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To: P&A Clients & Friends

From: Christopher L. Brown, Esq.
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Re: **Recent SJC Decision Addressing Public Policy Exception to At-Will Employment Doctrine Meehan v. Medical Information Technology Inc. – P&A Client Update 2022:01**

Public employees in Massachusetts -- unless subject to a collective bargaining agreement, employment agreement, or a personnel bylaw or ordinance that provides otherwise -- are generally employed "at-will," meaning they can be terminated for any reason or no reason at all. There are of course statutory and court-created exceptions to this rule. For example, an employee cannot be terminated for a discriminatory reason under an applicable state or federal law such as G.L. c. 151B. Nor can an employee be terminated for a reason contrary to a well-recognized public policy.

A recent decision by the Massachusetts Supreme Judicial Court (SJC or Court) provides guidance to employers, including local governments, on the parameters of the public policy exception. Meehan v. Medical Information Technology, Inc., 488 Mass. 730 (2021), addressed the question of whether an at-will employee who was fired after he filed a rebuttal letter to a performance improvement plan could bring a wrongful discharge claim. The SJC said Yes, reversing both the trial court and the appellate court.

The Court explained that the public policy exception to the at-will employment rule has been recognized "for asserting a legally guaranteed right (e.g., filing a worker's compensation claim), for doing what the law requires (e.g., serving on a jury), or for refusing to do that which the law forbids (e.g., committing perjury)." In addition to these categories, the Court delineated a fourth category to protect those "performing important public deeds, even though the law does not absolutely require the performance of such a deed" (such as cooperating with a criminal investigation).

The state Personnel Records Act, G.L. c. 149, §52C, provides that employees who disagree with information placed in their personnel files may submit a written statement

explaining their stance, which then becomes part of the personnel file. In Meehan, a Superior Court judge dismissed plaintiff's wrongful termination claim after concluding that plaintiff's statutory right to rebuttal was not a sufficiently important public policy to justify application of the public policy exception to the at-will employment doctrine. The Appeals Court affirmed the dismissal by a narrow majority, concluding that an employee's exercise of his right to submit a written rebuttal to his personnel file related to internal employer matters and did not fall within the public policy exception to the at-will employment doctrine. The Appeals Court agreed with the lower court's reasoning that the ability to bring a wrongful discharge claim based on violation of a statutory right of rebuttal might convert the at-will employment doctrine into a "just cause" rule.

The SJC reversed, holding that "when addressing the discharge of an employee for the exercise of an employment right defined by statute, we do not, as the motion judge and Appeals Court did here, decide whether the right is important or relates only to internal matters…In enacting the statutory employment right, the Legislature has already made both determinations, concluding that the right is a matter of public significance." The SJC elaborated that no matter how "intemperate or contentious" an employee's language may be, he or she cannot be fired for it absent a threat of physical violence or something similarly heinous.

The SJC clarified that employers can still terminate an at-will employee based on performance or conduct so long as the termination is not because of the submission of a rebuttal to information placed in their personnel file. The Court noted that "[t]he employer remains free to terminate the employee for any reason or no reason so long as the employer does not terminate the employee for filing the rebuttal itself." While not at issue in the decision, it logically follows that not only termination but any discipline at all because of a rebuttal to information to a personnel file could place an employer at risk of potential litigation. Any such situation therefore should be approached carefully and in consultation with counsel.

P&A routinely advises public employers on a variety of issues related to employee discipline up to and including termination to help our clients avoid costly errors. If you have any questions about this case or any labor or employment issue, please contact Chris Petrini or Chris Brown at the firm. Thank you.