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Recent Case Clarifies Liability of Contractors Under Chapter 93A in Massachusetts

By Anthony L. Leccese, Esq.



Anthony Leccese

By statute in Massachusetts, a negligence or other tort action for damages arising out of any deficiency or neglect in the design or construction of an improvement to real property must be commenced within three (3) years after the cause of action accrues (that is, when the property owner discovers or has sufficient notice of

the damages and the cause of the damages), provided that no such action can be commenced more than six (6) years after the substantial completion of the improvement and the taking of possession for occupancy by the owner. M.G.L. Chapter 260, Section 2B. This six-year limitation is known as the statute of repose and the period is absolute and is not extended by virtue of the so-called discovery rule applicable in other

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Changes in Human Resources Laws— Could They Affect You?

By Richard Mucci, Esq.



Richard Mucci

There have been several noteworthy changes to Human Resources laws in Massachusetts in 2010. All employers should be sure they are up-to-date and educated on the recent changes in the laws. The following are highlights of the important changes in Human Resources laws over the last year.

In August, 2010, Governor Patrick signed the

CORI Reform Bill. This statute prohibits employers of six or more employees from asking about a job applicant's criminal conviction history on a job application. The law, appropriately coined the "ban the box" law, requires employers of six or more employees to remove any questions regarding an applicant's criminal history from the initial job application. It does not prohibit employers from asking a job applicant's criminal conviction history at a later stage of the

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job application process such as during an interview. However, employers seeking to use such information to make an adverse decision or question an applicant about his/her criminal history will be required to provide a copy to the applicant prior to questioning him/her about it.

Significantly, in 2012, employers will be able to obtain conviction information from the newly formed Department of Criminal Justice Information Services ("DCJIS"). This will likely be a fee based login system for employers. Employers will benefit by using DCJIS because they will be immune from liability if they decide not to hire an applicant based on information in the conviction report that is erroneous or for claims of negligent hiring.

In addition, there is an amendment to the existing law regarding personnel records in recent economic development legislation. The amendment requires employers to notify an employee within 10 days of placing information into his/her personnel record that may negatively affect the employee's compensation, promotion, transfer or the possibility of disciplinary action. Noteworthy, is the use of the term "personnel record." Personnel record encompasses more than simply an employee's personnel file. A personnel record is broader and by way of example, includes documents in sub-files kept by managers. The consequences for failing to comply with the new legislation could result in the exclusion of important evidence if a former employee files suit.

Finally, on September 30, 2010, Massachusetts' ban on texting while driving went into effect. There was much media coverage regarding the new law and how it would impinge on individual drivers. Significantly, this new texting ban affects employers as well. Employers should revise Employee Handbooks to include this new texting ban. In addition, employers should inform employees about distracted driving. Employers may want to suggest to their employees to only make emergency calls when driving and to pull over when reading/composing emails. Such written enforced policies could potentially limit future employer liability.

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merous development projects in the community.

The lawsuit, filed on behalf of a longtime Hingham developer alleges over the last few years that the town conducted an ongoing campaign against his company, in which it repeatedly obstructed his development initiatives in a fraudulent and discriminating manner. The lawsuit names as defendants the Town of Hingham, a former Town Administrator, current members of the Board of Selectmen and Planning Board, a former Building Commissioner, and former Town Harbormaster. The lawsuit details scores of what it calls illegal, arbitrary or discriminatory rulings and decisions taken by town officials against Hastings' numerous development projects in Hingham over the last few years.

Celtics Breakfast

Last year Celtics President, Rich Gotham, spoke to a number of RF clients that we have identified as avid Celtics fans. We intend to have another breakfast this year and have a sports editor from a Boston newspaper speak about the Celtics. Please let us know, by emailing reception@RFlawyers.com if you would like to be invited this year.

Liability of Contractors

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them in the sale of the house. Note that claims under Chapter 93A are subject to a four-year statute of limitations, which, unlike the general three-year statute of limitations on tort actions discussed above, had not yet run out in this case.

The message to contractors, architects, and other building professionals is clear: you can be exposed to claims of unfair and deceptive business practices filed more than six years after completion of construction.