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Legal Counsel to Employers and Schools

COVID-19 UPDATE

Client Advisor

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Although it looked like we might go a week without any state or federal legislation related to COVID-19, that was not the case. On Thursday, the Massachusetts House and Senate passed *An Act to Further Address Challenges Faced by Municipalities, School Districts and State Authorities Resulting from COVID-19*, and it was signed into law by Governor Baker on Friday afternoon. Among other things, this Act waives standardized testing requirements for the year – marking the first time the MCAS has been cancelled in the more than two decades since it’s been used. We’ve provided the highlights below. Check our website throughout the week for updates related to this newly passed legislation

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A. Governor Baker signs into law *An Act to Further Address Challenges Faced by Municipalities, School Districts and State Authorities Resulting from COVID-19*

On April 10, 2020, Governor Baker signed into law *An Act to Further Address Challenges Faced by Municipalities, School Districts and State Authorities Resulting from COVID-19*. The law contained an emergency preamble adopted by both the House and Senate which means that the law took effect upon signing. The relevant portions of the law are highlighted below:

DESE High School Graduation Competency Waiver (Section 6)

This section permits the Board of Elementary and Secondary Education, upon the Commissioner’s recommendation, to modify or waive high school graduation competency requirements as a result of the outbreak of COVID-19. This is important because with the MCAS not being offered this spring (see below) there are thousands of high school seniors who have not yet passed MCAS and would not otherwise be able to meet the state’s graduation requirements. So far, Commissioner Riley has not made any decision and is reportedly still weighing options. One option would be to allow individual districts to determine which students have met local graduation requirements.

DESE MCAS Waiver Requirement (Section 7)

This section requires the Department of Elementary and Secondary Education to cancel MCAS testing for the 2019-2020 academic year as a result of the outbreak of COVID-19. This decision was fervently supported by the Massachusetts Teachers Association. Education Commissioner

Jeffrey Riley notified superintendents and charter school leaders on Friday that this spring's MCAS exams are cancelled. This is the first time Massachusetts has cancelled the MCAS which has been used to measure performance for more than two decades. As discussed above, it is still unclear what this means for the students that needed to take and pass the MCAS this spring in order to graduate.

Regional School District Interim Budgets (Section 8)

The Act suspends the budget approval process described in Section 16B of Chapter 71, and permits the Department of Elementary and Secondary Education to certify a 1/12 budget for the operation of a school district starting on July 1, 2020 and for subsequent months, as needed, in the event that a vote on the approval of the district's budget is delayed beyond June 30, 2020 as a result of the outbreak of COVID-19. This allows time for a budget to be developed and proposed, and then approved by member cities and towns, many of which will be going through their own difficult and delayed budget process. The Act provides that DESE "may issue guidelines or regulations for the implementation of this section."

Student Opportunity Act 3-Year Plan Filing Extension (Section 9)

This section requires the Commissioner of Elementary and Secondary Education to extend the deadline for school districts to submit the required 3-year plans to address educational disparities in student subgroups to May 15, 2020, or a later date, as determined by the Commissioner as a result of the outbreak of COVID-19. Last November Governor Baker signed the Student Opportunity Act committing the state to \$1.5 billion in new aid to Massachusetts schools. While the deadline for submitting plans has been pushed back, it is unclear what impact the COVID-19 outbreak will have on the anticipated funding since the Act calls for \$1.4 billion in additional funding to be phased on over the next 7 years.

For reference, the other sections of the Act address the following:

MBTA Budget Date Change (Sections 1 and 2);

Supportive Housing Programs Funding Flexibility (Section 3);

MRVP Applicant Verification (Section 4); and

RAFT Applicant Verification (Section 5).

B. Health and Safety While Teleworking

Having municipal employees teleworking from home has raised the question of whether employers are liable for the hazards of an unsafe home office. Apart from ordinary hazards of the home, there is some concern that poor ergonomics in a temporary workspace that is not properly set up for extended periods of work at home may cause repetitive stress and other injuries related to poorly designed workspaces. An OSHA instruction from 2000 (CPL- 2-0.125) answers the liability question definitively in the negative, noting that OSHA will not inspect home offices or hold employers liable for dangerous conditions there. However, employers would be well advised to provide technical assistance to teleworkers to ensure that they are able to stay comfortable and productive while working from home, and do not develop injuries that could plague them going forward. Ergonomic tips abound on the internet and there is even a government website, telework.gov with a detailed safety checklist. The League of Minnesota Cities recommends the following to prevent injury:

- **Use a good chair** if possible. If you don't have a good chair, add pillows or rolled towels for back/leg support.
- **Raise your chair** as most kitchen tables and desks are too high. Use a pillow or seat cushion if needed.
- **Raise your monitor** by using boxes, books, bricks, cans of soup, etc.
- **Support your feet** on books, a shoe box, etc., if they don't firmly touch the ground while sitting.
- **Use an external keyboard, mouse, and monitor** if possible. This helps prevent bending your neck and looking down. The top of the monitor should be at or just below eye level, shoulders relaxed, elbows and knees at a 90-degree angle.
- **Take breaks.** Set a timer every 60 minutes to get up and walk around.

Source: <https://lmcpipeline.blogspot.com/2020/03/simple-ergonomic-tips-for-working-from.html>

C. Pending Legislation (As of April 10, 2020)

UPDATE: Police and Fire Unions Seek Chapter 41, Section 111F Coverage for COVID-19 Related Absences.

A joint hearing was held (electronically) on Monday, April 6, 2020, regarding S. 2602 and H. 4611, *An Act Relative to Emergency Hazard Health Duty*. The Massachusetts Municipal Association (MMA) submitted a detailed opposition to the approach of creating a presumption of work relatedness for COVID-19 absences due to the extra and unnecessary economic burdens that would be imposed upon municipalities by such a presumption, preferring instead a sick leave based approach. NMP has continued to support the MMA's efforts in this area and we will keep you updated as we learn more about the progress of this legislation.

D. COVID-19 Postings on NMP Website

NMP continues to post COVID-19 orders, advisories, guidelines and legislation on its website (www.nmplabor.com). Also, our attorneys continue to be available by email, telephone and video conference to answer any questions and provide any advice. The following is a list of the new materials added to our website since our last Advisor:

- DLS' Website Offers Municipal Resources

If you have any questions or would like to discuss the information above in more detail, please feel free to contact:

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