

Human Resources 101 for Municipal Officials

Presented for League of Wisconsin Municipalities
Webinar Series

May 21, 2019

What We Will Cover

- Classification.
- Recruitment.
- Onboarding.
- Wage & Hour.
- Handbooks.
- Medical Situations.
- Safety.
- Supervisors.
- Training.
- Discipline/Termination.
- Documentation/Recordkeeping.
- Managing Conflict.

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Learning Objectives

- Overview of the components of effective human resources management.
- Understand that there are a myriad of different laws that impact the human resources function.
- Touch on human resources best practices.
- Learn to spot potential areas of trouble.
- Know when to seek legal assistance.

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Components of People Management

- Transactional ~ administration of employee services.
- Strategic ~
 - Organizational development.
 - Talent management.
 - Alignment of organizational objectives.

Components of People Management

- Legal Compliance.
 - State and Federal statutes.
 - Common Law.
 - Wrongful discharge/discharge in violation of public policy.
 - Breach of contract.
 - Invasion of privacy.
 - Defamation.
 - Negligent hiring, training, retention, supervision.
 - Intentional infliction of emotional distress.

Independent Contractors

To be considered an independent contractor and not an employee, an individual must meet and maintain all nine of the following requirements:

- Requirement One:** Maintain a separate business.
- Requirement Two:** Obtain a Federal Employer Identification Number or has filed business or self-employment income tax returns with the IRS based on the work or service in the previous year.
- Requirement Three:** Operate under specific contracts.
- Requirement Four:** Be responsible for operating expenses under the contract.
- Requirement Five:** Be responsible for satisfactory performance of the work under the contracts.
- Requirement Six:** Be paid per contract, per job, by commission or by competitive bid.
- Requirement Seven:** Be subject to profit or loss in performing the work under the contracts.
- Requirement Eight:** Have recurring business liabilities and obligations.
- Requirement Nine:** Be in a position to succeed or fail if business expenses exceed income.

Non-exempt v. Exempt

- Hourly verses Salaried.
- Impending revision to salary threshold.
- What is employee's primary duty?
- Categories:
 - Administrative ~ discretion and judgment= matters of significance (see WI).
 - Executive ~ C-Suite and managerial who supervise others.
 - Professional ~ engineers, attorneys, doctors, accountants=specialized study (see WI).
 - Misc categories ~ sales, commission, IT-related, etc.

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Recruitment

- Hire right without violating the law.
- Seek to prevent the use of arbitrary and irrelevant criteria that intentionally or unintentionally could screen out any candidate based on a protected class status.
- The law presumes that inquiries that are made are used in the hiring decision.
- The entire process must be designed to stay focused on only using job-related criteria to make a final determination.
- Job descriptions will be used as the applicable framework.

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The Wisconsin Fair Employment Law prohibits employers from discriminating against employees and job applicants because of any of the following:

- Age Discrimination
- Arrest and/or Conviction Record
- Ancestry, Color, National Origin or Race
- Creed
- Disability
- Genetic Testing
- Honesty Testing
- Marital Status
- Military Service
- Pregnancy or Childbirth
- Sex Discrimination
- Sexual Orientation
- Use or nonuse of lawful products off the employer's premises during nonworking hours

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Interviewing

- Must have a very clear idea of the expectations for and duties of the position and formulate questions and assessments around that "picture" of the ideal candidate.
- NO personal questions.

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Interviewing

- Tailor all inquiries to an ability to do the job and fit the culture.
 - Questions and observations around attitude, demeanor; objective descriptions must be documented.
 - Utilize your organization's stated mission, vision and values.
- Studies show that one of the greatest predictors of high-level performance is past performance.
 - Heavily utilize behavioral, situational, and hypothetical-based questions.

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Interviewing

- Can you end an interview with a candidate before asking every last question on the list??
- Documentation.
- Decision-making.
- Training for hiring managers/decision-makers.

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Appropriate Interview Questions

- Why are you interested in this position?
- Can you perform the essential functions of the position as listed on the job description?
- The regular hours for this position are 8 a.m. to 4:30 p.m., will you be able to work those hours?
- What attributes do you think will be necessary to be successful in this job/career?
- Name one thing you have done or accomplished with prior employer that you are particularly proud of? One disappointment?
- Tell me about a time you dealt with a difficult customer and how you handled the situation?

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Age/Date of Birth

- Unlawful:
 - What is your age or date of birth?
 - How old are you?
 - What year were you born?
 - What year did you graduate from high school/college?
 - At what age do you plan to retire?
- Lawful:
 - How long do you intend to work in the position you are seeking?

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Arrest/Conviction

- Have you ever been arrested or convicted?
- Past arrests verses pending.
- Conviction:
 - "A conviction will not necessarily disqualify you from employment. It will be considered only as it may relate to the job you are seeking."

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Arrest/Conviction

- Applicable standard ~ “substantially related to the circumstances of the job.”
- Requires a case by case determination.
- 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.
- Best handled at background screen phase.

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Weekend Availability

- Are you able to work on Saturday and Sunday?
- Make clear that a reasonable effort to accommodate religious practices will be made if possible without undue hardship on the employer.
 - Volunteers
 - Rotating schedules
 - Trades

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Financial Background

- Do you have a garnishment record?
- Do you have credit problems?
- Describe your credit history? Bankruptcy?
- Are you a homeowner?
- Fair Credit & Reporting Act regulations.

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Physical Status

Unlawful ~

- Do you have a disability?
- Any family members with a disability?
- Have you ever been injured on the job?
- Have you ever filed a work comp claim?
- What is your health history?

Lawful ~

- "Are you able to perform all of the duties and responsibilities of this position, with or without reasonable accommodation?"

Assessments

- Valid.
- Reliable.
- Job-related.
- Vendors matter.

Background Screening

- Consent.
- Conducted by someone other than hiring manager.
- Use of third parties and the Fair Credit Reporting Act requirements.
- Professional references, employment, education, credit/financial history, driving, criminal.

Onboarding

- Set up for success and retention.
- Goals:
 - Learn the new role and all that goes along with it.
 - Integration into the culture, expectations, and norms.
 - Develop relationships and feeling of belonging.
- Orientation checklist.
- Orientation guide for new hires.
- Set a 30/60/90 day plan and schedule follow-up at those same intervals.
- Survey/Exit interview.

I-9 Forms

- Form can be completed any time after new hire is cleared to start and prior to the first day of employment, but must be finalized within 3 days of the hire date.
- Employers must examine original and unexpired documents. New hires choose which documents to bring.
- Form must be completed to a "T."
- Forms of identification must strictly adhere to the List of Acceptable Documents.
- Use the correct form.
- E-verify.
- Fines and penalties are stiff.
- Government has tripled the # of workplace audits.

Calculation of Overtime

- Must be calculated in a workweek.
- The calculation must include all compensation received.
- Hours worked?
- Travel, training, meals/rest periods.
- Vacation, holiday, sick, comp time?
- Employees processing payroll must be well trained in both state and federal laws.

Compensable Hours

- Meals.
- Travel.
- Training.
- Unauthorized overtime.
- Off-duty emails and phone calls.

Handbooks

- Do not use a form handbook.
- Keep it simple and not too specific.
- Ensure it contains needed disclaimers:
 - Not a contract/employment-at-will.
 - Right to modify.
 - No exceptions other than by signed writing.
- Mandatory grievance procedure.
- Terms to avoid ~ "permanent", "probationary."
- Final product reviewed by employment counsel.
- Keep it updated.
- Updates reviewed by employment counsel.

Medical Inquiries and Situations

- WFEPA.
 - Limits capacity to work.
- Reasonable accommodation.
 - WFEPA v. ADA.
 - Interactive process required by ADA.
- Pre-offer, Post-offer, Post-hire.
- Privacy and protection of medical information.
 - Locked and separate.
 - "Need to know."
 - Avoid casual conversation.

Safety

- Care and concern for employees.
- Never know when DSPS will come knocking at your door.
 - Complaint.
 - Audit.
 - Response to reporting.
- Employee right to refuse.
- Personal protective equipment.
- Training ~ employee and supervisors.
- Accident investigations.
- Injury reporting.....the right way.
- Maintenance of records.
- Safety posters.

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Importance of Supervisors

- Monitor work environment.
- Enforce zero tolerance for harassing, discriminatory, bullying behavior.
- Respond to complaints and observations.
 - All must be taken seriously, even off-hand comments or requests that nothing be done.
- Scan for and be aware of retaliation.
- Consistent enforcement of policies.
- Recognize how to handle medical situations.
- Act like leaders.
- Legal liability.

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Training

- Safety.
- Harassment.
- Discrimination.
- FMLA.
- ADA.
- Privacy.
- Employee v. Supervisory.

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Discipline Best Practices

- Goal: Behavior change and to promote fairness.
- Be aware of statutory standards, i.e. police and fire.
 - "Due process" basics:
 - Expectations and consequences are clear.
 - Decision is based on factual evidence following fair and impartial investigation.
 - Employee given right to tell his or her side of the story.
 - Discipline imposed is proportionate to the infraction and equally applied in similar circumstances.
 - Uses progressive discipline where appropriate.
 - Consult employment counsel prior to denial of pay/position.

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Termination Best Practices

- Give consideration for the location.
- Use a witness.
- Make it happen in a timely fashion.
- Early to mid-week is best; avoid important dates and times.
- Make it clear in the very first sentence.
- Do not debate and do not be led to make a statement you will later regret.
- Do not discuss the reason for termination with others.
- Do inform staff and third parties who need to know of the decision.

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Documentation

- Do it.
- Important to:
 - Ward off claims.
 - Defend claims.
 - Demonstrate fair and lawful treatment.
 - Impede fabrication.
- If done incorrectly:
 - Can lead to claims.
 - Lead to a loss if claim is filed.

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Recordkeeping

- Know federal and state laws.
- Understand obligations in the event of anticipated and actual litigation.
- Incorporate into municipal ordinances.
- Understand employees' rights to access records.
- Audit recordkeeping, postings and reporting.

Conflict Management

- If neglected, can be a culture killer.
- If not equipped, some may have no idea how to negotiate conflict or resolve problems.
- Components.
- Training.

If you remember only one thing:

- Understand the applicable laws and how they apply to your municipality.
- One person appointed, educated and trained.
- Regularly assess human resources practices, policies and procedures.

Resources

- Wisconsin State SHRM – mid-October.
- HRCI/SHRM certifications.
- State Bar of Wisconsin.
- ICMA.
- WPELRA.
