

EMPLOYMENT LAW BASICS FOR CHILDCARE PROGRAMS

MARYLAND STATE CHILDCARE ASSOCIATION

OCTOBER 10, 2019

James R. Hammerschmidt, Esq.
jhammerschmidt@paleyrothman.com

Cristen S. Rose, Esq.
crose@paleyrothman.com

Jessica B. Summers, Esq.
jsummers@paleyrothman.com

PALEY
ROTHMAN

PRESENTATION OVERVIEW

- At-Will Employment and Employment Agreements
- Recordkeeping Requirements and Best Practices
- Overtime and Wage Payment Issues
- Breaks
- Leave
- Discrimination and Harassment
- Reasonable Accommodations
- Performance Management and Termination

Starting on the Right Foot:

The At-Will Employment Relationship
and Policies for New Employees



AT-WILL EMPLOYMENT

- In Maryland, an employee is presumed to be “at-will” meaning that the employer or the employee can end the employment relationship at any time without cause or notice
- At-will status can be modified by agreement between the employer and the employee
- Per the National Labor Relations Board (NLRB) employers should not adopt a blanket policy that at-will status can never be changed

RECORDKEEPING REQUIREMENTS AND BEST PRACTICES

- Document, document, document
- Keep medical records separate from the personnel file
- When in doubt, don't throw it out!

JOB DESCRIPTIONS

- Critical Elements
 - Title of the position
 - Essential functions
 - Ancillary or other duties and responsibilities
 - Physical restrictions or requirements
 - Name or title to whom the position reports

EMPLOYEE HANDBOOKS

- Very important to have to avoid ambiguities or loss of protection from lack of policy
- Employees should be required to acknowledge receipt
- Key policies:
 - EEO, non-discrimination, anti-harassment (including reporting), and anti-retaliation
 - At-will employment
 - Leave (treatment of PTO, state/local sick and safe leave)
 - Social media, internet, and e-mail monitoring

Show Me the Money:

Compensation and Overtime Issues



FAIR LABOR STANDARDS ACT (FLSA) OVERVIEW

- Under the FLSA, employees must be paid overtime at a rate of one and a half times their regular rate of pay for any hours worked over forty hours in a given workweek
- There are a number of exemptions to the FLSA overtime requirements (set forth in 29 U.S.C.A. § 213)
- Perhaps the most commonly used group of exemptions are those for “white collar” employees - specifically employees whose primary duties are executive, administrative, professional, computing or outside sales

THE WHITE COLLAR EXEMPTIONS

To qualify as an FLSA-exempt executive, administrative, professional or computing employee:

- The employee's **primary duties** must be executive, administrative, professional or computing (as defined by regulation) (a/k/a the "Duties Test")

AND

- The employee must be paid a minimum salary* (a/k/a the "Salary Basis Test")

*Except for computer employees who can either be paid a minimum salary or a minimum hourly rate

CURRENT SALARY THRESHOLD

- \$455 per week (i.e. approx.. \$23,660 per year) for the executive, administrative or professional exemptions;
- \$455 per week (i.e. approx.. \$23,660 per year) or an hourly rate of at least \$27.63 per hour for the computer exemption
- \$100,000 per year (at least \$455 per week) for the highly compensated employee exemption

NEW SALARY THRESHOLDS AS OF JAN. 1, 2020

- \$684 per week (i.e. approx.. \$35,568 per year) for the executive, administrative or professional exemptions;
- \$684 per week (i.e. approx.. \$35,568 per year) or an hourly rate of at least \$27.63 per hour for the computer exemption
- \$107,432 per year (at least \$684 per week) for the highly compensated employee exemption

EXECUTIVE EMPLOYEE

29 C.F.R. § 541.100

In addition to meeting the salary test, to qualify as an exempt **executive employee**:

- the employee’s primary duty must be the management of the business or “a customarily recognized department or subdivision thereof”
- the employee must supervise at least two full-time employees

AND

- the employee must have hire/fire authority or must have their recommendations on employment status issues given “particular weight”

ADMINISTRATIVE EMPLOYEES

29 C.F.R. § 541.200

In addition to meeting the salary test, to qualify as an exempt **administrative employee**:

- the employee’s primary duty must be “the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer’s customers”

AND

- the employee’s primary duties must involve the exercise of discretion and independent judgment on **matters of significance**

PROFESSIONAL EMPLOYEES

29 C.F.R. § 541.300

In addition to meeting the salary test, to qualify as an exempt professional employee, the employee's primary duty must be work that either:

- requires knowledge of “an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized or intellectual instruction”

OR

- requires “invention, imagination, originality or talent in a recognized field of artistic or creative endeavor”

WHAT ABOUT CHILD CARE CENTER TEACHERS?

“Bona fide teachers in preschool and kindergarten settings may qualify for exemption from the minimum wage and overtime pay requirements as “professionals” under the same conditions as a teacher in an elementary or secondary school. Teachers are exempt if their primary duty is teaching, tutoring, instructing or lecturing in this activity as a teacher in [sic] educational establishment. **It should be noted that, although a preschools [sic] may engage in some educational activities, preschool employees whose primary duty is to care for the physical needs for the facility’s children would ordinarily not meet the requirements for exception as teachers under the applicable regulations.**”

- US Department of Labor, Wage and Hour Division, Fact Sheet #46

DEALING WITH MISCLASSIFICATIONS

- Assess the risk
- Don't ignore the situation
- Be careful in presenting the reclassification
- Seek advice and counsel

HANDLING NON-EXEMPT EMPLOYEES: CONTROLLING OVERTIME WORK

- Just because an employee is eligible for overtime, doesn't mean the employer has to permit them to work overtime
- Employees who violate an employer's policy and work overtime without approval still have to be paid for that overtime work but can be disciplined for violating policy

HANDLING NON-EXEMPT EMPLOYEES: OT POLICIES AND PRACTICES

- Establish well-communicated policies and train supervisors and managers on OT rules, OT policies, how to spot trouble and the significant risks and liability from failing to pay OT
- Do not allow employees to dictate when they get to work overtime
- Do not allow employees to put extra time “on their own dime”
- Control telecommunicating, remote access and use of mobile devices by nonexempt employees
- Train supervisors and managers about what they may be permitted to expect from nonexempt employees

PRELIMINARY/POSTLIMINARY ACTIVITIES

- The Court has consistently interpreted “principal activity or activities” “to embrace all activities which are an integral and indispensable part of the principal activities”
- What does that mean: “integral” and “indispensable”
- Answer: “An activity is therefore integral and indispensable to the principal activities that an employee is employed to perform ***if it is an intrinsic element of those activities and one with which the employee cannot dispense if he is to perform his principal activities.***”
- Definition is consistent with DOL Regs: “Among the activities included as an integral part of a principal activities are those ***closely related activities*** which are indispensable to its performance.” 29 C.F.R. §790.8(b) and (c)

TRAINING AND SEMINARS

- As a general rule, an employee must be paid for any time he or she spends attending training programs, meetings and other similar activities unless all four criteria are met:
 - Attendance occurs outside the employee's regular working hours
 - Attendance is voluntary
 - The training or meeting is not directly related to the employee's job (i.e., provides an added skill outside of the employee's job, prepares the employee for other jobs or prepares the employee for promotion or other advancement). The Department of Labor considers a training or program to be directly related to the employee's job if it designed to make the employee handle his or her job more effectively; and
 - The employee does not perform productive work while attending the training or meeting

OFF-THE-CLOCK WORK

- Non-exempt managers and supervisors at highest risk
- Standard: Employer knew or *should have known* about the overtime
- Establish an off-the-clock policy in the employee manual and train supervisors and managers
- Use an attestation form for hourly supervisors and managers
- Supervisors/Managers in particular need to understand that THEY may be disciplined for requiring or condoning off the clock work or tampering with an employee's timecard
- Use all the tools at the employers disposal to audit for off the clock work, i.e., computer log in data, video cameras, security logs, etc.
- Be careful reclassifying a non-exempt employee in order to solve an off-the-clock problem

THE NUTS AND BOLTS OF PAYING EMPLOYEES

- In Maryland, non-exempt employees must be paid at least every two weeks or twice a month
- Employers cannot require employees to participate in direct deposit
- Unless required by law or court order, any deductions from employee pay must be expressly authorized in writing
- Employees who resign or are terminated must be paid all wages due by the next normal payday

Give Me a Break

Break and Leave Requirements



MEAL PERIODS AND BREAKS

- Non-exempt employees must be paid for breaks of less than 20 minutes
- Ordinarily meal periods of ½ hour or more are NOT compensable as long as the employee is completely relieved of all duties (watch off-the-clock issues)
- Avoid auto-deduct meal or rest period practices, which create repeated violations and lead to collective action suits
- Under federal law, employers must provide reasonable lactation breaks for one year after the birth of a child

LEAVE

- FMLA leave
- ADA Leave
- Maryland and Montgomery County Sick and Safe Leave
- Maryland Parental Leave
- Other Unpaid Leaves in Maryland
 - Voting leave
 - Military/military family
 - Jury duty/witness
 - Civil air patrol
 - Organ donation leave

FEDERAL FMLA ELIGIBILITY

- To be eligible for FMLA leave the employee must:
 - Work for a covered employer at a location that has at least 50 employees within 75 miles
 - Have worked for employer for at least 12 months (not necessarily consecutively) and
 - Have worked at least 1,250 hours during the 12 months immediately before taking FMLA leave

FEDERAL FMLA BASICS

- Eligible employees may take up to 12 weeks of unpaid leave per year:
 - For the birth of a child and to care for the child within one year of birth;
 - For the placement with the employee of a child for adoption or foster care and to care for the child within one year of placement;
 - To care for an immediate family member (spouse, child, or parent) with a serious health condition;
 - To take medical leave when the employee is unable to work because of a serious health condition;
 - For a qualifying exigency arising out of the fact that the employee's immediate family member is a covered military member on active duty.
- Eligible employees may take up to 26 weeks of unpaid leave per year to care for a covered service member with a serious injury or illness if the eligible employee is the service members immediate family or next of kin.

FMLA REINSTATEMENT RIGHTS

- Under both the Federal FMLA an employee is entitled to be reinstated to the same or an equivalent position at the end of FMLA leave
- **Exceptions to Reinstatement:**
 - Employee would not otherwise have been employed at the time of reinstatement
 - Employee is a key salaried employee and denial is necessary to prevent substantial and grievous injury to employer's operations
 - Employee is unable to perform an essential function of the position because of a physical or mental condition

LEAVE UNDER THE ADA

- Under the ADA, an employer must provide a reasonable accommodation to an employee with a disability unless doing so would pose an undue hardship on the employer
- Such a reasonable accommodation may include allowing the employee to work on a reduced schedule or allowing the employee to take leave

REINSTATEMENT RIGHTS AFTER ADA LEAVE

- The EEOC has taken the position that, under the ADA, the employee is entitled to return to the same position unless the employer demonstrates that holding the job open would impose an undue hardship

MARYLAND HEALTH WORKING FAMILIES ACT – OVERVIEW OF THE ACT

- Effective Date: February 11, 2018
- Covered Employers: Any entity doing business in the State that employs at least one non-owner
- Covered Employees: Any person who works in the State
 - Not covered –
 - Independent contractors
 - Employees who work less than 12 hours a week
 - Employees under 18 at the beginning of the year
 - Certain on-call employees
 - Certain employees employed by a temporary services agency

WHAT IS “EARNED SICK & SAFE LEAVE”?

- **Earned sick and safe leave** means paid leave away from work that is provided by an employer under MD Code, Labor and Employment, § 3-1304 and can be used for the purposes described in MD Code, Labor and Employment, § 3-1305. ***Earned sick and safe leave includes paid time off that can be used by the employee for any purpose***
- Earned sick and safe leave must be paid at the same rate and with the same benefits as the employee normally earns
- Tipped employees must be paid at least the applicable minimum wage

ACCRUAL OF SICK AND SAFE LEAVE

- All covered employees must earn at least 1 hour of paid sick leave for every 30 hours worked up to 40 hours per year
- Maximum Accrual Required by the Act:
 - Employees must be permitted to accrue *up to 40 hours of paid* leave per year (paid for employers with an average of 15 or more employees)
 - Employees must be able to accrue to 64 hours of unused leave before they can be required to draw down their balances before accruing more
- Maximum Usage Allowed by the Act:
 - 64 hours per calendar year

TIMING

Employers have two options as to when to provide the required leave:

- **Up Front:** All leave that will accrue is provided at the beginning of the year
 - Pros: No rollover requirement
 - Cons: Employees can use paid leave before they have accrued it and employers must have agreements in place to deduct from final paycheck
- **As Accrued:** Employees accrue leave over the course of the year
 - Pros: Employees can only use the leave they have accrued
 - Cons: Employees must be permitted to rollover up to 40 unused hours to the following year, accrue up to 64 hours and use up to 64 hours of leave in any given year

Leave must begin to accrue at the beginning of employment, but employers may prohibit use of leave during an initial probationary period of up to 90-days

USES OF SICK AND SAFE LEAVE

Employees may elect to use leave in the smallest increment available under the payroll system and may not be required to take leave in increments of more than four hours

Employees must be permitted to use their accrued leave for the following reasons:

- To care for or treat the employee's own, or a family member's mental or physical illness, injury or condition;
- To obtain preventative medical care for the employee or a family member;
- For maternity or paternity leave; or
- Where the employee or a family member is a victim of domestic violence, sexual assault or stalking and the absence is necessary for the employee or family member to obtain related medical or mental health attention, obtain services from a victim service organization, obtain legal services or participate in related proceedings, or relocate as the result of the situation.

NOTICE AND RECORDKEEPING

- Employers must notify employees of their entitlement to sick and safe leave in a form that includes:
 - (1) how leave is accrued;
 - (2) permitted uses of leave;
 - (3) a statement that the employer will not retaliate against the employee for using leave; and
 - (4) information about the right to file a complaint for violations of the law
- Employers must provide each employee with a written statement of how much sick and safe leave he or she has available **each time the employee is paid**
- Employers must retain records of each employee's leave accrual and use for **three years**

Managing a Discrimination and Harassment Free Workplace



EMPLOYMENT LAWS

- Title VII of the Civil Rights Act of 1964
- Americans with Disabilities Act
- Age Discrimination in Employment Act
- Genetic Information Nondiscrimination Act
- Pregnancy Discrimination Act
- State & Local Human Rights Acts
- Lily Ledbetter Fair Pay Act (and Equal Pay Act)
- State and Local Anti-Discrimination Laws

DISCRIMINATION vs. HARASSMENT

- Discrimination is treating people differently on the basis of a protected characteristic
- Harassment is the act of engaging in verbal or physical conduct that is humiliating or harassing to an individual because of his or her membership in a protected class

WHAT IS HARASSMENT?

- In Maryland, harassment is verbal, nonverbal, or physical conduct that humiliates, denigrates, belittles, or puts down an individual or shows hostility, distaste, or aversion toward that individual based on that individual's:
 - **Race or Color**
 - **Religion or Creed**
 - **National Origin or Ancestry**
 - **Ethnicity**
 - **Citizenship Status**
 - **Sex/Gender**
 - **Physical or Mental Disability**
 - **Age**
 - **Marital Status**
 - **Sexual Orientation**
 - **Genetic Information**
 - **Pregnancy, Childbirth and Related Health Issues**
 - **Gender Identity or Expression**
 - **Military/Veteran Status**
- Additional categories protected by county laws include – family responsibilities or status (MoCo, PG, Howard), political opinion (PG, Howard, and personal appearance (PG, Howard).

FORMS OF HARASSMENT

- Harassment can take several forms in the workplace, including:
 - Verbal
 - Nonverbal
 - Physical

QUID PRO QUO HARASSMENT

An individual's submission to or rejection of sexual advances or conduct of a sexual nature is used as the basis for adverse employment decisions

- Examples include termination, humiliating demotion, extreme pay-cut, or transfer to a position in which the employee would face intolerable working conditions
- Also includes “official acts” by managers that cause an employee to quit, i.e. constructive discharge

HOSTILE WORK ENVIRONMENT HARASSMENT

Conduct that unreasonably interferes with an individual's job performance or creates a hostile, intimidating, or offensive work environment

- Conduct must be both unwelcome and severe or pervasive
- Not necessary that harassment result in tangible or economic job consequences
- Employers, supervisors, co-workers, or members can create a hostile work environment

RETALIATION

Laws protect employees who:

- Register a complaint about harassment
- Support the claim of another employee (such as by participation in an investigation)
- Notify government authorities
- Resist advances
- Picket

Reasonable Accommodation of Disabilities



REASONABLE ACCOMMODATION OF DISABILITIES

- The Americans with Disabilities Act (ADA) requires employers to provide reasonable accommodations to qualified employees or applicants with disabilities except where doing so would cause an undue hardship
- There are three categories of accommodations under the ADA regulations:
 - "(i) modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position such qualified applicant desires; or
 - (ii) modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; or
 - (iii) modifications or adjustments that enable a covered entity's employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities."

REASONABLE ACCOMMODATION OF DISABILITIES: KEY CONSIDERATIONS

- Does the employee or applicant have a covered disability?
- Is there any accommodation that would allow him or her to do the essential functions of the job?
- Does that accommodation pose an undue hardship for the employer?

MARYLAND REASONABLE ACCOMMODATIONS DUE TO PREGNANCY ACT

- 15 or more employees
- Requires reasonable accommodation for disabilities caused by pregnancy
- In addition to FMLA & ADA rights
- Requires a written policy & a notice

Performance Issues and Termination



COUNSELING – PERFORMANCE MANAGEMENT AND DISCIPLINE

Objectives of Performance Management:

- Assess Current Performance
- Assess Potential
- Identify Training Needs
- Identify and Correct Poor Performance

Goals:

- Motivate employees to do their best work
- Enable employers to deal with any employee issues early
- Document employee behavior to prevent legal problems later

COUNSELING – PERFORMANCE MANAGEMENT AND DISCIPLINE (CONTINUED)

- Effective performance management requires:
 - Performance Planning
 - Review job responsibilities
 - Establish importance of tasks & behaviors
 - Feedback and Coaching
 - Is the employee clear on his or her job duties?
 - Are performance standards clear and reasonable?
 - Does the employee have a job description to consult if questions arise?
 - Performance Appraisal
 - Be prepared – NO SURPRISES
 - Provide adequate time to conduct the performance appraisal
 - Good location
 - Complete review
 - Two-way communication

COUNSELING – PERFORMANCE MANAGEMENT AND DISCIPLINE (CONTINUED)

- Failure to communicate unsatisfactory performance problems can result in litigation after termination
- Document both good and bad during the year - it's easier than you think
- Appraisals cannot be inflated
- Appraisals must be honest and specific
- Appraisals must involve dialogue with the employee

COUNSELING – PERFORMANCE MANAGEMENT AND DISCIPLINE (CONTINUED)

Approaches to behavioral/disciplinary problems and performance problems

- Verbal Warning (supervisor and HR)
- Written Warning (supervisor and HR)
- Suspension
- Discharge
- Management Tools (handbooks and policies)

COUNSELING – PERFORMANCE MANAGEMENT AND DISCIPLINE (CONTINUED)

Other approaches to performance problems and some disciplinary problems

- Closer supervision and counseling
- Supervisory or peer coaching
- Frequent Feedback
- Special Assignments
- Formal training
- Personal task accomplishment demonstration or on-the-job training

COUNSELING – DOCUMENTATION

- **JUST DO IT**
- Proper record keeping is the law
- Good records can support employment decisions and help protect the company from liability
- Records need to be organized and periodically purged
- Steps should be taken to protect confidentiality of the records
- Applies to everything from application packets and interview notes through termination forms and exit interviews
- Can be informal
 - Emails printed and saved to the file
 - Handwritten notes, signed and dated
- But also includes the formal
 - Hours
 - Performance reviews
 - Discipline notices or other warnings
- Good and bad and in-between

TERMINATION: WHY, WHEN AND HOW

- Understand the legal limits on the employer's right to fire
- Understand what behaviors cannot be tolerated
- Bring in upper management or HR at an early stage in the process
- Make sure termination is not a surprise
- Have checks against biased supervisor
- Follow procedures to give employees some control over uncontrollable event

TERMINATION: WHY, WHEN AND HOW (CONTINUED)

- Understand whether it is a performance-based or behavior-based termination
- Be sure you have given the employee a real chance to improve
- Be sure you have your facts correct and your documentation in order
- Handle termination in a way that preserves the employee's dignity

TERMINATION: WHY, WHEN AND HOW (CONTINUED)

- Meet privately in the mid- to late-afternoon
- Supervisor/Decision-Maker & HR should be present
- Be direct & decisive/No debate
- Summarize Benefits
- Terminate access
- Requests keys, access cards, etc. at the meeting
- Have severance agreement ready if appropriate
- Have final payment, including leave pay, ready
- Document the meeting in writing – short with salient facts and relevant remarks by the employee for your records
- Give the employee some perceived control
- You can offer the ability to resign in lieu of termination
- Resist “escorting” the employee out

TERMINATION: RETALIATION

Be cognizant and wary of potential retaliation claims

- Hidden source of liability
- Many statutes protect employees who complain about workplace
- Retaliation claims easier to win (or harder to defeat) than the underlying claims
- Important to train managers on danger and what conduct to avoid

POST TERMINATION CONSIDERATIONS: COBRA RIGHTS

- Applies to group health plans sponsored by employers that employ 20 or more full time and full time equivalent employees
- Qualifying events as to employees:
 - Termination of employment for reasons other than gross misconduct
 - Reduction in hours of employment
- Qualifying events as to an employee's spouse or dependents:
 - Termination of employee for reasons other than gross misconduct
 - Reduction in employee's hours
 - Employee becomes entitled to Medicare
 - Divorce or legal separation from employee
 - Death of employee
 - Loss of dependent child status
- Continuation of Coverage: 18 or 36 months

UNEMPLOYMENT CLAIMS

- **Whether to Respond**
 - The federal Unemployment Insurance Integrity Act required states to adopt laws by October 21, 2013, to require employers to respond to an unemployment agency's request for information. Under these laws, failure to respond generally results in the employer's account being charged for the benefits even if it is later determined that the employee was ineligible. Some state laws also include civil or criminal penalties for failing to respond.
- **Whether to Oppose an Employee's Claim**
 - Key points to Consider:
 - The circumstances under which the employee was terminated or resigned and state law on when someone is disqualified from unemployment compensation
 - The potential costs of associated with opposing or not opposing the claim

Employment Practice Liability Insurance



EMPLOYMENT PRACTICE LIABILITY INSURANCE

- What does it cover?
- What are the exceptions?
- How does it work?

Child Sexual Abuse and Misconduct Prevention Md. Code 6-113.2



CHILD SEXUAL ABUSE AND MISCONDUCT PREVENTION MD. CODE 6-113.2

- New pre-hiring screening requirements apply to applicants for positions with direct contact with minors at certain types of employers
- New obligations on current/former employers of employees in positions with direct contact with minors to provide information to others to conduct pre-hiring screening
- Effective July 1, 2019

CHILD SEXUAL ABUSE AND MISCONDUCT PREVENTION

Who is subject to new pre-hiring screening requirements?

- Local board of education, nonpublic school and “contracting agency”

“Contracting Agency” - Entity that contracts with a county board of education or nonpublic school to provide a service to a school or students of a school

- Applies to the employer; employees to be hired for all locations may be subject to the screening even if employer contracts with agency for one location only

CHILD SEXUAL ABUSE AND MISCONDUCT PREVENTION

What are the pre-hiring screening requirements?

- See [MSDE Employment History Review Form](#) for details; applicant for position involving direct contact with minors must provide:
 - Contact information for current employer
 - Contact information for all former school employers and all former employers involving direct contact with minors
 - Signed consent form authorizing current and former employers to release all records relating to child sexual abuse or sexual misconduct
 - Written statement as to whether (s)he has been the subject of child sexual abuse or misconduct investigation unless it was found to be without sufficient evidence/ rejected/unfounded/ruled out
 - Written statement as to whether (s)he has been disciplined/discharged/nonrenewed or asked to resign while allegations of child sexual abuse or sexual misconduct pending
 - Written statement as to whether (s)he has had license/certificate suspended/surrendered/revoked while allegations of child sexual abuse or sexual misconduct pending
- Employer subject to pre-hiring screening requirements must review information and follow-up if necessary **BEFORE** hiring applicant for position involving direct contact with minors

CHILD SEXUAL ABUSE AND MISCONDUCT PREVENTION

Who must provide information required by new pre-hiring screening requirements?

- All current/former employers where employee had direct contact with minors (even if current/former employer is not subject to pre-hiring screening requirements)
- Must respond within 20 days (but please do so as promptly as possible)
- Hiring employer required to report current/former employers who do not respond
- Yet-to-be defined civil penalties and enforcement action may be imposed for failure to respond; warnings may be issued at first

CHILD SEXUAL ABUSE AND MISCONDUCT PREVENTION

Additional Information and Forms

- MSDE Guidance/FAQ
http://www.marylandpublicschools.org/about/Documents/DEE/ChildSexualAbuse/MSDE_Guidance_House_Bill_486_9.16.19.pdf
- Employment History Review Form
http://www.marylandpublicschools.org/about/Documents/DEE/ChildSexualAbuse/Employment_History_Review_Form_Child_Sexual_Abuse_and_Sexual_Misconduct.docx
- Employer Report Form (for employer who did not respond)
http://www.marylandpublicschools.org/about/Documents/DEE/ChildSexualAbuse/MDCCode_Educ6113EmployerReportForm_9.16.19%20Revision.docx

CONCLUSIONS & Q+A

If there are any questions,
we would be happy to address them now.

Don't hesitate to contact us.

Thank you!

James R. Hammerschmidt
jhammerschmidt@paleyrothman.com
(301) 951-9338

Cristen S. Rose, Esq.
crose@paleyrothman.com
(301) 951-9343

Jessica B. Summers
jsummers@paleyrothman.com
(301) 968-3402