

# CLIENT ADVISOR

April, 2013

## DUA Guidance On Seasonal Employment

The Department of Unemployment Assistance (DUA) recently issued a guidance letter on seasonal employment. The letter reminds employers they are exempt from unemployment insurance charges for employees who worked in a **certified** seasonal position, and it sets out the seasonal certification process employers must comply with to take advantage of this exemption.

To be deemed seasonal employment, a position must fall into one of two categories: 1) the entire business will be in operation for less than 16 weeks in a calendar year, or 2) the employer has a functionally distinct occupation that is seasonal. 430 CMR §12.04(1).

An employer seeking certified seasonal status of a position must submit a written application to the DUA at least 60 days prior to the beginning of the season. A determination must be made for each seasonal period and for each distinct occupation within that seasonal period. If denied, the employer can appeal the decision within ten days of the mail date.

If seasonal certification is granted, the employer is responsible for notifying seasonal employees of their status and that they are exempt from unemployment assistance.

A copy of the DUA letter and FAQs are available on our website. Please contact your CLP attorney with any questions.

## SPEAKING ENGAGEMENTS

On April 18, 2013, Attorney Phil Collins participated on a panel discussion about recent changes in the Joint Labor Management Committee (JLMC) over the past year.

The panel, "JLMC Changes and Challenges" was part of the Massachusetts Municipal Personnel Association's monthly meeting agenda.

If you have questions about this panel or the JLMC, contact Phil Collins.



### Employers Must Use New I-9 Forms by May 7, 2013

Employers must begin using the revised I-9 Employment Eligibility Verification Form (I-9) released by the U.S. Citizenship and Immigration Services (USCIS) in March. The new form is two page instead of one and includes optional fields for the employee's phone number and email. Failure to use the new form or failure to fill the form out correctly may result in penalties of up to \$1,100 per form.



### Reach Us By Email:

Philip Collins  
pcollins@collinslabor.com

Michael C. Loughran  
mloughran@collinslabor.com

Leo J. Peloquin  
lpeloquin@collinslabor.com

Tim D. Norris  
tnorris@collinslabor.com

Joshua R. Coleman  
jcoleman@collinslabor.com

Melissa R. Murray  
mmurray@collinslabor.com

## Noteworthy Agency Decisions

### WHERE THERE'S SMOKE, THERE'S FIRE

Police and Fire officials appointed to their position after 1988 cannot smoke tobacco products, and if they do discharge is mandated. M.G.L. c. 41, s. 101A. In *Morehouse v. Weymouth Fire Dept.*, the Civil Service Commission (CSC) applied that statute to a fire fighter appointed in Weymouth in 2003, who had worked as a call fire fighter in another town beginning in 1986. The CSC determined the call appointment did not qualify to grandfather him, and that there was just cause to terminate him.

### PROCEDURE MATTERS

In *AFSCME Local 93 v. Town of Falmouth*, a DLR appointed arbitrator decided the Union's grievance was not procedurally arbitrable where the Union failed to present the grievance to the Town Manager, as required by the contractual grievance procedure, before filing a demand for arbitration. The Town prevailed, saving over \$25,000 in potential liability. The Town was represented by Attorney Joshua R. Coleman.

