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February 2020



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Chris Kenney is a nationally recognized trial lawyer and corporate consultant. He was recognized by



Mike Sams is a respected advocate and business advisor. He was recognized by *Best Lawyers 2020* in

Articles of Interest

U.S. Department of Labor Implements New Overtime Rule & Increase Salary Threshold for FLSA Exemptions

By: Michelle De Oliveira

The U.S. Department of Labor' updated overtime rule and increase of salary thresholds for qualifying exemptions under the Fair Labor Standards Act ("FLSA") are here, effective as of January 1, 2020.

On September 24, 2019, the U.S. Department of Labor ("DOL") announced its final rule, updating the salary thresholds necessary for an employee to meet the FLSA's minimum wage and overtime pay requirements. Through its updated rule, the DOL also establishes that an employer can count a portion of certain bonuses and/or commissions toward the minimum salary threshold.

[Read Full Article Here:](#)

U.S. Department of Labor Updates Regulations Relating to the Regular Rate Under the FLSA

By: Michelle De Oliveira

The U.S. Department of Labor ("DOL") has issued guidance to employers on what forms of compensation may be excluded from an employee's regular rate for purposes of overtime calculation.

On December 12, 2019, the DOL announced a Final Rule ("Rule") clarifying and updating regulations relating to "regular rate" requirements under the Fair Labor Standards Act's ("FLSA"). The Rule went into effect on January 15, 2020.

This Rule is significant, not only because it is designed to remedy this gap by targeting these unanswered questions, but also because it represents the first substantive update to the regulations in over 50 years.

[Read Full Article Here:](#)

How Prudent Risk Management Can Extend the Workers' Compensation Act's Tort Immunity to Companies That Lease Their Employees

By: J. Nathan Cole

With the economy continuing to hum along, and companies facing backlogs due to a tight labor pool, more Massachusetts employers are looking to lease employees to adequately staff projects, jobsites, and accounts – and substitute their own traditional workforce. Companies see numerous benefits to such leasing arrangements, including cost-saving measures related to personnel functions; better health, pension, and other employee benefits; and administrative functions that the company may be unable to perform in-house. When a company leases all or part of its work force from a professional employer organization (“PEO”) or “employee leasing company”, and one of the “leased employees” is injured on the job, does the Workers’ Compensation Act, Massachusetts G.L. c. 152 (the “WCA”), provide the defendant company immunity from tort liability? Alternatively, how can a lessee company shield itself from liability in these situations?

[Read Full Article Here:](#)

Contact Sports: Civil Liability for Players, Coaches, Referees and Facilities

By: Anthony Fioravanti

In a recent decision, the Massachusetts Appeals Court revisited the standard for civil liability for players, coaches, referees and facilities for injuries resulting from misconduct during amateur contact sports.

The Appeals Court first had to decide the appropriate standard for negligence with respect to participants in contact sports, such as hockey, and when a player can be liable for conduct within the game. Earlier cases established that only “reckless” conduct can give rise to liability and defined “reckless conduct” as intentional conduct involving a high degree of likelihood that substantial harm will result to another. The question, then, is what “reckless” means in the context of contact sports. After all, even a perfectly clean hockey hit, football tackle, softball slide, or soccer tackle exposes other players to a high risk of harm.

[Read Full Article Here:](#)

Kenney & Sams New Faces



Kenney & Sams Welcomes Emyr Remy

Emyr is civil litigator handling business disputes for companies and individuals. He has experience working on a broad range of matters including tort actions, premises liability, breach of contract and insurance coverage.

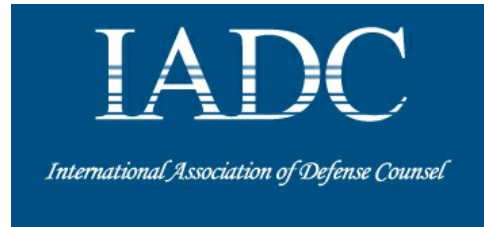
Firm Happenings



Lindsay Burke recently moderated a panel on the increasingly important field of trade secret law in the **Defend Trade Secrets Act** era. The panel provided guidance on important considerations around patent or trade

secret protection, the impact of the Defend Trade Secrets Act and the future role of trade secrets in biotech and biopharma.

In March, **Nate Cole** will be a panelist presenting on “Liability For Injuries to a Subcontractor’s Employee.” Nate will explore the often misunderstood concept of whether owners or general contractors may delegate responsibility and/or liability for jobsite safety to subcontractors and present to members of the International Association of Defense Counsel.



Founded in 1920, the IADC is comprised of the world’s leading corporate and insurance lawyers and insurance executives. Nate is an active IADC member, currently serving as Vice Chair of Webinars for the Construction Law Committee.



Michael Sams and Michelle De Oliveira co-authored *The Massachusetts Independent Contractor Law* chapter in the January 2020 edition of the Massachusetts Employment Law manual, published by the Massachusetts Continuing Legal Education.

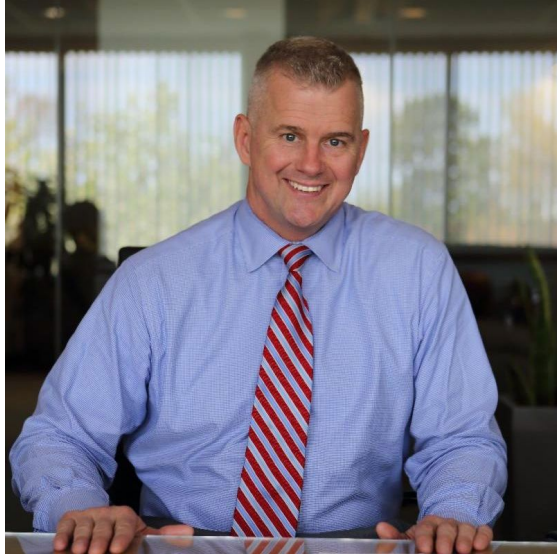
In this chapter, Mike and Michelle examine the legislature’s 2004 statutory amendments to the independent contractor statute, and provide an in-depth analysis on the applicable three-part test when analyzing the question of whether an individual who performs services for an individual or entity is an employee or an independent contractor. The key for employers is to tread the waters of independent contractor classification with care to avoid unnecessary legal exposure.

Join **Mike Sams** at **MCLE** on Friday March 6th as he discusses knowing when to make objections, and how to support and oppose them.

Access program materials here.
[MCLE Making Objections 2020](#)

Mike Sams will be speaking at an

upcoming **DRI** program in Chicago, **Mike** will present on artificial intelligence in construction. The seminar will discuss the use of AI today, potential liability issues, contract risk transfer, and new legal theories.



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