



Avoiding Personnel Landmines

3:45pm – 5:15pm

Presented by:

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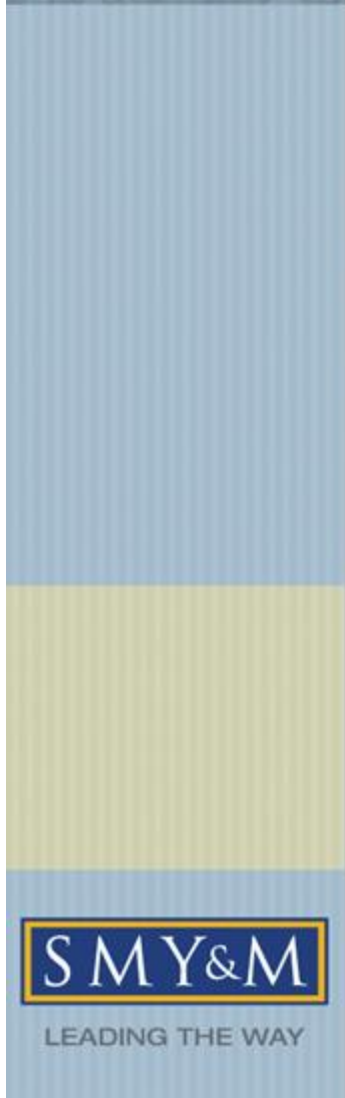
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Overview

- **Introduction**
- **Goals**
 - **Ounce of Prevention**
 - **Improve Issue Spotting Skills**
 - **Provide Ideas for Systematic Change**
 - **Limit Disruption/Liabilities**
- **Disclaimers**
 - **Real Problems are Fact Specific & Complex**
 - **Cookie-Cutting can be Dangerous**
 - **Non-Attorney Advice and the Attorney-Client Privilege**
- **Keep Your Questions Hypothetical**



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I. The Legal Basics



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You Are Not “Exempt”

**California Labor Code, DLSE,
CFRA, FMLA, PDL, ADA, ADEA,
CBA, ADR, DOL, DOT, FCRA,
FEHA, EERA, COBRA, EEOC,
DFEH, CDE, DOE, Education Code,
Constitutions, State & Federal
Regulations, IRS Regulations, Civil
Rights Act, OSHA, WCAB, HIPAA,
ERISA, EDD, PERB, FLSA**



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Basic Forms of Charter School Employment

- **“Pure” At-will**
- **“At-will Plus Something”**
- **Fixed Term**
- **For Cause (Permanent Or Tenured)**

Independent Contractor

- **What Is An Independent Contractor?**
- **Who Cares?**
- **How Do You Ensure An Independent Contractor Remains So?**
- **What Are The Penalties For Being Wrong?**



II. Hiring Guidelines and Pitfalls



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Hiring Issues

- **“Exceptions” To At-will Employment**
- **Basic Do’s And Don’ts**
 - **ADA Accommodations/Requirements**
 - **Applications**
 - **Interviews**
 - **[See Guide For Pre-employment Inquiries]**
 - **Criminal Background Checks**
 - **Reference Checks**
- **Collective Bargaining Agreement Considerations**
- **Review Of Hypothetical Scenarios**

Use of Employment Contracts

- **For At-will, Why Bother?**
- **Common Provisions**
- **Potential Pitfalls**
- **Inclusion Of Job Descriptions**
- **Consistency With Foundational Documents (i.e. Labor Agreements, Charter, etc.)**
- **Review Sample Contract**



Tips for Reducing the Risk of Liability

- **If At-will, Use Written At-will Provisions**
- **Confirm Terms In Employment Contract**
- **Avoid False Inducement To Relocate**



Tips for Reducing the Risk of Liability (cont'd)

- **If At-will, Do Not Assure Term Of Job**
- **Carefully Conduct Background Checks**
- **Use Authorization For Disclosure**



III. Managing Employees



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Conducting Evaluations

- **Take The Time Now!**
- **Develop Clear System/Forms**
- **Assess Job Related Performance**
- **See Sample Evaluation Checklist**



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Conducting Evaluations (cont'd)

- **Evaluation Of Directors**
- **Practice In Front Of The Mirror**
- **Review Hypothetical Scenarios**
 - **Inadequate/Irrelevant Criteria**
 - **Blind Adoption Of Pre-printed Forms**
 - **Failure To Include Examples**
 - **Failure To Discuss With Employees**



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Maintaining Discipline & Dismissal Policies

- **What Is Required?**
- **Where Should They Be Included?**
- **What Should They Include?**
- **Common Problems With Policies**

Tips for Good Documentation?

- **Consider FRISK Type System**
 - **Facts**
 - **Rule**
 - **Impact**
 - **Suggestions/Directives**
 - **Knowledge**

Investigations

- **What Is An Investigation?**
- **Which Complaints Should Be Investigated?**
- **Why Are Investigations Important?**
- **Review 12 Rules for Effective Internal Evaluations**



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Complaint Policies

- **Ensure Detailed Complaint Process Is In Place**
- **Types Of Policies**
- **Essential Ingredients Of Complaint Policies**



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***IV. Considering Discipline
or Release***



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Release of At-Will Employees

- **Consider Employment History**
- **Review Contract, If One Exists**
- **Resist Use Of “Excuses”**
- **When To Mention “ A Reason”**
- **Severance Considerations**

Elements of Just Cause

- **What Is Progressive Discipline?**
[See Checklist]
- **What Is Just Cause?**
[See Outline]
- **Common Factors Considered**
- **What Is Your Process?**
- **Review Examples**

Common Personnel Issues

- **At-will With Disability/Leave Issues/Retaliation Claims**
- **One (1) Year Evaluation System With Remediation Promised**

Common Personnel Issues

(cont'd.)

- **Progressive Discipline Promised**
- **Accidental Incorporation Of Due Process**
- **Lack Of Documentation/Findings**
- **Mercy Performance Reviews**

Common Personnel Issues

(cont'd.)

- **Failure To Review**
- **Irrational Parent Complaints/
Demand For Discipline**
- **Keeping Personnel Information
Confidential**

A Word On Board Involvement

- **When To Involve The Board**
- **How To Agendize**
- **“Complaints Or Charges”**
- **Follow Your Complaint Policy**
- **Final Action**



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V. Ending the Relationship and Beyond

Termination from Employment

- **Assess Liabilities Prior To Termination**
- **Review Contract & Other Promises**
- **Consider Preventative Measures**
- **If For Cause, Ensure Due Process**
- **Post-termination Letter**



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Settlement Agreement/Releases

- **The Value Of Releases**
- **Unwaivable Claims**
- **Common Quid Pro Quo**
- **Tax Considerations**



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Settlement Agreement/Releases

(cont'd.)

- **Job References**
- **Legal Review**
- **Confidentiality/Brown Act/
Public Records Implications**



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Post Termination Issues

- **Final Paycheck**
- **COBRA**
- **Unemployment Claims/Labor Commissioner Claims**
- **DFEH/EEOC**
- **Law Suits & Government Tort Liability**
- **Tendering To Your Insurance Carrier**

*Questions
&
Answers*

