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# Employment Law Update

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# Roadmap for Today

- MA Personnel Records Statute Amendments
- MA CORI Reform
- Recent Case Law Developments re:
  - MA Maternity Leave Act (MMLA) protection beyond 8 weeks?
  - Employer liability for employee's DWI accident?
  - Disability accommodation claim under M.G.L. c. 151B

# MA Personnel Records Statute Amendment

- An employer shall notify an employee within 10 days of the employer *placing in the employee's personnel record* any information to the extent that the information is, has been used or *may be used*, to *negatively affect* the employee's qualification for employment, promotion, transfer, additional compensation or the *possibility* that the employee will be subject to disciplinary action.

# MA Personnel Records Statute Amendment

*(cont.)*

- An employer receiving a written request for review or a copy of the personnel record shall provide the employee with an opportunity to review or copy within 5 business days of the request.
- Up to 2 times per year, excluding requests to review “negative” information placed in file.
- Effective August 1, 2010.

# Personnel Record Issues (*cont.*)

- Effect depends on how broadly one reads the law:
  - Manager files?
  - Emails?
  - “Verbal” warnings?

\*\*\*No private right of action, little enforcement by state, minor penalties for violation (between \$500 & \$2,500 per violation). What is the real consequence? Possible impact on litigation: employee may argue that if it is not in the file, employer cannot use it to defend wrongful termination claim.

# Mass. Passes CORI Reform

- Employers can no longer request criminal history information on “initial” written job application form (“Ban the Box Initiative”)
- Criminal history information can be requested during interview or in subsequent written forms
- Before asking applicant about the CORI report contents or taking adverse action, employer must furnish a copy to the applicant
- Does the law apply to MA residents, or those applying for positions in MA? (maybe both)

# CORI Reform (*cont.*)

- Employers who conduct 5 or more background checks annually must have a written CORI policy
- CORI records must be discarded after 7 years (following termination or decision not to hire)
- State CORI record will no longer include felony convictions closed for more than 10 years, or misdemeanor convictions closed for more than 5 years
- Restriction re: initial application form effective Nov. 4, 2010; remaining provisions effective Feb. 6, 2012

\*\*\*Employers can request criminal history information from applicants and employees... New law restricts the timing.



# *Global NAPs, Inc. v. Awiszus*

## (Supreme Judicial Court)

- MMLA provides female workers job protection for up to 8 weeks of maternity leave
- Poll Question: If an employer agrees to allow an employee to take more than 8 weeks of maternity leave, does the MMLA provide her job protection beyond the 8 weeks?

## *Global NAPs, Inc. v. Awiszus (cont.)*

- After company president's housekeeper notified employer of the date upon which her maternity leave would begin, president informed her that she could take more than 11 weeks of maternity leave if cesarean section delivery.
- After cesarean delivery and more than 8 weeks passed, she contacted employer regarding her return to work; and company fired her.
- She sued for violation of the MMLA.
- MCAD Guidelines: if grant leave longer than 8 weeks, must clearly inform employee if don't intend for statute's job protections to apply beyond 8 weeks.

# *Lev v. Beverly Enterprises-Mass., Inc.*

## (Supreme Judicial Court)

- John met his supervisor at restaurant after work, during which they discussed work-related issues, and John purchased and consumed 2 alcoholic drinks.
- While driving home from restaurant, John struck and severely injured pedestrian, Charles.
- After John convicted of DWI, Charles sued John's employer, alleging that John was acting within the scope of his employment when driving home and that John's supervisor was responsible for preventing John from driving while intoxicated.
- Employer liable to Charles for his injuries?

## *Lev v. Beverly Enterprises-Mass., Inc. (cont.)*

- Employer vicariously liable for John's negligence? Was John acting within the scope of his employment?
- Employer liable as a social host?
- Employer liable to Charles for failure to enforce its policy prohibiting alcohol consumption while conducting company business?

# *Godfrey v. Globe Newspaper Co.*

## (Supreme Judicial Court)

- Doug, assistant press foreman, seriously injured when fell while working.
- When returned to work following his injuries, he was unable to climb the press machines that produce the newspapers.
- Shortly thereafter, Globe terminated him for failing to submit worker' comp. payments to Globe, who paid his full salary during his leave.
- After termination, Doug sent letter to Globe seeking a light duty assignment to accommodate his inability to climb the press machines (without acknowledging his termination). Globe refused.

## *Godfrey v. Globe Newspaper Co. (cont.)*

- Doug sued the Globe for failure to accommodate his disability (among other claims).
- Was the Globe obligated to assign the responsibility of climbing machines to another employee?
- Was the Globe obligated to offer Doug a light duty assignment?

# QUESTIONS



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**THANK YOU!!!**

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