

NORRIS, MURRAY & PELOQUIN, LLC

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REOPENING CONTINUES

Changes as Massachusetts transitions into Phase 4, Step 2 of its reopening plan:

- **April 30:** face coverings required outdoors if social distancing not possible; masks still required for indoor public places and indoor and outdoor events.
- **May 29:** gathering limits increase to 200 ppl indoors and 250 ppl outdoors at event venues, and public or private gatherings.
- **August 1:** all industry restrictions and capacity limits lifted, subject to improving public health and vaccination data.



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SJC Upholds Commission's Reinstatement Of Terminated Firefighter Subjected To Racially Hostile Work Environment And Retaliation

Last week, the Massachusetts Supreme Judicial Court (SJC) upheld the determinations of the Civil Service Commission (Commission) and Superior Court that the Town of Brookline lacked just cause to terminate a firefighter (Alston) who had been subjected to racial discrimination and retaliation. Town of Brookline v. Alston and Civil Service Commission, SJC-12974 (April 27, 2021). In 2010, Alston's supervisor inadvertently left a racist comment in a voicemail message to Alston, which Alston reported to his superiors. Alston suffered emotional and physical distress after members of the department retaliated against him for reporting the comment, resulting in an extended absence. In 2016, the Town terminated Alston due to his ongoing absence and failure to communicate regarding his ability to return to work.

Following a lengthy procedural history, the SJC opined that the Commission may consider evidence related to a racially hostile or retaliatory work environment in its analysis of whether there was just cause to terminate a tenured civil service employee. Consistent with its purpose to protect employees from improper personnel actions, the SJC held that the "Commission may determine that an employee has been subject to, and rendered unfit by, racist and retaliatory acts and an arbitrary and capricious response to those acts by the municipality" and "termination of such an employee violates basic merit principles." The SJC noted that nothing in the language of Chapter 151B barred the Commission from hearing evidence of discrimination in the context of Alston's challenge to his termination.

The SJC rejected the argument that the Commission improperly considered evidence on issue and claim preclusion grounds. Alston previously filed discrimination claims against the Town, which were dismissed for reasons unrelated to the merits. As such, those claims were not "actually litigated" and were distinct from the issue of whether just cause existed for Alston's termination.

Finding that the Commission's decision was supported by substantial evidence, the SJC reasoned that the Commission was free to disregard part of the expert psychiatrist's opinion that Alston could have returned to work with certain conditions in place. The SJC acknowledged, however, that Alston's conduct, including drug use and refusing to meet with the Town, would have otherwise constituted just cause for termination, absent evidence the Town contributed to his unfitness. The SJC concluded reinstatement was statutorily required, despite the Town's actions fostering the environment that caused Alston's unfitness and his well-documented refusal to communicate with the Town.

DESE Announces Return Date For In-Person Learning For High School Students; Issues Safety Standards for Graduation Exercises

The Department of Elementary and Secondary Education (DESE) has announced the return of high school students to in-person learning full-time on May 17. Any school or district that fails to return to full-time in-person instruction by that date, without an approved waiver, must make up the missed learning time. Parents will continue to have the option to have children learn remotely for the remainder of the year. All waiver requests must be submitted to DESE by Monday May 10.

DESE and the Department of Labor Standards, also issued safety protocols for graduation exercises. Attendance is limited to only faculty, administrators, speakers, graduating students, and their guests. Guests must register in advance and attest that they will not attend if: experiencing any COVID-19 symptoms, have been in "close contact" with a COVID-19 positive individual, or have been ordered to quarantine. Indoor ceremonies must adhere to the venue's capacity limits. Indoor and outdoor ceremonies must adhere to social distancing requirements (indoors with masks, students seated 6 feet apart; outdoors with masks, students seated 3 feet apart). All other attendees must be seated 6 feet apart from other guests, unless part of the same household/group. Administrators cannot hand diplomas to students, but they may pick up a diploma from a table while walking across the stage.

Special distancing requirements also apply for singing and playing of instruments; singing is not permitted for indoor graduation exercises.