

CHANGES IN SEASON, CHANGES IN LAWS

Significant changes have been made in the areas of employee personnel records, texting at the state and federal levels, and child labor laws. In addition, the state maternity leave law gets a new interpretation:

Personnel Record Law Change

On August 5, 2010, Governor Patrick signed into law an economic development bill that includes an amendment to the Massachusetts Personnel Record Law and G.L. Chapter 149 § 52C. Under the amended law:

- Employers are required to notify an employee within 10 days of the employer placing information that would negatively impact an employment decision in the employee's personnel record. The amendment does not require that the notice to the employee be in writing, although it would be prudent to create a record of compliance with the notice obligation.
- The amendment also provides employers with the right to limit the number of times that an employee may review his or her personnel record to "two separate occasions" per calendar year.

Not surprisingly, the Attorney General has jurisdiction to enforce the statute with the violation being punishable by a fine of not less than \$500.00 or more than \$2, 500.00.

All employers should promptly notify any employee who has had negative information added to his or her personnel record since July

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31, 2010, and has not been previously noticed.

Texting Revisited

Massachusetts recently passed a law banning texting while driving. The U.S. Supreme Court decided that a police department did not violate an officer's privacy rights when it read his text messages sent on his department- issued pager.

As of October 1, 2010, it will be illegal to text and drive in Massachusetts. Additionally, it will be illegal for people under 18 to drive and talk on a cell phone.

The texting ban covers e-mailing, Internet searching, and any non-calling activity on anything such as a phone, laptop, or handheld electronic device while they are operating a motor vehicle. It also applies if you are waiting at a traffic light or a stop sign. It is considered a "primary offence" so the police can pull you over if they observe someone breaking the law. Violations will result in a \$100 fine, but the offense will not be considered a moving violation and thus will not incur a surcharge.

If your employees use their cars or yours for work, it is time to include in your policies a ban on texting while driving.

A police officer working for the City of Ontario California was disciplined after it was discovered that he had sent sexually explicit texts on his department issued pager. (Ontario v. Quon, decided June 17, 2010) He filed a civil rights suit under the Fourth Amendment to the Constitution that he had a reasonable expectation of privacy in the content of his communications. The Supreme Court found the search was reasonable because it was for a legitimate, work- related purpose and was not excessive in scope. The Fourth Amendment protects citizens against government intrusion. Different privacy laws would cover private employers.

What helped save the employer was the department's clear, written policy

that there was no expectation of privacy in communications made on department equipment. In addition, the staff had to sign off that they received and understood the policy. The chief sent follow-up memo's regarding the pagers specifically. When the department performed the search of the content of the texts they only looked at two months worth of texts and did not look at any texts made while the officer was off duty.

Child Labor Laws

The United States Department of Labor ("DOL") implemented sweeping changes to existing child labor laws, effective July 19, 2010. The law prohibits children under the age of 18 from operating most work-assist vehicles and power-driven hoists. The law also prohibits the use of chainsaws, wood chippers, reciprocating saws and all forestry-related services. These changes are designed to strengthen safety precautions for children in the workplace.

There are also some new protections for 14 and 15 year olds. For example, these children may not work more than three hours on a Friday if that day is a school day. The term "school hours" as used in the law is defined by the school district where the child lives. The law establishes the age of 15 years as the minimum for a lifeguard at a traditional swimming pool. The law prohibits 14 and 15 year olds from "youth pedaling activities or non-charitable door-to-door sales."

The law meanwhile expands some workplace opportunities for children. Specifically, the law now permits 14 and 15 year olds to work in advertising, banking and information technology positions. In addition, 14 and 15 year olds may now perform computer programming, drawing, and teaching activities, which were formerly prohibited. The law also permits 16 and 17 year olds to operate pizza-dough rollers and countertop food mixers under certain circumstances.

These are but a few of the many changes to the child labor laws. If you employ children in your workplace, you should read the "Final Rule" issued by the Department of Labor. If you have any questions about the changes

in the child labor laws as they may relate to your business, please feel free to contact us.

Massachusetts Maternity Leave Act (MMLA) Interpretation

In the case of *Global, Incorporated v. Awiszus*, the Massachusetts Supreme Judicial Court ruled that an employer who contracts to offer maternity leave that exceeds the state-mandated eight weeks is not obligated to reinstate an employee to that person's position if that person has taken more than eight weeks of maternity leave. Therefore, the MMLA only protects the employee's position during the eight weeks mandated by the Act. (Of note, the SJC stated in its decision that an employee who is permitted by contract to extend her maternity leave past eight weeks may have other rights that protect her from termination, but those protections are not found in the MMLA.)

Questions?

Contact info@foleylawpractice.com or call 508-548-4888.