



SUMMERTIME SAFETY – POLICIES AND PROCEDURES FOR CHILD PROTECTION



Edward H. Trent...

“All individuals should be trained on recognizing signs of abuse and what to do if they notice such signs, or a child reports an incident of abuse.”

As families and school kids get excited for summer break, time in the sun, and fun at camps, organizations that work with children need to review their child protection policies and procedures in addition to their life preservers, ropes courses, and face painting supplies. It is highly rewarding to work with kids, see their smiles, hear their laughs, and know that you are helping to create memories that will last a lifetime. Such work also carries with it great responsibility to ensure that children within an organization’s care are safe and return home happy after a fun day or week.

The statistics on child abuse are staggering. A child is abused or neglected every 47 seconds in

the U.S. and there are more than 3 million reports of abuse annually. On in ten children (one in seven girls and one in twenty-five boys) will be sexually abused before their 18th birthday. Ninety percent of perpetrators are someone the child knows. One in five youth ages 10 to 17 receive sexual solicitation or are approached online. So, when preparing for fun in the sun, organizations need to be prepared to protect kids from dangers beyond a fall from the swings. While a camp counselor may be thinking only about a child having fun and not getting hurt, that counselor needs to be prepared to respond appropriately should a child confide - or the counselor suspects - a terrible secret that far too many children carry, a secret of abuse or neglect.

When working with children, an organization must have clear policies on appropriate interaction and supervision of children. Some simple suggestions are that no child is put in a one-on-one situation with an adult out of public view. Meeting rooms for conversation should have a window.

Rules should be established for helping young children with soiled clothing. Organizations should establish rules for appropriate physical contact and topics of conversation with minors. Finally, every organization should establish a clear line of reporting any incidents of abuse.

Before someone is placed in a position to work with children, including volunteers, it is important the organization properly screen them. A background check and reference check should be a minimum, with a background check that includes fingerprinting being recommended. Background screens should be updated on a regular basis, such as every two or three years. While there is no “child predator profile,” face-to-face interviews and background information, including reference checks, allows an organization to determine if the person is a good fit for the organization and the community of children it serves.

Of course, those working with minors should be properly trained. Such training should go beyond basic first aid and include training on the organization’s specific policies for working with children. All individuals should be trained on recognizing signs of abuse and what to do if they notice such signs, or a child reports an incident of abuse. When a minor confides in an employee or volunteer that he or she has been abused, it is vitally important the person listens very carefully, remains calm, and if the minor is unwilling to go talk with another responsible adult, to get as much information as possible about the alleged abuse. The adult will want to learn as much as possible about the who, when, and what of the abuse without pressuring the minor, and remembering no child is ever to blame for being abused. This may be the only time the minor will talk about what has happened and the information the minor shares will be critical in not only getting enough information to make the mandatory report to state or law enforcement officials, but to make an organizational decision on whether the minor is safe when he or she leaves the organization’s care.

When it comes to policies on reporting allegations or

Continued on page 4 ►►

Our Firm Wimberly Lawson Wright Daves & Jones, PLLC is a full service labor, employment and immigration law firm representing management exclusively. The firm has offices in Knoxville, Morristown, Cookeville, and Nashville, Tennessee and maintains its affiliation with the firms of Wimberly, Lawson, Steckel, Schneider & Stine, P.C., Atlanta, Georgia; and Wimberly Lawson Daniels & Fisher, LLC, Greenville, South Carolina.



AV[®]
 PREEMINENT[™]
 Martindale-Hubbell
 Lawyer Ratings



PEER RATED
 For Ethical Standards
 and Legal Ability
 2018





**Mary Celeste
Moffatt**

"The concept of the case is extremely interesting because there are many other circumstances in which employers are plagued with 'fake' applicants."

.....
Oxlej v. Darby Road Pub. House & Rest., 2018 BL 86995, D.N.J., No. 2:16-cv-01180, 3/14/18.

The court allowed a counter-claim to be made in this situation, in which the employer is seeking a return of

EMPLOYER CAN PURSUE FRAUD CLAIM AGAINST UNDOCUMENTED WORKER

Undocumented workers generally have the right to bring lawsuits under the wage-hour and discrimination laws. While their right to reinstatement and future pay may be limited because of the immigration laws, they generally are considered to have remedies nevertheless under these laws. At the same time, when employers are sued, they in theory have the right to bring counter-suits or counter-claims. One employer recently brought such a counterclaim of fraud based on the Plaintiff's presentation of fake documents to gain employment.

Oxlej v. Darby Road Pub. House

monies the plaintiff received while working there. It should be noted, however, that the case is in a preliminary stage, and this result is not a final ruling.

The concept of the case is extremely interesting because there are many other circumstances in which employers are plagued with "fake" applicants. The applicant may be a union organizer, a reporter, a safety or animal rights activist, or various other types of persons seeking to gain employment for reasons unrelated to wanting the job. The question is whether more employers will counter-sue for fraud or related claims in these circumstances.

A great deal of caution is necessary in this area because the retaliation laws may come into play. That is, it is possible for a court to rule that a counter-suit is really retaliatory based on the bringing of the complaint against the employer. On the other hand, the employer may argue that it must assert certain available counter-claims early in the litigation, or else perhaps be held to have waived its legal right to sue. Obviously, these are complicated issues and readers are advised to consult with any of our attorneys at Wimberly Lawson for guidance.



**Howard B.
Jackson**

"[I]n the future courts are likely to interpret FLSA exemptions more broadly. This can make the difference in close cases."

.....
they did not perform the manual tasks themselves. The Court of Appeals for the Ninth Circuit disagreed, and ruled that the exemption should not apply to service advisors because they do not sell automobiles and do not engage in the manual labor of maintaining or repairing vehicles.

The U.S. Supreme Court reversed, and held that the exemption does apply to service advisors. Per the decision, service advisors are clearly sales persons, and they are integrally involved in the

EXEMPTIONS TO WAGE-HOUR LAW NO LONGER NARROWLY CONSTRUED

An April decision of the U.S. Supreme Court, *Encino Motor Cars, LLC v. Navarro*, No. 16-1362 (U.S. 4/2/18), has important ramifications beyond its holding in that decision. The case involved the question of whether service advisors at auto dealerships fall within an overtime exemption in the Fair Labor Standards Act ("FLSA") that applies to any salesman, parts man, or mechanic primarily engaged in selling or servicing automobiles, trucks or farm implements. The employer argued that the exemption from overtime applied to those whose duties involved selling or servicing vehicles, even if

servicing process. Therefore, their duties brought the job within the exemption.

In commentary that will impact future rulings under the FLSA, the Court flatly rejected the notion that FLSA exemptions should be construed "narrowly." Writing for a 5-4 majority, Justice Clarence Thomas stated: "We reject this principle as a useful guidepost for interpreting the FLSA." Instead, FLSA exemptions are entitled a "fair reading."

The "fair reading" holding suggests that in the future courts are likely to interpret FLSA exemptions more broadly. This can make the difference in close cases.

Notably, the most recently appointed member of the Court, Justice Gorsuch, joined in the 5-4 majority ruling. This may signal how he will lean in employment-related cases.

In another FLSA development, the federal government budget law, signed March 23, 2018, includes a rider amending the Act relative to tip-pooling arrangements. A regulation had been proposed that would have allowed restaurants to require employees who directly earn tips to share them with workers who do not. The amendment prohibits employers from requiring tip pooling arrangements that would compensate managers and supervisors (which opponents of the proposed regulation feared would happen if it were implemented). Tip pools remain permissible, however, where the pool is shared only with the appropriate non-exempt employees.



Jerome D. Pinn.....

"In contrast to audits or inspections, employers are not notified of raids, and raids usually occur in very serious situations."

..... allows immediate seizure of documents, an employer must be given three (3) business days to produce the documents requested by the Notice of Inspection.

In contrast to audits or inspections, employers are not notified of raids, and raids usually occur in very serious situations. At the Tennessee location, where the authorities executed a search warrant, the facility allegedly failed to report \$8.4 million in wages and to pay at least \$2.5 million in payroll taxes for undocumented workers. The workers were allegedly paid in cash and subject to harsh conditions. During the course of the raid, ICE arrested some 97

ICE CONDUCTS "OLD-FASHIONED" RAID OF TENNESSEE MEAT PACKING PLANT

Immigration & Customs Enforcement (ICE) officials on April 5, 2018 conducted a "raid" on a meat packing plant in Bean Station, Tennessee, near Knoxville. One distinction between a "raid" and an "inspection" is that a raid is accompanied by a search warrant that requires immediate access to the property. An inspection or audit in contrast begins when a business receives a Notice of Inspection, which states that the employer must produce its Form I-9s to an ICE auditor. By law, unless the search warrant

immigrants suspected of being in the country illegally. In ICE raids, it is not uncommon for the premises to be surrounded by ICE officials to prevent anyone from leaving.

The action was described as the largest single workforce raid since the Bush Administration, and the implementation of the raid was similar to those conducted during that administration. State and local authorities participated in the raid and streets were blocked. In a federal affidavit, officials said the family-run plant is under criminal investigation for allegedly evading taxes, filing false tax returns and hiring immigrants in the country illegally.

Last October, the acting ICE director indicated that there would be a four- to five-fold increase of ICE enforcement efforts. During the Trump Administration so far, there has been more than a one-third increase in immigration arrests and deportations.

Employers should carefully review any warrant to understand its scope, as the warrant should have a detailed description of when and where agents are going to search and what they may seize. Obviously, employers should be polite to the officers and not obstruct them from doing their jobs. Employers are not required, however, to answer ICE questions during a raid, and advice of counsel should be sought as to whether employers should consent to ICE agents speaking to their employees on the premises. Employers must be aware of their rights during a raid and develop protocols to follow if an audit or raid occurs.



TARGET OUT OF RANGE



The 2018 Wimberly Lawson Labor and Employment Law Update Conference

**Register Now
CLICK HERE!**

November 1 – 2, 2018 Knoxville, Tennessee

To register, please call Bernice Houle at (865) 546-1000, email Bernice Houle at BHoule@wimberlylawson.com, or register on-line at www.WimberlyLawson.com.

suspicious of abuse, all organizations should designate who is to receive reports of suspected child abuse. When an employee or volunteer makes such a report, the organization should obtain a written statement from that person, including a list of all witnesses and details of what was observed and/or reported by the minor. The statement should include an assessment of whether a child is in imminent danger of further abuse. Further, all such reports are to be kept confidential, understanding that a report must be made to the state or local law enforcement and the organization will conduct an internal review of the matter.

The organization will need to inform the child's parent(s) of what has occurred, regardless of whether the alleged abuser works for or is unassociated with the organization. If the alleged abuser is the custodial parent, then the organization will want to obtain guidance from local law enforcement on how to address the situation. When communicating with the parent(s), let the parent(s) know the child is safe and what steps have been taken. This conversation will be the most difficult a parent will ever have, so be understanding and reassure the parent that the organization is taking all appropriate steps to ensure the welfare of the child. The organization should ask the parent(s) if the child had made any comments about the alleged abuser or engaged in any behavior that in hindsight may be an indication of what occurred. The parent(s) may be truly unaware of the situation and not to blame, but given the report, seemingly innocuous comments or behavior may take on more significance.

If the alleged perpetrator works for the organization, he or she should be immediately removed from interaction with children and placed on leave until the issue can be investigated and resolved. In addition, the alleged perpetrator should be instructed to have absolutely no contact with the child or the child's family.

Tennessee requires individuals with knowledge of suspected abuse and specifically child sexual abuse to report the incident to either the state Department of Children's Services or local law enforcement. Tenn. Stat. Ann. §37-1-403 provides: "Any person who has knowledge of or is called upon to render aid to any child who is suffering from or has sustained any wound, injury, disability, or physical or mental condition shall report such harm immediately if the harm is of such a nature as to reasonably indicate that it has been caused by brutality, abuse or neglect or that, on the basis of available information, reasonably appears to have been caused by brutality, abuse or neglect." Further, Tenn. Stat. Ann. §37-1-605 provides: "Any person including, but not limited to, any: (4) School teacher or other school

official or personnel; (6) . . . Day care center worker . . . ; (8) Neighbor, relative, friend or any other person who knows or has reasonable cause to suspect that a child has been sexually abused; shall report such knowledge or suspicion to the department." To report abuse in Tennessee, one can: (1) call the Tennessee Child Abuse Hotline at 1-877-237-0004, (2) file online: <https://apps.tn.gov/carat/>, (3) call local sheriff or police departments, or (4) call a judge having juvenile jurisdiction.

When reporting allegations of abuse, the organization should assist the person who received the report from the minor or observed the signs of abuse. The organization will want to have the name and contact information of the victim, the nature and specifics of abuse including details of any physical signs of abuse, the identity of the perpetrator (if known), the identity of any witnesses (if known), whether the alleged perpetrator has current access to the child, and how the person reporting the abuse came to know about it. The person making the report has the right to remain anonymous.

While the organization should take no steps to interfere with law enforcement's investigation of the matter, the organization will want to conduct its own investigation into the situation, especially if an employee or volunteer of the organization is accused of abusing a child. State law permits such an internal investigation. The organization should determine what happened, understanding that it may not have the ability to obtain any additional information from the minor, and the alleged perpetrator may be unwilling to discuss the matter. At the very least, the organization should evaluate its policies, its training, and its protocols for working with children and reporting incidents of abuse. The organization may want to obtain legal counsel to assist with these processes.

Summer is a time for having fun with family and friends. Organizations that work with children are an important part of making summer a memorable time and providing experiences that form the stories kids will tell when school begins again in the fall. Providing a safe and nurturing environment is key to that success. Being prepared to prevent abuse within the organization and properly respond when a child reports or shows signs of abuse from someone within or outside the organization is a necessary part of a safe and nurturing environment. Who knows, your organization may provide the only face a child can trust to share what has happened and get the help they deserve.