



Employment Issues

Salary and Benefits

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General Information

Iowa school corporations have spent considerable administrative and negotiation time discussing the philosophy, shape and components of their teachers' salary schedules. Most school corporations employ a wide variety of classified employees (teacher assistants, custodians, cooks and bus drivers, etc.). The majority of classified employees are not represented by an exclusive bargaining representative. Unfortunately, many boards and administrators have done little, if any, analysis of the salary and benefits considerations of classified employees.

Before any employer can design or negotiate its pay system, it must reflect on its philosophy of compensation. The employer should decide whether pay is intended to reward length of service or superior performance, equal the comparable rates in the relevant labor market, ensure employee recruitment or retention, provide motivation for greater effort or make up for deficiencies in fringe benefits or a combination of these goals. Within an organization, several different goals and pay systems may be appropriate. For example, a school corporation may base skilled craft persons' pay to the going rates paid by local contractors, but start

unskilled food service workers at minimum wage with increases based on seniority.

Critical questions relating to any classified employee pay system are set forth below. These same questions may be asked, to a certain degree, regarding pay systems involving licensed employees.

1. What is the purpose of the wage or salary matrix?
2. How many groups or classifications of employees should be paid from the same matrix?
3. How many job classifications should you have? (Employers generally have too many.)
4. Are the pay grades in your matrix composed of job classifications with comparable skills, effort, responsibilities and working conditions or some other rational measure of worth?
5. Should increases be granted annually rather than, for example, after six, 12, 18 and 24 months?
6. Are the number of steps or pay levels reflective of a normal learning curve or based on some other factors that are unrelated to how long it ordinarily takes an employee to master the job? (A schedule with over five steps for classified employee groups is questionable.)
7. How should each vertical and horizontal cell be valued?
8. How much credit, if any, should you give for prior experience elsewhere?
9. Should all step increases be automatic, keyed only to seniority and, if not, what is the criteria for progression?
10. If a wage increase is denied, what review procedure is available? (Union contracts

- rarely permit a grievance arbitrator to establish a wage rate.)
11. Is all paid and unpaid time treated as "time worked" for progression purposes?
 12. If employees work, temporarily or permanently, in another classification or pay grade, how is their pay affected?
 13. Should employees, in addition to scheduled pay increases, receive some amount for longevity? When?
 14. Should your school corporation pay for required (or desired) licenses or education?
 15. How are pay rates for newly created classifications determined?
 16. Are scheduled pay rates minimum rates, and for what reasons can they be exceeded?
 17. Can persons with unique or scarce skills be hired above the scheduled base salary?
 18. Should pay rates for craft jobs (for example, plumber or electrician) be based on an apprentice/journeyman formula, as in the building trades?
 19. Should employees' daily or weekly pay be guaranteed, and when is the guarantee inapplicable? (Notwithstanding the certainty of employment, school employees rarely enjoy such guarantees.)
 20. Should employees be guaranteed a particular sum (for example, two hours pay) for reporting when work is not available or for the inconvenience of being called in during off-duty hours?

How a school corporation answers these questions will depend on its own wage philosophy. If, for example, a school corporation decides to reward seniority and avoid unnecessary turnover costs, it will establish a salary matrix with multiple steps for its classified staff or create some type of longevity pay for more senior employees. It will also increase the pay its classified staff receives each year and grant a uniform increase to all employees. If, on the other hand, the school corporation seeks to pay its classified staff the minimum wage necessary to hire qualified employees and is not concerned with high turnover rates, then the school corporation will create fewer salary steps, avoid longevity pay and attempt to keep salary levels the same each year. The school corporation might also seek to pay employees based on merit rather than seniority. That way it can reward superior employees with greater wage increases and deny wage increases to more marginal employees.

No matter what wage philosophy it adopts, a school corporation is advised to adopt compensation systems that are easy to administer and do not unduly restrict its ability to react to unforeseen contingencies or to assign work. Accordingly, school corporations are encouraged to reject salary matrixes that contain excessive job classifications. School corporations should also avoid salary increases that automatically go into effect without board action.

Some classified employees' pay systems are simple and unstructured, with a board policy merely stating:

The board shall annually determine the compensation of all classified employees, taking into account the financial resources and budgetary requirements of the school corporation and recommendations of the superintendent.

OR

The school corporation may adjust a classified employee's regular hourly rate at any time, within the rate range established for the classification, and based on the employee's years of service in the school corporation, attendance record and quantity and quality of work.

As a rule, employees prefer the certainty of a wage schedule containing specific wage rates at specific seniority levels.

What about a cost-of-living escalator or de-escalator, raising or reducing wages according to changes in the consumer price index, published by the Bureau of Labor Statistics? A cost of living adjustment (COLA) clause is uncommon in Iowa school contracts or policies.

These provisions have declined in popularity and are now contained in only 35 percent of private sector contracts. A COLA clause is particularly inappropriate for Iowa school corporations because there is no published index for any Iowa city. The increase in the cost of food, housing, transportation, etc. in Chicago, Minneapolis or for urban or clerical wage earners nationwide may be significantly higher than increases experienced in certain Iowa

communities. Unions are also reluctant to remove COLA clauses from contracts and few interest arbitrators are willing to delete language contained in an agreement.

Some collective bargaining agreements contain "reopener" clauses. There are two types of reopener clauses: 1) a traditional reopener which entails an agreement by the parties to renegotiate the salary schedule after the first year of a two-year contract; and (2) an increase or decrease in funds reopener which requires the parties to renegotiate wages if the school corporation receives more state aid than anticipated or increased revenue from any other source. Collective bargaining agreements can also contain an automatic adjustment clause under which additional funds are automatically added to agreed upon rates in a specified amount. Many public employers oppose any reopener clause that is tied to an increase in funding arguing that, if fair and competitive rates were negotiated, there is no reason to increase them because of a one-time increase in funding. It is also argued that increased funding is better spent on neglected line items in the budget and not on wages and salaries.

What about merit pay plans? Employee organizations, including the National Education Association, have strongly opposed such plans, arguing the plans are suspect due to the lack of any objective standards to measure teacher performance, favoritism by managers and the internal hostility and conflict generated among employees. Employee organizations also point out that merit plans, when used in the past, have not significantly increased the overall quality of employee work performance.

While the benefits to be derived from merit pay plans are not clear cut, these pay plans produce the best results if they are applied to jobs where an employee's level of performance is measured upon some objective standard. In addition, it is easier to sell such a plan if it is a component of a system which already has an attractive salary schedule in place so that the merit pay aspect of the employee's total compensation is akin to a bonus or to a form of incentive pay. Harvard Business School Professor Rosabeth Moss Kanter reflects the view of many management experts:

Far from freeing the energies of employees to seek ways to improve their performance,

subjectively based merit pay systems throw them back on the mercy of their bosses. Their earnings depend on the opinions of hierarchical "superiors" about their performance rather than on a more direct assessment of contribution. There is thus, not surprisingly, a fair amount of cynicism about the favoritism and potential for abuse in such a paternalistic practice.

In light of those concerns, a merit pay system in which teams of employees or the entire unit receive monetary rewards if the group meets a predetermined standard of excellence is easier to manage.

In recent years, there has been a dramatic increase in the variety and cost of employee benefits. It is common for a school corporation to provide life, health and disability insurance programs and several types of paid leave. Employee assistance plans, wellness plans and voluntary early retirement plans are also growing in popularity. Given the nature and range of benefits school corporations provide, a substantial portion of every salary dollar is now spent on fringe benefits. Due to limited budgets, many school corporations are focusing on providing only fringe benefits that substantially improve employee satisfaction or their quality of life. School corporations are acting to reduce cost increases for health care. As a result, few employee health care plans today provide full single and family coverage. Deductibles, co-payments and other cost-saving measures are now the rule.

Consider the following when designing board policies or negotiating contract provisions on key benefits for classified employees, and where relevant, for licensed employees:

Paid Holidays

1. Are they clearly identified by name or date?
2. Can an employee receive a paid holiday when not working (for example, July 4 for a nine-month employee) or on leave or layoff?
3. Does a holiday during an employee's vacation extend the vacation?
4. How much are employees paid for holidays worked or not worked? (Half-time workers should not be paid eight hours of billing pay.)

Vacations

1. Are part-time employees eligible for full or prorated vacations?
2. When during the year are vacations earned (anniversary date, June 1, etc.)?
3. How is vacation pay calculated (usual weekly hours times regular rate; percentage of annual earnings; etc.)?
4. Is there a policy or clause precluding vacations at certain times (for example, during the first and last weeks of school)?
5. Can you limit the number of employees on vacation at one time, in the interest of efficiency?
6. How are vacation preferences established, and does the school corporation have final approval?
7. If an employee quits or is terminated, can he or she receive pro-rata vacation pay?

Health Insurance

1. Is the insurance definition of "an eligible employee" clear?
2. Does the policy or clause incorporate by reference the school corporation's insurance contract? (Eligibility provisions are critical.)
3. Are the amounts or percentages to be paid by the school corporation and the employee for premiums, deductibles and co-payments clear? (A fixed dollar amount is beneficial to the employer.)
4. Do the specified premium obligations continue during a leave, layoff or other absence?
5. Should an employee be able to elect a tax-sheltered annuity in lieu of family insurance? (This is a mandatory bargaining topic but can be rejected as an unwise expenditure of insurance dollars.)
6. Are the terms of a health maintenance organization (HMO) option clearly spelled out in your policy or contract?
7. Are the terms of a flexible benefit plan clearly spelled out in your policy or contract?

Studies have shown that employees fail to appreciate the value of their fringe benefits. Many employers have found that an annual personalized benefit statement is worth the time and expense.

Overtime and the FLSA

The Fair Labor Standards Act (FLSA) requires employers, including school corporations, to pay all employees who are not exempt from the act's coverage overtime for each hour worked in excess of 40 during a given work [week](#).¹ The FLSA requires that the employee receive overtime pay that is equal to one and one-half times the employee's "regular rate" of [pay](#).²

An employee's regular rate is usually his or her hourly wage. An employee's regular rate can, however, exceed his or her hourly wage if the employee receives performance bonuses or other forms of additional compensation. If the employee receives additional compensation, the regular rate will exceed his or her hourly wage. An employee's regular rate of pay under the FLSA is determined by dividing a total remuneration from employment (except statutory exclusions) during any week of employment by the total number of hours actually [worked](#).³

The FLSA exempts certain categories of employees from its overtime provisions. These exemptions, commonly referred to as the "white collar exemptions," apply to executive, professional and administrative employees who meet certain [requirements](#).⁴ In general, administrators and licensed employees (including school nurses and counselors) are exempt. The FLSA specifically exempts classroom teachers from the provisions of the act. Other "nonlicensed" administrators and classified employees may also be exempt provided they meet either the long or short test for the "executive" or "administrative" exemption.

Executive - Long Test

1. Employee's primary duty must be management of the school corporation or a recognized department of the school corporation.
2. Employee must regularly direct the work of at least two full-time employees.
3. Employee must have the authority to hire and fire, or to effectively recommend hiring or firing decisions.
4. Employee must regularly exercise discretionary powers.
5. Employee must devote at least 80 percent of the work week to 1-4 above.

6. Employee is paid on a salary basis and earns at least \$155 per week but less than \$250 per week.

Executive - Short Test (Highly Paid Executives)

1. Employee must regularly direct the work of at least two full-time employees.
2. The employee's primary duty is management of the school corporation or a division of the school corporation.
3. The employee is paid on a salary basis and earns at least \$250 per week.

Administrative - Long Test

1. Employee's primary duty must consist of office or non-manual work of a substantial importance to the proper management or operation of the school corporation.
2. Employee must customarily and regularly exercise discretion and independent judgment.
3. Employee must devote at least 80 percent of the work week to 1-2 above; however, the employee may spend more than 20 percent of time on nonexempt work that is closely related to the employee's administrative duties.
4. Employee is paid on a salary basis and earns at least \$155 per week but less than \$250 per week.

Administrative - Short Test

(Highly paid administrative employee)

1. Employee's primary duty must consist of responsible office or non-manual work of a substantial importance to the proper management or operation of the school corporation.
2. The work the employee performs must require the use of discretion and independent judgment.
3. Employee must be paid on a salary basis and earn at least \$250 per week.

Unless they supervise two or more employees, most classified employees will not meet the requirements for the executive or administrative exemption and will be subject to the overtime provisions of the FLSA. When analyzing whether supervisory employees, such as lead custodians, head bus drivers or head cooks, qualify for the executive

exemption, note that to qualify for the exemption under either the long or short test, the employee's primary duty must be management of the school corporation or a recognized [subdivision](#).⁵ In its regulations, the Department of Labor defines "managerial or supervisory functions" as including the following duties:

"...directing their work; maintaining their production or sales records for use in supervision or control; appraising their productivity and efficiency for the purpose of recommending promotions or other changes in status; handling their complaints and grievances and disciplining them when necessary; determining the techniques to be used; apportioning the work among workers; determining the type of materials, supplies, machinery or tools to be used or merchandise to be bought, stocked and sold; controlling the flow and distribution of materials or merchandise and supplies; "interviewing, selecting and training of employees; setting and adjusting their rates of pay and hours providing for the safety of employees and [property](#)."⁶

As a general rule of thumb, the Department of Labor defines an employee's "primary duty" as entailing more than 50 percent of the employee's [time](#).⁷ Employees who spend 50 percent or more time performing the management functions listed above probably qualify for the executive exemption.

School corporations commonly ask whether their board secretary qualifies for one of the white collar exemptions. A board secretary can, depending on specific duties and responsibilities, qualify for the administrative exemption. To qualify for this exemption under either the long or short test, the board secretary must perform office work of substantial importance to the academic operations and functions in the school corporation and must exercise "discretion and independent [judgment](#)."⁸ Independent judgment is defined to involve "the comparison and the evaluation of possible courses of conduct and acting or making a decision after the various possibilities have been [considered](#)."⁹

A board secretary qualifies for the administrative exemption if he or she essentially serves as the school corporation's business manager and routinely advises the superintendent and the board on matters

essential to the academic operation and functioning of the school corporation. If, on the other hand, the board secretary essentially serves as the superintendent's secretary and primarily performs clerical responsibilities such as typing reports and correspondence, preparing agendas for and minutes of board meetings, and similar tasks, the board secretary does not qualify for the administrative exemption and is probably subject to the FLSA's overtime requirements.

When computing overtime payment what constitutes compensable work? The FLSA does not define the term "work" or "working hours." Department of Labor regulations do, however, provide that an employer must pay its employees for all time during which the employee is required to be on duty, to be on the employer's premises or at a prescribed work place and all times which the employee is "suffered or permitted" to work even if the employee is not required to [do so](#).¹⁰ "Suffered or permitted to work" has varying definitions depending on the circumstances. Generally, the time an employee spends performing work on behalf of the school corporation is compensable and must be counted when computing overtime—provided the school corporation knows or has reason to know the employee is providing those services.

Any time the employee spends at his or her place of work after the start of the work day is generally compensable, even if the employee is not actually working. This is not the case, however, if the employee is relieved of all work responsibilities for a period "long enough to enable him to use the time effectively for his own [purposes](#)."¹¹ Under those circumstances, the employee is considered "off duty" and not entitled to compensation provided the employee is "told in advance that he may have the job and that he or she will not return to work until a specified [hour](#)."¹²

In like manner, a "bona fide meal period" is not considered compensable time if the employee is completely relieved from duty for 30 minutes or longer. A 15-minute break in the morning or afternoon is, however, considered to be only a "rest period and is [compensable](#)."¹³

The rules regarding compensable time are murky with bus drivers and other nonexempt employees who drive or accompany students to athletic events

or field trips. While it is clear that the time spent transporting students is compensable, a question exists whether the school corporation must pay the employee when he or she is not actually driving the bus or van. The Wage and Hour Division, which is part of the United States Department of Labor and required to administer the FLSA, takes the position that only the time the employee spends driving the bus or supervising students is compensable time and must be included when computing overtime. Thus, if the employee drives two hours to an athletic event, watches the event for two hours, and then drives two hours back to the school, the employee has worked only four hours, even though the trip took six hours. This scenario assumes, however, that the employee was permitted to do whatever he or she wanted while the athletic event took place and was not assigned any duties or responsibilities during that two-hour period. If the employee was required to supervise other students, remain on the bus to prevent vandalism or theft, perform maintenance work on the bus or other similar tasks, the entire trip is compensable.

School corporations must maintain written policies on what hours an employee is required and permitted to work and what procedures employees must follow before they work overtime. Most school corporations require their classified and other nonexempt employees to work a standard work week of 40 hours. Each day of the week is further defined to begin and end at a certain time with a designated lunch time of at least 30 minutes that is not compensable. The defined work week should be included in the school corporation's personnel manual, along with a strong statement that employees are not permitted to work any additional or "overtime" hours unless they receive prior written authorization from their immediate supervisor. The policy manual should also directly inform employees that the school corporation will not compensate them for any unauthorized overtime hours worked.

A written policy prevents employees from claiming they worked hours in addition to the standard work week and then seeking overtime payments. Also, supervisors should be trained to tell any employee who voluntarily reports to work early or stays late that they are authorized to work only during the established work week and that any additional time spent working is not compensable.

If a supervisor knows an employee reports to work early or stays late to complete their assigned tasks and does nothing to correct the situation, the school corporation could be liable for overtime even if its written work schedule policy provides to the contrary, since the additional work performed is arguably "suffered or permitted" within the meaning of the FLSA.

In addition to computing the amount of overtime pay required by the FLSA, other issues commonly arise regarding overtime that are not controlled by legal requirements and are within the school corporation's discretion. These questions include:

1. How is overtime defined (all hours worked beyond eight daily, 40 weekly, on weekends)?
2. Is it voluntary or mandatory?
3. Is there a limit on how much overtime can be required?
4. Is advance notice of overtime required?
5. Must overtime be specifically authorized by supervision?
6. Is all overtime paid at time-and-a-half?
7. Are shift differentials, longevity or other premiums included in the employee's rate for overtime pay computation?
8. Should a clause or policy preclude the pyramiding of overtime pay on top of other premium pay (for example, a guarantee for Sunday work)?
9. Should a clause or policy require the equal distribution of overtime? (Within employees in a classification, department or among employees normally performing the work.)
10. Is refusal to work mandatory overtime a disciplinary offense?

Compensatory Time

Section 7 of the FLSA requires all employers to pay time-and-a-half for any hours worked in excess of 40 hours during any given work week. Section 7(o), however, provides public employers, including school corporations, some flexibility regarding the payment of overtime. Section 7(o) permits public employers to grant employees "compensatory time off," in lieu of overtime compensation, at a rate not less than one and one-half hours for each hour of employment for which overtime compensation is [required](#).¹⁴ This exception is unique to public employers. Private employers cannot pay their

employees "comp time" in lieu of overtime compensation.

The payment of compensatory time is not, however, absolute. Employees represented by a labor organization must be paid pursuant to the provisions of a collective bargaining agreement or pursuant to a "memorandum of understanding" between the employer and the employee's labor [representative](#).¹⁵ This requirement essentially mandates that the school corporation negotiate compensatory time with labor organizations. The school corporation cannot, in other words, unilaterally pay compensatory time in lieu of overtime. As a practical matter, this requirement does not impose a significant burden. Most employees and unions prefer having the option of receiving compensatory time.

For employees not represented by a labor organization, compensatory time must be paid pursuant to an agreement or understanding between the employer and the [employee](#).¹⁶ This agreement must be reached before work is actually performed. If a school corporation wishes to offer its non-organized employees compensatory time in lieu of overtime, it should explain the option during the employee's orientation and obtain the employee's written authorization.

There are also limits on the number of hours of compensatory time a school employee may accumulate. Generally, employees may accumulate no more than 240 hours of compensatory time and must be paid overtime for any hours worked beyond that amount. The FLSA, however, permits employees who perform a public safety activity, emergency response activity or any seasonal activity to accrue 480 hours of compensable [time](#).¹⁷ While the Department of Labor's regulations do not define these categories, it is doubtful that any school corporation employee will be deemed to perform a public safety activity, emergency response activity or a seasonal activity.

Section 7(o) of the FLSA also permits employees to convert accrued comp time into overtime wages. Section 7(o)(3)(B) permits public employers to pay or, in essence, "cash in" accrued compensatory time at any time. The employer must, however, reimburse the employee for his or her compensatory time at one and one-half times the employee's regular rate. The employee must be paid at the

regular rate he or she is earning when the payment is made and not when the comp time was generated.

Section 7(o) requires public employers to reimburse employees for accrued comp time upon termination. The rate is not less than the average regular rate received by the employee during the last three years of his or her [employment](#),¹⁸ or the last regular rate received by the employee, whichever is higher.

Lastly, the FLSA prescribes when an employer must allow an employee to take his or her accrued comp time. Section 7(o)(5) provides that any public employee who has accrued compensatory time and requests time off must be permitted to use his or her comp time within a "reasonable period," provided the request does not unduly disrupt the operations of the employer.

The Department of Labor does not define "reasonable period" within the meaning of the section. Rather, the regulations state that a "reasonable period" will be determined by considering the customary work practices within the agency based on the facts and circumstances of each case. Relevant practices include, but are not limited to:

- The normal schedule of work;
- Anticipated peak work loads, based on past experience;
- Emergency requirements for staff and services;
- The availability of qualified substitute [staff](#).¹⁹

While each situation is different, school corporations should generally consider two weeks as a reasonable time to grant an employee's request to use accrued comp time.

Personnel Records - Confidentiality

School corporations compile and maintain comprehensive personnel files on the individuals they employ. These files are necessary for the daily administration of the school system, including implementing salary and other personnel policies, preparing the budget and other financial documents, recording employee work performance and meeting federal and state requirements.

Personnel files typically contain a wide variety of information about employees. Some of the information is confidential and should not be released, absent a court order, to persons other than the employee, the employee's immediate supervisor and other administrators who have distinct reasons to know the confidential information.

Iowa's Freedom of Information Act grants "every person the right to examine and copy public [records](#)."²⁰ The Freedom of Information Act also defines public records broadly to include any document possessed by a public body, including the contents of a personnel file. The act, however, exempts 28 types of public records from disclosure and requires public employers to keep those records [confidential](#).²¹ Included within the 28 categories of exempted records is a broad category of documents defined as "personal information and confidential personnel records of public bodies including, but not limited to, cities, boards of supervisors and school [corporations](#)."²² It should also be noted that the 14th Amendment of the U. S. Constitution has been interpreted as preventing governmental bodies from disclosing private facts about an individual. This privacy interest is, however, limited in nature and is less expansive than the privacy protection afforded public employees by the personnel file exemption.

The Iowa courts have not had many opportunities to define what constitutes a "personnel record." Case law, however, confirms that records contained in personnel files that pertain to an employee's work performance are confidential personnel information and cannot be disclosed absent a [court order](#).²³ Examples of such records include:

1. Performance evaluations.
2. Classroom observations.
3. Disciplinary warnings or similar documents concerning employee misconduct or performance.
4. Written complaints sent by third parties; memos, notes and other records describing or summarizing such complaints.

Case law also suggests that the personnel record exemption pertains to employment records that contain private information about [employees](#).²⁴ Examples include medical information, completed application forms, references from other employers and similar documents. Payroll records, time cards

and other records that merely serve accounting or bookkeeping functions do not include private information about the employee and must be disclosed upon request. Employment contracts are also a public record; however, provisions of employment contracts that show private facts about the employee, like how much salary the employee deducts for a tax-sheltered annuity, should be deleted before the content is produced to a third person.

Iowa's Freedom of Information Act contains another exemption that can, in some cases, be construed to protect documents a school corporation receives from third parties concerning its existing employees or documents sent by job applicants. The exemption classifies as a confidential record not subject to disclosure "any communication not required by law, rule or procedure, that is submitted to the government body by an outside party" provided the governmental body "could reasonably believe that those persons would be discouraged from making them to that governmental body if they were available for general public [examination.](#)"²⁵ The Iowa Supreme Court interpreted that exemption to include employment applications submitted for a vacant city manager position where the applicant specifically requested the application remain [confidential.](#)²⁶ In its decision, the court noted that the legislature's goal when enacting the exemption was "to permit public agencies to keep confidential a broad category of useful incoming communications which might not be forthcoming if subject to public [disclosure.](#)"²⁷ In addition to employment applications, this exemption could be applied to letters received from parents or students about an employee's work performance.

Employee Medical Information

An Iowa Supreme Court decision added some clarification to the age-old question of what employee records are confidential and what are public. *Clymer v. The City of Cedar Rapids*, No. 209/97-1705. The case was originally filed after the city of Cedar Rapids denied the *Cedar Rapids Gazette's* request to release employee's individual sick leave usage. Iowa's public records law states public entities are not required to release "confidential personal personnel information." *Iowa Code* § 22.7(11) (1999). The *Gazette* contended individual sick leave usage was not confidential and filed suit.

The court weighed the employee's privacy interests against the public's need to know and considered:

1. the public purpose of the party requesting the information;
2. whether the purpose could be accomplished without the disclosure of the personal information;
3. the scope of the request;
4. whether alternative sources for obtaining the information exist;
5. the gravity of the invasion of personal privacy; and
6. past precedent.

The court determined the *Gazette's* request for birth dates, addresses and gender did not advance the public's interest and constituted an invasion of the employee's privacy. It reasoned that public employees have a legitimate interest in protecting this information from public dissemination. The court, however, did determine that an employee's compensation package (including salary) and a categorization of the employee's use of sick and vacation leave are matters of legitimate public concern. The court cautioned the information could not disclose personal medical conditions or professional evaluations.

The issue of whether the release of sick leave information violates provisions of the federal Americans with Disabilities Act (ADA) was not before the court. The court did reason that by releasing individual sick leave usage the city would not be revealing "personal medical conditions or professional evaluations." *Id.* This seems to imply that if a public entity's specific request did reveal a medical condition or medical history then the law would not require the release of that information. In those kinds of cases, school districts should consult with their local counsel before releasing the information.

Personnel files may also contain medical information about an employee. School corporations, like other employers, compile such information to monitor the health of employees to prepare for medical emergencies. School corporations also receive doctors' reports and other medical records when an employee leaves work due to a work-related injury or when an employee attempts to return to work after a medical leave.

Medical information in a personnel file is exempt from disclosure under the exemptions discussed above. A school corporation cannot release those records without the employee's prior authorization or a court order.

The Americans with Disabilities Act also requires all employers, including public employers, to treat information concerning the medical condition or history of an employee or applicant as a confidential medical [record](#).²⁸ Consistent with that requirement, employers are prohibited from disclosing employee medical records and information to third parties and must collect and maintain such records "on separate forms and in separate medical [files](#)."²⁹ The ADA also restricts the number of employees who may legitimately have access to an employee's medical records file and the purposes for which that information can be released. EEOC regulations provide that an employer may release medical information to the employee's manager or supervisor "regarding necessary restrictions on the work duties of the employee and necessary accommodations"; to first aid and safety personnel "when appropriate" if a disabling condition "might require emergency treatment"; and to government officials investigating an employer's compliance with the ADA's confidentiality [requirements](#).³⁰ The medical records file should be kept separate from the other personnel information.

Disclosure of Personnel Files to Employees

Confidentiality concerns arise when a third party or a fellow employee requests to see or obtain information from an employee's file. Such concerns are not triggered when an employee asks to review his or her own personnel file, since the request does not require disclosure to a third party. Iowa law grants employees, including school corporation employees, access to and the right to copy the contents of their [personnel file](#).³¹ Anytime an employee requests to review his or her personnel file, the administration must determine what documents are part of the employee's file and therefore subject to disclosure. For example, are notes the employee's supervisor took during the course of the year on the employee's work performance part of the personnel file? Is a written complaint by a parent part of the file? If the parent specifically requested his or her complaint remain confidential for fear the employee would retaliate against his or her son or daughter?

Under applicable law, a personnel file is broadly defined to include, without limitation, "performance evaluations, disciplinary records, and other information concerning employer-employee [relations](#)."³² The term personnel file does not, however, include "employment references written for the employee."

The broad personnel file definition, and in particular, the reference to "any other information concerning employer-employee relations," suggests that most documents a school corporation maintains pertaining to an employee are part of his or her personnel file and must be produced to the employee upon request. In addition, the Iowa Open Records law makes all information in a personnel file available to the public, upon request, except for "personal information" in a confidential personnel record. This also suggests that most information maintained by a school district pertaining to an employee must be made available to the employee. IOWA CODE Section 91B.1 specifically provides that an employee's personnel file includes job performance evaluations. The Iowa Supreme Court has stated that it is not the location of the file, but the nature of the record that determines whether or not it is part of a personnel file. Consequently, the employee should have access to most records in a personnel file, including job applications, resumes, etc.

Despite these broad definitions, an argument can be made that personal notes taken by a supervisor during the course of the year, or interview notes taken during the interview process need not be produced if any performance problems or concerns raised in those notes are contained in some other document (like a memo to the employee, the employee's evaluation or written disciplinary note) that is produced. The same rule also applies to parental complaints. The complaint itself is not part of the employee's personnel file unless it later becomes a source of discipline and is incorporated into another personnel document. That document, and not the complaint itself, must be produced to the employee upon request.

Retention of Employee Personnel Files and Other Records

Iowa and federal law do not provide uniform record keeping standards. School corporations, like other employers, are therefore advised to devise a

uniform retention policy regarding how long they will retain personnel, payroll and other employment records. The retention policy should be broad enough to comply with all state and federal requirements. It should also take into account the crucial role employment records can play in litigation if the records are properly compiled and maintained.

Based on those facts, school corporations should retain all records in the employee's personnel file for the duration of employment and for at least seven years after the employment ends. This practice meets all state and federal requirements and permits most of the applicable statutes of limitations to run before the records are destroyed. School corporations need only retain payroll records for three years after payment, according to U.S. Department of Labor regulations. School corporations may, of course, adopt a conservative approach and retain all employment-related records for an indefinite period. Nothing in state or federal law requires employers to destroy employment records after a given period.

Endnotes

1. [29 U.S.C.](#) § 207(a)(1).
2. [Id.](#)
3. [29 U.S.C.](#) § 207(e); 29 C.F.R. § 778.108.
4. [29 U.S.C.](#) § 213(a)(1).
5. [29 C.F.R.](#) § 541.103.
6. [29 C.F.R.](#) § 541.102.
7. [29 C.F.R.](#) § 541.103.
8. [29 C.F.R.](#) § 541.202(e).
9. [29 C.F.R.](#) § 207(a).
10. [29 C.F.R.](#) § 778.223.
11. [29 C.F.R.](#) § 785.16(a).
12. [Id.](#)
13. [29 C.F.R.](#) § 785.18 and 785.19.
14. [29 U.S.C.](#) § 207(o)(1).
15. [29 U.S.C.](#) § 207(o)(2)(A)(i).
16. [29 U.S.C.](#) § 207(o)(2)(A)(ii).
17. [29 U.S.C.](#) § 207(o)(3)(A).
18. [29 U.S.C.](#) § 207(o)(4)(1)(A) and (B).
19. [29 C.F.R.](#) § 553.25(c).
20. [IOWA CODE](#) § 22.2(1).
21. [IOWA CODE](#) § 22.1(3), § 22.7(1)-(28).
22. [IOWA CODE](#) § 22.7(11).
23. [Des Moines Ind. Comm. School Dist. v. Des Moines Register and Tribune Co.](#), 487 N.W. 2d 666, 670-71 (Iowa 1992).
24. [Id.](#)
25. [IOWA CODE](#) § 22.7(18).
26. [City of Sioux City v. Greater Sioux City Press Club](#), 421 N.W. 2d 895 (Iowa 1988).
27. [Id. at 898.](#)
28. [42 U.S.C.](#) § 12112(3)(B) and (4)(C).
29. [Id.](#)
30. [Id.](#)
31. [IOWA CODE Ch. 91B.](#)
32. [IOWA CODE § 91B.1.](#)