

Arkansas Municipal League



Human Resource and Personnel Matters Affecting Arkansas Municipalities

(5 hour Core Certification Course)

October 2017



SOCIETIAL TRENDS IMPACTING TODAY'S WORKPLACE.

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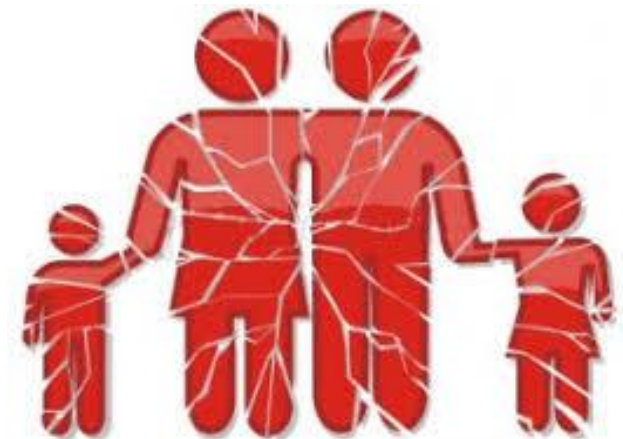
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IN 2014 – WE DISCUSSED

- Societal/Cultural Changes
- Demographic Trends
- The Impact of Change on the Municipal Workplace

SOCIETAL/CULTURAL 2014 TRENDS AND PROJECTIONS

- The “Nuclear Family” is dissolving.
- The trend is that two parent households are on the decline.
- 2/3 of all divorces were initiated by women in the marriage. An increase in the number of females in workplace.
- Nearly half of the children starting kindergarten will come from a single parent households.



CURRENT TRENDS



- Two parent households continue to decline.
- Divorces and cohabitation continue to go up.
- Women are the primary breadwinner in over 40% of all households with children.
- Within the traditional family, the roles of the mothers and fathers are converging due in part to the rise of breadwinner moms.

Source: Pew Research Center

WHY SHOULD WE TAKE NOTE OF THIS TREND?

- Family issues carryover into the workplace increasing the Challenges for City Officials and those dealing with HR issues.



GENERATIONAL CHANGES. 2014 TRENDS AND PROJECTIONS

- Baby Boomers moving out and Millennials moving in. We were told that by 2020 they would make up 50% of the workplace. They entered the workforce as the most tech savvy, sophisticated, well educated, and **diverse workplace in history**.
- Millennials appeared to be motivated different than previous generations. Very mobile, still live with their parents, and wanted casual Fridays every day.
- There would be conflict in the workplace because, the contrast between Millennials and the “Boomer” was radical. Millennials frustrate Boomers because they had poor social skills, most of their communication was via smart phones. Boomers frustrate the millennials because they were too old to learn.



CURRENT TRENDS



- Millennials most likely have surpassed the baby boomers as the largest generation in the workplace.
- Millennials are the most racially diverse generation in history. 43% are non-white, the highest of any generation. Still on track to become the most educated tech savvy generation in history.
- Jury is still out as to how large an influence their ideas and view of the workplace is becoming.
- When millennials are encouraged to offer ideas and suggestions, when boomers are encouraged to learn about new technology, then there is less likelihood for a conflict to occur. **Bottom line? There is no overall relationship between age and job performance.**

Source: Pew Research Center 3-31-16

DEMOGRAPHIC CHANGES. 2014 TRENDS AND PROJECTIONS

- In 2014 “Diversity” was a major/key topic in HR circles across the country. “Diversity” included age, gender, national origin, religion, background and race.
- The Latino population in America surpassed the African-American population as the largest minority group in the United States.
- In 2014 the trends and projections were that the Latino population would continue to rise and exceed 15% of the total population.

CURRENT TRENDS

- Americans are more racially and ethnically diverse than in the past and will be even more so in the coming years.
- The Hispanic population has reached a new high of (18%) of the national population and remains the 2nd largest racial or ethnic group behind Whites. However, growth has slowed. Between 2009 and 2014 more Mexicans went home than arrived in the U.S.
- Currently more new immigrants to the U.S. originate from Asia than from Latin America.
- Asians are now the only major racial or ethnic group whose numbers are rising, mainly because of immigration.
- Predictions are that in the coming decades there will not be one single racial or ethnic majority.

THE CHANGING ROLE OF RELIGION IN AMERICAN SOCIETY.

Trends to Observe:

- Christians are declining as a share of the U.S. population and the number of U.S. Adults who do not identify with any organized religion has grown. (“Nones”)
- Approximately 25% of the American population say they are not affiliated with any religious groups (Nones) they are the 2nd largest religious group and growing faster than any other group.



RELIGIOUS LANDSCAPE STUDY

PEW RESEARCH CENTER — 11-3-15

Religious Composition of Adults in the United States and Arkansas

- 72% of Americans say religion is losing influence.

	United States	Arkansas
Christians	70.6%	79%
Protestants	46.6%	70%
Catholic	20.8%	8%
Non-Christians		
Jewish	1.9%	(less than 1%)
Muslim	.9%	(less than 1%)
Buddhist	.7%	(less than 1%)
Other World Religions	.3%	(less than 1%)
None of the above "Nones" (un-affiliated with any religion)	22.8%	18%

Source: Pew Research Center

- In 2007, 78% of those responding to a pew research poll openly checked a survey box indicating that they were Christians. That has dropped to approximately 70%.
- Muslim population and a few other non-Christian faiths are projected to grow rapidly and take on a growing influence.

- City officials must walk a very fine line of knowing that people have a 1st amendment right to express their faith in the workplace – as long as they don't harass others to lead people to mistake their private expressions about their faith for the employer's views.



TODAY'S MUNICIPAL LEADER WOULD BE WISE TO...

- Recognize that their current city workforce consist of a diverse group of people.
- Recognize that changing demographics require constant evaluation of the workplace policies.
- Become familiar with current trends affecting HR and Personnel issues within your municipal workforce.
- Understand the basics of employment law.

Employment Law: Traps for the Unwary

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ARKANSAS MUNICIPAL LEAGUE

FALL 2017

HR CERTIFICATION CLASS



Employment at-will:

The well established **rule in Arkansas** is that when an employee's employment is for an indefinite term, either party may **terminate the relationship without cause or at-will.** *Griffin v. Erickson*, 277 Ark. 433, 437, 642 S.W. 2d 308, 310 (1982).

Examples

The employee, being 50% finished on a massive project that will make the mayor and the council city “officials for life...”

...QUITS despite previous promises to finish the project.

Examples

The employer is in a meeting with several employees asking why a project isn't done.

Response: if you don't like it, fire me.

Employer: ok.

The Importance of State Law...

BE CAREFUL!

To determine whether an employee enjoys a protected property interest in continued employment, for purposes of a procedural due process claim (**as discussed later**), the court of appeals **looks to state law**.

Eddings v. City of Hot Springs, 323 F.3d 596, 601 (8th Cir. 2003).

The Importance of State Law...

BE CAREFUL! (part II)

The at-will doctrine has been modified providing that where an at-will employee relies on a personnel manual or employment agreement **that expressly states** that he or she cannot be discharged except **for cause**, the employee may not be arbitrarily discharged in violation of such provision.

Gladden v. Arkansas Children's Hospital v. Saline Memorial Hospital, 292 Ark. 130, 136, 728 S.W. 2d 501, 505 (1987).

Additional Exceptions to the Employment at-will Doctrine:

Cases in which the employee is discharged **for refusing to violate a criminal statute.**

Cases in which the employee is discharged **for exercising a statutory right or a constitutional right.**

Cases in which the employee is discharged **for complying with statutory duty.**

Cases in which an employee is discharged **in violation of the general public policy of the state.**

Employment **contracts for time.**

Sterling Drug Inc. v. Oxford, 294 Ark. 239, 743 S.W. 2d 380 (1988).

U.S. Constitution; Property Right: Pre Deprivation Due Process

Remember, recognized by state law.

Remember the exceptions to at will.

Primarily the “just cause” exception.

Pre as in before.

One more time: pre as in before. As in before you decide to fire.

BEFORE NOT AFTER.

What is Due Process?

Simplest Form:

Notice; and

An opportunity to be heard.

Claims under 42 U.S.C. § 1983 & the Fourteenth Amendment

PROCEDURAL DUE PROCESS

What does this mean?

The Due Process Clause within the Fourteenth Amendment to the United States Constitution.

It provides that government may not deprive an individual of life, liberty, or *property* without due process of law.

Procedural Due Process

Procedural due process requires...

A meaningful opportunity to be heard...

Must be afforded to a public employee...

Who has a property or liberty interest in his or her employment.

Also, the employee must be given notice both of the underlying issue and...

The time and place to be heard.

U.S. Supreme Court

In fact, the Supreme Court has decided several cases involving the procedural due process rights of public employees.

These cases employ a multipart test.

First, whether there is a sufficient interest grounded in state or local law or practice,

and second, a balancing test to determine what particular process is due. *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 542-545 (1985).

Supreme Court

That minimum procedural due process requirements are a matter of federal constitutional law.

An individual with a property interest in public employment cannot be deprived of that interest without **constitutionally** adequate procedures.

In determining what process was due, *Loudermill* applied the three-part balancing test.

Mathews v. Eldridge. Loudermill, 470 U.S. at 542-43.

The Balancing Test

1. The employee's private interest in retaining employment and,
2. The risk of an erroneous deprivation of such interest through the procedures used; versus:
3. The governmental interest in the expeditious removal of unsatisfactory employees and the avoidance of fiscal and administrative burdens

The Supreme Court:

If Due Process is needed the high Court has noted:

The “...public employee is entitled to oral or written **notice** of the charges against him, an explanation of the employer's evidence, and an **opportunity to present his side of the story.**”

470 U.S. at 546.

NOTICE

First requirement is that the employee receive reasonable **notice** of all charges against him.

The **purpose of notice** under the due process clause is to apprise the affected individual of, and permit adequate preparation for, an impending hearing.

Rogers v. Mase, 788 F.2d 1288, 1295 (8th Cir. 1985).

NOTICE

Notice is sufficient if it apprises the employee of the "nature of the charges and the general evidence against him and if the notice is timely under the particular circumstances of the case."

Most cases provide that notice must occur **prior to the meeting**, such that the employee can prepare his or her response.

Rogers v. Masem, 788 F.2d 1288, 1295 (8th Cir. 1985).

The Notice Requirement: Be Specific

Tell the employee the "specific **nature and factual basis**" for the discharge.

Brouillette v. Bd. of Dirs. of Merged Area IX, 519 F.2d 126, 128 (8th Cir. 1975).

"**Conclusory terms** such as 'conduct unbecoming an [officer]' are not sufficient."

Bugard v. Unified Sch. Dist. No. 298 of Lincoln Co., Kan., 432 F. Supp. 895, 904 (D. Kan. 1977).

The Hearing Requirement

The courts aren't terribly clear on this.

Suggestions:

Allow the employee to address any and all things.

Make sure the employee has been fully informed of all items being considered.

The Hearing Requirement

If the individual wishes to allow others to make statements, allow but don't go too far afield.

Not a trial.

No witnesses or cross examinations.

Be fair.

Use your common sense.

Practical Lessons

Do you have employee writings?

ALL WRITINGS.

Employee handbook?

Ordinances?

Resolutions?

Memos?

Do you know what these things say?!

Knowing Your Employee Writings (Practical Tips cont'd)

If you know what your writings say, are you following them?

Do they need a review and possible revision?

Yearly Review

Just Cause; Contract for Time

Who should review? You

Whom else should review? Your City Attorney Too!

Additional Ideas

KISS method.

Find your historical documents

That ticking you're hearing ain't
an alarm clock.

Guess who will know your
documents?!

Additional Ideas

And most of all, recall the words of this great philosopher:

“The writer who breeds more words than he needs, is making a chore for the reader who reads.”

Dr. Seuss

Sources for Help

Employee Handbook

https://static.ark.org/eeuploads/arml/SamplePersonnelHandbook2017_05_WEB.pdf

FLSA, FMLA, ADA Lookie Here:

[https://static.ark.org/eeuploads/arml/Understanding Personnel Law 2017_05_WEB.pdf](https://static.ark.org/eeuploads/arml/Understanding_Personnel_Law_2017_05_WEB.pdf)

And Here:

[https://static.ark.org/eeuploads/arml/FMLA booklet 2017_05_WEB.pdf](https://static.ark.org/eeuploads/arml/FMLA_booklet_2017_05_WEB.pdf)

And Here:

[https://static.ark.org/eeuploads/arml/ADA 2014 WEB.pdf](https://static.ark.org/eeuploads/arml/ADA_2014_WEB.pdf)

And Here:

[https://static.ark.org/eeuploads/arml/Drug Free Workplace 2017_05_WEB.pdf](https://static.ark.org/eeuploads/arml/Drug_Free_Workplace_2017_05_WEB.pdf)

Who Appoints...

Who Removes...

Department Heads versus Non-Department Heads

State Law dictates who appoints and removes department heads.

No State Law for non-department heads.

Non-department heads are a matter of local policy.

Local as in...YOUR POLICY or PRACTICE!

Department Heads; Appoint and Remove vs. Local Policy

Appoint = Hire

Remove = Fire

Ark. Code Ann. § 14-42-110 says department heads are appointed and removed by the mayor

But... the council can over-ride with a two thirds vote

But... the council CANNOT appoint and remove department heads

More Appoint and Remove

Non-department heads are a matter of local policy.

What does your policy say?

No policy?

What's your practice? And let's carefully take a look...

Recommendations versus decisions...

Who's actually hiring and firing?

Department Head Example: Appoint/Hire

Need a police chief (department head by local designation)

Mayor hires Mark

Council over-rides by a two thirds vote

Mark is out and Mayor goes back to the drawing board

Department Head Example: Removal/Fire

The P.D. is in bad shape...or so says the Mayor!

Mayor Fires Mark

Council over-rides by a two thirds vote

Mark is in and living large!

A Non-Department Head Example

City needs to fill a non-department head position.

Writing(s)?

Practice?

A Non-Department Head Example: Appoint/Hire

Writing? Nope.

Practice is as follows...

Department head talks to mayor, mayor goes to council and council okay's the particular candidate as the choice.

Who appointed?

The Council!

A Non-Department Head Example: Appoint/Hire

Writing? Yes.

Read it.

Follow it.

A Non-Department Head Example: Remove/Fire

Practice is as follows... (the facts are very important)

Department head talks to Mayor.

Mayor mulls it over.

Mayor tells department head to go ahead and fire.

Who fired?

The Mayor! (Unless there is clear evidence that the department head actually made the decision.)

Appoint and Remove

Non-department policy or practice...be careful

Council, legislative policy maker and legislative immunity

Mayor, elected to run the day to day operations

Mayor makes contracts

Employment is a contract

Maybe only the mayor is entitled to hire/fire

MAYBE is maybe!

9th Grade Civics...

Civics Reminder

Three branches of government

Judicial

Legislative

Executive/Administrative

By staying in your role, less likelihood of liability

Fair Labor Standards Act

21 Things you need to know!!

[https://static.ark.org/eeuploads/arml/The_FLSA -
21 Things You Should Know 2017 4.pdf](https://static.ark.org/eeuploads/arml/The_FLSA_-_21_Things_You_Should_Know_2017_4.pdf)

Examples:

- \$8.50 minimum wage via Arkansas law.
- Overtime is paid at time and half of regular pay. (Salaries averaged)
- Be careful about folks volunteering...
- Exempt versus non-exempt.
- Prisoners are generally not employees.
- Special rules for uniform employees.

Updates...Obama versus Trump

Salary levels for exempt employees may rise!

- Executive, Administrative, Professional and the Highly Compensated Employee exemption salary may go up.
- For the first time non-discretionary bonuses, incentive pay, and commissions may be counted as salary to qualify for exemptions.

The rules may update every three years beginning January 1, 2020

- Stay on your toes! Watch your emails etc. for announcements.

Fair Labor Standards Act

Who is entitled to overtime pay?

Generally, every employee is entitled to overtime compensation. However, there are key exemptions to this general rule.

Key exemptions

Elected officials and their personal staff; executive employees, administrative, and professional employees. 29 U.S.C. § 203(e)(2)(C).

Title of position is not the determining factor of whether an individual is exempt.

Fair Labor Standards Act – Elected Officials

Elected Officials aren't just exempt, they aren't even employees under the FLSA!

- Not entitled to overtime or minimum wage.

Also excluded are:

- Personal staff of elected officials,
- Persons appointed to serve as policy makers, and
- Advisors on Constitutional or legal powers of elected official's office.

Elected Officials' Personal Staff

This exception appears to be rarely used, and is “narrowly construed.”

Don't rely on it applying except in very rare instances.

Elected Officials' Personal Staff

Some factors to consider in determining “Personal Staff Exemption:”

- 1) whether the elected official has plenary powers of appointment and removal,
- 2) whether the person in the position at issue is personally accountable to only that elected official,
- 3) whether the person in the position at issue represents the elected official in the eyes of the public,
- 4) whether the elected official exercises a considerable amount of control over the position,
- 5) the level of the position within the organization's chain of command, and
- 6) the actual intimacy of the working relationship between the elected official and the person filling the position. *Rutland v. Pepper*, 404 F.3d 921, 924 (5th Cir. 2005)

Fair Labor Standards Act

Executive Employees: 29 C.F.R. § 541.100

http://www.dol.gov/dol/cfr/Title_29/Chapter_V.htm

- (1) Compensated on a **salary basis** at a rate of not less than \$455 per week, or \$23,660 annually; (\$ 913 per week \$47,476 per year if the Obama rule gets life); and
- (2) Whose **primary duty** is management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof; and
- (3) Who **customarily and regularly** directs the work of two or more other employees; and
- (4) Who has the **authority to hire or fire** other employees **or whose suggestions and recommendations** as to the hiring, firing, advancement, promotion or any other change of status of other employees are given particular weight.

EXAMPLES: Police Chiefs, Fire Chiefs, and Department Heads

Fair Labor Standards Act

Administrative Employees: 29 C.F.R. § 541.200

http://www.dol.gov/dol/cfr/Title_29/Chapter_V.htm

- (1) Compensated on a **salary basis** at a rate of not less than \$455 per week, or \$23,660 annually; (\$ 913 per week \$47,476 per year if the Obama rule gets life); and
- (2) Whose **primary duty** is 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
- (3) Whose primary duty includes the **exercise of discretion and independent judgment with respect to matters of significance.**

EXAMPLES: HR Director, Computer/Systems Administrator, Financial Officer

Fair Labor Standards Act

Professional Employees: 29 C.F.R. § 541.300

http://www.dol.gov/dol/cfr/Title_29/Chapter_V.htm

Professional Employee Elements:

- (1) Compensated on a **salary basis** at a rate of not less than \$455 per week, or \$23,660 annually; (\$ 913 per week \$47,476 per year if the Obama rule gets life); and
- (2) Whose **primary duty** is the performance of work:
 - (i) Requiring **knowledge of an advanced type** in a field of science or learning customarily acquired by a **prolonged course of specialized intellectual instruction; or**
 - (ii) **Requiring invention, imagination, originality or talent** in a recognized field of artistic or creative endeavor

EXAMPLES: City Engineer, Wastewater Professionals, Planning Directors, City Attorneys

Highly Compensated Employees

A highly compensated employee is deemed exempt if:

1. The employee earns total annual compensation of \$100,000 or more.
2. The employee's primary duty includes performing office or non-manual work; and
3. The employee customarily and regularly performs at least one of the exempt duties or responsibilities of an exempt executive, administrative or professional employee.

Thus, for example, an employee may qualify as an exempt highly-compensated executive if the employee customarily and regularly directs the work of two or more other employees, even though the employee does not meet all of the other requirements in the standard test for exemption as an executive.

Recap POSSIBLE Updates

Executive, Administrative, and Professional Employees WOULD be paid \$913/week - \$47,476/year to meet the exemption;

- In addition to the meeting the same old duties test.

Highly Compensated Employees WOULD be paid \$134,004 to meet the exemption.

10% of the salary COULD come from non-discretionary bonus, incentive, or commission payments, that are paid out quarterly (Does not apply to HCEs)

MAY BE automatically updated every 3 years starting Jan. 1, 2020.

Impact of the New Rules

The Department of Labor predicts:

4.2 Million salaried workers will be affected by this rule because of their salaries not meeting the new level.

8.9 Million will be indirectly affected because their salaries are above the new salary level, but don't meet the duties tests.

DOL hopes this will result in more money going to middle class workers and their families: DOL estimates an extra \$1.2 Billion will go to the workers.

Things to Consider IF the new rules go into effect:

May need to raise salary;

Hire extra help to prevent workers going overtime;

Figure out an hourly rate which doesn't change an employees salary

- This might be unpopular

What works will always depend on the situation, don't expect a one size fits all solution.

Fair Labor Standards Act

Are all non-exempt employees the same?

There is a key difference between uniformed (police and fire) and non-uniformed employees and their entitlement to overtime.

What is a uniformed employee?

- Generally, uniformed employees are police and fire personnel, but does not include radio operators, clerks, secretaries, or janitors. 29 C.F.R. §§ 553.210 & 211.
- EMTs may qualify if their services are substantially related to firefighting or law enforcement activities. 29 C.F.R. § 553.215.

Fair Labor Standards Act

To what overtime provisions are non-uniformed employees entitled?

Time-and-a-half for every hour of work over 40 for a workweek. 29 U.S.C. § 207.

What is a workweek; does it need to be Monday thru Sunday?

Any 7-day period; the employer can establish a workweek that does not coincide with the calendar week. **Generally, a workweek beginning and ending at 5pm on Friday is appropriate.** 29 C.F.R. § 778.104.

Fair Labor Standards Act

Does every city owe its uniformed employees overtime?

- There is an exemption for police and fire departments that have less than 5 employees, including chiefs. 29 U.S.C. 213(b)(20).
 - Volunteer firefighters and auxiliary police officers are “volunteers” and are not treated as employees
 - Part-time Employees are considered employees. 29 C.F.R. § 553.200(b).
 - Employees who are on leave and not working are also considered employees. 29 C.F.R. § 553.200(b).

Fair Labor Standards Act

To what overtime provisions are uniformed employees entitled?

The FLSA provides a partial overtime exemption to the 40 hour work week for law enforcement officers and firefighters who work a “work period” of no fewer than 7 days and no more than 28 days. 29 U.S.C. § 207(k).

Fair Labor Standards Act

- *What is a uniformed employees “work period”?*
- An employer can establish a uniformed officers work period as anywhere between 7 and 28 days consecutively. 29 U.S.C. 207(k).

Fair Labor Standards Act

- *What is a uniformed employees “work period”?*
- The Secretary of Labor has set maximum hour standards based on a 28-day work period for both fire department and law enforcement personnel. Law enforcement employees who work over 171 hours within a 28-day work period must be compensated for those hours in excess of 171. Fire department employees working in excess of 212 hours within a 28-day period must also be compensated for overtime hours in excess of 212. These amounts are prorated for shorter work periods. 29 C.F.R. § 553.201.

Fair Labor Standards Act

Is there an option other than paying overtime? Yes, but be careful...

Instead of paying overtime pay, an employer can compensate an employee with compensatory time (“comp time”), and that time must accrue at time-and-a-half. 29 U.S.C. § 207(o)(1).

Fair Labor Standards Act

Is there an option other than paying overtime? First be careful...

The City may only elect to provide “comp time” if an agreement or understanding existed between the employer and the employee before the performance of that work; the employee must understand that the city has a policy of giving compensatory time. 29 U.S.C. § 207(o)(2)(A)(ii).

The agreement between the employee and employer can be made individually or collectively (i.e. collective bargaining agreement), although the employee must understand prior to performing the work. *See generally, United Food & Commercial Workers Union, Local 1564 of New Mexico v. Albertson's, Inc.*, 207 F.3d 1193 (10th Cir. 2000).

Comp Time: BE CAREFUL's

When can employees use “comp time”?

An employee can request the use of “comp time” at any time; the employer is obligated to allow the use of that “comp time” within a reasonable time unless by doing so, it would disrupt the operations of the employers. 29 U.S.C. § 207(o)(5)(B).

Can an employer require the use of comp time?

An employer can require an employee to use “comp time”. *See Christensen v. Harris County*, 529 U.S. 576, 585 (2000).

Comp Time: BE CAREFUL'S

Is there a limit on the amount of “comp time” an employee can accrue?

A non-uniformed employee can only accrue a total of 240 hours of “comp time” (160 actual overtime working hours) before the employer is required to pay the additional hours of overtime in cash. 29 U.S.C. § 207(o)(3)(A).

Comp Time: **BE CAREFUL'S**

Is there a limit on the amount of “comp time” an employee can accrue?

A uniformed employee can only accrue 480 hours of “comp time” (320 actual overtime working hours) before the employer is required to pay the additional hours of overtime in cash. 29 U.S.C. § 207(o)(2)(A)(ii).

Do not eliminate unused comp time without paying the employee for that overtime!

Comp Time: **BE CAREFUL'S**

How do I pay accrued “comp time” when the employee quits or is terminated?

Payment of “comp time” at termination is time-and-a-half at a wage equaling the average regular rate of pay for the final three years of employment or the final regular rate received by the employee, whichever is higher. 29 U.S.C. § 207(o)(4).

Comp Time: **BE CAREFUL'S**

How do I pay accrued “comp time” when the employee quits or is terminated?

Because unused “comp time” must be paid at the time of termination, it is advised to “pay as you go.” Compensate employees for their unused “comp time at the end of each year, or mandate that the employees use their comp time at your discretion.

Arkansas Civil Rights Act ACRA AND TITLE VII

EMPLOYMENT
DISCRIMINATION

A solid orange horizontal bar spanning the width of the slide at the bottom.

ACRA § 16-123-105

(a) Every person who, under color of any statute, ordinance, regulation, custom, or usage of this state or any of its political subdivisions subjects, or causes to be subjected, any person within the jurisdiction thereof to **the deprivation of any rights, privileges, or immunities secured by the Arkansas Constitution** shall be liable to the party injured in an action in circuit court for legal and equitable relief or other proper redress.

ACRA § 16-123-105

(b) In the discretion of the court, a party held liable under this section shall also pay the injured party's **cost of litigation and a reasonable attorney's fee** in an amount to be fixed by the court.

(c) When construing this section, a court **may look for guidance to state and federal decisions interpreting the federal Civil Rights Act** . . . in 42 U.S.C. § 1983, as in effect on January 1, 1993, which decisions and act shall have persuasive authority only.

ACRA § 16-123-107

Specifies that, “the right of an otherwise qualified person to be free from discrimination ***because of race, religion, national origin, gender, or the presence of any sensory, mental, or physical disability*** is recognized and declared to be a civil right.

“This right shall include but not be limited to: (1) the right to obtain and hold employment without discrimination.”

ACRA § 16-123-108

Prohibits retaliation against those who opposed any act or practice made unlawful by the ACRA.

In practical terms this is **all about timing**

If an employee speaks up as a witness for a complaining employee and within a week negative action is taken...

Timing says your actions were retaliatory.

ARCA § 16-123-102. Definitions

- (1) “Because of gender” means, but is not limited to, on account of pregnancy, childbirth, or related medical conditions;
- (2) “Compensatory damages” means damages for mental anguish, loss of dignity, and other intangible injuries, but “compensatory damages” does not include punitive damages;

ARCA § 16-123-102. Definitions

(3) “Disability” means a physical or mental impairment that substantially limits a major life function, but “disability” **does not include:**

- (A) Compulsive gambling, kleptomania, or pyromania;
- (B) Current use of illegal drugs or psychoactive substance use disorders resulting from illegal use of drugs; or
- (C) Alcoholism; . . .

ARCA § 16-123-102. Definitions

(5) “Employer” means a person who employs **nine (9) or more employees in the State of Arkansas in each of twenty (20) or more calendar weeks in the current or preceding calendar year**, or any agent of such person;

(6) “National origin” includes ancestry; . . .

(8) “Religion” means all aspects of religious belief, observance, and practice.

Title VII: Federal Law that also prohibits discrimination

Title VII makes it **unlawful** for an employer to **discriminate** against any individual with respect to the terms, conditions, or privileges of employment because of such individual's **race, color, religion, sex, or national origin**.

An employer includes an employer's agents for purposes of the law.

Discrimination Claims

Generally

Where an employee can show that they meet the required elements of a discrimination claim through **indirect evidence and they were subject to an adverse employment action,**

the City must then show that it had a **legitimate, non-discriminatory** reason for the adverse employment action.

Discrimination Claims Generally (Burden Shifting)

If the City shows a legitimate reason for the adverse employment action,

the employee/Plaintiff is then given the opportunity to show that the reason the City has given for the employment action is false and discrimination is the real reason.

Hostile Work Environment

If a supervisor creates a hostile work environment for another employee, **the employer is liable unless it can show:**

- It exercised reasonable care to prevent and correct the harassing behavior, **AND**
- The harassment **victim unreasonably failed to take advantage of the preventative or corrective opportunities** that the employer provided.

Hostile Work Environment: Reminders

You MUST have some process to provide for corrective measures if an employee complains of harassment.

If the ***harasser is not a supervisor, the victim can still recover*** if the employer was negligent in correcting or trying to remedy the co-worker's harassing behavior.

Retaliation: Most Litigated

There are many statutes/laws that prohibit retaliation.

Generally, To establish a prima facie case of retaliation a **Plaintiff must show that:**

- (1) [he] engaged in statutorily protected activity;
 - (2) an adverse employment action was taken against him or her; and
 - (3) a causal connection exists between the two events.
- (quoting *Green v. Franklin Nat'l Bank of Minneapolis*, 459 F.3d 903, 914 (8th Cir.2006)).

Retaliation Generally

Employee does something protected by statute or constitution.

And

They are given discipline including but not limited to being terminated.

And...

Retaliation Generally

The **discipline is a motivating factor** behind the disciplinary action taken.

In some instances, the employee will have to prove the disciplinary action **was taken because of the protected conduct** (if the claim is a Whistleblower claim under the State Act).

Retaliation Laws

These laws prohibit retaliation:

- Family and Medical Leave Act
- Fair Labor Standards Act
- Retaliation for exercising one's First Amendment rights
- Title VII
- Age Discrimination in Employment Act
- Arkansas Whistleblower Act

Family Medical Leave Act (FMLA)

Family Medical Leave Act

Posting Requirement

EMPLOYEE RIGHTS AND RESPONSIBILITIES UNDER THE FAMILY AND MEDICAL LEAVE ACT

Basic Leave Entitlement

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for the following reasons:

- For incapacity due to pregnancy, prenatal medical care or child birth;
- To care for the employee's child after birth, or placement for adoption or foster care;
- To care for the employee's spouse, son or daughter, or parent, who has a serious health condition; or
- For a serious health condition that makes the employee unable to perform the employee's job.

Military Family Leave Entitlements

Eligible employees with a spouse, son, daughter, or parent on active duty or call to active duty status in the National Guard or Reserves in support of a contingency operation may use their 12-week leave entitlement to address certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintroduction briefings.

FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered servicemember during a single 12-month period. A covered servicemember is a current member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty on active duty that may render the servicemember medically unfit to perform his or her duties for which the servicemember is undergoing medical treatment, recuperation, or therapy, or is in outpatient status; or is on the temporary disability retired list.

Benefits and Protections

During FMLA leave, the employer must maintain the employee's health coverage under any "group health plan" on the same terms as if the employee had continued to work. Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.

Use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

Eligibility Requirements

Employees are eligible if they have worked for a covered employer for at least one year, for 1,250 hours over the previous 12 months, and if at least 50 employees are employed by the employer within 75 miles.

Definition of Serious Health Condition

A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities.

Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than 3 consecutive calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

Use of Leave

An employee does not need to use this leave entitlement in one block. Leave can be taken intermittently or on a reduced leave schedule when medically necessary. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the employer's operations. Leave due to qualifying exigencies may also be taken on an intermittent basis.

Substitution of Paid Leave for Unpaid Leave

Employees may choose or employers may require use of accrued paid leave while taking FMLA leave. In order to use paid leave for FMLA leave, employees must comply with the employer's normal paid leave policies.

Employee Responsibilities

Employees must provide 30 days advance notice of the need to take FMLA leave when the need is foreseeable. When 30 days notice is not possible, the employee must provide notice as soon as practicable and generally must comply with an employer's normal call-in procedures.

Employees must provide sufficient information for the employer to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for military family leave. Employees also must inform the employer if the requested leave is for a reason for which FMLA leave was previously taken or certified. Employees also may be required to provide a certification and periodic recertification supporting the need for leave.

Employer Responsibilities

Covered employers must inform employees requesting leave whether they are eligible under FMLA. If they are, the notice must specify any additional information required as well as the employees' rights and responsibilities. If they are not eligible, the employer must provide a reason for the ineligibility.

Covered employers must inform employees if leave will be designated as FMLA-protected and the amount of leave counted against the employee's leave entitlement. If the employer determines that the leave is not FMLA-protected, the employer must notify the employee.

Unlawful Acts by Employers

FMLA makes it unlawful for any employer to:

- Interfere with, restrain, or deny the exercise of any right provided under FMLA;
- Discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

Enforcement

An employee may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against an employer.

FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

FMLA section 109 (29 U.S.C. § 2619) requires FMLA covered employers to post the text of this notice. Regulations 29 C.F.R. § 825.300(a) may require additional disclosures.



For additional information:
1-866-4US-WAGE (1-866-487-9243) TTY: 1-877-889-5627
WWW.WAGEHOUR.DOL.GOV

U.S. Department of Labor | Employment Standards Administration | Wage and Hour Division



WHD Publication 1420 Revised January 2009

<http://www.dol.gov/whd/fmla/index.htm>

Family Medical Leave Act

Posting Requirement

All covered employers are required to display and keep displayed a poster prepared by the Department of Labor summarizing the major provisions of The Family and Medical Leave Act (FMLA) and telling employees how to file a complaint. The poster must be displayed in a conspicuous place where employees and applicants for employment can see it. A poster must be displayed at all locations **even if there are no eligible employees.**

Located at: www.dol.gov/esa/whd/

Family Medical Leave Act

Handbook Requirement or Other Writing

If an employer is covered by FMLA and has any FMLA eligible employees it shall publish in writing:

A general notice that the employer recognizes and honors FMLA leave

As well as general statements of FMLA leave rights of the employee.

Family Medical Leave Act

Who is covered

Employers : Local Governments with 50 or more employees for at least 20 calendar workweeks in the current or preceding calendar year. 29 C.F.R. § 825.104(a). The calendar workweeks do not necessarily have to be consecutive. 29 C.F.R. § 825.105(e).

Family Medical Leave Act

Who is covered

Employees: Those employees who have completed at least 12 months of employment and worked at least 1,250 hours within the prior 12 months. The determination of a “working hour” is governed by the principles of “working hours” found in the FLSA. *See* 29 C.F.R. § 825.110 (for employee coverage generally); 29 C.F.R. § 785.6 (for determining “work hours”).

Family Medical Leave Act

How much leave can employees receive?

The rule of 12.

Employees entitled to 12 weeks of unpaid leave in a 12 month period. **29**

C.F.R. § 825.200(a)

The 12 weeks can be intermittent. **29**

C.F.R. § 825.200(c)

Family Medical Leave Act

Is the Employee entitled to leave?

Reasons for leave: 29 C.F.R. § 825.112(a)

Birth of child or care for a newborn

Placement with employee of adoptive or foster child

Spouse, child or parent is on **active duty** (or notified) and causes a “qualified exigency” to occur

Family Medical Leave Act

Is the Employee entitled to leave?

Reasons for leave: 29 C.F.R. § 825.112(a)

Care for an ***injured or ill armed services*** member in the line of duty (see later slide)

Employee has “serious health condition” that causes employee to be unable to perform functions of the job

Employee’s spouse, son, daughter or parent has ***“serious health condition”***

Family Medical Leave Act

Caring for Family Injured in the Line of Duty on Active Duty.....

26 weeks of leave to care for immediate family member (spouse, son, daughter, parent or *next of kin*) if seriously injured, or suffering from a serious illness, in the line of duty on active duty. 29 C.F.R. § 825.127(b).

If used, no more FMLA is available for any other reason during the same 12 month period. 29 C.F.R. § 825.127(c)(2).

Family Medical Leave Act

What is a Serious Health Condition?

An illness, injury, impairment, or physical or mental condition that involves inpatient care requiring an overnight stay in a hospital or residential medical care facility. 29 C.F.R. § 825.113(a).

Family Medical Leave Act

What is a Serious Health Condition?

This includes follow ups regardless of whether the follow up is inpatient care, as well as days prior to the first inpatient setting. 29 C.F.R. § 825.113(b).

This also includes continuing treatment by health care provider. 29 C.F.R. 7 825.113(c).

Family Medical Leave Act

What is a Serious Health Condition?

“Continuing treatment...includes any one or more of the following”: 29 C.F.R. § 825.115.

- **Period of incapacity** and treatment for more than 3 consecutive days
- **Period of incapacity** due to pregnancy

Family Medical Leave Act

What is a Serious Health Condition?

“Continuing treatment...includes any one or more of the following”: 29 C.F.R. § 825.115.

- **Period of incapacity** due to a chronic serious health condition (periodic visits of at least twice a year, continues over an extended period of time, etc.)
- **Period of incapacity** that is permanent or long-term (may not need active treatment, i.e.: Alzheimer's)
- **Any absences** to receive multiple treatments (includes periods of recovery, i.e.: chemo, physical therapy etc.)

Family Medical Leave Act

*What Notice should the Employee
Provide?*

Caveat: all employee notice requirements may be waived by the employer. 29 C.F.R. § 825.304(e).

Family Medical Leave Act

What Notice should the Employee Provide?

29 C.F.R. § 825.302(a) – **Foreseeable Leave – Requires:**

➤ **30 days advance notice if:**

- Expected birth or placement for adoption/foster care,
- Planned medical treatment for serious health condition of employee or family member (employee is obligated to work with employer so as not to disrupt operations)
- Planned medical treatment for the serious injury or illness of a covered service member
- In event employee fails to notify, the employer may ask why the employee failed to meet deadline

Family Medical Leave Act

What Notice should the Employee Provide?

29 CFR 825.302(b) – Foreseeable Leave – Con't:

- If 30 days isn't practicable then notice as soon as is practicable (generally the same day or next business day)
- If the leave is qualified exigency based, notice must be given as soon as practicable, even if its in advance of 30 days
- Notice need only be given one time but must advise employer should leave logistics change in as practicable manner as possible (i.e.: spouse with terminal cancer but actual leave dates unknown)

Family Medical Leave Act

What Notice should the Employee Provide?

29 C.F.R. § 825.303(a) – Unforeseeable Leave –
Requires:

- Notice as soon as is practicable under the particular circumstances of the case and that notice must meet all employer required notice provisions (i.e.: calling of immediate supervisor and mayors office etc.)

Family Medical Leave Act

Some things to remember about employee notices.....

Notice need not specify the FMLA

Notice can be done verbally

*Initially notice may only contain minimal information
(remember the term “when practicable”)*

*Make sure you review 29 C.F.R. §§ 825.302(c) & 303(c) for a
more complete description of content of employee notices.*

Family Medical Leave Act

What notice should the Employer Provide?

29 C.F.R. §§ 825.300-301.

Employers should notify w/in 1 or 2 days
after receiving employee's notice the
following:

That the leave will be counted as FMLA
leave; and

Any requirement of providing medical
certification, 29 C.F.R. §§ 825.305-308; and

Family Medical Leave Act

What notice should the Employer Provide?

29 C.F.R. §§ 825.300-301. **Continued.**

and

Employees right to use accrued paid leave, or employers decision to use accrued paid leave, 29 C.F.R. § 825.207; and

Any requirement that the employee make co-premium payments on health coverage; and

Any requirement to present fitness for duty certification before job restoration.

Family Medical Leave Act: Benefits

What does an employer do with employees health benefits and seniority benefits?

Employer must maintain health benefits, but can require employee to continue paying share of premiums if portion was required prior to leave.
29 C.F.R. § 825.209(a).

Family Medical Leave Act: Benefits

What does an employer do with employees health benefits and seniority benefits?

An employee's entitlement to benefits other than group health benefits during a period of FMLA leave (e.g., holiday pay) is to be determined by the employer's established policy for providing such benefits when the employee is on other forms of leave (paid or unpaid, as appropriate). 29 C.F.R. § 825.209(h).

Family Medical Leave Act

What to do when the employee returns?

“General rule. On return from FMLA leave, an employee is entitled to be returned to the same position the employee held when leave commenced, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment

An employee is entitled to such reinstatement even if the employee has been replaced or his or her position has been restructured to accommodate the employee's absence.” 29 C.F.R. § 825.214.

Family Medical Leave Act: Benefits

What to do when the employee returns?

Equivalent Benefits: 29 C.F.R. § 825.215(d).

- Benefits must be resumed in the same manner and at the same levels as provided when the leave began,
- An employee may, but is not entitled to, accrue any additional benefits or seniority during unpaid FMLA leave.
- And...

Family Medical Leave Act: Benefits

What to do when the employee returns?

Equivalent Benefits: 29 C.F.R. § 825.215(d).

- With respect to pension and retirement plans, any period of unpaid FMLA is not a break in service for vesting and eligibility to participate.
- They are entitled to changes in benefits plans, except those which may be dependent upon seniority or accrual during the leave period, immediately upon return from leave or to the same extent they would have qualified if no leave had been taken.
- An employee may, but is not entitled to, accrue any additional benefits or seniority during unpaid FMLA leave.

Family Medical Leave Act: Pay

What to do when the employee returns?

Equivalent Pay: 29 C.F.R. § 825.215(c).

- An employee is entitled to any unconditional pay increases, such as cost of living increases.
- Pay increases conditioned upon seniority, length of service, or work performed must be granted in accordance with the employer's policy or practice with respect to other employees on an equivalent leave status for a reason that does not qualify as FMLA leave.
- Equivalent pay includes any bonus or payment, whether it is discretionary or non-discretionary, made to employees.

Family Medical Leave Act: Terms and Conditions

What to do when the employee returns?

Equivalent terms and conditions of employment : 29 C.F.R. § 825.215(e)

- The employee must be reinstated to the same or a geographically proximate worksite,
- The employee is ordinarily entitled to return to the same shift or the same or an equivalent work schedule,
- The employee must have the same or an equivalent opportunity for bonuses, profit-sharing, and other similar discretionary and non-discretionary payments,
- FMLA does not prohibit an employer from accommodating an employee's request to be restored to a different shift, schedule, or position which better suits the employee's personal needs on return from leave, or to offer a promotion to a better position.

The Americans With Disabilities Act Recent Amendment Act.... ADAAA

The American's with Disabilities Act: Recent Amendment Act...ADAAA

Major shift in the law.

Prohibits employers from considering mitigating measures (other than eyeglasses and contact lenses) when considering whether a job applicant is “substantially” limited in a major life activity.

It rejected the need for a medical condition to significantly limit a major life activity or affect an entire class of jobs in order to be considered a covered disability.

ADAAA

Finally, the Act expanded the list of major life activities to include major bodily functions and cognitive skills, and requires a broad interpretation of “disability” in favor of ADA coverage.

In other words, virtually anything is a disability.

ADA Post-Employment

Once an employee begins work, medical testing and medical inquiries must be job-related and consistent with business necessity.

This usually takes the form of a “fitness for duty” examination.

Reasonable Accommodations!

Sexual Harassment under the Arkansas Civil Rights Act

Island v. Buena Vista Resort, 352 Ark. 548, 103 S.W. 3d 671 (2003)

In this case, the Supreme Court of Arkansas held that the ACRA provides a remedy for sexual harassment by an employer.

An employee alleged that her supervisor had sexually propositioned her, that she had rebuffed those advances, and that he had repeatedly made lewd comments to her.

She claimed that, following her refusal of his sexual advances, she was fired in retaliation - a violation of the ACRA.

The Supreme Court of Arkansas Said:

- The court noted that federal courts have interpreted this language as providing an employee protection against both:
 - “sexual harassment due to a hostile work environment” or
 - “sexual harassment based on *quid pro quo*.”

Hostile Work Environment Claims:

Island, 352 Ark. at 558, 103 S.W.3d at 676.

A plaintiff asserting a hostile work environment claim must show:

- (1) Membership in a protected group or class,
- (2) Unwelcome sexual harassment
- (3) Based upon gender, and...

Hostile Work Environment Claims:

And...:

(4) Resulting in an effect on a term, condition, or privilege of employment, and

(5) That the employer knew or should have known about the harassment and failed to take proper remedial action.

In addition, the plaintiff must show that the sexual harassment created an environment that was both objectively and subjectively abusive.

Quid Pro Quo Harassment

For a plaintiff to make a *prima facie* case for *quid pro quo* harassment, [she] must show that:

Island, 352 Ark. at 558, 103 S.W.3d at 676-77

Quid Pro Quo Harassment

- (1) she was a member of a protected class;
- (2) she was subjected to unwelcome sexual harassment in the form of sexual advances or requests for sexual favors;
- (3) the harassment was based on sex; and
- (4) her submission to the unwelcome advances was an express or implied condition of receiving job benefits or her refusal to submit resulted in tangible job detriment.

The First Amendment and the Arkansas Whistle-Blower Act

ARK. CODE ANN.

§§ 21-1-601 THROUGH 21-1-609

FIRST AMENDMENT RETALIATION CLAIMS

Under the First Amendment, an employee can sue if they commented on matters of *public concern, and* their interest in making such comments outweigh the employer's interests in maintaining workplace harmony.

FIRST AMENDMENT RETALIATION CLAIMS

The main defenses are

(a) where the employee is speaking as part of their job, it's not considered a matter of public concern or

(b) if the employer can show it would have taken the same action, i.e., termination for instance, whether the employee spoke or not.

Ark. Code Ann. § 21-1-603

Retaliation prohibited

A public employer shall not take adverse action against a public employee because the public employee or a person authorized to act on behalf of the public employee communicates in good faith to an appropriate authority:

Ark. Code Ann. § 21-1-603

Retaliation prohibited

- The existence of waste of public funds, property, or manpower, including federal funds, property, or manpower administered or controlled by a public employer; or
- A violation or suspected violation of a law, rule, or regulation adopted under the law of this state or a political subdivision of the state.

Ark. Code Ann. § 21-1-603

Retaliation prohibited

Also cannot take adverse action against a public employee for giving information in an investigation, hearing, court, legislative or other inquiry, or any form of administrative hearing.

Finally, cannot take adverse action against a public employee for the employee's refusal or objection to a directive that the employee reasonably believes violates a law, rule, or regulation adopted by the state or City.

Ark. Code Ann. § 21-1-603

Elements

Public employment relationship

Good faith communication of waste or violation

Reasonable basis in fact

To an appropriate authority

Provide reasonable notice of the need to correct

Adverse action based on the communication

Adverse Employment Action

Ark. Code Ann. § 21-1-602(1) states that adverse action “means to discharge, threaten, or otherwise discriminate or retaliate against a public employee in any manner that affects the employee’s employment, including compensation, job location, rights, immunities, promotions, or privileges...”

Adverse Action: Constructive Discharge

Case Law: A constructive discharge exists when an employer intentionally renders an employee's working conditions intolerable and thus forces him to resign. [*Harris v. Wal-Mart*, 658 F.Supp. 62 \(E.D.Ark.1987\)](#). It exists only when a reasonable person would have resigned under the same or similar circumstances.

Case Law: An employee is not constructively discharged, however, if she quits “without giving her employer a reasonable chance to work out a problem.” *Alvarez*, 626 F.3d 410 (8th Cir. 2010).

Bad performance evaluation: adverse action?

No law on this topic under the Ark Whistle-blower act.

Federal law under Title VII: A lower satisfactory performance evaluation, *by itself*, does not provide a material alteration of employment and is not an actionable retaliation claim under Title VII. *Sutherland*, 580 F.3d 748 (8th Cir. 2009).

Who is a proper Defendant?

Cities and Towns.

Cities and Towns commissions and the like.

You.

That's all you need to know.

What is Waste? A Violation?

WASTE: “a public employer’s conduct or omissions which result in **substantial** abuse, misuse, destruction, or loss of public funds, property, or manpower belonging to or derived from state or local political subdivision’s resources.

VIOLATION: “an infraction or a breach w**hich is not of a merely technical or minimal nature of a state statute or regulation**, of political subdivision ordinance or regulation, or of a code of conduct or code of ethics designed to protect the interest of the public or a public employer.

SO, there are some possible defenses built into the definitions here.

What is a Whistle-Blower?

“A person who witnesses or has evidence of a waste or violation *while employed with a public employer* and who communicates in good faith or testifies to the waste or violation, verbally or in writing, to one of the employee’s superiors, to an agent of the public employer, or to an appropriate authority, **provided that the communication is made prior to any adverse action by the employer.**”

The latter part of this definition is a key feature in many cases. It results in a race to discipline/whistle-blow literally in some fact scenarios.

Ark. Code Ann. 21-1-604(e)(1)

Affirmative defenses

The public employer has an affirmative defense to whistle-blower claims where the adverse action is based on employee misconduct, poor job performance, or a reduction in workforce unrelated to the public employee's protected conduct.

Or better knows as: Legitimate non-discriminatory reason.

Good Faith...not in the statute.

What Constitutes Good Faith?

“Good faith is lacking when the public employee does not have personal knowledge of a factual basis for the communication or when the public employee knew or reasonably should have known that the communication of the waste or of the violation was malicious, false, or frivolous.” Ark. Code Ann. § 21-1-603 (b)(2).

Ark. Code Ann. § 21-1-603(a)(2):
reasonable notice...sort of a defense

A protected communication must give the employer “reasonable notice” of the need to correct the alleged waste or violation.

What is Reasonable Notice?

The Supreme Court of the United States defines “reasonable notice” as “notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

Ark. Code Ann. §§ 121-1-605, 121-1-606

Available Remedies

Injunction

Reinstatement

- Federally, reinstatement will not be ordered where there is animosity between the parties; in lieu of reinstatement, often front pay is ordered.

Compensation

- Lost wages, benefits, and any other remuneration

Act 1103 of 2015 POSTING REQUIREMENT

Requires Employers to post in a conspicuous place, a printed sign at least 8 ½ X 11 that:

- Informs a public employee of the provisions of the Whistleblower Act;
- Describes an appropriate authority to whom the public employee may communicate in good faith regarding the existence of waste or a violation of law;
- If a telephone hotline exists for the reporting of fraud, waste, or abuse in government, contains the number of the telephone hotline

Act 1103 continued . . .

Arkansas Legislative Audit prepared a sign and it's available online.

The Act also requires employers (Cities included) to “obtain a state criminal background check,” conducted by the State Police, before finalizing hiring of any applicant for a position with **“supervisory fiduciary responsibility over all fiscal matters.”**

The applicant must sign a release of information to the public employer.

The employer may pay for the check or require the applicant to pay for the background check.

Upon completion of the check, the State Police must furnish all **“releasable information obtained concerning the applicant.”**

Act 1103 continued (crime for failure to report)

A public employee with supervisory fiduciary responsibility over all fiscal matters of the City **shall report** a loss of public funds to Legislative Audit, including without limitation: “apparent unauthorized disbursements of public funds; or the apparent theft or misappropriation of public funds or property.”

The report must be made within 5 business days of the date the public employee learns of the loss of funds;

A public employee with supervisory responsibility over all fiscal matters who ***purposefully fails to comply with the above*** is ***guilty of a Class A Misdemeanor***.

Act 1103 (FOIA Exemption)

All materials . . . Gathered in connection with a communication regarding the existence of waste or of a violation are exempt from the FOIA, **except**:

- Final reports concerning a communication regarding the existence of waste or of a violation and any supporting documents shall be open to public inspection and copying, **except** for documents that are exempt under other law;
- This section does not apply to the name and identifying information of a state employee eligible to receive a reward;
- This section applies without limitation to communications regarding the existence of waste or of a violation received by a telephone hotline allowing for reporting of fraud, waste, or abuse in government.

Drug Testing Non-CDL Employees

Drug Testing NON-CDL Employees

See this link:

http://www.arml.org/pdfs/publications/Drug_testing.pdf

Quick thoughts

Drug Testing NON-CDL Employees

Safety Sensitive Employees May be Randomly Tested.

Who are the safety sensitive folks?

- Law enforcement officers
- Motor vehicle operators who carry passengers, including, but not limited to, ambulance drivers
- Fire department employees who directly participate in fire-fighting activities.
- Medical personnel with direct patient care responsibilities including physicians, nurses, EMT's etc
- Mechanics etc who work on vehicles designed to carry passengers i.e.: buses, ambulances, police cruisers, vans etc

Drug Testing NON-CDL Employees

Security Sensitive Employees May be Randomly Tested.

Who are the security sensitive folks?

Those with access to information concerning ongoing criminal investigations and criminal cases, which information could, if revealed, compromise, hinder or prejudice the investigation or prosecution of the case. (police officer, jailer, dispatcher and police department employee, including clerical workers)

(2) Law enforcement officers may also be considered security-sensitive by reason of their duty to enforce the laws pertaining to the use of illegal substances.

Some Things to Watch and Do...Be Smart

Emotional decisions are bad decisions

Be consistent (do things the same way, even if its your buddy!)

Documentation

KISS Method (Keep It Simple Stupid)

Follow your policies. (You must know if you have policies and also WHAT THEY SAY)

Politics. Remember you work for government no matter how much you'd like to believe to the contrary

Be Smart

Don't ignore bad behavior

Bad behavior starts with little things and always leads to VERY BIG THINGS

You must manage

De-certify or not to de-certify

Common sense and initial reactions

Get involved

Stay informed

Understand what your employees are doing

You Must Discipline in These Cases

Actual Harassment

Un-reasonable use of Force, Deadly or Not (ASP, mace, gun, Taser, etc.)

False Arrest

Theft or Other Illegality (Liberty Interest)

The End!

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Arkansas Municipal League

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EMPLOYEE HANDBOOKS;
FUN, FABULOUS FILING; AND
RECORD RETENTION 😊

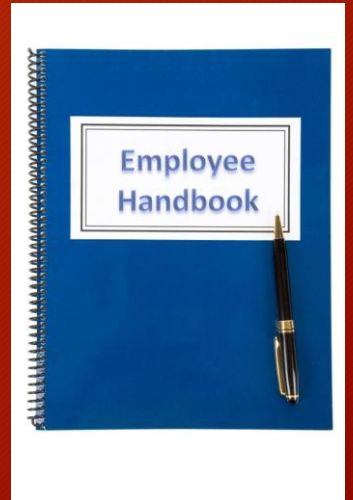
Tracey L. Cline-Pew, SPHR
MHBF Director
Arkansas Municipal League
501-978-6111
tpew@arml.org

OR STUFF I LEARNED THE HARD WAY!

- Sample provided in packet.
- Employment law is heavily litigated and constantly changing. Do not rely solely on the sample included in your meeting materials. You are encouraged to monitor and update your city's handbook to ensure that it continuously meets the needs of your city from a legal and employee standpoint. It should be reviewed annually by city officials and city attorneys.
- If your city adopts an employee handbook, failing to follow and enforce its guidelines may result in legal liability.
- Policies are of no use if city employees, supervisors, department heads and city officials don't follow them. When policies and/or updates are distributed, make sure that all employees and city officials sign the acknowledgement.

Employee Handbooks - Do I Need One?

- YES!
- *An Employee Handbook is an effective way to communicate policies, procedures and work rules to employees. It can be used to:*
 - *Properly orient new employees;*
 - *Maintain consistency among managers and supervisors;*
 - *Minimize misunderstandings over workplace policies;*
 - *Support disciplinary action and avoid charges of unlawful discrimination;*
 - *Outline employee benefits.*



Chapter by Chapter: What To Include in an Employee Handbook

Writing an employee handbook is a daunting task. It is our hope that the sample provided will make this task much easier.

There are also many software packages available, but be cautious. Even the electronic formats need to be reviewed by your city officials and city attorneys.



Chapter 1

- CHAPTER 1:
 - Chapter 1 should contain general overview of what's to come, such as the purpose and scope of the personnel policies.
 - It should also include definitions of terms frequently used through the handbook.
 - Chapter 1 should outline how amendments and revisions to the Employee Handbook will be made and communicated.
 - *Note: Always have employees sign an Acknowledgement of Receipt of any amendments or revisions.*

Chapter 2

- Equal Employment Opportunity
 - EEO Statement.
 - American's With Disabilities Act
 - Policy Regarding Unlawful Discrimination - defining prohibited conduct!
 - Sexual Harassment
 - Complaint Reporting and Investigation
 - Complaint Procedure
 - Investigation Protocol
 - Retaliation
 - False Accusations
 - Consequences



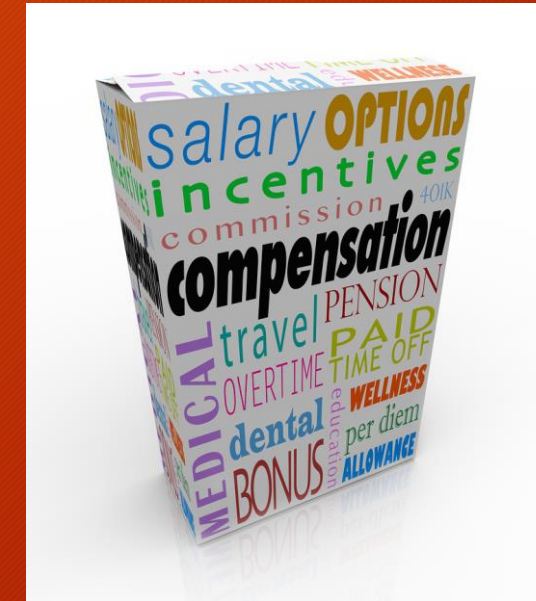
Chapter 3

- General Employment Policies
 - At-Will Employer
 - Authority to Hire and Fire
 - Job Posting & Advertising
 - Employment Applications & Resumes
 - Post-Offer Pre-employment Physicals
 - Fitness for Duty Exams
 - Drug and Alcohol Testing
 - Genetic Information (GINA)



Chapter 4

- Compensation and Matters Affecting Employment Status
 - Attendance
 - Work Hours
 - Unauthorized Work Time
 - Compensation - reporting time, payroll records, payday, withholding
 - Salary Basis Policy - FLSA, Exempt vs. Non-Exempt
 - Overtime & Compensatory Time
 - Emergency Situations
 - Temporary & Seasonal Employees
 - Vacancies and Promotions
 - Training
 - Performance Evaluations
 - Job Safety
 - Refusal to Work
 - Resignation/Termination
 - Exit Interviews
 - Job Descriptions - IMPORTANT



Chapter 5

- Benefits

- Vacations (Uniformed vs. Non-Uniformed Employees)
- Holidays & Holiday Pay
- Inclement Weather Policy
- Sick Leave (Uniformed vs. Non-Uniformed Employees)
- Funeral or Bereavement Leave
- Maternity Leave
- Uniformed Services
- Family and Medical Leave
- Leave for Witness or Jury Duty
- Health Benefits
- Occupational Injuries
- Accidental Injury



Chapter 6

- Standards of Conduct
 - Communicating with the Public
 - Personal Communications
 - Uniforms and Personal Appearance
 - Guidelines for Appropriate Conduct
 - Absenteeism and Tardiness
 - Outside Employment or Moonlighting
 - Voting
 - Outside Compensation
 - Use of Narcotics, Alcohol & Tobacco
 - Drug-Free Workplace
 - Use of City Access & Resources
 - Waiver of Privacy
 - City Vehicles
 - Political Campaigns
 - Disciplinary Action
 - Procedure for Review of Disciplinary Action

APPROPRIATE
BEHAVIOR



**This IS my
helpful face and
I'm very happy
to help you.**



Chapter 7

- Miscellaneous Information
 - Policy Statement
 - Conflicts - Federal, State or Local Law takes precedence.
 - Severability
 - Policy Changes
 - Change of Address



Employee Files

Fun, Fabulous Filing!

Employee Files & City Policy

- All organizations have files where important employee information is kept. Each filing system is specific to the individual employer.
- All organizations have their own policies regarding employee records and filing systems. In fact, many organizations have employee records maintained in many different areas. For example, general and confidential employee files may be maintained by Human Resources; and payroll records and documentation may be contained by a Payroll Administrator. Perhaps you are a small city or organization and all files are maintained by one person.
- The example file provided is just that - an example.
- Your city attorney should be included in any recordkeeping policies and decisions.



Why Do I Need A Personnel Files?

- Whether in paper or electronic format, it is important to keep employee records. Documentation is needed so the employer has an accurate employment history. Documentation supports the employer's decisions about the employee and his or her career. The documentation may protect an employer from a lawsuit - if maintained correctly. Not to mention record retention regulations. . .



Personnel File Storage

Are your file cabinets:

- Locked? Secure?
- Fire Proof? Water Proof?
- Meet Requirements of the organization's Disaster Recovery Plan?
- Meet HIPAA Privacy Rule Guidelines?
- Meet HIPAA Security Rule Guidelines?

Types of Files - Generally

- General Personnel File
- Confidential Employee File
- Payroll File
- Common File



What Goes Where?? Consider access.



- Consider whether or not the document contains sensitive information such as date of birth, marital status, dependent information, SSN, medical information, etc. Protected information should be stored in a confidential file with restricted access.
- Consider who will need access to the file. A supervisor may need access when making employment decisions. Is it related to an employee's performance, knowledge, skills, ability or behavior? If so, it may go in the general file.
- Each type of personnel file may have different access requirements.
- Employee access to his or her personnel file is allowed, but most employers set up guidelines for access.
- **Note:** Even though an immediate supervisor or HR staff may access an employee file, there has to be a bona fide reason to do so.

General Personnel File Contents

- Recruiting and screening documents such as applications, resumes, transcripts, licensure.
- Job description. (Did employee acknowledge and sign?)
- Records related to job offer, promotion, demotion, transfer, layoff or training.
- Acknowledgements or Agreements such as an acknowledgement of receiving employee handbook or new policy.
- Emergency contact information.
- Letters of recognition.
- Disciplinary notices.
- Performance evaluations.
- Termination documentation.



Confidential Personnel Folder Contents

- EEO information.
- Reference checks, background checks.
- Drug testing results.
- Medical insurance applications and records. Supporting documentation - divorce decrees, child support orders, marriage license, etc.
- Doctors notes, accommodation requests.
- Child support or other garnishments.
- Litigation documents.
- Workers compensation claims.
- Investigation records related to disciplinary actions.
- Requests for employment/payroll verifications.



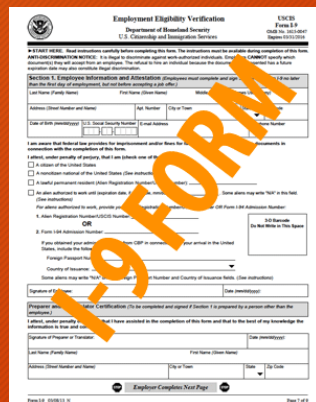
Payroll File

- Salary information.
- Benefit selection - both medical and supplemental.
- Pay rate changes.
- Garnishments.
- Legal documentation that affects an employees paycheck.
- W-4.
- State withholding form.



Common File Contents

- I-9 documentation (Allows easy access for auditing purposes)
- Equipment assignments.
- Special skills in case of a disaster/emergency. For example, employees trained in CPR; bilingual employees and languages spoken; employees with medical training and licensure. Often this information is kept in an Emergency Action Plan File.



The image shows a sample of the I-9 Employment Eligibility Verification form. A large, diagonal orange watermark with the text "I-9 FORM" is overlaid across the center of the form. The form is titled "Employment Eligibility Verification" and includes sections for employee information, employer information, and verification steps. It is a standard government form used for verifying the identity and employment eligibility of new hires.



Paper Files v. Electronic Files

- Filing systems vary from place to place and no one system is better than another if it works for your organization.
- Paper files have to be manually maintained and take up a large amount of space.
- Electronic storage systems have to be set up properly and documents must be scanned and organized so that they are easily accessible.
- Both types of systems must be securely maintained to ensure each employee's privacy.

Electronic Personnel File Audit

- Do you have a good document management system?
- Have you established clear parameters around which employees have access?
- Have you implemented proven security and password protections?
- Do you have a backup system in place?
- Do you have a secondary backup system in the event the software and backup are destroyed?
- Has everyone been adequately trained on the system?



Personnel File Audit

- Are files maintained in a locked and secure cabinet?
- Have all documents containing confidential information been removed from the general personnel file?
- Are personnel files organized in a logical manner so that information is easy to find?
- Is there a policy or consistent practice regarding employee access to personnel files?



Confidential File Audit

- Are medical/confidential files maintained in a locked and secure cabinet?
- Do you restrict access to only those with a need to know?
- Are the contents organized in a logical manner so that information is easy to access?



Terminated Employee Files

- Are terminated files locked and secured with limited access?
- Does your organization have a regular disposal plan for documents that have exceeded record retention guidelines.
- Are employment records that have met or exceeded record retention requirements disposed of via shredding, burning or fully destroying these records prior to disposal?
- Are files related to current or potential lawsuits maintained by legal counsel or in some way marked to be exempted from any disposal process until the suit is closed?
- Does your company have a written record retention and destruction policy or procedure?

I-9 File (Common File)

- I-9 forms should be maintained in a separate file from the employee personnel file.
- Access is highly restricted.
- It should be kept in a locked cabinet or secured electronic database.
- I-9 forms and supporting documentation should be easily accessible if required by U.S. Citizenship and Immigration Services personnel.

Record Retention

- Your organization should have a record retention policy. If not, work with your city attorney to establish one.
- Record retention varies depending on the law that applies to the document.



General Guideline for Electronic and Paper-based Records

- Personnel: 7 years after termination
- Medical/Benefits: 6 years after plan year - except in the case of exposure to hazardous material, then 30 years
- I-9 Forms: Not more than 3 years after termination.
- Hiring Records: 2 years after hiring decision.

Laws and Retention Requirements

Law

Age Discrimination in Employment Act (20 employees)

Equal Pay Act

Immigration Reform and Control Act

Record/Document

Payroll or other records showing name, address, date of birth, occupation, rate of pay and weekly compensation

Payroll records, timecards, wage rates, additions/deductions from wages paid, records explaining gender-based wage differentials

INS Form I-9

Retention

Three years for payroll or other records showing basic information; one year for applications or other personnel records

Three Years

Three years after date of hire or one year after termination

Laws and Retention Requirements

Law

Fair Labor Standards Act (FLSA)

Record/Document

Payroll or other records containing:

Employee's name, address, DOB, gender and occupation.

Time of day/day of week for beginning of workweek.

Regular hourly rate of pay.

Daily hours worked and total hours for each workweek.

Total daily or weekly straight-time earning.

Total additions/deductions from wages for each pay period.

Total wages per pay period.

Date of each payment of wages.

Retention

Three Years

Laws and Retention Requirements

Law

Americans with Disabilities Act (15 employees)

Title VII - Civil Rights Act (15 employees)

COBRA

Record/Document

Application and other personnel records; requests for reasonable accommodation.

Applications or other personnel records, including records for temporary or seasonal positions.

Provide written notice to employees/dependents of their option to continue coverage following certain qualifying events such as termination, layoff or reduction in working hours.

Retention

One year from making the record or taking action. In case of lawsuit, until final disposition.

One year from making the record or taking action.

No requirements, however, experts recommend 6 years from the date of the record.

Laws and Retention Requirements

Law	Record/Document	Retention
Employee Polygraph Protection	Polygraph test results and reason for administering.	Three years.
Employee Retirement Income Security Act (ERISA)	Maintain and report to DOL, IRS and PBGC certain reports, documentation and materials. Applies to all pension and welfare plans.	Minimum of 6 years.
Equal Pay Act	Payroll records, including timecards, wage rates, additions to/deductions from wages, records re: gender based wage differences.	Three years.

Laws and Retention Requirements

Law

Fair & Accurate Credit Transaction (FACT) Act

Family and Medical Leave Act (FMLA) (50 employees)

Record/Document

Consumer Credit Reports.
(Employer may retain employee's consent form but cannot retain the credit report.)

All FMLA documentation.

Retention

As of June 1, 2005, every employer that employs one or more must shred documents that contain information derived from a credit report. Non-compliance could result in civil penalties for non-compliance up to \$1,000; punitive damages for willful noncompliance; attorneys fees; and federal fines up to \$2,500 per violation. (Class Action could be a possibility).

Three years.

Laws and Retention Requirements

Law

Federal Insurance Contribution Act;
Federal Unemployment Tax Act;
and Federal Income Tax
Withholding

Record/Document

Records containing basic employee data.

Compensation data such as amounts and dates of payment; straight time and over time hours/pay; annuity and pension payments; fringe benefits paid; and deductions and additions.

Tax records including: wage amounts subject to withholding; actual taxes and dates withheld; withholding forms (W-4, W4-E).

Retention

Four years after later of when tax was paid or due.



Helping Prevent Violence in the Arkansas Municipal Workplace



A Professional Development Class for Municipal Leaders

Facilitated by

David S. Baxter

Arkansas Municipal League Health and Safety Coordinator

Class Objectives

- * Impact of Workplace Violence
- * What is Workplace Violence?
- * Why Does Workplace Violence Happen?
- * What Can I Do to Help Prevent Violence in My Municipal Workplace?



The Impact of Workplace Violence

- 2 million incidents of workplace violence annually.
- Fourth leading cause of all workplace deaths.
- Leading cause of death for women in the workplace.
- Recent data shows that over the last 20 years, there were about 13,827 workplace homicide victims, averaging around 700 victims per year, in the United States alone.
- Majority of deaths instigated by strangers, 19% in law enforcement, 13% retail, 10% medical operations.

Source: U.S. Department of Labor, OSHA/CDC



What is Workplace Violence ?

■ Workplace violence is any harassment, intimidation, threat, act of physical violence, or any disruptive behavior that occurs and causes fear in the workplace and includes:

- * Stalking
- * Assault
- * Domestic Violence
- * Workplace Homicides
- * Threats
- * Harassment
- * Intimidation
- * Vandalism
- * Theft



Workplace Violence Falls into Four Broad Categories



Why Does Workplace Violence Happen?

- Research has shown that violence in the workplace is more likely to occur when three components, conducive to creating an environment where violence can flourish, come together at the same time. These three factors are the personality of the **individual**, **stress**, and the **environment** of the organization itself.



What Can I Do to Help Prevent Violence in My Municipal Workplace?

- Develop municipal workplace **policy and procedures** that address violence in the workplace;
- Promote a municipal culture of **open communication** between all departments and all employee levels;
- Promote a **culture of “zero-tolerance”** regarding violent, aggressive, bullying, harassing, and general disruptive behavior that causes fear;
- Promote procedures that timely and effectively address **grievances** and complaints; and
- Promote a **culture of fairness**, with no double standards, when applying policy, procedures, and discipline.



- Provide training to **promote respect, understanding,** and acceptance of co-workers and citizens from different, races, sexes, religions, abilities, ethnic backgrounds, and sexual orientations.
- Provide **communication training** that helps employees increase situational awareness, recognize “red flags” from employees, encourages an effective reporting system, and understand de-escalation methods.



Situational Awareness

- Situational awareness is being aware of what is happening around you in terms of where you are, where you are supposed to be, and whether anyone or anything around you is a threat to your health and safety.



Our Behavior and Reaction Affects the Behavior of Others!

- A vital component of managing difficult behavior is knowing that **your behavior** affects the behavior of others. What you say or do in response to an individual's behavior can have an affect on whether the behavior escalates or stops.



Listening



- Listening is a key component to de-escalating and helping gain control of a potentially violent individual.
- Just the simple act of listening and being empathetic **calms** people down.

What About An Active Violence Situation?



Professional Development Classes Offered by the League

Defensive Driving:

For municipalities who are members of the
AML vehicle program



1. Defensive Driving for Municipal Police Officers (Presented @ League Headquarters).
2. Defensive Driving for Non-Police Municipal Employees (Presented @ Your City).
 - Objectives :
 - Facilitate situational awareness
 - Eliminate distracted driving
 - Reinforce positive driving habits



Professional Development Classes Offered by the League

Respect and Understanding:

- Objectives :
 - Develop cultural awareness of yourself and others.
 - Help create inclusive work environment and provide bias-free service in in your municipality.
 - Help your employees develop better communication and conflict management skills.



Professional Development Classes Offered by the League

Providing Exceptional Customer Service in the Arkansas Municipal Workplace:

- This is a new class that is under development for the new year!
- Objectives :
 - Improve listening skills to facilitate greater understanding, communication, and customer service.
 - Understanding the importance of first impressions.
 - Identify strategies to effectively and respectfully handle and met the needs of customers even in difficult situations.





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References

- <https://www.cdc.gov/niosh/topics/violence/>
- Workplace Violence: Issues in Response. FBI Academy, Quantico, VA
- <https://www.bls.gov/>
- <https://www.osha.gov/SLTC/workplaceviolence/>
- Adler & Proctor II, 2007, p. 367.
- Noble, n.d. p. 6. Conflict mastery: Questions to guide you.
- Denenberg, R. V., & Braverman, M. (1999). The Violence-Prone Workplace: A New Approach to Dealing with Hostile, Threatening, and Uncivil Behavior. NY, NY: Cornell University Press.
- http://www.arhealth.arkansas.gov/docs/Health_and_Safety/Module2.pdf.
- WORKPLACE VIOLENCE: RECOGNIZING RISK FACTORS AND FORMULATING PREVENTION STRATEGIES. (2005, Sept. & oct.). Retrieved April 24, 2017, from <http://www.sgmlaw.com/ttl-articles/869/>
- http://www.sjsu.edu/counseling/Faculty_Staff/De-Escalating_Aggressive_Behaviors/
- <https://www.crisisprevention.com/Resources/Knowledge-Base/Behavior-Management-Strategies>
- Framework guidelines for addressing workplace violence in the health sector. (n.d.). Retrieved April 27, 2017, from http://www.who.int/violence_injury_prevention/violence/activities/workplace/en/

Model Personnel File Folder



This File, Your City Attorney and What Works for You

All cities should have a file where important personnel information about each employee is kept. Individual employee personnel files can assist cities in organizing and storing proper personnel information. However, your personnel file should never be considered a substitute for the advice of your city attorney. The *Model Personnel File* is for guidance and reference only. Simply copying the contents of this *Model Personnel File* without determining the specific applicability to your city could pose legal problems. Remember, the *Model Personnel File* is for information and education. Each city is encouraged to adopt it to its own individual needs.

Cities making significant decisions concerning legal issues and questions in employment, labor or personnel law should consult their city attorney.

Employers should be aware that the American's With Disabilities Act (ADA) requires that all information obtained concerning the medical condition of an employee must be collected and maintained on separate forms. Access to the information is permitted only: (See attached form, Employee or Applicant Confirmation of Request for Reasonable Accommodation)

- To supervisors who need to know about necessary restrictions on the employee or duties of an employee and any necessary accommodations;
 - To designated safety personnel, if the employee has a disability that might require emergency treatment or if any specific procedures are needed in case of fire or an evacuation;
 - To government officials investigating compliance with the ADA, or
 - To comply with state workers' compensation laws
-

Following is a Department of Labor's Appendix A or Reasonable Accommodation Request Form.

U.S. Department of Labor
Office of the Assistant Secretary for Administration and Management
Civil Rights Center

Appendix A
Employee or Applicant
Confirmation of request for
REASONABLE ACCOMMODATION

Executive Order 13164 dated July 26, 2000, requires that agencies track the processing of requests for reasonable accommodation and maintain the confidentiality of medical information in accordance with applicable law and regulations.

SECTION I.

1. Name: _____
Employee/Applicant (circle one)
2. Home Address: _____
3. Home Telephone: _____ 4. Work Telephone: _____
5. Agency and Agency component: _____
6. The title, occupational series and grade of the position for which reasonable accommodation is requested (vacancy number for applicant only):

7. Date of the request for reasonable accommodation: _____

SECTION II.

ACCOMMODATION REQUESTED

(Be as specific as possible, e.g., adaptive equipment, reader, interpreter, etc., or attach a description.)

SECTION III.

REASON FOR REQUEST

SECTION IV.

Signature _____ Date _____

SECTION I

This section documents the city's selection process and important separation records when that event occurs. Documents you should place in this file include, but are not limited to:

- ✓ The Job Announcement Notice with Proof of Publication
- ✓ The Job Description
- ✓ Letters of Reference (if available)
- ✓ Application for Employment
- ✓ Offer of Employment and Acceptance Letter(s)
- ✓ Employee Statement
- ✓ Acknowledgment of Receipt of Handbook
- ✓ Employee Separation Clearance Checklist
- ✓ Voluntary Resignation Letter
- ✓ Inventory of City Property

Federal law requires that certain payroll and personnel records be kept for three (3) years following the last date of entry. A reasonable file retention practice for the personnel file of separated employees is four (4) years. However, it is also a good practice to retain basic employee data such as E.E.O. and key employee data on a permanent basis.

Cities would be wise to consult with their city attorney and also review state statutes when questions concerning file retention arise.

SAMPLE

Job Opportunity Notice

(This form may be used to advertise vacancies.)

DATE POSTED: _____

JOB TITLE: _____ SALARY LEVEL: _____

JOB LOCATION and/or CITY DEPT.: _____

DESCRIPTION / REQUIREMENTS: _____

APPLICANT MUST MEET THE FOLLOWING MINIMUM REQUIREMENTS:

If you wish to apply for _____ you may pick up an application at
(job description)
_____ or provide us with a resumé.

The City of _____ is an Equal Opportunity Employer. The City of
_____ does not discriminate on the basis of race, color, religion, sex,
national origin, marital or veteran status, political status, disability status or other legally
protected status.

SAMPLE

Application for Employment

Our policy is to comply with all applicable state and federal laws prohibiting discrimination in employment based on race, age, religion, national origin, disability status, or other legally protected status.

Name: _____ Date: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Cell: _____

Are you 18 years old or older? _____ Yes _____ No

Have you ever been convicted of a felony? _____ Yes _____ No
(Conviction will not necessarily disqualify an applicant for employment.) If yes, describe conditions: _____

Do you have the legal right to work and remain in the United States? _____ Yes _____ No
If Yes, can you produce evidence of U.S. Citizenship or legal work status within three (3) days? _____ Yes _____ No

Can you perform the duties of the job for which you are applying? _____ Yes _____ No

If No, will you need any accommodations? Explain: _____

** If additional space is needed please attach additional pages.

Education	Name and Location of School	Year Graduated	Major	Diploma/Degree
High School				
College/Univ.				
College/Univ.				
Other Training Education, Including Police/Fire Academy				

POSITIONS APPLIED FOR:

1) _____

2) _____

WORK HISTORY

Most Recent Employer:		Address:	Telephone:
Date Started:	Starting Salary: \$ Per:	Starting Position:	
Date Left:	Salary on Leaving: \$ Per:	Position on Leaving:	
Name of Supervisor:		Title of Supervisor:	
Description of Duties:		Reason for Leaving:	

Most Recent Employer:		Address:	Telephone:
Date Started:	Starting Salary: \$ Per:	Starting Position:	
Date Left:	Salary on Leaving: \$ Per:	Position on Leaving:	
Name of Supervisor:		Title of Supervisor:	
Description of Duties:		Reason for Leaving:	

Most Recent Employer:		Address:	Telephone:
Date Started:	Starting Salary: \$ Per:		Starting Position:
Date Left:	Salary on Leaving: \$ Per:		Position on Leaving:
Name of Supervisor:			Title of Supervisor:
Description of Duties:			Reason for Leaving:

Do you have a current commercial driver's license? _____

In addition to your work history, what other experiences, skills or qualifications would especially qualify you for work with the City of _____? Specify office equipment, machines, computers you can operate:

Give the names and addresses of three (3) persons, other than relatives, who have knowledge of your character, experience or ability:

NAME	ADDRESS/PHONE NO.	OCCUPATION

SAMPLE OFFER/ACCEPTANCE LETTER

Dear _____
(employee name)

Date: _____
(month/day/year)

This will confirm our oral conversation regarding an offer of employment. We are very pleased that you have decided to join our city in the position of _____ (job title), starting _____ (month/day/year).

The position is located in _____ (department and city name) and will pay \$ _____ per _____ Month _____ Week _____ Hour (check one). You will report to _____.*

All of us here at the City of _____ expect a smooth transition and look forward to the contribution which you can make to our mutual success. Since there can be no guarantees however, it is understood that your employment is at-will. That is, the City of _____ may terminate your employment at any time with or without cause, and you may do the same.

I look forward to seeing you in my office at _____ a.m./p.m. on your first day to complete the necessary payroll procedures and personnel forms. We will be pleased to describe in detail our benefits to you and answer any other questions you may have.

Again, we are happy that you will be joining us. It will be a pleasure having you on the team.

Sincerely yours,

Mayor, H.R. Manager or City Manager

Please acknowledge below your acceptance of this offer and return a copy to me for our records. The other copy may be retained for your files.

Accepted: _____
(new employee's signature)

Date: _____
(month/day/year)

NOTE: Avoid quoting salaries in annual amounts, such figures have been cited as an implied contract for a full year's employment.

* If you intend to require a pre-employment physical examination, please see and discuss 42 U.S.C. § 12116(d) with your city attorney

EMPLOYEE STATEMENT

I understand that this application is not intended to create any contractual or other legal rights. It does not alter the at-will employment status nor does it create an employment contract.

I certify that I have made no willful misrepresentations in this application, nor have I withheld information in my statements and answers to questions. I am aware that the information given by me in my application will be investigated, with my full permission, and that any misrepresentations may cause my application to be rejected or my employment to be terminated.

I authorize former employers to release to the City of _____ or its authorized representative any and all employment records and other information it may have about my employment. I understand that the information will be used for the purpose of evaluating my application for employment with the city. A photocopy of this authorization shall be valid as the original.

I understand that my appointment will be at the discretion of the department head, subject to the approval of the (chief administrative officer) and that this application is the property of the City and will become a part of my file if I am accepted for employment.

Signature of Applicant: _____

Date of Signature: _____

SAMPLE RECEIPT FOR EMPLOYEE HANDBOOK

I have received a copy of the City of _____ employee handbook dated _____ (month/year).

The handbook contains policies, practices and regulations which I have read, understand and agree to comply with during my employment with the City of _____. After reading the policies, practices and regulations, I understand that I am an at-will employee, and nothing in the handbook alters that status.

I further understand that I will be responsible for complying with future changes in such policies, practices and regulations communicated to employees from time to time, whether or not I have signed an acknowledgement of such changes.

Employee Signature

Date

City Representative

Date

Please keep a copy of the Receipt for Employee Handbook for your records.

SAMPLE EMPLOYEE SEPARATION CLEARANCE CHECKLIST

Employee _____ Last Day Worked _____

Department _____ Social Security # _____

- ☐ Expense Account
- ☐ Advance Loans
- ☐ Continuation of Insurance
- ☐ Final Change of Status Notice
- ☐ Insurance Conversion Privilege
- ☐ Accrued Vacation Pay
- ☐ Retirement Benefits
- ☐ Final Paycheck
- ☐ Address Verification
- ☐ Letter of Resignation
- ☐ Notice of Termination**
- ☐ Other (specify) _____

Personnel Department Clearance: _____
Personnel Manager Date

Supervisor Department Clearance: _____
Supervisor Date

**** Contact your city attorney or legal counsel prior to drafting any Notice of Termination.**

SAMPLE VOLUNTARY RESIGNATION

Employee Name _____ Department _____

I voluntary resign my employment with the City of _____

Effective: _____
(month/day/year)

My reasons for leaving are:

Forwarding Address:

Employee Signature

Date

Supervisor Signature

Date

Management Signature

Date

SAMPLE INVENTORY OF CITY PROPERTY

Property	Date Received	Initials	Date Returned	Initials
Keys				
Manual				
Credit Cards				
Tools				
Safety Equipment				
Library Material				
Computer Equipment				
City Vehicle				
Employee Identification				
Return of Checklist Completed				
Other:				
Other:				
Other:				
Other:				
Other:				

_____ (Employee Name) has turned in all city property assigned to him/her and has received his/her final paycheck.

Employee Signature

Date

Supervisor Signature

Date

SECTION II

This section should include documents related to employee development such as job performance, attendance records and correspondence. Documents you should place in this file should include:

- Employee Performance Review
- Disciplinary / Employment Action Notice
- Promotion Documents
- Records of Training Courses Completed
- Attendance Records
- Leave Request Forms
- Correspondence
- Disciplinary Actions and Commendations
- Significant Achievements

Records and notes pertaining to disciplinary or legal investigations that are in progress should NOT be kept in this file. It is important to review this section regularly and to discard materials that are no longer relevant. Each of these documents should be copied to the employee.

- ** Allowing supervisor access to employee information that is not directly job related can potentially expose the city to complaints of discrimination.
- ** Any documents containing medical information, such as sick leave forms, and requests for accommodations should be kept in a separate medical folder.

Following is a sample *Employee Performance Review* and sample *Disciplinary Notice* form. The AML offers this as an example, not an endorsement.

- ** Please note that Employee Performance Reviews are not required by law. Should you adopt an evaluation policy then it should be administered and applied honestly and objectively.
- ** Should your city decide to adopt these forms, the need for accurate and meaningful critiques cannot be stressed enough.

SAMPLE EMPLOYEE PERFORMANCE REVIEW

(Example of Goal-Oriented Approach)

Employee _____ Department _____

Title _____ Date Began this Position _____

Hire Date _____ Appraisal Period from _____ to _____

Appraising Supervisor _____ Date _____

Reason for Appraisal ☐ Regular ☐ Special _____
(transfer, promotion, etc)

- 1) Job Description: Attach Job Description and note recommended modifications, if any.
- 2) Results Achieved (Refer to goals and objectives established at last performance review):
To what extent are goals and objectives being met? Discuss individually. Add attachment if necessary.

- 3) Summary of Performance Rating: Supervisor—Check sentence that summarizes review.
 - ☐ Results achieved were excellent and continually exceeded overall requirements in all major areas.
 - ☐ Results achieved at times exceeded overall requirements in most major areas.
 - ☐ Results achieved met overall requirements.
 - ☐ Results achieved met most requirements but will need to improve in some areas.
 - ☐ Results achieved failed to meet requirements in one or more major areas.

Comments: _____

EMPLOYEE PERFORMANCE REVIEW (continued)

- 4) Goals and Objectives Planned for Next Review Period, Ending _____.
List key job performance goals and objectives, with work plan and completion dates as appropriate. If more space is needed, attach additional sheet(s).

- 5) Employee Comments: Each individual evaluated is encouraged to add comments to this review. If more space is needed, attach additional sheet(s).

Employee Signature _____ Date _____

Supervisor Signature _____ Date _____

Employee signature merely indicates receipt of appraisal and not necessarily agreement.

Management Signature _____ Date _____

**** Distribution:** One copy to the employee and supervisor; the original remains in the personnel file.

SAMPLE DISCIPLINARY/EMPLOYMENT ACTION NOTICE

Employee _____ Date _____

Department _____ Supervisor _____

Type of Action: ☐ Training Meeting
☐ Verbal Reprimand
☐ Written Reprimand
☐ Suspension
☐ Other (explanation required) _____

1) Statement of the Problem / Reason for Action (brief description including violation of rules, policies, standards, practices, need for training or unsatisfactory performance):

2) Summary of Corrective Action to be Taken (include dates and/or employee goals):

3) Employee comments (continue on reverse side if necessary): _____

Employee Signature _____ Date _____

Supervisor Signature _____ Date _____

Management Approval (if necessary) _____ Date _____

SECTION III

This section should contain selected employee data, including emergency information and information necessary for enrollment. Information such as:

- Health Insurance Information
 - Employee Pay Status Records
 - Insurance Beneficiary Information
 - Benefit Plan Enrollment
-

Family Medical Leave Act (if applicable)

- 1) Notice of Eligibility and Rights and Responsibilities
- 2) Certification of Health Care Provider for Employee's Serious Health Condition
- 3) Certification of Health Care Provider for Family Member's Serious Health Condition
- 4) Requests for Reasonable Accommodation
- 5) Insurance Premium Recovery Form

REMEMBER: Any documents containing medical information should be kept in a separate medical file.

ARKANSAS MUNICIPAL LEAGUE (SAMPLE)

INSURANCE PREMIUM RECOVERY AUTHORIZATION FORM

To: _____ (City Clerk or City Officer)

I certify by my signature that I have read and understand the following policy:

I acknowledge the city's legal right to recover the cost of any premium paid by it to maintain my coverage in group health benefits during any period of unpaid leave under the following conditions:

- 1) I fail to return from leave at the expiration of the leave to which I am entitled; and
- 2) The reason I fail to return to work is not one of the following:
 - a) The continuation, recurrence, or onset of a serious health condition that entitles me to leave to care for a child, parent or spouse with a serious health condition, or if I am unable to perform the functions of my position due to my own serious health condition; or;
 - b) Other conditions beyond my control prevent me from returning.

Date: _____ Name (Print): _____

Employee Number: _____ Name (Sign): _____

INSURANCE PREMIUM REIMBURSEMENT AGREEMENT

I certify by my signature that I have read and agree to do the following:

If I fail to return from leave, for any reason other than 2(a) or 2(b) above, I agree to coordinate with the City to develop a mutually acceptable schedule to reimburse the City for the cost of any premium paid by it to maintain my coverage in group health benefits during any period of unpaid leave taken by me.

Date: _____ Name (Print): _____

Employee Number: _____ Name (Sign): _____

1 copy to employee; original in personnel file

SAMPLE IMPORTANT DATA REFERENCE

EMPLOYEE DATA

Employee Name		Social Security #		Hire Date		F/T <input type="checkbox"/> P/T <input type="checkbox"/> Regular <input type="checkbox"/> Temp <input type="checkbox"/>	
FLSA Status Exempt <input type="checkbox"/> Non-Exempt <input type="checkbox"/>		Department			Extension #		
Birthdate	Sex	Payroll #	Marital Status	Spouse Name		No. of Dependents	
Address:							
City			State	Zip	Phone		
In Emergency, Notify:	Relationship		Address			Phone	

INSURANCE COVERAGE RECORD

Plan	Date Eligible	Elected Coverage Y/N	Dependant Coverage Y/N	Carrier
Health				
Dental				
Life				

Employee Separation Date: _____

SAMPLE EMPLOYEE PAY STATUS RECORD

Employee Name _____ Social Security # _____ FLSA ☐ Ex.* ☐ N-Ex. ☐

[illegible]

* Exempt or Non-Exempt. To determine the status use the Department of Labor Tests as provided on the following pages.

**Following is a Notice of Eligibility and Rights and Responsibilities
(Family and Medical Leave Act)**

**** This form should be completed by the employer and delivered to the employee to notify him/her that he/she has or has not met the eligibility requirements for taking FMLA leave.**

Notice of Eligibility and Rights & Responsibilities
(Family and Medical Leave Act)

U.S. Department of Labor
Wage and Hour Division



OMB Control Number: 1235-0003
Expires: 5/31/2018

In general, to be eligible an employee must have worked for an employer for at least 12 months, meet the hours of service requirement in the 12 months preceding the leave, and work at a site with at least 50 employees within 75 miles. While use of this form by employers is optional, a fully completed Form WH-381 provides employees with the information required by 29 C.F.R. § 825.300(b), which must be provided within five business days of the employee notifying the employer of the need for FMLA leave. Part B provides employees with information regarding their rights and responsibilities for taking FMLA leave, as required by 29 C.F.R. § 825.300(b), (c).

[Part A – NOTICE OF ELIGIBILITY]

TO: _____
Employee

FROM: _____
Employer Representative

DATE: _____

On _____, you informed us that you needed leave beginning on _____ for:

- ☐ The birth of a child, or placement of a child with you for adoption or foster care;
- ☐ Your own serious health condition;
- ☐ Because you are needed to care for your _____ spouse; _____ child; _____ parent due to his/her serious health condition.
- ☐ Because of a qualifying exigency arising out of the fact that your _____ spouse; _____ son or daughter; _____ parent is on covered active duty or call to covered active duty status with the Armed Forces.
- ☐ Because you are the _____ spouse; _____ son or daughter; _____ parent; _____ next of kin of a covered servicemember with a serious injury or illness.

This Notice is to inform you that you:

- ☐ Are eligible for FMLA leave (See Part B below for Rights and Responsibilities)
- ☐ Are **not** eligible for FMLA leave, because (only one reason need be checked, although you may not be eligible for other reasons):
- ☐ You have not met the FMLA's 12-month length of service requirement. As of the first date of requested leave, you will have worked approximately _____ months towards this requirement.
- ☐ You have not met the FMLA's hours of service requirement.
- ☐ You do not work and/or report to a site with 50 or more employees within 75-miles.

If you have any questions, contact _____ or view the
FMLA poster located in _____.

[PART B-RIGHTS AND RESPONSIBILITIES FOR TAKING FMLA LEAVE]

As explained in Part A, you meet the eligibility requirements for taking FMLA leave and still have FMLA leave available in the applicable 12-month period. However, in order for us to determine whether your absence qualifies as FMLA leave, you must return the following information to us by _____. (If a certification is requested, employers must allow at least 15 calendar days from receipt of this notice; additional time may be required in some circumstances.) If sufficient information is not provided in a timely manner, your leave may be denied.

- ☐ Sufficient certification to support your request for FMLA leave. A certification form that sets forth the information necessary to support your request _____ is/ _____ is not enclosed.
- ☐ Sufficient documentation to establish the required relationship between you and your family member.
- ☐ Other information needed (such as documentation for military family leave): _____

No additional information requested

If your leave does qualify as FMLA leave you will have the following responsibilities while on FMLA leave (only checked blanks apply):

- _____ Contact _____ at _____ to make arrangements to continue to make your share of the premium payments on your health insurance to maintain health benefits while you are on leave. You have a minimum 30-day (or, indicate longer period, if applicable) grace period in which to make premium payments. If payment is not made timely, your group health insurance may be cancelled, provided we notify you in writing at least 15 days before the date that your health coverage will lapse, or, at our option, we may pay your share of the premiums during FMLA leave, and recover these payments from you upon your return to work.
- _____ You will be required to use your available paid _____ sick, _____ vacation, and/or _____ other leave during your FMLA absence. This means that you will receive your paid leave and the leave will also be considered protected FMLA leave and counted against your FMLA leave entitlement.
- _____ Due to your status within the company, you are considered a "key employee" as defined in the FMLA. As a "key employee," restoration to employment may be denied following FMLA leave on the grounds that such restoration will cause substantial and grievous economic injury to us. We _____ have/_____ have not determined that restoring you to employment at the conclusion of FMLA leave will cause substantial and grievous economic harm to us.
- _____ While on leave you will be required to furnish us with periodic reports of your status and intent to return to work every _____. (Indicate interval of periodic reports, as appropriate for the particular leave situation).

If the circumstances of your leave change, and you are able to return to work earlier than the date indicated on the this form, you will be required to notify us at least two workdays prior to the date you intend to report for work.

If your leave does qualify as FMLA leave you will have the following rights while on FMLA leave:

- You have a right under the FMLA for up to 12 weeks of unpaid leave in a 12-month period calculated as:
 - _____ the calendar year (January – December).
 - _____ a fixed leave year based on _____.
 - _____ the 12-month period measured forward from the date of your first FMLA leave usage.
 - _____ a "rolling" 12-month period measured backward from the date of any FMLA leave usage.
- You have a right under the FMLA for up to 26 weeks of unpaid leave in a single 12-month period to care for a covered servicemember with a serious injury or illness. This single 12-month period commenced on _____.
- Your health benefits must be maintained during any period of unpaid leave under the same conditions as if you continued to work.
- You must be reinstated to the same or an equivalent job with the same pay, benefits, and terms and conditions of employment on your return from FMLA-protected leave. (If your leave extends beyond the end of your FMLA entitlement, you do not have return rights under FMLA.)
- If you do not return to work following FMLA leave for a reason other than: 1) the continuation, recurrence, or onset of a serious health condition which would entitle you to FMLA leave; 2) the continuation, recurrence, or onset of a covered servicemember's serious injury or illness which would entitle you to FMLA leave; or 3) other circumstances beyond your control, you may be required to reimburse us for our share of health insurance premiums paid on your behalf during your FMLA leave.
- If we have not informed you above that you must use accrued paid leave while taking your unpaid FMLA leave entitlement, you have the right to have _____ sick, _____ vacation, and/or _____ other leave run concurrently with your unpaid leave entitlement, provided you meet any applicable requirements of the leave policy. Applicable conditions related to the substitution of paid leave are referenced or set forth below. If you do not meet the requirements for taking paid leave, you remain entitled to take unpaid FMLA leave.

_____ For a copy of conditions applicable to sick/vacation/other leave usage please refer to _____ available at: _____.

_____ Applicable conditions for use of paid leave: _____

Once we obtain the information from you as specified above, we will inform you, within 5 business days, whether your leave will be designated as FMLA leave and count towards your FMLA leave entitlement. If you have any questions, please do not hesitate to contact:

_____ at _____

PAPERWORK REDUCTION ACT NOTICE AND PUBLIC BURDEN STATEMENT

It is mandatory for employers to provide employees with notice of their eligibility for FMLA protection and their rights and responsibilities. 29 U.S.C. § 2617; 29 C.F.R. § 825.300(b), (c). It is mandatory for employers to retain a copy of this disclosure in their records for three years. 29 U.S.C. § 2616; 29 C.F.R. § 825.500. Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. The Department of Labor estimates that it will take an average of 10 minutes for respondents to complete this collection of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this burden estimate or any other aspect of this collection information, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Ave., NW, Washington, DC 20210. DO NOT SEND THE COMPLETED FORM TO THE WAGE AND HOUR DIVISION.

**Following is a Sample of the Certification of Health Care Provider
for Employee's Serious Health Condition (Family and Medical Leave Act)**

****** The Family and Medical Leave Act (FMLA) provides that an employer may require an employee seeking FMLA protections because of a need for leave due to a serious health condition to submit a medical certification issued by the employee's health care provider. Your response is voluntary. While you are not required to use this form, you may not ask the employee to provide more information than allowed under the FMLA regulations, 29 C.F.R. §§ 825.306-825.308. Employers must generally maintain records and documents relating to medical certifications, recertification, or medical histories of employees created for FMLA purposes as confidential medical records in separate files/records from the usual personnel files and in accordance with 29 C.F.R. § 1630.14(c)(1), if the Americans with Disabilities Act applies. If you choose to use this form, please complete Section I of this form before giving the form to your employee.

Certification of Health Care Provider for
Family Member's Serious Health Condition
(Family and Medical Leave Act)

U.S. Department of Labor
Wage and Hour Division



DO NOT SEND COMPLETED FORM TO THE DEPARTMENT OF LABOR; RETURN TO THE PATIENT.

OMB Control Number: 1235-0003

Expires: 5/31/2018

SECTION I: For Completion by the EMPLOYER

INSTRUCTIONS to the EMPLOYER: The Family and Medical Leave Act (FMLA) provides that an employer may require an employee seeking FMLA protections because of a need for leave to care for a covered family member with a serious health condition to submit a medical certification issued by the health care provider of the covered family member. Please complete Section I before giving this form to your employee. Your response is voluntary. While you are not required to use this form, you may not ask the employee to provide more information than allowed under the FMLA regulations, 29 C.F.R. §§ 825.306-825.308. Employers must generally maintain records and documents relating to medical certifications, recertifications, or medical histories of employees' family members, created for FMLA purposes as confidential medical records in separate files/records from the usual personnel files and in accordance with 29 C.F.R. § 1630.14(c)(1), if the Americans with Disabilities Act applies, and in accordance with 29 C.F.R. § 1635.9, if the Genetic Information Nondiscrimination Act applies.

Employer name and contact: _____

SECTION II: For Completion by the EMPLOYEE

INSTRUCTIONS to the EMPLOYEE: Please complete Section II before giving this form to your family member or his/her medical provider. The FMLA permits an employer to require that you submit a timely, complete, and sufficient medical certification to support a request for FMLA leave to care for a covered family member with a serious health condition. If requested by your employer, your response is required to obtain or retain the benefit of FMLA protections. 29 U.S.C. §§ 2613, 2614(c)(3). Failure to provide a complete and sufficient medical certification may result in a denial of your FMLA request. 29 C.F.R. § 825.313. Your employer must give you at least 15 calendar days to return this form to your employer. 29 C.F.R. § 825.305.

Your name: _____
First Middle Last

Name of family member for whom you will provide care: _____
First Middle Last

Relationship of family member to you: _____

If family member is your son or daughter, date of birth: _____

Describe care you will provide to your family member and estimate leave needed to provide care:

Employee Signature _____ Date _____

SECTION III: For Completion by the HEALTH CARE PROVIDER

INSTRUCTIONS to the HEALTH CARE PROVIDER: The employee listed above has requested leave under the FMLA to care for your patient. Answer, fully and completely, all applicable parts below. Several questions seek a response as to the frequency or duration of a condition, treatment, etc. Your answer should be your best estimate based upon your medical knowledge, experience, and examination of the patient. Be as specific as you can; terms such as "lifetime," "unknown," or "indeterminate" may not be sufficient to determine FMLA coverage. Limit your responses to the condition for which the patient needs leave. Do not provide information about genetic tests, as defined in 29 C.F.R. § 1635.3(f), or genetic services, as defined in 29 C.F.R. § 1635.3(e). Page 3 provides space for additional information, should you need it. Please be sure to sign the form on the last page.

Provider's name and business address: _____

Type of practice / Medical specialty: _____

Telephone: (_____) _____ Fax: (_____) _____

PART A: MEDICAL FACTS

1. Approximate date condition commenced: _____

Probable duration of condition: _____

Was the patient admitted for an overnight stay in a hospital, hospice, or residential medical care facility?

☐ No ☐ Yes. If so, dates of admission: _____

Date(s) you treated the patient for condition: _____

Was medication, other than over-the-counter medication, prescribed? ☐ No ☐ Yes.

Will the patient need to have treatment visits at least twice per year due to the condition? ☐ No ☐ Yes

Was the patient referred to other health care provider(s) for evaluation or treatment (e.g., physical therapist)?

☐ No ☐ Yes. If so, state the nature of such treatments and expected duration of treatment:

2. Is the medical condition pregnancy? ☐ No ☐ Yes. If so, expected delivery date: _____

3. Describe other relevant medical facts, if any, related to the condition for which the patient needs care (such medical facts may include symptoms, diagnosis, or any regimen of continuing treatment such as the use of specialized equipment):

PART B: AMOUNT OF CARE NEEDED: When answering these questions, keep in mind that your patient's need for care by the employee seeking leave may include assistance with basic medical, hygienic, nutritional, safety or transportation needs, or the provision of physical or psychological care.

4. Will the patient be incapacitated for a single continuous period of time, including any time for treatment and recovery? ☐ No ☐ Yes.

Estimate the beginning and ending dates for the period of incapacity: _____

During this time, will the patient need care? ☐ No ☐ Yes.

Explain the care needed by the patient and why such care is medically necessary:

5. Will the patient require follow-up treatments, including any time for recovery? ☐ No ☐ Yes.

Estimate treatment schedule, if any, including the dates of any scheduled appointments and the time required for each appointment, including any recovery period:

Explain the care needed by the patient, and why such care is medically necessary: _____

6. Will the patient require care on an intermittent or reduced schedule basis, including any time for recovery? ☐ No ☐ Yes.

Estimate the hours the patient needs care on an intermittent basis, if any:

_____ hour(s) per day; _____ days per week from _____ through _____

Explain the care needed by the patient, and why such care is medically necessary:

7. Will the condition cause episodic flare-ups periodically preventing the patient from participating in normal daily activities? ____ No ____ Yes.

Based upon the patient's medical history and your knowledge of the medical condition, estimate the frequency of flare-ups and the duration of related incapacity that the patient may have over the next 6 months (e.g., 1 episode every 3 months lasting 1-2 days):

Frequency: ____ times per ____ week(s) ____ month(s)

Duration: ____ hours or ____ day(s) per episode

Does the patient need care during these flare-ups? ____ No ____ Yes.

Explain the care needed by the patient, and why such care is medically necessary: _____

ADDITIONAL INFORMATION: IDENTIFY QUESTION NUMBER WITH YOUR ADDITIONAL ANSWER

Signature of Health Care Provider

Date

PAPERWORK REDUCTION ACT NOTICE AND PUBLIC BURDEN STATEMENT

If submitted, it is mandatory for employers to retain a copy of this disclosure in their records for three years. 29 U.S.C. § 2616; 29 C.F.R. § 825.500. Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. The Department of Labor estimates that it will take an average of 20 minutes for respondents to complete this collection of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this burden estimate or any other aspect of this collection information, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Ave., NW, Washington, DC 20210.

DO NOT SEND COMPLETED FORM TO THE DEPARTMENT OF LABOR; RETURN TO THE PATIENT.

Fact Sheet #17A: Exemption for Executive, Administrative, Professional, Computer & Outside Sales Employees Under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information on the exemption from [minimum wage](#) and [overtime pay](#) provided by Section 13(a)(1) of the Fair Labor Standards Act as defined by Regulations, [29 CFR Part 541](#).

The [FLSA](#) requires that most employees in the United States be paid at least the [federal minimum wage](#) for all hours worked and [overtime pay](#) at time and one-half the regular rate of pay for all hours worked over 40 hours in a workweek.

However, Section 13(a)(1) of the FLSA provides an exemption from both [minimum wage](#) and [overtime pay](#) for employees employed as bona fide executive, administrative, professional and outside sales employees. Section 13(a)(1) and Section 13(a)(17) also exempt certain computer employees. To qualify for exemption, employees generally must meet certain tests regarding their job duties and be paid on a salary basis at not less than \$455 per week. Job titles do not determine exempt status. In order for an exemption to apply, an employee's specific job duties and salary must meet all the requirements of the Department's regulations.

See other fact sheets in this series for more information on the exemptions for [executive](#), [administrative](#), [professional](#), [computer](#) and [outside sales](#) employees, and for more information on the [salary basis](#) requirement.

Executive Exemption

To qualify for the executive employee exemption, all of the following tests must be met:

- The employee must be compensated on a [salary](#) basis (as defined in the regulations) at a rate not less than \$455 per week;
- 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.

Administrative Exemptions

To qualify for the administrative employee exemption, all of the following tests must be met:

- The employee must be compensated on a [salary](#) or fee basis (as defined in the regulations) at a rate not less than \$455 per week;
- 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.

Professional Exemption

To qualify for the **learned professional** employee exemption, all of the following tests must be met:

- The employee must be compensated on a **salary** or fee basis (as defined in the regulations) at a rate not less than \$455 per week;
- 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.

To qualify for the **creative professional** employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary or fee basis (as defined in the regulations) at a rate not less than \$455 per week;
- The employee's primary duty must be the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

Computer Employee Exemption

To qualify for the computer employee exemption, the following tests must be met:

- The employee must be compensated **either** on a salary or fee basis (as defined in the regulations) at a rate not less than \$455 per week **or**, if compensated on an hourly basis, at a rate not less than \$27.63 an hour;
- The employee must be employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field performing the duties described below;
- The employee's primary duty must consist of:
 - 1) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;
 - 2) The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;
 - 3) The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or
 - 4) A combination of the aforementioned duties, the performance of which requires the same level of skills.

Outside Sales Exemption

To qualify for the outside sales employee exemption, all of the following tests must be met:

- The employee's primary duty must be making sales (as defined in the FLSA), or obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and
- The employee must be customarily and regularly engaged away from the employer's place or places of business.

Highly Compensated Employees

Highly compensated employees performing office or non-manual work and paid total annual compensation of \$100,000 or more (which must include at least \$455 per week paid on a salary or fee basis) are exempt from the

FLSA if they customarily and regularly perform at least one of the duties of an exempt executive, administrative or professional employee identified in the standard tests for exemption.

Blue Collar Workers

The exemptions provided by FLSA Section 13(a)(1) apply only to “white collar” employees who meet the salary and duties tests set forth in the Part 541 regulations. The exemptions do not apply to manual laborers or other “blue collar” workers who perform work involving repetitive operations with their hands, physical skill and energy. FLSA-covered, non-management employees in production, maintenance, construction and similar occupations such as carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operating engineers, longshoremen, construction workers and laborers are entitled to minimum wage and overtime premium pay under the FLSA, and are not exempt under the Part 541 regulations no matter how highly paid they might be.

Police, Fire Fighters, Paramedics & Other First Responders

The exemptions also do not apply to police officers, detectives, deputy sheriffs, state troopers, highway patrol officers, investigators, inspectors, correctional officers, parole or probation officers, park rangers, fire fighters, paramedics, emergency medical technicians, ambulance personnel, rescue workers, hazardous materials workers and similar employees, regardless of rank or pay level, who perform work such as preventing, controlling or extinguishing fires of any type; rescuing fire, crime or accident victims; preventing or detecting crimes; conducting investigations or inspections for violations of law; performing surveillance; pursuing, restraining and apprehending suspects; detaining or supervising suspected and convicted criminals, including those on probation or parole; interviewing witnesses; interrogating and fingerprinting suspects; preparing investigative reports; or other similar work.

Other Laws & Collective Bargaining Agreements

The FLSA provides minimum standards that may be exceeded, but cannot be waived or reduced. Employers must comply, for example, with any Federal, State or municipal laws, regulations or ordinances establishing a higher minimum wage or lower maximum workweek than those established under the FLSA. Similarly, employers may, on their own initiative or under a collective bargaining agreement, provide a higher wage, shorter workweek, or higher overtime premium than provided under the FLSA. While collective bargaining agreements cannot waive or reduce FLSA protections, nothing in the FLSA or the Part 541 regulation relieves employers from their contractual obligations under such bargaining agreements.

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

When the state laws differ from the federal FLSA, an employer must comply with the standard most protective to employees. Links to your state labor department can be found at www.dol.gov/whd/contacts/state_of.htm.

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

U.S. Department of Labor
Frances Perkins Building
200 Constitution Avenue, NW
Washington, DC 20210

1-866-4-USWAGE
TTY: 1-866-487-9243
[Contact Us](#)

Job Descriptions And Sample Forms



October 26, 2017

JOB DESCRIPTION

TITLE: All city employees should have a job title, even part-time Employees.

DEPARTMENT: _____

SUPERVISOR: _____

SALARY: Annual and/or expected weekly salary.

JOB SUMMARY: This section should be no more than three or four sentences and be a summary of the duties and responsibilities associated with the job.

ESSENTIAL JOB DUTIES

[This section should only list duties which are critical to the successful performance of the job as it currently exist. As jobs change, job descriptions should be rewritten.]

WORKING CONDITIONS

[This section is used to describe the physical environment in which the work is being performed. Especially important are any conditions which are unpleasant or hazardous.]

MINIMUM QUALIFICATIONS

[This section is used to describe the education or experience required to obtain this specific job.]

PHYSICAL DEMANDS

[This section is used to describe any physical demands required to successfully perform the essential functions of the job.]

POSITION TYPE AND BENEFITS

[This section is used to describe the employment type (full-time/part time), expected hours to be worked, as well as the benefit package provided to an employee of this class.]

DISCLAIMER

[This statement indicates that the job description is not intended to be an exhaustive list of all duties performed of the incumbent.]

JOB DESCRIPTION

TITLE: Patrol Officer

DEPARTMENT: Police Department

SUPERVISOR: Sergeant

SALARY: Annual and/or expected weekly salary.

JOB SUMMARY: Under the general supervision of the Patrol Sergeant, assists in the prevention of crime and the preservation of order. This position is responsible for enforcing laws and ordinances, providing detention and courtroom services, patrol and guard duty and related supportive law enforcement activities.

ESSENTIAL JOB DUTIES

Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

1. Provide good customer service to both internal and external customers, maintain positive and effective working relationships with other employees (especially members of his or her own team), and have regular and reliable attendance that is non-disruptive.
2. Perform preventive patrol in assigned areas, both in vehicle and on foot.
3. Enforce state and federal laws and local ordinances.
4. Operate motor vehicle while on patrol in a safe manner for extended periods of time in all environmental conditions and on occasion operate the vehicle at high speeds and in congested traffic situations.
5. Make arrests on criminal and traffic related offenses including DWI detection and apprehension.
6. Become familiar with patrol districts, geographical locations, known offenders, neighborhood routines, and potential problem areas. Conducts security inspections and surveys buildings and businesses; handles complaints made by the public; conduct preliminary and follow-up investigations.
7. Seeks and serves arrest warrants, search warrants, and other court documents. Assist various prosecutors and attorneys in preparation of cases for trial; assists judges during court sessions; testifies clearly and truthfully in front of a judge and jury in court.
8. Direct and control vehicular and pedestrian traffic by use of hand signals and the blowing of a whistle. Traffic control for blocked traffic, parades, accidents, special events; provide crowd control, security, and information during special events.
9. Clean and fire a variety of police weapons, including pistols, rifles, and shotguns both in the field and to meet department standards of proficiency.
10. If assigned to bike patrol, having working knowledge and skills to maintain bicycle.

JOB DESCRIPTION

TITLE: Animal Control Officer

DEPARTMENT: Law Enforcement

SUPERVISOR: _____

SALARY: Annual and/or expected weekly salary.

JOB SUMMARY: Performs animal control work for the locality. Work regularly involves patrolling assigned areas to enforce animal control ordinances and related laws, rules, and regulations. Workers are responsible for handling animals for the purpose of investigations of mistreatment, or control of abandoned, dangerous, and unattended animals.

ESSENTIAL JOB DUTIES

Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

1. Provide good customer service to both internal and external customers, maintain positive and effective working relations with other employees (especially members of his or her own team), and have regular and reliable attendance that is non-disruptive.
2. Enforce state and local laws, issue citations pertaining to animals to violators and handle hostile individuals as needed.
3. Euthanasia – handle animal safely, euthanize humanely and track the use of controlled substances. Euthanize multiple animals per session. High level of stress due to rescue and euthanasia rates.
4. Trap and impound loose animals to include dogs and cats as well as livestock and wildlife.
5. Investigate animal cruelty and bite cases.
6. Testify in municipal and district court as necessary.
7. Work with animal shelter software and answer phone calls. Greet and assist the public visiting the shelter.
8. Prepare and present educational programs for youth groups, schools, and civil organizations and interact with the public at community events.
9. Respond to emergency calls involving animal attacks or injured animals. Administer first aid to injured animals. Respond to after-hours emergency calls.
10. Assist public in friendly and professional manner.
11. Transport animals and supplies.
12. Pick up deceased animals struck by vehicles or in neighborhoods.

13. Load and operate incinerator.
14. Perform chemical capture of animals utilizing dart rifle and other trapping devices.
15. Process adoptions, applications, and redemptions. Collect necessary fees.
16. Prepare rabies specimens for shipment to health department.
17. Cleans and maintains the animal shelter and animal control truck in a sanitary manner.
18. Performs related work as required.

WORKING CONDITIONS

Working conditions include driving in a pickup truck throughout the area. Employees are required to work around various types of dogs, including vicious dogs and dogs that may be diseased. Employees are regularly exposed to wet and/or humid conditions, moving mechanical parts, fumes or airborne particles, toxic or caustic chemicals, and outside weather conditions.

MINIMUM QUALIFICATIONS

1. A valid Arkansas Driver's License.
2. High school diploma or GED required; 6-12 months of animal handling experience preferred.
3. Must obtain Level I, II, and III Animal Control Training, Euthanasia Certification, Chemical Capture, and Bite Stick Certification within two years.
4. Ability to be on call 24 hours a day, 7 days a week.
5. Effectively communicate with others orally and in writing.
6. Working knowledge of routine animal care, animal diseases, and afflictions.
7. Ability to diplomatically respond to common inquiries or complaints from citizens, regulatory agencies, or members of the business community.
8. Must be proficient in the use of a computer and other related software programs. Must be able to effectively operate standard office equipment.

PHYSICAL DEMANDS

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job.

1. While performing the functions of this job, the employee is regularly required to talk or hear.
2. The employee regularly is required to stand, walk, run, and sit; use hands to finger, handle, or feel; reach with hands and arms; climb or balance; stoop, kneel, crouch, or crawl.

3. The employee must regularly lift and/or move up to 100 pounds, including the ability to lift a 50 lb. dog three feet up into the back of the Animal Control truck.
4. The employee must regularly use close and distance vision, color vision, peripheral vision, depth perception, and ability to adjust focus.

POSITION TYPE AND BENEFITS

Full-time, 40 or more hours per week, non-uniformed employee. Eligible for all benefits offered to full-time non-uniformed employees and all full-time accruals of paid leave. Required to be on call, and work irregular hours including nights and weekends as necessary.

DISCLAIMER

Please note this job description is not designed to cover or contain a comprehensive listing of activities, duties, or responsibilities that are required of the employee for this job. Duties, responsibilities, and activities may change at any time with or without notice.

11. Type on mobile computer terminal in police vehicle as a means of gathering and exchanging information. Complete traffic/criminal citations issued to violators of local and state laws. Investigate traffic accidents and report on the electronic system.
12. View crime scenes and identify/preserve physical evidence of a crime.
13. Write narrative reports as required in the performance of duty.
14. Respond to, and deal with, domestic disputes and resolve issues in a way that minimizes harm to the disputing parties.
15. Deal with children of all ages in a variety of situations, such as delinquents, minors requiring authoritative intervention, neglected, abused, runaways, lost, found, victims of crimes, public relations and instructional functions, and informants.
16. Provide interpersonal and business contacts and stand-by assistance in civil disputes.
17. Direct civilian employees and the public at the scenes of crimes, accidents, disasters, assemblies, etc.
18. Administer first aid when needed and coordinate emergency personnel and resources in crisis situations.
19. Act as public relations officer for the locality and foster good relationships with businesses, schools, etc.
20. Attend training as assigned; develops and maintains required skills and licenses.
21. Transports inmates and juveniles to and from correctional facilities and court.
22. Gives advice on laws, ordinances, and general information the public.
23. Perform other related duties as required or assigned.

WORKING CONDITIONS

While performing the duties of this job, the employee will be required to perform both inside and outside work with exposure to weather conditions. There is a possibility of exposure to fire, chemical, electric, mechanical, and firearm hazards. The majority of the time spent in this position will be spent in an office environment, in a motor vehicle, or on foot. This position includes the possibility of attack or injury, and exposure to fast moving vehicles and motor vehicle accidents.

MINIMUM QUALIFICATIONS

1. High School diploma or GED.
2. Be a citizen of the United States.
3. Be at least 21 years of age.
4. Must not have a felony conviction before selection into this process.

5. Valid Arkansas Driver's License.
6. Successfully pass background investigation, polygraph examination, credit history report, physical and mental evaluation.
7. Ability to obtain Basic Patrol officer Certificate (twelve weeks academy).
8. Ability to obtain the ACIC and the NCIC certification.
9. Must obtain various other certifications to handle specialized equipment to be used with this position.
10. Ability to become proficient in using MVR, MCT, Vehicle, Datamaster, Radar, Weapons, Tazer, Stopstix, sound meter and camera.
11. Ability to effectively operate a breach analyzer, computer, radio, and other specialized law enforcement equipment.
12. Effectively communicate with others orally and in writing.
13. Must be proficient in the use of a personal computer and other related software programs. Must be able to effectively operate standard office equipment.
14. Patrol officer must be able to exercise sound, independent judgement under stress.
15. Patrol officer must possess knowledge of modern police practices and methods, as well as the controlling laws and ordinances, particularly the laws of arrest and evidence.

PHYSICAL DEMANDS

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job.

1. While performing the functions of this job, the employee is regularly required to talk or hear.
2. The employee regularly is required to stand, walk, run, and sit; use hands to finger, handle, or feel; reach with hands and arms; climb or balance; stoop, kneel, crouch, or crawl.
3. The employee must occasionally lift and/or move up to 100 pounds.
4. The employee must regularly use close and distance vision, color vision, peripheral vision, depth perception, and ability to adjust focus.
5. The employee must possess the physical and mental stamina to fire weapons, react and move rapidly from sedentary to active conditions in response to environmental situations; assume a variety of body positions and postures necessary to employ "cover and concealment" during a deadly force encounter; respond to a physical attack and possess the ability to escape attacker, subdue attacker, and/or summon aid.
6. Must be able to react quickly and efficiently in all emergencies, natural or man-caused disasters.

POSITION TYPE AND BENEFITS

Full-time, 40+ hours per week, uniformed employees. Patrol officer is involved with regular and irregularly shift work and shift rotations necessary to provide police services 24 hours, 7 days a week, 52 weeks a year (weekends and holidays included).

DISCLAIMER

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SAMPLE

JOB DESCRIPTION

TITLE: Equipment Operator

DEPARTMENT: Street Department

SUPERVISOR: Street Superintendent

SALARY: Annual and/or expected weekly salary.

JOB SUMMARY: The equipment operator operates a variety of equipment used in construction, maintenance, and repair of roads, parking lots, and other large job sites.

ESSENTIAL JOB DUTIES

Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

1. Provide good customer service to both internal and external customers, maintain positive and effective working relationships with other employees (especially members of his or her own team), and have regular and reliable attendance that is non-disruptive.
2. Ability to operate all street department heavy equipment, or various sizes and weights, to assist in the construction, repair, and maintenance of all streets.
3. Performs routine inspection and preventive maintenance on assigned equipment and refers defects or needed repairs to the supervisor; cleans equipment.
4. Responsible for assuring that safe procedures are followed in the operation of all street department equipment.
5. Properly follows city safety procedures and applicable laws and regulations.
6. Set grade, form, and finish concrete for sidewalks, curb and gutter, streets and trails.
7. Assists other street department employees in a variety of tasks including construction and maintenance of storm sewers, opening draining ditches, cleaning right of ways, and loading trucks.
8. Operates other tools as needed: chainsaw, chipper, compacter, and street saws.
9. Traffic control – directing and flagging of vehicles.
10. Performs related tasks as assigned.

WORKING CONDITIONS

While performing the duties of this job, the employee is frequently exposed to fumes, toxic or caustic chemicals, or airborne particles, moving mechanical parts and vibration. The employee is exposed to a

variety of extreme weather conditions at construction job sites. The noise level in the work environment and job sites is usually loud.

MINIMUM QUALIFICATIONS

1. High School Diploma or GED.
2. Experience in the operation of repair and maintenance of heavy motorized equipment.
3. Must be 18 years of age.
4. Ability to obtain valid Arkansas Driver's License – Class B CDL within 60 days of hire date.
5. Effectively communicate with others orally and in writing.
6. Knowledge of traffic ordinances governing the use of vehicles and ability to obtain proper licenses.
7. Must be proficient in the use of dump trucks, bobcat, front-end loader, milling machine, roller, paving machine, flatbed trailer, truck, backhoe, hand tools, chainsaw and street saw, preferred.
8. Ability to read and understand safety rules, operating and maintenance instruction and procedure manuals.
9. Ability to apply common sense understanding to carry out instructions furnished in written, oral, or diagram form.
10. Must be able to meet the physical demands necessary to successfully perform the essential functions of the job, with reasonable accommodations for individuals with disabilities.

PHYSICAL DEMANDS

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job.

1. While performing the functions of this job, the employee is regularly required to talk and hear for safety reasons or to operate certain equipment.
2. The employee regularly is required to stand, walk, and sit; use hands to finger, handle, or feel; reach with hands and arms; climb or balance; stoop, kneel, crouch, or crawl.
3. The employee must regularly use close and distance vision, color vision, peripheral vision, depth perception, and ability to adjust focus.
4. The employee must regularly lift and/or move up to 100 pounds.

POSITION TYPE AND BENEFITS

Full-time, 40 or more hours per week, non-uniformed employee. Days and hours of work are Monday through Friday, 7:00 a.m. to 3:00 p.m. Occasional evening and weekend work may be required as job duties demand. Eligible for all benefits offered to full-time non-uniformed employees and all full-time accruals of paid leave.

DISCLAIMER

Please note this job description is not designed to cover or contain a comprehensive listing of activities, duties, or responsibilities that are required of the employee for this job. Duties, responsibilities, and activities may change at any time with or without notice.

Job Opportunity Notice

(This form may be used to advertise vacancies)

DATE POSTED: October 12, 2016

JOB TITLE: Equipment Operator SALARY LEVEL: \$30,000-\$35,000
(Depends on qualifications)

JOB LOCATION and/or CITY DEPT: Midtown Street Department

DESCRIPTION/REQUIREMENTS: Under general supervision. May operate a variety of
heavy equipment in the construction and maintenance of all city streets.

APPLICANT MUST MEET THE FOLLOWING MINIMUM REQUIREMENTS: Experience
in operation of heavy equipment, Valid Arkansas Driver's License, High School Graduate,
must be 18 years of age.

If you wish to apply for Equipment Operator you may pick up an
application at City Hall or provide us with a resumé.

The City of Midtown is an Equal Opportunity Employer. The City of
Midtown does not discriminate on the basis of race, color, religion, sex,
national origin, marital or veteran status, disability unrelated to job requirements, genetic
information, political status or other legally protected status or exercise of constitutional rights.

Interview Questions You Might Consider Asking

The interview is an opportunity for you the employer to acquaint yourself with the perspective employee and to determine if the perspective employee will be the right fit for the position that you are trying to fill. It is very important that you decide in advance what you hope to accomplish in the interview then structure the interview in advance to achieve these goals. A written list of questions to be asked of each perspective employee should be prepared in advance so important items will not be forgotten.

Possible Interview Questions

- Tell me about yourself. What do you consider to be your greatest strengths and weakness?
- Why have you applied for this position?
- If I asked people who know you to describe you, what three words would they use?
- What are your team-player qualities? Give examples
- In your opinion do you work well under pressure?
- What motivates you?
- Do you prefer to work as an individual or in a group?
- What would you do if a co-worker wasn't pulling his/her own weight and was hurting your department?
- What three things are most important to you in a position?
- What skill sets do you think you would bring to this position?
- What have been your most satisfying and most disappointing work related experiences?
- What challenges are you looking for in working for us?
- Describe an ideal work environment or "the perfect job."
- Tell me anything else you would like us to know about you that will aid us in making our decision.

TIDBITS OF INTEREST

Ken Wasson
Director of Operations

OVER THE PAST 3 YEARS, WHAT POSITIONS, IF ANY HAVE YOU HAD THE MOST DIFFICULT TIME FILLING?

National Response.

- 21% Police Officer
- 17% IT Personnel
- 14% Engineer
- 13% Healthcare
- 10% Utility Operations
- 9% Public Works
- 8% Finance



WHAT RECRUITMENT PRACTICES ARE MOST SUCCESSFUL IN REACHING QUALIFIED CANDIDATES?

National Response.

- 80% Online Job Advertising
- 50% Government Websites
- 47% Employee Referrals
- 40% Social Media
- 16% Job Fair
- 14% State/Local Newsletter



DO YOU FEEL THE WAGE AND BENEFITS COMPENSATION YOU OFFER YOUR EMPLOYEES IS COMPETITIVE WITH THE PRIVATE LABOR MARKET?

National Response.

- 64% said “YES” on wages
- 93% said “YES” on benefits



Source: June 2017, Center for State & Local Government Workforce

WHEN MILLENNIALS --- RULE

*One day soon, young people will
run the government. These American
mayors show how they'll do it*

BY CHARLOTTE ALTER

THE "HALL OF JUSTICE" HAS JUST TWO RULES: A NIGHTLY GAME OF beer pong, and a ban on talking politics after 8 p.m. The seven-bedroom house in upstate New York was home to a motley crew of government nerds—county legislators, city-council members, Ph.D. students and one big guy called "the Mayor." Svante Myrick got the nickname because he was always bigfooting decisions and hogging the remote control. But also because in 2011, at 24, he became the youngest-ever mayor of Ithaca, N.Y.

"The youngest generation is pretty sure that we can do it better than the folks that have been doing it for a long time," says Myrick, who was re-elected in 2015 with 89% of the vote. "And the folks that have been doing it for a long time are pretty sure that the youngest generation has no idea what we're doing."

Young people have always rolled their eyes at the received wisdom of the olds, but now they've got numbers on their side. Millennials—born between 1980 and 2000—overtook baby boomers as the largest segment of the U.S. population in 2015, yet they are led by one of the most

PHOTOGRAPH BY LANDON NORDEMAN FOR TIME

geriatric federal governments in history. Donald Trump, at 71, is the oldest President ever elected to a first term. On Capitol Hill, the average ages in the House and Senate were 49 and 53 in 1981; today they're 59 and 62. Nearly half of Senators defending their seats in 2018 will be over 65 on Election Day, including California's Dianne Feinstein, who recently announced that she'll run for re-election at 84. More than half of the Supreme Court was born before you could buy a color TV.

The Founding Fathers framed America as a representative democracy, yet the largest living generation has the least representation in Washington. Trump was propelled into office by older voters, but many of his policies so far weigh heaviest on millennials, who voted against him by a double-digit margin and overwhelmingly disapprove of his presidency. When Trump banned transgender troops from military service, some of the loudest outcry was from young people, who are twice as likely as boomers to identify as LGBTQ. When Trump and his Attorney General Jeff Sessions, 70, ended the Deferred Action for Childhood Arrivals program shielding 800,000 young undocumented immigrants from deportation, the effect will be mostly felt among millennial immigrants and their cohort. When 22 GOP Senators—with an average age over 65—pushed Trump to withdraw from the Paris Agreement, it appalled many young people, who tend to be the most concerned about climate change.

So far millennials have not responded by running en masse for federal office. And in state legislatures, they account for just 5% of seats nationwide. They have, however, planted flags at the local level, where government tends to be most accountable and least partisan. And lately, municipal governments are picking up the slack dropped by Washington on issues important to millennials like immigration and climate change. Whether a harbinger of change or merely natural succession, their growing prominence in local government casts the gulf between Washington and cities as a generational divide as well.

"When I talked to young people and asked, 'Would you consider running for any office?,' they'd say, 'Maybe mayor,'" says Shauna Shames, an assistant professor of political science at Rutgers University and the author of *Out of the Running: Why Millennials Reject Political Careers and Why It Matters*. National politics requires too much fundraising, she explains, and local office seems like a surer way to make a mark.

There's even a new sitcom on ABC about a young rapper who finds himself running city hall. "You look for some way where you can actively effect change," explains *Hamilton* star Daveed Diggs, an executive producer of *The Mayor*. "The place where it feels like you have the most control is within our communities, with the people you interact with every day."

▼
**'THESE
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NOW.'**

That would help account for the surge of young candidates targeting down-ballot races. Almost 11,000 millennials have asked about running for state and local office through Run for Something, a new Democratic-affiliated political organization aimed at recruiting young candidates. Emily's List, a group that supports pro-abortion-rights female candidates, has been approached by nearly 19,000 potential candidates this year, including half of them under 45.

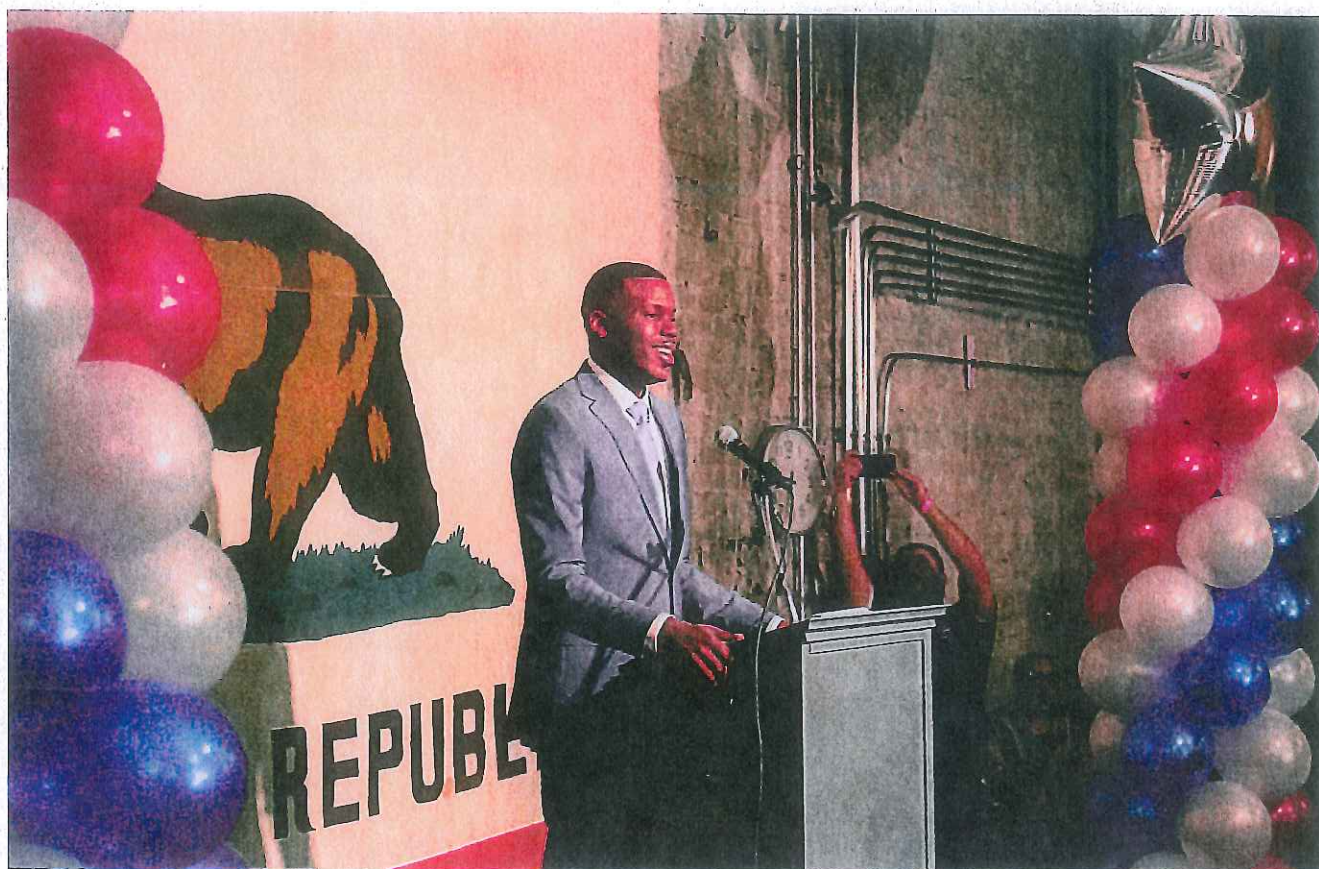
To the extent they are inspired by former President Obama and antagonized by Trump, these young upstarts might revive a Democratic Party that holds fewer seats in Congress than at any point since 1946. But either way, time will put an end to baby-boomer dominance and make way for a new generation of leaders who could shape the nation in ways not yet imaginable.

In search of a preview of what might change, TIME interviewed 11 millennial mayors, plus dozens of other young elected officials—Democrats and Republicans, veterans and teachers, city dwellers and small-town leaders. No two were alike, but what they had in common—a preternatural ease with technology, an appetite for collaboration and impatience with reflexive partisanship—offer hints of a future they are eager to shape. "We have to snatch the torch," says Brandon Scott, a 33-year-old member of the Baltimore city council. "It's never been passed."

AS A POLITICAL NOVICE with zero executive experience, the 29-year-old mayor of South Bend, Ind., nonetheless took office feeling the weight of expectations. "When you run for office in your 20s, your face is your message," says Pete Buttigieg, now 35 and halfway through his second term. "You are going to be the candidate of new ideas, technology and innovation. Even if you don't have any new ideas and don't like technology."

Fortunately, millennials are often fluent in both. And the chance to put ideas immediately to work is what makes local office attractive. "Ours might be the first generation of mayors who don't necessarily consider state and federal government a step up," says Buttigieg, an openly gay Afghanistan veteran who recently ran for chair of the Democratic National Committee. "A generation ago, folks like us wouldn't run for local office in the first place—we would go to law school, try to work for a Congressman and then try to be a Congressman."

Once in city hall, the young mayors say, they wasted no time. Confronted by the glut of abandoned properties in South Bend, Buttigieg demolished or repaired 1,000 of them in 1,000 days. Unemployment has fallen nearly 10 points under Compton, Calif., Mayor Aja Brown, 35, by requiring companies in the L.A. basin city to hire more locals. Alex Morse, the 28-year-old mayor of Holyoke, Mass., got a passenger rail station built and increased the city's



carbon-neutral power generation to 85%, with an aim to be totally carbon-neutral by 2020. Mayor Michael Tubbs, 27, recently convinced Amazon to build a 600,000-sq.-ft. facility in Stockton, Calif. And Matt Gentry, the 28-year-old Republican mayor of Lebanon, Ind., has a version of a “swear bucket” in his office: if you explain a decision with “That’s how it’s always been done,” you have to put in 25¢.

It’s not just the vigor of youth. “Millennials work in a very different way,” says Daniel Lopez, who worked for older politicians in Sacramento before joining Tubbs’ staff. “These young people don’t want to wait for a year to go by before tackling challenges. They want to try it now.”

In government, that attitude can have unintended consequences. “You have no management experience when you’re just entering your professional career,” says Erin Stewart, the 30-year-old Republican mayor of New Britain, Conn. When she was elected at 26, she tried to reorganize city government, but admits she didn’t get it right at first. “I had very high expectations,” Stewart says, adding that she was asking too much of longtime staffers and initiating too many new projects. She realized she had to listen to more experienced city employees before making changes.

That can be frustrating for a generation raised to

▲ **STOCKTON, CALIF.**

MICHAEL TUBBS

The 27-year-old’s office is adorned with lyrics by hip-hop artist J. Cole. He sorts his interns into Hogwarts houses: he is a Gryffindor

believe that anything from taxis to dating could be hacked. “Government is not designed to move fast,” says Tubbs, the youngest mayor of a U.S. city with more than 100,000 people. “If you prototype something and it fails, it’s just an internal conversation in your office. If I prototype water delivery or trash, it touches everyone, especially the most vulnerable.”

That doesn’t mean these mayors are leaving their phones at home. Young leaders insist on making government as wired and social-media-savvy as its citizens. An hour before each city-council meeting in New Britain, Stewart sits down in front of her computer and launches a Facebook Live to update residents on the agenda—new plans for paving roads, hiring police officers and building bridges—and answer their questions in real time. “Let’s not spend money on a bridge!” one resident comments. “When it collapses,” the mayor replies, “you’ll wish we spent it, lol.”

The videos can get hundreds of comments and more than 3,000 views, not bad in a city of 73,000. “We’re averaging all these views, but we can’t get two people to show up to city hall,” says Stewart. “That’s fine, I’ll bring government to you.”

On the other side of the country, in Compton, Brown hosts virtual town halls on her official Facebook page and posts photos of her husband’s

homemade dinners on Instagram. In Ithaca, Myrick has turned to social media to crowdfund city projects like the July 4th fireworks display. Buttigieg had to introduce new software to improve coordination between South Bend's city agencies, he says, because "I was getting all my crime stats by fax." And Morse describes switching Holyoke city emails to Gmail and computers to Macs as "little things that, as a young person, seem normal to me."

To other young people, these changes make local government seem less musty. They don't have to show up to municipal meetings to get in touch with their representatives. "We see ourselves in him," says Harold Grigsby, 20, an intern in Tubbs' office who never considered politics until meeting him. "If he can do it, I can do it. He'll tweet right back at you."

But there can be downsides to the intimacy of social media, particularly when it meets the porous boundaries of public life. Before she settled down with her fiancé, Stewart took a stab at Tinder. "Surprisingly, there are quite a few other elected officials on Tinder as well," she says. "I definitely swiped left."

Others are explicit about avoiding the unfiltered risks of social media. Myrick speaks to the hazards, though not in terms typically heard on C-SPAN. "We realized that there were lingering consequences to something you wrote on AIM or MySpace or Facebook," he says. "I didn't think there was ever a moment in my life when I felt the kind of anonymity that some people do when they're in a club with their shirt off, like doing lines of cocaine off their best friend's butt."

STOCKTON POLICE CHIEF Eric Jones is updating Tubbs on the latest crime stats when a server delivers a bowl of unfamiliar beans to their table. "What do I do with this?" asks the chief, who has been serving in the Stockton police department for almost as long as Tubbs has been breathing. You use your teeth, Tubbs explains, and then demonstrates how to eat edamame.

In 2012, when Tubbs was a senior at Stanford and first planning his successful run for city council, 71 people were killed in Stockton, a higher per capita murder rate than in Chicago or Afghanistan. That year, Stockton also became the largest municipality in America to declare bankruptcy. In the years since, Tubbs and Jones—a young black man and a middle-

aged white cop—have developed an unlikely friendship. Together, they built a coalition of community leaders, law enforcement, social workers and concerned citizens to create a violence-prevention task force called South Stockton Promise Zone. In the five years since they started, homicides and gun crimes fell significantly before recently stabilizing.

When Tubbs was first elected, he didn't know that building the South Stockton Promise Zone would entail negotiating a truce. "Being so young, I didn't realize many of these organizations were at war with each other," he said. He got them to work together by cracking jokes and pooling resources.

Pragmatism is a trait that runs across the generation, says Morley Winograd, co-author of *Millennial Momentum: How a New Generation Is Remaking America*. "Millennials approach a task by forming a team to take it on," he says, describing a method that suits government work. "The difference between boomers and millennials is that one wants to do it in a win-lose way, the other wants to do it in a win-win way."

Elections, of course, are win-lose affairs, yet elected millennials appear uncommonly comfortable questioning their parties. Buttigieg expressed doubts about Democratic strategies for reviving the Rust Belt economy, and Myrick, who campaigned as a surrogate for Hillary Clinton, said he's not surprised her message didn't resonate. Stewart, the Republican mayor of New Britain, Conn., keeps a picture of Obama in her office. Like almost all the mayors interviewed, she says she feels "inspired" by the former President. She also says Trump has made the office into a "joke."

"I get along better with younger Republicans than some older Democrats," says Daniel Riemer, 30, a Democratic state representative in Wisconsin. U.S. Representative Elise Stefanik, 33, a Republican from upstate New York, worked with young Democratic colleagues to push for legislation to make college more affordable and advocate for stronger action on climate change. "Older elected officials have aged during so much gridlock and partisan fighting," she says. "I just think my generation doesn't want to see the extreme partisanship that we're seeing."

That said, Trump's election may have inspired even more young Americans to enter the arena. A 2013 survey by the Bipartisan Policy Center and *USA Today* found that only 13% of them had seriously



SOUTH BEND, IND.

PETE BUTTIGIEG

The 35-year-old, pictured here on *Late Night with Seth Meyers*, says his view of national security was shaped by serving in Afghanistan

considered running for office. But in 2017, young people are now more inclined to say politics is relevant and that it creates tangible results, according to a biannual Harvard survey. There's even a new lobby, the Association of Young Americans (AYA), billed as the "AARP for young people," to push for action on climate change, student debt, criminal-justice reform and voting rights. "Everyone has lobbyists and the ability to put consistent pressure on legislatures," says AYA founder Ben Brown, "except for young people."

They truly are the sleeping giant of U.S. politics. Although millennials and boomers each account for about 30% of Americans, boomers hold 55% of seats in statehouses, compared with millennials' 5%. Gen X and the Silent Generation, which sandwich boomers, are represented proportionally to their numbers. But that's a snapshot, not a trend line.

"There is almost no research done on the generational demographics of these offices," says Amanda Litman, who co-founded Run for Something. "We know that barely 5% of state legislators are under the age of 35, but beyond that, it's anyone's best guess."

That age has long marked the threshold at which youth is surrendered to the more somber slogs of adulthood. The Constitution also marks it as the minimum age required to be President, which means the oldest millennials, at about 36, have now achieved that requirement, at least on paper.

THE ITHACA COMMONS was one of those problems that everyone acknowledged but nobody fixed. The pedestrian mall, built in 1974, obstructed access to decades-old electric utilities and water lines that hadn't been updated in a century. Obviously, the Commons had to be ripped up and realigned, but nobody wanted to deal with the fallout of turning an area with 150 businesses into a multiyear construction zone. His predecessor had commissioned designs for renovating the commons, but Svante Myrick bit the bullet.

It wasn't easy. Construction went over budget and lasted longer than expected. Myrick had to get creative with funding: he wrangled \$4.5 million in federal transit money by presenting the Commons as a walkway between two bus stops. For more than two years, local business owners were furious that the

construction hurt their revenue, pedestrians hated the eyesore, and angry residents packed city meetings and wrote nasty letters to the local paper. But now that the new Commons is complete and business is booming, some of the project's fiercest critics have become its biggest supporters.

"I think the decision to do it was a youthful one," Myrick says of his plan. "Because I was naive about how easy it would be, and because I was like, 'What's two years of pain if we can get this right for 100 years?'" That perspective, from the ripe old age of 30, may capture the core of the millennial political attitude to date: ambition bordering on arrogance, with an insistence on getting things done.

It is an approach born of youthful optimism. Julián Castro was elected mayor of San Antonio at 34 before serving as Secretary of Housing and Urban Development under Obama. He says that in some ways, inexperience made him a better leader: "It made me see the glass as half full. I was more positive and less jaded. You're not discouraged by years and years of having butted your head up against a wall and not gotten results, so you're more willing to try."

Given the dire economic prospects facing a generation defined by moving back in with the folks, it's a wonder that millennial politicians

are so upbeat. "The baby boomers were handed by the Greatest Generation the wealthiest nation that anybody had ever seen," says Myrick. "And they're passing down to us colleges that leave us \$120,000 in debt, roads that look worse than they did in 1950, airports that look worse than they did in 1960 and schools that feel worse than they did in 1970."

His explanation: "That generation of leadership—from Reagan to now—was afraid to tell the American people to 'ask not what your country can do for you, ask what you can do for your country.'"

For someone born nearly a quarter-century after JFK's death, Myrick does a pretty credible impression of the nation's freshest-faced President. But then he takes a turn for the solemn. Millennials, he says, are more politically similar to their grandparents, who fought World War II, than their boomer parents. "Financial adversity and scarcity and austerity, and being shocked into a global awareness, means that our generation is primed and prepared for greatness," he says.

He's not joking.

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**NEW BRITAIN,
CONN.**

**ERIN
STEWART**

The 30-year-old asked her friends to delete their Facebook pictures of her when she ran for mayor at 26

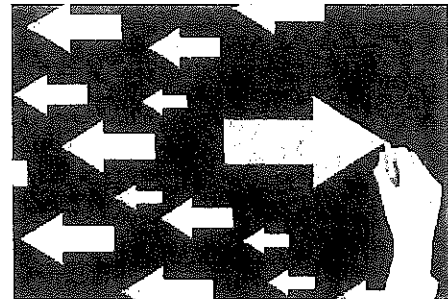
4 Ways to Improve Inter-Generational Decision Making

Create an Inter-Generational Team Focused on Resolving Issues

ARTICLE | Sep 27, 2017

By Jill Johnson

Making decisions is always difficult. It is hard enough when the decision needs to be made by a group of like-minded peers; but the hardest type of decisions to make are those in which there are multiple generations involved in the process. So what do you do?



Bringing out the best in the generations impacting your decisions requires four critical approaches to ensure their decision-making involvement stays on track and is focused on moving to a decision outcome that matters.

1. Don't Assume Everyone Has Enough Insight.

Decision making does not get a participation trophy. Just showing up is not enough in today's fast-paced environment. Careful consideration of the available decision options is important. Frequently, the assumption is made that everyone at the table has enough insight and information to participate effectively in the process. All too often they don't.

Make sure your intergenerational team has enough information so they can be more mindful in evaluating your options. Established professionals can get grounded into a black or white point of view that makes them hold fast to historical assessments of potential options.

Younger participants can have a limited viewpoint about possible options and consequences. This is not because they are incapable of complex thought. It's just they often don't have enough experience to engage in a more nuanced deliberation.

Prepare them for participating in this process. Do they need such advance reading material as an article about the critical issue you are going to address? Write up a summary of the critical elements of the issue and why a decision needs to be made. Set the stage at the outset by doing a comprehensive presentation at the first decision-making meeting. Provide them with clarity on how the decision relates to your organizational strategies and why this is an area of concern. Don't assume they understand this; consider this an educational opportunity.

2. Clarify the Decision Parameters.

Keeping an intergeneration group focused is a challenge. They will careen from issue to issue unless you frame things up clearly for them. Establish a framework of what must be considered and the boundaries for how far they can go with the decision options. Set limits. If there are budget or staffing limitations, say so.

Make sure to clarify the boundaries of the group's role in the decision-making process too. Are they the decisionmaker, serving in an advisory function to others who will decide, or an influencer with critical insight into key decision options? Put this in writing so no one can say later that they misunderstood or did not hear you say there were limits to work within.

It is easy to defer to a group of enthusiastic young professionals, but unless you stay on top of a project, they might go way beyond the appropriate parameters. This can result in treacherous consequences; both in them going too far and in you dampening their enthusiasm for participating again.

Have tons of interim check points and keep re-directing the discussion as needed. It is also easy for younger team members to defer to older professionals. Of course, they are seasoned and have experience. They can also fall into the trap of only thinking within a box of historical options that limit consideration of new approaches to solving problems. You need the insight of all generations at the table; however, it has to be effectively channeled.

3. Manage the Decision Discussion.

Don't abandon your team to work without your involvement. You don't have to be there for every workgroup conversation, but you still need to manage the discussion. Most importantly, encourage candid dialog. Clarify for everyone the stakes and the resources of information you need. Then begin discussing the decision parameters.

Have them walk through the potential outcomes of the options under consideration. Require them to discuss the pros and cons of each option. Encourage them to ask questions of each other to explore the consequences of the ideas being suggested. Challenge them to ask if there is an element of this option that could be combined with something already reviewed to make a stronger option.

Approach this in a respectful manner. Carefully manage how the group communicates so those with strong voices do not drown out innovative ideas from more introverted participants who may lack confidence in speaking up in the group. If you get each of your participants deeply involved in the discussion, they will develop mutual respect and learn from each other. This enhances intergenerational communication and encourages a more collaborative decision dialog.

4. Manage Expectations.

With intergenerational teams, also manage their expectations about how much influence they will ultimately have on the decision-making process. It goes back to the role they play in the decision. Will they get a vote in the decision? Or will they be influencing how you decide? Carefully managing their expectations at the front-end will help manage angst at the back end if you are the final decider and go a different way than they recommend.

Make sure you develop feedback loops and mechanisms for follow-up. You will lose your younger team members if they don't get periodic follow-up on the decision outcome. If possible, continue to involve the decision team in reviewing the progress of the decision implementation. Then they can help you adjust and adapt your decision strategy based on the evolving outcomes.

Intergenerational groups can provide you with significant ideas beyond options you initially considered. When you can do this effectively with intergenerational teams, they bond more effectively and can learn from each other. They can also find unexpected approaches linking possibilities in powerful, and sometimes unexpected ways that may create amazing results.

Final Thoughts

If you effectively manage your intergenerational decision-making efforts, you will create a team dynamic that is powerfully focused on resolving issues. At the same time, they will be building critical thinking skills and learning how to work together for future decision making.

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