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FLSA Update

On August 31, 2017, a Texas Federal Court judge struck down the new FLSA overtime rules that would have gone into effect on December 1, 2016 and impacted over 4 million workers. It is anticipated that the Department of Labor may revisit the rules proposed by the Obama administration and revise the proposed salary levels for overtime eligibility.

Massachusetts Educator License

On July 28, 2017, the Department of Elementary and Secondary Education issued new regulations impacting initial educator licenses and license renewal. See 603 CMR 7.00

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Massachusetts Law Expands Pregnancy Protections

Starting April, 2018, the Massachusetts Pregnant Workers Fairness Act ("PWFA") will prohibit discrimination based on pregnancy, and medical related conditions, including "lactation or the need to express breast milk for a nursing child." The Act prohibits an employer from taking any adverse action against a pregnant employee, including denying employment or dismissing an employee who requests a reasonable accommodation, provided they can otherwise perform the essential functions of their job.

The Act provides several examples of reasonable accommodations including: more frequent or longer paid or unpaid breaks; time off to attend to a pregnancy complication or recover from childbirth with or without pay; acquisition or modification of equipment or seating; temporary transfer to a less strenuous or hazardous position; job restructuring; light duty; private non-bathroom space for expressing breast milk; assistance with manual labor; or a modified work schedule. The Act prohibits requiring an employee to take a leave of absence if another reasonable accommodation may be provided. However, an employer does not need to dismiss or transfer another employee with more seniority in order to accommodate a pregnant employee.

An employer may request documentation from the employee's "health care or rehabilitation professional" in reviewing an employee's request for an accommodation. However, an employer cannot request documentation for the following accommodations: (i) more frequent restroom, food or water breaks; (ii) seating; (iii) limits on lifting over 20 pounds; and (iv) private non-bathroom space for expressing breast milk. Employers are not required to provide accommodations that would cause an undue hardship, which is defined as an "action requiring significant difficulty or expense."

By April 1, 2018, employers are required to provide written notice to all employees of the protections afforded by the Pregnant Workers Fairness Act, including the right to be free from discrimination, the right to request a reasonable accommodation, and the right to a private place to express breast milk. In addition, the employer must provide this notice to a specific employee within 10 days of the date the employee advises the employer of a pregnancy or medical related condition. Clients are encouraged to consult CLP counsel with any questions about crafting notices to employees about this law.

Superior Court Upholds Police Bypass For 1995 Fight and Car Accident

In Daniel Zaiter v. Boston Police Department, the Superior Court overturned the Civil Service Commission's decision and held that the Boston Police Department had a reasonable justification to bypass Daniel Zaiter for a position as a Boston police officer, based on a guilty plea to an assault for fighting with other Randolph High School students and a fatal motor vehicle accident, both over 20 years earlier, in 1995.

The Civil Service Commission overturned the bypass for several reasons, including that that the background investigator misled the interview panel concerning the scope of Zaiter's involvement in the 1995 fight and motor vehicle accident.

The Superior Court reversed, finding that the Commission improperly substituted its "judgment of a candidate's respective strengths and weakness for the judgment of the Appointing Authority itself" by "reweighing" Zaiter's application. The Court ruled it "immaterial" whether the Commission or the Court would have arrived at the same conclusion as the BPD. This decision is an important reminder that employers may have grounds to bypass candidates for offenses that occurred long ago, provided it does a reasonably thorough and independent review of the information.