

Labor Class Civil Service Employees Afforded Job Protection

On September 7, 2018, Governor Cuomo signed legislation that amended Civil Service Law Section 75. Pursuant to the amendments, Section 75 now extends hearing rights (i.e., the right to written disciplinary charges and a hearing before imposition of a reprimand, fine, suspension without pay, demotion or termination) to “Labor Class” employees after five years of continuous service. This is the same protection that has previously been afforded to employees in the Non-Competitive Class after five years of continuous service and employees in the Competitive Class immediately upon permanent appointment. Prior to this amendment, Labor Class employees had no such protections unless they were veterans or exempt volunteer firefighters. The amended law is effective immediately. If you are a public employer and have any Labor Class employees who have completed five years of continuous service, they are now protected pursuant to Section 75.

To the extent that existing collective bargaining agreements already confer pre-discipline hearing rights to Labor Class employees, this amendment will make little, if any, difference. However, if there are Labor Class employees who have not previously had a contractual entitlement to pre-discipline charges or a hearing, this is a major change.

To the extent that public employers have any Labor Class employees who have fewer than five years of service and do not already have a contractual right under a collective bargaining agreement to pre-discipline charges and a hearing, this might be a good time to address any performance or conduct concerns through counseling and discipline before those employees become protected under Section 75. In addition, it may make sense to note the five-year anniversary date of all current and future Labor Class employees so that a decision regarding retention or termination can be made at the appropriate time before such employees achieve protected status.

Public employers should keep in mind that, even in the absence of a right to pre-discipline charges and a hearing, many collective bargaining agreements that cover Labor Class employees confer a post-discipline right to challenge discipline or discharge decisions through the grievance and arbitration process. Therefore, public employers should make sure that they can defend their discipline or discharge decisions under the applicable provisions of the collective bargaining agreement, even when employees are not protected under Section 75.

If you have any questions about this Information Memo, please contact [Craig L. Olivo](#), any of the [attorneys](#) in our [Labor and Employment Law Practice](#), or the attorney in the firm with whom you are regularly in contact.



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