

Personnel Law

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At Will

- What does it mean and why can't the city council or city manager just hire and fire who they want, without a good reason?



At Will

- Hire and Fire anyone so long as:

No Discriminatory Intent

race, religion, age, gender, disability, or other protected status



Federal and State Law

- Americans with Disabilities Act
- Age Discrimination in Employment Act
- Fair Labor Standards Act
- Family Medical Leave Act
- Civil Rights Act
- §1983



Disability Discrimination

Americans with Disabilities Act

Protects a qualified individual with a disability (i.e. can perform essential functions of the job with or without a reasonable accommodation)



Age Discrimination

Age Discrimination in Employment Act

Protects individuals age 40 and above from discrimination based on their age



Wage and Hour Laws

Fair Labor Standards Act

- Minimum Wage
- Overtime
- Calculating Hours



Family Medical Leave Act

- Child or parent is sick
- Employee is pregnant or caring for newborn
- Notice and not working



Pregnancy Discrimination Act



Family Medical Leave Act

- Leave
 - Twelve Weeks
 - Unpaid (coordinate with paid)
 - Notice from city and employee
- Return to Work
- Intermittent Leave



Civil Rights Act: Employment Discrimination

- Treat similarly situated employees the same
- Federal: Title VII
- State: Texas Commission on Human Rights Act (Chapter 21, Labor Code)
- Protected Classes:
 - race
 - color
 - gender
 - national origin
 - religion



Sections 1981 and 1983

Liabile for race discrimination and other constitutional violations under these federal sections



§1981

- Race Discrimination
 - Violates clear constitutional or statutory right
 - Supervisor/employer acts as the “state”
 - Retaliation



§1983: Equal Protection

- Sexual Harassment
 - Liable as individual or for actions of employee
 - As individual do not harass people
 - If employee then you must show deliberate indifference to their harassment
 - If you hear about the harassment, try to fix it
 - Personnel policy, training, chain of command



§1983: Fourth Amendment

- Drug testing
- **Can** drug test:
 - Preemployment
 - Reasonable suspicion
 - Security or safety sensitive situations



§1983: Fourth Amendment

- **Cannot** drug test
 - Everyone
 - Job applicants without a job offer
 - Police officers unless involved in drug interdiction
 - People simply because they drive a city vehicle



§1983: First Amendment

- No adverse employment action against someone just because:
 - They spoke
 - Public concern
- However, employer's interest can outweigh employee's right to speech . . .
- Also, no adverse employment action based on religious beliefs (never, ever, ever)



Other Things to Remember

- Review the personnel manual
- Ensure that similarly situated employees are treated the same
- Employment laws for public entities are sometimes different than for private entities



Who are you going to call?

- City attorney
- Texas Municipal League Intergovernmental Risk Pool (if a member)
 - 1-800-537-6655
- Texas Municipal League Legal Department
 - 512-231-7400 or legalinfo@tml.org



Resources

- Texas Municipal League Web site
http://www.tml.org/legal_topics/legal_personnel.asp
- Equal Employment Commission www.eeoc.gov
- Texas Workforce Commission www.twc.state.tx.us
- Texas Municipal League Intergovernmental Risk Pool
“Call Before You Fire” 1-800-537-6655
- Texas Municipal Human Resources Association
www.tmhra.org
- Department of Labor www.dol.gov



Questions?

