PERSONNEL ISSUES

PERSONNEL MANAGEMENT IN COUNTIES

HR management not centralized
Financial aspects may/may not be centralized
Most don’t have HR director
Not uniform across the state

GENERAL RULES
WHOSE AUTHORITY?

County Commission authority:

- **No**
  - Day-to-day personnel decisions in county offices

- **Yes**
  - Overall budget for employee compensation and benefits
  - Health insurance and other countywide benefits

THREE BIGGEST ISSUES NOW

- Policies
- Budget & Authority to Hire
- Staffing

PERSONNEL POLICIES – REQUIRED

T.C.A. § 5-23-101 et seq.

- Leave
- Wage & hour
- Non-discrimination
- Drug testing (only safety sensitive employees)
PERSONNEL POLICIES – REQUIRED

- All county employees must be covered
- Policies may be countywide or office-specific
- CLB approves countywide policies
- If office files individually, CLB has no approval
- Approved by attorney (county attorney or other attorney appointed by county mayor for this purpose)
- Filed in office of county clerk

FIND YOUR POLICIES

PERSONNEL POLICIES – REQUIRED

- Policies may be changed – method depends on how policies were adopted

Separate policies adopted for your office
- May be changed at any time with attorney approval

Governed by countywide policies
- May file separate policies with attorney approval on or before November 30 (or wait until next year)

PERSONNEL POLICIES – OTHER

- Each official can adopt policies in addition to those that are required by law
- Cover day-to-day operation of the office
- No approval or filing required
- Check with your county attorney to make sure nothing will cause you problems
HOW EMPLOYEES ARE HIRED: COUNTY MAYORS

T.C.A. § 5-6-116

The county mayor has the authority to hire clerical assistants where necessary to properly and efficiently transact the business of that office under T.C.A. § 5-6-116, as long as sufficient funds have been appropriated for this purpose.

HOW EMPLOYEES ARE HIRED: HIGHWAY DEPARTMENTS

Chief Administrative Officer (Highway Superintendent) has broad authority to determine number and compensation of employees within the budget adopted by county legislative body (T.C.A. § 54-7-109).

HOW EMPLOYEES ARE HIRED: “FEE OFFICES”

For clerks of court, county clerks, trustees, registers of deeds and sheriffs, number & compensation of employees is determined by one of two methods:

1. Salary Suit
   - County mayor named as defendant
   - CLB must fund what court orders
2. Letter of Agreement
   - Avoids lawsuit if officials agree with what CLB has budgeted
HOW EMPLOYEES ARE HIRED

Department of Education
School board hires employees within parameters set in Title 49 and within budget.

Other Departments
Look to applicable statutory authority.

TO FIRE OR NOT TO FIRE?
First Amendment issues
Employees cannot be terminated, demoted, transferred, or otherwise punished solely for their political beliefs or activities.
Lawsuits often result (not limited by TCA). Personal liability is possible.

TO FIRE OR NOT TO FIRE?
Other rights
Personnel policies may require written notice, appeal, hearing or other procedures.
Contractual rights.
Consider cost of hiring and training new personnel.
Consider loss of knowledge and experience.

EMPLOYMENT LAW

TO FIRE OR NOT TO FIRE?

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TO FIRE OR NOT TO FIRE?

Evaluate First!

Check personnel policies
Observe current staffing arrangements
Identify your most qualified people
Develop a reasonable basis for all staffing decisions

Act Second!

Consult your County Attorney before taking any action!

OVERVIEW OF PERSONNEL LAWS

State and Federal
FEDERAL FAIR LABOR STANDARDS ACT (FLSA)

- Minimum wage is $7.25 per hour
- If employee works overtime, employee MUST be paid overtime at 1 1/2 times regular rate of pay
- Compensatory time may be used IF policy in place or employee agrees prior to doing the work
- Administered by the U.S. Department of Labor, Wage & Hour Division

OVERTIME EXEMPTIONS (FLSA)

- Exempt employees are not entitled to overtime
  - executive, administrative, professional
- To qualify for exemption, employees must be paid on salary basis, at least $684 per week/$35,568 per year.
- Must also meet primary duty test for exemption

FAMILY AND MEDICAL LEAVE ACT (FMLA)

- Eligibility
  - Employed 1 year in county AND
  - worked 1,250 hours in previous 12 months
  - 12 workweeks leave (paid or unpaid)
  - Birth or placement of child, serious health condition of employee or immediate family
  - Qualifying exigency and military caregiver leave
- Administered by the United States Department of Labor, Wage & Hour Division
COUNTY OFFICIALS ORIENTATION PROGRAM 2022

TENNESSEE PARENTAL LEAVE ACT

• Applies to employers with 100 or more full-time employees
• Both male and female employees can take up to four months off for adoption, pregnancy, childbirth, and nursing an infant as long as the employee has been employed for 12 months
• Leave may be with or without pay
• Three months notice required unless there is a medical emergency

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AMERICANS WITH DISABILITIES ACT (ADA)

• Prohibits discrimination against qualified individuals with disabilities
• Requires reasonable accommodation
• Medical records CONFIDENTIAL
• Prohibits medical examinations prior to conditional job offers

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DISCRIMINATION LAWS

Title VII & other discrimination laws prohibit discrimination and harassment on the basis of:

- Race
- Religion
- Sex
- Color
- National Origin
- Age (ADEA)
- Disability (ADA)
- Genetic Information (GINA)

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DISCRIMINATION – MILITARY SERVICE

No denial of employment, reemployment, retention, promotion, or any benefit of employment…

…on basis of any manner of connection to the armed forces

DRUG AND ALCOHOL TESTING

4th Amendment – warrantless search
No law requires testing of employees except those whose jobs require a commercial driver license (CDLs)

“Safety Sensitive” = “fraught with such risks of injury to others that even a momentary lapse of attention can have disastrous consequences”

WRITTEN POLICY REQUIRED

FIRST AMENDMENT ISSUES

Governmental employees have a First Amendment right to speak out on “matters of public concern”

Limitation: First Amendment generally does not protect employees complaining about office management issues

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OTHER PERSONNEL LAWS

- Retaliation/Whistleblower issues
- Form I-9
- State law issues
- Workers' compensation
- Health insurance
- Unemployment compensation

RECORDKEEPING

Good documentation is important
Each department head is responsible for recordkeeping unless recordkeeping is centralized (T.C.A. § 5-23-107)
Disposition schedules

LIABILITY ISSUES

- Tennessee Governmental Tort Liability Act only applies to state law issues
- Most employment law issues are federal law
- Many violations of employee’s rights under employment laws can result in personal liability
WHERE TO FIND HELP

- Your County Attorney
- County Technical Assistance Service (CTAS)
  http://www.ctas.tennessee.edu/
- CTAS electronic library (“e-Li”)
  http://el.ctas.tennessee.edu/
- United States Dept of Labor, Wage & Hour Division
  http://www.dol.gov/whd
- U.S. Equal Employment Opportunity Commission (EEOC)
  http://www.eeoc.gov

REMEMBER...

Three biggest personnel issues now?