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School Law Review

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Reporting Requirements under ACA for the 2015 Calendar Year

The Affordable Care Act (ACA) mandates several reporting requirements for large employers (e.g., employers with 50+ full time employees). Two of these reporting requirements become effective in 2016 for the data from 2015.

Section 6056 Reporting Requirements:

Section 6056 of the ACA requires large employers to file information returns to the IRS. There is a general method of reporting, as well as two alternative methods of reporting. The general method requires the employer to file a 1094-C (transmittal) and, for each full-time employee, a Form 1095-C (employee statement). The alternative methods are available to reduce administrative burden, as employers are sometimes allow to report less information than is reported using the general method.

Form 1094-C and Form 1095-C for each employee must be filed with the IRS by February 28th (or March 31st if filed electronically). All employers with 250 or more 1095-C Forms must file Form 1094-C and Form 1095-C electronically.

Section 6055 Reporting Requirements:

Large employers who are self-insured for group health plans must also report information to the IRS under Section 6055. However, the information required under Section 6055 is reported on the same form as the information required under Section 6056. Under the general method, a self-insured employer must also file a Form 1095-C to meet the reporting requirements under Section 6055.

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Section 6056 & 6055 Information for Employees:

Large employers (those with over 50 full-time employees) must also provide each full-time employee with a statement regarding the health coverage provided by the employer. For self-insured employers, information for Section 6056 & 6055 will be provided on a single form. The employer must issue the statement to its employees by January 31st. Because January 31st falls on a Sunday for 2016, the deadline for providing employees with their 2015 health insurance statement is February 1, 2016. Employers are allowed to provide statements to full-time employees electronically if the requirements for providing such documents electronically has been met, or employers may hand deliver the statements in a manner allowable for delivery of W-2 statements.

How this affects your district:

As school districts plan for these reporting requirements, now is the time to be documenting and collecting information needed for these upcoming reports. Specifically, employers will be required to report the following: identification of the large employer, identification of each full-time employee to whom coverage is offered, and duration of the offer.

For Section 6055, the report will require information about the entity providing coverage, including contact information, the list of individuals that are enrolled, demographic detail of those members, Tax ID numbers for each employee and dependent, and the months for which they were covered.

For section 6056, the report will require the same level of information as the Section 6055 reporting with the exception of the Tax ID number of each dependent. Detail of the number of full-time employees will be required. For each full-time employee, the report will list coverage offered to the employee by month, and will include the lowest employee cost of self-only coverage.

The penalty for failure to file an information return is $100 for each return for which such failure occurs. The penalty for failure to provide a correct payee statement is $100 for each statement with respect to which such failure occurs, with the total penalty for a calendar year not to exceed $1,500,000.

U.S. Supreme Court Overturns Ban on Same Sex Marriage

On the two year anniversary of *United States v. Windsor*, the Supreme Court of the United States (SCOTUS) ruled that all states must now allow same-sex couples to marry, and further that they must recognize same-sex marriages conducted in other states. In Justice Kennedy's opinion for the five member majority, he cited the evolution of marriage in society as an institution to support the decision that effectively declares bans on same sex marriage unconstitutional. The majority concluded that marriage is a fundamental right and it provides the opportunity for individuals to demonstrate their commitment to each other. The principles that the Court relied on in its decision have been equally applied to opposite-sex marriages. Since opposite-sex marriages are recognized outside of the state where the marriage was sanctioned, it stands to reason that same-sex marriages should be recognized equally in each state.

The Court mentioned the importance of marriage to families and children. Same-sex couples living in states that do not recognize same-sex marriage lack the financial and social benefits that come from

having married parents. However, the Court emphasized that marriage is not solely about children, noting that couples unable or unwilling to have children are entitled to marry whomever they choose.

When parts of the Defense of Marriage Act (DOMA) were overruled in the *Windsor* decision, certain benefits became available to same-sex couples regardless of whether the couple's state of residence recognized same-sex marriages. DOMA initially limited marital benefits to opposite-sex couples. When DOMA was overturned in 2013, same-sex couples became entitled to the same marital benefits of opposite-sex couples under federal law. However, certain benefits still were denied if the couple lived in a state that did not recognize same-sex marriages. Social Security and Family & Medical Leave Act (FMLA) benefits were modified to allow only same-sex couples living in a state that recognized same-sex marriages to receive the benefits. When the FMLA was amended in February of 2015 to include same-sex husbands and wives in the definition of "spouse," same-sex couples were awarded the same FMLA benefits as opposite-sex couples regardless of which state the couple lived.

In the short term, the Court's decision likely means that benefits previously offered only to opposite-sex spouses will be made available to same-sex spouses. Spouses are entitled to participation in insurance policies for up to 36 months after the death of their spouse, the covered employee, or if a divorce or legal separation causes a loss in coverage. Employees who work for districts subject to FMLA are entitled to take time off to care for a spouse with a serious health condition or take time off if their spouse is active military. Employees may use 12 weeks of unpaid leave if they have work for a district for 12 months or 1,250 hours. Employees who have worked longer are entitled to up to 26 unpaid weeks of leave to care for the military family member. If an employee dies, wages and personal earnings will be awarded to the surviving spouse first. Spouses of retirees are also entitled to State Teachers Retirement Board ("STRB") benefits including health and surgical care coverage. Both the retiree and spouse/ex-spouse must be over the age of 65 and not already eligible for Medicare to qualify for the retirement benefits.

Justice Kennedy was joined by Justices Ginsburg, Breyer, Sotomayor, and Kagan in the majority opinion. Chief Justice Roberts and Justices Scalia, Thomas, and Alito, dissented.

Obergefell et al. v. Hodges, Director, Ohio Department of Health, No. 14-556 (U.S. June 26, 2015)

How this affects your district:

In February 2015, the U.S. Department of Labor amended the Family and Medical Leave Act of 1993 ("FMLA") to include same-sex marriage in the definition of "spouse." With that change, all employers subject to FMLA were required to provide FMLA benefits to same-sex couples, regardless of whether the state allowed same-sex marriages. If the couple was legally married in a state that recognized their marriage, employees were entitled to FMLA benefits. Now that the Supreme Court has determined that same-sex marriage bans are unconstitutional, all same-sex couples will be entitled to the same benefits provided to opposite-sex couples, regardless of where they were married.

There will be changes and updates in other areas of the law as well. The Court specifically mentioned a list of areas in which married couples are entitled to certain benefits, including but not limited to taxation, inheritance and property rights, spousal privilege in the law of evidence, medical decision-making authority, adoption rights, the rights and benefits of survivors, birth and death certificates, professional ethics rules, campaign finance restrictions, workers' compensation benefits, health insurance, and child custody, support, and visitation rules. Not every one of these areas will

substantially affect school districts, but as the effect of the decision develops over time, there will be new awareness issues.

For now, it appears the biggest areas for districts to be aware of include employee leave and benefits. The response from health insurance companies is developing and we will keep you apprised of those developments.

Watch for updates in future Ennis Britton publications, and join us during the Administrator's Academy 2014-2015 Legal Updates webinar on July 16th for the latest information.

Supreme Court Rules on Case Involving Threats Made on Social Media

In our February 2015 Newsletter, we reviewed the facts of a pending U.S. Supreme Court case, *United States v. Elonis*, which involved the extent of freedom of speech on social media. Despite the anticipation for the Court's holding in its first freedom of speech case involving cyber-speech, the Court's decision was disappointing to say the least.

To review the facts, the case involved a man who wrote graphic lyrics on Facebook, which among other things referenced killing his estranged wife, law enforcement, and school students. *Elonis* was the Supreme Court's first freedom of speech case involving cyber speech. The issue before the Court was whether "conviction of threatening another person under 18 U.S.C. § 875(c) requires proof of the defendant's subjective intent to threaten" or whether "it is enough to show that a 'reasonable person' would regard the statement as threatening." Basically, under this "threat" statute, does it matter whether Elonis intended to cause fear or whether a reasonable person would consider his postings a threat?

In its recent opinion, the Court limited its discussion to whether negligence was an appropriate mental state for conviction under the statute and concluded that the defendant must have some level of awareness greater than negligence. Because there was some subjective intent required (more than mere negligence), the government must prove more than the fact that a reasonable person would consider the statements threatening.

United States v. Elonis, 730 F.3d 321(3rd Cir. 2013), cert. granted, 134S.Ct. 2819 (2014).

How this affects your district:

Despite the fact that this case focused on the interpretation of a specific threat statute, the legal community hoped that the Court's ruling would give insight into the justices' views on freedom of speech in the context of online speech. While it clearly showed that the justices are not in agreement on the topic, it failed to provide a clear standard to apply in such cases. More generally, it failed to provide insight into limitations on threatening speech provided over the Internet.

However, the standard for school discipline remains the same: "Did the behavior cause a substantial disruption to the educational environment or there is a reasonably foreseeable disruption?" This includes when a student's speech is violent or threatening to members of the school community.

Religious Rights in the Workplace: Supreme Court Decision Favors EEOC

The Supreme Court recently held that an employee or job applicant "need only show that his need for an accommodation was a motivating factor in the employer's decision" to not hire him, to fire him, or to limit him in any way in violation of Title VII.

An Oklahoma teenager and devout Muslim who wore a traditional hijab head scarf applied for a job as a sales clerk at an Abercrombie & Fitch store. While she scored well on the initial hiring assessment, the assistant manager asked a company representative if wearing a scarf for religious reasons conflicted with the company's "Look Policy" that prohibited caps and headwear. Abercrombie determined that the teenager's headscarf did violate the policy, and she was not hired.

The Equal Rights Opportunity Commission (EEOC) filed suit on behalf of the teenager, alleging her rights under Title VII of the Civil Rights Act of 1964 had been violated. The EEOC prevailed in the district Court and the woman was awarded $20,000 in damages. Abercrombie appealed, and the Tenth Circuit reversed the decision, concluding that without knowledge of whether the headscarf was definitively a religious practice, there was no intent to discriminate against the applicant.

The EEOC appealed the case to the Supreme Court, and in an opinion decided June 1, 2015, the judgment was reversed and sent back to the Circuit Court. The Supreme Court reasoned that in the context of Title VII, the phrase "because of" requires only that an individual's religious practice not be a "motivating factor" behind the refusal to hire an applicant. The Court emphasized that while other antidiscrimination statutes do explicitly require knowledge, Title VII does not. Further, Title VII doesn't require the employer to be neutral in policies applicable to religious practices, but instead gives religious practices "favored treatment."

In further discussion, the Court stated "the intentional discrimination provision prohibits certain *motives*, regardless of the state of the actor's knowledge. Motive and knowledge are separate concepts." An employer may have knowledge without using that knowledge as motive to refuse to hire an applicant or an employer may act with the motive of avoiding an accommodation even if he has only suspicion of a need for accommodation. The former is not a violation of Title VII, but the latter is. A request for accommodation or certainty of the religious practice may help establish motive, but it is not required for a determination of liability.

Justice Alito concurred but disagreed with the reasoning. In his comments, he indicated that knowledge of the need to accommodate was necessary, but that it was clear in this case that Abercrombie was aware of the applicant's religious practice. Justice Thomas dissented, arguing that the neutral policy was applied and, therefore, did not show intentional discrimination.

EEOC v. Abercrombie & Fitch Stores, Inc., No. 14-86 (U.S. June 1, 2015).

How this affects your district:

This case establishes that an employer cannot discriminate against an employee or applicant based on conduct or dress that may be religious in nature, even when the employer is unsure whether the conduct or dress is for a religious purpose or belief. Therefore, when making hiring decisions, employers should not base such decisions on an employee's dress. If such dress violates school policy, after hiring the employee the employer may point out the district's dress policy requirements and allow the employee an opportunity to request an accommodation for religious purposes.

Although the Court focused on the application of Title VII as it applies to religious discrimination, the Court's discussion of the "because of" language in the statute, implies that knowledge would also not be required in other types of Title IV claims, such as race or sex discrimination.

Utah Court Upholds a School District's Refusal to Release Videotape

A Utah parent requested a videotape recorded by a camera positioned outside the classroom of a middle school which contained footage of fight involving his son. The district refused his request, stating that the video contained images of other students and was therefore protected under FERPA and would be released if and when it obtained written consent from all of the parents of the other students shown in the video.

In response to the trial court's denial of his request for the video under the state's public records law, the parent then requested a redacted copy of the video. The district filed a supplemental memorandum with the court, indicating the cost of redaction. The Court issued an order granting the request for a redacted copy, provided the parent pay the cost to remove the images of other students from the video. The parent appealed.

The Utah Court of Appeals affirmed the trial court's decision as to nondisclosure of an un-redacted version of the video and payment of the cost of redaction. It determined that FERPA's requirements govern the disclosure of nonpublic records.

In determining whether the video was an "education record" under FERPA, the appellate Court stated the term was given a broad definition by Congress, thereby, rejecting the parent's suggestion that only academic records were education records. The court argued that the video contained information directly related to students and the images constituted information identifying the students. Additionally, the U.S. Department of Education's Family Policy Compliance Office (FCPO) states that "a parent may only inspect a school videotape showing his or her own child engaged in misbehavior if no other students are pictured." The Court noted that without any other guidance provided by the FPCO, the videotapes were education records for each of the students depicted in the video. Further, the Court rejected the parent's claim that the videotapes were not education records because they were not administered nor regularly viewed by educators. The Court determined that they were "maintained by or on behalf of an educational agency" and therefore were education records.

Because the video was protected, the appellate Court held that the video had to be redacted before the parent could view it, and the District could charge a reasonable fee for the redaction process. Finding that the fee issued by the District was reasonable, the Court held that the parent was responsible for paying the cost of redacting the images of other students in the video.

Bryner v. Canyons Sch. Dist., No. 20130566 (Utah App. Ct. May 29, 2015).

How this affects your district:

While this case involved a Utah school district, all states are uniformly subject to federal FERPA disclosure restrictions. In general, FERPA prohibits the disclosure of a student's "protected

information" to a third party, which includes: educational information, personally identifiable information, and directory information. However, the limitations imposed by FERPA vary with respect to each category. In Ohio, a separate statute applies to and defines directory information, and in certain circumstances permits release of identifiable student information to the public.

Generally, unless the information is considered directory information, personally identifiable information can only be disclosed if the educational institution obtains the signature of the parent or student (if over 18 years of age) on a document specifically identifying the information to be disclosed, the reason for the disclosure, and the parties to whom the disclosure will be made. Failure to comply with these requirements will result in a violation of FERPA.

Video of students is almost always considered a protected education record for each child depicted in the video. Schools are therefore prohibited from disclosing video without consent. As in the case above, the cost of any redactions, which would likely be significant, can be charged to the party requesting the records.

U.S. Supreme Court Rules Statements Made to Teachers by Abused Children are Admissible in Court

A little boy with the initials of L.P. arrived at his Ohio daycare with numerous marks and bruises. When he was questioned, he said his injuries were the result of a fall. Later, however, he admitted that the wounds had been inflicted by his mother's boyfriend, Darius Clark, who was in charge of her children while she was away engaging in prostitution. The case went to trial, and the statements the boy made to his daycare teachers and to social workers were used to convict Clark of assault, endangering children, and engaging in domestic violence. As a result, he was sentenced to 28 years in prison. The boy's mother pled guilty to similar crimes and was sentenced to eight years in prison.

Clark argued that the statement the 3-year-old boy made to his teachers was testimonial evidence used to convict him, and that using these statements at trial was a violation of the Sixth Amendment's Confrontation Clause because he could not cross-examine L.P. during the trial. The Ohio Supreme Court agreed and ordered a new trial. The state of Ohio, with the support of twenty-nine other states, appealed that decision to the U.S. Supreme Court.

At issue in the case was the use of statements made by L.P. to teachers that resulted in the conviction of an abuser. At Clark's trial, the daycare teachers were called as witnesses and testified about the statements made by L.P. Because teachers and daycare workers are required to report suspected abuse of children, Clark argued that the teachers and social workers were more like law enforcement agents who obtain information to prove past events to potentially be used as evidence for trial. Statements obtained by police officers for this primary purpose are known as testimonial statements and are typically excluded from trial due to a violation of the Confrontation Clause. Since children under the age of ten are typically not allowed to testify in Ohio, the statements would not make it into the courtroom.

The U.S. Supreme Court, in a decision issued June 18, held that the introduction of L.P.'s statement at trial did not violate the Confrontation Clause. The Court ruled that L.P.'s statements were not testimonial and were not made with the purpose of creating evidence. Questions were asked with the

purpose of responding to an ongoing emergency; specifically, whether the child and other children in the home were in danger and whether to release the children to the caregiver. Additionally, the Court held that "statements made by very young children will rarely, if ever, implicate the Confrontation Clause." The fact that these statements were made to his teachers, the Court indicated "is highly relevant." Teachers, the Court determined, are not in the role of uncovering and prosecuting criminal acts, but are charged with protecting children. Thus, statements made to them are less likely to be testimonial than those given to law enforcement officials.

In reversing the Ohio Supreme Court's decision, the U.S. Supreme Court stated that "Mandatory reporting obligations do not convert a conversation between a concerned teacher and her student into a law enforcement mission aimed at gathering evidence for prosecution." Thus, there was no violation of the Confrontation Clause.

Ohio v. Clark, No. 13-1352 (U.S. June 18, 2015).

How this affects your district:

School teachers and staff have a mandatory duty to report suspected abuse. In reporting, the immediate concern is to protect a vulnerable child and immediately stop further harm. Children are often reluctant to directly accuse their abuser and are sometimes unable to clearly explain the circumstances. Careful questioning by teachers and school staff is necessary to obtain information to help the child. With this ruling, careful questioning will not be complicated by the fear of the legal implications of producing testimonial evidence to be used at trial. Therefore, teachers and other mandatory reporters will typically be able to testify at trial regarding statements made by a minor when such statements are obtained under the circumstances of suspected abuse and questioning used to ensure the child's safety.

HB 64 - State Budget Bill

The budget bill, codified in Amended Substitute House Bill 64, was signed by the governor on June 30th, 2015. As in past years, the budget bill brought changes to education in Ohio. Some of the more significant changes affecting Ohio school districts include the following:

- Increases the maximum amount of a scholarship awarded under the Autism or Jon Peterson scholarship programs to $27,000 (up from $20,000).
- Requires school districts to offer real propertyit intends to sell first to a high performing community school, then to other community and college preparatory boarding schools located in the district (prior law did not include the requirement to offer to high performing charters first).
- Requires ODE, in conjunction with an Ohio educational service center association and an Ohio gifted children's association, to complete and submit a feasibility study for establishment of sixteen regional community schools for gifted children.
- Mandates that the State Board develop rules waiving any additional coursework requirements for renewal of an educator license for teachers who are consistently high performing, and also modifies the duration of a pupil activity permit for individuals holding a valid educator license from three years to the same number of years as the educator license.

- Requires the State Board of Education to develop a standards based framework for the evaluation of school counselors, and further requires all school districts to adopt a counselor evaluation policy by September 30, 2016 that conforms to the framework and will be implemented beginning in the 2016-2017 school year (will include annual evaluations with ratings of accomplished, skilled, developing, and ineffective just like OTES).
- Revises the alternative teacher evaluation framework by decreasing SGM to 35%, maintaining the performance rating at 50%, and authorizing the school district to determine the appropriate measure or combination of measures for the remaining 15%.
- Authorizes exemplary community schools to operate a preschool program for general education students
- Permits school districts to enroll under interdistrict open enrollment policies an adjacent or other district student who is a preschool child with a disability. ODE will deduct $4,000 from resident district and pay that same amount to the enrolling district.
- Prohibits appropriations from being used to purchase an assessment developed by PARCC for use as the state elementary or secondary achievement assessments, and reduces the testing that takes place in 2015-2016.
- Extends by two years certain safe harbor provisions in effect during the 2014-2015 school year for state report cards.
- Permits a school district to enter into a contract with a health care provider for the provision of health care services for students.
- Establishes requirements for issuance of diplomas to home school students and students from non-chartered nonpublic schools.
- Permits STEM schools to enroll out-of-state students.
- Authorizes schools to install security doors or barricades as part of an emergency management plan.
- Changes the date that financial disclosure statements must be filed with the Ohio Ethics Commission from April 15 to May 15.

The final version of the bill will be discussed at length during the final Administrator's Academy webinar on July 16th, 2015.

Upcoming Deadlines

As your school district prepares for the next couple of months, please keep in mind the following upcoming deadlines. For questions about these requirements, please contact an Ennis Britton attorney.

- **July 10** – last day for termination of teaching contract by a teacher without consent of the board of education (RC 3319.15)
- **July 15** – last day to adopt school library district tax budget on behalf of a library district (RC 5705.28)
- **July 21** – last day to submit certification for November conversion levy to tax commissioner (RC 5705.219)

- **July 27** – last day to submit certification for November income tax levy to Ohio Department of Taxation (RC 5748.02)
- **July 31** – last day to submit November emergency, current operating expenses or conversion levy to county auditor for November general election (RC 5705.194, 5705.195, 5705.213, 5705.219)
- **August 1** – last day to submit to the Ohio Department of Education a plan to require students to access and complete online classroom lessons ("blizzard bags") in order to make up hours for which it was necessary to close schools (RC 3313.482); last day to file statistical report with Ohio Department of Education (RC 3319.33)
- **August 4** – Special Election Day (RC 3501.01)
- **August 5** – last day for school district to file resolution of necessity, resolution to proceed and auditor's certification for bond levy with board of elections for November election (RC 133.18); last day for county auditor to certify school district bond levy terms for November election (RC 133.18); last day to submit continuing replacement, permanent improvement or operating levy for November election to board of elections (RC 5705.192, 5705.21, 5705.25); last day to certify resolution for school district income tax levy, conversion levy or renewal of conversion levy for November election to board of elections (RC 5748.02, 5705.219); last day to submit emergency levy for November election to board of elections (RC 5705.195); last day to submit phased-in levy or current operating expenses levy for November election to board of elections (RC 5705.251); last day to file (by 4 p.m.) nominating petitions for board of education and ESC governing board with board of elections (RC 3513.254, 3513.255).

Upcoming Presentations

July 16 – Ennis Britton Administrator's Academy

2014-2015 School Law Year in Review (webinar only - Register Now!)

August 3 – HR Essentials, OASBO

Presented by: Bill Deters

August 4 – Law Related Education and Truancy, OSROA

Presented by: Giselle S. Spencer

August 4 – Cyberlaw, Ohio State Bar Association School Law Workshop

Presented by: Bronston McCord

August 5 – OSBA Cyberlaw School Law Workshop

Presented by: Bronston McCord

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Webinar Archives

Did you miss a past webinar or would you like to view a webinar again? If so, we are happy to provide that resource to you. To obtain a link to an archived presentation, send your request to Pam Leist at pleist@ennisbritton.com or 513-421-2540. Archived topics include:

- Managing Workplace Injuries & Leaves of Absence
- Special Education: Challenging Students. Challenging Parents
- Fostering Effective Working Relationships with Boosters
- Effective IEP Teams
- Cyberlaw
- FMLA, ADA and Other Types of Leave
- Levies & Bonds
- OTES & OPES Trends & Hot Topics
- Tax Incentives
- Prior Written Notice
- Advanced Topics in School Finance
- Student Residency, Custody and Homeless Students
- Student Discipline
- Media and Public Relations

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