

CLIENT ADVISOR

January 2014



Update: Background Checks for School Employees

Nearly a year after Governor Patrick signed "An Act Relative to Background Checks," the Massachusetts Executive Office of Public Safety and Security (EOPSS) is nearly ready to begin the implementation of background checks required by that legislation.

A Massachusetts vendor, MorphoTrust, has been selected to perform the fingerprinting and is currently in the process of testing the website and setting up test locations around the state. They hope to have approximately 30 locations set up by March. In the future, mobile sites will be available to travel to sites with large numbers of individuals to be tested. Volunteer districts are expected to begin testing the system this month. After a soft launch, background checks are expected to rollout alphabetically.

The Board of Elementary and Secondary

Education has also been busy preparing for the upcoming national background checks. At its December 16, 2013 special meeting, the Board voted to adopt final regulations related to the new law. In addition, the Department of Elementary and Secondary Education is in the process of updating its CORI Advisory and has said that it will continue to update its FAQ page as new information becomes available.

With the implementation of national background checks, school districts will need to take steps to update their own CORI policies and implement a Statewide Application Fingerprint Investigation System (SAFIS) Policy to comply with FBI requirements.

A summary of the law is available on our website. CLP is available to provide policy review and counsel on the new law.

SPEAKING ENGAGEMENTS

The MMA's Annual Meeting and Trade Show will take place in Boston, MA at the Hynes Convention Center January 24 - 25, 2014.

Phil Collins will give his annual Labor Law Update during the first session on Friday (2:00 to 3:30 p.m.) on the second floor of the Convention Center.

If you are unable to make Phil's workshop and would like a copy of his materials, contact the office after the Annual Meeting.



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NOTEWORTHY DECISION

The Massachusetts Appeals Court in Allenson v. Superintendent of the Norton Public Schools, 84 Mass.App.Ct. 1113 (2013), reinstated an arbitrator's decision that upheld a teacher dismissal for conduct unbecoming a teacher. Allenson was a special education teacher in Norton who was dismissed in 2003 and appealed to arbitration under M.G.L. c. 71, §42. Before the hearing she sought to require the arbitrator to find in her favor and hear no evidence, because a jury in a prior discrimination law suit had found in her favor. The arbitrator ruled that the discrimination case had decided a different issue than the dismissal case before her, and therefore she was not precluded from making an independent decision pursuant to c. 71, § 42. Allenson elected not to attend the arbitration hearing. After a hearing and the submission of the superintendent's evidence, the arbitrator concluded that Allenson had engaged in conduct unbecoming a teacher, justifying her dismissal. Allenson brought an action in superior court to vacate the decision on the grounds that the arbitrator had exceeded her authority by refusing to give preclusive effect to the jury's verdict. The superior court agreed and vacated the award.

In reversing the superior court's decision, the Appeals Court found that the arbitrator had considered the jury verdict and was entitled to make the determination she made that the verdict did not preclude a determination under M.G.L. c. 71, §42. The jury's verdict was not binding because the statutory arbitration encompassed both the question of "unprofessional conduct" and "the best interests of the pupils in the district and the need to elevate performance standards." As a result of the decision, the discharge was upheld and the school district avoided substantial monetary damages. Attorneys Tim D. Norris and Melissa R. Murray represented the Norton School Committee in this matter.

