MASSACHUSETTS MUNICIPAL ASSOCIATION

LABOR LAW UPDATE

January 2023

PRESENTED BY
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January 20, 2023

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UPDATE ON LABOR COURT CASES AND LEGISLATION[2],[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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I. LEGISLATION

1. CROWN Act

On July 26, 2022, Governor Baker signed "An Act Prohibiting Discrimination Based on Natural and Protective Hairstyles" making Massachusetts one of 17 states to make the Creating a Respectful and Open World for Natural Hair Act (CROWN Act) a law. This law became effective as of October 24, 2022.

The CROWN Act expands the definition of "race" and anti-discrimination protections under the Massachusetts General Laws, included in Ch. 151B §4. The act includes "traits historically associated with race, including, but not limited to, hair texture, hair type, hair length and protective hairstyles." The act separately defines "protective hairstyle" to "include, but not be limited to, braids, locks, twists, Bantu knots, hair coverings and other formations.

The Massachusetts Commission Against Discrimination (MCAD) is tasked with promulgating the rules and regulations to spell out these new definitions. In addition, with this new act having its genesis from a Massachusetts charter school dispute over hair, the Massachusetts Department of Elementary and Secondary Education (DESE) is tasked with providing written guidance on the new law in school environments.

Violation of the new law could result in liability under Massachusetts antidiscrimination statutes (including damages for emotional distress, lost wages, punitive damages, and attorneys' fees) and therefore, employers should consider reviewing their equal employment opportunity policies as well as grooming and uniform policies.

2. Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021

As of March 3, 2022, the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021 ("the Act") was signed into law by President Biden. The Act amends the Federal Arbitration Act and gives employees who are parties to arbitration agreements with their employers and who had previously agreed to an agreement prior to claims arose, the option to bring claims of sexual assault or sexual harassment in either arbitration or in court. In addition, these individuals may choose to proceed via a class or collective action even if they had waived the right to proceed collectively before claims arose.

The Act states that the enforceability of these pre-dispute arbitration provisions are "at the election of the person alleging conduct constituting a sexual harassment dispute or sexual assault dispute, or the names representative of a class or in a collective action alleging such conduct..."

The Act gives the court and not an arbitrator the power to determine the validity and enforceability of an agreement that requires arbitration of sexual harassment or sexual assault claims. However, a claimant can still elect to use the arbitration process as opposed to going to

court, usually as a means to preserve privacy or because of a belief that the claim will be resolved more quickly.

Future litigation is anticipated over this new law as it still remains to be determined if this law is giving the option to avoid arbitration for just sexual assault or sexual harassment claims, or to all claims at issue in such a case.

3. Police Reform Act

On December 1, 2020, the Legislature adopted the Police Reform Act (the "Act"). The Act addresses a system for certifying and decertifying police officers and creates a new State Agency to carry out the law. The purpose of the New Division of Police Certification is to establish uniform policies and standards for the certification of all law enforcement officers. Municipalities will be required to "maintain a publicly available and searchable database containing records for law enforcement officers." Not just officers, but law enforcement agencies also need to be certified. Municipalities must establish and implement policies regarding use of force and reporting use of force; officer code of conduct; officer response procedures; criminal investigation procedures; juvenile operations; internal affairs and officer complaint investigation procedures; detainee transportation; and collection and preservation of evidence. A Division of police standards was created to investigate officer misconduct and make disciplinary recommendations. The Act includes new reporting requirements that states there are 2 business days to report for "any complaint". If a preliminary inquiry is conducted by the Agency into the conduct of a law enforcement officer, the officer must be notified 30 days of commencing the inquiry. Upon completion of an internal investigation of a complaint, it should be determined if there are to be any disciplinary actions such as retraining and suspension or revocation of the officer's certification. Police officer's certifications may also be suspended if arrested, charged, or indicted for a felony or misdemeanor, engaged in conduct that affects the fitness of the officer to serve as a law enforcement officer, or if the suspension is in the best interest of the public.

The Act also addresses a new system to prevent disciplined cops from moving from one system to another, an outright ban on chokeholds, and restrictions on the use of chemical agents, rubber bullets, and no-knock warrants. The Act also includes ways to create police forces that better represent the diverse populations they serve.

The Act also bans racial profiling by law enforcement officers and authorizes the attorney general to enforce that ban through civil actions in the courts. It establishes a duty to intervene by officers observing other officers using abuse of force and set up a commission to reexamine the state's civil service laws as they apply to police hiring in order to diversify those forces. Lastly, the Act mandates a community policing and behavioral health advisory council to make recommendations on expanding the use of non-police resources, including mental health experts, as part of a crisis-response team.

4. Minimum Fair Wage

As of January 1, 2023, the Massachusetts minimum wage increased from $14.25 per hour to $15 per hour. However, state minimum wage increases and the minimum fair wage law itself have been interpreted **not** to apply to municipal employees. Grenier v. Town of Hubbardston, 7 Mass. App. Ct. 911 (1979). Municipalities **must still** pay employees at least the federal minimum wage, which is currently $7.25.

5. OPEB Reform Act

M.G.L. Ch. 32B § 20, provides that a city or town may establish an Other Post-Employment Benefits Liability Trust Fund, and may appropriate amounts to be credited to the fund. Any interest or other income generated by the fund shall be added to and become part of the fund.

6. Paid Family Medical Leave Act

On June 28, 2018, Governor Baker signed "An Act Relative to Minimum Wage, Paid Family Medical Leave and the Sales Tax Holiday" making Massachusetts one of very few states in the country to require employers to provide paid family and medical leave to employees. Significantly, this law, like the Massachusetts paid Sick Time Law, does not apply automatically to municipal employers and is only applicable through local acceptance. If the Act is adopted by a majority vote of the local legislative body or the governing body municipalities must adhere to the below provisions.

By its terms, the Act created G.L. c. 175M entitled "Family and Medical Leave." G.L. c. 175M, in turn, established a "Department of Family and Medical Leave within the Executive Office of Labor and Workforce Development" (the "Department") to administer the leave program.

The leave program was initially being funded by a .75 percent payroll tax, taken from both employers and employees in varying percentages, that is to be paid to a state fund known as the "Family and Employment Security Trust Fund." Contributions to the fund commenced on October 1, 2019. Beginning in 2022, the amount of the payroll tax is fixed by the Director of the Department by October 1st of the preceding year and is currently 0.63%. Notably, private employers with fewer than 25 employees in Massachusetts are not required to pay the employer portion of the payroll tax.

All private and State employees may begin taking medical or family leave for one of the reasons enumerated by the Act including: (i) for the employee's own serious health condition, (ii) to care for a family member with a serious health condition, (iii) to bond with the worker's child during the first 12 months after birth or the first 12 months after the placement of the child for adoption or foster care, (iv) because of any qualifying exigency arising out of the fact that a family member is on active duty or has been notified of an impending call or order to active duty

in the Armed Forces or (v) in order to care for a family member who is a covered service member.

After an initial seven-day waiting period, employees are paid a percentage of their wages/salary from the fund in accordance with a specific statutory formula. Initially, an employee's weekly benefit may not exceed $1,129.82 , but the Department is directed to adjust that maximum annually to 64% of the state average weekly wage.

Employees are eligible for up to 12 weeks of paid family leave in a benefit year. If an employee's family leave is taken to care for a covered service member, however, the employee is eligible for up to 26 weeks of paid leave. Employees who take medical leave are eligible for up to 20 weeks of paid leave. In no event, however, is an employee allowed to take more than 26 weeks of leave, in the aggregate, of family and medical leave, during the same benefit year. Leave taken under the Act may run concurrently with leave taken under the Federal FMLA.

In addition, employers cannot compel an employee to exhaust his/her rights to any sick, vacation or personal time prior to or while taking leave under the Act. This reality, coupled with the fact that leave taken under the Act may run concurrently with leave taken under the FMLA, if so, will require employers to revise FMLA policies to clarify language requiring employees to use accrued paid leave, including sick or vacation time, or personal time, to cover some or all of the FMLA leave.

Employers are permitted to meet their obligations under the Act through a private plan. Employers seeking to go this route must first seek the Department's approval and then participate in a private plan that confers all of the same rights, protections and benefits provided to employees under the Act.

II. CASE LAW

1. Massachusetts Supreme Judicial Court (SJC) held that the Massachusetts Wage Act requires that employers that fail to pay wages owed to employees by the date required must pay treble the amount of the wages as liquidated damages, even if the employer paid those wages to the employee before the employee brings suit.

Beth Reuter v. City of Methuen, 489 Mass. 465 (2022)

On April 4, 2022, in *Reuter v. City of Methuen*, the Massachusetts Supreme Judicial Court held that employers are strictly liable for treble damages on late wage payments even when an employee has not yet filed suit asserting a wage claim. This decision is significant because it addresses a "gray area" in Massachusetts law that employers often relied upon to address pre-suit late wage payments by paying any unpaid amounts in full with trebled interest. The *Reuter* decision resolves that unsettled area of the law and makes clear that employers are strictly liable for late wage payments and must pay treble damages on the unpaid wages. Employers cannot simply pay trebled interest on the unpaid wages.

BACKGROUND

The City of Methuen terminated the employment of Reuter for misconduct after she was convicted of larceny. At the time the city terminated her employment, it failed to pay Reuter her accrued vacation time in the amount of $8,952.15. The City ultimately paid Reuter for her accrued vacation time approximately three weeks later. Reuter's counsel sent the City a demand letter for $23,872.40, which included a trebling of the late vacation pay and attorney's fees. Recognizing that it failed to timely pay Reuter for the accrued vacation time, the City sent her a check for an additional $185.42, which represented trebled interest for the time period between the termination of Reuter's employment and the date the City paid the accrued vacation time.

Reuter filed suit in Superior Court asserting a claim for the failure to pay her vacation pay on the day of her discharge as required by the Massachusetts Wage Act, G.L. c. 149, § 148. Following a bench trial, the trial court issued an order holding that, in addition to a payment of attorney's fees, Reuter was only entitled to treble damages on the interest representing the three-week delay in receiving her vacation pay, and that this amount had previously been paid by the City. Reuter appealed the trial court's decision contending that she was entitled to treble damages on the unpaid wages and not simply treble damages on the interest.

THE SJC'S ANALYSIS

At the outset, the court noted that, despite the employer's pre-suit payment of Reuter's unpaid, accrued vacation time and trebled interest, late payments constitute clear violations of the Massachusetts Wage Act. Focusing on the text of the statute, the court emphasized that the

Massachusetts Wage Act makes clear that "an employee discharged from such employment shall be paid in full on the day of his discharge," and that the statute clearly defines "wages" to include "any holiday or vacation payments due to an employee under an oral or written agreement." The court found that those phrases, when read together, establish that a terminated employee is entitled to all accrued vacation benefits on the day of discharge. The court also discussed the importance of treble damages in the context of the Massachusetts Wage Act, including how such damages are designed to protect workers from the harsh consequences of unpaid wages.

The court rejected the theory that an employer can avoid liability for treble damages on unpaid wages by simply paying the unpaid wages and trebled interest on those unpaid wages. The court held that "the statute leaves no wiggle room" and that "the remedy is also explicit." Any failure to pay wages, including accrued vacation pay, at the time of discharge subjects the employer to treble damages on those unpaid wages. Notably, the SJC recognized that its holding can put employers in a difficult position when immediately terminating an employee for misconduct because it might be unclear how much the employee must be paid on short notice. However, even after recognizing that reality, the court noted that the policy goal of the statute – prompt payment to the employee – did not allow for any alternative approach.

2. Collective Bargaining Agreement provision and arbitration award infringed on the nondelegable exclusive assignment authority of the City's chief of police.

City of New Bedford v. New Bedford Police Union, 97 Mass. App. Ct. 502 (2020)

The Appeals Court considered whether a Superior Court judge erred in vacating an arbitration award that found the City of New Bedford in breach of a provision of a collective bargaining agreement with the New Bedford Police Union. The alleged breach occurred when the City of New Bedford assigned officers to perform background investigations during their normal work hours in addition to their typical duties. The Appeals Court affirmed the Superior Court's holding that the Agreement provision and arbitration award infringed on the nondelegable exclusive assignment authority of the City's chief of police.

The New Bedford Police Union and the City of New Bedford were parties to the collective bargaining agreement. The union filed a grievance on August 5, 2016, alleging the City was assigning officers from various units to "perform background investigations along with their normal duties and during their normal work hours … in violation of Article 21, Sec. 9" of the Agreement. Following a hearing, the arbitrator issued an award in favor of the union.

The Court found contrary to the arbitrator's findings, a "police chief's authority to assign his officers to particular duties is a matter that concerns the public safety." Taunton v. Taunton Branch of the Mass. Police Ass'n., 10 Mass. App. Ct. 237, 243 (1980). Police chiefs inherently are vested with general managerial authority over employees "where matters of public safety are concerned." Saugus v. Saugus Pub. Safety Dispatchers Union, 65 Mass. App. Ct. 901, 902 (2005). The Court further reasoned the protection of a public employer's management

prerogative concerns policy judgments in the allocation and deployment of law enforcement resources. Id. at 901-902. The assignment of officers was within the exclusive managerial prerogative of the chief, and was neither subject to collective bargaining, nor delegable to arbitration. An arbitrator exceeds his or her authority by substituting his or her judgment for that of a chief of police in assigning and deploying police officers and the Court therefore concluded the arbitrator exceeded his powers and the Superior Court judge did not err in vacating the arbitration award.

3. The disclosure to defense counsel of exculpatory information arising from a grand jury proceeding is part of a prosecutor's official duty under Brady.

In the Matter of a Grand Jury Investigation, 485 Mass. 641 (2020)

In this case, Petitioners, two police officers, knowingly made false statements in their police reports that concealed the unlawful use of force by a fellow officer against an arrestee and supported an unfounded criminal charge of resisting arrest against the arrestee. The Superior Court judge authorized the disclosure of petitioners' misconduct to defense counsel as potentially exculpatory in unrelated criminal cases where the petitioners might be witnesses and the petitioners appealed.

Petitioners, Fall River police officers, were present when fellow police officer used force while arresting arrestee and subsequently were required to prepare use-of-force reports. Each petitioner executed a use-of-force report adopting fellow officer's version of events, stating the arrestee was noncompliant, threatened to punch the officers, and was taken to the ground by the officer. Arrestee's defense attorney provided the district attorney with a videotape of surveillance footage showing the arrest and that arrestee was physically compliant when the officer struck him. During the criminal investigation grand jury, each petitioner asserted their privilege against self-incrimination and were subsequently granted immunity to testify. All petitioners admitted that their use-of-force reports were false.

On appeal, the SJC concluded the disclosure to defense counsel of exculpatory information arising from a grand jury proceeding is as much a part of a prosecutor's official duty as the presentation of inculpatory evidence at trial. Because the disclosure of this information arises from the prosecutor's Brady obligation, no prior judicial approval is required.

The Court came to their conclusion by looking to the due process clause of the Fourteenth Amendment to the United States Constitution and Article 12 of the Massachusetts Declaration of Rights, which states a prosecutor must disclose exculpatory information to a defendant that is material either to guilt or punishment. The Court cited to Giglio v. United States, 405 U.S. 150 (1972), stating that "when the 'reliability of a given witness may well be determinative of guilt or innocence,' nondisclosure of evidence affecting credibility falls within this general rule."

The Court further explained the Massachusetts Rules of Criminal Procedure also require a prosecutor, as part of automatic discovery, to disclose to a defendant "any facts of an exculpatory nature." [9] Mass. R. Crim. P. 14 (a)(1)(A)(iii), as amended, 444 amended, 444 Mass. 1501 (2005). Also, the rules of professional conduct require prosecutors to make timely disclosures to the defense of all information known to the prosecutor that negated the guilt of the accused.

The Court rejected petitioners' argument that the information fell outside the scope of the prosecutor's Brady obligation because petitioners' argument incorrectly equated a prosecutor's duty to disclose exculpatory evidence with the standard applied in determining whether the prosecutor's failure to disclose exculpatory evidence is so prejudicial that it requires a new trial. The Court explained a prosecutor should not attempt to determine how much exculpatory information can be withheld without violating a defendant's right to a fair trial and where a prosecutor is uncertain whether information is exculpatory, the prosecutor should err on the side of caution and disclose it. Lastly, the Court noted the ultimate admissibility of the information is not determinative of the prosecutor's Brady obligation to disclose it.

Petitioners' also argued where exculpatory information is obtained from a witness's immunized testimony, prosecutors should not disclose the information to defendants in unrelated cases because the orders of immunity protect immunized witnesses from the adverse consequences that might result from such disclosure. The Court rejected this argument as it misreads the scope of the immunity order. The immunity is available only where the witness's testimony might incriminate the witness with respect to a crime, either by the testimony itself or by evidence derived from that testimony. The privilege cannot be invoked simply because the testimony could cause the witness to be fired from a job or injure the witness's reputation in the community.

4. The Supreme Judicial Court, reversing the Appeals Court, unanimously held that the termination of an at-will employee for exercising the statutory right of rebuttal to information included in their personnel record fell within the public policy exception to employment-at-will.

Meehan v. Medical Information Technology, Inc., 488 Mass. 730 (2021)

On December 17, 2021, the Massachusetts Supreme Judicial Court (SJC) ruled that an employee discharged for submitting a written rebuttal to his employer in response to the placement of negative information in his personnel file can state a claim against the employer for wrongful termination in violation of public policy.

In ***Meehan v. Medical Information Technology, Inc.***, No. SJC-13117, 2021 WL 5990887 (Mass. December 17, 2021), the Commonwealth's highest court reversed a trial court's determination (which an intermediate appellate court had upheld) that although the plaintiff-employee had a statutory right to submit a rebuttal, his right to do so "was 'not a sufficiently important public policy' to support" a wrongful termination claim. The court held that an

employer that discharges an employee simply for exercising that right violates the public policy exception to the at-will employment doctrine. The decision clarifies that an employment right guaranteed by statute need not be "important" to qualify for protection, and that employers may want to be particularly cautious when deciding whether to discharge employees who arguably have exercised such rights.

The Personnel Records Statute

The Massachusetts legislature has enacted the personnel records statute (Mass. G.L. c. 149, § 52C) that requires employers to "notify an employee within [ten] days of the employer placing in the employee's personnel record any information ... that ... negatively affect[s] the employee's qualification for employment, promotion, transfer, additional compensation or the possibility that the employee will be subject to disciplinary action." The statute further provides that if the employee disagrees "with any information contained in a personnel record," and if the employer and employee do not "mutually agree[]" to remove that information from the file or correct it, "the employee may submit a written statement explaining the employee's position which shall thereupon be contained therein and shall become a part of such employee's personnel record." The statute's requirements are enforceable only by the Commonwealth's attorney general—i.e., an employee cannot bring a lawsuit against an employer for failure to comply with the statute—and violations are punishable "by a fine of not less than [$500] nor more than [$2,500]."

Legal Precedent

Massachusetts courts have long recognized a public policy exception to the general rule that the relationship between an employer and employee is "at will" and thus may be terminated by either party for any reason or for no reason. Under that exception—which the courts have emphasized must be "narrowly construed to avoid converting the general at-will rule into 'a rule that requires just cause'" for termination—an at-will employee may not be discharged (1) "for *asserting a legally guaranteed right* (e.g., filing a workers' compensation claim)," (2) "for doing what the law requires (e.g., serving on a jury)," (3) "for refusing to do what the law forbids (e.g., committing perjury)," or (4) for '"performing important public deeds even though the law does not absolutely require" their performance, such as "cooperating with an ongoing criminal investigation." (Emphasis in original.)

An employee who is discharged for engaging in conduct that falls into one or more of the four categories above can assert a common law tort claim against the employer for wrongful termination in violation of public policy, unless the statute that gives rise to the public policy at issue already provides a remedy (a) to employees discharged in violation of it; or (b) for violation of the statute that is not a remedy for discharge, but that "is meant to be comprehensive.

The Lower Courts' Rulings

The plaintiff in the *Meehan* case, Terence Meehan, began working for Medical Information Technology, Inc. (Meditech) as a sales representative in November 2010. In early

July 2018, Meditech placed Meehan and two other salespeople on performance improvement plans (PIPs). Shortly thereafter—on July 17, 2018—"Meehan sent his supervisor a lengthy rebuttal" to the PIP that Meditech had issued to him. That same day, according to Meehan's complaint, the president and chief executive officer of Meditech decided to terminate Meehan's employment, and he was discharged immediately thereafter.

Meehan filed a one-count complaint in the trial court alleging that Meditech had fired him for submitting a rebuttal to the PIP, and asserting a claim against Meditech for wrongful termination in violation of public policy. Meditech filed a motion to dismiss the complaint for failure to state a claim on which relief could be granted, and the trial court judge allowed the motion, holding that an employee's "right to submit a rebuttal" under the personnel records statute "was 'not a sufficiently important public policy' to support a wrongful termination claim under Massachusetts law. In reaching that conclusion, the judge reasoned that the rebuttal right "merely 'involves matters internal to an employer's operation,'" and that a rule protecting any employee who submits a rebuttal to negative information in his or her personnel file from termination of employment would convert the at-will employment doctrine into a rule requiring just cause for termination.

Meehan filed an appeal from the trial court's decision, and an expanded panel of the Appeals Court (in a split decision) affirmed the decision to dismiss the claim.

The Supreme Judicial Court's Reversal

The SJC reversed the lower courts' rulings, holding that because the right of rebuttal provided for in the personnel records statute is protected under the law an at-will employee who exercises the right of rebuttal is protected from discharge for doing so by the public policy exception to the at-will employment doctrine that protects employees from discharge "for asserting a legally guaranteed right." The SJC further held that because the personnel records statute does not provide at-will employees discharged for exercising their rights under the statute with a remedy—and instead merely authorizes the attorney general to enforce the statute's requirements, and then only by seeking the imposition of a fine capped at $2,500—such employees may bring an action for wrongful termination in violation of public policy.

In reaching its decision, the SJC rejected the lower courts' reasoning that the public policy exception to at-will employment only protects the exercise of employment rights defined by statute when the right is "important" or does not relate to matters that are "internal" to the employer. As the court observed, by "enacting the statutory employment right, the Legislature has already made both determinations, concluding that the right is a matter of public significance." The court further noted that the question whether the right exercised by the employee is important or concerns internal matters is relevant primarily in the context of the fourth public policy exception to the at-will doctrine—i.e., where the employee has engaged in public deeds that the law does not absolutely require—because in such cases "there has been no legislative recognition of the right, [and] an examination of the importance and public nature of the policy at issue ... is necessary to determine whether it merits protection."

Finally, the court cautioned that although the issue presented and decided in *Meehan* was whether an employee may be fired "for merely filing the rebuttal as opposed to what he wrote in the rebuttal," employers should not assume that they are protected from liability if they discharge an employee not for submitting a rebuttal but instead for the manner of expression. The court observed that because the personnel statute's rebuttal provision applies only when there is a "disagreement" regarding the contents of the file, "the rebuttal may be expected to involve disputed, contentious subjects and vehement disagreement." Accordingly, although "threats of personal violence, abuse, or similarly egregious responses" are not protected, an at-will employee's "exercise and expression of the right of rebuttal should not be grounds for termination when it is directed at 'explaining the employee's position' regarding the disagreement," regardless of "how intemperate and contentious the [employee's] expression" of his or her position may be.

5. Public Employers must impact bargain over order to employee to undergo a fitness for duty exam.

City of Newton v. Commonwealth Employment Relations Board, 100 Mass. App. Ct. 574 (2021)

Most public employers are aware that they have the managerial right to order an employee to undergo a fitness-for-duty examination. In City of Newton v. Commonwealth 14 Employment Relations Board, however, the Massachusetts Appeals Court held that the method and means of such examinations are mandatory subjects of impact bargaining.

In 2016, the City of Newton's Police Chief ordered a Captain to undergo both a physical and a psychological fitness-for-duty examination because he had taken an unusually large number of personal days following a death in his family and a personal injury unrelated to work. The Captain was placed on paid administrative leave pending the results of these examinations. After a meeting with the union, where the Chief insisted that he had the authority to take this action, the Captain complied with the directive, passed both examinations, and was cleared for duty.

The police union then filed a charge of prohibitive practice with the Department of Labor Relations (DLR), alleging that the City had failed to conduct impact bargaining over a number of items related to the means and method of the examinations including:

- The selection of the psychological examiner;
- The information transmitted to that examiner;
- The testing protocol; and
- What results were to be generated and with whom they were to be shared.

The City had refused to engage in such bargaining, arguing that it was within the public employer's managerial right to require the examinations and their methods and means. The DLR hearing officer found that the City violated M.G.L. c.150E when it failed to bargain to resolution or impasse. On appeal, the Commonwealth Employment Relations Board (CERB) affirmed the

determination that, while the City had the authority to impose the examinations, it needed to bargain over the means and methods. The City appealed.

The Appeals Court affirmed the findings of the CERB, holding that the City was required to engage in impact bargaining over the criteria and procedures for the examinations, particularly since the decision touched upon the terms and conditions of employment. The Court reasoned that "[t]he fact that mere completion of the examinations did not result in [the Captain's] reinstatement, and that he remained suspended until he had met whatever fitness criteria applied to the examinations, makes the point that the 'methods and means' of the decision were critical to the terms of [the Captain's] continued employment."

The City made four arguments against requiring impact bargaining over the methods and means of implementing the decision to require a fitness for duty examination. The Appeals Court rejected them all:

1. The City argued that it had a compelling interest in ensuring the safety and fitness for duty of officers who engage in public safety. The Court held, however, that the interest in public safety is not undercut by the requirement to engage in impact bargaining over the means and methods of the examinations.

2. The City argued that the requirement to bargain would unduly impinge on its freedom to perform public functions, but the Court held that this requirement does not affect the City's prerogative to require that its officers be fit and pass fitness for duty examinations. Nor does the requirement to bargain suggest that the examinations would have to be eliminated.

3. The City argued that it was insulated from its duty to bargain by the Civil Service Law (M.G.L. c.31, §61A), which allows the Commonwealth's Human Resources Division Administrator to issue health and physical fitness standards applicable to all police officers. The Court rejected this argument, however, noting that the Administrator had never issued such standards to begin with, and further, that there was no conflict between the Civil Service Law and the public bargaining law.

4. Finally, the City argued that the union waived its right to bargain. The Court disagreed, holding that the collective bargaining agreement did not show a "clear and unmistakable" waiver of bargaining over the method and means of these examinations, and finding that the broad managerial rights clause did not constitute such a waiver.

6. **The Massachusetts Appeals Court, reversing the Commonwealth Employment Relations Board (CERB), held that the City of Everett could promote the Fire Chief without bargaining to impasse or resolution with the Everett Firefighters as managerial positions are not within the scope of the Collective Bargaining Agreement.**

   City of Everett v. Commonwealth Employment Relations Board, Mass. App. Ct. (2022)

BACKGROUND

On August 27, 2021, the Commonwealth Employment Relations Board (CERB) issued a final decision and order holding that the City of Everett violated Section 10(a)(5) and Section 10(a)(1) of M.G.L. c. 150E by using an Assessment Center as the sole basis for scoring and ranking candidates on an eligible list for promotion to Fire Chief without bargaining to impasse or resolution with the Everett Firefighters (the Union). The Board held that all of the potential promotes were bargaining unit members and that their participation outweighed the City's interest in maintaining it "managerial prerogatives". The Board claimed that promotions are an important condition for employees who aspire to the promotional position due to the relationship of increased pay, benefits and prestige and movement on a career ladder. The Appeals Court reversed the Board's decision.

THE APPEALS COURT ANALYSIS

The Appeals Court reviewed the question of whether the Board erred in ruling that the city had to bargain over aspects of the promotional process for fire chief as it would not interfere with core managerial prerogatives. However, a public employer's duty to bargain is only applicable to mandatory subjects of bargaining, such as "terms and conditions" of employment of bargaining unit employees. The Board's own precedents as set in Newton v. Commonwealth Employment Relations Board, 100 Mass. App. Ct. 574, states that the process for choosing managerial employees such as fire chiefs are not subject to mandatory bargaining as a managerial employee is outside of the bargaining unit.

The concern that the processes for selecting a fire chief will impact the "terms and conditions" of employment of the deputy chiefs or other bargaining unit employees is not accurate. It does not alter, change, or impose upon these other positions, rather, being promoted to fire chief would make one leave the bargaining unit and become part of the City's managerial team. The argument that the fire chief position is part of the "promotional ladder" for deputy chiefs in incorrect as fire chief would be a fundamentally different job, not just a promotional ladder step.

Overall, the proposed subject of bargaining for this position under the provision that it would impact employment terms and conditions of bargaining unit members, does not apply.

7. **The Massachusetts Appeals Court held that sovereign immunity protects public employers from claims brought under employee misclassification and wage-based retaliation.**

Craig Harrison v. Massachusetts Bay Transportation Authority, 101 Mass. App. Ct. 659 (2022)

This case was brought by two IT independent contractors for the MBTA in Superior Court on September 19, 2018. The Plaintiffs claimed that the MBTA misclassified them as independent contractors instead of employees and one alleged he was fired in retaliation for asserting that he had been misclassified. The Superior Court dismissed these claims and the Plaintiffs appealed.

The Massachusetts Appeals Court affirmed the Superior Courts ruling after reviewing the establishment of the Massachusetts Bay Transportation Authority (MBTA). The MBTA was created by the Legislature as "a politic body and corporate and a political subdivision of the commonwealth." Although contract actions were not permitted against the commonwealth under immunity laws, tort actions were. In November 2009, the Legislature added the MBTA to the list of "public employers" covered by the Massachusetts Tort Claims Act that made the MBTA liable "to the same extent as a private street railway company" for certain acts and negligence. This clearly gave the MBTA status as a State entity and "public employer" granting it immunity to claims such as misclassification.

Under the wage and hours laws it states: "No employee shall be penalized by an employer in any way as a result of any action on the part of an employee to seek his or her rights under the wages and hours provisions of this chapter". However, the Appeals Court found the use of the terms "employee" and "employer" as ambiguous as to whether this applies to public employers such as the MBTA. The absence of any clear scope in regards to public employers allows for this not to apply to the MBTA. Similarly, the independent contractor statute is also silent concerning public employment. In a remedial provision of the statute the word "whoever" is used. In the General Laws the word "whoever" does not encompass government agencies or municipalities, and therefore the public employer – the MBTA – has immunity under this retaliation provision.

The Appeals Court upheld the Superior Court ruling, dismissing the case.

8. **The Massachusetts Supreme Judicial Court held that the forfeiture of a pension is applicable to an individual who, after having retired from public service, misappropriates government funds or engages in criminal activity ties to his or her former public employment.**

Paul Mahan v. Boston Retirement Board, 490 Mass. 604 (2022)

In this case the Supreme Judicial Court was asked to determine whether pension forfeiture provisions in M.G.L. c. 32 are applicable to an individual who, after having retired from public service, misappropriates government funds, or engages in criminal activity ties to his or her former public employment.

BACKGROUND

The Plaintiff was a former correction officer for the Suffolk County Sheriff's department. In 2000, while attempting to restrain an inmate engaged in a fight, the Plaintiff severely injured his knee. The Plaintiff subsequently tried to return back to work with a knee brace but was advised by his doctors that he should stop working. Between 2006 and 2013 the Plaintiff was receiving a combination of workers' compensation benefits, assault pay, and a disability retirement allowance. The Plaintiff had to certify every six months that he was not working or deriving any income from work.

In 2006, the Plaintiff's wife opened a used car dealership where the Plaintiff regularly worked during open business hours. After an investigation, the Plaintiff was convicted of workers' compensation fraud and larceny and plead guilty as he was in fact working while receiving workers' compensation benefits. The Plaintiff was ordered to five years of probation and to pay restitution to the Suffolk County Sheriff's department as the funds for the workers' compensation benefits and assault pay came directly from the Sheriff's Departments budget and not an insurer.

The Plaintiff then participated in proceedings with the Boston retirement system which decided to "forfeit the plaintiff's retirement benefits". The Plaintiff filed a petition in the Boston Municipal Court for review of this decision, but it was found that the Board did not err. The Plaintiff then filed a writ of certiorari in the County Court, which was transferred to the Superior Court, appealed to the Appeals Court, and then transferred to the Boston Municipal Court.

THE SJC'S ANALYSIS

Under General Laws c. 32 forfeiture of a retirement allowance earned by a "member" of the public retirement system can happen after conviction of an offense involving the funds or property of one's former government employer. A "member" of such system can include anyone who is regularly employed in the performance of their duties or anyone who has retired and is receiving retirement allowance. The permanent forfeiture of retirement allowance is when the misconduct is "applicable to his office or position" and the facts of each case have a direct link between the criminal offense and the member's office or position. This direct link does not mean that the crime necessarily happened at work, but rather constitutes either a legal link where the crime implicates a statute applicable to the employees' position or a factual link where the crime is connected to the employee's position by means of resources.

The Plaintiff falls under the category of an "inactive member" which would preclude him from receiving the retirement allowance. The statutes do not state that a "member" must be a "member in service" when government funds are misappropriated or offenses are committed and therefore, the application of this statute is not limited and applies to the Plaintiff. The Court found that even if the member of a retirement system was employed by a non-public employer at the time of the conviction, the pension is still forfeited due to involvement in criminal activity.

The Plaintiff's fraudulent receipt of workers' compensation and assault pay directly falls under the term of misappropriation, especially since the funds came directly from his former employer, the Sheriff's Department. It was found that there was a factual link since the Plaintiff would not have been injured if he did not work with the Suffolk County's Sheriff Department, and would not have been receiving workers' compensation benefits, and therefore, would not have made fraudulent reports regarding income and not convicted of fraud. Even though he was retired, the Plaintiff's former employment can be seen as having "facilitated" his crimes which establishes the link for forfeiture of his pension.

9. The Appeals Court, affirming the Commonwealth Employment Relations Board decision, held that the Commonwealth should have bargained to resolution or impasse with the Union when unilaterally changing the terms and conditions of employment by monitoring employee telephone calls without notice to the Union.

Commonwealth v. Commonwealth Employment Relations Board, 101 Mass. App. Ct. 919 (2022)

BACKGROUND

The Union filed a charge with the Department of Labor Relations claiming the Commonwealth (MassHealth) violated M.G.L. 150 E when managers monitored telephone calls without first providing the Union with notice or an opportunity to bargain to resolution or impasse. MassHealth claimed that the monitoring was allowed under the policies stated in the collective bargaining agreement (CBA) such as when the BERS A/Bs log into the Commonwealth's system, "any data that users create or receive, any electronic mail messages they send or receive, and any websites that they may access" are property of the Commonwealth. MassHealth also claimed that this monitoring did not change the terms and condition of employment as it was just a more dependable and efficient way of collecting information it had previously collected before. The CERB concluded that the Commonwealth engaged in an unlawful unilateral change in terms and conditions of employment, and it was ordered to rescind all discipline. The Commonwealth appealed.

THE APPEALS COURT ANALYSIS

When reviewing this case, the Appeals Court "must accord deference to the [CERB's] specialized knowledge and expertise" while still having the power of ultimate statutory interpretation. The Appeals Court focused on whether MassHealth implemented a new practice that should have mandated bargaining as there was no dispute to the facts of the Commonwealth listening to telephone calls without the Union's knowledge.

Prior to 2019, MassHealth did not engage in the practice of listening to telephone calls with the public, and the Union was not given notice when this practice started. The Commonwealth argues that this does not constitute as a new practice as the BERS A/B were notified each time they logged on of the Acceptable Use Policy which used the term "device" defined to include telephone. However, the policy referred to the monitoring of documents and communications stored on the computer, not to telephone calls. As the managers had not previously monitored the telephone calls, the Appeals Court agreed with the CERB's decision that this action directly implicated the "productivity and performance" measures that assessed the employees which increased discipline. The new practice had an impact on the underlying conditions of employment, and therefore had a mandatory subject of bargaining because the managers changed the nature, quantity, and quality of information available to them. The CERB's decision was upheld.

10. The Massachusetts Supreme Judicial Court held that under the Domestic Violence and Abuse Leave Act (DVLA), an employer is prohibited from taking adverse action or discriminating against employees who exercise their rights under the DVLA.

Kehle Osborne-Trussell v. The Children's Hospital Corporation, 488 Mass. 248 (2021)

The Domestic Violence and Abuse Leave Act (DVLA) was enacted in 2014. It is designed to support victims of abuse and harassment by easing the additional burdens when taking action to stop the abuse, pursue legal action, and rebuild their lives. The DVLA prohibits employers from taking adverse action against or discriminating against an employee who exercises their rights under the DVLA. These rights can include having to take leave from work to attend doctor's appointments or go to court hearings. Employees are required to provide their employers with "appropriate advance notice" of the leave they may need to take.

BACKGROUND

In 2018, the Plaintiff obtained a Harassment Prevention Order (HPO) against an abuser which ordered the abuser to not directly or indirectly contact the Plaintiff, remain away from the Plaintiff's home and place of work, and prohibited the abuser from creating any social media postings that referenced the Plaintiff.

In 2019, the Plaintiff applied for employment with the Children's Hospital Corporation (CHC). It has been claimed that the CSC "aggressively" recruited the Plaintiff, and invited her to several interviews, contacted her references, and ordered a background check, resulting in a formal offer of employment. The Plaintiff accepted, and was subsequently issued an identification card, identifying her as a CHC "staff nurse", given an employee identification number and put onto a training schedule.

A few weeks before the Plaintiff's orientation was to commence, the abuser posted threats and false statements on social media about the Plaintiff and tagged the CHC profile. This was in violation of the HPO which the Plaintiff reported to the Merrimac police department. In addition, the Plaintiff informed the CHC's human resources department about the HPO. Soon after, CHC sent a termination letter rescinding the Plaintiff's employment offer. The plaintiff filed a three-count complaint against CHC in Superior Court asserting that the DVLA was violated in terms of the nonretaliation and noninterference provisions as well as public policy. CHC filed a motion to dismiss, which was allowed. The Plaintiff appealed, and the case was transferred to the Supreme Judicial Court (SJC) instead by the SJC.

THE SJC'S ANALYSIS:

Upon reviewing CHC's motion to dismiss, the SJC considered all well pleaded facts alleged in the complaint to be true. With this under consideration, the SJC began to review statutory interpretations. Under M.G.L. c. 149 §52E, "employees" is defined as "individuals who perform services for and under the control and direction of an employer for wages or other remuneration". CHC claimed that the Plaintiff was not an employee and did not have to follow DVLA guidelines. CHC claimed that her offer of employment was contingent upon specific conditions that needed to be fulfilled and therefore, she was not yet able to "perform services". However, this was in dispute to factual allegations in the complaint. The Plaintiff alleged that she had "successfully gone through the entire application, interview, and onboarding process" before CHC terminated her. CHC had issued the Plaintiff an identification badge, an employee identification number, and a training schedule. The SJC did not agree with CHC's narrow definition of the term "employee" which was inconsistent with provisions in the DVLA and therefore, rejected that individuals who have been hired but yet to perform services are excluded as "employees" and rather found that the Plaintiff was an employee of CHC and should be given rights under the DVLA.

In regard to the allegations of retaliation, under statute, an employee must allege that 1) the employer availed herself of a protected right under the DVLA, 2) the employee was adversely affected by an employment decision and 3) there is a causal connection between the employee's protected activity and the employer's adverse action. The CHC claimed that the Plaintiff failed to bring facts plausible for the first and third allegations.

1. CHC claimed that the Plaintiff did not follow the leave provisions of the DVLA as she did not notify CHC that she required leave or requested time off for a specific date. However, by notifying human resources that her abuser had violated the HPO and that she was engaging with law enforcement, she effectively was giving a qualified reason for leave to be afforded under the DVLA in the future. This notified

CHC that the Plaintiff might need the leave afforded under the DVLA at some point during her employment. While the DVLA requires "appropriate advance notice", the provision does not define a specific phrase that needs to be used, contrary to what the CHC was claiming.

3. In assuming that the Plaintiff was in fact an employee of CHC, the SJC found a causal connection between the Plaintiff's notice and her termination. CHC claims that this cannot be found due to the proximity. However, the Court found that in addition to the proximity of the circumstances, CHC had "aggressively" recruited the Plaintiff. CHC had clearly wanted her employment and after being given notice, suddenly changed tones regarding wanting to employ the Plaintiff. This adverse employment action suggested causation that the termination was in response to the notice.

By finding plausibility to these facts, the SJC found that the nonretaliation provision of the DVLA was violated. In regard to the interference claim of the DVLA, that "no employer shall coerce, interfere with, restrain or deny the exercise of, or any attempt to exercise, any rights under this section" the SJC found in favor of the Plaintiff due to the same finding as before that the Plaintiff was defined as an employee, and therefore, retained the rights of employees under DVLA provisions.

The Plaintiff's public policy violation claim was found to be properly dismissed. However, with respect to the other two violations, the motion to dismiss was vacated and the matter was remanded to the Superior Court for further proceedings.

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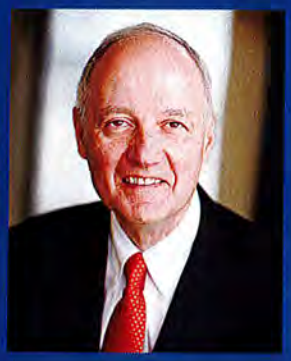

Mr. Moschos is Of Counsel at Seder & Chandler, practicing in the firm's Labor & Employment, Litigation and Education Law Groups. He is a fellow of the College of Labor and Employment Lawyers which includes the leading labor lawyers in the United States. He serves as labor counsel for various private and public employers in Massachusetts, regularly advising employers on labor and employment law issues. He routinely appears before government agencies, including the National Labor Relations Board, the Department of labor and the Massachusetts Commission Against Discrimination. He has conducted more than 600 labor negotiations in both the public and private sectors.

Mr. Moschos represents clients in education matters throughout the Commonwealth, affecting both public and private schools, including colleges. He has represented various colleges in employment and Labor matters on a wide range of issues including faculty issues, FMLA, and discrimination claims.

He participated in the drafting of Massachusetts Labor Statute; Mr. Moschos is a founder and former management chair of the State Joint Labor Management Committee (Dunlop Committee) and the Worcester County Bar Association's Labor and Employment Law Committee and was awarded with the WCBA's Distinguished Service Award ®. He is also adjunct professor of Labor Relations at Clark University.

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Mr. Moschos is recognized as The Best Lawyers in America© 2022 in the fields of Employment Law – Management; and Labor Law – Management and since 1995, recognized as Best Lawyers® Worcester "Lawyer of the Year" in 2013 and 2015. He has been named one of Massachusetts "Super Lawyers" by Boston magazine and Law & Politics since 2006. He holds an AV® Preeminent Peer Review Rating by Martindale-Hubbell, the highest rating available for legal ability and professional ethics. Mr. Moschos is the recipient of the Massachusetts Municipal Personnel Association's Emil S. Skop Award for outstanding contributions to human resources management.

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PUBLISHED WORKS

- Quoted in "Banks could be ripe targets for age-bias lawsuit," American Banker (November 13, 2020)
- "New Regulations Surrounding the Paid Medical Leave Act," Worcester Regional Chamber of Commerce Webinar (October 28, 2020)"NEW Federal Employment Acts (Emergency Sick Leave, Emergency FMLA Amendment and Payroll Protection Act)," Worcester Regional Chamber of Commerce Webinar (April 2, 2020)
- "Employment Issues Involving School Employees in General," Co-Author of Chapter, MCLE School Law in Massachusetts, 3d Edition (2018)
- "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," HRMA Perspectives (April 2012)
- "Summary of Seminar on New 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 Journal (June 20-July 6, 2000)

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