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## Employment

### “Employment Law in Massachusetts: What Out-of-Staters Need to Know”

The technological advancements of recent years have led to increasingly flexible and far-flung employment arrangements that allow employees to live and work far from their employers' principal places of business. Massachusetts is known for having in place a multitude of laws governing the employment relationship. Employers unfamiliar with this landscape can easily find themselves making seemingly innocuous, but costly, mistakes when dealing with their Massachusetts employees. We summarize here the most significant traps for the unwary employer:

- The Massachusetts Wage Act. Like many states, Massachusetts has enacted a statute requiring the regular payment of wages under what is commonly referred to as the “Wage Act.” Unlike many states, however, an employer may violate the law in wide-ranging circumstances, for example by withholding certain bonuses and commissions or, as in a recent Massachusetts case, refusing to pay severance promised to an employee. What you need to know:
  - Even if unintentional, failing to pay wages brings stiff penalties, including *mandatory treble damages* and payment of the employee's attorney's fees.
  - Certain agents and officers of a corporation are *personally* liable for violations of the Wage Act.
  - When terminating an employee, an employer must pay all unpaid wages earned to date, in addition to compensation for any accrued vacation (where the employer offers paid vacation time to employees).
- The Massachusetts Maternity Leave Act. Employers with six or more employees must allow eight (8) weeks' unpaid maternity leave to a mother upon the birth or adoption of a child. Legislation is currently pending which, if enacted, would extend this benefit to fathers.
- Sexual Orientation Discrimination. Unlike many states, an employer may not refuse to hire, or otherwise discriminate against an employee in the terms and conditions of employment based on the individual's sexual orientation.
- Sexual Harassment Policies. Massachusetts requires every employer with six or more employees to have in place a written policy governing sexual harassment and to distribute the policy annually to every employee. The MCAD now recommends that employers adopt written policies prohibiting harassment against members of any protected class (including, for example, harassment on the basis of sexual orientation).
- Non-Competition Agreements. In recent years, Massachusetts courts have further limited the enforceability of non-competition and non-solicitation agreements in the employment context. Legislation is currently pending which, if enacted, would further limit an employer's use of such agreements to restrict an employee after they depart.

- Criminal background checks. In 2010, the Massachusetts legislature reformed the laws governing criminal offender record information ("CORI"). These reforms prohibit certain pre-employment inquiries about a candidate's criminal history, and restrict an employer's access to, and use of, CORI in employment decisions.
- Personnel Records. As in other states, Massachusetts requires certain employers to maintain personnel records for employees. Since August 2010, however, an employer is required to notify employees within 10 days after adding information to the employee's personnel record that has been, 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."
- Independent Contractors. The Massachusetts statute governing independent contractors makes it very difficult for employers to treat workers as contractors rather than employees. The Attorney General is charged with enforcing this law, although a violation can give rise to private claims by individuals (including, for example, wage and hour claims).
- Health Insurance. Thus, employers with 11 or more full-time employees must make fair and reasonable contributions to their employees' health insurance premiums. This generally requires employers to pay at least 33% of health insurance premiums and to offer cafeteria plans for employees who wish to use pre-tax earnings to purchase health insurance. And, of course, there are penalties for non-compliance.

Navigating the employment relationship in Massachusetts can be tricky. For those unfamiliar with this legal landscape, the better practice is to consult with counsel before acting. We encourage you to contact Margaret H. Paget, C. Forbes Sargent or Matthew C. Moschella.

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