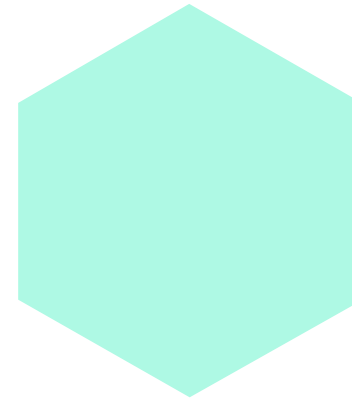
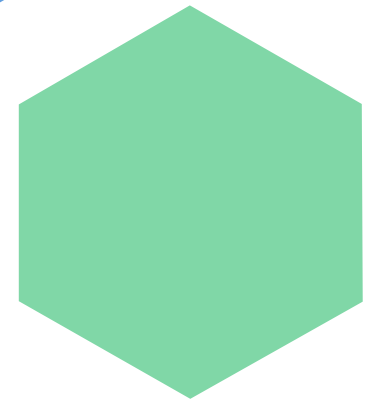
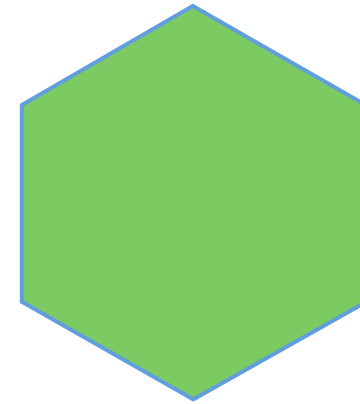


Lowlights and Highlights of Agency Employment Decisions Reported in 2023

A Presentation to the Massachusetts
Municipal Association Annual Meeting

Presented by Melissa R. Murray
Norris, Murray & Peloquin

January 19, 2024



AGENDA

- Joint Labor Management Committee (JLMC)
- Department of Labor Relations (DLR)
- Civil Service Commission (CSC)
- Peace Officer Standards and Training (POST) Commission
- Massachusetts Commission Against Discrimination (MCAD)

Joint Labor Management Committee (JLMC)

STATISTICS, AWARDS, TIPS AND TRENDS



Orange County Register, Union Ruckus Cartoons
(<https://www.ocregister.com/2011/02/27/cartoonphoto-gallery-union-ruckus-cartoons/>)

STATISTICS

YEAR	Number of Cases Filed	Open on 12/31/2022	Open on 12/31/2023	Closed
2016	63	1	0	1
2017	67	0	0	0
2018	44	0	0	0
2019	55	3	0	3
2020	20	2	0	2
2021	34	26	4	22
2022	52		39	13
2023	35		32	58

The 35 cases were filed in 2023 and 58 cases were closed. At the close of the year, there are 32 active cases on the JLMC docket: 22 Police and 10 Fire. Of the 32 cases, 1 fire case is in arbitration, 5 police cases are headed to 3(a) hearings, 4 police cases and 2 fire cases are in Committee Level Mediation, 9 police cases and 4 fire cases are in Staff Mediation, 2 police and 2 fire cases are in investigation, and the rest 2 police cases and 1 fire case have reached tentative agreements.

AWARDS SUMMARY

	ARBITRATOR	AWARD YEARS	WAGES
2023			
Westport Police (P)	James S. Cooper	FY22-FY24	2%, 2%, 2% (plus POST stipend 2%, 2%, 2%)
Brookline Police (P)	Theodore O'Brien	FY21-FY23	2.5%, 3%, 3% (plus POST stipend 2% (FY22) and 2% (FY23))
Fall River Fire	Beth Anne Wolfson	FY22-FY24	4%, 4%, 4% (plus new Hazardous Duty pay at 3% (1/1/24))
Springfield Police (S)	James S. Cooper	FY21	3%
		FY22-FY24	3%, 3%, 3% (plus end of FY stipends of \$1,000 (2) for DOJ imposed programs [evals, field training])

Prior arbitration decisions issued: 2016 (8); 2017 (6); 2018 (13); 2019 (12); 2020 (4), 2021 (4), 2022 (1)



JLMC

- Volume of cases is back to pre-COVID numbers; some delay in processing
- Trend towards settlement rather than arbitration
- Only 13 awards issued 2020-2023
- Wages are trending up

How to Prepare For Or Avoid the JLMC



- Propose serious, well-thought-out proposals.
- Do your homework; know the landscape of settlements in comparable communities. Don't wait to put together comparability data (Internal and External).
- **COST OUT PROPOSALS!**
 - Understand how close or far apart the parties' proposals are.
 - Compare what you are proposing to other packages given in the city/town.
 - Analyze hidden costs and be clear on the long and short-term impacts of the benefits.
- Ask Union for their data or an explanation of what they are basing their proposals on
- Double check the Union's "facts" and figures
- Understand the risks (your strengths and weaknesses) of going to arbitration
- Use the Mediation Process
- Communicate with the Management Rep and Panel Member
- **SELECT YOUR ARBITRATOR WISELY**
- Continue exploring settlement options while preparing for arbitration – clearly there is not a lot of interest or enthusiasm for going to arbitration

Summary of the Landscape

- COLAs at 2% or 2.5% are OK still depending on circumstances, but COLAs at or above 3% are becoming quite common (Needham Police; Waltham Fire; Lynn Fire; Brookline Fire; Boston Fire; Springfield Superiors)
 - **Fall River Fire at 4% a year is currently an anomaly**
- **POST Certification Stipend**: several police unions are asking for an annual “Certification Differential” or “POST Stipend” for being certified AS REQUIRED BY LAW by the POST Commission (Needham 4% stipend; Lexington 5% stipend)
 - Two JLMC Arbitration Awards with POST Stipend: Westport Police = 6% POST Certification and Brookline Police = 4% POST Certification
- **Increasing EMT and Paramedic pay to help retain/attract personnel**
- Proposals/Demands for one-time ARPA payments; these have varied wildly but appear to have slowed, fallen into some patterns (Belmont Fire/\$2,000; Waltham/\$3,000; Swampscott/\$5,000; Randolph/\$3,000)
- **Staffing shortages, burnout, difficulty hiring, length of hiring process may lead to increase in use of laterals**
- Many communities still interested in exiting civil service; seeking relief as hiring challenges increase
- Unions are making outrageous initial proposals followed by minor or inconsequential concessions
- **Looking for increase in detail pay (Boston Fire increase by \$8/hr)**

JLMC STAFF

Joint Labor Management Committee

John Hanson, Chairman
[vacant/proposed], Vice Chair

Management Staff Members

George Driscoll
Bob Markel*

Management Committee Members

Jill Goldsmith, Chatham Town Manager (Chair)
Dean Mazarella, Leominster Mayor (Vice Chair)
Richard Tranfaglia, Natick Dir. of Human Resources (Ret.)
Kathleen Johnson, Worcester Assistant City Manager (Ret.)
Lisa Yanakakis, Weston Asst Town Manager/HR Director

** Joining JLMC as a Senior Staff Representative for Management the week of January 28. Bob retired as Town Manager in Ipswich, MA (December 2011) and is currently serving as part time interim Town Administrator for the Town of Hampden, MA.*

Salaries Employment Health
Grievance Protection Law
Employees **COLLECTIVE** Participate
BARGAINING
Process Negotiation
Agreement Productive
Working Hours Terms Rules
Employer Union Wages Growth
Overtime Safety Establish Co

Department of Labor Relations (DLR)

STATISTICS AND SIGNIFICANT
DECISIONS

STATISTICS

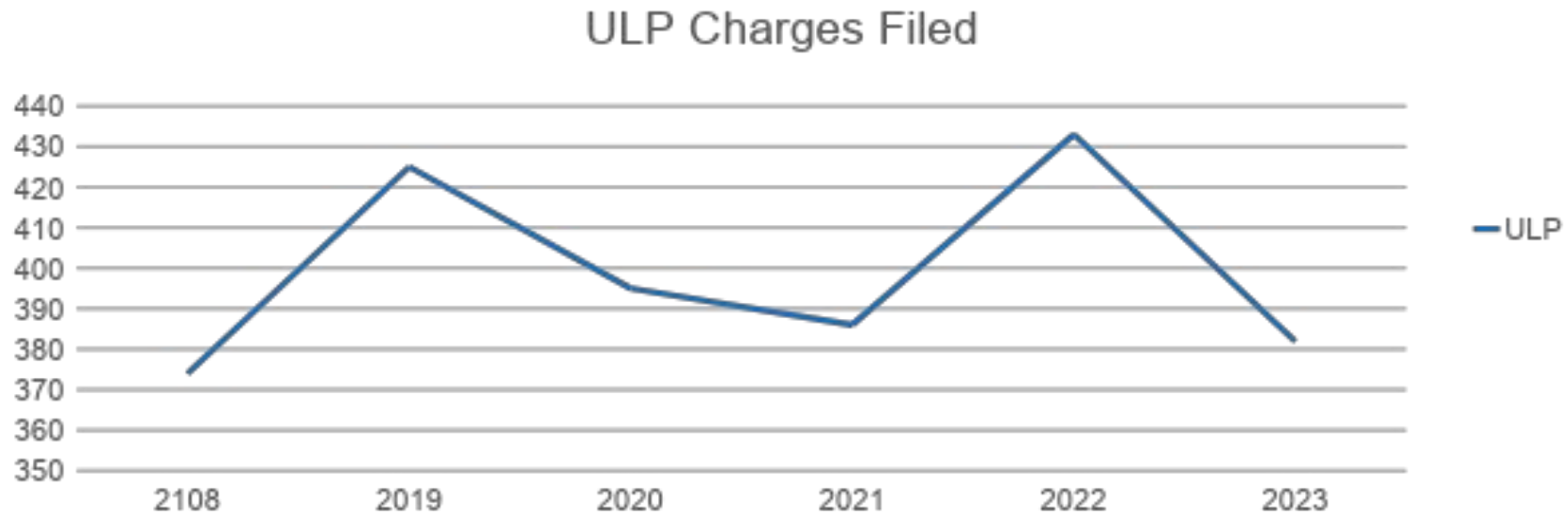
- DLR Statistics and Cases Calendar Year 2023
- Case Processing and Statistics

Case Type	# Filed 2021	# Filed 2022	# Filed 2023	# Closed 2021	# Closed 2022	# Closed 2023
Unfair Labor Practice Charges	386	433	382	368	428	408
Representation Petitions	32	53	29	28	54	34
Written Majority Authorization Petitions	15	31	31	15	27	27
Unit Clarification Petitions	18	16	15	17	14	16
Contract Mediation/Fact-Finding Petitions	72	107	72	48	81	96
JLMC Contract Mediation/Arbitration Petitions (Police/Fire)	34	54	35	25	26	58
Grievance Mediation Petitions	3	6	0	1	6	3
Arbitration	41	28	34	38	34	25

Source for Statistics: Philip T. Roberts, Director, Department of Labor Relations

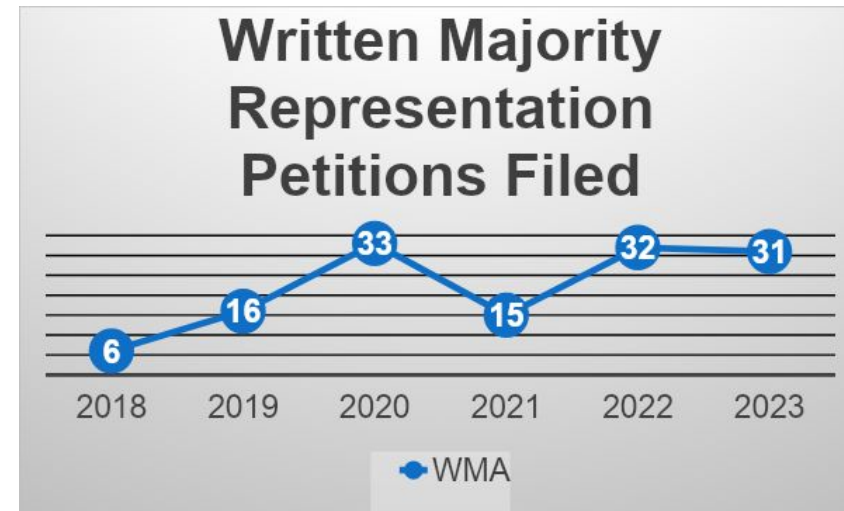
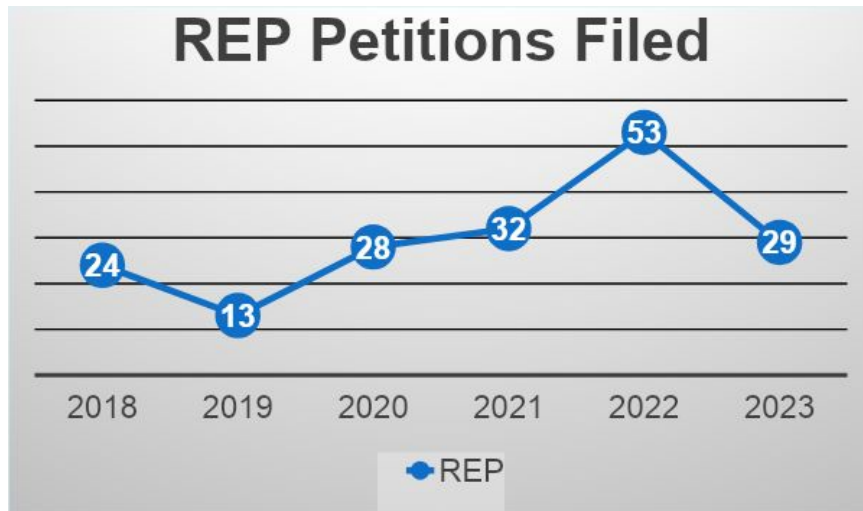
STATISTICS

ULP filings were higher immediately before the pandemic, dropped during the first two years of the pandemic, and then increased above pre-pandemic levels. They have now returned to pre-pandemic levels (374 in 2018).



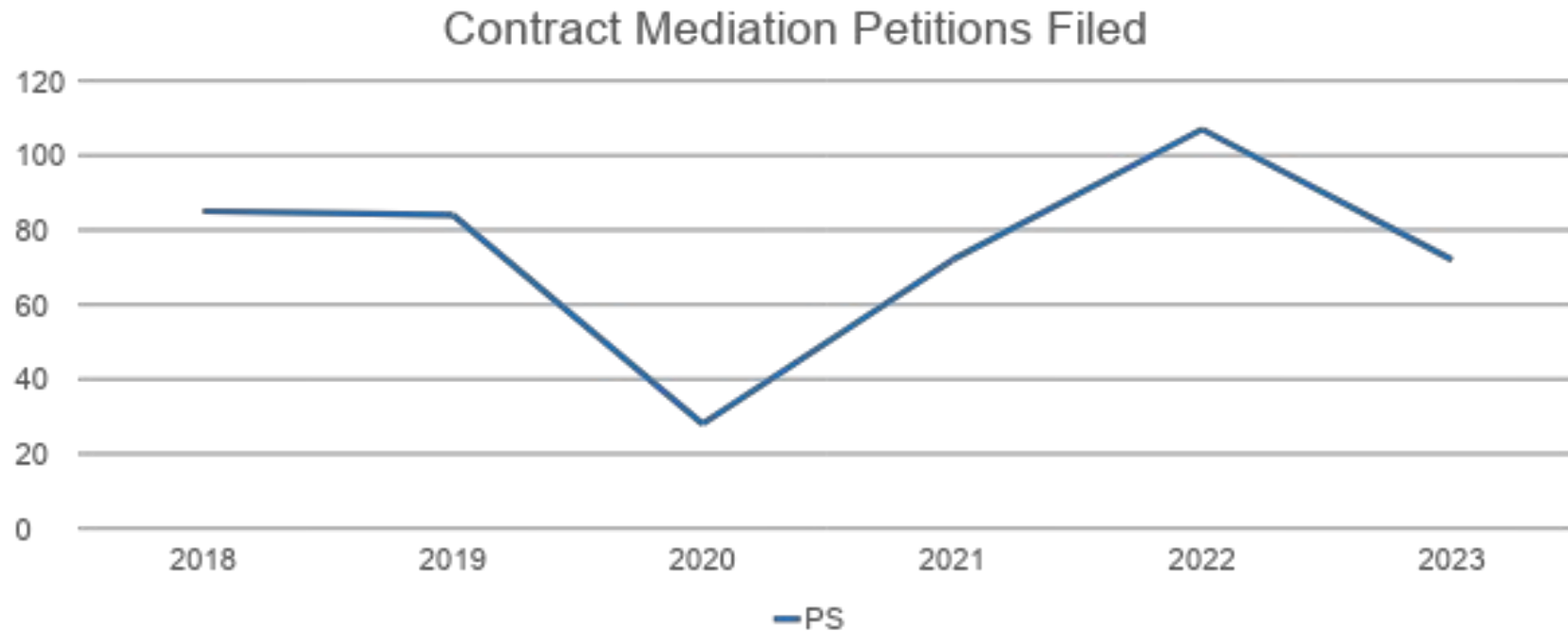
STATISTICS

Petitions for union representation have also returned to near pre-pandemic levels, however, Written Majority Representation Petitions have remained level with last year.



STATISTICS

Petitions for contract mediation dropped sharply during 2020, returned to greater than pre-pandemic levels in 2022, and returned to near pre-pandemic levels in 2023.



What's trending at DLR?

Teacher Strikes:

- There were several decisions on teacher strikes in 2022 (Haverhill) and that has continued in 2023 (Woburn).
- The most recent is a November 9, 2023, Strike Ruling against the **Andover Education Association** who held a strike vote the afternoon of the DLR strike investigation to go on strike “immediately”
- In September 2023, the CERB issued a Ruling on a strike petition filed by the Newton School Committee
- The CERB concluded that the **Newton Teachers** engaged in an unlawful strike when they boycotted a district-wide meeting on the educator’s first workday of the 2023-2024 school year. However, the NTA did not engage in and were not engaged in a strike, work stoppage, slow down or other withholding of services by remaining silent during certain staff meetings.

Representation/Clarification/Amendment Petitions:

- Increase in Representation and CAS petitions
 - Somerville 311 operators
 - Somerset Schools PT cafeteria workers
 - Medford – City Clerk
 - AFSCME – seeking to represent ADAs
 - Sienna Farms – noteworthy as 1st petition for traditional farmworkers that DLR has ever received. In this case, however, referred petition to NLRB to determine jurisdiction.



CERB Decisions

WARNING: Think Twice About Involuntarily Transferring “Active” Union Presidents

In **City of Newton and Newton Police Superior Officers Association, Mass Cop Local 401** (MUP-18-6946, MUP-19-7379, February 22, 2023) the Hearing Officer dismissed a consolidated complaint that alleged the City violated 150E when it took three separate adverse actions against the Union President in retaliation for this engaging in protected concerted activity. The adverse actions were: involuntarily transferring Babcock from his day shift position in the Traffic Bureau to a night shift position in the Patrol Bureau (MUP-18-6946); denying his request to attend a specialized Search Warrant course (MUP-19-7379); and not selecting Babcock for a Sergeant Specialist position (MUP-19-7379). While the parties’ contract provides the City the right to transfer employees when in the best interest of the City, there was no evidence that the City had ever transferred a sergeant or a lieutenant from a specialty position. The Union appealed the dismissal of all three counts and the City cross appealed certain findings. The CERB reversed the Hearing Officer’s dismissal of the involuntary transfer but affirmed the dismissal of the other two counts. The CERB found that a reasonable person in the Union President’s shoes would view a sudden transfer from six years of working on a day shift with weekends and holidays off, to a night shift position with a schedule that could routinely include working weekends and holidays, to be a material and objective change sufficient to constitute an adverse action.

Union’s Obligation To Respond To Information Request Parallels That Of An Employer

In **Malden Police Patrolmen’s and Malden Superior Officers and City of Malden** (MUPL-19-7698 & MUPL-19-7699, August 15, 2023), the CERB Reversed a Hearing Officer Decision In Part with its finding that the Union violated the law by failing to make a reasonable effort to search for responsive records within their exclusive possession and control. The City had requested records relating to the establishment or modification to detail rates by the Detail Board to ensure it was correctly paying unit members in accordance with the parties’ collective bargaining agreement. The City has no direct or indirect representation on the Detail Board; all the members are Union presidents or their designees, or union members elected by other union members. The City provided ample evidence that the Detail Board conducted business by text and personal emails, none of which the City had access to. The Unions argued that they had no control over the Detail Board or its records, but the CERB rejected this argument noting that there was no way to distinguish between Detail Board records and union records since union officials and their designees had exclusive control and access to the responsive records. The CERB chided the Unions for making no attempt to search for any responsive records and stressed that the Unions had a duty to make a reasonable effort to search for records in their possession or control and that they failed to carry out that duty.

Hearing Officer Decisions

Failure to Execute A Final Settlement After Reaching Agreement = Repudiation

In **Commonwealth of Massachusetts, Department of Corrections and Service Employees International Union, Local 509** (SUP-20-8162, January 17, 2023) the hearing officer found that the DOC violated the law when it failed to reduce the final settlement agreement to writing and execute it. “Where the parties had a meeting of the minds on all terms of the settlement agreement, the Law recognizes it as effective and enforceable.”

Request for Mediation ≠ Impasse

In **Bristol County Commissioners and OPEIU, Local 6** (SUP-20-8269, June 16, 2023), the issues were whether the Employer I) implemented a last best offer during successor negotiations when the parties were not at impasse in violation of Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law; II) refused to participate in DLR mediation in violation of Section 10(a)(6) and, derivatively, Section 10(a)(1) of the Law; and III) refused to bargain at a November 2020 meeting in violation of Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law. The Hearing Officer found that the Employer violated the Law on all counts. Based upon the totality of the circumstances, he concluded that the parties were not at impasse where the Union sought to continue bargaining and the record indicated that further movement was possible. **The hearing officer rejected the Employer’s contention that the Union’s request for mediation freed it declare bargaining finished and implement its last offer.** The Employer’s refusal to mediate and bargain also violated the Law. The Employer was ordered to restore the status quo ante and resume bargaining and mediation upon demand. The Employer was ordered to maintain the economic benefits resulting from its unlawful implementation of the “last best” offer pending the conclusion of bargaining, and to make a bargaining unit member whole for lost wages that resulted from the unlawful implementation.

Springfield School Committee Did NOT Violate The Law When It Changed Manner and Location Union Reps Meet With Teachers

In **Springfield Education Association & Springfield School Committee** (MUP-18-6667, October 28, 2023) the hearing officer found that the school committee had not violated the law as alleged. There were two issues: (1) whether the school committee violated the law by unilaterally changing, in five schools, the manner and location where union representatives may meet with teachers; and (2) whether the school committee violated the law when the Superintendent and various principals told Association representatives that they could not walk about the building seeking meetings but allowed them to meet teachers in the teachers’ room/lounge/lunchroom.

DLR Miscellaneous Rulings and Litigation Summary

MISCELLANEOUS RULINGS:

Andover School Committee and Andover Education Association, 49 MLC 245, MUP-21-8668 (February 24, 2023). The CERB found that the Hearing Officer did not abuse her discretion by refusing to amend a complaint to add general allegations regarding use of paid union leave that were not alleged in the complaint.

Board of Higher Education, SUP-23-10090 (September 14, 2023) (unpublished complaint and partial dismissal). The Investigator dismissed an allegation that the Employer was required to bargain over its decision to require campus police to wear body cameras. The Investigator did, however, issue a complaint alleging that the Employer had unlawfully failed to bargain prior to implementation over the impacts of the decision on bargaining unit members' terms and conditions of employment.

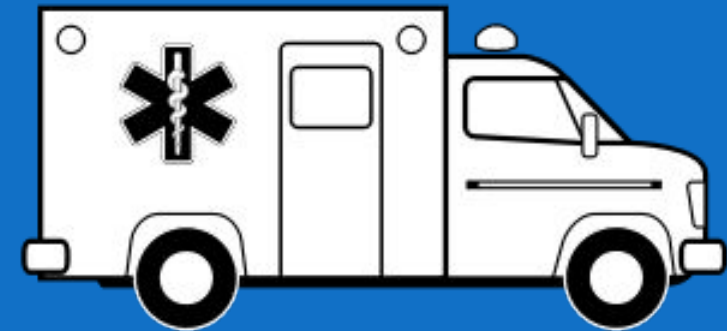
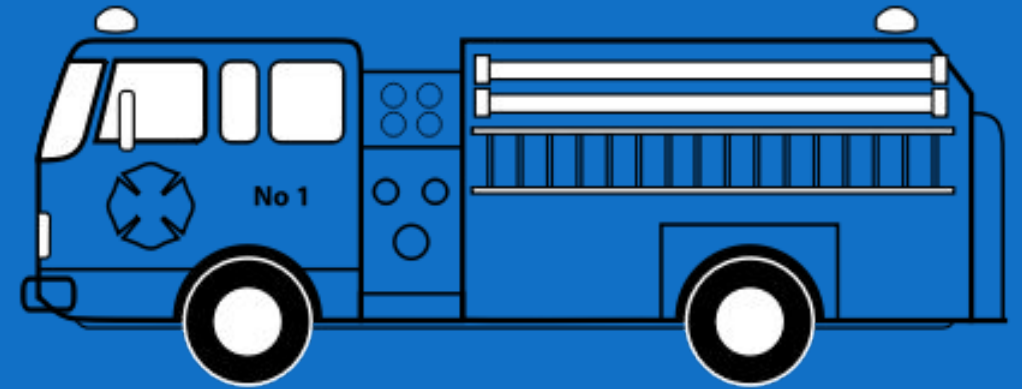
LITIGATION SUMMARY:

Boston Firefighters Union, Local 718 v. City of Boston, 491 Mass. 556 (2023) (SJC-13347) SJC decision in City of Boston vaccine mandate case, adopting the CERB's rationale that a public employer's decision to impose a vaccine mandate was not a mandatory subject of bargaining but fell within the zone of managerial authority concerning public health and safety.

City of Chelsea v. NEPBA, 291 Mass. 426 (2023) (SJC-13331), SJC decision holding that a successor union is entitled to "step[] into the shoes of its predecessor" and enforce an arbitration provision in a collective bargaining agreement negotiated by its predecessor.

Civil Service Commission (CSC)

STATISTICS, CSC “HYBRID” PROPOSAL, AND
DECISIONS



STATISTICS

2023 Calendar Year Statistics – Highlights

- The Civil Service Commission received 234 new appeals in 2023 and closed out 265
- The open case inventory of appeals as of December 31, 2023 is 172
- 6 appeals have been pending before the Commission for more than 12 months as of December 31, 2023
- Average age of a pending appeal is 18 weeks as of December 31, 2023 (compare: 46 weeks (2018); 35 weeks (2021); 34 weeks (2022)).

Total Appeals Pending (2006 -2022) as of:

2006	2009	2012	2015	2018	2019	2020	2021	2022	2023
813	220	179	90	175	190	156	158	103	72

Total Appeals Pending for more than 12 months (2006 -2021) as of:

2006	2009	2012	2015	2018	2019	2020	2021	2022	2023
550	98	46	27	60	71	76	33	25	6

AGENCY UPDATES

CIVIL SERVICE LEGISLATIVE PANEL

As part of the 2020 Police Reform Law, a special commission was formed to study Civil Service in Massachusetts. In April 2022, the commission issued a report (available on the MMA website). The commission was reconvened on December 12, 2023, to hear an initial reform proposal for a new “hybrid” pathway. On January 10, 2024, the committee met again and endorsed the concept of the hybrid proposal and cadet modification.

COMMISSIONER S

- Christopher C. Bowman, Chair
- Shawn C. Dooley, Commissioner (**NEW**)
- Angela C. McConney, Commissioner (**NEW**)
- Paul M. Stein, Commissioner
- Kevin M. Tivnan, Commissioner

CSC Bypass Decisions

Conditional Offers Should Not Be Issued Until All Relevant Non-Medical Information Has Been Evaluated

In *Luis E. Cotto v. City of Taunton*, 36 MCSR 103 (3/9/23) the Commission upheld a bypass for original appointment based on a recent OUI and numerous traffic violations, despite procedural errors in the hiring process, and rejected a secondary justification that Appellant failed a new Taunton Police Department (“TPD”) sit-up requirement. Similarly, in *Edwin Concepcion v. Department of Correction*, 36 MCSR 138 (4/20/23), the Commission upheld a bypass for original appointment based on non-medical reasons after a conditional offer was granted where there was no evidence of medical discrimination. In both cases, the Commission identified the need going forward, to first complete all portions of a non-medical background investigation prior to issuing a conditional offer of employment, which triggers a medical and psychological evaluation. Massachusetts and federal law prescribe that a firm “bona fide” conditional offer based on an evaluation of “all relevant non-medical information” is necessary **before a candidate can undergo medical or psychological screening**. Adhering to the law and specifically the guidelines put forth by the MCAD ensures that employers do not gain access to a candidate’s sensitive medical information and that candidates are not subjected to inherently invasive medical and psychological evaluations unless necessary. “Put another way, if a candidate is going to be rejected for employment regardless of the outcome of the medical and psychological evaluations, then the candidate should not be required to undergo those evaluations.” *Ortiz v. Department of Correction*, 33 MCSR 19 (2020).

Commission upholding bypasses for “lack of veracity” but falling short of saying a candidate was “untruthful”

The Commission appears to be making a deliberate decision to avoid confirming claims that a candidate has been “untruthful” and is instead upholding bypasses based on “lack of veracity” and “evasiveness” likely to preserve candidates’ ability to apply for police positions in the future. See *Natalie Lima v. City of Somerville*, 36 MCSR 155 (May 4, 2023) and *Johnny Denis v. City of Somerville*, 36 MCSR 304 (May 5, 2022) for examples of how the Commission is handling this issue. Notwithstanding this, Appointing Authorities should continue to identify untruthfulness as an issue if it was a reason for a bypass, however, to bolster its position, appointing authorities are reminded that they should cite every good faith justification in the bypass letter when bypassing a candidate.

CSC Discipline Decisions

Firefighter Termination Upheld Based On History of Sick Leave Abuse, Absenteeism, Inefficiency And General Apathy Towards Department. In *Firefighter J v. City of Taunton*, 36 CMR 147, the Commission adopted, in part, a tentative decision by a DALA Magistrate upholding the termination of the appellant firefighter (hereinafter “FF”) for a history of repeated infractions during his 14 year-career with the fire department that included abuse of sick time, absenteeism, inefficacy, and general apathy towards the Department. The Magistrate found that the City met its burden by showing that there was indisputable just cause for FF’s termination. In addition, the Magistrate noted that FF’s alcoholism was the root of his attendance problems and that the evidence supported the conclusion that FF was still habitually using intoxicating liquors to excess, and was therefore disqualified from holding a civil service position, pursuant to G.L. c. 31, s. 50 (“no person habitually using intoxicating liquors to excess shall be appointed to or employed or retained in any civil service position.”) The Commission agreed that there was just cause to terminate FF, noting that the City was “exceptionally patient in dealing with the FF’s numerous infractions.” However, the Commission rejected the Magistrate’s finding that G.L. c. 31, § 50 formed a basis for FF’s termination because the City did not cite G.L. c. 31, § 50 as a reason for its decision to terminate.

Commission upholds six-month suspension and demotion for Fire Captain with history of flouting attendance and shift swap abuse as well as exaggerating injuries while on sick leave, simultaneously conducting side business. In *Robert Brown, Jr. v. City Of Chelsea*, 36 MCSR 217 (July 13, 2023), the Commission upheld a six-month suspension and demotion from Captain to rank and file firefighter after finding a persistent pattern of attendance issues, culminating in an unjustified refusal to return to work on limited duty, by claiming, contrary to the medical evidence, he was unable to perform clerical desk duties with accommodation for his condition. The Commission agreed with the City’s findings that the Fire Captain’s actions constituted insubordinate conduct unbecoming of a fire service officer that rose to the level of gross misconduct because of his supervisory rank and that while on injured leave he simultaneously pursued his own private business and personal affairs that involved arduous physical activity.

The case is a good example of the issues that arise when an employee who is on injured leave, pursuant M.G. c. 41 s. 111F, also maintains a separate job. Although in many municipalities, outside employment for police and fire is addressed through collective bargaining, it’s prudent for an appointing authority to have a clear policy on when outside employment is allowed, including while the employee is on injured leave.

CSC Discipline Decisions

Police officers do not maintain unfettered free speech rights when weighed against the potential harm or harm caused to the Department and public as whole. In *Rafael A. Roca V. City Of Holyoke*, 36 MCSR 172 (May 18, 2023) the Commission affirmed the termination of a police officer who made a YouTube video and gave media interviews in which he made unsubstantiated accusations against fellow officers and the police chief. The Commission found that the officer's speech was not protected by the First Amendment because it was disruptive to the police department and harmed its ability to function effectively. The officer, a Black and Hispanic veteran who was appointed as a patrol officer by the City of Holyoke Police Department in March 2016, had no history of discipline before March 8, 2021. On March 7, 2021, Roca uploaded a forty-three-minute video on his personal YouTube channel, identifying himself as a police officer of the Holyoke Police Department. The video began with Roca stating he was making the video "to expose the corruption, and the lies, and the injustice" within the Department, further accusing the Department of "corruption and racism...for as long as anybody can remember."

The Commission found that the consequences of the Roca's actions were "not only real, but demonstrably harmful to the efficiency to be expected of a police department" and that discharge was an appropriate response. Roca's accusations against his co-workers and superiors of engaging in unlawful activity, without any basis, substantially undermined the trust and comradery needed for effective policing and seriously disrupted the efficient day-to-day operations of the department. Furthermore, the allegations in the video also forced the Department to divert resources and officers away from public safety efforts to investigate wild accusations.

Roca's case raises important questions about the balance between free speech and the need for discipline and order in police departments. On the one hand, police officers should be able to speak out about wrongdoing within their departments. On the other hand, the department has a legitimate interest in maintaining order and cohesion. In Roca's case, the Commission found that the department's interest outweighed Roca's First Amendment rights.

See also, Brenda James v. Boston Police Department, 36 MCSR 329 (October 19, 2023) for another Commission decision upholding the termination of an officer for making false reports and giving false testimony regarding an incident with a superior officer.

CSC Decisions - Other

In a case of first impression, the Commission finds that HRD had acted arbitrarily in refusing to restore police officer to the sergeants' eligibility list that was still active after he resigned to work in another jurisdiction but was reinstated a few months later. In *Nicholas Goon v. Human Resources Division*, 36 MCSR 274 (August 24, 2023), the Commission ruled that an officer who had temporarily disqualified himself from promotion by leaving the Department should have been placed back on the eligible list for promotion after he was reinstated as police officer with the Brookline Police Department. Goon was appointed as a police officer to the Brookline Police Department ("BPD") on November 9, 2016. On December 15, 2020, HRD established the eligible list for police sergeant with the BPD that expired December 15, 2023. On August 31, 2022, Goon resigned from the BPD to become a police officer in another state. In November 2023, Brookline notified HRD of Goon's resignation and HRD removed Goon from the eligible list.

In January, 2023, Goon returned to Brookline and was reinstated as an officer with the BPD. After being reinstated, Goon emailed HRD requesting to be placed back on the eligible list. HRD responded indicating that to be placed on any promotional list in the future, he would have to take the promotion exam again. BPD Chief Jennifer Pastor also inquired and HRD reiterated its position, adding that because of Goon's break in service he would need to participate in the next promotional exam. Goon and the BPD agreed that had he not been removed from the eligible list he would be ranked in the first position either by himself or tied with one other candidate.

In reviewing this situation, the CSC found that HRD had a consistent and reasonably justified practice of removing someone from an eligible list for promotion after the individual is separated from employment through resignation, transfer, or layoff. However, HRD was unable to provide any evidence that it had a consistent practice of denying requests for restoration on an eligible list after reinstatement with the appointing authority. The CSC further found that, contrary to the procedural requirements of G.L. c. 31, § 3, and basic merit principles of fair procedure, HRD effectively adopted a rule that was not approved by the Commission and was not published or practiced in any manner that would give notice to Goon or any other candidates. Further HRD failed to identify how its proposed rule relates to merit, performance, seniority, or any other aspect of an employee's ability to perform the duties of the promotional position. The Commission rejected HRD's proposed rule and ordered that Goon be restored to his position on the eligible list for promotion to police sergeant in Brookline.



Peace Officer Standards and Training (POST) Commission

Statistics, COVID-19, and
decisions

POST COMMISSION

The POST Commission has mandates to (1) develop certification standards in collaboration with the Municipal Police Training Committee, (2) certify officers, school resource officers (SRO) and law enforcement agencies, (3) receive, investigate and adjudicate complaints, and (4) maintain a public database with certain disciplinary records and certification status of officers.

- **CERTIFICATION STATUS:** On January 5, 2024, POST released a new database showing the current certification status of law enforcement officers. The database contains 17,178 records from 438 agencies. The data is current as of January 5, 2024.
- **SCHOOL RESOURCE OFFICERS:** POST began certifying SROs in October of 2023. As of January 5, 2024, 149 individuals had completed the required training and obtained an SRO certification.
- **DISCIPLINE RECORDS:** On August 22, 2023, POST released a database of law enforcement officer disciplinary records, which was one of the major directives of the police reform act. The earliest disciplinary record reported is from December 1984 and the data is updated regularly. The upcoming release will include cities like Brookline, Everett and Cambridge who were not in the original release because their information contained at least one form of validation error. They expect to regularly update this database.
- **NEW PORTALS:**
 - POST deployed a NEW Agency Portal in May 2023 – certification information is entered directly into the portal; this year notices will be sent directly to officers regarding recertification and agencies can access reports in the portal.
 - POST is rolling out a new portal for submitting complaints, incident reports and I/As. The rollout of the new portal is envisioned for February, but it is undecided whether it will be a soft launch (a few agencies) or wide launch.

OFFICER STATUS COUNTS

AS OF JAN. 5, 2024



16,181

CERTIFIED

284

CONDITIONALLY
CERTIFIED

206

NOT CERTIFIED

272

NOT CERTIFIED
-ON LEAVE

9

DECERTIFIED

45

SUSPENDED

4

ADMIN. SUSPENDED

149

SRO CERTIFIED

Officer Status Counts (status definitions)

- ❑ **Not Certified:** Officer has not satisfied all recertification requirements (i.e., failed to complete the required training, is out on excused leave, or has a disciplinary matter)
- ❑ **Not Certified (Excused Leave):** Officer is on extended leave (medical, military, family or administrative) and has not met recertification requirements
- ❑ **Conditionally Certified:** Officer has met some recertification requirements, and must satisfy all requirements within a specified time frame
- ❑ **Decertified:** A decertified officer cannot work for a law enforcement agency in any capacity.
- ❑ **School Resource Officer: (SRO)** An individual who is either a duly sworn municipal police officer with all necessary training and up-to-date certificates, including special SRO certification as required by M.G.L. c. 6E, § 3, or an officer appointed by the chief of police who is specially charged with providing law enforcement, promoting school safety and security services to elementary and secondary public schools, and maintaining a positive school climate for all students, families, and staff.
- ❑ **Administrative suspension:** All officers included in this list have been administratively suspended for failure to complete the required MPTC training

POST COMMISSION – Future Certification Policy Matters

1. The Second Round of Recertification begins July 2024

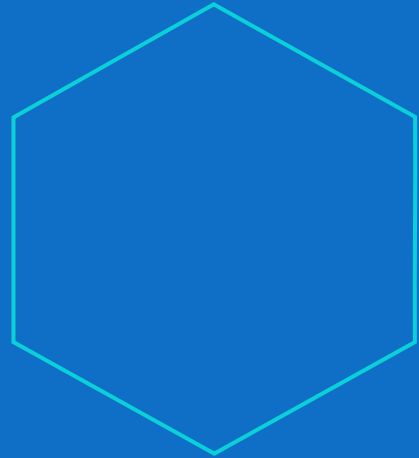
- All officers as of July 1, 2021, were certified by statute. The initial recertification followed the following schedule:
 - Officers A-H were recertified as of July 1, 2022
 - Officers I-P were recertified as of July 1, 2023
 - Officers Q-Z were recertified as of July 1, 2024
- Officers with last names A-H will be required to be recertified on by July 1, 2025. They have begun thinking about the second round of certification. The process for recertification need not be the same as the initial certification. POST has broad discretion; has developed a subcommittee of the Commission to discuss the associated policy questions.

2. Physical & Psychological Fitness

- Initial certification by POST ascertained whether an agency had ever administered a physical and psychological evaluation to a given officer.
- The statute assumes an on-going requirement of physical and psychological fitness
- Improving officer health and wellness is a broad topic.

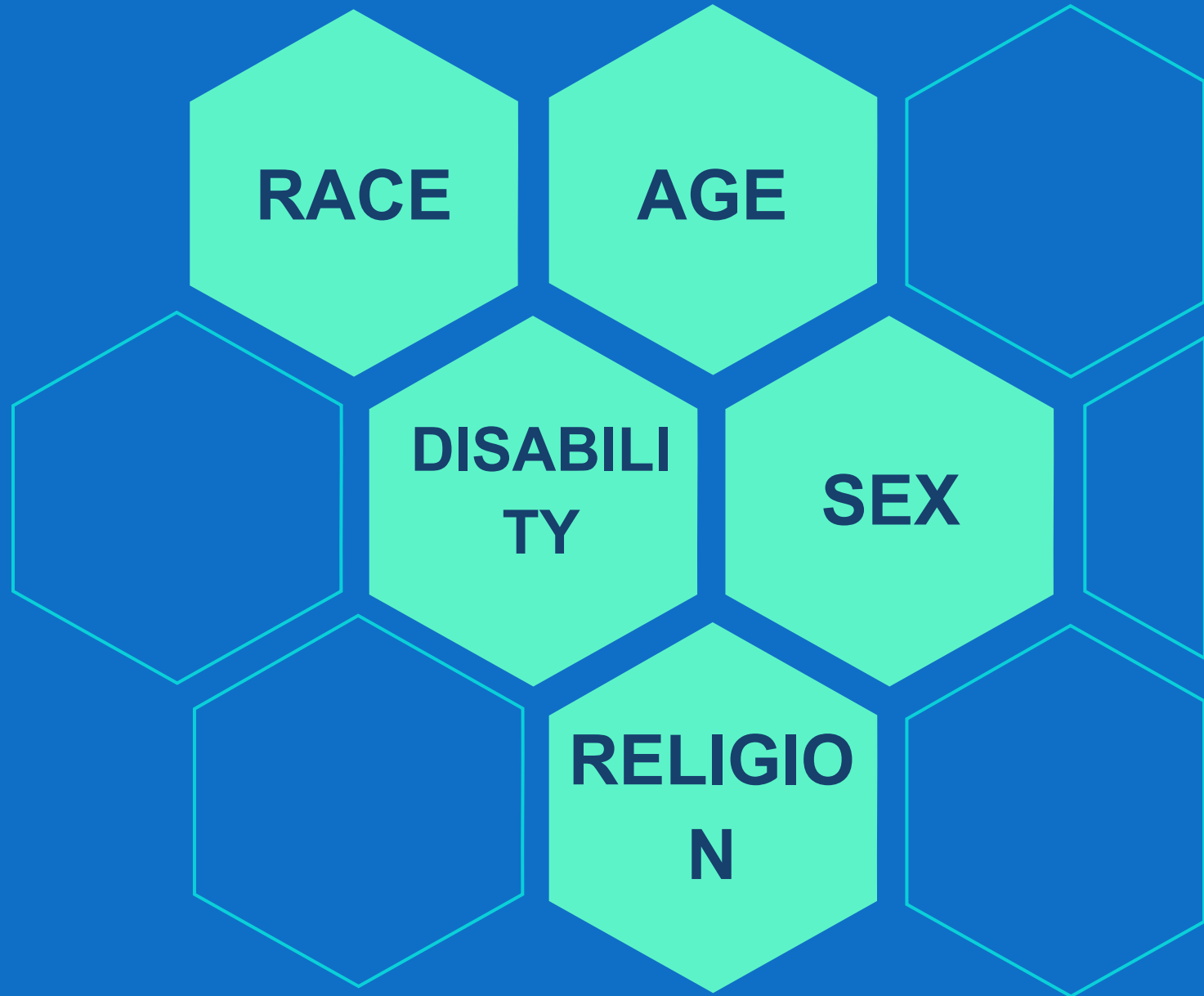
3. Certification of Agencies

- Chapter 6E s. 5 states that all law enforcement agencies shall be certified by the Commission
- Areas for certification of agencies include all major areas of policing (use of force, code of conduct, response and investigation procedures, internal affairs and complaint investigation, etc.)
- In consultation with MPTC, establish minimum certification standards for LEA's



Massachusetts Commission Against Discrimination

Statistics, COVID-19, and decisions

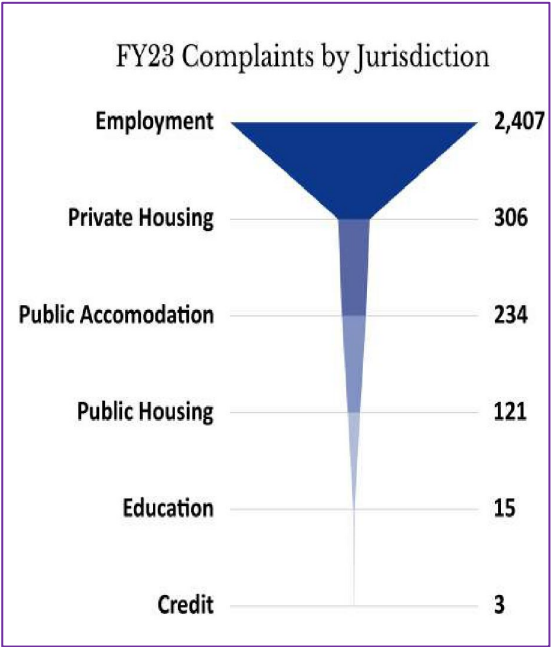
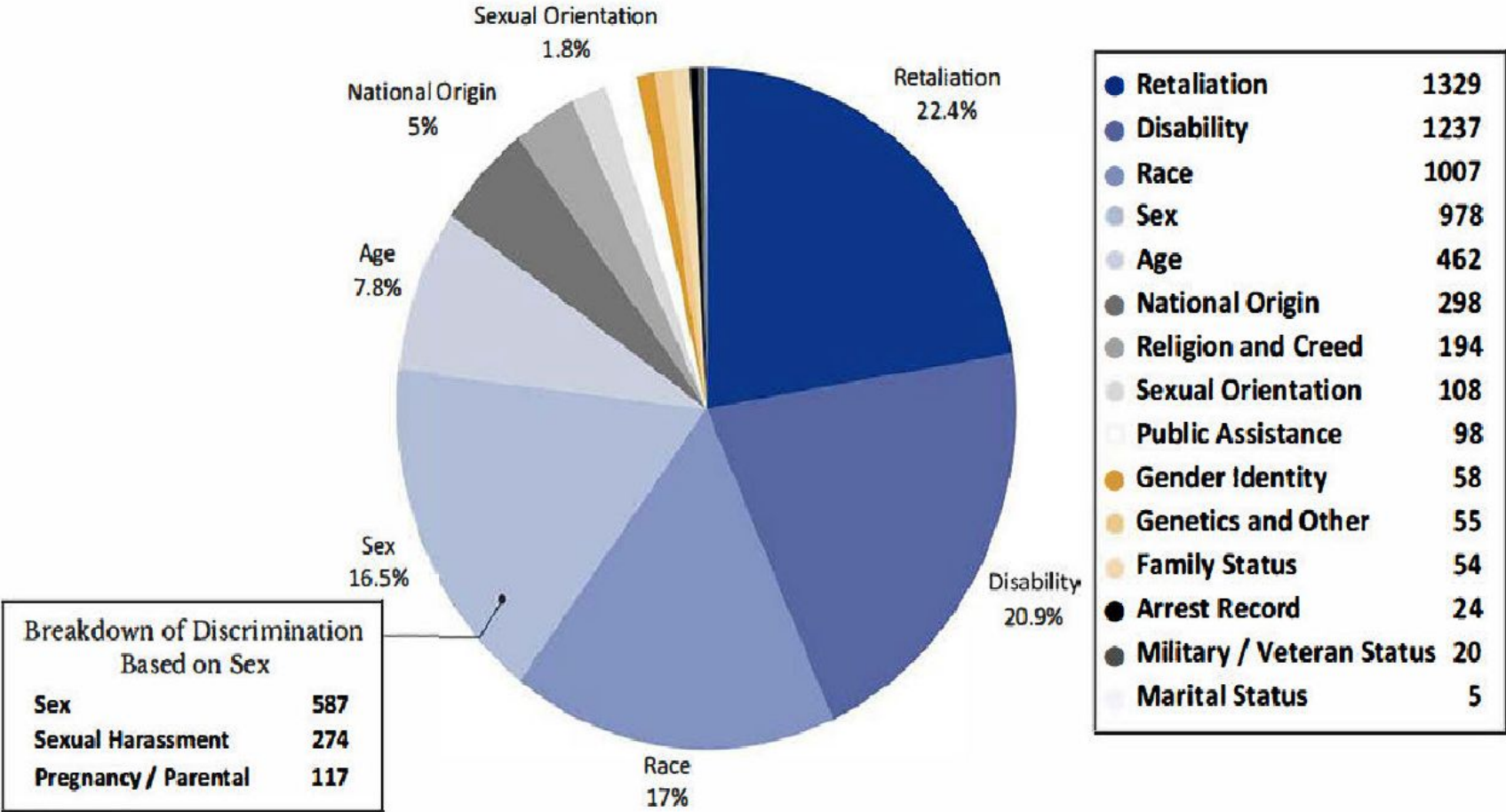


AGENCY UPDATES

- Last fiscal year the Commission was focused on rebuilding and fortifying the agency following several years of setbacks and delays caused by COVID-19 and staffing challenges. In recent years, MCAD saw an unprecedented reduction in staff through attrition from retirements and low staffing levels during the pandemic that resulted in an unavoidable increase to the agency's backlog—both investigative and post-probable cause cases—and longer wait times for the parties.
- At the end of FY2023 and heading in 2024, the agency remains a behind but is recovering in terms of staffing and things are trending in a positive direction.
- In terms of tips or guidance, the advice is to read the regulations and follow instructions. Individuals/agencies will be better off if they do that.
- In May, 2023, MCAD published Parental Leave Guidelines, as well as a brief guide to the Massachusetts Parental Leave Act which includes updates on the guidelines, notice, Q & A, and a summary page.

AGENCY UPDATES

FY23 Breakdown of Complaints of Discrimination by Protected Category



Source: MCAD FY23 Annual Report

AGENCY UPDATES

Annual Inventory of New Complaints



Annual Inventory of Backlog Cases



MCAD DECISIONS

REASONABLE ACCOMMODATIONS

In *Massachusetts Commission Against Discrimination, et al. v. Organogenesis, Inc* (No. 17-BEM-01945), the hearing officer determined that the employer unlawfully discriminated against an employee when it refused to grant the employee's request to work remotely two days a week as a reasonable accommodation. The employee suffered from chronic pain in her neck, shoulders, back, hips and feet, which was exacerbated by her 1-2 hour commute to work. Based on the severity of her pain, the employee asked her supervisor if it would be possible to work remotely. The supervisor told her that remote work would not be possible.

The employee was subsequently diagnosed with fibromyalgia and approached her supervisor again with a doctor's note and request to work remotely two days a week. The supervisor notified HR about the request and indicated his opposition. A representative from human resources met with the employee but was not very friendly and informed the employee that her accommodation request was denied. Instead, the HR representative offered the employee a change in schedule, a stand-up desk, and access to a conference room in which to stretch. A few months after this meeting, the employee resigned and filed a complaint with MCAD alleging disability discrimination, including failure to provide a reasonable accommodation and constructive discharge.

The Hearing Officer concluded that the employer's refusal to grant the employee a remote work schedule constituted a failure to provide a reasonable accommodation to her disability in violation of M.G.L. c. 151B, § 4(16). Employers have an obligation to provide an accommodation that is effective for its purpose. It does not need to be the best accommodation or the one requested, but it needs to address the underlying concern or issue. The offer of a place to stretch and a stand-up desk did not address the root cause of the employee's pain, namely her commute. The hearing officer concluded that a partial remote work schedule would have been a reasonable accommodation and would not constitute an undue hardship. In fact, there was evidence that the employee had worked from home in the past and that much of the employee's job required her to work independently using electronic databases, email and telephone. The Hearing Officer found that the lack of an interactive process and failure to accommodate resulted in severe, long-lasting distress and granted the employee \$75,000 in emotional distress damages.

MCAD Decisions

RETALIATORY TRANSFER

In *MCAD and Yerica Santiago v. Caregivers of Massachusetts, Inc.*, 17-SEM-02059 (January 2023), the hearing officer found that Caregivers transferred Santiago in retaliation for her complaints of sexual harassment and that the employer should be held liable under G.L. c. 151B and be ordered to pay lost wages in the amount of \$132,560, plus \$30,000 in emotional distress damages.

Santiago alleged that Caregivers transferred her to the Worcester office in November 2016 in retaliation for complaining verbally, in June 2016, and in writing, in September 2016, of sexual harassment. The relationship between the decision to transfer Santiago and her previous complaints of sexual harassment can be found in the abrupt manner that she was informed of the transfer decision and the timing of the decision. Santiago was informed one business day prior to her transfer and was not informed why she was being transferred, or how long her relocation to the Worcester office would continue. While Caregivers alleged that it had nondiscriminatory, operations needs that required Santiago's transfer to Worcester, the hearing officer determined otherwise. "Ms. Santiago has shown by a preponderance of the evidence...that Caregivers acted with retaliatory intent when it transferred her to Worcester. ...If there was truly an operational need for Ms. Santiago to work in Worcester, Ms. Santiago would have been given personnel files to work on and the infrastructure necessary to do her work, even in the first week of the transfer. I find Caregivers liable for transferring Ms. Santiago in retaliation for her internal complaints of sexual harassment."

In addition to the retaliatory transfer, Caregivers failed to engage in an interactive process with Santiago when she requested an accommodation after the birth of her child. Instead of engaging in an interactive process to identify an accommodation, Caregivers terminated Santiago's employment on March 24, 2017. While employers are not required to provide employees with an indefinite leave of absence, they are obligated to conduct a reasonable investigation, including an interactive process, designed to identify the precise accommodation required and in this case, the amount of time Ms. Santiago needed to return to work. They failed to do so.



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- Director Roberts, DLR
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- Antoine Fares, Ian Keefe, and Phil Collins at Norris, Murray & Peloquin

For more detail on DLR and CSC cases, please see our firm's Management Commentary in Landlaw's publication of these cases.

NOTICE: This presentation and the content herein does not purport to give legal advice for any specific situation, or, come to think of it, even a general situation. The information provided is for informational and training purposes only.

QUESTIONS?



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