

GUIDANCE ON COMMON LEGAL & HR ISSUES IN LIBRARIES

VERMONT LIBRARY CONFERENCE - 2015

Law Office of Caroline S. Earle, PLC
Caroline S. Earle, Esq.
Robin A. Freeman, Esq.
(802) 225-6495
cse@caroline-law.com
raf@caroline-law.com

HIRING STUDENTS

- Question: Our library hires a student under age 16 each summer for 25 hours/week. The student doesn't work after 8 pm and not more than 6 hours/day.
- Answer: This is fine

HIRING STUDENTS

● Ages 14-15

- May work outside school hours in non-hazardous jobs
- Not more than three hours/school day
- Not more than 18 hours/school week
- Not more than 8 hours/non-school day
- Not more than 40 hours/non-school week
- Not before 7 am or after 7 pm, except 06/01/15 - Labor Day, when they can work until 9 pm

Hiring Students

- Ages 16-18:
 - Can work in pretty much any non-hazardous job
- Agricultural jobs: other rules apply

COPYRIGHT ISSUES

- Question: Clarify our responsibility vis a vis copy-write law and helping patrons copy and print things OR even seeing them using the copier.
- Issues related to libraries and photocopying are covered primarily in 17 U.S.C. §108
- Answer: If the library makes the copy of an article or journal entry, you must stamp it with a notice that copyright law applies
- Answer: If the library makes a copy of a book chapter, include a copy of the copyright notice from the front of the book or stamp the copy with a separate notice
- Sample -- NOTICE: THIS MATERIAL MAY BE PROTECTED BY COPYRIGHT LAW AND MAY NOT BE REPRODUCED OR DISTRIBUTED WITHOUT THE PERMISSION OF THE COPYRIGHT OWNER

COPYRIGHT ISSUES

- Answer: If the patron is making the copy (“unsupervised use”), library is protected if there is a copyright warning prominently displayed on the equipment
- The display must follow the guidelines and wording contained in 37 C.F.R. §201.14
- None of the protections apply if the library or its employee has reason to believe that it is participating in a systematic reproduction or distribution of multiple copies of the work for use outside of private study

COPYRIGHT ISSUES

- Answer: Also consider computer access and patron violations of copyright law through the computer and printer
- Answer: Provide and prominently display on each computer a similar warning to those placed near photocopiers
- **Sample** -- Materials obtained or copied on the Internet or the Library's computer network may be subject to copyright laws. Materials protected by copyright may not be reproduced or distributed without the permission of the copyright owner, with certain limited "fair use" exceptions. Violation of the copyright law may subject network users to a legal action for damages and/or an injunction. Responsibility for compliance with copyright laws and all consequences of copyright infringement lie with the user. The Library disclaims any liability or responsibility related to copyrights resulting from patron Internet use.

COPYRIGHT ISSUES

- Question: A community member uses my library's meeting room to screen a documentary film series that is free and open to the public (usually when the library is closed). While I have advised this person to purchase public screening rights for any film he is showing, I am pretty sure he never does this. Could the library be held legally liable for this violation? We do not sponsor the series, and we have a clear policy stating that use of our meeting room does not imply endorsement of the event.

COPYRIGHT ISSUES

- Answer: If the library has obtained a Performance Site License (Movie Licensing USA), all video screenings at the site are covered, even for community groups
- Answer: If no site license, then there is potential liability for the library but in this situation liability is unlikely
- Factors to Consider:
 - Does the library charge for use of the space?
 - Is there a form that must be filled out for use of the space that contains a strong warning about copyright violation?
 - Does the form contain a strong hold harmless/indemnity provision?
 - Is library equipment used for the screening?

GENERAL USE OF LIBRARY

- Question: Is it legal for a municipal library to allow a 501(c)(3) organization exclusive use of a significant portion of the building rent free?
- Answer: Under Vermont law, a Town Selectboard is charged with “the general supervision of the affairs of the town.” 24 V.S.A. §872. Moreover, the Board of Trustees of a municipal library has “full power to manage the library” and “shall control and manage [library] property ... for the use and benefit of the library.” Under this broad grant of authority, the Selectboard/Board of Trustees may be entitled to grant a non-profit exclusive use of a portion of the library building if it deems this use beneficial to the citizens of the town. This is best raised at a selectboard or library board meeting.

Definition of Public Library

- Question: What has more weight in the definition of a municipal (public) library, the original vote to make the library the town library, or the way a library handles its finances?
- “Public Library” is defined as “any library established and maintained by a municipality or by a private association, corporation or group to provide basic library services free of charge to all residents of a municipality or a community and which receives its annual financial support in whole or in part from public funds.” 22 V.S.A. § 101(2)
- Answer: Both the foundation of the library and the manner in which it receives its funds carry equal weight. A library must meet both criteria to be a “public library.”
- “Public funds” would not include just appropriations from the Town, but might include any public funds such as government grants

BENEFITS

- Question: Are library employees entitled to same benefits as other municipal employees?
- Answer: Generally yes, unless the library employees operate under a separate CBA.

UNPAID VACATION LEAVE

- Question: Can a staff person take unpaid vacation leave indefinitely?
- Answer: No. As an employer, you can insist on a firm return date.
 - Practice Pointer: If this is a change, give notice to all and be consistent in practice.

UNION QUESTION

- Question: Could libraries with one staff member each (a library director) create a statewide union?
- Answer: Unlikely.
 - Under Vermont's Municipal Labor Relations Act, 21 V.S.A. § 1721 et seq., "municipal employee" is defined to exclude supervisors (references same definition under VLRA) and also excludes "confidential employees," defined as an employee "whose responsibility or knowledge or access to information relating to collective bargaining, personnel administration, or budgetary matters would make membership in or representation by an employee organization incompatible with their duties."

VOLUNTEER AGREEMENTS

- Question: What are the legal issues involved with Volunteer Agreements?
- Answer: Volunteers (i.e., no compensation in any way) are generally not considered to be eligible for worker's compensation benefits. However, this is not settled law.
- Answer: Indemnity and Release provisions must specifically include language that covers the organization's own negligence or it will not be covered
- Answer: Even with such language, the provision may still be found to violate public policy
- Answer: Photograph and video media releases are generally upheld

FILE RETENTION

- Question: How long should HR and personnel files of former employees be retained?
- Answer:
- Selection, hiring & employment records: 2 years after creation of document or the hire/no hire decision, whichever is later.
 - Job applications, job ads, screening tools/tests, interview notes and other records related to hire/no hire decisions
- Personnel Records: 7 years after termination
 - Records related to promotions, demotions, transfers, performance appraisals, terminations, reasonable accommodations requests, training records, incentive plans, merit systems, and seniority systems.

CONFIDENTIALITY OF LIBRARY PATRON RECORDS

- Question: In the Northern part of Vermont there is a cooperative of 21 Libraries that have signed a contract that enables patrons of each library to use all 21 libraries. Is it legal for a person to fill out a privacy policy (agreeing to let other people check out on their account or agreeing that library staff can leave detailed messages about why they are calling-about an overdue or hold, etc.) at one library and have that stand for all 14 libraries sharing the system? For example, Bob from Town 1 signs a form stating Joan can borrow materials on his library account. This message is then put onto his library record and Towns 2-14 can see this message. Can they then let Joan borrow on Bob's account or is it only legal for Joan to borrow on Bob's account when checking out in Town 1?

CONFIDENTIALITY OF LIBRARY PATRON RECORDS

- Library Patron records are governed by 22 V.S.A. §171-173, requiring patron registration and transaction records to be confidential
- Exemption: 22 V.S.A. §172(b)(1): “with the written permission of the library patron to whom the records pertain”
- Exemption: 22 V.S.A. §172(b)(2): “to officers, employees, volunteers, and agents of the library to the extent necessary for library administration purposes”

CONFIDENTIALITY OF LIBRARY PATRON RECORDS

- Answer: Yes, if the privacy policy specifically allows for such disclosure
- Have the patron registration materials inform patrons of the Cooperative and the fact that information will be seen by library employees in other towns
- Registration materials are clear that others with access to borrowing rights can view the transaction records
- Have all patrons with registrations pre-dating the Cooperative sign new registration or policy forms
- Provide an opt-out if possible

CONFIDENTIALITY OF LIBRARY PATRON RECORDS

- Question: Vermont's Library Patron Records law, 22 V.S.A. § 171 et seq., provides that patron records should be kept confidential, and authorizes civil action against library if records disclosed. If a child reports feeling unsafe or in danger, what can library staff lawfully report to police, without fear of liability?
- Answer: In these circumstances, Vermont's Child Welfare laws provide that any "concerned person who has reasonable cause to believe that a child has been abused or neglected" may make a report to the Commissioner for Children and Families (1-800-649-5285). 33 V.S.A. § 4913(c).

CONFIDENTIALITY OF LIBRARY PATRON RECORDS

- Any person who in good faith makes such a report shall be immune from civil or criminal liability that otherwise might be imposed. 33 V.S.A. § 4913(d)(1).
- Note: The SOV website states that if you perceive the child to be in immediate danger, call 911 or local police first, then call them. <http://dcf.vermont.gov/fsd/reporting>

QUESTIONS?

Further Questions or Follow-Up

- Feel free to reach out to us in the future:
 - Phone: 802-225-6495
- Caroline S. Earle, Esq.
 - cse@caroline-law.com
- Robin A. Freeman, Esq.
 - raf@caroline-law.com