



Washington Schools Risk Management Pool Human Resources Audit Program

Prepared by:

Law Offices of Richard H. Kaiser
4957 Lakemont Blvd SE Ste., C-4 #162
Bellevue, WA 98006
P (425) 213-0993
September 21, 2005 (Rev)
April 2006 (Rev)
June 2009 (Rev)
September 2011 (Rev)
October 2015 (Rev)
June 2021 (Rev)
August 2023 (Rev)
August 2025 (Rev)

TABLE OF CONTENTS

INTRODUCTION.....	1
AUDIT ISSUES IN THE HIRING PROCESS	2
I. ADVERTISEMENTS FOR JOB CANDIDATES	2
Audit Action Items Related to Job Advertisements	2
II. JOB DESCRIPTIONS.....	3
Audit Action Items Related to Job Descriptions	3
III. JOB APPLICATIONS	4
Audit Action Items Related to Job Applications.....	4
IV. INTERVIEWS	5
Audit Action Items Related to Interviews	5
V. CANDIDATE SCREENING	6
Audit Action Items Related to Candidate Screening	7
VI. THE JOB OFFER	8
Audit Action Items Related to Job Offers	8
VII. EMPLOYEE ORIENTATION AND TRAINING.....	9
Audit Action Items Related Orientations and Trainings.....	9
VIII. EMPLOYEE HANDBOOKS AND OTHER WRITTEN POLICIES AND PROCEDURES	10
Audit Action Items Related to Employee Handbooks and Other Written Policies and Procedures	10
AUDIT ISSUES DURING EMPLOYMENT	11
I. LEAVE POLICIES	11
A. Family and Medical Leave	12
Audit Action Items Related to Family Leave.....	12
B. Pregnancy Leave and Accommodations	14
Audit Action Items Related to Pregnancy Leave/ Accommodations	14
C. Family Care Leave and Miscellaneous Leaves	14
Audit Action Items Related to Family Care Leave.....	15
D. Miscellaneous Sick Leave Issues.....	15
Audit Action Items Related to Sick Leave	15

E.	Domestic Violence/ Sexual Assault Leave	16
	Audit Action Items Related to Domestic Violence/ Sexual Assault Leave.....	16
F.	Military Leave.....	16
	Audit Action Items Related to Military Leave	17
G.	Jury Duty.....	17
	Audit Action Items Related to Jury Duty	17
II.	HEALTH AND SAFETY ISSUES.....	18
A.	Smoking.....	18
	Audit Action Items Related to Smoking Policies.....	18
B.	Drugs and Alcohol.....	18
	Audit Action Items Related to Drug and Alcohol Policies	18
C.	Infectious Diseases.....	19
	Audit Action Items Related to AIDS and Infectious Diseases	19
D.	Workplace Violence	20
	Audit Action Items Related to Workplace Violence	20
E.	Maintaining Professional Staff-Student Boundaries	21
	Audit Action Items Related to Staff-Student Boundaries	21
III.	EMPLOYER RECORD-KEEPING AND REPORTING REQUIREMENTS	21
	Audit Action Items Related to Employer Record-Keeping Requirements.....	22
	Audit Action Items Related to Employer Reporting Requirements of Employment Claims.....	22
IV.	DISCRIMINATION	22
A.	Disparate Impact Discrimination.....	22
B.	Disparate Treatment Discrimination	23
	Audit Action Items Related to Disparate Discrimination.....	23
C.	Retaliation.....	23
	Audit Action Items Related to Retaliation Discrimination	24
D.	Workplace Harassment Discrimination	24
	Audit Action Items Related to Workplace Harassment.....	24
E.	The Office of the Superintendent of Public Instruction's Regulations Governing Discrimination	26
	Audit Action Items Related to Regulations Governing	

	Discrimination.....	26
V.	REASONABLY ACCOMMODATING PERSONS WITH DISABILITIES	27
	Audit Action Items Related to Reasonably Accommodating Persons with Disabilities	27
VI.	PERFORMANCE EVALUATIONS	28
	Audit Action Items Related to Performance Evaluations.....	28
VII.	STAFF TRAINING AND DEVELOPMENT	29
	Audit Action Items for Staff Training and Development.....	29
VIII.	INVESTIGATIONS	30
	Audit Action Items for Investigations	30
IX.	PROGRESSIVE DISCIPLINE	32
	Audit Action Items for Progressive Discipline.....	32
X.	EMPLOYEE BENEFITS	33
	Audit Action Items Related to Employee Benefits.....	33
XI.	WAGE AND HOUR LAWS AND COMPENSATION.....	34
	Audit Action Items Related to Wage and Hour Laws and Compensation.....	34
XII.	PRIVACY RIGHTS IN THE WORKPLACE.....	36
	Audit Action Items Related to Employee Privacy Rights.....	36
XIII.	STAFF CIVILITY AND EXPRESSION	37
	Audit Action Items Related to Staff Civility and Expression	38
XIV.	LOCAL GOVERNMENT WHISTLEBLOWER PROTECTION ACT	38
	Audit Action Items Related to the Whistleblower Protection Act	38
	AUDIT ISSUES ARISING AT THE TERMINATION OF EMPLOYMENT	38
I.	PRE-TERMINATION PROCEDURES	38
	Audit Action Items Related to Termination of Employment.....	39
II.	POST-TERMINATION PROCEDURES.....	40
	Audit Action Items Related to References	40
	Audit Action Items Related to Post-Termination Claims	41

WASHINGTON SCHOOLS RISK MANAGEMENT POOL PERSONNEL AUDIT PROGRAM

NOTICE: This is a confidential legal document developed on advice of counsel. You should restrict access and safeguard this document on a need-to-know basis within your district.

INTRODUCTION

There has been a dramatic increase in state and federal laws relating to the relationship between employers and their employees in both the public and private sectors during the past two decades. In general, these laws impose a wide variety of requirements on employers and grant employees a variety of legal protections. Simultaneously, the courts have fashioned an extensive set of doctrines which increasingly apply principles of both tort and contract law to the workplace. As a result, there has been a significant increase in the workload of personnel managers and human resources professionals in all organizations.

This Audit has been developed specifically for use by members of the Washington Schools Risk Management Pool. It will enable each member to conduct a self-evaluation of its employment practices in order to assess the current state of the district's compliance with state and federal laws and regulations in the employment arena. In addition, this Audit is intended to suggest specific personnel practices, policies, and procedures that might be appropriate for member school districts to use. Member school districts should consult with counsel before taking personnel action on specific issues, especially discrimination, staff misconduct, whistleblowers, and any adverse action against an employee.

The introductory information provided in each section is intended to be comprehensible for non-lawyers. We have attempted to provide a general explanation of the issues that arise from specific statutes, regulations, and case law as they relate to each section. The "Audit Action Items" in each section pinpoint specific suggestions for districts to assure compliance with the corresponding legal requirements.

Because we intend this Audit to have broad general application to the member school districts, there are a few specific areas that are not included. For example, we have not attempted to address the issues related to the administration of collective bargaining agreements, because each agreement is unique. Similarly, we do not address the particular statutes and regulations related to the administration of benefits, the employment of substitute or student teachers, or the regulatory structure and requirements of certificated evaluations. Finally, we have not included references to the specific duties imposed by numerous federal laws upon federal contractors.

The focus of this Audit is on prevention. It is our intent to guide each person who completes this Audit to recognize key issues and considerations arising in the employment context. The most important part of being a successful employer is preventing problems or stopping small problems from becoming larger. In order to do that, employers need a broad general understanding of the legal principles governing all phases of the employment relationship. This Audit is intended to provide the basis for attaining that level of understanding.

Throughout this Audit, you will see references to the Washington State School Directors Association Model Policy Reference Manual ("WSSDA"). A majority of member school districts use this manual. Policies and Procedures relating to the particular subject matter are cross-referenced by policy number and adoption date. Members can assume the particular policy/procedure is lawful and current unless otherwise noted.

AUDIT ISSUES IN THE HIRING PROCESS

I. ADVERTISEMENTS FOR JOB CANDIDATES

Workplace discrimination issues first arise in the recruiting process. Essentially, all federal and state anti-discrimination and fair employment practice laws extend their protections to recruitment procedures. Accordingly, no job advertisements should contain any language indicating a preference, limitation, or discrimination based on a protected status like race, color, creed, religion, disability, age, sex, marital status, sexual orientation, gender identity, gender expression, national origin, or any other protected class. In exceptional circumstances, gender may be referenced, but only if that characteristic is a bona fide occupational qualification for the particular position.

Generally, districts should eliminate any references, direct or indirect, to protected classes in job advertisements and implement recruitment methods that will reach diverse segments of the job pool.

WSSDA Policy 5000 (12/14)

WSSDA Policy 5001 (04/23)

WSSDA Policy 5010 (07/25)

WSSDA Policy 5612 (06/22)

WSSDA Procedure 5000P (12/14)

WSSDA Procedure 5010P (12/24)

Audit Action Items Related to Job Advertisements:

- __1. Insert Equal Employment Opportunity ("EEO") statements in all job advertisements.
- __2. Delete any protected class identifiers, e.g., age or sex, or other job requirements, e.g., height or weight, that have not been validated as necessary for performance of the essential functions of the job, unless they are bona fide occupational qualifications. For example, sex **may** be a BFOQ for some physical education or coaching positions; race and national origin can never be BFOQs.
- __3. Run all advertisements by a human resources representative for approval.
- __4. Place advertisements in media resources that reach into protected-class communities within your geographic area of recruiting.
- __5. Do not solely rely on word-of-mouth recruiting.
- __6. Formulate a consistent practice regarding whether you accept "walk-in" applications.
- __7. If the position is unionized, consider including that information in the advertisement.
- __8. If you use any pre-employment testing or screening mechanisms, e.g., drug testing or criminal background checks, list those in the advertisement.
- __9. Consistently post advertisements in a readily accessible location in the district's administrative building and on its website.
- __10. Ensure job advertisements or the hiring process comply with any internal or external hiring requirements in any governing collective bargaining agreement.

NOTES:

II. JOB DESCRIPTIONS

Under the Americans with Disabilities Act (ADA) and Washington Law Against Discrimination (WLAD), it is illegal to discriminate against a qualified individual with a disability who can perform the essential functions of a job, with or without reasonable accommodation. Consequently, it is helpful to formulate job descriptions that identify the essential functions of each job. Job descriptions also provide the basis for recruitment, selection, and employment of staff; clarify expectations; and provide a basis for performance evaluations.

WSSDA Policy 5000 (12/14)

WSSDA Policy 5222 (10/15)

WSSDA Policy 5021 (12/11)

WSSDA Procedure 5000P (12/14)

Audit Action Items Related to Job Descriptions:

- ___1. Post all job descriptions in the district office in a place and form accessible to all applicants, including those with disabilities.
- ___2. Identify the essential functions of the job in each job description.
- ___3. Include any statutorily required duties in job descriptions for principals, teachers, and administrators. (RCW 28A.150.240 and 28A.400.100)
- ___4. Include in the job description "subjective" job requirements, such as "professionally interact with students, staff members, and community members" and the like.
- ___5. Use the phrase "and such other duties as the employer may assign," or some similar phrase, to ensure flexibility.
- ___6. Include "maintain physical presence at assigned location" as an essential function in each job description.
- ___7. Be specific about the physical requirements of the job, e.g., prolonged standing or ability to lift 25 pounds, as long as they are job-related and consistent with business necessity.
- ___8. Include factors about working in a particular environment, e.g., noise levels, air pollution, or inside or outside work.
- ___9. Include communication skills that are required where applicable, but make sure any language requirements are job-related and consistent with business necessity.
- ___10. Do not include requirements for a position unless those requirements are necessary for the successful performance of the job or required by law.
- ___11. List equipment that must be used on the job.
- ___12. Establish a system for periodically reviewing and revising job descriptions; provide staff with updated copies of their job descriptions.

__13. Adopt a policy on job sharing by district employees. (RCW 28A.405.070)

NOTES:

III. JOB APPLICATIONS

It is critical for employers to make the best hiring decisions possible for each new opening in their workforce. The costs and potential liability associated with subsequently terminating an employee demonstrate that hiring is the most important decision an employer can make. Because job applications are usually the first information an employer receives about a candidate, it is imperative that they be as informative as possible. At the same time, anti-discrimination and fair employment practice laws prevent an employer from seeking certain kinds of information from applicants.

WSSDA Policy 5000 (12/14)

WSSDA Procedure 5000P (12/14)

Audit Action Items Related to Job Applications:

- __1. Formulate a policy or adopt a consistent practice regarding your acceptance of applications: i.e., limit acceptance of applications to specific days or time periods during which positions are available, accept applications only in response to specific job advertisements, or accept applications from anyone wishing to apply for any current or prospective job opening.
- __2. Consider reasonable accommodations that may be necessary to assist individuals with disabilities who otherwise may not be able to complete your job application.
- __3. Eliminate any information from job applications that identifies the applicant as having protected-class characteristics, e.g., age, marital status, pregnancy, race, sex, sexual orientation, gender identity, disability, religion, or national origin.
- __4. Ensure applicants have the opportunity to identify their preferred pronouns.
- __5. Eliminate questions that could permit discrimination based on family relationship, membership in any lawful organization, or the exercise of legal rights during off-school hours. (RCW 28A.405.250)
- __6. Only require information that bears a reasonable, definable relationship to successful job performance for the position sought.
- __7. Provide applicants with an up-to-date job description at the time of application.
- __8. Ask all applicants whether they can perform the essential functions of the job with or without reasonable accommodation (provide job description if you are asking this question). Never ask an applicant whether he or she has a disability.
- __9. Include an EEO statement on the face of the application.
- __10. Insert a statement regarding the consequences of intentionally falsifying or omitting material information on the application (up to and including termination).
- __11. Include a question about criminal **convictions**, guilty pleas, and pleas of nolo contendere. Have a

consistent policy with regard to denial of employment based on convictions.

- ___12. Include a question that asks an applicant if she or he has ever been the respondent of any anti-harassment, stalking, or sexual assault protection order.
- ___13. Consider a requirement that any applicant with a criminal history provide copies of the police report, charging document, sentencing paperwork, and proof that the applicant has fully complied with the terms and conditions of her/his sentence.
- ___14. Consult counsel before denying employment based on disqualifying information, a conviction, or the applicant's inability to perform the essential functions of the job due to a disability.
- ___15. In applications for positions where the employee will have unsupervised access to children, developmentally disabled persons, or vulnerable adults, notify the applicant that any offer of employment will be conditioned on satisfactory results of a background check for criminal history or other disqualifying information.
- ___16. Do not ask applicants to submit photographs of themselves; if you need a photograph for employee identification, obtain it after hire.
- ___17. If necessary, elicit information pertaining to protected classifications on a separate or tear-off form, with clear notice to the applicant that provision of the information is voluntary and an explanation of the purposes for which the information is sought. Keep the forms in a separate file where hiring decision-makers cannot access them.
- ___18. Insert a reference release form with your job applications so you can obtain more information about the applicant.
- ___19. Review your application on a periodic basis to ensure compliance with new laws.
- ___20. Date-stamp all applications and maintain them for a consistent period of time.

NOTES:

IV. INTERVIEWS

EEO and ADA principles are the most important legal considerations for employers during the interview part of the application process. Employers must be very cautious during interviews not to ask for information that directly or indirectly elicits protected-class or disability-related information. Nor may employers ask questions that may disproportionately screen out members of protected groups, unless those inquiries can be justified by business necessity. Also, interviewers must be aware of the potential need to reasonably accommodate individuals with disabilities during the interview process.

WSSDA Policy 5000 (12/14)

WSSDA Procedure 5000P (12/14)

Audit Action Items Related to Interviews:

- ___1. Train all interviewers about proper and improper pre-employment inquiries during the interview process.

- __2. Devise interview questions that are as objective as possible and are clearly job-related.
- __3. Use checklists to ensure interviewers consistently follow the same procedures and ask the same questions to each applicant.
- __4. Use interviewers who reflect the diversity of your workforce and job applicant pool.
- __5. Be sure your interview areas are accessible to individuals with disabilities.
- __6. Do not inquire whether an applicant has a disability. You may, if you wish, list the essential functions of the job and ask every applicant: (a) whether s/he can complete those functions, with or without reasonable accommodation; and (b) (if the applicant indicates s/he can perform the essential functions of the job) how s/he would perform the tasks.

If the applicant's disability is obvious or if the applicant voluntarily discloses the disability, or the need for accommodation, you may ask: (a) how s/he would perform the tasks (even if not asked of other applicants); (b) whether s/he needs a reasonable accommodation; and (c) if so, what accommodations s/he would need.
- __7. Do not inquire about an applicant's family status, caretaking responsibilities, or, generally, personal life.
- __8. Refrain from making any promises or guarantees to applicants during interviews.
- __9. Thoroughly inquire about gaps in time in candidates' resumes.
- __10. Thoroughly inquire about candidates' stated reasons for leaving their prior positions.
- __11. Inquire about an applicant's omission of former immediate supervisors as references.
- __12. Inform applicants about the union status of the position, if applicable.
- __13. Inform candidates that any job offer is conditional on (1) Board approval; (2) satisfactory completion of a background check; and (3) proof of identity and eligibility to work in the U.S.
- __14. Screen all applicants for prior misconduct by asking the applicant whether he or she was ever the subject of an investigation, complaint, or inquiry regarding (1) sexual misconduct; (2) failing to maintain a professional relationship with a student; (3) emotionally, verbally, or physically mistreating any student, staff member, or member of the community; or (4) discrimination.
- __15. Monitor your interview process and results for discriminatory effects.

NOTES:

V. CANDIDATE SCREENING

Candidate screening includes all pre-hiring processes besides the application and interview, such as pre-employment testing and reference checks.

Prospective employers must be as thorough as possible in screening candidates. Beyond the obvious benefit of thorough screening techniques, employers need to avoid hiring an employee who then causes foreseeable harm to others. School districts also have special background checking requirements imposed by law. Some

of these checks will not be conducted until a conditional job offer has been made to the top candidate.

The screening of candidates includes contractors and volunteers.

WSSDA Policy 5000 (12/14)

WSSDA Policy 5005 (10/24)

WSSDA Procedure 5000P (12/14)

Audit Action Items Related to Candidate Screening:

- ___1. If a disabled applicant requests, provide reasonable accommodations for taking pre-employment scored tests.
- ___2. Establish written guidelines for any pre-employment drug screening (and limit it to safety-sensitive and CDL positions).
- ___3. Make certain that any testing you do is handled by reputable, professional firms, and that test results are treated in a confidential manner and made available only to those persons who "need to know" the information.
- ___4. Determine that your scored test results allow preferences for veterans with a qualifying discharge. (RCW 41.04.010)
- ___5. If you require pre-employment screening tests, ensure that the tests have been validated and monitor test results for disparate impact on protected-class applicants.
- ___6. Decide which job categories should be subject to pre-employment medical examinations. Require applicants to submit to pre-employment medical examinations only after an offer of employment has been extended, and only if such requirements are imposed upon all entering employees in the same job category.
- ___7. Maintain the confidentiality of any physical examination results or other medical information by keeping the information in a medical file apart from the regular personnel file. Store the file in a separate locked cabinet. Restrict access to designated person(s).
- ___8. Use the results of any physical examinations only to determine whether the applicant can perform the essential functions of the job, with or without reasonable accommodation.
- ___9. Conduct thorough reference checks on applicants using standard questions; consider using a written form.
- ___10. Prior to hiring or retention, request a disclosure from the applicant for employment, contractor, or prospective volunteer regarding criminal history and conduct a criminal background check through the Washington State Patrol and FBI, including a fingerprint check. This may be waived if the applicant has had the same background check within the last two years. (RCW 28A.400.303; RCW 10.97.030; and RCW 43.43.830-.834)
- ___11. Request verification of certification status from OSPI for certificated candidates, as well as any information relating to sexual misconduct on file at OSPI.
- ___12. Screen all applicants for prior sexual misconduct by obtaining authorization from the applicant to check with current and past school district employers and requesting the needed information from current and past employers in writing. Do not hire any applicant who will not sign the authorization. (RCW

- ___13. If you are going to obtain a credit report or an investigative consumer report on an applicant, disclose to the applicant, in a separate document, the fact that you may do so, and obtain written authorization.
- ___14. Before taking any adverse action, e.g., refusal to hire, based on a credit or consumer report, give the applicant (1) a copy of the report; (2) the name, address, and telephone number of the agency supplying the report; (3) a written description of his/her rights under the federal and Washington Fair Credit Reporting Acts; and (4) a reasonable opportunity to respond to any information on the credit or consumer report that the applicant contends is false or misleading.
- ___15. In addition to a criminal background check, require all applicants for employment, contractors, or volunteers to complete a questionnaire that requires the applicant to disclose, among other things, being the respondent in any anti-harassment, stalking, or sexual assault protection order, as well as any prior acts of misconduct or discipline that may not fall within the scope of sexual misconduct. This includes any prior discipline, being the subject of an investigation/complaint/inquiry, or resigning in lieu of being terminated by any previous employer or entity the applicant served as a volunteer.
- ___16. Do not use, or threaten to use, polygraph exams on applicants.

NOTES:

VI. THE JOB OFFER

It is always preferable to make written offers of employment that carefully spell out the pertinent terms of the offer and anticipated employment. However, the danger of using written offers is that an employer may inadvertently make promises to the applicant that can later be enforced as a contract of employment. Particular care must be given to the content of all job offers, both written and oral.

For certificated employees, there also are statutory contract requirements.

WSSDA Policy 5001 (04/23)
WSSDA Policy 5005 (07/17)
WSSDA Policy 5050 (07/23)
WSSDA Policy 5610 (06/22)

WSSDA Procedure 5005P (07/17)
WSSDA Procedure 5610P (09/20)

Audit Action Items Related to Job Offers:

- ___1. In light of I-200, do not grant preferences in hiring based on race or gender.
- ___2. Communicate to the successful candidate in writing that s/he will be recommended for the position, describing the type of contract to be offered.
- ___3. Have someone from your human resources department review the written job offer before sending it to the applicant.
- ___4. Request that applicants submit written acceptances of your written job offers.

- ___5. Make all offers conditional on satisfactory results of any screening that still needs to be conducted or if results are pending.
- ___6. Inspect identity and eligibility to work documents and complete I-9 form within the first three days of work.
- ___7. For certificated staff, employ the candidate at an official Board meeting and issue the appropriate contract (regular, provisional, or supplemental), not to exceed one year except, under limited circumstances, three years for principals. (RCW 28A.400.300; RCW 28A.400.315; and RCW 28A.405.210)
- ___8. Send standardized written rejections to unsuccessful candidates.
- ___9. Report new hires to DSHS (state support agency) as required by law. (RCW 26.23.040)
- ___10. DO NOT allow the prospective employee or volunteer to assume any duties or responsibilities until all background checks are complete and contracts are ratified.

NOTES:

VII. EMPLOYEE ORIENTATION TRAINING

Orientation and training ensure employees have notice and education about their rights and duties under governing laws and district policies. Providing notice to employees helps ensure due process and predictable employer expectations. Providing education to employees helps prevent and deter wrongful conduct.

WSSDA Policy 5260 (07/25)
WSSDA Policy 5253 (03/19)
WSSDA Policy 5011 (04/25)
WSSDA Policy 3421 (12/22)

WSSDA Procedure 5260P (07/25)
WSSDA Procedure 5253P (03/19)
WSSDA Procedure 5253F1 (07/19)
WSSDA Procedure 5011P (04/25)
WSSDA Procedure 3421P (07/25)

Audit Action Items Related to Orientations and Trainings:

- ___1. During orientation at the beginning of employment, provide employees and volunteers with applicable policies.
- ___2. During orientation at the beginning of employment, provide employees with electronic or “in- person” training about their rights and duties under applicable policies.
- ___3. Ensure your “Orientation Checklist” reflects distribution and training about the applicable policies.
- ___4. Ensure electronic and “in person” training about employees’ rights and duties under applicable policies occurs every two years or in the time proscribed by the specific policy.

- __5. Secure records of each employee’s training history (and training content) in a central location.

NOTES:

VIII. EMPLOYEE HANDBOOKS AND OTHER WRITTEN POLICIES AND PROCEDURES

Employee handbooks, or written policies and procedures have become a source of much guidance during the employment relationship and litigation after it. If not carefully worded, an employee handbook or manual may constitute a (separate) contract of employment. If it does, then an employee who has received and relied upon that handbook may only be terminated in the manner and for the reasons stated. Similarly, courts have found that any promise—written or oral—of specific treatment in specific situations may constitute an employment contract. Therefore, the content and structure of employee handbooks and/or policy and procedure manuals are very important to employers.

WSSDA Policy 5021 (12/11)
WSSDA Policy 5281 (10/21)

Audit Action Items Related to Employee Handbooks and Other Written Policies and Procedures:

- __1. Consult the WSSDA sample policies as a resource for policy development.
- __2. If you use, or wish to develop, an employee handbook or written policy and procedure manual, have it reviewed by counsel before distributing it to employees.
- __3. Avoid drafting language in a policy or handbook that conflicts with any applicable language in a board-level policy or collective bargaining agreement.
- __4. If handbooks or policy manuals cover represented employees, include a statement at the beginning that the applicable collective bargaining agreement will control if the handbook or policy conflicts with the agreement. (RCW 41.59.910)
- __5. Make sure policies are written for, and distributed to, only their intended audience. Handbooks should contain only what all employees need to know.
- __6. Include in all employee handbooks and policy and procedure manuals a statement that the handbook is not a contract and can be changed at any time, with or without notice by the district.
- __7. List examples of conduct that will lead to discipline, up to and including termination, but also include a qualifying statement to indicate that these are examples of unacceptable conduct and are not intended to be all-inclusive. Ensure it tracks WSSDA Policy 5281 (10/21).
- __8. Avoid promises that an employer will follow a specific procedure for administering discipline, e.g., counseling sessions in advance of termination. If you list different types of disciplinary actions, describe them as options from which management may choose, not a series of steps to be followed in a particular order.
- __9. Make sure that policies covering topics included in this audit are consistent with this audit, that the handbook and policy manual are consistent with each other, and that both reflect what actually happens in the workplace.

- ___10. Include in all employee handbooks or policy/procedure manuals an EEO statement and a workplace harassment policy that addresses conduct toward staff, students, and others associated with the district.
- ___11. Ensure applicable leave policies, including the FMLA, are included in the handbook.
- ___12. Reserve management discretion by avoiding the use of absolutes in handbooks and policy/procedure manuals, i.e., terms such as "always," "never," "will," and "shall."
- ___13. Have employees sign a written acknowledgement of receipt of the handbook or manual.
- ___14. Whenever a new or revised handbook or policy/procedure manual is issued, provide a review of the contents for employees that highlights major changes.
- ___15. Any time that updates are made to a handbook or manual, be sure all employees receive the new information and sign a written acknowledgement of their receipt of the changes.
- ___16. Secure each employee's written acknowledgement that she or he has received and reviewed all applicable handbooks or policies.
- ___17. Promulgate an employee conduct or discipline policy that enumerates specific conduct that may result in discipline up to and including termination. See WSSDA Policy 5281 (10/21).
- ___18. Ensure each employee receives a copy of the district's anti-discrimination, harassment, boundary invasion, and misconduct policies on an annual basis.

NOTES:

AUDIT ISSUES DURING EMPLOYMENT

I. LEAVE POLICIES

Numerous state and federal laws establish some types of leave that employers are required to provide to employees. This includes family and medical leave, family care leave, pregnancy leave, voting time, jury duty service, and military leave. In those areas that are regulated, employers must be familiar with the requirements that the law imposes upon them and their employees. State law also requires school districts to have written policies regarding other types of leave.

WSSDA Policy 5400 sets forth general conditions of leave.

We have listed the Audit Action Items related to each of the different forms of required leave, grouping them under headings to identify the particular law involved.

WSSDA Policy 5400 (12/24)
WSSDA Policy 5404 (10/19)
WSSDA Policy 5410 (12/22)
WSSDA Policy 5411 (12/11)

WSSDA Procedure 5406P (05/18)

A. Family and Medical Leave

Federal and state law provides detailed programs for family leave. The federal Family and Medical Leave Act ("FMLA") and state family leave act require covered employers, which includes all public agencies, to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for certain family or medical reasons. Employees are eligible if they have worked for a covered employer for at least one year, for 1,250 hours over the previous 12 months, and at a job site where 50 employees work within 75 miles. [Note: Small districts with less than 50 employees are "covered" by the law and must post the notice, but their employees are not "eligible" for leave.]

The Washington State Paid Family and Medical Leave Act ("PFML") is slightly different from the FMLA and its state counterpart. Notably, it has less strict eligibility requirements and the employee, not the employer, designates leave under this program, which the Employment Security Department administers. The PFML also includes siblings and grandparents within the definition of family. In some situations, leave under the PFML is consecutive to leave under the FMLA.

In addition, there is interplay between these leave acts, the Americans with Disabilities Act, and workers' compensation (if the illness or injury is job-related). An on-the-job injury may also be a disability under the ADA and WLAD as well as a serious medical condition under the leave acts.

WSSDA Policy 5404 (10/19)

Audit Action Items Related to Family Leave:

- ___1. Determine whether your district workforce is large enough (50 or more) for the employees to be eligible for FMLA leave. (PFML applies to all employers in Washington.)
- ___2. Review existing leave policies for compliance with the FMLA, including FMLA regulations, and PFML.
- ___3. Remember that employees who are injured at work have the right to refuse light duty and use FMLA leave instead, although they may lose their right to time loss benefits. If an employee's workplace injury involves time loss, it also may qualify as a "serious medical condition." If so, ensure the workers' compensation and FMLA leaves run concurrently. You must give the employee notice of your intent to run these leaves concurrently. The employee's injury or serious medical condition also may be a disability, which you may need to reasonably accommodate with additional unpaid leave that may run concurrently and/or consecutively to the other leave.
- ___4. Remember that employers must maintain an employee's group health coverage during FMLA leave. An employee's entitlement to other benefits during FMLA leave is the same as to benefits offered for other kinds of leave.
- ___5. Become familiar with the special FMLA provisions for school districts that allow you to (a) place conditions on intermittent leave for instructional employees whose certain leaves involve more than 20 percent of the working days during the period over which the leave extends; and (b) require instructional employees to postpone their return to work until the following term in the case of certain end-of-term leaves. (29 CFR §§ 825.600-.604)
- ___6. Draft a policy explaining to your employees the requirements of the FMLA and how it will be implemented in your organization, including the method you used for calculating the 12-month eligibility period. Make sure it is clear that FMLA runs concurrently with most other leaves, e.g., workers' compensation, but consecutive to leave for maternity disability.

- ___7. Train administrators and supervisors on the requirements of the FMLA, as well as its interplay with the PFML, ADA, WLAD, workers' compensation, and Washington state pregnancy discrimination regulations. Train administrators and supervisors to refer all contacts with medical care providers to a representative of human resources.
- ___8. Parental leave under the PFML must be used within the 16 weeks after birth or placement of the child unless the employee also takes pregnancy-related disability leave. In that instance, the employee must complete the PFML leave within one year of the birth or placement of the child. (RCW 41.04.067)
- ___9. Use the U.S. Department of Labor's forms and letters that explain the rights and obligations under the FMLA and the Washington State Employment Security Department's notification for PFML.
- ___10. Include in your written policy the medical certification requirements of the FMLA and use the DOL's written form for medical certification.
- ___11. Maintain any medical information about the employee or covered family member in a separate and confidential medical file.
- ___12. Ask the employee to supplement vague or incomplete certifications or communications that support an employee's request for leave.
- ___13. Seek re-certification if (1) the employee requests an extension of leave; (2) the circumstances in the previous leave request have changed; or (3) you receive reliable information that casts doubt on the validity of the original certification.
- ___14. Do a preliminary assessment of your "key employees," as defined in both the state and federal laws. If you wish to utilize the "key employee" exception, designate the "key employees" in your workforce, consistent with the provisions of the FMLA. Remember that you must determine the "key employee" issue before the employee requests family leave.
- ___15. Post the FMLA notice in a conspicuous place at the work site for a summary of federal and state posters required in the workplace. You also must include the FMLA notice in all employee handbooks.
- ___16. Consider a policy of personal or other unpaid leave for employees not eligible for FMLA leave. Remember, a qualified employee also may have the right to unpaid leave as a reasonable accommodation under the ADA and WLAD.
- ___17. Remember that an employee who exhausts her or his FMLA leave may be entitled to other forms of leave as a reasonable accommodation under the ADA or WLAD.
- ___18. The FMLA does recognize same-sex spouses, but does not recognize qualified registered domestic partners. However, the Washington Family Leave Act recognizes both. The FLA allows qualified employees 12 weeks of unpaid leave to care for a partner with a serious health condition. This means that the qualified employee may still have 12 weeks of unpaid leave for a different qualifying exigency under the FMLA.
- ___19. Post a poster in a conspicuous place that describes an employer's obligations and an employee's rights under governing leave laws.

NOTES:

B. Pregnancy Leave and Accommodations

Washington employers with more than eight employees are required to allow pregnant employees to take time off for the actual period of disability associated with pregnancy or childbirth. Note: Pregnancy leave does not have a 12-week limit like FMLA or PFML leave. Rather, it runs the entire period of time that a person is sick or temporarily disabled because of pregnancy or childbirth. Further note, pregnancy leave is consecutive to any FMLA or PFML leave that the employee may be entitled to due to a serious medical condition or other qualifying conditions that include the need to care for a newborn child.

Washington employers also are required to reasonably accommodate pregnant employees when they are at their assigned work location.

WSSDA Policy 5404 (10/19)

Audit Action Items Related to Pregnancy Leave (WAC 162-30-020) and Accommodations:

- ___1. Review your leave policies to make sure you treat pregnancy no less favorably than any other disability.
- ___2. Train supervisors on the pregnancy disability leave requirements.
- ___3. Be aware that pregnancy disability leave must be consecutive to the 12 weeks of family leave that a qualified employee can take to care for a newborn.
- ___4. Review policies to assure that if you grant maternity leave benefits beyond those required by law, you grant the same paternity benefits.
- ___5. Ensure compliance with the law by returning the employee to the same or a similar job at the end of pregnancy leave.
- ___6. If the employee simultaneously qualifies for 12 continuous weeks of FMLA leave and pregnancy disability leave, ensure you provide the employee notice that the FMLA leave will begin once the need for pregnancy disability leave expires.
- ___7. Display a poster in a conspicuous place that describes an employer's obligations and an employee's rights under governing leave laws.
- ___8. Reasonably accommodate all pregnant employees and provide a private break room for the employee to express breast milk for two years after the child's birth. (RCW 43.10.005)

NOTES:

C. Family Care Leave and Miscellaneous Leaves

Employers are required to allow employees their choice of available sick leave or other paid time off to care for a child with a health condition that requires treatment or supervision, or to care for a spouse, parent, parent-in-law, or grandparent who has a serious health condition or an emergency health condition, and to care for children 18 years and older with disabilities. Grandparents-in-law, grandchildren, and siblings are not included.

The Family Care Act does not allow employees to use available time off to care for a healthy newborn. The FMLA and PFML govern that qualifying exigency. See Section I(A), supra.

Washington law also requires school districts to have written policies for leaves for conference attendance, sabbaticals, bereavement, and emergencies.

WSSDA Policy 5403 (12/11)

WSSDA Policy 5404 (10/19)

WSSDA Policy 5409 (06/14)

WSSDA Procedure 5409R (06/14)

Audit Action Items Related to Family Care Leave (RCW 49.12.265-.295: WAC 296-130):

- ___1. Review your leave policies to ensure they do not prevent employees from using any form of available leave for a qualifying event.
- ___2. Train supervisors not to discourage employees from using available leave to care for sick school-aged children who need supervision.
- ___3. Promulgate written policies for leaves for conferences, sabbaticals, bereavement, and family emergencies with or without compensation as determined by the Board.
- ___4. Post a poster in a conspicuous place that describes an employer's obligations and an employee's rights under governing leave laws.

NOTES:

D. Miscellaneous Sick Leave Issues

Washington law contains special rules regarding paid leave and cash-out of accrued paid leave.

WSSDA Policy 5401 (12/17)

WSSDA Policy 5406 (05/18)

WSSDA Procedure 5406P (05/18)

Audit Action Items Related to Sick Leave (RCW 28A.400.300: RCW 28A.400.210: RCW 28A.400.380: and WAC 392-136):

- ___1. Adopt a written policy providing for not less than 10 and not more than 12 days per year of annual leave with compensation for illness, injury, or emergencies, and pro rata leave for part-time staff. State in the policy whether a leave balance will be credited upon rehire.
- ___2. Consider an attendance incentive policy allowing for cash-out of accrued sick leave in excess of 60 days at the rate of one day's pay for each four days of sick leave.
- ___3. When employing a certificated or classified employee previously employed in another district, credit the employee's leave balance from the prior district.
- ___4. Provide for sick leave cash-out at retirement or death of an employee, as well as for cash-out when employees over 55 terminate with more than 10 years of service (retirement plan 3) or 15 years of service (retirement plan 2). All such cash-out is at the rate of one day of compensation for each four days of sick leave.

- __5. Consider developing a policy for leave sharing whereby one employee may donate accrued leave or personal holiday time to another who would otherwise be forced to use unpaid leave or resign their employment. (RCW 41.04.650-.670 and WAC 392-136)

NOTES:

E. Domestic Violence/Sexual Assault Leave

Under Washington’s Domestic Violence Leave law, employers are required to give eligible employees “reasonable” leave from work, intermittent leave, or a reduced leave schedule to obtain legal or other assistance due to domestic violence, sexual assault, or stalking. The employee is entitled to use this leave to also assist a similarly situated family member or person with whom the employee had a dating relationship.

The law further entitles the employee to the same or equivalent position and benefits of employment that the employee held when the leave commenced.

Employees must give their employer notice of the need for this leave no later than the end of the first day of their leave, which may be paid or unpaid.

Audit Action Items Related to Domestic Violence/Sexual Assault Leave (RCW 49.76):

- __1. Ensure existing leave policies apprise employees of this right.
- __2. Train supervisors to be alert for circumstances that may implicate this law and to ensure the employee in question has a safe work environment. This may include the creation and distribution of a safety/emergency plan for the employee.

NOTES:

F. Military Leave

Under the federal Family Medical Leave Act, a qualified employee who is the spouse, son, daughter, parent, or next of kin of a qualified armed services member is entitled to 26 workweeks of unpaid leave during a single 12-month period to care for the armed services member. This leave is not in addition to any other leave under the FMLA.

The FMLA also provides that a qualified employee is entitled to 12 workweeks of unpaid leave for qualifying exigencies arising out of the employee’s spouse, son, daughter, or parent being on, or preparing for, a call of duty. Qualifying exigencies include short-notice deployment, military events and related activities, childcare and school activities, financial and legal arrangements, counseling, rest and recuperation, post-deployment activities, and additional activities. This leave is not in addition to any other leave under the FMLA.

Under the Washington State Military Family Act, a qualified employee who is the spouse of an armed services member on, or preparing for, a call of duty is entitled to 15 days of unpaid leave per deployment. The leave may be used prior to the deployment, or during the period when the military spouse is on leave during the deployment. This leave does not have to be taken all at once. This leave is in addition to any other PTO normally available to the employee.

Washington law entitles public employees who are members of the Washington National Guard or armed services reserves to 21 days of paid leave each year for military training or active duty. This leave is in addition to any other PTO normally available to the employee.

WSSDA Policy 5404 (10/19)

WSSDA Policy 5407 (12/11)

WSSDA Procedure 5407P (12/11)

Audit Action Items Related to Military Leave (RCW 73.16.032-.053: RCW 38.40.060: RCW 49.77: 38 U.S.C. § 4301: and 29 U.S.C. § 2612):

- ___1. Review your leave policies to make sure you provide paid leave up to 21 days per year to employees who are required to fulfill obligations as members of the Washington National Guard or armed services forces reserves.
- ___2. Ensure that members of the armed services or the Washington National Guard are not discharged or denied promotional opportunities or any other benefit of employment because of their obligation.
- ___3. Ensure that qualified employee who is the spouse of an armed services member on, or preparing for, a call of duty is entitled to 15 days of unpaid leave per deployment. The leave, which may be intermittent, may be used prior to the deployment, or during the period when the military spouse is on leave during the deployment.
- ___4. Make sure your leave policy provides for leave for active-duty military service of up to five years, with benefits continuation and reinstatement in accordance with applicable law.

NOTES:

G. Jury Duty

Employers are also required to allow time for employees to serve as jurors and to vote.

WSSDA Policy 5408 (12/11)

Audit Action Items Related to Jury Duty (RCW 2.36.165):

- ___1. Review your leave policies to make sure you provide paid or unpaid leave to employees called to jury duty.
- ___2. Train supervisors not to discourage jury duty.
- ___3. If you provide paid leave for jury duty, consider developing a written policy limiting the amount of jury duty leave that will be paid, e.g., two weeks. Some trials can last more than six months!
- ___4. Reserve the right to ask employees to request a postponement of jury duty on the grounds of hardship.
- ___5. State in your policy whether you provide leave for employees subpoenaed as witnesses and any limitations on such leave.

NOTES:

II. HEALTH AND SAFETY ISSUES

Issues related to workplace safety and health must be a primary concern for all employers and employees. State and federal laws require employers to furnish a work site that is free from recognized hazards likely to injure employees. At the same time, the economic costs to employers of employee health problems, including drug and alcohol abuse, are staggering. Employers must implement programs that are carefully tailored to legitimate health and safety concerns and that fully comply with all state and federal laws. However, employees' rights to privacy and freedom from discrimination must be considered when any programs related to employee health and safety issues are implemented.

WSSDA Policy 5004 (12/22)

WSSDA Policy 6511 (12/11)

WSSDA Procedure 5004 (12/22)

WSSDA Procedure 6511P (12/11)

A. Smoking

Audit Action Items Related to Smoking Policies:

- ___1. Develop and disseminate a written policy prohibiting smoking or using any tobacco products on school district property, in district-owned vehicles, or during working hours. (RCW 28A.210.310)
- ___2. Consider providing employees with incentives to quit.

NOTES:

B. Drugs and Alcohol

WSSDA Policy 5201 (07/19)

WSSDA Policy 5202 (10/15)

WSSDA Policy 5203 (12/11)

WSSDA Procedure 5202P (05/20)

Audit Action Items Related to Drug and Alcohol Policies:

- ___1. Develop intervention strategies for dealing with drug and alcohol abuse by employees that focus on prevention and rehabilitation, as well as discipline and discharge.
- ___2. Become familiar with the federal Drug-Free Workplace Act and comply with its requirements.
- ___3. Develop drug and alcohol testing policies for employees using commercial drivers' licenses in their jobs, as required by the Federal Motor Carrier Safety Act.
- ___4. Have a drug and alcohol policy in place. Ensure it complies with all state and federal laws, including

the ADA and the FMLA. Ensure the policy bars employees and volunteers from being under the influence of alcohol or illegal drugs at district events in addition to prohibiting the possession, use, or distribution of alcohol or illegal drugs on district property or at district events. Remember that marijuana is still illegal under federal law.

- ___5. Include in your policy a requirement that employees must inform their supervisors if they are taking any drug that may affect their ability to **safely** perform their jobs. Note: The EEOC takes the position that an employer may only require employees to disclose medications when they may affect safety.
- ___6. Eliminate any policies that may discriminate against job applicants or employees who have completed or are participating in an alcohol/drug rehabilitation program and are no longer using alcohol/drugs.
- ___7. Train supervisors about drug and alcohol testing and substance abuse issues that relate to your workplace.
- ___8. Consider using a "last chance agreement" for employees with drug or alcohol abuse problems. Identify the problem (conduct, not status as an alcoholic or "drug addict") to be addressed; the express terms upon which the agreement is being signed; the requirements it imposes upon the employee; the timeline for compliance, i.e., the duration of the employment relationship; and the consequences of the employee's failure to comply. Such an agreement should also advise the employee to seek the advice of counsel before signing it.
- ___9. Consistently respond to allegations of employees reporting for duty under the influence of alcohol or illegal drugs. Respond immediately, not the following day.
- ___10. Consider implementing a staff assistance program to make counseling available to employees. If you have such a program, make sure it complies with HIPAA.

NOTES:

C. Infectious Diseases

WSSDA Policy 5004 (12/22)

WSSDA Procedure 5004P (12/22)

In addition to concerns regarding AIDS, school districts need to ensure they take steps to stop and reduce the spread of staph infections (MRSA) and other contagious diseases.

Audit Action Items Related to Infectious Diseases (RCW 49.60.172-.174 and WAC 246-110):

- ___1. Eliminate any policies that may discriminate against job applicants or employees who are HIV-positive or have AIDS.
- ___2. Within 10 days of employment, train all new employees on risks associated with HIV/AIDS and other infectious diseases like MRSA, including their epidemiology, transmission, treatment, and prognosis, as well as state and federal laws prohibiting discrimination against persons with HIV/AIDS.
- ___3. Before the first day of each school year, annually train all employees with reasonably anticipated exposure to blood or other potentially infectious material regarding bloodborne or direct-contact pathogens.

- ___4. Retain records that employees have received appropriate training.
- ___5. Do not automatically exclude students or staff members who are colonized or infected with MRSA. Reserve exclusions for situations where the wound cannot be contained with a clean dressing taped on all four sides.
- ___6. Ensure information about students or staff is only disclosed on a “need to know” basis. This should be narrowly tailored solely to stop the risk of further transmission. Typically, it is not necessary to inform the entire school community about a MRSA infection. Consult with counsel before identifying the person with the infection.
- ___7. Educate athletic directors, physical education teachers, and coaches on practices to stop and reduce the risk of MRSA.
- ___8. Report the outbreak of a contagious disease, as defined in WAC 246-110-010, to the appropriate local health care officer.
- ___9. Train employees and develop a written exposure control plan to eliminate or minimize employee exposure to blood or other potentially infectious materials.

NOTES:

D. Workplace Violence

Districts have a duty to maintain a safe workplace environment.

WSSDA Policy 5515 (06/21)
WSSDA Policy 6511 (12/11)
WSSDA Policy 6513 (07/23)

WSSDA Procedure 5515P (06/21)
WSSDA Procedure 6511 (12/11)
WSSDA Procedure 6513P (12/11)

Audit Action Items Related to Workplace Violence:

- ___1. Develop and implement a comprehensive safe schools plan based on guidance from OSPI. (RCW 28A.320.125)
- ___2. Ensure you follow the OSPI model policy for providing notice of threats of violence or harm to students and staff. (RCW 28A.320.123-.126)
- ___3. Create a district-wide workforce mental health committee to share links and resources for secondary traumatic stress, stress management, and other mental health resources and supports available through OSPI, the governing educational service district, and the school employees’ benefits board.
- ___4. Require all employees to attend training on safety procedures at their (specific) worksite. Secure attendance records of these trainings.

- ___5. Respond promptly to reports of employees, contractors, members of the community, or volunteers who exhibit potentially dangerous or antisocial behavior.
- ___6. Report to OSPI by January 31 of each year all known incidents of weapons possession on school premises, buses, or facilities used by the school in the prior year. (RCW 28A.320.130)

NOTES:

E. Maintaining Professional Staff-Student Boundaries

Districts have a duty to exercise reasonable care to protect students from foreseeable harms, including sexual abuse. Staff-student boundary invasions often signal that this conduct is occurring or may occur if not stopped and deterred. Boundary invasions, even if not sexual, may also constitute a breach of a professional relationship and harm a student.

WSSDA Policy 5253 (03/19)

WSSDA Procedure 5253P (03/19)

WSSDA Procedure 5253F1 (07/19)

Audit Action Items Related to Staff-Student Boundaries:

- ___1. On an annual basis, ensure all staff and volunteers receive specific training governing this issue. Document and secure each employee's completion of this training.
- ___2. Adopt WSSDA Model Policy 5253, Procedure 5253P, and Procedure No. 5253F1.
- ___3. Consider revoking the supplemental contracts of any staff or status of volunteers who engage in this conduct. Take other prompt action to deter and stop the conduct.

NOTES:

III. EMPLOYER RECORD-KEEPING AND REPORTING REQUIREMENTS

State and federal laws impose specific record-keeping requirements upon employers. The primary issues of employer concern are:

- 1. Retaining the proper records for the required length of time;
- 2. Maintaining employee rights to privacy regarding records; and
- 3. Required notice of Employment Practices claims to the Pool.

Documents containing EEO, health, immigration, or medical testing information should always be segregated from employee personnel files.

WSSDA Policy 5260 (07/25)

WSSDA Procedure 5260P (07/25)

Audit Action Items Related to Employer Record-Keeping Requirements:

- __1. Review record-keeping and retention policies.
- __2. Establish a system for destroying outdated records.
- __3. Segregate records and limit access to EEO, I-9, and medical/health information.
- __4. Provide employees with access to their personnel files on at least an annual basis. (RCW 49.12.240)
- __5. Permit employees to add a statement of rebuttal or correction to their files; former employees shall have the right of rebuttal or correction for a period not to exceed two years after employment (RCW 49.12.250)
- __6. Remind employees of their obligation to keep personal information up to date by notifying the human resources department of changes in name, address, or telephone number, as well as changes in marital status or dependents if relevant to insurance or pension plans.
- __7. Train or otherwise inform employees that their individual files, notes, text messages, and emails may be discoverable pursuant to the Washington Public Records Act.
- __8. Ensure district email accounts retain data in compliance with the records retention schedule for districts.

Audit Action Items Related to Employer Reporting Requirements of Employment Claims:

- __1. Establish a system to ensure that districts provide immediate notice to the Pool when they learn of circumstances that may lead to a claim being made against a district, including full details about the alleged wrongful employment practice.
- __2. Unless there are exigent circumstances, contact the Pool before taking any action or conducting any additional investigation.

NOTES:

IV. DISCRIMINATION

Employers have a legal obligation to prevent, investigate, and deter discriminatory conduct. This generally includes the following kinds or theories of discrimination: disparate impact, disparate treatment, retaliation, and harassment. Each of these theories requires evidence that an adverse action or unwelcome conduct occurred on the basis of a protected status or activity. A protected status can be a characteristic like race, ethnicity, gender, sex, sexual orientation, gender identity, gender expression, religion, national origin, disability, or any other protected characteristic under governing state and federal anti-discrimination laws. Protected activity generally involves “whistleblowing” opposition to unlawful conduct, filing a complaint, or participating in an investigation or litigation.

A. Disparate Impact Discrimination

Disparate impact discrimination occurs when an employer has a facially neutral policy or practice that disproportionately impacts persons of a certain protected class. Disparate impact claims generally occur when

a standardized test or job application procedure disproportionately excludes persons of a protected class. To establish a claim of disparate impact, an employee does not need to show that the employer intended to discriminate against her or him.

Employers may be able to justify the relevant policy or practice by showing that it is a “business necessity” and is manifestly related to the position(s) held by the employee(s).

B. Disparate Treatment Discrimination

Disparate treatment discrimination occurs when a discriminatory bias causes an employer to take an adverse employment action against an applicant or employee. In disparate treatment claims, an adverse employment action is a personnel decision that causes economic harm.

Disparate treatment claims usually involve a discriminatory termination. They also can involve an employer’s failure to hire or promote a qualified person. To establish a claim of disparate treatment, an employee usually produces direct evidence, e.g., a “smoking gun” email or a discriminatory statement, that the decision maker was biased. An employee can also establish a claim through circumstantial evidence that the employer’s explanation for the challenged personnel decision is not believable. An aggrieved employee generally accomplishes this by showing that she or he was qualified for the position (or met the job requirements) and that a less qualified person with different protected traits replaced (or was hired instead of) her or him.

WSSDA Policy 5010 (07/25)

WSSDA Policy 5011 (04/25)

WSSDA Procedure 5010P (12/24)

WSSDA Procedure 5011P (04/25)

Audit Action Items Related to Disparate Discrimination:

1. When taking an adverse action against an employee, secure all documents and evidence to support that action.
2. Compare your decision to the circumstances of other employees who have engaged in substantially similar misconduct. Ensure your approach is consistent.
3. Ensure the level of discipline is proportionate to the misconduct.

C. Retaliation

Retaliation occurs when an employee engages in protected activity that causes the employer to take an adverse employment action. Protected activity generally occurs when an employee (1) opposes a practice that she or he reasonably believes is unlawful, or (2) participates in an investigation of allegedly unlawful conduct.

In retaliation claims, an adverse employment action must be materially adverse to a reasonable employee or job applicant. However, it does not require economic harm and may include transfers, the loss of promotion opportunities, discipline, or conduct that injures the employee’s name or reputation.

WSSDA Policy 5010 (07/25)

WSSDA Policy 5011 (04/25)

WSSDA Procedure 5010P (12/24)

WSSDA Procedure 5011P (04/25)

Audit Action Items Related to Retaliation Discrimination:

1. When taking an adverse action against an employee, secure all documents and evidence to support that action.
2. Compare your decision to the circumstances of other employees who have engaged in substantially similar misconduct and who have not engaged in protected activity. Ensure your approach is consistent.
3. Ensure the level of discipline is proportionate to the misconduct.
4. Ensure relevant administrators are not aware of the employee engaging in any, even if unrelated, form of protected activity prior to taking the adverse action.

D. Workplace Harassment Discrimination

Hostile work environment harassment can take many different forms involving verbal, physical, or electronic conduct that is unwelcome on the basis of a protected class.

Sexual harassment also includes sexual advances, requests for sexual favors, sexual comments, and other conduct of a sexual nature or conduct because of one's sex. Offensive conduct may also involve pressure for sexual favors or employment decisions based upon an employee's acquiescence to sexually harassing behavior in the workplace. Washington law extends protection against sexual harassment to students, parents, volunteers, and others participating in school activities.

To be legally actionable, the harassment must be severe and/or pervasive and be unwelcome on the basis of at least one protected characteristic.

Under Washington law, a school district is liable for harassment if a manager subjected a subordinate to the conduct or if the district knew or should have known about the harassment and failed to take swift, adequate action to end it. Harassment suits often include tort and contract claims, including assault and battery and infliction of emotional distress. Because these suits are costly in both economic and psychological terms and very disruptive to the workplace, it is important for districts to develop comprehensive policies for dealing with harassment and to enforce those policies.

WSSDA Policy 5010 (07/25)

WSSDA Policy 5011 (04/25)

WSSDA Procedure 5010P (12/24)

WSSDA Procedure 5011P (04/25)

Audit Action Items Related to Workplace Harassment:

- ___1. Develop, post, and submit to OSPI a written policy and procedure against the harassment of employees, students, and volunteers by supervisors, co-workers, students, and third parties that complies with the Guidelines from the Superintendent of Public Instruction (RCW 28A.640.020, WAC 392-190-057) and the Department of Education's Title IX regulations. Ensure the policy specifically addresses "quid pro quo" and hostile work environment sexual harassment and reflects the procedural requirements under Title IX and WSSDA Procedure 5011P.
- ___2. Ensure the policy also makes it clear that the harassment must be unwelcome on the basis of a protected status, e.g., sex, race, or disability, and that it is a violation of district policy and may be unlawful.

- ___3. Due to the ongoing changes to Title IX, consult with counsel any time you receive a written or electronic complaint alleging any kind of sexual harassment or conduct.
- ___4. Adopt WSSDA Policy No. 3207 (7/23), which excludes staff-on-staff conduct from the district's requirements to respond to harassment, intimidation, and bullying complaints.
- ___5. Ensure you provide each employee and volunteer with a copy of this policy at the start of employment and on an annual basis. Secure records documenting this distribution.
- ___6. Annually train staff on their rights and duties under governing antidiscrimination laws and trainings. Ensure these trainings include topics like communication and the use of names and pronouns.
- ___7. Prohibit harassment in your computer use policies.
- ___8. Develop a procedure for dealing with harassment complaints, consistent with the Guidelines from the Superintendent of Public Instruction, including designating at least one employee to monitor compliance with laws and to receive formal harassment complaints and investigate them. (WAC 392-190-060-0751)
- ___9. Develop a process for disseminating and discussing the harassment policy and include it in any publication regarding the district's rules and regulations or standards of conduct.
- ___10. Train administrators about harassment and what to do if they witness inappropriate conduct or receive a complaint, even if it does not appear to describe severe or pervasive harassment. Train administrators on how to conduct investigations and report all complaints to the district's compliance officer.
- ___11. Investigate all complaints immediately and document the results of the investigation under governing policies. Have someone with appropriate training and/or experience conduct the investigation.
- ___12. Try to maintain the confidentiality of the individuals involved in the investigation, but never promise a witness confidentiality.
- ___13. Ensure all responses to any complaint, any investigation, and any discipline comply with any governing collective bargaining agreement.
- ___14. Take steps to ensure the complainant does not experience any more discriminatory conduct during the investigation.
- ___15. Be attentive to innuendos, slurs, and other forms of harassment as they occur in the workplace.
- ___16. Follow up after the resolution of any harassment complaint to make sure that the harassment has stopped and there is no retaliation.
- ___17. Review WSSDA model policies governing workplace harassment and adopt them or ensure your policy tracks them.
- ___18. Take steps to deter any harassment from occurring after an investigation. Available steps include letters of direction, discipline under the governing harassment policy or WSSDA Policy 5281, which includes mistreatment of students or staff members as a basis for discipline, additional training, reassignment of the alleged harasser, and "check-ins" with the complainant and others to ensure the conduct has stopped. Districts should consider implementing these measures even if the investigation does not establish severe or pervasive harassment.

- ___19. Ensure all administrators and witnesses in an investigation know about the right to report any retaliation and their duty not to engage in it.
- ___20. Always treat harassment as a disciplinary offense.

E. The Office of the Superintendent of Public Instruction’s Regulations Governing Discrimination

The Office of the Superintendent of Public Instruction promulgates regulations governing a school district’s response to anyone who alleges any form of discrimination. See WAC 392-190. The regulations provide that anyone may file a written complaint alleging that the school district engaged in a discriminatory practice. The school district then has 30 days to investigate the complaint and provide the complainant with (1) a written summary of the investigation, (2) a determination of whether the school district violated the anti-discrimination regulations (which track state and federal anti-discrimination law), (3) notice of the complainant’s appeal rights, and (4) information about the corrective action the district took to correct the noncompliance. (WAC 392-190-065)

WSSDA Policy 5010 (07/25)
WSSDA Policy 5011 (04/25)
WSSDA Policy 5515 (06/21)

WSSDA Procedure 5010P (12/24)
WSSDA Procedure 5011P (04/25)
WSSDA Procedure 5515P (6/21)

Audit Action Items Related to Regulations Governing Discrimination:

- ___1. Designate a staff member to serve as a compliance officer.
- ___2. Ensure the compliance officer reviews governing laws and WAC 392-190 to ensure a prompt and reasonable response to any discrimination complaint.
- ___3. Publish the name, school address, and phone number of the designated staff member, and the grievance procedure, at least once a year in a manner designed to reach employees, parents, and students. (WAC 392-190-060)
- ___4. Comply with OSPI sex discrimination guidelines applicable to staff and students. (RCW 28A.640.020, WAC 392-190)
- ___5. Develop a grievance procedure for responding to complaints of discrimination that complies with WAC 392-190-065.
- ___6. Develop policies and procedures for conditions under which staff may participate in political activities. (RCW 41.06.250)
- ___7. Develop policies and procedures for accommodation of disabled employees and employees with specific religious needs; train supervisors.
- ___8. Make sure that any “speak English only” rules are as narrowly drawn as possible and that employees are notified of the rule.
- ___9. Add sexual orientation and gender identity as a protected basis under your harassment and discrimination policies.

NOTES:

V. REASONABLY ACCOMMODATING PERSONS WITH DISABILITIES

The ADA and WLAD require school districts to provide reasonable accommodation to an employee or job applicant with a disability, unless doing so would cause undue hardship for the district.

Under the ADA, a disability is (1) a physical or mental impairment that substantially limits a major life activity, (2) a record or past history of such an impairment, and (3) being regarded as having a disability. Under the WLAD, a disability is a sensory, mental, or physical abnormality that has/had a substantially limiting effect upon the individual's ability to perform his or her job (not other major life activities). In Washington, conduct that results from a disability is considered part of the disability. This includes most kinds of misconduct.

A reasonable accommodation is any change in the work environment (or in the way things are usually done) to help a qualified person with a disability apply for a job, perform the duties of a job, or enjoy the benefits and privileges of employment.

Undue hardship means that the accommodation would be too difficult or too expensive to provide, in light of the school district's size, financial resources, and overall operations. A school district may not refuse to provide an accommodation just because it involves some cost. Employers do not have to provide the exact accommodation the employee or job applicant wants. If more than one accommodation works, the district may choose which one to provide.

The reasonable accommodation process is ongoing. Employers may not deny an employee's request without offering an alternative accommodation. If the accommodation does not work, the employee and employer must confer about other ways to reasonably accommodate the employee.

A school district may lawfully exclude an individual from employment for safety reasons only if the employer can show that employment of the individual would pose a "direct threat." A "direct threat" means a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation. The risk of harm must be verifiable and not speculative.

In Washington, misconduct that is not a "direct threat" and generally results from a disability is to be considered part of the disability and not an independent basis for discipline. (This excludes alcohol/illegal drug use and violent threats.)

WSSDA Policy 5010 (07/25)

WSSDA Procedure 5010P (12/24)

Audit Action Items Related to Reasonably Accommodating Persons with Disabilities:

- ___1. Ensure job descriptions and announcements list all essential job duties, including "job presence" and "interacting professionally with students, staff, and other individuals in the community."
- ___2. Consult with counsel before deciding an employee requesting a reasonable accommodation is not qualified under the ADA or WLAD. Remember, the definition of disability under the ADA and WLAD is very broad.

- ___3. Train building administrators and supervisors to address this issue only if an employee makes a request for a reasonable accommodation in connection with a disability or if the employee alludes to a disability in connection with poor performance or another work-related issue. Ensure administrators and supervisors do not disclose any information about the employee's condition or request for accommodation to anyone except human resources or other district administrators who need to know about the process.
- ___4. Provide a written response to all requests and a summary of all meetings in a timely manner. Ask the employee to confirm the summary is accurate.
- ___5. If possible, a disabled employee's immediate supervisor or evaluator should not be the same person who responds to a request for reasonable accommodations.
- ___6. When granting a reasonable accommodation, do not tell the employee's supervisors or co-workers about the medical condition necessitating the accommodation. Rather, inform them that the district has determined the employee needs the specific accommodation without further discussing the issue.
- ___7. Retain all documents about the employee's request and supporting documentation in a separate file.

NOTES:

VI. PERFORMANCE EVALUATIONS

Effective documentation of employees' performance is critical for numerous reasons:

- (a) to effectively communicate an assessment of performance;
- (b) to timely identify areas of improvement needed and employee goals; and
- (c) to reasonably document and support employment decisions.

Performance evaluations can bring out the best in employees, motivate them to do better work, and assist in career planning. In addition, proper performance evaluations discourage litigation and help defend against employment law claims because they constitute contemporaneous documentation of an employee's work deficiencies and misconduct. When improperly done, performance evaluations can be very damaging to an employer's ability to successfully defend against employment law claims and to the employment relationship in general.

WSSDA Policy 5240 (07/17)

Audit Action Items Related to Performance Evaluations:

- ___1. Establish an evaluation system for certificated employees that complies with RCW 28A.405.100.
- ___2. Include in the evaluation the minimum categories for evaluation of certificated staff listed in WAC 392-191-010 and RCW 28A.405.100(2)(b); you may evaluate on additional categories as well.
- ___3. Establish evaluation criteria and procedures for superintendents, principals, and other administrators consistent with RCW 28A.405.100(5)-(6).
- ___4. Complete performance evaluations on classified staff and administrators on at least an annual basis and observe them at least once during their probation period.

- ___5. Provide training for all principals and administrators in evaluation techniques before they conduct any evaluations. (RCW 28A.405.120-.130)
- ___6. Encourage evaluators to include constructive criticism, as appropriate, in evaluations.
- ___7. Include in performance evaluation forms a section designating a list of areas that can be improved upon.
- ___8. If there is a sudden change in the level of an employee's evaluation, be sure to provide a thorough explanation for that change in the evaluation and documentation to support the explanation, as appropriate.
- ___9. Provide employees with an opportunity to examine the documentation and indicate their agreement or disagreement with particular criticisms and comments.
- ___10. Provide employees with time to read and study their evaluations before responding to them.
- ___11. Monitor the quality of performance evaluations in each school or administrative unit to assess the validity of evaluations prepared by different administrators. Attempt to maximize consistency.
- ___12. Ensure that supervisors promptly address areas of concern when they occur and do not wait until the evaluation to surprise the employee with notice that her or his performance needs to improve.
- ___13. Discourage supervisors from providing opinions (positive or negative) that go beyond an employee's job performance.
- ___14. Provide certificated staff with a mentor and in-service training in teaching skills needing improvement. (RCW 28A.405.140)

NOTES:

VII. STAFF TRAINING AND DEVELOPMENT

One of the keys to attracting and retaining qualified employees is providing opportunities for advancement and learning within the organization. In addition, state law requires certain types of training and continuing education for school district employees. Where training is required by law on a particular subject that is covered elsewhere in this audit, training is mentioned in connection with that topic.

WSSDA Policy 5203 (12/11)
WSSDA Policy 5520 (06/21)

WSSDA Procedure 5520P (06/21)

Audit Action Items for Staff Training and Development:

- ___1. Develop a process for keeping track of Continuing Education Units for certificated staff to ensure they meet the requirements for continued certification. (WAC 181-85)
- ___2. Adopt a Professional Growth Program for certificated staff including a Professional Growth Committee and individual professional growth plans. (WAC 392-192)

- ___3. Take advantage of in-service training funds from the Superintendent of Public Instruction. (WAC 392-195)
- ___4. Include discriminatory bias awareness training as part of in-service training programs provided for certificated and/or classroom personnel. (WAC 392-190-020)
- ___5. Ensure professional learning days include the new, required topics that include, but are not limited to, social-emotional learning, trauma-informed responses, cultural competency, and diversity. (RCW 28A.415.443-.445)
- ___6. Develop a policy for reimbursement of expenses of staff attending approved training or incurred in connection with other approved school district business. (RCW 28A.320.050)
- ___7. Provide training on reporting requirements for child maltreatment (neglect, physical abuse, sexual abuse, and exploitation) to all new hires as part of orientation and every three years thereafter. Remember that this includes reports of student-on-student abuse. (RCW 28A.400.317)
- ___8. Provide annual trainings to all staff on safe interactions with students and anti-harassment policies and procedures.
- ___9. Regularly train new supervisors on performance management and their new duties as supervisors.

NOTES:

VIII. INVESTIGATIONS

Employers, especially school districts, need to carefully investigate all allegations of misconduct. Investigations need to be thorough and fair. At a bare minimum, they should establish who did what, where, when, and why.

Audit Action Items for Investigations:

- ___1. Notify the Washington Schools Risk Management Pool as soon as you believe misconduct of any kind may have occurred. Your claims adjuster can help you retain counsel, who can advise you of the next steps to take and retain an investigator to assist with your fact-finding process.
- ___2. Consider whether the allegation triggers a duty to report the situation to CPS or law enforcement. If so, refrain from taking any additional steps until counsel or law enforcement indicates it is appropriate to do so.
- ___3. Ensure that all staff know their duty to contact CPS or law enforcement when they have a reasonable cause (including secondhand knowledge) to believe a child has suffered abuse or neglect, including instances of student-on-student conduct.
- ___4. Review the applicable collective bargaining agreement before taking any additional steps. Ensure your response comports with any duties under the agreement.
- ___5. If possible, but no less than 48 hours later, notify a student's parents the day s/he discloses or alleges

any misconduct, especially if the alleged perpetrator is a district employee, contractor, or volunteer. If the alleged perpetrator is a district employee, contractor, or volunteer, also provide the student's parents with information regarding their rights to request public records regarding school employee discipline. (RCW 28A.320.160)

- ___6. Consider whether it is necessary to secure the district computer assigned to the employee and whether the employee should be "locked out" of the network. Secure any video surveillance recordings that may assist in your fact-finding process.
- ___7. As soon as reasonably possible, notify the accused employee that she or he is under investigation. Instruct him or her not to retaliate against any person involved in the investigation. Consult the employee's collective bargaining agreement for further guidance if necessary.
- ___8. Direct the employee not to compromise the investigation by intimidating witnesses or concealing/destroying evidence. Direct the employee not to discuss the allegations with current or former students and their families. Do allow the employee to confer with her or his attorney or union representative.
- ___9. Consider whether the accused employee needs to be on paid administrative leave during the investigation. If you decide that step is necessary, direct the employee not to come onto district property or attend district events during the investigation.
- ___10. Employers can require employees on paid administrative leave to be available at their home phones during working hours.
- ___11. Do not make any promises to any person about the outcome or scope of the investigation.
- ___12. Do not provide any assurances of confidentiality.
- ___13. Interview as many witnesses as necessary to obtain a reasonable account of the allegations.
- ___14. Do not interview witnesses, especially students, in groups.
- ___15. Ensure that the complainant, accused, and other material witnesses have sufficient opportunity to provide their accounts to the investigator.
- ___16. If necessary, make credibility determinations to resolve factual disputes.
- ___17. Consider whether district policy requires a certain response within a certain time period to complete the investigation and/or to notify the complainant and accused about the results of the investigation.
- ___18. Provide all important witnesses with notice that the investigation is complete and thank them for participating.
- ___19. Consult with any applicable collective bargaining agreements governing notice of an investigation and or discipline as well as any district policies governing the same or the subject matter of the investigation.

NOTES:

IX. PROGRESSIVE DISCIPLINE

Progressive discipline affords employees an opportunity to correct deficiencies in their performance. It also gives employers an opportunity to document the discipline process, which may be incremental. A progressive discipline procedure provides an employee with notice of deficiencies in his or her performance or conduct. It also allows employees a sort of "due process" to be sure that they have adequate notice of their deficiencies and an opportunity to respond to that notice.

If your district has a progressive discipline, grievance, arbitration, or layoff procedure, or any other procedure related to disciplinary action, it is very important to carefully follow the specific promises outlined by those procedures. Ideally, any procedure has language that allows employers to bypass low-level forms of discipline for more serious acts of misconduct.

WSSDA Policy 5006 (12/11)
WSSDA Policy 5161 (04/23)
WSSDA Policy 5281 (10/21)

Audit Action Items for Progressive Discipline:

- ___1. Develop a flexible progressive discipline policy, train employees and supervisors in its application, and consistently follow it.
- ___2. Develop conduct rules and review them periodically to determine whether they relate to valid school district concerns. Always remind employees that any published work rules are not exhaustive lists.
- ___3. Investigate suspected infractions of conduct rules before deciding to discipline an employee for suspected behavior.
- ___4. Exercise caution to protect employees' privacy rights during an investigation.
- ___5. When conducting an investigatory meeting that may result in disciplinary action, allow union employees to have a representative upon request. Consult with the employee's governing collective bargaining agreement for any other necessary steps during the investigation or discipline process.
- ___6. Review policies to assure compliance with all civil service or collective bargaining agreement requirements for covered employees.
- ___7. Consistently apply disciplinary measures to similarly situated employees.
- ___8. Be sure that the disciplinary measure is appropriate, based on the seriousness of the infraction.
- ___9. Where the disciplinary infraction is severe enough to warrant suspension or discharge, inform the employee in writing of his/her right to a pre-determination hearing, and if the employee is exempt, suspend for no less than a week.
- ___10. Deliver copies of all written disciplinary notices and appeal rights to the employee (and to his/her union representative if required by the contract), and have the employee sign the documents. If the employee refuses, note that on the form.
- ___11. Allow the employee to have a co-worker or union representative present when disciplinary action is discussed. If the employee declines to have another person present, document the decision in writing.
- ___12. Thoroughly document in employee personnel files the grounds for a disciplinary action and the steps taken by the employer.

- ___13. Ensure the employee completes any training or other programs that she or he must attend as part of any discipline or other remedial action. Retain documentation in the employee's personnel file.
- ___14. Review and adopt the most recent version of WSSDA Policy 5281, which includes new authorities/grounds for discipline.
- ___15. Consider adopting WSSDA Policy 5161 to cultivate a civil work environment.

NOTES:

X. EMPLOYEE BENEFITS

Employers must keep their employees fully informed about applicable benefits policies. Employees need to know to what they are entitled, at what cost, for how long, and what their responsibilities are in order to maintain coverage.

Under COBRA, employers who provide group medical insurance plans must make available, at employee expense, continuation coverage at group rates to employees and covered dependents on the occurrence of certain "qualifying events."

WSSDA Policy 5410 (12/22)
WSSDA Policy 5411 (12/11)
WSSDA Policy 5510 (12/11)

Audit Action Items Related to Employee Benefits:

- ___1. Ensure that a benefits professional regularly reviews all benefits plans and communications.
- ___2. Review your existing communications about employees' benefits. Ensure that the communications effectively describe what benefits are available and how they can be utilized.
- ___3. When communicating with employees about compensation, include the value of benefits.
- ___4. Provide employees with access to summary plan descriptions and summary annual reports related to employee benefit plans. Also make the plan itself, any collective bargaining agreement, contract, or trust agreement governing the plan, and the annual report available to employees.
- ___5. Provide yearly statements of accrued and vested benefits to participants and beneficiaries of employee benefit plans.
- ___6. Review your benefit plans to ensure that they are nondiscriminatory.
- ___7. Establish procedures to comply with the notification requirements of COBRA, both at the time of eligibility and at the time of a qualifying event.
- ___8. Inform employees about what constitutes a "qualifying event" that will trigger application of COBRA protections.
- ___9. Review all policies regarding statutorily authorized or required school district employee benefits to ensure compliance, including liability, life, health, accident, disability, and salary insurance.

- ___10. Review procedures for retirement contributions to ensure compliance with State Teachers' Retirement Systems and/or Washington School Employees' Retirement System.
- ___11. Provide paid holidays on New Year's Day, Martin Luther King Jr. Day, Presidents' Day, Memorial Day, Juneteenth, Independence Day, Labor Day, Veterans Day, Thanksgiving Day and the day after, and Christmas Day. (RCW 28A.150.050)
- ___12. Adopt a policy setting forth vacation entitlements and providing for payment of accrued unused vacation upon termination. Do not cash out accrued vacation in excess of 30 days (240 hours). (RCW 41.50.150)
- ___13. Make sure that any authorization forms you have employees sign in connection with obtaining medical information from health care providers comply with HIPAA. (45 C.F.R. 164.508(c))
- ___14. If the district is self-insured for health insurance, or provides any medical services to employees in-house, e.g., EAP, determine HIPAA coverage and make sure you comply with the privacy and security regulations.

NOTES:

XI. WAGE AND HOUR LAWS AND COMPENSATION

This area of the law is troublesome for employers. Public employers must pay particular attention to the designation of employees as exempt from the overtime provisions of the Fair Labor Standards Act, to their policies for the payment of overtime to non-exempt employees, and to their use of compensatory time for employees.

WSSDA Policy 5231 (10/15)

WSSDA Policy 5310 (07/23)

WSSDA Policy 5315 (12/11)

WSSDA Procedure 5315P (12/11)

Audit Action Items Related to Wage and Hour Laws and Compensation:

- ___1. Review all wage and hour policies and payroll practices to assure compliance with state and federal laws.
- ___2. Adopt written annual salary schedules for certificated employees that include credit for continuing education, in-service training, and internships. (RCW 28A.405.200 and RCW 28A.415.430-.445)
- ___3. Re-evaluate your classification of exempt employees to make sure that they are paid on a salary basis and that their duties satisfy the white-collar exemptions under the wage and hour laws. Reassess status when there are changes in job duties.
- ___4. In light of federal rules for white-collar exemptions, make sure that any supervisors you have classified as exempt executives have the power to hire and fire, or at least make recommendations regarding personnel actions that are given significant weight, and that all exempt employees (excluding teachers) are compensated under the schedule set forth in WAC 296-128-545.
- ___5. Formulate written policies that set forth any agreements between you and your employees regarding

the provision of compensatory time off. All agreements must be in accordance with any applicable collective bargaining agreement. Consider limiting the amount of compensatory time that employees may accrue.

- ___6. Always award overtime or compensatory time for non-exempt employees at a rate of 1-1/2 hours for each hour of overtime worked over 40 hours worked in a work week. Specify the time period within which compensatory time must be used.
- ___7. Formulate policies with regard to compensatory time for management and other exempt employees, considering alternatives to compensatory time: e.g., offer personal leave, paid days off, or administrative leave to exempt employees.
- ___8. Do not impose hourly quotas on exempt employees. If you "dock" exempt employees' pay or leave banks for absences of less than one day, make sure it is pursuant to an established policy in writing.*
- ___9. Do not deduct from exempt employees' pay for absences of less than a full week for jury duty, providing testimony in a judicial proceeding, or short-term military leave.*
- ___10. Use a paid leave of absence for exempt employees for discipline problems or impose disciplinary suspensions of at least one week to maintain the employee's exempt status, unless it is for a major safety infraction.*
- ___11. Avoid using an overtime system for exempt employees that pays a defined amount for each extra hour in excess of 40 hours worked during a pay period.*
- ___12. Be sure that any payroll deductions are (1) lawfully authorized; or (2) authorized by employees in writing and approved by management. (RCW 41.04.020-.030 and WAC 296-126-025-.028)
- ___13. Never discharge or discriminate against an employee because of a complaint regarding wages or hours.
- ___14. Review policies regarding leave, breaks, on-call, training, and pre- and post-shift activities and your obligation to pay non-exempt employees for that time.
- ___15. Reassess your policies to determine whether they comply with "equal pay for equal work" principles, in conjunction with collective bargaining agreements, merit pay requirements, and the Equal Pay Act.
- ___16. If there is a wage differential in payment to employees of different sexes, document the non-discriminatory basis for those differentials and preserve all related records.
- ___17. Provide at least a 30-minute duty-free lunch period for all certificated and non-exempt employees. (RCW 28A.405.460 and WAC 296-126-092)
- ___18. Unless provided differently in a governing collective bargaining agreement, provide at least one paid, duty-free ten-minute rest period for each four hours of working time. (RCW 49.12.187 and WAC 296-126-092)
- ___19. Be sure to include all appropriate "extras" (shift differentials, incentive pay, etc.) in the regular rate of pay before computing overtime.
- ___20. At the request of at least five employees (or less at the district's option), arrange for the purchase of tax-deferred annuity contracts and make payroll deductions for employees' contributions. (RCW 28A.400.250)

- __21. Display the wage and hour posters conspicuously in your workplace.
- __22. If any employees are required to wear clothing identifying them as a school district employee, or marked with a logo, make sure you provide or compensate them for the clothing. (RCW 49.12.450)
- __23. Make sure any workers you treat as independent contractors satisfy the IRS' "Twenty-Factor Test" or reclassify them as employees.
- __24. Require all non-exempt employees to properly document their hours worked and adhere to their assigned rest and meal periods.
- __25. Consider whether classified employees who also work under supplemental contracts are eligible for overtime.

NOTES:

* Teachers are exempt professionals without regard to whether they are paid on a salary basis, so these items do not apply to them.

XII. PRIVACY RIGHTS IN THE WORKPLACE

Public employees have a constitutional right to privacy in areas where they have a reasonable expectation of privacy. Therefore, searches of employees' lockers, desks, offices, computers, etc., must be conducted very cautiously. Any search must be reasonable and in an area where the employee has a reduced expectation of privacy. The employer must balance the employee's legitimate expectation of privacy against the employer's need for supervision, control, and efficient operation of the workplace.

WSSDA Policy 5202 (10/15)

WSSDA Procedure 5202P (05/20)

Audit Action Items Related to Employee Privacy Rights:

- __1. Inform employees in advance, e.g., in your handbook or other publication, that the school district may search their work areas, computers, email, property, or vehicles located on district property at management's discretion, and that they will be expected to cooperate or risk discipline. Also inform employees in advance that they may have to undergo a medical screening to detect impairment if they are involved in an accident while driving a vehicle on behalf of your district. These notifications reduce expectations of privacy. Note: There are different requirements for school bus drivers involved in an accident.
- __2. If you provide an employee with access (and a key) to a locked or secured office, cabinet, or desk drawer, ensure the employee knows that the area is not confidential and that the district may use its own key or authority to access the area.
- __3. Train administrators in the provisions of law and applicable collective bargaining agreements that address employee searches.
- __4. Develop guidelines for computer, electronic mail, and voicemail systems, explaining to employees that they are not confidential, are for business use only, and can be accessed by management. Ensure employees know that work-related communications on personal devices are employer records and thus

not confidential under the Washington Public Records Act.

- ___5. Conduct searches only where there is a reasonable ground for suspecting an employee has violated or is violating work rules or applicable laws.
- ___6. Instruct administrators to consult a specified third person in upper-level management and/or law enforcement before asking an employee to submit to a search of his or her person.
- ___7. Ensure that searches of employees' lockers or belongings are not broader than the stated goal of the search.
- ___8. Never attempt to physically coerce an employee into submitting to a search. Rather, impose discipline under the organization's disciplinary rules for refusal to cooperate.
- ___9. If you suspect an employee has engaged in criminal activity, consult local law enforcement before conducting any search.
- ___10. Require employees to undergo a breath or blood test only after there is reasonable and reliable suspicion the employee may be under the influence of alcohol or illegal drugs, which still includes marijuana. The determination to conduct reasonable suspicion testing must be based on specific, contemporaneous, and articulable observations of employee conduct, behavior, appearance, or body odors. The observations must be made and documented by a supervisor who has participated in training on the signs and symptoms of alcohol misuse and drug abuse as well as the requirements for reasonable suspicion testing.
- ___11. Limit disclosure of information about employees, inside and outside the workplace, to those with a need to know.
- ___12. Check and retain driving record abstracts only for employees and applicants who drive school buses or commercial vehicles. You may require other employees who drive to provide a driving record abstract from the Department of Licensing. (You may not directly request it from the department without an employee's written consent.) (RCW 46.52.130)
- ___13. Provide parents with information annually regarding their rights to request information about school employee discipline under the Washington Public Records Act. (RCW 28A.320.160)
- ___14. Make sure you have appropriate protections in place to safeguard the privacy of information you receive from health care providers and insurance plans in compliance with the HIPAA privacy rules and FERPA.

NOTES:

XIII. STAFF CIVILITY AND EXPRESSION

State and federal constitutions protect school district employees who engage in certain kinds of free speech. This is especially true when the speech involves the employee speaking as a private citizen on a matter of public concern. At the same time, not all kinds of speech are protected. Employers thus face challenges balancing these interests.

WSSDA Policy 5161 (04/23)

WSSDA Policy 5254 (04/23)

Audit Action Items Related to Staff Civility and Expression:

- __1. Adopt WSSDA Policy 5161 and Policy/Procedure 5254.
- __2. Train administrators on how to properly investigate and respond to employees' conduct on social media.

XIV. LOCAL GOVERNMENT WHISTLEBLOWER PROTECTION ACT

Whistleblower laws generally protect employees who report or try to stop what they believe is unlawful conduct or conduct against the public interest. These protections flow from the state and federal constitutions and from several state statutes, including RCW 42.41.

WSSDA Policy 5271 (12/23)

WSSDA Procedure 5271P (12/23)

Audit Action Items Related to the Whistleblower Protection Act:

- __1. Establish procedures for internal reporting of complaints of alleged improper government acts. Include a list of persons inside and outside of the school district to whom employees can report improper governmental acts, and a system for adjudicating retaliation claims allegedly arising from reporting.
- __2. Post a summary of your local government whistleblower policy prominently within the workplace.
- __3. Consider using an "outside" investigator when complaints of improper government acts are received.
- __4. Avoid retaliating against employees who complain of improper governmental action.

NOTES:

AUDIT ISSUES
ARISING AT THE TERMINATION OF EMPLOYMENT

I. PRE-TERMINATION PROCEDURES

Claims for wrongful discharge, employment discrimination, breach of contract, and numerous torts can arise from the termination process. Therefore, school districts must be particularly attuned to the legal requirements related to employee terminations and to the emotional and psychological needs of employees during the termination process.

WSSDA Policy 5280 (11/23)

WSSDA Policy 5281 (10/21)

Audit Action Items Related to Termination of Employment:

- ___1. Consider alternatives to termination, e.g., resignation, suspension, probation, transfer, or counseling. Determine whether termination is an appropriate response to the employee's conduct.
- ___2. If the adverse action is a non-renewal of contract, provide the above notice by May 15. If the legislature has not passed the omnibus appropriations act by May 15, you may give notice no later than June 15. (RCW 28A.405.210)
- ___3. Ensure that the director of human resources (or equivalent) and the superintendent separately and independently review the matter and concur in the decision to terminate the employee.
- ___4. Ensure that each decision maker relies on the same material and has substantially similar reasons for supporting the termination.
- ___5. Immediately terminate any employee who has contact with children and who is convicted of, or pleads guilty to, a felony crime against a child (RCW 28A.400.320 and 28A.405.470).
- ___6. If the adverse action is for a disciplinary reason, consider whether it is appropriate to suspend (with pay) the employee pending the pre-termination hearing.
- ___7. Do not confuse the investigatory interview of the employee with the pre-determination meeting, which is also known as a Loudermill hearing. The investigatory interview gives the investigator a chance to gather facts about the employee's alleged conduct. After the investigation has concluded, the supervisor reviews all the factual information, determines the charges, issues the pre-determination letter, and schedules the pre-determination meeting. Once the pre-determination meeting occurs, the supervisor and other administrators can make a final decision. Do not use the pre-determination meeting as a method of investigation. Similarly, do not use the investigatory interview as the pre-determination meeting.
- ___8. Conduct a pre-determination hearing before making any final decision about the level of discipline. At the pre-determination meeting, give the staff member the reasons for the decision and an opportunity to respond.
- ___9. Use a checklist for reviewers to complete in reviewing a termination decision. Review the employee's history of discipline, training, and performance evaluations, and the current materials that triggered the decision to terminate the employee.
- ___10. Coordinate with all involved supervisors to evaluate the necessity for termination.
- ___11. Evaluate your potential for liability before deciding to terminate. Consider discriminatory causes, public policy violations, principles of retaliation, and whether you have cause to terminate.
- ___12. Assess the reasons for termination and whether they are consistently applied to all similarly situated employees.
- ___13. Establish procedures for fact-gathering regarding proposed terminations.
- ___14. Ensure compliance with the relevant provisions in a collective bargaining agreement, employee handbook, policy and procedure manual, or grievance procedure.
- ___15. Consult with human resource personnel and/or with counsel if any doubts arise about the propriety of the termination decision or procedure.

- ___16. Personally, or via registered or certified mail, provide any contractual (certificated, classified, or supplemental) employee with written notice of any termination or adverse action on a contract, including the reason(s) for the adverse action, appeal rights, and how a description of the appeal process may be obtained. (28A.405.300)
- ___17. Give the employee the reasons for termination personally. Consider the employee's privacy and dignity.
- ___18. Have the employee sign the written statement of reasons for termination, acknowledging receipt.
- ___19. If a separation agreement and release is to be used, and the employee is 40 or older, ensure it complies with requirements in the Older Workers' Benefits Protection Act.
- ___20. Do not enter into a resignation or separation agreement that suppresses or expunges information about physical or verbal abuse or sexual misconduct. (RCW 28A.400.301)
- ___21. Ask employees to sign a waiver of claims for reference-giving.
- ___22. Provide employees with proper notice of COBRA rights.
- ___23. Make sure final paychecks are made available no later than the next regular payday and they include any accrued paid leave due upon termination.

NOTES:

II. POST-TERMINATION PROCEDURES

Even after an employee has been terminated, an employer retains the potential for liability from claims arising from that termination or from the employee's employment. Issues related to reference-giving, such as defamation claims or negligent "failure to inform" claims, must be considered. Employers must be prepared to respond to unemployment compensation claims. Employers must also be prepared to deal with rumors and questions in the workplace about the termination of a fellow worker and must have a policy or consistent practice addressing communications with employees about the reasons for the termination. Finally, employers must be prepared to respond to administrative charges and lawsuits filed by former employees.

Audit Action Items Related to References:

- ___1. Tell only those within the district who have a "need to know" about the reasons for the employee's termination.
- ___2. Unless the terminated employee signed an authorization and release of claims, avoid giving references that include information other than verification of dates of employment and the position held.
- ___3. Centralize the responses to reference requests to promote uniformity in response, e.g., have all supervisors refer reference requests to human resources.
- ___4. Establish procedures to train administrators and supervisors not to give references, but to refer to the designated reference-giver.
- ___5. Require written requests for references.

- ___6. Provide written references only, or, at a minimum, document what questions were asked and what information was given.
- ___7. If the former employee had serious performance problems that could be detrimental to others in a new work setting, consult with counsel about the type of information you should relay to potential new employers.
- ___8. If the former employee's information could be characterized as negative, ensure any disclosure of it solely relates to (a) the employee's ability to perform his or her job; (b) the diligence, skill, or reliability with which the employee carried out the duties of his or her job; or (c) any illegal or wrongful act committed by the employee when related to the duties of his or her job. (RCW 4.24.730)
- ___9. Share only information that is factual and documented in the personnel file, not unsupported opinion, e.g., "She was rated unsatisfactory on her last performance evaluation," not, "She was a lousy teacher."
- ___10. Ensure that all staff do not informally share information about the employee with friends or colleagues in other districts.
- ___11. Respond honestly to requests for information from the Employment Security Department and attend appeal hearings if they occur. Ensure the reasons for termination are always consistent.

NOTES:

Audit Action Items Related to Post-Termination Claims:

- ___1. Immediately consult with WSRMP and counsel when a charge or lawsuit is received.
- ___2. If a charge is filed, preserve all personnel records and electronic data relevant to the charge or action until final disposition.
- ___3. Do not add or delete any documents from the employee's file.
- ___4. Instruct applicable employees to preserve all emails that are relevant to the controversy or reference the employee.
- ___5. Open a confidential file for all notes and correspondence with counsel and work product prepared in anticipation of litigation.
- ___6. Do not allow any administrative or legal claims to become a general topic of conversation around the district.
- ___7. Be objective and honest with administration and counsel about the facts related to a lawsuit or administrative claim.
- ___8. Consult with the district's own attorney before discussing any relevant issues with the claimant or his or her attorney.
- ___9. Do not forbid employees from speaking with the claimant or his or her attorney.
- ___10. If you conclude that a charge of discrimination is valid, take prompt action to remedy any discriminatory

conduct.

- ___ 11. During the investigation, determine whether the charge is indicative of broader patterns of similar discrimination. If so, take immediate corrective action.

NOTES:
