

CLIENT ADVISOR

December, 2014



Revised Standards for Competitive Foods and Beverages

The Massachusetts Public Health Council has approved revised standards for Competitive Foods and Beverages in Massachusetts Schools. (See 105 CMR 225.00: Nutrition Standards for Competitive Foods and Beverages in Public Schools). Approved on November 12, 2014, the revised standards become effective Friday, December 5, 2014.

Originally approved in 2011, the recently passed amendments bring the state requirements and regulations in line with the United States Department of Agriculture's (USDA) interim final regulations for foods sold in schools. The USDA's regulations are the minimum standards required for all public schools.

Competitive foods and beverages are defined as any items sold or provided outside of USDA's National School Lunch and School Breakfast Program. In Massachusetts, the standards apply to all a la carte items sold in school cafeterias, as well as all items sold in school stores, snack bars and vending machines. The

standards do not apply to foods and beverages sold as part of school-sponsored fundraisers, or sold or provided at booster sales, concession stands, or school-sponsored events.

Among other things, the revised regulations change the timing of when the standards apply. Previously the standards did not apply to foods and beverages sold up to 30 minutes before the start of the school day or those sold over 30 minutes after the end of the school day. The new regulations no longer exempt items sold before the start of the school day.

The amendments were prepared and proposed by the state's Executive Office of Health and Human Services, Department of Public Health, with the input and assistance from a number of stakeholders. School districts that wish to go beyond the state standards and establish local policies that apply to all settings or at all times have the discretion to do so.

A link to the revised regulations is available on our website at www.collinslabor.com.

SAVE THE DATE

MCLE-MMLA Annual
Municipal Law Conference
March 18, 2015

Leo J. Peloquin has been asked to serve on a panel dealing with "Cameras & Searches of the Workplace and Employees." Get to know your rights in the workplace and the rights of your employees.

Information and details regarding the conference and how to register available at www.massmunilaw.org

Minimum Wage Increase Does Not Apply To Municipal Employees

Good news for municipal employers. Although the Massachusetts minimum wage will increase to \$9.00 an hour on January 1, 2015, the law has been interpreted not to apply to public employees. The increase, which is the first minimum wage increase in the state since 2008, is one of three annual increases that will raise the minimum wage from its current \$8.00 an hour to \$11.00 an hour over the next three years. While the law purports to apply to all but a few groups of employees (G.L. c. 151, §§1 and 2), Massachusetts case law and a pair of Opinion Letters from the Executive Office of Labor and Workforce Development (EOLWD) have determined that G.L. c. 151, the state's minimum wage law, does not apply to public employees.

In Grenier v. Town of Hubbardston, 7 Mass.App.Ct. 911 (rescript 1979), the Appeals Court upheld a superior court decision that the plaintiff firefighters were not entitled to recover the difference between their hourly rate of 50 cents and the state's minimum wage rate in effect at the time. The Court determined that the firefighters' claim "falls within the rule that statutes regulating persons and corporations engaged in trade and industry are ordinarily construed not to apply to the Commonwealth or its political subdivisions unless the Legislature has expressly or by clear implication so provided." *Id.* at 911. The Court's decision is reinforced by two EOLWD Opinion Letters which reference the Court's decision and opine that the Legislature has evidenced a clear intent to treat municipal employees differently by enacting a series of statutes that deal with wage and hour rules for municipal employees: G.L. c. 41, §108A, provides the option to establish a minimum wage plan; G.L. c. 40, §21A, provides the ability to establish hours, days, and weeks of work and leave periods including sick, vacation and holiday; and G.L. c. 149, §§33A-33C, governs overtime for municipal employees.

According to EOLWD, "[t]aken as a whole, these statutes evidence the Legislature's clear intent to establish different wage and hour rules for municipal employees and to exclude them from coverage under the state minimum wage laws which apply to private employers." While state minimum wage law does not apply, public employers are still subject to federal minimum wage law.

Contact CL&P if you have questions about the minimum wage law or wage and hour compliance.

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