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PELRAS UPDATE

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Advisory Service

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End of Year Check-in: Are your Job Descriptions Accurate and Up to Date?

By Robert Vernon, Esq.

The pandemic has accelerated necessary technology improvements and, by extension, requests from employees to work from home. Whether work-from-home arrangements work in the public sector is debatable and certainly limited to job functions that do not require in-person engagement. These requests for work-from-home arrangements or remote work have highlighted the necessity for all employers to review, revise and update job descriptions.

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Takeaways

- Requests for work-from-home arrangements should have triggered employers to reevaluate and revise their existing job descriptions to address any changes to roles performed by their employees.
- Well-written and thorough job descriptions provide a basis for the evaluation of employee performance and serves as an important layer of protection from liability under federal and state employment discrimination laws.

- Employers should consult with legal counsel to assess whether they would benefit from revisions to existing job descriptions and to develop a plan to revise any outdated or inadequate job description.

The Bottom Line

Thorough, well-crafted and up-to-date job descriptions are a necessary tool for both the efficient management of a department or workplace, and for protections against liability from claims arising from the numerous statutes governing the employer/employee relationship. Municipal managers are encouraged to identify and review their job descriptions to determine whether those descriptions remain accurate, or whether changes are needed.

Pre-Employment Drug Testing and Medical Marijuana

By Joshua C. Hausman, Esq. and Julie A. Aquino, Esq.

In 2016, Pennsylvania became the 24th state to legalize medical marijuana by the passage of the Medical Marijuana Act. The Act established access to medical marijuana for individuals with qualifying health conditions from approved and licensed dispensaries. While the Act was comprehensive in establishing a framework for patients, growers, and dispensaries, it was much less thorough in defining how employers in Pennsylvania should address medical marijuana use by job applicants and employees.

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Takeaways

- The Pennsylvania Medical Marijuana Act does not specify whether a failed drug test, standing alone (without evidence of being “under the influence” in the workplace), such as a pre-employment drug test, is a non-discriminatory basis to disqualify an applicant or employee who is a certified medical marijuana user.
 - A federal district court recently dismissed a lawsuit by certified medical marijuana user whose employment was terminated after failing a post-conditional offer drug test, holding that the employer did not unlawfully discriminate against the employee.
 - Employers should continue to consult with legal counsel about how to best address pre-employment drug testing as to certified medical marijuana patients.
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The Bottom Line

The United States District Court for the Eastern District of Pennsylvania recently upheld the termination of a maintenance manager who was a certified medical marijuana patient and had failed a post-conditional offer drug test. The court concluded that the employee was not discriminated against because he could not establish that the employer discharged him on the “sole” basis that he was a certified medical marijuana patient. Although this decision is welcomed by employers, there likely will be a longer line of cases under the Medical Marijuana Act over the coming years, and employers should continue to consult with legal counsel about how to best address pre-employment drug testing and certified medical marijuana patients under the employer’s drug and alcohol policies.

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