



New York State
Public Employer Labor Relations Association Inc.

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PAID LEAVE FOR ANY CANCER SCREENING

A new NYS law was passed which grants public employees up to four (4) hours of excused leave per year to undergo screening for any type of cancer. Currently, this leave has been available to public employees only for breast or prostate cancer screening. N.Y. Civil Service Law § 159-c (prostate cancer) and § 159-b (breast cancer). This new law becomes effective March 18, 2018. The new law repeals § 159-c in its entirety, and makes § 159-b applicable to any cancer, not just breast cancer.

As with the current breast and prostate cancer screening leave, the employee cannot be required to charge other accrued leave (such as sick or personal time) during this period of absence. N.Y. Civil Service Law § 159-b. Although not expressly required by law, employers should adjust any affected policies accordingly, and ensure that employees are aware of this new leave entitlement in whatever manner notice of benefits is generally communicated to employees.

RESIGNATION BASED UPON “THREAT” TO TERMINATE

A Deputy Sheriff was believed to have engaged in acts of misconduct. During a meeting with the Sheriff, the Deputy was given the option to resign or face termination from employment with the Sheriff’s Department. The Deputy tendered his resignation. When the Deputy sought to rescind the resignation, the Sheriff would not agree.

The discipline procedure in place is Civil Service Law § 75 (CSL § 75). Under the mandates of due process included in the statutory scheme is a requirement to hold a pre-disciplinary hearing. CSL § 75 states, in pertinent part:

A person against whom removal or other disciplinary action is proposed shall have a written notice thereof and of the reasons therefor, shall be furnished a copy of the charges preferred against him and shall be allowed at least eight days for answering the same in writing.

Ruling on an Article 78 Petition filed by the Deputy, the Court held that although the Sheriff had the discretion to accept retraction of a prior submitted resignation, by not doing so in this case (and under these particular facts) was an abuse of that discretion. Since the Deputy had the statutory rights of CSL § 75, had not been served with written charges and given the opportunity to answer the charges against him, the resignation was essentially, in the Court's opinion, given under duress.

Resignation under the threat of wrongful termination is involuntary and may be withdrawn upon request.

* * *

The Sheriff had no legal right to terminate [the Deputy]...

...it is impossible to provide an employee with a pre-disciplinary hearing after he or she has already been disciplined.

In the Matter of Daryl Ortlieb v. Lewis County Sheriff's Dept., et. al, 155 A.D.3d 1628 (4th Dept., 2017)

CONTRACT NEWS

City of Schenectady:

The City of Schenectady and its AFSCME unit recently settled a four (4) year deal. The unit consists of 125 or so employees who work for the Department of Water, Parks and Wastewater, among others. The settlement included: A wage adjustment in each year, 2017-2020 of 2.0%; an increase in longevity, boot allowance and a stipend for those assigned to work in the Water Department, on a temporary basis, from December 1st through March 31st.

City of Albany:

After over four (4) years of no success at the bargaining table, the City and its AFSCME employee "Blue Collar" unit resolved their issues:

Wages: 2014, 2015, 2016: Wages frozen at 2013 rates.
 2017: Effective and retroactive to April 1st: 2%
 2018: 1%
 2019: 2%

Many of the open issues were operational in nature. As this unit covers the Department of General Services, the Department of Water and Wastewater, the Department of Recreation, and the Landfill and Traffic Safety Department, there were many interests to accommodate. One of the key issues which the City team was able to achieve was fine-tuning what it means to be “qualified” for a position so that it is not awarded strictly on seniority:

The following “qualification” factors shall be considered in determining which employee shall be selected, and where the Employer determines that factors (ii), (iii), (v) and (vi) are relatively equal, factor (i) shall govern. The “qualification factors” are: (i) period of continuous service; (ii) ability to perform work; (iii) experience in the position and/or with the job duties of the position; (iv) review of Official Personnel File. Further, at the time of filling the job, the applicant employee must be in full time work status, not absent due to workers’ compensation or other long term absence. Preference shall be ...

County of Erie:

The CSEA Erie Unit Local 815, Erie County and Joint Employers: Erie County Medical Center Corp., Erie Community College and Buffalo & Erie County Public Library entered into an agreement for the term January 1, 2017 – December 31, 2022. The Agreement covers approximately 800 “white collar” titles of the County of Erie and the multiple joint employers. Titles include: clerical; directors; social workers; LPNs; laboratory personnel; personnel clerks; licensed hospital staff (excluding RNs); probation officers; library associates; clerks; welfare examiners; motor vehicle representatives; and election workers.

Wage Increases: The six-year agreement, provides for wage increases as follows:

Effective and
retroactive to 1/1/17: \$0.24 per hour
Effective and
retroactive to 12/31/17: \$1.01 per hour
Effective and
retroactive to 1/1/18: 2% across-the-board

Effective 1/1/19: 2.25% across-the-board
 Effective 1/1/20: 2.50% across-the-board
 Effective 1/1/21: 2.50% across-the-board
 Effective 1/1/22: 2.50% across-the-board

Health Insurance: For all members of the bargaining unit (except those employed by ECMCC, which has a separate sub-agreement), the Agreement requires annually increasing fixed dollar contributions to the family and single monthly premiums over the course of the Agreement.

	<u>Beginning 1/1/2017</u>	<u>Through 1/1/2022</u>
Family Plan	\$141.66/mo.	\$275.00/mo.
Single Plan	\$ 50.00/mo.	\$116.67/mo.

Other Contract Changes:

- Increase from 40 to 60 hours of vacation time eligible to sell back.
- Increase in sick leave bonuses from \$200 to \$300 for employees reaching maximum accumulations. (Reduces minimum utilization of Personnel Leave from 1 hour to 30 minutes.)
- Civil Service Exam fees: now waived.
- Stand-by Pay: Weekly stipend increased from \$35 to \$60.
- Maternity Leave: Provides for health insurance coverage regardless of paid or unpaid leave. Previously: only paid or FMLA leave required paid health insurance (with employee co-pays).

Time and Attendance Policy: The Agreement establishes a standardized time and attendance policy for County employees (excluding ECMCC, which has its own policy). Limits disciplinary action to 60-day increments for progressive discipline, i.e., counseling, oral warning, and written warning. Suspension after 90 days from date of written warning. Requires removal of disciplinary record after stated time limits if no additional infraction within time limit. If no further infractions, the disciplinary process repeats beginning with a counseling. Currently, counseling memos are no longer permitted in the employee personnel file, only in the

supervisor's file. The new contract language modifies longstanding County Personnel policy (dating back to the 1970's) to state that absences accompanied by a doctor's note are no longer able to be counted against an employee. Previously, notes were subject to review by the Commissioner of Personnel.

Time and Attendance Policy (ECMCC): Absences accompanied by a doctor's note are no longer able to be counted against an employee. Previously, the doctor's note was subject to review by a supervisor. This provision eliminates consideration of FMLA sick leave from any qualifying occurrence (e.g., patterns of absenteeism).

Bereavement Leave: Adds step-sibling and step-child as covered members of "immediate family." Changes start date of leave to either date of death or memorial service; reduces bereavement days off from 5 to 4.

Full-Time/part-Time Employee Ratio: A new provision limits the number of part-time employee (19 hours/week) positions that can be created to be no more than 10% of the total number of full-time and regular PT (20 plus hours/week) positions. Previously, a limited number of PT titles were exempt from any limitation.

Overtime Distribution (ECMCC only):
Eliminates the management right to balance overtime distribution on a quarterly basis and now requires an overtime wheel. Payment for missed shift is now mandatory "because of negligence of management."

ECMCC Changes:

- Adds "hooded sweatshirts" as "inappropriate attire" to Dress Code Policy.
- Clarifies in writing that CSEA members are subject to the Reasonable Suspicion Drug & Alcohol Testing Policy.
- Creates "Preceptor Pay" of \$1.25/hour for clinical employees performing preceptor duties for more than 1 hour.

Reporting Time for Absences: Modifies call-in requirement by distinguishing between employees as follows: 1 hour call-in for an unscheduled absence for employee who does not require a replacement; 2 hours for an employee requiring a replacement.

THE TAYLOR LAW AT 50

The Agenda is taking shape for the 50th Anniversary of the Taylor Law Conference. PERB's website provides the details, including the sessions planned, a copy of Governor Cuomo's citation to PERB on the occasion of the Anniversary, and the materials necessary to register to attend this important event (www.nysperb.com). The Conference will be held in Albany, New York at the Desmond Hotel and Conference Center on May 10-11, 2018.

NYSPELRA ANNUAL TRAINING CONFERENCE will be held in Saratoga Springs from July 18 – July 20, 2018. Stay tuned for details.

RACIAL SLUR: ALWAYS INAPPROPRIATE

Although stated only one time, a racial slur or racially based remarks are never appropriate and can form the basis for a hostile work environment claim.

Two African-American men were employed as laborers on a fence removal project. While the group's Supervisor was giving instructions to the work crew he stated that any worker would be "fired if they n**gerrigged the fence." These remarks were made in front of the entire work crew, the remainder of whom were non-African-American; the two African-American men were in fact, ultimately terminated.

The two African-American men brought a claim under the Civil Rights Act of 1866 (specifically, a "§ 1981 Action") claiming harassment, discrimination and retaliation. Using the standard "severe or pervasive" the Court concluded that any act of inappropriate language forms the basis for a valid claim:

Some harassment may be severe enough to contaminate an environment even if not pervasive; other less objectionable conduct will contaminate the workplace only if it is pervasive.

Castleberry v. STI Group, 863 F3d Cir. 259 (7/14/17 No. 16-3131). Note that although each case will turn on its specific facts, here in Castleberry the Supervisor used the slur contemporaneously with threatening termination.

AGING INNOVATION CHALLENGE

Do you know an undergraduate or graduate student at a NYS college or university? Do they enjoy a challenge? If so, the New York State Department of Health has launched the Aging Innovation Challenge for NYS college and university students. Innovators have a chance at a \$50,000 prize pool.

The Aging Innovation Challenge is seeking breakthrough solution in independent living for older adults and their caregivers. Student Innovators are invited to join the challenge and develop technological prototypes that assist New Yorkers to remain independent as they age. Prototypes must be designed to meet the needs of older adults with limitations in performing one or more activities of daily living, such as eating, bathing and dressing.

Please feel free to share this challenge with the students in your life, or others who may also know students. For more information, visit HeroX.com and search for the Aging Innovation Challenge, or follow the link: <https://herox.com/aginginnovationNY>

SAD NEWS

On February 4, 2018, Susie Holcomb passed away. For the past several years Susie has been the primary caretaker for our dear Bill. Susie and Bill were a wonderful couple who played off of one another with love, laughter and caring. Bill and Susie were married for 55 years.

May Susie rest in peace. We all send our prayers and loving thoughts to Bill and the entire Holcomb family.

Contact NYSPELRA

NYSPELRA

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Please let us know your thoughts and opinions of the NYSPELRA Newsletter.

In addition, you are encouraged to forward to Jack or to Elayne Gold [egold@rwgmlaw.com] any article, information from your municipality, agency, or school district relating to Arbitration Awards (grievance arbitration, discipline, etc.), Fact Findings, contract settlements, etc. for inclusion in future editions of our Newsletter.

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