



SCHOOL CORNER

The Model Criminal History Record Information (CHRI) Policy for Non-Criminal Justice Entities has been revised by the DCJIS. This Policy applies to all public and private schools in MA that serve students pre-K-12. Districts should review and adopt the updated Policy to ensure compliance with CHRI requirements.

REMINDER:

Employees subject to background checks who began working for their school employer prior to July 1, 2013, must have submitted a fingerprint check by the start of the 2016-2017 school year.



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Personal Liability For FMLA Violations

On March 17, 2016, the Second Circuit Court of Appeals (the same court deliberating on Tom Brady’s suspension), ruled that a Director of Human Resources could exercise sufficient control over an individual’s employment to be subject to individual (personal) liability under the Family and Medical Leave Act (“FMLA”). *Graziadio v. Culinary Institute of America et al.*, 15-888-cv (2d Cir. Mar. 17, 2016). Under the FMLA, an individual may be held liable if he or she is considered an “employer,” defined as “any person who acts, directly or indirectly in the interest of an employer to any of the employees of such employer.” Applying the economic-reality test used to analyze whether an individual is an “employer” under the Fair Labor Standards Act (“FLSA”), the Court concluded the district court’s summary judgment dismissal against the Culinary Institute’s Director of Human Resources was improper. The Second Court joins the Third and Fifth Circuits in applying the economic-reality test to identify “employers” in the FMLA context.

While the outcome of this case raises some concerns, especially for human resources managers administering FMLA plans, the facts of this case provide some important takeaways.

- Human Resources personnel should be regularly trained on the FMLA and FMLA compliance.
- Employers are expected to responsibly respond to and answer questions from employees concerning the FMLA, and their rights and responsibilities. 29 CFR §825.300(c)(5).
- All communication regarding leave requests and required documentation should be professional and responsive. In *Graziadio*, the Court noted that the breakdown in communication between the parties was largely the product of the Human Resources Director not responding to the Plaintiff’s requests for clarification. As we have advised, the interactive process in these and disability cases is not a letter writing campaign. Employers should respond to requests for information or clarification in a clear and simple manner.
- An employer must advise an employee whenever the employer finds a certification incomplete or insufficient, and the employer must “state in writing what additional information is necessary to make the certification complete and sufficient.” 29 CFR §825.305(c).
- Employers should be reasonable about deadlines, keep lines of communication open, and not refuse to communicate or meet with an employee.

Visit our website for additional information and an expanded version of this article. If you have any questions on this or other Labor and Employment Issues, please contact your CLP Attorney.

ALERT! Fee Change for Public Records Requests

The Secretary of State’s office issued revised regulations that **lower** the fees a governmental entity can charge for copies of public records (950 CMR 32.06). Effective February 29, 2016, entities can only charge “the actual cost of any storage device or material provided to a person in response to a request for public records”, and **no more than five cents (\$.05) per page** for black and white copies and printouts (single or double-sided). In addition, the revised regulations no longer include a separate fee for computer printouts or copies of records from microfilm or microfiche.

Previously, the standard fee for a black and white copy was twenty cents (\$.20) per page, and entities could charge upwards of fifty cents (\$.50) per page for computer printouts, and twenty-five cents (\$.25) for copies of public records on microfilm or microfiche. The revisions **did not** alter an entity’s right to charge for search and segregation time, or to charge the actual cost of making a copy of a record not susceptible to ordinary means of reproduction.