

# Human Resources 101 for Municipal Officials

Presented to: League of Wisconsin Municipalities

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## 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

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- 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

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

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## Components of People Management

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- 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.

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## Overview of Wisconsin Laws

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- Employee Safety ~ Wis. Stat. Chapter 101.
- Worker's Compensation ~ Wis. Stat. Chapter 102.
- Employee Access to Records ~ Wis. Stat. Section 103.13.
- Wage & Hour ~ Wis. Stat. Chapters 103, 109, 812.
- Family & Medical Leave ~ Wis. Stat. Sections 103.10 and 103.11.
- Unemployment Insurance ~ Wis. Stat. Chapter 108.
- Fair Employment Act ~ Wis. Stat. Chapter 111.31-111.95.
- Municipal Employment Relations Act ~ Chapter 111.
- Wisconsin Stats. Chapter 61 (Villages) and Chapter 62 (Cities)

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## Overview of Federal Laws

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- Title VII of the Civil Rights Act of 1964.
- Pregnancy Discrimination Act.
- Americans with Disabilities Act and Amendments Act.
- Family and Medical Leave Act.
- Age Discrimination in Employment Act.
- Genetic Information Nondiscrimination Act.
- Health Insurance Portability and Accountability Act.
- Equal Pay Act.
- Immigration Control and Reform Act.
- Fair Labor Standards Act.
- Fair Credit Reporting Act.

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## Independent Contractors

To be considered an independent contractor and not an employee, an individual must meet and maintain all nine of the following requirements (from WI Worker's Comp law):

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.
- Recent revision to salary threshold.
- Only FLSA applies.
- Categories:
  - Administrative ~ discretion and judgment.
  - Executive ~ C-Suite and managerial who supervise others.
  - Professional ~ engineers, attorneys, doctors, accountants.
  - Misc categories ~ sales, commission, IT-related, etc.

## Recruitment

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- It can be hard! Need to be creative!
- Long-term:
  - Cultivating candidates in high school and college.
  - Building an employer “brand” ~  
[https://www.westalliswi.gov/DocumentCenter/View/14122/2019\\_Assistant-City-Administrator-](https://www.westalliswi.gov/DocumentCenter/View/14122/2019_Assistant-City-Administrator-)
- Short-term:
  - Professional Associations.
  - League of WI Municipalities.
  - Linked In and other social media.
  - Craig’s List.
  - Direct solicitation.
  - Professional recruiters.

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## Recruitment

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- 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.

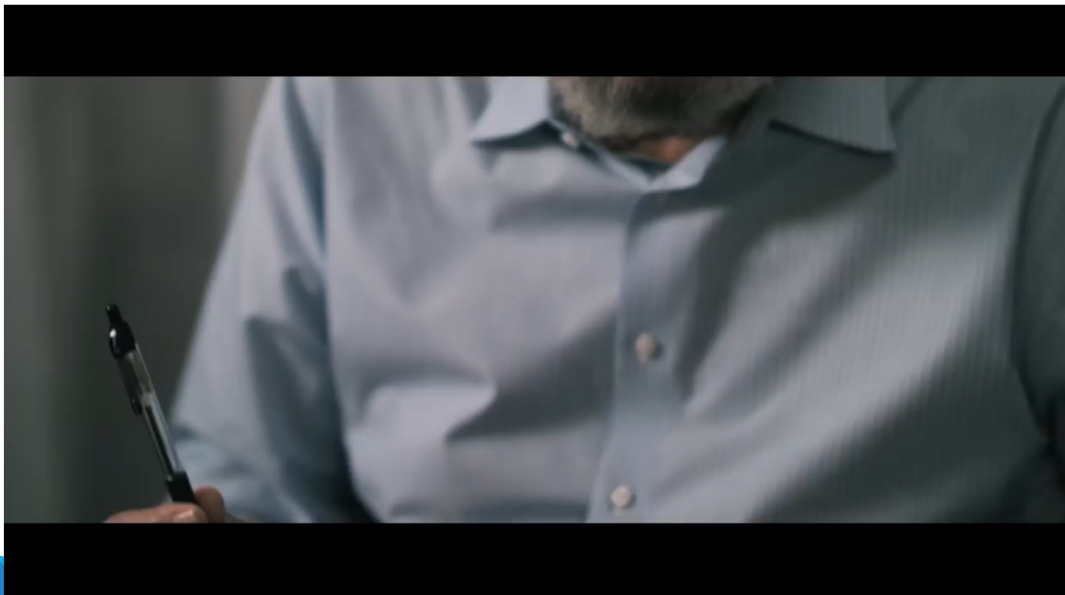
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The Wisconsin Fair Employment Law prohibits employers from discriminating against employees and job applicants because of any of the following:

- **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 – NOT for the faint of heart



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## Interviewing

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- **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

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- **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

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- 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

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- 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

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- **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?

## Arrest/Conviction

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- 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.”

## Arrest/Conviction

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- 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

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- 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

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- 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

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### 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?”

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## Assessments

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

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## Background Screening

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- 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.

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## Onboarding

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- 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.

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## I-9 Forms

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- 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.

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## Calculation of Overtime

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- 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

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

## Handbooks

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- 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.

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## Medical Inquiries and Situations

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- 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.

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## Safety

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- 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

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- 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

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- Safety.
- Harassment.
- Discrimination.
- Diversity.
- Unconscious bias.
- Bystander awareness.
- FMLA.
- ADA.
- Privacy.
- Employee v. Supervisory.

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# Discipline Best Practices

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- 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

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- 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

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- 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

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- 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/Bullying/Harassment Management

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- Commitment from the top of the organization to workplace respect and civility.
- Values to include respect, collaboration, trust, teamwork, encouragement, no tolerance for rude/disrespectful behavior, bullying or harassment.
- Training for managers.
- Training for employees.
- Applicable policies.
- Risk assessments.
- Conflict management processes.
- Hiring/promotion processes as gate-keepers.

## Key Takeaways:

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- 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.
- Regularly train managers and staff.

## Resources

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- Wisconsin State SHRM ~ mid-October.
- HRCI/SHRM/IPMA-HR certifications.
- State Bar of Wisconsin ~ Employment Law Code Book/Employment Law book series.
- Wisconsin City/County Manager Association.
- Wisconsin Public Employer Labor Relations Association.
- International City/County Management Association.

# *Thank You!*

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