



CLP NEWS

Tim D. Norris

will be presenting at the International Municipal Lawyers Association (IMLA) 2017 Mid-Year Seminar in Washington D.C. on April 21, 2017 on the topic: “Navigating the Fair Labor Standards Act with Police and Fire Employees.”

Topic highlights: special issues in applying the FLSA to police and fire employees, such as the legal and practical aspects of using an extended work period under Section 207(k) with an emphasis on common pitfalls and ways to avoid potential liability, FLSA application to small departments, and different ceilings on accrual of compensatory time. If you have questions regarding this topic, please reach out to Tim to help navigate your way.

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Employers Must Bargain Over Impacts of NARCAN Policy to Save Lives

In Town of Natick and Natick Patrol Officers Association (February 17, 2017), a Department of Labor Relations (DLR) Hearing Officer held that the Town failed to bargain over the impact of its decision in April, 2014 to adopt a policy requiring police officers to administer NARCAN. The Union demanded to bargain over both the decision and its impacts. At two bargaining sessions in July and December 2014, the Town stated it would not bargain over the decision to implement NARCAN, and rejected a Union proposal for a NARCAN stipend. The Union filed a charge alleging a failure to bargain over the decision and its impacts.

The Hearing Officer held there was no bargaining obligation regarding the decision, stating that “the Town’s decision to require police officers to administer NARCAN to combat overdoses as First Responders was a level of services decision regarding the deployment of public safety personnel made in furtherance of [a] public health policy.” However, the Hearing Officer held that the Town was required to bargain over the impact, as the administration of NARCAN impacted police officers’ job duties and workload, including: specialized training, officers had to evaluate whether a victim should receive NARCAN, what amount they should receive, and had to offer medical advice to those who refused medical care. The Town was ordered to bargain in good faith to resolution or impasse over the impacts of its NARCAN policy, but the Union did not seek a cease and desist/return to status quo order.

In a recent Somerville JLMC award, the panel awarded the City’s proposal to require police officers to administer NARCAN and rejected the Union’s quest for a *quid pro quo* payable in U.S. dollars. The panel noted that NARCAN is prevalent and now taught at the Police Academy and is an accepted responsibility of First Responders.

Almost three years since Governor Patrick declared opioid abuse a public health crisis, and 2½ years since NARCAN training has been required of all First Responders (police and fire), we have a 55 page decision from a hearing officer about impact bargaining. In the meantime, dozens of unions representing public safety professionals have embraced these life-saving techniques, learned with minimal training, without seeking a stipend, many without formal bargaining, and only a few bent on litigating how many meetings need to be held to address any concerns.

**Could Consideration of Sick Leave Use In Denying A Position
 Constitute Retaliation Under the FMLA?**

The legal standard for liability for FMLA retaliation --what a plaintiff must prove -- is the subject of a recent U.S. District Court decision in Gourdeau v. City of Newton. The Court rejected the plaintiff’s FMLA retaliation claim that she only had to prove that her use of FMLA leave was a “negative factor” in the City’s decision not to hire her as a temporary Traffic Officer Specialist. Instead, the Court adopted the City’s standard, consistent with anti-discrimination statutes, that she would have to prove she would have been hired “but for” her use of FMLA leave. Employers should be careful, in evaluating sick leave use as a criterion for promotion or transfer, not to deny a position because of valid use of sick leave under the FMLA.