

Massachusetts Now Requires Notification to Employees When Negative Information is Placed in Their Personnel Record

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The newly amended Massachusetts personnel records statute, Massachusetts General Laws ("M.G.L.") Chapter 149, §52C, significantly changes employers' obligations respecting information maintained in their employees' personnel records and may expose non-compliant employers to liability. Employers are now required to notify an employee within 10 days of placing any information in that employee's personnel record that could "negatively affect the employee's qualification for employment, promotion, transfer, additional compensation or the possibility that the employee will be subject to disciplinary action." Previous law required only that employers maintain certain information in an employee's personnel record and provide access to that record upon an employee's written request to review it.

The amendment offers no guidance as to what constitutes "negative information," or what type of notice is required. However, the expansive language of the amendment could broadly be read to require notification and disclosure of a wide range of documents (e.g. email) with even a passing negative reference to employee performance if such document may be used in evaluative decision-making pertaining to the employee.

In the prior version of the law, employers were required to permit employees to review their personnel records within 5 business days of a written request for review. The amendment now limits employees to two reviews per calendar year. However, a request to review a personnel record made after an employee receives notice of negative information placed in his or her record does not count towards the two review limit per calendar year.

The amendment was passed on August 5, 2010 and went into effect retroactively on August 1, 2010. The Attorney General has the power to enforce the statute and may fine an employer up to \$2,500 for each violation. The full scope of the requirements the amendment places on employers and its potential impact on employment-based lawsuits, where personnel records are often critical to an employer's defense of employee claims, is not yet clear.

To comply with this change in law, employers should develop policies and forms of notification to be provided to employees within 10 days of negative information being placed in the employee's personnel record. Employers should also train supervisors, managers, and human resources professionals to comply with these new requirements. For assistance in compliance efforts, please contact any member of our Employment Practice Group.

This advisory should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult your own lawyer concerning your situation and any specific legal questions you may have.

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