

CLIENT ALERT: HRD Announces Changes in Civil Service Appointment Procedures

On August 10, 2009, the Massachusetts Human Resources Division ("HRD") announced that changes in the civil service appointment procedures are forthcoming due to budgetary constraints. According to HRD, it will begin delegating the civil service appointment and promotion approval process to municipalities effective September 1, 2009.

While no process has yet been finalized, HRD stated that "each municipality will be responsible for contacting the candidates, making appointments and promotions from the eligible list and providing bypass and selection reasons to the applicants in accordance with the civil service law and rules." Thus, after August 31, 2009, HRD will no longer review and approve appointments and promotions, and appeals will be made directly to the Civil Service Commission.

HRD will retain its responsibilities for maintaining and updating the eligible list for each municipality and shall continue to issue lists to communities when requested. HRD also stated that it will send a technical certification manual to each municipality, conduct information sessions in September, and make itself available for technical assistance as needed to aid municipalities in making appointments and promotions from the eligible list.

Under the current administration of the civil service system, when a municipality has a vacancy to be filled, it must file a requisition with HRD, which in turn forwards a "certification" containing a list of candidates for the position. HRD creates these certifications by taking names from an eligible list of the individuals with the highest marks who otherwise meet the qualifications of the position sought to be filled. It is not clear from HRD's announcement whether it will continue to provide such certifications following its anticipated procedural changes or whether municipalities will become responsible for their creation.

After receiving a certification, municipalities fill their vacancy with the individual on it with the highest mark, unless they find that another candidate is better qualified for the position. If the municipality chooses not to hire the candidate with the highest mark, it is considered to have "bypassed" that individual and must provide a written statement to HRD supporting its decision to do so. Within 15 days of receiving a municipality's written statement, HRD either approves or disapproves of the bypass. According to HRD, following September 1, 2009, it will cease review each municipality bypass; however applicants who are bypassed will still be able to appeal the decision to the Civil Service Commission.

Municipalities should be aware that there it is not clear whether HRD's proposed changes will conform to the requirements of Massachusetts civil service law. In particular, the law requires that upon a municipality's decision to bypass an applicant for appointment, the municipality must submit a written statement of reasons for such bypass to HRD. Thus, even if HRD's proposed changes direct municipalities to forward this written statement of reasons to candidates directly, it is in the municipalities' best interests to also send an additional copy of the written statement to HRD to ensure its compliance with the law.

As HRD noted, no decision has yet been made as to the final process of these impending changes. Therefore, municipalities should contact HRD with any suggestions or concerns.

For the most up-to-date information, please continue to visit the MBJ website and contact your MBJ attorney.

Sean P. O'Connor is an attorney with Morgan, Brown & Joy, LLP and may be reached at (617)

523-6666 or at soconnor@morganbrown.com. Morgan, Brown & Joy, LLP focuses exclusively on representing employers in employment and labor matters.

This alert was prepared on August 11, 2009.

This publication, which may be considered advertising under the ethical rules of certain jurisdictions, should not be construed as legal advice or a legal opinion on any specific facts or circumstances by Morgan, Brown & Joy, LLP and its attorneys. This newsletter is intended for general information purposes only and you should consult an attorney concerning any specific legal questions you may have.