

EMPLOYMENT LAW ALERT:

Two Changes in Massachusetts Laws That Will Have a Large Effect On Your Company—The Amendments to the Personnel Records Statute and the Texting While Driving Ban.

While you were away enjoying the sun and fun of summer, the Massachusetts legislature passed two significant pieces of legislation which are bound to have a significant impact on both small and large business in this state.

1. The New Personnel Records Statute

The first of these two sweeping changes comes in the form of a corporation's new obligations to maintain personnel records files. On August 5, 2010, a new law was signed that included an amendment to the Massachusetts personnel records statute, G.L.c.149, section 52C. This amendment now creates an affirmative obligation on the part of employers to notify employees whenever certain negative documents are placed into an employee's personnel record. The amended statute provides that such notification be accomplished within 10 days of placing such information in an employee file which information may be used to "negatively affect the employee's qualification for employment, promotion, transfer or additional compensation or the possibility that the employee will be subject to disciplinary action." This amendment is a significant departure from existing law and will require employers to change the way they handle and document employment issues. Indeed, it is now clear, that in the future, each time a document meeting this expansive provision is placed in an employee's file, the employer must notify the employee. In addition, the employer is obligated to notify an employee each and every time the employer creates a negative document (including e-mails). Under this new law, there is no private right of action by an employee against his or her employer. Rather, under the amendment, the responsibility for imposition of penalties will rest with the Massachusetts Attorney General's Office which may impose fines on employers ranging from \$500.00 to \$2000.00 for each violation.

Undoubtedly, it will take further legislative and judicial direction to clarify certain aspects of the statute in order for the full realm of employer responsibilities to be understood. For example, does the statute now distinguish between documents "placed" in a personnel file and other notes or emails created but not placed in the personnel file? Furthermore, what form must the notification take? Must the employer give the employee a copy of the document placed in the file or just inform the employee of the fact that an addition has been made to his personnel file?

2. The New Anti-Texting While Driving Law

As of September 30, 2010, a new statewide ban called the Citable Motor Vehicle Offenses Act, G.L. c.90 et.seq. are going into effect in Massachusetts which expressly prohibits all drivers, including law enforcement officials, from text messaging, emailing, internet searching and other non-calling activity on the phone, laptop or other handheld electronic device while driving. The new law also applies to all drivers waiting at traffic lights and stop signs from engaging in such conduct. The penalties for violations of this statute will be \$100.00 for a first offense and moving up to \$500.00 for multiple offenses. Drivers under 18 if caught texting while driving will face a \$100.00 fine and a license suspension for 60 days. Massachusetts will be the 29th jurisdiction to have such legislation in place. The reason behind the new law is of course safety. The use of these electronic devices poses a grave safety risk to both the driver, other drivers and pedestrians. According to the latest data from the National Highway Traffic Safety Administration, nearly six thousand people died in 2008 in distracted driving crashes nationwide. The highest proportion of those crashes involved teen drivers and a total of 659 teens were killed in distracted driving-related cases.

For further information and a game plan on how to meet the requirements of both of these new laws, please contact us immediately.