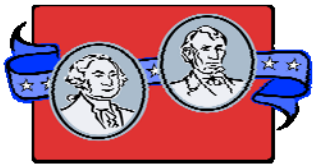
Collins, Loughran & Peloquin, P.C.

February 2014

CLIENT ADVISOR



Practice Update: Department of Unemployment Assistance

The statute governing Massachusetts Unemployment Insurance was recently amended to comply with a federally imposed mandate that prohibits states from providing relief of charges to an employer's unemployment compensation account when an employer (or employer's agent) fails to adequately or timely respond to an information request by the Department of Unemployment Assistance ("DUA"). M.G.L. c.151A, § 38A.

Under the amended law, if an employer fails to respond or submits an untimely or inadequate response to a DUA request for information and the claimant is approved for benefits at the initial level, the employer loses party status and its ability to appeal the initial approval. Previously, employers were eligible to recoup benefits paid to claimants whose initial eligibility determination was reversed, regardless of whether the information or lack thereof provided by the employer contributed to the initial incorrect determination.

What this means for employers:

- Employers must pay close attention to information requests from the DUA, including when responses are due.
- Employer responses to information requests from the DUA must be timely and adequate.
- An adequate response is one that allows the DUA to make an eligibility determination without further clarification from the employer. All the information the employer has or can obtain should be provided on fact-finding questionnaires; answers should include all details and any documentation pertaining to the issue presented.
- A failure to respond is considered an inadequate response.

According to the DUA, an employer that fails to respond or submits a late or inadequate response will be notified that it will no longer be considered a party to any further claim proceedings (related to the particular claim) and that it will be prohibited from being relieved of any benefit charges resulting from payments on the claim.

Employers should consult legal counsel with any questions about the amended law and its impact on employer practices.

Guidance Regarding Student Discipline Practices

On January 8, 2014, the U.S. Department of Education's Office for Civil Rights ("OCR"), in conjunction with the Civil Rights Division of the U.S. Department of Justice ("DOJ"), released its first-ever federal policy guidance addressing discipline in elementary and secondary schools.

Issued as a joint "Dear Colleague" letter by U.S. Secretary of Education Arne Duncan and U.S. Attorney General Eric Holder, the guidance makes the case that student discipline practices across the nation have become a civil rights issue and outlines the approach OCR and DOJ will take when investigating complaints of race or national origin discrimination in a school or district's disciplinary practices.

The guidance does not create new law, however it does provide information and examples of the DOE's expectations under existing law. It also clarifies that districts can be held responsible for discrimination not just by employees, but also by agents such as security guards or law enforcement officials.

For a copy of the Dear Colleague letter please visit our website at www.collinslabor.com.

SPEAKING ENGAGEMENTS

On February 11, 2014, **Phil Collins** is co-leading a MIIA webinar titled, "'It's Not In My Contract!': Managing Union Employees."

The one hour interactive webinar will cover how to respond to employees who are asked to perform a task and respond with "it's not in my contract."

The webinar is from 10:00 to 11:00 a.m. Registration is available through MIIA's website at www.emiaa.org.

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