

# CHARTER SCHOOLS



## PERSONNEL POLICIES AND PRACTICES: UNDERSTANDING EMPLOYMENT LAW

Produced under a grant from the Annie E. Casey Foundation



## ABOUT THE AUTHORS

*William P. Bethke* is a partner in Kutz & Bethke, a law firm specializing in public education and disability law, and an Adjunct Professor of Law at the University of Denver School of Law. He was Board President of the Colorado League of Charter Schools from 1995-2000. Mr. Bethke has been a trial lawyer or labor arbitrator for over twenty years and currently represents a number of Colorado charter schools. He received a B.A. from Colorado State University in 1975 and a J.D. from the Yale Law School in 1978. He can be contacted at [wpbethke@earthlink.net](mailto:wpbethke@earthlink.net).

*James W. Griffin* is the Executive Director of the Colorado League of Charter Schools, the state's nonprofit association of charter schools. He has served in that capacity since the organization's inception in 1994, building the League from a one-person technical support/advocacy organization to a four-person comprehensive association of nearly eighty charter schools. Mr. Griffin received a B.A. from Connecticut College in 1989, and a J.D. from the University of Denver School of Law in 1994. He can be contacted at [james\\_griffin@ceo.cudenver.edu](mailto:james_griffin@ceo.cudenver.edu).

# CHARTER SCHOOLS

## PERSONNEL POLICIES AND PRACTICES: UNDERSTANDING EMPLOYMENT LAW

---

### CHALLENGES



**1. FEDERAL AND STATE EMPLOYMENT REGULATIONS**



**2. STATE PUBLIC EMPLOYMENT LAW AND CHARTERING AUTHORITY POLICIES**



**3. CHARTER SCHOOL EMPLOYMENT POLICY ISSUES AND LAWS**



# CHARTER SCHOOLS

## PERSONNEL POLICIES AND PRACTICES: UNDERSTANDING EMPLOYMENT LAW

### INTRODUCTION

Charter schools are in many cases given more freedom to chart their own course in employment relations than most district schools. There remain limits, however, many drawn by law.

The Annie E. Casey Foundation and the Charter Friends National Network recognize the need for charter schools to have access to a guide that not only reviews the areas of legal regulation common to all employers but also examines personnel issues that are specific to the charter school environment. A handbook on current employment law is no substitute for well-qualified local counsel on specific issues. Such a guide cannot predict what lies over the next horizon in American employment practices, nor can it tell a charter school how to steer its course in employment relations – what risks to take or avoid, what opportunities should be seized and which are illusory. It can, however, identify a few of the reefs and shoals.

Relative to traditional public schools, most charter schools have much more autonomy in their employment practices. Even within the existing law, this is a good deal of flexibility available to founders and school leaders. The Personnel Policies and Practices resource guide is offered as a way to help charter schools develop personnel policies and practices that meet federal, state, and local regulations while taking advantage of their flexibility. The guide was developed by William Bethke, a partner in Kutz & Bethke, a law firm specializing in public education and disability law, and an Adjunct Professor of Law at the University of Denver School of Law and James Griffin, an attorney and the Executive Director of the

Colorado League of Charter Schools, the state's non-profit association of charter schools. The more extensive document is available online at [www.uscharterschools.org/gb/personnel/](http://www.uscharterschools.org/gb/personnel/).

The three-part summary offers the following:

- an explanation of federal and state employment legislation that affects employment practices in most workplaces, including civil rights law and basic workplace regulations;
- a discussion of the common issues of state and local public employment law that govern charter schools' employment decisions, such as certification of personnel;
- an analysis of the common charter school employment issues, such as hiring and termination.

In addition, numerous resources are offered including helpful books, online resources, sample personnel policies, and an Employment Policy and Contract Checklist for use by founders and leaders to ensure that the most critical employment topics have been considered in personnel policy development.

Individuals dealing with employment issues on a regular basis — school administrators and members of a personnel committee on a governing board — are advised to read the entire manual, perhaps skipping any area they already know well or know does not apply in their jurisdiction or to their school. And again, even the most comprehensive guide is no substitute for qualified local counsel on these matters.



# Federal and State Employment Regulations

Federal and state employment laws that cover broad swaths of the public and private sectors fall into two rough categories: civil rights and workplace regulation.

## CIVIL RIGHTS LAW

Below is an introduction to the major laws related to civil rights enforcement in the workplace. Please consult the online manual for a more in-depth discussion of these laws and their implications on the charter school environment. It is important to note that in addition to compliance with law, charter schools need to be cognizant of anti-discrimination policies of the chartering authority. Even if there is no law against a certain type of discrimination, the chartering authority may have adopted a policy on the subject that the school must follow.



**Table I: Civil Rights Law Critical to Charter School Employment (alpha-order)**

Law	Brief Description
<b>Age Discrimination in Employment Act (ADEA)</b>	The ADEA forbids discrimination in employment against persons 40 years of age or older due to their age. <sup>1</sup>
<b>Americans with Disabilities Act (ADA)</b>	<p>In 1990, Congress passed the ADA, <sup>2</sup> which takes rules developed under Section 504 (see below) and applies them generally. The general definition of disability in this act is defined as a "a physical or mental impairment that substantially limits one or more major life activities." ("Major life activities" include things such as walking, standing, hearing, seeing, working, and learning.)</p> <p>ADA legislation bans discrimination "against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment." A person is "qualified" or "otherwise qualified" under the ADA if they are able to perform the "essential functions" of the job with or without reasonable accommodation. "Reasonable accommodation" is not precisely defined, but the statute gives a list of examples of what may be reasonable accommodations. Keep in mind that a proposed accommodation is not reasonable if it will cause the employer an "undue hardship" or a "direct threat."</p>
<b>Equal Pay Act</b>	The Equal Pay Act <sup>3</sup> , passed before Title VII, forbids paying men and women at different rates for "equal work."

<sup>1</sup> 42 U.S.C. § 6102.  
<sup>2</sup> 42 U.S.C. §§ 12101-213.  
<sup>3</sup> 29 U.S.C. § 206(d).

**Table I: Civil Rights Law Critical to Charter School Employment (continued)**

<b>Pregnancy Discrimination Act</b>	This amendment to Title VII (see below) makes it clear that discrimination on the basis of pregnancy is considered discrimination on the basis of sex.
<b>Section 504 of the Rehabilitation Act of 1973</b>	This law was the first, and for many years only, federal statute to prohibit disability discrimination. Section 504 follows the Title VI model (see below), prohibiting discrimination only in federally funded programs or activities (but, unlike Title VI, prohibits employment discrimination without regard to the primary purpose of the federal funding). The law defines disability without resort to a specific list or description of disabilities.
<b>Section 1981</b>	This law gives "[a]ll persons" the same right to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens. <sup>5</sup>
<b>Section 1983</b>	Section 1983 makes it possible for a private person to sue any state or local government that has violated federal law – whether constitutional or, in some cases, statutory. It is the basic means for private, civil enforcement of federal law against state or local government agencies, which include charter schools in many states. In employment discrimination cases, Section 1983 gives public employees another way to sue for intentional discrimination that violates the constitution.
<b>Title VI</b>	Title VI, also part of the Civil Rights Act of 1964, prohibits any "program or activity" that receives federal funds from discrimination on the basis of "race, color or national origin." <sup>6</sup>
<b>Title VII</b>	Title VII, part of the Civil Rights Act of 1964, prohibits discrimination on the basis of "race, color, religion, sex, or national origin." <sup>7</sup> It also prohibits retaliation against an employee who has "opposed any practice made . . . unlawful" by Title VII, or who has filed a Title VII charge or "testified, assisted, or participated in any manner" in a Title VII case. <sup>8</sup> Title VII forbids intentional discrimination and certain discriminatory effects and defines discrimination based on religious practice to include failure to "reasonably accommodate" the practice.
<b>Title IX</b>	Title IX, part of the Education Amendments of 1972, prohibits discrimination on the basis of sex in any educational program that receives federal funds. Though Title IX is most famous for its effects on women's athletics, it also provides an alternative method for suing educational institutions for sex discrimination in employment.

4 29 U.S.C. § 794.  
 5 42 U.S.C. § 1981(a).  
 6 42 U.S.C. § 2000d. Unlike Title VII, Title VI does not reach discrimination on the basis of religion or sex.  
 7 42 U.S.C. § 2000e-2(1) and (2).  
 8 42 U.S.C. § 2000e-3(a).

Table II lists the major classes that are protected by the civil rights laws. The online manual offers details about the unique features or issues that arise with regard to each different protected class.

<b>General Federal Law</b>	<b>State or Local Law (varies by state and locality)</b>
Race/Color/Nationality/Ethnicity	Marital status
Sex, including pregnancy and sexual harassment	Political affiliation
Religion, including reasonable accommodation of religious practices	"Lifestyle" or legal activity
Disability, including reasonable accommodation and nondisabled associates of disabled individuals.	Sexual Orientation

## BASIC WORKPLACE REGULATION

Many issues involving labor markets and work place practices were historically a matter of state regulation or no regulation. Over time, federal regulation has grown at the expense but not to the exclusion of state regulation. Below are seven areas of interest to charter schools. As with the civil rights legislation above, consult the online manual for more details about each area of regulation.

### FAIR LABOR STANDARDS ACT (FLSA) AND OVERTIME

The Fair Labor Standards Act establishes the minimum wage, eight hour day and forty-hour work week as the basic standard for all employment in the United States. FLSA does not regulate the work hours of "professionals," and thus will not apply to a typical salaried teacher. But FLSA will apply to hourly workers of most, if not all, charter schools. An employer who requires or allows an hourly employee to work more than 40 hours in one work week will be required to pay the employee at an overtime premium rate.

### FAMILY AND MEDICAL LEAVE ACT ("FMLA")

The Family and Medical Leave Act establishes a floor of protection for taking leave from work for certain purposes. Part of the legislation includes giving "eligible" employees of a covered employer the right to take unpaid leave, or paid leave if it has been earned, for a period of up to 12 workweeks in any 12 months because of the birth of a child or the placement of a child for adoption or foster care, because the employee is needed to care for a family member (child, spouse, or parent) with a serious health condition, or because the employee's own serious health condition makes the employee unable to do his or her job. Under certain circumstances, this leave may be taken on an intermittent basis rather than all at once, or the employee may work a part-time schedule.<sup>9</sup>

As subdivisions of state or local government, charter schools are public agencies covered under FMLA. While the constitutionality of the FMLA's coverage

of some state entities is being litigated, the safest assumption is that FMLA applies to all charter schools.

### CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT (COBRA)

The Consolidated Omnibus Budget Reconciliation Act of 1985 requires employers of more than 20 employees – including public employers at the state or local level – that provide group insurance coverage as an employee benefit to extend that coverage under certain circumstances for former employees and dependents. Covered employees must elect to extend coverage within a specified time period (60 days from the "qualifying event, or notice of such event"), and such extended coverage is at the employee's expense. Coverage may be extended up to 18 months following termination or a reduction in hours, and for longer periods under certain other circumstances.

### EMPLOYEE RETIREMENT INCOME SECURITY ACT (ERISA)

ERISA regulates employer pension plans and employee retirement benefits. Public employers at the state or local level are generally exempt from its operations. Thus, to the extent charter operators are clearly classified as public employers under state law, ERISA will not apply. However, ERISA-type regulation may still apply to charter school retirement plans under either: (1) state law or constitutional provisions governing public employee retirement; or (2) Internal Revenue Service regulations which must be complied with prior to a public employer's having its retirement plan approved by the IRS.



<sup>9</sup> 29 C.F.R. 825.100.

## **OCCUPATIONAL SAFETY AND HEALTH (OSHA)**

Congress passed the Occupational Safety and Health Act in 1970 promoting workplace safety through a comprehensive system of regulation, inspection, and enforcement of work sites across the country. Whether OSHA itself applies to charter schools varies depending upon whether a state has adopted federal standards and enforces OSHA itself.

## **WORKER'S COMPENSATION**

Worker's compensation laws provide a statutory mechanism to compensate employees injured on the job. These laws are essentially a compromise providing the employee guaranteed compensation in the event of an injury, while at the same time prohibiting that employee from seeking possibly greater compensation from their employer through the court

system. These laws are in place in every state, though not mandatory in three states (New Jersey, Texas, and South Carolina). Public employers are generally covered to the same extent as private employers, so charter schools should assume their states' worker's compensation laws apply to them.

## **UNEMPLOYMENT COMPENSATION**

Unemployment compensation was part of the original Social Security Act and was designed to soften the immediate financial impact of loss of work and provide a brief period of transitional income. Employers pay a "tax" – though the rate varies with, among other things, the employer's history of past claims, making this tax look more like a premium based on risk assessment. Employees who lose work without "fault" on their part are then entitled to a period of compensation for this unemployment.





## State Public Employment Law and Chartering Authority Policies

Below is a brief discussion of four main areas of state law or local policy that are critical to charter school employment: certification and licensing; unionization and collective bargaining; tenure; and, public employment retirement plans. As with the other components of this summary, reference the online manual for more details.

### CERTIFICATION AND LICENSING

Individual states define and regulate the criteria and qualifications necessary to work in their public schools. From teachers to administrators to bus drivers, employees must obtain the certificate or license required of their profession as a prerequisite to working in the state's public schools. The state's department of education usually administers certification programs.

As public schools, charter schools are subject to the same statutory requirements of certification and licensure except where specifically exempted under state law or where granted specific waivers of that law. Charter schools need to understand how state certification and licensure requirements work. To the extent those requirements apply to your school, you, as an employer, are responsible for ensuring initial and continuing compliance with those requirements. That means hiring new staff only upon a showing of appropriate credentials, but also ensuring that staff maintain their required certification or licensure over time.

### UNIONIZATION AND COLLECTIVE BARGAINING

Few charter schools engage in the collective bargaining process. Many charter schools, however, are subject or potentially subject to such bargaining. Collective bargaining laws give employees they cover a protected right to organize and use some forms of self help (e.g., strikes); employ a model of defining bargaining units (i.e., groups of employees who are allowed to negotiate as one); recognize exclusive representation (meaning a union with majority support represents 100% of the employees of a bargaining unit); and, require good faith bargaining.

These statutes may or may not apply in a particular state or local jurisdiction. If your charter school is not covered by collective bargaining laws (or is covered by a collective bargain with a union willing to be innovative), there is no reason that other models of employee "voice" cannot be used. Again, however, be sure of the local ground rules.



## TENURE

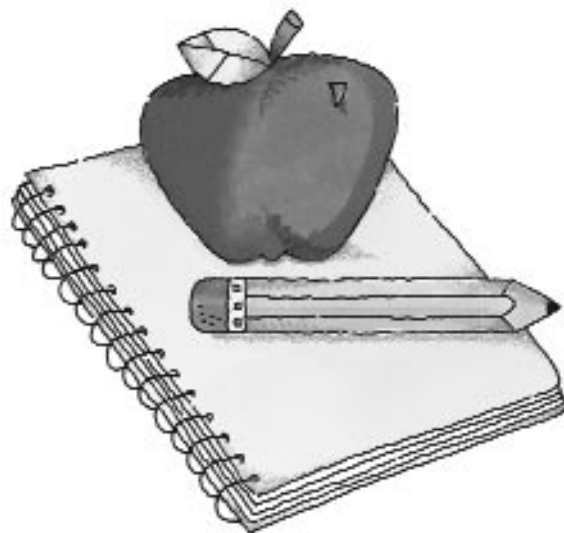
"Tenure" simply means that an indefinite term of employment can only be ended by the employer for certain reasons, with evidence to support those reasons. The reasons to end tenure fall into the following three broad categories: the employer's needs or convenience (often called layoffs, reductions-in-force or downsizing); an employee's acquired medical disability and inability to continue doing their job; and "cause" – i.e., employee incompetence or misconduct (such as alleged sexual abuse).

In many K-12 public school systems, in contrast, tenure is conferred by a certain term of seniority. If the employee is re-employed after a defined period of probation, tenure follows automatically. If charter employment decisions will impact tenure, it is important for charter school managers to know when the probationary period will be completed and when an employee is considered tenured.

A common confusion is for charter employers to give employees contracts stating that the employee is at-will or nontenured, but to also say that the employee will be treated fairly or will only be fired for a "good reason." These employers have sent contradictory messages. Words like "good reason," or "just reason," or "sufficient reason," are exactly what creates tenure. If a charter employer is allowed by law to use employment at-will, and then chooses to do so, it should not send a mixed message. A court may later determine that the employees given this message were given a binding promise of fair treatment – that is, tenure. A school in this situation would not only be required to prove cause, it would also need to assure that the procedures used met constitutional due process requirements. While these standards are not necessarily onerous, they would almost certainly be violated by an employer who acted as if an employee was at-will. See the online manual and the fourth section of this summary for additional discussion about tenure, at-will, and other employment structure options.

## PUBLIC EMPLOYEE RETIREMENT PLANS

Many states have public employment plans that operate outside the Social Security system. Where the state requires that charter schools participate in such plans, school management must make sure it understands everything from enrollment of individual employees to calculating the appropriate liability for the school's budget. It may be important for the school to become familiar with details – such as vesting rules – that at first blush appear only to be of interest to employees. How the plan operates – both its limits and the protections it affords employees – often impact recruitment and hiring, especially if employees are being recruited from another state or from employers that utilize other retirement plans.





## Charter School Employment Policy Issues and Laws

Each charter school has authority to make some real choices about its personnel policies. Those choices most commonly express themselves in the contract relationship created with employees. These contracts exist in the context of the common law of contracts and each jurisdiction's employment law. There are several school policy and employment law areas where the charter school must balance its freedom and autonomy within the bounds of employment law, including:

- fundamentals of the employment relationship,
- the hiring process, conflicts of interest, grievance systems and alternative dispute resolution, and
- ending the employment relationship, and post-employment issues.

The charter school should consider having written policies related to all of these issues. Below is a brief description of just some of the legal issues related to these areas. (Please consult the online manual at [www.uscharterschools.org/gb/personnel/](http://www.uscharterschools.org/gb/personnel/) for in-depth discussion of these areas, as well as the compensation, evaluation, employee policy development. Also consult the guidebook for *Mobilizing and Motivating Your Staff* — at [www.uscharterschools.org/gb/motivatingstaff/](http://www.uscharterschools.org/gb/motivatingstaff/) for an additional examination of how charter school can use their autonomy, within the limits of federal and state regulations and local policies, to create effective personnel systems.)

### Employment Relationship Issues

Charter school leaders will need to determine several structures in defining the relationship with their employees. Will the school's staff be their employees, employees of the school district, another

chartering agency, or an education management organization? Will the staff be independent contractors, or employees? Will there be a written contract or just a verbal understanding? Will employment be at-will, or will employees be tenured, or will there another type of employment option? The online manual discusses these questions at length. Below is a brief description of some of the related issues.

### CHOOSING INDEPENDENT CONTRACTORS VERSUS EMPLOYEES

Like many employers, charter schools frequently choose to use independent contractors for certain jobs or services at the school. If an employer seeks to classify certain individuals as independent contractors instead of employees, it should take care to set up and manage that to ensure that the status is not subject to question or challenge at a later date. Every independent contract should then be put in writing. The written contract should recite why the relationship is an independent contract and should clearly identify the worker's responsibility to pay estimated tax, self-employment tax, and so on.

### AUTHORIZING CONTRACTS

If properly authorized individuals make oral promises these can become part of the employment relationship. To guard against a judge ruling that a conversation held with an employee is an oral contract, the best practice is to put contracts into writing. The written contract can be reasonably brief and can incorporate employment policies — subject to any revisions later made in those policies.



## **DETERMINING EMPLOYMENT STATUS: AT-WILL, TENURE, OR SOMETHING IN-BETWEEN**

The long-standing baseline of American law is at-will employment. In an at-will employment contract, either party may terminate the employment relationship at any time, for any reason, with or without notice. It is perhaps the simplest and most basic contractual relationship between employer and employee. That simplicity and ease of operation make it a popular option for charter school operators. In particular, there are no specific reasons that must be given for termination and no "due process" type procedural requirements.

There are two major costs that should be considered alongside the very significant benefits of at-will employment. Most employees view employment at-will to mean that they have no job security and are subject to termination more or less on a whim. As a result, many employees who are at-will are fearful, distrustful, and quick to assume the worst about their employer. Attempts to engage employees in governance, curriculum development or any aspect of policy formation may be frustrated by employee fear that frank expressions of opinion will be rewarded with prompt termination. In short, the employer who chooses the at-will option should also spend some thought and effort on gaining the trust or confidence of employees that this power will not be abused.

"Tenure" simply means that an indefinite term of employment can only be ended by the employer for certain reasons (with evidence to support those reasons). While at-will employment can communicate distrust and insecurity to employees, tenure can burden employers with proving specific reasons to support discharge through trial-type procedures. There are several options that may be employed by charter school employers to avoid the costs associated with the strict tenure or at-will choices. One option is to provide a severance guarantee or notice period, which can be as simple as a two-week notice provision or as elaborate as a "golden parachute." A second alternative simply extends the period of notice until it amounts to a term contract for annual or multi-year (but not indefinite) employment. A third option is to give employees procedural protections

even though they do not have the status of tenure or cause limitations on dismissal. Keep in mind that any decision to adopt an option that is neither at-will nor tenure (other than a brief notice period) should only be adopted after consultation with local counsel and review of applicable state law.

### **Hiring Issues**

Employment law can often restrict what can be asked while sanctioning asking too little. Staying within the boundaries on both sides is important. There are a few strategies that can be utilized to stay within the middle ground.

#### **BOX ONE: TYPES OF EMPLOYMENT STATUS**

At-Will

Tenure

"In-between options," including:

- employment with severance guarantee/notice period
- term contract, and
- employment with procedural protections.

*For more information about each of these options and others, visit the online guide at [www.uscharterschools.org/gb/personnel/](http://www.uscharterschools.org/gb/personnel/)*

Your posting or advertising strategy should be one that will allow a broad range of interested and qualified persons a real opportunity to apply. Do not advertise for a "young dynamic" employee – the clear implication is that you intend to discriminate on the basis of age. Do not state employees must be in "good health" or specify the gender required the first is an ADA violation and the second is clear sex discrimination. From the other side, make sure that advertisement or posting states that you are "An Equal Opportunity Employer." If you know your current work force under-represents a prominent group in your community, make an extra effort to place advertising or to post positions in a way that is accessible to this group.

In job applications and interview, you must avoid questions that are clearly illegal or that imply any form of discrimination. Professional ability testing should only be utilized if experts that specialize in confirming the validity of such tests have reviewed the test and approved its use for the position in question. On the other hand, basic background checks and reference checking should always be utilized. Charter school employers may be required by some states to run employee fingerprints through law enforcement screening procedures. Reference checks are not necessarily required by law, but good management practices suggest that employers check into references of prospective employees.

## **INTELLECTUAL PROPERTY ISSUES**

Teachers often create work that is useful for the school. Whether this consists of writing curriculum, writing a new test, or compiling classroom materials, the result may be a document in which someone can hold a "copyright." A copyright gives the party that owns it control over the use of the copyrighted item.

Copying such material without the permission of the copyright holder (normally the author) gives rise to serious civil and even criminal sanctions under federal law. In general, if an employee prepares a document as part of the job it is considered a "work for hire." That is, the employer is considered to have paid for the copyright by having paid for the work. However, the more scholarly the work, or the more it involves an employee taking initiative away from "the job," the more question there may be about whether it was a work for hire or constituted an activity independent of the job. As a practical matter, such work often has little economic value. Rather than assume that the work for hire rule covers the issues, an employer may adopt a written policy or contract provision that deals specifically with copyright issues. In this case, the school may want to give employees some of the benefit of any intellectual property they produce.

## **CONFLICT OF INTEREST AND EMPLOYEE-BOARD MEMBERS**

If a school is organized as a non-profit corporation, state corporation law will probably have applicable conflict of interest rules. Chartering authorities may also have standards for conflict of interest issues. The State education code may have applicable provisions. While the specific law will vary from jurisdiction to jurisdiction, several common themes can be found. At a minimum, any employee or non-employee board member who has a conflict of interest should formally disclose their real or potential conflict.

The implications of these rules for teachers participating on boards or other employee governors are numerous. See Box Two for a list of ways you can avoid staff conflicts of interest.

### **Box Two, AVOIDING TEACHER BOARD MEMBERS' CONFLICTS OF INTEREST**

- Require that teacher board members disclose any duality of interests and that those with dual interests abstain from voting. For example, teacher board members should not vote on their own contracts or their own salaries. Planning decisions -- particularly in potential reduction in force or reorganization contexts -- may well require teachers to abstain from voting.
- Request that employees on a governing board participate with care in general budget discussions and votes, lest their position be interpreted as trying to indirectly determine terms of employment that they cannot vote on directly.
- Consider treating board member employees' evaluation of the performance (or deciding on the future employment) of their supervisor to be a conflict of interest.
- Create a written policy that defines certain issues as ones on which employee-board members are automatically considered to have conflicts of interest and will not vote.

## GRIEVANCE SYSTEMS & ALTERNATIVE DISPUTE RESOLUTION

Most employers have a defined grievance or complaint system of some kind. Grievance procedures can provide employers with perspective that they may otherwise not receive. A school's self-improvement is significantly tied to its ability to understand its shortcomings and improve upon them. However, in many cases employees do not use grievance systems because they fear retaliation or believe their complaints will be given biased treatment.

To expect such a system to be effective, an employer must have a serious commitment to hearing even unjustified employee gripes dispassionately, investigating complaints fairly, settling matters quickly and providing a true remedy if a real problem is discovered. If the commitment to a grievance system is serious, there are several options for implementation. See Table III, Systems for Resolving Disputes, for brief descriptions of four common options.

**Table III. Systems for Resolving Disputes**

Type	Brief Description	General Cautions
Chain of Command System	This grievance system requires employees to go through the existing hierarchy to have their complaint heard.	If a chain of command system is used, the system should have some "safety valve" alternative for certain serious complaints about the manager (such as allegations of sexual harassment).
Open Door System	This system makes it clear that employees can bring any complaint to any of a number of persons in positions of authority.	The appearance that the 'door' is open will often be interpreted differently by employees – the idea that one manager will readily second guess another is often doubted by line employees.
Ombudsman System	This type of grievance system identifies a particular person whose job is to handle employee complaints. Some organizations train and authorize particular line employees to serve as an ombudsman for their peers. Others create a specialized review board that may include, or even have a working majority, of line employees.	Probably more suited to large organizations.
Alternative Dispute Resolution (ADR)	This system involves utilizing some "third party" or "neutral" to the original dispute. There are different types of ADR available – arbitration, mediation, advisory arbitration, incentive arbitration, confidential listener, mediation-arbitration, and multi-step alternative dispute resolution.	A uniform statute on arbitration has been adopted in many states, however the legislation can be complex. A charter school that designs an ADR system should become familiar with the ADR ground rules in its jurisdiction. (Consult the online manual at <a href="http://www.uscharterschools.org/gb/personnel/">www.uscharterschools.org/gb/personnel/</a> for details about ADR, the common forms, and its interaction with federal anti-discrimination law.)

## Ending the Employment Relationship

The process of terminating employees will generally require a formal decision at a high level of the organization. This may involve compliance with state public meeting or "sunshine" laws. It may also involve compliance with school organizing documents (such as articles of incorporation or bylaws). These situations vary from state to state, even school to school, and should be reviewed carefully whenever a termination may be at issue. A variety of situations can cause termination, including lay offs, downsizing, discrimination, drug and alcohol issues, off-duty misconduct, and abandonment of employment.

### EMPLOYEE MISCONDUCT

Employee misconduct is one of the most common reasons for ending the employment relationship. One of the common mistakes employers make – often in writing policies, handbooks or contracts – is to assume that they already know all the ways their employees may misbehave and what labels or terms will capture these forms of misbehavior. Indeed, this is one reason that many civil service systems, tenure laws and union contracts allow for discipline or termination based on "just cause," "good cause," "sufficient cause," or "cause." (An at-will or modified at-will employer will want to avoid these terms – perhaps using "with or without cause," instead.) An employer may well want to give employees firm directions regarding some common forms of misbehavior that could cause termination (absenteeism, tardiness, negligence, dishonesty, insubordination, discrimination, drug use, safety violations, etc.) However, it is critical that directions to employees never state or imply that the employer is only concerned about the specific behaviors being discussed or is in any way restricting the power to respond to unexpected but clearly inappropriate behavior.

### RESIGNATION

The other common termination act is resignation – termination of the employment relationship by the employee. While resignations may seem to be the best available protection against termination-related claims, the act of resignation can be confused or abused, and employees can claim that they were

wronged by being forced to resign. It may be better to take the action necessary to fire an employee – particularly an at-will employee – than to leave standing real uncertainty about whether the employee voluntarily quit. An employer should never attempt to force a resignation. On the other hand, an authentic resignation remains the surest protection available against a claim of improper termination of employment. The safest course with resignations is to make them final and irrevocable as soon as they are submitted (even if they have a later effective date). It is probably wise to have a policy requiring a written communication of resignation since oral resignations can give rise to disputes over what really happened.

### POST-EMPLOYMENT ISSUES

While you may not want to look back once an employee has been terminated, it is important to have policies on — or at least to have some put some thought into — two issues: covenants not to compete and employment references.

### COVENANTS NOT TO COMPETE

Private employers, particularly those with sensitive or proprietary information or carefully cultivated client bases, often require employees to sign covenants not to compete. Covenants not to compete are not often seen in the public sector and may give rise to serious policy questions. However, charter schools that feel their very unique approach to education is at risk from unfair competition by former employees could consider drafting a covenant not to compete, particularly for top level managers. The validity of covenants not to compete is very dependant upon reasonableness – that is, the size of the area covered, the period of time covered, and so on. A charter employer should only utilize a covenant not to compete with advance clearance from counsel who has reviewed the law in their jurisdiction.

## EMPLOYMENT REFERENCES

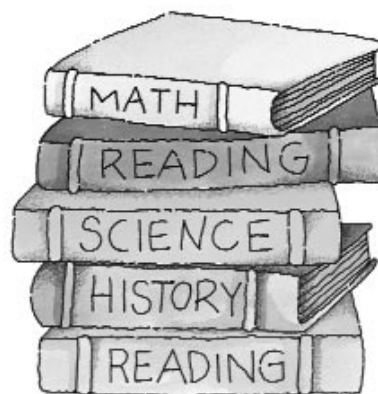
As an employer you want accurate and candid references from others and should try to give accurate and candid references to others. Yet employers can be subject to liability for defamation regarding any statements made about current or former employees. Charter schools should take several steps in managing employment references. Carefully specify and train the person at your school that is authorized to provide employment references and prohibit anyone else from acting in that capacity. The person giving a reference should only report unfavorable facts if they are sure the facts are true and can be proven to be true. Keep reference checks private with the person or persons who can properly make inquiries. And, finally, be sure to stick to what is relevant when talking to others about employees.

## Resources

With the frameworks established by federal and state law – whether treating civil rights, labor markets, or aspects of public employment – each charter school has some authority to make real choices about employment policy. These choices most commonly express themselves in the contract relationship created with employees. (The online manual offers a look at the legal limits in employment issues such as hiring, compensation, employee evaluation, and termination. Specific guidance is given to the charter leader or administrator who is crafting personnel policy in how to guard against legal claims from employees. Another publication of the Charter Friends National Network, *Mobilizing and Motivating Your Staff To Get Results*, also addresses these issues, providing strategies on ways to use the autonomy and flexibility granted by your charter to use your most important resources well, creating a truly innovative and successful charter school environment. This is available online at [www.uscharterschools.org/gb/motivatingstaff/](http://www.uscharterschools.org/gb/motivatingstaff/).)

The legalization of the employment relationship is wide-ranging in scope and is growing with each passing day. The law establishes some boundaries – some clear and firm, others contestable and vague – for the range of possible and permissible practices. To stay abreast of the complexities of employment law, the charter school leader will need to take a proactive stance.

The most important steps in navigating the field of employment law are to become familiar with employment regulations that could affect your school, hire local counsel, and develop policies that consider all aspects of the employment relationships. See the employment policy and contract checklist on the following page. Each charter school should review the policies of the chartering authority, the internal policies of the charter school and its written contracts for, especially, professional employees, to be sure the a wide range of subjects have been considered and are either covered by some definitive policy statement or omitted by conscious choice.



## EMPLOYMENT POLICY AND CONTRACT CHECKLIST

- 1. Party identification/ address/SSN
- 2. Status
- 3. Duty description
- 4. Place of performance
- 5. Compensation
  - a. Wage, salary, or commission
  - b. Overtime
  - c. Additional compensation criteria
  - d. Bonuses
- 6. Employee benefits
  - a. Vacations
  - b. Holidays
  - c. Personal leave
  - d. Sick leave
  - e. Insurance
    - i. Medical
    - ii. Disability
    - iii. Life
  - f. Retirement plan
  - g. Other
- 7. Expense reimbursement
- 8. Outside activity/employment limitations
- 9. Confidentiality duties
- 10. Noncompetition covenant
  - a. Time length
  - b. Geographic limitations
- 11. Intellectual Property/Work for Hire provisions
- 12. Property return
- 13. Duty to notify management of unlawful acts or practices
- 14. Certification/Licensure duties
- 15. Employment termination
  - a. With cause
    - i. Grounds
    - ii. Process
  - b. Without cause
    - i. At-will
    - ii. Decision maker
  - c. Resignation effective
    - i. In writing
    - ii. On receipt
- 16. Grievance/Dispute resolution procedures
- 17. Waiver of breach
- 18. Severance
- 19. Illness, incapacity, or death
- 20. Cooperation after retirement or termination
- 21. Modification, renewal, or extension
- 22. Zipper clause
- 23. Saving clause
- 24. Applicable law
- 25. Date
- 26. Signatures



## Learn More about Charter School Personnel Policies and Practices

### The Complete Chapter Online

<http://www.uscharterschools.org/gb/personnel/>.

It includes details about the areas of legal regulation common to most employers, including charter schools. There is also a discussion of the distinctive issues that arise in charter schools, including licensing, collective bargaining systems, contracts, and retirement plans.

Also see the companion resource guide *Mobilizing and Motivating Staff to Get Results*, at [www.uscharterschools.org/gb/motivatingstaff/](http://www.uscharterschools.org/gb/motivatingstaff/)

## BOOKS

*Dale Belman, Morley Gunderson, and Douglas Hyatt, eds., Public Sector Employment in a Time of Transition* (IRRA 1996). This research volume issued by the Industrial Relations Research Association reviews trends in different aspects of public sector employment and samples some of the comparative literature on law and practices in other nations.

*Kurt H. Decker, The Individual Employment Rights Primer* (Baywood 1991). A very basic but accessible introduction to the law of individual rights in the work place. Written from the employee's attorney's point of view.

*Adrienne E. Eaton and Jeffery H. Keefe, eds., Employment Dispute Resolution and Workers Rights* (IRRA 1999). The IRRA's long over-due look at the limited empirical literature on employment ADR practices.

*Frank Elkouri and Edna Asper Elkouri, Resolving Drug Issues* (BNA 1993). This volume provides the nitty-gritty on dealing with drug abuse in the work place.

*Matthew W. Finkin, ed., The Legal Future of Employee Representation* (ILR Press 1994). A collection of law review articles on new developments in employee representation in the unionized and nonunionized sectors.

*James G. Frierson, Preventing Employment Lawsuits: An Employer's Guide to Hiring Discipline and Discharge* (BNA 1994). An accessible and professional guide to major theories of liability, preventive practices and legal process.

*Marvin Hill and Anthony V. Sinicropi, Management Rights* (BNA 1986). A standard reference work for those impacted by collective bargaining.

*Henry H. Perritt, Wiley Employment Law Update* (Various dates, John Wiley). Since 1991 Professor Perritt has issued useful annual volumes collecting articles on new developments in employment law.

*James R. Redeker, Discipline: Policies and Procedures* (BNA 1983). This is a somewhat dated but still valuable introduction to "just cause" and "progressive discipline" as used in the unionized private sector. The volume catalogues different forms of misconduct and discusses when discipline or discharge has been considered "just." Though not designed for the at-will context or the "tenured" teacher context, this volume could be very useful as a non-binding set of guidelines or suggestions for managers.

*Charles R. Richey, Manual on Employment Discrimination Law and Civil Rights Actions in the Federal Courts* (West 2nd ed. 1998). Judge Richey's MANUAL gets pulled off the shelf by many federal judges when they are trying to decide a civil rights case involving employment.

*Terry Thomason, John F. Burton, Jr., and Douglas Hyatt, eds., New Approaches to Disability in the Workplace* (IRRA 1998). An IRRA research volume on post-ADA developments in dealing with work disability. Primarily for those interested in the empirical literature.

*Marvin M. Volz and Edward P. Goggin, eds., Elkouri and Elkouri How Arbitration Works* (Committee on ADR in Employment and Labor Law, American Bar Association and BNA 1996). This is the standard reference work on arbitration of labor and employment disputes.

## ONLINE RESOURCES

The following documents are made available by charter school resource centers or schools. These are only samples and different jurisdictions or circumstances may demand different approaches or language.

### General Guidance:

#### Guiding Principles and Helpful Hints: Staff Recruitment and Selection

Illinois Charter School Developers Handbook – Overview of School Organization and Staffing  
[http://www.lqe.org/Resource\\_Guide/go\\_organization.htm](http://www.lqe.org/Resource_Guide/go_organization.htm)

Massachusetts Charter School Handbook – Boston Renaissance School Employment Handbook  
<http://www.pioneerinstitute.org/csrc/cshb/employ.cfm>

New York Charter School Resource Center – Model Personnel Policy  
[http://www.nycharterschools.org/personnel\\_manual.html](http://www.nycharterschools.org/personnel_manual.html)

### Job Descriptions:

Summit Middle School – teacher job descriptions  
[http://bcn.boulder.co.us/univ\\_school/summit/suteachr.htm](http://bcn.boulder.co.us/univ_school/summit/suteachr.htm)

Massachusetts Charter School Handbook – Barnstable Horace Mann Charter School – curriculum coordinator job description  
<http://www.pioneerinstitute.org/csrc/cshb/principal4.cfm>

### Compensation Systems:

Massachusetts Charter School Handbook – Benjamin Banneker Charter School – longevity and degree based  
<http://www.pioneerinstitute.org/csrc/cshb/salary3.cfm>

Massachusetts Charter School Handbook – Boston Renaissance Charter School – longevity and degree based, with salary ranges  
<http://www.pioneerinstitute.org/csrc/cshb/salary2.cfm>

Family Learning Center – four- level pay for performance system  
[http://www.uscharterschools.org/pub/uscs\\_docs/sd/perf\\_pay.htm](http://www.uscharterschools.org/pub/uscs_docs/sd/perf_pay.htm)

### Evaluation Forms/Processes:

Massachusetts Charter School Handbook – Lynn Community Charter School – evaluation process  
<http://www.pioneerinstitute.org/csrc/cshb/evaluation2.cfm>

Massachusetts Charter School Handbook – Advantage Schools – evaluation process  
<http://www.pioneerinstitute.org/csrc/cshb/evaluation1.cfm>

# ACCESS MORE TOOLS FOR CHARTER SCHOOLS

Guidebooks Available on Creating an Effective Charter School Governing Board, Personnel Policies & Practices, Creating and Sustaining Family Friendly Institutions, and Mobilizing and Motivating Your Staff to Get Results. These guides can be accessed online at <http://www.uscharterschools.org/gb/cfguides.htm>

The Charter Friends National Network has a limited number of print summaries of the documents available. To request a copy of one, or all four, please send an email to [info@charterfriends.org](mailto:info@charterfriends.org).

## ABOUT THE SPONSORING ORGANIZATIONS

**The Annie E. Casey Foundation** is a private charitable organization dedicated to helping build better futures for disadvantaged children in the U.S. Recognizing that strong families and strong neighborhoods are interdependent, the Casey Foundation is supporting broad strategies for neighborhood development and family transformation in twenty-two urban communities around the nation through its Making Connections initiative. For more information about the Annie E. Casey Foundation and the Making Connections initiative visit the website or contact:

The Annie E. Casey Foundation  
Tel: (410) 547-6600  
Email: [webmail@aecf.org](mailto:webmail@aecf.org)  
Web: <http://www.aecf.org/initiatives/ntfd/making.htm>

**The Charter Friends National Network (CFNN)** is a project of the Minnesota-based Center for Policy Studies in cooperation with Hamline University. Founded in early 1997, CFNN's mission is to connect and support state-level charter school organizations - mainly non-profit resource centers and associations of charter school operators.

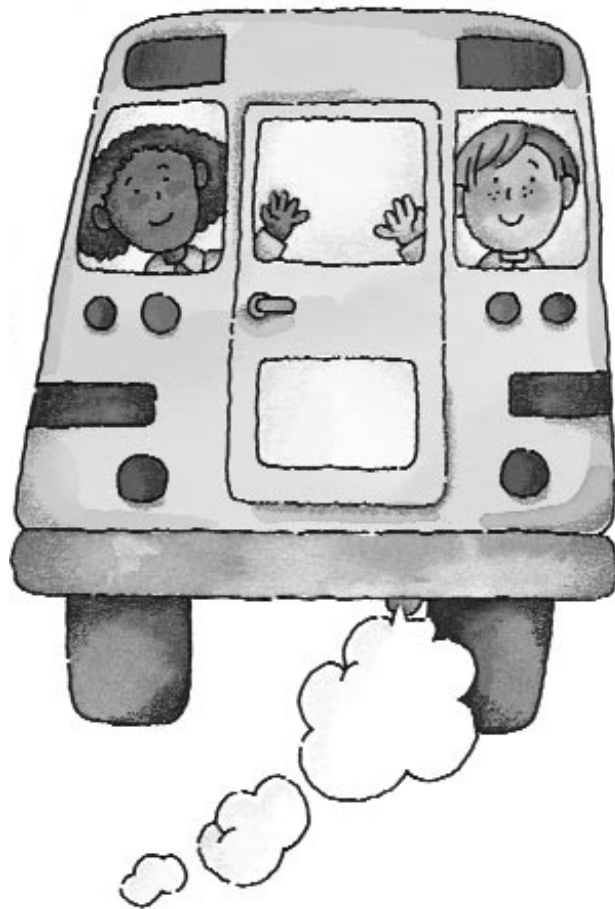
The Charter Friends National Network,  
1745 University Avenue, Suite 110  
St. Paul, MN 55104  
Tel: (651) 649-5479 • Fax: (651) 649-5472  
Email: [info@charterfriends.org](mailto:info@charterfriends.org)  
Web: <http://www.charterfriends.org>

### OTHER RESOURCE GUIDES AVAILABLE FROM CHARTER FRIENDS NATIONAL NETWORK:

- Charter School Accountability: A Guide to Issues and Options for Charter Authorizers
- Charter School Facilities: A Resource Guide on Development and Financing
- Charting a Clear Course: A Resource Guide for Charter Schools Contracting with School Management Organizations
- Employer-Linked Charter Schools: An Introduction
- A Guide for Developing a Business Plan for Charter Schools
- Thinking About a Pre-existing Comprehensive School Design
- Out of the Box: An Idea Book on Charter School Facilities Financing
- Paying for the Charter Schoolhouse: Policy Options for Charter School Facilities Financing
- Shaping an Accountability Plan for Your Charter School



The Annie E. Casey Foundation



**CHARTER FRIENDS**  
**NATIONAL NETWORK**

connecting and supporting state-level charter school initiatives