

# MASSACHUSETTS MUNICIPAL ASSOCIATION

## LABOR LAW UPDATE

UPDATE ON LABOR COURT CASES AND LEGISLATION



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# **LEGISLATION 2022**

## **CASE LAW 2020-2022**





# LEGISLATION



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**Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021**



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# CASE LAW



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



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



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



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



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



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





# CASE LAW



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



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



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



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



# LEGISLATION



## CROWN ACT

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

**The CROWN Act expands the definition of "race" and anti-discrimination protections under the Massachusetts General Laws, included in Ch. 151B §4.**

**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.**



# LEGISLATION



## **Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021**

**The Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021 (“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.**





# LEGISLATION



## Police Reform Act

The Police Reform 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.

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



# LEGISLATION



## 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.

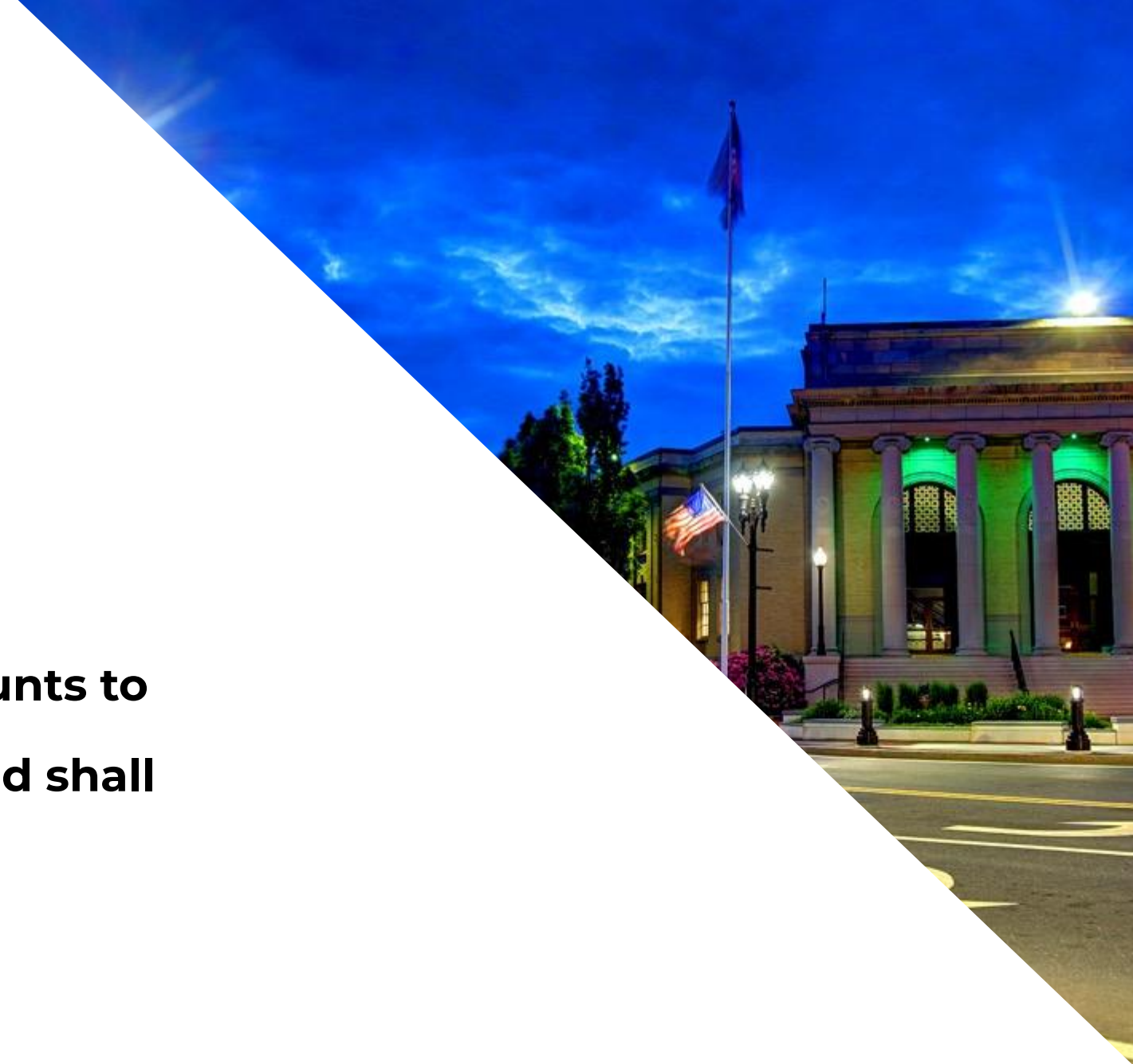


# LEGISLATION



## 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.**





# LEGISLATION



## **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.**



# CASE LAW



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

**The 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.**





# CASE LAW



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

**The Massachusetts Appeals Court held that the Collective Bargaining Agreement provision and arbitration award infringed on the nondelegable exclusive assignment authority of the City's chief of police.**





# CASE LAW



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

**The Massachusetts Supreme Judicial Court held that the disclosure to defense counsel of exculpatory information arising from a grand jury proceeding is part of a prosecutor's official duty under Brady.**





# CASE LAW



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

**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.**





# CASE LAW



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

**The Massachusetts Appeals Court held that Public Employers must impact bargain over order to employee to undergo a fitness for duty exam.**





# CASE LAW



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

**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.**



# CASE LAW



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

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



# CASE LAW



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

**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.**





# CASE LAW



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

**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.**





# CASE LAW



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

**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.**



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- **Conducted more than 600 labor negotiations in both the public and private sectors.**
- **Named "Top 500 Corporate Employment Attorneys in the United States"**
- **Fellow of the College of Labor and Employment Lawyers which includes the leading labor lawyers in the United States.**
- **Participated in the drafting Massachusetts Labor Statute.**





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