

NORRIS, MURRAY & PELOQUIN, LLC

Legal Counsel to Employers and Schools



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Speaking Engagements

October 17, 2018

Melissa Murray and Lisa Adams (MMA) will provide the personnel and labor law update at the Massachusetts Government Finance Officers Association (MGFOA) Fall 2018 Meeting being held at the Old Sturbridge Village.

October 26, 2018

Tim Norris and Kristine Trierweiler (Assistant Town Administrator in Medfield) are presenting "7 Steps to Bulletproof Documentation" at the Mass Municipal Personnel Association 2018 Annual Labor Relations Seminar at the Devens Common Center.

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Legislature Relaxes No Smoking Law For Firefighters and Police Officers

It was a windfall for Police Officers and Firefighters in the most recent session of the State Legislature and it came at the expense of Employers and consistency in the law. In our September Advisor, we told you about the law taking effect October 22 under which a Firefighter will get the benefit of the cancer presumption--something previously only available for a disability retirement--for 41-111F claims. In the very same session, the Legislature saw fit to amend M.G.L. c. 41, § 101A, the statute that, until now, called for automatic dismissal of a Firefighter or Police Officer appointed after January 1, 1988 caught smoking tobacco. Now, an offender "shall be provided with an opportunity to enter a smoking cessation program." And a second offense, "may be cause for dismissal." In contrast, the current statute makes it clear that "no person so appointed shall continue in such office" if caught smoking.

While there are some Employers who have decided to give offenders a second chance, now every Employer will have to. The inconsistency is even more pronounced because the original anti-smoking statute was enacted decades ago in the context of legislation that provided a presumption to Police and Firefighters for purposes of retirement for certain conditions--like heart disease--that can be caused by smoking.

Civil Service Commission Weighs In On "Acting" Time

The Commission recently issued a decision that may impact promotional list(s) and upcoming promotions if you have a promotion list resulting from the November 2017 Fire Lieutenant and Captain promotional examination. In *Borjeson et al v. HRD*, the Commission ordered HRD to include "acting" time in the scoring of Education and Experience (E/E) for all candidates who passed the November 2017 exam. A new online Experience Claim Application is available for candidates to submit evidence in support of a request for "acting" time. Candidates who do not submit a new experience claim will maintain their current score.

The following situations do not need to be rescored:

- ◆ Current eligible lists containing only one employee.
- ◆ Lists in departments that do not use "acting" time. Departments that do not use "acting" time may submit a letter to HRD signed by the Union and the Appointing Authority indicating that no member has served in an "acting" capacity and therefore their candidates do not need to be rescored. Upon receipt, HRD will release the department's eligibility lists.

The Commission's Final Decision provides that hiring may continue from the current lists until a new list is established incorporating the rescored E/E credit. HRD expects the new amended eligible list to be available January 1, 2019. Any promotions made prior to this date will not be affected by the Commission's decision.