**MEMORANDUM**

TO: MASSACHUSETTS ASSOCIATION OF SCHOOL SUPERINTENDENTS

FROM: LONG & DiPIETRO, LLP

DATE: FEBRUARY 17, 2015

RE: NEW MASSACHUSETTS PARENTAL LEAVE ACT

Please see the attached summary and analysis of the Massachusetts Parental Leave Act, effective April 7, 2015. This Act will replace the text of Mass. Gen. L. c. 149, §105D, formerly known as the Massachusetts Maternity Leave Act.

For years, the Commonwealth has mandated that employers subject to the Massachusetts Maternity Leave Act extend a minimum of eight (8) weeks of maternity leave, which may be paid or unpaid, to an eligible female employee for the purpose of giving birth, adopting a child under the age of 18 or adopting a mentally or physically disabled child under the age of 23. Effective April 7, 2015, under the new gender neutral Massachusetts Parental Leave Act, however, employers must grant eligible male employees the same eight weeks of leave, which may be with or without pay at the employers’ discretion, previously afforded only to female employees under the Massachusetts Maternity Leave Act. While the law does not speak to the specifics of paid or unpaid leave, we do not believe that the statute requires that paid sick leave be extended to male employees for parental leave, as they are not medically disabled by pregnancy or child birth. However, employers should review applicable collective bargaining agreements, individual employment contracts, letters of appointment and the like to determine whether these provide for compensation for this type of leave.

The Massachusetts Parental Leave Act, Mass. Gen. L. c. 149, §105D, as amended by St.2014, c.484 (S865) (“MPLA”) to replace the Massachusetts Maternity Leave Act (“MMLA”), preserves maternity leave “for the purpose of giving birth or for adopting a child” and does more than simply extend the eight week leave benefit to eligible male employees. Other significant changes include:

1. the creation of eligibility for MPLA leave of an employee having a child placed with him or her “pursuant to a court order,” with eligibility no longer limited to only birth or adoption. Because the MPLA does not specify or limit this provision to certain types of court orders, it seems that an employee will now be eligible for MPLA leave upon receiving placement of a child under any court order, including but not limited to the placement of a child previously in foster care, in state custody or in the custody of another parent or guardian. As such, MPLA leave requests may become more frequent, particularly due to the likely inclusion of requests relating to divorce and associated custody changes;
2. the requirement that an employer provide advance notice to an eligible employee of any condition(s) that may apply if an employee is permitted and elects to take leave for a period of time in excess of the statutorily protected minimum of eight weeks, such as “the denial of reinstatement or loss of other rights and benefits.” It is important to carefully consider this provision in conjunction with other approved leaves, typically under a collective bargaining agreement;
3. an expanded “posting” requirement, mandating that a notice including both a description of the MPLA and the posting “in a conspicuous place,” of an employer’s related policies in lieu of the MMLA’s lesser requirement that only “a notice of” the Act be posted “in every establishment in which females are employed;”
4. an allowance for an employee option to provide notice of intent to begin leave or return to work to an employer “as soon as practicable,” in addition to the MMLA’s more stringent two week notice requirement, but only if a failure to meet the two week notice period is “for reasons beyond the individual’s control.” Prior to commencement of the MPLA leave, an employer should carefully review with the employee the importance to students of clear timelines for re-integration and transition from the substitute teacher back to the permanent educator;
5. a new provision stating that two employees of the same employer “shall only be entitled to 8 weeks of parental leave in aggregate for the *birth or adoption of the* *same child*” (emphasis added). This provision does not include language specifically addressing newly eligible court ordered child placement, although such placement should be incorporated as referenced above, nor does it clarify parameters regarding multiple births or the simultaneous adoption or court ordered placement of more than one child with the same employee or employees.

Just as with the MMLA, employees on MPLA leave retain the right to return to the “previous or similar” position, and the parental leave does not affect an employee’s right to benefits, sick leave, length of service credit or other benefits for which the employee was eligible at the commencement of the leave. The MPLA must be viewed as just one piece of the parental leave landscape in Massachusetts. Requests for MPLA leave require consideration in conjunction with its federal counterpart, the Family Medical Leave Act (“FMLA”), and the Massachusetts Small Necessities Leave Act, as well as in the context of your collective bargaining agreement. As you are aware, while a collective bargaining agreement typically is in compliance with the minimum FMLA and the MPLA criteria, collective bargaining agreements may and often do set forth more expansive leave entitlements for employees than those required by federal or state law.

The Massachusetts Commission Against Discrimination (“MCAD,” “Commission”), as the body responsible for MMLA enforcement, has issued regulatory guidelines relative to the MMLA in 804 CMR 8.00. MCAD has yet to put forth updated regulations regarding the MPLA. The Commission is currently in the process of implementing new MPLA regulations, which it intends to issue prior to the Act’s April 7, 2015 effective date. Please check for updates on the MCAD website at www.mass.gov/mcad.

Attorneys at Long & DiPietro, LLP are available to assist with any general questions or compliance concerns relative to this extension of state parental leave benefits and its intersection with federal and collective bargaining agreement policies; specific questions about local working condition on your contract should be reviewed with your labor or general counsel.