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News For School Clients

When an Employee Falsifies Records

This year, the WEAC Convention (Convention) is taking place in Milwaukee from October 25-26, 2007. Some collective bargaining agreements provide compensation to teachers and/or support staff for attendance at the Convention. While most school district employees are honest and trustworthy, in the past, a handful of school district employees have attempted to secure compensation for attendance at the Convention without actually attending the Convention. For example, an employee who takes a personal vacation for the two days of the Convention or simply spends the two days at home may also submit documentation to the school district designed to confirm his or her attendance at the Convention. This situation is no different than any school district that must deal with an employee who falsifies employment records. In both situations, the school district must decide whether to impose disciplinary action.

When an employee intentionally falsifies employment records, trust between the employer and the employee is impaired. Employees may falsify records in a variety of situations. For example, an employee may provide inaccurate information on a time card or false information to justify a sick leave request. An employee may also attempt to secure compensation for attendance at a convention or conference without actually attending the event. When an employee

engages in such an act, the employee has gained an economic or personal benefit based on a falsehood. Thus, such an act is considered a serious offense akin to theft, such that disciplinary action, up to and including discharge, may be warranted.

In 1997, in a case involving the Muskego-Norway School District, Arbitrator Coleen Burns upheld the discharge of an employee who had falsified a doctor's note in order to extend the length of time of his work restrictions. According to Arbitrator Burns, any time an employee makes a "fraudulent claim for a contractual benefit," it is harmful to the District and constitutes serious misconduct. In fact, Arbitrator Burns concluded that the misconduct was so serious as to warrant discharge even in the absence of progressive discipline.

Arbitrators generally consider the following factors when evaluating discipline imposed for falsification of employment records:

1. Intent - Arbitrators will uphold stiff penalties, including discharge, where the employee's falsification of records is found to have been intentional. Intent may be proven with an employee's admission or inconsistent statements;
2. Motive - A lack of financial or other personal motivation often is a factor considered by arbitrators;

3. Effect of falsification – Some arbitrators consider *de minimis* harm as a mitigating factor; while others reject such an argument because an employee’s honesty, trustworthiness and reliability is at issue, as opposed to the employer’s loss;
4. Clarity and consistency of company policies – Where an employer relies on a policy that prohibits falsification (specific or general), arbitrators generally review the clarity of the policy and the consistency with which it is enforced;
5. Contract language – Where specific contract language is at issue, arbitrators will review the clarity and consistency of the contract language;
6. Employee’s record – As with other types of discipline, a long tenure with the company and an unblemished record may serve as mitigating factors; and
7. Employee’s candor – Where an employee attempts to conceal falsification and/or fails to be forthcoming with the employer once caught, an arbitrator is more likely to uphold a discharge for falsification.

DISCIPLINE AND DISCHARGE IN ARBITRATION
233-237 (Norman Brand, et al. eds., 1998).

In light of the above, if a school district learns that an employee who claimed to have attended the Convention was not truthful about attending the event, it is advisable for the school district to investigate the situation prior to imposing any discipline. In the context of the investigation, the district should review the documentation, if any, provided by

the employee to substantiate the claim, attempt to learn where the employee was if he or she was not at the Convention, and determine any other relevant facts. The district may conduct interviews to confirm that the employee was, in fact, not in attendance at the Convention. Finally, it is imperative that the district review any applicable collective bargaining agreement provisions and policies to determine whether there were any obligations related to the employee’s attendance at the Convention and compensation provided by the district.

In some situations, school district officials might hear, prior to the WEAC Convention, that an employee intends to submit false documents to certify his or her attendance at the Convention. For example, a school district official might overhear an employee boasting about his upcoming vacation after submitting the necessary paperwork related to attendance at the Convention. In such cases, school district officials should confront the employee before the Convention and warn him or her that falsification of an employment record or other deceptive behavior will result in discipline, up to and including discharge.

The WEAC Convention is only one event of which an employee could take advantage in order to receive compensation. Throughout the year, school districts must be conscientious about reviewing the documents submitted by employees to justify leave and compensation. The arbitration decisions are clear; employers need not tolerate deceptive behavior, including the falsification of employment records.

If you have any questions regarding this topic, please call any of the following members of the Lathrop & Clark LLP School, Municipal, Labor and Employment Law Team.

Michael J. Julka (608) 286-7238	Frank C. Sutherland (608) 286-7243	Richard F. Versteegen (608) 286-7233
William L. Fahey (608) 286-7234	Joanne Harmon Curry (608) 286-7248	Carrie M. Benedon (608) 286-7208
David E. Rohrer (608) 286-7249	Shana R. Lewis (608) 286-7202	Todd J. Hepler (608) 286-7160

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