



**PUBLIC
SPEAKING
ENGAGEMENT**

Phil Collins

will present the Labor Law Update at the 39th MMA Annual Meeting and Trade Show in Boston on Friday, January 19th. at 2:00 p.m.

Don't miss out on the synopsis of key legal points from 2017's most pertinent decisions of the JLMC, Civil Service, DLR and the MCAD cases.

**POLICIES CAN
BE CONTRACTS**

Can a personnel policy which accords preference for new positions, to employees whose positions have been eliminated, constitute a binding, enforceable contract, even if the employee was terminated for cause under applicable Civil Service statutes? In Adamson v. Civil Service, a superior court judge ruled that it could, depending on the facts and circumstances.



**Comparable Work Statute Poses Immediate
Challenges For Cities, Towns, And School Committees**

Should male school custodians and female cafeteria workers receive the same remuneration for their employment? Twenty years ago, a closely divided Supreme Judicial Court (Jancey v. School Committee of Everett) [421 Mass. 4821 (1995) and 427 Mass. 603 (1998)] interpreted the Massachusetts Equal Pay Act not to require such equal pay because the substantive content of the jobs was so different. Now, under the Pay Equity Act, a statute becoming effective on July 1, 2018, the substantive content standard is gone and what remains is whether the two jobs are “substantially similar” in the following four aspects: skill, effort, responsibility, and working conditions. If those tests are met, there are six specific nondiscriminatory reasons for different compensation which avoid liability: (1) seniority; (2) merit; (3) commissions; (4) geographic location; (5) education, training and experience, if reasonably related to the job; and (6) travel (if a regular and necessary condition of the job).

Reasons for Concern About Liability.

1. The basis for the 1995 – 1998 decision in Jancey v. School Committee of Everett is no longer applicable. The trial court judge in that case had found the “skill/effort/responsibility/working conditions” of the two jobs comparable. Under the “substantially similar” standard, the two jobs would likely be deemed comparable in 2018.
2. Differences in pay and benefits due to decades of collective bargaining is not a defense.
3. In determining discrimination on the basis of gender in paying “wages,” all forms of remuneration count, not just hourly or annual wage rates. This broad definition will complicate analysis of the value of health insurance, vacation and other leaves, bonus and incentive payments and the like.
4. The definitions of “comparable work” and “working conditions” leave ample room for disputes. And no definition is supplied to define what percentage of a job’s occupants must be one gender to be considered predominantly one gender.
5. Extraordinary damages. Liability is doubled: Liquidated damages equal to the shortfall in “wages” are automatically granted. And, reasonable attorney’s fees and costs are automatically paid by the defendant if the plaintiff wins a judgment. . .not if the employer prevails.
6. No MCAD or administrative filing is required: One or more employees may initiate action in court, and class action status is easily achieved. Liability will be measured three years back; because each pay check creates a new cause of action, statutes of limitations defenses won’t prevail.

Safe Harbor For Avoiding Or Limiting Liability. Employers who complete a self-evaluation of its pay practices (within three years and prior to the filing of the lawsuit), and “demonstrate progress” toward eliminating wage differentials based on gender for comparable work, have a defense to liability if the self-evaluation is “reasonable in scope and detail”; but even incomplete self-evaluations can avoid liquidated damages, but not liability.

What To Do. Initiate the self-evaluation, starting with job descriptions, but always looking at actual duties and functions and the frequency of each essential task, as well as environmental circumstances and hazards.

Contact your CLP attorney with questions or for assistance with your self evaluation.