

Trending Hot Topics: Crowdfunding, Website Accessibility and the FLSA

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Grand Valley School Business Officials

Crowdfunding 101

- Popularity Increasing – Stephen Colbert/Bill Gates
- Examples: GoFundMe.com, DonorsChoose.org, ClassWish.org
- Policy: To Have or Not to Have?
 - Legal Liability? Unregulated use can lead to legal pitfalls
 - (1) FERPA
 - (2) IDEA
 - Examples
 - (3) Supplement not Supplant (FAPE!)



Crowdfunding 101

- **Template NEOLA Policies**
 - **BOE/Superintendent designation of approved Crowdfunding sites**
 - Education-specific is best; procedural safeguards in place
 - **Administrative approval**
 - Require sample posting for review
 - Other approval required? (ex: IT)
 - **Funds raised are property of the District**
 - Allow for requested items in lieu of direct funds
 - **Provisions for protection re: FERPA, IDEA and Title IX**
 - Photos of students, identifying information, disparaging comments, etc.
 - **Student Crowdfunding?**



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Crowdfunding 101

- **All other BOE policies and administrative guidelines**
 - Non-discrimination, Anti-Harassment
- **Crowdfunding Policies extends to affiliated groups:**
Booster Clubs, PTO, etc.
- **No use of District logo or images for personal benefit**
- **District retains control and can terminate if policy is violated**
- **Discipline for violations**



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Crowdfunding 101

- Resources
 - <https://www.donorschoose.org/> (Commonly used education crowdfunding site)
 - <http://www.revtrak.com/> (Another site used by schools)
 - NEOLA Crowdfunding Policies



Website Accessibility 101

- What is Website Accessibility?
 - Simply put: “People with Disabilities can access the web.” Navigate, perceive, understand and interact with the website to the same extent as persons without disabilities can.
- Who is impacted?
 - Blind users, low vision users, deaf or hard of hearing
- Why does it matter?
 - Section 504 and Title II of the ADA
 - OCR!!!
 - As of July 2016, 227 investigations open



Website Accessibility 101

- Standards for Website Compliance:
 - Web Content Accessibility Guidelines 2.0 (WCAG), Level AA – most common
 - (1) **Understandable**
 - Text is readable and understandable (contrast issues)
 - PDF vs. RTF files
 - (2) **Robust**
 - Compatible with current and future user tools
 - (3) **Perceivability**
 - Captioning, Alternative Text
 - (4) **Operable**
 - Disabled users (screen readers, keyboard users)
 - Alternative Access



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Website Accessibility 101

- Get ahead of the OCR!! “3 Step Quick-Fix”
 - (1) Non-Discrimination Policies and Administrative Guidelines – how do you find them?
 - Title IX Coordinators – readily accessible!



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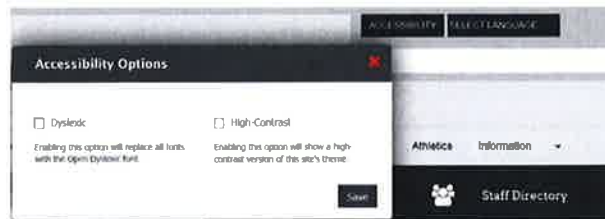
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Website Accessibility 101

- (2) Website Accessibility Issues
 - Website Accessibility Coordinator – who is it? How can I contact them?

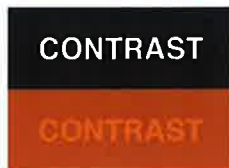
ACCESSIBILITY

Any student, prospective student, employee or guest of the District who is unable to access information contained on this website or any online content about the District's programs, services, or activities may contact a member of the District Communications Department for assistance.



Website Accessibility 101

- (3) Web Checker – Do it Yourself!
 - WAVE: Identify the “Red Flags”
 - 3 most common: Alternate Text Images, Contrast Issues and Audio Only Content



Website Accessibility 101

- When the OCR comes knocking...
 - Most OCR Resolution Agreements contain the same general requirements:
 - Development of Policies (WAP) and Procedures
 - No model policy yet from NEOLA or MDE
 - Development of Corrective Action Plan (Audit)
 - Notice of Policies – Reporting of Issues
 - Training
 - At least annually; can specify terms
 - Website Accessibility Coordinator and all other employees responsible for creating or distributing Online Content
 - Applies to all! (School secretary? History teacher?)



Website Accessibility 101

- **Resources**
 - Sample OCR Resolution Agreement (included in materials)
 - <http://www2.ed.gov/about/offices/list/ocr/frontpage/faq/readingroom.html> (OCR Reading Room – other sample resolution Agreements/Website Accessibility Materials)
 - <http://siteimprove.com> (Web Checker Service)
 - <http://wave.webaim.org> (Free webpage checker)
 - <https://www.w3.org/WAI/intro/wcag> (WCAG standards)
 - <http://webaim.org/standards/508/checklist> (Section 508 standards checklist)

Overtime Pay Update

- **Fair Labor Standards Act of 1938 (FLSA):**
 - Applies to nearly every employee and employer
 - Establishes minimum wage, overtime pay and exemptions from same
 - Employees who are not entitled to overtime pay under the FLSA are typically referred to as "*Exempt Employees*"



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Overtime Pay Update

- **New White Collar Exemption Regulations**
 - Take effect **December 1, 2016**
 - 21 States have sued in federal court in Texas to block the new regulations
 - Very low probability of success in the end.



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Overtime Pay Update

- New regulations effect:
 - Executive, Administrative, and Professional Employee (EAP), as well as Highly Compensated Employee (HCE) minimum wage and overtime pay exemptions
 - **Qualify by meeting:** salary-basis test + duties test
 - *HCE duties test is not as stringent*
 - **Does not effect:** “bona fide teachers”
 - teachers
 - professors
 - adjunct instructors



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Overtime Pay Update

- New regulations increase the salary-basis test
 - **Effective December 1, 2016:** EAP minimum salary increases from \$455 per week to \$913 per week
 - Roughly an increase of \$23,660/yr. to \$47,476/yr.
 - **Effective December 1, 2016:** HCE minimum annual compensation increases from \$100,000 to \$134,004.
 - **Beginning January 1, 2020, and every three years thereafter:** the above amounts will change based on a specific wage census formula.



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Overtime Pay Update

- New “salary basis” feature allows employers to satisfy up to 10% of the minimum salary requirement (i.e., \$91.30 per week) for EAP employees by nondiscretionary bonuses, incentives and commissions that are paid quarterly or more frequently
 - At the end of each quarter, any shortfall must be paid no later than the next pay period
 - N/A to HCE employees – separate feature available



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Overtime Pay Update

- Compliance options?:
 - Raise salaries to continue exemption
 - ***Convert employee to non-exempt***
 - **Must track time worked**
 - Minimum wage and overtime pay
 - May adjust hourly rate to factor in cost effect of anticipated overtime pay



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Overtime Pay Update

- Employers should consider whether employees being converted to non-exempt status have:
 - employer-provided smartphones and laptops; and/or
 - remote access to work e-mails and projects
- Non-exempt employees with those devices and/or electronic access expose employers to overtime liability for “*off the clock work*” (even if unauthorized!)



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Overtime Pay Update

- FLSA requires all **non-exempt employees** be paid overtime pay at 1.5 times the regular rate of pay for all **hours worked** over 40 hours in a workweek
 - “**Hours worked**” has been generally understood to include:
 - time an employee must be on duty, on the employer’s premises or at any other prescribed place of work; and
 - any additional time the employee is allowed (i.e., **suffered or permitted**) to work (**even if not requested by the employer**)



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Overtime Pay Update

- Whether an employer must compensate employees for work performed outside of regular working hours and outside of the office (hereafter “off the clock” work) is a very fact intensive inquiry.
- However, the case law generally requires an employer pay an employee for time “off the clock” if:
 1. the employee **performed “Work”**;
 2. for more than a *de minimis* amount of time; and
 3. the employer **knew or had reason to know** about the work.



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Thank you!



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Kara T. Rozin dedicates her legal practice to enriching the quality of education for students by assisting educators in state and federal legal matters. Kara represents Michigan public school districts and private employers in an array of labor and employment law and litigation matters. For the last eight years, she has defended school districts and employers in claims alleging employment discrimination, retaliation, wrongful termination, violation of constitutional or civil rights, sexual harassment, intentional torts and other related matters. Kara also serves to protect the interests of school districts and private employers during quasi-judicial proceedings such as investigations by the Department of Education, Office of Civil Rights, Equal Employment Opportunity Commission and the Michigan Department of Civil Rights. These investigations include Complaints alleging violations of the Americans with Disabilities Act, Family Medical Leave Act, Title VII, Title IX, Age Discrimination in Employment Act and the Elliot-Larsen Civil Rights Act.

Kara earned her Bachelor of Arts degree in Political Science/Pre-Law from Purdue University, West Lafayette, IN and her Juris Doctorate from Thomas M. Cooley Law School. She is a member of the State Bar of Michigan, and the Grand Rapids and Federal Bar Associations, as well as the Women Lawyers Association of Michigan.

When not practicing law, Kara enjoys traveling and spending time with her family, friends and dog. Kara regularly serves as a volunteer and Board Member for the Humane Society of West Michigan and frequently volunteers at the Guiding Light Mission in downtown Grand Rapids.

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Stephen R. Gee is an associate with the Labor & Employment Practice Group in Clark Hill's Grand Rapids office. Stephen counsels employers on federal, state, and local labor and employment law compliance, as well as labor and employment agreement implementation, interpretation, and compliance. Stephen also represents clients in collective bargaining negotiations, grievance and interest arbitrations, and in discrimination and retaliation matters before federal and state administrative agencies.

Prior to joining Clark Hill, Stephen gained a wide range of labor and employment law experience working at management-side firms in Illinois. Stephen has worked on wage and hour class action lawsuits and has also drafted, reviewed, and revised employee handbooks and personnel manuals so that they reflect best practices and compliance with current federal, state, and local laws and address trends in human resource management and employment law. Additionally, he co-authored the article "*Employee Theft: Practical and Legal Concerns*" that was published in Bloomberg BNA's Human Resources Report (Vol. 33, No. 9) on March 9, 2015.

Stephen graduated *cum laude* from Chicago-Kent College of Law. He served on the Chicago-Kent Law Review Executive Board and was a Student Editor on the Employee Rights & Employment Policy Journal. Stephen's law review note, "*The 'Moral Hazards' of Title VII's Religious Accommodation Doctrine*," was published in Volume 89 of the Chicago-Kent Law Review. After graduation, Stephen was also awarded the 2014 American Bankruptcy Institute Medal of Excellence.

Prior to law school, Stephen worked in marketing for two years after attaining a Bachelors of Business Administration with High Distinction from the University of Michigan's Stephen M. Ross School of Business.

Presentations

- "Working Off-The-Clock: Minimizing Wage and Hour Exposure from Digital Devices and Working at Home," Clark Hill Webinar, March 2016.

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Presentations

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