

# THE MUNICIPAL LAW NEWSLETTER

THOMPSON & BOWIE, LLP

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## Introduction

The purpose of this newsletter is to provide you, the municipalities of Maine, with a brief update on legal issues in the area of municipal law as well as practical tips for avoiding legal pitfalls and managing risk.

It is no secret that employment lawsuits are on the rise as employees are laid off and new laws are enacted to protect employee rights. In light of this backdrop, this edition will focus on recent employment laws and the implementation of a reduction in force.

Please feel free to contact us regarding new issues of concern in your municipality. We will strive to be current and practical to best meet your needs.

## New Whistleblower Protections for Disclosing Wasteful Use of the 2009 Stimulus Funds

On February 12, 2009, Congress passed an economic stimulus bill that provides a safeguard against fraudulent spending of stimulus funds, via the McCaskill Amendment.

The McCaskill Amendment strengthens whistleblower protections for employees of recipients of stimulus funds that disclose waste, fraud and/or gross mismanagement of stimulus funds.

The Amendment prohibits a broad range of retaliatory employment actions, including termination, demotion, or any other discriminatory act that would dissuade a reasonable person from engaging in protected conduct.

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## Reduction in Force Considerations

Layoffs can result in variety of legal actions, including: breach of contract/collective bargaining agreements; discrimination based on age, gender or disability; violations of labor laws; and wrongful discharge, to name a few.

Employment lawsuits tend to be very costly as most federal and state statutes provide for attorney's fees in the event of a judgment against the employer. These fees often total more than the actual claim itself.

The following steps will assist you in preventing legal action as a result of layoffs, or at the very least, prepare your municipality for a strong defense to a lawsuit.

### 1) Use a team approach to decision-making.

As soon as layoffs are seriously contemplated, assemble a small team of decision makers, including managers, supervisors, human resources specialists and lawyers. As a team, discuss the rationale and justification for layoffs and gather all documents to support your decision.

The team must be mindful that its actions will be skeptically scrutinized when challenged in a grievance proceeding or courtroom. All motives will be attacked, reasoning criticized and mischaracterized, and each team member's conduct will be judged against demanding expectations.

Develop a coordinated and consistent communications strategy focused on dignity and respect for all affected employees.

### 2) Make sure well-crafted personnel policies are in place

Rigorously review the policy to administer it thoughtfully and consistently and be knowledgeable about what processes to follow, what standards to apply, and what grievance rights are available to those who lose their jobs.

If the policy is silent on the process, take the time to amend the policy, including reserving the right to terminate staff positions for financial or programmatic reasons.

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### 3) Be attentive to potential cases where legal risks are foreseeably high.

High-risk cases involve employees who have had performance-related problems, have recently taken family medical leave or military leave, have recently received worker's compensation or have filed a claim, have a disability, have participated in an investigation of another employee, or employees who may believe that demographic or age-related characteristics influenced their termination.

Claims data show that a disproportionate percentage of legal claims come from high-risk cases.

#### [DOCUMENT DOCUMENT DOCUMENT!!!!](#)

Take special care to document the objective and subjective criteria for each layoff, including whether the employee poses a high risk of pursuing legal action.

Prior to proceeding with layoffs of high risk cases, seek the advice of an attorney.

## The Governor's Order Establishing the Joint Enforcement Task Force on Employee Misclassification

Governor Baldacci has recently issued an executive order to prevent the misclassification of employees as independent contractors, when legally they should be classified as employees. This misclassification, the Governor says, may be an attempt by the employers to avoid legal obligations under federal and state labor laws regarding minimum wage, overtime, prevailing wage, unemployment insurance, workers' compensation insurance, temporary disability insurance, wage payment, child support and income tax.

The executive order establishes a task force to look into this rising problem in Maine.



## More Stimulus News.....

*The Federal Broadband Stimulus Package provides \$7 billion to local governments for constructing and operating "ready to go" wired and wireless broadband systems.*

<http://www.ntia.doc.gov/broadbandgrants/>

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