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**LAMB & BARNOSKY, LLP**

ATTORNEYS AT LAW

## MEMORANDUM

**TO: OUR SCHOOL DISTRICT CLIENTS**

**FROM: LAMB & BARNOSKY, LLP**

**RE: PREPARING FOR “SUPER TUESDAY” – HIRING ELECTION WORKERS**

**DATE: MARCH 24, 2010**

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Numerous state and federal agencies, including the Internal Revenue Service (“IRS”) and the New York Office of the State Comptroller (“OSC”), continue to investigate alleged employer misclassification of employees as independent contractors rather than employees. With the school budget votes/elections rapidly approaching, numerous questions resurface regarding how to properly classify and process election workers. This memorandum is intended to advise you on how to do so.

### **I. Election Workers Should be Classified as Employees**

The Internal Revenue Code (“IRC”) and its regulations and revenue rulings mandate that election workers be treated as employees. Election worker wages are includable in gross income as compensation for services. Income of \$600 or more paid to an election worker must be reported on IRS Form W-2. Income of less than \$600 should not be reported on IRS Form W-2. IRS form 1099 should not be used, regardless of the amount paid to an election worker. Election workers should be paid as employees and their earnings processed through the school district’s payroll system, rather than through accounts payable.

Election worker wages are not subject to federal or State income tax withholding. Therefore, there is no need for an election worker to complete an IRS Form W-4, regardless of the amount of the wages earned, provided the election compensation is the only payment made to the worker by the district.

Election worker wages are not subject to Federal Income Contributions Act (“FICA”) tax withholding provided the election wages aggregate less than \$1,500 for 2010. In the unlikely

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scenario that an election worker earns \$1,500 or more in 2010 for election services only, FICA tax must be withheld.

***1. Election worker earns less than \$600***

The district is not required to issue a Form W-4, file a Form W-2 or withhold income tax or FICA tax.

***2. Election worker earns \$600 - \$1,499***

If an election worker earns a total of \$600 - \$1,499 in 2010 and only for election services: the district is not required to issue a Form W-4 but must file a Form W-2. The district should not withhold income tax or FICA tax.

***3. Election worker earns \$1,500 or more***

If an election worker earns a total of \$1,500 or more in 2010 and only for election services: the district is not required to issue a Form W-4, but must file a Form W-2. The district should not withhold income tax, but must withhold FICA tax.

***4. Election worker is otherwise employed by the district and his/her combined income is less than \$600***

If an election worker earns \$200 for election services and also earns \$300 in some other capacity for the district: the district must issue a Form W-4, must report the \$300 on a Form W-2, should not report the \$200 on the Form W-2, and should not withhold income tax or FICA tax from the \$200. The district must, though, withhold income tax from the \$300.

***5. Election worker is otherwise employed by the district and his/her combined income is \$600 or more***

If an election worker earns \$200 for election services and also earns \$400 or more in some other capacity for the district: the district must issue a Form W-4, must report both the \$200 and the \$400 on a Form W-2, should not withhold income tax or FICA tax from the \$200, but must withhold income tax from the \$400.

## **II. Fingerprinting Election Workers**

A school district employee must be fingerprinted if the employee is reasonably expected to have direct contact with students under the age of 21. "Direct contact" is defined as in person, face-to-face communication or interaction. Fingerprinting is not required if an employee's term of employment is for no longer than five days and the worker is supervised by one or more employees of the school district. If election workers will have direct contact with students under

the age of 21 who come to vote or who accompany voters to the polls, procedures should be implemented so that a district employee supervises any election workers who have not been fingerprinted.

Please contact us if you have any questions regarding this memorandum.

THIS MEMORANDUM IS MEANT TO ASSIST IN GENERAL UNDERSTANDING OF THE CURRENT LAW. IT IS NOT TO BE REGARDED AS LEGAL ADVICE. THOSE WITH PARTICULAR QUESTIONS SHOULD SEEK THE ADVICE OF COUNSEL.

THIS WRITTEN ADVICE WAS NOT INTENDED OR WRITTEN TO BE USED, AND IT CANNOT BE USED BY ANY TAXPAYER FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON THE TAXPAYER. THE FOREGOING LEGEND HAS BEEN AFFIXED PURSUANT TO U.S. TREASURY REGULATIONS GOVERNING TAX PRACTICE.