SNIFFEN & SPELLMAN, P.A.

Education Law Alert

April 2018

DOL Provides Updated FLSA Overtime Guidance to Colleges and Universities

On April 12, 2018, the Department of Labor ("DOL") issued a new Fact Sheet for Higher Education Institutions and Overtime Pay under the Fair Labor Standards Act. The following are common exemptions applicable to Institutions of Higher Education:

- **Teachers:** Individuals whose "primary duty is teaching, tutoring, instructing, or lecturing to impart knowledge." This can include faculty members that teach on-line or remotely.
- **Coaches:** Those whose primary duty is instructing student-athletes in performing their sport will likely qualify, however, a coach whose primary duty is recruiting student athletes will not.
- **Professional Employees:** Learned Professionals, such as CPA's psychologists, certified athletic trainers, and librarians.
- **Administrative Employees:** Employees such as admissions counselors and financial aid officers.
- **Academic Administrative Employees:** Employees whose primary duty is "performing administrative functions directly related to academic instruction or training in an educational establishment" such as department heads, academic intervention specialists, and academic counselors.
- **Executive Employees:** Deans, department heads, directors and other senior supervisors.

Read more here.

CRC Approves Revision Potentially Impacting Education Community

The Constitution Revision Commission (CRC) has voted to approve eight revisions to be placed on the 2018 General Election ballot for voter consideration. Proposed constitutional revisions on the ballot must secure at least 60 percent voter approval to become law.

Of particular interest to the education community is a proposal to amend the State Constitution to establish a limitation on the period for which a person may be elected as a member of a district school board; to specify which schools are operated, controlled, and supervised by a school board; and to require the Legislature to provide for the promotion of civic literacy in public education.

Read more here.

First Amendment Protections in State Grants

The Supreme Court issued its decision in the matter of *Trinity Lutheran Church of Columbia, Inc. v. Comer* on June 26, 2017. Trinity Lutheran Church operated a preschool and daycare program called the Trinity Lutheran Church Child Learning Center, which admitted students of any religion and operated year-round. As part of this program, Trinity Lutheran Church maintained a playground which used a pea-gravel surface. While it is likely that it is needless to say, pea gravel is not the most forgiving surface for a child to land upon after a tumble from the swing set or other playground equipment.

In 2012, the state of Missouri started the Missouri Scrap-Tire Program, which offered reimbursement grants to non-profit organizations for the purchase of playground surfaces made from recycled tires. This program was funded through a fee placed on new tire sales within Missouri. Each non-profit that sought reimbursement was required to apply for a reimbursement with the Missouri Department of Natural Resources who would award the grants based on the strength of their applications.

When Trinity Lutheran Church applied for this reimbursement, they scored fifth out of the 44 applicants. However the Church's application was summarily denied due to a policy of the Missouri Department of Natural Resources, based solely on Trinity Lutheran Church being a religious organization. Missouri alleged that this was compelled by Article I, Section 7 of the Missouri Constitution, which prohibits the use of state treasury funds in support of religious organizations.

While not reaching the merits of this provision of the Missouri Constitution, the Supreme Court found that the policy of the Missouri Department of Natural Resources was unconstitutional as it violated the First Amendment of the Constitution, because it imposed a restriction on the offering of public services to a religious institution solely because of its religious affiliation.

To read the full text of this decision, click here.

Criminalization of Romantic Relationships Between Students and Teachers

Under Chapter 2018-150, Laws of Florida, a new criminal statute has been enacted which makes it a felony for any employees, volunteers, or individuals under contract with a school to engage in sexual conduct, a relationship of a romantic nature, or lewd conduct with a student of the school in which they volunteer or work. It is important to note that the age of the student is irrelevant under this law, and that "romantic nature" is undefined under statute. This provision does not apply to employees, volunteers, or contract workers at state colleges and universities.

For additional information regarding this law click here.

DROP Extension for Public Educators and Administrative Personnel

In Florida, the majority of the school districts participate in the Florida Retirement System, and a substantial number of teachers and administrative personnel participate in the pension plan it offers. Under this plan, an individual who has been employed for 30 years or who reaches the age of 62 has the option of participating in the Deferred Retirement Option Program for 60 months. Understandably this causes some problems with teachers who operate under defined school years and semesters rather than being based off of the date someone was hired or the month in which someone turned 62.

Under Chapter 2018-150, Laws of Florida, the legislature has attempted to address the problems inherent in this system by permitting instructional and administrative personnel to extend their DROP participation until the end of the academic year rather than require them to quit upon completion of the regular 60 months permitted under DROP. This law is effective on July 1, 2018 and modifies the provision of Section 121.091(13), Fla. Stat.

For additional information regarding these changes click here.

From the Lighter Side: This Plaintiff is a Real Animal

The Ninth Circuit has decided that animals may not sue for copyright protection. The case involved a monkey that took "selfies" with an unattended wildlife photographer's camera. The photographer later published the photos. An animal rights group sued, alleging that the monkey owned the copyright because it took the pictures. The Court noted it had to determine whether a monkey may sue humans, corporations, and companies for damages and injunctive relief arising from claims of copyright infringement. The Court determined that the monkey – and all animals, since they are not human – lack statutory standing under the Copyright Act.

Read more here.