

# Bond

## EMPLOYEE HANDBOOKS FOR CHARTER SCHOOLS

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*Commitment • Service • Value • Our Bond*

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# THE PURPOSES OF EMPLOYEE HANDBOOKS:

- Convey information
- Boost morale
- Avoid litigation
- Obey regulatory requirements  
FMLA, COBRA, NY Labor Law
- Set expectations

# NEW LEGAL LANDSCAPE FOR CHARTER SCHOOLS:

*Hyde Leadership Charter School*

364 NLRB No. 88 (August 24, 2016)

New York Charter Schools are covered by the  
National Labor Relations Act.

# PRACTICAL EFFECTS OF NLRA COVERAGE:

- Possibility of strikes
- School can unilaterally implement its last best proposal after an impasse in bargaining
- School can insist on a secret ballot election before a union is recognized

# RECENT NLRB DECISIONS AFFECTING HANDBOOKS OF NONUNION EMPLOYERS I

*Hills & Dales General Hospital,*  
360 NLRB No. 70 (2014)

Employer cannot prohibit employees from making negative statements about colleagues or the School.

# RECENT NLRB DECISIONS AFFECTING HANDBOOKS OF NONUNION EMPLOYERS II

- *Remington Lodging*,  
359 NLRB No. 95 (2013)

Employer cannot prohibit employees from speaking to news media without permission.

# RECENT NLRB DECISIONS AFFECTING HANDBOOKS OF NONUNION EMPLOYERS III

*Purple Communications,*  
361 NLRB No. 126 (2014)

Employees cannot be prohibited from using school email system for nonbusiness reasons.



# RECENT NLRB DECISIONS AFFECTING HANDBOOKS OF NONUNION EMPLOYERS IV

*Cellco Partnership dba Verizon Wireless,*

365 NLRB No. 38 (2017)

*Lily Transportation,*

362 NLRB No. 54 (2015)

Employees cannot be prohibited from disclosing all confidential information, unless there is an explicit carve-out for information on employees' terms and conditions of employment.

# RECENT NLRB DECISIONS AFFECTING HANDBOOKS OF NONUNION EMPLOYERS V

*Casino San Pablo,*

361 NLRB No. 148 (2014);

*Karl Knauz Motors,*

358 NLRB No. 164 (2012)

Employees cannot be prohibited from acting disrespectfully towards management.

# ALL THIS MAY CHANGE UNDER A NEW TRUMP NLRB:

- But will PERB follow the Obama NLRB?

# IMPORTANCE OF SCHOOL MISSION:

- Sets tone
- Establishes values and priorities for staff

# CODE OF ETHICS:

- Required under Charter Act
- Signed by all employees
- Reference in Handbook

# SOCIAL MEDIA POLICY:

- Acceptable e-mail platforms and communications.
- Use of social media interactions with students

# CONFIDENTIALITY OF STUDENT INFORMATION:

- Generally
- On social media
- Tied to Code of Ethics: not for personal use or personal gain

# COMMON HANDBOOK MISTAKES I

- *This handbook is not a contract. The school can change any provision at any time, with or without notice.*
- *The School prohibits discrimination and harassment, and will not retaliate against anyone who makes a complaint of discrimination and harassment.*



# HOW TO FIX THIS?

- *Certain policies, however, will never be changed: our employment-at-will policy, which permits either you or the School to terminate our relationship for any reason at any time; our policy of strictly prohibiting discrimination and harassment; and our policy of strictly abiding by the letter and spirit of all applicable laws.*

# COMMON HANDBOOK MISTAKES II

Domestic partner health insurance policies that are limited to same-sex couples

- A provision designed to prevent discrimination now operates to create discrimination

# HOW TO FIX THIS?

- Option 1: Allow a reasonable period of time for same-sex domestic partners to marry, and then sunset the provision.
- Option 2: Extend domestic partner benefits to opposite-sex couples.

# COMMON HANDBOOK MISTAKES III

Employees may not discuss salaries with each other.

# COMMON HANDBOOK MISTAKES IV

- Treating all salaried employees as exempt from overtime rules.
- New NYC minimum salary test for non-teachers:  
    \$825/week  
    \$975/week as of 12/1/2017
- Lower thresholds if fewer than 11 employees, or outside NYC.
- Federal minimum salary test: \$913/week (but currently enjoined, and may be repealed).

# BUT MINIMUM SALARY IS NOT ENOUGH BY ITSELF:

- Administrative exemption
- Executive exemption
- Professional exemption
- High-level computer professional exemption

# COMMON HANDBOOK MISTAKES V: LEGALESE

*This Handbook creates no contractual rights, and creates no reasonable expectations that can be relied upon. Management may change any provision of this Handbook at any time, with or without prior notice. Each employee is required to abide by all terms of this Handbook. Failure to do so may result in immediate termination. This Handbook shall be interpreted under the law of the State of New York, without regard to its conflict-of-laws principles.*

# COMMON HANDBOOK MISTAKES V: LEGALESE Con't

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*This handbook is a general guide to School's current procedures, policies, and objectives. It is not a binding contract.*

*No employee handbook can anticipate every circumstance or question. As circumstances change, School may change its policies. Certain policies, however, will never be changed: our employment-at-will policy, which permits either you or the School to terminate our relationship for any reason at any time; our policy of strictly prohibiting discrimination and harassment; and our policy of strictly abiding by the letter and spirit of all applicable laws.*

*If you want more details about any School policy, or believe that any policy should be changed, feel free to speak to \_\_\_\_\_.*



# COMMON HANDBOOK MISTAKES VI: EEO POLICIES

- Overly legalistic definitions of discrimination and harassment.
- Implication that harassment is okay if it is lawful.
- Failure to mention harassment other than sexual harassment.
- Failure to mention accommodation to religious practices and disabilities.
- Failure to provide more than one official authorized to receive complaints.

# COMMON HANDBOOK MISTAKES VII: RESTRICTIVE PERSONNEL FILE POLICIES

- It's not legally required to allow access to personnel files and a right to reply.
- But it's a wise policy.

# COMMON HANDBOOK MISTAKES VIII

- Failure to abide by New York City Earned Sick Time Act.
- Allow accruals from Day One.
- Allow usage from 120 days.

# COMMON HANDBOOK MISTAKES IX

- Failure to retain prior versions of handbooks.
- Failure to keep track of when each version was distributed.

# STAY TUNED

New York Paid Family Leave Act

Effective January 1, 2018

# QUESTIONS?