

Employment Law: What Counties Need to Know

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- *Preliminary Issue*
- Elected and appointed officials have hiring and firing authority for employees in their departments. The officials do not have to follow County policy.

- *But*

- The County sets and controls the financial terms of employment
 - Compensation
 - Benefits
- Elected and appointed officials must comply with state and federal law.
 - And federal law generally trumps state law

- Try to get the elected and appointed officials to cooperate with and coordinate with your HR department.
- Advise officials that if they refuse to coordinate with the County, and their refusal results in financial liability to the County, the costs and attorneys fees may come out of the official's budget.

Recruiting/Hiring/Employment Decisions

- Non-Discrimination
 - Race
 - Gender/Pregnancy
 - Age
 - National Origin
 - Color
 - Religion
 - Disability
 - Genetics

Recruiting/Hiring/Employment Decisions

- Non-Discrimination (cont'd)
 - Political affiliation
 - Reserve status
 - Tobacco use

Recruiting/Hiring/Employment Decisions

- Background check
 - Criminal (SLED)
 - Sex Offender Registry
 - Credit Check
 - Fair Credit Reporting Act
 - Driving
- I-9 (Immigration)
- E-verify
- Residency Requirement

Recruiting/Employment Decisions

- Contracts
- Tests
 - Physical – *after* tentative decision to hire is made
 - Skills tests
 - Drug

Wages

- Fair Labor Standards Act (FLSA)
 - Minimum wage (\$7.25/hour)
 - Overtime – after 40 hours worked in one week
 - Exception: law enforcement and fire suppression

Wages

- FLSA (cont'd)
 - Record Keeping -- *all* “hours worked”
 - “know or have reason to know” employee is working

Wages

- FLSA (cont'd)
- Exclusions/Exemptions
 - Elected officials – excluded
 - Exempt employees (exempt from overtime and record keeping)
 - Salary test
 - Duties test

Wages

- State Wage Payment Act
 - Notice – wages, fringe benefits, deductions, payday, hours of work
 - Pay what is owed
 - Garnishment

Fringe Benefits

- Mandatory
 - Health Insurance
 - State Retirement
 - Worker's Compensation
 - Unemployment Compensation
 - Reservist's Pay

Fringe Benefits

- Optional & Conditional (no law requires)
 - Vacation & Sick Leave (forfeiture)
 - PTO option
 - Holiday Pay
 - Jury Duty (cap)
 - Funeral/Bereavement

Working Conditions

- Handbooks (do *not* adopt by ordinance)
 - Disclaimer (UNDERLINED, ALL CAPS) on page 1
 - “Will,” “must,” “shall”
 - Minimum contents

Working Conditions

- EEO Policy – first in the handbook
- Anti-Harassment Policy
 - Policy prohibiting *all* harassment
 - No retaliation
 - Procedure for reporting. Include alternative to chain-of-command

Working Conditions

- Leaves of Absence
- OSHA
- Unions
- Free Speech/Whistleblowing
 - Employees at Council meetings

Working Conditions

- Political Activity – Candidacy
- Workplace Privacy Policy
- Computer Use Policy
- Nepotism

Discipline

- Forms of Discipline – do not promise “progressive”
 - Oral
 - Written
 - Suspension
 - Loss of leave
 - Discharge
- Signing Reprimands – require

Termination

- No Surprise Rule
- Termination Conference/Resignation
- Grievance Procedure Act
 - Not required to have grievance procedure but if you do, it must comply with the Act
 - Suggest: no appeal to Council

FOIA

- Freedom of Information Act
 - Some matters considered public record
 - Names, salary, hire date
 - Personnel Files
 - How much to release

Unemployment Compensation

- Tax basis vs. Reimbursable
- Misconduct vs. Incompetence
 - Privilege
 - Witnesses

References

- Neutral References for all employees
 - Shield law not a safety net
- CDL Drug Tests



Questions?