

Human Resources:

ALASBO Pre-conference: December 2, 2018

Introduction

- A little about Katie
 - Executive Director of Human Resources and Payroll for the Mat-Su Borough School District
- A little about you
 - Name, Position, District, relationship to HR
- A little to guide our training

Agenda – topics list

- New in 2019
- Hiring
- Mandated Training Requirements
- Fair Labor Standards Act
- Family Medical Leave Act
- EEO Basics
- Staff/Employee Discipline
- Investigation Tips
- Collective Bargaining Basics

New in FY 2019

Retirement and Benefits

- SB 185 – District's may now rehire retired staff after certain conditions are met.
 - Must meet the bona-fide separation rules
 - Employer Must
 - Pass a policy
 - Publicly advertise the position for 10 days
 - Provide to the Division
 - Copy of the policy
 - Report all rehired retired members
 - Describe the circumstances for the shortage which include actions taken by the district
 - Pay retirement contributions of 12.56% for total base salaries.
 - Offer Health Insurance, which may be waived
- Defined Contribution – medical coverage for members who do not work 12 months are not available.

Janus v. AFSCME

- Overturned the 1977 Supreme Court decision of *Abood v. Detroit Board of Ed.*
- Key Findings
 - Agency fee arrangements “violate the free speech rights of nonmembers by compelling them to subsidize provide speech on matters of substantial public concern.”
 - “States and public-sector unions may no longer extract agency feed from nonconsenting employees.
 - No payments to the union may be deducted from a nonmember’s wages unless the employee affirmatively consents to pay.
 - By agreeing to pay, nonmembers are waiving their first amendment rights, and such a waiver cannot be presumed. Rather, to be effective, the waiver must be freely given and shown by “clear and compelling” evidence. Unless employees clearly and affirmatively consent before money is taken from them, this standard cannot be met.
- While there are still many questions, many organizations are honoring employees prior elections.

Hiring

New Hire Process – Authority to Hire

1. Prescreen – Principals/District Administrators
2. Position Interview – Principal/Hiring Committee
3. References – Hiring Administrator
4. Recommendation for Hire – Hiring Administrator
5. Offer of Employment – Superintendent's Designee (Katie)
6. Contract for Employment – School Board

New hire process

- Hiring Process Best Practices
 - References
 - Background checks
 - Fair Credit Reporting
 - Criminal
 - NASDTC Clearinghouse access - NEW
 - Employment Contract Requirements
 - AS 14.20.130: Employment contracts.
 - 4 AAC 18.010 Minimum Standard Contract Conditions

New Hire Paperwork

- Certification
 - Personnel department access
- Tenure
 - Portability
- Retirement System
 - Tier Status
 - Not covered by SSA
- Important New Hire Information
 - Policies, procedures, rules, ptpc etc.

Bona Fide Separation Rules

- Effective January 1, 2018
- Retirement waiting periods
 - Under age 62
 - Under 59 ½
- Employment in any capacity
- Understanding prearrangement

DRB FAQ's -

<http://doa.alaska.gov/drb/employer/returntowork/faqs.html#.XANQnUxFw2w>

Mandated Training

Mandated Training – list of required training

- Blood Born Pathogens
- Domestic Violence and Sexual Assault
- Drug and Alcohol Related Disabilities
- Gender and Race Equity in Educational Materials
- Suicide Awareness and Prevention Training
- Special Education Training for Staff
- Special Education Training for Aides
- Recognition and reporting of child abuse and neglect
- Training in crisis response, including evacuation and lock down drills
- Employee Evaluation Training
- Crisis Intervention Training (Seclusion & Restraint) Must include First Aid & CPR
- Sexual Abuse and Sexual Assault Awareness and Prevention Training
- Dating Violence Awareness and Prevention Training

Mandated training

- [HB 44](#)

- revised 14.08.111 and 14.14.090 to add a new subsection “establish procedures for providing the training under AS 14.18.060, AS 14.20.149, 14.20.680, AS 14.30.355, 14.30.356, 14.30.362, AS 14.33.100, 14.33.127, AS 18.66.310, and AS 47.17.022; the procedures established under this paragraph must include a training schedule that ensures that not less than 50 percent of the total certificated staff employed at a school receives all of the training not less than every two years and that all of the certificated staff employed at each school receives all of the training not less than every four years.
- Added training for Sexual Abuse and Sexual Assault Awareness and Prevention
- Added training for Dating violence and Abuse Awareness and Prevention

- [HB 156](#)

- Removed the AS 14.33.127 from 14.08.111 and 14.14.090
- Changed AS 14.08.111 and 14.14.090 from “employed at a school” to “employed by the district”

Fair Labor Standards Act

FLSA – Key concepts

- Exempt Employees
 - Executives, professionals administrators
- Working Hours
 - “suffered or permitted to work”
- Overtime
 - 1.5 times the employees hourly rate for all hours worked in excess of 40 a week
- Compensatory Time
 - Available only to public employees – allows for time off in lieu of overtime.

Fair labor standards Act

- School Districts are covered under the Fair Labor Standards Act – Not the Alaska Wage and Hour Act.
 - This includes the state minimum wage which is \$9.75 compared to the federal \$7.25
- Uncertainty regarding co-curricular coaches/sponsors
- Not covered
 - independent contractors, volunteers, political appointees

Family Medical
Leave Act/Alaska
Family Leave Act

Family medical leave act (FMLA)

- The FMLA entitles eligible employees of covered employers to take unpaid, job-protected leave for a specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not take leave.
- The FML Act – Established February 1993 – the first piece of legislation signed by Bill Clinton
- Eligibility
 - Covered Employer – special provision including local education agencies
 - Employed for at least 12 months
 - Worked at least 1,250 hours in that 12 month time period
- Leave Types
 - Birth of child and for care of a newborn
 - Placement of child for adoption/foster care
 - Care for certain relatives with serious health condition
 - Employees own serious health condition

Alaska Family Leave Act (AFLA)

- AFLA requires the District to provide up to 18 weeks on unpaid leave during a 24 month period to eligible employees because of a serious health condition of the employee or a qualifying family member or 18 weeks in a 12 month period because of pregnancy, childbirth, or adoption.
- Eligibility
 - Worked 35 hours a week in the last six consecutive months immediately preceding the leave
 - Worked 17.5 hours a week for the last 12 consecutive months immediately preceding the leave

Key FMLA provisions

- Certified Health Care Professional
- Intermittent Leave
- FMLA also provides leave for Military Family Leave
- Special provisions for spouses who are employed by the same employer
- Special provisions for instructional employees
- Children over the age of 18

FMLA/AFLA Additional information and resources

- [Escriba v. Foster Poultry Farms](#) 9th circuit opinion establishing that an employee can decline the use of FMLA.
- Feb 23, 2015, the US Dept of Labor announced a Final Rule to revise the definition of spouse under the FMLA in light of the Supreme Court's decision in *United States v. Windsor*. This new definition allows eligible employees in legal same-sex marriages to be able to take FMLA.
- Family Medical Leave Act WHS Compliance [here](#)

EEO Basics

Equal Employment Opportunity Basics

Discrimination

The EEOC is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person's race, color, religion, sex (including pregnancy, gender identity, and sexual orientation), national origin, age (40 or older), disability or genetic information.

- Title VII of the Civil Rights Act of 1964
- The Pregnancy Discrimination Act
- The Equal Pay Act of 1963
- The Age Discrimination in Employment Act of 1967
- Title 1 of the Americans with Disabilities Act of 1990
- Sections 102 and 103 of the Civil Rights Act of 1991
- Sections 501 and 505 of the Rehabilitation Act of 1973
- The Genetic Information Nondiscrimination Act of 2008

Important Terms

- Disparate Treatment
- Disparate Impact
- Reasonable Accommodations
 - Disability
 - Religious
- Constructive Discharge

- More information at www.eeoc.gov

Employee Discipline

Employee Discipline – Legal context

- Due Process (AS. 14.20.180)
 - Derived from the fourteenth amendment and applicable to public employees. “nor shall any State deprive any person of life, liberty, or property, without due process of law;”
 - Public employees who can be discharged only for cause have a property interest in their employment
 - Employee is entitled to notice and an opportunity to be heard before discharge
- **Just Cause**
 - The seven tests
 - “One which is not for any arbitrary, capricious, or illegal reason which is one based on facts (1) supported by substantial evidence and (2) reasonably believed by the employer to be true.” *Braun v. Alaska Commercial Fishing and Agriculture Bank*

Employee Discipline – Legal context

- Weingarten Rights – If an employee has a reasonable belief that an investigatory interview could lead to discipline or discharge that employee has a right to be accompanied by a union representative.
 - Extends only to unionized employees, and applies to union representatives only
 - Does not include disciplinary meetings or meeting in which work direction or performance/expectation meetings
- Garrity Rights – protect public employees from being compelled to incriminate themselves during investigatory interviews conducted by their employers. Stems from the Fifth Amendment.

Dismissal and nonretention in Alaska

- AS 14.20.170: A teacher, including a teacher who has acquired tenure rights, may be dismissed at any time only for the following causes:
 1. Incompetence
 2. Immorality
 3. Substantial noncompliance
- AS 14.20.175
 - A teacher who has not acquired tenure rights is subject to nonretention for any cause that the employer determines to be adequate
 - A teacher who has acquired tenure rights is subject to nonretention for the following school year only for the following causes:
 1. Failure to successfully complete a Plan of Improvement under AS 14.20.149
 2. Immorality
 3. Substantial noncompliance

Importance of documentation

- Properly demonstrate employee performance and to record efforts to correct deficiencies
- Substantiate management's burden of proof in disciplinary or dismissal cases
- Defend a personnel decision in a grievance or arbitration
- Support the district's defense in a discrimination, retaliation or other claim.
- Assists successive supervisors in tracking and addressing problems

Documentation recommendations

- Appropriate Examples
 - Written Verbal Warnings Summaries
 - Written Reprimands
 - Suspension Notices
 - Unsatisfactory Evaluations
- Poor examples
 - Uncorrected, collected prior work problems
 - Staff wide emails addressing broad concerns
- FRISK Model - a framework for simplifying the drafting of documentation to include all elements necessary for them to be legally sufficient

Conducting an investigation

Investigation Steps

- Document complaint if applicable
- Determine the scope and objective
- Consider any preliminary actions that may be necessary
- Assign an investigator
- Conduct interviews
- Gather other evidence
- Maintain a documented record of all steps
- Write a final report of findings
- Consult with the decision maker

Conducting an investigation – Additional Practical Insights

- Do not make any promises
 - Keep comments about what “is” going to happen to items firmly within your control
- Do not jump to conclusions
 - Make sure you have sufficient evidence to support adequately any conclusions or determinations
- Do not be afraid of awkward silence
- Have someone else review all investigation details
 - This should only be done by authorized or appropriate parties but a fresh set of eyes/ears can help review the details and ensure that the investigation has been thorough
- Ask interviewees to review and initial investigative notes or summaries

Collective Bargaining

Collective bargaining

- Public Employment Relations Act AS 23.40.070 – 23.40.260
 - Classes of public employees
 - Special provisions for impasse or deadlock for school districts.
 - Upon the completion of negotiations between an organization and a public employer, if a settlement is reached, the employer shall reduce it to writing in the form of an agreement.
 - The agreement may include a term for which it will remain in effect, not to exceed three years.
 - Monetary terms for school districts are not required to be submitted to the legislature.
 - Public involvement in school district negotiations
- Collective Bargaining Among Public Employees 8 AAC 97.010 – 8 AAC 97.990

Collective bargaining - considerations

- Subjects of Bargaining
- Initial Offers
 - Required to be made public
- Key Considerations for Success
 - Know your priorities
 - Know your bargaining unit
 - Know the costs of the proposals
 - Factual communication – is allowable, use it!
 - Don't be rushed
 - Take advantage of our network

Additional HR resources

- SHRM, Society for Human Resources Managers
- AASPA, American Association of School Personnel Administrators
- NPELRA, National Public Employer Labor Relations Association
- NAEN, North American Association of Educational Negotiators
- NELI, National Employment Law Institute