

# Employment Law Issues for Municipal Officials

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Missouri Municipal League  
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## Overview

- At-Will Doctrine
- Discrimination, Harassment and Retaliation
- Personnel Policies and Practices
  - FLSA
  - FMLA
  - USERRA
- Employee Performance and Discipline
  - Government Employees
  - Whistleblower Protections
  - Retaliation
- Nepotism

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## “At Will” Employment

- Missouri is an “at will” employment state
  - Does not allow discharge “at will” for an illegal reason
    - Discrimination
    - Retaliation
    - Whistle-blowing
    - Violation of employee’s constitutional rights
  - Does not allow discharge “at will” if there is an employment agreement
  - Does not allow discharge “at will” in violation of collective bargaining agreement
  - Does not allow discharge “at will” of merit system employee
  - Does not allow statutory process or constitutional due process to be circumvented
    - Police Officers – RSMo 85.011
    - Chief Law Enforcement Officer – RSMo 106.273
    - Name Clearing Hearing

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## Employment Discrimination

- **Employment Discrimination**
  - Sex (Gender Identity or Sexual Orientation)
  - Age (Over age 40)
  - Race
  - Color
  - Ancestry
  - National Origin
  - Religion
  - Disability (Mental or Physical as defined by the ADA)
  - Genetic Information
- Missouri Commission on Human Rights
- EEOC

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## Americans with Disabilities Act

- Title I of the ADA prohibits discrimination against people with disabilities in employment
  - Enforced by EEOC
- Duty to provide reasonable accommodations to qualified job applicants and employees with disabilities
- Engage in interactive process
- Department of Labor – Job Accommodation Network
  - <https://www.dol.gov/odep/resources/jan.htm>

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## Age Discrimination in Employment Act

- Prohibits age discrimination against an applicant or employee who is age 40 or older
- Mandatory retirement may be allowed when employer shows age is a bona fide occupational qualification
  - Police Officer
  - Firefighter
  - Judge

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## Workplace Harassment

- Unwelcome conduct based on sex, race, gender or other protected category or that affects a term or a condition of employment
  - A “condition of employment” may include the environment of the workplace

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## Equal Pay

- May not pay unequal wages to men and women who perform jobs that require substantially equal skill, effort and responsibility, and that are performed under similar working conditions within the same establishment
- Pay differentials are permitted when they are based on seniority, merit, quantity or quality of production, or a factor other than sex
- Title VII of Civil Rights Act

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## Minimum Wage & Overtime Pay

- Fair Labor Standards Act (FLSA)
  - Minimum Wage
  - Overtime for “Hours Worked” in Excess of 40 in Work Week
  - Exceptions:
    - Exempt Employees
    - Police – 171 in 28 days
    - Fire – 212 in 28 days
    - Less than 5 Fire or Police Employees
  - Compensatory Time
  - Beware: Electronic Devices



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## Youth Employment

- Child – anyone under age of 18
- 16 and 17 year olds
  - May employ in non-hazardous occupation
- 14 and 15 year olds
  - Limited to certain categories of work
  - Limited to certain hours of work
- 12 and 13 year olds
  - Very restrictive categories of work
  - Parental written consent required

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## Minimum Wage Resources

<https://www.dol.gov/whd/flsa/>

[https://www.dol.gov/whd/regs/compliance/Digital\\_Reference\\_Guide\\_FLSA.pdf](https://www.dol.gov/whd/regs/compliance/Digital_Reference_Guide_FLSA.pdf)

<https://labor.mo.gov/DLS/MinimumWage>



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## Family and Medical Leave Act

- Applies if you have at least 50 employees
- 12 weeks of unpaid time
  - Illness
  - Caregiving
  - Bonding with a new child
- Employer must continue group health benefits during leave
- Right to reinstatement
- Military Family Leave

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## Military Leave

- Uniformed Services Employment and Reemployment Rights Act (USERRA)
  - Section 105.270 RSMo.
- Leave from work for federal or state military service or duty
- Employee must be reinstated when military leave is finished
  - No loss of pay or benefits
  - Advance notice to employer required
  - Cumulative military service not exceed 5 years
  - Reemployment Exception – dishonorable discharge

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## Pregnancy Discrimination Act

- Prohibits sex discrimination based on pregnancy, child birth or related conditions
- Emphasis must be on job duties and not on perception of ability to perform job
  - May not refuse to hire pregnant woman as long as able to perform major functions of job
  - Must be permitted to work as long as able to perform major functions of job
- Policies must be non-discriminatory
  - Treat same as treat any temporary disability
- ADA
- FMLA

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## Break Time for Nursing Mothers Law

- Contained in the Affordable Care Act
- Employers must provide a private location and reasonable amount of time for new mothers to express breast milk at work
  - One year after birth of child
  - Location not to be a bathroom
  - If less than 50 employees, not required if undue hardship
  - Compensation consistent with break time rules for all other employees

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## Jury Duty

- Missouri law prohibits an employer from discharging, threatening, disciplining, or otherwise taking adverse action against an employee because he or she takes time off to serve on jury duty
- No multiple absences for jury duty if 5 or less full time employees

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## Voting Leave

- Employees must be allowed at least three hours off work while the polls are open on any election day
  - Not required if employee's shift begins at least three hours after polls open (6:00 am) or ends at least three hours before polls close (7:00 pm)
- Paid leave
- Employee must request in advance
- Employer may designate hours
- Employer require proof employee actually voted and time required to vote

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## Hiring Process

- Job Descriptions
- Application Requirements
- Interviews
- Post-Offer Examinations
- Policies and Procedures

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## Employee Performance

- Performance Reviews
- Document All Disciplinary Actions
  - Events that prompted employer to notice issue and investigate
  - Findings
  - Specific behavior at issue
  - Real world consequences or risks that resulted;
  - City policy that was violated;
  - Discipline imposed;
  - Future expectations;
  - Consequence of repeated behavior or other problems
- Consistency

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## Employee Performance The Traditional Disciplinary Process

- Traditional Progressive Discipline
  - Documented verbal reprimand;
  - Written reprimand;
  - Suspension with pay;
  - Suspension without pay;
  - Demotion;
  - Termination of employment

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## Employee Performance The Modern Disciplinary Process

- Performance Guidance
  - Additional training;
  - Professional counseling;
  - Performance improvement plans;
  - Probationary status extension;
  - Other

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## Constitutional Protections

- Government as the Employer
- First Amendment
  - Employees may speak on matters of "Public Concern"
- Due Process
  - Property or Liberty Interest
    - Liberty interest if employee's good name, reputation, honor or integrity is questioned publicly
    - Name-clearing Hearing

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## Retaliation Prohibited

- Retaliation occurs when an employer punishes an employee for engaging in legally protected activity
  - Most frequently alleged basis of discrimination AND the most common discrimination finding in federal cases
- If adverse action would deter a reasonable person in the situation from making a complaint, it constitutes illegal retaliation
  - May include any negative job action
    - Examples: demotion, discipline, firing, salary reduction, shift reassignment, denial of promotion, denial of training, transfer to a less desirable position, exclusion from meetings, etc.
- Complaint must have been made in good faith

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## Whistleblower Protections

- **Section 105.055 RSMo** - Prohibits a public employee from taking any disciplinary action against a public employee for the disclosure of any alleged prohibited activity under investigation or for the disclosure of information which the employee reasonably believes evidences:
  - A violation of any law, rule or regulation; or
  - Mismanagement, a gross waste of funds or abuse of authority, violation of policy, waste of public resources, alteration of technical findings or communication of scientific opinion, breaches of professional ethical canons, or a substantial and specific danger to public health or safety, if the disclosure is not specifically prohibited by law
  - Must post a copy of Section 105.055 RSMo in a location where it can reasonably be expected to come to the attention of all employees of the public employer
- **Federal Whistleblower Protection Act**

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## Severance Agreements

- Contract between an employer and an employee that specifies the terms of an employment termination
  - Must state consideration
  - May contain waiver of right to sue
    - Older Workers Benefit Protection Act requires specific time frames to consider and revoke agreement related to age discrimination

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## Nepotism

Missouri Constitution, Article VII, Sec. 6

- Nepotism**
  - Applies to Public Officers and Employees
  - Appointment of Relative within 4<sup>th</sup> Degree
    - Affinity, or
    - Consanguinity
  - Penalty
    - FORFEITURE OF OFFICE OR EMPLOYMENT**

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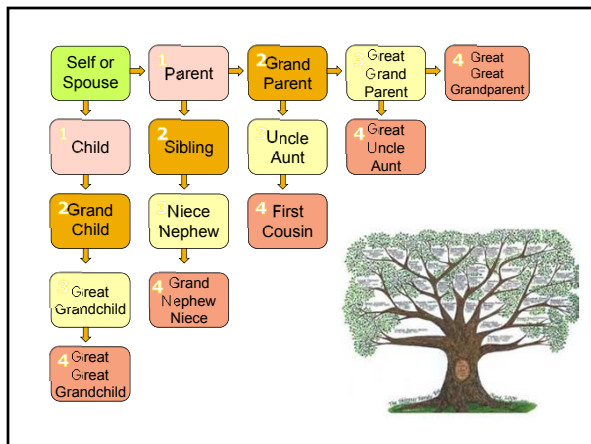
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## Mitigation of Risk

- Establish Written Policies
- Follow Policies (and established unwritten practices)
- Be Consistent
- Institute a Regular and On-Going Program to Train Employees
- Use a Thorough and Comprehensive Hiring Process
- Encourage Employees to Report Areas of Concern and TAKE ACTION
- Document, Document, Document

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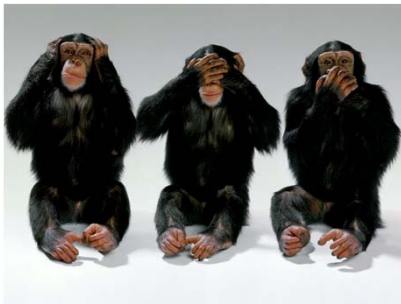
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## Questions



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