

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

Riley Fletcher 2014

Laura Mueller

Assistant General Counsel
Texas Municipal League



At Will

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



At Will

- 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

I heard from another employee 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)



Age Discrimination

I'm working on a job description for our new public information officer and I really want someone who understands social media. Can I just say we want someone young and up to date on all these issues?



Age Discrimination

Age Discrimination in Employment Act

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



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.



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. Do we need 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
 - 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?



§1983: Fourth Amendment



§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



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



Who are you going to call?

- 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?

