

MASSACHUSETTS MUNICIPAL ASSOCIATION LABOR LAW UPDATE

UPDATE ON LABOR COURT CASES AND LEGISLATION



SEDER & CHANDLER, LLP.
Worcester | Westborough



PRESENTER :
D.M. MOSCHOS, ESQ.

LEGISLATION 2020-2023

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LEGISLATION



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CASE LAW



Lawless v. Town of Freetown, 63 F.4th 61 (2023)



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Barron v. Kolenda, 203 N.E.3d 1125 (2023)



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Fairhaven Housing Authority v. Commonwealth, 493 Mass. 27 (2023)



CASE LAW



Owens v. Malden, 85 F.4th 625 (1st Cir. 2023)



Cafarella vs. Massachusetts Inst. of Tech., D. Mass., No. 1:23-CV-11032-IT (Nov. 2, 2023)



Chelsea vs. New England Police Benevolent Ass'n, Inc., Local 192, Mass., No. SJC-13331 (2023)



John Moriarty & Associates, Inc. v. Zurich American Insurance Co., 102 Mass. App. Ct. 474 (2023)



Tesla, Inc. v. Nat'l Labor Relations Bd., 73 F.4th 960 (5th Cir. 2023)



Town of Brookline v. Brookline Police Union, Norfolk Superior Court Docket No. 2382CV00594 (June 30, 2023)



LEGISLATION



CROWN ACT

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 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.

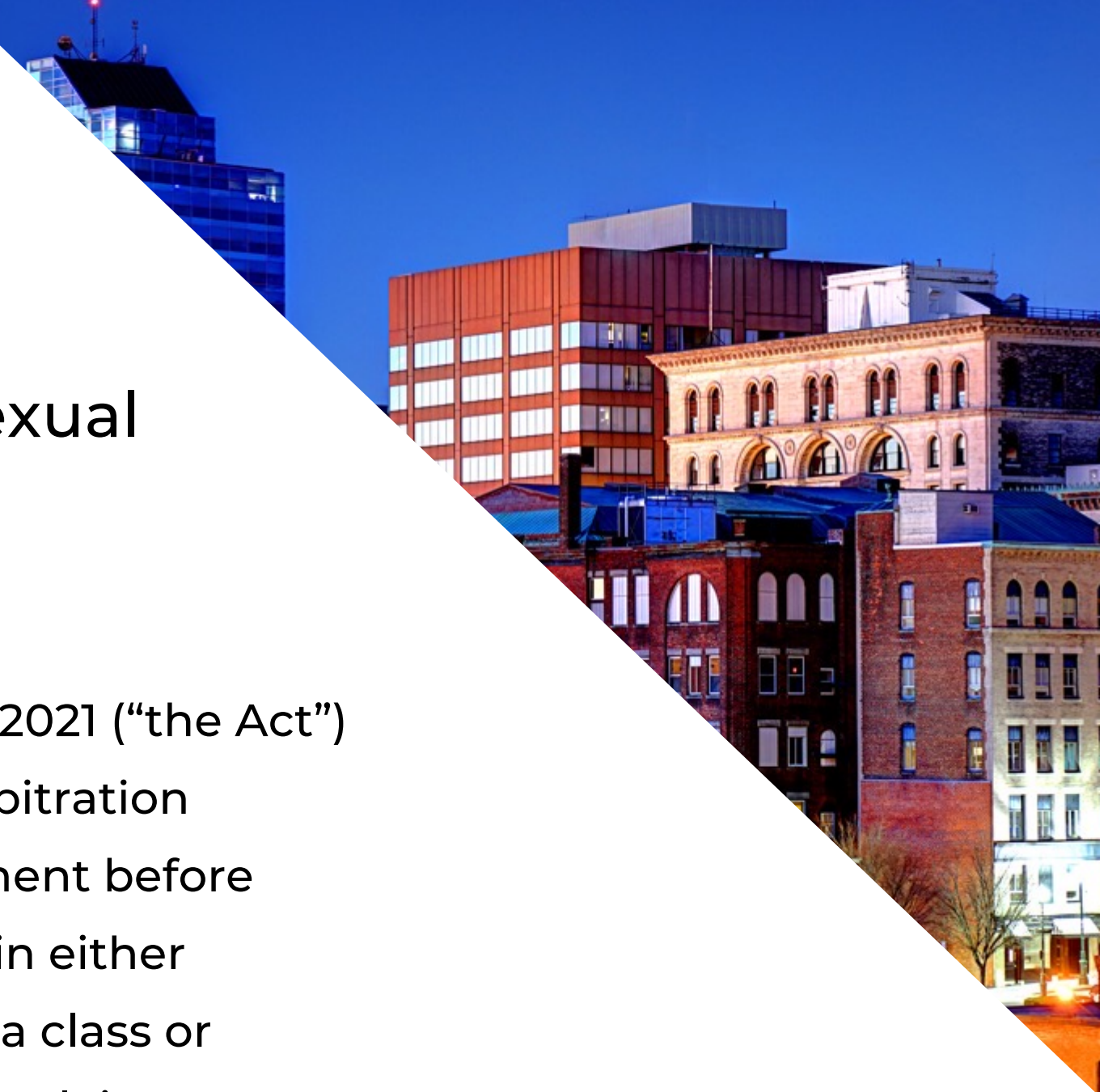


LEGISLATION



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 before 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

On December 1, 2020, the Legislature adopted the Police Reform Act (the “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 the use of non-police resources, including mental health experts, as part of a crisis-response team.

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

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



Pregnant Workers Fairness Act

The Federal Pregnant Workers Fairness Act overlaps significantly with the Massachusetts Pregnant Workers Fairness Act. Both protect current and prospective employees from pregnancy discrimination, and require employers to reasonably accommodate pregnant employees. Federal protection for breastfeeding employees primarily falls under the PUMP Act with some overlapping protection for reasonable accommodation for breastfeeding parents falling under the Federal Pregnant Workers Fairness Act. The Massachusetts Pregnant Workers Fairness act protects both pregnant and breastfeeding employees, including accommodating space for breastfeeding employees to breastfeed or express milk.

The Federal Pregnant Workers Fairness Act does not cover employers with fewer than fifteen employees, but the Massachusetts Pregnant Workers Fairness Act covers employers with six or more employees. Employees have 300 days to file a discrimination complaint under both the Massachusetts and Federal Pregnant Workers Fairness Acts.

LEGISLATION



Proposed Civil Service Reform Legislation

There is proposed legislation that would significantly impact the hiring of civil service personnel such as police officers and fire fighters. Due to the developing nature of this matter, municipalities should keep a close watch on this legislation as it progresses. The following is a reproduction in full of the summary of the proposal and the frequently asked questions for the proposal produced by the Special Commission reviewing Civil Service.



LEGISLATION



Proposed Civil Service Reform Legislation Summary of Proposed Changes to the Civil Service Law to Implement Hybrid Proposal and Streamlining of Cadet Options

Overview of Hybrid Proposal

The product of months of discussion with numerous stakeholders proposed new sections 6D and 59A through 59D of the civil service law (Chapter 31), and if enacted, would expand the pool of candidates for entry-level civil service police and fire positions by allowing cities and towns to consider candidates who may not have taken a traditional civil service examination, which is currently administered annually, alongside those who applied through the current civil service pathway.

Streaming of Initiation of Cadet Programs

Proposed new Sections 59B and 59C would create a streamlined process for launching more police and fire cadet programs. These programs have proven invaluable in diversifying some large and small police departments. Currently, though, a special act of the Legislature is required for cities and towns to secure civil service tenure for entry level police officers and firefighters appointed through an approved cadet program.



LEGISLATION



Proposed Civil Service Reform Legislation FREQUENTLY ASKED QUESTIONS

1. Will the hybrid proposal, if enacted, form part of the civil service system?

Yes. Hybrid is being incorporated into the existing civil service system and civil service law. While the local appointing authority will be able to consider additional candidates coming through the hybrid process, all candidates must be appointed consistent with basic merit principles and a vetting process that, beginning with a background check, will be identical to that employed with traditional candidates.

2. What safeguards will be in place to ensure that the hybrid option is not misused and that appointments are made through a fair and impartial process free of favoritism and nepotism?

Appointing authorities will have to enter into a binding memorandum of understanding (MOU) with the state's Human Resources Division (HRD) to: (1) abide by basic merit principles in the hiring process; and (2) adopt stringent anti-nepotism, anti-patronage, and anti-favoritism commitments. HRD and the Civil Service Commission will ensure compliance and curtail hybrid-appointment privileges if abuses arise. Also, all other state and federal laws, including those related to anti-discrimination and ethics safeguards, must continue to be adhered to regarding all appointments.



LEGISLATION



Proposed Civil Service Reform Legislation FREQUENTLY ASKED QUESTIONS

3. Would local appointing authorities have to place candidates who enter through a hybrid portal in any rank order?

No.

4. How many candidates could be appointed through the hybrid hiring process?

Up to 50% of candidates may be appointed under proposed hybrid legislation. For those local appointing authorities with a cadet program, no more than 50% of candidates can be appointed through hybrid and cadet pathways, combined.

5. How would hybrid impact statutory protections such as those in place for veterans?

By retaining the traditional civil service model for at least 50% of all appointments, the statutory protections for veterans and other will remain in place for all those who come through the exam based civil service portal. While no statutory protections for veterans and others restrict the selection of candidates who enter through the hybrid portal, appointing authorities may consider military service as a positive factor when considering hybrid candidates.



LEGISLATION



Proposed Civil Service Reform Legislation FREQUENTLY ASKED QUESTIONS

6. Will candidates who enter through a hybrid portal be treated the same as all other candidates once appointed?

Yes. Once appointed, all candidates, after serving the required probationary period, become permanent, tenured civil service employees, with all the traditional civil service protections.

7. Will an appointing authority be able to appoint a police officer or firefighter from a non-civil service community through a hybrid hiring process?

Yes. Proposed hybrid legislation would allow local civil service appointing authorities to appoint incumbent police officers and firefighters from noncivil service communities. This is limited to entry-level positions only, however and the candidate would not bring any seniority with them upon appointment.



LEGISLATION



Proposed Civil Service Reform Legislation FREQUENTLY ASKED QUESTIONS

8. Would the hybrid proposal impact promotional appointments?

No. Hybrid pertains to entry-level, original appointments only. By incorporating hybrid into the existing civil service system, promotional appointments are preserved by allowing all candidates (regardless of hiring pathway) to be granted the same civil service seniority date and eligibility to sit for future civil service promotional examinations.

9. May a local appointing authority, at its discretion, administer a local qualifying examination for those candidates who enter through the hybrid portal?

Yes, the civil service appointing authority has the option to administer a local qualifying examination.

10. Would candidates considered through a hybrid hiring process have the right to file a bypass appeal with the Civil Service Commission if not appointed?

No. Since candidates considered through the initial hybrid-side process are not ranked, there is no resulting bypass if not appointed.



LEGISLATION



Proposed Civil Service Reform Legislation FREQUENTLY ASKED QUESTIONS

11. What would happen if a hybrid police officer candidate were to fail to graduate successfully from a police academy?

As mandated by current law, this candidate could not be sworn in as a police officer and could not perform the regular duties of a police officer.

12. Can a candidate who appears on a traditional eligible list or certification be considered as a hybrid appointment?

Yes. So long as the appointing authority stays within the 50% cap, it could consider a candidate placed lower on a traditional eligible list an appoint that candidate through the hybrid selection process.



CASE LAW



Lawless v. Town of Freetown, 63 F.4th 61 (2023)

Board Members entitled to qualified immunity in town employee's due process violation claim alleging board members decided to fire her before her pretermination disciplinary hearing.

Lawless v. Town of Freetown, 63 F.4th 61 (2023)



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.

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



CASE LAW



Tetrault v. Board of Selectmen of Lynnfield,
103 Mass. App. Ct. 330

The strong chief statute does not grant fire chiefs lifetime appointments.

Tetrault v. Board of Selectmen of Lynnfield, 103 Mass. App. Ct. 330



CASE LAW



Barron v. Kolenda, 203 N.E.3d 1125 (2023)

The Supreme Judicial Court of Massachusetts held that a municipal civility code requiring “respectful and courteous” remarks at public meetings violated the First Amendment and articles of the Massachusetts Declaration of Rights and that board members were not entitled to qualified immunity.

Barron v. Kolenda, 203 N.E.3d 1125 (2023)



CASE LAW



Lanctot v. Brewster, 102 Mass. App. Ct. 739 (2023), review denied, 492 Mass. 1106 (2023)

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)



CASE LAW



Fairhaven Housing Authority v. Commonwealth, 493 Mass. 27 (2023)

The Massachusetts Supreme Judicial Court held that the Department of Housing and Community Development did not act outside of its statutory authority when it conditioned funding for Local Housing Authorities on compliance with its guidelines for executive director contracts.

Fairhaven Housing Authority v. Commonwealth, 493 Mass. 27 (2023)



CASE LAW



Owens v. Malden, 85 F.4th 625 (1st Cir. 2023)

The First Circuit found that the City of Malden did not violate G.L. c. 44 § 53C nor the Wage Act because Malden police officers received a higher rate of pay than the collective bargaining agreement required.

Owens v. Malden, 85 F.4th 625 (1st Cir. 2023)



CASE LAW



Cafarella vs. Massachusetts Inst. of Tech., D. Mass.,
No. 1:23-CV-11032-IT (Nov. 2, 2023)

Evidence that employer school discouraged former employee from reapplying after former employee filed wage act and discrimination claims was sufficient to establish a prima facie case for the adverse employment action of failure to rehire under Massachusetts and Federal law.

Cafarella vs. Massachusetts Inst. of Tech., D. Mass., No. 1:23-CV-11032-IT
(Nov. 2, 2023)



CASE LAW



Chelsea vs. New England Police Benevolent Ass'n, Inc.,
Local 192, Mass., No. SJC-13331 (2023)

The Supreme Judicial Court ruled that if a grievance occurred before a change in union representation, the employer must arbitrate it with the successor union based on the prior Collective Bargaining Agreement.

Chelsea vs. New England Police Benevolent Ass'n, Inc., Local 192,
Mass., No. SJC-13331 (2023)



CASE LAW



John Moriarty & Associates, Inc. v. Zurich American Insurance Co., 102 Mass. App. Ct. 474 (2023)

Massachusetts Appeals Court reversed Superior Court decision and held that an insurer that refuses to take action in defense of insured without a reservation of rights, when the insurer knew or should have known that the claim was covered, can be found to have breached its duty to the insured.

John Moriarty & Associates, Inc. v. Zurich American Insurance Co.,
102 Mass. App. Ct. 474 (2023)



CASE LAW



Tesla, Inc. v. Nat'l Labor Relations Bd., 73 F.4th 960
(5th Cir. 2023)

The Fifth Circuit reversed an NLRB decision holding that requiring employees to wear a uniform instead of a union t-shirt violated section 8(a)(1) of the NLRA.

Tesla, Inc. v. Nat'l Labor Relations Bd., 73 F.4th 960 (5th Cir. 2023)



CASE LAW



Town of Brookline v. Brookline Police Union, Norfolk Superior Court Docket No. 2382CV00594 (June 30, 2023)

Pending in the Norfolk Superior Court is an appeal by Town of Brookline of the award of a 4% Stipend for holding a certification from the POST Commission.

Town of Brookline v. Brookline Police Union, Norfolk Superior Court Docket No. 2382CV00594 (June 30, 2023)





D. M. Moschos, Esq.

Mr. Moschos is Chair of the firm's Labor & Employment Group, and is a member of the Litigation, Education & Corporate Law Groups.

(774) 243-9959

dmoschos@sederlaw.com

- Massachusetts Lawyers Hall of Fame (MA Lawyers Weekly) 2023
- 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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Seder & Chandler LLP

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