

Clause for Concern: What Every School Should Know About Contracts and Labor Laws

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Agenda

Certified Contracts

Classified Contracts

Administrative Contracts

Clause for Concern

Labor Laws

Certified Contracts



"No, the buck stops three doors down on your left."

The Basics

- **Lesson #1 - have them and execute them properly**
- SDCL 13-43-4
 - Must have a **written** contract
 - Signed by Teacher
 - Signed by President of Board
 - Signed by Business Manager

The Basics

- **Lesson #2 - make sure the teacher is appropriately credentialed**
- SDCL 13-43-5
 - Must provide valid certificate to teach the course and grades in the school under the contract
 - If teacher is graduating college, teacher can sign contract but must have certificate issued prior to start of the school year
 - If not, contract is void

The Basics

- **Lesson #3 - make sure contracts contain statutory minimum**
- SDCL 13-43-6
 - Minimum contents of contract are outlined in statute
 - The date at or about which the school shall begin, the term of employment, the wages per month, and the time of payment thereof; such contract shall be signed in duplicate and one copy filed in the office of the business manager and the other retained by the teacher.

Consider Adding

- Duty to notify school of arrest
- Wage garnishment for damaged or lost property
- Certification of health of employee
 - SDCL 13-43-60
 - If, at any time, there is reasonable cause to believe that an employee is suffering from a mental or physical condition that could be detrimental to the health or safety of the employee, any student, or any other employee, the superintendent may require a certification of health. The expense of obtaining such certifications of health shall be borne by the school.

Issuance of Contracts

- No statutory requirement when contracts must be issued
- We only have statutory requirements when notice must be given to teachers regarding non-renewal
- Generally, March or April
- DOUBLE CHECK NEGOTIATED AGREEMENT

Key Terms

- Nontenured/Probationary: Teacher who has served three consecutive years or less in the District
- Tenured: Teacher who is in or has served four consecutive years or more in the District
- Continuing Contract: Any teacher's contract renews automatically unless given notice that complies with statute and board policy (default date is April 15th)
- Termination: Teacher's contract ends immediately (no difference between tenured/nontenured)

Teacher Nonrenewals

- What is the process for nontenured teachers?
 - The superintendent or chief executive officer shall give written notice of nonrenewal by April fifteenth but is not required to give further process or a reason for nonrenewal.
 - “Not required to give . . . a reason” - DON'T GIVE REASONS

Teacher Nonrenewals

- What is the process for tenured teachers?
 - If nonrenewal of a teacher is contemplated under § 13-43-6.1, the superintendent or chief executive officer shall give written notice of an intention to recommend nonrenewal to the teacher and the school board; a written statement of the reasons for the recommendation; access to the employment records of the teacher; the opportunity to the teacher for a hearing before the school board to present reasons in person or in writing why the nonrenewal should not occur; and the opportunity to be represented. The teacher shall request the hearing as provided in § 13-43-6.9. The school board shall conduct the hearing not sooner than fourteen days, nor later than forty-five days, after receipt of the teacher's request for hearing. The parties may waive the time limitations provided for in this section.

Legal Reasons - 8 Deadly Sins

A school district may nonrenew a teacher who is in or beyond the fourth consecutive term of employment as a teacher with the school district pursuant to § 13-43-6.3 for just cause, including breach of contract, poor performance, incompetency, gross immorality, unprofessional conduct, insubordination, neglect of duty, or the violation of any policy or regulation of the school district.

*Notice policy is included so ensure your board policies encompass the teacher ethics rules

Remind Me About April 15th

- Notice of nonrenewal for both nontenured and tenured staff must be provided **by** April 15
- If you plan to RIF a teacher(s), that must be provided by April 15th as well

What about coaching?

Dear _____:

This letter is to inform you that the school district's administration has assigned you to perform the extra duties indicated below for the _____ school year. You will receive extra duty pay for each of these assignments as provided for in the district's negotiated agreement with the local education association. This extra duty salary will be paid in 12 equal installments beginning with the first regular pay period of the contract year in which the services will be rendered.

| Assignment | Annual Extra Duty Pay | Amount of Extra Duty Pay per Pay period |
|------------|-----------------------|---|
| | | |
| | | |
| | | |
| | | |

Non-Teaching Certified Staff

- DO NOT use your standard teaching contract for:
 - Administrators
 - Related service providers
 - Community coaches
 - Classified staff
- We see business managers change teaching contracts into other contracts - PLEASE DO NOT DO THIS!
- Do not incorporate negotiated agreement provisions into other staff contracts (ex. Hearing rights)

Classified Contracts/Work Agreements



"I understand past performance is no guarantee of future results, but I'm a little confused by your winking and air quotes."

Classified Staff Agreements

- At will provision
 - SDCL 60-4-4
 - An employment **having no specified term** may be terminated at the will of either party on notice to the other, unless otherwise provided by statute.
 - Check your classified staff contracts to make sure you don't have start and end dates


Classified Staff Agreements

- Reminder about the FLSA
 - All employees must be paid minimum wage and overtime for hours worked over forty
 - Must classify all employees as exempt versus non-exempt
 - VAST majority of classified staff are nonexempt

Classified Staff Agreements

- Who might be exempt?
 - “Executive Employees” (ex. Head custodian, food service director, transportation director)
 - Supervision: customarily and regularly supervises work of two or more other employees in department
 - Authority: hires or fires other employees
 - Or recommendations as to hiring, firing, or other status changes given particular weight
 - Administration has expressed concern about managers who perform other work

Status of Salary Threshold

On April 26, 2024, the U.S. Department of Labor (Department) published a final rule, [Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees](#) , to update and revise the regulations issued under section 13(a)(1) of the Fair Labor Standards Act implementing the exemption from minimum wage and overtime pay requirements for executive, administrative, and professional employees. Revisions included increases to the standard salary level and the highly compensated employee total annual compensation threshold, and a mechanism for updating these earnings thresholds to reflect current earnings data. On November 15, 2024, the U.S. District Court for the Eastern District of Texas vacated the Department's 2024 final rule. Consequently, with regard to enforcement, the Department is applying the 2019 rule's minimum salary level of \$684 per week and total annual compensation requirement for highly compensated employees of \$107,432 per year. Lawsuits regarding the 2024 final rule are currently pending in two other federal district courts, and the United States has filed a notice of appeal from the November 15 decision. The Department will update this notice with additional information as it becomes available.

What about part time staff?

The standard salary level is not prorated for part-time employees. However, exempt employees need not be paid for any workweek in which they perform no work. See [29 CFR 541.602\(a\)\(1\)](#). Therefore, an exempt employee who works for a school 10 months out of the year only needs to receive the required salary level during the 10-month work period. See [29 CFR 541.602\(a\)\(1\)](#). The standard salary level is a weekly earnings threshold, not an annual earnings threshold.

Additionally, employers may prorate over a full year the salary of an otherwise exempt employee who has a duty period of less than one year. Accordingly, a school may employ a nurse on a 10-month basis and pay the nurse the standard salary level only in the weeks in which the nurse works. Alternatively, the school may spread the nurse's salary payments over 12 months rather than 10 even though each individual payment would be less than the standard salary level.

Overtime

- Should be addressed in classified staff work agreement
- SD minimum wage is \$11.50
- OT does not apply to paid leave
 - PTO, holiday, vacation, sick, personal

Compensatory Time

- Allowed if:
 - 1.5 hours per overtime hour worked
 - Employees agree to it in advance
 - **Agreement must be in writing (PUT IN TEACHER CONTRACT)**
- Can't accumulate over 240 hours
- Employer can require employee to take comp time
- Can pay cash for comp time "at any time"
 - Must be paid out to employee if they leave
- Employer may deny comp time leave request if the request unduly disrupts the operations of the employer

What about coaches?

“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).”

- DoL Opinion Letter,

https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/2018_01_05_06_FLSA.pdf

What about coaches?

"Assuming that the coaches are not also employed by the school or school district in a different, nonexempt capacity, we believe they qualify for exemption as teachers under the FLSA. Unlike other exempt professional employees, teachers are not subject to the salary requirements in 29 C.F.R. § 541.300 or 29 C.F.R. §§ 541.600-.606. The FLSA itself imposes no minimum wage or overtime pay requirements for employees exempt under section 13(a)(1), including teachers. Therefore, the school may pay its coaches who are exempt teachers as it deems appropriate."

- DoL Opinion Letter,
https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/2018_01_05_06_FLSA.pdf

Classified Staff Who Coach

- Most classified staff who coach are not exempt for FLSA purposes because their “primary duty” is not exempt
- They must:
 - Track their coaching hours
 - Be paid OT or comp time for all hours worked over 40
 - Make sure you identify which method of OT calculation you are using for dual-rate employees
 - Weighted Average or Accrual
 - Put the method in the employment contract/work agreement
 - Can pay a different rate than the extra-duty payment schedule in the negotiated agreement

Dual Rate Employees

- Classified staff who work two or more jobs at different rates
 - Ex. Custodian who drives bus
 - Ex. Para who coaches basketball
- Two options are available to calculate OT
 - Weighted average
 - Accrual
- DOL has a calculator to check your work if you use the weighted average method
 - <https://webapps.dol.gov/elaws/otcalculator.htm>

Other Ideas

- Prohibit overtime
 - Very hard to enforce
 - Will have to reprimand staff if they do not comply
- Don't have classified staff work extra duty positions
- Flex time
- Volunteer service agreement – must be legitimate
- Utilize compensatory time

Classified Staff Termination

- Generally, at will so can terminate at any time with or without cause
- EXCEPT veterans
- SDCL 3-3-1
 - No person holding a public position by appointment or employment, and belonging to any of the classes of persons to whom a preference is granted pursuant to this chapter, may be removed from the position or employment unless replaced by another person of a class to whom such preference is granted. However, the person may be removed for incompetency or misconduct shown after a hearing, upon due notice, upon stated charges, and with the right of the employee or appointee to a review by writ of certiorari. The burden of proving incompetency or misconduct rests upon the party alleging the incompetency or misconduct.

Termination Laws

- SDCL 60-11-11
 - Whenever an employee not having a written contract for a definite period quits or resigns that employment, the wages or compensation earned are due and payable not later than the next regular stated pay day for which those hours would have normally been paid or as soon thereafter as the employee returns to the employer all property of the employer in the employee's possession.

FYI

- SDCL 60-11-16
 - Any employee who falsifies the amount due to the employee or who intentionally attempts to defraud the employer commits a Class 2 misdemeanor.

Administrative Contracts



Basically No Laws

- ARSD 13-43-1.2
 - No person may draw wages as a teacher, administrator, or other educational professional in any public school or other accredited school who does not have a valid certificate.

Superintendents/Principals

- ARSD 24:28:07:01 - A person employed as a superintendent, assistant superintendent, principal, or assistant principal in kindergarten through grade 12 shall hold a certificate valid for the position to which the administrator is assigned.

Clauses for Concern



"But I think we can both agree that my nap ethic is fantastic."

Clause for Concern #1

The Classified Staff Member hereby waives any rights under federal and state wage and hour laws, and agrees that this contract shall be the sole source of all rights and remedies.

Clause for Concern #2

The Classified Employee is classified as a salaried, exempt employee and shall not be entitled to overtime compensation.

Clause for Concern #3

The superintendent may not be terminated unless just cause is determined. Just cause is defined as breach of contract, poor performance, incompetency, gross immorality, unprofessional conduct, insubordination, neglect of duty, or the violation of any policy or regulation of the school district. Upon notice of termination, the superintendent may request a hearing with the school board.

Labor Laws



"Considering we've both just signed what is a quite lengthy and excruciatingly thorough contract I'm not sure I see the point, but fine - no takebacks."

Background Checks

- SDCL 13-10-12

- Each person over eighteen years of age hired by a school district shall submit to a criminal background investigation, by means of fingerprint checks by the Division of Criminal Investigation and the Federal Bureau of Investigation. The school district shall submit completed fingerprint cards to the Division of Criminal Investigation before the prospective new employee enters into service. If no disqualifying record is identified at the state level, the fingerprints shall be forwarded by the Division of Criminal Investigation to the Federal Bureau of Investigation for a national criminal history record check. Any person whose employment is subject to the requirements of this section may enter into service on a temporary basis pending receipt of results of the criminal background investigation. The employing school district may, without liability, withdraw its offer of employment or terminate the temporary employment without notice if the report reveals a disqualifying record. The employing school district may pay any fees charged for the cost of fingerprinting or the criminal background investigation for any person whose employment is subject to the requirements of this section. Any person hired to officiate, judge, adjudicate, or referee a public event sponsored by a school district is not required to submit to a criminal background investigation as required in this section. In addition, any instructor employed by a technical college is required to submit to a criminal background investigation as required in this section at the time of initial employment.

Background Checks

- SDCL 13-10-12.1
 - Any school district employee who is employed by more than one school district is only required to obtain one criminal background investigation, if the background investigation was conducted no more than five years before the person is first employed by the additional school district. The results of the background investigation **shall** be transferred to any additional school district from the initial school district that obtained the criminal background investigation if the additional school district or the school district employee requests in writing to the initial school district that the results be transferred and the school district employee who was the subject of the criminal background investigation signs a written release authorizing the transfer.

Background Checks

- A school district may refuse to employ a person, either directly or by contract, who has been convicted of a crime involving moral turpitude as defined in subdivision 22-1-2(25). No person may be employed by a school district, either directly or by contract, if the person has been convicted of a crime of violence as defined in subdivision 22-1-2(9), a sex offense as defined in § 22-24B-1, or trafficking in narcotics. **Nothing in this section prohibits a school district from considering any criminal conviction in making a hiring decision.**

SDCL 22-1-2(25)

- Moral turpitude - "Moral turpitude," an act done contrary to justice, honesty, principle, or good morals, as well as an act of baseness, vileness, or depravity in the private and social duties which a person owes to his fellow man or to society in general

SDCL 22-1-2(9) - CANNOT HIRE

- "Crime of violence," any of the following crimes or an attempt to commit, or a conspiracy to commit, or a solicitation to commit any of the following crimes: murder, manslaughter, rape, aggravated assault, riot, robbery, burglary in the first degree, arson, kidnapping, felony sexual contact as defined in § 22-22-7, felony child abuse as defined in § 26-10-1, or any other felony in the commission of which the perpetrator used force, or was armed with a dangerous weapon, or used any explosive or destructive device;

SDCL 22-24B-1 - CANNOT HIRE

22-24B-1. Sex crimes determined.

For the purposes of §§ 22-24B-2 to 22-24B-14, inclusive, a sex crime is any of the following crimes regardless of the date of the commission of the offense or the date of conviction:

- (1) Rape as set forth in § 22-22-1;
- (2) Felony sexual contact with a minor under sixteen as set forth in § 22-22-7 if committed by an adult;
- (3) Sexual contact with a person incapable of consenting as set forth in § 22-22-7.2;
- (4) Incest if committed by an adult;
- (5) Possessing, distributing, or manufacturing child pornography as set forth in §§ 22-24A-35 to 22-24A-37, inclusive;
- (6) Sale of child pornography as set forth in § 22-24A-1;
- (7) Sexual exploitation of a minor as set forth in § 22-22-24.3;
- (8) Kidnapping, as set forth in § 22-19-1, if the victim of the criminal act is a minor;
- (9) Promotion of prostitution of a minor as set forth in subdivision 22-23-2(2);
- (10) Criminal pedophilia as previously set forth in § 22-22-30.1;
- (11) Felony indecent exposure as previously set forth in former § 22-24-1 or felony indecent exposure as set forth in § 22-24-1.2;
- (12) Solicitation of a minor as set forth in § 22-24A-5;
- (13) Felony indecent exposure as set forth in § 22-24-1.3;
- (14) Bestiality as set forth in § 22-22-42;
- (15) An attempt, conspiracy, or solicitation to commit any of the crimes listed in this section;
- (16) Any crime, court martial offense, or tribal offense committed in a place other than this state that constitutes a sex crime under this section if committed in this state;
- (17) Any federal crime, court martial offense, or tribal offense that constitutes a sex crime under federal law;
- (18) Any crime committed in another state if that state also requires anyone convicted of that crime register as a sex offender in that state;
- (19) If the victim is a minor:
 - (a) Any sexual acts between a jail employee and a detainee as set forth in § 22-22-7.6;
 - (b) Any sexual contact by a psychotherapist as set forth in § 22-22-28; or
 - (c) Any sexual penetration by a psychotherapist as set forth in § 22-22-29;
- (20) Intentional exposure to HIV infection as set forth in subdivision (1) of § 22-18-31;
- (21) First degree human trafficking as set forth in § 22-49-2 if the victim is a minor;
- (22) Second degree human trafficking as set forth in § 22-49-3 involving the prostitution of a minor;
- (23) Felony use or dissemination of visual recording or photographic device without consent and with intent to self-gratify, harass, or embarrass as set forth in § 22-21-4;
- (24) Manufacturing or distributing a child-like sex doll as set forth in § 22-24A-1.1; or
- (25) Felony conviction of purchasing or possessing a child-like sex doll as set forth in § 22-24A-3.1.

Title VII - Religious Discrimination

Title VII of the Civil Rights Act of 1964 prohibits employers, including school districts, from discriminating against employees or applicants based on religion. This protection covers not only hiring, firing, and promotion decisions but also day-to-day work conditions. Schools must make reasonable accommodations for an employee's sincerely held religious beliefs or practices—such as adjusting schedules for religious holidays or allowing religious dress—unless doing so would create an undue hardship on operations. Importantly, retaliation against an employee for requesting or using a religious accommodation is also unlawful.

Groff v. DeJoy

600 U.S. 447 (2023)

- Groff is an Evangelical Christian working for USPS
 - Hired in 2012, but asked to work on occasional Sundays in 2016
 - Groff received discipline for refusing to work Sundays, eventually resigning and bringing suit under Title VII
- Title VII requires employers to make “reasonable accommodations” for religious practices
- Unless there are “undue hardships on the conduct of the business”
 - De minimis cost

Groff v. DeJoy

600 U.S. 447 (2023)

- SC:
 - “We hold that showing ‘more than de minimus cost,’ as that phrase is used in common parlance, does not suffice to establish ‘undue hardship’ under Title VII.”
 - An “employer must show that the burden of granting an accommodation would result in substantial increased costs in relation to the conduct of its particular business.”

What does this case mean?

- Inconvenience to coworkers not enough
- The effect to other employees has to directly relate to the conduct of the business
- DOCUMENTATION
 - Need to be able to show substantial increased costs due to an accommodation

What to do if you get a request?

- If an employee requests a religious accommodation, have a conversation with them
 - Engage in interactive process
 - Assess alternatives
 - Look at all factors: monetary costs, detrimentally affect other employees' schedules, health or safety risks, etc.
 - Reasonable accommodation v. preferred accommodation

Pregnancy Workers Fairness Act

- Pregnant Workers Fairness Act
 - Went into effect June 18, 2024
 - Schools are considered covered entities which must adhere to the new law
 - “[R]equires a covered employer to provide a ‘reasonable accommodation’ to a qualified employee’s or applicant’s known limitations related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an ‘undue hardship.’”
 - <https://www.eeoc.gov/wysk/what-you-should-know-about-pregnant-workers-fairness-act>

Examples of “related to, affected by, or arising out of” pregnancy

- Difficulty standing for long time due to pregnancy
- Need to attend prenatal health care appointments
- Therapy appointments for postpartum depression
- Lactating employee in need of breaks or time to eat
- Employee seeking leave for IVF treatment

What are “reasonable accommodations?”

- PWFA provides examples of possible reasonable accommodations but list is not exhaustive and can include:
 - Frequent breaks
 - Sitting/standing
 - Schedule changes
 - Telework
 - Parking
 - Light duty
 - Job restricting
 - Temporarily suspending one or more essential functions
 - 29 C.F.R. § 1636.3(i)

Document the Interactive Process

- PWFA does not provide a list of steps that must be followed
 - Described as an “informal exchange of information”
 - “The ADA restrictions on when employers are permitted to ask disability-related questions and require medical examinations apply to all such inquiries or examinations, whether employers make them of people with or without disabilities, including questions that an employer asks during the interactive process under the PWFA.”

The ADAAA

The Americans with Disabilities Act Amendments Act of 2008 (ADAAA) broadened the protections of the original ADA by expanding the definition of “disability.” Under the ADAAA, the focus is on whether the employer has provided a reasonable accommodation.

The ADAAA

- “Disability” is “a physical or mental impairment which substantially limits a major life activity”
- “Substantially limits” is not defined, but means a limitation beyond what a non-disabled person would experience
 - “I can’t lift 10 lbs.” compared to “I can’t lift 500 lbs.”
- “Major life activity”: manual tasks, walking, standing, thinking, concentrating, working, and all bodily systems
 - Cancers, diabetes, chronic back problems, mental illness

What does the law do in the employment context?

- Bars discrimination “against a qualified individual on the basis of disability”
 - Individual (1) must possess the requisite skill, education, experience, and training for the position and (2) be able to perform the essential job functions with or without reasonable accommodation
- Duty to engage in the interactive process
 - Identify limitations and potential reasonable accommodations
- Standard to deny is “undue hardship”

Document the Interactive Process

ADA Interactive Process Checklist _____ Public Schools

Employee Name: _____

Employee Position: _____

Date(s) of Interactive Process Meetings: _____

Participants in Interactive Process Meetings: _____

1. What is the physical or mental impairment which is prompting the employer to begin the interactive process?
2. Identify the major life activity which is substantially limited by the physical or mental impairment.
3. Identify any mitigating measures the employee uses to eliminate or ameliorate the effects of the disability, including medication, medical supplies, prosthetics, hearing aids, cochlear implants, mobility devices, etc. (The ameliorative effect of mitigating measures will be disregarded for assessment of whether the impairment qualifies as a disability.)

Questions?

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