

GSSA

Fall Bootstrap Conference

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October 23, 2008

Expanded FMLA Rights for Military Families

- Part of “National Defense Authorization Act for FY 2008”
- New Leave Entitlement (effective 01/28/08)
 - Up to 26 weeks of unpaid leave during one 12-month period for the employee to care for spouse, child, parent, or next of kin who is a service member undergoing medical treatment, recuperation or therapy, is on outpatient status or is on the temporary disabled retired list for a serious injury or illness (incurred on active duty that may render medically unfit to perform duties)

FMLA cont'd

- New Qualifying Reason for Leave (effective when DOL issues new FMLA regulations)
 - 12 weeks of unpaid leave during any 12-month period for “any qualifying exigency” when the employee’s spouse, child, or parent is on active duty or is notified of an impending call or order to active duty – or when the service member is already on active duty – in the Armed Forces (including Reserves and National Guard) in support of a “contingency operation”

Final FMLA Regulations

- Expected “as soon as possible” after 04/11/08- end of comment period
- Employer can require, or employee can elect, substitution of accrued paid leave
- Any combination of other FMLA leave with the 26-weeks for service member care is limited to 26 weeks
- Spouses working for the same employer may only take 12 weeks total when taking leave due to military family “exigency” leave
- Caregiver leave: One-time leave that must be used in one 12-month period

Changes to Americans with Disabilities Act

- The term disability is to be “construed in favor of broad coverage of individuals”
- Disabilities that are episodic or in remission qualify if they substantially limit an activity when active
- Mitigating measures not to be considered

What is a major life activity?

- Caring for one's self
- Performing manual tasks
- Seeing
- Hearing
- Eating
- Sleeping
- Walking
- Standing
- Lifting
- Bending

And more....

- Speaking
- Breathing
- Learning
- Reading
- Concentrating
- Thinking
- Communicating
- Working
- The operation of a major bodily function

Even those without disability are protected if you regard them as having a disability

- But doesn't apply to transitory or minor impairments
- Those lasting less than 6 months

Section 504 made consistent with new ADA

- Both are effective 1/1/09

Practical Suggestions to Respond to Federal Legislation

- Review and consolidate leave policies and put into place uniform procedures for dealing with leave
- Review, update and create job descriptions
- And, one more time, evaluation and documentation of performance

The importance of job descriptions

- Used to define the essential functions of the job
- Therefore, must be accurate and up to date
- Must be specific where needed, such as, special education paraprofessionals, different custodial positions, maintenance jobs, etc.
- Include physical requirements

What other functions do job descriptions serve?

- FLSA exempt status
- Chain of command
- Placement on salary or supplement schedule
- Foundation for evaluation
- Required for some positions by state law, OCGA §20-2-211(d)

Reduction-in-Force

- One of the 8 grounds under the Fair Dismissal Act; “reduce staff due to loss of students or cancellation of programs”
- The dangers of seniority or other objective criteria
- How to insure that a reduction in force maintains the most competent employees

The elements of a policy

- Separate the policy decision made by the Board from the personnel decision
 - Need to reduce budget by certain amount
 - Need to reduce staff due to student numbers
 - Decision to eliminate program or specific position
- Require development of a plan to implement policy decision and have the plan approved by the Board

Elements of RIF plan

- Define the group from which the RIF will occur
- Have multiple criteria to be used to determine specifics of RIF with goal being to best serve the students
- Make sure you can articulate the reasons for the application of the plan to specific employees
- Make sure you have evidence that supports the reasons
- Make sure the evaluation file testifies for you and not against you

Supplements and Benefits

- As to Supplements be aware of the statute
- The State is doing furloughs, can we?
- If you are in this contract year, the language of the contract controls
- Did the BOE authorize the supplement or benefit, if so, when and how?

Official Immunity Under the Gun Again.....

- Remember the previous attacks were based on the Court of Appeals reading of statutes that used the word “shall”
- Newest case: *Smith v. McDowell*
- Facts: 6 year old abducted from school by noncustodial father, school receptionist only defendant, supposed to check registration form, consult administrator if person is not on card, admits that she has no discretion
- Facts: phone call and fax from woman saying she was mother instructing to release to father, card not found, child happy to see father, couldn't find administrator, released, not aware of written procedures until after incident

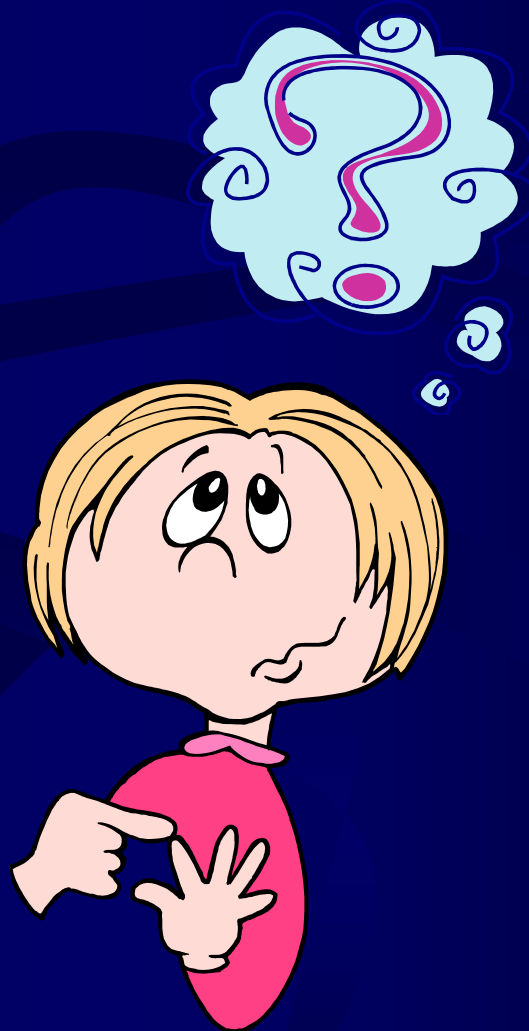
A defacto absolute immunity for school employees has developed gradually across the last decade. Not one recent case stands in which Georgia courts have found a ministerial duty on the part of a school employee.

On the one hand, the General Assembly requires that parents entrust their small children to the public schools, unless they have the resources to educate them privately or at home. On the other hand, our courts increasingly allow school employees to avoid responsibility for all harm to the children placed in their custody by law. At some point, this accelerating trend must come to a halt.... If Georgia school employees are to be clothed with absolute immunity under any and all circumstances, that is a decision to be made by the Georgia General Assembly; it is not a function of this, or any, court.

Governance Legislation: The Cure may be Worse than the Problem

- The Commission on School Board Excellence
- The Role of the State
- The Role of a Separate Ethics Commission
- The Role of SACS
- The Role of the Superintendent

QUESTIONS?



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