SOUTH CAROLINA
ASSOCIATION OF COUNTIES

Employment Law: What Counties Should Know

July 28, 2026
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BETTIS LAW GROUP, LLP
South Carolina's Labor & Employment Law Firm

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Topics

- County employees
- Employment at will
- Discrimination and Harassment
- Remote Work
- Public Records and FOIA
- First Amendment and Public Employees
- Employee Handbooks
- South Carolina Payment of Wages Act

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Topics

- Grievance Procedures
- The Fair Labor Standards Act
- Drug Testing
- The Family and Medical Leave Act
- Military Leave
- Political Activity

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Who are County employees?

- The real issue is who **aren't** County employees

- Elected and appointed officials have hiring and firing authority for employees in their departments. The officials do not have to follow County policy with respect to discipline, hiring, and firing.

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Who are County employees?

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

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Who are County employees?

- 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

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At Will Employment

- True or False:
  - South Carolina is an “at will” state
    - True. 49 states, including South Carolina, are “at will” states.

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At Will Employment

- At Will Employment means, essentially, that either the employer or the employee may end the employment relationship without giving either notice or reason.
- What employees aren’t at will?
  - Employees who have a contract of employment for a definite period of time
  - Employees who cannot be terminated without cause

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At Will Employment

- True of False:
  - When employees are “at will” it means that they can be terminated for any reason.
    - False. An at will employee may be terminated for any reason or no reason, BUT NOT AN ILLEGAL REASON

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Potentially Illegal Reasons

- Motivated by discriminatory intent based on a protected category
- Participating in a workplace investigation
- Reporting for jury duty
- Making an OSHA (Occupational Safety and Health Administration) complaint
- Refusing to perform illegal activities
- Requesting reasonable accommodation for a disability
- Taking legally protected leave (Family Medical Leave Act)
- Being a whistleblower regarding unsafe or illegal activity at the place of employment
- Filing a discrimination, wage, or harassment suit
- Complaining about wages, overtime, or the working environment

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Federal Anti-Discrimination Laws

- Title VII of Civil Rights Act of 1964
  - Race
  - Sex (including sexual orientation, gender identity and pregnancy)
  - Religion
  - Color
  - National origin

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Federal Anti-Discrimination Laws

- Age Discrimination in Employment Act (ADEA)
  - Age: 40 years old and above
- Americans With Disabilities Act (ADA)
  - Disability
- Pregnant Workers Fairness Act (PFWA)
  - Pregnancy
- Genetic Information (GINA)
  - Medical history

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Title VII of Civil Rights Act of 1964

- Title VII prohibits discrimination against a job seeker or employee on the basis of race, color, religion, sex (including pregnancy, sexual orientation, and transgender status) or national origin.

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Title VII of Civil Rights Act of 1964

- Title VII covers the full spectrum of employment decisions, including:
  - recruitment
  - selection
  - termination
  - promotion
  - discipline
  - other decisions concerning terms and conditions of employment.

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The Age Discrimination in Employment Act

- Age discrimination involves treating an applicant or employee less favorably because of his or her age.
- The ADEA forbids age discrimination against people who are age 40 or older. It does not protect workers under the age of 40.
- The ADEA prohibits discrimination in any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, benefits, and any other term or condition of employment.

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The Americans With Disabilities Act

- The ADA makes it unlawful to discriminate in employment against a qualified individual with a disability.
- The ADA prohibits an employer from retaliating against an applicant or employee for asserting his rights under the ADA.
- Under the ADA, a person has a disability if he has a physical or mental impairment that substantially limits a major life activity.
- An individual with a disability must be qualified to perform the essential functions of the job with or without reasonable accommodation, to be protected by the ADA.

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The Americans With Disabilities Act

- A reasonable accommodation is any change or adjustment to a job or work environment that permits an employee with a disability to perform the essential functions of a job, or to enjoy benefits and privileges of employment equal to those enjoyed by employees without disabilities.
- Reasonable accommodations may include:
  - acquiring or modifying equipment or devices,
  - job restructuring,
  - part-time or modified work schedules,
  - reassignment to a vacant position,
  - adjusting or modifying examinations, training materials or policies,
  - providing readers and interpreters, and
  - making the workplace readily accessible to and usable by people with disabilities.

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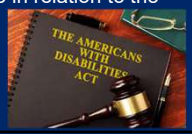
The Americans With Disabilities Act

- It is a violation of the ADA to fail to provide reasonable accommodation to the known physical or mental limitations of a qualified individual with a disability, unless to do so would impose an undue hardship on your county.
- Undue hardship means that the accommodation would require significant difficulty or expense in relation to the size and resources of the employer.



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The Americans With Disabilities Act

- How does the ADA differ from the Family and Medical Leave Act?
  - The ADA only requires employers to employ 15 employees to be covered, rather than 50
  - There is no minimum length of employment required for an employee to be covered by the ADA, and in fact, it applies even before employment begins
  - The ADA does not require accommodations or leave be provided to employees who are caring for others; only for an employee's own disability
  - Leave as a reasonable accommodation is not limited to twelve weeks, and in fact, can extend to six months in some situations

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The Pregnant Workers Fairness Act

- The Pregnant Workers Fairness Act (PWFA)
  - effective June 27, 2023
  - the Pregnant Workers Fairness Act (PWFA) requires a covered employer to provide a "reasonable accommodation" to a qualified employee's or applicant's known limitations related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an "undue hardship."
  - The PWFA applies only to accommodations. Other laws make it illegal to fire or otherwise discriminate against employees or applicants on the basis of pregnancy, childbirth, or related medical conditions.

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The Pregnant Workers Fairness Act

What are Some Accommodations for Pregnant Workers?

- Being able to sit or drink water
- Being excused from strenuous activities
- Receiving appropriately sized uniforms and safety apparel
- Receiving break time to use the bathroom, eat, and rest
- Taking leave or time off to recover

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Harassment

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Harassment

- What is unlawful harassment?

1. Unwelcome verbal, nonverbal or physical conduct
2. That denigrates, belittles, or puts down an individual or shows hostility, distaste, or aversion toward an individual based on his or her:

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Harassment (cont.)

- race
- color
- religion
- sex (including sexual orientation, gender identity and pregnancy)
- national origin
- age (40 or older)
- disability

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Let's play: Is it UNLAWFUL harassment?!!!!!

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Question # 1

I'm a huge Gamecock fan. My coworker's office looks like this:

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Question # 2

I'm of Pakistani origin, and every time I see my coworker he says:

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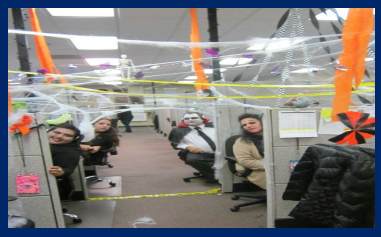
Question #3

I don't celebrate Halloween for religious reasons, because I think it promotes paganism and devil-worship. Here is what I see when I walk into work all of October:



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Question # 4

My boss constantly makes fun of lazy millennial "snowflakes" who get offended by everything, are addicted to their phones, and think the world owes them something. This is my friends and I:

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The most common form of harassment

- What is the most common and well-known type of harassment?
  - Sexual harassment

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Sexual Harassment

- Sexual harassment is a form of discrimination that involves unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, when:
  - Submission to such conduct is made either explicitly or implicitly a term or condition of a person's job, pay, career; or
  - Submission to or rejection of such conduct is used as a basis for career or employment decision; or
  - Such conduct has the purpose or effect of interfering with an individual's work performance, or creates an intimidating, hostile or offensive work environment.

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Retaliation

- Harassment because of opposition to other unlawful conduct is illegal.
- Harassment because of participation in an investigation into other unlawful conduct is illegal.

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Practical Issues

- Conduct that may seem harmless to one person may not be harmless to others
  - Even to those in the same classification
  - Even if not technically unlawful, may still be inappropriate
- The fact that conduct may be culturally or socially acceptable outside of the workplace does not make it acceptable in the workplace

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Is Everything Harassment?

- Petty slights, annoyances, and isolated incidents (unless extremely serious) will not rise to the level of illegality.
- To be unlawful, the conduct must create a work environment that would be intimidating, hostile, or offensive to reasonable people.

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Is Everything Harassment?

- The U.S. Supreme Court has opined that Title VII is not a "general civility code for the American workplace."
- "Toiling under a boss who is tough, insensitive, unfair, or unreasonable can be burdensome, but Title VII does not protect from the 'ordinary slings and arrows that suffuse the workplace every day."

  "Generally disagreeable behavior and discriminatory animus are two different things."

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Remote Work

Raise your hand if your county completely prohibits remote work.

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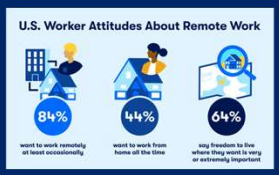
Remote Work

Things to bear in mind if your County permits remote work:

- Communication and Collaboration – avoid "out of sight, out of mind"
- Performance Management – supervisors must continue to supervise
- Set Clear Expectations – benchmarks and goals with follow-up
- Policies – have them in place and apply them evenly



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Remote Work

- Even if you have a "no remote work" rule, employers should not automatically deny a remote work request
- In *some* cases, remote work may be a reasonable accommodation to disability
- Permitting an employee to work remotely may be a reasonable accommodation, even if the County generally does not allow remote work.

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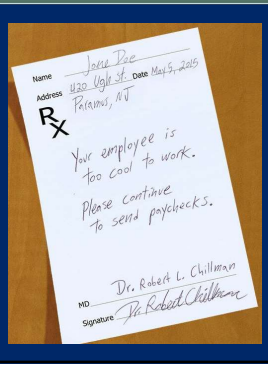
Remote Work

- However, a doctor cannot "prescribe" remote work
- An accommodation should be reached through an interactive process between the employee and employer
- An employer is not obligated to adopt an employee's preferred or requested accommodation and may instead offer alternate accommodations as long as they would be effective



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Public Records

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Public Records

- Public Records - all books, papers, maps, photographs, cards, tapes, recording, or other materials regardless of physical form (including emails and phone records for work cell phones and other work equipment)
- A person who unlawfully removes a public record from the office where it usually is kept or alters, defaces, mutilates, secretes, or destroys it is guilty of a misdemeanor and may be fined or imprisoned (SC Code § 30-1-30)

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Public Records

- The Archives and Records Management Division of the State Archives has prepared general retention and disposition schedules for counties
- The schedules list permanently valuable records, which should be properly protected for future use, and they also supply a timetable that will allow records custodians to regularly and legally dispose of records of non-permanent value
- The County-specific retention schedule can be found here: https://scdah.sc.gov/records-management/schedules

General Records Retention Schedule
for Counties Revised 2026
Introduction 1
Statutory authority 1
Definitions 1
General schedule format 3
Application of general schedule 4
How to use the general schedule 10
Explanation of terms used in retention summary 10
Special provisions 9
Contacting the Records Management Division 9

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Public Records and FOIA

- The South Carolina Freedom of Information Act (SC Code § 30-4-10 et seq.) requires that public records and information must be made available to the public at a minimum cost or delay.
- SC Code Section 30-4-40(a) states that a “public body may but is not required to exempt” certain information from disclosure.
- Only a “citizen of the State may apply to the circuit court for a declaratory judgment, injunctive relief, or both, to enforce the provisions” of FOIA

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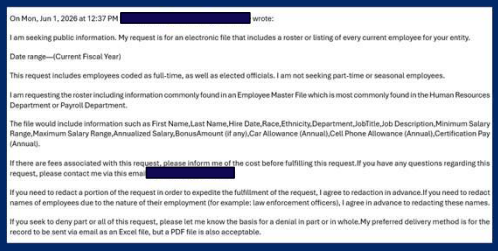
Public Records and FOIA

- A commonly received FOIA request might look like this:


On Mon, Jun 1, 2026 at 12:37 PM [redacted] wrote:

I am seeking public information. My request is for an electronic file that includes a roster or listing of every current employee for your entity.

Date range—(Current Fiscal Year)

This request includes employees coded as full-time, as well as elected officials. I am not seeking part-time or seasonal employees.

I am requesting the roster including information commonly found in an Employee Master File which is most commonly found in the Human Resources Department or Payroll Department.

The file would include information such as First Name,Last Name,Hire Date,Race,Ethnicity,Department,JobTitle,Job Description,Minimum Salary Range,Maximum Salary Range,Annualized Salary,BonusAmount (if any),Car Allowance (Annual),Cell Phone Allowance (Annual),Certification Pay (Annual).

If there are fees associated with this request, please inform me of the cost before fulfilling this request.If you have any questions regarding this request, please contact me via this email [redacted]

If you need to redact a portion of the request in order to expedite the fulfillment of the request, I agree to redaction in advance.If you need to redact names of employees due to the nature of their employment (for example: law enforcement officers), I agree in advance to redacting these names.

If you seek to deny part or all of this request, please let me know the basis for a denial in part or in whole.My preferred delivery method is for the record to be sent via email as an Excel file, but a PDF file is also acceptable.

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Public Records and FOIA

- There are dozens of organizations that send out hundreds of FOIA requests per day to public entities nationwide to gather information to create content for their website.
- A County is required to provide copies of public records in its possession but is not required to create records in response to a FOIA request.
- I recommend clients respond to requests like the one found on the previous slide as follows:

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Public Records and FOIA

- [NAME] County is not in possession of an electronic file that includes a roster or listing of every current employee of the County that lists First Name, Last Name, Hire Date, Race, Ethnicity, Department, Job Title, Job Description, Minimum Salary Range, Maximum Salary Range, Annualized Salary, Bonus Amount (if any), Car Allowance (Annual), Cell Phone Allowance (Annual), Certification Pay (Annual). Because the County is not in possession of the record you have requested, your request is denied.

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Public Records and FOIA

- When your county receives a FOIA request for a personnel file, the county <u>may</u> be able to exempt it from disclosure because it contains information of a personal nature where disclosure would be an “unreasonable invasion of personal privacy.” S.C. Code 30-4-40(a)(2)

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Public Records and FOIA

- The courts have narrowly construed the “privacy exemption” and weigh the public’s interest against personal privacy.
- Whether a County should produce personnel records in response to a FOIA request will require an individual analysis.
- While it is geared towards cities, I often recommend clients read “Releasing Personnel and Compensation Information” found here: https://www.masc.sc/uptown/07-2021/releasing-personnel-and-compensation-information

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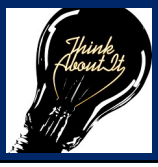
Public Records

- What about work emails sent on a personal computer or work-related texts sent on a personal phone, do those constitute “public records”?
- *See* Does Using Personal Devices Foil FOIA? from the SC Press Association for a full discussion (https://scpress.org/does-using-personal-devices-foil-foia/)
- The safest answer until a South Carolina court weighs in is “potentially”.
- Therefore, if those texts and emails are potentially FOIA-able, should your County consider prohibiting employees from using personal devices for work-related purposes?



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The First Amendment and Public Employees

MONEYWATCH

Workers fired, placed on leave for Charlie Kirk comments after assassination

WORKFORCE

Public Workers Are Getting Fired for Posting About Charlie Kirk

GOP leaders urged citizens to flag social media posts about Kirk, leading to investigations and dismissals across state and local agencies.

Educators fired after posting about Charlie Kirk allege in lawsuits that their free speech rights were violated

The posts were shared on their private social media accounts.

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The First Amendment and Public Employees

- The First Amendment prohibits governmental entities from "abridging the freedom of speech."
- That means that a County cannot arrest, fine or even discipline or fire someone because they exercised their right to First Amendment protected free speech.

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The First Amendment and Public Employees

- But not all speech is protected by the First Amendment.
- Speech not protected by the First Amendment includes:
  - obscenity
  - fighting words
  - defamation
  - child pornography
  - perjury
  - blackmail
  - threats of violence
  - incitement to imminent lawless action
  - solicitations to commit crimes
  - statements made pursuant to an employee's official job duties
  - plagiarism of copyrighted material

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The First Amendment and Public Employees

- "[P]ublic employees do not surrender all their First Amendment rights by reason of their employment . . . Rather, the First Amendment protects a public employee's right, in certain circumstances, to speak as a citizen addressing matters of public concern." Garcetti v. Ceballos, 547 U.S. 410, 417 (2006).
- "[T]he law is settled that as a general matter the First Amendment prohibits government officials from subjecting an individual to retaliatory actions . . . for speaking out . . ." BUT "in recognition of the government's interest in running an effective workplace, the protection that public employees enjoy against speech-based reprisals is qualified." Mercado-Berrios v. Cancel-Alegría, 611 F.3d 18, 25 (1st Cir. 2010).
- "When a citizen enters government service, the citizen by necessity must accept certain limitations on his or her freedom." McGunigle v. City of Quincy, 944 F.Supp.2d 113 (1st Cir. 2016).

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The First Amendment and Public Employees

- When analyzing whether employee speech is protected by the First Amendment, a public employer must ask whether a public employee spoke on a matter of public concern, defined as a matter of larger societal significance or importance.
- If a public employee was disciplined or discharged for expressing a private grievance, that would not violate the First Amendment.
- If, however, a public employee spoke on a matter of public concern, the County must engage in a balancing test.
- The County should balance the employee's right to free speech against the County's interests in an efficient, disruptive-free workplace.

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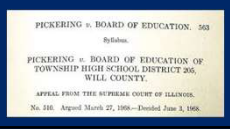
The First Amendment and Public Employees

- The United States Supreme Court developed this test in Pickering v. Board of Education (1968), a case involving a public high school teacher who was terminated after writing a letter to the editor of a newspaper that was highly critical of school district officials but not people he worked with on a day-to-day-basis.
- The Supreme Court reasoned that Pickering spoke on a matter of public concern – whether the school district spent too much money on athletics as opposed to academics.
- The Court then held that Pickering's rights to free speech outweighed the school board's interests in a disruptive free workplace, largely because Pickering did not criticize people that he worked with daily, such as fellow teachers or his principal.



PICKERING v. BOARD OF EDUCATION. 563

Syllabus.

PICKERING v. BOARD OF EDUCATION OF TOWNSHIP HIGH SCHOOL DISTRICT 205, WILL COUNTY.

APPEAL FROM THE SUPREME COURT OF ILLINOIS.

No. 346. Argued March 27, 1968.—Decided June 3, 1968.

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The First Amendment and Public Employees

- If your County is considering disciplining or discharging an employee based on their speech, the questions to ask are:
  - (1) whether the speech falls into one of the categories not protected by the First Amendment listed above;
  - (2) whether the speech is on a matter of public concern rather than a private grievance; and
  - (3) whether the speech was so disruptive that the County's interest in maintaining an efficient and harmonious workplace outweighs the employee's right to free speech.

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Employee Handbooks

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Employee Handbooks

Why do we need one?

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Employee Handbooks

- What should be on the first page?
  - A disclaimer
- What one word must describe the disclaimer?
  - Conspicuous
- Why does the disclaimer need to be conspicuous?
  - Prevents the handbook from being a contract

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Employee Handbooks

- Disclaimer (Handbooks are not contracts) § 41-1-110
  - Page 1 of handbook, employee manual
  - ALL CAPITAL LETTERS AND UNDERLINED
  - Signed by employee

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DISCLAIMER

ALL EMPLOYEES OF THE COUNTY ARE EMPLOYED AT-WILL AND MAY QUIT OR BE TERMINATED AT ANY TIME AND FOR ANY OR NO REASON. NOTHING IN ANY OF THE COUNTY'S RULES, POLICIES, HANDBOOKS, PROCEDURES OR OTHER DOCUMENTS RELATING TO EMPLOYMENT CREATES ANY EXPRESS OR IMPLIED CONTRACT OF EMPLOYMENT. THIS HANDBOOK REPLACES ANY PREVIOUSLY ISSUED POLICIES, PRACTICES AND UNDER-STANDINGS, WRITTEN OR ORAL, GOVERNING EMPLOYMENT. NOTHING CONTRARY TO OR INCONSISTENT WITH THE LIMITATIONS IN THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT UNLESS: 1) THE TERMS ARE IN WRITING; 2) THE DOCUMENT IS LABELED "CONTRACT"; 3) THE DOCUMENT STATES THE TERM OF EMPLOYMENT; AND 4) THE DOCUMENT IS SIGNED BY THE COUNTY [ADMINISTRATOR/MANAGER/MAYOR] OR APPROVED BY VOTE OF COUNCIL.

ACKNOWLEDGEMENT:

_____

[Signature] Date

_____

Printed Name

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Employee Handbooks

- Must have policies:

  - Equal Employment Opportunity
  - Anti-harassment
    - Must prohibit all harassment
    - Must prohibit retaliation
    - Must have a procedure for reporting, including alternate reporting based on different potential harassers
  - Family and Medical Leave Act

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Employee Handbooks

- Policies to consider:
  - Reasonable Accommodations
  - Social Media
  - Artificial Intelligence
  - Holidays
  - County Equipment – "advance on wages"; ethics issues
  - Drug-Free Workplace policy

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Is your County's employee handbook an ordinance?

- Here are just a few of the things that have happened that may have made your County's handbook out-of-date just in the past two years:
  - Constitutional Carry (effective March 7, 2024)
  - The Pregnant Workers Fairness Act (effective June 27, 2023, but final regulations went into effect on June 18, 2024)
  - South Carolina's Hands-Free Driving Act (effective September 1, 2025)
- If your County's employee handbook is searchable, search for the word "Myspace"
- Both law and everyday life change rapidly. Consider whether having an employee handbook that can only be modified by ordinance makes sense in our constantly evolving world

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The South Carolina Payment of Wages Act

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The South Carolina Payment of Wages Act

- Payment of Wages Act -- § 41-10-10 et seq.
  - Notice of hours, wages, deductions, and place of payment
  - Pay according to notice
  - 7 days written notice of changes

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The South Carolina Payment of Wages Act

- Why is it important not to violate?
  - Damages include:
    - Treble damages
    - Costs and attorney's fees
  - Likely not covered by insurance

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Grievances

- Grievance Procedure Act
  - Not required to have grievance procedure but if you do, it must comply with the Act
  - But which Act?

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Grievances

- Title 8, Chapter 17, Article 3
  - Not Article 5!
- Proper subjects for a grievance hearing:
  - dismissal, suspensions, involuntary transfers, promotions and demotions
  - Not compensation, except where alleged to be inequitable

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Grievances

- A sheriff's deputy has been suspended and requests a grievance hearing. What do you tell them?

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Grievances

- Points to remember:
  - Have a grievance committee in place before you need one;
  - Employee is not entitled to representation during the hearing unless your policy so provides;
  - The committee only makes a recommendation

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The FLSA

- The Fair Labor Standards Act, or FLSA, was signed into law on June 25, 1938.
- According to a U.S. Department of Labor (DOL) fact sheet, the FLSA protects more than 143 million American workers.

The four main provisions of the FLSA are:

- Federal minimum wages
- Overtime pay
- Employer recordkeeping
- Child labor

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The FLSA

- Covered, nonexempt workers are entitled to a minimum wage of $7.25 per hour effective July 24, 2009.
- Nonexempt workers must be paid overtime pay at a rate of not less than one and one-half times their regular rates of pay after 40 hours of work in a workweek.
- Every covered employer must keep records for each non-exempt worker that include identifying information about the employee and data about hours worked and wages earned.

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Exempt versus Non-Exempt

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Exempt versus Non-Exempt

- Exempt employees can work whenever they want right?
  - Not really. Exempt employees are supposed to work **more** than 40 hours per week, not less. If they leave during the day for an appointment, knock off early, etc., their accrued annual leave can be reduced for the time they took off.
- Exempt employees should get comp time when they work over right?
  - No. Compensatory time is only available for non-exempt employees.
  - That doesn't mean that they can't be allowed to take "flex time."

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Sample Flex Time Policy

<u>Flex Time</u>

Exempt employees do not qualify for overtime pay or compensatory time but may be allowed to take "flex time" or to adjust their work hours in light of work performed outside of normal business hours. Such time is solely within their supervisor's discretion, is not an entitlement, does not accrue or result in a bank of leave of any kind, does not entitle the employee to compensation of any kind, and should not be confused with overtime pay or compensatory hours, which are only available to non-exempt employees. To request to take "flex time" as a result of having worked outside of normal work hours, an exempt employee should speak to their supervisor.

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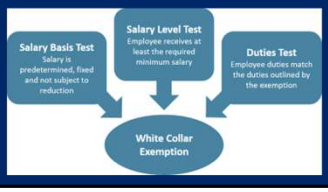
EAP Exemption to the FLSA



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EAP Exemption to the FLSA

- Employees are exempt from the Fair Labor Standards Act's minimum wage and overtime protections if they are employed in a bona fide:
  - Executive,
  - Administrative
  - Professional

capacity as those terms are defined in regulations at 29 CFR part 541.

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EAP Exemption to the FLSA

- To fall within the EAP exemption, an employee must:
  - be paid a salary;
  - be paid at least $684 per week (equivalent to $35,568 annually); and
  - primarily perform executive, administrative, or professional duties, as provided in the Department's regulations.

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EAP Exemption to the FLSA

- **Executive Exemption duties test:**
  - The employee's primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise;
  - The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and
  - The employee must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.

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EAP Exemption to the FLSA

- **Administrative Exemption duties test:**
  - The employee's primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and
  - The employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

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EAP Exemption to the FLSA

- **Professional Exemption duties test:**
  - The employee's primary duty must be the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment;
  - The advanced knowledge must be in a field of science or learning; and
  - The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

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Section 7(k) of the FLSA

85

Section 7(k) of the FLSA

- Section 7(k) of the FLSA provides that employees engaged in fire protection or law enforcement may be paid overtime on a "work period" basis.
- A "work period" may be from 7 consecutive days to 28 consecutive days in length.
- Overtime pay is required when the number of hours worked exceeds the number of hours that bears the same relationship to 212 (fire) or 171 (police) as the number of days in the work period bears to 28.
- For example, fire protection personnel are due overtime under such a plan after 106 hours worked during a 14-day work period, while law enforcement personnel must receive overtime after 86 hours worked during a 14-day work period.

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Section 7(k) of the FLSA

Maximum Hours Worked (Rounded) Before Overtime

CONSECUTIVE DAYS WORK PERIOD	HOURS OF FIRE PROTECTION	HOURS OF LAW ENFORCEMENT
28	212	171
27	204	165
26	197	159
25	189	153
24	182	147
23	174	141
22	167	134
21	159	128
20	151	122
19	144	116
18	136	110
17	129	104
16	121	98
15	114	92
14	106	86
13	98	79
12	91	73
11	83	67
10	76	61
9	68	55
8	61	49
7	53	43

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Section 7(k) of the FLSA

- Fire protection personnel include firefighters, paramedics, emergency medical technicians, rescue workers, ambulance personnel, or hazardous materials workers who:
  - are trained in fire suppression;
  - have the legal authority and responsibility to engage in fire suppression;
  - are employed by a fire department of a municipality, county, fire district, or State; and
  - are engaged in the prevention, control and extinguishment of fires or response to emergency situations where life, property, or the environment is at risk.

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Section 7(k) of the FLSA

- Law enforcement personnel are employees who are empowered by State or local ordinance to enforce laws designed to maintain peace and order, protect life and property, and to prevent and detect crimes; who have the power to arrest; and who have undergone training in law enforcement.
- Employees engaged in law enforcement activities may perform some work which is not performed as an incident to or in conjunction with their law enforcement activities.
- However, a person who spends more than 20 percent of the workweek or applicable work period in non-law enforcement activities is not considered to be an employee engaged in law enforcement activities under the FLSA.

89

Drug Testing

- Your County's employee handbook should have a drug-free workplace policy
- Drivers with Commercial Driver's Licenses should have their own separate policy because DOT rules only apply to CDL drivers
- Only employees in "safety sensitive positions" may be randomly drug-tested
- All employees may be tested based on "reasonable suspicion" or post-accident
- Disciplinary consequences for positive tests should be consistent

90

The Family and Medical Leave Act

- Family and Medical Leave Act (FMLA)
  - Employee must have worked at least one year and 1250+ hours in the preceding twelve months
  - Employee receives 12 workweeks of leave in a rolling twelve-month period
  - Provisions for military purposes
    - Eligible employees may take FMLA leave for specified reasons related to certain military deployments of their family members.
    - 26 weeks of FMLA leave in a single 12-month period to care for a covered servicemember with a serious injury or illness.

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The Family and Medical Leave Act

- A covered employer must grant an eligible employee up to a total of 12 workweeks of unpaid, job-protected leave in a 12-month period for one or more of the following reasons:
  - for the birth of a son or daughter, and to bond with the newborn child;
  - for the placement with the employee of a child for adoption or foster care, and to bond with that child;
  - to care for an immediate family member (spouse, child, or parent – but not a parent "in-law") with a serious health condition;
  - to take medical leave when the employee is unable to work because of a serious health condition; or
  - for qualifying exigencies arising out of the fact that the employee's spouse, son, daughter, or parent is on covered active duty or call to covered active duty status as a member of the National Guard, Reserves, or Regular Armed Forces.
- The FMLA also allows eligible employees to take up to 26 workweeks of unpaid, job-protected leave in a "single 12-month period" to care for a covered servicemember with a serious injury or illness.

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Analyzing an Employee's Request for Leave Following an on-the-job injury

- Laws that may apply:
  - The Family and Medical Leave Act
    - Does the employee have a serious health condition?
    - Has the employee worked for at least one year?
    - Has the employee been absent for more than twelve weeks?
  - The Americans with Disabilities Act
    - Could the employee's injury classify as a disability?
    - Is the employee's need for leave for a definite amount of time?
    - Is the employee's need for leave less than six months total?
  - Worker's Compensation Retaliation
    - Is any decision based on the filing of a worker's compensation claim or participating in a proceeding?
    - Does a statutory affirmative defense apply?

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Worker's Compensation Retaliation

- Workers' Compensation Anti-Retaliation §41-1-80
  - Defenses to a claim of worker's compensation retaliation:
    - willful or habitual tardiness or absence from work;
    - being disorderly or intoxicated while at work;
    - destruction of any of the employer's property;
    - failure to meet established employer work standards;
    - malingering;
    - embezzlement or larceny of the employer's property;
    - violating specific written company policy for which the action is a stated remedy of the violation.

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The Uniformed Services Employment and Reemployment Rights Act

- USERRA is a federal law that protects military service members and veterans from employment discrimination on the basis of their service and allows them to regain their civilian jobs following a period of uniformed service.
- USERRA applies to members of the Armed Forces, Reserves, National Guard, FEMA Reservists and other "Uniformed Services" (the National Disaster Medical System and the Commissioned Corps of the Public Health Service).

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The Uniformed Services Employment and Reemployment Rights Act

- USERRA ensures that service members:
  - Are not disadvantaged in their civilian careers because of their military service;
  - Are promptly re-employed in their civilian jobs upon return from duty;
  - Are not discriminated against by employers because of past, present, or future military service.

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The Uniformed Services Employment and Reemployment Rights Act

- Employees must provide notice to employers that they will be absent due to military service. Employees should give notice to their employers as soon as they have received it. Employees should provide a copy of their orders where possible.
- Employees must leave civilian work for the purpose of military service; nothing else.
- Employees must serve honorably for USERRA to apply; any less-than-honorable discharge from service duties may affect employers' obligations to re-employ the worker under USERRA.

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The Uniformed Services Employment and Reemployment Rights Act

- Employees may not be absent for more than five cumulative years from any one employer. This provision has some exceptions where calls for service do not count toward the five-year maximum.
- Employees must report back to work in a timely fashion, which depends on the length of service under USERRA. Generally, for service less than 31 days, the employee must return at the beginning of the next regularly scheduled work period. For service of 31 to 180 days, the employee must apply for reemployment within 14 days of release from service. And for service of 181 or more days, within 90 days of release from service.

98

State Law - Paid Military Leave

- Non-Temporary Employees with official military orders are eligible for paid military leave to engage in training or any other duties to which they are lawfully ordered.
- The 15 workdays of short-term military leave are based on regularly scheduled average workdays and are not required to be consecutive.
- The 15 days of short-term military leave cannot be used for travel time outside of the dates on the orders. An employee may request annual leave, compensatory time, or leave without pay for travel time to get to the assignment outside of the dates on the order.

99

State Law - Paid Military Leave

- In accordance with S.C. Code Section 8-7-90, an employee who receives official military orders to serve during a declared emergency is entitled to 30 days of paid leave per declared emergency in addition to the 15 workdays of paid military leave granted each year.
- In accordance with S.C. Code Section 8-7-90, an employee who serves on active duty in a combat zone and who has exhausted all available leave for military purposes is entitled to receive up to 30 additional days of military leave in any one year.
- A "workday" is the employee who is entitled to leave's normal scheduled shift. If the employee is a 24-hour employee, then the employee is entitled to 15 24-hour days of paid leave.

100

Political Activity

- SC Code § 16-17-560 and the First Amendment to the U.S. Constitution make it unlawful to discharge a citizen from employment because of his political opinions or the exercise of political rights.
- Employers can prohibit employees from campaigning during work time or at work sites or using County resources.
- SC Code § 8-13-765 bars the use of government personnel or facilities for campaign purposes.

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Political Activity

- Employers should be careful to avoid the appearance of an official endorsement or support of an employee/candidate.
- If an employee's pursuit of office creates a conflict of interest or causes a disruption in the workplace, the employee can be placed on leave of absence for the duration of the campaign.
- However, an employee cannot be terminated simply because he has chosen to run for office.

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Questions?

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