

# Labor and Employment Update



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**October 18, 2024**



# Caution

These slides reflect general legal standards for the related presentation and are not intended as legal advice for specific situations.

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Future legal developments may affect these topics.

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# Labor Relations



# Lesson's Learned Over the Last Year

1. Union's (lack of) organization and preparation.
  - A. Locals were not aware of the changes in the law or past practice
  - B. Locals were not aware of the contents of their own proposals
  - C. Information that Union provided is not accurate

# Lesson's Learned Over the Last Year

2. The heightened importance of “qualifications” for a position and defining what “qualifications” are.

- Experience
- Education
- Skills
- Training/DPPD



# Lesson's Learned Over the Last Year

## 3. The rise of “Just Cause” for all teachers.



# **Standards for Discipline**

Just Cause

Not Arbitrary or Capricious

At Will



# Appropriate Discipline?

- 1) Was the behavior planned or deliberate?
- 2) Did it constitute a crime?
- 3) Did it involve fraud, deceit, sexual misconduct, drugs, or a weapon?
- 4) What was the teacher's motive or purpose?
- 5) Did the conduct result in harm to a specific victim, and if so, what is the gravity of the harm?

# Appropriate Discipline?

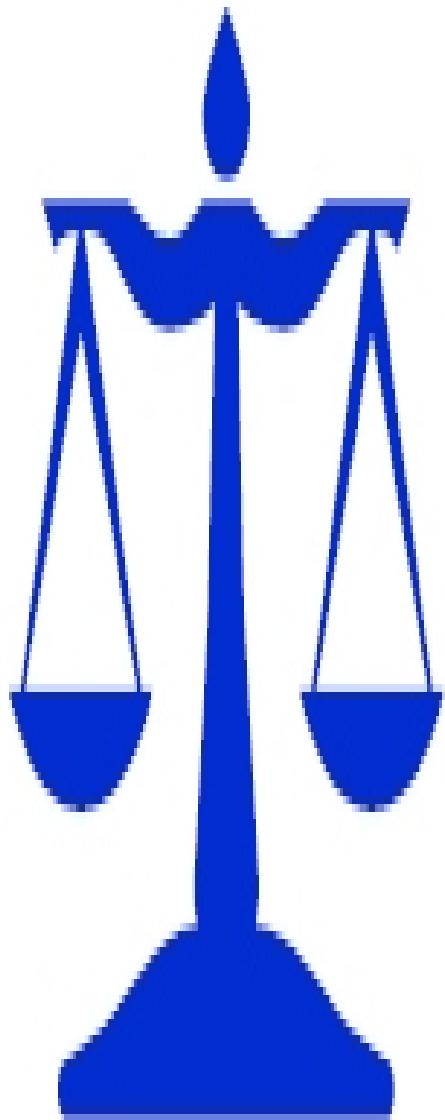
- 6) How much did the teacher's conduct deviate from the norms of appropriate conduct for members of society and teaching professionals?
- 7) Was there any previous disciplinary record, especially for the same type of misconduct?
- 8) What effect did any previous punishments or interventions have on the teacher's behavior?
- 9) What is the teacher's attitude, including whether the teacher accepts responsibility and exhibits a willingness to change?
- 10) What is the likelihood the behavior will recur?

# Complicated Processes

- Employee notice of complaint
- Initiating, conducting, and concluding fair and impartial investigation
- Interviewing bargaining unit employee
- Regular contact with Association
- Representation present for all meeting
- Limitations on evidence
- Ability to review evidence, notes, statements, etc
- Maintaining file

# Consequence

- More importance on lesser discipline to build case for discharge
- More tenure cases; higher tenure settlements
- More arbitrations over low level discipline
- Arbitrator's "split the baby"
- Last Chance Agreements to avoid arbitration
- Direct conflict with "cancel culture"



# Legal Update

# Prevailing Wage



# Reenactment of Michigan Prevailing Wage Act

- 2023 PA 10, eff. Feb. 13, 2024, restores prevailing wage requirement after 2018 repeal
  - Applies to State-funded projects
  - Must be addressed in contracts
  - Noncompliance fines
  - Oversight by Dept. Labor & Economic Opportunity
  - Does *not* change compliance with Davis-Bacon Act (federally-funded project over \$2,000)



# Applies to School Projects

- New Construction
- Alteration
- Repair
- Installation
- Painting/Decorating
- Completion
- Demolition
- Conditioning/Reconditioning
- Improvement





# Clean Drinking Water Access Act

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- 2023 PA 154 (“Filter First”)
- By **Jan. 24, 2025**, school must implement Drinking Water Mgt. Plan that:
  - Is available to staff, parents, the public, and EGLE\*
  - Is updated every 5 years
  - Includes annual testing and procedures if testing shows elevated lead levels



\*Mich. Dept. of Environment, Great Lakes, and Energy

# Filter First

- EGLE and MiLEAP prepared 22-page Plan template, along with filter guidance and training
- By 25-26 school year, schools must install approved filters on all consumptive fixtures, with annual sampling
- Funding available for one-time acquisition/installation of filtered bottle fill coolers, faucet filters, and some maintenance and sampling costs





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# Mandatory Information Sharing

- 2023 PA 236, eff. Feb. 13, 2024
- Adds Sec. 11a to PERA
- *30 days after hire*, school must provide new employee information to union, regardless of dues status
- *Every 90 days*, school must provide union with same information for *all* unit employees
- Do *not* incorporate into CBA!
- No requirement to use union form

# Required PERA Information

Name (first, middle, last)

Department or agency

Classification

Primary work location

Home address, unless confidential

Personal phone number

Personal email address

Work email address

Hire date

Employee ID number, if applicable

Full- or part-time status

Wage



MCL 423.211a

# Payroll Deductions for PACs

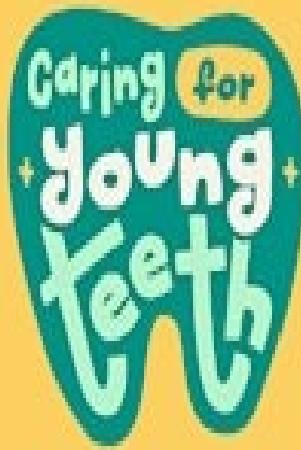


# PAC Payroll Deductions (effective Feb. 13, 2024)

- 2023 PA 243, amends Sec. 7 of Michigan Wages and Fringe Benefits Act
- 2023 PA 244, amends Sec.57 of Michigan Campaign Finance Act
- Removes prohibition against public bodies administering payroll deductions for PAC contributions
- Requires employee's affirmative consent
- Must be bargained

# Is your child ready for Kindergarten?

- ✓ Vision Check
- ✓ Hearing Check
- ✓ Dental Check **Now!**



**Good Oral Health Improves School Readiness**

Starting in the 2024-2025 school year, children entering kindergarten or the first year of school are required to have dental assessments before their first day.



My Community Dental Centers



# Kindergarten Oral Health Assessment Program

2023 PA 316, eff. Dec. 14, 2023

- Beginning 2024-25 school year, pre-enrollment dental screening required for first-time K or 1<sup>st</sup> grade enrollees
- Parent must provide MDHHS form showing proof of screening or religious exemption statement
- No exclusion for noncompliance
- Schools must submit data to MDHHS by Nov. 1 each year
- Local health department oversees



# 2024 Asbestos Legislation Effective *Sine Die*

**PA 16:** creates Public Entity Asbestos Removal Disclosure Act

**PA 17:** amends MIOSHA to add penalties for asbestos-related violations

**PA 56:** amends Michigan EPA to require owner to pay \$100 notice fee

**PA 59:** creates Public Entity Asbestos Removal Verification Act to require schools to conduct background investigation before entering abatement contract

# Public Entity Asbestos Removal Verification Act

2024 PA 59, eff. *sine die*

Prohibits school from entering into abatement contract if contractor has been issued 5+ environmental violation notices or subject to administrative order within 5 years

School may enter contract if it

- Investigates each violation,
- Conducts public hearing with 30-day notice,
- Determines contractor can comply, and
- Issues determination in writing

What You Need  
to Know About  
**Cardiac  
Emergency  
Response**



# Cardiac Emergency Response Plan

2024 PA 36, eff. *sine die*

Amends Fire Prevention Code to require schools to implement cardiac emergency response plan 25-26 school year

School personnel “included in the plan” who perform CPR or AED are not liable unless grossly negligent



# Written Plan Must

Activate and disseminate cardiac emergency response team

Place marked AEDs in conspicuous places

Provide routine maintenance for AEDs

Implement annual simulations

Provide training on CPR, AED, first aid

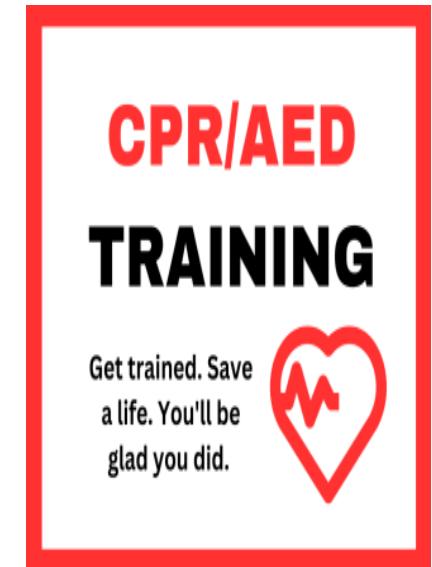
Integrate plan with local first responders

Review every 3 years

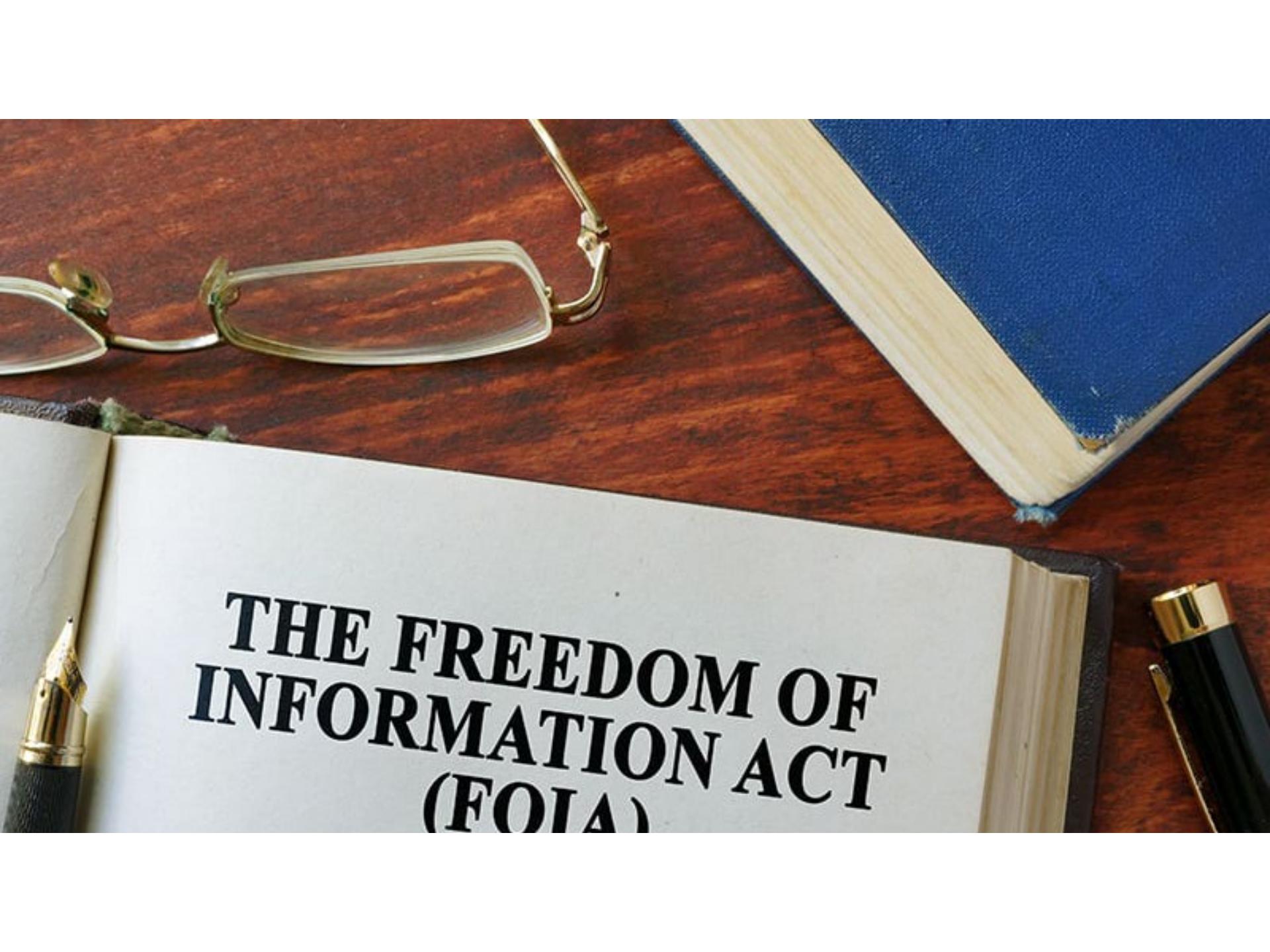


# Coach CPR/AED Certification

- 2024 PA 37, eff. *sine die*
- Adds Sec. 1319 to RSC
- Beginning 2025-26 school year, high school athletic coach must have valid CPR/AED cert. issued by Red Cross, American Heart Ass'n, or comparable institution approved by MDE
- No liability unless grossly negligent





A photograph of a dark wood desk. On the desk, a blue book with a white spine is positioned diagonally. A pair of gold-rimmed glasses lies on the desk to the left of the book. In the bottom left corner, the nib of a fountain pen is visible. In the bottom right corner, the barrel of another fountain pen is visible. The main focus is a white page with the text "THE FREEDOM OF INFORMATION ACT (FOIA)" printed in large, bold, black capital letters.

# THE FREEDOM OF INFORMATION ACT (FOIA)

# *Blackwell v U of M* Mich App unpublished (2023)

- In FOIA response, public body may exempt person's name/identity if:
  - Disclosure provides "intimate, embarrassing, private, or confidential" information, and
  - Revealing identity would not provide insight into government operations or activities
- Person's name, by itself, is not personal or private information
- Note: *Mich Federation of Teachers v U of M*, 481 Mich 657 (2008) held that employee home addresses and telephone numbers meet FOIA's privacy exemption

# *Mackinac Center v MSU* Mich App unpublished (2023)

Michigan Supreme Court denied leave  
MSU denied FOIA request for any emails  
to/from MSU President that mention Stephen  
Hsu (MSU administrator)

- Information exempt under FERPA, and
- Emails contained “frank communication”

Court found no FERPA exemption because  
student emails were not education records  
and the redacted names, email addresses,  
and phone numbers were directory  
information

# “Frank Communication”

Court agreed that exemption applied to *some* emails between President and other administrators

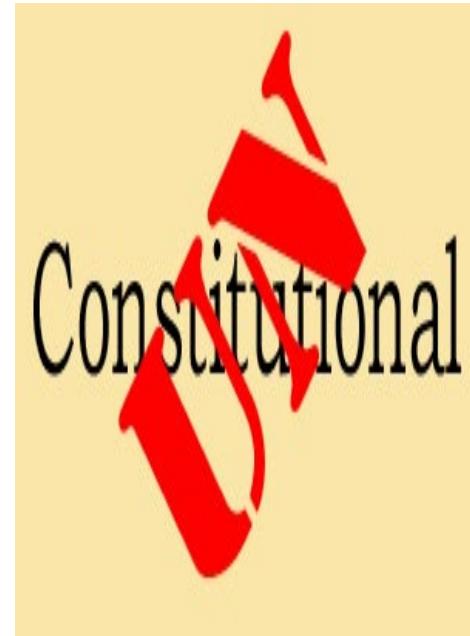
- Advisory communication within public body or between two public bodies
- Covers more than purely factual material
- Preliminary to final agency determination
- Public body must demonstrate that public interest in encouraging frank communication outweighs public interest to disclose

# *Litkouhi v Rochester CS* Mich App unpublished (2024)

- FOIA request for teacher's "lesson plans, readings given to students (articles, publications, case studies), viewings (video clips) and assignments used to evaluating students (writing prompts)."
- Court: public school teachers ≠ "public body"
- Documents prepared, owned, used, or possessed by individual teacher ≠ public records subject to FOIA
- *Caution:* some teacher-possessed documents could be subject to disclosure under FOIA, as well as FERPA, Revised School Code, and subpoena

# *Mothering Justice v Att'y Gen'1* Mich No. 165325 (July 31, 2024)

Michigan Supreme Court (in a 4-3 decision) found unconstitutional the Michigan Legislature's 2018 "adopt and amend" tactic to circumvent petition initiative to increase minimum wage and expand medical leave time



# “Constitutional Mischief”

*“In sum, by adopting [those Acts] and then later stripping those Acts of their key features in the same legislative session, the Legislature unconstitutionally violated the people’s initiative rights.”*

Lawmakers, however, are free to change the measures in subsequent sessions.



# Court-Ordered Remedy

Original (not amended) Wage Act  
and Earned Sick Time Act go  
back into effect Feb. 21, 2025  
(205 days after decision)

No liability for employers  
State Treasurer to calculate  
inflation-adjusted minimum wage  
by Nov. 1, 2024 (currently  
\$10.33) for Feb. 21, 2025  
implementation

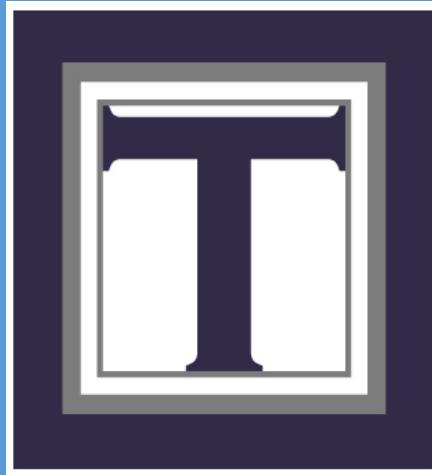


# Earned Sick Time Act

- Employer must provide paid medical leave to each EE regardless of
  - Length of service
  - Salary or hourly status
- 1 hour of paid medical leave accrues for every 30 hours worked
- EE may use up to 72 paid medical leave hours per year (some exceptions)
- Employer may require reasonable documentation after 3 consecutive leave days

# FLSA Salary Rule

- Eff. July 1, 2024, DOL updated salary thresholds for exemptions
  - Minimum increased to \$844/week
  - Will increase Jan. 2025 to \$1,128/week
- Creates mechanism to update salary levels every 3 years
- Limited impact for schools as teachers and some administrators exempt from FLSA
- Could affect some directors, supervisors, and other noninstructional employees (non-exempt)
- Exempt employees do not get OT



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