

On Tuesday, October 25, 2022, I had the pleasure of interviewing Kelsey Montgomery, Assistant General Counsel at Northeastern University. The following paper represents vigorous research on topics that were discussed in that interview. After a brief introduction of Montgomery and Northeastern University, and a high-level summary of the conversation, there are two sections devoted to deeper dives into parental leave and labor unions—the areas in which Montgomery has direct influence at the university. An appendix with interview questions is included at the end of this paper after references.

### **About Kelsey Montgomery**

Kelsey Montgomery began her career as a student at Mount Holyoke College studying Architectural Design. As a first generation college student, she was introduced to law by one of her professors who was also an attorney. Upon graduating, she attended law school at Boston University in 2008. During her school years, she worked at a criminal defense clinic, and applied to be a public defender. Though her application was denied, she credits this missed opportunity for the success of the rest of her career, as she began work at Sugarman, P.C. shortly afterwards in 2011.

As an associate at Sugarman, Montgomery's first case was also her favorite: she handled all of the documents and evidence alongside two of the partners in her firm in the suit against Toys“R”Us regarding safety standards testing for imported inflatable slide that lead to the death of a 29 year old mother in Andover, MA in 2009. The verdict totaled more than \$20 million, making it the largest ever awarded in Essex county at the time (Manganis, 2011); it was upheld on appeal in 2013 (*Michael Aleo vs. SLB Toys USA, Inc.*, 466 Mass. 398 (SC, 2013)). At Sugarman, she practiced in areas of plaintiff-side litigation, including personal injury, medical malpractice, and products liability.

In 2014, Montgomery made the move to Seyfarth Shaw, LLP. There she expanded her practice into employment and labor related matters, representing employers before government agencies, and in federal and state court. Towards the end of her work at Seyfarth Shaw, Montgomery's mother sent her a listing for Northeastern position in the General Counsel's office; her mother attended law school at the same time as Montgomery and had taken a position at a higher education institutions—as a result of this experience, she thought it would be a good fit for her daughter. Montgomery has been at Northeastern as Assistant General Counsel since 2018, and continues to practice in areas of labor and employment, as well as general litigation.

### **About Northeastern University**

Founded in 1898 as an Evening Institute of the Boston Young Men's Christian Association (YMCA), Northeastern University is a large, private, not-for-profit, R1 institution that offers undergraduate and research intensive doctoral programs across 35 specialized research and education centers. Degree programs focus on profession related studies, arts, and sciences—and accomplish this by utilizing a unique experiential education model and incorporating interdisciplinary research to respond to global and societal needs (Carnegie Classification of Institutions of Higher Education, 2020; Northeastern University Snell Library, n.d.).

### **Current Legal and Policy Issues on Northeastern's Radar**

In speaking with Montgomery on the current and recent affairs of Northeastern University, a majority of the cases that impact Northeastern are related to matters of employment. In 2020, Northeastern won a case brought against them by Morgan Helfman. The Massachusetts Supreme Judicial Court ruled that Northeastern was not liable for Helfman's alleged rape; however, they did reaffirm an institution's duty to protect students from foreseeable harm as a result of drinking (Frankel, 2020). In 2021, summary judgment dismissed two putative

class action cases against Northeastern regarding tuition and fee reimbursement to do COVID-19 related closures (Todd & Weld, LLP, 2021).

With the acquisition of Mills College in Oakland California, Northeastern is now loosely tied to a class action suit by students against Mills College, alleging “rampant deception” by the college in regards to transitions for students (Nichols Kaster, 2022). Students first filed a suit in 2021 to review the institution’s finances as it related to the merger (Lambert, 2021). A suit has been filed against the university alleging a series of ERISA violations in regards to the university’s 403(b) plan (Steyer, 2022).

Ultimately, a majority of conversation was spent on two other key issues: parental leave and labor unions on campus. The following sections include details shared by Montgomery as well as information discovered through research.

### **Parental Leave and Higher Education**

Massachusetts, generally speaking, is a national leader in implementing policy and creating programs regarding medical care. The Parental Leave Act (PLA) replaced the Massachusetts Maternity Leave Act (MMLA) in 2015 in an effort to be more inclusive. This law granted only 8 weeks of unpaid leave. Then, in 2018 Paid Family and Medical Leave (PFML) was signed into law, expanding both eligibility of coverage and benefits of coverage to up to 26 weeks of paid leave (split between family and medical). The law went into effect in January of 2021 (Commonwealth of Massachusetts, 2022). In contrast, the United States is the only developed nation that does not require paid parental leave: right now, the Family Medical Leave Act (FMLA) guarantees only 12 weeks of unpaid parental leave to only some employees, specifically those who work in companies with more than 50 employees (Stanton, 2021).

Montgomery was one of the few staff who contributed to the design and implementation of Northeastern's current paid leave policy updates, something she is incredibly proud of.

University policy creation and implementation is a rigorous process. A proposed policy first passes through the hands of the policy oversight committee, and is required to follow a specific template, utilize plain, common, and concise language, and needs to be gender nonspecific (Northeastern University, 2014; Northeastern University, 2021). In consideration of employee health and safety, as well as the change in Massachusetts law, Montgomery and other general counsel office staff members "tried to be as generous as possible."

In comparison to other Boston institutions of higher education, Northeastern comes out ahead for its benefits eligible employees with up to 26 weeks of 100% paid leave for personal medical leave (including birth recovery), and 8 weeks of 100% paid leave and 4 weeks of 80% paid family leave (Chernikova, 2022). This means that someone who just gave birth could have up to 34 weeks of 100% paid leave without the use of sick or vacation time. Tufts plan allows only up to 20 weeks of paid medical leave and 12 weeks of family leave, calculated at the Basic Leave Pay state calculated rate. To even get to 100% of employee pay, employees need to expend sick, vacation, and personal time—with a cap on how much time can be used (Tufts University, 2022). Boston University has a similarly lackluster plan for its employees, with 26 weeks of 80% paid medical leave, and 12 weeks of 80% paid family leave. In order to achieve 100% paid leave, employees can elect to use only their accrued sick time to supplement (Boston University, 2022).

Family leave has implications for higher education institutions in many aspects. A 2018 survey of 205 research universities in the United States and Canada showed that only 60% of institutions had paid parental leave (Viallette, 2020). Though international examinations of

parental leave policies and labor market data does not suggest female outcomes in broader labor and labor force participation, it is noted in many cases that the same cannot be said of women in the United States. Patterns of female employment show high trends of participation early in life but then steeply declines after motherhood; this has also changed the average age at which women give birth, moving later and later in life (Olivetti & Petrongolo, 2017).

Retention rates of female employees at an institution are directly tied to the level of parental support (Harrison et al., 2022). This is due in large part to the ways in which marriage and childbirth impact women more adversely, and that young, family forming faculty often receive the least amount of benefits (Goulden et al., 2011). Faculty members face additional concerns in regards to parental leave, as some institutions require making up course work during other semesters, and gaps in research due to family changes have an impact on tenure review (Doherty, 2021).

Ultimately, Montgomery's interest and success in this endeavor stems from her own personal experience with becoming a mother. Before departing Sugarman, she had given birth to twins. Upon her return to work, she explained that many of her colleagues didn't think she would come back to work at all, and if she did come back they expected her to take a step back. For this reason, an opening at Seyfarth Shaw was the obvious choice. Her caseload at Sugarman was making work-life balance hard to find, especially as a new mom with limited time away. Changing employers gave her more control over this balance. The same can be said for her shift to Northeastern, where she took on the job because it would greatly benefit her work life balance.

### **Labor Unions on College Campuses for Faculty and Students**

When asked about what challenges and issues is the university bracing itself for, Montgomery's answer was very clear: "the union landscape is dramatically shifting at higher

education institutions in Boston.” She noted that Northeastern is one of the only institutions that does not have a graduate student union. A clear trend has emerged and Montgomery said that the Office of the General Counsel is preparing for any new developments, as conversations and brief discussion of unionizing have been ongoing on campus for some time.

This trend is likely due in large part to a challenge brought to the National Labor Relations Board (NLRB) by Columbia University students in 2016; the NLRB determined that students at private institutions “are considered employees under federal law and can join a union” (Ryan, 2016). As of 2018, 60 campuses around the country have organized with the Service Employees International Union (SEIU); in 2016 alone, 20 new faculty unions were certified. Approximately 20% of postsecondary teachers are currently unionized (Edwards & Tolley, 2018). Not only are faculty more involved and invested in unions, unions themselves are resolved to accelerate labor organizing: in March of 2022, a formal affiliation was brokered between the governing councils of the Association of American University Professors and the American Federation of Teachers, uniting nearly 316,000 academic employees (Marcus, 2022).

In September of 2017 after a three year collective effort, graduate student workers at Boston College voted 270 to 224 to join the United Auto Workers (UAW) (UAW, 2017). Boston College Provost and Dean of Faculties, David Quigley, described graduate student unions as “a serious threat to our shared academic values and to our ability to advance our distinctive institutional missions” (Quigley, 2018). This view is a clear mismatch with the national and local movement of academic workers to be in unions. At the same time Boston College condemned unionization, ten other institutions, including several Boston area schools (Brandeis, Harvard, and Tufts) agreed to recognize and bargain with graduate student unions (UAW, 2018).

A similar story can be found at Boston University. In 2016, full-time nontenured faculty voted by a margin of 4-to-1 (135 to 36 votes) to join the Service Employees International Union (SEIU) Local 509. SEIU 509 currently has membership from part-time faculty at Tufts, Bentley, Brandeis, Lesley, and Northeastern, and full-time teaching staff at Tufts and Lesley, accounting for somewhere around 3,500 greater Boston educators (Barlow, 2016). Most recently in 2022, BU graduate students have also reignited their commitments to unionizing (Larkin, 2022). Though the Boston City Council has passed a resolution voicing their support of graduate student workers at BU (SEIU Local 509, 2022), an email from Provost Jean Morrison expressed the university's opinion that unionizing would actually hurt students (Ramos et al., 2022).

As conversations about the efficacy of tenure begin around the country, unions are an important consideration for faculty looking for job security. West Virginia University has proposed changes to appointment, tenure, and promotion guidelines, which includes "a clear process for removing even tenured faculty members for unsatisfactory performance" (Flaherty, 2022). Emporia State in Kansas, a new management policy led to the firing of 33 tenured faculty members, hoping to recoup those cuts and reinvest them in unspecified plans for revitalization (Moody, 2022). Other attacks on academia, like funding cutbacks, workload increases, shifts to a managerial and corporate style workplace, and increasing reliance on contingent faculty have also driven this growth (Pearson, 2015; Wickens, 2008).

Montgomery carefully did not voice an opinion on unions, both in general and at the institution, though she did note that she is heavily involved in all matters related to labor and benefits. She is in a unique position in this conversation, as she is in the employ of Northeastern and therefore represents the interests of the university, who believe that full time faculty unionization hurts academic progress (Franko, 2019). Despite this belief, the university also

operates under what they refer to as “One Faculty model of shared governance,” which has the potential to work well with a unionized faculty body: unions can regulate labor issues and faculty senate and university offices maintain academic matters (Bucklew et al., 2012).

There is also the consideration of Northeastern’s private, non-profit status. Private institutions have different union rights than public institutions, as public institutions follow state law. Private institutions have the 1980 U.S. Supreme Court ruling *NLRB v. Yeshiva University* to contend with, which declares tenure track faculty members as managers and therefore not able to collectively bargain (Flaherty, 2019). Furthermore Northeastern’s non-profit status and global impact model suggest that the institution’s goals are not maximizing profits, but serving the public (Trivedi, 2022). Even if the goal was to increase revenue, studies suggest that there is no impact on revenue by faculty labor unions (Hosios & Siow, 2004).

### **Conclusion**

Kelsey Montgomery was pleasant to talk with, down to earth, and extremely knowledgeable. She offered insight into a few key areas of her work, labor and employment matters, which have yet to be discussed in this course. Montgomery was able to effectively communicate with me regarding some of the ramifications of changes to parental leave law and the changing labor union landscape in Boston. Thanks to her efforts, Northeastern has one of the most competitive parental leave benefits in Massachusetts. Additionally, her ongoing work with the part-time faculty union remains in good standing, and she reports no major issues or clashes of interest. Even so, Montgomery is right to highlight this issue as one of the next waves of policies and litigation that will hit Boston, and Northeastern. As other institutions recognize unions, Northeastern is faced with its own decisions—decisions that Montgomery carefully kept vague.



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