



Riley Fletcher Basic Municipal Law Seminar

Employment Law for Cities

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2009



Discrimination & Harassment



- **Title VII**
 - Race/Color
 - National Origin
 - Religion
 - Sex (includes sexual harassment, sex stereotyping, and pregnancy or related medical condition)



Discrimination & Harassment



- **Procedural Requirements**
 - Employee files charge with EEOC within 300 days
 - Employer responds to the EEOC
 - EEOC may conduct investigation
 - EEOC issues a notice of right to sue letter
 - Employee has 90 days to file a lawsuit

Discrimination & Harassment



- **Title VII Liability**
 - City as employer is liable under Title VII
 - No individual liability (supervisor may be liable under tort law or constitutional claims that have no caps on monetary damages)
 - Capped damages up to \$300,000 (no punitive damages)



Discrimination & Harassment



- **Americans with Disabilities Act (ADA)**
 - Protects qualified individuals with a disability
 - Balances reasonable accommodation against undue hardship
 - Prohibits retaliation
 - ADA Amendments Act of 2008





Discrimination & Harassment



- **Age Discrimination in Employment Act**
 - Prohibits age discrimination against individuals over 40 years
 - Prohibits retaliation
 - **Release—29 USC § 626(f)**

written agreement, refers to this law, no waiver of later actions, consideration, advised in writing to consult attorney, 21 or 45 days to consider, can change mind up to 7 days after executing waiver, job titles and ages of all individuals selected under the program for

incentives ■

Discrimination & Harassment

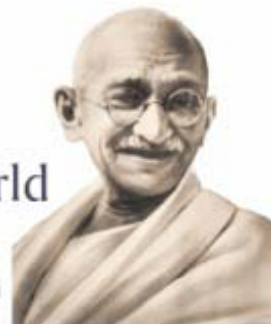


- **Texas Commission on Human Rights Act**
 - Race, National Origin, Sex, Religion, Disability, and Age
 - Similar provisions to the federal discrimination laws



An eye
for an eye
makes the
whole world
blind

-Mahatma Gandhi



Retaliation



- **State and federal discrimination laws prohibit retaliation**
- **Adverse employment actions could include actions that might dissuade a reasonable worker from making or supporting a charge or discrimination**

Fair Labor Standards Act



**Wages
and Hours**



FLSA



- **Exemptions to Overtime Pay**
 - Exempt employees (Executive, Administrative, Professional)
 - Complete Overtime Exemption for small fire and police departments
 - Police and Fire may have different work week than 40 hours—police probably 40 hours 142.0015(f)2 TLGC.
 - Comp Time” in lieu of overtime payment
- **Release of claim—may want DOL involved to be enforceable—29 USC §216c**



FMLA



- **FMLA Requirements:**
 - 12 weeks of leave for eligible employees with qualifying medical and family reasons
 - Restoration to same or equivalent position that employee held before taking leave
 - Prohibits retaliation for exercising FMLA rights

FMLA



- **Eligible Employees**
 - Employee works for a city that has more than 50 employees;
 - Employee has worked for such city for at least 12 months; and
 - Employee has worked for at least 1250 hours during the 12 months prior to taking FMLA leave

FMLA



- **H.R. 4986**
 - 12 weeks for any “qualifying exigency” arising out of the fact that a spouse, child, or parent of the employee is on active duty in the armed forces in support of a contingency operation
 - Parent, spouse, child or next of kin of member of armed forces is eligible for 26 weeks of leave to care for service member that is undergoing medical treatment

USERRA 38 USC §3801 et seq



- **Prohibits discrimination/retaliation against members of the military**
- **Employees returning from military leave are entitled to reinstatement to previous job and treated as though they had remained at work.**



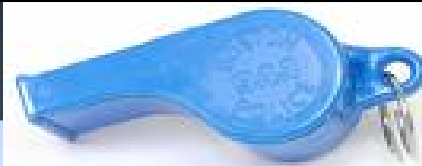
State Law Issues



- **Texas Workers' Compensation Act**

- Prohibits discrimination/retaliation against employee who files a claim in good faith, hires a lawyer to represent the employee in a claim, institutes a workers' comp proceeding, or testifies in such proceeding
- Workers' compensation illness/injury may involve ADA and FMLA issues

State Law Issues



- **Texas Whistleblowers' Statute**

- Protects an employee who in good faith reports a violation of law by the city or another city employee to an appropriate law enforcement authority.
- Hinges on what is “an appropriate law enforcement authority” and whether there is a causal connection between the reporting and the adverse employment action



