

# Education

## EMPLOYMENT PRACTICES REVIEW CHECKLIST

### **When Was the Last Time Your School Had An Employment Checkup?**

If it has been a while, or if you can't even remember the last time your school reviewed employment-related policies, practices, and procedures, it's time for a "checkup." Changes in employment law occur not only when new laws are passed, but also as courts interpret existing law. Even subtle changes often affect what should be included in a school's policies and procedures. To remain in compliance with applicable laws, a school should set a schedule and periodically review human resources policies, practices, and procedures to ensure that they are up to date.

At Fisher Phillips, we routinely help our clients audit their human resource practices, as well as review their employment law compliance under both state and federal law. With our help, you can make sure that you are doing things right. This checklist serves as a guide to help you review your policies, practices and procedures to ensure they comply with current labor and employment law, and that they represent "best practices" for your school. If you do not have all of the right policies, practices or procedures already in place, don't worry -- we can work with you to develop them.

Yes No



**DOCUMENTATION AND FILING SYSTEMS**

- Does the school maintain and follow a written record retention and destruction policy?
- Are medical records maintained in a secure, confidential manner separate from personnel records?
- Have the school's employment agreements been reviewed by an attorney within the last year?
- Have the school's employee handbook(s) been reviewed by an attorney within the last two years?



**APPLICATION STAGE**

- Do your job postings contain all information required by state or federal law?
- Does the school retain copies of all external job advertisements and postings?
- Do advertisements or postings contain Equal Employment Opportunity language?
- Are you ensuring that AI is not used improperly and that you have a policy in place consistent with the EEOC's directives?
- Has the employment application been reviewed by employment counsel in the last 12 months?
- Does the school's application ask for the applicant's salary history?
- Does the school's application contain criminal background questions? If so, have you confirmed you may do so under state law?
- Does the school require a completed, signed application for employment for each applicant for all positions?
- Are you reviewing your job descriptions at least annually to ensure that they are accurate and do not contain language or requirements that could be viewed as discriminatory?
- Are job descriptions sufficiently tailored to include all essential job duties?
- Do job descriptions make clear (if appropriate) that the job description is not a contract, and that the employer reserves the right to modify the duties as appropriate?
- Are managers/administrators trained on appropriate interview processes (including documentation) to avoid discrimination claims?
- Does the school utilize a conditional offer of employment making clear that all offers are subject to satisfactory background checks, reference checks, and, if applicable, drug testing?
- Do the reference checks include the employee's current supervisor or Head of School?
- Is the school completing any pre-employment state law requirements related to prior allegations of sexual misconduct or inappropriate relationships with students?
- Does the offer letter make clear, if appropriate, that employment is at will and reference any introductory period?
- Does the school send offer-of-employment letters and do they contain employment-at-will language where appropriate?
- Are any employment tests used?
- Do employment tests (if any) comply with the Uniform Guidelines on Employee Selection Procedures?
- Does the school have an appropriate process for the collection and storage of applications?

Yes No



**NEW HIRE STAGE**

- Is a new hire checklist completed for each employee?
- Do you provide an orientation program for new employees, including important training on harassment, discrimination, child abuse reporting, and boundaries?
- Does each new hire sign an arbitration agreement or jury trial waiver (if appropriate)?
- Have you had counsel review your arbitration agreements in the last year to ensure compliance with legal changes?
- Is a new hire reporting form completed and submitted for each employee?
- If direct deposit is used, does the school obtain a signed, employee authorization?
- Does your state permit mandatory direct deposit?
- Does your state require an alternative to direct deposit?
- Does your state permit pay cards? If yes, are there restrictions and/or limitations?
- Does the school have current emergency contact information for each employee?
- Does the School have a personal email address (other than their work email address) for each employee?
- For employees who are issued school property, does the school get a signed receipt for the property?
- Do receipts for school property contain language authorizing the school to deduct, to the extent allowed by law, for loss, damage, or failure to return the property?
- Is a current employee handbook given to each employee?
- Is there a signed, dated acknowledgment of receipt for the handbook in each employee's personnel file?
- Does the school check the driving record and require evidence of automobile insurance for employees who drive in the course of their jobs?



**PROTECTING CONFIDENTIAL INFORMATION**

- Does the school have a policy making clear that all employees have a duty to maintain confidentiality of trade secrets and confidential information?
- Have employees who have specific access to confidential information executed employment contracts or confidentiality agreements addressing the duty of confidentiality?
- Does the school limit access to confidential information (whether written or maintained electronically) to only those employees with a legitimate need to know?
- When an employee is terminated, does the school immediately disable the employee's access to the school's databases, phone systems, and private property areas?
- Does the school immediately gather the employee's computer, school phone, and other electronic items?
- Is the school able to determine when an employee was accessing the school's computer systems, what the employee accessed, and whether anything was printed, downloaded, uploaded, or transferred?
- Is the school able to determine when an employee made off-hours access onto its premises?

Yes No



**FAIR CREDIT REPORTING ACT (FCRA)**

- Has your school assessed with counsel whether the school is covered by the Fair Credit Reporting Act? If yes: Do applicants complete a disclosure and authorization form prior to the company obtaining a criminal history or credit report?
- Is the disclosure and authorization on an individual form, consisting solely of the disclosure and authorization?
- Does the form allow for reports during continued employment?
- When FCRA issues arise, is the current "Summary of Your Rights Under the FCRA" sent?
- When FCRA issues arise, is a pre-adverse action letter sent?
- Are the required special procedures followed for using Investigative Consumer Reports?
- Do you counsel employees with access to FCRA information about its proper use?
- When you finish using the consumer report, do you dispose of it in a secure manner?
- When reviewing a consumer report, are you aware of additional EEO considerations?
- Do you know whether your state has criminal history or credit report limitations (e.g. Ban-the-Box laws)?
- If you are using an FCRA package/kit, is it compliant with the state(s) in which your school operates?



**WAGE AND HOUR COMPLIANCE**

- Has the school audited its workforce to ensure all employees are properly classified as exempt or nonexempt under wage hour law?
- Has the school recently re-evaluated the status of any individuals treated as nonemployees such as independent contractors, trainees, volunteers, interns, or students?
- Are all nonexempt employees paid at least the applicable minimum wage?
- Are all nonexempt employees paid the proper overtime premium (which includes stipends, bonuses, incentives and other kinds of pay)?
- Does the school operate in a state that requires meal or break periods for nonexempt employees?
- Does the school maintain accurate records of all hours worked by nonexempt employees (including breaks, meal periods, training and meetings, work done at home, travel, work before and after scheduled hours, and so on)?
- Does the school allow nonexempt employees to work through their breaks or lunch periods?
- Does the school permit nonexempt employees to work from home (including responding to emails, phone calls, etc.)?
- Do any nonexempt employees have remote access to the school's systems through electronic or personal devices?
- Does the school's timekeeping system round time entries?
- Does the school's timekeeping system automatically deduct time for lunch (rather than require nonexempt employees to clock out and back in)?
- Has the school evaluated the status of any "comp time" system in use?
- Do nonexempt employees have the ability to review and correct time records?
- Are all deductions from pay covered by an agreement and permitted by law?
- Do you know if your state requires reimbursement to employees for business expenses?
- Does the school have a written policy regarding salaried exempt employees and deductions?
- Does the school prohibit employees from discussing their wages with one another?
- Are wages withheld from employees for failure to return school property or equipment at separation?

Yes No



**NONDISCRIMINATION, HARASSMENT, AND CHILD PROTECTION TRAINING**

Does the school have written policies prohibiting discrimination, harassment and retaliation, which include a complaint procedure?

Does the school have student-adult boundaries and child abuse reporting policies?

In the last 12 months, has an expert trained administrators/managers and employees about the school's EEO, harassment, retaliation, boundaries, and child abuse policies?

Are training session attendance sheets and handouts maintained by Human Resources?

Does the school have a whistleblower policy and an internal procedure for investigating whistleblower complaints?

Does the school inspect the school campus for any materials that may violate the school's harassment policies (including posters, graffiti, screen savers, etc.)?

Has the school reviewed day-to-day operating procedures and policies to eliminate discrimination on the basis of sex or pregnancy (e.g., leaves of absence or other benefits)?

Does the school consistently enforce dress and grooming policies for EEO considerations?

Does the school have an English-only policy?

Has the school recently reviewed your pay practices for discrimination and/or pay inequalities on the basis of sex or other protected categories in your state?



**FAMILY AND MEDICAL LEAVE ACT (FMLA)**

Does the school have an FMLA policy posted at the worksite and published in its handbook even if it has less than 50 employees?

Does the school's FMLA policy utilize a rolling 12-month look back period for leave availability?

Are administrators/managers trained to recognize when a leave request implicates the FMLA?

When an eligible employee requests medical leave, does the school provide the employee with a Notice of Rights?

Does the school require the employee to provide a Health Care Certification supporting the leave?

Does the school provide the employee with a Designation of Leave either at the time it sends the Notice of Rights or after it receives the completed Health Care Certification?

Does the school require employees on a medical leave to submit periodic status reports?

Does the school properly designate and manage use of intermittent FMLA leave?

Does the school have a written attendance policy?

Does the School calendar the date when the employee is scheduled to return from leave?

Does the school have a medical leave policy for employees who are ineligible for FMLA?

Does the school designate employees on Short Term Disability or on Workers' Compensation as being on FMLA leave?

Does the school designate someone as being a "key employee" when designating their leave?

Does the school communicate in writing with the employee shortly before they are scheduled to return to work to determine whether they are able to do so and outlining conditions?

If the employee is unable to return to work at the end of their scheduled leave, does the school assess continued leave as an accommodation under the Americans with Disabilities Act (ADA)?

Yes No



**BENEFITS**

- Do you have a compliant ERISA plan and summary plan descriptions (SPD) for health insurance, life insurance, accidental death & dismemberment insurance, retirement savings plans, STD and/or LTD benefits?
- Do you conduct annual nondiscrimination testing and confirm contribution limits are satisfied for your health and welfare plans, including HRAs, HSAs, or FSAs?
- Do you have a written cafeteria plan document to authorize pre-tax payment of employee insurance premiums?
- Do your group health plans provide equal coverage for all employees without regard to sex, disability, pregnancy, genetic information, health-status, or compensation?
- Do you have committee charters and procedures in place to ensure compliance with your fiduciary duties under ERISA for your welfare and retirement plans?
- Are you an applicable large employer under the ACA?
- Are you part of an aggregated controlled or affiliated service group for benefit plan testing and ACA liability?
- Is health coverage "affordable" and provide "minimum value" if you are an applicable large employer?
- Do you report group health plan eligibility information to employees on Form 1095 series and to the IRS on the Form 1094 series if you are a large employer or self-insured?
- Do you provide a uniform summary of benefits and coverage to participants and beneficiaries at appropriate times (i.e. application for coverage and at renewal)?
- Do you provide proper notices for retirement and welfare plans required under the ACA, ERISA, CHIPRA, HIPAA, Medicare Part D, and COBRA?
- Do you prepare a Summary of Material Modifications (SMMs) to notify employees of changes in medical plans within 60 days before their effective date?
- Do you prepare SMMs to notify employees of changes in your non-medical welfare plans within 210 days of the close of your benefit year?
- Do your payroll settings for retirement plan (which could include 401(k), 403(b), 457(b)) deductions accurately capture the definition of compensation in your retirement plan for deferral purposes?
- Do you ensure the automatic enrollment provisions, if any, in your retirement plan are timely implemented?
- Are you in compliance with Form 5500 filing requirements and file a Form M-1 if you sponsor a multiple employer welfare arrangement?
- Do you complete a Summary Annual Report (SAR) for ERISA plans?
- On an annual basis and upon changes affecting your Medicare Part D plan's creditable coverage status, do you provide the plan's creditable status to the Centers for Medicare and Medicaid Services (CMS)?
- Do you comply with Medicare Secondary Payer restrictions and notice requirements?
- Do you comply with the Mental Health Parity and Addiction Equity Act (MHPAEA), the Newborns' and Mothers' Health Protection Act (NMHPA), and the Women's Health and Cancer Rights Act (WHCRA)?
- Does your payroll system reflect the annual Social Security (FICA) taxable wage and the addition of an additional employee-paid Medicare tax for employees earning more than \$200,000?
- Have you recently audited whether all wages are being captured and taxed properly for imputed income (e.g., employer provided life insurance coverage in excess of \$50,000)?
- Do you engage in timely Actual Deferral Percentage and Actual Contribution Percentage discrimination testing on your retirement plan(s)?
- Is your school prepared to meet the IRS deadline for distribution to employees of their excess deferrals and excess annual additions beyond the statutory maximum under your qualified retirement plan(s)?

Yes No



**BENEFITS (CONTINUED)**

- Do you ensure that documentation provided electronically or posted on a school website is in compliance with the DOL's safe harbor provisions?
- Do you have compliant HIPAA Privacy and Security Procedures and conduct annual training for employees with access to protected health information?
- Do you maintain procedures in case of a HIPAA breach (including a breach log and reporting procedure)?
- Do your severance, long-term incentive and executive nonqualified retirement plans comply with the requirements of Sections 409A and 457(f) of the Internal Revenue Code or qualify for an exception by design?



**IMMIGRATION (IMMIGRATION REFORM AND CONTROL ACT) COMPLIANCE**

- Does the school maintain valid, current I-9 forms on all employees?
- Does the school photocopy the supporting documents listed in Section 2 of the I-9 form? If so, do you apply this practice consistently for all employees?
- Does the school have a system of checks and balances in place for I-9 or is one person responsible for I-9s?
- Does the school periodically conduct self-audits of its I-9s or have outside counsel conduct periodic I-9 audits?
- Does the school accept any expired documents (including passports) in filling out the I-9 form?
- Is the school aware that some expired Employment Authorizations cards receive automatic extensions of work authorization?
- If the school uses an electronic system to complete I-9s, does the electronic system meet the DHS requirements for electronic I-9s?
- Are I-9 forms maintained in a separate file (not the personnel file)?
- Does the school keep I-9 forms for the proper retention period after termination?
- Is there a tickler system to assure timely reverification of expiring employment authorization documents?
- Are any employees allowed to work without completing an I-9 form?
- Are any employees required to present more than two documents?
- Are administrators/managers trained about Immigration Reform and Control Act requirements?
- Does the school review a terminating employee's I-9 form as part of the exit process?
- Has the school ever received a charge of discrimination from the U.S. Department of Justice?
- Is the school required to use E-Verify?
- If you participate in E-Verify and the employee presents a U.S. Passport, Passport Card, Permanent Resident Card or Employment Authorization Document, do you retain a photocopy of the document?
- Do you close all cases in E-Verify after receiving a final case result?
- Are administrators/managers trained on E-Verify requirements?
- Have you been audited by the U.S. Immigration and Customs Enforcement for I-9 Form and E-Verify compliance?
- Does the school still employ any individual who received an E-Verify Final Nonconfirmation?
- Have you registered for the IMAGE program?
- Is the school aware of the pitfalls in using the Social Security Number Verification Service website for verification?
- Does the school properly respond to notifications from the Social Security Administration or other governmental agencies regarding employees whose Social Security numbers do not match government records?
- Does the school review letters regarding mismatched Social Security numbers to ensure that the same employees do not reappear on these lists year after year?
- Does the school sponsor employees for temporary or permanent visa status?

Yes No



**SAFETY MATTERS**

- Is the official OSHA poster on display?
- Do driver applicants complete a request for check of driving record? Does the school have any CDL drivers?
- Does the school use written safety instructions or manuals?
- Does each employee sign an acknowledgment of receipt of safety rules?
- Do employees receive regular training about safety matters?
- Is all OSHA-required safety training completed and documented?
- Has your school been audited by a safety professional within the last two years?
- Is there an administrator/manager who has been assigned responsibility for safety and health compliance?
- Have administrators/managers been trained to properly respond to an OSHA or other inspection (e.g., building inspectors)?
- Does the school have an emergency response plan?
- Does the school have a crisis management team for catastrophic occurrences, fatalities and OSHA-related publicity?
- Does the school have a Job Safety Analysis (JSA) for each job?
- Is there a written Hazard Communication Plan?
- Are Material Safety Data Sheets (MSDS) maintained for all hazardous chemicals used on premises?
- Does the school have a Bloodborne Pathogens Plan?
- Has the school determined whether employees are required to use any personal protective equipment (PPE)?
- Does the school have a written certification of the hazard assessment for PPE?
- Does the school pay for PPE?
- Does the school conduct internal and external safety audits and hazard assessments of the school's facility?
- Does the school have appropriate and adequate first aid supplies?
- Are designated school personnel trained in first aid, CPR, and stop the bleed?
- Is all electrical equipment properly marked?



**CAMPUS SECURITY**

- Does the school have any security employees that it has authorized to carry weapons on campus?
- Has the school properly authorized such armed personnel consistent with state and federal law?
- Has the school evaluated armed personnel and regularly train them?
- Does the school have appropriate procedures for its armed personnel to store, carry, and utilize weapons on campus?
- Does the school have a policy prohibiting bullying, weapons and threats with a reporting procedure?
- Does the school have a broad inspection policy permitting inspection anywhere?
- Does the school have a comprehensive electronics communication policy permitting inspection of school systems and electronics brought to school by employees and students?
- Has the school trained employees regarding workplace violence, including response to active shooters?
- Does the school have a contingency plan for bomb threats or incidents of violence or threats?
- Does the school have a disaster recovery plan?
- Has the school had a security audit within the last year?
- Does the school have limited access points to the campus?
- Does the school consistently enforce policies regarding access to the premises?
- Does the school have surveillance cameras and proper notice if so?



Yes No



### EVALUATION, DISCIPLINE, AND TERMINATIONS

Are all new hires subject to a trial or introductory period? Are performance evaluations conducted for all employees?

Are managers/administrators trained to conduct performance evaluations?

Has the school reviewed its evaluation form to ensure that it achieves its purpose and does not create adverse evidence against the school?

Are managers/administrators trained about and evaluated on compliance with employment laws?

Are managers/administrators trained about and evaluated on documenting personnel and disciplinary actions?

Are employees allowed to comment on their performance evaluations?

Are employees required to sign their performance evaluations?

Is there a written progressive discipline system that limits the school's discretion? Does the school use a standard disciplinary warning form?

Are employees given copies of all written discipline?

Are terminations compared to prior discipline for similar offenses?

Are exit interviews conducted for all voluntary terminations?

Are terminating employees asked to sign a waiver for the school to give future employment references?

Does the school direct all reference checks to a central person?

Are managers/administrators trained how to respond to requests for employment references?

Does the school discuss the return of school property with the separating employee?

Are final wages paid consistent with the requirement of your state's laws?



### OTHER COMPLIANCE ACTIONS

Does the school have a conflict-of-interest policy?

If your school is a non-profit, does it have a code of ethics as recommended by the IRS?

Does the school have a records retention and document destruction policy?

Does the school have a whistleblower policy?

Are applicable federal and state employment law posters properly displayed? Is the EEO-1 form completed and submitted annually?

Has the school reviewed EEO-1 forms to see if they indicate any trend in the representation of women or minorities in each EEO-1 job category?

Are school premises, as well as its website, accessible to disabled individuals?

Does the school make reasonable accommodations for pregnancy, disabilities, and religious observances where appropriate?

Does the school have an Employee Assistance Program (EAP)?

Has the school assessed its independent contractor arrangements?

Has the school assessed its volunteer or internship arrangements?

## ABOUT FISHER PHILLIPS EDUCATION PRACTICE

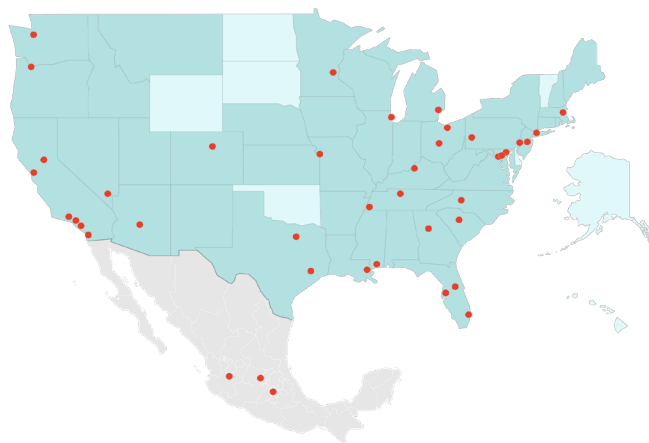
Fisher Phillips represents educational institutions nationally in employment and student matters. We assist administrators in meeting legal obligations to both employees and students under state and federal law. Our practice encompasses employee and student concerns from application and admission to termination and expulsion and all points between. Our attorneys understand the unique issues and dynamics presented by the school environment and recognize that each decision made in the school environment affects the school's relationship with its students, parents, faculty and staff.

## ABOUT THIS CHECKLIST

This checklist provides only a general outline for an internal review of some labor and employment law policies, procedures and practices. The list is not an all-inclusive summary of necessary employment law forms or practices. Important areas, such as those relating to COBRA, HIPAA, workers' compensation, management development programs and other subjects are omitted from this checklist. The "correct" answers to these questions may depend on multiple factors, including religious status and state and local laws and laws regulating a particular type of school. For a complete analysis, schools need to consider the particular laws and regulations that apply. This document is not intended to constitute legal advice. However, schools may find it helpful to review this general outline with their education counsel. Among other things, use of this checklist in conjunction with legal counsel may serve to protect the responses under the attorney-client privilege.

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With almost 600 attorneys in 41 offices across the United States and Mexico, Fisher Phillips is an international labor and employment firm providing practical business solutions for employers' workplace legal problems. Labor and employment law is all the firm does, offering deep and broad knowledge and experience in the area of law the attorneys know best. Fisher Phillips attorneys help clients avoid legal problems, are dedicated to providing exceptional client service, and are there when you need them.

