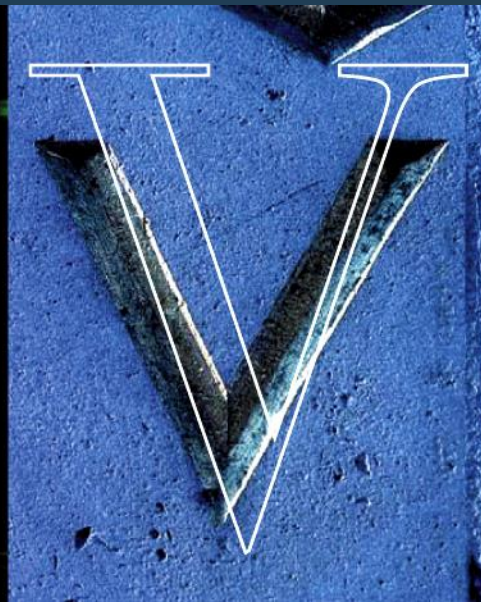
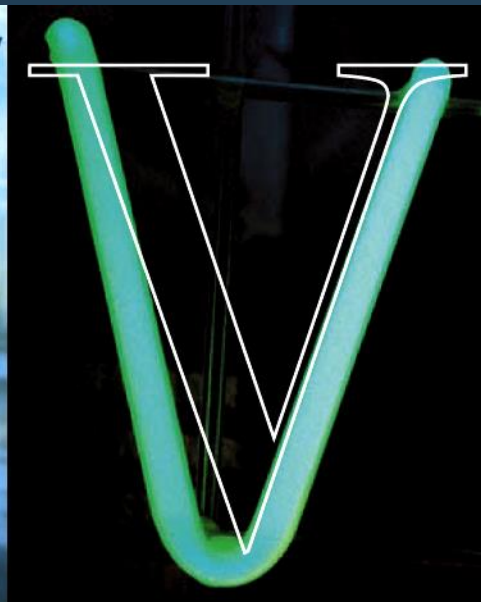
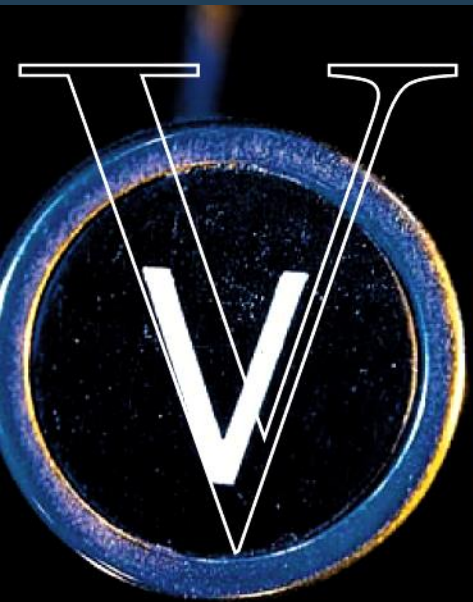


# VENABLE<sup>®</sup><sub>LLP</sub>

## A School-Year Case-Study: Perspectives on Employment Law Issues

Presented by Caryn Pass  
NWAIS Business Managers Conference  
April 2014



## august

A teacher executed an employment contract for the 2014-2015 school year that runs from July 1 through June 30. Teachers report to school on August 15<sup>th</sup> for orientation. The teacher notifies school on August 14<sup>th</sup> she won't be returning since she accepted a job at another independent school. She has received three paychecks on the 2014-2015 school year and insurance coverage for the month and 1/2.

➤ ***Breach of Contract:***

- *Can she break the contract or is she required to return for the 2014-2015 school year?*
- *Can we include a penalty for breaking the employment contract?*

➤ ***Wage and Hour:***

- *Can we recover the salary we paid on the 2014-2015 employment contract?*
- *Contract timing issues?*

➤ ***COBRA:***

- *Do we recover our share of premiums? Place her on COBRA?*



## october

A second year teacher has had a rocky start. The first week of school she left two students on the playground after lunch, sent three kindergarteners to the office for giggling in class and cried in front of the parents at back to school night. The second week she missed one day of school, was late two days, and was unable to attend the faculty meeting after school. The Monday of the fourth week she told the division head she is bi-polar and her medication needs to be adjusted. She needs to come in late on occasion and her performance may be erratic till her medication is working again. In her first year of teaching performance issues were noted.

➤ ***American's with Disabilities Act:***

- *Is she covered by the ADA?*
- *Do we accommodate her? What kind of accommodations?*

➤ ***FMLA:***

- *Is she eligible for FMLA?*
- *Can we ask her to go out on FMLA?*

➤ ***Performance & Counseling:***

- *Can we write her up for leaving the kids on the playground? Crying in front of the parents?*



## december

An associate in institutional advancement fell on the ice as she was leaving school and hurt her back. She has been out of work for eight weeks. During her absence there are countless issues that have come up. Fifteen checks from donors were found in her desk, the data base hasn't been updated in over a year, calls with complaints of mistakes come in daily & her office is filled with plates from the dining hall. The director wants to terminate her employment (yesterday). There is nothing in her file and till this point her performance has been acceptable but not great.

- **Workers Compensation?**
  - *Is she covered by Workers Comp?*
- **American's with Disabilities Act?**
  - *Is she covered by the ADA?*
- **FMLA:**
  - *Is she eligible for FMLA?*
- **Performance & Counseling:**
  - *Can we write her up for what we discovered?*
- **Employment Action:**
  - *Can we terminate her?*



## february

A popular 8<sup>th</sup> grade girl's basketball coach/teacher tells her team that practice is ending early since she needs to get to her other job. Curious as to the nature of the coach's other work, the girls head to the locker room and google her name. Turns out the coach has a lucrative business teaching lap dancing and pole dancing as well as performing in both of these forms of entertainment. The girls eagerly share the coach's website with their moms who unfortunately were less than entertained. The parents want the coach/teacher fired and the head is in agreement. The teacher feels that she has a right to do what she wants on her own time. The director of institutional advancement wants to sell lessons at the auction.

- **Employment Action:**
  - *Can we terminate her?*
- **Employee handbook:**
  - *Do we need to look at the handbook? What policies?*
- **Employment Contract:**
  - *Does the contract have any impact?*
- **Does the teacher have the right to participate in activities of her choosing without limitation?**



## april

The School provides a stipend to two language teachers so they can work on an app that would assist students practice mandarin vocabulary. The app is extremely successful. Not only do students at the school use it but the app is sold to others. A substantial amount of money is earned. The teachers, believe the profit from the sales belongs to them. The School believes that the profits belong to the school since they paid for the teacher's time. There is no agreement between the parties as to who owns the copyright to the app or the profits earned from the sale.

➤ ***“Work for hire” doctrine:***

- *“Employer” considered the author/creator even if the employee actually created the work.*
- *Work prepared by the employee within the “scope of his employment.”*

➤ ***Employee handbook:***

- *Do we need to look at the handbook? What policies?*

➤ ***Employment Contract:***

- *Does the contract have any impact?*

➤ ***Agreement with employees establishing ownership***



## june

The head of 32 years recently retired. His long time assistant is having a difficult time acclimating to the new head. The new head answers his own phone, responds to emails on his own, maintains his calendar on the computer, and wants greater access to the public than his predecessor. The head begins to counsel the assistant. She eventually quits and brings a claim against the head alleging discrimination based on her age. (she is 72) The assistant also claims she was wrongly classified as exempt when she was really entitled to overtime compensation. She claims she worked an average of 10 hours of overtime per week for the last 22 years.

- ***Age Discrimination in Employment Act:***
  - *Does the employee have a claim? How does the school respond?*
- ***Constructive Discharge:***
  - *Does the employee have a claim even though she quit?*
- ***Exemption Classification:***
  - *Is the employee exempt or non-exempt? Eligible for OT?*



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