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**LEGAL ISSUES IN EMPLOYMENT,
PAYROLL & PERSONNEL**

Alabama Association of School Business Officials

**The University of Alabama
Bryant Conference Center**

By Mark S. Boardman
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I. THE STUDENTS FIRST ACT, TITLE 16, CHAPTER 24C, OF THE ALABAMA CODE.

The AASB's Guidelines for Implementing the Students First Act is available on the internet at the AASB website and is the premier source for information on SFA. The AASB's chart is the best summary I have seen of any Alabama tenure law. Hence, it is the last 3 pages of this handout. Why improve on perfection?

Who is not covered?

- Contract principals, superintendent, CSFO's
- Substitute or temporary personnel or part-time employees (less than 20 hours per week), but not bus drivers)
- Seasonal, supplemental, irregular, or people in positions that are experimental, pilot, temporary, or other special programs, projects, or purposes, the funding and duration of which are finite, such as that covered by a grant.
- People on emergency certificates do not earn tenure while on emergency certificates.

II. THE JOB POSTING STATUTE VS. THE STUDENTS FIRST ACT. *Alabama Code Section 16-22-15* requires for notification of personnel vacancies, seven days when schools are in session and 14 days for newly created positions and supervisory positions. That Act was passed in 1998.

In 2011, the Legislature passed the Students First Act, found in Title 26, Chapter 24C. That Act allows for transfers and reassignments by the Superintendent and Board, with or without the consent of the employee involved.

There are two theories about the interaction between the two statutes. One is that a superintendent and board have the ability to transfer and, when they do so, the position where the employee lands is not a vacancy, assuming the prior employee occupied it prior to the transfer. Regardless of the status of the prior employee, the Legislature enacted Students First which allows the employer to transfer the employee and does not mention posting. Posting in this situation would be a useless exercise.

Another theory is that the job should be posted (even if the transferred employee is put in the position temporarily), perhaps even with a notation that the job will be filled internally, potentially including that the board will not accept applications or, at least, discourage any applications.

My suggestion is that the first theory applies, and that Students First controls, since it is the newer legislative enactment. But your Board attorney may disagree.

III. THE FAIR LABOR STANDARDS ACT

- A.** This litigation has not gone away, despite the large wave that proceeded through Alabama beginning two decades ago. Issues we currently see are:
 - Coming in early, staying late, and working through lunch.
 - A two-hour or longer lunch break and/or waiting period.
- B. Protect Your Board under FLSA**
 - Substitute employees who work elsewhere violate the best practice of “one job per person.”
 - Look for “exempt status” in job descriptions.
 - Remember, there is often not an overtime claim if, one day of the week, the employee had either a holiday or was sick on sick leave.
 - Overtime rules probably do not apply to coaches.

IV. EMPLOYMENT LAWSUITS

- A. Title IX of the Education Amendments of 1972**

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.
- B. Title VII of the Civil Rights Act of 1964**

Prohibits discrimination against employees on the basis of race, color, religion, sex or national origin in all work places, including state and local governments, with 15 or more employees.
- C. Americans With Disabilities Act**

Prohibits discrimination on the basis of disability.

D. The Age Discrimination in Employment Act

Prohibits discrimination against people who are age 40 or older in the workplace.

PROTECTED CLASSES, SUBJECT TO DISCRIMINATION:

1. Race or color
2. Gender, sex, gender identity, or sexual orientation
3. Country of origin or ethnicity
4. Religion
5. Age
6. Disability
7. Pregnancy or marital and family status
8. Genetic information

UNITED STATES CONSTITUTION AMENDMENT XIV

“All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce laws which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

SECTION 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State or Territory of the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, sued in equity, or other proper proceeding for redress.

ASSOCIATION CLAIMS

Anyone associated with a protected class can also sue for discrimination linked to that protected class.

RETALIATION FOR EXERCISING LEGAL RIGHTS

1. The employee engaged in a statutorily protected activity.
 - Statutorily protected activity could include filing an EEOC claim, or
 - Engaging in non-employment related free speech.
 - Complaining about the supervisor.
2. The employee suffered an adverse employment action.
3. A causal link exists between the protected activity and the adverse employment.

Should you have any questions about any of the above, you can reach me at (205) 678-8000, or via email at mboardman@boardmancarr.com.

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