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New Rules At JLMC For Police And Fire Interest Arbitration

The JLMC has issued new rules designed to promote negotiations and, where necessary, expedite arbitrations. There will be greater scrutiny of petitions filed after minimal bargaining. The committee may even decline jurisdiction.

The issues to be submitted are now due to the JLMC 5-days in advance of the 3A hearing, but the exchange of issues occurs only 24-hours before. Arbitration hearings are to be scheduled and conducted within 90 days of arbitrator selection. This means more preparation sooner in the pre-arbitration process, and potentially that the busiest arbitrators, even if selected, will not be able to serve.

The JLMC also promises to scrutinize issues to make sure only issues involving mandatory subjects of bargaining will be certified for arbitration. Time will tell if these initiatives will make this lengthy process better.

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Student Who Did Not Appeal Suspension Can Still Sue School

A recent case from the Massachusetts Supreme Judicial Court ("SJC") ruled that a student could sue her school for suspending her even though she did not "exhaust administrative remedies" by appealing the Principal's decision to the Superintendent as prescribed by statute and school policy.

A Lee High School Senior was suspended by the High School Principal for felonious behavior – stealing a firearm. The suspension was based on MGL c. 71, §37H½, which provides that students charged with a felony may be suspended if returning the student to school "would have a substantial detrimental effect on the general welfare of the school." The problem was that the student had not actually been charged with any crime, much less a felony, at the time the suspension was imposed. The student never appealed the suspension to the Superintendent.

After three months of suspension, a criminal complaint finally issued, but the student was charged only with a misdemeanor – receipt of stolen property under $250. At that point the student's attorney requested an end to the suspension. The District agreed to allow the student to return to classes, but indicated that she would not be permitted to walk in graduation later that year.

The student sued the school for unlawfully excluding her. The school district sought to dismiss the case because the student had not formally appealed the decision to exclude her. The trial judge granted the District's motion, but the SJC reversed. The SJC noted that §37H½ is an exception to the rule that students may not be suspended for conduct not connected with school-sponsored activities. The lack of any felony charges at the time of the suspension placed the case outside of §37H½ so that the suspension was illegal, and the administrative remedies in that statute were not activated. Finally, the SJC ruled that the tort remedy in MGL c. 76, §16 for unlawful exclusion is available whether a student appeals the suspension or not.

For more information about this case, see the School Law Blog at www.collinslabor.com.

Case of First Impression: Massachusetts Superior Court Upholds Termination Of Employee Who Used Medical Marijuana

Cristina Barbuto, who had a prescription for medical marijuana, was terminated by her employer, Advantage Sales and Marketing ("ASM"), after testing positive for marijuana following a urine test. She alleged her termination constituted disability discrimination in violation of MGL c.151B, a violation of the Massachusetts Act ("Medical Marijuana Act"), was against public policy and an invasion of privacy. Superior Court Justice R. Tochka, dismissed all counts of the complaint, except for the invasion of privacy claim. The court held there is no requirement under Chapter 151B to accommodate an employee's use of medical marijuana, which is illegal under federal law.

The 2012 Medical Marijuana Act states in part, "nothing in this law required any accommodation of any on-site medical use of marijuana in any place of employment." The court held there was no private right of action under the Medical Marijuana Act. The employee's termination did not violate public policy, as the Act only guarantees that an employee would not be subject to criminal prosecution or civil penalties for using medical marijuana. The Act does not forbid an employer from discharging an employee who uses medical marijuana.

The only count not dismissed was the invasion of privacy claim, based on the theory that the drug testing was unreasonable and not commensurate with the employee's job duties or the nature of the employer's business.

This is an important decision. With the increased availability of medical marijuana, more employees are likely to seek an accommodation around use. Cases of first impression such as this one help employers understand their rights and obligations. The Plaintiff recently appealed this decision and CLP will continue to monitor it.