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Legal Counsel to Employers and Schools

Volume 8, Issue 10

Client Advisor

October, 2020

Trick or Treat?

On October 7, 2020, the Massachusetts DPH issued [Tips for a Safe and Healthy Halloween](#).

The new guidance is consistent with the CDC's guidance issued several weeks ago, and provides safe and healthy tips for how to enjoy Halloween.
<https://www.mass.gov/news/halloween-during-covid-19>



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Political Speech and Activities in the Workplace

With election day quickly approaching and some voters opting to engage in the early voting process, employers should be mindful about employees' discussions and activities regarding politics in the workplace. Political discussions (and more often than not political disagreements) in the workplace have become especially challenging this year based in large part on the fact that the upcoming elections are set against the backdrop of polarizing national issues such as the COVID-19 pandemic, the economy, and social justice and unrest.



According to the U.S. Supreme Court, government (public) employees do not surrender their First Amendment Rights at their employer's doorstep, however the protection of an employee's right to free speech is not absolute. The First Amendment will not protect public employees where the employer's interest in providing efficient and effective services to the public outweighs the employee's free speech interests.

Additionally, employers should be aware that there is an important distinction between taking an adverse employment action against an employee because of his or her political beliefs or affiliations, and disciplining employees whose conduct is deemed to be harassing, offensive, or threatening, or which espouses a discriminatory animus, even if it may be motivated by the employee's political views. In other words, employers cannot discipline an employee for supporting a particular candidate, political party, or movement, but may discipline employees for engaging in harassing, offensive, and/or threatening conduct that undermines the public's trust or confidence or reflects an employee's inability to serve all individuals in the community.

Most public employees are generally required to adhere to a standard of conduct prohibiting both on- and off-duty conduct, particularly, offensive social media posts, that impair the performance of their official duties or the efficiency of their employer's mission. Employers may also rely on their respective Anti-Harassment and Social Media policies to prohibit such conduct, provided that the policies are enforced in a neutral and consistent manner.

Finally, aside from the First Amendment considerations, public employers in Massachusetts should be aware that the conflict of interest law, M.G.L. c. 268A, generally prohibits employees from engaging in certain election-related activities while on duty. As a reminder, appointed public employees may not engage in the following activities (exceptions exist for elected officials and policy makers):

Political Speech and Activities in the Workplace (continued)

- Sending campaign-related materials using office computers, fax machines, or an official email account to send campaign emails;
- Using office supplies or materials to create or distribute campaign materials;
- Directing other public employees or staff (while on duty) to distribute campaign materials, or conduct campaign polls or research;
- Wearing a uniform while performing campaign activities or supporting a particular candidate or ballot initiative;
- Using a public title while campaigning, or using a public title to support or oppose a candidate or ballot initiative;
- Holding campaign-related events in public office spaces;
- Soliciting, either directly or indirectly, political contributions of any kind.

If you have any questions or concerns regarding political speech or activity by public employees during this Election Season (or beyond), please contact your NMP Attorney.

JUNETEENTH HOLIDAY OBLIGATION FOR MUNICIPAL EMPLOYERS

On July 24, 2020, Governor Charlie Baker signed legislation (“Section 3 of Chapter 124 of the Session Laws of 2020”) amending M.G.L. c. 4, § 7 to include Juneteenth as State holiday. As Employers gear up for or begin successor contract negotiations, it is important they understand the ramifications of the new Juneteenth holiday on their collective bargaining position, as set forth below.

As far as Massachusetts Law is concerned, Municipal Employers are not obligated by Law to provide employees with holiday pay/leave for Juneteenth. But they may be obligated to do so under their respective collective bargaining agreement(s) (“CBA”). The extent of that obligation largely depends on the language of the CBA. For instance, if the CBA only lists the paid holidays which bargaining unit members are entitled to and Juneteenth is not enumerated as one of the paid holidays, the Union will have to bargain with the Employer to include Juneteenth as a paid holiday. On the other hand, if the CBA already states that employees get whatever holidays the Commonwealth recognizes, employees automatically get Juneteenth as a paid holiday.

In Town of Millbury, 47 MLC 2, (July 7, 2020), a particularly timely arbitration decision, Arbitrator Timothy Hatfield was tasked with determining whether the Town of Millbury (“Town”) violated the parties’ CBA when it failed to compensate bargaining unit members with holiday pay for Christmas Eve after President Trump issued an order designating December 24, 2019 as a holiday for federal government employees. Arbitrator Hatfield rightly found that the Town did not violate the contract in part because the parties’ contract “clearly and unambiguously lists the twelve paid holidays which bargaining unit members are entitled to” and Christmas Eve is not on that list.

As evidenced by this decision, an Employer’s obligation to provide holiday pay for existing and/or new State holidays ultimately depends on the language in their CBAs.

