

CLIENT ADVISOR

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FIRM NEWS

Home Sweet Home: Residency Limits For Public Safety Employees

A Civil Service Commission decision issued earlier this year has sent some shock waves through a number of Civil Service police and fire departments. In *Erickson v. Rockland Fire Department* the Commission used its investigative powers under M.G.L. c. 31, §2(a) to determine whether a fire lieutenant promoted to a captain had been or was in compliance with the 10 mile residency limit imposed by M.G.L. c. 31, §58. In reviewing the matter, the Commission determined that compliance would be measured as of the date of the hearing, and by that standard ultimately found that the promoted candidate was in compliance. In its decision, however, the Commission stated that in the future if there was evidence of noncompliance, the Commission could open an investigation and if warranted make recommendations, including the vacation of appointments.

What is unsettling about the decision is the fact that in some communities the Civil Service 10 mile limit or the 15 mile limit under M.G.L. c. 41, §99A (not limited to Civil Service towns), are not enforced and haven't been for years. Even communities imposing a limit are

unlikely to have consistently monitored compliance. Indeed, a few communities have even negotiated larger residency limits, 25-30 miles, though the enforceability of such agreements is questionable because neither residency statute is currently included in the section of the bargaining statute that lists state statutes that can be superseded by a Collective Bargaining Agreement.

That may soon change. As we go to press, the Massachusetts Senate has passed a measure to allow bargaining about the Civil Service residency statute. The Professional Fire Fighters of Massachusetts has pushed for a 35 mile limit. With an expanded mileage limit like that, and many fire fighters working 2 out of 8 days under the 24-hour shift, there is little doubt that the response levels and response times of off duty fire fighters to large fires and other emergencies will be reduced. Reliance on mutual aid will continue to increase.

For now, communities are encouraged to review current practices with respect to residency compliance and to consult your CLP attorney with any question.

Cassandra Montgomery has joined the firm as a law clerk. Ms. Montgomery is a third year student at the Northeastern University School of Law. Prior to starting at CLP, Cassandra served as a legal intern for Massachusetts Appeals Court Associate Justice Mary T. Sullivan. She has also served as a legal intern for the Cambridge Public Schools and worked as an educator and cognitive skills trainer.



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Noteworthy Agency Decisions

Even the Union President Has to Abide by the Town's Break Time Rules

The Department of Labor Relations ("DLR") recently held that the Town of Falmouth's Facilities Director, who was a member of the same Union as the Union President, did not retaliate against the President by enforcing work rules regarding breaks. The DLR also found the Town did not retaliate against the Union President by issuing a two day suspension for an excessive break as there was "no nexus" between his duties as Union President and his suspension. Town of Falmouth and AFSCME Local 93, MUP-10-5996. Attorney Joshua R. Coleman represented the Town of Falmouth.

We're Not Making This Up

A candidate applying to be a corrections officer failed to include on his application the fact that he had been discharged by that very department, only three years before. His excuse: "I thought you only wanted positives". Not surprisingly, the Commission found that the bypass decision was reasonably justified given the appellant's lack of judgment and his attempt to mislead the employer. Sousa v. DOC, 26 MCSR 26 (2013).

