

# HR BASICS/JOB DESCRIPTIONS: A LABOR OF LOVE

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# STUDYING THE ART OF BEGINNING, CULTIVATING, AND ENDING WORKING RELATIONSHIPS:

- ALL THINGS COURTING APPLICANTS
  - POSTING, JOB DESCRIPTIONS, REFERENCES, AND BACKGROUND CHECKS
- WORKING ON THE RELATIONSHIP
  - EVALUATING, DISCIPLINE, AND RECORDKEEPING
- LOVING THEM OUT THE DOOR
  - KNOWING WHEN TO LET GO AND HOW TO DO SO



# BACK IN THE SADDLE AGAIN AND LOOKING TO MAKE A CONNECTION?

A BRIEF OVERVIEW OF:

- POSTING JOBS
- JOB DESCRIPTIONS
- INTERVIEWING
- CHECKING REFERENCES
- BACKGROUND CHECKS



# POSTING LIKE A PRO



- FOR CERTIFIED STAFF
  - DOES YOUR NEGOTIATED AGREEMENT ADDRESS POSTINGS FOR VACANCIES?
    - IF SO, YOU MUST CONSISTENTLY FOLLOW THIS. FAILURE TO DO SO = PROHIBITED PRACTICE.
  - [HTTPS://JOBS.EDUCATEKANSAS.ORG/INNER.PHP?P=SCRIPTS/FUNCT.SEARCH.JOB.LIST](https://jobs.educatekansas.org/inneR.php?p=scripts/funct.search.job.list)
  - JOB FAIRS AND COLLEGE OF ED POSTINGS
- OTHERWISE, IT'S A CHOOSE YOUR OWN ADVENTURE.
  - NEWS OUTLETS
  - YOUR WEBSITE
  - BILLBOARDS
  - TINDER
    - ...JUST MAKING SURE YOU'RE AWAKE

# DEFINE THE POSITION

- KNOW WHAT YOU ARE LOOKING FOR IN THE POSITION.
- ANALYZE THE JOB TO ENSURE YOU HAVE AN ACCURATE JOB DESCRIPTION.
- DID YOU PROPERLY CLASSIFY THE POSITION UNDER FAIR LABOR STANDARDS ACT?
- KNOW THE ESSENTIAL FUNCTIONS OF THE JOB.
- ACCURATE JOB DESCRIPTIONS ARE A LEGAL ASSET. THESE WILL BE ESSENTIAL IN WORK COMPENSATION, ADA, AND FMLA SITUATIONS.



# FIRST RULE OF THE FLSA

- Forget “hourly” v. “salaried” classifications!!!
  - How an individual is paid, i.e. by the hour or salaried, does not matter in terms of the FLSA.
- Instead ask –
  - Is the employee...
    - Exempt or Nonexempt
      - <https://www.dol.gov/agencies/whd/fact-sheets/17d-overtime-professional>





# EXEMPT V. NONEXEMPT EMPLOYEES

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## EXEMPT EMPLOYEES

- FLSA'S MINIMUM WAGE AND OVERTIME PROVISIONS DO NOT APPLY TO THESE EMPLOYEES.
- EXEMPT EMPLOYEES INCLUDE BONA FIDE EXECUTIVE, ADMINISTRATIVE, PROFESSIONAL, AND CERTAIN COMPUTER EMPLOYEES.
- JOB TITLES DO NOT DETERMINE EXEMPT STATUS.

## NONEXEMPT EMPLOYEES

- EVERYONE ELSE – MOST EMPLOYEES ARE GOING TO BE NONEXEMPT.



# EXECUTIVE EMPLOYEE

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Paid not less than \$684 per week (\$35,568 per year)?	Y	N
Paid on a salary basis?	Y	N
Primary duty managing the school district or a customarily recognized department or subdivision of the school district?	Y	N
Regularly and customarily supervises two or more employees in the department the executive is managing?	Y	N
Suggestions and recommendations about hiring, firing, advancement, promotion or any other tangible employment action with regard to other employees are given particular weight?	Y	N





# ADMINISTRATIVE EMPLOYEE

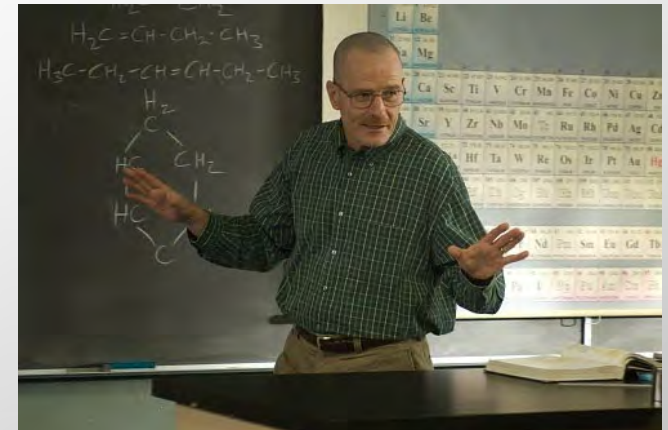
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Paid not less than \$684 per week?	Y	N
Paid on a salary basis?	Y	N
Primary duty consists of the performance of office or non-manual work directly related to the management or general business operations of the school district?	Y	N
Primary duty requires the exercise of discretion and independent judgment with regard to matters of significance?	Y	N



# PROFESSIONAL EMPLOYEE

Paid not less than \$684 per week? (Not Required for Teachers)	Y	N
Paid on a salary basis? (Not Required for Teachers)	Y	N
Does the employee's primary duty consist of the performance of work that requires knowledge of an advanced type in a field of science or learning customarily acquired?	Y	N





## COACHES

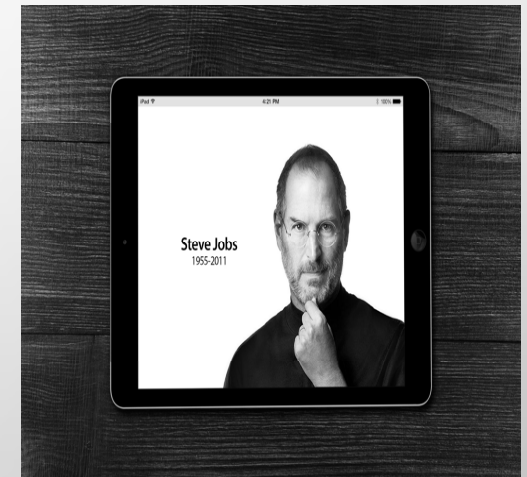
SECTION 13(A)(1) OF THE FLSA AND ITS IMPLEMENTING REGULATIONS EXEMPT “ANY EMPLOYEE WITH A PRIMARY DUTY OF TEACHING, TUTORING, INSTRUCTING OR LECTURING IN THE ACTIVITY OF IMPARTING KNOWLEDGE AND WHO IS EMPLOYED AND ENGAGED IN THIS ACTIVITY AS A TEACHER IN AN EDUCATIONAL ESTABLISHMENT BY WHICH THE EMPLOYEE IS EMPLOYED.” 29 C.F.R. § 541.303(A).

COACHES WHOSE PRIMARY DUTIES ARE NOT RELATED TO TEACHING—FOR EXAMPLE, PERFORMING GENERAL CLERICAL OR ADMINISTRATIVE TASKS FOR THE SCHOOL UNRELATED TO TEACHING, INCLUDING THE RECRUITMENT OF STUDENTS TO PLAY SPORTS, OR PERFORMING MANUAL LABOR—DO NOT QUALIFY FOR THE TEACHER EXEMPTION. SEE WAGE AND HOUR OPINION LETTER AUGUST 24, 1998.

FOR PURPOSES OF THIS RESPONSE, WE ASSUME THAT THE COACHES ARE NOT EMPLOYED IN ANY OTHER CAPACITY BY THE SCHOOL OR THE SCHOOL DISTRICT. WE ALSO ASSUME THE SCHOOL MEETS THE DEFINITION OF AN EDUCATIONAL ESTABLISHMENT UNDER 29 C.F.R. § 541.204(B). COACHES QUALIFY FOR THE EXEMPTION IF THEIR PRIMARY DUTY IS TEACHING AND IMPARTING KNOWLEDGE TO STUDENTS IN AN EDUCATIONAL ESTABLISHMENT. “THOSE FACULTY MEMBERS WHO ... SPEND A CONSIDERABLE AMOUNT OF THEIR TIME IN EXTRACURRICULAR ACTIVITIES SUCH AS COACHING ATHLETIC TEAMS ... ARE ENGAGED IN TEACHING. SUCH ACTIVITIES ARE A RECOGNIZED PART OF THE SCHOOLS’ RESPONSIBILITY IN CONTRIBUTING TO THE EDUCATIONAL DEVELOPMENT OF THE STUDENT.” 29 C.F.R. § 541.303(B).

# COMPUTER PROFESSIONAL

Is the employee paid at least \$684 per week on a salary basis or paid on an hourly basis, at a rate not less than \$27.63 an hour?	Y	N
Paid on a salary basis (unless hourly)?	Y	N
Is the employee employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field performing the duties described below?	Y	N
Does the employee's primary duty consist of: The application of systems analysis techniques and procedures to determine hardware, software or system functional specifications; ■ The design, development, documentation, analysis, creation, testing or modification of computer systems or programs based on and related to user or system design specifications; ■ The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or ■ A combination of the above.	Y	N



# AVOIDING LIABILITY

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## UPDATE JOB DESCRIPTIONS

- REVIEW JOB DESCRIPTIONS AND INCLUDE LANGUAGE TO REFLECT PERFORMANCE OF EXEMPT DUTIES.
  - FOR INSTANCE, THE JOB DESCRIPTION OF AN EXEMPT EXECUTIVE EMPLOYEE SHOULD INDICATE THE INDIVIDUAL EVALUATES AND/OR MAKES EMPLOYMENT RECOMMENDATIONS ABOUT THE EMPLOYEES HE OR SHE SUPERVISES.

## TIPS FOR HANDLING MISCLASSIFICATION OF EMPLOYEES

- VERIFY THE FACTS
- COMMUNICATE PRECISELY AND EFFECTIVELY
  - EXPLAIN THE EXEMPTION CHANGES AND WHY THEY ARE BEING MADE TO THE EMPLOYEE
- CONSIDER THE EMPLOYEE'S VIEWPOINT
- DECIDE WHETHER TO PAY BACK OVERTIME





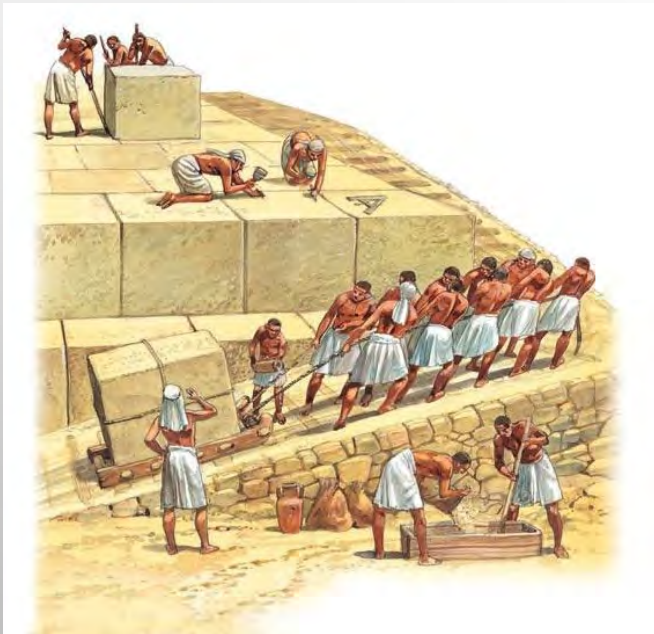
# SCENARIO 1: JANITOR JONES

- MR. MARVIN JONES IS YOUR HEAD CUSTODIAN AT THE HIGH SCHOOL. HE LEADS A TEAM COMPRISED OF ONE FULL-TIME AND ONE PART-TIME/NIGHT CUSTODIAN.
- WHILE HE DOES JANITORIAL DUTIES HIMSELF, HE IS ALSO RESPONSIBLE FOR ASSIGNMENTS AND ORDERING. WOULD HE BE EXEMPT?





# DON'T SKIP PHYSICAL ESSENTIAL FUNCTIONS



- NO JOB DESCRIPTION IS COMPLETE WITHOUT AN ACCOUNTING OF THE PHYSICAL DEMANDS OF THE POSITION.
  - REGULAR AND PREDICTIVE ATTENDANCE
  - ABILITY TO LIFT (SPECIFIED, NOT EXAGGERATED AMOUNT), PUSH, PULL, DRAG, REACH, BEND, STOOP, KNEEL, STAND FOR LONG PERIODS, WORK IN NOISY AND STRESSFUL ENVIRONMENTS, ETC.
  - PHYSICAL PRESENCE IN THE WORKPLACE
  - ATMOSPHERIC ANOMALIES AND SUBSTANCES
  - DURING COVID-19 OUTBREAK, YOU MAY WANT TO SPECIFY A REQUIRED WORKING LOCATION, TOO

# EVIDENCE OF ESSENTIAL FUNCTION (ADA)

- THE EMPLOYER'S JUDGMENT, SUPPORTED BY EVIDENCE OF ACTUAL PERFORMANCE
  - AVOID PAPER REQUIREMENTS THAT ARE NOT ENFORCED.
    - WHAT ABOUT A JOB REQUIRES THE TEACHER TO LIFT, PULL, OR DRAG 50 POUNDS?
  - AVOID STEREOTYPING.
- WRITTEN JOB DESCRIPTIONS PREPARED BEFORE ADVERTISING OR INTERVIEWING
  - MUST REFLECT ACTUAL FUNCTIONS OF THE CURRENT JOB
  - LOOK AT PURPOSE OF FUNCTION, NOT MANNER IN WHICH CURRENTLY PERFORMED



## SCENARIO 2: THE SENSITIVE SNIFFER

- AFTER HIRING YOUR NIGHT CUSTODIAN, YOU LEARN THAT SHE HAS A SEVERE SENSITIVITY TO CHEMICALS AND ODORS. SHE COMES BEARING A DOCTOR'S NOTE THAT SHE IS NOT ABLE TO CLEAN WITH ANY COMPOUND MORE FRAGRANT THAN WATER. WHAT DO YOU DO? CAN YOU MAKE ACCOMMODATIONS, OR IS THIS A DEAL BREAKER?

**LISTEN...  
DO YOU  
SMELL  
SOMETHING?**



# INTERVIEWS



- CONSISTENCY IS KEY: ASK ALL APPLICANTS THE SAME QUESTIONS FROM JOB DESCRIPTION
- RANK RESPONSES
- KEEP RESPONSES AT LEAST 180 DAYS
- BE PREPARED TO DEFEND WHY YOU DID NOT HIRE CANDIDATE AND PROVIDE ANY DOCUMENTATION TO KHRC, EEOC
- THERE SHOULD BE EASILY ARTICULABLE, NONDISCRIMINATORY REASONS WHY YOU SELECTED THIS CANDIDATE OVER THE OTHERS.

# INTERVIEWS



- INTERNAL CANDIDATES SHOULD GET THE SAME TREATMENT AS EXTERNAL ONES
  - CAN YOU JUSTIFY ON PAPER WHY THE INTERNAL CANDIDATE WAS PREFERRED IF THERE'S A CHALLENGE?
- IF CONDUCTING ZOOM INTERVIEWS, TRY TO RECREATE THE NORMAL INTERVIEW SETTING AND SCHEDULE OTHER CANDIDATES EXPERIENCE
  - IN A WORKER'S MARKET, THIS IS AS MUCH AN INTERVIEW OF YOU AND YOUR DISTRICT AS IT IS OF THE CANDIDATE
  - BE AWARE OF YOUR SURROUNDINGS

# DANGEROUS INQUIRIES

- MARTIAL STATUS
- FAMILY SITUATION
- FAMILY HISTORY UNRELATED TO JOB
- MEDICAL INFORMATION
- ASSOCIATIONAL ACTIVITIES
- DISABILITIES
  - CAN ASK IF THE APPLICANT IS ABLE TO PERFORM THE ESSENTIAL FUNCTIONS OF THE JOB.
- YOU CANNOT SEEK ANY OF THIS INFORMATION FROM REFERENCES OR PAST EMPLOYERS.





# REFERENCES



- ALL REFERENCES SHOULD BE CHECKED.
  - DO NOT HIRE UNTIL YOU HAVE VERIFIED THAT THE APPLICANT POSSESSES THE REQUISITE SKILLS, ABILITY AND EXPERIENCE TO FULFILL THE DUTIES OF THE POSITION.
  - CONTACT PAST EMPLOYERS AS WELL.
- WATCH FOR GAPS IN EMPLOYMENT HISTORY
- WHAT ABOUT CYBERSTALKING CANDIDATES?
  - BE CAREFUL WITH THIS ONE. YOU NEED A BUFFER BETWEEN THE RESEARCHER AND THE ONE MAKING DECISIONS, SO THAT INFORMATION ON OFF-LIMITS TOPICS IS NOT EXCHANGED.

# BACKGROUND CHECKS

## REASONS TO DO BACKGROUND CHECKS:

- TO PROVIDE A SAFE WORKPLACE FOR EMPLOYEES AND STUDENTS
- TO HIRE THE MOST QUALIFIED PEOPLE
- TO MINIMIZE EXPOSURE FROM EMPLOYEE LIABILITY FOR NEGLIGENT HIRING
- TO ENCOURAGE HONESTY IN THE APPLICATION AND INTERVIEW PROCESS
- TO DISCOURAGE APPLICANTS WITH SOMETHING TO HIDE
- TO ELIMINATE UNCERTAINTY IN THE HIRING PROCESS
- INSTINCT AND FIRST IMPRESSIONS ARE NOT ALWAYS SPOT ON
- YOUR APPLICANTS' HISTORY WILL HELP IN PREDICTING THEIR FUTURE BEHAVIOR
- HAVING A BACKGROUND SCREENING PROGRAM IN PLACE WILL ENCOURAGE APPLICANTS TO BE MORE FORTHCOMING WITH INFORMATION.

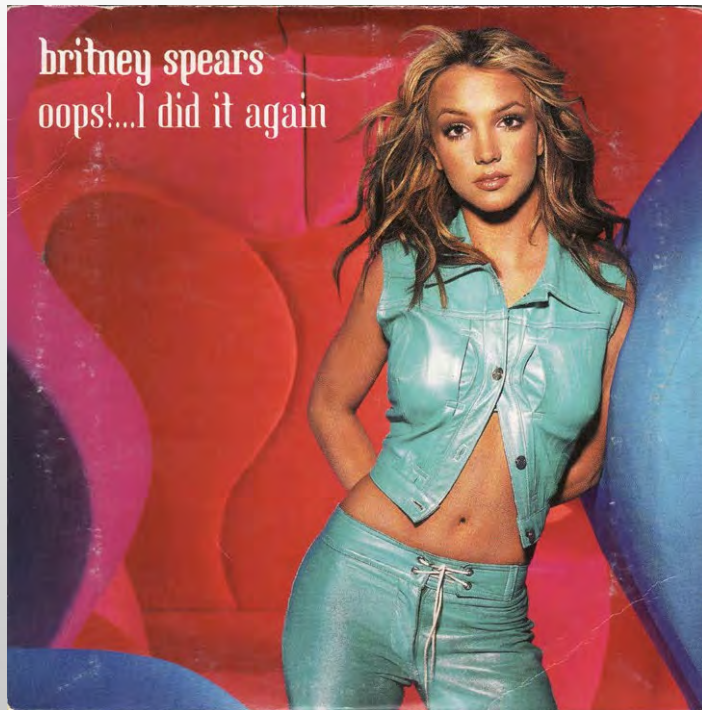


# BACKGROUND CHECK REALITY CHECK

- THEY ARE COSTLY.
  - CHECK INTO KBI OPTIONS.
- THEY DON'T ALWAYS CATCH EVERYTHING.
- YOUR TEACHERS ALREADY GET THEM THROUGH LICENSURE PROCESSES.
- THEY ARE NOT A LEGAL REQUIREMENT.
- YOU MAY ALREADY KNOW EVERYTHING ABOUT LOCAL CANDIDATES.



## SCENARIO 3: ABOUT THAT TEACHING LICENSE...

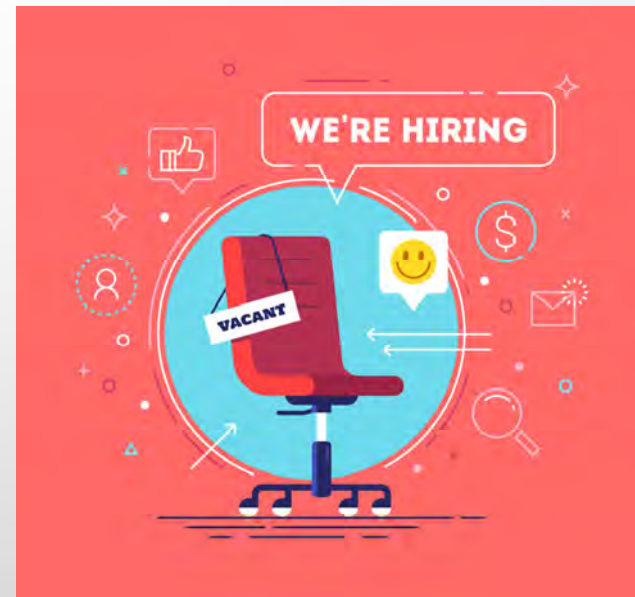


- A FIRST-YEAR TEACHER IN YOUR DISTRICT HAS TAUGHT FOR SHORT STINTS IN TWO OTHER DISTRICTS AND SAID HE WAS LICENSED IN THE AREA YOU PLACE HIM. WHEN A LICENSE HASN'T BEEN PROVIDED TO THE CLERK, SHE FOLLOWS UP, ONLY TO FIND THAT HE NEVER FINISHED THE DEGREE AND HAS NO LICENSE. WHAT DO YOU DO? HOW COULD YOU HAVE PLAYED THIS DIFFERENTLY?

# PROCESS FOR FINDING THAT SPECIAL SOMEONE

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- PRE-INTERVIEW HIRING PROCESS FOR CLASSIFIED AND LICENSED:
  - SUPERVISOR SENDS LETTER OF RESIGNATION TO HUMAN RESOURCES
  - HR POSTS POSITION
    - POSITION IS POSTED FOR REQUIRED MINIMUMS
  - PRINCIPAL/DIRECTOR REVIEWS APPLICATIONS FOR INTERVIEW
    - NO APPLICATION = NO INTERVIEW





# PROCESS FOR FINDING THAT SPECIAL SOMEONE, PART DEUX

- INTERVIEWS:

- THE PRINCIPAL/DIRECTOR WILL ARRANGE INTERVIEWS, ENTER INTERVIEW QUESTIONS, AND FOLLOW UP WITH REFERENCES
- REVIEW SUBMITTED REFERENCES AND ENTER COMMENTS IN NOTES
- CALL CURRENT OR PAST SUPERVISOR AND COMPLETE TELEPHONE REFERENCE CHECK WITH SUPERVISOR
  - IF SUPERVISOR HAS NOT OR WILL NOT GIVE A REFERENCE, THIS IS A RED FLAG. CHECK WITH HUMAN RESOURCES.
- OFFER POSITION TO MOST QUALIFIED CANDIDATE PENDING SUCCESSFUL BACKGROUND CHECK AND BOE APPROVAL.







- **POST-INTERVIEW PROCESS:**

- HUMAN RESOURCES REVIEWS REFERENCE CHECKS AND , FOR LICENSED STAFF, VERIFIES LICENSE
- SUPERINTENDENT APPROVE, AND PRINCIPAL/DIRECTOR NOTIFIED BY EMAIL
- FOR LICENSED STAFF, A LETTER OF INTENT IS SENT TO THE CANDIDATE
- HUMAN RESOURCES SENDS CONSENT FOR BACKGROUND CHECK TO CANDIDATE IF NOT ALREADY DONE
- LIST OF CLASSIFIED HIRES SUBMITTED, BY DUE DATE, TO BOE FOR APPROVAL
- HUMAN RESOURCES CLOSES POSTING AFTER BOE APPROVAL, AND OTHER APPLICANTS ARE NOTIFIED BY EMAIL
- IF BOE APPROVES, HUMAN RESOURCES ISSUES WORK AGREEMENT OR CONTRACT TO CANDIDATE AND COMPLETES PROCESS
- THE PRINCIPAL/DIRECTOR WILL RECEIVE AN EMAIL THAT RECOMMENDATION WAS TAKEN



# THE BUCK STOPS (AND STARTS) HERE

K.S.A. 72-1137. SCHOOL DISTRICT OFFICERS AND EMPLOYEES; APPOINTMENT; BOARD MEMBERS TO RECEIVE NO COMPENSATION.

- *IN ADDITION TO THE OFFICERS PROVIDED FOR IN THIS ACT, **THE BOARD OF EDUCATION OF ANY SCHOOL DISTRICT MAY APPOINT OTHER OFFICERS AND EMPLOYEES TO SERVE AT THE PLEASURE OF THE BOARD.** SUCH OFFICERS AND EMPLOYEES SHALL RECEIVE COMPENSATION FIXED BY THE BOARD. NO MEMBER OF A BOARD OF EDUCATION SHALL RECEIVE COMPENSATION FROM THE SCHOOL DISTRICT FOR ANY WORK OR DUTIES PERFORMED BY HIM.*
- **RUN EMPLOYMENT DECISIONS THROUGH HUMAN RESOURCES, LOOK TO THAT DEPARTMENT FOR FORMS AND GUIDANCE, AND ENSURE THAT OFFICIAL ACTION TO START AND STOP EMPLOYMENT IS TAKEN BY THE BOARD.**

# WORKING ON THE RELATIONSHIP

EVALUATING, DISCIPLINE, AND RECORDKEEPING



# LICENSED EMPLOYEES MUST BE EVALUATED

**K.S.A. 72-2409.** POLICY OF PERSONNEL EVALUATION; ADOPTION; FORMS; CONTENTS; TIME.

EACH BOARD SHALL ADOPT A WRITTEN POLICY OF PERSONNEL EVALUATION PROCEDURE IN ACCORDANCE WITH [K.S.A. 72-9002](#) ET SEQ., AND AMENDMENTS THERETO. EVERY POLICY SO ADOPTED SHALL: **(A)** BE PRESCRIBED IN WRITING AT THE TIME OF ORIGINAL ADOPTION AND AT ALL TIMES THEREAFTER WHEN ANY AMENDMENTS ARE ADOPTED.

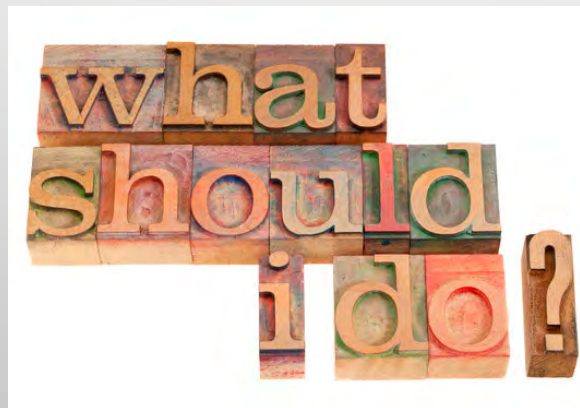
**(B)** INCLUDE EVALUATION PROCEDURES APPLICABLE TO ALL EMPLOYEES.

**(C)** PROVIDE THAT ALL EVALUATIONS ARE TO BE MADE IN WRITING AND THAT EVALUATION DOCUMENTS AND RESPONSES THERETO ARE TO BE MAINTAINED IN A PERSONNEL FILE FOR EACH EMPLOYEE FOR A PERIOD OF NOT LESS THAN THREE YEARS FROM THE DATE EACH EVALUATION IS MADE.

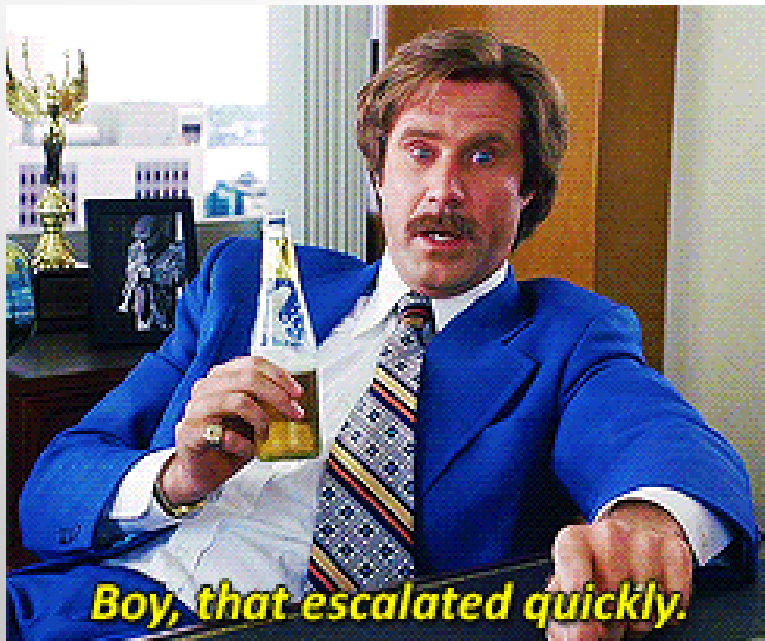
**(D)** EXCEPT AS PROVIDED HEREIN, PROVIDE THAT EVERY EMPLOYEE IN THE FIRST TWO CONSECUTIVE SCHOOL YEARS OF EMPLOYMENT SHALL BE EVALUATED AT LEAST ONE TIME PER SEMESTER BY NOT LATER THAN THE 60TH SCHOOL DAY OF THE SEMESTER. ANY EMPLOYEE WHO IS NOT EMPLOYED FOR THE ENTIRE SEMESTER SHALL NOT BE REQUIRED TO BE EVALUATED. DURING THE THIRD AND FOURTH YEARS OF EMPLOYMENT, EVERY EMPLOYEE SHALL BE EVALUATED AT LEAST ONE TIME EACH SCHOOL YEAR BY NOT LATER THAN FEBRUARY 15. AFTER THE FOURTH YEAR OF EMPLOYMENT, EVERY EMPLOYEE SHALL BE EVALUATED AT LEAST ONCE IN EVERY THREE YEARS NOT LATER THAN FEBRUARY 15 OF THE SCHOOL YEAR IN WHICH THE EMPLOYEE IS EVALUATED.

# CLASSIFIED STAFF SHOULD BE EVALUATED

- CHECK YOUR POLICY
- ALTHOUGH CLASSIFIED STAFF ARE GENERALLY AT-WILL EMPLOYEES, YOU STILL NEED TO HAVE NONDISCRIMINATORY REASONS BEHIND ALL THE EMPLOYMENT DECISIONS YOU MAKE ON BEHALF OF THE DISTRICT
- EVALUATIONS, DONE CONSISTENTLY AND HONESTLY, WILL PROVIDE THE EVIDENCE NEEDED TO DOCUMENT PERFORMANCE PROBLEMS IN CASE OF CHALLENGE OR COMPLAINT



# PROGRESSIVE DISCIPLINE



KASB

- THE NORMAL ESCALATION OF EMPLOYEE DISCIPLINE GOES SOMETHING LIKE:

- VERBAL REPRIMAND (WHICH IS DOCUMENTED IN NOTES),
- WRITTEN REPRIMAND,
- NEGATIVE EVALUATION,
- PLAN OF IMPROVEMENT,
- SUSPENSION WITH PAY,
- SUSPENSION WITHOUT PAY,
- NONRENEWAL, AND
- TERMINATION.

THESE STEPS CAN BE SKIPPED IF THE SEVERITY OF THE SITUATION WARRANTS IT, BUT THE PROCESS IS IN PLACE TO HELP BUILD A CASE FOR THE EMPLOYMENT ACTION TAKEN IN SITUATIONS WHERE THERE IS NO REAL SMOKING GUN THAT TAKES YOU TO IMMEDIATE TERMINATION.



# TAKING THEM BY SURPRISE = BAD

- EMPLOYEES SHOULD NOT BE MADE TO FEEL LIKE THEIR CONTINUED EMPLOYMENT IS A GAME OF CHANCE. DECISIONS SHOULD BE WELL SUPPORTED BY THE EVIDENCE, AND, IF YOU'VE DONE YOUR WORK TO TRY TO REHABILITATE THE EMPLOYEE, THEY SHOULD HAVE BEEN AWARE OF THE PERFORMANCE ISSUES AND THE CONSEQUENCES IF NOT CORRECTED. FAILING TO DO THESE THINGS LEADS TO MORE CHALLENGES AND THE FILING OF MORE COMPLAINTS.



# EMPLOYEE FILES



- IT IS ACCEPTABLE TO HAVE MORE THAN ONE FILE ON AN EMPLOYEE.
- PERMANENT PERSONNEL FILE
  - OPEN TO INSPECTION BY EMPLOYEE
  - CHECK POLICY/NEGOTIATED AGREEMENTS ON EXACT CONTENTS AND TIMELINES
  - OFTEN INCLUDES CONTRACTS, EVALUATIONS, LETTERS OF REPRIMAND, AND/OR PLANS OF IMPROVEMENT
- UNOFFICIAL FILE
  - COULD INCLUDE PERSONAL MEMORY AIDS, DOCUMENTS PREPARED IN PREPARATION FOR LITIGATION, SUPPORTING DOCUMENTS FOR DISCIPLINARY ACTION
  - LIKELY ALSO HAVE SEPARATE FILES FOR APPLICATION MATERIALS, MEDICAL RECORDS, I-9 DOCUMENTATION, ETC.
  - MANY OF THESE DOCUMENTS WOULD NOT BE DISCLOSABLE TO THE EMPLOYEE EXCEPT IN THE CASE OF LITIGATION.
- WHAT ABOUT EMAILS?
  - LITIGATION HOLDS AND THE KANSAS OPEN RECORDS ACT
  - LET'S NOT PUT ANYTHING IN AN EMAIL WE WOULDN'T WANT ON A BILLBOARD WITH YOUR FACE ON IT.

# LOVING THEM OUT THE DOOR: DRAWING INSPIRATION FROM THE GAMBLER HIMSELF

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- “EVERY GAMBLER KNOWS THE SECRET TO SURVIVING IS KNOWING WHAT TO THROW AWAY AND KNOWING WHAT TO KEEP.”
- **SOME EMPLOYMENT RELATIONSHIPS ARE NOT EASY. WE’LL TAKE SOME TIME TODAY TO TALK ABOUT WHEN TO HOLD ONTO WHAT YOU’VE BEEN DEALT AND SEE IT THROUGH AND WHEN TO CONSIDER FOLDING.**
- BECAUSE, “[I]F YOU’RE GOING TO PLAY THE GAME, BOY, YOU GOT TO LEARN TO PLAY IT RIGHT.”

# DO YOU FEEL LIKE YOU'RE "ON A TRAIN BOUND FOR NOWHERE" WITH THIS EMPLOYEE?

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- NOW IS THE TIME TO START BUILDING A CASE AND DOING YOUR HOMEWORK.
  - HOW LONG HAS THE EMPLOYEE WORKED HERE?
  - DO THE EVALUATIONS AND DOCUMENTATION IN THE EMPLOYEE'S FILE SUPPORT A NONDISCRIMINATORY PURPOSE FOR WHICH YOU COULD NONRENEW OR TERMINATE THE EMPLOYEE'S EMPLOYMENT?
  - WHAT KIND OF CONTRACT IS HE/SHE ON, AND WHAT NOTICE REQUIREMENTS APPLY?
  - DOES THIS PERSON HAVE DUE PROCESS PROTECTIONS UNDER YOUR NEGOTIATED AGREEMENT OR BOARD POLICY YOU WILL NEED TO CONTEND WITH?



# **CLASSIFIED/HOURLY EMPLOYEE**





# FIRST STEPS



Review any work  
agreements/contracts



Policy



Handbooks





## EMPLOYMENT -AT-WILL

- MAY BE TERMINATED  
FOR:
  - ANY REASON
  - NO REASON AT  
ALL

Contract or  
confirmation of  
employment  
letter

Employee-At-  
Will

Contract for  
term

## **TYPES OF CONTRACTS**



Beginning and ending date



Property interest in employment for the term of that contract



May have built in notice provision or causes listed that would allow termination in certain cases

## CONTRACT FOR A TERM

# SUPPLEMENTAL CONTRACTS: NONRENEWAL OR TERMINATION

Continuing Contract does not apply, although keep these contracts separate from main contract



Employees do have a property interest in current contract if you try to terminate in middle of contract year.

*Kelly v. Independent School Dist. No. 12 of Okla. County, Okla.*



# **BE PREPARED**

- KNOW THE LIMITATIONS OF THE CONTRACT AND POLICIES APPLICABLE TO THE EMPLOYEE
- IT'S HELPFUL IF EVALUATIONS REFLECT PERFORMANCE PROBLEMS
- DOCUMENT PERFORMANCE ISSUES AND PRACTICE PROGRESSIVE DISCIPLINE WHEN POSSIBLE
- POST TERMINATION CHALLENGES DO HAPPEN, SO HAVE CLEAR EVIDENCE OF NONDISCRIMINATORY REASONS FOR TERMINATION OR NONRENEWAL EVEN IF YOU DON'T HAVE AN OBLIGATION TO PROVIDE THE EMPLOYEE WITH NOTICE OF THOSE REASONS AT THE TIME OF THE BREAKUP



## SCENARIO 4: EVERYONE'S FAVORITE GUY

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- YOU HAVE A FUN-LOVING, WIDELY BELOVED CUSTODIAL EMPLOYEE WHO IS FIGHTING A PARTICULARLY AGGRESSIVE FORM OF SKIN CANCER. OVER THE LAST YEAR, HE HAS BEEN IN DALLAS MUCH OF THE TIME RECEIVING EXPERIMENTAL TREATMENT IN HOPE OF REVERSING ITS COURSE.
- HE HAS COMPLETELY EXHAUSTED HIS PAID LEAVE, AND EMPLOYEES ARE COMING IN DROVES REQUESTING TO DONATE MUCH OF THEIR OWN LEAVE TO HIM TO ALLOW HIM TO STILL RECEIVE PAY AND BENEFITS THROUGH THE SCHOOL.
- WHAT DO YOU NEED TO CONSIDER? WHAT ARE YOUR NEXT STEPS?

# **NONRENEWAL OR TERMINATION OF LICENSED STAFF**

## **PLAN AHEAD**

- NEGOTIATED AGREEMENT
- BOARD POLICY
- HAVE SCHOOL BOARD ATTORNEY INVOLVED FROM THE BEGINNING
- A GOOD EVALUATION INSTRUMENT
- TRUTH IN EVALUATING AND DOCUMENTING ISSUES



# TO DO LIST



- REVIEW POLICIES FOR DISMISSAL
- REVIEW NEGOTIATED AGREEMENT
- EVIDENCE SUPPORTING GOOD CAUSE FOR DISMISSAL THAT IS NOT DISCRIMINATORY
- BE PREPARED TO PROVIDE DUE PROCESS AS REQUIRED BY THE NEGOTIATED AGREEMENT
- ONE SPOKESPERSON SHOULD BE APPOINTED TO DEAL WITH INQUIRIES ON THE CASE, SUCH AS WITH THE STAFF MEMBER'S ATTORNEY
- HAVE SETTLEMENT AUTHORITY
- AVOID EXTRANEOUS COMMUNICATIONS BY BOARD MEMBERS, SCHOOL ADMINISTRATORS

# NOTICE OF NONRENEWAL/TERMINATION

- ALL TEACHERS AND ADMINISTRATORS [HAVING TWO OR MORE YEARS OF SERVICE IN THE DISTRICT (OTHER THAN THE SUPERINTENDENT)] HAVE A 3<sup>RD</sup> FRIDAY IN MAY WRITTEN NOTICE DEADLINE UNLESS OTHERWISE SPECIFIED IN THE NEGOTIATED AGREEMENT, CONTRACT, OR POLICY.
- IF YOU ARE NOT LOCKED INTO GIVING REASONS, I WOULD NOT. THIS DOES NOT MEAN YOU DO NOT HAVE REASONS READY TO GO IN CASE OF CHALLENGE.
- IF DUE PROCESS IS REQUIRED LOCALLY, FOLLOW THOSE REQUIREMENTS. NOTE, ALSO, THAT YOUR ADMINISTRATORS HAVING TWO OR MORE YEARS HAVE THE RIGHT TO A MEETING WITH THE BOARD PRIOR TO NONRENEWAL IF THEY REQUEST ONE.
- IF YOU ARE TERMINATING A CONTRACT FOR A TERM PRIOR TO ITS END, OPPORTUNITY FOR DUE PROCESS MUST BE PROVIDED IN SOME FORM.





## DOCUMENTATION DOS:



- AS YOU'RE WORKING WITH EMPLOYEES, ENSURE THAT DOCUMENTATION OF MEETINGS, EVALUATIONS, PLANS OF IMPROVEMENT, ETC. ARE SIGNED BY BOTH THE STAFF MEMBER AND THE ADMINISTRATOR.
- BEHAVIOR THAT IS NOT DOCUMENTED GENERALLY DOES NOT CHANGE. PLANS OF IMPROVEMENT GIVE STAFF ATTAINABLE GOALS AND AN OPPORTUNITY TO IMPROVE. YOUR EVALUATION INSTRUMENT MAY REQUIRE SUCH PLANS IF RATINGS ARE SUBPAR.
- YOU NEED TO HAVE THE SAME EXPECTATIONS FOR ALL STAFF. IF YOU MAKE EXCEPTIONS FOR PARTICULAR STAFF MEMBERS, YOU ARE SETTING PRECEDENT FOR DOING SO FOR ALL EMPLOYEES IN FUTURE SIMILAR SITUATIONS.

# SCENARIO 5: OFF THE WAGON?

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- YOUR HIGH SCHOOL BUSINESS TEACHER'S HUSBAND CALLED TO LET YOU KNOW HE FEARS HIS WIFE MAY BE USING ALCOHOL AGAIN. A COUPLE OF YEARS AGO, YOU WORKED WITH HER IN TAKING TIME OFF TO GET TREATMENT.
- AROUND THE SAME TIME, YOU OBSERVE THAT SHE IS LEAVING CAMPUS OVER HER DUTY-FREE LUNCH, WHICH IS SOMETHING SHE NEVER USED TO DO.
- WHAT ARE YOUR NEXT STEPS AS FAR AS INVESTIGATION?
- IF SHE IS USING AGAIN, AND POSSIBLY EVEN IMPAIRED AT WORK, WHAT DOES THIS MEAN FOR HER EMPLOYMENT?

# KNOW WHEN TO HOLD 'EM



- THERE'S ALWAYS MOTIVATION TO WORK WITH THE STELLAR EMPLOYEES THROUGH ROUGH PATCHES. THE HARD PART IS TO REMEMBER THAT YOU HAVE TO TREAT EMPLOYEES CONSISTENTLY AND THAT YOU'RE SETTING PRECEDENT FOR FUTURE CASES.
- BE SURE THAT YOU PROVIDE EMPLOYEES WITH ALL JOB PROTECTED LEAVE REQUIRED BY LAW AND/OR POLICY. FAILURE TO DO SO COULD LEAD TO LIABILITY. RETALIATION FOR USING LEAVE ALLOTTED IS NOT ALLOWED.
- KEEP FMLA, ADA, WORK COMP, AND USERRA IN MIND AS YOU'RE WORKING THROUGH LEAVE AND SCHEDULING ISSUES.

# KNOW WHEN TO FOLD 'EM

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- REMEMBER: **ONLY THE BOARD OF EDUCATION CAN HIRE OR FIRE!**
  - ADMINISTRATORS MAY RECOMMEND ACTION, BUT THE BOARD MUST FOLLOW THROUGH.
  - THE SUPERINTENDENT GENERALLY HAS AUTHORITY TO SUSPEND WITH OR WITHOUT PAY UNLESS THE NEGOTIATED AGREEMENT PROVIDES OTHERWISE.
  - WHAT DOES THE BOARD WANT TO DO?
  - DO YOU HAVE ANY SETTLEMENT AUTHORITY?





# KNOW WHEN TO WALK AWAY

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- WHEN AN EMPLOYEE HAS EXHAUSTED ALL LEAVE AVAILABLE THROUGH LAW AND POLICY, AND THERE IS NO ADA RELATED ACCOMMODATION THAT SEEMS REASONABLE TO ALLOW THE EMPLOYEE TO KEEP WORKING
- WHEN THERE ARE DOCUMENTED PERFORMANCE ISSUES AND NO SIGNS OF IMPROVEMENT
- IF THE EMPLOYEE IS FAILING TO MEET JOB EXPECTATIONS AND/OR FOLLOWING POLICY AND/OR LAW

# KNOW WHEN TO RUN

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- WHEN SCHOOL, STUDENT, OR STAFF SAFETY IS AT ALL IN JEOPARDY IF THIS PERSON STAYS
- WHEN THERE IS EVIDENCE OF INAPPROPRIATE RELATIONS WITH STUDENTS
- WHEN THERE IS REASON TO BELIEVE THE EMPLOYEE IS MISUSING DISTRICT FUNDS
- WHEN THIS PERSON IS BULLYING OR HARASSING STUDENTS AND/OR STAFF
  - REMEMBER TITLE IX PROCESS AND ALLOW IT TO PLAY OUT, WHEN APPLICABLE





# “YOU NEVER COUNT YOUR MONEY WHEN YOU’RE SITTING AT THE TABLE. THERE’LL BE TIME ENOUGH TIME FOR COUNTIN’ WHEN THE DEALIN’S DONE.”

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- WORK ON YOUR POKER FACE.
- IN CASES WHERE ADA IS IMPLICATED, ENSURE YOU HAVE A ONE-ON-ONE DISCUSSION ABOUT WHETHER THE PERSON CAN PERFORM THE ESSENTIAL FUNCTIONS OF THE JOB WITH OR WITHOUT REASONABLE ACCOMMODATIONS, AND THAT YOU COME TO THAT DISCUSSION WITH AN OPEN MIND PRIOR TO TERMINATION.
- HAVE A CONCISE SCRIPT AND FOLLOW IT WHEN TALKING TO THE EMPLOYEE.
- REGULATE THE URGE TO FILL EVERY DEAD SPACE IN THE CONVERSATION WITH THIS EMPLOYEE WITH THE SOUND OF YOUR VOICE. YOU WILL INEVITABLY GIVE TOO MUCH INFORMATION OR PROVIDE REASSURANCE TO THE EMPLOYEE THAT WILL MAKE HIM OR HER BELIEVE THE EMPLOYMENT ACTION IS NOT APPROPRIATE OR DESERVED.
- DOCUMENT YOU’VE HAD THESE MEETINGS.



# “I MADE A LIFE OUT OF READIN’ PEOPLE’S FACES, AND I CAN SEE YOU’RE OUT OF ACES.”

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WHEN THE END IS NEAR, CONSIDER  
GIVING THE EMPLOYEE THE OPPORTUNITY  
TO RESIGN BY A GIVEN DATE AND HAVE  
THE BOARD ACCEPT THAT RESIGNATION  
INSTEAD OF TAKING UGLIER ACTION IN  
OPEN SESSION OF A BOARD MEETING. IF  
THE EMPLOYEE TAKES THIS OPPORTUNITY,  
YOU HAVE A QUICKER, KNOWN  
RESOLUTION, AND YOU DON’T HAVE TO  
INVEST THE TIME AND RESOURCES INTO  
FURTHER PROCESSES.



A man with a mustache, wearing a white shirt, a brown vest, and a dark bow tie, stands behind a green poker table. He is smiling slightly and looking directly at the camera. His hands are resting on a black tray filled with various colored poker chips (red, blue, green, yellow, and white). The table has yellow markings, including the words "BET", "ALL IN", and "DRAW ONLY PLAY WITH ACHING".

I WILL NOW GLADLY DEAL  
WITH YOUR QUESTIONS!

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