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SCHOOL CORNER

Massachusetts' Problem Resolution System (PRS) office has published its first Case Study. Available on its website, the first Case Study deals with Due Process for Emergency Removals. Intended to highlight and help clarify difficult or confusing issues, these Case Studies should be a helpful resource for school administrators.
www.doe.mass.edu/prs/



CONTACT US

Leo Peloquin

lpeloquin@nmplabor.com

Tim Norris

tnorris@nmplabor.com

Melissa Murray

mmurray@nmplabor.com

Philip Collins

pcollins@nmplabor.com

Antoine Fares

afores@nmplabor.com



nmplabor.com

DOL Issued Final Rule Amending FLSA Overtime Exemptions

The U.S. Department of Labor has increased the minimum weekly salary level required to qualify for an exemption from the Fair Labor Standard Act's (FLSA) minimum pay and overtime requirements. The Department's final rule recognizes the growth in employee compensation that has occurred since the prior levels were set in 2004, and effective January 1, 2020, increases the minimum annual salary thresholds for executive, administrative and professional employees from \$455 per week to \$684 per week (or \$35,568 per year). Additionally, employers are permitted to use nondiscretionary compensation to satisfy up to 10 percent of the minimum salary requirement for these exemptions, as long as they are paid at least annually.

The final rule also increases the minimum annual salary for highly compensated employees (HCEs) who are exempt from overtime based largely on their total compensation, raising this threshold from \$100,000 to \$107,432 (at least \$684 must be paid weekly on a salary or fee basis). This exemption already allows employers to include all nondiscretionary compensation toward meeting the total annual compensation requirement without a cap. The Department estimates that as a result of these changes, approximately 1.3 million employees will become nonexempt. Contact your NMP attorney with questions or concerns regarding your compliance with the FLSA overtime exemptions.

Section 72 Inquiry Opened After Disparate Treatment Allegations

In August 2019, the Civil Service Commission opened a M.G.L. c. 31 § 72 inquiry, ordering the Boston Fire Department ("BFD") to investigate racist social media postings by a Boston Firefighter ("MG"), after the postings were brought to the Commission's attention in a discharge appeal involving an allegation of disparate treatment. Rowe v. Boston Fire Department, 32 MCSR 314 (2019). The BFD investigated MG's racist postings and issued him a two-tour suspension for lying about making the postings. The investigation and resulting discipline were reported to the Commission which criticized the BFD for imposing such a lenient disciplinary sanction on MG given the seriousness of his misconduct, and recommended the BFD consider implementing discipline beyond the two-tour suspension.

The good news is that the Commission upheld the discharge in Rowe despite its finding of disparate treatment. Rather than alter the discipline imposed on Rowe, the Commission's Section 72 inquiry was meant to ensure that the BFD pursued the same due diligence in investigating racist behavior by other members of the department, including MG. While the Commission ultimately disagreed with the light discipline imposed on MG, it had no statutory authority to overturn it.