



## SPEAKING ENGAGEMENT

Attorney Leo Pelouquin will be conducting a workshop on “Employer Rights And Limitations In Addressing Employee Use Of Marijuana” (medicinal and recreational) at the Massachusetts Municipal Personnel Association Annual Labor Relations Seminar on October 27 at the Boxboro Regency Hotel and Conference Center.

## AGENCY FEE CHALLENGE TO BE DECIDED BY U.S. SUPREME COURT

The U.S. Supreme Court has agreed to hear Janus v. American Federation of State, County and Municipal Employees to decide whether public sector unions may require workers who are not members to help pay for collective bargaining. Mark Janus, an Illinois state government employee, is asking the court to overrule a 1977 decision in Abood v. Detroit Board of Education, where the court made a distinction between two kinds of compelled payments. The court said workers need not pay for the political activities of unions, like campaign spending, as that would violate their First Amendment rights, but it is constitutional to require nonmembers to help pay for the union’s collective bargaining efforts.

## OPEN MEETING LAW CHANGES IN EFFECT OCTOBER 6, 2017

The Attorney General’s revisions to the Open Meeting Law (OML) regulations which took effect October 6 include the following:

- While notices must continue to be filed with the municipal clerk, the municipal website is the only alternative to posting the official notice on the bulletin board where the municipal clerk’s office is located. Even though they will not be considered official notices, a municipality can still post notices in other locations. If the website is the official notice location and it becomes inaccessible to the public during the 48-hour window for posting, the website must be restored within 6 business hours of when the website deficiency is discovered. Otherwise, the 48-hour notice period starts anew.
- Remote participation still has to be adopted in the usual manner. But it will now be easier to justify remote participation. Previously, the chair had to determine that participation would be unreasonably difficult because of personal illness, personal disability, emergency, military service and/or geographic distance. Now, remote participation will be allowed, without any independent determination by the chair, if “physical attendance would be unreasonably difficult.”
- There is no longer the requirement of an administrative law judge hearing before the Attorney General issues orders of nullification and reinstatement of an employee because of an OML violation. But a public body still has the right to appeal the Attorney General’s order within 21 days.
- A public body that receives an order from the Attorney General must certify in writing to the Attorney General within 30 days that it has complied with the order. Typical orders requiring written certification include approval and release of meeting minutes and attendance at a training. No certification is required for orders of immediate and future compliance.
- A revision that mirrors the OML itself makes clear that while the Attorney General may fine a public body for an intentional violation of the OML, but a fine will not be imposed where the public body acted in good faith compliance with advice of counsel.
- Public bodies are obligated to approve both open and executive session meeting minutes in a “timely manner.” Within thirty (30) days is considered timely although not a hard and fast requirement as there can be a showing of good cause for further delay.
- Complainants have been required to file complaints within 90 days of the alleged violation. Now, however, that time period has been extended “if the alleged violation could not reasonably have been known at the time it occurred...” to within 90 days of when of the date the alleged violation “should reasonably have been discovered.”
- New members of the public body are now required to receive a copy of each Attorney General determination, over the prior five years, that the public body violated the Open Meeting Law.
- Although Attorney General’s determinations have made it clear that public bodies must meet to review Open Meeting Law complaints, the revisions clarify this in the regulations.
- Public bodies can request mediation with a complainant who has filed five or more complaints within the prior 12 months. If the public body requests mediation and the complainant fails to participate, then the Attorney General may decline to review the complaint.

