

## ***Legal Considerations for Drafting Administrator Contracts***

Around this time of the year, school boards are often in the process of hiring new district administrators or other administrators in the district. When hiring new administrators, a board must determine whether a particular administrator is entitled to a written employment contract, and, if so, what provisions the contract should include. Wis. Stats. §118.24 applies to the employment and contracts of school district administrators, business managers, and principals, and their assistants. The contracts of personnel administrators and supervisors, curriculum administrators and their assistants are also governed by §118.24, but only if they perform administrative duties exclusively. The above administrators must have a written contract. This contract must be approved by a majority vote of the full membership of the board. Administrative positions that do not fall within these categories are not governed by §118.24.

Administrator contracts often contain items such as duration clauses, salary and benefit provisions, termination and liquidated damages clauses, and various other provisions. Most provisions are generally subject to negotiation between the administrator and the boards. Administrators may have their own ideas of what should be in their contract or may have a version they have used elsewhere. This FYI will briefly discuss various provisions that are often included in such contracts.

### **DURATION CLAUSES**

Section 118.24 states that “[t]he term of each employment contract may not exceed 2 years.” As a result, the duration of any such contract must not be longer than two years. Contracts are usually either one year or two years in duration, but such contracts can include other durations, as long as the contracts do not exceed two years. Contracts often identify the dates by which the contract will begin and end. For example, a contract may state as follows: “This contract shall cover a period of two (2) years beginning on July 1, 2019, and ending on June 30, 2021.” The expiration date of a contract term is an important component as affecting renewal/nonrenewal, as will be discussed in the next section of this FYI.

In some contracts, salary and benefits may also be determined based on a “contract year,” so the contract may also define a “contract year.” The contract may state as follows: “A contract year shall be July 1 through June 30.” Contracts often identify the number of working days required under any contract (e.g., 220 or 260

working days). A contract may state that such working days will be assigned by the district and are subject to any applicable leave provisions. A contract may also state that the number of working days will be used to determine applicable per diem payments or pro-rated benefits.

## RENEWAL/NONRENEWAL PROVISIONS

Section 118.24 includes requirements related to the renewal and nonrenewal of administrator contracts. With respect to renewal, the statute provides for the automatic renewal of a contract at the expiration of the contract if the board has not issued notice of renewal or nonrenewal. If a board does not want the contract to be renewed, the board can prevent the renewal if it follows steps to notify the administrator that the contract will not be renewed. Board action and the issuance of notices related to the nonrenewal of the contract must begin at least five months prior to the expiration of the contract, so it is important for a board to plan accordingly if it does not wish for a contract to renew.

Awareness of the nonrenewal deadlines is particularly important because, as mentioned, the statute includes an automatic renewal provision. This provision states that, if a board fails to renew or nonrenew a contract, the contract will be renewed for a period of two years. Thus, even a contract shorter than one year may be renewed for a period of two years if proper notice is not given. Therefore, boards must pay particular attention to such renewal and nonrenewal dates, especially if the board wishes to renew a contract with a term of less than two years, for a term of less than two years (e.g., one year).

The contract often just simply recognizes the application of the statute to the contract. For example, such contracts may state as follows: “Renewal or nonrenewal of this contract shall be governed by Wis. Stat. §118.24.” In some cases, the parties only wish for the contract to last a specific term; if so, the parties should seek legal counsel to include language to ensure that the contract ends as intended.

## EXTENSION CLAUSES

Section 118.24 specifically states that “[a] contract for a term of 2 years may provide for one or more extensions of one year each.” Based on this language, boards may include an extension clause in two-year contracts, but are not required to do so. Such extension provisions are not permitted by statute in contracts that are less than two years. There also may not be more than a single two year contract in effect at the same time. Thus, for example, a board may not approve a 2019-21 and a 2021-23 contract.

It is important to distinguish extension of a contract from renewal of the contract. Extension of a contract typically extends the contract for one year, and often any decision to extend the contract occurs around the middle of a two-year contract. Such extension is dependent on the specific contract language. Such extension language for a July 1, 2019 to June 30, 2021 contract may state as follows: “This contract may be extended on July 1, 2020, for an additional one (1) year (from July 1, 2021 to June 30, 2022) if the Board notifies the administrator in writing on or before June 15, 2020, that the contract is to be extended at the end of the then current two-year term.”

Section 118.24 does not provide specifics on what actions must occur for the contract to be extended. In the example above, the board must take action to notify the administrator in writing about the extension by a date certain. However, alternative language could permit an automatic extension at a specific date, without the board

taking any action. Finally, a contract may provide for multiple one-year annual extensions, commonly termed a “rolling horizon” contract. The parties will need to negotiate and be aware of the exact actions necessary for any extension.

## SALARY AND BENEFIT PROVISIONS

Salary and benefit provisions are often included in administrator contracts, and the language of such provisions vary from district to district. With respect to salary, such provisions will often identify the specific annual salary, the frequency of installments for such payments, and any deductions that may be taken from this salary. For example, a salary provision for a one-year contract may state: “In consideration for the services rendered, the board will pay to the administrator an annual salary of \$\_\_\_\_\_ for the contract year. Payments during the contract year will be made in 24 installments.” For contracts that are more than one year, the board should specify exactly how the salary for any second year (or subsequent years, if a contract is extended or renewed) will be determined. Often, language is included that the salary will be determined by a certain date and will not be less than the salary of the previous year.

With respect to benefits, administrator contracts will often also include provisions related to leave (sick, vacation, personal, etc.); holidays; insurance (health, dental, long-term disability, life, etc.); retirement; professional association memberships; and reimbursements for conferences, credits, or use of personal car. For these provisions, the board should identify the exact nature of the benefit, any time limits for such benefits, and any approval necessary for such benefits. For example, a sick leave provision may state as follows: “The administrator is entitled to eleven (11) sick days per contract year, cumulative to a total of sixty (60) days. Such sick days are subject to approval of the district administrator.”

For certain benefits, it is also important for the board to recognize the tax consequences for the benefit. For example, a contract may include a provision for reimbursement for moving expenses. In such instances, because of a change in the tax law, starting as of January 1, 2018, any amounts paid as a reimbursement of an employee’s moving expenses are subject to income and employment taxes. These amounts are to be included as taxable wages on an employee’s W-2. Boards can still reimburse reasonable moving expenses, but the amounts reimbursed are treated as taxable wages.

## TERMINATION AND LIQUIDATED DAMAGES PROVISIONS

Section 118.24 establishes some basic requirements related to termination or dismissal during the term of an existing administrator contract. In particular, the statute states that “[n]o such person may be employed or dismissed except by a majority vote of the full membership of the board.” Again, this is not just a majority of those present at that meeting but a majority of the full board. (e.g., if you have a 7 member board you need 4 votes, even if only 5 members are present). The statute also states that “[n]othing in this section prevents the modification or termination of an employment contract by mutual agreement of the parties.” In this respect, such provisions should specify what impact any mutual termination will have on other provisions in the contract, including payment to the board for any liquidated damages and payment to the administrator for any accumulated and unused vacation or sick leave.

Some contracts also contain liquidated damages clauses, which allow for the board to recover a specified amount as damages if the administrator seeks to terminate (or breaches) the contract during the term of the contract. Liquidated damages provisions vary in amount, sometimes based on the type of position and/or based on when

the administrator terminates the contract. Liquidated damages provisions should be carefully reviewed and should ensure that they apply when the administrator either breaches the contract or seeks release from the contract.

Finally, some contracts include provisions that apply when the board wants to terminate the contract prior to the expiration of the contract. In those instances, it is important that the contract specifies the standard that will be applied for such termination (e.g., arbitrary or capricious). The contract may also provide some examples of conduct that may qualify for termination, such as failure to maintain an appropriate license for the position. For such terminations, the board must also be aware that constitutional due process protections may apply to the termination.

## CONCLUSION

Drafting administrator contracts can be challenging. Contracts must be worded appropriately to avoid any challenges at a later date. Boards must also consider how board policies and employee handbooks apply to any such contracts. Contracts do not need to be exactly the same for all administrators in a district, but boards should carefully consider the rationale behind any differences. Of course, any questions about such contracts should be brought to your legal counsel.

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