

# THE FOWLER LAW FIRM PC



## Clearing Out the Closet

### What to do about the Employment Contracts that Nobody Uses or that Just Don't Fit Right

February 4, 2009

**Laura Sanders Fowler, JD**  
[lfowler@thefowlerlawfirm.com](mailto:lfowler@thefowlerlawfirm.com)

*Editor's Note: The Fowler Law Firm is very pleased to announce the upcoming publication of its newest edition of "Texas Personnel Information Systems for Public and Private Schools". While there are other books and information systems offering different approaches to this critical topic, we believe there is no other book or system more practical and useful than ours. "Texas Personnel Information Systems" is entertaining and useful for any school administrator with the responsibility to employ, supervise, or discharge school employees.*

*If you are a participating member in our school law programs, each week for the next twelve weeks you will receive an excerpt from the book. Ms. Fowler will also give presentations on topics covered in the book at upcoming school law events, a list of which are featured at the end of this article. While you are welcome to use and share these articles (our goal is, as always, to help you avoid costly legal mistakes) please consider purchasing a copy of the book and subscribing to the information system to ensure that you do not miss out on any of this helpful advice. Net proceeds of sales will be devoted to scholarships for deserving Texas students. Click here to order an advanced copy ([www.thefowlerlawfirm.com/PISflyer.pdf](http://www.thefowlerlawfirm.com/PISflyer.pdf)). To learn more about THE FOWLER LAW FIRM scholarship programs, visit our website at ([www.thefowlerlawfirm.com/community.html](http://www.thefowlerlawfirm.com/community.html)).*

Dear Readers:

This time of the year, many of us take stock of our belongings and decide to give some of them away. Many times this process invites questions like "What did I use this for?" or "Why on earth did I ever think I needed this?"

Employment contracts in Texas public schools and junior college districts should receive the same treatment. Many contracts currently in use do not fit employment needs well and may even be unnecessary. With an old tool or an old shirt, using it or letting it hang around does not present much risk. An old employment contract, however, risks the most unnecessary and expensive mistake you could ever make.

Ask the following question and you may be surprised at the answers:

**Is the person we are about to offer employment to entitled to a formal written contract or just a letter stating the amount of pay per month?**

# THE FOWLER LAW FIRM PC

In many Texas public schools well over half of all the employees are not entitled to a formal written contract. These positions include a host of highly compensated employees like the Information Technology Director, in-house facilities administrators, registered architects and/or licensed engineers, risk managers, legal counsel, etc. Many of these talented individuals do not expect a written contract for a term of years. They likely come from a private firm or company in which true “at will” employment is the norm and expect to receive a simple letter that states their monthly or bi monthly compensation, days of compensated leave, and little more. A simple letter offer of employment, if correctly worded, eliminates the need for a formally worded contract.

If you offer a written contract that resembles a professional educational administrator’s contract to this class of employee, your ability to discharge this individual if things do not work out becomes much more difficult than it needs to be. Even if you do not feel comfortable taking current contracts away from existing employees, review all new positions and tighten up or limit the contracts you intend to offer to new employees for 2009-2010.

Texas Education Code Section 21.031, “Certification of Educators,” contains a complete list of positions entitled to the substantial protections of the Term Contract Nonrenewal Act. While many school employees are not covered by this, over the years contract copying and “cut and paste” have turned many otherwise simple discharge proceedings into costly emotional uproars in which the only true beneficiaries were the attorneys for the parties!

In your every professional adventure, we wish you the very best.

*Don't miss out! Laura Fowler's upcoming presentations about many aspects of Texas employment law are offered to members of the sponsoring associations at no charge and will help you avoid calling lawyers and making embarrassing mistakes. Consider attending or enrolling in a trial subscription of Texas Personnel Information Systems for Public and Private Education Institutions ([www.thefowlerlawfirm.com/PISflyer.pdf](http://www.thefowlerlawfirm.com/PISflyer.pdf)) to ensure that you do not miss out on any helpful advice.*

**February 7:** Texas Association of Future Educators Annual State Conference: San Marcos, Texas ([www.tafeonline.org](http://www.tafeonline.org))

**February 10:** CEFPI Central Texas Chapter Meeting, “How to Avoid Hiring Extraterrestrial Beings as Contractors, Consultants or Employees,” Travis Institute of Culinary Arts and Hospitality: Austin, Texas (<http://www.cefpi.org/i4a/pages/index.cfm?pageid=3324>)

**February 17:** National Association of Purchasing Managers, “How to Protect Yourself from Charlatans and Thieves,” Norris Conference Center: Austin, Texas (<http://www.napm-austin.org/>)

# THE FOWLER LAW FIRM PC

**February 27:** Law and Clergy Conference: Managing Risk for the 21st Century Church, Christian Legal Society, “Finding Wonderful People to Serve as Employees and Volunteers in your Church or School,” Austin, Texas

(<http://www.thefowlerlawfirm.com/LawandClergyFlyer.pdf>)

**February 28:** Austin Bar Association, People’s Law School, “Helpful Pointers in Texas Employment Law,” University of Texas Law School ([www.peopleslawschoolaustin.com](http://www.peopleslawschoolaustin.com))

**April 18:** CEFPI Spring Southern Region Conference, “How to Avoid Hiring Extraterrestrial Beings,” Austin, Texas (<http://www.cefpi.org/i4a/pages/index.cfm?pageid=4189>)

*The Fowler Law Firm PC and its members are grateful to so many of you for your support and friendship. We never charge a client a fee or incur any expense until the client understands and agrees. We often provide information at no charge when we cannot truly be of service to a client. For more information about our firm and our community outreach please contact us at [www.thefowlerlawfirm.com](http://www.thefowlerlawfirm.com) , or at 512-441-1411.*

*Contact Laura Fowler at [lfowler@thefowlerlawfirm.com](mailto:lfowler@thefowlerlawfirm.com) or call (512) 441-1411.*

*Receipt of this electronic newsletter or printer friendly version does not establish or constitute an attorney- client relationship. This information is not intended as a substitute for careful review by legal counsel of your own choosing. As with any legal issue, please consult your attorney with questions.*