GFOA | Government Finance Officers Association of New Jersey

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STATE HOUSE NEWS FOR FINANCE OFFICERS

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INTEREST ARBITRATION

GFOA, the New Jersey State League of Municipalities (NJLM), the New Jersey Municipal Managers Association (NJMMA), and the New Jersey Association of Counties (NJAC) have joined forces to assemble an outstanding panel of finance officers, labor attorneys, and local governing body administrators that will provide management with effective strategies and recommended best practices on how to navigate the unlevel playing field created by the failure of State leaders to permanently extend the 2% cap on binding interest arbitration awards.

Senator Declan O'Scanlon (R-11), an Interest Arbitration Task Force Member, will deliver the keynote remarks followed by leading labor attorneys Matthew Giacobbe and Joseph M. Hannon, who will address the current state of negotiations. Town of Boonton Administrator Neil Henry will provide a comprehensive case study and highly regarded finance officers Jon Rheinhardt and Gabriela Simoes Dos Santos will discuss the significance of analyzing and preparing critical financial data.

The workshop will also recommend new legislative strategies to address the continued inaction of State leaders that has inequitably altered the collective bargaining process in favor of labor at the expense of property taxpayers, and recommend best practices for management, some of which include: expecting aggressive and coordinated negotiating tactics from collective bargaining units; making sure to use general counsel and an experienced labor attorney to negotiate directly with collective bargaining units; preparing comprehensive financial analysis that includes a complete and accurate picture of a governing body's ability to pay; compiling salary, wage, and fringe benefits data, and all other relevant information, to address false claims and statements made by collective bargaining units; and, staying strong on health benefit concessions, particularly with retirees and rolling back Chapter 78 requirements.

This important and timely workshop is scheduled for 10:00 a.m. – 12:00 p.m. on July 31st in Committee Room 4 of the State House Annex in Trenton. The event is free for public officials, but space is very limited, so please make sure to let us know at knolan@njac.org if you plan on attending as we expect to close registration shortly.

WORKERS COMPENSATION

On July 8th, Governor Murphy signed into law **SENATE, NO. 716** *(Greenstein D-14/Bateman R-16)(Quijano D-20/Benson D-14)*, which would establish the "Thomas P. Canzanella Twenty First Century First Responders Act."

In general, this new law establishes a presumption of workers' compensation coverage for public safety workers and other employees under certain circumstances. More specifically, the law provides that if a public safety worker can demonstrate that in the course of his or her employment, the worker is exposed to a serious communicable disease or a biological warfare or epidemic-related pathogen or biological toxin, all care or treatment of the worker, including services needed to ascertain whether the worker contracted the disease, shall be compensable under workers' compensation, even if the worker is found not to have contracted the disease. If the worker is found to have contracted a disease, there would be a rebuttable presumption that any injury, disability, chronic or corollary illness or death caused by the disease is compensable under workers' compensation.

The measure further provides workers' compensation coverage for any injury, illness or death of any employee, including an employee who is not a public safety worker, arising from the administration of a vaccine related to threatened or potential bioterrorism or epidemic as part of an inoculation program in connection with the employee's employment or in connection with any governmental program or recommendation for the inoculation of workers. The law also establishes a rebuttable presumption that any condition or impairment of health of a public safety worker which may be caused by exposure to cancer-causing radiation or radioactive substances is a compensable occupational disease under workers' compensation if the worker was exposed to a carcinogen, or the cancer-causing radiation or radioactive substance, in the course of employment. Employers are required to maintain records of instances of the workers deployed where the presence of known carcinogens was indicated by documents provided to local fire or police departments under the "Worker and Community Right to Know Act," and where events occurred which could result in exposure to carcinogens.

In the case of any firefighter with seven or more years of service, the law creates a rebuttable presumption that, if the firefighter suffers an injury, illness or death which may be caused by cancer, the cancer is a compensable occupational disease. The measure further provides that, with respect to all of the rebuttable presumptions of coverage, employers may require workers to undergo, at employer expense, reasonable testing, evaluation and monitoring of worker health conditions relevant to determining whether exposures or other presumed causes are actually linked to the deaths, illnesses or disabilities, and also requires that the presumptions of compensability are not adversely affected by failures of employers to require testing, evaluation or monitoring. The measure covers paid or volunteer emergency, correctional, fire, police, and medical personnel.

GFOA remains concerned that this new law may increase annual expenditures by local governing bodies that employ public safety workers as it shifts the burden of proof from the worker to the employer in certain cases, which may produce increased claims for workers' compensation benefits and the requirement for employers to maintain additional records. GFOA is also concerned that the new law will result in increased premium costs to provide workers' compensation coverage as the measure may increase the pool of individuals filing claims.

JOB APPLICANT WAGE AND SALARY EXPERIENCE

On June 20th, both houses passed and sent to the Governor **ASSEMBLY, NO. 1094** *(Downey D-11/Lampitt D-6)((Gill D-34/Weinberg D-37),* which would prohibit employer inquiries about a worker's wage and salary experience under certain circumstances.

In summary, this legislation would make it an unlawful employment practice for any employer: to screen a job applicant based on the applicant's salary history, including, but not limited to, the applicant's prior wages, salaries or benefits; or, to require that the applicant's salary history satisfy any minimum or maximum criteria. Under the bill, an employer may consider salary history in determining salary, benefits, and other compensation for the applicant, and may verify the applicant's salary history, if an applicant voluntarily, without employer prompting or coercion, provides the employer with that salary history. An applicant's refusal to volunteer compensation information would not be considered in any employment decisions. An employer may also request that an applicant provide the employer with a written authorization to confirm salary history, including, but not limited to, the applicant's compensation and benefits, after an offer of employment, which offer includes an explanation of the overall compensation package, has been made to the applicant.

The legislation would not apply to: applications for an internal transfer or a promotion with an employee's current employer, or use by the employer of previous knowledge obtained because of prior employment with the employer; any actions taken by an employer pursuant to any federal law or regulation that expressly requires the disclosure or verification of salary history for employment purposes, or requires knowledge of salary history to determine an employee's compensation; and, any attempt by an employer to obtain, or verify a job applicant's disclosure of, non-salary related information when conducting a background check on the job applicant, provided that, when requesting information for the background check, the employer shall specify that salary history information is not to be disclosed. If, notwithstanding that specification, salary history information is disclosed, the employer shall not retain that information or consider it when determining the salary, benefits, or other compensation of the applicant.

The legislation would further provide that employer inquiries regarding an applicant's previous experience with incentive and commission plans and the terms and conditions of the plans, provided that the employer shall not seek or require the applicant to report

information about the amount of earnings of the applicant in connection with the plans, and that the employer shall not make any inquiry regarding the applicant's previous experience with incentive and commission plans unless the employment opening with the employer includes an incentive or commission component as part of the total compensation program. Governor Murphy is expected to sign the bill into law.

ON-SITE LACTATION ROOMS

On May 23rd, both houses passed and sent to the Governor **SENATE, NO. 1735** *(Weinberg D-37/Ruiz D-29)(Pintor-Marin D-29)(Mosquera D-4)*, which would require certain public facilities to provide an on-site lactation room.

In summary, this legislation would require every health care facility; federally qualified health center; county or municipal welfare office or agency; Medical Assistance Customer Center (MACC); One-Stop Career Center operated by, or under the authority of, the Department of Labor and Workforce Development; adoption agency or center operated by, or under the authority of, the Division of Child Protection and Permanency in the Department of Children and Families; foster care agency contracted by the Division of Child Protection and Permanency; or local office of the Division of Child Protection and Permanency, where practicable, to make at least one lactation room available, upon request, to any mother who is utilizing on-site services. The presence of any such lactation room would not abrogate or otherwise limit the mother's right to breast feed her baby in public, as provided by existing law.

The bill would require the Department of Health (DOH) to create signage that: contains information about breast feeding; affirms a mother's right to nurse in public; and indicates that lactation rooms are being made available for the privacy and comfort of nursing mothers, pursuant to the bill's provisions. Such signage is to be distributed directly to the various facilities identified in the bill, and is also to be posted, in a printable format, on the department's Internet website. A facility that is required to provide a lactation room pursuant to the bill's provisions would be required to display the prepared signage in a clear and conspicuous manner in the facility's public waiting room, as well as in any lactation room that is made available. The measure would further require that no later than one year after the bill's effective date, DOH would be required to establish, and post at a publicly accessible location on its Internet website, a list of all facilities that have made lactation rooms available pursuant to the bill's provisions.

The Office of Legislative Services (OLS) concluded in its Fiscal Estimate that the legislation may "increase State costs … in fulfilling certain administrative and reporting requirements," so it's unclear if Governor Murphy intends to sign the bill into law at this time.

PUBLIC OFFICIAL PENSION FORFEITURE

On May 30th, both houses passed and sent to the Governor **ASSEMBLY, NO. 3766** *(Armato D-2/Houghtaling D-11)(Corrado R-40),* which would require a public officer or employee to forfeit their pension under certain circumstances

More specifically, this legislation would require a public officer or employee to forfeit their pension if convicted of sexual contact, lewdness, or sexual assault when the offense is related directly to the person's performance in, or circumstances flowing from, the specific public office or employment held by the person. The bill would also require such forfeiture if the person is convicted of the crime of corruption of public resources in the first degree. The crime is of the first degree when a person knowingly uses or makes disposition of a public resource valued at $500,000 or more for an unauthorized purpose, when that public resource is subject to an obligation to be used for a specified governmental function or public service.

The measure would define "public resource" as any funds or property provided by the government, including (1) money paid by the government; (2) transfer by the government of an asset of value for less than fair market price; (3) fees, loans, or other obligations normally required for a contract, that are paid, reduced, or waived by the government; (4) money loaned by the government to be repaid on a contingent basis; (5) money loaned by an entity based upon a guarantee provided by the government; (6) grants awarded by the government; and (7) credits applied by the government against repayment obligations. Governor Murphy is expected to sign this bill into law.

NJ COPS AND FIREFIGHTERS ARE ASKING FOR MUCH BIGGER RAISES. HERE'S WHY.
Samantha Marcus, NJ Advance Media for NJ.com, July 14, 2019

After West Windsor's police contract expired at the end of last year and negotiations with the township stalled, the union turned to an arbitrator to break the impasse. The local union's demands? Four percent annual pay hikes for sergeants and for patrolmen at the top of the scale and 2 percent annual wage increases for everyone else, in addition to the standard wage increases officers receive for additional years of service. The township of course came in with a lower counter-offer. And, ultimately, the arbitrator awarded two years of 2-percent raises and two years of 2.25 percent raises for everyone.

Sound like business as usual to you? No, say local government lobbyists. They fear it could be a sign of bigger raises for police and firefighters who are emboldened to ask for more following the state's controversial decision not to renew a law designed to help curb property taxes. That law set a 2-percent cap on wage increases public-sector unions could win in interest arbitration. The West Windsor arbitration award is one of just three to emerge since the cap expired in December 2017, opening the door for police and firefighters to get bigger raises when contract talks stall between their unions

and municipalities. The state's League of Municipalities and Association of Counties continue to urge lawmakers to extend the cap, which they say helped slow the growth of the nation's highest property taxes. Last year, the average residential property tax bill in New Jersey was $8,767.

Without the limits on arbitration, they said local government leaders would have to cut spending and reduce services to stay within the bounds of a separate 2 percent cap on increases in spending. While the three arbitration awards issued so far indicate arbitrators are sticking pretty close to spirit of the 2 percent cap, the West Windsor award demonstrates the kind of "creep" that concerns local government employers, said Mike Cerra, assistant executive director of the New Jersey League of Municipalities. In the decades before the cap was installed in 2011, arbitration awards ranged from 2 percent to nearly 6 percent. Interest arbitration awards aren't going to jump to 6 percent overnight, experts said. Instead, Cerra said, "What we're likely to see is over the course of time a creeping upwards. This community got 2.25 percent, for this reason this town should get 2.5 percent, and for that basis this town increases to 2.75 percent."

A 207 study, which was derided as one-sided by labor groups — determined the arbitration cap had saved taxpayers $530 million from police and firefighters salaries between 2010 and 2015. Employers and unions head to arbitration when they can't agree on contract terms, such as wages, health care contributions, vacation time or other conditions of employment. The vast majority of contracts are settled through voluntary negotiations. That's where the real impact is being felt, Cerra said. "The level playing field we think the interest arbitration cap created has now been unleveled," he said. "You are seeing these local bargaining units, who believe that they need to recapture what was lost, coming in with higher proposals across the board because they have the fallback option of interest arbitration." Local government leaders engaged in collective bargaining are reporting back with opening offers from police and fire unions of 4 percent and 5 percent, Cerra said.

"The police and firefighters in collective bargaining units are coming in very aggressive," said John Donnadio, executive director of the New Jersey Association of Counties. "You're seeing in negotiations that the parties are starting further apart." Michael Freeman, vice president of labor relations for the New Jersey State Policemen's Benevolent Association, said the unions' asks have been within the context of what the municipalities can afford and with the interests of taxpayers in mind. "We're not asking for 6 percent. We understand the landscape. We understand there was a need to make some changes," he said. "We've done our part, and we just want to recoup some of the losses that we've had." "We're never going to go in with anything unreasonable."

Between required increases in the pension and health benefit contributions, "our buying power has been decreased considerably," he said. "And that money going back to municipalities comes out of our paychecks." Freeman said he expects most arbitration awards will be in line with the West Windsor award, more or less, as

arbitrators are still required to weigh what the municipality can afford, employee morale, comparable pay and what the market will bear. In Bedminster, Policemen's Benevolent Association Local 366's final offer included 2-percent raises for all officers every six months — on Jan. 1 and July 1 of each year — for the term of the four-year contract. The union argued its members had suffered financially under the 2 percent cap and by a state law requiring them to pick up a larger share of their health care costs and they needed to make up lost ground, according to the arbitrator's decision.
Armed with data on the township's finances, the local PBA said the township had amassed a healthy surplus and it could absorb the higher payroll costs.

Meanwhile, the township offered raises between 1.6 percent and 1.8 percent each year — and only for sergeants and officers at the top of the salary guide. All others would continue to receive annual increases tied to years of service. The arbitrator's final award, which has been appealed, would boost salaries for sergeants and officers at the top of the salary guide by 2 percent every year and granted one 2-percent across-the-board raise. This, the arbitrator said, would "allow the township to continue to maintain its fiscal responsibility to the taxpayers while providing the officers a fair and reasonable increase and as such is in the public interest."

Donnadio said he's concerned unions are calling out local governments' reserves in assessing their ability to pay — and that arbitrators will take this into account. "I know that's something that they believe they're entitled to as well," he argued. "The reserves are for rainy days and an emergency, not to pay general everyday operating expenses." But, Freeman countered, local governments were able to amass those reserves by paying police and firefighters less. "They have more," he said. "We're making less."

NEW FORECLOSURE LAW AIMS TO INHIBIT LOSS OF AFFORDABLE HOMES IN NJ
Colleen O'Dea, NJ Spotlight, July 15, 2019

A law signed recently by Gov. Phil Murphy requires that whenever a mortgage holder starts foreclosure proceedings on a home that is deed-restricted as affordable — meaning there is a cap on its sale price and it can only be purchased by those with low or moderate incomes — the mortgage holder must notify the municipality where the home is located. This will give municipal officials the option of purchasing the home if they think it makes sense.

The loss of a low-priced home in a state with some of the highest housing costs in the nation further exacerbates New Jersey's affordability problem. It also could hurt municipalities that had already fulfilled prior housing obligations. Under several state Supreme Court decisions known as the Mount Laurel Doctrine, every community is required to provide for its fair share of needed low-cost housing. Some 300 municipalities have built or approved the construction of affordable homes dating back as early as the mid-1980s. A municipality must replace a lost affordable unit, according to Murphy's conditional veto of an earlier version of the bill. The Housing and Community

Development Network of New Jersey applauded the new law, signed late last month by Murphy.

“We feel it is critical New Jersey does not lose any affordable homes,” said Nina Rainiero, a spokeswoman for the network. “Public funds were invested into making these homes affordable and this bill ensures that public investment will not be lost because of foreclosure. Plus, it provides another family an opportunity to live in a home that’s affordable.” The new law does not go as far as its sponsors had hoped. As sent to Murphy last March, the measure would have required that the deed restriction on an affordable home remain in force even after a foreclosure and thus ensure that it could be re-sold at a below-market price and only to those whose incomes qualify.

Murphy had conditionally vetoed the measure, S-362, last May, saying that while the bill was well-intentioned, it could have made it difficult for most low-income families to buy an affordable home. That’s because Federal Housing Administration regulations expressly prohibit the use of FHA loans to purchase a property whose deed restriction will not expire with a foreclosure. “This bill may actually hurt the very low- and moderate-income families it is intended to benefit by making it more difficult for these families to obtain a mortgage,” Murphy wrote. “This bill would effectively preclude all prospective affordable unit homeowners from accessing any FHA loan or insurance products. This is problematic because many first-time low- and moderate-income homebuyers rely on FHA loan products to secure the financing necessary to purchase their homes ... Few low- and moderate-income applicants have the capital on hand to obtain a private loan and the universe of lenders providing loans for the purchase of homes with affordability controls is relatively small.”

Additionally, Murphy continued, it would “further disadvantage” prospective purchasers of affordable units because they would no longer qualify for a financial assistance program offered by the New Jersey Housing and Mortgage Finance Agency that includes a 3.5 percent down payment option and $10,000 to cover the down payment and closing costs. The HMFA is only allowed to provide this assistance to homebuyers getting FHA loans. Murphy retained the provisions in the legislation requiring creditors to inform municipal officials of their intent to foreclose on a home with an affordability restriction, saying that will put the question of trying to maintain a low-cost unit in the hands of local officials.

“This notice will ensure that municipalities do not miss an opportunity to intervene in foreclosure proceedings and, where appropriate, preserve a home’s affordability controls,” Murphy wrote in the conditional veto. In his veto message, Murphy said municipal officials may choose not to maintain as affordable some older foreclosed homes but might decide to replace them with newer units. Currently, municipal officials are in the midst of establishing new affordable housing obligations through 2025 under a process that is taking place in the courts. The Fair Share Housing Center, which has been part of legal actions and negotiations as part of this process, says it has now reached

settlements with 289 municipalities, more than half of those across the state. The number of new units that these settlements call for is unknown, but Kevin Walsh, Fair Share's director, said they could result in the construction of 50,000 new affordable homes. In March 2018, a Superior Court judge estimated the need for new affordable units at close to 155,000 statewide. Municipalities do not have to build low-cost units, but they do have to put in place zoning that would allow for the construction of their obligated number of affordable units.

The new law also mandates that a mortgage holder provide a property owner with contact information for both the municipal housing official and NJHMFA so that the owner can consult with them and try to get help to retain the home. Sen. Ronald Rice (D-Essex), one of the primary sponsors of the law, said these efforts are necessary because the large number of foreclosures in the state has led to the loss of affordable units, given that a significant portion of properties in foreclosure are deed-restricted. He said that last year, New Jersey finalized close to 70,000 foreclosures and led the nation for those procedures. "It's heartbreaking to know so many families are losing their homes," Rice said. "But the situation is compounded when affordable housing properties go into foreclosure and are then stripped of the deed restriction that ensures their affordability. In times like this, when more and more New Jersey residents are faced with difficult economic conditions, we need more affordable housing protections, not less."