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THE Extra Mile

GOING THE EXTRA MILE SO YOU DON'T HAVE TO

EDUCATION EDITION

January 2014

Supreme Court Ruling on Same Sex Marriages Changes Employee Benefit Rules--As you know, on June 26, 2013, the U.S. Supreme Court in the landmark decision of *United States v. Windsor*, ruled unconstitutional the section of the federal *Defense of Marriage Act* defining the term "marriage" as a legal union between one man and one woman as husband and wife and the term "spouse" as referring only to a person of the opposite sex who is a husband or a wife.

On August 29, 2013, the IRS released a ruling (IR-2013-72) specifying that same sex couples who are legally married in jurisdictions that recognize their marriages now will be treated as married for federal tax purposes, including income tax purposes and all federal tax provisions where marriage is a factor.

Pursuant to these IRS rulings, certain employee tax benefits previously available only to an opposite sex spouse will now be available to an employee's same sex spouse. For example, an employer may now provide health insurance to an eligible same sex spouse on a pre-tax basis rather than on an after-tax basis, and a participant employee

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Consumer Price Index

Percent change for the month of **December 2013,** for the urban wage earners & clerical indices as reported by the Bureau of Labor Statistics.

	All Urban (CPI-U)	Workers (CPI-W)
Chicago Mthly	-0.3	-0.2
12 Mth	0.5	0.4
St. Louis, 2nd Half 2013		
6 Mth	0.5	0.3
12 Mth	1.3	1.2
U.S. Mthly	0.0	0.0
12 Mth	1.5	1.5

January CPI figures will be released February 14, 2014. For the most recent CPI, visit our website at: www.hlerk.com.

The Extra Mile is intended solely to provide information to the school community. It is neither legal advice nor a substitute for legal counsel. The Extra Mile is intended as advertising but not as a solicitation of an attorney/client relationship.

Reminders & Notes

- Join **Heather Brickman, Nancy Krent** and **Barb Erickson** at IASPA's Winter Conference at the Hyatt Lisle on January 24th.
- Join **Cindi DeCola** who will present on "Successful Bargaining Strategies" at a conference workshop preceding the annual Ed-Red legislative dinner on January 27th.
- In February join **Jay Kraning** and **Michelle Todd** at IAASE's Winter Conference in Springfield.
- Join **Terry Hodges** at IASB's school board member training on February 8th in Naperville.

New "Dear Colleague" Letter Targets Racial Discrimination in Student Discipline--On January 8, 2014, the Department of Education ("DOE"), Office for Civil Rights ("OCR") and the Department of Justice ("DOJ"), Civil Rights Division jointly issued a "Dear Colleague" letter regarding racial discrimination in student discipline.

The DOJ and OCR ("Departments") are responsible for enforcing Title VI of the Act which prohibits discrimination by recipients of federal financial assistance. The letter notes racial disparities in the administration of school discipline.

For example, African-Americans are approximately 15% of public school students yet they constitute 44% of students suspended more than once and 36% of expelled students. Research indicates that rates of misbehavior do not fully account for these disparities.

Under Titles IV and VI, school districts are liable for the actions of all school employees, officials, and contractors, including contracted security guards or law enforcement personnel. These statutes also protect students through the entire continuum of discipline from students referred to the principal to suspended or expelled students.

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Dear Colleague Cont.

Unlawful racial discrimination may take two forms: 1) different treatment based on race; or 2) a disparate impact, meaning policies that, while neutral in language and application, have a disproportionate and unjustified effect on students of a particular race.

Examples of different treatment include racially based selective policy enforcement, disciplining similarly situated students differently, implementing a facially neutral policy intended to target students of a particular race (e.g., a prohibition on a particular style of clothing), or acts motivated by racial animus (e.g., a staff member uses racial slurs while disciplining a student).

If similarly situated students (students who engaged in similar misconduct and/or have a similar history of infractions) of different races are disciplined differently, the Departments will ask the school district if it has a legitimate, nondiscriminatory reason for the different treatment. Assuming the district produces such a reason (e.g., different impact on the learning environment, prior warnings, etc.) then the Departments will investigate whether the articulated reason is a mere pretext for discrimination.

The Departments will investigate and analyze disparate impact discrimination claims in a similar three-part inquiry: 1) Has a discipline policy resulted in an adverse impact on students of a particular race? 2***)*** If so, is the discipline policy *necessary* to meet an important educational goal? 3) If so, are there alternative practices that would meet the educational goal with a lower impact on the disproportionately affected racial group? If such alternatives exist, the Departments will find discrimination.

If the Departments make a discrimination finding, they may order remedies such as removing the discipline from the student's records, compensatory educational services, policy changes and staff trainings on classroom management, behavioral interventions, discipline, and racial sensitivity. The letter also stresses the importance of accurate record-keeping by the schools. A failure to do so will raise concerns for the Departments.

An appendix to the letter has a long list of proactive recommendations divided into the following broad concepts: safe, inclusive, and positive school climate; training and professional development for all personnel; appropriate use of law enforcement; nondiscriminatory, fair, age-appropriate discipline policies; communicating with and engaging school communities; emphasizing positive interventions over student removal; monitoring and self-evaluation; and data collection and responsive action. *Guiding Principles: A Resource Guide for Improving School Climate and Discipline* issued by OCR also accompanies the "Dear Colleague" letter.

The resource guide is a narrative approach to the recommendations. To read the letter and the recommendations**,** visit http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.pdf.

Contact Bennett Rodick or Pam Swanson with student discipline inquiries, or inquiries regarding the DOE Guidance and its impact on your district.

Same Sex Marriages Cont.

in a Section 125 cafeteria plan may now pre-tax the premiums for coverage of a same sex spouse and utilize health flexible spending account dollars for reimbursement of eligible expenses of his/her same sex spouse.

To this end, on December 16, 2013, the IRS issued Notice 2014-1, providing transition relief for implementing the same sex spouse standard in Section 125 cafeteria plans. In part, Notice 2014-1 allows employees for a limited time to utilize a cafeteria plan's legal marital status change exception to make a mid-year cafeteria plan election for prospective pre-tax treatment of premiums for same sex spouse coverage.

The Notice further allows employers to amend existing 125 plans (retroactively, for a limited time) to add a legal marital status change exception if it is not currently provided.

The Notice goes on to require employers to implement such pre-tax treatment for spousal premiums when they receive notice that a cafeteria plan participant is married to a same sex individual already receiving health coverage through the employer on an after-tax basis (whether such notice is by change in election or change in W-4).

Although an employer's pre-tax treatment of premiums after such notice or election is prospective, the employee and spouse may obtain retroactive tax relief when they file their future tax returns or amendments.

Notice 2014-1 also acknowledges that FSA reimbursement of qualified medical expenses of same sex spouses may be made with proper documentation. Lastly, the Notice explains how the combined contribution limits for married couples under dependent care FSAs and HSAs (and resulting taxation of excess contributions) will apply immediately as of the 2013 tax year for same sex married couples.

There is an added twist to this issue in Illinois due to the recent statutory changes related to same sex unions.

Under the IRS rulings, any same-sex marriage legally entered into in one of the 50 states, the District of Columbia, a U.S. territory or a foreign country will be treated as being married for tax purposes. However, it is important to note that the rulings do not apply to registered domestic partnerships, civil unions or similar formal relationships recognized under state law.

Thus, civil unions entered into in Illinois where the same sex couple is not also legally married in Illinois or another jurisdiction are not covered by these rulings and the related tax benefits.

However, pursuant to P.A. 98-597, effective June 1, 2014, Illinois will now recognize same sex marriages, and existing civil unions may be converted to marriages under the *Illinois Marriage Act* with proper solemnization.

Further, for a transitional period of one year after the effective date of P.A. 98-597, parties to a civil union in Illinois may have their civil union legally designated and recorded as a marriage retroactive to the date of solemnization of the civil union.

Thus, under Illinois law, some individuals who have not been eligible for tax benefits under the above IRS rulings as parties to a civil union may have access to such benefits pursuant to prospective or even retroactive legal status as married persons on or after June 1, 2014.

Please contact Heather Brickman or Barbara Erickson with any questions regarding same sex marriage benefits .

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Illinois Appellate Court Dismisses Taxpayers' Lawsuit Alleging Improper Diversion of Working Cash Funds--The Appellate Court of Illinois (First District) recently upheld the dismissal of an action filed by five taxpayers on behalf of the Lemont-Bromberek Combined School District 113A.

In *Lutkauskas v. Ricker*, 2013 IL App. (1st) 121112, the taxpayers brought suit against two district employees, seven school board members, the district's accounting firm, and the district's surety, claiming that the district employees and board members violated Section 20-5 of the *School Code* (105 ILCS 5/20-5) when they spent money from the district's working cash fund without a school board resolution approving the transfer of funds from the working cash fund.

Under Section 20-5 of the *School Code*, a school board must pass a resolution directing each temporary transfer (loan) from the working cash fund. The *School Code* also permits a school board to adopt a resolution at any time abolishing the working cash fund and transferring any balance to the educational fund at the end of the school year (105 ILCS 5/20-8). Section 20-10 provides further authority to abate the working cash fund to the fund most in need by adoption of a resolution by the school board.

Plaintiffs alleged that between 2007 and 2010, the district drew money from the working cash fund to cover for the overspending of individual funds. Additionally, the plaintiffs alleged that the district defendants never reimbursed the working cash fund, but rather passed resolutions to abate and abolish it. Plaintiffs sought criminal remedies provided for in Section 20-6 of the *School Code* (105 ILCS 5/20-6), including forfeiture of office and payment of a fine.

The appellate court first addressed plaintiffs' request that the court fine each defendant and order their removal from office under the first sentence of Section 20-6. The appellate court found that this provision sets forth criminal penalties, and therefore, only the State of Illinois, and not a taxpayer, would have standing to pursue these remedies. Thus, the appellate court held that plaintiffs did not have standing to seek forfeiture of office or the imposition of fines.

Section 20-6 also permits taxpayers to bring an appropriate civil action for the benefit of the school district. Under this provision, the plaintiffs sought to recover an amount sufficient to make District 113A whole, and replace the public funds that were unlawfully diverted from the working cash fund. The appellate court determined that an "unlawful diversion" of funds requires the funds to be used for a purpose not permitted by statute.

The district used the money from the working cash fund for school purposes, and so the court concluded that plaintiffs could not recover a monetary award from defendants when they did not allege that the money transferred from the working cash fund was put towards an improper purpose forbidden by statute.

Plaintiffs did not allege that defendants violated the *School Code* by spending the money on something other than legitimate school expenses, but rather only alleged that the board did not pass a resolution permitting the transfer of funds. Therefore, plaintiffs were unable to show any loss to the district. Similarly, the court also dismissed plaintiffs' claim for breach of fiduciary duty because the taxpayers did not allege any loss to the district as a result of the failure to obtain board approval.

Although the outcome in this case was favorable for school districts, the case serves as a reminder that each working cash fund transfer, including loans, must be properly authorized by school board resolution.

In an era of close inspection and inquiry of school financial practices, close coordination with district's legal counsel is vital. For questions concerning your school finance issues, contact Heather Brickman or Steve Richart.

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