

## **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

- 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



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- 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](mailto:legalinfo@tml.org)



## Resources

- Texas Municipal League Web site  
[http://www.tml.org/legal\\_topics/legal\\_personnel.asp](http://www.tml.org/legal_topics/legal_personnel.asp)
- 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 League Intergovernmental Risk Pool  
“Call Before You Fire” 1-800-537-6655
- Texas Municipal Human Resources Association  
[www.tmhra.org](http://www.tmhra.org)
- Department of Labor [www.dol.gov](http://www.dol.gov)



Questions?

