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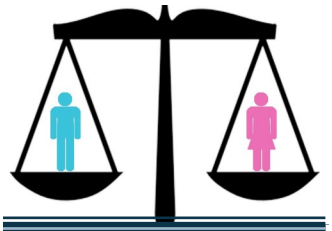

Substance Abuse Education Policies

Signed into law in March, 2016, An Act Relative to Substance Use, Treatment, Education and Prevention, ("Opioid Law"), requires schools to have a policy "regarding substance use prevention and the education of its students about the dangers of substance abuse."

The policy, which should be in place by the start of the 2016-2017 school year, must be posted on the school's website, filed with the DESE, and schools must ensure that parents and guardians are notified of the policy.

For questions on the law or your district's policies, contact your CLP attorney.

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Men and Women Must Be Paid Equally for Comparable Work In Massachusetts

On Monday, August 1, 2016, Governor Baker signed the Pay Equity Act. The Act requires all employers to provide equal pay for comparable work regardless of gender. This is an expansion of the existing state law which only requires that men and women be paid the same for doing the same job. Effective July 1, 2018, the law defines comparable work as "substantially similar in that it requires substantially similar skill, effort and responsibility and is performed under similar working conditions." The Act does provide for variations in wages and benefits, but only for select reasons which include a bona fide seniority or merit system, geographic location, job related education, training or experience, or travel.

In addition to equal pay, the Act makes Massachusetts the first state in the nation to make it illegal for employers to ask prospective employees for their salary history before making a formal job offer that includes compensation, and prohibits "pay secrecy policies," opening the door for employees to discuss salaries without fear of employer retribution. Under the new law, employers can still verify salary history prior to making a job offer but only when a prospective employee "has voluntarily disclosed such information."

Employers who make discriminatory compensation decisions or have discriminatory pay practices face severe penalties including unpaid wages, attorney fees and liquidated damages. The Act does provide an affirmative defense for employers that conduct a "self-evaluation of its pay practices [within three years prior to the commencement of a civil action] in good faith and can demonstrate that reasonable progress has been made toward eliminating compensation differentials."

Employers are required to post notices advising employees of their rights, and should review their hiring and compensation practices with their CLP attorney before the Act becomes effective.

Arbitrators, Not Courts, To Determine Issue of Arbitrability In Teacher Dismissal Cases

Whether a dismissed teacher employed by a school district for over five years, but who took two separate maternity leaves during that period, has professional teacher status (PTS) is an issue that must be decided by an arbitrator. *Plymouth Public Schools v. Educ. Assoc. of Plymouth & Carver*, 89 Mass. App. Ct. 643 (2016). This recent decision by the state's highest court puts to rest what the Court referred to as the "chicken and egg" problem of determining whether a Massachusetts teacher has earned professional status. Because teachers are not eligible for arbitration and other procedural and substantive rights until they obtain PTS, the district had argued that a judge, rather than an arbitrator, should decide the question of whether the teacher had obtained the status necessary to access arbitration. The Court disagreed.

The Court concluded that "the strong public policy favoring arbitration" and the preference for arbitration expressed in the Education Reform Act dictates that the issue of "whether the teacher has professional teacher status must be decided by an arbitrator." Its decision reflects earlier decisions in which the Court held that it does not makes sense to "establish two successive forms of review in two different forums for dismissed teachers with professional status." *Turner v. Sch. Comm. of Dedham*, 41 Mass. App. Ct. 354 (1996).

The Court declined to address the public policy arguments raised by both parties. Given the significance of these issues – a district's right to three consecutive, full years of training and evaluation before a teacher obtains PTS versus the right of an employee not to be penalized or put in a worse position for taking parental or FMLA-qualifying leave – it is unlikely that the arbitrator's decision will result in a final resolution. For now, what is settled is that the determination of whether the teacher is even entitled to arbitration, belongs to the arbitrator.