



Legal Compliance/Awareness Checklist

Association of Christian Schools International
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Introduction

In today's rigorous legal and regulatory climate, it is important for administrators and school board members to make sure that their schools are in compliance with all applicable laws and regulations. Failure to do so could subject the individuals and their schools to fines, penalties, and adverse publicity. For more than a decade ACSI has published updated versions of its Legal Compliance Checklist in the *Legal/Legislative Update* newsletter.

ACSI is **not** rendering legal advice in providing this checklist, nor does it claim that the list is all-inclusive. The checklist is but an attempt to acquaint individuals with some of the major legal issues that impact their schools. If there are questions regarding whether a school is, or needs to be, in compliance with the laws or regulations referenced below, please seek professional legal counsel. Remember that this list will change over time, since laws and regulations are changed on a regular basis.

NOTE: To gain further information, forms, policies regarding the various topics that are being presented you may visit the websites of governmental agencies provided in various sections below. For more significant questions or analysis you may want to consider consulting with a certified public accountant or attorney that specializes in these areas.

NOTE: Paragraphs that are shaded have been added or have had changes made recently!

Personnel Issues

Immigration Reform and Control Act of 1986 (8 USC § 1321 *et seq.*)

All new employees are to fill out Department of Homeland Security's I-9 Form on the first day of hire and must provide their documentation proving that they are eligible to work in the US within three business days of hiring. The school verifies documents and completes the form.

Forms are updated as required when original verifying documents reach their expiration dates.

The forms are retained by the school and made available for inspection for three years after the date of hiring **or** one year after the date of the employee's termination, whichever is later.

Retain I-9s in separate folder.

Be sure to update information when authorizing documents expire.

The U.S. Citizenship and Immigration Services (USCIS) posted the newest version of the I-9 at the [USCIS website](https://www.uscis.gov/i-9). A copy of the I-9 can be found at <https://www.uscis.gov/i-9>.

Employers should be using the form that is labeled 10/21/19 and expires on **10/31/2022**.

Note: Employers do NOT have to complete a new Form I-9 for current employees if they already have a complete I-9 on file for that worker (unless re-verification applies). Unnecessary verification efforts of your employees could trigger a discrimination complaint. Only use the new form with new hires or employees who need I-9 re-verification.

___ **Personal Responsibility and Work Opportunity Reconciliation Act of 1996** (42 USC § 1305 plus additional multiple references)

Requires states to have new hire reporting programs for the purpose of strengthening child support enforcement. Employment security and workers' compensation programs will also have access to the information to detect and prevent erroneous benefit payments.

Employers must report newly hired employees within 20 days by providing a copy of the W-4 form to the designated state agency. The amount of days allowed for reporting may vary in a few states. You can check your state law at <https://www.acf.hhs.gov/css/resource/state-new-hire-reporting-websites>

___ **Title VII of the Civil Rights Act of 1964** (42 USC § 2000e) **and Other Civil Rights Statutes**

Title VII applies to employers with 15 or more employees and requires that the school not discriminate on the basis of race, color, sex, or national origin in its employment decisions. Title VII permits job-related religious discrimination by a religious employer (42 USC 2000e-1). Title VII also prohibits employers from providing fringe benefits on a discriminatory basis.

Title VII prohibits sexual harassment in the workplace. The school must adopt a written policy prohibiting sexual harassment and disseminated it to all new and existing employees. The school also conducts appropriate in-service regarding the policy. (CA schools must also have a student-to-student non-harassment policy in place.)

The Age Discrimination in Employment Act of 1967 (29 USC § 621 *et seq.*) is an amendment to Title VII. It applies to employers with 20 or more employees. Employers must guard against making any employment decisions that unfairly impact employees age 40 and over. <https://www.eeoc.gov/laws/types/age.cfm>

The Pregnancy Discrimination Act of 1978 (42 USC § 2000e[k]) is another amendment to Title VII. It makes it clear that Title VII treats discrimination against a woman because of pregnancy, childbirth, or a related medical condition as unlawful sex discrimination. <https://www.eeoc.gov/laws/types/pregnancy.cfm>

Genetic Information Nondiscrimination Act (PL 110-233)

The Genetic Information Nondiscrimination Act (GINA) was signed into law by President Bush on May 21, 2008. It is designed to prohibit the improper use of genetic information in health insurance and employment. It prohibits group health plans and health insurers from denying coverage to a healthy individual or charging that person higher premiums based solely on a genetic predisposition to developing a disease in the future. The legislation also bars employers from using individuals' genetic information when making hiring, firing, job placement, or promotion decisions. <https://www.eeoc.gov/eeoc/publications/fs-gina.cfm>
www1.eeoc.gov/employers/poster.cfm.

___ **Americans with Disabilities Act** (42 USC § 12101 *et seq.*)

Direct medical and disability questions should not be asked on employment applications **or** during oral interviews (42 USC § 12112[d]). The school may require a medical exam prior to employment only if **all** entering employees are subjected to such exams and the medical history/information is treated confidentially. However, supervisors may be informed of necessary work restrictions and first aid requirements. Safety personnel may be informed if emergency treatment might be required.

Attempts are to be made to provide "reasonable accommodation" to the disabled so that they could perform the "essential functions" of a job and thereby have an equal opportunity to qualify for employment.

The Americans with Disabilities Act does **not** prohibit a religious school from giving preference in employment to individuals of a particular religion. Religious schools may require all employees to conform to religious tenets (42 USC § 12113[c][1] and [2]).

Employers can refuse to assign an individual who has an infectious or communicable disease to a job involving food handling (42 USC § 12113[d][2]).

The Americans with Disabilities Act Amendments Act went into effect on January 1, 2009. This new amendment broadly expands the definition of disability and does away with many Supreme Court cases which defined disabilities in narrow terms. More information is available through the ACSI Legal Legislative Office. <https://www.eeoc.gov/eeoc/publications/fs-ada.cfm>

___ Fair Labor Standards Act (FLSA) (29 USC § 201 *et seq.*)

The FLSA establishes the minimum wage and a 40-hour workweek with time-and-a-half pay for overtime work. Child labor is also regulated under the FLSA.

Under the FLSA employees are divided into the two broad categories of exempt and nonexempt employees depending upon whether the employer must pay them overtime wages. Executive, professional, and administrative employees can qualify as "exempt" employees.

CAUTION: The Dept. of Labor looks at duties, not titles of individuals when determining whether they are properly classified as "exempt" from overtime or not.

As of January 1, 2020, a person must be paid a minimum of \$684 per week worked as one of the qualifications necessary to be an exempt employee. This amount remains the same for 2022. There are states with a higher minimum wage for exempt employees. Check your state laws. Note: Teachers are exempt from this minimum salary under Federal law. See DOL Fact Sheet #17C at https://www.dol.gov/whd/overtime/fs17c_administrative.htm and Fact Sheet #17D at https://www.dol.gov/whd/overtime/fs17d_professional.htm. These fact sheets have not been updated at this time with the new minimum wage of \$684 per week.

Note: Giving someone a salary does not make them an exempt employee. School administrative assistants or secretaries are often misclassified as exempt employees. Only under limited circumstances would a school administrative assistant or secretary meet all the criteria for qualifying for the exempt classification.

___ Equal Pay Act (EPA) (29 USC § 206)

The Equal Pay Act amended FLSA. It requires employers to provide women and men with equal pay when their jobs require equal or substantially equal skill, effort, and responsibility and are done under similar working conditions. Equal pay should not be confused with the concept of "comparable worth," which is not currently in any federal employment law.

<https://www.eeoc.gov/eeoc/publications/fs-epa.cfm>

Do not pay "head-of-household" allowances since even gender-neutral "head-of-household" policies are illegal under the EPA.

___ Federal Minimum Wage Law (29 USC § 206)

The school must pay at least federal minimum wage (\$7.25 as of July 24, 2009) to support staff. (Several states have a higher state minimum wage which must be paid instead of the federal minimum wage.) You can check your state minimum wage at this site:

<https://www.laborlawcenter.com/state-minimum-wage-rates/>

___ Information About Personnel Laws Is Posted as Required by Law

Information about federal laws must be posted for faculty and staff. Examples include: Americans with Disabilities Act (42 USC § 12115); Age Discrimination in Employment Act (29 USC § 627); Civil

Rights Act of 1964 (Title VII) (42 USC § 2000e-10); Williams Steiger Occupational Safety and Health Act (29 USC § 657); Employee Polygraph Protection Act (29 USC § 2003); Family Medical Leave Act (29 USC § 2619[a]); Fair Labor Standards Act (29 USC § 201); and Federal Minimum Wage (29 USC § 206).

The best way to determine which federal posters are required is to go to www.dol.gov/elaws/posters.htm. This site will walk you through some questions and determine which posters are required of your school. All federal posters can be downloaded for free through this same website. To determine which state posters you need, go to www.dol.gov/whd/contacts/state_of.htm.

[Note: Here are the websites for four vendors that have the federal and state charts that you can purchase:

HR Direct – <http://www.hrdirect.com/>; Personnel Concepts – <http://www.personnelconcepts.com> and Walmart – www.walmart.com]

Federal Unemployment Tax Act (FUTA) (26 USC § 3301)

With changes in federal law in 1997, all three categories of Christian schools have a choice on whether they pay FUTA taxes. **Category I** (schools owned and operated by a church or a convention or association of churches), and **Category II** (schools that are a separate corporation formed by a church or a convention or association of churches) were exempted from FUTA since a 1981 decision by the US Supreme Court. **Category III** (independent, non-church affiliated religious schools) were exempted by a change in the law in 1997. Most state unemployment laws mirror the federal law. Check with your state’s labor department to see if there is tax liability for your school. All three types of Oregon schools must pay the state unemployment taxes.

Uniformed Services Employment and Reemployment Rights Act of 1994 (38 USC § 4301 *et seq.*)

This law was significantly updated October 1996. It prohibits employers from discriminating against applicants for employment and employees because of “service in the uniformed services.” The law covers all the uniformed services (e.g., Army, Navy), including reservists (e.g., Air Force Reserve), Army and Air National Guard members, and the commissioned corps of the Public Health Service. These individuals have reemployment rights when they are on active duty, active duty for training, full-time National Guard duty, and absence from work for an exam to determine a person’s fitness for any of these types of duty.

Employers do not have to keep paying these individuals while they are on duty, but they cannot be fired, demoted, or have their benefits cut while on active duty. If military-related absences total less than five years, employers must reemploy these workers in their old jobs or jobs with the same status, seniority, pay, and benefits. These requirements apply to both full-time and part-time workers. To be protected, the employees must provide timely oral or written notifications to their employers of their calls to duty and must report back to work for reemployment in a timely manner. (See law for details.)

Employees who are temporarily absent from work due to military service can make “catch-up” payments to their employer’s qualified retirement plans (including 403[b] tax-sheltered annuities) for contributions they missed while away. The catch-up contribution cannot exceed the amount the employees would have been permitted to contribute had they not been absent from work.

USERRA also provides for the continuation of health benefits even if their employers are not covered by COBRA. If a person’s health plan coverage would terminate because of an absence for military service, he/she may elect to continue health plan coverage for up to 24 months after the absence begins. He/she cannot be required to pay more than 102 percent of the full premium for the coverage.

NOTE: USERRA temporarily cancels the returning employee's at-will status. Returning soldiers who are gone more than 180 days receive this extra protection for one year. Those gone for 30-180 days are given six months worth of extra protection. This means that these individuals cannot be fired at will by the employer but must have clearly violated some business rule. This makes hourly employees just like administrators or teachers that have contracts. They cannot be fired unless the school has "just cause" for firing them. "Just cause" reasons are usually spelled out in contracts and the employee handbook. Tread lightly here. Be sure to check with an attorney before taking any termination actions!

If you have questions regarding this law, contact <https://www.dol.gov/vets/programs/userra/> where you can download information about the law.

___ Veterans' Benefits Improvement Act of 2004 (38 USC § 101, *et seq*)

On December 10, 2004, President Bush signed into law the Veterans' Benefits Improvement Act of 2004, which expands certain rights for veterans. The act amends the Uniformed Service Employment and Reemployment Rights Act (USERRA) by (1) increasing the amount of time a veteran and his or her family can remain on an employer's health coverage plan from 18 months to 24 months; and (2) requiring employers to provide employees with a notice of the rights, benefits, and obligations of the employee and the employer under USERRA. This obligation can be met by simply putting up a labor poster in the general area where all labor posters are hung. Employers should do these two things: (1) make sure that all employment materials, medical plan descriptions, etc., are changed to reflect the increased medical coverage for veterans; and (2) secure and post the newly required USERRA poster that must be posted beginning March 2005. Note: You can download this free poster by going to

http://www.dol.gov/vets/programs/userra/USERRA_Federal.pdf.

___ Equal Employment Opportunities Commission (Under general authority of the Commission as conferred by 42 USC § 2000e-8) Employers of 100 or more must submit an EEO-1 Report by e-transfer by September 30th each year regarding the racial breakdown of their work force. For information regarding this law and instructions on how to e-transfer the form, call (866) 286-6440. Note: ACSI recommends that you do not ask the racial background or ethnicity of individuals until after they are hired. Small schools with less than 100 employees do not need to ask for this information. <https://www.eeoc.gov/employers/eo1survey/>

___ Family and Medical Leave Act of 1993 (29 USC § 2611 *et seq.*)

There is **no** statutory exemption of religious institutions under this Act. All schools must be in compliance with the wall-posting requirement. Schools must keep and preserve records pertaining to their compliance with this Act.

Large schools with 50 or more employees are to be in compliance with all other provisions of the Act that may require up to 12 weeks of unpaid leave during any 12-month period for "eligible employees." Provisions of this Act include special rules regarding leave for instructional employees (29 USC § 2618).

An eligible employee who complies with notice requirements under the Act is to be restored to the same or equivalent position upon his/her return, with no loss of benefits accrued prior to leave.

To be eligible for FMLA benefits, an employee must:(1) work for a covered employer; (2) have worked for the employer for a total of at least 12 months; (3) have worked at least 1,250 hours over the previous 12 months; and (4) work at a location where at least 50 employees are employed by the employer within 75 miles. (Note: Employees located on several campuses of the same school would count together for the total.)

ELIGIBILITY NOTE: Many part-time employees, such as cafeteria workers, bus drivers, and teacher aides, likely will not be eligible for FMLA leave even though other employees of a large school will be

eligible. Based on a 180-day year, a part-time employee would have to work almost seven hours a day or 35 hours a week to be eligible since they must work at least 1,250 hours in the previous 12 months to qualify for leave.

When figuring whether an employee is eligible for FMLA leave based on the number of hours worked in the previous 12 months, be sure to count the months and hours that military reservists or National Guard members would have worked if they hadn't been called for duty.

Leave must be granted to eligible employees for:

- (1) the birth or placement of a child for adoption or foster care;
- (2) to care for an immediate family member (spouse, child, or parent) with a serious health condition; or
- (3) to take medical leave when the employee is unable to work because of a **serious health condition**.

Serious health condition means an illness, injury, impairment, or physical or mental condition that involves:

- (1) any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility;
- (2) any period of incapacity requiring absence of more than 3 calendar days from work, school, or other regular daily activities that also involves continuing treatment by (or under the supervision of) a health care provider; or
- (3) continuing treatment by (or under the supervision of) a health care provider for a chronic or long-term health condition that is incurable or so serious that , if not treated, would likely result in a period of incapacity of more than 3 calendar days, and for prenatal care.

Spouses employed by the same employer are jointly entitled to a **combined** total of 12 workweeks of family leave for the birth or placement of a child for adoption or foster care and to care for a parent (but not a parent-in-law) who has a serious health condition.

Intermittent FMLA Leave. FMLA allows the use of intermittent leave and reduced schedule leave for only two of the four qualifying reasons for leave. It is allowed for employees with a serious health condition or when the employee is needed to care for a family member with a serious health condition. Leave for adoption, foster care, or birth of a child may not be taken intermittently or on a reduced schedule unless the employer and employee voluntarily agree on such arrangement. Periods of intermittent leave may range from an hour to several days. If this leave is for planned medical treatment, the employee must try to schedule the treatment to create the least disruption for the school.

How can I keep tardy employees from routinely claiming FMLA leave? First, designate that intermittent FMLA leave be taken in no less than the shortest period of time recognized by your payroll system.

Second, require medical certification that says intermittent leave is needed. If a tardy employee does not provide a completed medical certification form in a timely way, deny leave and hand out progressive discipline as described in your school's attendance policy.

FMLA Employee Requirements to Use Leave. Employees seeking to use FMLA leave may be required to provide:

- (1) 30-day advance notice when the need is foreseeable;
- (2) medical certifications supporting the need for leave due to a serious health condition affecting the employee or an immediate family member;

- (3) second or third medical opinions and periodic recertifications (at the employer's expense); and
- (4) periodic reports during FMLA leave regarding the employee's status and intent to return to work.

Employer Requirements Under FMLA Leave.

If there is an employee handbook or other written guidance to employees, the entitlements and employee obligations under FMLA must be set forth in the handbook or other document. If the employer does not have written policies, manuals, or handbooks describing employee benefits, the employer must provide written guidance to an employee whenever the employee requests leave under FMLA.

While employees are asked to provide 30-day notices when possible, many times the need for leave will not be foreseeable. In these cases, the employees need to inform the school "as soon as practicable," which means verbal notification within one or two business days of realizing the need to take leave.

Note: Employees (or their representatives) need not mention the FMLA when they seek the leave. As long as the employee informs you of the specific reason for the leave, the burden is on the school to draw a preliminary conclusion about whether such leave falls under the FMLA.

Within **two business days** after you learn of an employee's FMLA-related absence, the school must send a written notice to the individual that the leave falls under the FMLA. By putting employee on official notice in this manner, you set the 12-week meter running. Failure to notify an employee that leave is being deducted from the FMLA entitlement may prevent the school from counting that time against the 12-week allotment.

Note that several different types of FMLA-related absences could occur in a 12-month period necessitating written notices each time.

Your FMLA notification letter should cover these issues:

- (1) The employee's need to provide the school with medical certification that proves the leave qualifies under the FMLA.
- (2) The employee's need to present medical certification that he/she is fit for duty upon return from leave.
- (3) The school's policy regarding whether paid leave must be used first or not.
- (4) Whether the employee must make partial premium payments to maintain health insurance benefits while on leave.
- (5) The employee's potential liability for payment of health insurance premiums if he/she does not return to work from leave.
- (6) The employee's right to return to the same or an equivalent job after the leave. If the employee fits the definition of a "key employee" the notification that a job may not be available after leave concludes.

Schools must keep and preserve records pertaining to their compliance with this Act. Keep copies of all notices, letters, medical compliance forms, etc.!

Notify Staff How You Count FMLA Year. Under FMLA, qualified employees are eligible to take up to 12 weeks of unpaid leave during a 12-month period. But the law lets each company choose among four options how it will calculate those 12 months:

- (1) the calendar year;
- (2) any fixed 12-month "leave year," such as the fiscal year, a year required by state law, or a year starting on the employee's anniversary date;
- (3) the 12-month period starting with the date an employee's first FMLA leave begins; or

(4) a rolling 12-month period measured backward from the date an employee uses any FMLA leave.

Most employers recommend the **rolling month method**. Under this approach, “each time an employee takes FMLA leave the remaining leave entitlement would be any balance of the 12 weeks which has not been used during the immediately preceding 12 months.” So, if an employee had used the full 12 weeks by May, no more leave would be available until the following May.

The method chosen must be used for all employees and should be explained in your employee handbook or employment materials. If changed, 60-day notice required.

Maintenance of Health Benefits. A covered employer is required to maintain group health insurance coverage for an employee on FMLA leave if the insurance was provided before the leave was taken and on the same terms as if the employee had continued to work.

If applicable, arrangements will need to be made for employees to pay their share of health insurance premiums (copay) while on leave. Employees have a 30-day grace period after the agreed upon date for co-payment without affecting health benefits coverage. If the employee does not make the payment within the grace period, the employer may discontinue health coverage on the date the grace period ends, or the employer may choose to continue health coverage by making the premium payments. Employers that choose to pick up the employee’s share of health care costs during leave are entitled to recover the additional payments after the employee returns to work.

If an employee fails to return to work, the employer may recover premiums it paid to maintain health coverage during FMLA leave.

Employers are not required to continue life insurance or other benefits during the absence. However, most employers probably keep these benefits going, especially for short term FMLA leaves, because of all the paperwork.

Job Restoration. Upon return from FMLA leave, an employee must be restored to his/her original job, or to an equivalent job with equivalent pay, benefits, and other employment terms and conditions. In addition, an employee’s use of FMLA leave cannot result in the loss of any employment benefit that the employee earned or was entitled to before using FMLA leave.

New Provisions That Started in 2008

Family Leave Due to a Call to Active Duty. This benefit provides 12 weeks of FMLA unpaid leave due to a spouse, son, daughter, or parent being on active duty or having been notified of an impending call or order to active duty in the Armed Forces. Leave may be used for any “qualifying exigency” arising out of the service member’s current tour of active duty or because the service member is notified of an impending call to duty in support of a contingency operation. “Qualifying exigency” is not defined in the new law but will probably be defined in regulations that are being formulated.

Caregiver Leave for an Injured Service Member. This benefit provides 26 weeks of FMLA unpaid leave during a single 12-month period for a spouse, son, daughter, parent, or nearest blood relative caring for a recovering service member. A recovering service member is defined as a member of the Armed Forces who suffered an injury or illness while on active duty that may render the person unable to perform the duties of the member’s office, grade, rank, or rating.

2009 changes to the Family and Medical Leave Act (FMLA) regulations took effect January 16, 2009. These are the first significant changes since 1994. It addresses two new forms of military leave and then makes some major adjustments to the original regulations.

Fiscal Year 2010 National Defense Authorization Act (H.R. 26470). This new law included an expansion of the recently enacted exigency and caregiver leave provisions for military families under the Family and Medical Leave Act of 1993 (FMLA).

H.R. 2647 expands the exigency leave benefits to include family members of active duty service members. Under current law, only family members of National Guard and Reservists are eligible for “exigency leave.

H.R. 2647 expands the caregiver leave provision to include veterans who are undergoing medical treatment, recuperation or therapy for serious injury or illness that occurred any time during the five years preceding the date of treatment.

H.R. 2647 also revises the definition of "serious injury or illness" for active duty members and provides a slightly different definition for veterans. Both are now defined to include an injury or illness that existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces. And, for veterans, the definition further adds that the injury or illness may manifest itself before or after the member became a veteran.

To be eligible for the leave, employees must work in organizations of 50 or more employees and work at least 1,250 hours in a 12-month period.

Complete information can be found at <http://www.dol.gov/whd/fmla>.

Health Insurance Portability and Accountability Act of 1996 (HIPAA) (42 USC § 300gg) HIPAA does not require any school to offer any specific type of medical insurance coverage. It does not even require a starting date for coverage. A school can decide not to offer insurance; or subject to existing nondiscrimination laws, may only cover certain classes of employees; or require a waiting period before any coverage takes effect.

Their intent is to protect the security of medical information of employees. Now health care providers such as insurers, doctors, and pharmacies must obtain patients’ approval before disclosing private medical information in “nonroutine” processes, such as releasing it to an employer or using it for marketing purposes. The regulations give patients more access to their personal medical records and allow them to request changes to correct errors.

Employers may require employees upon enrollment into a health plan to sign a release form that will offer the employer, health care providers, and insurance companies the access they need to medical records.

The regulations exempt workers’ compensation policies, and long-term and short-term disability insurance programs from the regulations so that workers will not prevent employers for access to information needed to administer and enforce these programs.

Schools should take at least these four steps to ensure compliance under the rules:

- (1) Ask your health insurance broker and provider to provide information as to what they have done to ensure compliance with these regulations;
- (2) Police any business associates who whom your school shares protected health information—such as technology vendors and insurance plan administrators—and rewrite contracts to assure that third parties are in full compliance with HIPAA;
- (3) Make sure that all medical information is kept physically separate from other employee records. Access to this information should be strictly restricted;
- (4) Appoint a privacy officer to help with compliance with HIPAA policies.

Many states have developed their own health-information protections. HIPAA's standards generally pre-empt state law unless the state rules are stricter.

If you are a covered entity under HIPAA, the first phase of compliance targeted the privacy of medical records. This last phase of HIPAA targets the security of those records. The privacy rule and the security rule are distinct but inextricably linked. Good privacy depends on good security measures. Your school must comply with the security rule if your insurance premiums and payments are less than \$5 million per year. Read more on HIPAA at <https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/index.html>.

The Affordable Care Act (ACA) passed in 2010 provides additional health protections. Insurance companies cannot longer deny insurance to individual due to pre-existing conditions. For more information, go to <https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/affordable-care-act/for-employers-and-advisers>

___ **Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA)** (29 USC § 1161 *et seq.*, and 42 USC § 300bb-1 *et seq.*)

Lay-board (Category III) schools are to be in compliance with COBRA, which provides eligible employees and certain family members the right to continue health care coverage, at the employee's expense, under an employer's group health plans. This applies to employers with 20 or more full- and part-time employees. Church owned and operated schools are not covered by this law.

Get help when you need it. You can contact the Employee Benefits Security Administration (EBSA), Office of Regulations and Interpretations at 202-693-8523. Publications on COBRA may be obtained on EBSA's website at <http://www.dol.gov/ebsa> under Resources.

___ **Medicare Prescription Drug Improvement and Modernization Act** (42 USCS § 1395kk-1)

Every employer that offers prescription drug coverage to active or retired employees, or their dependents/spouses, who are eligible for Medicare must comply with two notification requirements issued by the Centers for Medicare & Medicaid Services (CMS).

(1) Part D eligible individuals (i.e., those active or retired employees, or their dependents/spouses, who are entitled to Medicare benefits under Part A or are enrolled in Part B) who are enrolled in, or seek to enroll in, their employer's prescription drug coverage plan must be notified of whether such private coverage qualifies as credible prescription drug coverage under the rules of Part D. This is because individuals who do not enroll in Part D coverage when they are fully eligible face a limit on when they can enroll and a late enrollee penalty unless they had "credible coverage" under another plan. To prevent this from happening, employers are required to advise individuals of the potential penalties if the prescription plan is not deemed to be credible under CMS guidelines. Note: This notification requirement applies regardless of whether or not the employer applies for the new retiree drug subsidy.

(2) Employers must notify the CMS of whether the coverage is credible or not. Prescription drug coverage is credible for Part D purposes if the actuarial value of the coverage exceeds the actuarial value of the standard prescription drug coverage as defined by the CMS.

These notices must be provided annually, before the 15th of November, and: (a) before the individual's initial enrollment period for part D; (b) before the effective date of enrollment in the prescription drug coverage or upon the date of any change in credible coverage; and (c) upon request. Summary of the ACT: <http://www.kff.org/medicare/med011604pkg.cfm>

___ **Occupational Safety and Health Act of 1970** (29 USC § 651 *et seq.*; 29 CFR § 1904)

The Occupational Safety and Health Administration (OSHA) of the US Department of Labor requires all employers to comply with the general duty clause (29 USC § 654(a) which stipulates that

employers must provide employment and a workplace free from recognized hazards likely to cause death or serious injury. Other sections of the law deal with specific workplace safety issues.

OSHA requires employers to report, within eight hours, the death of an employee or the hospitalization of three or more employees in work-related accidents. The report must be made by telephone or personally at the area office of OSHA, or by using this telephone number: 800/321-6742. This number may also be used to obtain OSHA information. Required information includes: the name of the organization, location of the incident, number of fatalities or hospitalized employees, contact person, phone number, and a brief description of the incident. *[Note: Individual states may have more stringent catastrophic reporting requirements.]*

Currently, employers must maintain a log of occupational illnesses and injuries using OSHA Form 300, but (for schools) only if notification in writing is received from the Bureau of Labor Statistics that the employer has been selected to participate in a statistical survey. If no such notice is received, the OSHA Form 200 is not necessary. Schools should also check to see if there are any state record-keeping requirements in this area.

Since 2015, all employers are required to contact OSHA within 24 hours following an occurrence of any in-patient hospitalizations, amputations, or loss of an eye, as well as the current requirement to contact OSHA within eight hours following a fatality. For reporting compliance, employers have three options when contacting OSHA: 1) call the nearest area office; 2) call OSHA's 24-hour hotline 1-800-321-OSHA (6742); or 3) report online.

Electronic Communications Privacy Act of 1986 (18 USC § 2510)

It is illegal for employers or their agents to intercept or endeavor to intercept any wire or oral communication through use of any electronic, mechanical, or other device (e.g., wiretaps, "bugs"). The law also prohibits any person from disclosing or using the contents of any wire or oral communication if there is knowledge or a reason to know that the information was obtained through an unlawful interception.

Exceptions. Consent for surveillance may be given by an employee. Phone calls in the "ordinary course of business" may be intercepted. Personal phone calls cannot be intercepted or recorded, but personal phone calls may be prohibited during working hours. The interception of "course of business" calls is permitted only when the equipment used is part of the overall telephone systems, e.g., an extension line. It is suggested that notice be given to employees that "course of business" calls are monitored.

Video surveillance that does not record sound is not subject to the federal wiretap law. (Therefore, videos in buses, classrooms, common areas, offices, and the like are permitted.) The addition of an audio component to such monitoring will subject an employer to liability.

Email. An employer may monitor email messages if advance notice has been given to the employees. Consider putting a paragraph about employer monitoring in your employee handbook.

Consider putting a paragraph about employer monitoring in your employee handbook. Here is a sample notice that could be displayed on computers when they are turned on by employees:

_____ Christian School provides technical equipment for job-related purposes and specifically reserves the right to monitor employees work performance and use of any mechanical, electronic, or other work-related device, including telephone, voice mail, computer, Internet, email, and stored email messages. Misuse of ACSI equipment may lead to disciplinary action up to and including dismissal.

[Note: State law must be considered as it may be more restrictive than federal law regarding surveillance issues.]

Employee Polygraph Protection Act of 1988 (29 USCA § 2001 *et seq.*)

This Act prohibits employers from requiring employees or applicants for employment to take or submit to any lie detector test. Employers cannot (1) use or inquire concerning the results of any lie detector test, or (2) discipline or deny promotion for refusal to take such a test or because of the results of such a test.

An employer may request an employee to submit to a lie detector test in connection with any ongoing investigation involving economic loss or injury to the employer's business (as from theft, embezzlement, or misappropriation) if certain additional conditions are met.

Fair Credit Reporting Act (15 USCA § 1681 *et seq.*)

Obtaining and using credit reports is regulated under the Fair Credit Reporting Act. An "investigative consumer report" about an applicant for employment may not be obtained or prepared unless the applicant has received a disclosure that an investigative consumer report (with information about character, general reputation, personal characteristics, and mode of living) may be requested or obtained. Disclosure must be as specified in the law. It must be clear, conspicuous, and in writing, and cannot be a part of an employment application. <https://www.consumer.ftc.gov/articles/pdf-0096-fair-credit-reporting-act.pdf>

When adverse employment action is taken based on information in a credit report, the person must be so advised. *[Note: The federal Bankruptcy Code prohibits a prospective employer from refusing to hire a candidate for employment due to bankruptcy.]*

Fair and Accurate Credit Transactions (FACT) Act (15 USC § 1681a)

This act was passed to fight against the increasing problem of identity theft and consumer fraud. Since 2005, it requires every employer to appropriately dispose of any documents—whether paper, electronic, or other format—that contain personal information derived from a credit report or other types of consumer information reports obtained from third parties such as credit reporting agencies when it comes time to purge your employees' personnel files.

The Federal Trade Commission does not specify how information must be disposed of, but it says that reasonable measures must be taken to protect against unauthorized access to or use of the information. Disposal could be as simple as using a paper shredder for paper items. Information stored electronically, such as on computer discs or hard drives, could be overwritten or wiped clean using tools you can purchase or obtain for free on the Internet, or even, as the FTC suggests, by taking a hammer to the disc or hard drive containing the information.

<https://www.ftc.gov/enforcement/statutes/fair-accurate-credit-transactions-act-2003>

Title III, Consumer Credit Protection Act (15 USC § 1671 *et seq.*; 29 CFR 870)

This Act protects employees from being discharged by their employers because their wages have been garnished for any one debt and limits the amount of employees' earnings that may be garnished in any one week. <https://www.dol.gov/agencies/whd/wage-garnishment>

Employee Retirement & Income Security Act of 1974 (ERISA) (29 USC § 1001 with further amendments in 1990)

All organizations with 25 or more employees must comply with ERISA, which sets minimum compliance standards for benefit plans offered by employers. Benefit plans have been broadly defined to include retirement, medical, health care, and other types of "vesting" benefits such as vacation plans. ERISA requires that all employees similarly situated (for instance, all full-time employees) must receive the same benefits from programs and plans provided through the employer. Employers must make available complete plan-description booklets to employees who request them. For more information go to <https://www.dol.gov/general/topic/health-plans/erisa>.

Student Issues

___ **Title VI of the Civil Rights Act of 1964** (42 USC § 2000d)

“No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.” The mandate extends to a school’s student admissions, financial aid, and virtually every aspect of the federally assisted program.

___ **Section 504 of the Rehabilitation Act of 1973** (29 USC § 794)

The school must provide “reasonable accommodation” to disabled students *if* the school is a recipient of direct federal funding under some educational act or program.

<https://www2.ed.gov/about/offices/list/ocr/504faq.html>

___ **Floyd D. Spence National Defense Authorization Act** (P.L. 106-398)

In section 563, this Act grants the military access to public and private secondary school student names and addresses for recruiting purposes. If you are contacted for this information, there are four possible responses: (1) send the list; (2) explain that such names are not available to colleges or prospective employers and therefore, they are not available to a military recruiter; (3) explain that the school board has adopted a policy prohibiting the releasing of names for this purpose; or (4) show that the school has historic religious objections to military service and invoke section 563(c)(5)(b).

___ **Telecommunications Act of 1996** (47 USC § 230 *et seq.*)

The Schools and Libraries [Universal Service](#) program was established as part of the Telecommunications Act of 1996 to provide affordable telecommunications services for all eligible schools and libraries, especially those in rural and economically disadvantaged areas.

___ **Children’s Internet Protection Act of 2000** (47 USC § 230 *et seq.*)

This Act requires schools and libraries that receive funding under either Title III of the Elementary and Secondary Education Act or the Museum and Library Services Act, or that receive universal service discounts for Internet access (“E-rate”) to adopt an Internet safety policy incorporating the use of filtering or blocking technology on computers with Internet access. You will find more information at www.universalservice.org or <https://www.usac.org/e-rate/>

___ **Children’s Online Privacy Protection Act (COPPA)** (15 USC § 6501 *et seq.*; 16 CFR § 312)

COPPA requires that certain commercial, educational websites get parents’ consent before collecting any personal information from children under age 13. Prior parental consent is not required when (1) a website operator collects a child’s or parent’s email address to provide notice and seek consent, or (2) an operator collects an email address to respond to a *one-time* request from a child and then deletes it.

The Act allows school districts to permit their teachers to give consent on parents’ behalf during school activities. In those districts that permit teachers to give consent, parents are to be sent a letter about COPPA and are asked to sign a permission slip granting or denying permission. Under this scenario both parents and teachers may rescind their permission. Other districts prohibit teachers from allowing, encouraging, or requiring students to establish an account with websites that collect information for advertising purposes. For more information, contact website <http://www.onguardonline.gov/articles/0031-kids-privacy>.

___ **Child Nutrition and WIC Reauthorization Act of 2004** (P.L. 108-265).

Requires local educational agencies to develop a local school wellness policy. This requirement also applies to private schools that participate in a program authorized by the National School Lunch Act or the Child Nutrition Act. Private schools may develop their own wellness policy or adopt the one from their local education agency. Private schools participating in the Special Milk Program are also

required to have the wellness policy. This website provides additional information:

<https://www.fns.usda.gov/cn>

Operational Issues

___ Maintenance of Employee Records

The various federal laws have different time periods for keeping personnel records. Generally, employment records can be divided into two broad categories. For example, Christian schools frequently receive several applications from prospective employees who are not hired. Schools may even go through an interview process, using an interview form, but still not hire the teacher. In these cases, the school should retain these records for a minimum of three years following the date of the decision. The school can then destroy the application information or other prospective employee records. Each state may have its own record-keeping requirements. Those obligations should be determined.

In contrast to this category, however, are records for actual employees. The school should retain these records for a much longer period of time. Schools may need to verify employment or provide reference information years after an employee has left employment. Therefore, schools should generally retain personnel file documents of former employees for a minimum of seven years following the date of termination. This would include all personnel file documents.

Schools may also have some general employment materials not specifically related to an individual employee. These would include faculty or staff handbooks, job descriptions, tax records or documents, and organizational documents. These documents should be maintained permanently. The school should date these documents so that in later years one can easily determine the time frame of applicability.

___ Jury Systems Improvement Act (28 USC § 1363 *et seq.*)

This federal law prohibits employers from penalizing employees who take time off for jury service. Some states have even stricter laws that may even require the employer to compensate the employee for jury service.

___ General Education Provisions Act, as amended (20 USC § 1221e-11)

The US Bureau of the Census collects educational data for the National Center for Education Statistics, US Department of Education, under the authority of this Act. Under this and other acts and programs, randomly selected private schools are sent **surveys** to collect data that will be used to develop a profile of the providers of private education in the US. [The US Bureau of the Census also sends out the Census of Service Industries–Social Services survey under 13 USC for the US Department of Commerce.]

___ Federal Copyright Act (17 USC § 101 *et seq.*)

The school must follow the copyright law regarding the use of printed material, music, and other media products. Section 110 of the Copyright Act, also known as the TEACH Act, contains more information about how teachers can comply with these guidelines. The Copyright Clearance Center offers an overview of the *TEACH Act* at <https://www.copyright.com/wp-content/uploads/2015/04/CR-Teach-Act.pdf>.

ACSI recommends that all schools get a license for music, videos etc. from CCLI. ACSI members receive a 10 percent discount off the license fee. For more information, please visit their website at www.ccli.com or call CCLI at 1-800-234-2446.

Books and Periodicals

A teacher may:

- a. Make a **single copy**, for use in scholarly research, in teaching, or in preparation for teaching a class, of the following:

- (1) A chapter from a book
 - (2) An article from a periodical or newspaper
 - (3) A short story, short essay, or short poem, whether or not from a collected work
 - (4) A chart graph, diagram, drawing, cartoon, or picture from a book, periodical, or newspaper
- b. Make **multiple copies** for classroom use only, and not to exceed one per student in a class, of the following:
- (1) A complete poem, if it is less than 250 words and printed on not more than two pages
 - (2) An excerpt from a longer poem if it is less than 250 words
 - (3) A complete article, story, or essay if it is less than 2,500 words
 - (4) An excerpt from a prose work, if it is less than 1,000 words or 10 percent of the work, whichever is less
 - (5) One chart, graph, diagram, drawing, cartoon, or picture per book or periodical

A teacher may not:

- a. Make multiple copies of work for classroom use if it has already been copied for another class in the same institution.
- b. Make multiple copies of a short poem, article, story, or essay from the same author more than once in a class term.
- c. Make multiple copies from the same collective work or periodical issue more than three times per term.

For more information see: www.copyright.gov.

___ Volunteer Protection Act of 1997 (42 USC § 14501)

Schools can relieve the anxiety of potential volunteers who are concerned about exposure to financial liability by informing them of the Volunteer Protection Act.

A person is individually protected from liability when an accident or problem occurs if:

- a. He/she was acting within the scope of his/her responsibilities
- b. He/she was licensed or certified (if that is required for the type of volunteer work being done)
- c. He/she did not act willfully or recklessly; or engage in criminal conduct; or act with gross negligence or conscious, flagrant indifference to the rights or safety of the individual harmed
- d. He/she was **not** operating a motor vehicle, vessel, or aircraft

This law protects the volunteer; it **does not** protect the school in any way from liability for compensatory or punitive damages. More information can be found [here](#).

___ Political Activity by Nonprofit Organizations (26 USC § 501[h])

The IRS puts limits on political activity by tax-exempt organizations. The following information should provide you general guidance.

Tax-Exempt Organizations CAN:

- Conduct Nonpartisan voter registration drives.
- Distribute unbiased, nonpartisan voting records and candidate surveys. The surveys must cover a broad range of issues, not just the church's/school's known agenda. The materials must not unfairly describe any candidate's position on an issue or unfairly summarize a candidate's voting record. Also, the materials must not be distributed only near election time. They must be distributed at least one other time during the year, in a non-election season.
- Educate their members on specific issues or pending legislation.
- Have issues awareness committees and meetings to educate members on specific issues or pending legislation.
- Enlighten members on what they can do if they support or oppose a particular issue.

- Expend up to 5% of their total budget on direct lobbying or on contributions to individuals or groups for the purpose of supporting or opposing specific legislation (not candidates).
- Encourage prayer for a particular issue or public official.
- Host candidate forums if all candidates for a particular office are invited and the forum is conducted in a nonpartisan manner.

Tax-Exempt Organizations CANNOT:

- Endorse a political candidate.
- Make contributions to a political candidate.
- Participate in political fund-raising endeavors for a political candidate.
- Distribute political materials for a candidate.
- Pay for individuals to attend a caucus for a state or national political convention.
- Donate their mailing list to a candidate or political party.

In summary, IRS guidelines greatly restrict Christian organizations in matters concerning political candidates and elections but permit them to attempt to influence voters or legislators regarding issues.

For more information about lobbying activities by nonprofit organizations, check this website: <http://www.irs.gov/Charities-&-Non-Profits/Churches-&-Religious-Organizations>

Federal Rules of Civil Procedure (FRCP)

The FRCP governs civil procedure in U.S. District Courts, or more simply, court procedures for civil suits. States make their own rules that apply in their own courts, but most states have adopted rules that are based on the FRCP. **IMPORTANT:** If your school receives a letter, phone call, or verbal message that threatens a lawsuit, all electronic messages that might be relevant to a potential lawsuit must be saved even if the time frame for saving this information goes beyond the normal time your school routinely uses to destroy old electronic files or copy over backup disks. Destroying information stored by some type of electronic means is “spoliation of evidence” and can be quite costly to your school if the destruction becomes an issue during a civil lawsuit.

Environmental Issues

OSHA’s Final Rule for Bloodborne Pathogens (29 USC § 14501; 29 CFR § 1910.1030)

An exposure control plan is to be written covering each staff position and must be updated annually.

“Interactive” in-service is to be provided to all staff regarding “universal precautions” and other bloodborne pathogen issues. Latex or vinyl disposable gloves and other appropriate items are to be provided to all staff. Staff is **required** to practice universal precautions (29 CFR 1910.1030[d][1]).

Hepatitis B vaccinations are to be offered at school expense to those members of the staff whose job classifications fall into Group One. All other staff are to be offered the vaccination series within **24 hours of exposure** at school expense.

For more guidance from OSHA go to <https://www.osha.gov/bloodborne-pathogens>.

For training resources from OSHA go to <https://www.osha.gov/bloodborne-pathogens/resources>.

Asbestos Hazard Emergency Response Act (15 USC § 2641 *et seq.*)

This Act requires that an initial inspection and management plan be prepared unless the school is in a new building with an occupancy permit dated after October 12, 1988.

The management plan for responding to asbestos-containing materials is to be submitted to the Governor or a designated state official. A copy of the management plan is to be made available in the school's administrative offices for inspection by the public.

The school service/maintenance staff must be educated regarding safety procedures with respect to friable asbestos-containing material, i.e., any asbestos-containing material applied on ceilings, walls, structural member, piping, duct work, or any other part of a building that, when dry, may be crumbled, pulverized, or reduced to powder by hand pressure (15 USC § 2644[c]).

The school is to contract for inspections every three years by EPA-certified inspectors. The school's in-house "designated person" is to conduct and document premise inspections every six months.

The school must also keep in their office copies of the annual letter to constituents indicating they may come to the school office to inspect the management plan. (This is required of all schools whether their facility is asbestos free or not.)

For updated guidance and information on Asbestos and School Buildings go to <https://www.epa.gov/asbestos/asbestos-and-school-buildings>.

___ Worker and Community Right to Know Law [Hazard Fact Sheets] (29 USC § 651 *et seq.*)

The regulations require manufacturers and importers to determine if their products contain hazardous chemicals. If so, they must make hazard information available through distributors to users in the form of container labels and material-safety data sheets (MSDS). MSDS must be saved and made accessible to employees. Employers must develop, implement, and maintain at the workplace a written, comprehensive hazard communication program that includes provisions for container labeling, collection, and availability of MSDS, and an employee training program.

A list of hazardous chemicals in each work area must be compiled. Exceptions exist for containers designed to be sold on the retail market for use by the general public. [Some potential hazardous chemicals used by schools may include janitorial/cleaning supplies, pesticides, certain office products, and science lab chemicals—*Ed.*] Contact OSHA for information on setting up your program. The EPA has a [Chemical Management Resource Guide for School Administrators](#).

___ Lead Contamination and Control Act of 1988 (42 USC § 300j-21)

This law, an amendment to the Safe Drinking Water Act, asks, but does not require public and private schools and daycare centers to check the lead levels in their building's drinking water. Lead can be leached into the water from lead pipes, solder joints in pipes, and from drinking fountains in school buildings. For information on how to test your school's water supply for lead, go to the Environmental Protection Agency website that covers this at <https://www.epa.gov/ground-water-and-drinking-water>

___ Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 USC § 4821 *et seq.*)

This law applies to housing constructed prior to 1978. There are no exceptions for housing owned by churches or other charitable organizations. Churches or schools that own or are willed such homes may be legally liable for injuries caused by lead-based paint to families or to individuals in outside groups (e.g., a preschool) who purchase, lease, or rent the residential property. Certain documents must be provided at the time of these transactions. This law does not apply to dormitory housing and rentals of individual rooms in residential dwellings. The Act does not require sellers to remove lead-based paint from their property or to inspect their property for the existence of lead-based paint. Instead, buyers must be notified in writing of any known lead-based paint or hazards on the property so that buyers can make an informed decision and be alerted to any potential health problems in the future. If you are buying older housing or such housing is being donated for ministry use, be sure to obtain the lead-paint notifications. <https://www.epa.gov/lead/protect-your-family-exposures-lead>

___ **Sarbanes/Oxley Act** (15 USC Section 7201, et seq)

This federal law applies to profit-making U.S. corporations. The Act increases the accountability of corporations to the IRS and to the general public. The U.S. Congress continues to consider proposals to make U.S. nonprofit organizations more accountable. There will likely be similarities between the proposals and the Sarbanes/Oxley Act. New accountability laws are expected to be adopted for nonprofits. Here are three things that your church and Christian school can do to get ready:

- (1) Be sure that your school board **addresses conflict-of-interest issues** by board members. ACSI recently published an article along with two sample conflict-of-interest forms that nonprofit boards could use for this purpose. The forms should be filled out by board members on an annual basis.
- (2) Adopt protection for “**whistle blowers.**” Your organization needs a policy that clearly states that any employee that brings to the administration or board information about perceived wrongdoing in the school or by the school’s business practices be protected against adverse job discrimination by making such a report.
- (3) The school board needs to establish an **audit sub-committee** made up of some of the board members. Since this is to be an independent committee that checks the finances and the financial integrity of the organization, no school employees should serve on this committee. Each of these three items is expected to be required in the expected new laws for nonprofit organizations. Why not get a head start on them and seek voluntary compliance? All three ideas make good sense.

Transportation Issues

___ **Highway Safety Act of 1966** (23 USC § 401 *et seq.*)

The regulations written under this statute include guidelines for “Pupil Transportation Safety” (23 CFR Part 1204.0, Guide 17) that recommend standards for mandated state highway safety programs including the identification, operation, and maintenance of buses used for carrying students.

A “school bus” is defined as a motor vehicle designed for carrying more than 10 persons, including the driver when it is used for purposes that include carrying students to and from school or related events on a regular basis, but does not include a transit bus or a school-chartered bus.

Every school must ascertain the specific requirements for buses imposed by the state in which the school is located. The standards vary from state to state.

___ **Commercial Motor Vehicle Safety Act of 1986** (49 USC § 31101 *et seq.*)

A driver of any vehicle weighing at least 26,001 pounds or passenger vehicles designed to carry 16 or more passengers including the driver, must have a commercial driver’s license (CDL). There are no exceptions in this law for churches and private schools.

S-Endorsements Required for School Bus Drivers. A school bus driver with a commercial driver’s license (CDL) must obtain the “S” or school bus endorsement on the CDL. It is required for all individuals driving buses whether the bus has students on board or not. The “S” endorsement includes a driving skills test and a knowledge test that covers procedures for loading and unloading children, using emergency exits, and traversing highway-rail grade crossings. Drivers of children and/or adults must also have a “P” (passenger endorsement). Please check with your DMV or state police offices for more information.

___ **Motor Vehicle Safety Act of 1994** (49 USC § 30101 *et seq.*)

If the school purchases a new bus, it must meet the standards of this law and its regulations.

Under this law, a “school bus” means a passenger motor vehicle designed to carry more than 10 passengers, including the driver, and used to transport school students to or from school or an event related to school. Vans need to be ordered from the factory with the “school bus package.” Use of vans for school transportation that are not “school bus equipped” increases your school’s liability if the van is involved in an injury accident.

___ **Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005** (109 P.L. 42; 119 Stat. 435 § 7259(b))

Congress Bans School Purchase of 11 to 15-Passenger Vans

At the end of July 2005 Congress passed and the President signed into law the “Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005” (H.R. 3). Section 7259(b) bans the purchase, rental, or lease of nonconforming 15-passenger vans for school use” effective immediately. H.R. 3 states that a school “may not purchase or lease a new 15-passenger van [which is defined as “a vehicle that seats 10 to 14 passengers, not including the driver”], if it will be used significantly by, or on behalf of, the school or school system to transport preprimary, primary, or secondary school students to or from school or an event related to school.” Postsecondary use is not banned by H.R. 3.

The only kinds of vans that are in compliance and can now be purchased for school use are those that have been converted to comply “with motor vehicle standards prescribed for [1] school buses and [2] multifunction school activity buses.” This means that a van must meet all the federal motor vehicle safety standards for school buses (such as yellow in color, lights, stop arm, etc.) or comply with multifunction school activity bus law (which can be any color, but must meet all requirements in the school bus crashworthiness standards, crash avoidance safety standards, and all post-crash school bus standards).

If your school had already leased or purchased a 15-passenger van prior to the enactment H.R. 3, the new law does not apply to such a vehicle. But remember that several States have already banned these vehicles. Note also that such a law will make it more difficult to insure a 15-passenger van for school use.

<https://www2.ed.gov/about/offices/list/oii/nonpublic/transportation.html>

___ **Federal Motor Carrier Safety Regulations** (49 CFR § 382, 383, 387, 390–399)

The transportation of students by a private school that owns or leases a bus for an extracurricular activity, such as an out-of-state field trip, is subject to these regulations.

The transportation of preprimary, primary, elementary, and secondary school children to and from school is not subject to these regulations.

___ **Omnibus Transportation Employee Testing Act of 1991** (49 USC § 31306 *et seq.*)

This Act requires alcohol and controlled substances testing of operators of commercial motor vehicles designed to transport 16 or more passengers, including the driver. Testing is required for preemployment, reasonable suspicion, random, and post-accident situations.

All drivers with commercial drivers’ licenses must be tested under this Act.

In addition to the testing program, employers must (1) adopt a policy on the misuse of alcohol and use of controlled substances; (2) notify employee drivers of the required alcohol or controlled-substances testing; (3) provide educational materials that explain the testing requirements and the employer’s policies and procedures with respect to meeting these requirements; (4) develop referral, evaluation, and treatment policies; and (5) maintain records of the alcohol misuse and controlled-substances use programs and assure the confidentiality of those records.

State or Local Issues

___ **State and Local Codes**

The school must be in compliance with state and local building codes, and fire, safety, health, and immunization regulations.

___ **State Sales and Use Taxes**

Forty-five states have such taxes, but not all states provide a sales tax exemption to private schools. In some states, the law applies to out-of-state purchases of textbooks, supplies, and buses.

___ **Personnel Files**

No federal law gives employees the right to examine their personnel files, but many state laws do. Determine whether there is a state law and its requirements.

___ **Termination Pay**

Most states are very specific on how quickly an employer must pay a terminated worker. Failure to follow the law can lead to state penalties or to monetary judgments against the employer if sued by the departing employee.

___ **Child Care Licensure**

The school must arrange for appropriate licensing of its day care or other type of early child-care program if it is required to do so by state or local law.

Almost every state requires the licensing of programs if the participants are five years of age or younger. The usual exception is a kindergarten class that is part of a primary or elementary school. For information, go to <https://childcareta.acf.hhs.gov/licensing>

___ **Teacher Certification**

If required, the school must be in compliance with state requirements regarding teacher certification. Most states do not require private school teachers to be state certified or licensed to teach.

___ **City Zoning**

The school must secure the city zoning necessary to operate legally at its location.

___ **Minimum Wages**

The school must be in compliance with state minimum-wage laws. More than half of the states have a higher minimum wage than the federal minimum wage.

___ **State Labor Posters**

Posters required by state fair employment and child abuse reporting laws are to be posted for faculty and staff. To find what your state requires go to http://www.dol.gov/whd/contacts/state_of.htm.

___ **Child Abuse Regulations**

- State-required background checks must be conducted.
- State-required fingerprinting must be done.
- Any state-required signed statements by staff acknowledging familiarity with the abuse law (e.g., CA) must be executed.

___ **Anti-Harassment Policy**

The school is to adopt and post clearly worded anti-harassment policies for its students, employees, and other adults as mandated by several states.

Workers' Compensation

State law determines the extent to which workers' compensation benefits are payable to an employee who is injured while in the course and scope of employment or while advancing the employer's business and when such injury is related medically and causally to that activity.

An employer should have a reporting procedure for work-related injuries. A plan should, at minimum, include: (1) a written procedure for employees to follow when reporting work injuries; (2) notice to employees through orientation materials, employee handbooks, or manuals; and (3) designation of persons to whom injuries are to be reported.

Record Keeping

Arrangements must be made to keep and care for student records after students graduate or leave the school. Transcripts must be kept "forever."

Personnel Records

Applications of individuals not hired by the school are to be kept for three years. Applications and personnel materials of employees are to be kept a minimum of seven years following their termination/retirement.

Appropriate Liability Insurance

The school must maintain adequate property and liability insurance policies. [Note: Many states have regulations that mandate minimum amounts of insurance for educational or child-care facilities.]

Notice: *This article is designed to provide accurate and authoritative information in regard to the subject matter covered. It has been provided to member schools with the understanding that ACSI is not engaged in rendering legal, accounting, tax, or other professional services. If legal advice or other expert assistance is required, the services of a competent professional should be sought. Laws vary by jurisdiction, and the specific application of laws to particular facts requires the advice of an attorney.*

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