

Municipalities 2023 Webinar Series

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General Municipal Law Sections 207-a and 207-c Legal Overview & Best Practices



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Overview

- Introduction
- Overview of GML §§ 207-a & 207-c.
 - Basics
 - Benefits (Salary + Injury Coverage)
 - Return to Work (Full or Light Duty)
 - Retirement & Termination
- Bargaining Obligations
- Best Practices
- Q&A



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Introduction

- General Municipal Law (“GML”) Sections 207-a and 207-c provide a form of generous workers’ compensation-like benefits to covered firefighters and police officers who are injured or who become ill in the performance of their duties so as to necessitate medical or other lawful remedial treatment.
 - Paid firefighters are covered by GML § 207-a.
 - Police officers (among other law enforcement personnel) are covered by GML § 207-c.



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Introduction

- Law was enacted to provide police officers and firefighters additional benefits and occupational protections due to the Legislature's categorical determination that certain municipal work involves a greater risk of injury.
- Employer is required to pay:
 1. An employee's full salary, and
 2. The costs of medical treatment and hospital care necessitated by the employee's injury/illness.



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Introduction

- Employer has the right to make the **Initial Determination** as to whether the disabled employee should receive benefits under GML § 207-a or § 207-c.
- Once granted, employer has the right to:
 - Schedule independent medical examinations (IMEs),
 - Prescribe treatment, and
 - Order the employee to return to work, full or light duty, if deemed capable.



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THE BASICS

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Basics

- GML §§ 207-a and 207-c are “remedial statute[s] enacted for the benefit of ... personnel injured in the line of duty, and as such, [are] to be liberally construed in their favor.”

Matter of Crawford v. Sheriff’s Dept., Putnam Cnty., 152 A.D.2d 382 (2d Dept. 1989)

- To be eligible, the employee must demonstrate a **direct causal relationship** between job duties and resulting illness/injury.
 - The term “duties” “encompasses the full range of a covered employee’s job duties,” not just those duties that have a heightened risk of injury.

Theroux v. Reilly, 1 N.Y.3d 232 (2003)

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Basics

- An employee is not automatically entitled merely because the employee is eligible for Workers' Compensation benefits.
- *Martino v. County of Albany*, 47 A.D.3d 1052 (3d Dept. 2008):
 - A corrections officer posted at a visitor observation booth alleged that he injured his back while removing a bag of garbage. The Court upheld the denial of benefits to the officer because that duty was assigned to maintenance workers, even though the officer was under a general duty/order to keep his work area neat, clean and sanitary.



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Basics

- Pre-existing conditions do not bar receipt of benefits if a direct causal relationship is established.
- But, at the same time, "*mere fortuity of timing* does not entitle an employee to benefits under [GML § 207-c] in the absence of a causal connection between duties and disability."
Matter of Greenwald v. County of Schenectady, 85 N.Y.2d 527, 534 (1995)



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Basics

- Once granted, this status becomes a vested constitutional property right, which cannot be taken away without due process.
 - Minimally, due process consists of notice and an opportunity to be heard.
- Thus, an employer may be “on the hook” until:
 - The disability ceases,
 - The employee reaches the mandatory retirement age,
 - The employee voluntarily retires (service retirement), or
 - The employee receives a disability retirement (police only).

BENEFITS

What Benefits Are Afforded?

- Generally, the benefits afforded by law are exclusive, but can be built upon through collective bargaining.
- At its most basic, the law requires an employer to pay salary and medical costs.



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What Benefits Are Afforded?

- Once granted, an employee is statutorily entitled to the **“full amount of his or her regular salary or wages from such employer until his or her disability arising therefrom has ceased...”**
- This means full salary (tax-free), which includes an employee’s base wage and any longevity payments.



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What Benefits Are Afforded?

Borelli v. City of Yonkers, 39 N.Y.3d 138 (2022) – **“Regular salary or wages” under GML § 207-a(2) does not include any type of monetary compensation based on the performance of additional responsibilities beyond an employee’s regular job duties.**

- CBA provided that only firefighters who actually worked the night tour were entitled to night differential, which made it distinct from “regular salary or wages.”
- In contrast, CBA provided that holiday pay would be provided to all active firefighters, whether worked or not. Therefore, holiday pay constituted monetary compensation based on the performance of regular job duties, and thus constituted “regular salary or wages.”



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What Benefits Are Afforded?

- GML § 207-a requires that “such municipality or fire district shall be liable for **all medical treatment and hospital care furnished during such disability.**”
- GML § 207-c requires that “such municipality... shall be liable for **all medical treatment and hospital care necessitated by reason of such injury or illness.**”



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What Benefits Are Afforded?

- The language “**all medical treatment**” requires the municipality to pay for all reasonable costs of necessary medical treatment.
 - For example, it includes professional services rendered by licensed psychologists.
 - Practically, an employer’s Workers’ Compensation carrier will also contribute to the costs of the medical treatment.
- An employee does not have to miss time from work to receive this medical treatment benefit, nor does this benefit cease when the employee returns to work.



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What Benefits Are Afforded?

- By law, employees are **not** entitled to:
 - Payment of certain benefits that are not “regular salary or wages,” like shift differential and/or uniform allowance;
 - Accrual of certain benefits, like vacation, personal, or sick leave; and
 - Employer-paid health insurance.
- However, employees **may** be entitled to any of the above where they are expressly provided for in a collective bargaining agreement or otherwise negotiated procedure.
 - CBAs will not be construed to implicitly expand such benefits.
In re Town of Evans, 66 A.D.3d 1408 (4th Dept. 2009)



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RETURN TO WORK

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Focusing on an Employee's Return

- During an employee's absence, an employer should shift focus to the employee's return to work by...
 - **Requiring IMEs**, or even corrective surgery, to establish continuing eligibility for benefits (failure to undergo an IME or corrective surgery may result in termination of status but still must afford due process);
 - **Enforcing residency restrictions** under NYS Public Officers Law § 30 (or local laws), if applicable; and
O'Connor v. Police Comm'n, 221 A.D.2d 444 (2d Dept. 1995)
 - **Enforcing any stay-at-home restrictions.**

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Independent Medical Examinations (IMEs)

- When multiple employees are out of work, schedule IMEs carefully to avoid discrimination claims.
- Request HIPAA releases and/or employee's medical records to provide to IME doctor.
 - Be careful who maintains these records!
- Write to IME doctor prior to the exam so the doctor is clear about the nature of the injury and the precise light and/or full duty job duties that the employee will be required to perform.
 - Employer may ask for a supplemental report if not satisfied!



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Light Duty Assignments

- Employer can offer a light duty assignment to employees (that are cleared to return to work in a light duty capacity) so long as the assignment is consistent with the employee's regular job duties.
 - Example: Cannot offer a light duty assignment to police officer that involves cleaning bathrooms because that is inconsistent with a police officer's regular job duties. However, can offer a light duty assignment to a police officer to review open case files, a duty normally performed by a police officer.
- If an employee refuses to perform the light duty assignment, wages/salary payment may cease.



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Challenges to a Light Duty Assignment

- If the employee provides information (e.g., a differing medical opinion regarding employee's ability to perform light duty assignment) in response to a return-to-work order that creates a "genuine medical dispute," then the order to report to duty may not be enforced, nor may benefits be terminated, without due process.

Uniform Firefighters of Cohoes v. City of Cohoes, 94 N.Y.2d 686, 692 (2000)

- Question of what constitutes "due process."



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RETIREMENT & TERMINATION



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Police Officer's Disability Retirement

- For police only, the granting of a disability retirement renders the police officer ineligible to receive benefits under GML § 207-c.
- Disability Retirements:
 - **Performance of Duty** (Retirement & Social Security Law § 363-c)
 - **Accidental** (“Three Quarters”) (RSSL § 363)
 - **Ordinary** (RSSL § 362)
 - Applies only to off-duty injuries, no service years requirements.
 - Does not apply to GML § 207-c injuries.



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Police Officer's Disability Retirement

- Employer can file a disability retirement application on behalf of an injured employee for on-duty injuries.
 - Employer should provide notice to the employee that disability retirement application(s) have been filed and an award could terminate GML § 207-c status.
- If an employee advises that he/she filed on own, ask for copies of the application.
 - Employee may have only filed for Accidental because it is the most preferred. If so, employer may want to file a Performance of Duty application.



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Firefighter's Disability Retirement

- While a police officer's right to full salary ceases if he/she receives a disability retirement, a **firefighter's salary benefits continue after a disability retirement is awarded**. However, the salary will be reduced by the amount of the pension.

GML § 207-a(2)

- A firefighter's salary benefits cease when the firefighter reaches mandatory retirement age, which is set by the terms of his/her plan.



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Firefighter's Disability Retirement

- The obligation to continue paying salary also includes any negotiated salary increases or decreases.

- *Whitted v. City of Newburgh*, 126 A.D.3d 910 (2d Dept. 2015):

Retired firefighters commenced an Article 78 proceeding to compel City to pay their continued salary benefit under § 207-a at the level that was in effect before the commencement of a new collective bargaining agreement that contained a salary decrease for active firefighters. The Second Department held that "regular salary or wages" in § 207-a included these salary decreases that were applied to active firefighters.



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Terminations

- *Town of Southold* Cases: Second Dept. upheld the Town's disciplinary termination (pursuant to Civil Service Law § 75) of two police officers who were receiving GML § 207-c benefits. Rulings **confirmed a municipality's ability to terminate police officers who are receiving GML § 207-c benefits** on the basis they are incompetent due to excessive absenteeism.

Hunstein v. Town of Southold, 204 A.D.3d 797 (2d Dept. 2022); *Wysocki v. Town of Southold*, 204 A.D.3d 811 (2d Dept. 2022)

- However, terminations **do not** have an impact on an officer's eligibility for § 207-c benefits (*i.e.*, employer must still pay).



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COLLECTIVE BARGAINING OBLIGATIONS



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Bargaining Obligations under the Taylor Law

City of Watertown v. State of N.Y. PERB, 95 N.Y.2d 73, 78-79 (2000)*

“The Taylor Law (Civil Service Law § 200 *et seq.*) requires public employers to bargain in good faith concerning all terms and conditions of employment.” There is a “strong and sweeping” public policy in New York State “in favor of collective bargaining.” Thus, “[t]he presumption in favor of bargaining may be overcome only in ‘special circumstances’ where the legislative intent to remove the issue from mandatory bargaining is “plain and clear,” or where a specific statutory directive leaves “no room for negotiation.”

*internal quotations and citations omitted.



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Bargaining Obligations

A demand to negotiate an overall procedure is mandatorily negotiable. However, there may be elements within the procedure that are individually nonmandatory, such as:

- Employer’s right to make Initial Determination.
- Employer’s right to assign light duty.
- Employer’s right to force treatment, including corrective surgery.
- Employer’s right to force the waiver of the confidentiality of medical records that are necessary for the employer’s determination of the nature of employee’s medical problem and its relationship to his/her duties.

Schenectady Police Benevolent Assn. v. New York State PERB, 85 N.Y.2d 480 (1995);
City of Watertown v. PERB, 95 N.Y.2d 73 (2000)



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BEST PRACTICES

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Best Practices

- Be judicious when making the initial determination.
- Obtain HIPAA releases early in the process, preferably as part of initial application.
- Create non-discriminatory practices (e.g., send all employees receiving GML §§ 207-a/c to IMEs).
- Effectively use disability retirement process.

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Best Practices

- Be aware of *Cohoes* and nonmandatory subjects.
- Do not agree to restrictive timelines to answer applications (e.g., if application is not responded to in 30 days, application is automatically granted).
- Negotiate caps on any benefit(s) expressly provided for in CBA (e.g., employee may only accrue vacation time for the first 60 days of his/her absence, not indefinitely).



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Questions?



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