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SJC Overrules CERB: No Need to Bargain Retiree Health Insurance Contribution Rates

It has been four years since the CERB took the view that municipal employers have a duty to bargain health insurance contribution rates of *certain retirees,* i.e. current employees who will retire in the future. Under CERB's logic, an employer could unilaterally alter the contribution rate of persons *already retired*, but not for persons *about to retire* or any other *future retiree.* In the 2011 *City of Somerville* case, CERB ordered the City to restore previous payments (80%, 90%, or 99%) towards health insurance for persons who retired after July, 2009. To its credit, the City appealed and the Supreme Judicial Court ("SJC") took jurisdiction.

The SJC decision issued on February 3, 2015, firmly concludes that the Legislature intended in M.G.L. c. 32B to leave the determination of retiree contribution rates to cities and towns. Since the local option statutes in c. 32B permitting contributions are not listed in c. 150E, §7(d) as statutes which can be superseded by a collective bargaining agreement, **retiree contribution rates are not a mandatory subject of bargaining**. The Court reasoned:

> In our view, the Legislature conferred authority on municipalities to decide whether and how much to contribute to retirees' health insurance premiums in recognition of the fact that as public employers, they must balance the needs of their retired workers with the burden of safeguarding their own fiscal health, thereby ensuring their ability to provide services for all of their citizens.

In articulating that view, the Court cited two cases our firm handled: *Twomey v. Middleborough,* 468 Mass. 260 (2014), which affirmed the power of the Board of Selectmen, not Town Meeting, to set the contribution rate for retirees, and *Yerestsky v. Attleboro,* 424 Mass. 315 (1997), which overrode a Superior Court decision requiring a 90% contribution rate to retirees in HMOs, leaving the choice of employer contribution, between 50% and 90%, to the political process.

Massachusetts Expands Maternity Leave Act to Male Employees

On January 7, 2015, in one of his last acts as governor, Deval Patrick signed into law "An Act Relative to Parental Leave", which expands the Massachusetts Maternity Leave Act ("MMLA") (M.G.L. c. 149, §105D) and makes it gender neutral. The MMLA requires employers with six or more employees to provide full-time female employees of more than three months with eight weeks of job-protected leave in connection with the birth or adoption of a child. The new Parental Leave Act (the "Act"), which becomes effective April 7, 2015, extends this right to both male and female employees. In addition, it provides for leave in the event a child is placed with an employee pursuant to a court order.

The Act also clarifies employees' job protection rights. As before, with limited exception, employers are required to restore employees taking leave to the same or a similar position when they return to work following a parental leave. Under the new Act, however, an employer's job protection obligations are no longer limited to the eight weeks provided under §105D. Effectively reversing the Supreme Judicial Court's 2010 decision in *Global NAPs, Inc. v. Awiszus*, which held that the MMLA's protections only applied to the first eight weeks of an employee's employer-approved leave, the Act provides that if an employee is allowed to take more than eight weeks of parental leave, the employer must provide written notice to the employee if taking leave beyond eight weeks will result in the denial of reinstatement or a loss of other rights or benefits. Employers are required to provide this notice prior to the start of an employee's parental leave, and again prior to any extension of that leave beyond eight weeks.

The Parental Leave Act maintains that leave provided under §105D may be paid or unpaid at the discretion of the employer. It also provides that if two parents work for the same employer, they are only entitled to a total of eight weeks for the birth or adoption of the same child.

Employers should review and revise their current policies to ensure compliance with the new law. Even employers who currently provide some form of parental leave or paternity to male employees should review their policy to make sure that both male and female employees have the same parental leave opportunities. Failure to provide employees with the same parental leave opportunities is likely to violate state and federal discrimination laws.

Contact your CLP attorney with any questions or concerns regarding the new law or existing policies.