

MASSACHUSETTS

Employment Law Workbook Addendum

(Update on legislation enacted from Jan. 1–Dec. 31, 2013)

Topics

I. Discrimination

Gender identity was added as a new protected category. Thus, now transgender individuals are protected against discrimination (HB 3810, MGLA ch. 151B, § 4, effective July 1, 2012).

The Supreme Judicial Court expanded retaliation protection under Fair Employment Practices Act, concluding that former employees can bring a retaliation claim for actions taken after the termination of employment relationship, and that instituting baseless litigation against the ex-employee can serve as the basis for a retaliation claims (*Psy-Ed Corp. v. Klien*, 2011 Mass LEXIS 254 (2011)).

No new laws or regulations enacted in 2012 or 2013.

II. Pre-Employment Inquiry Guidelines

More portions of the Massachusetts Criminal Offender Record Information Reform Act took effect on May 4, 2012. If an employer wishes to question an applicant regarding criminal history, the employer must provide a copy of the criminal record information in the employer's possession. Employers conducting 5 or more background investigations per year must have a written policy regarding the use of criminal background checks in the hiring process which includes certain provisions established by the Act. Employers who register will be able to access the State's iCORI system for any individual who has signed an acknowledgement form.

No new laws or regulations enacted in 2013.

III. Family and Medical Leave

No new laws or regulations enacted in 2012 or 2013.

IV. Wage and Hour Laws

The Supreme Judicial Court ruled that employers may not deduct costs of damage to company property from earned wages of the employee who caused the damage (*Camara v. Attorney General*, 2011 WL 198644 (Jan. 25, 2011)).

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The Temporary Workers Right to Know Act takes effect on January 1, 2013. The Act requires staffing agencies to provide temporary employees assigned to a new position a written notice with extensive information which includes: (1) the name, address, and telephone number of the staffing agency, the agency's workers' compensation carrier, the worksite employer, and the Massachusetts Department of Labor Standards; (2) a position description and any costs charged to the employee; (3) the hourly rate of pay, whether overtime pay may occur, and the designated pay day; (4) the start and end time of the work day and the expected duration of employment; and (5) any meals provided by the staffing agency or worksite employer, the costs of such meals, and the details and costs of any transportation required or offered to the employee. Staffing agencies and worksite employers are prohibited from charging a variety of costs and fees, including a fee for registering with the agency and the cost of a background check.

Hospitals are prohibited from requiring nurses to work overtime with the exception of "emergency situations" (SB 2400, effective Nov, 4, 2012). Hospitals may not regularly schedule a nurse to work more than 12 hours in a 24-hour period and cannot permit a nurse to work more than 16 consecutive hours in a 24-hour period, after which time the nurse must be given 8 consecutive hours of time off. (The law does not alter the terms of a collective bargaining agreement.)

No new laws or regulations passed in 2013.

V. Drug Testing

No new laws or regulations enacted in 2012 or 2013.

VI. Noncompete and Other Employment Agreements

No new laws or regulations enacted in 2012 or 2013.

VII. Workplace Safety

No new laws or regulations enacted in 2012 or 2013.

VIII. Workers' Compensation

No new laws or regulations enacted in 2012 or 2013.

Miscellaneous

Massachusetts superior court's decision reinforced that the public policy exception to the employment-at-will doctrine is very narrow. The court also reminded employers that Massachusetts law does not provide a generalized common-law whistleblower protection for private employees (*Nelson v. Anika Therapeutics, Inc.*, Aug. 12, 2011).

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Supreme Judicial Court ruled that mandatory treble damages statute is not retroactive (*Rosnov v. Molloy*, treble damages amendment applies prospectively from July 12, 2008 onward).