

ALERTS AND UPDATES

New Massachusetts Law Requires Employee Notification for Negative Materials Placed in Personnel Records

September 20, 2010

Massachusetts has adopted legislation—Act Relative to Economic Development Reorganization (the "Act")—which Gov. Deval Patrick signed into law on August 5, 2010. This Act makes many changes in Massachusetts law that are designed to provide a "business friendly environment that will stimulate job growth and improve the ease with which businesses can operate in the markets" in the state. Deep within the numerous changes, additions and revisions made by this Act is a brief section amending Massachusetts law governing personnel records.¹

The new law requires an employer to notify an employee within 10 days of the employer's placing any information in the employee's personnel record that may be used to negatively affect the employee's qualification for employment, promotion, transfer or additional compensation. Moreover, an employer is also required to notify an employee within 10 days of any information placed in that employee's personnel file that may reflect the possibility that the employee could be subject to disciplinary action. The new statute does not provide guidance on how notice may be given to employees or on what type of notice needs to be given.

The statute defines a "personnel record" as a record kept by an employer that identifies an employee and may affect or be used to consider that employee's qualifications for employment, promotion, transfer, additional compensation or disciplinary action. Employers should be aware that certain records that may not be kept physically and specifically in an employee's personnel file could still be considered part of the employee's personnel record and would be subject to the new notice requirement for negative information.

The Act also revises the statute to limit the number of times that an employee may request access to his or her personnel file to two separate occasions in a calendar year. However, an employee's request to review his or her personnel file that originates from a notification of negative information added to the personnel record, provided to the employee in accordance with the terms of this Act, does not count toward the limit of two annually permitted reviews. All violations of this statute are punishable by fines ranging from \$500 to \$2,500.

What This Means for Employers

At this time, there is no guidance outside the language of the Act itself on how employers should implement these revisions to Massachusetts' personnel record statute. Until there is more guidance, Massachusetts employers may want to be prudent in generating paperwork that would negatively reflect upon an employee or that may be considered when deciding the terms and conditions of the employee's employment. In order to potentially avert violations and penalties, employers may want to inform their managers and their human resources staff of these new obligations. They may also want to establish a procedure for determining what circumstances would give rise to a notice requirement under the Act, how such notice would be provided to the employee, and how and in what form would a record be kept that denotes the employee was provided notice in accordance with the Act.

For Further Information

If you have any questions about the information addressed in this *Alert*, please contact any of the [attorneys](#) in our [Employment, Labor, Benefits and Immigration Practice Group](#) or the attorney in the firm with whom you are regularly in contact.

Note

1. Mass. Gen. Law ch. 149, § 52C (2010).