

FRANCZEKRADELET

ATTORNEYS & COUNSELORS

How Can We? Handling School Employment Matters

Todd Faulkner
jtf@franczek.com
312.786.6123

Shelli Anderson
sla@franczek.com
312.786.6119

Dana Fattore Crumley
dfc@franczek.com
312.786.6583

Bill Pokorny
wrp@franczek.com
312.786.6141

Mike Hernandez
mjh@franczek.com
312.786.6124

Patrick DePoy
pmd@franczek.com
312.786.6547



A Custodian's Injury...

- [EMBED VIDEO]
- A long-time custodian was injured when he fell down a flight of stairs on the job. He said he was going to need about a week off to recover from what he called “a bad sprained ankle.” After missing 8 work days, he returned limping badly. He says he is fine and ready to return...

Handling the Injury Aftermath

- Act Fast
- Require Employee to Report Immediately
- Document Everything
Details Matter



Is the Injury FMLA-Eligible?



- Is the injury FMLA eligible?
 - Running sick and FMLA leave concurrently?
 - More than a few days? Request Certification

Handling the Return

- **Require** a Fitness-For-Duty Evaluation
- Job Functions on Job Description Must Align with **Actual** Job Functions
- Independent Medical Exam (IME): **School pays**



New Twist, Two Weeks Later...

- [New Video Embed]:

After a few weeks, returns with a doctor's note from his physician containing new work restrictions. Can only stand for 4 hours per 8 hours shift, and cannot walk up or down stairs... But this conflicts with the "Full Release" IME we received 10 days before this note...

Who Must You Believe?

- Use a critical eye to evaluate the situation
- Identify what further information is needed
- **Ask** follow up questions
- Demand details about an employee's condition

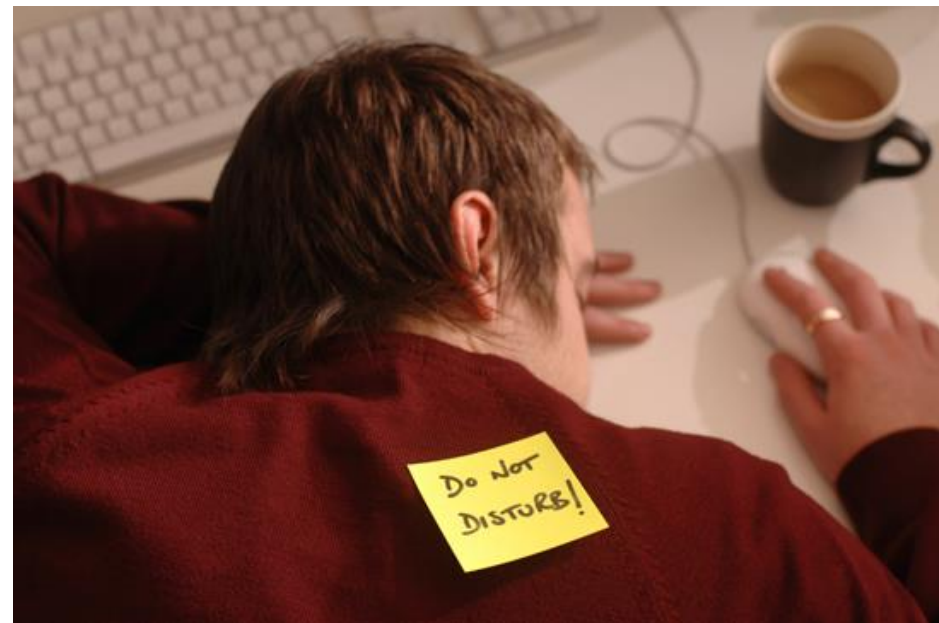


Be Prepared for ADA Complications

- **Play It Safe**: *Assume* this is a request for an accommodation under the ADA
- Start the interactive process
 - Can we make this work?
 - What do you need?
- We can never terminate, right? **Wrong**

Undue Hardships

- Employer does not need to provide an accommodation that is an undue hardship
- Employee is entitled to a reasonable accommodation, **not** the accommodation he wants...
- Leave as a Reasonable Accommodation? Maybe...



Social Media & PR Nightmare

- [EMBED VIDEO] A parent called the principal of a school very angry. Her child had discovered a social media post from a teacher describing her students as “brats” and stating the District needed to give teachers more resources to “bring these mental cases under control.” The post has gone viral, and a local news team has called the Superintendent...

**Bill Jones**

Another day of babysitting brats that I'm supposed to be trying to educate and mold into "the next generation..." God help us! We need more resources in the classroom and more support from administrators to bring these jackals under control!!!

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4 people like this.



Social Media Use By Employees

- As public employees, teachers have free speech rights under the First Amendment
- What categories of speech are **not** protected?
 - Fighting words
 - Threats
 - Defamatory Speech*



Employee or Private Citizen?

- First Question: Is the individual speaking as an employee, or as a “private citizen?”
- An employee does not “speak as a citizen” when he makes a statement related to his “official duties.”



Chris Kjobech /1965

Public Concern?



- Was the matter one of “public concern?”
- Public Concern: Speech relating to any matter of political, social or other concern to the community
- Private Concern: Personal gripes about the employment context or info about employee’s private life

Final Balancing Test

- The “*Pickering* Balancing Test”
- When “close working relationships” are essential to job, employer’s judgment gets wide deference



Is Coach Jones Being Paid Right?

- Tammy Jones works in the business office at Smallville High School, which is part of Smallville School District 123. She regularly works 35 hours per week, though sometimes she works a few extra hours during busy times of the year such as registration. Tammy's job mainly involves data entry and clerical work. She also covers the reception desk. She is paid a flat salary of \$700 per week. In addition to her regular job, Tammy is the head coach of the girls' soccer team. The season runs about 16 weeks, and Tammy puts in additional time outside of the regular season. She receives a flat stipend of \$2000 for the soccer season. Tammy doesn't track how many hours she works, but guesses she puts in 10-15 hours in a typical week during the season, sometimes more during tournaments. During the football and basketball season, Tammy also takes tickets at some of the home games. When she does so, she receives a flat per-game stipend of \$20. This year, Tammy also signed on to coach an intramural soccer club at the Junior High, which is also part of the district. She is paid a stipend of \$500 for this work. All of these extra jobs are completely voluntary, and unrelated to Tammy's regular work in the business office?

Is Coach Jones Exempt?

- Look to the regular duties of her job
- Primarily Clerical?
- **Not** FLSA Exempt



Can We Pay Coach Jones a Flat Salary?

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- Yes, but...
- Make sure Coach Jones expressly agrees to salary pay in writing.
- Make sure agreement specifies how many hours the salary covers – fixed number OR all hours worked during the week



Extra Pay for Coaching Soccer?



- Yes
- Regular Rate =
Total (non-OT)
comp for the week/
Total hours.
- OT Pay = $\frac{1}{2}$
Regular Rate for
each hour over 40

Extra Pay for Taking Tickets?

- Maybe...
- “Occasional or sporadic”
- No bright line. Fact specific question...



Working at Junior High?

- Working at Junior High? Yes
- Probably not “occasional”



A large, stylized clock face is visible in the background. The clock has a white face with black numbers and hands. The numbers 0, 8, 11, and 12 are visible on the left side, while 1, 2, 5, 6, and 7 are visible on the right side. The clock hands are black, and there is a red hand pointing towards the 6. A blue rectangular box with rounded corners and a white border is overlaid on the clock face, containing the word "Questions?" in white text.

Questions?