

CLIENT ALERT – OCTOBER 2010

Employers – Are You in Compliance with the New Personnel Records Law?

The compliance date has long since passed for employers to begin notifying employees when negative information is placed in their personnel records. A major addition to the Massachusetts Personnel Records Statute, G.L. c. 149, § 52C, became effective as of August 5, 2010.

1. Employers must notify an employee of any negative information added to the employee's personnel record

Employers are now required to notify an employee within 10 days of the employer placing in the employee's personnel record any information 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.

The definition of "personnel record" has not changed, and remains broadly defined as any record that has been, is, or may be used relative to the employee's qualifications for employment, promotion, transfer, additional compensation, or disciplinary action. Under this definition, any documented comment regarding an employee, whether in an email, a private note, or otherwise, could be deemed part of the employee's personnel record. Although the precise contours of the new law have not yet been tested in the courts, it appears that employers are required to notify an employee of the documentation or circulation of any potentially negative comment relating to the employee that the employer may consider when making employment-related decisions.

The new law does not specify whether the notice to the employee must be in writing, but employers should consider providing written notice so as to document their compliance.

2. Employees' right to access their personnel records is limited to two times per year (excluding access after the addition of "negative" information)

The new law added a two-times-per-year limit on the number of times an employer is required to allow an employee to review her personnel record. This limit does not apply, however, to requests for access that are triggered by notification of negative information. The timeframe for responding to requests for access has not changed – an employer who receives a written request from an employee must provide the employee with access to her personnel record within 5 business days of the request.

3. Penalties

The penalties for violation of the personnel record statute remain a fine of between \$500 and \$2,500 per violation, enforceable by the Attorney General.

If you would like to speak to someone about the changes to the personnel record statute, including how best to implement the new rules into your business's practices, please contact Diane DeGiacomo, Chair of our Employment Law Group.

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