Welcome – Dedi Somavia

Hiring – Best Practices
- Roberta Rowe – Lozano Smith Attorney
- TCOE Hiring Practices – Dedi Somavia & Sarah Santano

Special Education credential updates – Sara Marvin
- SPED authorizations
  - MMSN, ESN, DHH, VI, ECSE

Others
- Law Seminars
  - Navigating Employee Complaints and Investigations – January 25, 2023
  - The ADA Interactive Process (Advanced Training) – March 9, 2023
- Survey results – discussion for next meeting
Best Hiring Practices

Presented by:
Roberta L. Rowe

Tulare County Office of Education
October 21, 2022
Robert L. Rowe
Partner

Fresno Office
rrowe@lozanosmith.com
559.431.5600

Overview
Robert L. Rowe is a Partner in Lozano Smith’s Fresno office. She focuses on student, and labor and employment matters for school districts and community college districts in her daily practice of law. Ms. Rowe has expertise in certificated and classified employee matters, termination and layoff hearings, collective bargaining, grievance arbitrations and unfair labor practice charges.

She also has in-depth knowledge of the Brown Act, conflicts of interest and policy development. In addition, she has been involved with investigations on behalf of school districts and municipalities related to harassment and discrimination complaints.

Before becoming an attorney, Ms. Rowe worked for eighteen years as a Vocational Rehabilitation Consultant with workers’ compensation, social security and marital dissolution cases.

Presenter Experience
Ms. Rowe is a sought-after speaker and has made numerous presentations to school districts, county offices of education and statewide organizations including California School Boards Association (CSBA), Association of California School Administrators (ACSA), California Association of School Business Officials (CASBO), California Association of Supervisors of Child Welfare and Attendance (CASCWA) and California Small School Districts Association (SSDA). Topics include sexual harassment prevention, student discipline, bullying and gender identity/sexual orientation, employee and student free speech, leaves, Brown Act, classified and certificated discipline, and certificated and classified layoffs.

Ms. Rowe has taught for California State University, Fresno, Kremen School of Education and Human Development Administrative Services Credential Program. She has conducted seminars in Advanced Techniques of Personnel and Legal Aspects of Education.

Education
Ms. Rowe received her Juris Doctor degree from San Joaquin College of Law in 1995. While attending law school, she won first place at the Hopper Moot Court Competition and was a quarter finalist at the Evans Constitutional Law Moot Court Competition at the University of Wisconsin in Madison. She also served on the San Joaquin College of Law Agricultural Law Review. Ms. Rowe earned an M.A. in Rehabilitation Counseling from California State University, Fresno, and a B.S. in Psychology from Oregon State University, Corvallis.
WHO WE ARE & WHAT WE DO
Lozano Smith is a full-service education and public agency law firm serving hundreds of California's K-12 and community college districts, and numerous cities, counties, and special districts. Established in 1988, the firm prides itself on fostering longstanding relationships with our clients, while advising and counseling on complex and ever-changing laws. Ultimately, this allows clients to stay focused on what matters most – the success of their district, students and communities they serve. Lozano Smith has offices in eight California locations: Sacramento, Walnut Creek, Fresno, Monterey, Bakersfield, San Luis Obispo, Los Angeles, and San Diego.

AREAS OF EXPERTISE
- Administrative Hearings
- Charter School
- Community College
- Facilities & Business
- Governance
- Investigations
- Labor & Employment
- Litigation
- Municipal
- Public Finance
- Public Safety
- Special Education
- Student
- Technology & Innovation
- Title IX

COST CONTROL is important for public agencies and an area we have mastered. We recognize and understand your financial restraints and work tirelessly to provide the best legal representation with those limitations in mind. One of the best ways we keep legal costs to a minimum is through strategic, preventive legal services. These include Client News Briefs to keep you updated on changing laws affecting education. In addition, we offer extensive workshops and legal seminars providing the tools needed to minimize liability, reducing the need for legal assistance down the road.

CLIENT SERVICE is our top priority and we take it very seriously. With premier service as the benchmark, we have established protocols and specific standards of practice. Client calls are systematically returned within 24 hours and often sooner when required.

DIVERSITY IS KEY and we consciously practice it in all that we do. It is one of our core beliefs that there is a measurable level of strength and sensitivity fostered by bringing together individuals from a wide variety of different backgrounds, cultures and life experiences. Both the firm and the clients benefit from this practice, with a higher level of creative thinking, deeper understanding of issues, more compassion, and the powerful solutions that emerge as a result.
Best Hiring Practices

Presented by:
Roberta L. Rowe
TULARE COUNTY OFFICE OF EDUCATION
October 21, 2022

Overview of the Hiring Process

- Advertise/Post the Position
- Paper Screen Applicants
- Interview Applicants
- Background/Reference Checks
- Select Applicant/Offer Position
- Fingerprint
- School Board Approval
- Proper Classification of New Employee

Is the posting/job description current?
Overview of the Hiring Process

Advertise/Post the Position

Paper Screen Applicants

- Who paper screens?
- Are they trained?

Paper Screen Applicants

Education and Credential Verification

- Certificated
  - Do they have the proper credential, permit, authorization?
- Classified
  - Education level on application versus job description
  - Past experience
  - Certification/License
Overview of the Hiring Process

Advertise/Post the Position

Paper Screen Applicants

Interview Applicants

Interview Applicants

- Who is on the panel?
- How do they rank applicants?

Dress Codes: New law prohibits discrimination based on hairstyle

A new law, called the CROWN Act, amends the definition of “race” in state anti-discrimination laws to include “hair texture and protective hairstyles.”

Be mindful about hiring decisions based on an applicant’s lack of “professionalism.” Be clear about what the member of the hiring team means by this.
Overview of the Hiring Process

Advertise/Post the Position
  ➔
Paper Screen Applicants
  ➔
Interview Applicants
  ➔
Background/Reference Checks

Background Checks

- A **complete** background check should include review by **trained staff** of:
  - Complete employment application
  - Employer References
  - Credential Verification
  - Education Degree Verification
  - Fingerprinting (Criminal History)

Checking Out Employee’s Social Media – Good or Bad Idea?
Overview of the Hiring Process

- Advertise/Post the Position
- Paper Screen Applicants
- Interview Applicants
- Background/Reference Checks
- Select Applicant/Offer Position

Fingerprinting

- Offer contingent upon receiving fingerprint clearance
- Employee should not begin work until fingerprints are cleared

AN ARREST ≠ CONVICTION!
Withdrawing Employment Offer After DOJ Report

- Individualized assessment of relationship of conviction to job
- Written notification of decision to applicant
- Applicant has opportunity to respond and provide additional information
- Written notice of disqualification after review

Fingerprinting & Criminal Record Take-Aways

- Cannot consider arrests
- May consider charges
- Violent and serious felonies, sex offenses, and controlled substance offenses generally bar employment, but exceptions
- May generally consider the conviction before hiring if not otherwise prohibited
- Call legal counsel for complicated scenarios

Overview of the Hiring Process

1. Advertise/Post the Position
2. Paper Screen Applicants
3. Interview Applicants
4. Background/Reference Checks
5. Select Applicant/Offer Position
6. Fingerprint
7. School Board Approval
Overview of the Hiring Process

- Advertise/Post the Position
- Paper Screen Applicants
- Interview Applicants
- Background/Fingerprint/Reference Checks
- Select Applicant/Offer Position
- School Board Approval
- Proper Classification of New Employee

HIRED – Now What?

How are you “Onboarding” new employees?
- Introduction and Socialization of new employee into the workplace.

Federal Equal Pay Act (“EPA”) and California Fair Pay Act (“FPA”)

- EPA prohibits discrimination by employers on the basis of sex in wages paid for: “[E]qual work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.”
- FPA prohibits discrimination on the basis of sex, race or ethnicity in wages paid for “substantially similar work.”
- Jobs don’t need to be identical – “substantially equal” and “substantially similar” looking at job duties rather than title.
- Includes all forms of pay.
Federal Equal Pay Act

- A Plaintiff bringing forward a claim under the EPA is not required to show intent to discriminate.
- If Plaintiff shows wages unequal for substantially equal work, burden of proof shifts to the employer.

Equal Pay Act: Employer’s Case

- The employer has the burden to show that the compensation differential is based on:
  - Seniority;
  - Merit;
  - Quantity or quality of production; or,
  - “Any factor other than sex”. (Catch all Exception)

Rizo v. Yovino (2018): Background

- Aileen Rizo hired by Fresno COE as a math consultant. Previously employed as a teacher in Arizona.
- COE’s hiring procedures dictated that new hire’s salary placement be based on prior salary, plus 5%.
  - In Arizona, Rizo’s salary was $50,630 (206 days work) plus $1,200 per year educational stipend.
  - At the COE, she was placed on step 1 of the 10-step salary schedule, with a salary of $62,133 (196 days work) plus $600 educational stipend.
Rizo v. Yovino (2018): Background Cont’d

- When Rizo found out that male colleagues who were paid based on prior salary for jobs in California were all placed at higher steps upon hire, she first filed an internal complaint, then sued in federal district court.

- COE’s position was that Rizo was placed on the salary schedule based on her prior salary, which fell under the “catch all exemption.”


- Ninth Circuit ruled that the federal Equal Pay Act prohibits using a new employee’s prior salary as a basis for establishing their initial salary.
- Prior salary is not a “factor other than sex.”
- Decision relied on the “intent” of the EPA and national data on wage disparities between men and women.
- Split among circuit courts.
- However, the Supreme Court vacated the decision because it included a vote from Judge Reinhardt, who had passed away before the decision was published.

Questions
For more information, questions and comments about the presentation, please feel free to contact:

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Partner
Tel: 559-431-5600
rrowe@lozanosmith.com

Or any of the attorneys in one of our 8 offices.

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## Assignments Authorized by Special Education Authorizations

✓ = Authorizes Service for disability Category; ✗ = Does not Authorize Service in identified disability area

*= These authorizations may only be added to a base special education teaching credential as an Added Authorization (AA)

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1 May serve as a resource specialist within the grade levels authorized on the document

2 May teach VI or DHH students that also have autism, but cannot serve students with the Autism disability area alone
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³ The Language and Academic Development (LAD) authorization allows services for students identified with academic communication and language needs in the following areas: language development, school readiness and social skills, and literacy development addressing competencies across the curriculum in listening, speaking, reading, writing, and academic areas.
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<td>RSAA</td>
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<td>Adapted Physical Education Added Auth*</td>
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