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Wisconsin Moves Forward to Protect Against Child Abuse - New Reporting and Training Requirements

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The Wisconsin legislature has recently taken steps to further protect children against abuse and neglect. 2011 Wisconsin Act 81 ("Act 81") implements important enhancements to the mandatory reporting of child abuse.

Changes on Mandatory Reporting of Child Abuse and Neglect

On November 23, 2011, Governor Walker signed Act 81 into law. Act 81 took effect on December 9, 2011, and implements two critical new requirements. First, Act 81 mandates that all school employees are obligated to immediately report child abuse or neglect if, during the course of their professional duties, they have reasonable cause to suspect that such abuse or neglect has occurred. Second, since the Act expands such obligations to employees who previously did not have such duties, the Act also requires mandatory training of all school employees within specified time frames.

The law itself is not new, as the previous version of Wis. Stat. §48.981(2)(a) applied similar obligations to teachers, administrators, and counselors. Act 81 expands the obligation to all school employees, including educational assistants, bus drivers, interpreters, maintenance staff, food service employees, clerical staff, and coaches. The law obligates all employees to immediately report the child abuse or neglect - no delay is justified. In addition, a school employee may not ask or rely on another individual to report on their behalf. Each school employee must make the report, regardless of whether they believe another school employee is going to report the child abuse or neglect. Act 81 did not alter the provision that the obligation only arises if the school employee sees the child in the course of their professional duties, but keep in mind that this includes the classroom and extends to any school sponsored event.

Act 81 also expands the potential penalties for a school employee who fails to report such child abuse or neglect to a maximum fine of \$1,000 and/or six months in jail. In order to further encourage the reporting of such child abuse or neglect, Act 81 also enhances the protections afforded to reporters. First, reporters are entitled to confidentiality. While the reporter's identity may be disclosed to the agency receiving the report, their identity cannot be shared with third parties unless it is authorized on other grounds. Second, while the prior law prohibited the firing of any employee who reports child abuse or neglect, Act 81 expands that protection to prohibit discipline or other discrimination in the terms and conditions of employment for making such a report. Finally, any such reporter is entitled to civil and criminal immunity as long as the report was made in good faith.

The expansion of the mandatory reporting is not the only critical change to the law. The legislature also mandated training for all school employees within six months of hire and every five years after that. The training must: (1) address how to identify children who have been abused or neglected and (2) review the laws and procedures governing the reporting of such child abuse or neglect. While Act 81 is relatively silent on the details of such training, DPI has advised that the initial training of all school employees must take place by June 9, 2012. In addition, DPI has indicated that it will provide two alternatives to school districts to meet the mandatory training requirements - a webcast to be viewed by school employees or a Powerpoint to be presented to school employees in person. The materials should be available by January 31, 2012.

School Districts Can Now Refuse to Hire All Felons

In enacting 2011 Wisconsin Act 83, the Wisconsin legislature also moved forward to

protect children by permitting school districts to fire or refuse to hire any individual who is a convicted felon, regardless of whether the underlying conviction is substantially related to circumstances of the job. As many employers, including school districts, are aware, Wisconsin law generally prohibits employment discrimination based on conviction record. Wis. Stat. §111.335. One of the exceptions to this bar against employment discrimination is if the conviction is substantially related to the circumstances of that particular job

Several professions previously were allowed to discriminate against convicted felons, regardless of whether the conviction substantially related to the circumstances of the job. This included private detectives, installers of burglar alarms, security personnel, and the like. Wis. Stat. §111.335(1)(cg-cx). Interestingly, Wisconsin courts in the past have invited the Wisconsin legislature to include school districts in this category of professions which are allowed to discriminate based on a felony conviction. See *Milwaukee Bd. of Sch. Directors v. Labor & Indus. Review Comm'n*, 2001 WI App 166, 246 Wis. 2d 988, 632 N.W.2d 123 (unpublished).

Governor Walker signed 2011 Wisconsin Act 83 ("Act 83") into law on November 23, 2011. Act 83 took effect on December 9, 2011 and allows school districts to fire current employees or refuse to hire prospective employees who have been convicted of a felony. There is no longer any requirement that the circumstances of the conviction relate to the circumstances of the job.

It is equally important to note that this change in the law does not alter the prohibition against arrest record discrimination. It would still be discrimination to take an adverse employment action against an employee based solely on an arrest and not a conviction. In addition, if the conviction is not for a felony, it would still constitute discrimination to take an adverse employment action against the individual, unless the non-felony conviction substantially related to the circumstances of the job.

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