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Legal Counsel to Employers and Schools

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## AG Guidance to Schools Re: ICE Requests for Info and Access

On May 18, 2017, the Office of Massachusetts Attorney General Maura Healey issued guidance to the state's public K-12 schools regarding their rights and obligations with respect to requests for access or information by U.S. Immigration and Customs Enforcement ("ICE"). Under current ICE policies, schools are "sensitive locations" and as a result enforcement activities are generally prohibited absent special circumstances or prior approval. A copy of the guidance and additional information is available on our website.

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## Personal Liability For FMLA Violations Revisited

In April 2016, we advised that the Second Circuit Court of Appeals 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 Medical Leave Act (FMLA). *Graziadio v. Culinary Institute of America et al.*, 817 F.3d 415 (2016). At the time, the Second Circuit joined the Third and Fifth Circuits in applying the Fair Labor Standards Act's (FLSA) economic-reality test to identify "employers" under the FMLA. A year later, a U.S. District Court judge in Massachusetts has determined that an employee can sue his supervisor individually for violating his rights under the FMLA. *Eichenholz v. Brink's Inc., et al.*, 2017 WL 19021456 (D. Mass. 2017).

In his decision, Judge Leo T. Sorokin wrote that although the First Circuit has yet to directly address the issue of individual liability under the FMLA, it has determined that individuals can be sued under the FLSA, whose definition of "employer" is "materially identical" to the FMLA. Further, the majority of federal courts that have addressed the issue have determined the FMLA allows for individual liability, a conclusion that has been "implicitly adopted" by the First Circuit. The *Eichenholz* decision comes on the heels of U.S. Magistrate Judge Katherine A. Robertson's March, 2017 decision in *Boadi v. Center for Human Development, Inc.*, 2017 WL 886972 (D. Mass. 2017) which similarly noted that "the national trend is towards permitting individual liability," and that "a majority of federal courts to address the issue of private supervisor liability have concluded that such liability exists." *Boadi*, 2017 WL 886972, at *10 (quoting *Reilly v. Cox Enters., Inc.*, CA No. 13-785S (D.R.I. April 16, 2014)).

Now that the trend towards personal liability appears to have hit home, employers need to make sure that managers, supervisors and human resources professionals are properly trained, and that they understand their obligations and responsibilities under the law. Your CLP attorney is available to assist with training and resources, and to answer questions about this or other Labor and Employment Issues.

## The Dangers Of Being An Appointing Authority Elected To Office

In *Nigro v. City of Everett* (G2-15-47), the successful candidate for Deputy Fire Chief, selected from three tied candidates, knows the Mayor personally and contributed to the Mayor's re-election campaign. One of the non-selected candidates cries foul, and files a bypass appeal and request for Investigation with the Civil Service Commission. The Commission decides that just knowing the Mayor and contributing to a campaign are not enough to warrant a §2(a) investigation where:

- The Mayor accepted the recommendation of the Fire Chief;
- The Fire Chief had interviewed each candidate; and
- The Fire Chief had first-hand knowledge of all candidates from working with them over a period of several years.


The Commission also determined no bypass had occurred where all candidates were tied.