MASSACHUSETTS MUNICIPAL ASSOCIATION

LABOR LAW UPDATE

January 24, 2014
Boston, Massachusetts

PRESENTED BY

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MASSACHUSETTS MUNICIPAL ASSOCIATION

January 24, 2014

Presented By:

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UPDATE ON LABOR CASES[3]

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3 Remarks and handouts are for informational and training purposes only and do not constitute legal advice. You should contact Labor Counsel concerning any specific legal questions you may have.

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2. **Family and Medical Leave Act National Defense Authorization Act for FY 2010 Amendments** – On February 5, 2013, the Department of Labor issued its Final Rule implementing expansions of FMLA.

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1. **City need only pay one-half the amounts specified under the Quinn Bill, plus any amount actually received from the Commonwealth.**

Adams v. City of Boston, 461 Mass. 602 (2012).

The Supreme Judicial held that collective bargaining agreements between municipalities and police unions, providing that in the event of a deficient reimbursement from the Commonwealth under G.L. c. 41, § 108L (the "Quinn Bill"), the municipality owes only its one-half share plus the actual reimbursement by the Commonwealth, were enforceable.

The Quinn Bill is a local option statute providing incentive salary increases to police officers for furthering their education in police work. The Quinn Bill contains two key provisions concerning payment. The first lists the percentage base salary increases that officers are entitled to receive earning various credits or degrees and states that such increases "shall be granted." The second provision provides that any municipality accepting the statute and providing "career incentive salary increases for police officers shall be reimbursed by the commonwealth for one half the cost of such payments upon certification by the board of higher education."

The City of Boston accepted the provisions of the Quinn Bill and agreed in collective bargaining agreements to the following clause:

> [I]f for any fiscal year the reimbursement from the Commonwealth does not fully meet its fifty percent (50%) share of educational incentives paid pursuant to [§ 108L], then eligible employees shall subsequently be paid educational incentives equal to 5.0%, 10.0%, or 12.5% based on the degree held and certified, plus [the amount] actually reimbursed by the Commonwealth for the prior fiscal year.

The percentages listed – 5 %, 10%, and 12.5 % – equal one-half the percentages specified in the payment provision of the Quinn Bill.

In 2009 the Commonwealth provided funding for only 8.73 percent of its contribution to the City of Boston. The City notified the police union leaders that the City would immediately reduce its Quinn Bill payments to 5.73 percent, representing the City's one-half contribution and the 8.73 percent actually received by the Commonwealth. The plaintiffs filed an action seeking a declaratory judgment that the collective bargaining agreement provisions concerning the Quinn Bill were invalid because they materially conflict with the Quinn Bill.

The Supreme Judicial Court disagreed and upheld the provisions in the collective bargaining agreement. The Court reasoned that the collective bargaining agreement provisions did not materially conflict with the Quinn Bill. The Court noted that the statute is silent as to whether the municipality must pay more than one-half. It may agree to do so, but the statute does not require it. Further, "the text of the statute unambiguously conveys the intent of the Legislature that participating municipalities be required to pay fifty percent of the amounts specified in the payment provision, plus any reimbursement actually received." The Court further found that the statute's legislative history supported this construction.

2. Payment of salary and benefits after employee's termination does not provide a substitute for payment for accrued vacation time.

Dickson v. City of Malden, 464 Mass. 446 (2013).

The Supreme Judicial Court held that the defendant City's payment of salary and benefits after the plaintiff's termination of employment did not provide a substitute for payment for accrued vacation time. The Massachusetts Wage Act does not allow an employer to claim that later payments in the form of salary and benefits compensate for earned and unused vacation time.

At the time of the plaintiff's termination of employment, the plaintiff had accrued 50 days of unused vacation time, amounting to $13,615.54. The plaintiff was not paid for these vacation days on the day of his termination. Although the defendant City claimed that the plaintiff was terminated for cause, the Mayor authorized a continuation of the plaintiff's salary and benefits for an additional three and a half months. The Mayor did not communicate to the plaintiff that the continuing salary payments were vacation pay. The plaintiff received weekly payments, which included standard deductions for income tax, like regular payroll. His final paystub showed 50 days of accrued vacation time.

The plaintiff filed an action in Superior Court claiming the defendant violated the Wage Act by failing to pay his 50 days of accrued vacation time. The Superior Court ruled that the City had not violated the Wage Act because, as a result of the salary continuation, the plaintiff came away with more from the defendant City than he was owed. As a result, the Superior Court held that he was not damaged by the City. The salary continuation payments totaled approximately $19,700, which is more than the amount of his vacation pay.

On appeal, however, the Supreme Judicial Court overturned the Superior Court ruling. The Court reasoned that the defendant City did not characterize the continued salary payments as payment for vacation accrual and the City did not communicate in any way that the salary continuation was payment for accrued vacation time. The Wage Act requires employers to pay discharged employees earned wages on the day of their discharge, which includes vacation pay. The plaintiff's receipt of salary and benefits after his termination does not diminish the fact that the plaintiff was not paid for his accrued vacation time on the day of his discharge. The Court further stated that the failure to pay unpaid wages under the Wage Act cannot be mitigated by gratuitous after-the-fact payments and that employees who have not received payment for unused vacation time to which they are entitled may seek relief under the Wage Act.

3. Associational discrimination is a viable claim under G.L. c. 151B.
Flagg v. Alimed, Inc., 466 Mass. 23 (2013).

The Supreme Judicial Court confirmed that associational discrimination is a viable claim under G.L. c. 151B, the state anti-discrimination statute. Generally, associational discrimination occurs when an employee suffers an adverse employment action as a result of a family relationship with a handicapped individual. Such a claim had previously been recognized by the Massachusetts Commission Against Discrimination (MCAD), as well as federal courts construing analogous federal statutes, but until this opinion, the state high court had never addressed whether such claims were recognized under the statute.

The plaintiff was a former employee of a medical supply company of eighteen years, having received favorable performance reviews during his tenure. In December 2007, the plaintiff's wife underwent surgery for a brain tumor and then received rehabilitative care. As a result, the employee became responsible for child care, which required him to be absent from work for brief periods of time to pick up his daughter from school on certain days. Over a two-week span, the plaintiff did not "punch out" of work when he went to pick up his daughter. His supervisor was aware of this and did not say anything. In February 2008, the plaintiff's employment was terminated for having failed to punch out on certain days and receiving pay for that time. The plaintiff filed suit, claiming that the stated reason for termination was false, that the real reason was his wife had a serious medical condition that rendered her totally disabled, and for which the employer, through its health plan, was financially responsible. The Superior Court dismissed the claim, holding that a claim of associational discrimination was not recognized under state statutes.

On appeal, however, the SJC reversed the lower court and found that such a claim was viable. The Court reasoned that a claim of associational discrimination is supported by the statutory language, the purpose of G.L. c. 151B, and the longstanding interpretation given the statute by the Massachusetts Commission Against Discrimination, and analogous provisions of Federal anti-discrimination statutes. "When an employer takes adverse action against its employee because of his spouse's impairment, it is targeting the employee as the direct victim of its animus, inflicting punishment for exactly the same reason and in exactly the same way as if the employee were handicapped himself."

Please note that under the Wage Act damages are subject to mandatory triple damages and attorney's fees.

4. Employee not entitled to workers' compensation benefits for alleged emotional disability arising out of an investigatory interview.

Joseph Upton's Case, 84 Mass.App.Ct. 411 (2013)

The Appeals Court held that an investigatory interview is included in the definition of "personnel action" under the Workers' Compensation Act, G.L. c. 152, § 1(7A) which provides that an employee is not entitled to workers' compensation benefits for an "emotional disability arising principally out of a bona fide, personnel action including a transfer, promotion, demotion or termination ...."

The plaintiff's employment with the Suffolk County Sherriff's Office was terminated in 1999. In March 2001, an arbitrator overturned the termination and reduced it to a six month suspension. A lengthy appeal process of that decision ensued which resulted in the affirmance of the arbitrator's order to reinstate in August 2008. The Sherriff prepared an "offset earnings" document which itemized the plaintiff's earnings from other sources during the interim period for the purposes of calculating the back pay due to the plaintiff. The plaintiff signed the document under the pains and penalties of perjury in September 2008. Two months later, the sheriff uncovered information suggesting that the plaintiff had failed to disclose post-termination earnings. On November 25, 2008, two investigators called the plaintiff into a meeting to discuss the discrepancy in the presence of one of his union representatives. Shortly after the meeting, the plaintiff went to the hospital with complaints of shortness of breath, tingling, and pain in his right arm.

The plaintiff was unable to return to work and filed a claim for total incapacity benefits, partial incapacity benefits in the alternative, medical benefits, interest, attorney's fees, and costs under the Act. An administrative judge in the Department of Industrial Accidents concluded that the investigatory meeting constituted a personnel action and accordingly, denied the claim. On appeal, the DIA's reviewing board reversed, holding that the meeting did not constitute a personnel action within the meaning of the Act. The Appeals Court reversed again, finding that the meeting was a personnel action, which disqualified the plaintiff from receiving benefits.

The Appeals Court reasoned that the Legislature's use of the term "including" after the phrase "personnel action" suggests an intent to include other actions besides transfer, promotion, demotion and termination, which are listed. The language at issue was added in the context of the Legislature's attempt to "rein in compensation for work-related mental and emotional disabilities unassociated with physical injury." "[T]he extension of the exception to such preliminary process respects the legitimate efforts of the employer to regulate competence and integrity at the workplace without risk of workers' compensation liability for emotional consequences of good faith supervision."

Moreover, deference to the agency's interpretation here was not warranted. The board's interpretation of the language did not arise contemporaneously with the enactment and the board has not held it previously or consistently.

5. Physical fitness bonus paid to police officers should not factor in to calculating a claimant's accidental disability retirement benefit.

Kearns v. State Board of Retirement, 82 Mass.App.Ct. 682 (2012).

The Appeals Court held that a bonus paid to active duty police officers for passing a physical fitness test does not qualify as "regular compensation," as defined by G.L. c. 32, § 1, for purposes of calculating a claimant's accidental disability retirement benefits pursuant to G.L. c. 32, § 90A.

The claimant began serving as a Metropolitan District Commission (MDC) police officer in 1951. In 1971, while performing his duties he suffered a serious injury to his back. Thereafter, he began receiving accidental disability retirement benefits equal to seventy-two percent of his regular compensation at the time of injury. Subsequently, the retirement benefits were periodically increased in accord with G.L. c. 32, § 90A. Upon the merger of the MDC with the State Police, by statute, accidental disability retirement benefits were to periodically be increased to an amount not exceeding one-half of the rate of regular compensation payable to a State Police Officer in a comparable grade or classification.

In 2007, the claimant requested that the State Board of Retirement increase his benefits to reflect bonuses paid to active-duty State Police officers who pass a physical fitness test under their collective bargaining agreement. The board denied the claimant's request. A Division of Administrative Law Appeals magistrate reversed the board's decision, concluding that the physical fitness bonus should be included in the increase in retirement benefits. Following a hearing before the Contributory Retirement Appeal Board (CRAB), the CRAB reversed, holding that the physical fitness bonus was not "regular compensation" as defined under G.L. c. 32, § 1. The Appeals Court affirmed the CRAB's decision.

The Appeals Court found that the statutory language did not include "ad hoc amounts such as bonuses or overtime. The statute defines "regular compensation" as "salary, wage or other compensation in whatever form ... not including bonus, overtime, severance pay ...." Further, the Supreme Judicial Court previously held that the definition of "regular compensation" is a safeguard against introducing incidental payments into the benefits where, as here, the public entity that negotiates a collective agreement is not the one that will have to find the funds to pay the continuing retirement benefits. Moreover, the Court held that the CRAB's interpretation of the statute was reasonable.

6. Extraterritorial stop by police officer permissible under mutual aid agreement.

Commonwealth v. Gregory Bartlett, 465 Mass. 112 (2013).

The Supreme Judicial Court upheld the denial of a motion to suppress evidence obtained as a result of a Merrimac police officer's stop of a driver in the neighboring town of Amesbury. Although the officer was not authorized under G.L. c. 37, § 13 to conduct the stop because Amesbury had not requested assistance prior to the stop, the stop was, nonetheless, permissible under the mutual aid agreements between the municipalities.

The defendant was charged with a number of operating while under the influence offenses following a stop by a Merrimac police officer in Amesbury. The Merrimac police officer was on patrol when he crossed the town line into Amesbury to purchase a beverage. While returning to Merrimac, but still in Amesbury, the police officer observed the defendant's vehicle leave its lane seven times, veer onto the shoulder three times, and into oncoming traffic four times. Following these observations, the police officer stopped the vehicle while still in Amesbury, which resulted in the criminal charges against the defendant.

The defendant moved to suppress the evidence obtained from the traffic stop on the grounds that the officer did not have jurisdiction to act in Amesbury. The motion judge in the Superior Court denied the motion to suppress on the grounds that the officer had authority under G.L. c. 37, § 13, to conduct the stop as he was acting in "preservation of the peace."

The Supreme Judicial Court affirmed, however, on different grounds. Section 13 of G.L. c. 37 provides that a law enforcement officer may "require suitable aid ... in the preservation of the peace [or] in the apprehending or securing of a person for a breach of the peace." The plain language of the statute grants the extraterritorial officer the authority to act only when an official of the host jurisdiction has requested assistance.

Nonetheless, the Court found that the stop was permissible under a mutual aid agreement between Merrimac and surrounding towns. Under the terms of the agreement officers were authorized to exercise police powers in other towns "when circumstances [arose] dictating an immediate response or action for the good of public safety." Based upon the police officer's observations the Court found that the officer had reasonable suspicion that the defendant's driving presented an immediate danger to others and to public safety under the terms of the mutual aid agreement. Denial of the motion to suppress was affirmed.

7. **Arbitrator exceeded his authority in rescinding a transfer of police officer because the contractual provision precluding transfers without consent impermissibly delegated the commissioner's statutory authority to assign and organize officers.**

City of Boston v. Boston Police Superior Officers Federation, 466 Mass. 210 (2013)

The Supreme Judicial Court overturned an arbitrator's decision that rescinded the transfer of a Boston police officer that was initiated without the officer's consent. A collective bargaining agreement provision precluding such transfers impermissibly delegated the police commissioner's statutory authority.

As the result of interest arbitration between the City of Boston and the defendant union, a provision that prohibited the transfer of officers without their consent was inserted into the collective bargaining agreement between the parties. The provision remained unchanged in several successor contacts.

In February 2008 an officer was transferred involuntarily due to concerns about his supervisory authority. The union filed a grievance on his behalf and an arbitrator issued an award invalidating the transfer and granting the officer an opportunity to return to his original assignment. The City moved to vacate the award, arguing that the transfer provision impermissibly delegated the statutory authority of the commissioner under St. 1906, c. 291, § 10 to assign and organize officers. The union contended the provision was enforceable because the City agreed to its insertion into the collective bargaining agreement. Superior Court denied the City's motion. On appeal the Supreme Judicial Court reversed.

Under the statute the commissioner has "authority to appoint, establish and organize [Boston] police" and has "cognizance and control of the government, administration, disposition and discipline of the department, and of the police force of the department and shall make all needful rules and regulations for the efficiency of said police." St. 1906, c.291, § 11, as appearing in St. 1962, c. 322, § 1. The court interpreted the above language to include transfers. Although the language does not contain the word "transfer," by its plain language the statute confers nondelegable authority over the assignment and organization of officers within the department. As such, regardless of the City's consent to the provision in the collective bargaining agreement prohibiting involuntary transfers, a nondelegable authority may not be delegated to an arbitrator.

8. Police officers' statements in an investigatory report are not absolutely privileged.

Dear v. Devaney, et. al., 83 Mass.App.Ct. 285 (2013)

The Massachusetts Appeals Court held that statements made by defendant police officers in their report of an investigation into an entertainment license violation were not absolutely privileged. The statements, however, were conditionally privileged. Issues of fact existed on whether the statements were made with reckless disregard or in knowing falsity. As such, summary judgment entered by the Superior Court for the officers on the plaintiff's claim of defamation was vacated.

The plaintiff was a State Trooper who received permission to work as a disc jockey (DJ) in nightclubs in and around Boston. The plaintiff worked with a production company known as Elite. In November 2006, the plaintiff attended a Thanksgiving eve party at an establishment called 33 Restaurant Lounge. Although he had been scheduled to work as a DJ that evening, he did not, although he was present. That evening the Boston Fire Department inspected the Lounge and issued an abatement order alleging it was overcrowded. The order did not reference Elite or the plaintiff.

The defendant police officers reviewed Elite's website and learned that it had promoted the event at 33. The defendant officers issued an incident report that stated, among other things, the plaintiff owned Elite, that Elite operated by the plaintiff "conducts events that are chronically a danger to the public safety of the patrons ... detectives have observed overcrowding [at Elite events] ... the company consistently violates rules and regulation of the Boston Licensing Board ...."

The overcrowding at 33 was investigated by the Mayor's Office of Consumer Affairs and Licensing (MOCAL). The plaintiff was not a party or witness to the proceeding. At the hearing, the owner of 33 stated that Elite was not in control of the establishment.

The plaintiff filed suit against the officers alleging that claims of, among other things, defamation based upon primarily the statements contained in the defendants' reports. At deposition the officers stated that they relied on Elite's website or the plaintiff's presence in the nightclub to make the connection between the plaintiff and Elite. They admitted that they did not investigate who controlled admission to the event or 33's financial records to determine who was being paid for the event. The plaintiff at deposition denied that he owned Elite or that he was even paid by Elite. He denied having any financial arrangements with establishments beyond acting as a DJ.

The Superior Court granted the defendants' motion for summary judgment, finding that the statements in the report were absolutely privileged. The Supreme Judicial Court reversed, reasoning that the Court has never extended the privilege to investigatory reports of officers. The Court further stated that the statements were made during the investigation, not the prosecution of the license suspension proceedings. The statements are directed at someone who is not a party to the proceeding, or even present at the proceeding. As such he had no opportunity to test the validity of the statements. Also, there is nothing in the record to suggest that MOCAL contemplated a proceeding against the plaintiff.

The Court further held that, nonetheless, the statements may be conditionally privileged, which applies to officials while performing their official duties. The conditional privilege is lost when there is knowing falsity or the statements are published with reckless disregard for the truth. Here, the Court found that there were issues of fact as to whether such occurred.

9. Escalator principle under USERRA may apply regardless of whether a promotion is automatic.

Rivera-Melendez v. Pfizer Pharm, 730 F.3d 49 (1st Cir. 2013)

The First Circuit Court of Appeals held that the escalator principle under the Uniformed Services Employment and Reemployment Rights Act (USERRA) may apply regardless of whether the promotion at issue is automatic.

The plaintiff was an employee of Pfizer when he was called to active duty to serve in Iraq. While he was serving in Iraq, Pfizer restructured the department he worked in and eliminated the plaintiff's position of API Group Leader, replacing it with two new classifications of API Team Leader and API Service Coordinator. Pfizer told the Group Leaders at the time that they could apply for the Team Leader positions, for which seven would be posted. If they were not hired into Team Leader, they could then: (a) apply for the Service Coordinator position; (b) be demoted to an operator position; or (c) separate from the company. While the plaintiff was still serving, the seven Group Leader positions were filled.

When the plaintiff was discharged from the service he contacted Pfizer and requested reinstatement. Pfizer informed him he was placed in a Group Leader position, but because that position had been eliminated, he was assigned to "special tasks." Although he received the same compensation and benefits, his responsibilities were reduced.

The plaintiff filed suit alleging, among other things, violations of USERRA, because he was not hired into the Team Leader position upon his return. The District Court granted Pfizer's motion for summary judgment, finding that the Team Leader position was not the plaintiff's "escalator position" – that is the position of employment he would have been employed if his continuous employment was not interrupted through service. The District Court held that USERRA's escalator principle is based solely on seniority and does not include appointment to a position that is not automatic.

The First Circuit Court of Appeals reversed. The Court reasoned that the, "appropriate inquiry in determining the proper reemployment position for a returning servicemember is not whether an advancement or promotion was automatic, but rather whether it was reasonably certain that the returning servicemember would have attained the higher position but for his absence due to military service." The Court found that the Department of Labor regulations and Supreme Court precedent supported this interpretation.

10. Elimination of position for economic reasons failed to establish just cause for termination under Civil Service statute.

Attleboro Redevelopment Authority v. Civil Service Commission, Mass. Appeals Court, No. 12-P-1529 (2013)

The Massachusetts Appeals Court upheld the Superior Court's affirmance of a Civil Service Commission decision ordering reinstatement of Michael Milanoski and Meg Ross, the executive director and chief financial officer of the Attleboro Redevelopment Authority.

In November 2009, Milanoski and Ross were informed that their positions had been eliminated, allegedly due to financial shortfalls of the Authority. Under G.L. c. 121B § 52, a civil service position cannot be abolished except for just cause. Generally, lack of funding may constitute just cause. An economic reason may not justify just cause, however, if it is mere pretext for an improper motive to remove the employee. The Commission found that the shortfall reason was in fact pretextual. The Commission credited testimony that the Mayor of Attleboro, for political reasons, orchestrated a long time campaign to remove Milanoski and Ross from their positions, and that the Authority's Board acted in concert to remove them.

The Appeals Court affirmed the Commission's findings, noting that Commission was not obligated to accept the Authority's stated reason. The Court further noted, among other things, conflicting evidence that the Authority had funds available to pay salaries from three sources: (1) settlement of litigation; (2) a grant; and (3) urban renewal bonds.

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D. is a senior partner in the firm's Labor, Employment and Employee Benefits Group. He has extensive experience in labor and employment law. He has frequently represented management in labor and employment cases before government agencies, including the National Labor Relations Board, the Department of Labor and the Massachusetts Commission Against Discrimination. He has personally conducted more than 600 labor negotiations, including numerous negotiations involving teachers, factory workers, hospital employees, and public employees. D. also practices education law and represents public and private schools in Massachusetts. Presently, D. is labor counsel for various private and public employers in Massachusetts and regularly advises employers on labor and employment law issues.

He drafted a portion of the Massachusetts Labor Statute and is a founder and former management chair of the State Joint Labor Management Committee (Dunlop Commission) and the Worcester County Bar Association Labor and Employment Law Committee.

In 2013, D. received the 2013 Cushing-Gavin Labor-Management Counsel Award. Also in 2013, D. was awarded honorary membership in the International City Management Association (ICMA). Honorary membership in ICMA is awarded to an individual outside of the profession of local government management because of his or her distinguished public service and contributions to the improvement and strengthening of local government. *Human Resource Executive* Magazine and *Lawdragon* have recognized D. as being one of the "Top 100 Corporate Employment Attorneys in the United States" in 2010, 2011, 2012 and 2013. D. was selected by his peers for inclusion in *The Best Lawyers in America* ©2014 in the field of Employment Law – Management (Copyright 2014 by Woodward/White, Inc., of Aiken, SC). First listed 2012. D. was also named Best Lawyers' 2013 Worcester Employment Law – Management "Lawyer of the Year." In 2007, the Massachusetts Municipal Personnel Association selected him as the recipient of its annual Emil S. Skop Award for outstanding contributions to human resources management. D. has been named one of Massachusetts "Super Lawyers" by *Boston* magazine and *Law & Politics* every year since 2006. D. has received an AV® Preeminent Peer Review Rating by *Martindale-Hubbell*, the highest rating available for legal ability and professional ethics.

He is a fellow of the College of Labor and Employment Lawyers which includes the leading labor lawyers in the U.S.

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ATTORNEY BIOGRAPHY – DEMITRIOS M. MOSCHOS

Publications (Partial Listing)

- "Workplace Emergencies," HRMA Perspectives (October 2013)
- "How to Conduct an Employment Investigation," HRMA Perspectives (October 2012)
- "Federal Court Upholds NLRB's Notice-Posting Rule, but Invalidates Enforcement Penalties Contained in Final Rule, (April 2012)
- "Summary of Seminar on Lobbying Law," WCBA, Legal Lines (May 2011)
- "2010 Amendments to the Massachusetts Personnel Records Law," HRMA Perspectives (October 2010)
- "New Wage Law Prompts Review of Pay Practices," *HRMA Perspectives* (September 2008)
- "Identity Theft," *HRMA Perspectives* (February 2007, updated April 2008)
- "U.S. Department of Labor Proposes to Review Overtime Regulations," *HRMA Perspectives* (May 2003)
- "Change in Employer and Individual Liability Under Harassment Law," *MBA Journal*, Section Report (Spring 2001)
- "Employers Can Be Held Liable for Sexual Harassment that Takes Place Without Their Knowledge," *Boston Business Journals*, June 20-July 6, 2000

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Department of Labor Relations Advisory Council, member

National Association of College and University Attorneys, Continuing Legal Education Committee

Boston Bar Association, College and University Law Section

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Human Resource-Related Training
Labor Law
Litigation
Public and Municipal
Municipal Law

Nick is a member of the firm's Labor, Employment and Employee Benefits Group and Higher Education Group. His practice includes traditional private- and public-sector labor law, litigation of employment disputes, and counseling on labor, employment and human resource matters. While maintaining a diverse practice, he has developed a significant emphasis on labor relations. Nick regularly counsels clients on traditional labor issues, including union avoidance, election campaigns, collective bargaining and complex contract formation disputes, grievance adjustment and arbitration, unfair labor charges, strikes, picketing, and other work stoppage issues and reduction-in-force planning. Nick regularly counsels colleges, universities and community colleges on a wide range of legal issues. He has appeared before numerous state and federal agencies including the National Labor Relations Board, the Massachusetts Division of Labor Relations, the Equal Employment Opportunity Commission, and the Massachusetts Commission Against Discrimination.

Nick was named a Massachusetts "Super Lawyer" by *Boston* magazine and *Law & Politics* in 2013. He has been named a Massachusetts "Rising Star" by *Boston* magazine and *Law & Politics* from 2006 to 2010. Nick was also selected by the *Worcester Business Journal* as one of "40 Under Forty" young professionals honored for their professional achievements and community service. In September 2010, Nick was appointed by Governor Patrick to the Department of Labor Relation's Advisory Council.

Representative Matters

- Successfully represented City in obtaining permanent stay of arbitration based upon unenforceable "Evergreen" clause
- Successfully negotiated sweeping municipality-wide (including School Unions) plan design changes through informal coalition bargaining
- Advised and represented client through NLRB decertification proceeding, which resulted in employee votes to remove incumbent Union as exclusive bargaining representative
- Developed strategies for a health care provider during picketing and work stoppage
- Successfully guided a service-industry client during union organizing, including defending related unfair labor charges, and card-check election
- Represented an employer in union duty of fair representation litigation in federal court
- Represented a municipality in a $4 million arbitration related to health insurance premium contribution for unionized employees

ATTORNEY BIOGRAPHY – NICHOLAS ANASTASOPOULOS

Representative Matters (Continued)

- Represented a higher education institution in a complex union recognition dispute
- Defended an unfair labor charge related to a municipality's decision to lay off police officers and allegations of direct dealing with employees

Publications/Presentations

- "MOOCs: When Opening Doors to Education, Institutions Must Ensure that People with Disabilities Have Equal Access," *The New England Journal of Higher Education*, August 2013 (co-author)
- "Yeshiva Redux: Religiously Affiliated Institutions and the Right to Unionize," National Center for the Study of Collective Bargaining in Higher Education and the Professions, April 2013
- "What the Presidential Election Means for Non-Unionized Workplaces," Mirick O'Connell Labor, Employment and Employee Benefits Seminar, March 2013
- "Laboratory Safety (and Liability) in the Research Environment," NACUA, Fall 2012 CLE Workshop, November 2012
- "OSHA and Criminal Prosecution of UCLA," College of Worcester Consortium, November 2012
- "OSHA Announces Extended Compliance Date for New Residential Construction – Fall Protection Directive," ABC, Inc./Gould Construction Institute, June 2011
- "The Future Employee Voice in the Workplace—Union and Non-Union," 32nd Annual Labor and Employment Law Spring Conference, Massachusetts Bar Association, June 2011
- NLRB Labor Law Update, in-house client presentation, June 2011
- Public Sector Labor Law Update, Massachusetts Municipal Management Association, June 2011
- "Labor Law Update," Massachusetts Municipal Management Association, June 2011
- "EFCA" Seminar, in-house client presentation, June 2011
- Records Management and Documentation, Massachusetts Municipal Personnel Association, May 2011
- "Collective Bargaining in the Brave New World: Exploring the Impact of Electronic Media on Negotiations, Protected Activity and Privacy in the Modern Workplace," 38th National Conference, National Center for the Study of Collective Bargaining in Higher Education and the Professions, April 2011
- "What Every Non-Unionized Employer Needs to Know About the New National Labor Relations Board (NLRB)," Mirick O'Connell Labor, Employment and Employee Benefits Seminar, March 2011
- "Employee Documentation," in-house client presentation, March 2011
- "CORI and Personnel Records," in-house client presentation, March 2011
- "Organizing Activity in a Non-Union Workplace," Healthcare Program, January 2011
- "The Ins and Outs of OSHA – Preparing for an Audit," Gould Construction Institute, May 2010
- "Workplace Investigations: An Overview of When, Why, and How to Conduct a Workplace Investigation," April 2010
- "College Campuses and Labor Law," Colleges of Worcester Consortium, April 2010
- "OSHA: Preparing for an Audit and Legislative Update," Mirick O'Connell Labor and Employment Law Update Seminar, March 2010
- "Union Avoidance in the EFCA ERA," Mirick O'Connell Seminar, February 2009
- "President Starts Making Good on Campaign Promises to Unions" *HRMA Perspectives*, February 2009
- "The New Family and Medical Leave Act" HRMA Seminar, January 2009
- "NLRB Addresses Two Significant Issues: Voluntary Recognition and Unfair Labor Practice Charge Involving Union Salts," *HRMA Perspectives*, December 2007
- "Balancing Employee Privacy Rights with an Employer's Need to Know," Mirick O'Connell Labor and Employment Law Update Seminar, November 2007
- "Collective Bargaining and the GIC; What Are Your Options?" Association of Town Finance Committees Annual Meeting, November 2007
- "Basic Legal Aspects of Collective Bargaining," lecture, UMass/McCormack Graduate School, Topics in Municipal Governance, Fall 2006-present
- "Communicating across Generational and Gender Gaps in the Workplace," Mirick O'Connell Labor and Employment Law Update Seminar, November 2006
- "NLRB Strengthens Employers' Ability to Maintain Harassment-Free Workplace," *HRMA Perspectives*