

# Management Alert

## General Assembly Passes Numerous Bills With Potential Impact on Illinois Public Employers

The 2007 state legislative session in Springfield, Illinois has produced a number of bills that may have a significant impact on public sector employers throughout Illinois. Many of these bills have already passed the General Assembly and are awaiting Governor Blagojevich's approval. Employers should be aware of these bills, and begin preparing now for their possible enactment. A brief summary of some of the more significant bills for public employers is included below.

### **I. Restrictions on the Ability of Municipalities to use Part-Time Firefighters**

Senate Bill 834 amends the Illinois Municipal Code (65 ILCS 5/10-1-14 and 10-2.1-4) and the Fire Protection District Act (70 ILCS 705/16.06), by imposing restrictions upon the ability of municipalities and fire protection districts to use part-time and contractual firefighters as temporary or permanent substitutes for "regular appointment" firefighters. The bill would prohibit fire departments that (1) employ full-time firefighters and (2) are subject to collective bargaining agreements from using part-time firefighters as a "temporary or permanent substitute for classified members." This is significant, because fire departments currently have the authority to use part-time firefighters and/or to contract for services with part-time firefighters who are employed with another

jurisdiction. Many departments rely on these alternative hiring arrangements to ensure sufficient staffing levels.

Under the proposed amendments, however, fire departments could only use part-time firefighters as temporary or permanent substitutes if *mutually agreed upon* with the certified bargaining agent of its full-time firefighters. Bargaining over the use of part-time firefighters would be considered a *permissive* subject of bargaining, such that an employer could not compel a union to bargain over the issue to the point of impasse or interest arbitration.

As one might expect, there are a number of ambiguities in S.B. 834 as currently drafted, including what it means to use a part-time firefighter as a "temporary or permanent substitute." Does a "substitute" refer to occasions when an employer needs to replace a full-time firefighter who was previously scheduled to work? Or does "substitute" refer to an employer's overall practice of using part-time firefighters alongside full-time firefighters?

S.B. 834 will affect Division 1 departments, Division 2.1 departments, and fire protection districts. Home rule authority is expressly preempted. It is unclear when S.B. 834 will take effect, due to the lack of an effective date contained in the body of the bill.

## II. Arbitration for Discipline is Now a Mandatory Subject of Bargaining for Most Police and Fire Personnel

House Bill 1542 amends the Board of Fire and Police Commissioners provisions of the Municipal Code (65 ILCS 5/10-2.1-17) by establishing that impartial arbitration is a mandatory subject of bargaining with respect to the discipline or discharge of police officers and fire fighters, irrespective of a public employer's home rule or non-home rule status. By contrast, the present law expressly provides that for non-home rule units of local government, arbitration is a permissive subject of bargaining, such that non-home rule units do not have to bargain over alternative disciplinary procedures for police and fire personnel (unless they had previously agreed to such procedures in a collective bargaining agreement). With H.B. 1542, non-home rule units would have to bargain at a union's request over arbitration as an alternative disciplinary procedure to boards of fire and police commissioners (arbitration was always a mandatory subject of bargaining for home rule units of local government). If signed by the Governor, this bill will take effect upon becoming law.

In another significant change, House Bill 1719 amends the Counties Code, Section 5 of which currently allows a county sheriff to take disciplinary measures against a deputy, including suspensions not to exceed a cumulative 30 days in any 12-month period. 55 ILCS 5/3-8013. The proposed amendment provides that after June 1, 2007, in any sheriff's department that is covered by a collective bargaining agreement, such disciplinary measures and the method of reviewing those measures are subject to mandatory bargaining. This mandatory bargaining can include impartial arbitration or an alternative due process procedure.

## III. Firefighters' Benefits

### *a. Disability Pension Determination and Reinstatement*

Under the Firefighters' Pension Code, a firefighter is currently entitled to a disability pension if a disability is established by *three physicians and such other evidence as the board deems necessary*. 40 ILCS 5/4-112. Senate Bill 1553 will amend the Pension Code to provide that the three physicians selected by the board need not unanimously agree as to the existence of any disability, or the nature and extent of a disability.

The amendment also declares that a physical or mental disability that constitutes, in whole or in part, the basis for an *application* for disability benefits under the Illinois Pension Code, cannot be used by a municipality or fire protection district as cause for a firefighter's discharge.

The Pension Code currently provides for reinstatement upon a firefighter's recovery from disability. With the proposed amendment found in SB 1553, however, the firefighter will also be entitled to *immediate* return to the employer's payroll, as well as *the recovery of reasonable court costs and attorney's fees*, if the firefighter must file a civil action against the employer to enforce his or her mandated return to the employer's payroll. This bill will take effect upon becoming law if signed by the Governor.

### *b. Rebuttable Presumption for Workers' Compensation Benefits*

The Workers' Compensation Act currently provides benefits for persons whose condition arises out of and in the course of his or her employment. 820 ILCS 305/6. House Bill 928 amends the Workers' Compensation Act by providing a rebuttable presumption for firefighters,

EMTs, and paramedics that the following ailments all arise out of and in the course of employment, and are causally connected to the hazards or exposures of employment.:

- Blood borne pathogen-related diseases
- Lung or respiratory diseases or conditions
- Heart or vascular diseases or conditions
- Hypertension
- Tuberculosis; and
- Cancer

This presumption, however, does not apply to an individual who has been a firefighter, EMT or paramedic for less than five years. H.B. 928 also makes clear that a workers compensation finding under this rebuttable presumption cannot be used as *res judicata* in any future disability claim pursuant to the Illinois Pension Code. If signed by the Governor, House Bill 928 would become law on either the date it is signed or January 1, 2008, whichever date is later.

#### *c. Leave of Absence for Firefighters Elected to General Assembly*

The Local Governmental Employee's Political Rights Act already extends the right to firefighters to run for and serve in elected office. 50 ILCS 135/12. House Bill 1919 takes this one step further, and requires employers to now grant an unpaid leave of absence upon the written request of a firefighter who is elected to the General Assembly. If signed by the Governor, this Bill will take effect upon becoming law.

## IV. Whistleblower Protection Extended to Public Sector Employees

The Whistleblower Act protects employees from employment retaliation for disclosing information to a governmental or law enforcement agency, where the employee has *reasonable cause* to believe that the information discloses a violation of state or federal law. 740 ILCS 174/15. The Act currently applies only to private sector employers. House Bill 742 would extend the Act's coverage to state and local governments, expressly exempting municipal home rule powers. The Bill would also prohibit retaliation against employees who testify in court, an administrative hearing "or in any other proceeding," where the employee has reasonable cause to believe that the information discloses a violation of federal or state law. If this bill is signed by the Governor, it would take effect on the date the Governor signs it or January 1, 2008, whichever date is later.

## V. Amendments to the Illinois Human Rights Act

### *a. Mandatory Light Duty for Pregnant Police Officers and Firefighters*

House Bill 166 amends the Employment article of the Illinois Human Rights Act (775 ILCS 5/2-102) by making it a civil rights violation for a public employer to refuse to temporarily transfer a pregnant female peace officer or firefighter to a less strenuous or hazardous position for the duration of her pregnancy, if she so requests, with the advice of her physician, where that transfer can be reasonably accommodated. If the Governor signs this legislation, it would take effect on the date that the Governor signs it, or on January 1, 2008, whichever date is later.

### *b. Option to File a Civil Action in Circuit Court*

House Bill 1509 amends the Human Rights Act and provides claimants the right to commence a *civil action* for alleged violations of civil rights (currently these charges can only be processed through the Human Rights Commission or the Equal Employment Opportunity Commission). Under the proposed amendments:

- If upon reviewing the investigatory report, the Director determines that there is *no substantial evidence* of the alleged civil rights violation, the Director *must notify* the complainant of his or her right to *either* (1) seek review before the Human Rights Commission; or (2) commence a *civil action* in circuit court within 90 days.
- If the Department fails to issue a report within 365 days of the filing of a charge, the complainant can either (1) file his or her own complaint with the Human Rights Commission; or (2) commence a civil action in civil court.
- If the Department concludes that there is substantial evidence of a human rights violation, the Department must notify the complainant of his or her right to *either* (1) request the issuance of a complaint by the Human Rights Commission; or (2) commence a civil action in circuit court within 90 days.
- In filing a civil action, the complainant must do so in the circuit court of the county where the alleged civil rights violation allegedly took place.

If signed by the Governor, this Bill will take effect on January 1, 2008, and the amendments will apply to charges filed on or *after* that date.

## VI. Definition of an “Officer” Under Uniform Peace Officers’ Disciplinary Act

House Bill 539 amends the Uniform Peace Officers’ Disciplinary Act and provides that *Secretary of State* sergeants, lieutenants, commanders, and investigator trainees are included in the definition of “officer,” thereby extending to them the various procedural protections that are outlined in the Act. If signed by the Governor, the Bill would take effect on either the date it is signed or January 1, 2008, whichever is later.

As mentioned above, all of these bills are currently awaiting Governor Blagojevich’s approval before finally becoming law. Assuming that the Governor signs most, if not all, of these bills, public employers can expect an immediate impact on their employee relations with fire and police personnel. For example, employers may very well have to begin extending light duty assignments to pregnant police officers and firefighters as a result of the proposed amendment to the Illinois Human Right Act (whereas such accommodations were generally not required under the federal Americans with Disabilities Act). Also, non-home rule units of local government may soon receive bargaining requests from their public safety unions to replace boards of fire and police commissioners with impartial arbitration in the disciplinary context. In addition, firefighters may now find it easier to obtain disability pensions from a local fire pension board, as well as to return to work once they have recovered from any such disability.

*If you have questions about the impact of these and other employment-related bills currently pending in the Illinois General Assembly, please contact the Seyfarth Shaw attorney with whom you work or any labor and employment attorney listed on our website at [www.seyfarth.com](http://www.seyfarth.com).*

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