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## — Employment Law Client Alert —

JANUARY 2007

### LICENSED ESTABLISHMENTS OWE A HEIGHTENED DUTY OF CARE WHEN SERVING UNDERAGE ADULTS

The Massachusetts Supreme Judicial Court has recently ruled that licensed commercial establishments can be held liable if they serve alcohol to a patron who is an adult between the ages of 18 and 21, and as a result the patron is injured. According to the Court, the injured patron only has to present evidence that the establishment served him alcoholic beverages knowing, or having reason to know, that he was under twenty-one years of age and as a consequence he was then injured. The patron does not need to prove willful, wanton, or reckless conduct on the part of the establishment, which is still the standard for the duty of care owed to intoxicated patrons who are twenty-one years of age or older.

Establishments licensed to serve alcohol should have a policy in place where all servers are required to check the identification of any patron who looks under the age of thirty and under no circumstances should they serve alcoholic beverages to anyone who is underage. In light of the recent court decision, we recommend that you revisit this policy with your servers and bartenders. Servers and bartenders should also be trained on what to do when they suspect that a patron's identification is false. Finally, managers should perform spot checks in order to ensure that servers are complying with these policies. If a server fails to check a patron's identification or a server intentionally or even unintentionally serves alcohol to an underage patron, the employer should consider taking disciplinary action, up to and including termination of employment.

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