the year), you may **not** be denied FMLA leave.

Q: Will I lose my job if I take FMLA leave?

Generally, no. It is unlawful for any employer to interfere with or restrain or deny the exercise of any right provided under this law. Employers cannot use the taking of FMLA leave as a negative factor in employment actions, such as hiring, promotions or disciplinary actions; nor can FMLA leave be counted under "no fault" attendance policies. Under limited circumstances, an employer may deny reinstatement to work – but not the use of FMLA leave –to certain highly-paid, salaried ("key") employees.

Q: Are there other circumstances in which my employer can deny me FMLA leave or reinstatement to my job?

In addition to denying reinstatement in certain circumstances to "key" employees, employers are not required to continue FMLA benefits or reinstate employees who would have been laid off or otherwise had their employment terminated had they continued to work during the FMLA leave period as, for example, due to a general layoff.

Employees who give unequivocal notice that they do not intend to return to work lose their entitlement to FMLA leave.

Employees who are unable to return to work and have exhausted their 12 weeks of FMLA leave in the designated "12 month period" no longer have FMLA protections of leave or job restoration.

Under certain circumstances, employers who advise employees experiencing a serious health condition that they will require a medical certificate of fitness for duty to return to work may deny reinstatement to an employee who fails to provide the certification, or may delay reinstatement until the certification is submitted.

Q: Can my employer fire me for complaining about a violation of FMLA?

No. Nor can the employer take any other adverse employment action on this basis. It is unlawful for any employer to discharge or otherwise discriminate against an employee for opposing a practice made unlawful under FMLA.

Q: Does an employer have to pay bonuses to employees who have been on FMLA leave?

The FMLA requires that employees be restored to the same or an equivalent position. If an employee was eligible for a bonus before taking FMLA leave, the employee would be eligible for the bonus upon returning to work. The FMLA leave may not be counted against the employee. For example, if an employer offers a perfect attendance bonus and the employee has not missed any time prior to taking FMLA leave, the employee would still be eligible for the bonus upon returning from FMLA leave.

On the other hand, FMLA does not require that employees on FMLA leave be allowed to accrue benefits or seniority. For example, an employee on FMLA leave might not have sufficient sales to qualify for a bonus. The employer is not required to make any special accommodation for this employee because of FMLA. The employer must, of course, treat an employee who has used FMLA leave at least as well as other employees on paid and unpaid leave (as appropriate) are treated.

Q. How are leaves covered under the FMLA and workers' compensation statutes and how much time off is required?

The FMLA is a mandatory federal leave law intended to protect employees who need to take time away from work to attend to certain family and medical problems. It applies to employers with 50 or more employees and all public agencies and schools and allows an eligible employee to take up to 12 weeks of job-protected leave for various family and medical reasons, including medical leave when the employee is unable to work because of a "serious health condition."

Workers' compensation ("WC") statutes are primarily state liability and income continuation laws that protect employees who are injured while working. Almost every state has a law that guarantees an income (funded by employers and the state) to employees injured on the job and at the same time places limits on the employer's responsibility for the injury. Benefits vary from state to state but typically include medical treatment, rehabilitation, disability, and wage continuation. WC statutes generally are not leave laws, however. Most states do not require employers to give a specific amount of leave for workers' compensation, and only a few states require reinstatement from WC leave.

Q. When is a WC injury covered under the FMLA?

If the employee is eligible for leave under the FMLA and the injury is considered a "serious health condition," the WC leave should be treated under the FMLA. The FMLA defines serious health condition broadly to include any "illness, injury, impairment, or physical or mental condition that involves" either inpatient care or continuing treatment by a health care provider. The statute does not distinguish between work-related and non-work-related injuries. Thus, any on-the-job injury that requires an employee to take leave to seek inpatient care or continuing treatment likely will be covered by the FMLA.

Accordingly, whenever an employee is injured on the job and needs time off to recover, the employer immediately should determine if the employee also is eligible for leave under the FMLA. If the employee is eligible for FMLA leave, the employer should notify the employee in writing that the leave is covered under the FMLA so that the leave time may be counted against the employee's 12-week FMLA entitlement. If the employer does not run the WC leave concurrently with the FMLA leave, the employee may still have the full 12-week FMLA entitlement available to use after the WC leave.

Q. Should WC leaves be treated separately from other types of leaves?

Some experts suggest that WC leaves be treated separately from all other types of leaves to ensure compliance with the requirements of state workers' compensation laws. However, treating workers' compensation as a totally separate category of leave may cause employers to inadvertently neglect the requirements of the FMLA.

Q. Should the employer give the employee any special notification under the FMLA?

In order to deduct the time spent on WC leave from an employee's annual FMLA leave entitlement, the employer must notify the employee in writing that the WC leave is designated as FMLA leave and will count against, and run concurrently with, the employee's 12-week entitlement. The notice to the employee must detail the specific obligations of the employee while on FMLA leave and explain the consequences of a failure to meet these obligations.

Most employers use the Department of Labor's Form WH-381 to comply with these notice requirements. If the employer does not provide the notice, it cannot count the WC leave towards the 12-week FMLA entitlement. Therefore, the employee may be entitled to an additional 12 weeks of FMLA leave at a later date.

If the employee has been on WC leave without being placed specifically on FMLA leave, the employer should send notice to the employee immediately so that the FMLA clock starts running. However, the employer may then only designate the leave from the date written notice to the employee is provided. It cannot retroactively designate the time spent on WC leave against the FMLA entitlement.

Q. Does an employer have to pay for health insurance for an employee on WC leave?

If the employee qualifies for FMLA leave and the employer normally pays for health insurance, the answer is yes. Although most state WC laws do not require employers to pay for health insurance during a WC leave, the FMLA requires the continuation of health insurance benefits during an FMLA leave. Typically, the state WC laws cover the employee's medical costs related to the work injury but do not mandate continued coverage under, or payment for, a health insurance plan. However, under the FMLA, employers must provide the same health benefits during an eligible employee's FMLA leave that it would have provided if the employee worked throughout the leave. Thus, if the employer normally pays 80% of an employee's health benefits premium, it must continue to do so during the employee's FMLA/WC leave.

Q. Can an employee on WC leave be required to use vacation or sick leave?

The FMLA allows employers to require employees, or employees to elect, to substitute accrued vacation, sick, or other paid leave for all or part of the 12 weeks of unpaid leave. Employees on WC leave typically receive up to two-thirds of their normal pay as a wage benefit under state law. In recognition of this benefit, the FMLA regulations do not allow the use of paid leave if the employee is receiving workers' compensation, even to make the employee "whole" or if requested by the employee. However, the employer may designate the leave as FMLA leave and count it against the employee's 12-week FMLA entitlement.

Q. If the employee is released to light duty, can he be required to return to work?

Most light duty positions do not include the employee's normal job functions. Therefore, if the employee is unable to perform the essential functions of the job because of the work-related injury, he may continue to take any remaining FMLA leave and cannot be required to accept the light duty position. However, if the state workers' compensation statute requires the employee to take the light duty assignment to continue receiving wage benefits, the employee's WC benefits may be discontinued. The employee then must be allowed to use any accrued paid leave during the remaining unpaid FMLA leave.

Q. Does the employer have to reinstate an employee returning from a WC leave?

If the employee is covered under the FMLA, he must be reinstated to the same or an equivalent position. The employee must be reinstated even if the employer did not notify the employee of coverage under the FMLA. If the employee does not return to work at the end of the 12-week FMLA leave, the employer may terminate the employee without violating the FMLA as long as the termination is consistent with the treatment of similarly situated employees who have taken FMLA leave. However, the employee must have been properly placed on FMLA leave and notified that the time off for WC leave ran concurrently with the FMLA. In addition, a few state WC laws, such as Oregon, require reinstatement regardless of the length of the WC leave. As a further complication, the employee may be considered disabled under the Americans with Disabilities Act and, therefore, may be entitled to additional leave as an accommodation.

Prevent legal headaches: count WC leave as FMLA

Since most workers' compensation leaves typically will be covered under the FMLA, employers should be prepared to comply with both laws. Failure to categorize a WC leave as a FMLA leave generally will not harm the employee as long as he gets all of the benefits of FMLA leave, such as continued health insurance and reinstatement rights. However, the employer may lose the opportunity to count the time on WC leave against the employee's FMLA entitlement and may extend unnecessarily the employee's FMLA leave eligibility. In addition, employers may violate the FMLA if they do not reinstate an employee from a WC leave that was not properly designated as FMLA leave.

Workers Compensation

Employer's Guide
Colorado Department of Labor and Employment
Division of Workers' Compensation October 2002

The purpose of workers' compensation is to speedily and justly compensate employees for injuries occurring during the performance of their jobs and to insure employers against liability for injuries to their employees.

Before the workers' compensation law was established, there was little recourse for workers injured on the job. A worker could sue in court, but had to prove negligence. The outcome was uncertain and could take years to resolve. This was costly both to the employer and the worker, often with little benefit to either party. The move toward workers' compensation began during the Industrial Revolution as mechanization brought an increase in work-related injuries. It was a new legal concept: liability without regard to fault. First established in Germany in 1856 and adopted soon after by England and most of Western Europe, workers' compensation was enacted in Colorado in 1915. By 1920, most states had workers' compensation laws and by 1947, all states mandated workers' compensation coverage.

Most of the information in this booklet is for employers who have or are seeking insurance coverage from insurance companies. If an employer is self-insured or a part of an insurance pool, some of the reporting requirements may be different.

Workers' compensation is based on a mutual agreement between the employer and the employee and is called the "exclusive remedy" provision of the Workers' Compensation Act. This serves two basic purposes.

- To promptly provide employees with reasonable and necessary medical treatment and partial wage replacement while the employee recovers from the effects of a work-related injury or occupational disease. In the case of a fatality, to provide death benefits to dependent survivors.
- To provide employers with predictable costs for work-related injuries and illnesses.

Workers' compensation insurance coverage is paid by the employer. Employers purchase insurance coverage through a private insurance company or, if qualified, through self-insurance programs. No portion of the premium may be deducted from an employee's wages. In Colorado there currently is no recognized form of alternative coverage that can be used instead of workers' compensation coverage.

The Division of Workers' Compensation in the Department of Labor and Employment administers the workers' compensation system in Colorado.

All public and private employers in Colorado, with limited exceptions, must provide workers' compensation coverage for their employees if one or more full- or part-time persons are employed. A person hired to perform services for pay is presumed by law to be an employee. This includes all persons elected or appointed to public sector service and all persons appointed or hired by private employers for remuneration. There are a few exemptions to this definition.

Exemptions

There are some exemptions from coverage requirements for specific occupations and individuals. The Division of Workers' Compensation can provide detailed information on exemptions. The following is only a partial list of occupations and/or individuals exempt from mandatory coverage under the Workers' Compensation Act.

- Certain casual maintenance or repair work performed for a business for under $2,000 per calendar year
- Certain domestic work, maintenance or repair work for a private homeowner that is not done full time
- Licensed real estate agents and brokers working on commission
- Independent contractors who perform specific for-hire transportation jobs
- Drivers under a lease agreement with a common or contract carrier
- Any person who volunteers time or services for a ski area operator
- Persons who provide host home services as part of residential services and supports
- Federal employees (covered under federal laws)
- Railroad employees (covered under federal laws)
- Independent contractors who are generally defined below

Independent contractors

A person hired to perform services for pay is presumed by law to be an employee unless they meet the definition of an independent contractor or qualify under a specific exemption provided by workers' compensation laws. A person who works as an independent contractor and can prove that the person meets the legal definition of independent contractor is not an employee and is not entitled to workers' compensation benefits unless the person buys a separate policy.

If a business hires an individual as an independent contractor, the independent contractor must be:

- Free from the business' control and direction over how the service is performed; and
- Customarily engaged in an independent trade, occupation, profession, or business related to the service being performed.

These are the two key principles of independent contracting.

A written contract may be helpful in proving independent contractor status and is always helpful in defining the work relationship. However, the actual facts of the work relationship are the most important evidence. If the actual facts differ from what the written contract says, the facts will control. A list of important criteria about written contracts is provided in the next section.

It is important to remember that if a contractor is hired who has employees, the business must verify that the contractor has workers' compensation insurance for those employees. A business may verify insurance coverage by requesting a certificate of insurance from the contractor's insurance agent. Notification of any policy changes may also be requested of the insurer. If the contractor does not have workers' compensation insurance for its employees throughout the duration of the work being done for the business, the business that hired the contractor can be held responsible for the workers' compensation insurance for the contractor's employees. If the business provides coverage for the contractor's employees because the contractor failed to do so, the business can recover the cost of the premium from the contractor.

Written contracts with independent contractors

When a business intends to hire an independent contractor for a project, the parties may decide to write a contract. This helps to establish that the independent contractor adequately meets the two key principles of independent contracting identified above. A contract should show the following factors appropriate to the parties' circumstances.

- The business does not require the individual to work for it exclusively, except that the individual may choose to work exclusively for the business for a finite period of time specified in the contract.
- The business does not establish a quality standard for the individual, except that the business may provide plans and specifications regarding the work. The business cannot oversee the actual work or instruct the individual as to how the work will be performed.
- The business does not pay a salary or an hourly rate but rather pays a fixed or contract rate.
- The business does not have the right to terminate the individual's services during the contract period unless the individual violates the terms of the contract or fails to produce a result that meets the specifications of the contract.
- The business does not provide more than minimal training for the individual.
- The business does not provide tools or benefits to the individual, except that materials and equipment may be supplied.
- The business does not dictate the time of performance, except that a completion schedule and a range of negotiated and mutually agreeable work hours may be established in the contract.
- The business does not pay the individual personally but rather makes checks payable to the trade or business name of the individual.
- The business and the individual do not combine business operations in any way; all business operations are maintained separate and distinct.

Remember: A written contract may be helpful in proving independent contractor status. However, the facts of the work relationship are actually more important than what the contract says. Section8-40-202(2), C.R.S. states requirements for disclosure and format for such contracts. Be sure you are familiar with this section of the law.

Types of insurance coverage

In Colorado, there are three ways in which an employer may obtain workers' compensation coverage:

1. Commercial Insurance;
2. Self-Funding (Individual); or
3. Self-Funding (Groups and/or Pools).

Commercial insurance

Workers' compensation insurance may be purchased from one of over three hundred private insurance companies authorized to conduct business in the State of Colorado. Those who purchase commercial insurance often receive cost advantages over prevailing insurance rates through innovative cost-plus and cash flow plans, that are available to select customers, and "package deals" where other types of insurance policies are discounted for the inclusion of the workers' compensation business. Changes in the laws and the market may result in fluctuations in the types of plans that are offered and in the availability of coverage from year-to-year. Commercial carriers may endorse "all states" coverage.

Self-funding, individual – self-insurance

Colorado workers' compensation statutes allow employers, meeting strict financial and loss control standards, to self-insure this risk. Authorized by special permit, such workers' compensation obligations are paid directly from the earnings and assets of the employer. Permits to self-insure individual companies are obtained through the Division of Workers' Compensation. Employers applying for self-insurance must regularly employ 300 or more employees in Colorado or be a division or subsidiary of a parent school that has a minimum of $100,000,000 in assets.

You may hold disputed premium amounts in abeyance during the appeal process. However, if you lose the appeal you must pay the disputed premium amount plus interest at the rate of 1% of such disputed amount per month. Such interest will accrue from the date of the premium rate increase to the date of payment.

The Division of Workers' Compensation offers a Cost Containment Certification Program that can provide employers with a reduction in their premiums. See the "Cost Containment Certification" section later in this booklet for information.

Penalties to uninsured employers

The Division of Workers' Compensation investigates all information received or discovered about employers who may be uninsured for workers' compensation. If an employer fails, neglects or refuses to obtain workers' compensation insurance as required by law, the Director of the Division is authorized to assess penalties of up to $500.00 per day, not to exceed the amount of the premium, for a period of time that employers do not carry insurance. In addition, a cease and desist order may also be issued against the business to stop business operations until insurance is obtained.

The Colorado Workers' Compensation Act does not provide a fund to cover the medical expenses or lost wages of employees injured while working for uninsured employers. Employers have sole responsibility to provide insurance. If unlawfully uninsured at the time of an injury, the employer must pay all statutory medical and disability benefits for the injured employee and an additional 50% of all temporary, permanent and disfigurement benefits for having been uninsured.

Medical treatment

When a worker is injured on the job, promptly furnish medical treatment. Emergencies should always be handled by the closest medical facility. In Colorado, the employer or insurance company has the right to select the physician that employees must use for treatment of work-related injuries. This becomes the designated medical provider.

When selecting the designated physician it is extremely important to assure that you are furnishing the best medical care possible. Quality and appropriate medical care is important in cost containment and minimizing the effects of an injury to an employee. Be sure to check with your insurance company. They may have established preferred provider networks that can save additional medical expense.

By designating a physician, the employer will have an immediate source of treatment for the injured employee and claims may be managed consistently by the same facility. This increases communication among the employer, insurer, employee and treating physician. When a claim is in dispute, check with your insurance company before contacting the employee or treating physician.

Investigate accidents and report injuries

All accidents should be investigated to ensure that all pertinent facts are gathered and available if the insurance company has any questions regarding the claim. Establish communication early with the insurance company. This communication should be maintained until the conclusion of the claim. The law requires an employer to notify the insurance company of an injury within 10 days, no matter how minor the injury. This is done by filing an Employer's First Report of Injury form.

The employer may be asked to complete forms that describe the job duties and physical requirements of the employee's regular or modified-duty position. This is used by physicians to evaluate if the employee can return to full duty or perform modified duties.

Supplemental report of accident

When the injured employee either returns to work or is terminated from your employment, you must provide the insurance company with a completed Supplemental Report of Accident form. Your insurer can provide this form.

Learn from past accidents to prevent future accidents

Many employers recognize the importance of accident prevention in reducing workers' compensation costs. Evaluate what caused the workplace injury and correct any safety or training problems to prevent future accidents and injuries.

Responsibilities of the insurance company

The insurance company has 20 days from receipt of the claim to determine whether benefits will be paid for an injury that causes the employee to lose more than three days, or three shifts, at work or results in physical impairment. This is also true of fatalities. The insurer's decision is mailed to the employee, the employer and the Division of Workers' Compensation as an Admission of Liability or a Notice of Contest (denial).

The insurance company assigns a claim number and a claims adjuster to the claim. You may contact the adjuster with questions about the claim.

Insurance companies and self-insured employers must also report all other injuries requiring only medical care to the Division of Workers' Compensation by monthly summary form.

Temporary partial disability (TPD) benefits are paid when the employee returns to modified duty with reduced wages or reduced hours. This is calculated at two-thirds of the difference between the AWW at the time of the injury and the part-time earnings.

Payment of temporary benefits stops when the employee returns to work; is given a written release to return to regular work by the authorized treating doctor; is given a written release by the authorized treating doctor to return to modified work; the employer makes a written offer of such work and the employee begins or refuses to begin the work; or when the authorized treating doctor determines that maximum medical improvement (MMI) is reached. MMI means that the injury or disease causing disability has become stable and no further medical treatment will improve the condition.

If you are a temporary help contracting firm, a business that hires people to work for a third party, the injured employee is entitled to receive one written offer of modified work. Any future offers do not have to be in writing. The offer of work must be approved by the doctor and the employee is allowed at least twenty-four hours, not including Saturday, Sunday, or a legal holiday, to respond to the offer of work. A written offer of modified employment must clearly state that future offers of employment need not be in writing; the policy of the temporary help contracting firm regarding how and when employees are expected to learn of such future offers; and that benefits will be terminated if an employee fails to respond to an offer of modified employment.

Benefits may be reduced under certain circumstances. Examples include:

- The employee willfully failed to use a safety device.
- The employee willfully failed to obey a reasonable safety rule that was written and posted.
- The employee willfully misled you about his physical ability to perform the job.
- The injury resulted from the use of drugs or alcohol.
- The employee owed child support.
- The employee returned to work full or part time.
- The employee or dependents received social security.

Compensation services

The Benefits Section offers information to the public on workers' compensation benefits and technical aspects of the workers' compensation system. Claims Managers are experienced in workers' compensation claims adjusting practices. They assist in resolving problems involving the payment of compensation benefits, medical bills, calculation of permanent impairment or disability benefits, lump sum payments and wage calculations. They review admissions of liability, conduct audits, and close claims.

Self-insurance

Administration of employer Self-Insurance programs includes evaluation of applications and review of existing permits. See the "Types of Insurance Coverage" section of this booklet for more information.

Cost containment certification

Certification status is granted by the Premium Cost Containment Board to employers who can document that they have had a loss prevention/loss control program in effect for at least one year. The Board is composed of seven members: The Commissioner of Insurance, the Manager of Pinnacle Assurance, and five members appointed by the governor and confirmed by the senate. Certified employers are eligible for up to a 10% reduction in their Workers Compensation insurance premium. For additional information and a publication on this program, contact the Customer Service Unit at the Division of Workers Compensation.

Independent Medical Examinations

The Independent Medical Examination program assists with the resolution of disputes about the treating physician's opinion regarding when an injured worker has reached maximum medical improvement or the assessment of permanent medical impairment rating.

Medical utilization review

If a party to a claim thinks that inappropriate or unnecessary treatment is being given by a health care provider, the issue may be submitted to the Division for review by a panel of medical experts. A fee is charged to cover the costs of this review.

Mediation services

Mediation is a confidential, informal process where an employee in the Division of Workers Compensation will attempt to help the parties reach a resolution. The staff member does not act as a judge, give legal advice, or tell the parties what they must do.

Pre-hearing and settlement conferences

A pre-hearing conference is an informal hearing conducted by an administrative law judge upon request of one of the parties. The judge may order the parties to attend. A pre-hearing conference provides an opportunity for the parties to a claim to meet and discuss issues and concerns about the case before a judge. The judge may also order the parties to exchange information, such as employment records, that may assist in resolving the issues.

A settlement conference before an administrative law judge may also be requested. All parties must agree to the conference. The judge will facilitate discussion and possible resolution of some or all of the issues. In a settlement conference, the judge must maintain confidentiality of all conversations or proceedings.

The Division of Workers Compensation also is a resource for information regarding options for arbitration before an administrative law judge. These conferences may be scheduled in Denver, Boulder, Colorado Springs, Durango, Fort Collins, Glenwood Springs, Grand Junction, Greeley or Pueblo.

Anyone needing further information about mediation services, pre-hearing conferences, settlement conferences or arbitration should call the Customer Service Unit.

Hearings

A hearing is a formal legal proceeding where an administrative law judge decides what benefits, if any, must be paid, and decides any other issues. All parties may present evidence, including documents and sworn testimony of witnesses. A court reporter makes a record of the hearing.

There is no jury and there is no charge for a hearing. Hearings are held by the Division of Administrative Hearings within the Department of General Support Services/Personnel.

Division of Workers' Compensation
Customer Service Unit
1515 Arapahoe Street, Tower 2 Suite 500
Denver, CO 80202-2117
303.318.8700
Toll-free number 1.888.390.7936
Si tiene preguntas o necesita información, llame a nuestro número sin peaje 1.800.685.0891

SPECIAL FUNDS UNIT
Major Medical, Subsequent Injury, and Medical Disaster Funds
Toll free number 1.800.453.9156
Web Site:http:// www.coworkforce.com/DWC/

Other Government Offices
Division of Administrative Hearings.....303.764.1400
Division of Insurance.....303.894.7499
Mine Safety and Health Administration.....303.231.5400
Occupational Safety and Health Administration
Denver area employers 303.844.5285
All other employers 303.843.4500

Unemployment Insurance Tax
Toll-free number (in state)..... ...1.800.480.8299
Denver metro area..... .....303.318.9100

Colorado Division of Workers' Compensation
Frequently Asked Questions – By Employers

Q: As an employer, how do I know whether I have to carry workers' compensation insurance?

All public and private employers in Colorado, with limited exceptions, must provide workers' compensation coverage for their employees if one or more full or part-time persons are employed. A person hired to perform services for pay is presumed by law to be an employee. This includes all persons elected or appointed to public sector service and all persons appointed or hired by private employers for remuneration. There are a few exemptions to this definition.

Q: How do I obtain insurance?

Workers' compensation insurance may be purchased from one of over two hundred private insurance companies authorized to conduct business in the State of Colorado. Coverage may be purchased from any authorized insurance company.

Q: Am I exempt from carrying workers' compensation coverage if I'm an independent contractor?

Generally, an independent contractor is a person who contracts to complete a specific project for another business for a set price. The independent contractor must be: (1) free from control and direction over the means and method of performing work; and (2) customarily engaged in an independent trade, occupation, profession or business related to the work being performed. While a business and an independent contractor may help establish independence in a written document, the actual facts will determine whether a particular worker qualifies as an independent contractor. If the independent contractor has employees, workers' compensation insurance for the employees must be obtained.

Q: Can my business be self-insured for workers' compensation?

Colorado workers' compensation statutes allow employers, meeting strict financial and loss control standards, to self-insure this risk. Authorized by special permit, such workers' compensation obligations are paid directly from the earnings and assets of the employer. Permits to self-insure individual companies are obtained through the Division of Workers' Compensation. Employers applying for self-insurance must regularly employ 300 or more employees in Colorado or be a division or subsidiary of a parent school that has a minimum of $100,000,000 in assets.

All employers must provide workers' compensation for their employees.

Colorado state law mandates that employers provide coverage for their employees. This insurance provides prompt partial wage replacement and covers medical expenses for workers injured on the job.

The full cost of this insurance is paid by the employer. It is unlawful to deduct the cost of this coverage from an employee's wages. No other insurance is allowed to substitute for workers' compensation coverage. Failure to provide this type of coverage for you employees may result in substantial penalties and an order to cease business operations.

To obtain workers' compensation coverage, contact you insurance agent. For more information regarding workers' compensation, contact the Department of Labor and Employment, Division of Workers' Compensation at (303) 575-8700.

Reporting new hires

Information on how to report the hiring of a new employee may be obtained by contacting the Colorado State Directory of New Hires, Employer Outreach Customer Service Department (303) 297-2849

Workers' Compensation Q&A

If you have employees, then you need to carry workers' compensation insurance. That's the law. Unfortunately, many small business owners don't know a lot about their workers' compensation commitments. It's to your benefit to understand how workers' comp works, where you can get it, and how much it will cost you.

Links

COBRA insurance benefits – www.dol.gov/dol/topic/health-plans/**cobra**.htm
Family Medical Leave Act – main site –
http://www.dol.gov/dol/compliance/comp-fmla.htm
FMLA compliance guide –
http://www.dol.gov/esa/regs/compliance/whd/1421.htm
FMLA fact sheet – http://www.dol.gov/esa/regs/compliance/whd/whdfs28.htm
Public Employee's Retirement Association (PERA) Benefits program –
www.co**pera**.org
Unemployment (Colorado) Employer Handbook –
http://www.coworkforce.com/UIT/EmployersHandbook/default.asp
Workers Compensation (Colorado) – http://www.coworkforce.com/DWC/

Chapter Six – Evaluations and Terminations

Evaluations

Continuous review of employee performance is important for developing the culture of any school. Employees want feedback – both positive and constructive – so they can improve their skills and realize that their hard work is being recognized.

Reviews of employees should be regular, standardized and as frequent as possible. Feedback should be both written and verbal and all documentation should be maintained in the personnel file.

Likewise, employee behavior which needs to change, requires that the employer clearly communicate the issue to the employee as soon as possible and that this communication, whether written or verbal, is documented and placed in the personnel file.

There are three key words that apply to employee reprimands, regardless of the severity of the incident…

- Document
- Document
- Document

Smaller incidents may just include a written note reviewing the incident.

Larger concerns should include a written reprimand that requires the employee's signature that he/she has received the reprimand. The employee should also be allowed in this case to submit a written response.

This section will include some sample review forms and reprimand forms as well as information about these processes.

HR practice tip: Reduce the pain of performance evaluations

Are your organization's "annual" appraisals done even less frequently because no one likes doing them? You may be missing an opportunity to improve employee relations and productivity.

A performance evaluation system can be an effective retention tool, since most employees want and need constructive feedback on how they are doing. Unfortunately, the majority of supervisors dread doing appraisals. The process requires communicating personal judgments and is time consuming, especially if supervisors do only annual reviews that force them to recall and catalogue a year's worth of experiences. Many HR experts agree that this "once-a-year" approach to performance evaluations doesn't work since it tends to focus the appraisals on extraordinary events or to rehash past problems that should have been addressed already. Instead, employees need regular, ongoing evaluations and structured guidance to help them set and achieve both job and career goals. The following practice tips outline the four elements of an effective appraisal system and warn against the eight common mistakes supervisors make that can undermine the program.

Effective performance evaluation programs

For a performance evaluation to work, the program must give employees clear goals and rate their progress objectively. The most successful programs typically combine five key elements:

- Regular, consistent informal feedback from supervisors. Once-a-year evaluations are insufficient. Employees need regular input from their supervisors and these discussions should focus on day-to-day performance objectives rather than concentrating on the employee's past mistakes or failures.
- Performance goals are set jointly by employees and supervisors. Goals may be both short-term and long-term covering a wide variety of objectives. Core competencies should be used to determine future goals, which should be specific and quantifiable where possible. Supervisors should offer additional training or other necessary support to help employees meet their goals. New performance goals should be recorded, reviewed regularly, and modified as needed.
- Action plans should be used to address disciplinary problems. The supervisor should discuss problems with the employee as they occur and suggest a specific course of action that may improve performance. A good plan will detail the problem, the steps that both the employee and the supervisor will take, and the timeline for implementing the plan. The employee should have input and suggest changes.
- Formal reviews should be done several times a year, although if informal meetings are conducted regularly, you may be able to get away with an annual or semi-annual review. Formal reviews should not be used to deal with ongoing performance problems because these should have been covered during the informal discussions and should be following an action plan to correct them. Instead, the purpose of these reviews is to assess overall goals and to determine if the employee is following the right path for career development.
- Follow-through on a regular, prescribed basis. Too many employers go through the steps of evaluation and identify problems and solutions without a follow through process. This failure to follow up results in school liability on a number of issues including discrimination through unemployment compensation.

Train to avoid the pitfalls of evaluations

Supervisors should refrain from the following common errors that can hurt or invalidate the evaluation process:

1. Judging all employees too leniently or too strictly or rating all employees "in the middle;
2. Failing to include unfavorable comments on the evaluation, even when justified;
3. Permitting personal feelings to bias the evaluation process.
4. Allowing irrelevant or non job-related factors to influence the evaluation, such as physical appearance, participation in employee programs, or excused time off for leaves of absence;

5. Allowing one characteristic of the employee or aspect of the job performance to distort the rest of the rating process;
6. Basing the evaluation on the employee's most recent behavior, instead of evaluating the whole performance period;
7. Allowing one very good or very bad prior evaluation to affect all the other ratings of the employee.

Supervisors should review their subordinate evaluations with their own supervisors with a critical eye to identify when these factors may be damaging the evaluation process.

Foster positive attitudes about appraisals

When done properly evaluations should be effective planning tools for managers and provide important feedback to employees. You must show your school's commitment to the process by providing training to supervisors, who in turn must be held accountable for their ability to provide ongoing guidance to their employees. Again, supervisors should involve employees in the formulation of goals and action plans. This disciplined, interactive approach can help eliminate the natural barriers to effective evaluations.

National Council for Accreditation of Teacher Education – A sound system for performance evidence

Teacher candidate knowledge

Effective teaching requires mastery over the subject content that new teacher candidates will impart to their students. "Knowledge" is an area in which measurement tools such as essays, oral examples, multiple-choice tests, and semester projects can be especially useful. It is also an area where standardized tests are available commercially that may be appropriate in circumstances where the content of the tests is aligned with the elementary program instructional experiences.

Part I includes many standards describing what new elementary teacher candidates should know. Note that the language of the Committee is "know and understand," words used to indicate that knowledge is essential, but to understand implies an ability to analyze, use, build on, or relate that knowledge to other knowledge. Examples are:

- From standard 1 – Candidates know (and) understand…major concepts, principles, theories, and research related to the development of children and young adolescents
- From standard 2b – Candidates demonstrate a high level of competence in use of the English language arts
- From standard 2d – Candidates know (and) understand…major concepts, procedures and reasoning processes of mathematics that define number systems and number sense, geometry, measurement, statistics and probability, and algebra

- From the supporting explanation of standard 3a – Candidates understand learning theory, subjects taught in elementary schools (described in sections 2a through 2i of the Program Standards), curriculum development, and particular assessment tasks frequently provide information about candidate proficiency particular assessment tasks frequently provide information about candidate proficiency for more than one standard.
    - Lesson plans that demonstrate the teacher candidate understands the material being taught
    - Multiple choice tests that probe for information about concept knowledge and applications
    - Project reports or laboratory reports that demonstrate an understanding of concepts and problem solving ability
    - Videos or feedback to student work demonstrating that teacher candidates can identify naive interpretations and help develop more appropriate interpretations
    - Vignettes exhibiting naive interpretations and lesson plans on which the candidate is requested to provide comments indicating how he/she would then proceed in the lesson
    - Transcripts of performance in appropriate course work (e.g., from courses undertaken in subject specialty) indicating level of accomplishment such as exam scores, projects completed, essays prepared
    - Written essays on the content matter demonstrating abilities to develop a topic, write well, clarify questions
    - Examples of assignments that teacher candidates would prescribe as a consequence of their teaching (and perhaps elementary student work, including teacher feedback)

Teaching performances

Elementary teachers not only know and understand content but also are able to relate it to ideas, information, and knowledge previously learned. They know how to teach using a variety of methods, how to adapt their teaching to the subject being taught, and how to engage diverse students in the subject. Candidates who meet these performance competencies will be able to provide evidence of positive effects on student learning.

Here are some examples of teaching standards from Part I:

- From standard 2b – Candidates…use concepts from reading, language and child development to teach reading, writing, speaking, viewing, listening, and thinking skills
- From the explanation for standard 2i – In their instruction, candidates make connections in their instruction across the disciplines and draw on their knowledge of developmental stages to motivate students, build understanding, and encourage application of knowledge, skills, and ideas to lives of elementary students across fields of knowledge and in real world situations.
- From standard 3a – Candidates plan and implement instruction based on knowledge of students, learning theory, subject matter, curricular goals, and community

- From the explanation for standard 3b – Candidates know how to seek assistance and guidance from specialists and other resources to address elementary students' exceptional learning needs
- From standard 5b – Candidates are aware of and reflect on their practice in light of research on teaching and resources available for professional learning; they continually evaluate the effects of their professional decisions and actions on students, parents, and other professionals in the learning community.

There are many ways to demonstrate that elementary teacher candidates meet the performance aspects of the standards. In addition to the "portfolio" approach described above, here are some illustrative types of teacher performance measures:

- Elementary student impact
  - Evidence of elementary student learning
  - Evidence of "surface" and "deep" elementary student learning
  - Case studies that candidates are asked to analyze
  - Elementary student projects showing evidence of ability to make use of information
  - Student essays demonstrating ability to state and elucidate ideas
  - Graduates' success
- State licensure test pass-rates and results on induction year portfolio assessments
  - Graduate surveys
- Artifacts produced by the teacher candidate
  - Lesson plans
  - Teaching aids
  - Videos
  - Feedback on student work
  - Vignettes
  - Case studies
  - Assessment materials
- Reflective essays on candidate-prepared lessons
  - Written essays
  - Reflections on student work emanating from the lessons
  - Examples of assessments
  - Journal entries
  - Interviews
- Attestations of teaching accomplishment
  - By cooperating teachers
  - By students
  - By parents
  - By principals
  - Summative evaluations
  - Transcripts of course performance
  - Multiple choice tests
- Observations
  - Videotapes of classroom instruction
  - Micro-teaching
  - Reactions to videos

- By cooperating teachers
- By teacher preparation faculty
- By other teachers
- By principals
- Videos of talks to various audiences
- Professional artifacts
- Parent communications
- Letters to parents
- Surveys of elementary students, parents and colleagues
- Record of professional activities
- Community activities
- Awards, recognitions

Dispositions

Dispositions refer to values and commitments and often make the difference between what elementary teacher candidates understand and how they perform in a classroom. Examples of dispositions that are significant in teacher preparation might include:

> A belief that all students can learn, a vision of high and challenging standards, a commitment to personal professional development and to a safe and supportive learning environment, an ability to accept responsibility, an understanding of school operation as an integral part of the larger community, an acceptance of families as partners in the education of their children, and a dedication to bringing ethical principles into decision-making processes.

Such values and commitment are important elements in successful teaching and may frequently be of particular relevance at the unit level rather than for individual preparation programs.

One example of dispositions critical to effective teaching was the focus of a paper prepared for the Committee by Mary Kennedy. In stating the importance of "changing one's conception of teaching," Dr. Kennedy claims that:

> The unusual nature of teacher learning is such that students entering teacher education already "know" a great deal about their chosen field. Moreover, they will use what they already know to interpret any new skills or new theories they acquire during the formal study of teaching. This fact means that the simple acquisition of new skills or theories is not adequate to alter teaching practices. Therefore, the central task of teacher learning must be to change these conceptions.
>
> (Candidates) need to be persuaded that school subjects consist of more than the facts and rules they themselves learned as children. Teacher's conceptions of subject matter as fixed, indisputable, and factual, need to be replaced with conceptions that recognize ambiguous concepts and tentativeness, and that acknowledge that even young children are capable of reasoning about and arguing about ideas in each school subject. Unless teachers envision subject matter as conceptual, they cannot teach it conceptually. And…teacher educators need to address and alter teacher candidates' strong desire to control student behavior, for the desire to develop management routines that keep students on task and in line are frequently a stumbling block to implementing conceptual approaches to teaching.

As evidence for her expression of dispositions, Kennedy suggested the following indicators:

- Evidence that teacher candidates adopt conceptual goals for teaching subjects
- Evidence that teacher candidates justify their lesson plans and their approaches to teaching according to the concepts they want students to learn, and that these concepts are included in national subject matter standards
- Evidence that teacher candidates are aware of teaching practices such as reciprocal teaching, cognitive apprenticeships, and the writing process, which are defined according to what is learned rather than only according to how teachers behave
- Evidence that programs monitor the teaching practices of cooperating teachers.

It is difficult to identify measures for such indicators, and, indeed, it is challenging to establish measures of proficiency for any dispositions. Over time, however, institutions in which dispositions are explicit and important will find ways to demonstrate that candidates have achieved them. The Committee encourages faculty in elementary preparation programs, and the leadership of the unit, both to state values and commitments toward which completing elementary candidates should be disposed, and to search for appropriate ways that candidates' achievements in these areas can be exhibited.

There are few explicit references to dispositions in the Part I standards as written by the Committee, largely because of the measurement problems noted above. But here are some:

- From the introduction to Part I – New candidates for elementary teaching must be committed to elementary students and their learning. They must be prepared to act on a belief that all elementary children have potential for learning rigorous content and achieving high standards.
- From the supporting explanation of Standard 1 – (Candidates) consider diversity an asset and respond positively to it.
- From the supporting explanation for standard 2e – Candidates are able to use knowledge, skills, and dispositions from social studies to organize and provide integrated instruction in grades K-6…
- From the supporting explanation for standard 2h – Teacher candidates…recognize the critical importance of physically active life styles for all students…Teacher candidates appreciate the intrinsic values and benefits associated with physical activity.
- From the supporting explanation for standard 5b – Candidates respect parents' choices and goals for their children and communicate effectively with parents about curriculum and children's progress.

Positive effects on student learning

Elementary teacher candidates are expected to gather examples of their elementary students' work. Those examples can illustrate that candidates' knowledge and teaching performances result in evidence of positive effects on students' achievement. The Committee seeks a focus on student learning and it expects that program review submissions that will sample and summarize what faculty monitoring has disclosed about learning among students of candidates in the elementary preparation program.

It does not expect "representative samples" of work of a candidate's students. Nor does it expect Part I standards to be interpreted as efforts to hold elementary teacher candidates responsible for specific student gains on state achievement tests. In their field experiences, teacher candidates often are placed in other teachers' classes for short periods, are given limited control over the choice of curricula, must adapt to the teaching style of the cooperating teacher, and rarely have students for sufficient time to see other than very short term effects.

But student learning, as noted elsewhere, is the goal. It is appropriate to devise standards that direct attention to student learning. It is also appropriate to know whether teacher candidates can find ways to understand the level of accomplishment of their students, to use that knowledge as a basis for design of instruction for a particular objective, to identify and apply suitable measures of effects on student learning as a result, then finally, to reflect on the whole sequence and hypothesize how the instruction might have been more effective.

Here are some examples of Part I standards that call for positive effects on student learning:

- From standard 2a – Candidates…can create meaningful learning experiences that develop students' competence in subject matter and skills for various developmental levels.
- From the supporting explanation for standard 2b – (Candidates) teach students to read competently…Candidates teach students a variety of strategies to monitor their own reading comprehension…They help students think critically about what they read.
- From standard 2d – Candidates…foster student understanding and use of patterns, quantities, and spatial relationships that can represent phenomena, solve problems and manage data.
- From the supporting explanation for standard 3d – (Candidates) create learning communities in which elementary students assume responsibility for themselves and one another, participate in decision making, work collaboratively and independently, and engage in purposeful learning activities.

Some illustrative types of evidence to examine positive effects on student learning are listed below:

- Student work indicating material was learned and understood by elementary students
- Student work and reflections on how this work relates to the lesson as taught
- Teacher lesson plan based on understandings of the content domain, and teacher awareness of the common misconceptions that need to be addressed
- Feedback on students' work that illustrates how the student could improve and advance
- Elementary students' expressions that the activities are personally relevant, are connected to previous information learned, are interesting and challenging
- Examples of elementary student work demonstrating skills in integrating learning and generalizing
- Student scores on achievement tasks throughout the time the teacher has been teaching and indications of how they are used to improve and enhance teaching

- Evidence about the performance of previous teacher candidates (graduates) after they have taught a few years

Results from rigorous and systematic efforts by the institution to set performance levels and judge accomplishments of its candidates

Institutions that systematically conduct evaluations of candidate proficiencies also determine performance levels by which candidate success can be judged. They address the question: "How good is good enough?" The terms "rubrics" and "criteria" are frequently used to designate levels of performance. Rubrics and criteria are narrative descriptions of what is valued in a candidate's response to an assessment – the qualities by which levels or elements of performance can be differentiated – and serve as anchors for judgments about the degree of candidate success. They may be stated in generic terms or may be specific to particular assessment tasks. They may define acceptable levels of performance for the institution and one or more levels below (such as borderline, or unacceptable) and above (such as exemplary), or they may be in the form of criteria defining the institution's conditions or expectations for success. The rubrics or criteria are "public," shared with candidates and across the faculty.

Institutions with sound assessment evidence systems judge individual candidate proficiencies, and also summarize and analyze the proportions of new teacher candidates who reach levels or conditions expressed in the rubrics or criteria. These results are used both for advisement of individual candidates, and also for strengthening of the courses and experiences offered by the institution to prepare elementary teacher candidates. The summary of results from the faculty judgments in applying the rubrics or criteria are used for the NCATE submission.

Provides information that is credible – accurate, consistent, fair and avoiding bias

The Committee has specified in Part II that the program and unit needs to demonstrate the "credibility" of their assessment information. That term was intended as less technical than the traditional "valid and reliable" (or accurate and consistent) but was expected to encompass those qualities, along with fairness, and avoiding bias.

Accuracy, or validity, is an expectation that the assessment information measures what is important for the decision to be made and represents the performances, competencies, and dispositions that are intended (that is, included in standards for elementary teacher candidates). Institutions with sound assessment systems gather and make use of defensible evidence that their assessment activities validly portray the proficiencies of their elementary teacher candidates. Linn and Miller (1986) made the following important comment about validity:

> It is widely agreed that validity is the most important consideration in the evaluation of the use of a test. Validity is always a matter of degree. It is not a single all-or-none concept. Rather, the concern is with the degree to which the accumulated evidence supports a particular test use. Many forms of evidence may be relevant in evaluating the validity of a particular test use, and it is not possible to give a simple prescription for the forms or adequacy of the evidence in the abstract. Professional judgment is required to determine the forms of evidence that are most appropriate in a given situation and to judge the adequacy of the support for the intended purpose.

A core concept to the notion of validity is representativeness, that is, the degree to which the assessment task models the construct, and the degree to which it samples the universe of the construct. When choosing assessment procedures for whatever purpose – evaluating candidate achievement, determining program or course effectiveness, preparing for NCATE program approval – it is necessary to address the extent to which the assessments "represent" the performances, competencies, and dispositions, such that the process does not lead to:

- Construct under-representation (the assessment does not capture the important aspects of the construct)
- Construct irrelevance (the assessment measures something other than what was intended by the construct).

Consistency, or reliability, in institutional assessment systems is an expectation that successive samples of performances from the same candidate are reasonably related. Assessment systems must also be fair; for example, they must be based in opportunities to learn provided by the curriculum and those, in turn, must reflect the standards for teacher candidates. They should avoid bias, providing equitable treatment for all candidates. Making judgments about these matters requires professional expertise and is often determined through peer review, evaluations by external experts, or formal validation studies.

Terminations

Don't terminate for "no reason"

As discussed in chapter three, Colorado is a strong "at-will" state, and there is generally no need for an employer to give a reason when firing an employee. Nevertheless, even though firing an employee for no reason is legal, it is generally not a good idea to refuse to tell an employee why his or her employment is being terminated. If you do not identify a reason for the termination, you may provoke the employee to suspect discriminatory motives. Therefore, if you can point to a particular reason why the employee is not performing well in the job (for example, poor job or interpersonal skills), you may be able to reduce the odds that discrimination or other employment claims will be filed.

So if you should not terminate solely by saying that an employee is at-will, how do you terminate a problem employee when a manager has not properly documented performance deficiencies? A school's best bet is to follow the school's normal disciplinary process, even if that means taking extra time before the school terminates the employee. For most employers, this includes:

- Giving notice to the employee of the specific performance problems and the consequences of not improving;
- Establishing goals for improvement;
- Setting a reasonable time frame for meeting the goals (normally two weeks to thirty days);
- Following up to see if there is improvement; and
- Terminating the employee if the goals have not been met.

In addition to the above guidelines, a school should document the performance issues and the steps taken before terminating the employee. This record can help a school defend against any subsequent discrimination or wrongful discharge claims.

Of course, there may be circumstances when you feel you cannot take the time to follow the school's normal disciplinary procedure. In these cases, it is still better to discuss the specific problems with the employee and explain that they are the reason for the termination. If a school simply invokes the at-will relationship and gives no reason for the termination, the employee may assume that the true motive is related to discrimination or some other illegal act and thus seek legal recourse.

There is one circumstance when some HR experts agree the "no reason" at-will clause may be invoked to terminate an employee: during the introductory period. This period is usually structured as a trial that can be ended without following normal policies. In other words, the employee's expectations are lower.

Employee Termination Questions & Answers from the Colorado Department of Labor

Q. Can an employer terminate an employee without advance notice or without giving a reason for termination?

A. Yes. Colorado law allows an employer to terminate an employee without explanation or advance notice. If an employee feels there is a case of "discrimination" then an employee may:

- Contact the Colorado Division of Civil Rights or the Federal Equal Opportunity Commission when termination results from discrimination, (i.e. race, color, creed, sex, age, ancestry, national origin or physical handicap); or for violation of a "public policy", i.e., filing for unemployment benefits, workers compensation, etc.

Q. When must I receive my pay if I am terminated or laid off?

A. When an employer interrupts the employment of an employee (fires or lays-off), all earned and unpaid wages are due **immediately**.

If the employee is terminated at a time when the accounting unit is closed, the employer has **six (6) hours** from the time it reopens to issue the check. If the accounting unit is located off the work site, the employer has twenty-four hours after the start of the employer's next regular workday. At the employer's discretion, the check should be made available at the work site, the employer's office, or the employee's last-known mailing address. The law does not require immediate payment of deferred compensation such as pensions, profit sharing funds or commissions that are not yet fully earned. (C.R.S. 8-4-104)

Q. If I resign or quit, how soon can I get my final check?

A. You should be paid on the next regular payday.

Q. What constitutes quitting a job?

A. Ceasing to perform your assigned duties either by your action or failure to appear as scheduled or assigned for any reason is considered self-termination.

Q. Must an employer provide vacation, sick leave, holiday pay, retirement, health, or life insurance benefits?

A. Colorado law neither prohibits nor requires the granting of such benefits. However, the Colorado Supreme Court has ruled that a vacation earned by an employee, in accordance with an employer's policy, must be paid as wages upon separation of employment.

Q. How much time am I entitled to for lunch and breaks?

A. For the industries covered by the Colorado Minimum Wage order, an employer is required to provide a 10-minute break for every four-hour work increment or major fraction of the four hours. For any workday exceeding five hours, an employer is required to provide a 30 minute unpaid meal period. The employees must be completely relieved of all duties and permitted to pursue personal activities to qualify as a non-work, uncompensated period of time. If the nature of your work is such that one cannot be relieved of duties, one may eat on the job and must be compensated for the on-duty meal period.

Q. What are eligibility requirements?

A. To be eligible to receive unemployment benefits, the worker must be unemployed through no fault of their own and must be able to work; be available for work; and be willing to seek and accept suitable work.

Q. How does the Unemployment Insurance Division determine who is eligible?

A. The Division requests information from both the claimant and the employer as to the reasons for the job separation. Those facts are then evaluated according to the requirements as stated in the Colorado Employment Security Act.

If you have any questions concerning the DOAH forms, please contact DOAH at 303-764-1400.

Tips to Prevent Termination Headaches

Condensed from "Ten tips to prevent termination headaches" (May, 1998), by Contributing Editor Orlando Blake, president of The Blake Group consulting firm, Glendora, CA.

The most difficult aspect of human resources management is involuntary termination. Far too often, what should be a routine termination ends up in litigation, arbitration, or mediation.

Most employment litigation is the direct result of some common termination mistakes that could be prevented. To counter these mistakes consider these steps:

1. **Follow written termination policies**. Generally, it is a good idea to follow written termination policies even if you have taken our advice and made sure that that employee cannot claim that the policies constitute an implied contract. An employer that ignores its own policies is asking for trouble. Make sure that managers who handle terminations work with the human resources department and are trained on how to apply the policies. In addition, explain the policies to every employee and make sure each employee acknowledges receipt of them.
2. **Investigate thoroughly before considering termination**. The threshold for initiating an investigation should be relatively low. When you have a good reason to believe that an employee violated a rule, policy, guideline, or procedure, you should investigate. Timeliness in an investigation is crucial. In some cases, such as situations involving harassment, failing to investigate thoroughly and promptly could expose the organization to liability. In addition, a school may appear to condone the employee's actions by allowing too much time between infractions and corrective actions. Further, if a school does not act promptly, it will be more difficult to initiate or defend discipline in other cases.
3. **Consider alternatives to termination in appropriate cases**. Look for alternatives to discharge when you can. Termination is not always the appropriate disciplinary action. Oral and written warnings and suspensions can be viable alternatives. However, make sure you are consistent in your disciplinary actions with other employees for the same offense.
4. **Give the employee an opportunity for corrective action before termination, where appropriate**. Remember that you are trying to turn around inappropriate behavior and help the employee improve.
5. **Carefully consider each step of the termination**. Take the time to plan the phases and details of the termination process. Specifically:
   - Think through your decision and follow your termination policy. Be patient and reasonable.
   - Consult legal counsel before, not after, the termination.
   - Consider fully the impact of laws prohibiting discrimination, including those based on race, color, religion, sex, national origin, age, or disability. In my experience, some employers do not take the law seriously or minimize the possible legal consequences. Other employers may believe that their employment liability insurance will cover the costs, "so it isn't a big deal."

6. **Document the causes for the termination**. Even with at-will employees it is a good idea to document the reason for termination (we are assuming there is some reason for the termination, i.e., that it is not arbitrary). Therefore, before discharging an employee, ask yourself, "Is there a fully documented history of poor performance?" Your employee files should include recent performance reviews, documentation of conferences with the employee to discuss the problem, and any corrective measures taken. I have seen some situations where the only document in the personnel file of an employee terminated for "performance problems" was a three-year old, partially completed performance review that indicated the employee was doing a great job. These types of inconsistencies make defending legal claims very difficult.
7. **Plan the details of the termination meeting**. Many employers adequately plan the process but ignore the details. Ask yourself these questions:
   - When are we going to have the termination meeting?
   - Who should be there?
   - What can we do to maintain the dignity of the person?
   - Will all the final compensation be ready?
8. **Give the employee the real reason for the termination**. Some employers provide phony reasons for termination because they do not want to hurt the employee's feelings. A false or misleading reason may support future litigation against the employer.
9. **Limit your discussions of the termination**. To ensure confidentiality and limit defamation claims, discuss termination decisions only with those people who need to know. This list may include the employee's immediate supervisor; your own supervisor, and legal counsel.
10. **Evaluate your termination process on a regular basis**. Each time the termination process is completed, scrutinize it and your own behavior. Hold them up to a mirror and closely examine strengths and flaws and make necessary changes.

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Links

ADEA – Age Discrimination in Employment Act –
http://www.eeoc.gov/policy/adea.html
ADA – http://www.eeoc.gov/policy/ada.html
ADA handbook – http://www.eeoc.gov/ada/adahandbook.html
Colorado Dept. of Labor – http://www.coworkforce.com/
Colorado Unemployment – http://www.coworkforce.com/UIB/
EEOC laws – http://www.eeoc.gov/abouteeo/overview_laws.html
Definition of discriminatory practices – all areas – Title VII, ADA, Age Discrimination. – http://www.eeoc.gov/abouteeo/overview_practices.html
EEOC compliance manual – http://www.eeoc.gov/policy/compliance.html
EEOC and small business links, Q&A page –
http://www.eeoc.gov/employers/overview.html
Harassment rules – http://www.eeoc.gov/types/sexual_harassment.html
Workers Compensation – http://www.coworkforce.com/DWC/
Unemployment (Colorado) Employer Handbook –
http://www.coworkforce.com/UIT/EmployersHandbook/default.asp

Chapter Seven – Outsourcing a School Human Resources Department

A Human Resources (HR) department is a critical component of employee well being in any school. Its responsibilities include payroll, benefits, hiring, firing, and keeping up to date with state and federal tax laws.

Any mix-up concerning these issues can cause major legal problems, as well as major employee dissatisfaction. Because many small schools don't have the staff or the budget to properly handle the nitty-gritty details of Human Resources, some schools are beginning to outsource their HR needs. According to the market research firm Dataquest the HR outsourcing industry is expected to grow from $13.9 billion in 1999 to $37.7 billion in 2003.

What is HR outsourcing?

HR outsourcing services fall into four categories: PEOs, BPOs, ASPs, or e-services. The terms are used loosely, so a big tip is to know exactly what the outsourcing firm offers clients, especially when it comes to employee liability.

PEOs

A Professional Employer Organization (PEO) assumes full responsibility of the school's human resources administration. A service is only a PEO when it takes legal responsibility of employees. Some HR outsourcing services like to use the recognized term "PEO" when they handle the primary aspects of HR like payroll and benefits, yet they do not take this legal partnership. It becomes a co-employer of a school school's workers by taking full legal responsibility of your employees, including having the final say in hiring, firing, and the amount of money employees make. The PEO and business owner become partners, essentially, with the PEO handling all the HR aspects and the business handling all other aspects of the school.

BPOs

Business Process Outsourcing refers to outsourcing in all fields, not just HR. A BPO differentiates itself by either putting in new technology or applying existing technology in a new way to improve a process.

ASPs

Application Service Providers host software on the Web and lease it to users. Some are well-known packaged applications like People Soft while others are customized HR software. These software programs can manage payroll, benefits, and more.

E-services

E-services are those HR services that are Web-based. Both BPOs and ASPs are often referred to as e-services.

Who's who?

These services listed are fairly straightforward in their own right, but may cross over into other types of services, or shed some of the services for which they are known.

For example, some BPOs will take over legal responsibility while others do not. And many ASPs/e-services will also consider themselves to be BPOs because they are implementing new technology by hosting software.

What can a school get?

When a school outsources HR functions, some services require adoption of their entire program, while others customize the offerings.

Typical services include:

- **Payroll administration:** Produce checks, handle taxes, and deal with sick time and vacation time.
- **Employee benefits:** Health, Medical, Life, 401(k) plans, cafeteria plans, etc.
- **HR management:** Recruiting, hiring, and firing. May also include background interviews, exit interviews, and wage reviews.
- **Risk management:** Workers' compensation, dispute resolution, safety inspection, office policies and handbooks.

Online services tend to be more limited but add options like web access, which will allow the school to view information (like benefits packages) and even make changes to such information online. PEOs that have survived off-line since the early 1980s are starting to offer online access for certain aspects of their service (like viewing benefits packages).

Pricing

There are no clear-cut price ranges with HR outsourcing. The fees range greatly between services, as well as within the services. Aspects like number of employees, the options a school choose to use, and even geography, will affect a school overall cost.

A PEO typically charges 4 percent to 8 percent of each employee's pretax salary per month. The monthly range can be as little as $20 per employee to as much as $200. A typical package with an online service, including insurance, 401(k) and workers' compensation, costs $75 to $130 per employee per month with an upfront setup fee of about $2,000.

If you think this sounds expensive, compare the cost of an outsourcing program you are investigating and the average salary and maintenance of an in-house HR director or staff. You might find significant savings either in money, hassle, or both.

Contracts with HR outsourcing firms will usually run a year but you should seek a clause giving you the option of 30 days' notice to break the contract if you are dissatisfied.

Advantages

What are the biggest advantages to outsourcing a school HR needs?

A big reason businesses turn to HR services is that they don't have the time, or expertise, to deal with this. And if a school chooses to go with a PEO, a school can pass the legal responsibility of a school's employees onto them.

A school may also save money. A school can usually count on a reduced benefits rate when outsourcing to HR services. Because they buy so often from vendors, they usually get a discounted rate that they pass on to a school.

If a school opts for an online service (ASP/e-service), a school doesn't have to purchase software, install it, and worry about configuring it. An ASP business model is hosting software, so a school doesn't have to bother with additional software or installation.

Disadvantages

There are some definite drawbacks to not having an HR manager in-house. A staff person handles perks that a school can't necessarily count on from an outsourced provider – like looking into group offerings, employee incentive programs, even taking care of recognition for employees' birthdays. Oftentimes employees want someone in-house to turn to if they have a work-related problem or dispute with another co-worker. Also, a staff HR person interacts daily with a school's employees; they will likely have more of an interest in a school's employees. For example, employees often appreciate having someone on staff who will help negotiate in their favor for certain benefits that are critical these days for employee retention (like 401(k) plans and vacation policies).

Also, in the case of using a PEO, giving up the right to hire and fire school employees may not be desirable for a school particular business. Most PEOs insist that they have the final right to hire, fire, and discipline employees. While having the extra time and not having to deal with the stress of this may be appealing, a school may not want this responsibility out of a school hands.

Common complaints about HR outsourcing range from payroll mix-ups to payroll not being deposited on time to denied medical claims.

Should a school consider outsourcing?

If a school has fewer than 100 employees, the answer is yes. At this size, a school often doesn't have the resources for an in-house HR staff, so outsourcing is just right for a school. A school doesn't have to worry about managing all the details that are so critical to HR in a school's business, and most small-business owners just don't have the skills and experience to do so.

If a school has at least 12 employees, consider a PEO. Most PEOs only take on businesses with at least a dozen employees. Get recommendations and references for PEOs, and consider one that is part of the NAPEO (National Association of Professional Employment Organizations). The NAPEO is committed to educating PEOs. If a PEO is a member, it's a good sign that they are committed to being the best in the field.

If a school is even smaller, online services are worth investigation. These services are tailored to work with all sizes of businesses. A school doesn't have to give up legal responsibility and a school is able to easily access information online. Since the charge is usually by user it can be very cost-efficient.

If a school is uncertain about outsourcing everything try outsourcing only certain parts, such as payroll and benefits. A school can also purchase HR software right off the shelf to support any in-house efforts.

Whatever a school decides, make sure to keep your employees in the loop. They appreciate knowing that you are seeking the most affordable solution for the business while doing your best to meet their needs.

Directory of NAPEO Members

The online NAPEO member directory includes these entries for a school search in State or Country: CO

Accord Human Resources, Inc.
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Fax: **(505) 466-1209**

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Longmont, CO **Chris Gunlikson**
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Englewood, CO **John D. Smith**
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Fax: **(303) 466-7947**

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Fax: **(303) 861-0377**

The Employer Source
Loveland, CO **Mark Weaver**
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