

Robbins Schwartz Legal Update for Illinois Higher Education Institutions

Virtual Conference | September 14, 2023

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Although the information contained herein is considered accurate, it is not, nor should it be construed to be legal advice.
If you have an individual problem or incident that involves a topic covered in this document, please seek
a legal opinion that is based upon the facts of your particular case.

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VIRTUAL LEGAL UPDATE FOR ILLINOIS HIGHER EDUCATION INSTITUTIONS

Thursday, September 14, 2023

AGENDA

8:30 a.m. – 9:30 a.m.

GENERAL SESSION

Workplace and Educational DEI Initiatives Face Significant Challenges After the Supreme Court's Recent Affirmative Action Decision

Presented by: Frank B. Garrett III

CONCURRENT SESSIONS

9:45 a.m. – 10:45 a.m.

Session 1

Addressing Student Mental Health Concerns and Threats to Campus Safety

Presented by: Emily P. Bothfeld and Michelle L. Weber

Top Construction Problems and Solutions

Presented by: Matthew J. Gardner and Christopher R. Gorman

Higher Education Collective Bargaining Trends and Management Strategies for Effective Negotiations

Presented by: Philip H. Gerner III and Thomas C. Garretson

11:00 a.m. – 12:00 p.m.

Session 2

Navigating the Waters of FMLA, ADA, and Employee Leave Rights

Presented by: Kevin P. Noll and Aaron J. Kacel

Data Breaches and Ransomware Attacks: Strategies for Protecting Data and Security and Responding to Data Incidents

Presented by: Matthew J. Gardner and Emily P. Bothfeld

12:15 p.m. – 1:15 p.m.

Session 3

Bidding from the Basics to the Advanced

Presented by: Howard A. Metz and Kenneth M. Florey

Bills, Bills, Bills: An Overview of New Legislation Impacting Illinois Colleges

Presented by: Todd K. Hayden and Matthew M. Swift



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Workplace and Education DEI Initiatives Face Significant Challenges After the Supreme Court's Recent Affirmative Action Decision

September 14, 2023

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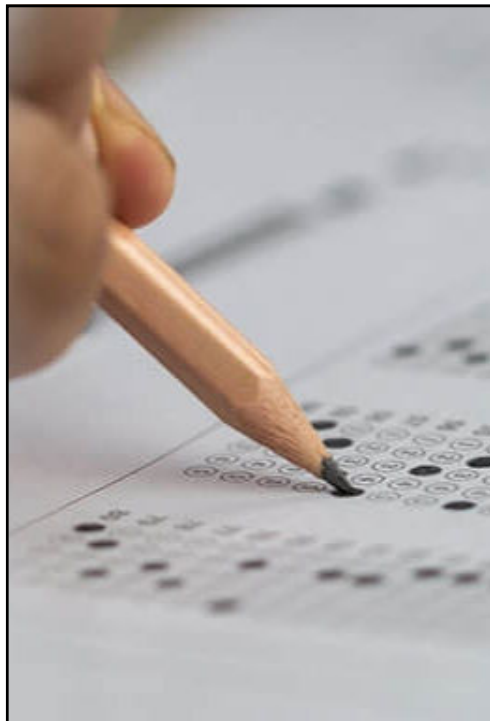
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Pop Quiz: Legality of Various DEI Initiatives

1. The Supreme Court's Harvard and UNC decisions prohibit employers from using race in employment decisions.
True or False
2. Diversity, equity and inclusion principles are generally designed to increase opportunity for diverse candidates, and employees.
True or False
3. Title VII, unlike the Equal Protection Clause of the Civil Rights Act.
 - a) Allows for the use of DEI initiatives to diversify the workplace;
 - b) Allows an employer to utilize race conscious DEI initiatives to increase diversity;
 - c) Allows an employer to factor in race when engaging in lay-offs or RIFs in order to maintain racial diversity (retention) in the workplace;
 - d) None of the above.
 - e) All of the above.



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Assessing Your Workplace Knowledge of Race Conscious Measures

4. The Harvard decision will make it more difficult for colleges to offer scholarships based on race.
True or False
5. An employer's DEI Plan should:
 - a) Have an end date;
 - b) Be reviewed and assessed on a regular basis;
 - c) Provide data supporting its initiatives;
 - d) All of the above.
 - e) None of the above.
6. Advertisements in publications geared toward racial and/or ethnic minority students or employee applicants is an unlawful race conscious measure.
True or False

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Supreme Court Strikes Down the Use of Race Conscious Efforts in Student Admissions

- SFFA filed lawsuits alleging that Harvard's and UNC's student admission policies were discriminatory in violation of Title VI of the Civil Rights Act ("Title VI") and the Fourteenth Amendment of the Constitution.
- The Supreme Court agreed with SSFA, ruling that both universities' use of race in their student admissions decisions was unlawful violating Title VI and the Equal Protection Clause of the Fourteenth Amendment.



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Supreme Court's Rationale for Rejecting Race Conscious Measures in Student Admissions

- The Equal Protection Clause of the Fourteenth Amendment provides that no state shall "deny to any person...the equal protection of the law." Interpreted by the Courts to require the doing away with all governmentally imposed discrimination based on race.
- According to the Court, Harvard and UNC's race conscious admission programs were not based upon a compelling government interest; and
- The diversity and inclusion goals of Harvard and UNC were "not sufficiently coherent" and measurable to survive a constitutional "strict scrutiny" analysis.
- "Societal discrimination" alone does is not a compelling reason under a strict scrutiny analysis for the use of race-based measures.



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Proponents of Race Conscious Measures See a Silver Lining in the Court's Rulings

- The author of the Court's Harvard Decision, Chief Justice Roberts, stated that "[n]othing in this opinion should be construed as prohibiting universities from considering an applicant's discussion (essay) of how race affected his or her life.
- Interesting that the Court appears to exempt from its ruling the United States military academies. The Court noted that the limited use of race in admitting cadets presents "potentially distinct interests" from colleges and universities.
- Does this mean that certain employers and/or positions of employment are more appropriate for the use of race conscious?



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What are "Race Conscious" Measures?

- Race conscious DEI initiatives are measures and efforts designed to obtain and maintain racial diversity using race as a limited factor in the selection process. Examples include:
 - Hiring or selecting a candidate because of their race
 - Using race as a "tiebreaker" or awarding a "plus" to someone of a particular race
 - Setting aside a set number or percentage of hires, promotions, or selections for members of a particular race
 - Instructing internal or external recruits to fill a position with someone of a particular demographic
 - Awarding scholarships or grants to an individual because of their race

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What Are “Race Neutral” Measures?

- Race neutral can be defined as a DEI initiative used in obtaining and maintaining a diverse, equitable and inclusive environment without using any distinctions or classifications based on race.
- Race neutral measures attempt to address racial disparities without directly targeting benefits exclusively to a racial minority group and therefore, arguably not adversely impacting majority groups.



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Examples of Race Neutral Initiatives

1. Revising job descriptions and advertisements to more accurately reflect the duties and qualifications of the position.
2. Expanded advertising and recruiting efforts designed to increase the pool of diverse candidates.
3. Training of team members charged with hiring employees or selection of students for certain programs.
4. Training staff on non-discrimination laws and policies and on unconscious bias.
5. Providing increased leadership opportunities and trainings and advertising these opportunities to diverse employees.
6. Employee and student mentoring programs.
7. Non-Discrimination and Equal Employment policies, procedures and statements.



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Departments of Justice and Education Provide Guidance on Lawful Diversity and Equity Measures

Issued guidance on August 14, 2023, in response to the Supreme Court's Decision in Harvard: [Questions and Answers Regarding the Supreme Court's Decision in *Students For Fair Admissions, Inc. v. Harvard College and University of North Carolina*](#)

- Acknowledges the Court's ruling, but states that some considerations by colleges to increase diversity remain lawful, i.e.:
 - How an individual's background or experiences, including race, make them qualified for a program or position;
 - Targeted outreach and recruitment;
 - Partnering with a particular school and offering mentorships, and Pathway programs.

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Departments of Justice and Education Provide Guidance on Lawful Diversity and Equity Measures, contd.

- Collecting student demographic data as long as it remains separate from any selection process and
- Policies of admitting all students who complete degrees at community colleges (with a certain G.P.A.) or initiatives which allow for admitting all students who graduate in top portion of their high school class.
- Departments' Guidance also states that student clubs and affinity groups do not violate the law so long as the clubs or groups are open to all students regardless of race.



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Lawsuits and Challenges Post Harvard

- Seemingly emboldened by the Supreme Court's Harvard decision, a number of lawsuits have been filed against employer and college DEI programs and initiatives
 - America First filed a discrimination charge against Kellogg's DEI plan claiming it seeks to balance the workforce based on race.
 - The American Alliance of Equal Rights filed suit against two major law firms alleging their fellowships are dedicated to minority law students and unlawful.
 - A former managing director at Morgan Stanley sued, claiming he was fired because of his race, White, and to make way for a Black women because of the firm's Diversity and Inclusion Initiatives.



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Lawsuits and Challenges Post Harvard, contd.

- Fearless Fund, a venture capital firm that provides grants for Black female entrepreneurs is being sued by Edward Blum, claiming that operating a grant program open only to Black females is discrimination in violation of the Civil Rights Act of 1866 and its provision related to making contracts.
- A number of states and universities eliminated DEI programs and offices after the Court's decision.



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Considerations for Employers Post Harvard/UNC Decision

- The Court's Harvard/UNC decision analyzed constitutional provisions that are applicable to employment as well as higher education.
- Titles VI and VII of the Civil Rights Act rely upon very similar language in prohibiting discrimination based upon race or color.



Recommendations for Action Post Harvard/UNC Decision

- Do not overreact by immediately eliminating all initiatives to increase diversity and equity, if the data supports such use.
- Seek expert legal advice to fully understand the Court's rulings and application of the ruling to your policies and practices.
- Engage in a thorough audit of any current policies and procedures, written and oral, which use or touch upon DEI principals to ensure legal compliance with Titles VI, VII and the Equal Protection Clause.
- Evaluate and discuss the risks of current practices that utilize diversity and equity measures.

Additional Recommendations for Action

- Engage and implement compliance training to appropriate administrators and staff.
- Have frank and honest conversations with stakeholders regarding the current DEI reality in your community and the vision of the college as it relates to DEI efforts.
- Rely upon data when engaging in initiatives to increase the hiring, selection, promotion and retention of diverse candidates. Examine the college's current demographics, demographics of the available hiring pool, student and community demographics, history of hirings and promotions and review of any prior claims or complaints of discrimination.
- Examine whether race-neutral initiatives have been successful in meeting the college's diversity and equity goals before engaging in race-conscious initiatives.
- Plan for and conduct a regular review and assessment of your DEI needs, initiatives and results.
- If there are DEI initiatives in place there should be a proposed date to end the initiatives once the goal has been achieved.



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About the Presenter

Frank B. Garrett, fgarrett@robbins-schwartz.com
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Frank B. Garrett III is a partner with Robbins Schwartz and represents educational institutions and employers in all aspects of employment law. Frank counsels and trains educational institutions and companies on a myriad of education workplace issues including unlawful discrimination, harassment and misconduct, ADA and FMLA rights, free speech and expression, grievances and misconduct complaints and employee discipline. Additionally, Frank is certified in Diversity, Equity and Inclusion leadership and counsels organizations on their DEI compliance. Frank is a regular presenter at both the state and national level and is continuously recognized as an Illinois Leading Employment Lawyer.



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Addressing Student Mental Health Concerns and Threats to Campus Safety

September 14, 2023

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Introduction



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1

Recent Headlines

- All headlines from <https://www.chronicle.com/>

Colleges Face More Pressure to Keep Students With Mental-Health Conditions Enrolled

By Carolyn Kuimelis | DECEMBER 8, 2022



NABHA BHALLA, THE DARTMOUTH

Students Say Mental-Health Breaks From Class Help Them Succeed. Here's How Colleges Are Responding.

By Julian Roberts-Grmela | FEBRUARY 2, 2023



NICOLAS OSGONOSKY FOR THE CHRONICLE

More Colleges Are Hiring Crisis-Response Teams for Mental-Health Emergencies

By Kate Hidalgo Bellosers | OCTOBER 13, 2022



NICOLAS OSGONOSKY FOR THE CHRONICLE



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Recent Headlines

- All headlines from <https://www.chronicle.com>

Campus Bomb Threats Increased More Than Fivefold Last Year

By Zachary Schermole | AUGUST 2, 2023



SUZANNE KREITER, THE BOSTON GLOBE, GETTY IMAGES

When a Student Seems Violent, Colleges Turn to Threat-Assessment Teams. What Are They?

By Kate Hidalgo Bellows | NOVEMBER 15, 2022



SHABAN ATHUMAN, AP

'We Have a National Crisis': How Michigan State Responded to a Mass Shooting

By Sylvia Goodman | FEBRUARY 14, 2023



CARLOS OSORIO, AP

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Agenda

- I. Supporting Students' Mental Health Needs Generally
- II. Accommodating Students with Mental Health Conditions
- III. Responding to Campus Threats
- IV. Q&A

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Supporting Students' Mental Health Needs



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Mental Health Early Action on Campus Act

Went into effect in 2019.

Applies to Illinois public colleges and universities.

Unfunded until FY23. Funding for FY24 and beyond is TBD.

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Mental Health Early Action on Campus Act

Key components:

- 1) Awareness
- 2) Online screening tool
- 3) Training
- 4) Peer support program
- 5) Strategic partnerships
- 6) Clinical benchmark ratio



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Accommodating Students with Mental Health Conditions

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Mental Health Disability Accommodations

- ADA and Rehabilitation Act require institutions to provide qualified students, including those with mental health-related disabilities, with reasonable accommodations.
- MHEACA requires colleges to develop and implement policies and procedures that, in part:
 - Advise students, faculty, and staff of proper procedures for identifying and addressing needs of students exhibiting mental health conditions; and
 - Promote understanding of ADA/Rehabilitation Act to increase knowledge of student legal protections.



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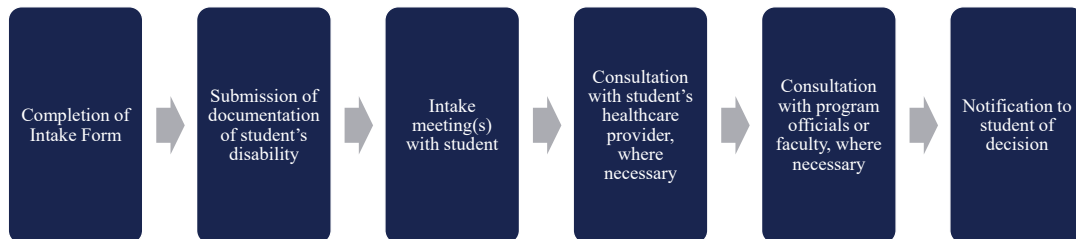
Student Accommodation Process

- Disability services office is typically responsible for processing requests for disability-related accommodations.
- Upon receipt of a request, disability services will engage in an **interactive process** with the student to determine:
 - Whether the student is eligible for and requires disability-related accommodations to access the educational program in a manner similar to their nondisabled peers; and
 - If so, what accommodations are appropriate and reasonable.
- Process is no different for students with mental health conditions.



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Student Accommodation Process



*Note new requirements under P.A. 103-58 (Removing Barriers to Higher Education Success Act), eff. 1/1/2024

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Practical Tips

- If a student contacts an instructor or faculty member directly to request a disability-related accommodation, the student should be referred to the disability services team.
- Faculty should respond in a timely manner to requests from the disability services team for information regarding course requirements and format.
- Instructors should keep track of approved accommodations for students enrolled in their courses.
- If the nature or scope of a particular accommodation is unclear, instructors should follow up with the disability services team to request clarification.

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Hypothetical #1

- Student James was diagnosed with intermittent explosive disorder over the summer. This medical condition causes him to experience episodes of rage and aggression at the slightest provocation. The first day of classes, James notifies Professor Stone that he has this diagnosis, but tells Stone that “he has things under control.” The two agree that, if James is feeling agitated, he can take a break from class or leave class early and Stone will not count these breaks against James or otherwise penalize him for leaving class.
- Do you have any concerns with how Professor Stone handled the situation? What are the Professor’s obligations with respect to James? What are the College’s obligations with respect to James?



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Responding to Campus Safety Threats



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Response Process Overview

Involve your Campus
Threat Assessment
Team

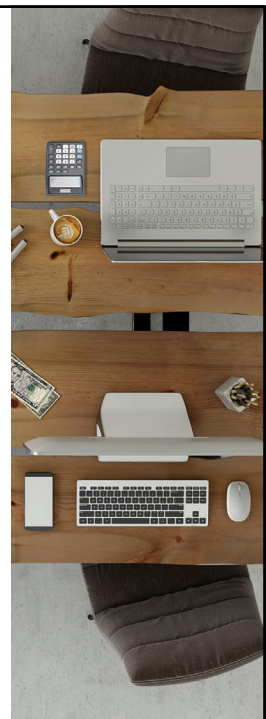
Determine whether,
and to what extent, to
involve third-parties

Assess applicable
notification and
reporting requirements

Implement and
monitor remedial
measures

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Step 1: Involve Campus Threat Assessment Team



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Campus Threat Assessment Team

- Campus Security Enhancement Act of 2008 and its implementing regulations require that each Illinois higher education institution develop and maintain a multidisciplinary campus threat assessment team.
- Act provides guidance for identifying concerning and threatening behaviors that could lead to violence.



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Campus Threat Assessment Team – Purpose

- Create written threat assessment policy that includes process for identifying and investigating conduct that may lead to targeted violence and provides a specific response action plan.
- Coordinate between community leaders and services providers to prevent sexual violence, domestic violence, dating violence and stalking.
- Ensure coordinated response with law enforcement and victim services.



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Campus Threat Assessment Team – Meetings

- Teams must meet at least two times per calendar year for the purpose of discussing and improving upon:
 - Best practices for prevention, awareness, education, and response
 - Policy/procedure review and development
 - Collaboration with community-based organizations and law enforcement
- Team should also meet for post-incident assessments.



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Campus Threat Assessment Team – Incident Response

- Oversees the College's threat assessment process.
- Coordinates with outside entities, if necessary or appropriate, to assess the level of threat.
- Coordinates the College's response following threat assessment determination.
- Monitors any follow up activities following a threat to campus safety.



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Step 2: Consider Involvement of Third Parties

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Potentially Relevant Third Parties

- Law enforcement
- DCFS
- Outside mental health providers
- Medical professionals
- Parents/guardians or other family members

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Student Privacy Considerations

- FERPA generally prohibits non-consensual disclosure of student record information.
- But note key exceptions:
 - Disclosure to “school officials” (including contracted third-parties) with legitimate educational interests
 - Disclosure to parents/guardians of dependents, in certain contexts
 - Disclosure to third parties in connection with a “health or safety emergency”

Step 3: Assess Reporting and Notification Requirements

Clear and Present Danger Reporting

Illinois Firearm Concealed Carry Act (“ICCA”) mandates that institutions report to Illinois State Police (“ISP”) any student or other person who is determined to pose a “clear and present danger” to themselves or others, within 24 hours of that determination.

“Clear and Present Danger” defined as “a person who demonstrates threatening physical or verbal behavior, such as violent, suicidal, or assaultive threats, actions, or other behavior as determined by a physician, clinical psychologist, qualified examiner, law enforcement official, or school administrator.”

Clear and Present Danger – Reporting

Who Must Report

- Law enforcement officials
- School administrators – including chief administrative officers of community colleges, colleges and universities.

Clear and Present Danger – Reporting

- CPD report to include specific behaviors and statements leading to the determination, including dates and times of occurrence, and names and contact information of any witnesses.
- CPD reporting must be made consistent with FERPA.
- College must maintain a copy of all reports filed.

Clery Act Notifications and Warnings

- The Clery Act is a federal statute requiring all colleges and universities that participate in federal financial aid programs to keep and disclose information about crime on and near their respective campuses.



Clery Act – Emergency Notification

- Institutions must develop emergency response and evacuation procedures and include a description of those procedures in their annual security report (“ASR”).
- Institutions are required to provide immediate notification to the campus community upon confirmation of a significant emergency or dangerous situation occurring on campus that involves an immediate threat to the health or safety of students or employees.



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Clery Reporting – Timely Warning

- Institutions must develop a plan/procedure to evaluate if there is a serious or ongoing threat to the campus to determine if a timely warning needs to be issued to staff and students.
- Timely warning required when:
 - Clery Act crime has been reported;
 - Crime occurred in or on institution’s Clery geography; and
 - Crime represents serious and continuing threat to students and employees.



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Timely Warning/Emergency Notifications

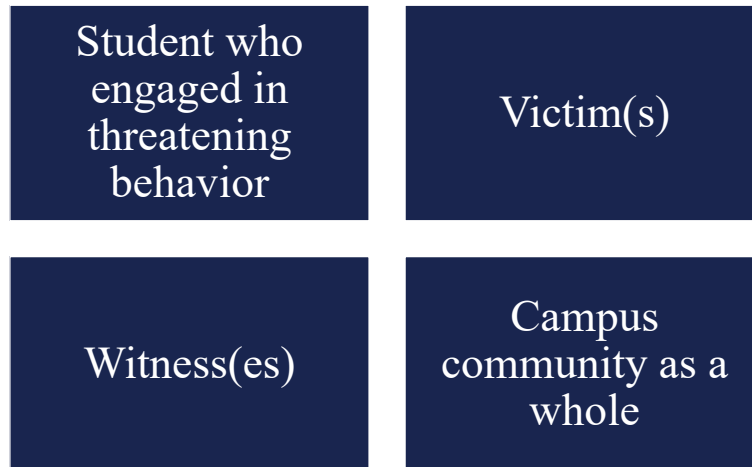
	Emergency Notification	Timely Warning
Scope	Significant emergency or dangerous situation	Clery Crimes, reported to CSAs
Triggered by?	Event that is currently occurring on or imminently threatening campus	Crimes that occurred and represent an ongoing threat
Where event occurs?	Only on campus	Clery Geography
How soon to issue?	Immediately upon confirmation of situation	As soon as information is available

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Step 4: Implement and Monitor Remedial Measures

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Comprehensive Remedial Measures



Involuntary Removal

- Title II of the ADA limits educational institutions' ability to involuntarily remove a qualified student with a disability from the educational program.
- To remove, student must pose a "direct threat to others."
- "Direct threat" means a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation.
- Note that "direct threat to self" is not a basis for removal.

Direct Threat – Individualized Assessment

- Colleges must make an individualized assessment based on “reasonable judgment that relies upon current medical knowledge or best available objective evidence,” to determine:
 - Nature, duration, and severity of the risk;
 - Probability of injury; and
 - Whether risk may be mitigated by a reasonable accommodation.
- Best practice is to include a multidisciplinary team of individuals in the process.



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Other Remedial Measures

- Evaluations and assessments
- Access to mental health services
- Referral to external resources
- Safety and security measures (increased monitoring, no contact directives, restrictions on campus access)
- Ongoing collaboration with outside providers
- Disciplinary procedures



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Hypothetical #2

- James is referred to the Disability Services Office, who connects him with access to mental health services and reasonable accommodations. According to James's accommodation plan, he is able to take breaks, leave classes early, or take classes remotely when necessary. One day, while James is in class, he threatens to punch Professor Stone in the face. During the course of the altercation, James stands up and begins walking towards Stone, but another student interjects before James approaches Stone. James quickly leaves class and does not make any physical contact with Stone.
- What recourse does the College have to address James's conduct? Does the College have any reporting or notification obligations in response to James's conduct?



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Hypothetical #3

- Same facts as #2 except, after leaving class, James is seen on campus security video footage taking a baseball bat to Professor Stone's car.
- How would this change the College's response?



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A word cloud of "Thank You" in various languages including English, Spanish, Italian, Greek, Russian, and Chinese.



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Top Construction Problems and Solutions

September 14, 2023

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Construction Problems??

Let's Find Solutions!



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Agenda

- Problems and Headaches at the Beginning of a Project and Practical Planning Considerations for New Developments
- Managing and Resolving Construction-Phase Problems to Keep Your Project on Track
- Close Out Considerations
- Construction Claims and Litigation
- Questions



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Problems and Headaches at the Beginning of a Project

Practical Planning Considerations



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Common Problems on Construction Projects Before the Shovel Hits Dirt

- Board of Trustees uncertainty and/or political issues
- Imprecise scope and budget
- Acquiring property and financing a project
- Inexperienced internal administrative team
- Absence of a relationship with external construction team
- Setting unreasonable project timelines that are destined for failure
- Requirements for bonds and prevailing wage in bid/contract documents



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Imprecise Scope and Budget: Can We Move Forward?

- Uncertainty may exist:
 - Often colleges do not know full scope of a new development or the available budget when property becomes available.
- Solutions:
 - Provide the Board of Trustees and key partners (Foundation, private partners, other governments, etc.) with all available information including the reasons for the uncertainty.
 - Try to provide a formula or structure for funding and basic requirements for project.
 - Identify programming preferences and engage cost estimating professionals.
 - Board approval of the project or development to allow architects or cost estimating professionals to generate an estimated cost.
 - Have an exit ramp! Limit the college's potential costs or allow the college to terminate any contract if too expensive or proposed scope does not meet the college's desired needs.



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Acquisition of Property: Give Yourself Enough Time

- **Top Problems When Acquiring Property?:**

- Finding the right property, including the right community/campus, and what the college is willing to pay?
- Extending offers and negotiating purchase and sale agreements.
- How to keep the Board of Trustees apprised of negotiations and issues?
- Due diligence: environmental, zoning, title/survey, and existing tenants.
- Property tax implications.



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Acquisition of Property: Give Yourself Enough Time

- **Solutions:**

- Community colleges have broad authority to purchase real property under 110 ILCS 805/3-36 (including the power of condemnation).
- Board decision as to where to purchase property: provide as much information as possible and should engage brokers if needed.
- Ability to discuss the purchase or lease of real property in closed session (5 ILCS 120/2(c)(5)).
- Consider intergovernmental or private partnership opportunities.
- Due diligence can be time consuming and involve significant negotiations.
- Address risks and costs, including taxes, environmental, title defects, and closing costs in the purchase and sale agreement.



8

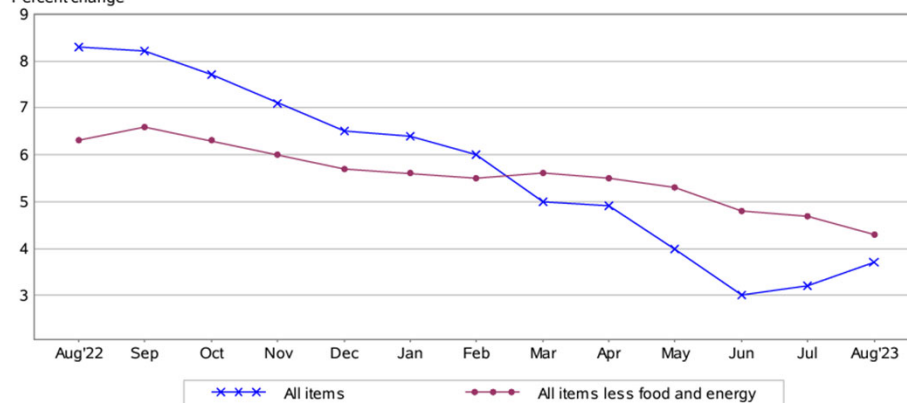
Financing the Project: What is the Status of the Supply Chain?



9

Financing the Project: What is the Status of Inflation?

Chart 2. 12-month percent change in CPI for All Urban Consumers (CPI-U), not seasonally adjusted, Aug. 2022 - Aug. 2023



10

If Inflation and Supply Chain are Falling, Why is the College Project so Expensive?

- Inflation is measured based on a snapshot in time of certain goods and services.
- More specific studies of the costs of school buildings and other related-construction projects show mixed results for costs:
 - New school building construction ↑10.8% since June of 2022
 - Government construction ↑ 9.1% since June of 2022
 - Maintenance and repair (non-residential) ↑ 2.5% since June of 2022
 - Architectural services ↑1.7% since June of 2022

(See Associated General Contractors of America Percentage Change in Producer Price Indexes, July 13, 2023, https://www.agc.org/sites/default/files/users/user21902/PPI%20Tables%202023_6.pdf)

- Electrical and mechanical equipment still have extended lead times, and contractor backlog is estimated at 8.9 months.

(See CBRE United States Construction Market Trends, Q2 2023, August 16, 2023, <https://www.cbre.com/insights/reports/united-states-construction-market-trends>)



11

Financing Considerations and Solutions

- Estimate the college's project costs to the best of your ability given current information and market conditions.
 - Consider working with cost estimating professionals (may just be your architect or construction manager).
 - Include FFE and costs for your construction professionals.
- Construction allowances and escalation clauses
- Financing options:
 - Cash on hand
 - Bonds
 - Private partnerships (do public construction laws apply?)



12

Practical Planning Considerations: What Project Delivery Method?

- How do you want to structure your project?
 - Do you need new external team members?
 - What are the procurement requirements and how does that impact your project timeline?
- Common project delivery methods for colleges:
 - Design-bid-build
 - Construction managers or general contractor
 - Guaranteed energy savings contracts (110 ILCS 805/5A-5, *et seq.*)
- Cooperative purchasing



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Practical Planning Considerations: Selecting Your External Project Team

- Work with legal counsel for applicable procurement requirements
- Ask for list of comparable projects and make sure they have enough manpower to complete the work.
- Project team members: Does the economic uncertainty change the considerations?
 - Architect/Engineer - Performs design services
 - Construction Manager – Professional services (CM-advisor v. CM-at-Risk)
 - General Contractor – Selected through bid process and performs the construction services
 - Owner's Representative – Unburdens college staff and has a fiduciary duty
 - Commissioning Agent – Works on behalf of the college to confirm that the building operates as designed
 - Specialty Consultants – Hired by the college to consult about the design & construction of specialty projects



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Performance and Payment Bonds: What Contractors Need to Provide Them?

- Payment and performance bonds (30 ILCS 550/1)
 - Each contract for public work in Illinois exceeding \$50,000 requires the contractor to furnish performance and payment bonds in the full amount of the contract.
- Colleges generally require bonds for each entity that it holds a direct contract with to perform the work.
 - Construction managers-at-risk
 - Double bonding = cost increase



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Prevailing Wages: What are the College's Obligations?

- Bid documents must notify of, and contracts must require, compliance with the Prevailing Wage Act if the contract is for "public works."
- Biggest issue is determining whether the project is for "public works":
 - Definition: "fixed works constructed or demolished by any public body, or paid for wholly or in part out of public funds."
 - Includes "any maintenance, repair, assembly, or disassembly work performed on equipment whether owned, leased, or rented."



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Managing and Resolving Construction-Phase Problems to Keep Your Project on Track

Considerations for Limiting Risk



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Common Problems During the Construction-Phase

- Contractor/supply delays
- Change orders:
 - Statutory considerations: Bidding requirements? Public Construction Contract Act?
 - Unforeseen or latent conditions
 - Delays due to third-party or the District
- Failure to perform and breach of contract:
 - General breach (did not comply with scope)
 - Punchlist
 - Defects
- Injuries and safety

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Keeping Your Project on Schedule: Key Tools

- Include owner-friendly contracts in your bid packets, and include as much detail about the scope and schedule as possible.
- Use allowances, contingencies, and bid alternates to keep the project under budget.
- Consider lead times:
 - College may want to pre-order equipment directly
 - Establish deadlines for ordering equipment
 - Have flexibility with substitutions if necessary
- Communication!



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Change Orders and Preventing Against “Extras” Claims

- “Extras” Claims:
 - Contractor claims for work performed that was outside the scope of the contract.
- Contract documents should require the college’s written approval before the contractor performs said work and no compensation without a signed change order.
- Change orders: Consider the timing of approval.
 - If taking to the Board, will it impact schedule?
 - Contractor willing to perform work and wait for next Board meeting?
 - Board resolution authorizing administration to approve change orders up to a certain value.



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Best Solution: Using Owner-Friendly Contract Terms for a Timely and Successful Project

- AIA Contract Documents from Design to Closeout
 - Contract Sum and Change Orders
 - Progress Meetings
 - Requirements for Ordering Materials/Equipment
 - Allowances and Contingencies
 - Progress Payments & Retainage
 - Substantial Completion
 - Liquidated Damages
 - Owner Takeover



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Is Owner Takeover and Termination a Good Solution?

- Construction projects are notorious for problems. Not every breach justifies take over or termination. Communication is important and may help resolve most problems. Yet, colleges should have contractual rights to take over and terminate if the contractor is not completing the work.
- Taking Over Portions of the Project:
 - Can a new contractor complete the work?
 - Will it cost more? Will it take longer? Will it be the same quality or better/worse? Bidding requirements?
 - Warranties with multiple contractors on site?
 - Potential litigation?
- Will the current contractor ever be able to complete the work?
 - Will it be good workmanship? Create dangers/hazards?
 - Trustee of public money – does the contractor deserve to be able to finish and be paid?
- Termination for Cause Necessary for Bond Claim

22

Closing Out Construction

Addressing and Resolving
Ongoing Problems



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Mitigating Future Construction Claims at Closeout

- Punch List Problems
- Payment Issues:
 - Retainage
 - Sworn Lien Waivers and Liens
- Commissioning
- Warranty Documents
- 12 Month Walk-Through



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Construction Claims and Litigation

- Common Construction Claims
 - Payment Claims
 - Defect Claims
 - Design Defects Claims
 - Construction Defect Claims
 - Personal Injury / Worker's Comp Claims



Payment Claims

- Generally arise in three circumstances (often overlapping):
 - Work outside the scope of the contract, *i.e.* “extras”
 - Unforeseen conditions
 - Payment withheld due to construction defects
- Contractors may file a lien action under Section 23 of the Illinois Mechanics Lien Act (“Lien on Public Funds”)
- Payment bonds
- Local Government Prompt Payment Act:
 - Provide written notice if rejecting claims for payment due to defects

Design and Construction Defect Claims

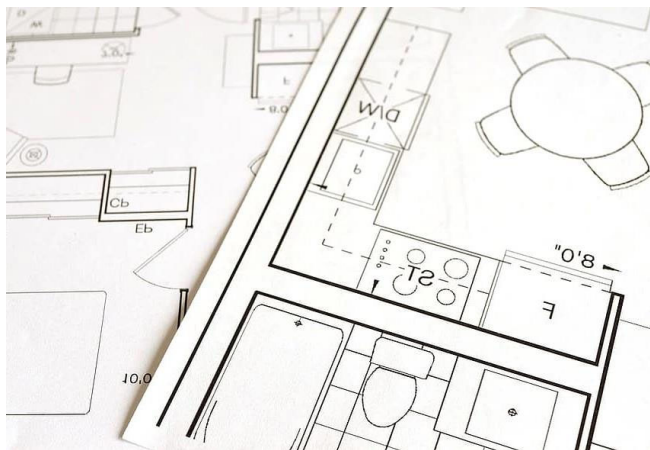
- Defects in both the design and construction of a project can give rise to claims during and after construction
- What is a defect claim?
 - Defect claims arise when an element of a construction project does not:
 - Function as intended
 - Meet the requirements of the contract documents
 - Meet the owner's reasonable expectations
 - Design professional or contractor breached their contractual duties
 - Owner suffered damages (aesthetic or cosmetic issues?)



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Design and Construction Defect Claims

- Architect and Design Professionals' Duties:
 - Design the project in accordance with contract and/or the standard of care
- Contractor(s) Duties:
 - Construct the project in strict accordance with project specifications
 - Responsible for means and methods
 - Consider warranties



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Defect Claim Procedures and Best Practices

- Time limitations on filing a claim (735 ILCS 5/13-214)
 - Statute of limitations – 4 years from discovery of claim
 - Statute of repose – No claims after 10 years except that if defect is discovered within the 10 years, owner still has 4 years to bring claim (up to 14 years total)
- Beware of contractual limitation periods
- Tolling agreements
- Memorialize defective conditions and prevent spoliation claims
 - Notice to potential defendants and inspection



29

Construction Litigation

- General Litigation Considerations:
 - Who is included in the lawsuit?
 - The role of experts.
 - What are the recoverable damages?
 - What are the issues that need to be proved?



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Damages Available through Construction Litigation

- The calculation of damages will depend on two factors—whether the contractor substantially performed under the contract and who breached the contract.
- Based on these factors, a college may or may not be entitled to chargeback the cost of completion of the work .
 - If a contractor is found to have breached the agreement but substantially completed the work, the contractor may be entitled to the contract sum less costs of completion. The college generally cannot recover the full replacement cost.
 - If the owner is found to have breached the contract (e.g., through wrongful termination) and the contractor is found to have substantially completed the work, the owner would not be entitled to the cost of completion.



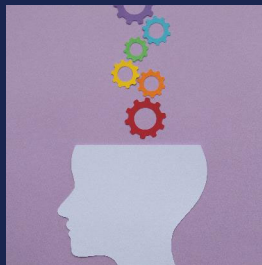
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Alternative Dispute Resolution in Construction

- Reserving the right to decide whether to litigate, arbitrate or mediate
- Benefits of litigation over arbitration and mediation
 - Established rules of discovery
 - Applicability of prevailing law
- Benefits of arbitration or mediation over litigation
 - Informal dispute resolution
 - Party self-determination (mediation)
 - Cost savings (sometimes)



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Summary

- Construction is complicated and can result in a number of problems
- Planning and communication can prevent future headaches
- Spend time on good contracts
- Consider reaching legal counsel involvement before problems elevate to claims or lawsuits
- Keep good records, document defective conditions, and provide written notices


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QUESTION & ANSWER


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Higher Education Collective Bargaining Trends and Management Strategies for Effective Negotiations

September 14, 2023

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Introduction



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1

Collective Bargaining

- Traditional Bargaining
- Interest Based Bargaining
- Trends at the Table
- Strategic Considerations



2

2

Traditional Bargaining v. IBB Format



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Negotiations Strategies and Techniques

- Planning for bargaining using **traditional bargaining** format:
 - Composition of bargaining teams
 - Ground rules
 - Review language issues
 - Financial modeling
 - The first proposal
 - Responding to proposals
 - Tentative agreements
 - Board action

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Traditional Bargaining

- Building a Team – Chief Spokesperson
 - Provides rationale for proposals, responses, and rejections
 - Maintains a consistent message throughout negotiations
 - Provides operational knowledge



5

Traditional Bargaining

- The Initial Proposal
 - The first proposal at the bargaining table should come from the Union
 - The College may wish to base its response on the extent and complexity of the Union's proposal
 - The College should insist on receiving a complete proposal from the Union so that it will not bargain in a piecemeal fashion (particularly on economic issues)



6

Traditional Bargaining

- Responses to Proposals
 - The College, as a first response, may not propose a “take it or leave it” proposal
 - However, the College is not required to accept any proposal made by the Union



Traditional Bargaining

- The parties will alternate responses until an agreement is reached
 - Agreements reached on particular contract terms are considered “tentative agreements”
 - When all issues have been “TA’d,” the parties submit the new draft collective bargaining agreement to the Board for approval and the Union’s membership for ratification



Interest Based Bargaining

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Interest Based Bargaining

- Interest based bargaining (IBB) goes by a variety of names including “win-win” and “mutual gains bargaining”
- IBB dispenses with the use of a chief spokesperson and sequential exchanges of formal written proposals in favor of participation by many individuals and reliance on interest-based problem solving

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Interest Based Bargaining

- IBB process:
 - The participants identify issues of mutual concern
 - The participants identify the various interests both parties have in the issues, while avoiding taking positions on the issues
 - Participants jointly brainstorm options and solutions – no judging!
 - Participants apply standards or criteria to evaluate solutions or options – now you judge!
 - Often, parties revert back to traditional bargaining for economic proposals



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Interest Based Bargaining

- IBB format:
 - The process uses experienced facilitators to train the participants in the IBB techniques and help the parties in negotiation sessions work towards consensus solutions on which have been mutually identified by the parties
- Training providers:
 - Federal Mediation and Conciliation Service (FMCS) free of charge
 - The Illinois Education Association and other unions will also provide facilitators
 - Private facilitators are an option



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Interest Based Bargaining

- The IBB process relies on:
 - Extensive training of the bargaining teams in problem solving and listening techniques
 - Commitment of the College's bargaining team to participate in the training and interest based bargaining negotiation sessions
 - A willingness of all the participants to follow the IBB format and principles

Interest Based Bargaining

- Time commitment:
 - Generally, the training lasts 1-2 days
- Focus of the training:
 - The facilitators will stress keeping an open mind
 - The College and Union will practice listening techniques and participate in group exercise and negotiation scenarios to demonstrate the benefit of the techniques



Interest Based Bargaining

- Advantages to IBB:
 - Open exploration and discussion of issues may promote better understanding and relationships
 - The Union may develop a better appreciation of the College's limitations and interests
 - The process may help dissipate bitterness built up over previous difficult negotiations
 - The process usually entails an expedited process with a deadline



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Interest Based Bargaining

- Disadvantages to IBB:
 - Unrealistic expectations may cause problems
 - Multiple participants in discussion raise possible contract language problems
 - Bargaining history is more challenging to discern and verify
 - Individuals may be subject to personal attacks if parties do not adhere to the IBB principles
 - The process demands a significant time commitment on all participants



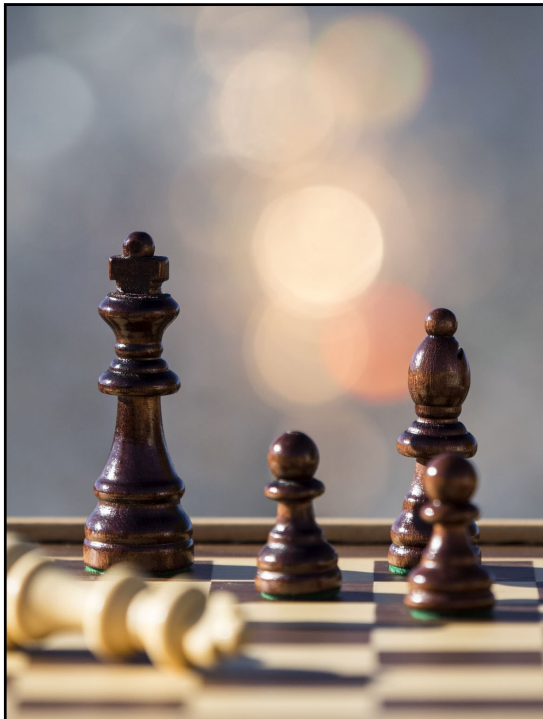
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Negotiations Strategies and Techniques

- Strategic considerations:
 - Use the bargaining table to solve problems
 - For wage matters, work off the same data points
 - Be careful of regressive bargaining
 - Use “package proposals”
 - Note: Packages tend to be more useful in the later stages of the process
 - Use “supposal” or “what if” scenarios



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Negotiations Strategies and Techniques

- Additional strategic considerations:
 - Use the “sidebar”
 - Focus on diminishing expectations
 - Know your audience
 - Cost each financial proposal



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Negotiations Strategies and Techniques

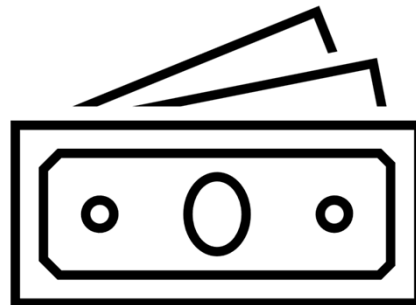
- Additional strategic considerations:
 - Know how each proposal directly affects each member of the Union's bargaining team, particularly in terms of compensation
 - "Sleeping dogs" and "sacred cows"
 - Sleeping dogs: avoid proposing changes when the college arguably has retained the right in question
 - Sacred cows: are contract provisions that appear to be minor but are likely to provoke a disproportionately charged response



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Trends at the Table - Salary

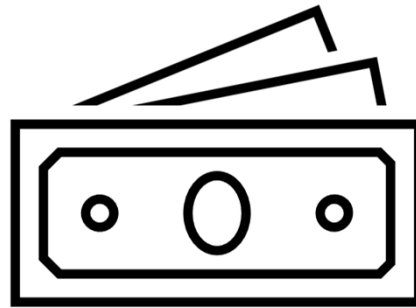
- Higher salary increases than prior contract years are common
 - Range: 3.5 – 5.5% increases as opposed to 2.5 – 3.5% increases
- Why?
 - High CPI-U
 - Staff shortages
 - Hiring and retention challenges
- Response options?



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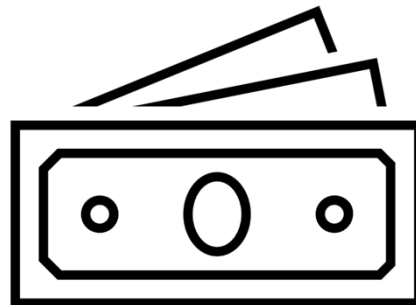
Trends at the Table - Salary

- Key factors in determining the level of annual salary increase:
 - The College's current and projected financial condition
 - The College's revenue limitations and constraints
 - Comparable wage data, salary schedules, benefits packages, and contracts
- The problem with salary schedules:
 - The combination of horizontal and vertical schedule movement can yield significant salary increases
 - Calculate the cost of schedule movement and consider eliminate schedules



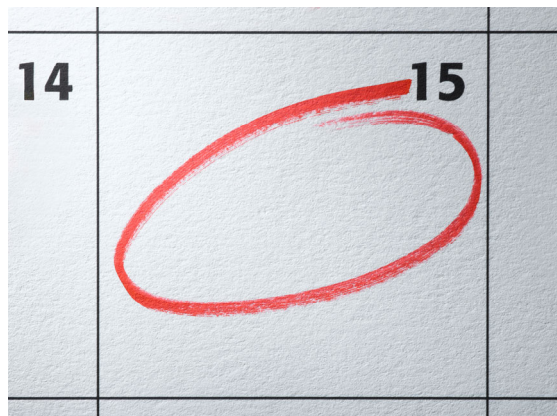
Trends at the Table - Salary

- Most Colleges have eliminated or phased-out merit salary lanes for faculty members due to difficulties in administration and challenges from faculty members denied admission.
- Negotiating elimination of the merit salary lanes is difficult and often requires that faculty occupying such lanes be “grandfathered” or continue to receive some recognition even after the lane is eliminated.



Trends at the Table – Flex/Hybrid Schedules

- Unions increasingly proposing alternative work assignments and flexible scheduling, including remote and hybrid options
- Key Considerations
 - Can the position responsibilities be performed effectively without 100% on-campus work?
 - Does the flex scheduling create an operational disruption?
- Recommendation = reserve management rights to greatest extent possible



Management Negotiation Strategies – Flex/Hybrid Schedules

- Options?
 - College can agree to review and determine which positions are eligible for remote or hybrid schedules based upon the job description and the need for the employee to be on campus to perform their essential duties.
 - Any agreement should reserve the supervisor's right to approve the assignment and direct the employee to return on-site if needs change.
 - Reject any Union proposals to allow the parties to jointly determine whether a position qualifies for remote or hybrid work – exclusive management right.
 - Resist any Union proposals to allow employees to work an alternative or flex schedule at their option. Counter: *A bargaining unit employee may be assigned an alternate or flex work schedule (e.g., change in scheduled workweek or work shift hours) with the supervisor's pre-approval. The supervisor reserves the right and discretion to modify the alternate or flex work schedule depending upon departmental or staffing needs.*

Management Negotiation Strategies – Paid Leave Benefits

- Unions frequently proposing enhancement to existing paid leave benefits and new benefits
 - 12-weeks of paid parental leave
 - Sick leave banks
- Considerations?
 - Overall costs associated with enhanced leave benefits
 - Think about unintended consequences if agreed to only for faculty, such as equity issues involving other employee groups and impact on other bargaining tables



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Management Negotiations Strategies – Faculty Release Time

- Colleges should resist proposals to increase release or alternate time allocations for faculty members serving as department chairs or coordinators.
- Most effective to address this issue via establishment of a committee to approve release/alternate time allocations for chair and coordinator assignments.
- Any faculty proposals to increase the allocation amount should be reviewed by the dean and appropriate committee.



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Management Negotiations Strategies – Faculty Office Hours

- Colleges should be wary of Union proposals to reduce faculty office hours or otherwise limit faculty availability to advise and work with students.
- Union proposals often attempt to allow faculty to hold online office hours.
- Consider requiring faculty who teach online and hybrid courses to retain a minimum number of in-person office hours.
- Ex: Faculty members teaching online/hybrid courses may schedule online office hours to the extent they do not exceed the percentage of their load that is online.



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Management Negotiations Strategies – Faculty Workload

- Colleges should resist Union proposals to reduce full-time faculty workload requirements which can result in additional staffing costs and burden on other teaching staff.
- College can counter to allow greater flexibility for faculty to reduce their semester load level below 15 hours if their total hours for the academic year meet the minimum 30-hour standard for full load.
- Any proposals should reserve the right to review and approve faculty requests for a reduced semester load.
- Negotiate clear limits on maximum summer load and overload hours to prevent “burnout” and reduce costs.



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Management Negotiations Strategies – Faculty Remediation

- College should retain the contractual authority to intervene and take appropriate disciplinary action/remediation in response to complaints and/or observations of performance/conduct deficiencies.
- CBAs should reserve the Administration's right to intervene and implement a remediation plan if necessary.
- Should the faculty member fail to remediate in accordance with the expectations of the plan, College should retain the right to discipline or dismiss the faculty member.



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Management Negotiations Strategies – Faculty Practices

- Increased efforts from management for faculty to incorporate “high impact practices” into teaching methods and interactions with students.
- Strategies at the table? Any options which provide incentives for faculty to deploy these practices:
 - Modifications to faculty evaluation form
 - Eligibility for annual recognition awards



30

Management Negotiations Strategies – Faculty Retirement

- Many Colleges have eliminated traditional faculty retirement benefits provisions that granted eligible faculty members with 6% salary increases in final years of employment.
- Recommended alternatives?
 - One-time voluntary retirement incentives if faculty member retires during a limited “window” period during term of CBA
 - Post-retirement service bonus payment
 - Contributions to alternative health insurance plans



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Management Negotiations Strategies – Faculty Initiatives

- Increased focus from management on institutional initiatives and incentives for faculty to promote and help achieve College goals.
- Any work that helps promote and foster College initiatives should be promoted and rewarded appropriately.
- Colleges can negotiate CBA language which establishes minimum institutional service requirements for tenured and non-tenured faculty members.
- Option to provide incentives to those who exceed the minimum requirements and participate in volunteer opportunities.



32

Management Negotiations Strategies – Position Reclassification

- Classified Unions have increased the frequency of proposals related to the employee reclassification and salary grade process.
 - *HR will review and determine whether a bargaining unit position should be reclassified and entitled to a salary grade change. If the employee or the Union disagrees with the decision, a joint committee of an equal number of College and Union representatives will review the decision on appeal. If the joint committee cannot reach agreement, the reclassification decision will be determined by the President.*
- Colleges should reject any proposals for a joint committee of an equal number of management and union representatives. Retain management authority to determine whether a reclassification appeal merits consideration based upon HR's analysis and review.



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Management Negotiations Strategies – Probationary Period

- Colleges should not agree to any proposals which limit the probationary period for new employees to an unreasonably short timeframe without the right to extend the probationary period.
 - *New employees must complete a probationary period of thirty (30) days. Upon completion of the 30-day probationary period, the College will provide a written evaluation of the employee's performance. If the employee's performance is rated "satisfactory" or "meets expectations", the employee will be designated on permanent, non-probationary status. Non-probationary employees will be evaluated annually and cannot be disciplined or discharged without just cause and prior progressive discipline.*



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Management Negotiations Strategies – Probationary Period

- Colleges should propose a longer probationary period with the right to extend the probation if necessary to ensure that it has sufficient time to evaluate the new employee.
- *Newly hired employees must complete a probationary period of ninety (90) days worked. The employee's performance will be reviewed prior to completion of the probationary period. The College may extend the probationary period for an additional forty-five (45) days if necessary to assess whether the employee has successfully completed the probationary period and should be promoted to non-probationary status. Probationary employees are considered "at-will" and may be dismissed for any reason without prior notice.*



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Management Negotiations Strategies – Discipline/Discharge

- Colleges should reject Classified Union proposals which overly limit the right to discharge employees for unsatisfactory performance or serious misconduct.
- *Employees shall not be disciplined or discharged except for just cause after prior verbal and written warnings, suspension without pay, and a pre-termination hearing before the Board. Any disciplinary reprimands will be expunged and removed from the employee's personnel file after one (1) year absent a recurrence of similar documented misconduct.*
- Possible response?
 - *Non-probationary employees may be suspended or discharged for sufficient cause, including but not limited to unsatisfactory performance and documented misconduct.*



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Management Negotiations Strategies – Discipline/Discharge

- Colleges should ensure that any contract language does not mandate progressive discipline but reserves the right to bypass any steps in the progressive discipline sequence if appropriate depending on the seriousness of the misconduct.
- *The College agrees to the principle of progressive discipline but reserves the right to bypass any step in the progressive discipline sequence set forth above and terminate immediately depending upon the nature and seriousness of the employee's misconduct.*



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Navigating the Waters of FMLA, ADA, and Employee Leave Rights

September 14, 2023

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1

Agenda

- Family and Medical Leave Act
- Americans with Disabilities Act
- Paid Leave for All Workers Act
- Family Bereavement Leave Act
- Victims' Economic Security and Safety Act



2



- An eligible employee is entitled to 12 weeks of unpaid leave during a 12-month period for the employee's own serious health condition that renders the employee unable to perform the essential functions of the job.
- Also entitled to leave for the care of a son, daughter, spouse, or parent with a serious health condition.
- Eligible employees are entitled to unpaid leave for the birth or placement of a child for adoption, foster care, or to care for the child.



The FMLA – Eligibility

Eligible Employees

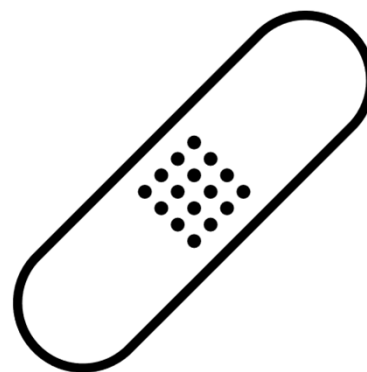
- Employed by a covered employer (colleges are covered employers);
- Employed for at least 12 months; and
- Worked at least 1,000 hours in the 12-month period immediately preceding the request for leave.



5

The FMLA – Covered Conditions

- A **serious health condition** is defined as an illness, injury, impairment, or physical or mental condition that involves:
 - Inpatient care; or
 - Continuing treatment by a healthcare provider



6

The FMLA – Notice Requirements

- An employee is generally required to give notice of their need to take FMLA leave but not need specifically reference the FMLA.
- Notice is sufficient if the employee provides enough information to let the employer know that the FMLA may apply.
- Notice of the need for unforeseeable leave must be given as soon as practicable under the circumstances.



7

The FMLA – Notice Requirements

- Colleges must provide a notice of eligibility to employees who request FMLA leave.
- Colleges must provide designation notices to employees stating whether the leave has been designated as FMLA leave.



8

The FMLA – Medical Certification

- An employee has 15 calendar days after receipt of the medical certification to submit the information.
- A college must advise an employee of an incomplete or insufficient certification and give them an opportunity to correct.



The FMLA – Leave Entitlements

- Colleges may, with notice, require employees to use any paid leave they may have as part of their FMLA leave.
- Employees may use their paid leave during FMLA leave if the use of the paid leave would meet the normal requirements.
- Although FMLA leave is unpaid, colleges must continue all health insurance and other benefit coverage during the FMLA leave on the same basis as the employee received prior to the leave.

The FMLA – Intermittent Leave

The Intermittent Leave Predicament

- The FMLA allows for intermittent leave or a reduced schedule if medically necessary.
- Unplanned intermittent leave, especially for a chronic serious health condition, can pose problems for employers.



The FMLA – Intermittent Leave

Managing Intermittent Leave Abuse

- Require certification and re-certification as often as legally possible.
- Require the employee to make reasonable efforts to schedule treatment as to not disrupt the workplace.
- Consider temporary transfer of an employee that better accommodates recurring periods of intermittent leave (when foreseeable).
- Enforce call-in procedures.
- Be prepared to ask questions when an employee requests time off.

The FMLA – Rights Upon Return

- An employee is entitled to reinstatement to the same or equivalent position as the employee held at the commencement of the leave.
- The employee is entitled to reinstatement even when a replacement employee is hired or when the job has been restructured to accommodate the employee's absence.
- Fitness-for-duty certifications when part of a uniformly-applied policy or practice.



13

The Americans with Disabilities Act



14

The ADA – Generally

- An employee is protected under the ADA if the employee is a qualified individual with a disability.
- **Disability** is defined as a physical or mental impairment that substantially limits one or more of the major life activities of an individual.
- A **qualified individual with a disability** is an employee who can:
 - Satisfy the requisite skills, experience, education, and other job-related requirements of the position; and
 - Perform the “essential functions” of the position with or without a reasonable accommodation.



15

The ADA – Interactive Process

- The ADA interactive process is the process of determining:
 - Whether the employee has a disability under the ADA; and
 - Whether a reasonable accommodation is available that would allow the employee to safely return to the workplace to perform the essential functions of their position.
- Colleges may seek documentation verifying:
 - The employee has a disability as defined by the ADA;
 - The functional limitations of the disability; and
 - The nature of the recommended accommodation.



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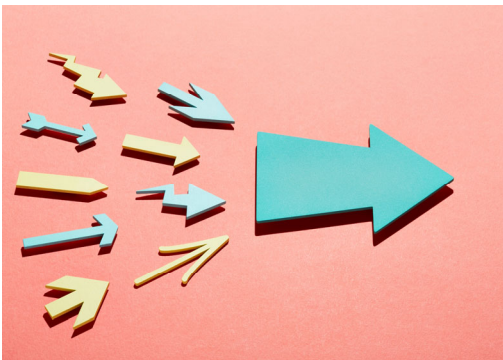
The ADA – Leaves of Absences

- Under the ADA, an unpaid leave of absence can be viewed as a reasonable accommodation.
- However, unlike the FMLA, an employee may only take leave for their own disability and not to care for others.
- An employee is not entitled to leave where the employer can demonstrate the leave will constitute an undue hardship.
- **An employee is not entitled to an indefinite leave.**
- An employer has no duty to continue insurance or other benefits while the employee is on an ADA leave of absence.



17

The ADA – Rights Upon Return



- The employee is entitled to the position they held prior to the leave, assuming they are still qualified for the position.
- The college may be required to suspend or modify attendance requirements as a reasonable accommodation.



18

The Paid Leave for All Workers Act



The PLFAWA – New Legislation

- Governor Pritzker signed Public Act 102-1143 (the Paid Leave for All Workers Act) into law on March 13, 2023
- Effective date = January 1, 2024

The PLFAWA – Covered Employers

- All private employers
- Most governmental employers (*e.g.*, community colleges), except:
 - Short-term employers in higher education
 - Temporary student workers who work part-time in higher education
- School districts
- Park districts
- Certain railroad workers
- Certain construction workers
- Employees covered by a CBA with an employer that provides services nationally and internationally of delivery, pickup, and transportation of parcels, documents and freight



21

The PLFAWA – Excluded Employees

Short-term Employees in Higher Education

- Employed for less than 2 consecutive calendar quarters during a calendar year; and
- No reasonable expectation that they will be rehired by the same employer for the same service in a subsequent calendar year.

Temporary Student Workers in Higher Education

- Enrolled in and regularly attending classes in a college that is also the student's employer; and
- Employed on a temporary basis at less than full-time at the college.
- Only applies to work performed for the college the student is enrolled and attending classes in.



22

The PLFAWA – Employees Covered by CBA

- CBAs in effect as of January 1, 2024 are grandfathered and a college need not comply with the PLFAWA as to employees covered by the CBA for the term of the CBA.
- New and successor CBAs entered into after January 1, 2024 must comply with the PLFAWA or contain an explicit waiver of the law.



23

The PLFAWA – Leave Entitlement

- Eligible employees are entitled to earn and use up to 40 hours of paid leave during a 12-month period or a pro-rata number of hours of paid leave.
- Two options:
 - Paid leave accrues at a rate of one hour for every 40 hours worked; or
 - The minimum annual amount is front loaded to the employee



24

The PLFAWA – Reasons for Leave

- Leave can be used for any purpose or reason.
- Employers cannot require an employee to:
 - Provide a reason for the leave.
 - Provide documentation or certification as proof or support of the leave.
- Employees may choose to use accrued leave under the PLFAWA before using any other leave provided by the employer or by State law.



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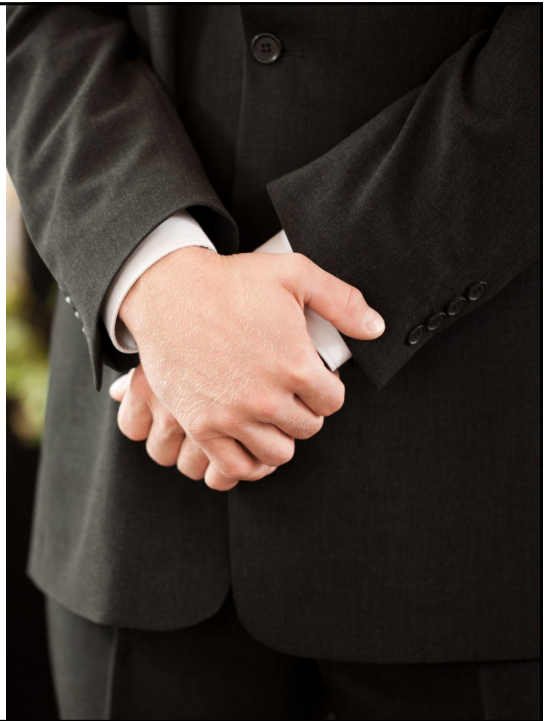
The PLFAWA – Requesting Leave

- Requests can be made orally or in writing
- For foreseeable leave, the college can require the employee to provide seven (7) calendar days' notice for use of leave.
- If not foreseeable leave, an employee must provide the college with notice as soon as practicable.
- Minimum increments for use of paid leave cannot exceed 2 hours per day.
- Colleges cannot require an employee to search for or find a replacement worker to cover their paid leave time.



26

Family Bereavement Leave Act



27

The FBLA – Generally

- Effective January 1, 2023
- Amends the Child Bereavement Leave Act
- Provides up to **10 working days** of unpaid leave time for any event covered by the Act to grieve, attend a funeral, or make arrangements necessitated by the death of the family member
- Eligibility = same eligibility requirements as the *federal* FMLA



28

The FBLA – Covered Family Member

Covered Family Member:

- Child or stepchild
- Spouse or domestic partner
- Sibling
- Parent or step-parent
- Mother-in-law or father-in-law
- Grandchild
- Grandparent



29

The FBLA – Events Covered

Funeral	Arrangements	Grieve	Absence
Attend the funeral (or alternative to funeral) of a covered family member	Make arrangements necessitated by the death of a covered family member	Grieve the death of a covered family member	Absence due to miscarriage, unsuccessful IVF, failed adoption match, failed surrogacy agreement, diagnosis that negatively impacts pregnancy or fertility, stillbirth



30

The FBLA – Documentation

- Colleges may request documentation to verify the need for leave
 - Death certificate
 - Published obituary
 - Documentation from health care provider
 - Documentation from adoption agency, etc.



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Victims' Economic Security and Safety Act



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VESSA – Generally

- Governor Pritzker signed HB 2493 on July 28, 2023, which amends VESSA, effective January 1, 2024
- Protects employees who are victims of domestic, gender, sexual violence, **or any crime of violence**, or whose family or household member is a victim
- Applies to part-time employees with no employment time requirement (*i.e.*, probationary period)



33

VESSA – Coverage

- Eligible employees are entitled to unpaid leave under VESSA for one or more of the following reasons:
 - Seek medical attention for or recovery from physical or psychological injuries
 - Obtain services from a victim services organization or psychological or other counseling
 - Participation in safety planning, temporarily or permanently relocating, or taking other actions to address safety issues
 - Seek legal assistance or remedies



34

VESSA – Coverage, continued

- **Effective January 1, 2024**, eligible employees are entitled to unpaid leave under VESSA for one or more of the following reasons:
 - Attending the funeral or alternative to a funeral or wake of a family or household member who is killed in a crime of violence
 - Making arrangements necessitated by the death of a family or household member who is killed in a crime of violence
 - Grieving the death of a family or household member who is killed in a crime of violence



35

VESSA – Overlap with the FBLA

If an employee is entitled to leave under FBLA, VESSA does not create a right for the employee to take bereavement leave that exceeds or is in addition to leave to which the employee is entitled under FBLA.



36

VESSA – Length of Leave

- Eligible employees are entitled to:
 - 4 weeks of unpaid leave for an employer with at least 1 but no more than 14 employees
 - 8 weeks of unpaid leave for an employer with at least 15 but no more than 49 employees
 - 12 weeks of unpaid leave for an employer with at least 50 employees



37

VESSA – Leave Entitlements

- Employers may require certification
- Employees are not entitled to accrue seniority or other benefits while on leave
- Employees returning from VESSA leave have the same rights as if they are returning from FMLA leave



38



39

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Data Breaches and Ransomware Attacks: Strategies for Protecting Data and Security and Responding to Data Incidents

September 14, 2023

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Introduction



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1



Agenda

- Recent Data Breaches
- Legal Framework for Collegiate Data Privacy and Security
- Strategies for Mitigating Potential Risks
 - Reducing Risks Associated with Data Theft
 - Limiting Liabilities for Data Loss
 - Preventing Risks Resulting from Neglect
 - Adopting Secure Practices
- Considerations for Responding to Data Breaches and Cyber Threats



2

Recent Data Breaches Impacting Colleges



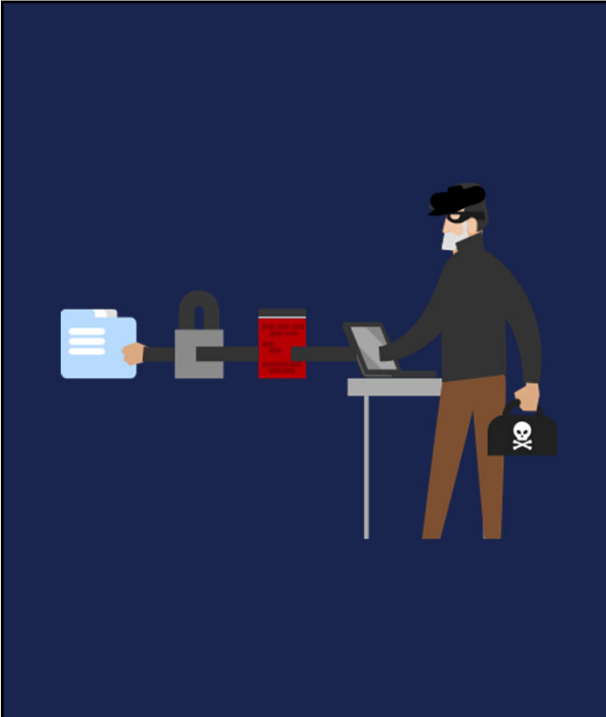
3

Recent Data Breaches – National Student Clearinghouse and MOVEit Transfer

- What is National Student Clearinghouse (NSC)?
 - Who uses NSC?
 - What is the information that NSC has access to?
- How and when did the breach occur?
- How and when were colleges informed?



4



- What information was accessed?
- Did colleges have any responses?
 - Public announcements or individual responses?
- What was the potential for liability?
 - What was the liability on past data breaches?

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Other Recent Data Breaches

Pension Benefit
Information
(PBI)

PaperCut

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Legal Framework for Data Privacy and Security

Overview of Student Data Privacy Laws



7

Key Data Privacy and Security Laws for Educational Institutions

- Family Educational Rights and Privacy Act (“FERPA”)
- Personal Information Protection Act (“PIPA”)

8

FERPA – Protecting Student Privacy

- Defines “education record” as information recorded in any way, including handwritten documents, electronic files, video or audio recordings, that:
 - Contains information directly related to a student; and
 - Is maintained by an educational entity.
- Generally prohibits educational institutions from disclosing personally identifiable information (PII) from an eligible student’s education records without the student’s prior written consent.



9

FERPA – Protecting Student Privacy

- Requires that institutions use reasonable methods to safeguard student PII from unauthorized disclosure.
- No specific breach notification requirements.
 - But note general requirement to “maintain a record” of each disclosure of PII from a student’s education records.



10

PIPA – Considerations for Responding to Data Breaches



- What information is protected?
- Who has an obligation under PIPA?
- When is a notification obligation triggered?
 - To the individual?
 - To the Attorney General?
 - To the State agency?
- What are the consequences for lack of compliance?



11

What Is Included in a Breach Notification?

- Notification must include:
 - Toll-free numbers and addresses for consumer reporting agencies;
 - Toll-free number, address, and website address for the Federal Trade Commission;
 - A statement that the individual can obtain information from these above-mentioned sources for fraud alerts and security freezes; and
 - A statement that the individual should promptly change their username or password and security question, or take any other steps appropriate to protect all online accounts which the individual uses the same account access information.
- Additional requirements for breaches impacting >500 Illinois residents



12

Strategies for Mitigating Potential Risks



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Strategies for Data Security Risk Management

- Implement commercially standard security processes;
- adopt up-to-date data security policies and procedures;
- obtain legal review of all contracts with vendors and third parties that will have access to confidential or personally identifiable information or to the institution's network; and
- maintain adequate cyber liability insurance.

Ultimately, colleges need to work with their Chief Technology Officer, IT professionals, insurers, and legal counsel to ensure that they are covered in the event of a data breach and to be aware of their obligations following a breach.



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Data Security Risk Management: Recommended Security Practices



- Consult with IT and data security professionals
- Reduce the number of administrative “superusers”
- Implement multifactor authentication or biometric factor system
- Patch management
- Delete protected data when permissible
- Do not e-mail or otherwise transmit protected data unless encrypted
- Vulnerability assessments and penetration testing



15

Data Security Risk Management: Policies and Procedures, and Contract Review

- Policies and Procedures:
 - Colleges should regularly review all policies and current administrative processes relating to data security and protected data (know what is being accessed and by who)
 - Necessary data and security training for college employees
 - Develop a cyber incident response plan
- Contract Review:
 - Review contract with vendors to ensure compliance with applicable law (PIPA, FERPA, etc.) and commercially reasonable security measures in place
 - When possible, modify contracts to shift risk to vendor to be responsible for costs resulting from a data breach including notification costs and credit monitoring



16

Data Security Risk Management: Cyber Liability Insurance

- Consult with insurance professionals to determine what cyber liability coverage that your institution needs, what it will cost, and what control requirements are necessary.
- Coverage rates: Good news! After three years of rising policy rates, the cyber insurance market is stabilizing. (Gallagher, 2023 U.S. Cyber Market Conditions Outlook Report, January 2023.)
- More restrictions in coverage and control requirements in said policies.
- Loss ratios improved due to higher prices/threats in 2021 and stabilization or even decline in ransomware attacks in 2022.



17



18

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Bidding from the Basics to the Advanced

September 14, 2023

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Introductions



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1

Bidding Requirements – 110 ILCS 805/3- 27.1



2

Section 3-27.1 of the Community College Act

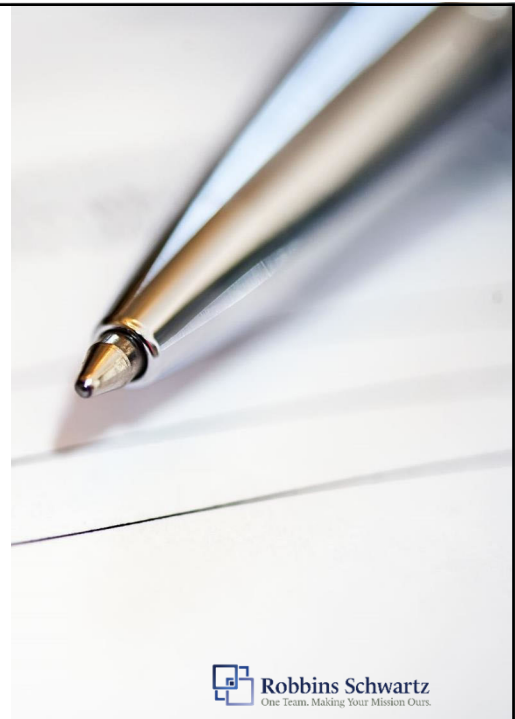
- Requires community colleges to publicly bid all contracts for purchase of supplies, materials or work involving an expenditure over \$25,000, or a lower amount as required by Board policy.
- Invitation to bid must be advertised in newspaper published in the community college district at least 10 days before the deadline to submit bids.
- Bidder must receive at least three days' notice of time and place of bid opening.
- Bids must be sealed by the bidder and opened by Board member or college employee at public bid opening where the bids are announced.



3

Section 3-27.1 of the Community College Act

- Contracts shall be awarded to “lowest responsible bidder considering conformity with specifications, terms of delivery, quality, and serviceability.”



4

Bidding Exemptions – 110 ILCS 805/3-27.1

EXEMPT

5

Professionals

- Contracts for the services of individuals possessing a high degree of professional skill where the ability or fitness of the individual plays an important part (architects, engineers, consultants, construction managers, etc.).



6

Change Orders

- Publicly bid contracts for materials or work that, due to unforeseen circumstances not the fault of the contractor, must be revised to increase the contract price by less than 10% of the contract price.



7

Dealer Maintenance

- Contracts for the maintenance or servicing of, or provision of repair parts for, equipment which are made with the manufacturer or authorized service agent of that equipment where the provision of parts, maintenance, or servicing can best be performed by the manufacturer or authorized service agent.



8

Data Processing

- Purchases and contracts for the use, purchase, delivery, movement, or installation of data processing equipment, software, or services and telecommunications and inter-connect equipment, software, and services.



9

Copy Machines and Supplies

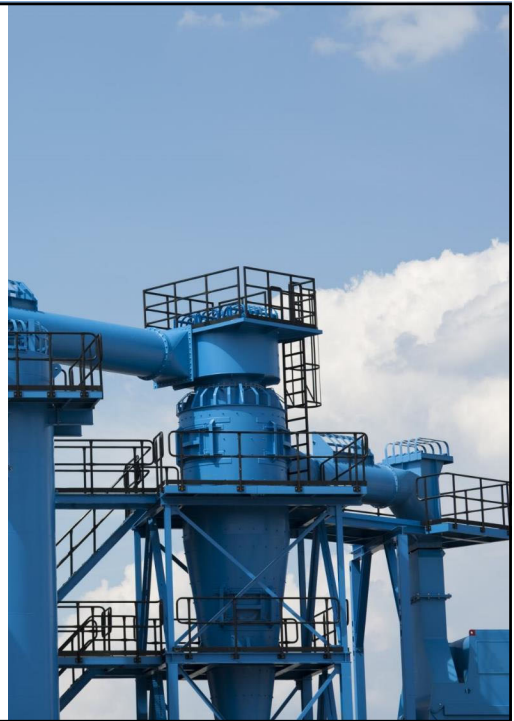
- Contracts for duplicating machines and supplies.



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Natural Gas

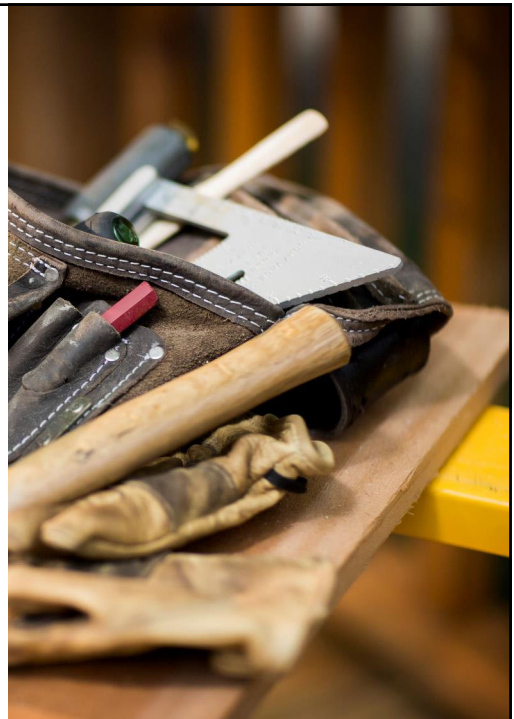
- Contracts for the purchase of natural gas when the cost is less than that offered by a public utility.



11

Used Equipment

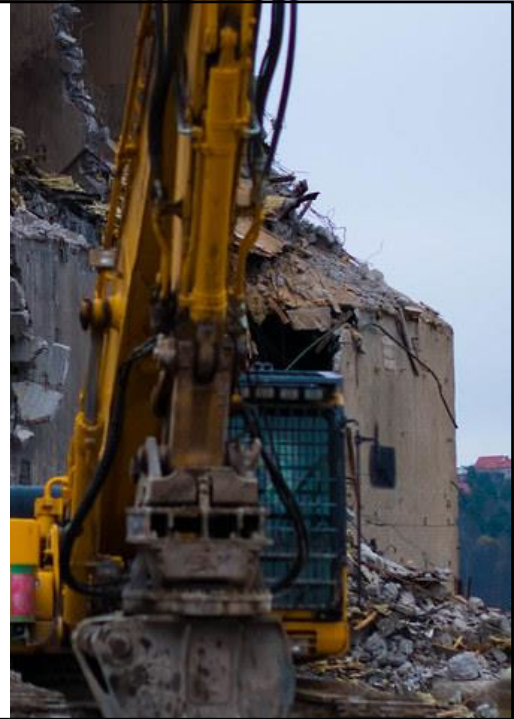
- Purchases of equipment previously owned by some entity other than the district itself.



12

Small Remodeling Project Exception

- Contracts for repair, maintenance, remodeling, renovation, or construction not exceeding \$50,000 and not involving a change or increase in the size, type, or extent of an existing facility.



13

IGAs

- Contracts for goods or services procured from another governmental agency.

Single Source

- Contracts for goods or services which are economically procurable from only one source, such as for the purchase of magazines, books, periodicals, pamphlets and reports, and for utility services such as water, light, heat, telephone or telegraph.



14

Perishable Foods and Beverages

- Contracts for the purchase of perishable foods and perishable beverages.

Emergencies

- Funds expended in an emergency and approved by $\frac{3}{4}$ of the members of the Board.



15

Governmental Joint Purchasing Act 30 ILCS 525/1, et seq.



Allows community colleges to jointly purchase personal property, supplies, and services with any other governmental unit.



The bidding procedures in Section 4 of the Governmental Joint Purchasing Act supersede the bidding procedures under Section 3-27.1 of the Community College Act.



16

Governmental Joint Purchasing

- Needs to meet certain legal requirements in accordance with both:
 - Cooperative consists of all government agencies.
 - Purchases must be based on competitive solicitations.
 - Bids and proposals solicited by public notice as specified by the Joint Purchasing Act.
 - May solicit bids or proposals by sending requests by mail to prospective suppliers.

Local Government
Professional Services
Selection Act – 50
ILCS 510/1, et seq.



Applies to

- Architectural, engineering, and land surveying services.



Notice

- College must provide notice of potential project and request a statement of interest by:
 - (1) Mailing or emailing firms that filed a statement of qualifications and performance data with the college; or
 - (2) Advertising with a newspaper of general circulation throughout the district; or
 - (3) Advertising on the College's website.

Evaluation

- The College may evaluate responding firms based on factors that the College specifies in its notice documents. At this point in the process, the College cannot seek estimates of cost or compensation from the service provider.



21

Selection Procedure

- After evaluations, the College selects the three most qualified firms and ranks them in terms of qualifications. College shall negotiate with most qualified firm and attempt to reach an agreement with compensation that the College determines in writing to be fair and reasonable.



22

Selection Procedure

- If the College cannot negotiate a satisfactory contract, the College shall terminate negotiations and shall begin negotiations with second ranked firm.



23

Exemptions from the Local Government Professional Services Selection Act

- If the College has a “satisfactory relationship” with one or more firms, no need to go through selection process; the College can simply contract with its previously-retained firm for the new project.



24

Exemptions from the Local Government Professional Services Selection Act

The College may waive this statutory procedure if it determines by resolution that an emergency situation exists and necessitates selection of a firm in an expeditious manner.

The College may waive this statutory procedure if the cost of the professional services is expected to be less than \$40,000.

25

● The Bidding Process

- Bid Specifications
- Certainty Required
- Sole Sourcing
- Bid Addendum & Questions
- Pre-Bid Meeting

26

The Bidding Process

Bid Submittals

- Sealed Bids
- Electronic Bids
- Timeliness of Bids
- Modification, Withdrawal or Re-submittal of Bids Before Bid Opening

Public Opening and Reading of the Bids

- Withdrawal or Modification after the Bids Are Received



27

How is a Contract Awarded as a result of Bidding?

Lowest

- Alternate bids.

Responsive

- Material defects – nonwaivable
- Minor variances – waivable

Responsible

- Pre-qualification of bidders

Post-Bid, Pre-Award Negotiations



28



29

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Bills, Bills, Bills: An Overview of New Legislation Impacting Illinois Colleges

September 14, 2023

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Introduction



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1

Agenda

- Student Services
- Board Governance and Finance
- Employee Leaves
- Employment Notices
- Other Employee Protections



2



3

P.A. 103-0469: Course Transferability

Effective date: January 1, 2024

- Amends the Illinois Articulation Initiative Act.
- Increases required courses from 4 courses in one IAIA major to 4 courses in each IAIA major (provided the college has equivalent majors and courses).
- Requires IAIA major courses to be transferable as direct course equivalents.
 - Being transferable as electives is no longer an option.

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P.A. 103-0058, Student Disability Determinations

Effective date: January 1, 2024

- Creates the Removing Barriers to Higher Education Success Act.
- Requires adopting a policy that makes certain documentation sufficient to establish that an enrolled or admitted student is an individual with a disability.
- The policy must include transparent and explicit information about the process for determining eligibility for accommodations.
- Colleges must (1) disseminate such information to students, parents, and faculty in accessible formats, including during any student orientation, and (2) make the information readily available on its public website.



5

P.A. 103-0058: Student Disability Determinations

Effective date: January 1, 2024

- Documentation sufficient to establish the status of a student with a disability:
 - Documentation that a student has had an IEP.
 - Documentation that a student has received services or accommodations pursuant to a Section 504 plan or the ADA.
 - Documentation of a plan or record of service for the individual from a school or institution of higher education under a Section 504 plan.
- A record or evaluation from a relevant licensed professional finding that the individual has a disability.
- A plan or record of disability from another institution of higher education.
- Documentation of a disability due to military service in the uniformed services.



6

P.A. 103-0054: Student Debt Assistance

Effective date:
June 9, 2023

Withholding Transcripts or Diplomas

- Colleges must adopt a policy outlining the process to obtain a transcript or diploma that has been withheld because the student owes a debt.
- Colleges must post their policies online, along with procedures for filing a complaint about the withholding of a transcript or diploma due to a debt.
- Colleges must provide the policies and procedures to students as part of information they share about the cost of attendance.
- Colleges must annually report to ICCB about their policies and the number of students whose official transcripts, diplomas, or registration privileges have been withheld each year.



7

P.A. 103-0054: Student Debt Assistance

Effective date: June 9, 2023

- An official transcript must be provided if the student requests it to:
 - Complete a job application
 - Transfer from one institution of higher education to another
 - Apply for financial aid
 - Join the U.S. Armed Forces or Illinois National Guard
 - Pursue other postsecondary opportunities
- Colleges still must treat transcript requests equally regardless of whether the current or former student owes a debt.



8

P.A. 103-0159: Out-of-District Enrollment

Effective date:
January 1, 2024

- If a student (a) wants to enroll in a program that is not offered by the community college district where they reside and (b) the college does not have a contractual agreement for such a program, then the student may attend any recognized community college and shall pay tuition and fees at the in-district rate of the receiving college.
- Previously, the college of residence would pay the tuition up to the per-capita cost for the previous year.



9

P.A. 103-0159: Out-of-District Enrollment

Effective date: January 1, 2024

- Students will apply to the college of residence (or “sending college”) to obtain a letter designating them as participants in an approved program.
- The sending college makes the first determination about whether there are substantial programmatic differences (e.g., classification of instructional program codes, occupational outlook).
 - Not substantial: minor course requirement differences, delivery methods, and minor program differences such as semester length, online versus in-person instruction, competency-based instruction, and program credit hours.
- ICCB will maintain a program directory to help colleges determine what programs other colleges provide.



10

P.A. 103-0159: Out-of-District Enrollment

Effective date: January 1, 2024

- If the sending college approves, the student will register and be a member of the receiving college's district for that term.
- A student may choose to complete any required general education coursework and may take approved courses at either college.
- The receiving college must provide access to its learning resources center, other instructional resources, counseling, guidance, and other services that facilitate the learning process.
- The receiving college will be considered the student's district for athletic eligibility, any activity in which the student officially represents a community college, the military, and scholarships offered by ISAC.



11

P.A. 103-0465: Wellness Kiosks

Effective date:
August 4, 2023

- Community colleges must make at least one wellness kiosk available on each campus under its jurisdiction.
- The wellness kiosk must be located in an area of campus where students can access it during class hours.
- The wellness kiosk must offer emergency contraception at a reduced price in the original, tamper-proof, expiration-dated packaging.



12

P.A. 103-0519: iGROW Tech Scholarships

Effective date: January 1, 2024

- The Illinois Graduate and Retain Our Workforce Tech Scholarship Program will allow ISAC to award scholarships to students in the fields of:
 - computer and information sciences;
 - information technology;
 - computer systems networking and telecommunications;
 - computer and information systems security or information assurance, including cybersecurity; or
 - management information systems.
- ISAC will handle applications and distribute the awarded scholarship funds directly to colleges. Subject to appropriation, the program will start no earlier than 2024-2025 and can award scholarships through 2029-2030.



13

P.A. 103-0435: Hunger-Free Campus Grants

Effective date: August 4, 2023

IBHE will allocate funding to each hunger-free campus to be used to address food insecurity among students. To qualify, colleges must:

- 1) establish a hunger task force, including students, that meets at least 3 times per year to set at least 2 goals with action plans;
- 2) designate a staff member responsible for assisting students with enrollment in SNAP;
- 3) allow students to use SNAP benefits at campus stores or information on area establishments where they can do so;
(continued)



14

P.A. 103-0435: Hunger-Free Campus Grants

Effective date: August 4, 2023

- 4) participate in an awareness day activity and plan a campus event during Hunger and Homelessness Awareness Week;
- 5) provide a physical food pantry on campus or a separate, stigma-free arrangement with a local food pantry;
- 6) develop a student meal credit donation program or designate money for free meal vouchers for students; and
- 7) annually conduct a student survey from IBHE on hunger and submit results for inclusion in a comparative profile of each campus.



15

A colorful illustration of a business meeting. A man in a pink shirt and green pants stands on the left, pointing at a bar chart on a flip chart. Two women are seated at a desk on the right, working on laptops. A potted plant and a small green lizard are also on the desk. The scene is framed by a large blue circular arc.

Board Governance and Finance



16

P.A. 103-0311: OMA Remote Attendance

Effective date: July 28, 2023

- Expands the reasons that members of a college board of trustees may attend a public meeting by phone or videoconference.
- When a quorum of the board is physically present, a majority may allow a trustee to attend a meeting remotely if unexpected childcare obligations prevent attending in person.
- The previously available reasons for remote attendance include personal illness or disability, employment purposes or the business of the public body, and a family or other emergency.



17



P.A. 103-0278: Board Secretary

Effective date: July 28, 2023

- A board of trustees may elect a board secretary who is not a member of the board.
- The chair and vice-chair must be board members.
- The board may provide compensation to a secretary who is not a member. The compensation must be fixed by the board prior to the election of the secretary.



18

P.A. 103-0278: Working Cash Fund

Effective date: July 28, 2023

- Monies in the working cash fund may be used for any and all college purposes.
- Colleges may abolish or abate their working cash fund and transfer the balance to operating funds.
 - Unlike before, if a college abolishes its working cash fund, it may create a working cash fund again at any time without voter approval.
- Colleges also may abate the working cash fund at any time by board resolution to any college fund or funds most in need of money.
 - However, 0.05% of the then-current value of the taxable property in the district must be maintained to the credit of the working cash fund.
 - If necessary, any outstanding loans to other funds may be paid or become payable to the fund or funds to which the abatement is made.



19

Employment Notices



20

P.A. 103-0539: Pay Scale and Benefits

Effective date: January 1, 2025

- Covered employers (with at least 15 employees) must include the pay scale and benefits for a position in any job posting which is posted on or after January 1, 2025.
 - Linking to a public webpage that includes the relevant and up-to-date pay scale and benefits would satisfy the requirement.
 - Employers are not required to make a job posting.
- If an employer uses a third party to publish a job posting, the employer must provide the pay scale and benefit information (or a hyperlink) to the third party.



21

P.A. 103-0539: Pay Scale and Benefits

Effective date: January 1, 2025

- Employers must announce, post, or otherwise make known to all current employees all opportunities for promotion no later than 14 calendar days after making an external job posting for the position.
- Upon request, employers must disclose pay scale and benefits to an applicant for a job, promotion, transfer, or other employment opportunity, if a posting was not made available to the applicant.
 - The disclosure must occur prior to making an offer or discussing compensation.



22

P.A. 103-0539: Pay Scale and Benefits

Effective date: January 1, 2025

- Employers must not retaliate against an applicant or employee for exercising their right to receive pay and benefits information.
- IDOL has jurisdiction over investigation and enforcement of alleged violations, subject to a one (1) year statute of limitations.
- The job posting, pay scale, and benefits for each position are added to the list of records an employer is required to make and preserve for at least five (5) years.
- Violations can incur civil penalties that depend upon whether the posting is active or inactive at the time IDOL issues a notice of violation and whether it is an employer's first, second, or third or subsequent offense.
 - For first and second offenses, if the posting is still active, employers will have 14 or 7 days to remedy the violation.



23

P.A. 103-0201: Remote Worker Notices

Effective date:
January 1, 2024

- Employers who have employees who do not regularly report to a physical workplace, such as employees who work remotely or travel for work, must provide summaries of the following laws by email to its employees or “conspicuous posting” on its website or intranet:
 - Minimum Wage Law
 - Equal Pay Act of 2003
 - Illinois Wage Payment and Collection Act
 - Child Labor Law (if any minors under 16 are employed)
- On written request, an employer must email or mail a requested personnel record to an employee (whether or not they could inspect it in person).



24



Employee Leaves



25



P.A. 103-0450: Organ Donation Leave

Effective date: January 1, 2024

- Amends the Employee Blood Donation Leave Act.
- On request, a full-time employee employed for at least 6 months may be entitled to leave with pay to donate blood or an organ.
- An employee may use up to 10 days of leave in any 12-month period to serve as an organ donor.
- Employees must have employer approval before using the leave.



26

P.A. 103-0466: Child Extended Bereavement Leave
Effective date: January 1, 2024

- Employers with 50-249 employees must provide up to six weeks of unpaid leave to any full-time employee who has worked for the employer for at least two weeks and who has lost a child to suicide or homicide.
- Employers with 250+ full-time employees must provide up to twelve weeks of leave.
- The leave may be taken in a continuous period or intermittently within a year of the employee notifying the employer about the child's death.



P.A. 103-0466: Child Extended Bereavement Leave
Effective date: January 1, 2024

- Employees may substitute any other paid or unpaid leave to which they are entitled for this leave.
- However, employees who take leave under this Act may not also take leave under the Family Bereavement Leave Act for the death of the same child.
- Employers may require reasonable documentation to support the leave request and may require reasonable advance notice where practicable.

P.A. 103-0314: VESSA Leave for Victim Death

Effective date: January 1, 2024

- In 2022, VESSA expanded to provide unpaid leave to employees who are victims or whose family or household members are victims of a wider range of crimes of violence.
- This amendment adds three reasons unpaid leave can be used related to the death of a family or household member who is killed in a crime of violence:
 - Attending the funeral or alternative
 - Making arrangements necessitated by the death
 - Grieving the death
- Leave for these three reasons is limited to 2 work weeks or 10 workdays, and it must be completed within 60 days of when the employee learns about the death.



29

Other Employee Protections



30

P.A. 103-0437: Day and Temporary Laborers

Effective date: August 4, 2023

- Day or temporary laborers assigned to work for more than 90 calendar days must be paid not less than:
 - the pay rate and equivalent benefits as the lowest paid directly hired employee of the client company with the same level of seniority and performing substantially similar work that requires substantially similar skill, effort, and responsibility under similar working conditions; or
 - the pay rate and equivalent benefits of the company's lowest paid directly hired employee with the closest level of seniority, if there is no comparative employee.
- Upon request, a third-party client shall be obligated to timely provide the day and temporary labor service agency with all necessary information to comply with this requirement.



31

P.A. 103-0437: Day and Temporary Laborers

Effective date: August 4, 2023

- Before a day or temporary laborer begins, the client company must:
 - 1) document and inform the temp agency about anticipated job hazards;
 - 2) review the safety and health awareness training provided by the agency to determine if it addresses recognized hazards for the company's industry;
 - 3) provide specific training tailored to the particular hazards at the worksite;
 - 4) document and maintain records of site-specific training and provide confirmation that the training occurred to the agency within 3 business days.
- A client company must provide worksite specific training and must allow a temp agency to visit any worksite where the laborer works to observe and confirm the training and information related to the worksite's job tasks, safety and health practices, and hazards.



32

P.A. 103-0437: Day and Temporary Laborers

Effective date: August 4, 2023

- No day and temporary labor service agency may send a day or temporary laborer to a place where a strike, a lockout, or other labor trouble exists without providing a written statement informing them of the labor dispute and the right to refuse the assignment without prejudice to receiving another assignment.
- An “interested party” may sue for alleged violations of any part of the act after an IDOL notice of right sue and, if they prevail, may receive 10% of the statutory penalties, plus any attorneys’ fees.



33

P.A. 103-0282: Gender Violence Act

Effective date: January 1, 2024

- Adds provisions about employer liability for gender-related violence, which includes:
 - Violence or aggression satisfying the elements of battery and committed at least in part on the basis of sex;
 - A physical intrusion or physical invasion of a sexual nature satisfying the elements of battery;
 - Domestic violence; or
 - A threat of one of the above acts causing a realistic apprehension that the person making the threat will commit the act.
- Allows actions against employers with a 4-year statute of limitations (or until a victim who was a minor reaches the age of 22).



34

P.A. 103-0282: Gender Violence Act

Effective date: January 1, 2024

- Employers are only liable for gender-related violence committed in the workplace by an employee or agent when:
 - the interaction arises in the course of employment;
 - the violence occurs while the employee or agent was directly performing job duties or contracted work;
 - the employee's violence or agent's performance of contracted work was the proximate cause of the injury;
 - the employer has acted in a manner inconsistent with how a reasonable person would act under similar circumstances; and
 - the employer failed to supervise, train, or monitor the employee; or failed to investigate complaints or reports directly provided to a supervisor of similar conduct by an employee/agent and to take remedial measures in response.



35



36

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One Team. Making Your Mission Ours.

Biographies

FRANK B. GARRETT III

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Frank B. Garrett III represents and counsels public and private employers in all aspects of employment law, including litigation defense of workplace complaints and charges. Frank also reviews, audits and trains organizations on their Diversity, Equity, and Inclusion initiatives. Frank is often called upon to investigate workplace complaints of harassment, discrimination, violation of employer leave policies and employee discipline incidents.

Frank practices regularly in both state and federal courts at both the trial and appellate levels. Frank is a regular presenter on employment law and workplace issues at both the state and national levels. He is continually recognized as an Illinois Leading Lawyer.

AWARDS

Illinois Leading Lawyer, Government and Regulatory-Related

Illinois Leading Lawyer, Employment and School Law

Illinois Super Lawyers

RECENT PUBLICATIONS

Contributing Author, "Employment Discrimination" *School Law: Personnel and Student Issues*, IICLE (1996, 1999, Supp. 2001, 2005, 2010, 2012, 2015, and 2021)

"Extended Medical Leave Under ADA Soundly Rejected by 7th Circuit," *Chicago Daily Law Bulletin* (2017)

"First Amendment Protections Get Broader for Government Employees," *Chicago Daily Law Bulletin* (2016)

"Big-box Employee's Attempt to 'Scam' Company Undercuts FMLA Claims," *Chicago Daily Law Bulletin* (2015)

Employers Must Rethink Employee 'Look' Policies After High Court Decision," *Chicago Daily Law Bulletin* (2015)

"Using Social Network Screening as Part of the Hiring Process: Employers Should Proceed with Caution," *Inquiry & Analysis*, National School Boards Association's Council of School Attorneys (2013)

RECENT PRESENTATIONS

School District Diversity, Equity and Inclusion Guidance, Northwest Personnel Administrators Group Meeting (September 2022)



PRACTICE AREAS

Employment Law
Diversity, Equity and
Inclusion Review, Audits
and Training
Education Law Litigation

EDUCATION

J.D., DePaul University
College of Law

B.A., Oberlin College

ADMITTED TO PRACTICE

Supreme Court of the
United States

U.S. Court of Appeals for
the Seventh Circuit

Trial Bar of the U.S.
District Court for the
Northern District of Illinois

U.S. District Court for the
Northern District of Illinois

U.S. District Court for the
Central District of Illinois

U.S. District Court for the
Southern District of Illinois

Supreme Court of Illinois

Safeguarding School District's Diversity, Equity and Inclusion Initiatives from Unlawful Discrimination Challenges, American Association of School Personnel Administrators (April 2022)

A Review of Important New Laws Impacting Illinois School Districts, Illinois Association of School Boards (January 2022)

Sexual Violence and Harassment on Campus, Illinois Community College Trustee Association (June 2021)

ORGANIZATIONS

American Bar Association,
Section on Labor and
Employment

National Association of
Diversity Officers in
Higher Education

Chicago Bar Association

Illinois Council of School
Attorneys



EMILY P. BOTHFELD

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Emily Bothfeld counsels higher education institutions and K-12 school districts on various issues, including student discipline, Title IX, free speech and expression, student disability rights, board governance, and policy development. In her role leading the firm's Title IX practice, Emily performs extensive work with educational institutions to ensure compliance with Title IX and related laws in all aspects of employment and education, including recruitment, admissions, academic programs, counseling, financial assistance, athletics and extracurricular activities, and facilities access. Emily was instrumental in Robbins Schwartz's development of policies, procedures, and training materials for school districts and higher education institutions in response to the United States Department of Education's 2020 amendments to the Title IX regulations, and Emily has significant experience working closely with Title IX Coordinators and administrators tasked with investigating and adjudicating sexual harassment reports and complaints.

Emily also represents both educational institutions and private companies in matters related to student privacy. She regularly advises school districts regarding privacy considerations and compliance requirements associated with the use of educational technology platforms. She has significant experience negotiating data privacy agreements and education-related service agreements on behalf of schools and organizations. In 2020, Emily co-drafted the Illinois addendum to the National Data Privacy Agreement ("NDPA"), a standardized agreement used by school districts and educational technology vendors throughout the United States to streamline the contracting process and establish a consistent framework for protecting and managing student data. The NDPA is currently being utilized by approximately 750 school districts in Illinois and over 11,000 nationally to facilitate compliance with state and federal student privacy and security laws.

Emily has extensive experience representing educational institutions in responding to complaints filed with the U.S. Department of Education's Office for Civil Rights, Illinois State Board of Education, Office of the Illinois Attorney General, and Illinois Department of Human Rights. Emily regularly defends educational entities in state and federal court in defending against constitutional, civil rights, and breach of contract claims.

Before joining Robbins Schwartz, Emily represented students with disabilities in special education matters. Emily attended the George Washington University Law School, where she was a member of the George Washington International Law Review and the GW Law Moot Court Board. Prior to attending law school, Emily taught high school mathematics and science in Hangzhou, China.



PRACTICE AREAS

Education Law
Higher Education
Special Education
Student Discipline

EDUCATION

J.D., *with honors*, George
Washington University
Law School

B.S., *cum laude*,
Vanderbilt University

ADMITTED TO PRACTICE

U.S. Court of Appeals for
the Seventh Circuit

U.S. District Court for the
Northern District of Illinois

Supreme Court of Illinois

ORGANIZATIONS

Trustee, Associated
Colleges of Illinois

Chicago Bar Association

Illinois Council of School
Attorneys

National Council of School
Attorneys

RECENT PUBLICATIONS

"College Admissions Under Fire as Top Court Takes Affirmative Action Case,"
Chicago Daily Law Bulletin (2022)

"Disabled Athlete Can't Support ADA Claims," *Chicago Daily Law Bulletin* (2018)

RECENT PRESENTATIONS

Best Practices for Safeguarding Data in an Increasingly Digital World, SecurED
Schools: K-12 Data Privacy and Cybersecurity Conference (January 2023)

Legal Gymnastics in the Age of COVID and Other Challenges, Illinois Council of
Community College Presidents Retreat (January 2022)

Making Sense of the Alphabet Soup: FERPA, COPPA, SOPPA, ISSRA, MHDDCA,
and PIPA and Strategies for Compliance, Secured Schools K-12 Data Privacy and
Cybersecurity Conference (January 2022)



MICHELLE L. WEBER

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Michelle practices in the area of education law with a focus on special education and student matters. She counsels school districts and community colleges regarding the IEP process, due process, Section 504, student discipline, board policy and student records.

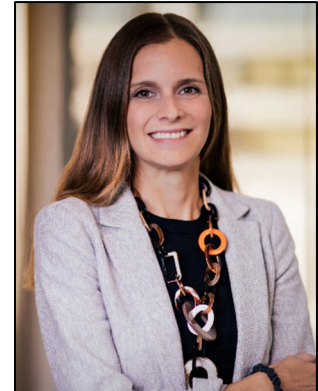
Prior to joining Robbins Schwartz, Michelle worked as an attorney for Waukegan Public Schools and Chicago Public Schools, focusing in special education. She has experience counseling IEP teams and school administrators, representing districts in complex due process hearings and developing policies and procedures for school districts. Prior to starting law school, Michelle was a Middle School Language Arts Teacher in Los Angeles, CA.

RECENT PUBLICATIONS

"DeVos Rollbacks Could Hit Schools Hard," *Chicago Daily Law Bulletin* (2017)

RECENT PRESENTATIONS

Removals to Interim Alternative Educational Setting for 45 School Days... Who, What, Where, When, Why, and How?, Illinois Alliance of Administrators of Special Education Winter Conference (February 2022)



PRACTICE AREAS

Education Law
Special Education
Student Discipline

EDUCATION

J.D., Loyola University
College of Law

M.A., Loyola Marymount
University

B.A., Trinity College

ADMITTED TO PRACTICE

Supreme Court of Illinois

ORGANIZATIONS

Chicago Bar Association

Illinois Council of School
Attorneys

MATTHEW J. GARDNER

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Matt Gardner is a partner at Robbins Schwartz where he is a member of the firm's construction, commercial transactions, real estate, and public finance practice groups. Matt represents private and public project owners over the course of construction and development projects, beginning with property acquisition, zoning, contract negotiation and bidding, project management, surety and warranty claims, and any resulting litigation concerning payment, delays or design or construction defects. Matt also represents contractors, subcontractors and material suppliers on a variety of construction-related matters, including payment claims, preserving and enforcing lien rights, and defending defect claims.

In addition to his construction and real estate practice, Matt represents school districts, colleges, and educational technology companies in matters relating to student records and data privacy. Matt regularly drafts and negotiates data privacy agreements, software license agreements, and other service agreements that comply with applicable federal and state privacy laws and regulations while simultaneously protecting his clients' interests. He was part of a team of Robbins Schwartz attorneys that drafted the Illinois addendum to the National Data Privacy Agreement and frequently advises clients on the evolving legal landscape for education privacy matters and risks associated with data breaches or ransomware attacks. Matt has worked with educational technology clients to successfully complete responses and bid submissions as part of the procurement process for some of the largest school districts in the nation resulting in significant contracts. He also works with education technology clients to prepare subcontracts, policies, and procedures to address data security and compliance with the multitude of state and federal data privacy laws.

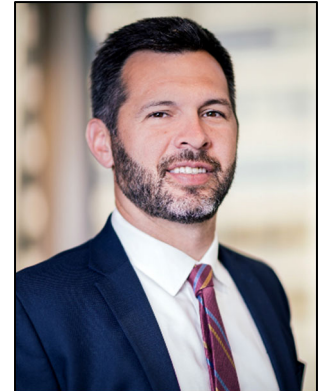
Matt is the past Chair of the Chicago Bar Association Construction Law and Mechanics Lien Subcommittee (2018-19), has testified before the General Assembly on construction-related matters, and is a member of the Illinois State Bar Association and Chicago Bar Association Judicial Evaluation Committee. Matt has also performed pro bono services representing clients through Chicago Volunteer Legal Services and Franciscan Outreach.

AWARDS

Illinois "Rising Star", by Super Lawyers Magazine, in the area of Construction Litigation (2021-2022)

RECENT PUBLICATIONS

Contributing author, "Environmental Issues" *Construction Law: Transactional Considerations*, IICLE (2021)



PRACTICE AREAS

Commercial Law
Construction Law
Public Finance & Taxation
Real Estate Development

EDUCATION

J.D., University of
Wisconsin Law School

B.S., University of Utah

ADMITTED TO PRACTICE

U.S. District Court for the
Northern District of Illinois

Supreme Court of Illinois

Supreme Court of Utah

Supreme Court of
Wisconsin

ORGANIZATIONS

Chicago Bar Association

Illinois State Bar
Association

Contributing author, "School Property and Environmental Issues" *School Law: Organization, Finance, and Property*, IICLE (2017, 2021)

Contributing author, "Turner on Illinois Mechanics Liens," *Chapter III – Making a Lien Against Private Property Enforceable* (2019)

Co-author, "School Construction from Start to Finish: A Project Checklist," *School Business Affairs Magazine*, ASBO (2018)

Contributing author, "Top 11 Public Bidding Questions," *UPDATE Magazine*, Illinois ASBO (2018)

Contributing author, "Meditation a Win-Win for Clients and their Attorneys in Construction Litigation," *Chicago Daily Law Bulletin* (2018)

RECENT PRESENTATIONS

Best Practices for Safeguarding Data in an Increasingly Digital World, SecurED Schools: K-12 Data Privacy and Cybersecurity Conference (January 2023)

Bidding 101, IASBO Emerging SBO Summit (July 2022)

Legal Considerations Related to Renewable Energy, Illinois ASBO Administrator Academy: Sustainability for PK-12 Schools (May 2022)

School Bidding, Procurement, and Prevailing Wages: From the Basics to the Advanced, IASA Spring Legal Seminar (March 2022)

Making Sense of the Alphabet Soup: FERPA, COPPA, SOPPA, ISSRA, MHDDCA, and PIPA and Strategies for Compliance, Secured Schools K-12 Data Privacy and Cybersecurity Conference (January 2022)



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Chris practices in the firm's commercial, construction, and real estate practice groups, representing public sector clients in commercial transactions, contracting, construction and related transactional matters. Chris has also served in the firm's labor and employment practice group and counseled employers in all aspects of labor and employment law, including labor relations, collective bargaining, grievance and dispute resolution, workplace investigation, employee discipline, terminations and reductions in force, and employment discrimination. Chris also advises clients on board governance and compliance with the Illinois Freedom of Information Act and Open Meetings Act.

Prior to joining Robbins Schwartz, Chris served as in-house counsel for a nonprofit organization, a charter school management organization and a state regulatory agency overseeing higher education financing.

RECENT PUBLICATIONS

Contributing author, "Labor Issues in the Transactional Side of the Project," *Construction Law: Transactional Considerations 2021 Edition*, IICLE (2021)

"Continuing Controversy Over FCC's Efforts to Improve Broadband Connectivity," *Energy, Utilities, Telecommunications and Transportation Newsletter*, Illinois State Bar Association (2021)

"The Future of For-Profit Online Charter Schools," *Labor and Employment Law Quarterly*, American Bar Association (2016)

RECENT PRESENTATIONS

Best Practices for Safeguarding Data in an Increasingly Digital World, SecurED Schools: K-12 Data Privacy and Cybersecurity Conference (January 2023)

School Bidding, Procurement, and Prevailing Wages: From the Basics to the Advanced, IASA Spring Legal Seminar (March 2022)

Making Sense of the Alphabet Soup: FERPA, COPPA, SOPPA, ISSRA, MHDDCA and PIPA, The Learning Technology Center of Illinois SecurED Schools Annual Conference (January 2022)



PRACTICE AREAS

Commercial Transactions
Construction Law
Labor & Employment
Real Estate Development

EDUCATION

J.D., University of
Minnesota Law School

B.A., University of
Minnesota – Twin Cities;
Presidential Scholar

ADMITTED TO PRACTICE

U.S. District Court for the
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Supreme Court of Illinois

ORGANIZATIONS

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Illinois State Bar
Association

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Phil Gerner counsels and represents school districts and community colleges in collective bargaining negotiations, union representation petitions and IELRB proceedings, teacher evaluations, remediations and dismissals, employee discipline and discharge issues, labor contract administration and grievance arbitration and other labor and employment issues. Phil has represented school districts and community colleges in numerous labor arbitrations, unfair labor practice hearings, tenured teacher dismissals and IDHR and EEOC proceedings. Phil has successfully handled a number of appellate court appeals on issues of significance for educational employers, including short-term employee bargaining unit exclusion standards, teacher evaluation plan bargaining obligations and RIF/seniority rights of tenured teachers.

Phil is a frequent presenter for IASB, IASA, Illinois ASBO, ICCTA and other educational employer associations on a full range of labor and employment issues, including collective bargaining negotiations, teacher evaluation and remediation, school administrator employment contracts, employee discipline and discharge, and public employee speech and concerted activity issues.

AWARDS

Illinois Leading Lawyer, Employment and School Law, 2004-2012

RECENT PUBLICATIONS

"Collective Bargaining During COVID-19" IASA Leadership Matters Magazine (2021)

"Hot Topics in Collective Bargaining," IASB.COM, IASB (2014)

Contributing author, "Labor Relations: Contract Administration Including ULPs," Illinois School Law, IICLE (2005, 2010 and 2012)

"Collective Bargaining Implications of the Performance Evaluation Reform Act of 2010 (SB 315) and the Education Reform Act (SB 7)," UPDATE Magazine, Illinois ASBO (2011)

RECENT PRESENTATIONS

Legal Issues Regarding Mandatory Employee Vaccinations, Illinois Association of School Personnel Administrators Webinar (September 2021)

COVID-19 HR Webinar: Vaccine Mandate for Staff, 2021 Illinois Association of School Business Officials Conference (September 2021)



PRACTICE AREAS

Education Law
Employee Benefits
Labor & Employment
Litigation

EDUCATION

J.D., Washington
University School of Law

B.A., *cum laude*, St.
Lawrence University

ADMITTED TO PRACTICE

U.S. District Court for the
Central District of Illinois

U.S. District Court for the
Northern District of Illinois

Supreme Court of Illinois

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Tom advises and counsels employers in the public and private sectors in all areas of labor and employment law, including workplace investigations, disciplinary action, leaves and accommodation requests, contract disputes, wage and hour issues, and general human resources compliance. Tom has significant experience working closely with management in traditional labor matters, including union organizing, collective bargaining and contract negotiations, grievances, and unfair labor practices. Tom also defends employers in state/federal court and before administrative agencies involving claims of discrimination, harassment, retaliation, and breach of contract.

Prior to joining Robbins Schwartz, Tom worked as a labor relations attorney for the Cook County Health System. During law school, Tom interned with the U.S. Equal Employment Opportunity Commission's Enforcement Unit.

RECENT PUBLICATIONS

"Seventh Circuit Certifies Question to Illinois Supreme Court Regarding When BIPA Claim Accrues" *Employment and Labor Law Flashpoints*, IICLE (2021)

"Get off my Property: SCOTUS Limits Union Access to Employer Premises," *Employment and Labor Law Flashpoints*, IICLE (2021)

"Recent Department of Labor Opinion Letters: Pay for Training and Travel," *Employment and Labor Law Flashpoints*, IICLE (2021)

"Seventh Circuit: Jury, Not Judges, Must Decide Coach's Sex Discrimination Claim," *Employment and Labor Law Flashpoints*, IICLE (2020)

"Unions Strike Back Through Amendments to Illinois Public Labor Acts," *Employment and Labor Law Flashpoints*, IICLE (2020)

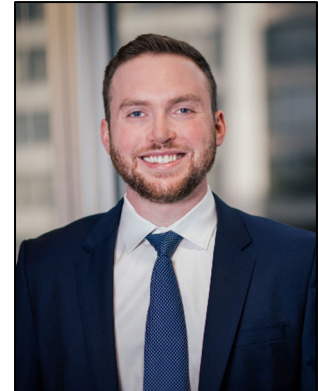
"Heading Into the New Year with New Employment Laws," *Employment and Labor Law Flashpoints*, IICLE (January 2019)

RECENT PRESENTATIONS

Never a Dull Moment - Case Studies and Tales from HR, IASPA Annual Conference (January 2022)

Updates from the Department of Human Rights, IAPD/IPRA Soaring to New Heights Conference (January 2022)

The Nuts and Bolts of Employee Leave Rights Under the FMLA, ADA, and Illinois Law, IAPD/IPRA Soaring to New Heights Conference (January 2022)



PRACTICE AREAS

Labor & Employment

EDUCATION

J.D., Chicago-Kent College of Law

B.A., *with honors*,
Michigan State University

ADMITTED TO PRACTICE

U.S. District Court for the Northern District of Illinois

Supreme Court of Illinois

ORGANIZATIONS

Chicago Bar Association

Mid-Term and Successor Bargaining Trends Post-COVID-19, IASA Legal Workshop (December 2021)

Employee Misconduct Investigations and Discipline During a Pandemic, IASPA Annual Conference (January 2021)



KEVIN P. NOLL

PARTNER, CHICAGO

312.332.7760

knoll@robbins-schwartz.com

Kevin's practice focuses in the area of labor and employment law. Kevin counsels school districts, community colleges, libraries, and municipalities with issues involving employee discipline, internal investigations, employee leaves of absences, and alleged discrimination and harassment claims. Kevin also defends clients in litigation and administrative charges in federal and state court, the U.S. Equal Employment Opportunity Commission, the Illinois Department of Human Rights, and the Illinois Department of Labor. In addition to his experience in labor and employment law, Kevin has trained school districts and community colleges pursuant to Title IX of the Education Amendments Act of 1972.

Prior to joining Robbins Schwartz, Kevin represented individuals with employment matters, civil rights claims, and consumer protection litigation.

AWARDS

Illinois "Rising Star," by Super Lawyers Magazine

RECENT PUBLICATIONS

"OSHA Pauses Vaccination and Testing ETS Following Legal Challenges," *Employment and Labor Law Flashpoints*, IICLE (2021)

Contributing author, "Employment Discrimination" *School Law: Personnel and Student Issues*, IICLE (2021)

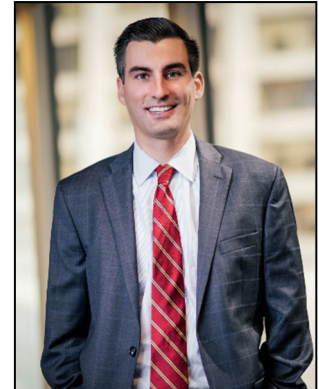
"NLRB Takes New Look at Charter Schools," *Chicago Daily Law Bulletin* (2019)

RECENT PRESENTATIONS

Updates from the DOL: New Developments for FMLA, FLSA, and IWPCA, IAPD/IPRA Soaring to New Heights Conference (January 2020)

Is it ADA, FMLA, or Other Leave? Navigating the Murky Waters of Employee Leave Benefits, IAPD/IPRA Soaring to New Heights Conference (January 2020)

Illinois Minimum Wage: Nutz and Bolts Overview, IGFOA Payroll Seminar (October 2019)



PRACTICE AREAS

Labor & Employment

EDUCATION

J.D., The John Marshall
Law School

B.A., Indiana University

ADMITTED TO PRACTICE

U.S. District Court for the
Northern District of Illinois

Supreme Court of Illinois

ORGANIZATIONS

Chicago Bar Association

Illinois State Bar
Association

Kane County Bar
Association

AARON J. KACEL

ASSOCIATE, CHICAGO

312.332.7760

akacel@robbins-schwartz.com

Aaron counsels employers on various aspects of labor and employment law, including internal investigations, employee discipline, labor relations, workplace policies, and state and federal labor and employment law matters under the Illinois Human Rights Act, Americans with Disabilities Act, Age Discrimination in Employment Act, Family and Medical Leave Act, Occupational Safety and Health Act, Uniformed Services Employment and Reemployment Rights Act, Title VII, and other laws. Aaron also represents employers in traditional labor law matters including labor arbitration and grievance proceedings and collective bargaining agreement negotiations.

Aaron represents employers in litigation and before administrative agencies including the U.S. Equal Employment Opportunity Commission, the Illinois Department of Human Rights, the U.S. Department of Labor, and the Illinois Department of Labor.

Aaron provides training to employers on internal investigation best practices, avoiding charges of unlawful discrimination and harassment in the workplace, and awareness and management of implicit bias in various sectors.

Aaron is the Associate Representative to Robbins Schwartz's Diversity, Equity, and Inclusion Leadership Committee.

Prior to joining Robbins Schwartz, Aaron served as in-house employment law counsel for the Cook County Sheriff's Office. He has previously worked for the City of Chicago and a large, international law firm. During law school, he served as Managing Executive Editor of *the Northwestern Journal of Law & Social Policy* and President and Founder of the Northwestern Labor & Employment Law Society. He also served as a judicial extern for the Honorable Judge Joan B. Gottschall of the United States District Court for the Northern District of Illinois

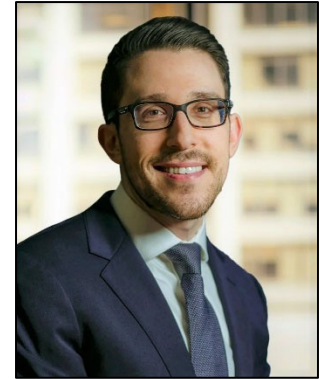
RECENT PUBLICATIONS

Co-Author, "Seventh Circuit Addresses Employer Liability for Coworker and Supervisor Harassment and Challenges in Establishing Claims For Retaliation, Defamation, and IIED," *Employment and Labor Law Flashpoints*, IICLE (2023)

"When It Happens to You: Responding to Reports of Harassment and Discrimination," Law Arts Blog, Lawyers for the Creative Arts (July 2022)

RECENT PRESENTATIONS

Navigating Payroll Laws: Wages and Record Keeping Requirements, Illinois Association of School Business Officials Bookkeepers Conference (March 2023)



PRACTICE AREAS

Labor & Employment

EDUCATION

J.D., Northwestern
University Pritzker School
of Law

B.A., Washington
University in St. Louis,
magna cum laude, high
distinction

ADMITTED TO PRACTICE

U.S. District Court for the
Northern District of Illinois

Supreme Court of Illinois

ORGANIZATIONS

Secretary, Associate
Board, Lawyers for the
Creative Arts

Chair, Labor and
Employment Committee,
Chicago Bar Association,
Young Lawyers Selection

Chair, Vice Chair,
Secretary, Board of
Directors, About Face
Theatre (2018-2021)

Co-Chair, LGBTQ+ Alumni
Affinity Group,
Northwestern Pritzker
School of Law

The Peanut Butter and Jelly Effect: Understanding Implicit Bias and Its Impact on Educators, Illinois Association of School Administrators Legal Workshop
(February 2023)

2022 Hot Topics in Labor and Employment Law, Chicago Bar Association
(February 2023)



HOWARD A. METZ

PARTNER, CHICAGO

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Howard Metz counsels and represents school districts, community colleges, park districts and municipalities with respect to real estate, commercial transactions, construction law and land use and zoning matters. He has resolved construction cases involving issues such as disputed architectural fees, construction defects, bidding disputes and construction delays. Howard has also litigated issues involving zoning laws and municipal control over school property.

RECENT PUBLICATIONS

Contributing author, "Joint Purchasing Everything You Want to Know but Are Afraid to Ask!" *UPDATE Magazine*, Illinois ASBO (2019)

Contributing author, "Public Body Social Media Rules Make Retention, Ready Retrieval Imperative," *Chicago Daily Law Bulletin* (2019)

Contributing author, "How Far Does the Law Allow Schools to Go?" *UPDATE Magazine*, Illinois ASBO (2018)

Co-author, "School Construction from Start to Finish: A Project Checklist," *School Business Affairs Magazine*, ASBO (2018)

Contributing author, "Organization, Finance, and Property," *Illinois School Law*, IICLE (2017)

"Look Before You Leap: Evaluating Your Joint Purchasing Options," *UPDATE Magazine*, Illinois ASBO (2016)

Contributing author, "School Property and Environmental Issues," *Illinois School Law*, IICLE (2010 and 2012)

RECENT PRESENTATIONS

School Bidding, Procurement, and Prevailing Wages: From the Basics to the Advanced, IASA Spring Legal Seminar (March 2022)

Legal considerations related to renewable energy, Illinois ASBO Administrator Academy: Sustainability for PK-12 Schools (November 2021)



PRACTICE AREAS

Commercial Transactions
Construction Law
Education Law
Finance
Municipal Law
Real Estate Development

EDUCATION

J.D., IIT Chicago-Kent
College of Law

B.S., University of Iowa

ADMITTED TO PRACTICE

U.S. District Court for the
Northern District of Illinois

Supreme Court of Illinois

KENNETH M. FLOREY

PARTNER, CHICAGO & LISLE

312.332.7760

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Ken Florey concentrates his practice representing public and private clients, including municipalities, school districts, community colleges, townships, libraries, private owners, contractors and design professionals regarding land use, municipal law, construction, tax, finance and litigation. Ken has also started offering his services as a mediator with an emphasis on construction disputes.

Ken was the Chair of the DuPage County Bar Association's Local Government Committee. He was appointed Special Assistant Attorney General to prosecute and defend construction litigation claims on behalf of the Illinois Capital Development Board. Ken is also a member of the Illinois ASBO Service Associate Advisory Committee. He served as a Trustee for the Village of Lombard for eight years and is a member of the Lombard Fire and Police Commission.

MEDIATOR CERTIFICATE: Northwestern University 2017

AWARDS

Illinois Leading Lawyer, Construction Law; Governmental, Municipal, Lobbying & Administrative Law; Land Use, Zoning & Condemnation Law; and School Law

Illinois Association of School Business Officials, Above and Beyond Award

Illinois Institute for Local Government Law, Litigation Award

RECENT PUBLICATIONS

Contributing author, "Joint Purchasing Everything You Want to Know but Are Afraid to Ask!" *UPDATE Magazine*, Illinois ASBO (2019)

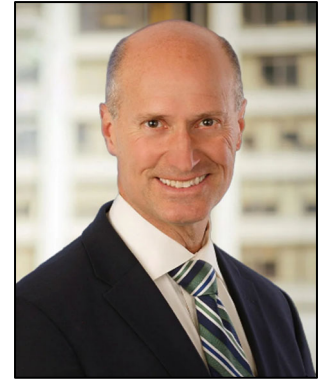
Contributing author, "How Far Does the Law Allow Schools to Go?" *UPDATE Magazine*, Illinois ASBO (2018)

Contributing author, "Top 11 Public Bidding Questions & Solutions" *UPDATE Magazine*, Illinois ASBO (2018)

Co-author, "School Construction from Start to Finish: A Project Checklist," *School Business Affairs Magazine*, ASBO (2018)

Contributing author, "Top 11 Public Bidding Questions," *UPDATE Magazine*, Illinois ASBO (2018)

Contributing author, "Meditation a Win-Win for Clients and their Attorneys in Construction Litigation," *Chicago Daily Law Bulletin* (2018)



PRACTICE AREAS

Commercial Law
Construction Law
Education Law
Energy Law
Litigation
Mediation
Municipal Law
Public Finance & Taxation
Real Estate Development
Zoning, Planning & Land Use

EDUCATION

J.D., DePaul University
College of Law; *Managing Editor, DePaul Journal of Art and Entertainment Law*

B.A., University of Illinois
at Urbana Champaign

ADMITTED TO PRACTICE

U.S. District Court for the
Northern District of Illinois

Supreme Court of Illinois

Contributing author, "Organization, Finance, and Property," *Illinois School Law*, IICLE (2017)

"Construction Project and Contract Pitfalls" *UPDATE Magazine*, Illinois ASBO (2017)

"The Good, the Bad and the Ugly of School Bidding Requirements," *UPDATE Magazine*, Illinois ASBO (2016)

"Settlement Crumbles; Appeals Court Declines to Put Pieces Back Together," *Chicago Daily Law Bulletin* (2015)

RECENT PRESENTATIONS

Alternative Dispute Resolution Section MCLE Program, DuPage County Bar Association (February 2023)

Cooperative Purchasing: Are We Doing it Right?, Illinois Association of School Personnel Administrators and Illinois Association of School Business Officials Regional Conference (October 2022)

Building a Construction Team and So Much More to Achieve Success with Your Project, Association of School Business Officials International (August 2022)

Ethics and ADR: Meditation and Arbitration Issues, DCBA (June 2022)

Cooperative Purchasing: Are You Doing it Right?, Illinois ASBO Annual Conference (June 2022)

Bidding Processes & Procedures: Best Practices in a Changing Environment, Illinois ASBO Annual Conference (May 2022)

Contracts and Conflicts: How Did We Get Here & Where are We Going?, Illinois ASBO Annual Conference (May 2022)

Wrapping Up the Year End in the Business Office: Do's and Don'ts, Illinois ASBO School Business Essentials (April 2022)

School Construction and Purchasing Scenarios: Common Problems with Practical Solutions, ASBO International and AC&E (October 2021)

Using ESSR Funds for Facilities Improvements: School Construction from Start to Finish, Illinois ASBO and IASPA (October 2021)

Prevailing Wages and Bidding, Northeastern Illinois Facility Professionals (November 2021)

No Weak Links: Fostering Positive Intra-Board Relationships, IASB/IASA/IASBO (November 2021)

No Weak Links: Fostering Positive Intra-Board Relationships, IASB (July 2021)



TODD K. HAYDEN

PARTNER, LISLE

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thayden@robbins-schwartz.com

Todd Hayden practices in the areas of school and municipal law. He provides governmental employers with guidance and counseling regarding labor and employment, including employee discipline and termination, board governance, collective bargaining, contract, public finance and transactional matters.

Todd has represented employers in various employer-employee disputes including federal and state litigation, EEOC/Department of Human Rights charges, State Labor Board Proceedings and grievance and arbitration proceedings. Todd has extensive experience in collective bargaining, including unit formation proceedings, negotiations, mediation and interest arbitration. He has performed construction contract reviews, served as local bond counsel and worked on school boundary changes.

Todd is approved by the Illinois State Board of Education to provide school board member training.

AWARDS

Illinois Leading Lawyer, Employment Law: Management, Labor Law: Management, School Law and Governmental, Municipal, Lobbying & Administrative Law, 2015

RECENT PUBLICATIONS

Contributing author, "Civil Rights Litigation," *Illinois School Law*, IICLE (2021)

RECENT PRESENTATIONS

Collective Bargaining 2021, LUDA Spring Conference (June 2021)

Legislative Update, ED-RED (June 2021)

Remote Work or Leave of Absence Due to Covid-19?, LUDA Fall Conference (October 2020)



PRACTICE AREAS

Commercial Transactions
Education Law
Employee Benefits
Labor & Employment
Litigation
Municipal Law
Public Finance & Taxation
Student Discipline

EDUCATION

J.D., *cum laude*, Indiana
University School of Law

B.A., University of
Michigan

ADMITTED TO PRACTICE

Supreme Court of the
United States

U.S. Court of Appeals for
the Seventh Circuit

Trial Bar of the U.S.
District Court for the
Northern District of Illinois

U.S. District Court for the
Northern District of Illinois

Supreme Court of Illinois

MATTHEW M. SWIFT

ASSOCIATE, CHICAGO

312.332.7760

mswift@robbins-schwartz.com

Matthew is a member of the labor and employment practice group. He counsels employers in various aspects of labor and employment law, such as employee discipline, labor relations, wage and hour, and employment discrimination matters under both federal and state laws such as the Americans with Disabilities Act, Family and Medical Leave Act, Age Discrimination in Employment Act, Title VII of the Civil Rights Act, and Illinois Human Rights Act. He also represents clients in state and federal courts and advises on Illinois Freedom of Information Act and Open Meetings Act matters.

Before he joined Robbins Schwartz, Matthew served as in-house counsel and FOIA Officer for the Illinois Office of the Governor. In that role, he counseled dozens of agencies on compliance with sensitive FOIA requests, advised on current and potential litigation issues, and served as a legal liaison to the Illinois Department of Human Rights and the Illinois Human Rights Commission.

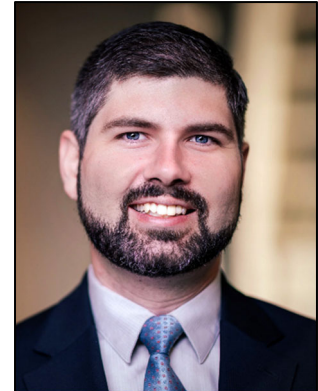
RECENT PUBLICATIONS

"All Together Now – Employment Law Issues in the New Title IX Rules,"
Chicago Daily Law Bulletin (2020)

"Life After Leave: Bringing Employees Back in a COVID-19 Age" *Best Practices Magazine*, American Association of School Personnel Administrators (2020)

RECENT PRESENTATIONS

Red Light, Green Light? Responding to Recent Decisions about COVID-19 Mitigations, ED-RED's Virtual Member Meeting (February 2022)



PRACTICE AREAS

Education Law
Labor & Employment

EDUCATION

J.D., University of Chicago
Law School

M.P.P., University of
Chicago, Harris School of
Public Policy

B.B.A., *summa cum laude*,
Baylor University

ADMITTED TO PRACTICE

U.S. District Court for the
Northern District of Illinois

Supreme Court of Illinois

ORGANIZATIONS

Chicago Bar Association