

# Personnel Law: Preparing for Your Council's Pressing Personnel Problems

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# At Will

- Why can't I fire anyone I want whenever I feel like it? Isn't Texas an At-Will state?

# At Will

- Your response: no, sorry Councilmember. There are a few rules.
- 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

A councilmember heard from an employee that read on Facebook that the city manager is taking Xanax for anxiety. Can we just fire him?

Why Not?

# 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)

# Wage and Hour

The assistant city secretary is such a hard worker. She eats lunch at her desk every day and she clocks out but is always willing to answer the phone if it rings during her break. Is that okay?

# Wage and Hour Laws

## Fair Labor Standards Act

- Minimum Wage
- Overtime
- Calculating Hours



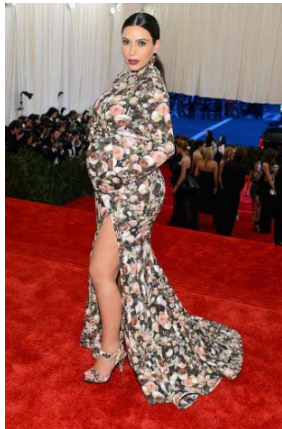


# Family Medical Leave Act

City Secretary's wife is going to have a baby and he wants some time off after the baby is born. Mayor calls you and asks if the city needs to pay him or something?

# 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 or Why That Whole At-Will Thing Isn't Going to Work Like We Planned.

- 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

# §1983: Equal Protection



# §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
    - Train the staff and the council
    - If you hear about the harassment, try to fix it
      - Personnel policy, training, chain of command

# §1983: Fourth Amendment

We have been randomly pulling employee names out of a hat for our quarterly drug testing. Can we add the city councilmembers to the hat? Or the City Attorney?

# §1983: Fourth Amendment





# §1983: Fourth Amendment

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



# §1983: Fourth Amendment

- ***Cannot*** drug test
  - Everyone
  - Police officers unless involved in drug interdiction
  - People simply because they drive a city vehicle



# First Amendment

An employee said mean things about the mayor on Facebook. Can we fire the employee?



# §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
- Make sure staff and council are adequately trained

# Who are you going to call?

- Texas Municipal League Intergovernmental Risk Pool (if city is a member)
  - 1-800-537-6655
- Texas Municipal League Legal Department
  - 512-231-7400 or [legalinfo@tml.org](mailto:legalinfo@tml.org)



# Resources

- TML Web site [www.tml.org](http://www.tml.org)
- Equal Employment Commission [www.eeoc.gov](http://www.eeoc.gov)
- Texas Workforce Commission [www.twc.state.tx.us](http://www.twc.state.tx.us)
- Texas Municipal Human Resources Association  
[www.tmhra.org](http://www.tmhra.org)
- Department of Labor [www.dol.gov](http://www.dol.gov)



Questions?

