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TO: Vice Presidents of Administration & Finance
Chief Academic Officers

FROM: John L. Casey, Assistant General Counsel 

DATE: January 14, 2019

RE: **Legal Advisory – Update to Public Employee Workplace Safety Standards**

The purpose of this legal advisory is to inform institutions of the upcoming implementation of amendments to M. G. L. c. 149 §6 ½ regarding workplace safety for public sector employees. The changes to the law, and the corresponding regulations, 454 CMR 25.00, incorporate the standards established by the federal Occupational and Health and Safety Act of 1970 (OSHA), 29 USC c. 15 as well as the general duty clause, 29 USC § 654.

Amendments

The federal OSHA Act sets standards to protect workers from mechanical and chemical dangers in the workplace. Historically, OSHA applied only to workers in the private sector. State and local governments were free to set their own safety standards. In 2014, the Massachusetts Legislature passed a law applying OSHA protections to state executive branch employees only, omitting city and town workers and higher education workers. With the passage of amendments to Chapter 149, §6 ½, OSHA standards will now apply to all public employers, including higher education. The amended law also creates a new OSHA advisory board to evaluate injury and illness data, recommend training, monitor the effectiveness of safety standards and determine if any other resources are needed. Massachusetts becomes the 26th state to expand OSHA protections to public employees.

Effective Date/Jurisdiction

The amendments go into effect on February 1, 2019. Enforcement of the amended law and regulations will continue to be under the jurisdiction of the Massachusetts Department of Labor Standards (DLS). Federal OSHA inspectors will not be inspecting public sector employers, but will retain jurisdiction over private employers, including those performing work on public property. Likewise, OSHA 10 and 30 safety training will remain voluntary programs and are not required under the amended law.

Site Inspections

The DLS will continue to have authority to conduct on-site inspections of public employer facilities. Inspections are prioritized in the following order: Imminent Hazard; Accident Investigation; Voluntary; Complaint; and Planned Program Inspection. DLS has authority to issue civil fines, however, the enforcement approach by DLS is to issue corrective actions to public employers for a first offense. If such corrective actions are taken, no fine will issue.

Reporting Requirements

Under the amended law, public employers have a duty to report certain types of injuries to the DLS, including accidents involving death, amputation, loss of an eye, loss of consciousness, or inpatient hospitalization. Reports should be made to DLS at either 508.616.0461 or safepublicworkplace@state.ma.us.

Departments Subject to Greater Scrutiny

While the amended law applies to all public sector employers, certain College departments may be subject to greater scrutiny given the nature of their work. Such departments include Facilities, Public Safety, STEM, and/or Food Service. DLS representatives have already met with the Community Colleges' Facility Directors and STEM Deans to discuss the law's potentially broad-reaching impact on public employers and strategies for maintaining compliance. The General Counsel's Office has also met with the Community College's Chiefs and Directors of Public Safety to discuss the same.

Recommendations

It is recommended that Department Heads avail themselves of the information provided at the DLS website at www.mass.gov/dols/wshp. The information on the website includes general information about the law amendments, self-audit checklists, sample safety and health programs, and training checklists. The DLS continues to add and update information to the website as the February 1, 2019, effective date approaches. Individual departments should also consider requesting voluntary inspections from the DLS. DLS representatives have suggested that it may be efficient for multiple Colleges to participate in a voluntary on-site inspection together, as Colleges are likely to have similar issues.

cc: Community College Presidents
Gretchen Manning, Interim Executive Officer