



12 Months Means 12 Months

Putting a Police Officer or Fire Fighter on administrative leave who is close to finishing the probationary period, pending the outcome of an investigation of off duty, criminal misconduct (two domestic violence arrests) is permitted, and stops the 12 month “actually perform the duties” clock, under c.31, §61, from ticking. But, if the employer dismisses the employee, even after one criminal case is dismissed, it is still within its rights. In such “he said/she said” cases, it is prudent to rely on aspects of the conduct which show poor judgement, irrespective of the issues or outcome in the criminal cases. Andrade v. City of Cambridge, Motion to Dismiss granted March 15, 2018.

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Time Is Now To Notify Employees Of Rights Under Pregnancy Workers Fairness Act

The Massachusetts Pregnancy Workers Fairness Act (“PWFA”) took effect April 1 and it required Employers to notify employees in writing of their rights by April 1. New hires must be notified as well. A separate notice is also required within 10 days of an employee’s notice to the Employer of pregnancy. The notice can be emailed and the MCAD website has issued guidance for the text of the required notice.

By amending M.G.L. c. 151B, §4, the PWFA prohibits discrimination in employment on the basis of pregnancy and pregnancy-related conditions, such as lactation or the need to express breast milk for a nursing child. Generally, employers may not treat employees or job applicants less favorably than other employees based on pregnancy or pregnancy related conditions and they have an obligation to accommodate pregnant workers. For example, an Employer:

- Cannot refuse to hire or take any adverse action against any employee or applicant who is pregnant or has a pregnancy-related condition if the individual is capable of performing the essential functions of the position with a reasonable accommodation;
- Must engage in good faith in the interactive process to determine a reasonable accommodation for an employee or applicant who is pregnant or has pregnancy related conditions, provided the accommodation does not create an undue hardship. “Undue hardship” means that providing the accommodation would cause the employer significant difficulty or expense;
- Cannot require medical documentation about the need for an accommodation if the accommodation requested is for: (i) more frequent restroom, food or water breaks; (ii) seating; (iii) limits on lifting no more than 20 pounds; and (iv) private, non-bathroom space for expressing breast milk. Medical documentation can be requested for other accommodations;
- Cannot require a pregnant employee to accept a particular accommodation, or to take a leave of absence, if another reasonable accommodation would enable the employee to perform the essential functions of the job without an undue hardship. An Employer is not required to discharge or transfer another employee or promote an unqualified employee as an accommodation.

Not far behind is the Massachusetts Pay Equity Act, which takes effect July 1. But final notice/posting requirements have not yet been issued by the Attorney General for that new law. Contact your CLP attorney with questions or for assistance with these matters.