

Employment Update

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The New Tax Law, #MeToo, and Unintended Consequences

Boston Business Journal

By [Brian J. MacDonough](#) and [David I. Brody](#)



As the dust settles from the recent legislative collision between the #MeToo movement and tax reform, it is the proponents of the #MeToo movement that are left scratching their heads and crying foul. In what was intended to help shine a spotlight on, and assist in the eradication of, workplace sexual

harassment, the 2017 Tax Cuts and Jobs Act includes language prohibiting the deductibility of (1) any settlements or payments related to sexual harassment or sexual abuse if such settlement or payment is subject to a nondisclosure agreement (NDA) and (2) attorney's fees related to such settlement or payment.

[Read more.](#)

Our "Top Five to Ten" List of Important Recent Decisions



In an effort to keep our newsletter readers abreast of recent developments and legal trends, we are beginning a new feature - a "top five to ten" list of cases of importance to executives and professionals. This quarter, we are covering cases in the following fields: **contract, discrimination, executive compensation and wage act litigation**. Included in our list are "heads up" regarding important cases likely to be decided soon. [Click here](#) to see the full list.

Thought Leadership

Are Non-Competes Enforceable in Massachusetts? Finally, Some Answers

By [Brian J. MacDonough](#) and [Nancy S. Shilepsky](#)

For years, when asked by clients whether non-competition agreements are enforceable in Massachusetts, lawyers have had to say "it depends." Well, it still does - but not as much. On August 10, 2018, Massachusetts Governor Baker signed a law that will take effect on October 1, 2018 and which will finally provide some clear guidance.

Click [here](#) to read a brief summary of what you need



to know.

What's Up with Sick Leave?

By [David I. Brody](#)

There is a lot up with sick leave. First, for anyone who is on intermittent leave under the Family and Medical Leave Act (FMLA), be sure to renew your FMLA leave request at least every twelve months. At least one Federal court has held that an employee's right to FMLA leave essentially expired after twelve months if the employee had not re-requested and re-qualified for such leave. See *Feistl v. Luzerne Intermediate Unit*, U.S. District Court, C.A. No. 3:12-0491 (M.D. Pa. Ap. 6, 2018).



Second, for Massachusetts employees, paid sick leave (personal and family) is on the horizon. Beginning in 2021 (on January 1 for personal leave and July 1 for family leave), eligible employees will be entitled to begin taking such leave. However, the payroll tax intended to fund paid sick leave - shared by employers and employees - will be hitting paycheck next year, on July 1, 2019.

More on Sexual Harassment

By [Brian J. MacDonough](#) and [Jaclyn L. McNeely](#)



As we have predicted, in the wake of revelations of unbridled, systemic abuse, sexual harassment cases are going to be easier to bring and easier to prove. One example is the reasoning in *Minarsky v. Susquehanna County*, 895 F.3d 303 (3rd Cir. 2018). There, the Court of Appeals vacated the trial court's grant of summary judgment in favor of the employer - which would have robbed Ms. Minarsky of her right to a jury trial. The Court of Appeals held that it was a jury to

decide, among other things, whether the employer's exercised reasonable care to prevent unlawful harassment, especially given that Ms. Minarsky was required to work alone with the alleged harasser every Friday; whether, under the circumstances, Ms. Minarsky's delay in reporting the harassment was unreasonable - going so far as to hold that a failure to report at all is not *per se* unreasonable; and the impact of "prolonged, agonizing harassment" on the reasonableness of Ms. Minarsky's efforts to manage the situation on her own.

Client Spotlight

Sherin and Lodgen Successfully Defends Dental Practice in Restrictive Covenant Case

Sherin and Lodgen successfully defended its client, a dental practice, its owner, and two employees, against a motion for preliminary injunction in Norfolk Superior Court. The plaintiffs, another dental practice, alleged the defendants breached their respective employment agreements, including purported breaches of non-competition, non-solicitation, and non-disclosure clauses, misappropriated trade secrets, and tortuously interfered with plaintiffs' contractual and advantageous business



relations, among other claims. The Court denied the plaintiffs' request for injunctive relief, noting that the defendants had shown a substantial likelihood of strong defenses to plaintiffs' claims.

[Matthew C. Moschella](#), partner in the firm's Employment and Litigation Departments, and [David A. Michel](#), an associate in those Departments, handled the case for our client.

Sherin and Lodgen is regularly called upon to represent clients in trade secret and restrictive covenant matters including non-competition, non-solicitation, and confidentiality provisions. Learn more about our employment team and capabilities [here](#).

Sherin and Lodgen News and Accolades

Employment Partners Ranked in The Best Lawyers in America®

Congratulations to **Nancy S. Shilepsky** and **Brian J. MacDonough** on being among 18 of Sherin and Lodgen's attorneys elected by their peers for inclusion in *The Best Lawyers in America*® 2019. This is the first year Brian has been ranked in the publication.

Best Lawyers gathers feedback from clients in determining attorney rankings. The team's feedback included:

- "Nancy Shilepsky and Brian MacDonough of Sherin and Lodgen did outstanding work for me. I highly recommend working with Sherin and Lodgen's Employment Law group!"
- "Brian of Sherin and Lodgen was incredibly professional throughout this difficult process. He reviewed all the relevant documents and was able to build a very solid case."
- "Nancy Shilepsky of Sherin and Lodgen is an expert when it comes to strategy development in the support of executive negotiating terms of employment. She is amazingly responsive and highly supportive of her client. She is smart, successful, assertive and a pleasure to work with."

Sherin and Lodgen Adds New Associate to Employment Law Department

[Jaclyn L. McNeely](#) is a new associate in the firm's Employment Law Department. McNeely represents clients in a wide range of matters, including wage and hour issues, wrongful termination, discrimination, retaliation, and contract negotiation and enforcement. Her experience includes representing clients in internal investigations and at arbitration, and advising clients regarding FMLA, Massachusetts Wage Act and parental leave matters.

Read Jaclyn's full bio [here](#).



David I. Brody Elected Treasurer of the Massachusetts Employment Lawyers Association

[David I. Brody](#), an associate in the firm's litigation and employment law departments, has been elected treasurer of the Massachusetts Employment Lawyers Association, Inc. (MELA) for the 2018-2019 term. Brody was elected via popular vote at the June MELA member meeting.

MELA is the Massachusetts Chapter of the National Employment Lawyers Association (NELA), the country's largest professional organization exclusively comprised of lawyers who represent individual employees in cases involving employment discrimination and other employment-related matters.



About Sherin and Lodgen LLP

Sherin and Lodgen is a mid-sized Boston law firm specializing in real estate, litigation, business law and employment. With over 40 attorneys, the firm handles complex matters, while providing responsive, senior-level attention to every matter. Known for its effective, efficient and focused representation, Sherin and Lodgen delivers sophisticated analysis and a high touch service by developing an in-depth understanding of clients' business goals, issues, concerns and emerging industry trends. Visit our website to learn more.