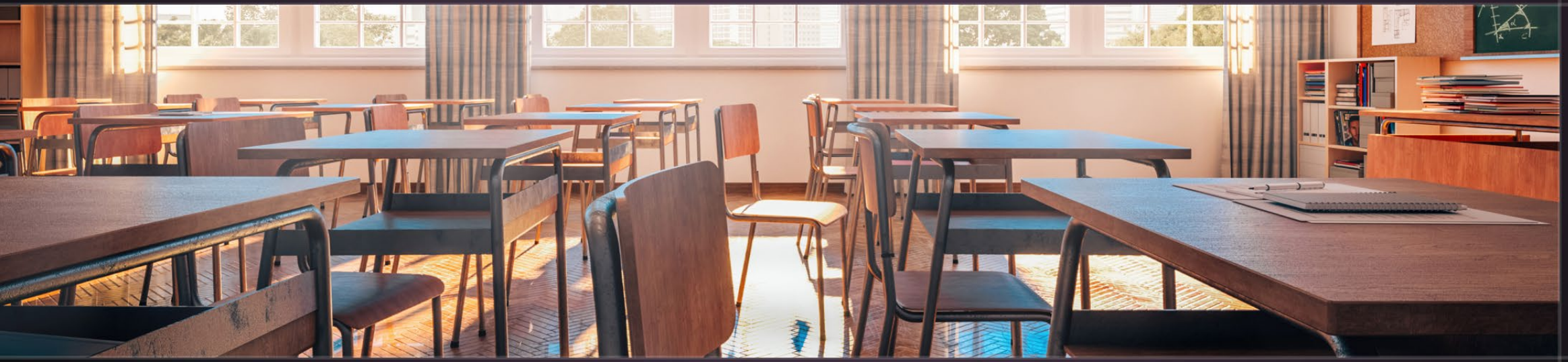
Hodgson Russ

School Client Conference

JANUARY 16, 2026



HODGSONRUSS.COM

Hodgson Russ

Collective Bargaining – Essential Strategies and Trends

Presented by Elizabeth D. McPhail, Esq. and Jeffrey F. Swiatek, Esq.

January 16, 2026

Agenda

- Strategy 1: Understand How to Utilize the Triborough Amendment and the Sunset Doctrine
- Strategy 2: Avoid the Conversion Doctrine by Keeping Non-Mandatory Subjects Non-Mandatory
- Strategy 3: Evaluate if Past Practice Impacts the District's Position in Bargaining
- Strategy 4: Do Not Bargain Over Subjects if the District has Management Rights
- Strategy 5: Bargaining in Good Faith – What does this really mean?
- Strategy 6: Effectively Use Regressive Bargaining and Understand How Regression works in the context of package proposals
- Strategy 7: Integrate the Possibility of Impasse into Your Strategy
- Strategy 8: Effective Approaches to Communications

STRATEGY 1

Understand How to Utilize the Triborough Amendment and the Sunset Doctrine

- **The Triborough Amendment.** (Civ. Serv. L. 209-a(1)(e)). Requires a municipality to continue *most* terms of the collective negotiations agreement until a new agreement is reached.
- **The Sunset Doctrine.** The parties may themselves preclude the application of the Triborough Amendment by using language that causes a contractual term to "sunset" or expire at the conclusion of the agreement or at some other point in time.

EXAMPLE SCENARIOS

STRATEGY 2

Avoid the Conversion Doctrine by Keeping Non-Mandatory Subjects Non-Mandatory

- **Mandatory Subjects** - Matters which if raised must be negotiated. Note: Just because a subject is mandatory does not mean that either side is required to agree.

  Examples: wages, health insurance benefits, paid leave, subcontracting

- **Non-mandatory** - Matters which if raised need not be negotiated but which may be negotiated by mutual agreement. Note: Sometimes referred to as "permissive."

  Examples: class size, minimum staffing, other management prerogatives

- **The Conversion Doctrine.**
  - Under PERB's "conversion theory," if a non-mandatory subject is incorporated into the contract, it can convert to a mandatory subject.
  - Non-mandatory subjects of bargaining that have been incorporated into a collective bargaining agreement become mandatory subjects for purposes of negotiating the next agreement or any time negotiations on a current contract are reopened. *City of Cohoes*, 31 PERB ¶ 3020 (1998); *City of Troy*, 33 PERB ¶ 4589 (2000).

EXAMPLE SCENARIOS

STRATEGY 3

Evaluate if Past Practice Impacts the District's Position in Bargaining

- **Past Practice."** An enforceable past practices is an unequivocal, consistent, long-standing practice for which there is a reasonable expectation that the practice would continue.
- If an employe violates a past practice, that can also be the basis of an improper practice charge at PERB.
- The collective bargaining agreement may have language that codifies that the parties are bound by past practices. If so, an asserted violation of the past practice may be litigated pursuant to the grievance/arbitration clause of the agreement.
- A district can assert that it is not bound by a past practice through evidence that establishes:
  - The school lacked either actual or constructive knowledge of the practice; or
  - when a CBA has specifically language that contradicts that practice – the district can revert to the contractual language

EXAMPLE SCENARIOS

STRATEGY 4

Do Not Bargain Over Subjects if the District has Management Rights

- **Management Rights and Current Contract language.** Be sure to fully assess your current right to implement changes based on current contract language. Be careful not to underestimate or overestimate your authority.
- Review to confirm if the district's contract includes a management rights clause, and if so, how specific the rights are that are bestowed by that language.
- Consider the overlap between whether a right is seeded to the district by the management rights clause versus if it is simply not a mandatory subject of bargaining (and accordingly, the district has the ability to control)

EXAMPLE SCENARIOS

STRATEGY 5

Bargaining in Good Faith – What does this really mean?

The Taylor Law requires that the Public Employer and the Union at all times negotiate in "good faith" (*Civil Service Law, § 204[3]*)

- Meet at reasonable times and places (*e.g*, Employers' silence for two and one-half months, despite two union requests for negotiations, is a violation [*Town of Huntington, 27 PERB ¶ 3039*]; *c.f.*, permissible to delay bargaining on economic items while awaiting information on state aid [*New Rochelle CSD, 4 PERB ¶ 3060]*)
- Confer in good faith on wages, hours, and other mandatory terms and conditions of employment
- No obligation compelling either party to agree to a proposal or to make a concession

Summary of "good faith" bargaining – Evidence a sincere desire to reach agreement:

- Must present comprehensible proposals;
- Must be able to explain the objectives of the proposals; and
- May have to provide information to substantiate the basis for the proposals

Matter of Buffalo City School District, 50 PERB ¶ 4532 (2017).

STRATEGY 5 – Continued…

Bargaining in Good Faith – What does this really mean?

- **"Hard bargaining"** is acceptable and, arguably, encouraged by the Taylor Law. On the other hand, "surface bargaining," *i.e.*, going through the motions without actually intending to reach a final agreement, constitutes an improper practice.
- Remember that good faith bargaining does not mean that a district as to agree to any of the union's proposed terms

EXAMPLE SCENARIOS

STRATEGY 6

Effectively Use Regressive Bargaining and Understand How Regression works in the context of package proposals

- "**Regressive bargaining**" may be permissible if explained by intervening circumstances, *e.g.*, decline of budget and/or economic situation, loss of benefit of health insurance cost reductions, etc. Cannot be used to retaliate, or to "teach a lesson"
- **Package Proposals**
  - Bundling various terms and conditions, including wages and benefits into a single proposal.
  - Reserving the right to revert to the prior proposals if ALL provisions of the package are not agreed upon.

  Example Language – "If the parties are unable to reach agreement on the entire package proposal, the district specifically reserves the right to revert to its last proposal presented during the meeting on [date] with regard to all of the context of he package proposal."

EXAMPLE SCENARIOS

STRATEGY 7

Integrate the Possibility of Impasse into Your Strategy

- **Impasse**: If good faith negotiations with respect to a mandatory subject of negotiations fail to yield an agreement, the Taylor Law sets forth a detailed procedure for impasse resolution. (*Civ. Serv. L., § 209*).
- Normal part of the process – does not that either of the parties have "failed" – but this may require consideration of how the district communicates to the public, to the school community, and to the unit members
- Remember, that districts still have an ongoing obligation to bargain in good faith
- Impasse can be declared jointly or by a single-party declaration
- No matter the twists and turns of the bargaining process, no one can compel you to grant a pay raise or enhance a benefit.

EXAMPLE SCENARIOS

STRATEGY 8

Effective Approaches to Communications

- Prepare for persuasive communications at the table.
- A school district may also communicate directly with union members and/or the general public to explain its bargaining positions and/or to respond to inaccurate statements by the union.
- However, any such communications which are deemed to constitute "direct-dealing" with employees, or which threaten reprisals for protected activity, may be improper under the Taylor Law. e.g., *City of Rochester, 9 PERB ¶ 4542; County of Onondaga*, 14 PERB ¶ 4503.
- Be factual (e.g., permissible to publish a union's proposals in local newspaper together with analysis of impact on tax rate [*Brookhaven CSD, 6 PERB* ¶ 3018]).

EXAMPLE SCENARIOS

Questions?

Disclaimer

This presentation is intended for general informational purposes only and does not constitute legal advice or legal opinion on any specific facts or circumstances. Information contained in this presentation may not be appropriate to your particular facts or situation. You should not act upon the information in this presentation without consulting Hodgson Russ LLP or other professional advisors about your particular situation.

No attorney-client relationship with Hodgson Russ LLP is established by viewing this presentation. Hodgson Russ LLP makes no representations as to the accuracy or completeness of any information in this presentation, and the opinions expressed in this presentation are the opinions of the individual authors and may not reflect the opinions of the firm or any individual attorney.

Contact for More

Jeffrey F. Swiatek, Esq.
Partner

716-848-1449

jswiatek@hodgsonruss.com

Elizabeth D. McPhail, Esq.
Partner

716-848-1530

emcphail@hodgsonruss.com

Hodgson Russ

Grievances and Arbitration – Effectively Handling Contractual Disputes

Elizabeth D. McPhail, Esq.

Andrew D. Drilling, Esq.

Disclaimer

This presentation is intended for general informational purposes only and does not constitute legal advice or legal opinion on any specific facts or circumstances. Information contained in this presentation may not be appropriate to your particular facts or situation. You should not act upon the information in this presentation without consulting Hodgson Russ LLP or other professional advisors about your particular situation.

No attorney-client relationship with Hodgson Russ LLP is established by viewing this presentation. Hodgson Russ LLP makes no representations as to the accuracy or completeness of any information in this presentation, and the opinions expressed in this presentation are the opinions of the individual authors and may not reflect the opinions of the firm or any individual attorney.

Agenda

- Processing Grievances
- Procedural Defenses
- Selecting an Arbitrator
- Disclosure of Evidence Before Hearing
- What to Expect at an Arbitration Hearing
- Preparing Witnesses
- Preparing Evidence
- Overlap with Section 75 of the Civil Service Law
- Assessing the Likelihood of Success:
  - Management Rights
  - Past Practice
  - Employee Handbook and Other Policies
  - “Just Cause”

Processing Grievances

- Carefully review and follow grievance steps outlined in CBA.
- During grievance meetings LISTEN – first opportunity to evaluate merits of grievance.

Procedural Defenses

- Did the Union timely file the grievance?
- Did the Union timely advance the grievance?
- Consequences.
- Preserve defense during grievance process and in written answer.

Procedural Defenses - Consequences

- CBA with no definitive time limitations.
- CBA with time limitations and no consequences.
- CBA with time limitations and consequences.

Ex.: "If the grievance has not been appealed in writing or the Union has not requested an extension within three working days, it shall be settled on the basis of the District's response."

"Any grievance not processed in the manner prescribed by this article and within the designed time limits shall be considered dropped."

"The time limits set forth in the grievance procedure are essential thereto . . . A grievance is barred if it is not submitted within the specified time limit at the lowest step at which this Agreement permits the grievance to be submitted. If a grievance is not answered within the specified time limit, it may be appealed to the next higher step as though it had been answered on the last allowable day. If a grievance is not appealed within the specified time limit, it shall be deemed to have been satisfied by the last answer given."

Procedural Defenses – Consequences (con't)

- "An arbitrator is the only delegated the authority to interpret the terms of this agreement and shall have no power or authority to render an award which is contrary to any express terms of this agreement. With this limitation, the decision of the arbitrator is binding on both parties to the dispute, and his/her decision shall be final. Nothing in this provision is meant to limit or waive either parties' rights pursuant to New York's Civil Practice Law and Rules to appeal the arbitrator's decision."
- "Arbitrators shall have no power or authority to render an award which requires the commission of an act prohibited by law or which is contrary to, inconsistent with or which adds to, detracts from or modifies any term of this Agreement. The award of the arbitrator shall be final and binding on . . . all parties in interest."
- "By submitting a grievance to arbitration, a grievant union member waives on his own behalf, and a grievant which is in the Association waives on his own behalf and on behalf of all unit members affected by the grievance, every right, if any, which the grievant has or may have to pursue any other remedy before any hearing officer, tribunal, administrative agency or court with respect to the subject matter of the grievance."

Selecting an Arbitrator

- Considerations in a Contract Interpretation Case.
- Considerations in a Discipline/Discharge Case.
- Methodology for selection of arbitrator.

Employer's Disclosure of Evidence Before Hearing

- Under the Taylor Law, a union has a general right to request and thereafter receive documents and information that are reasonably relevant and necessary for representational activities, such as:
  - Collective negotiations;
  - The resolution of negotiation impasse; and
  - The administration of negotiated agreements including for use in investigating a potential grievance and/or the processing of a pending grievance and/or arbitration.

Employer’s Disclosure of Evidence Before Hearing (con’t)

- The union's right is subject to 3 primary limitations:
  - Reasonableness, which includes the burden on the responding party;
  - Relevancy; and
  - Necessity.
- The district may also refuse to comply with any such requests if the production of the documents and information is prohibited by law.
- But in such an instance employers must still make a good faith effort at accommodating the need for information.

Employer's Disclosure of Evidence Before Hearing (con't)

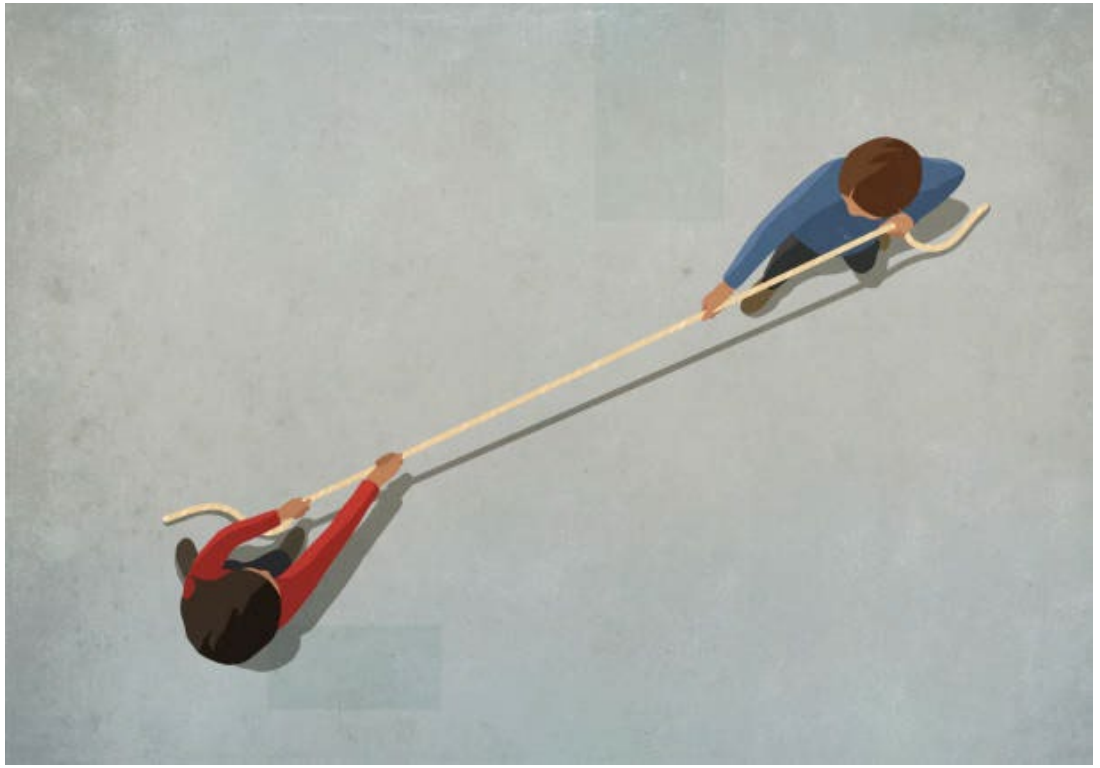
- Post-Janus Amendment to the Taylor Law requires public employers to provide certain information to unions upon demand.
  - Including name, home address, job title, employing agency or department or other operating unit and work location of all employees of a bargaining unit.
- A union has additional methods to obtain information:
  - A Freedom of Information Law request;
  - An arbitration subpoena under CPLR Article 75;
    - Article 75 reflects strong public policy favoring arbitration as a dispute resolution mechanism through robust judicial enforcement of private agreements to arbitrate and any resulting arbitral award.
    - In any proceeding brought under Article 75, the arbitrator and attorneys of record can issue an enforceable subpoena.
  - A subpoena or discovery demand in a legal action or proceeding.

Union's Obligation to Disclose Evidence to Employer

- In the majority of cases, the employer has access to the relevant information so a Union's obligation to disclose evidence to the employer is less well-settled.
- Unions have a limited duty to disclose necessary and relevant information that is not available to an employer and related to collective negotiations, contract administration or grievance processing.
  - Consider whether to request documentation related to negotiation history, such as bargaining notes and proposals, if relevant.

What to Expect at a Hearing

- More casual format than in a court proceeding – conference room table versus a witness stand and judge.
- Be prepared with adequate space – you will need a hearing room and break out sessions for the district and the union.
- At the district, union hall, or other location?
- Court report or no court reporter?
- Virtual versus in-person? What challenges does this pose?
- Sequestration of witnesses.
- Closing arguments versus post-arbitration briefs?



Preparing Witnesses

- Be sure of witness availability.
- Who are your witnesses?
  - Staff – are those staff members also in a union or the same union as the grievant?
  - Administrators
  - Students
  - Expert witness(es)
- Address logistical challenges related to witnesses.

Preparing Witnesses (con't)

- Review testimony with witnesses, including review of witness outline.
- Prepare witnesses for what to expect at hearing when they provide testimony:
  - Sequestration
  - Sworn Testimony
  - How to answer questions on direct
  - How to answer questions on cross examination
  - What to do if there is an objection

Preparing Evidence

- Opening Statement
- Witness Outlines
- Outline of Exhibits
- Copy and Organize Exhibits – including copies
- If the hearing is virtual, prepare and plan for how documents will be shared with district witnesses, union witnesses, and the arbitrator.
- Be prepared with someone “on call” to assist with retrieval of other possible documents that could be relevant during the hearing.

Section 75 of Civil Service Law

- Civil Service Law § 75(2) states in relevant part:
  - An employee who at the time of questioning appears to be a potential subject of disciplinary action shall have a ***right to representation*** by his or her certified or recognized employee organization . . . and shall be notified in advance, in writing, of such right . . . If representation is requested a ***reasonable period of time*** shall be afforded to obtain such representation. If the employee is unable to obtain representation within a reasonable period of time the employer has the right to then question the employee. A hearing officer under this section shall have the power to find that a reasonable period of time was or was not afforded. In the event the hearing officer finds that a reasonable period of time was not afforded then any and all statements obtained from said questioning as well as any evidence or information obtained as a result of said questioning ***shall be excluded***, provided, however, that this subdivision shall not modify or replace any written collective agreement between a public employer and employee organization negotiated pursuant to article fourteen of this chapter . . .”
- Under the CSL, a violation of an employee’s right to representation results in the exclusion from a disciplinary hearing of statements at the interview and evidence obtained as a result of any such statements.

Civil Service Law

- N.Y. Civil Service Law § 75 provides disciplinary protections for various classifications of public employees.
- Civil Service Law § 76[4] authorizes public employers and unions to negotiate modifications and alternatives to Section 75 disciplinary procedures.
- Under the Taylor Law (Article 14 of the Civil Service Law), public employees and unions are authorized to negotiate disciplinary standards and procedures, which may supplant statutory protections or modify at-will status.

Civil Service Law (con't)

- Under CSL § 75, discipline may consist of:
  - Reprimand
  - Fine not to exceed $100
  - Suspension without pay for up to two months
  - Demotion in grade and title
  - Dismissal
  - Employees subject to disciplinary proceedings may be suspended without pay for a period not to exceed 30 days
  - If an employee is acquitted of the charges, the employee must be restored to their position with full pay for any period of suspension (less any unemployment insurance benefits received)

Overlap with Section 75 of Civil Service Law

- Civil Service Rights
- Choice Between Civil Service Law and Grievance/Arbitration Provision
- Grievance/Arbitration Replaces Civil Service Law

Assessing Likelihood of Success

Management Rights

- No management rights clause.
- Management rights clause that lacks specificity.
- Clear and specific management rights clause.

Management Rights (con't)

- EX: "These rights shall include but shall not be limited to: reprimand, suspend, discharge, or otherwise discipline Employees; to determine the number of Employees to be employed; to determine the number of Employees to be employed in each job classification; to hire Employees, determine their qualifications, assign, direct and supervise their work, and specify their reporting locations, co-workers, work assignments, and supervisors; to promote, demote, transfer, lay off, recall to work , and retire. Employees to maintain the efficiency of operations; to hire and direct supervisors and managers at its sole discretion; to determine the personnel, methods, means, facilities, curriculum, and equipment by which operations of the Centers are conducted and facilitated; to specify the quality and quantity of personnel, equipment and facilities to be used; to set the starting and quitting time and the number of hours and shifts to be worked; to schedule work time and time off for each Employee; to prescribe the method and means of recording the time worked by each Employee; to close down part or all of the Employer's operations; to relocate some or all of the Employer's facilities, equipment and resources; to expand, reduce, alter, combine, transfer, assign, or cease any job, department, operation, program, classroom, or service; to transfer work out of the bargaining unit; to control and regulate the use of facilities, vehicles, equipment, classrooms and common areas in the Centers, and any other property owned, leased, or maintained by the Employer; to introduce new or improved research, education, service, operational, and maintenance methods, materials, facilities, and equipment; to determine the number, location and operation of the departments, divisions, classrooms, programs, curriculum, and all other units of the Employer; to issue, amend, abolish, and revise policies, work rules, regulations and practices; to issue, amend, abolish, and revise job classifications, job descriptions and standards for Employee performance, conduct, inspection, evaluation, supervision, training, orders, practices, directives and other operational procedures, policies, and guides; to take whatever action is either necessary or required to determine, manage and fulfill the mission of the Employer."

Management Rights (con't)

- The Town and the Association recognize that subject only to the provisions of this Agreement, the management, direction and control of the Town's business, operation and personnel are exclusively the function of the Town. It is the intention hereof, that all authority, rights, powers and responsibilities are retained by the Town except those that are specifically abridged or modified by this Agreement.

  It is expressly recognized, by way of illustration and not by way of limitation, that such authority, rights, powers, and responsibilities shall include, but are not limited to, determining the mission, objectives, policies, practices and procedures of the Town; directing all programs and operations of the Town; determining methods, facilities, locations, and hours for the conduct of the Towns programs and operations; selecting, hiring, training and promoting employees; fixing and determining employees' qualifications, duties, job titles and compensation; determining the necessity for filling vacancies; creating new jobs and classifications and abolishing any jobs and classifications; transferring employees from one job, classification or assignment to another, demoting, suspending, discharging and disciplining employees; assigning, supervising and directing employees in their work; determining the work to be done; releasing employees for proper, legitimate reasons; fixing and determining operating and personnel schedules; making rules and regulations for the conduct of work and the maintenance of safety, order, discipline, efficiency and the protection of property; contracting for goods and services; and issuing any other orders or directives intended to carry out the managerial responsibilities and duties imposed upon the Town by law.

Management Rights (con't)

- Except as expressly limited by other provisions of this Agreement, all of the authority, rights and responsibilities possessed by the Employer are retained by it, including, but not limited to, the right to determine the mission, purpose, objectives and policies of the Employer; to determine facilities methods, means and number of personnel for the conduct of the Employer's programs; to administer the merit system, including the examination, selection, recruitment, hiring, appraisal, training, retention, promotion, assignment or transfer of employees pursuant to law; to direct, deploy and utilize the work force; to establish specifications for each class of positions, and to classify or reclassify, and to allocate or re-allocate new or existing positions in accordance with law and the provisions of this Agreement.

Importance of Past Practices Under a Collective Bargaining Agreement

- A “past practice” is a consistent and accepted way of doing things in a workplace that is not explicitly stated in a collective bargaining agreement.
- A valid past practice is binding on both the employer and the union and can be considered an implied agreement between the parties.
  - To be enforceable, a past practice generally must be clear, consistently followed, mutually accepted, and not contrary to the terms of an applicable CBA.
- Employers and management level employees should be aware of any existing past practices and should also be mindful not to create an undesirable past practice where one does not exist.

Employee Handbook

- Many employee handbooks contains provisions that, if violated, could result in disciplinary action (e.g. workplace violence, drug and alcohol policy, conflicts of interest, etc.)
- For example, many codes of conduct include a non-exhaustive list of prohibited activities that may result in discipline up to and including termination, such as:
  - Theft or misuse of property;
  - Time theft or falsification of records;
  - Insubordination;
  - Violation of health or safety rules;
  - Harassment/discrimination; and
  - Excessive absenteeism or unsatisfactory performance.
- Handbooks can (and should) be drafted to provide certain advantages in discipline cases.
  - E.g., notice of rules, set expectations, scope of permissible discipline, etc.

Employee Handbook (con't)

- Employer policies, such as those in handbooks, may also limit or place requirements on an employer's ability to discipline employees.
  - Applicable collective bargaining agreements and the Civil Service Law will override any inconsistent policies in the handbook or elsewhere as applied to covered employees.
- Many handbooks also contain provisions related to discrimination, harassment, retaliation, etc.
  - All allegations of discrimination, harassment, or retaliation must be investigated and appropriate disciplinary action taken where appropriate following investigation.
  - Employers should comply with any applicable requirements in conjunction with potential discipline for alleged discrimination, harassment, retaliation, etc.

"Just Cause"

- Bargaining unit employees enjoy additional protections and generally are not employed at-will.
  - **Exception**: probationary employees may be employed at-will
- Bargaining unit employees generally may only be disciplined or discharged for "just cause" and may also be subject to additional protections under the Civil Service Law.
  - They also may have additional protections during the investigatory process (e.g., right to representation).
    - The Taylor Law makes it an improper employer practice to, among other things, fail to permit or refuse to afford a public employee the right, upon the employee's demand, to representation by a representative of a certified employee organization, when at the time of questioning by the employer of such employee it reasonably appears that he or she may be the subject of a potential disciplinary action.
  - Garrity Rights – protects public employees from being forced to incriminate themselves during internal investigations. If employe is compelled to answer under thread of job loss, their statements cannot be used against them in a criminal prosecution.
  - "Cadet Rights" - A tenured teacher cannot be compelled to provide self-incriminating information and may refuse to answer questions in any pre-hearing investigation that the teacher believes could lead to disciplinary action. The teacher cannot be held insubordinate for the refusal to answer.

Employee Discipline – "Just Cause" Standard

- Just cause – a legal standard to determine whether an employer's decision to discipline or discharge an employee is justified. It probes whether there is a legitimate, fair, and reasonable basis for the discipline imposed.
  - Did the employer establish a clear rule of conduct/performance?
  - Was the rule reasonable?
  - Was there a proper investigation?
  - Was there substantial credible evidence of wrongdoing?
  - Was the penalty imposed reasonably related to the seriousness of the offense and the employee's past work record?
  - Has the rule been evenly enforced?

Importance of the “Just Cause” Standard

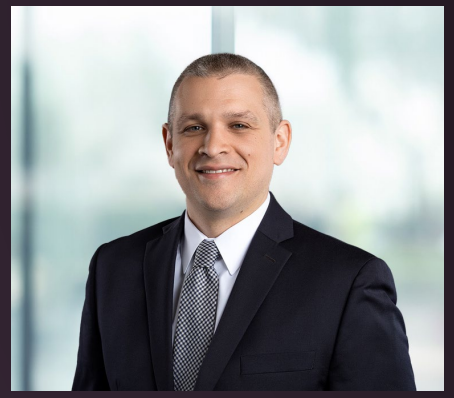
- For union employees, it is important to measure the proposed disciplinary action against the “just cause” standard from the outset.
  - If a disciplinary proceeding proceeds through the grievance process to arbitration, arbitrators are vested with the power to invalidate or reduce discipline that does not comply with the “just cause” standard.
- Based on assessment of likelihood of success, consider/evaluate settlement versus hearing.

Questions?

Contact for More

Elizabeth D. McPhail
PARTNER

716.848.1530
emcphail@hodgsonruss.com



Andrew D. Drilling
PARTNER

716.848.1412
adrillin@hodgsonruss.com

Hodgson Russ

Effectively & Efficiently Handling Employee Discipline & Evaluations

Luisa D. Bostick, Esq.

Jordan R. Einhorn, Esq.

Disclaimer

This presentation is intended for general informational purposes only and does not constitute legal advice or legal opinion on any specific facts or circumstances. Information contained in this presentation may not be appropriate to your particular facts or situation. You should not act upon the information in this presentation without consulting Hodgson Russ LLP or other professional advisors about your particular situation.

No attorney-client relationship with Hodgson Russ LLP is established by viewing this presentation. Hodgson Russ LLP makes no representations as to the accuracy or completeness of any information in this presentation, and the opinions expressed in this presentation are the opinions of the individual authors and may not reflect the opinions of the firm or any individual attorney.

Agenda

- Case Studies
- Evaluations
- Counseling Memos
- Discipline
- Due Process, Statutory Protections and Constitutional Considerations

Case Study

Sally the Secretary is a key employee, but she has recently started to periodically come to work late and the quality of her work has decreased over the last year. She has missed a few deadlines, forgotten to put a number of meetings on your calendar, and the typographical errors in her work are increasing. Her annual review is coming up.

Why Are Evaluations Important?

- Evaluations are an opportunity to engage employees in open, honest, and constructive dialogue.
- Evaluations:
  - Provide critical feedback;
  - Acknowledge good performance;
  - Set expectations for future job performance;
  - Rehabilitate and remediate poor performance; and
  - Discuss issues that may lead to possible discipline or removal.
- Ongoing performance discussions can assist in avoiding serious problems in the future.

Evaluations Criteria and Procedures

The New York Public Employment Relations Board has established the following general framework with regard to the overlap of collective bargaining and employee evaluations:

- The ***standards*** and/or ***criteria*** for evaluations are non-mandatory subjects of bargaining, but
- Evaluation ***procedures*** are mandatory subjects.

Roswell Park, 36 PERB ¶ 4518 (2003); *County of Nassau*, 35 PERB ¶ 4566 (2002)

Best Practices for Evaluations

- Directly address poor/deficient performance.
- Take advantage of both formal and informal opportunities to observe, evaluate, advise, and assist employees.
- Effectively use the probationary period.
- Document!

Best Practices for Evaluations

- Clearly outline all areas of dissatisfaction.
- Make it clear that progress will be required by a certain date and how that progress will be measured.
- Be thorough, specific, and direct.
- Prepare discussion points and recommendations prior to post-observations and evaluations.
- Observe and be aware of the timelines and other restrictions specified in the relevant CBA or by law.
- Reference applicable policies/orders/standards to the extent applicable.

Best Practices for Evaluations

- Monitor and follow through on performance problems and corrective measures.
- Remain objective and seek outside counsel if needed.
- Supervise and evaluate aggressively during the early years of employment. The administration should be certain that inadequacies in performance are remedied before permanent status is considered.
- Where inadequacies of performance are identified, evaluate consistently and frequently until the evidence is conclusive, irrefutable and overwhelming.
- Be sure to observe any contractual procedures and/or timelines for evaluations.

Documenting Performance

- Focus on facts and be clear about conclusions (including basis for credibility judgements).
- Avoid inflammatory words.
- Directives should be succinct and pointed.
- Personalize the memoranda.
- Do not inject personal viewpoints.
- Disinterested review.
- Destroy drafts.
- Sign and date.

Sally's Evaluation

Sally, you are an excellent employee and hard worker. Keep showing up to work on time and paying attention to detail. Continue to always document meetings on my calendar.

Sally, this year, I have noticed a number of performance issues that I would like you to focus on. First, it is extremely important that you are at your desk ready to work by 7:30 a.m. every morning. If you are going to be late, you must contact me before 7:30 a.m. Every meeting must be documented on my calendar. Your failure to do so hurts students, staff, and families who have taken time to meet with me.

Case Study Continued

Sally's performance does not improve. She has shown up late three times in the last month and she sent a letter intended for high school families to all middle school families.

Counseling Memoranda

- Counseling memos should be used to alert employees about misconduct or performance issues that do not necessarily warrant formal disciplinary action.
  - Counseling memos serve as a warning to improve behavior without being considered a full disciplinary measure.
- Counseling memos can be used to support disciplinary action in the future, if necessary.

Counseling Memoranda

COUNSELING ≠ DISCIPLINE

- Counseling memos are “admonitions that are critical of performance” while disciplinary actions are “disciplinary determinations of a punitive nature.”
- Counseling memos are administrative actions and are not disciplinary in nature, *unless* the memo contains written criticism constituting a reprimand or is otherwise punitive.
- Counseling memo **should not** include a penalty (although they can include remedial measures).
- The primary purpose of the counseling memo is to **warn**, rather than to **punish**.
  - *Holt v. Board of Ed. Webutuck Cent. Sch. Dis.*, 52 N.Y.2d 625 (1981)

Counseling Memo: Factors of Analysis

Factors used to determine whether a counseling letter will be viewed as a critical of performance or a disciplinary determination of a punitive nature (reprimand):

- Whether the letter is directed toward an improvement in performance or a reprimand for prior misconduct.
- The severity of the misconduct and the admonition/reprimand.
- Whether the letter is from the immediate supervisor or from the board of education.
- Whether the letter uses the word reprimand.
- Whether the letter uses accusatory language of formal charges in describing the conduct at issue.

Counseling Memo: Components

- A counseling memo should include:
  - A summary of the conduct that led to the memo;
  - The key results of the investigation or review of the matter;
  - The employee's response;
  - Disposition of the issue;
  - Instruction to the employee to abstain from similar conduct in the future, or to take certain conduct in the future;
  - A warning that formal disciplinary action may be taken in the event of other violations or misconduct.

Case Study Continued

You issued Sally a counseling memo last month and her performance has only gotten worse. She has been late one day every week, and she called off last Friday after her request for vacation was denied. Her work continues to be sloppy and riddled with errors.

Discipline

- Initial questions to ask yourself:
  - Does Sally have due process protection under the Civil Service Law (i.e., Section 75 rights)?
  - What does the collective bargaining agreement say about discipline?
  - What are the District's "past practices" with regard to similarly situated employees?

Civil Service Law: Due Process Protections

- Section 75 of the NYS Civil Service Law protects certain public employees from being penalized or removed from their position without due process.
  - "shall not be removed or otherwise subjected to any disciplinary penalty … except for **incompetency** or **misconduct** shown after a hearing upon stated charges."
- 18-month statute of limitations.

N.Y. Civ. Serv. Law § 75(1)(a)-(e)

Section 75 Hearings

- Before you bring charges:
  - Investigate the matter.
  - Schedule and conduct a disciplinary meeting.
    - The employee has the right to representation at the meeting and must be notified of this right in writing.
- Draft the charges - be specific.
- Serve the charges.
- Give the employee at least eight days to answer.
- Appoint the hearing officer.
- Schedule the hearing.
- Conduct the hearing.
  - The burden of proof is on the employer.

Sample Section 75 Charges

Charge I, Specification #1: In the Fall of 2025, you were late to work on a number of occasions.

Charge II, Specification #1: In the Fall of 2025, you failed to report your tardiness.

Charge I, Specification #1: On or about September 1, 2025, September 15, 2025, October 1, 2025, October 3, 2025, November 6, 2025, November 10, 2025, and November 15, 2025, you engaged in misconduct when you reported to work after the start of your scheduled work day in violation of the District's time and attendance policy.

Charge II, Specification #1: On or about November 6, 2025, November 10, 2025, and November 15, 2025, you engaged in insubordination when you failed to report your tardiness to the Superintendent of Schools prior to the start of your scheduled work day in direct violation of the directive given to you in the counseling memo dated October 10, 2025.

Civil Service Law: Disciplinary Consequences

- Reprimand;
- Monetary fine (not to exceed $100 deducted from employee's wages);
- Suspension without pay (not to exceed 2 months);
- Demotion in grade and title; or
- Dismissal.

- Pending the hearing and determination of charges, the employee may be suspended without pay for up to thirty days.
  - If found guilty of the charges and suspended, the time during which the employee was suspended prior to the hearing "may" be considered as part of the penalty.
  - If found not guilty of the charges, the employee must be restored to his/her original position with full back pay and benefits for any period of suspension (less any unemployment benefits received).

Employee Discipline – Negotiated Alternatives to Section 75

- Civil Service Law § 75[2] and 76[4] authorizes public employers and unions to negotiate modifications and alternatives to Section 75 disciplinary procedures.
- Under the Taylor Law (Article 14 of the Civil Service Law), public employees and unions are authorized to negotiate disciplinary standards and procedures, which may supplant statutory protections or modify at-will status. *Grippo v. Martin*, 257 A.D.2d 952 (3d Dept. 1999).

Employee Discipline – Negotiated Alternatives to Section 75

- Pros and Cons to negotiating an alternative to Section 75
  - Pros: Fewer procedural hurdles (e.g., filing charges, answer, etc.), unless you specifically negotiate them. More control over the process.
  - Cons: Can inadvertently negotiate yourself into a narrower standard than Section 75's "incompetency or misconduct." Union will likely default to "just cause" language.

- Check your Management Rights provision, which may grant flexibility to an employer with respect to certain matters not addressed in the CBA.

Last Chance Agreements (LCAs)

- LCA: A written agreement giving an employee who has been accused of engaging in some kind of serious misconduct, one last chance to keep their job.
  - Should clearly set forth:
    - the employee's employment problems;
    - the expectations for continued employment; and
    - the ramifications for the employee's failure to follow through.
  - Can be negotiated before after charges are preferred against an employee.
  - **Advantage**: Even if an LCA requires compliances with grievance procedures, the scope of review will be limited to whether the employee engaged in the alleged misconduct or other objectionable behavior.
    - An arbitrator will not review the reasonableness or proportionality of the penalty if set in advance as part of a LCA.
  - **Caution**: Employee's waiver of statutory protections must be "clear" and "voluntary and noncoerced."

Case Study

It was recently discovered that Terry, a tenured teacher, has stopped grading student work and instead assigns arbitrary grades. During class, Terry allows students to play games that are unrelated to the curriculum. Terry also changed several students' grades after the students gave her very generous holiday gifts.

Terry has two counseling memos already in her file regarding her grading practices and ensuring that students are focused on the assigned curriculum during class.

New York Education Law Section 3020 – Discipline of Teachers

- A tenured educator may only be **disciplined** or **discharged** for "just cause," and pursuant to the procedure set forth in Section 3020-A.

- A collective bargaining agreement may contain a negotiated alternative to the 3020-A procedures, but any negotiated alternative **must** give tenured teachers the right to elect between the negotiated alternative **or** the 3020-A procedures.
  - Any negotiated alternative must also result in a disposition of the disciplinary charge within the amount of time allowed under section 3020-A.

- Examples of discipline include a reprimand, fine, suspension, termination, or other action taken with intent to discipline an employee (such as a transfer to another position), or as defined in an applicable contract.

N.Y. Ed. Law. § 3020[1]

Section 3020-A Procedure

- Charges must be filed with the clerk or secretary of the school district or employing board during the period between the opening and closing of the school year.
  - Generally, charges may not be brought more than three years after the occurrence of the incident giving rise to the charges. This time is extended if the charge is of misconduct constituting a crime when committed.
  - If filed with the clerk or secretary, the clerk or secretary must immediately notify the employing board.

- The employing board must meet in executive session within five days after receipt of the charges and determine whether probable cause exists to bring disciplinary proceedings against the teacher.
  - If the board determines probable cause exists, the teacher must immediately be given a written statement specifying (i) the charges in detail, (ii) the maximum penalty which will be imposed by the board if the employee does not request a hearing or that will be sought by the board if the employee is found guilty of the charges after a hearing, and (iii) the employee's rights under Section 3020-A.

Section 3020-A Procedure

- The unexcused failure of the employee to notify the clerk or secretary of his or her desire for a hearing within ten days of the receipt of charges shall be deemed a waiver of the right to a hearing.
  - In this case, the board has 15 days to proceed to vote to determine the case and establish the penalty.

- Unless waived, hearings are presided over by a single hearing officer, who is selected after the written statement of charges is delivered to the employee.

- Pending the hearing on the charges and final determination thereof, the employee may be suspended **with pay.**
  - Suspension may be without pay if the employee has been convicted of or pled guilty to certain enumerated crimes, or, subject to a probable cause hearing and for up to 120 days, if the charges constitute physical or sexual abuse of a student.

Investigation

- Gather the facts.
  - Review relevant documents.
    - Policies, regulations, handbooks, CBA
    - Personnel file, including prior counseling memos and discipline
    - Electronic communications
    - Other documentation
  - Determine appropriate witnesses.
- Conduct a thorough and fair investigation.
- Gather information from all relevant witnesses.
- Consider use of surveillance and other recordings.
- Prepare a comprehensive, chronological report based on credibility assessments, facts, etc.

Confrontation Conference

- Present the findings of the investigation to the employee.
  - Method of presentation – verbal vs. in writing.
  - All findings?
  - Draft statement of charges?
- Give the employee an opportunity to respond to the findings of the investigation.
- Employee should have union representation at the conference.
- After the confrontation conference, consider whether further investigation or revision of draft charges is required.

Key considerations before filing charges

- Evaluate the strengths and weaknesses of your case before bringing charges.
  - How strong is your documentation?
  - How credible and willing are your witnesses?
  - Do your policies and practices support the charges and requested penalty?
- What is the ultimate goal?
- Should the employee be suspended pending the hearing on the charges?

The Seven Tests of Just Cause

1. Reasonable rule or work order that was broken by employee?

- Ensure work rules (whether by policy manual, general orders or otherwise) are comprehensive but sufficiently detailed and legal.
- Applied in a consistent and unbiased way and reasonably related to efficient and safe operations.

2. Did Employee receive prior notice of rule?

- *Prior notice* may not be necessary in cases of serious misconduct

3. Was there a sufficient investigation?

- Have you adequately pursued all relevant information to establish wrongdoing or unacceptable performance?

4. Was the investigation fair and objective?

- Have you given the employee a chance to appear with a representative, hear and respond to the allegations, and tell his side of the story?

The Seven Tests of Just Cause

5. Is the proof sufficient?

- Is the proof of misconduct substantial and clearly supported by the evidence you gathered? Unlike most employment litigation, the District bears the burden of proof.

6. Was this employee treated equally?

- Is there a “disparate treatment” defense?

7. Was the disciplinary action appropriate given the totality of circumstances?

- Is the discipline you propose to take reasonably related to the seriousness of the problem?
- Is it reasonably related to the employee's record (length of service and overall performance)?

Key considerations after filing charges

- Hearing officer's reputation and prior decisions.
- All hearing officers handle cases differently.
  - Some push settlement and act like a mediator.
  - Others press forward without even mentioning settlement.
  - Some are overly willing to extend the hearing timelines.
- Do not get emotional.
- Be patient and remember the overall goal.

Representation in Investigations

- Does the right to union representation also include the right to union representation during questioning?
  - Generally, yes, under Civil Service Law Section 75[2].
  - Upon an employee's demand, if at the time of questioning it reasonably appears that the employee may be the subject of potential disciplinary action.
  - The employee must be notified **in advance, in writing** of this right.
  - An employee who requests representation under such circumstances must be afforded reasonable time to obtain it. If a reasonable time is not afforded, any statements obtained from such questioning will be excluded from a hearing.
  - Rights under Section 75[2] can be negotiated by collective bargaining agreement.

"Right to Remain Silent"

- Civil Service employees are required to answer questions truthfully and completely or can face termination for refusing to so answer

  Shales v. Leach, 119 A.D. 2d 990 (4th Dept. 1986); *Matt v. Larocca*, 71 N.Y. 2d 154 (1987)

- "*Garrity Rights*" – Respects constitutional right to remain silent in criminal context, but protects the right of employer to compel cooperation with investigation in the employment context.

- *"Cadet Rights"* - A tenured teacher cannot be compelled to provide self-incriminating information and may refuse to answer questions in any pre-hearing investigation that the teacher believes could lead to disciplinary action. The teacher cannot be considered insubordinate when refusing to answer such questions.

Case Study

Peter, the middle school principal, is very active on Facebook. Last night, Peter posted about the new Town Supervisor's priorities for the police department and how those priorities are going to lead to an increase in unsolved crime in the town. This morning, Peter posts about a complaint he received from a teacher alleging that she was sexual harassed by the new Town Supervisor, who also happens to be a parent of a student in the district. Peter is the district's Title IX coordinator. The new Town Supervisor won't stop calling the district office and wants the Principal fired for his posts.

First Amendment Protections

- "**Congress shall make no law** respecting an establishment of religion, or **prohibiting the free exercise thereof; or abridging the freedom of speech**, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."
- The First Amendment restricts the **government** from restricting speech or penalizing an individual for speech.

First Amendment Protections

- Public sector employees retain, subject to certain limitations, First Amendment protections in the workplace.

- The First Amendment protects public employees' right to free speech **only** when they speak as **private citizens** on **matters of public concern**.
  - "If public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline." *Garcetti v. Ceballos*, 547 U.S. 410 (2006).
  - Speech concerning purely private matters, e.g., personal gripes is not protected by the Constitution. Many political issues, however, are matters of public concern.
    - A public concern is "something that is a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public at the time of publication." *City of San Diego v. Roe*, 543 U.S. 77, 83-84 (2004).

First Amendment Protections

- *Locurto v. Giuliani*, 447 F.3d 159 (2d Cir. 2006): Discharge of employees from their positions in the NYPD and the FDNY in retaliation for their participation in a Labor Day parade, on a float that featured mocking stereotypes of African-Americans, was upheld on the basis that the City's interests in fostering a trusting relationship between the departments and the minority community outweighed the employees' right to self-expression.

Case Study

Peter, the middle school principal, is very active on Facebook. Last night, Peter posted about the new Town Supervisor's priorities for the police department and how those priorities are going to lead to an increase in unsolved crime in the town. This morning, Peter posts about a complaint he received from a teacher alleging that she was sexual harassed by the new Town Supervisor, who also happens to be a parent of a student in the district. Peter is the district's Title IX coordinator. The new Town Supervisor won't stop calling the district office and wants the Principal fired for his posts.

What can we do?

Q&A

Thank you.

Contact for More

Luisa D. Bostick
Partner
716.848.1705
lbostick@hodgsonruss.com

Jordan R. Einhorn
Associate
716.848.1339
jeinhorn@hodgsonruss.com

HodgsonRuss

From Request to Return:
How to Approach Employee Leaves of Absence

Luisa D. Bostick, Esq.

Katherine L. Fierle, Esq.

Disclaimer

This presentation is intended for general informational purposes only and does not constitute legal advice or legal opinion on any specific facts or circumstances. Information contained in this presentation may not be appropriate to your particular facts or situation. You should not act upon the information in this presentation without consulting Hodgson Russ LLP or other professional advisors about your particular situation.

No attorney-client relationship with Hodgson Russ LLP is established by viewing this presentation. Hodgson Russ LLP makes no representations as to the accuracy or completeness of any information in this presentation, and the opinions expressed in this presentation are the opinions of the individual authors and may not reflect the opinions of the firm or any individual attorney.

Agenda

- Leave Law Hypotheticals
- Other Protected Leaves
- Employer Best Practices

Hypothetical #1: Angry Outbursts

Hypothetical #1: Angry Outbursts

- Mr. Smith is a high school teacher that has been with the District for over 12 years, and who has recently returned from a personal leave of absence. Over the past month, colleagues and students have reported multiple incidents where Mr. Smith has displayed angry outbursts during class. Examples include yelling at students for minor mistakes, slamming classroom doors, and abruptly leaving the classroom mid-lesson with no explanation. Prior to his leave, Mr. Smith was known as being extremely nice and welcoming to all students. Therefore, the abrupt change in Mr. Smith's behavior has caused concern among staff and parents and has raised questions about student safety.
- When approached by the principal, who expressed concern regarding such outbursts, Mr. Smith insists that he is "fine" and explicitly stated that he has no issues with teaching and does not want to take any time away from work. However, during the conversation, the principal noticed that Mr. Smith appeared visibility agitated, fatigued, and that he was curling his fists into balls while speaking with him.

Hypothetical #1: Angry Outbursts

- What is the appropriate next steps in addressing the concerns of Mr. Smith's behavior?
  - **Given Mr. Smith's erratic behavior and concerns about his potential inability to perform his essential job duties, the District should consider invoking New York Education Law Section 913, which requires an employee to undergo a medical examination to determine fitness for duty.**
- What is the first step under Section 913?
  - **First, the District should approach Mr. Smith and ask if he is willing to voluntarily undergo a medical exam based on the District's outlined concerns.**
- Mr. Smith refuses to voluntarily undergo a medical exam, again insisting that he is "fine." What is the District's next course of action?
  - **If Mr. Smith refuses to voluntarily undergo a medical exam, the District should (a) prepare a resolution for the Board to order an involuntarily exam; (b) select a qualified health care provider to conduct the exam; and (c) send a formal letter to Mr. Smith outlining the concerns and the scope of the evaluation.**

Hypothetical #1: Angry Outbursts

- What should the letter to Mr. Smith outline?
  - **For involuntary examinations under Section 913, the letter typically should:**
    - **Outline the concerning behaviors Mr. Smith is exhibiting at work;**
    - **State that the District is recommending to the Board of Education that they direct Mr. Smith to submit to a medical examination to determine his physical and/or mental capacity to perform his duties as a teacher;**
    - **Explain that the Board will likely adopt a resolution at its next Board meeting, and provide the date of the meeting;**
    - **Explain that Mr. Smith's name will not appear in the resolution, and if passed, Mr. Smith will receive a letter directing him to submit to such an examination;**
    - **Provide the name, facility, and address of the designated health care provider;**
    - **Include a blank HIPPA compliant release form for Mr. Smith in case the designated health care provider requests prior treatment records prior to the 913 exam; and**
    - **Explain that Mr. Smith will be required to cooperate and comply with any directive to an examination under Section 913 and that refusal to comply may result in disciplinary action.**

Hypothetical #1: Angry Outbursts

- If Ms. Smith does not agree to voluntarily attend the exam, what does the Board of Education need to do?
  - **Pass a resolution ordering the examination. A resolution will generally include the following:**

RESOLUTION

_____ SCHOOL DISTRICT

RESOLVED, that, acting pursuant to Section 913 of the New York State Education Law, this Board of Education hereby directs the tenured teacher set forth in Confidential Schedule A to submit to a medical examination by [DOCTOR NAME], who is hereby appointed as a school medical inspector of this District for the purposes of conducting this examination, in order to determine the employee's physical and/or mental capacity to perform his duties. Such examination shall be conducted in accordance with the provisions of Section 913, and the report thereof shall be transmitted to this Board of Education and may be referred to and considered for the evaluation of the service of the teacher.

Hypothetical #1: Angry Outbursts

- The Board of Education votes for a medical exam for Mr. Smith. What is the next step?
  - **The District should send a letter to the chosen health care provider outlining the reasons for the request for the medical exam, including the behavioral concerns and the need to evaluate whether Mr. Smith is able to effectively complete his job duties as a teacher.**
- After contacting the health care provider, the District sends a follow-up letter to Mr. Smith directing him to submit to a medical examination on February 5, 2026 with the identified health care provider. Mr. Smith tells the assistant superintendent that he intends to bring his wife to the appointment as a witness. Is Mr. Smith's wife allowed to attend?
  - **Yes. Under the statute, Mr. Smith is allowed to be accompanied by either a "physician or other person of his or her choice."**

Hypothetical #1: Section 913 Basics

- The New York Education Law § 913 allows the Board of Education to require a teacher or other employee of the district to submit to a medical examination in order to determine the employee's physical or mental capacity to perform said employee's job duties.
- The employee may be placed on administrative leave pending the examination.
- Refusal to submit to the exam is insubordination and can result in leave without pay until the employee complies.
- The employee has the right to be accompanied by a physician or other person of the employee's choice during the examination.
- "The determination based upon such examination… shall be reported to the board of education… and may be referred to and considered for the evaluation of service of the person examined or for disability retirement."

Hypothetical #2: Slips Happen

Hypothetical #2: Slips Happen

- Ms. Lopez, an aide, slips and falls in the school science lab while supervising an experiment. She sustains a severe knee injury that requires surgery and ongoing physical therapy. The injury is covered by your workers' compensation insurance policy because it occurred during the course of her employment. After surgery, Ms. Lopez is unable to return to work immediately and her doctor estimates that her recovery will take at least 14 months.
- What rights does Ms. Lopez have while taking leave for the injury covered under Workers' Compensation?
  - **Under New York Civil Service Law Section 71, Ms. Lopez is entitled to a leave of absence for at least one year.**
- If Ms. Lopez's workplace injury was not because of a slip, but instead because of an assault at work, would she receive greater rights?
  - **Yes. If the injury had resulted from an assault during employment, she would be entitled to two years of leave.**

Hypothetical #2: Slips Happen

- Ms. Lopez follows her doctor's recommendation and goes out on leave on March 3, 2025 after her workplace injury. Does the District have to provide any notice to Ms. Lopez upon the commencement of her leave?
  - **Yes. After notice that Workers Compensation payments have begun, and no later than the 21st day of absence due to the workplace injury, the District must notify Ms. Lopez in writing of the following:**
    - **A. The effective date of her leave;**
    - **B. The right to a leave of absence from her position during continued disability for one year unless extended;**
    - **C. The right to apply to return to duty at any time during the leave;**
    - **D. The right to a hearing to contest a finding of unfitness for restoration to duty;**
    - **E. The termination of employment as a matter of law at the expiration of the workers' compensation leave; and**
    - **F. The right thereafter to apply to the Civil Service Department within one year of the end of disability for reinstatement to the position if vacant, to a similar position, or to a preferred list pursuant to Section 71.**

Hypothetical #2: Slips Happen

- As of today, January 16, 2026, Ms. Lopez has not yet returned to work, nor has she applied to return to work. Based on her doctor's original estimates, the District worries that she will not be returning by March 3, 2026. What steps should the District take?
  - **If Ms. Lopez does not return by March 3, 2026, her employment may be terminated as a matter of law under the New York Civil Service Law.**
  - **However, before an automatic termination occurs, the District must first give 30 days notice, via mail or in person, of a notice of impending action. The letter must notify Ms. Lopez of the following:**
    - **A. The proposed effective date of the termination;**
    - **B. The right to apply for reinstatement to duty if medically fit;**
    - **C. The obligations to submit to a medical examination to determine fitness to perform the duties of the position; and**
    - **D. The right after termination to apply to the Civil Service Department within one year of the end of the disability for reinstatement to the position if vacant, to a similar position, or to a preferred list.**

Hypothetical #2: NY Civil Service Law Section 71 Basics

- Employees who are out of work due to a Workers' Compensation-covered illness or injury are entitled to a leave of absence for at least one year (two years if the injury is a result of an assault sustained in the course of employment).
  - **Exception:** if the disability is permanently incapacitating, the employee may be discharged immediately.
- Within one year after the disability termination, the employee can apply for reinstatement if the employee recovers sufficiently to return to work.
- The employee will be subject to a medical examination. If the medical officer certifies that the individual is fit to perform the duties of the individual's prior position, the individual is entitled to reinstatement to the position, if vacant, or to a vacancy in a similar position or a position in a lower grade in the same occupational field, or to a vacant position for which the employee was eligible for transfer.

Hypothetical #2: NY Civil Service Law Section 71 Basics

- If no vacancy exists, or if the workload does not warrant filling the vacancy, the individual must be placed on a preferred list for their former position, and they shall be eligible for reinstatement from such preferred list for four years.
- **Caution**: As we saw in the hypothetical, Section 71 is supplemented by detailed regulations (4 N.Y.C.R.R. § 5.9).
- In particular, when an employee is to be terminated under Section 71, the employee is entitled to advance notice (30 days) of their right to a hearing and notice of other legal rights. 4 N.Y.C.R.R. § 5.9(c).
- Although these regulations provide that they are applicable only to employees of the State, several New York State court decisions have reversed public employee terminations under Section 71 for failing to provide employees with rights at least as extensive as those provided by the regulations. *See e.g., Cooke v. City of Long Beach*, 247 A.D.2d 538 (2d Dept. 1998).

Hypothetical #3: Classroom Curveballs

Hypothetical #3: Classroom Curveballs

- Ms. Johnson, a first-grade teacher, has been diagnosed with rheumatoid arthritis. Her condition causes joint pain and stiffness, especially in the mornings, making it difficult to stand for long periods or move quickly around the school. After receiving her diagnosis, Ms. Johnson goes to the school's Human Resources contact and requests a more ergonomic chair, telling the HR contact that her current chair is "uncomfortable."
- What laws may be applicable to Ms. Johnson's request?
  - **The Americans with Disabilities Act (ADA) and the New York State Human Rights Law (HRL) if Ms. Johnson needs a reasonable accommodation.**
  - **Under the ADA, an "individual with a disability" is "any person who (1) has a physical or mental impairment that substantially limits one or more major life activities, (2) has a record of such an impairment, or (3) is regarded as having such an impairment."**
  - **Under the HRL, disability means "a physical, mental or medical impairment resulting from anatomical, physiological, genetic or neurological conditions which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques."**

Hypothetical #3: Classroom Curveballs

- Has Ms. Johnson provided adequate notice to the District that she needs a reasonable accommodation?
  - **Likely not. While Ms. Johnson has requested a new chair that is more "ergonomic," she has not linked her need for an ergonomic chair to any medical condition.**
- Is it the District's responsibility to inquire more about why Ms. Johnson may need an ergonomic chair?
  - **Not necessarily. Generally, it is the employee's responsibility to inform the employer that an accommodation is needed. The employer is entitled to know that the employee has a covered disability and that he or she needs an accommodation because of the disability.**
  - **However, if the district is not in the process of replacing chairs upon general request, the HR contact could inform Ms. Johnson that she will need to provide further information if she is requesting a more ergonomic chair for a medical reason.**

Hypothetical #3: Classroom Curveballs

- Take the same facts as before, but instead of requesting a chair because her current one is “uncomfortable,” Ms. Johnson states that she needs an ergonomic chair because of her medical condition. Ms. Johnson also states that she needs “help getting around the school” in the mornings. What should the District do next?
  A. Continue the conversation with Ms. Johnson and ask her what her medical condition is.
  B. Provide Ms. Johnson with an ergonomic chair as they are inexpensive to procure.
  C. Seek further information from Ms. Johnson in writing.
  D. Deny Ms. Johnson’s request, telling her that she has not provided enough information.

Hypothetical #3: Classroom Curveballs

- Why is seeking further information in writing the next best step for the District?
  - **Ms. Johnson's request for a reasonable accommodation is the first step in the informal, interactive process between her and the District. If the employee seeking accommodation has a disability or need for accommodation that is not obvious, an employer may request reasonable documentation from an appropriate health care provider.**
  - **In some instances, before addressing the merits of the accommodation request, the employer needs to determine if the individual's medical condition meets the ADA or NYSHRL definition of "disability," a prerequisite for the individual to be entitled to a reasonable accommodation. Here, Ms. Johnson simply told the HR contact that she has a "medical condition." The District must then assess whether the medical condition is a qualifying disability.**
  - **Document, document, document! Putting the request for further information in writing allows the District to have a paper trail that proves it engaged in the interactive process with Ms. Johnson. While the District may think Ms. Johnson is a stellar employee, the process of documenting all requests related to a protected leave helps protect the District in the event of unforeseen litigation regarding disability discrimination.**

Hypothetical #3: Classroom Curveballs

- What is reasonable to ask Ms. Johnson to understand the medical condition and need for an accommodation?
  - **Reasonable documentation includes information that describes (a) the impairment, (b) the nature, severity, and duration of the impairment, (c) the activity or activities that the impairment limits, and (d) the extent to which the impairment limits the employee's ability to perform the activity or activities.**
  - **This would generally take the form of a medical certification and an accompanying cover letter.**
  - **The cover letter would state that Ms. Johnson stated that she has a medical condition that requires an ergonomic chair and "help getting around the school in the mornings." To determine whether the District can accommodate Ms. Johnson's requests, we need additional information from her health care provider.**
  - **The health care provider would then ideally receive a copy of Ms. Johnson's job description outlining the essential functions of her job and a medical certification form that allows the health care provider to identify the conditions at issue, whether the impairment limits Ms. Johnson from performing major life activities, and clarification around the specific accommodations needed for Ms. Johnson to perform her job.**

Hypothetical #3: Classroom Curveballs

- How long should the District give Ms. Johnson to return the completed medical certification form?
  - **Both the District and Ms. Johnson are responsible for engaging in the interactive process in good faith.**
  - **In order for Ms. Johnson to have time to give her health care provider the medical certification form, we generally recommend setting a deadline of at least two weeks to return the form. The District should also grant an extension if requested by Ms. Johnson in good faith.**
- Ms. Johnson returns the completed medical certification form, which indicates that she needs an ergonomic chair that she is allowed to sit in while teaching and the need to have a short distance between her car and classroom commute in the mornings due to her rheumatoid arthritis. Must the District provide these requested accommodations?
  - **Generally, yes, unless providing an accommodation would result in an undue hardship for the District.**
  - **An "undue hardship" is defined as "significant difficulty or expense incurred" by the employer.**

Hypothetical #3: Classroom Curveballs

- After receiving the completed medical certification, it is clear to the District that they can provide an ergonomic chair to Ms. Johnson. However, the District is not sure what they should do in order to provide a shorter "commuting" distance for Ms. Johnson in the mornings. The District is considering allowing Ms. Johnson to have a reserved parking spot, which will significantly shorten her walk to her classroom. However, Ms. Johnson suggests that if she moves to a classroom in the back of the building, she can use the back entrance to the building to get to the new classroom. The District is concerned that moving classrooms would disrupt the class of young students, who are used to their current routine. The District completes the measurements and determines that the two options are within 10 feet of each other. Must the District allow Ms. Johnson to move classrooms?
  - **No. The employer is not required to provide the specific accommodation requested by the employee so long as the chosen accommodation is effective. While the District should strongly consider the preference of Ms. Johnson as part of the interactive process, the District has the right to choose between various effective accommodations.**
  - **Here, the District can document that the two accommodation suggestions both significantly lessen Ms. Johnson's commute to her office, that both are within 10 feet of each other, and that the accommodation chosen by the District is less disruptive for the students in Ms. Johnson's classroom**.

Hypothetical #3: Summarizing the ADA Basics

- An accommodation is defined as a modification or adjustment to the job application process, the work environment, or the manner or circumstance under which the position is customarily performed that enable a qualified individual with a disability to perform the essential functions of that position.
- A reasonable accommodation is one that “seems reasonable on its face, i.e., ordinarily or in the run of cases.”
- Examples of potential reasonable accommodations include:
  - Modified work schedule
  - Extra break time
  - Change in workspace location
  - Exceptions from certain policies
  - Job restructuring or reassignment
  - Unpaid leave

Hypothetical #3: Summarizing the ADA Basics

- Generally, it is the employee's responsibility to inform the employer that an accommodation is needed.
- The employer is entitled to know that the individual has a covered disability and that he or she needs an accommodation because of the disability.
- The employer should promptly engage in an "interactive process" with the employee to obtain relevant information and explore potential accommodations.
- Ultimately, the employer has the right to choose among multiple reasonable accommodations, if the chosen accommodation is effective.
- Employers should keep track of all ADA compliance efforts, including efforts at accommodation. The records will be crucial if the situation leads to litigation.
- While the ADA exists to keep employees with disabilities working, employers must not lose sight of the FMLA and its protections. If an employee requires leave as an accommodation, the FMLA may be implicated.

Hypothetical #4: Planning for the Unplanned

Hypothetical #4: Planning for the Unplanned

- Frank, who has been a school administrator with the District for over three years, has recently been calling in sick to work more than usual. Frank returns to work after taking three days off and tells the assistant superintendent that he has been dealing with back pain the last two months due to a recent car accident. Frank tells the assistant superintendent that his back pain “flares” up due to the weather, whether he got enough sleep, etc. He states that he is not always in pain, but that the pain “comes and goes.”
- The assistant superintendent wants to know how much more time Frank may take off in the coming weeks. What should the assistant superintendent do next?
    A. Continue the conversation with Frank and ask him how much more time he thinks he will take off.
    B. Continue to let Frank take his paid time off/paid sick leave until it is exhausted.
    C. Determine if Frank may be eligible for FMLA leave.

Hypothetical #4: Planning for the Unplanned

- It sounds like Frank may have a serious health condition. However, before determining whether a serious health condition exists, the assistant superintendent should next determine if Frank may be eligible for FMLA leave generally:
  - Does the FMLA apply to school districts?

    Yes, educational agencies are covered employers under the FMLA, regardless of the number of employees employed by the educational agency.
  - Has Frank worked at least 1,250 hours during the last 12 months?

    Yes, he has been employed for the last three years.
  - Does Frank work at a location where the District has at least 50 employees within 75 miles?

    Yes.

Hypothetical #4: Planning for the Unplanned

- What is a serious health condition under the FMLA?
  - **The FMLA defines a serious health condition as an illness, injury, impairment, or physical or mental condition that involves either inpatient care or continuing treatment by a health care provider.**
  - **Conditions that may require continuing treatment include incapacity plus treatment, pregnancy, chronic conditions, permanent or long-term conditions, and conditions requiring multiple treatments.**
  - **A chronic condition is one that requires periodic visits to a health care provider, or a nurse supervised by the provider, at least twice a year, and which includes periods of incapacity that recur over an extended period. A chronic condition may cause short periods of incapacity. An employee can be incapacitated due to a chronic condition even though he or she does not receive treatment from a health care provider during the absence, and even if the absence does not last for more than three consecutive calendar days.**
- How much time can Frank take off for a serious health condition under the FMLA?
  - **12 weeks in a 52-week period.**

Hypothetical #4: Planning for the Unplanned

- How should the District determine if Frank has a serious health condition?
  - **The District should provide Frank with Form WH-380-E, Certification of Health Care Provider for Employee's Serious Health Condition under the FMLA. The District should complete Section 1 – the Employer information, before providing the form to Frank.**
  - **The District should generally request the medical certification within 5 business days of the employee's notice of the need for leave.**

How long should the District give Frank to complete the medical certification?

At least 15 calendar days from the date requested by the District.

Certification of Health Care Provider for Employee's Serious Health Condition under the Family and Medical Leave Act

U.S. Department of Labor
Wage and Hour Division

WHD
WAGE AND HOUR DIVISION

DO NOT SEND COMPLETED FORM TO THE DEPARTMENT OF LABOR. RETURN TO THE PATIENT.

OMB Control Number: 1235-0003
Expires: 6/30/2026

The Family and Medical Leave Act (FMLA) provides that an employer may require an employee seeking FMLA protections because of a need for leave due to a serious health condition to submit a medical certification issued by the employee's health care provider. 29 U.S.C. §§ 2613, 2614(c)(3); 29 C.F.R. § 825.305. The employer must give the employee at least 15 calendar days to provide the certification. If the employee fails to provide complete and sufficient medical certification, his or her FMLA leave request may be denied. 29 C.F.R. § 825.313. Information about the FMLA may be found on the WHD website at www.dol.gov/agencies/whd/fmla.

SECTION I - EMPLOYER

Either the employee or the employer may complete Section I. While use of this form is optional, this form asks the health care provider for the information necessary for a complete and sufficient medical certification, which is set out at 29 C.F.R. § 825.306. **You may not ask the employee to provide more information than allowed under the FMLA regulations, 29 C.F.R. §§ 825.306-825.308.** Additionally, you **may not** request a certification for FMLA leave to bond with a healthy newborn child or a child placed for adoption or foster care.

Hypothetical #4: Planning for the Unplanned

- The District gives Frank 15 calendar days to provide the completed medication certification. On day 13, Frank contacts the assistant superintendent stating that he contacted his doctor, but the doctor is out of the office and cannot complete the certification until at least 20 days after the request for the certification. On day 17, Frank requests to take a day off for his back pain. Frank then returns the completed form on day 22. Is the day off on day 17 protected as FMLA leave?
  - **Yes. When an employee makes diligent, good faith efforts to return the certification, but is still unable to meet the deadline, the employee is entitled to additional time to provide the certification.**
  - **Here, Frank gave notice ahead of the deadline that it would be late based on his doctor's inability to complete it within the deadline. Therefore, Frank's leave during the 22 days and the days that follow are FMLA-protected.**

Hypothetical #4: Planning for the Unplanned

- The medical certification states that Frank will need 3-6 days per month when flare-ups occur of his medical condition. Is Frank qualified to take intermittent leave under the FMLA?
  - **Yes. Employees generally have the right to take FMLA leave all at once, or, when medically necessary, in separate blocks of time or by reducing the time they work each day or week.**
  - **As long as the leave is for a qualifying reason, it should be granted. However, the District may require employees using intermittent leave to make a reasonable effort to schedule leave in a way that does not unduly disrupt the operations of the District if the leave is for a planned medical treatment.**
  - **Note that there are specific requirements for instructional employees when they use intermittent or reduced schedule FMLA leave.**
- Does Frank have to follow the District's normal attendance reporting procedures when using FMLA?
  - **Generally, yes. To request FMLA leave, employees should follow the employer's usual and customary workplace procedures for requesting leave, absent unusual circumstances (in which case the employee must provide notice as soon as he or she can practicably do so).**

Hypothetical #4: Planning for the Unplanned

- When Frank calls into work next, does he have to state that he is using “FMLA time” for the time to qualify as job protected leave?
  - **Not necessarily. An employee does not need to specifically state that the leave is for an “FMLA-related absence,” but the employee must provide enough information for the employer to determine whether the leave is for FMLA.**
  - **For example, here Frank could call out and state that it is for FMLA, for his “serious medical condition,” or due to his “back pain flare up.”**
  - **If the District is unsure if Frank is using the time as FMLA leave, they should specifically ask when he calls in or follow up with him once he returns from leave.**
- Can the District require that Frank exhaust his paid time off when taking FMLA-qualified days off?
  - **Yes. An employee may choose, or an employer may require, an employee to take any accrued and unused paid time off while on unpaid FMLA leave.**

Hypothetical #4: Planning for the Unplanned

- Frank has taken all 12 weeks of intermittent FMLA. However, Frank informs the assistant superintendent that his chronic back pain still exists, and he will likely need additional time off from work.
- What should be the District's next course of action? Can Frank be fired for taking additional time off if he has exhausted his FMLA leave and any paid time off?
  - **The District may have additional leave obligations to Frank under the ADA, regardless of his FMLA eligibility.**
  - **Leave is one form of reasonable accommodation under the ADA. Unpaid leave may be a reasonable accommodation for an employee if there is no other effective accommodation, and the leave does not cause an undue hardship for the District.**
  - **If Frank states that he needs more time off, the District should engage in the interactive process with him and request further information from his medical provider on what accommodations he will need.**

Hypothetical #4: Summarizing the FMLA Basics

- Eligible employees may take FMLA leave for any of these qualifying reasons:
  - Birth of a child or placement of a child with the employee for adoption or foster care, to care for the child within one year of birth or placement.
  - To care for a family member (i.e., child, spouse, or parent) who has a serious health condition.
  - For an employee's serious health condition rendering the employee unable to perform the functions of his or her position.
  - Qualified exigencies resulting from a covered servicemember being called to duty in the Armed Forces.
  - To care for a covered servicemember who is injured or becomes ill while on covered active duty.
- Leave can be taken intermittently where it is occasioned by a serious health condition, a covered servicemember's injury or illness, or a qualifying exigency.
- During any unpaid leave under the FMLA, employers may require employees to use any type of accrued and unused paid time off (including vacation, sick, and personal time) concurrently with FMLA leave.

Hypothetical #4: Special Rules Under the FMLA

- The FMLA regulations contain special rules that apply to employees of “local educational agencies,” including public school boards and elementary and secondary schools under their jurisdiction, and private elementary and secondary schools.
- For local educational agencies, “instructional employees” have special rules around taking intermittent or reduced leave and for taking leave near the end of the term under the FMLA.
- “Instructional employees” are those whose principal function is to teach and instruct students in a class, small group, or individual setting.
  - Includes teachers, athletic directors, driving instructors, and special education assistants.
  - Does not include teacher assistants or aides who do not have the principal job of teaching or instructing or other “auxiliary personnel” such as counselors, psychologists, or curriculum specialists.
- For all employees of a public-school board or public or private elementary or secondary school, the determination of whether an employee is restored to their original job or to an equivalent job may be based on school board or private school policies and practices, and collective bargaining agreements.

Other Protected Leaves

Other Protected Leaves: New York Civil Service Law Section 72

- Section 72 is an employer's tool relating to leave when the employee is unable to perform their duties because of a non-work-related disability.
- The statute contains detailed procedures which must be strictly followed:
  - First, the employer must provide the employee and the civil service department with written notice of the facts providing the basis for the appointing authority's judgment that the employee is not fit to perform their duties. Employees must also receive copies of any written, electronic or other communication by the appointing authority to a medical officer or any other entity regarding the claim that the employee is unable to perform their duties;
  - Second, the employee must submit to a medical examination by a medical officer;
  - Finally, if the medical officer certifies that the employee is not fit to perform their duties, the employer must notify the employee that they may be placed on leave and provide the employee with a detailed written statement of the reasons for such leave and of the employee's right to a hearing.

Other Protected Leaves: New York Civil Service Law Section 72

- Exception: if the employer finds that there is "probable cause to believe that the continued presence of the employee on the job represents a potential danger to persons or property or would severely interfere with operations," it may place the employee on an involuntary leave of absence immediately.
  - The medical examination will take place after the employee has been removed from work.
  - However, such an employee is entitled to draw all accumulated unused sick leave, vacation, overtime and other time allowances available and is entitled to back pay, seniority, etc., lost if the employee is determined to be physically or mentally fit to perform the duties of the position.
- Employees placed on Section 72 involuntary leave may appeal the decision and have the right to apply for reinstatement within one year, subject to a medical examination to determine mental or physical fitness. Civil Service Law § 72(2).
- After one year, employees placed on leave pursuant to Section 72 are subject to termination in accordance with Section 73 of the law. Civil Service Law § 72(4).

Other Protected Leaves: New York Civil Service Law Section 73

- Guarantees public employees a one-year leave of absence for non-work-related disabilities.
- An employee who recovers sufficiently to return to work may make an application for reinstatement.
  - Such an application must be made within one year after the termination of the disability (not one year after termination of employment).
  - The employee will be subject to a medical examination to determine fitness to perform the duties of the employee's prior position.
  - If the medical officer certifies that the individual is fit to perform the duties of said employee's prior position, the individual is entitled to reinstatement to the position, if vacant, or to a vacancy in a similar position or a position in a lower grade in the same occupational field, or to a vacant position for which the employee was eligible for transfer.
  - If no vacancy exists, or if the workload does not warrant filling the vacancy, the individual must be placed upon a preferred list for said employee's former position, and he shall be eligible for reinstatement from such preferred list for a period of four years.
- For employees who are unable to return after one year, Section 73 leave may be terminated – but they are entitled, as matter of federal due process, to some pre-termination notice and opportunity to be heard, in addition to post-termination procedures. *Prue v. Hunt*, 78 N.Y.2d 364 (1991).

Other Protected Leaves: Collective Bargaining, Statutory Leave, & Policies

- Collective Bargaining and/or Statutory Leave may include:
  - Parental Leave
  - Personal Time
  - Bereavement Leave
  - Voting Leave, Cancer Screening Leave, etc.
- It is critical for CBAs to carefully define purposes for which each leave category may be taken.
- District policies may also create leave rights if they award time off not addressed by CBAS or other written policies.
  - For example, New York Paid Family Leave generally applies to all private sector employers.
  - Public employers, such as school districts, are only covered **if** they voluntarily elect to be covered.

Employer Best Practices

Employer Best Practices: Requesting and Taking Leave

- **Document, document, document!** It is important for employers to document all actions and communications related to protected leaves, as well as whether or not the employee's absence falls under his or her protected leave.
- **Adopt effective workplace policies regarding notice of leave and scheduling leave** that specify notice requirements for absences.
  - For example, an FMLA policy should remind employees that when leave is needed to care for a family member or the employee's own illness and is for planned medical treatment, the employee must attempt to schedule treatment so as to minimize disruption to the school district's operations.
- **If there is no independent right to leave (not eligible under FMLA, Civil Service Law, etc.),** first conduct a robust reasonable accommodation analysis before deciding on leave.
  - While leave may be an appropriate reasonable accommodation, it should be viewed as a last resort.
  - Consider whether, instead of leave, if workplace modifications, adjusted schedules, specialized equipment, etc. would provide effective accommodation for the employee to continue to work.

Employer Best Practices: Requesting and Taking Leave

- **An employee's use of a protected absence should not be the basis for counseling or disciplinary memoranda.**
  - This includes protected absences under the FMLA, NYPFL, CSL, and the ADA/NYSHRL.
- **However, employees with protected absences may still be counseled for**:
  - Absences that are not protected (i.e., "my car broke down")
  - Failing to adhere to notice requirements for absences absent unusual circumstances (protected or not)
  - Failure to meet normal job/performance requirements
- **Before counseling an employee for the immediately preceding reasons, ask yourself**: *Do I have documentation that I am counseling the employee for a legitimate non-discriminatory reason that is unrelated to a protected leave or accommodation?*

Employer Best Practices: What if an employee is out and there are no statutory protections available to the employee?

1. Review whether the employee is covered under the Civil Service Law and the Educational Law disciplinary procedures.
2. If no statutory protection exists, check whether the employee's CBA contains any contractual "just cause" standards and/or hearing procedures.
3. If no relevant CBA protections, consider whether the employee has an employment agreement that outlines terms on how to discipline and terminate an employee.
4. If no protections apply, "at-will" principles apply, and the employee can be disciplined or discharged for any legitimate, non-discriminatory reason so long as there is a rational basis for the discharge.

- Other potential actions include:
  - Negotiated settlements in the form of a separation and release agreement
  - Last chance agreements that give the employee one last chance to remain employed

Questions?

Contact for More

Luisa D. Bostick
PARTNER
716.848.1705
lbostick@hodgsonruss.com

Katherine L. Fierle
ASSOCIATE
716.848.1317
kfierle@hodgsonruss.com