

# BULLET PROOF YOUR CHARTER SCHOOL: 10 COMMON PITFALLS IN MAKING HR DECISIONS

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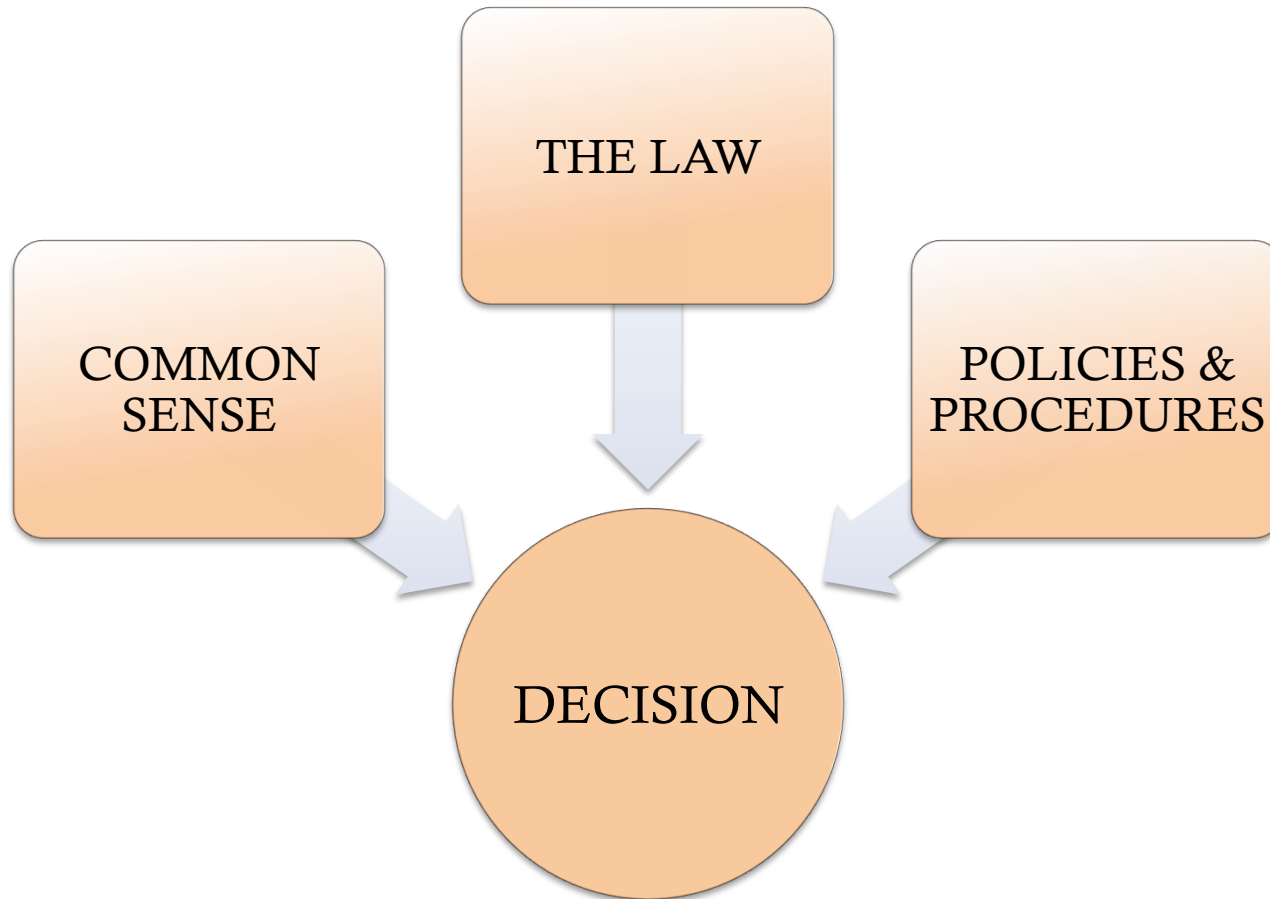
## 10 COMMON PITFALLS

Decisions made during:

1. Selection/Interviewing
2. Hiring
3. Training
4. Documentation
5. Discipline/Counseling
6. Harassment/Discrimination/Retaliation
7. Wage & Hour
8. Leave Issues
9. Termination
10. Post-Termination



## (GOOD) DECISION MAKING



## SOME APPROACHES TO CONSIDER

- It takes time ... take the time necessary to make a good decision
- Use a rational and logical approach
- Keep your emotions out of the process
- Consult with advisors / experts / counselors
- Consider the consequences of your decisions:
  - Monetary vs. Non-Monetary
  - Short Term vs. Long Term
  - Business vs. Legal
  - Human and Emotional Component

## CONSEQUENCES OF BAD EMPLOYMENT DECISIONS

A bad employment decision can affect:

- Employee and organizational morale and loyalty
- Employee's perception of trust and fairness

It can *ALSO* be a potential lawsuit. Being involved in litigation means:

- Responding to EEOC/DFEH complaints and investigations
- Responding to discovery requests, depositions and mediations
- Gathering documents and email
- Negative media exposure
- Monetary exposure at trial – unpredictable juries and punitive damages
- Payment of deductibles, potential increases of insurance rates

## WHEN BAD THINGS HAPPEN TO GOOD SCHOOLS

Every stage of the employment relationship can give rise to risk.

- Five Stages:
  - Pre-hiring
  - Hiring
  - During the course of employment
  - Termination
  - Post termination



## STAGE 1: PRE-HIRING

- Recruiting Process
  - Making sure you're casting a wide net
  - EEO considerations
- Screening Process
  - Make sure your job application is legally compliant
  - Have clearly defined job descriptions that include the physical job requirements
  - Document all activity and preserve the records
  - Use a standard criteria based on the job description for screening all applications



## STAGE 2: INTERVIEWING/HIRING

- Interviewing Process:
  - Identify appropriate criteria for selection of applicants for interviewing
    - Be consistent and use the same criteria for everyone
    - Do not rely on “gut feeling” or your “intuition”
  - Identify appropriate person (or panel) to interview
    - Make sure they are trained to conduct a proper interview
    - Ask all the candidates the same set of questions
    - Use a pre-determined criteria for grading and assessing candidates
  - Keep all applicant information
    - Keep all applications, all interview notes / criteria and assessments
    - Be able to document why you hired this candidate

**Be able to answer the questions:**

**“Why did you hire this person?” and “Why didn’t you hire this person?”**



## STAGE 2: INTERVIEWING/HIRING

- Hiring Process:
  - Have an up-to-date hiring packet that contains all mandatory documents as well as internal documents (State notices, workers' comp notices, handbook, payroll forms)
  - Ensure all documents are completed and returned to HR
  - Offer Letters / At-Will Employment Agreements
    - Make sure they are accurate, up-to-date and vetted by your legal counsel
    - Use separate agreements for classified vs. certificated
  - Understand the concept of “At-Will” employment
    - Termination of employment by either party for any or no reason, with or without notice or cause (but not for an illegal reason)

## STAGE 3: DURING EMPLOYMENT

The majority of exposures arise during the course of employment as a result of:

- Inadequate training or no training
- No performance evaluations or poor performance evaluations
- Inappropriate disciplinary practices
- Harassment, discrimination and retaliation accusations
- Violations of wage and hour laws
- Poor internal governance
- Violation of leave laws
- Poor documentation of all the above

## TRAINING

- **Mandatory Training**
  - California Sexual Harassment Prevention (AB1825)
    - All supervisors (anyone who directs the work of another person)
    - Two-Hour mandatory training every other year
    - Enforcement mechanism for non-completion of training
    - Track and keep training records
  - Child Abuse Mandated Reporter Training
    - Should be done for all employees who are MRs every year
    - Can be done online
  - Bloodborne Pathogens
- **Best Practices Trainings**
  - Sexual Harassment Prevention/EEO training for all staff
  - Family Educational Rights and Privacy Act (FERPA)
  - Internal complaint and dispute resolution protocols

## DOCUMENTATION

- What should you document? Just about everything related to your employees!
  - Common pitfalls:
    - No documentation at all
      - Why? It’s too time-consuming; it’s hard; don’t want to make a record; not trained
    - Sub-par documentation
    - After-the-fact documentation (i.e. “papering the file”)
- Why is it important?
  - Creates an irrefutable record
  - Puts all parties on notice
  - Prevents “he said – she said” situations
  - Assists in completing performance evaluations, goal-setting, lay-off decisions, and termination decisions

## DISCIPLINARY PROCESS

- Reasons why discipline/counseling might be necessary:
  - To encourage good behavior
  - To discourage bad behavior
  - Improve performance
- Types of discipline:
  - Verbal counseling or coaching sessions
  - Written formal discipline
  - Suspension (with or without pay)
  - Demotions
  - Performance Improvement Plan (PIP)
  - Last Chance Agreements
  - Separations (voluntary or involuntary)



## MORE ON DISCIPLINE

- Considerations:
  - Notice to employee with explanation – FRISK method is good
  - Be consistent among employees and with the method (“DITO-DITA” - Do It To One – Do It To All)
  - Consider past practices
  - Follow your policies and what’s in your handbook
  - Consult with the appropriate person(s) (i.e. board, legal counsel)
  - Stand by your decision
  - Make sure your decision is documented
  - Make sure your decision is explained clearly to the employee(s)
  - Ask yourself – “Will this come as a surprise to the employee?”

**“LIONS & TIGERS & BEARS ... OH MY!”**

**BUT ....**

**IN THE EMPLOYMENT WORLD, IT’S  
“HARASSMENT, DISCRIMINATION,  
RETALIATION ... OH MY!”**

## HARASSMENT

- Sexual Harassment
- Hostile Work Environment

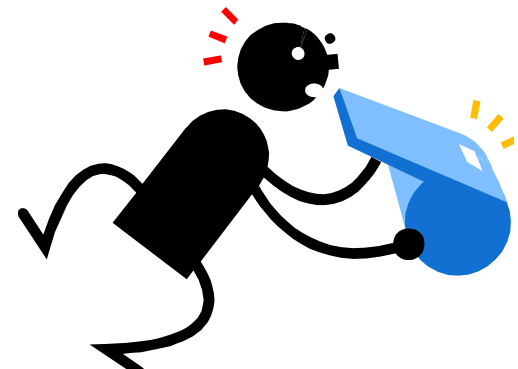
## DISCRIMINATION

- Sex
- Age
- Race/National Origin/Ethnicity
- Religion
- Medical Condition/Pregnancy/Child Birth
- Disability
- Marital Status
- Sexual Orientation / Gender Identity / Gender Expression



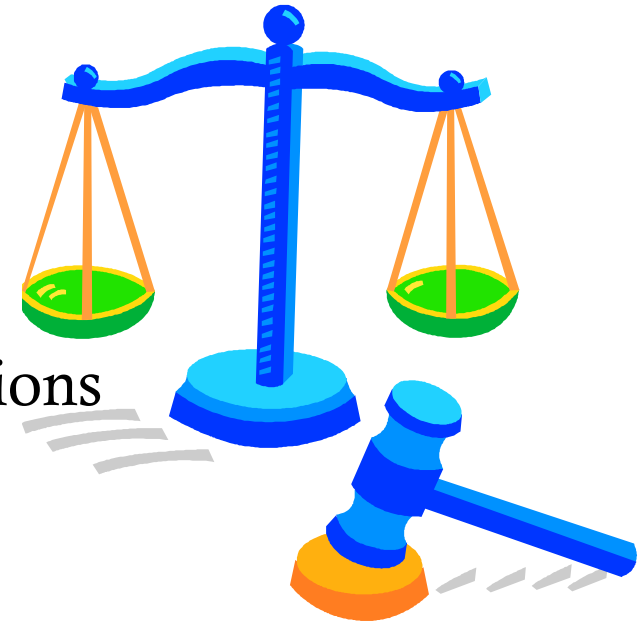
## RETALIATION & WHISTLEBLOWER CLAIMS

- Retaliation
  - What does it look like?
    - “I complained and they .... (fill in the blank).”
- Whistleblower
  - “An employee who reports employer wrongdoing to a governmental or law enforcement agency.”
  - California Labor Code §1102.5 prohibits retaliation against an employee who discloses information.



## WAGE AND HOUR ISSUES

- Minimum Wage Laws
- Meal and Rest Break Periods
- Overtime Pay
- Records of Hours Worked
- Holidays, Vacation, and Sick Pay
- Exempt vs. Non-Exempt Classifications
- Final Pay
- Unpaid Wages



## LEAVE ISSUES

- FMLA/CFRA
  - Must have policy (include in handbook if you have one)
- Pregnancy Disability Leave (PDL)
- Workers' Compensation Leave
- ADA
  - Extended leave can be a reasonable accommodation
  - Interactive Process is mandatory – always!

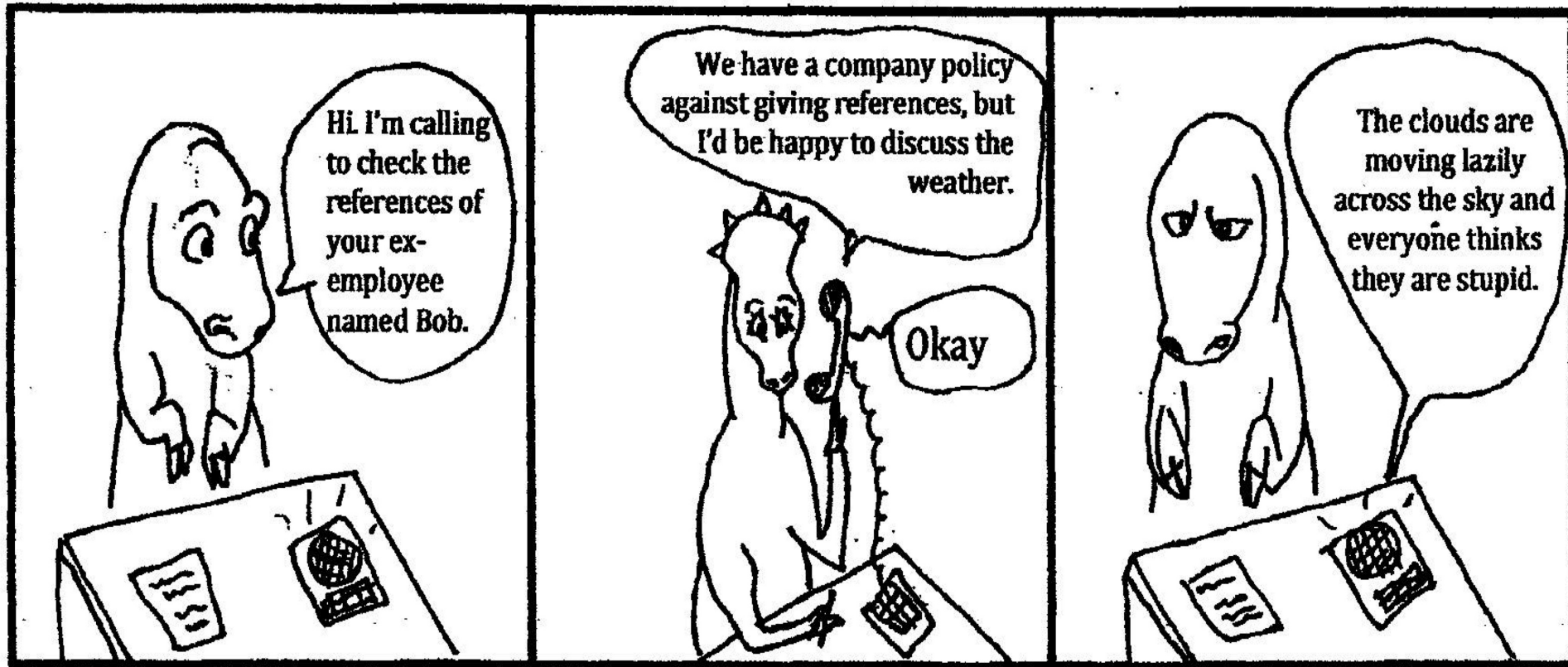


## STAGE 4: TERMINATION

- Best Practices – What to do!
  - Decisions based on “facts”
  - Use a termination decision checklist – identifies red flags
  - Is your decision supported by documentation?
  - Bring in the team (the Board, legal counsel)
  - Final Separation Meeting
    - Always have a 3<sup>rd</sup> party witness present (note taker) but avoid antagonizers
    - Make it short and to the point
  - Be prepared for surprises!
  - Stick to your decision
- Other important considerations
  - Return of school property (keys, passwords, laptops)
  - Terminate access to email/server/physical locations immediately

## STAGE 5: POST TERMINATION

- What to do?
- What not to do?
- Have a policy in place for all verifications of employment
- Hypothetical:
  - An employee has been terminated. Employee is going to be hired by another prospective employer, who calls you to verify employment information and to ask you some questions about your experience and observations about the employee.
  - What do you say?



## REVIEW

- Plan for the best case scenario
  - Communicate / seek advice / no guesswork
  - Have and use comprehensive and legally compliant policies and procedures
  - Practice good documentation
  - Practice good performance management
- Prepare for the worst case scenario
  - Document!
  - Keep your attorney on speed-dial!

## QUESTIONS & ANSWERS

THANK YOU

Come see us in Booth 700

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