

HR 101:

Human Resources for Municipal Officials

Presented by:

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Presented for:



DISCLAIMER: The material in this outline is not, and is not intended to be, legal advice. Nor does this material constitute an exhaustive delineation of all laws that will apply to your municipality. This document is intended to be a very high-level overview of considerations concerning staff management and is not exhaustive. Please consult an attorney for legal advice regarding particular situations and legal compliance.

1. **Why should we care?**

- a. Compliance with applicable laws is the foundation of employee engagement and sets the base for the desired workplace culture. Moreover, a failure to comply with applicable laws can be costly if a complaint is filed or if the municipality is audited.
- b. Applying best practices to managing people ensures employees are fulfilling the stated purposes and objectives of their respective positions, that the right people are selected for the right roles, citizens receive the best service and the municipality is fulfilling its mission, vision and objectives.

2. **What is Human Resources?**

a. It is **Functional**:

- i. Job Analysis.
- ii. Job Descriptions.
- iii. Recruiting, background checking.
- iv. Employee orientations.
- v. Payroll, compensation, benefits, and leave administration.
- vi. People-related policies/procedures/processes/initiatives.
- vii. Employee recordkeeping, reporting and notice management.
- viii. Counseling, discipline, coaching, managing separations.
- ix. Employee safety, training and privacy.
- x. Labor relations and negotiations.
- xi. Managing legal risks.

b. It is **Strategic**:

- i. Tied to organizational mission, vision, goals and objectives:
 1. Workforce planning.
 2. Performance management.
 3. Organizational, culture, leadership and employee development.
 4. Employee relations and engagement.
 5. Total Rewards.

- c. It is **Compliance**:
 - i. “The legal aspects for human resource management are complicated and can be a bit daunting. Laws affect virtually everything in the field of human resources and it’s important to ensure the company is compliant with Federal and State laws and regulations that impact all aspects of the employee relationship, from hiring to termination.” U.S. Small Business Association
- 3. Overview of Wisconsin Laws.¹**
- a. Employee Safety, Wis. Stat. Chapter 101.
 - i. Important highlights:
 - 1. Imposes on employers a general duty to provide a safe workplace. Obligated to take all steps “reasonably necessary” to protect life, health, safety and the welfare of employees and visitors. Employees are prohibited from failing or neglecting to take all reasonable actions necessary to protect the workplace.
 - 2. This general duty for safety is over and above the extensive specific safety regulations imposed by the law.
 - 3. Must keep an annual injury log and file an annual workplace injury summary with the Department of Safety and Professional Services (report is now filed online).
 - b. Worker’s Compensation, Wis. Stat. Chapter 102.
 - i. Important highlights:
 - 1. The law is the exclusive remedy for injuries arising out of the course of employment. Fault is not at issue in a work comp claim.
 - 2. Employees are entitled to payment of medical expenses and lost wages that vary under applicable circumstances.
 - 3. Employers must rehire/return an employee if the employer has work available within the employee’s restrictions/limitations. A refusal to do so without reasonable cause is subject to a penalty up to one year’s wages.
 - c. Employee Access to Records, Wis. Stat. Sec. 103.13.
 - i. Important highlights:
 - 1. Within 7 days of making a request, employees are allowed to review medical records and personnel documents that are used by the employer in determining an “employee’s qualifications for employment, promotion, transfer, additional compensation, termination or other disciplinary action.”
 - 2. Employees do not have a right to review certain medical records, records relating to ongoing investigations, letters of reference, portions of test documents, materials used by the employer for staff management planning, personal information regarding a person other than the employee, and records related to a pending

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claim between the employee and employer that are discoverable in the proceeding.

3. Employees have the right to dispute information in the records they have access to, and can seek a removal or correction.
 - a. If the employer does not agree to remove or correct a record, the employee can provide a written rebuttal to documents in his or her file and that must be attached to the respective portion of the personnel document.
- d. Wage & Hour Regulations, various sections of Wis. Stat. Chapter 103.
 - i. Contains many of the same wage and hour regulations as the federal Fair Labor Standards Act, however, employers must be aware of important differences:
 1. For example: Wisconsin law has a strict requirement of 30 minutes or more during which employees must be relieved of duty and free to leave the premises in order to be deemed a bona fide meal period for which employees need not be paid.
 2. Another example: Travel time under Wisconsin law is more generous than federal law in terms of what is considered compensable time.
 - ii. Wisconsin wage and hour laws also set minimum wage, overtime requirements, child labor restrictions and requirements, and other regulatory matters governing wage and hours.
- e. Wage claim law, various sections of Wis. Stat. Chapter 109.
 - i. Establishes rules governing when employees must be paid, and when wages are owed to separated employees. It further provides a mechanism for employees to recover wages owed them.
- f. Wage garnishment law, Wis. Stat. Chapter 812.
 - i. Governs the means available for creditors to garnish employee wages. Prohibits employers from imposing fees or taking any adverse action against an employee because of a wage garnishment.
- g. Family & Medical Leave, Wis. Stat. Secs. 103.10; 103.11.
 - i. Important highlights:
 1. Applies to employers with at least 50 permanent employees in 6 of the last 12 months.
 2. Wisconsin FMLA grants eligible employees an absolute right to leave time, either in blocks of time (i.e. 6 weeks) or intermittently (smaller portions of time for doctor's appointments, chronic conditions, parental leave, etc.)
 - a. Employers must track FMLA entitlement using a calendar year.
 - b. Leave entitlements include:
 - i. Six weeks in a calendar year for birth or adoption of a child.

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- ii. Two weeks to care for a child, spouse or parent with a serious health condition.
 - iii. Two weeks in a calendar year for an employee's own serious health condition.
 3. Position, pay and benefits are protected.
 4. Rules exist around when employees can choose to take time as unpaid or paid.
 5. Managers often miss the scenarios that would dictate a designation of FMLA leave time and must be trained/reminded frequently.
 6. There can be significant differences between State and Federal FMLA laws and employees are entitled to the rights most favorable to them.
- h. Wisconsin Unemployment Insurance Law, Wis. Stat. Chapter 108.
 - i. Important highlights:
 1. Provides a source of income for generally a 26-week period based on complicated formulas for those who are unemployed through no fault of their own.
 2. Employees are most typically disqualified for misconduct, substantial fault, and voluntary termination, each of which has specific definitions in the statute.
 3. Employers are given the opportunity to dispute a claim for benefits after a claim is filed.
 - i. Wisconsin Fair Employment Act, Wis. Stat. Chapter 111.
 - i. Discrimination and accommodation obligations apply to all Wisconsin employers regardless of size.
 - ii. Wisconsin law prohibits employers from discriminating against employees and job applicants because of any of the following:
 1. Age Discrimination.
 2. Arrest and/or Conviction Record.
 3. Ancestry, Color, National Origin or Race.
 4. Creed.
 5. Disability.
 6. Genetic Testing.
 7. Honesty Testing.
 8. Marital Status.
 9. Military Service.
 10. Sex Discrimination.
 11. Sexual Orientation.

12. Use or nonuse of lawful products off the employer's premises during nonworking hours.
- iii. There are several differences between the Wisconsin FEPA and federal laws that address the same topics, especially in the area of disability discrimination. Employers must apply the more favorable provisions of the WFEPA when making decisions about employee situations.
 1. Example: An individual with a disability under Wisconsin law is one who has an impairment that makes achievement unusually difficult or limits the capacity to work (broader than ADA).
 2. Example: WFEPA does not use "essential functions" terminology and reduction or transfer of some duties might be considered a reasonable accommodation (not required under ADA).
- j. Municipal statutes address certain positions/aspects of the employee-employer relationship:
 - i. Chapter 59: Counties
 - ii. Chapter 60: Towns
 - iii. Chapter 61: Villages
 - iv. Chapter 62: Cities
 - v. Chapter 63: County and City Civil Service

4. Overview of Federal Laws.²

- a. Title VII of the Civil Rights Act of 1964.
 - i. Prohibits employment discrimination based on race, color, sex, religion, or national origin by employers with 15 or more employees. It covers both intentional discrimination and disparate impact and considers sexual harassment a form of sex discrimination.
- b. Pregnancy Discrimination Act.
 - i. Prohibits discrimination on the basis of pregnancy, childbirth, or related medical conditions.
- c. Americans with Disabilities Act and Amendments Act.
 - i. Prohibits discrimination against individuals with disabilities in all aspects of employment. It requires employers to "reasonably accommodate" qualified disabled applicants and employees unless to do so would impose an "undue hardship."
 - ii. These Acts further govern what and when employers can lawfully ask regarding an applicant's or employee's medical condition and any medically-related testing.
- d. Family and Medical Leave Act.
 - i. Requires employers with 50 or more employees to provide eligible employees with up to 12 weeks of unpaid leave during any 12-month period. Employee jobs and benefits are protected during these leaves,

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which may be granted for the birth or adoption of a child, for the employee's serious health condition, or to care for a spouse, child, or parent with a serious health condition.

- e. Age Discrimination in Employment Act
 - i. Prohibits employment practices that discriminate on the basis of age (40+).
 - ii. Older Worker Benefit Protection Act.
 - 1. Specific requirements for release of claims against an employer.
- f. Genetic Information Nondiscrimination Act.
 - i. Prohibits discrimination based on genetic information. It further limits the acquisition and disclosure of genetic information.
- g. Health Insurance Portability and Accountability Act (HIPAA).
 - i. Sets national standards to protect individuals' medical records and other personal health information.
- h. Equal Pay Act.
 - i. Requires employers to pay men and women equal wages for work that requires equal skill, effort, and responsibility and is performed under similar working conditions.
- i. Immigration Control and Reform Act.
 - i. Requires employers to verify that employees are legally entitled to work in the United States; it is the law that requires employers to complete I-9 forms for all new hires.
- j. Fair Labor Standards Act.
 - i. Sets minimum hourly wages, training wages, governs overtime hours and rates, regulates child labor and many other wage and hour matters. If State and Federal law conflict, employers must follow the one most favorable to the employee.
 - ii. Little known amendment imposes certain requirements on employers to accommodate breast-feeding in the workplace.
- k. Fair Credit Reporting Act.
 - i. Regulates and imposes requirements on employers who use third parties to conduct background checks on prospective and current employees.
- l. Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA).
 - i. Grants certain protections to individuals that need to be absent from his or her civilian employment to serve in this country's uniformed services.

5. Privacy and Medical Inquiries.

- a. Employers must protect employees' right to privacy as it relates to their personal situations, and especially as to medical conditions and related information.
 - i. Employers should have a privacy policy that identifies steps taken to safeguard personal and medical information, defines who has access to

the information, and protections that are in place to ensure confidentiality.

- ii. An employee's medical condition, situation, and other related details should never be shared beyond the individual in the organization charged with medical and leave management responsibilities. Supervisors should only be told how long an employee may be absent, accommodations that may be necessary for a staff member's condition, and any temporary restrictions that the supervisor may need to be aware of.

b. Medical Inquiries.

i. Pre-Offer:

1. No medical questions or inquiries can be made of a job applicant prior to a conditional offer of employment.
2. Employers can ask: "Can you perform the essential functions of this job with or without reasonable accommodation?" This is a "yes" or "no" question. If you ask it of one candidate, you must ask it of all candidates.

ii. Post-Conditional Offer, Pre-Hire:

1. Pre-employment physicals are permitted if job-related and all persons hired for the position are tested.
2. The occupational medical provider can ask for medical history and other medical information needed to determine the candidate's ability to perform the job duties of the position.
3. If there are restrictions on the ability to perform any of the job functions, the employer must consider the existence of reasonable accommodations that would permit the candidate to perform the job in question.

iii. Post-Hire:

1. Inquiries are only permitted when medically necessary and consistent with business necessity, for example in the case of safety concerns or if an employee indicates that he or she needs an accommodation to perform a portion of their job.

6. **Effective and Legal Recruitment.**

- a. The goal is to hire the right person for the job and the culture without violating the law.

- i. An organization is only as good as its people. And, there is a real monetary cost associated with a bad hire. Employers should carefully craft their recruitment process to achieve these objectives.

b. Pre-Hire.

- i. Define the technical **and** behavioral competencies needed for outstanding performance.
- ii. Conduct a Job Analysis to include:
 1. Skills, knowledge, experience, education.

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2. Manner in which work is performed.
3. The work setting.
4. Key behaviors needed to excel.
5. Resources:
 - a. The Occupational Information Network (O NET) System
 - b. The Occupational Outlook Handbook (OOH)
- iii. Create a Job Description from the information gathered from the Job Analysis. This should include:
 1. Job title.
 2. Department.
 3. Reports to.
 4. FLSA status.
 5. Job summary.
 6. Essential duties and responsibilities.
 7. Competencies.
 8. Supervisory responsibilities.
 9. Qualifications.
 10. Education and/or experience.
 11. Certificates, licenses, and clearances.
 12. Physical demands and work environment.
 13. Equal employment opportunity (EEO) statement.
 - a. Including statement regarding reasonable accommodation.
- iv. Define the screening process.
 1. Identify the steps that will be taken to narrow down the applicant pool to those who will be interviewed.
 - a. How will applications be screened?
 - b. What criteria will be used to determine which candidates to interview?
 - c. Who will participate in the interviews?
 - d. What questions will be asked?
 - e. Will any assessments be used before or after the interviews?
 - f. Who will make the final determination?
- v. Reasonable accommodations.
 1. The obligation under State and Federal laws to provide reasonable accommodations to those with a disability extends to applicants as well. Employers should provide a statement of reasonable

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accommodation on their application, online portal, and other locations where applicants will see it and know how to request one.

- c. Job Posting.
 - i. Internal and/or external?
 - ii. Job Boards such as Indeed, Monster, etc.
 - iii. Professional Associations:
 - 1. Accountants.
 - 2. Administrators.
 - 3. Assessors.
 - 4. Attorneys.
 - 5. Building Inspectors.
 - 6. Clerk/Treasurers.
 - 7. Engineers.
 - 8. Firefighters/EMS.
 - 9. Law enforcement.
 - 10. Public Works.
 - iv. League of WI Municipalities.
 - v. LinkedIn & other social media.
 - vi. Craig's List for certain positions.
 - vii. High schools, tech schools and colleges for certain positions.
 - viii. Direct solicitation.
 - 1. Example ~ building inspectors, assessors.
 - ix. Professional recruiters.
- d. Applications.
 - i. These can protect the organization legally by including for example, an EEO statement, at-will disclaimer, authorization and release for employment references and screening, and notice of termination for dishonesty. These should be reviewed and approved by legal counsel.
 - ii. Unlike resumes, applications standardize the information that is collected.
 - iii. Can be used to elicit information not typically provided in a resume:
 - 1. Names of former supervisors.
 - 2. Reasons for leaving previous employment.
 - 3. Criminal history with appropriate disclaimer.
- e. Interviewing.
 - i. One of many tools that is used to find the right candidate.

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- ii. Objective: to ask the appropriate questions to determine if the candidate is the right person for the job and the culture.
- iii. General standards for hiring inquiries:
 1. Be familiar with the successful candidate profile. This should be built around the results of the job analysis and the job description.
 2. Tailor inquiries to knowledge, skills, experience, qualifications, competencies and attitude (as long as objectively measured).
 - a. Skills, experience, qualifications, past performance, goals, values, behaviors, attitudes, work ethic, etc.
 3. Structure for uniformity where possible.
 - a. For example, start with a list of questions that will be asked of all candidates. Follow-up probing questions that seek or elicit more information or clarification can be asked depending on how the candidate responds to the pre-established questions.
- iv. Phone interviews.
 1. These can be very helpful as an initial screening tool if the pool of candidates is relatively large.
 2. Develop a list of questions that each candidate will be asked; 4-5 introductory questions designed to get a sense of candidates' experience and potential fit in the organization.
- v. In-person interviews.
 1. Decide who will participate and who will ask the questions.
 2. Develop questions prior to the interview.
 3. Determine how candidates will be evaluated and progressed in the process.
- vi. Behavioral/Performance based questions.
 1. These are designed to establish how the person has performed in previous roles and how they have responded in certain situations. The theory is that past experience is a good predictor of future behavior.
 2. Examples:
 - a. How have you addressed a situation where
 - b. Describe a time that you.....
 - c. Give me an example of.....
 - d. Tell me how you dealt with.....
- vii. Hypothetical/Situational based questions.
 1. These questions ask a candidate how they would handle a particular situation or circumstance if presented in the workplace.
 2. Examples:

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- a. How would you handle
 - b. What would you do if
 - c. What steps would you take to
- viii. Use the job description.
1. Design questions around skills, abilities, experience, and qualifications needed to successfully perform the job at a high level.
 2. Have candidates review the job description and ask if they have experience with the listed job duties and if they are able to perform all of the duties listed, with or without a reasonable accommodation.
- ix. Listening.
1. A failure to actively listen to the candidate will negate the ability to capture all of the information the candidate provides.
 - a. Be conscious of not formulating or “thinking ahead” while the candidate is still speaking/answering the pending question.
 - b. A best practice is to have a staff member who is not a decision-maker, such as a confidential administrative assistant, attend the interview to ask the questions and keep notes of responses. This will allow the decision-makers, or those making recommendations, to actively listen and hear everything the candidate says.
- x. Non-verbal “Responses.”
1. Confident?
 2. Enthusiastic?
 3. Interested?
 4. These assessments are legitimate as long as objective descriptions of the observations are documented, and as long as they constitute only one of many factors used to make a determination.
- xi. Can the interview with a particular candidate end before every question on the list is asked?
- xii. Document.
1. Use a form to summarize your impressions of each candidate.
 2. Rating system?
- f. Areas of inquiry that could prove to be unlawful.
- i. Guiding Principle:
 1. Focus questions on the person’s ability to do the job and to fit the culture of the organization.

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2. “Personal” questions should not be permitted as so many prove to be potential landmines for illegal inquiries. As hard as it is, your ability to “get to know” the candidate must be narrowly focused on whether he or she is a fit for the job. Questions about family, interests, experiences not related to the job etc. must be reserved for post-hire.
- ii. Age.
 1. Unlawful: “How old are you?”
 2. Lawful: “This job requires you to be 21 years old, are you at least 21 years old?”
 3. Lawful: “How long do you intend to work in this position?”
 - iii. Arrest/Conviction Record.
 1. Best practice is to reserve these inquiries until a conditional offer has been made and the candidate is in the background screening phase.
 2. Can never consider an arrest that has been dismissed.
 3. Can consider pending arrests and convictions that are “substantially related” to the position.
 - a. Requires a case by case determination.
 - b. Involves assessing whether the tendencies to behave in a certain way in a particular context are likely to reappear in a related context based on the revealed traits.
 4. If asked on the application or in the interview, candidates must be advised that pending arrests and conviction records are not an automatic bar to employment.
 - iv. Are you able to work on Saturday and Sunday?
 1. Make clear that a reasonable effort to accommodate religious practices will be made if possible without undue hardship on the employer.
 - v. Children/Pregnancy: Unlawful.
 - vi. Citizenship/National Origin: Unlawful.
 1. Lawful: “Will you be able to establish that you are legally authorized to work in the United States?” ~ if asked of all candidates.
 - vii. Disabilities/Medical Conditions:
 1. Unlawful: Questions around a candidate’s medical condition, use of medication or history of worker’s compensation injuries.
 2. The only legitimate inquiry is whether applicants can do the job with or without reasonable accommodation.
 - viii. Financial Background: Avoid unless directly related to the position.

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1. Governmental employers are prohibited from denying employment based on a candidate's bankruptcy.
- ix. Language: Proceed with caution.
 1. Can only require the level of fluency that is realistically required to successfully perform the duties of the position.
- x. Marital Status: Unlawful.
- xi. Military Service: Proceed with caution.
 1. Employers cannot deny employment to a candidate because of military obligations such as once a month training commitment. However, employers can ask candidates about their service to the extent that it relates to the duties of the position at issue.
- xii. Lawful Products: Unlawful.
 1. Inquiries are prohibited relative to the use or non-use of lawful products (i.e. alcohol, tobacco) off duty.
 2. Very narrow exception for firefighters. Requires use of a pre-hire agreement to refrain from the use of tobacco at all times.
- g. Assessments.
 - i. These are legal and permitted as long as they are job-related and a valid predictor of success in the position.
 - ii. Skills testing, i.e. Microsoft Office, accounting, driving, customer service, etc.
 - iii. Job compatibility, i.e. Profile XT: "match the individual attributes of people with the qualities important to success in specific jobs...." Profiles International.
 1. Be careful that the assessment is validated for selection purposes, i.e. DISC v. Profile XT.
 - iv. Should never be the sole factor in making an employment decision.
- h. Making a Conditional Offer.
 - i. Legally cannot require a physical or psychological exam until a conditional offer has been extended.
 - ii. Best practice is to extend a conditional offer before conducting any background screens.
- i. Reference & Background Checks.
 - i. Make certain to obtain a valid signed authorization and release of liability from the candidate before proceeding.
 - ii. If using a third-party provider beware that:
 1. Quality and reputation matter.
 2. Understand and comply with the Fair Credit Reporting Act Requirements.

- iii. What to screen for:
 - 1. Employment and education verifications.
 - 2. References (supervisory preferred).
 - a. Wisconsin employers are immune from civil liability for providing a reference if they act in good faith; good faith is presumed unless evidence is presented that the employer knowingly provided false information, made the reference maliciously, or unlawfully discriminated against an employee in making the reference.
 - 3. Criminal and sex offender history.
 - 4. Driving record where applicable.
 - 5. Physical, psychological, and drug screens as appropriate for the respective position.
- iv. Use free or reduced cost resources:
 - 1. WI Department of Justice.
 - 2. WI Department of Motor Vehicles PARS.
 - 3. DMV Accident Reports.
 - 4. Circuit Court Access Program (CCAP).
 - 5. Google.
 - 6. WI and National Sex Offender Registries.

7. **Onboarding (New Hire Orientation)**

- a. Objective: To set employee up for success in the position and workplace culture.
- b. 3-5 days prior to start date:
 - i. Send a “What to Expect” summary:
 - 1. What to bring (i.e. I9 ID documents).
 - 2. Dress code.
 - 3. Summary of the first week.
 - 4. Contact info to include supervisor cell number.
 - 5. An outline of the key people the new hire will need to know and/or be working with.
 - 6. A copy of the job description.
 - ii. Office, desk, phone computer set-up.
 - iii. Meeting of supervisor with co-worker’s, HR, key stakeholders to set first week’s activities.
- c. In the first week:
 - i. Completion of I-9 form (no later than 3 days after start date).
 - ii. Time-keeping/time off.

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- iii. Benefits orientation.
 - iv. Provide an overview of mission, vision, objectives, handbook and policies; obtained signed acknowledgement forms.
 - v. Provide a tour and staff introductions.
 - 1. Include announcement via email to ensure that everyone is “introduced.”
 - vi. Cover job description/workplace “norms”/behavioral expectations, including how to treat co-workers, customers, etc. and what to do if disputes or conflicts arise.
 - vii. Make sure supervisor is there and involved.
 - viii. Assign a mentor and schedule lunch.
 - ix. Set goals!
 - x. Have a list of tasks to be accomplished during the first week or two.
 - xi. Explain feedback system and pay-for-performance opportunities.
- d. Training in the first week:
- i. Workplace safety.
 - ii. EEO and harassment/bullying.
 - iii. Supervisory (if new hire has these duties).

8. **Handbooks.**

- a. Important because they:
 - i. Serve as an introduction to the organization, including culture/mission/values, etc.
 - ii. Set expectations up front.
 - iii. Provide needed disclaimers.
 - iv. Demonstrate legal compliance, i.e. FMLA, COBRA, etc.
 - v. Policies are clearly defined and hold up in the face of challenges.
 - vi. Help maintain consistency and fair treatment.
 - vii. Highlight the benefits and parameters of those benefits.
- b. At a minimum, the handbook should include:
 - i. Harassment, discrimination, and retaliation (EEO) statements/complaint procedures, as well as a statement on reasonable accommodation and how to request one.
 - ii. Workplace safety policies, expectations and reporting procedures.
 - iii. Legal notices and a signed acknowledgement.
 - iv. Terms of employment, such as:
 - 1. Work hours.
 - 2. Time off policies.

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3. Pay policies and schedule.
4. Overtime, including prohibition on working unauthorized overtime.
5. Benefits overview.
6. Compensation and performance management policies.
- v. Conduct expectations, such as:
 1. Attendance.
 2. Internet and social media.
 3. Use of technology.
 4. Ethics.
 5. Confidentiality.
 6. Offenses for which discipline/termination may result.
- vi. Discipline and separation procedures/rules.
- vii. Drug-testing policies.
- viii. Legal disclaimers.

9. **Supervisory responsibilities:**

- a. Often supervisors are considered to be “agents” of the organization, meaning that their decisions and failures to act can be attributed to the organization who then bears the liability for their actions/inaction. Therefore, it is crucial that supervisors are trained to fully understand their obligations, applicable laws and expectations that the organization has regarding their conduct.
- b. As a general overview, supervisors must be trained and responsible for:
 - i. Monitoring the work environment.
 - ii. Addressing issues promptly.
 - iii. Maintaining confidentiality.
 - iv. Ensuring that they treat staff fairly and consistently.
 - v. Communicating appropriately.
 - vi. Documenting.
 - vii. Ensuring they are familiar with the rules and policies of the organization and that they are consistently applied.
 - viii. Reporting medical situations and injuries/requests for leave/complaints of harassment, discrimination or retaliation to the person(s) responsible for management of those issues.

10. **Performance Management.**

- a. Performance Feedback.
 - i. There are a myriad of different models and theories around performance management. Some of the latest developments include:

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1. Use of the annual performance review has declined in recent years. There are many different reasons for this trend. Some reasons are offered by a Gallup study that found traditional reviews no longer measure up due in part to:
 - a. Feedback that is infrequent or only once a year.
 - b. Lack of clarity around expectations and goals.
 - c. Manager bias.
2. Recent findings/studies around performance feedback offer interesting alternatives for performance management. A summary of some are provided below as consideration for a possible starting point.
 - a. Gallup~Re-engineering Performance Management.
 - i. The purpose of performance management is to improve the quality of work, productivity and other organizational outcomes. Some findings of this study included:
 1. Employees want a coach, not a boss.
 2. They want clear expectations, accountability, a purpose, and ongoing feedback and coaching.
 3. Performance systems should effectively define expectations, review progress, adjust goals, recognize accomplishments and develop employees on an individualized basis.
 - b. Google: Project Oxygen.
 - i. Study found that the most important trait in a manager is to be a good coach. Defined as someone who:
 1. Provides timely and specific feedback.
 2. Delivers hard feedback in a motivational and thoughtful way.
 3. Tailors approaches in one-on-one meetings.
 4. Practices active listening and being fully present.
 5. Is cognizant of own mindset and that of employees.
 6. Asks open-ended questions.
 - c. Management by Objectives.
 - i. Coined and written by Peter Drucker. Principles include:

1. Define organizational goals: These should reflect mission critical outcomes required for success. Initiatives that drive improvements.
 2. Define employee objectives: What can be accomplished, in what time frame, and with what resources that will support the organizational goals.
 3. Continuous monitoring: Regularly schedule touch points to review and discuss progress of all goals and objectives during the year. Create a performance-oriented culture.
 4. Performance evaluation: These occur on a quarterly basis tied to touch point feedback sessions. The annual summary is a recap of these sessions.
 5. Rewards: These are to be tied to the annual summary results.
 6. Year-End review and establish new objectives: Discussion focuses on the touch points and realignment of goals and objectives for the next year.
- d. The New One Minute Manager ©
- i. The plan is designed to help managers be effective by ensuring their teams are clear about goals and what good performance looks like.
 - ii. The one-minute goals ensure everyone knows what they're accountable for and what good performance looks like.
 - iii. Goals can encompass anything; can include things like "learn how to adapt to change."
 - iv. Feedback on results is an invaluable tool in the process ~ it is the #1 motivator of people. And feedback needs to happen in real time in order to be effective.
 - v. Managers deal fairly and clearly with one behavior at a time so the person receiving the feedback actually hears it.
 - vi. Goals begin behaviors. Consequences influence future behaviors. Uses praise and redirection at appropriate times.
- e. One-on-One meetings:
- i. Borne from a belief that regular feedback and communication between supervisors and employees is crucial to developing employees,

achieving a high-performing workforce, and aligning staff with organizational goals.

- ii. Focus on current performance, exploring issues such as what is working well, what is not working, obstacles encountered, needed support or resources, accomplishments, next steps, what the employee has learned, improving on strengths, and areas for development.
- iii. Discussions can explore the employee's current level of job satisfaction, how it can be improved, his or her career goals (short and long term), skills and knowledge that can be acquired or deepened, current and anticipated training needs (see Staff Development below).

b. Correcting Substandard Performance.

- i. As opposed to performance development, correcting poor performance addresses an inability to do the job or portions of the job. The situation must be appropriately managed in the event the poor performance or behavior could lead to termination of employment.
- ii. Guidelines for performance improvement.
 - 1. Has the employee been appropriately trained?
 - a. Explore development of a remedial training program.
 - 2. Has employee been shown precisely where and why the performance is considered substandard?
 - a. Ensure that coaching and correction conversations have occurred and are appropriately documented.
 - 3. Has the employee been allowed the opportunity to respond to his or her view of the alleged deficiencies?
 - a. Consider all viewpoints to ensure that the deficiencies are real, as opposed to subjective viewpoints of others that may not be accurate. Make certain that all stakeholders have their say.
 - 4. Has a plan been implemented and given time to assist the employee in bringing performance to expected standards?
 - a. Performance improvement plans are a must before separating the employee for substandard performance.
 - 5. Is the employee's performance being measured in the same fashion as others who are similarly-situated? Has the employee been treated fairly in all respects?

c. Staff Development.

- i. Employee development initiatives are those that seek to expand an employee's responsibilities and growth.

- ii. Foster a culture of continuous learning!
- iii. Developing staff is a major factor in developing your workplace culture and positively impacting employee engagement.
- iv. Development initiatives should be aligned with the mission, vision, and values of the organization and each employee's department. This requires a compelling vision and clearly delineated goals.
- v. Some development ideas include having staff:
 - 1. Mentor or onboard a new employee.
 - 2. Lead a team or project.
 - 3. Temporarily fill in for a supervisor.
 - 4. Make a presentation to department staff or department heads.
 - 5. Evaluate and propose suggestions for improving a process or procedure.
 - 6. Serve as a liaison between two or more functions.
 - 7. Conduct a cost-benefit analysis.
 - 8. Create a business case for additional resources.
 - 9. Join a job-related or professional association.
 - 10. Teach a process or course to co-workers.
 - 11. Run a staff meeting.
 - 12. Work on a challenging project or initiative.
 - 13. Represent the department at a cross-functional meeting.
 - 14. Write a grant.
 - 15. Expand accountabilities.
 - 16. Attend in-house or outside training.
 - 17. Expand scope of responsibilities.
 - 18. Cross train or teach job rotation.

11. **Conflict Management.**

- a. A number of effective models exist to help navigate conflict in the workplace.
 - i. Examples:
 - 1. Crucial Conversations.
 - 2. Reality-based Leadership.
 - 3. Emotional Intelligence 2.0.
 - 4. Strength Finders 2.0.
 - 5. BIFF Response Method.
 - 6. LinkedIn Learning ~ Managing Conflict.
 - b. The absence of conflict and/or artificial harmony is NOT the goal. The goal is to manage conflict to assist in arriving at the best decision/outcome/relationships.
 - c. Create a model that works for the environment and then train in the model, consistently and continually reminding staff of the principles to be employed.
 - i. Everyone must be given the tools or it will not work.
 - ii. Suggested components:
 - 1. START with self-examination.
 - a. "What are my shortcomings?"

- b. “What do I need to work on to improve my conversation and conflict management skills?”
- 2. Work on development of trust, authenticity, vulnerability.
- 3. Develop real and active listening skills.
- 4. Learn how to effectively utilize pauses and silence to keep conflict from escalating.
- 5. Learn techniques to manage emotions and to respond rather than react.
- 6. Study techniques to stay calm and defuse anger.
- 7. Remain open to others’ perspectives and solutions.
- 8. Learn to discuss, as opposed to debate. Define the goal as arriving at the best way to deal with the situation at hand, even if different than initially desired.
- 9. Genuinely caring for other people and be able to demonstrate that care and concern.
- 10. Learn to say “I’m sorry.”
- 11. Practice, practice, practice.....and then practice some more.

12. **Discipline and Documentation**.³

- a. Basic investigatory guidelines:
 - i. Place employee on leave pending investigation depending on seriousness of the alleged situation.
 - ii. Be proactive, prompt, thorough, objective and unbiased.
 - iii. PREPARE! Questions, lines of inquiries, issues to be addressed, specific statements that need to be verified, etc.
 - iv. Determine if *Garrity* warning is required; this notice requires an employee to tell the truth and cooperate in the investigation, and provides an assurance that nothing he or she says can be used in any criminal proceeding. Do not move forward without consulting legal counsel as the use of, or decision not to use, is dependent on the circumstances presented.
 - v. Interview all relevant parties, including the employee, making certain to explain the allegations and ensure the employee has adequate opportunity to respond and provide his or her side of the story.
 - vi. Seek confidentiality.
 - vii. Document everything.
 - viii. Review all relevant documentation, including the personnel file and prior instances of similar conduct by others in the organization, before making findings and conclusion.

³ /Wisconsin statutes, such as Sec. 62.13, and collective bargaining agreements may have specific requirements for discipline, termination and documentation. These are not addressed herein as they are beyond the scope of this outline.

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- ix. Determine the applicability of the rules/policies to the conduct at issue.
 - x. Determine appropriate discipline, making certain that it is reasonably calculated to prevent similar future infractions and is in proportion to the severity of the current infraction.
 - xi. Consult legal counsel for possible use of a formal last chance agreement where appropriate.
- b. Meetings to impose the discipline decided upon:
- i. Describe the nature of the discipline, changes that need to be made, and the time frame for making them, as well as the consequences of a failure to do so.
 - ii. Offer any suggestions for correcting the conduct.
 - iii. Ask the employee for input on how the organization can assist in the effort to correct the conduct.
 - iv. Provide additional training if necessary.
 - v. Have the employee sign an acknowledgement form any time counseling or disciplinary action is taken, or note a refusal to sign the document.
 - vi. To the extent possible, have a witness/note taker sit in on any counseling or disciplinary meetings.
- c. Disciplinary Considerations:
- i. In litigation and other legal proceedings, employers must be able to demonstrate that:
 - 1. The employee knew or should have known the rules and the consequences.
 - 2. The rule or policy is reasonable.
 - 3. A fair and objective investigation was conducted to determine whether the employee in fact violated or disobeyed the rule or policy.
 - 4. The employee was given the opportunity to tell his or her side of the story.
 - 5. The evidence gathered during the investigation revealed that the employee more likely than not did engage in conduct contrary to the rule or policy.
 - 6. The rule and penalties have been even-handedly applied to all employees in similar situations.
 - 7. The discipline imposed on the employee is reasonably proportional to the severity and nature of the offense.
- d. Documentation:
- i. Purpose:
 - 1. Serves as an accurate summary of findings of fact.
 - 2. Explains why a particular decision or conclusion was reached.

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- ii. When:
 - 1. Documentation should be used whenever there is a significant performance or conduct problem.
 - 2. Not only should the problem be documented from the beginning, but follow up efforts to correct the problem must also be noted.
 - 3. Document events as close in time to their occurrence as possible.
 - 4. If not possible, include a reason for the delay.
- iii. Judges, juries, attorneys and employees expect proper documentation.
 - 1. All documentation should be prepared with the idea that someone else will be reading and evaluating its contents.
 - 2. The focus is on truthfully recording and assessing situations that occur in the workplace, and avoiding language or inferences that could cause legal problems.
 - 3. Inaccurate, incomplete, inflammatory, or imprecise language must be avoided. Proofread all documentation before finalizing.
 - 4. Be absolutely truthful, stick to the facts, avoid speculation, editorial comments or opinions. Ask:
 - a. “Is this document a fair and accurate account of the events in question?”
 - b. “Would I feel comfortable having this read back to me in a courtroom and being subjected to vigorous cross-examination regarding my written statements?”
 - 5. Keep it short and to the point to prevent inconsistencies and avoid surplus information.
 - 6. Verify all facts before memorializing them in a final document.
 - 7. If the information came from someone else, be sure it is written to make that fact clear.
 - 8. Do not write in a manner that “admits” someone else’s account, unless you mean to do so.
 - 9. When recording impressions or conclusions based on information from others, include objective reasons for crediting what you were told.
 - 10. When credibility determinations are required, make clear who you believed and provide objective reasons for your decision.
 - 11. Always date a document on the date it was written.
 - 12. Do not use inflammatory language (name calling, curse words, etc.) unless you are recording actual events.
 - 13. Mean what you say and say what you mean.

13. Separation and Termination.

- a. At-will employment:
 - i. Allows an employer to discharge an employee, and allows an employee to leave employment, for any reason or no reason at all, with or without notice.
 - ii. Exceptions to the at-will doctrine include discharges for reasons that violate a State or Federal law, for example, firing someone for a discriminatory reason, or out of retaliation for performing a legally-protected action.
 - iii. Just cause provisions in collective bargaining contracts, ordinances, or civil service systems similarly act as exceptions to the at-will rule.
 - iv. Be wary of using probationary periods as these similarly could be used to argue an exception to the at-will rule.
 - v. Must be cognizant of potential situations where statutes, contracts, policies, nature of the termination, etc. may create a property or liberty interest. Where such exists, employees are entitled to certain due process/procedural rights. It is best to consult an attorney prior to imposing significant discipline or terminating an employee.
- b. Legalities and Best Practices for Separations.
 - i. Basic criteria:
 1. The employee has had the opportunity to tell his or her side of the story.
 2. There is documentation to support the termination.
 3. Employees in similar situations have been treated the same in the past.
 4. Your lawyer approves and has opined that the termination will not violate any local, state or federal law.
 - ii. Termination Meeting
 1. Remember to handle all terminations with dignity and respect.
 2. If possible, arrange the meeting at the very beginning or very end of the workday and earlier in the week if possible.
 3. Have a witness present.
 4. Line up security depending on the circumstances.
 5. Use a checklist.
 6. Make it short and to the point. Provide a simple statement for the reason to terminate.
 7. Indicate the steps taken and the employee's failure to correct behavior or bring performance to standard. The employee should already have had an opportunity to respond, so do not engage in debate at this stage.
 8. Discuss arrangements for final pay.

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- a. Seeking a separation and release may be advisable depending on the situation; consult with legal counsel to discuss.
 9. Explain when benefits will end and when the COBRA notice will be sent.
 10. Explain the organization's job reference policy.
 11. Collect all keys, credit cards, technology devices, and other property belonging to the company.
 12. Make arrangements for the pickup/delivery of personal belongings.
 13. Ensure employee leaves the premises.
 14. Document.
- iii. Exit interviews.
 1. Use pre-interview questionnaire.
 2. Follow-up questions at exit interview. This should include:
 - a. Suggestions for improvement.
 - b. Problem areas that need to be solved.
 - c. Any other retention issues.

14. **Record-keeping, Notice, Retention Requirements.**

- a. All employee information/records must be kept in locked cabinets or securely in a confidential data base/server on the computer.
- b. Medical folders must be maintained separately from all other personnel documents and access must be limited to those with protection of privacy obligations and training.
- c. I-9 forms should be kept separately as well.
- d. State and Federal laws have varying record retention requirements. Best practice is to incorporate a standard for retention into municipal ordinances to ensure compliance with all applicable laws.
- e. Records related to a probable or pending claim must be preserved and retained through final disposition. Federal law requires a "litigation hold" preserving any and all potential evidence or documents related in any way to a situation that could result in litigation. There are serious consequences for failure to do so.
- f. State and Federal laws have varying reporting requirements that employers must be aware of, examples of which include:
 - i. EEO-4.
 - ii. Creditable coverage disclosure to CMS/Medicare Part D.
 - iii. DSPS injury summary.
- g. WI and Federal posting requirements. Must be prominently displayed in areas where all employees have access.
 - i. Safety.

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- ii. EEO.
- iii. Wage & Hour.
- iv. USERRA.
- v. Polygraph protection.
- vi. FMLA.
- vii. Unemployment and Worker's Compensation.
- viii. Cessation of health care benefits.

15. **Take-Aways:**

- a. Every municipality with any number of employees needs to understand what laws apply and how to comply with them.
- b. One person in each municipality has to have oversight for the HR function and regularly communicate with department heads regarding HR issues.
 - i. Medical situations.
 - ii. Workplace complaints.
 - iii. Uniformity of decisions.
- c. The person designated with HR oversight must stay abreast of developments in the law and best practices.
- d. Employers should regularly (minimum of every other year) evaluate their current practices and compliance and revise accordingly.
- e. Employees and supervisors must be trained bi-annually.
- f. Obtain and utilize available resources:
 - i. State Bar's Employment Law book series.
 - ii. Wisconsin Employment Law Code Book.
 - iii. SHRM
 - iv. ICMA
 - v. Law Firm Newsletters.