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LABOR & EMPLOYMENT DEPARTMENT

ALERT

STATE FURLOUGH PLANS ALLOWED TO PROCEED – A DECISION IMPACTING ALL CIVIL SERVICE ENTITIES WITHIN THE STATE OF NEW JERSEY

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Thousands of New Jersey state employees got an extended Memorial Day weekend without pay in a decision made unilaterally by the state as a cost-cutting measure in this time of economic crisis. Several unions with state contracts questioned the state's right to mandate these unpaid days off in a challenge before the New Jersey Public Employment Relations Commission (PERC). The unions requested that PERC restrain the state from implementing its imminent furlough plans and allow state employees to come to work and get paid.

On Saturday, May 16, 2009, just days before PERC employees themselves would be furloughed, PERC issued its decision denying the unions' request for immediate relief against the state. PERC ruled instead that the state, as well as other civil service entities within New Jersey could proceed with planned furloughs to the extent that such furloughs were part of a department or agency-wide shutdown on one or more defined days. In so ruling, PERC relied on a portion of a new emergency rule adopted by the New Jersey Civil Service Commission (Commission) on March 25, 2009 – and upheld by the New Jersey Superior Court Appellate Division – permitting civil service entities to initiate temporary layoffs, or furloughs, for reasons of economy, efficiency, or other related reasons as long as such layoffs included an entire layoff unit and closed for one or more work days over a defined period of time. The portion of the emergency regulation addressing staggered temporary layoffs – where employees in a department or agency are laid off on different days – was not upheld by the Appellate Division and PERC refrained from addressing the issue as the furlough plans at issue before PERC did not include any such staggered layoffs.

As for non-civil service public sector employers in New Jersey (where the civil service rule is not applicable), PERC reaffirmed long-standing precedent that temporary layoffs constitute a unilateral change in terms and conditions of employment requiring negotiations.

A final temporary layoff regulation with similar provisions to the emergency regulation was adopted by the Commission and became effective on May 24, 2009. This final regulation closely tracks the language of the emergency rule and will expire on June 30, 2010. Although the final regulation does include language covering staggered layoffs, the Commission has determined that no staggered layoff plans shall be approved until at least July 8, 2009, so that any interested parties may have time to seek court review.

This decision sends a strong message that, in these tough economic times, civil service public employers can take unilateral action to save salary and benefit costs, provided that the impact on the public is minimized.

For more information about this topic, please contact the authors of this *Alert,* or any member of Fox Rothschild's Labor & Employment Department. Visit us on the web at www.foxrothschild.com.

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Another recent change in the law in New Jersey may affect your municipality. Please click here to view our *Alert* on the recent NJ Supreme Court decision in *State v. DeAngelo* (A-73-07), where the court held that a municipal "sign" ordinance that banned all inflatable balloon signs, other than grand opening signs, was unconstitutional because it violated the First Amendment right to free speech and was overbroad.

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