

UPDATE

SLRMA TOP 4 Downloads

#1 Avoiding FLSA Pay Violations Self-Audit Checklist for Substitute Teachers

This self-audit form is intended for use by school district employers to assist in determining the exempt or non-exempt status of substitute teachers under the federal Fair Labor Standards Act (FLSA).

#2 2011 Fair Labor Standards Act Self-Audit Checklist

With complaints under the Fair Labor Standards Act on the rise, SLRMA updated our popular FLSA Self-Audit Checklist.

#3 English Language Learners in Selected States: A District Self-Audit Guide, Special Report From FLIC

Is your district prepared for the challenges of school-age children whose first language at home is not English? Let SLRMA help with this self-audit guide.

#4 Bullying: A Real Threat to Your School District and All of Your Students!

Is your school district prepared to deal with the bullies in your schools? Log in and download the new Anti-Bullying and Anti-Harassment Checklist to help prevent your school from becoming a victim of bullies.



Don't Aid and Abet Potential Discrimination Claims when Using Criminal Background Checks in Your Hiring Practices

Criminal background checks are necessary to protect schools from becoming potential victims. However, improper and overzealous use of criminal background checks may result in inadvertently discriminatory hiring practices that can lead to liability under Title VII.

Recently, the Equal Employment Opportunity Commission (EEOC) issued its guidelines for using criminal background checks in employment decisions. The guidelines highlighted the significant increase in the number of Americans who have been through some part of the criminal justice system. From 1991 to 2007, the percentage of Americans who have served time in prison has risen from 1.8% to 3.2%. Moreover, arrest rates for African American and Hispanic men are significantly higher. If these incarceration rates continue unabated, approximately 6.6% of all persons born in the United States in 2001 will serve some time in prison during their lifetime.

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CHECKLIST SAMPLE

Avoiding Discrimination Claims When Using Criminal History In Employment Decisions Checklist

Best Practices:

Does your school district have a written policy and procedures for excluding applicants and employees only for criminal conduct that is job related for the position in question and consistent with business necessity, as described below?

Yes	No
<input type="checkbox"/>	<input type="checkbox"/>

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What to Include in a Criminal Record Exclusion Policy

Yes No

Create a Targeted Criminal Conduct Screen: Your policy must be narrowly tailored to link specific criminal conduct, and its dangers, to the risks inherent in each job to which the policy applies.

- Have you eliminated policies and practices that automatically exclude people from employment based on any criminal record? Yes No
- For each job or category of jobs subject to your criminal record exclusion policy, have you identified the essential functions of the job and the circumstances in which it is performed (e.g., inside or outside, with or without supervision)? Yes No
- For each job or category of jobs, have you identified the types of criminal conduct that would render an individual unsuitable? Yes No

Provide for individualized assessment: Give individual applicants who are identified under the targeted screen the opportunity to demonstrate that exclusion should not apply to them based on such factors as:

- Does the school district provide such an applicant an opportunity to demonstrate that the criminal conduct exclusion policy should not apply to the applicant's situation? Yes No

Asking About Criminal History In Job Applications

- If your state allows questions about prior convictions on job applications and your applications ask such questions, are the inquiries limited to convictions for which exclusion would be job related for the position in question and consistent with business necessity? Yes No

Arrest vs. Conviction Records: An arrest record by itself can never support an adverse employment decision, because unlike a conviction, an arrest is not reliable evidence that the individual committed the charged offense. However, a school district can investigate the conduct underlying an arrest and can make an adverse decision if the individual actually engaged in conduct that renders him or her unfit for the job in question. If your state and local laws permit inquiries about arrest records and you make such inquiries of job applicants:

- Do you ask only about arrests for conduct that, if committed, would render the individual unfit for the job in question? Yes No
- Do you inform applicants that no adverse action will be taken based solely on the report of a prior arrest that did not lead to conviction? Yes No

This is a small sample of the Self Audit Checklist for Avoiding Discrimination Claims When Using Criminal History in Employment Decisions.

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Title VII of the Civil Rights Act of 1964 (42 U.S.C. §2000, *et seq.*) prohibits discrimination based on race, color, religion, sex or national origin. Given the statistics above, a school's otherwise neutral policy or practice in using criminal background checks may result in disproportionately more Title VII-protected groups being refused employment, simply based on their criminal background. Thus, schools need to evaluate their use of criminal background checks now to ensure they are not exposing themselves to liability under Title VII.

SLRMA is pleased to offer its **Self-Audit Checklist for Avoiding Discrimination Claims When Using Criminal History in Employment Decisions**. This Checklist provides your school with the means to evaluate its current practices and educate your districts on potential pitfalls in the use of criminal background checks when make employment decisions. In anticipation of the hiring season, your school district should immediately download and follow the Checklist available at www.slrma.org so as to avoid any possible accusations under Title VII. ■

Recent Dispatches in the Newsroom



Content provided by:

FLIC

Federal Legislation Insurance Committee

Log In and Download the Recent Case Summaries That Impact Your School District and Find Out What You May Be Missing

April

Filarsky v. Delia, 132 S.Ct. 165 (United States Supreme Court)

Are your school volunteers and temporary employees entitled to the same immunities afforded full-time government employees for discretionary acts in carrying out governmental functions? The U.S. Supreme Court addresses the parameters of the immunities possessed by part-time and volunteer government employees that will equally apply to school districts who use of part-time employees.

May

J.F.K. v. Troup County School District, 678 F.3d 1254 (11th Cir. Appellate Court (Georgia))

The standards by which a school district may be found liable for sexual harassment under Title VII (employment) and Title IX (student educational opportunities) are different and applying the wrong standard in analyzing your school district's obligation to take action could have a calamitous result. In this case, the Federal Court of Appeals outlines the elements of liability under Title IX and how that standard is less stringent than that required under Title VII.

June

Moss v. Spartanburg County School District, 2012 WL 2445028 (4th Cir. Appellate Court (South Carolina))

Does your school district allow its students to be released from school to participate in religious education classes and provide credit for such attendance? Church and state relationships under the Establishment Clause of the First Amendment is often difficult to navigate. In this recent federal appellate decision, the court outlines the Lemon test which your school can employ to determine whether such liability may exist in your school district.

July

Doe v. Elmbrook School District, 2012 WL 2996743 (7th Cir. Appellate Court (Wisconsin))

Given the size of some schools, often it is not possible to host senior graduation or significant events in school facilities. In a rare full panel decision, the 7th Circuit analyzes a school's use of a church for graduation, again employing the Lemon test, and determines sometimes even innocent attempts at accommodation can result in unintended liability.



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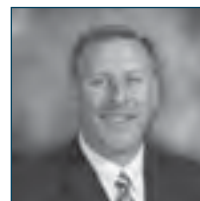
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Congratulations to the Echo Pen Give-Away Winners:

Michigan	Mackinac Island Public Schools
Illinois	Blackhawk Area Special Ed. Dist.
Montana	Ronan Public Schools
Oklahoma	Cashion Public Schools
Nebraska	Ashland-Greenwood Public Schools

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