



MITT ROMNEY
Governor

KERRY HEALEY
Lieutenant Governor

THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE FOR ADMINISTRATION AND FINANCE
HUMAN RESOURCES DIVISION
ONE ASHBURTON PLACE, BOSTON, MA 02108

ERIC KRISS
Secretary

RUTH N. BRAMSON
Chief Human Resources
Officer

To: Municipal Appointing Authorities
Police Chiefs
Human Resources Directors

From: Omar Hernández, Deputy General Counsel

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ISSUE: The Impact of the Student Officer Bill on Civil Service Seniority

It is essential that the correct civil service seniority date be used in determining the order of layoffs from among civil service employees.

[Massachusetts General Laws Chapter 31, Section 33](#)

defines seniority as the first date of permanent civil service employment after certification from an eligible list. The individual's length of service shall be computed from the first date of full-time employment as a permanent employee, including the required probationary period.

There has been much discussion concerning the impact of Chapter 333 of the Acts of 1994 ("student officer bill") upon an employee's civil seniority date. Although the act does not specifically address the impact of the required training on probationary periods as set forth in

[Massachusetts General Laws Chapter 31, Section 61](#),

the Civil Service Commission has opined that the twelve-month probationary period does not begin for a person who received an appointment on a full-time basis in which he/she will exercise police powers in the police department of any city or town until he/she has successfully completed the prescribed courses of study approved by the Criminal Justice Training Council. In its rationale, the Commission stated, in part, that an officer cannot be considered to performing the duties of a police officer until such time he/she can legally exercise police powers. *Gelinas v. Chicopee Police Department*, (January 25, 1999).

Moreover, the Civil Service Commission has opined in two cases that the proper seniority date of an individual is the date of his/her permanent appointment to the position. (See 5 MCSR 171, September 11, 1992; 3 MCSR 140, June 5, 1990).

An appointment to a permanent full-time position establishes an employment relationship. One of the essential tests to define an employment relationship is whether the person who is performing services for another is under the control and supervision of the latter and is bound to obey his instructions, not only as to the result to be accomplished but also as to the means and methods that are to be utilized in the performance of the work. In this connection, it is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if he has the right to do so. If an employee is subject to such control and supervision, then he is an employee of the person for whom he is performing the services. *Texas Co. v. Higgins*, 118 F.2d 636 (1941); *Coughlan v. Cambridge*, 166 Mass. 268 (1896); *Khoury v. Edison Electric Illuminating Co.*, 265 Mass. 236 (1928); *Wanders's Case*, 308 Mass. 157 (1941); *Bell v. Sawyer*, 313 Mass. 250 (1943). This test has been frequently applied in determining the liability of one to an unemployment tax, under title IX of the Federal social security act and under the different State unemployment compensation systems.

For purposes of unemployment, the

[Massachusetts General Laws Chapter 151A, Section 2](#)

defines services performed by an individual to be deemed to be employment unless an individual is free from control and direction in connection with the performance of such services and such service is performed outside the usual course of the business for which the service is performed and such individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed. Accordingly, the Human Resources Division had determined that a person who is appointed to a police department on a permanent full-time basis does not meet the exclusionary language in

[Chapter 151A, Section 2](#)

and the appointment establishes a employment relationship.

Based upon the aforementioned, the Human Resources Division has defined that a police officer's twelve-month probationary period begins upon successful completion of the police academy and allowed to perform the duties of a police officer. The officer's civil service seniority date is the first date of paid employment on a permanent full-time basis. *The Human Resources Division shall consider the date given on the Authorization of Employment Form,*

[Form 14](#)

as the first date of paid employment on permanent full-time basis.