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LABOR LAW UPDATE
UPDATE ON LABOR COURT CASES AND LEGISLATION



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Presenter :

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CASE LAW



1. **Ababio v. Nike Retail Services, Inc., et al.**
2. **Raftery v. State Board of Retirement**
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LEGISLATION



1. Massachusetts Pay Transparency Act

On July 31, 2024, Governor Healey signed a new law providing for pay transparency, denominated as Chapter 141 of the Acts of 2024. This Act has two key provisions: (1) the posting of a disclosure of salary ranges for employees' job classifications; and (2) the filing of equal employment opportunity reports sent to the federal government, to also be filed with the Secretary of State on February 1.

i. The Posting of Salary Ranges

For employers of 25 or more employees, the law requires for each job posting it, shall include the annual salary or hourly wage range that the employer “reasonably and in good faith expects to pay for the position.” It appears that the salary range is the base wage for the position and does not include stipends and other pay benefits.

The posting requirement applies to the following activities:

- a. Any advertisement of a job posting for the recruitment of a specific position, whether completed directly by the Employer or by a third party for the Employer.
- b. In any offer of promotion, the employer shall provide the pay range for that position.
- c. For a transfer to a new position with different job responsibilities, the employer shall provide the pay range for the new position.
- d. The release of the pay range for a specific position to an employee holding the position or to an applicant for such position

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1. Massachusetts Pay Transparency Act

ii. Enforcement of the Pay Transparency Act

The statute provides exclusive jurisdiction for the enforcement of the law with the Attorney General and does not provide an employee with a private right of action against the employer.

Violation of this Act is subject to fines, with the first offense being a warning and subsequent offenses subject to monetary penalties. The Act does not authorize triple damages like the Wage Act.

iii. No Retaliation or Discrimination

The Act contains new retaliation and discrimination provisions protecting an employee who exercises their rights under the posting provisions of this Act.



2. Massachusetts Proposed Minimum Wage Increase

There are proposals in the Legislature to increase the state minimum wage from \$15/hour to \$20/hour. However, municipalities are not subject to the Massachusetts minimum wage, but rather the federal minimum hourly wage of \$7.25/hour.

LEGISLATION



3. New FLSA Overtime Regulations for Exempt Employees

The United States Department of Labor has adopted new regulations as of July 1st, 2024, regarding the salary weekly requirements for exempt employees. To be exempt from FLSA overtime rules, exempt employees must meet a salary and duties test. The new salary requirements are as follows:

- a. The salary requirement before July 1, 2024, was \$684 per week, which is equal to \$35,568 per year.
- b. Effective as of July 1, 2024, the minimum salary payment per week will be increased to \$844, or if annualized, will be equal to \$43,088.
- c. On January 1, 2025, the \$844 will be increased to \$1,128 per week or if annualized, will increase to \$58,656.
- d. In addition, the highly compensated employee duties exemption, which limits the number of duties requirements, has been increased from \$107,432 per year to \$132,964 per year, as of July 1, 2024, and will be increased to \$151,164 per year, effective January 1, 2025.
- e. Finally, the Department of Labor rules provide that the annual salary exemption will be reviewed in 2027, and every three years thereafter, in order to keep the figures updated for inflation.
- f. The Federal District Court of Texas has enjoined the enforcement of the Regulations pending the suit challenging the legality of the Regulations.

LEGISLATION



4. Changes to Massachusetts Paid Family Medical Leave Act

Effective January 1, 2026, the maximum weekly PFML benefit increased to \$1,230.39 per week. No Massachusetts city or town has adopted PFML due to the cost.



5. False Claims of Hours Worked by Law Enforcement Officer – G.L. c. 231, § 85BB

“A law enforcement officer . . . who knowingly submits to a state agency, state authority, city, town or agency. . . a false or fraudulent claim of hours worked for payment and receives payment therefor or knowingly makes, uses or causes to be made or used a false record or statement material to a false or fraudulent claim of hours worked for payment that results in a law enforcement officer receiving payment therefor or any person who conspires to commit a violation of this section shall be punished by a fine of 3 times the amount of the fraudulent wages paid or by imprisonment for not more than 2 years.”

LEGISLATION



6. Social Security Fairness Act

On January 6, 2025, President Biden signed the Social Security Fairness Act into law, officially repealing two tax provisions that had previously operated to reduce benefit payments for some public servants.

- a. The Windfall Protection Provision (WEP) reduced the Social Security benefits available to retirees who spent a portion of their career in the private sector in addition to a government job where Social Security was not intended as an element of their retirement income, such as the civil service retirement system.
- b. The Government Pension Offset (GPO) reduced spousal and survivor Social Security benefits in families with retired government workers.
- c. This reform will effectively increase Social Security benefits for millions of pensioners, some of whom could see their monthly benefits increase by up to \$500.



LEGISLATION



7. Violent Assault Disability Benefits for First Responders

On July 31, 2024, Governor Healey signed Chapter 149 of the Acts of 2024, An Act Relative to Disability Pensions and Critical Incident Stress Management for Violent Crimes (“Violent Assault Disability”). This Act creates an enhanced new type of G. L. c. 32, § 7 accidental disability retirement benefit for firefighters, emergency medical technicians, licensed health care professionals, and certain police officers who become permanently physically disabled with a catastrophic, life-threatening or life-altering bodily injury disability as the result of a Violent Act Injury by means of a dangerous weapon.

- a. The effective date of this Act is October 29, 2024, and the Violent Act Injury disability will be available to any member who qualifies and has not been approved for disability as of that date.
- b. Anyone who has previously been approved for disability is not eligible to have the provisions of this act apply to their retirement allowance and their benefit cannot be recalculated.



LEGISLATION



7. Violent Assault Disability Benefits for First Responders

i. Definition of “Violent Act Injury”

“Violent Act Injury” is defined in G.L. c. 32, § 1 as: “A catastrophic, life-threatening or life-altering and permanent bodily injury sustained as a direct and proximate result of a violent attack upon a person by means of a dangerous weapon, which is designed for the purpose of causing serious injury or death, including, but not limited to, a firearm, knife, automobile or explosive device.”

In order to qualify for a disability under the Violent Act Injury provision a member must demonstrate, and the retirement board must determine that all three of the following elements are established:

- a. That they suffered a catastrophic, life-threatening or life-altering permanent bodily injury;
- b. That the injury was the direct and proximate result of a violent attack upon a person, which means the injury must result from an intentional physical act, and not result from an accident or from negligence; and
- c. That the attack was by means of a dangerous weapon as defined in this statute – i.e., “designed for the purpose of causing serious injury or death.”



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7. Violent Assault Disability Benefits for First Responders

As the definition of a “Violent Act Injury” makes clear, this enhanced disability benefit is not for every instance in which a member suffers a disability in the line of duty. The definition clarifies that the permanent bodily injury must be of a catastrophic, life-threatening or life-altering nature. The definition states that the injury must be a permanent bodily injury and Section 2 of the Act amends paragraph (1) of Section 7 to make clear that the member must be physically unable to perform their essential duties. These two provisions mean that only physical injuries qualify a member for the Violent Act Injury disability. Therefore, psychological and emotional disabilities do not and will not qualify.

A catastrophic, life-threatening or life-altering injury must be something that goes beyond preventing a member from being physically able to perform the essential duties of their position (the current disability standard and still available to all). The Massachusetts Public Employee Retirement Administration Commission (PERAC) intends to initiate a regulatory process that will define these terms. Until that time, as an illustration, PERAC highlights the following example of the United States Department of Labor Office of Workers’ Compensation Programs definition of “catastrophic:”

...those in which the injured worker (IW) has sustained life-threatening injuries or the injury has resulted in extensive functional deficits where the medical recovery is expected to extend over a long or indefinite period of time (traumatic head or spinal cord injuries, severe

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7. Violent Assault Disability Benefits for First Responders

By no means are these the only examples of “catastrophic,” but this definition is included to illustrate the nature of injuries rising to this level.

In addition to requiring that the member suffer a catastrophic, life-threatening or life-altering permanent bodily injury that injury must be the result of a violent attack upon the member by the means of a dangerous weapon. A dangerous weapon in this statute is defined as a weapon “which is designed for the purpose of causing serious injury or death, including, but not limited to, a firearm, knife, automobile or explosive device.” Thus, an assault or violent attack on a member must be perpetrated by the use of a weapon which is designed to injure or kill, not simply an everyday item that is used in the attack. A member who is punched or kicked and sustains serious injury would not qualify for the enhanced disability under this provision because such an assault does not involve a dangerous weapon that was designed for the purpose of causing serious injury or death.

While an automobile is not designed for the purpose of causing serious injury or death, it is specifically listed in the statute. In order for an injury from an automobile accident to qualify under this statute, it must be demonstrated that the automobile was intentionally used in a violent attack upon the member. A typical automobile accident, or one



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7. Violent Assault Disability Benefits for First Responders

ii. Who Qualifies for The Violent Act Injury Disability?

Section 3 of Chapter 149 of the Acts of 2024 inserts a new clause (iv) into Section 7(2) of Chapter 32 that details the benefit amount and specifies the limited group of members who may qualify for consideration under the Violent Act Injury provision. That clause limits the potential candidates to the following:

Notwithstanding clauses (i) to (iii), inclusive, a yearly amount of pension for any firefighter, any call, volunteer, auxiliary, intermittent or reserve firefighter, any call, volunteer, auxiliary, intermittent or reserve emergency medical services provider who is a member of a police or fire department and who is not subject to chapter 152, any police officer, any auxiliary, intermittent, special, part-time or reserve police officer or any municipal or public emergency medical technician or licensed health care professional...

Accordingly, the Violent Act Injury is NOT available to all public employees. Indeed, the Violent Act Injury benefit is potentially available only to police officers, firefighters, EMTs and other licensed health care professionals. State Police do not qualify for the Violent Act Injury benefit because they do not retire under Section 7 of Chapter 32. State Police benefits are determined under Section 26 and no reference to the Violent Act Injury benefit was inserted into



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7. Violent Assault Disability Benefits for First Responders

iii. Benefits

A member found to be disabled under Section 7 receives an accidental disability retirement benefit that provides for a pension of 72% plus an annuity. Under the new Violent Act Injury provision, however, a member receives a benefit equal to 100% of the regular rate of compensation which would have been paid to the member had they continued in service at the grade held by the member at the time of their retirement. This 100% benefit includes all compensation, including stipends, that were being paid to the member on the date of injury and which were included as pensionable earnings. This 100% benefit is adjusted in the same manner as a Section 100 benefit and is payable to the member until their death or until they reach mandatory retirement age.

Upon retirement the member receives a lump sum payment from the retirement board equal to the member's total accumulated retirement deductions.

The statute further provides that, upon reaching the mandatory retirement age for the position, if applicable, the member's benefit must be reduced to 80% of the average annual rate of compensation paid to the member in the previous 12 months. This 80% amount will be adjusted annually by any cost-of-living increases ("COLAs") that a retirement board approves. This benefit level will continue until the member's death. If there is no mandatory retirement age then the benefit does not get reduced from the 100% level but continues

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7. Violent Assault Disability Benefits for First Responders

If the member predeceases their spouse, prior to the mandatory retirement age, then the spouse is entitled to 75% of what the member would have received had they not died. The spouse's benefit, upon the date the member would have reached mandatory retirement, becomes 75% of the benefit the member would have received at the time they reached mandatory retirement (75% of the 80% benefit). This amount would then be increased by any COLAs that a retirement board approves. If the member was in a position that was not subject to a mandatory retirement age then the benefit for the spouse will be 75% of the amount that the member would have received had they not died.

Upon the death of the member the spouse shall be eligible for the 75% specified in Section 7. The Violent Act Injury disability specifies which benefits a surviving spouse is eligible to receive and thus a surviving spouse is not eligible for a Section 9 benefit. Under Chapter 32 a member or beneficiary is not eligible to receive two benefits on account of one member.

If the member and their spouse predecease their children and any of the member's children are unmarried, under the age of 18 or under age 22 and full-time students, or are over age 18 but physically or mentally incapacitated from earning income on the date of the member's retirement, such children shall be entitled to a benefit equal to 75% of the amount of the pension payable to the member at the time of their death. This benefit would be split equally between all eligible children. When a child is no longer eligible for their portion of the

LEGISLATION



7. Violent Assault Disability Benefits for First Responders

Upon retirement under the Violent Act Injury provision the member's benefit will be paid as an Option A allowance. The member's accumulated total accumulated deductions are returned to the member and therefore there can be no Option B beneficiary. Likewise, the Violent Act Injury provision specifies benefits that are available to beneficiaries such as the spouse and children, and, therefore, precludes the naming of an Option C beneficiary.

iv. Post-Retirement Earnings

Members retired under the Violent Act Injury clause have different earnings limitations than those established by Chapter 32 Sections 91(b) and 91A. A member retired under the Violent Act Injury may earn up to $\frac{1}{2}$ of the amount of their retirement allowance if they work in the public sector. They are prohibited from doing any work in a position classified in Group 3 or Group 4. Members may be employed in the private sector or by a private entity without any earnings or hours restrictions, provided that service is not devoted to the Commonwealth, or a city, town, district or authority, therein.

v. Critical Incident Stress Management

A new subdivision (7) has been added to Section 7 by Chapter 149 of the Acts of 2024 which requires that those members eligible for the Violent Act Injury disability shall be provided with notice of critical incident stress management debriefing programs, including the location and times for the programs and contact information. This is the responsibility of the employer and does not require any action by the

LEGISLATION



7. Violent Assault Disability Benefits for First Responders

vi. How Should Boards Handle Applications for a Violent Act Injury Disability?

The Member's Application for Disability Form and the Employer's Involuntary Disability Application will be updated to provide for the option of a member or the employer to apply for an accidental disability with a Violent Act Injury. Once the Board receives an application in which the member or the employer has selected this option, the Board will process it like any other disability, by gathering the same information and any forms that are required for a Section 7 ADR application.

If a Board receives an application for voluntary or involuntary ADR that does not check off the Violent Act Injury provision, but the Board determines that the situation would merit consideration of the application under that provision, then the Board should discuss it with the member or employer and amend the application if warranted.



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7. Violent Assault Disability Benefits for First Responders

Likewise, if a Board receives an application for ADR in which the member or employer checks off the Violent Act Injury provision, but the Board has reason to believe that the member may not be eligible due to the above-listed restrictions of the provision, then the Board should notify the member or the employer of those restrictions and the member or employer will have the opportunity to adjust the application accordingly.

Unlike the majority of G.L. c. 32, Section 7 applications, Violent Act Injury applications **MUST** include Board Findings of Fact, which must be submitted to PERAC for its 30-day disability review process. Findings of Fact for a Violent Act Injury application are essential to ensure that the injury sustained qualifies for the enhanced benefits of this provision. The Findings of Fact should detail the injury sustained and how it was catastrophic, life-threatening or life altering, the dangerous weapon that was used in the assault and the circumstances of such assault, and any other information the Board relied upon in determining that the member qualified for the Violent Act Injury provision.



CASE LAW

1. **Ababio v. Nike Retail Services, Inc., et al.,**

In these consolidated actions, the plaintiffs brought putative class claims against four employers—Nike, Bloomingdales, Warby Parker, and Walmart—for alleged violations of the Massachusetts Lie Detector Statute

Ababio v. Nike Retail Services, Inc., et al., Mass. Sup. Ct. – Suffolk, C.A. No. 2584CV01134-BLS-1 (Nov. 25, 2025)



CASE LAW

2. Raftery v. State Board of Retirement

A former state trooper sought judicial review of the state retirement board's decision that he must forfeit his pension benefits as a result of his plea of guilty to a federal criminal charge of embezzlement, four months after retiring from the state police, for falsely reporting that he had worked over 700 overtime hours, for which he received over \$50,000 in unearned overtime pay.

Raftery v. State Board of Retirement, 496 Mass. 402 (Aug. 7, 2025)



CASE LAW

3. Cannata v. Town of Mashpee

A former firefighter for the Town of Mashpee, who left his employment in 2004 as a deferred retiree, brought suit against the town for its refusal to re-enroll him in the town's health insurance plan after he started collecting retirement benefits upon turning fifty-five years old in 2021.

Cannata v. Town of Mashpee, 496 Mass. 188 (Jun. 18, 2025)



CASE LAW

4. Nunez v. Syncsort Inc.

The plaintiff brought a Wage Act claim against his former employer, alleging that the defendant failed to remit a payment owed to him under a retention bonus agreement on his last day of employment.

Nunez v. Syncsort Inc., 496 Mass. 706 (Oct. 22, 2025)



CASE LAW

5. Andover Educ. Ass'n v. Comm. Emp. Rels. Bd.,

A teacher's union challenged the Commonwealth Employment Relations Board's (CERB) finding that the union had engaged in a prohibited labor practice by refusing to bargain in good faith. Three weeks after executing a collective bargaining agreement with the employer, the Andover school committee, the union began advocating for additional compensation through the town meeting process, thereby bypassing the school committee in an effort to obtain what it could not obtain through negotiations.

Andover Educ. Ass'n v. Comm. Emp. Rels. Bd., 106 Mass. App. Ct. 18 (Sep. 9, 2025)



CASE LAW

6. **City of Newton v. Comm. Emp. Rels. Bd.,**

The City of Newton sought review of the CERB's decision that the city had retaliated against a police sergeant for engaging in union activities by transferring him from working the day shift in the traffic bureau to the night shift in the patrol division.

City of Newton v. Comm. Emp. Rels. Bd., 496 Mass. 82 (May 22, 2025)



CASE LAW

7. Adams v. Superintendent, Dep't of State Police

A former state police trooper requested review of his suspension without pay pending the outcome of an internal affairs investigation into discrepancies concerning the trooper's overtime pay. The Appeals Court determined that the Colonel of State Police Department's decision to adopt the duty status board's recommendation that the trooper be suspended without pay was not arbitrary or capricious because the duty status hearing was properly conducted and there was ample evidence to support the trooper's suspension after the hearing.

Adams v. Superintendent, Dep't of State Police, 105 Mass. App. Ct. 611 (Jun. 27, 2025)



CASE LAW

8. Kay v. Town of Concord

Rejecting the “proposition that communications not directly including an attorney are per se unprotected by the attorney-client privilege” and holding that emails between town manager and select board regarding legal dispute that were not sent to town’s attorney did not preclude finding that they were protected from disclosure under Public Records Act by the attorney-client privilege; the town manager and members of the select board were agents of the town, and when they communicated amongst themselves for the purpose of obtaining legal services, such communications were eligible for protection by the attorney-client privilege.

Kay v. Town of Concord, 105 Mass. App. Ct. 366 (Mar. 28, 2025)



CASE LAW

9. Brandao v. Boston Police Dep't

Police officer appealed decision of Civil Service Commission upholding police department's termination of officer's employment without pretermination process as a non-tenured officer. Department filed cross motion for judgment on the pleadings.

Brandao v. Boston Police Dep't, 105 Mass. App. Ct. 187 (Jan. 16, 2025)



CASE LAW

10. **Tetreault v. Selectmen of Lynnfield**

After town gave its fire chief notice of its intent not to renew his contract at end of his fifth year as fire chief, fire chief filed a wrongful termination action, seeking a judgment declaring that he had been granted a lifetime appointment unless removed for cause.

Tetreault v. Selectmen of Lynnfield, 102 Mass. App. Ct. 330 (2023)





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- **Conducted more than 600 labor negotiations in both the public and private sectors.**
- **Elected to Massachusetts Lawyer's Weekly Hall of Fame, 2023**
- **Fellow of the College of Labor and Employment Lawyers which includes the leading labor lawyers in the United States.**
- **Participated in drafting the Massachusetts Public Sector Labor Statute and the State**



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