

RELEVANT LINKS:

I. APPLICABLE STATE AND FEDERAL LAW

[U.S. Department of Labor](#)

[Minnesota Department of Labor and Industry](#)

Overview: State and federal laws that may apply to a city at various points in the process of separating from employment are listed in this section. In addition, these laws are discussed throughout this manual as applicable topics are addressed.

A. Affirmative Action

[Minnesota Statutes 363A.36, Subdivision 1](#)

The Minnesota Department of Human Rights advises that cities are not required, but are encouraged, to establish and comply with an affirmative action plan.

[Office of Federal Contract Compliance Programs](#)

The federal Government Office of Contract Compliance advises cities receiving federal funding to work directly with the federal agency from which funding is to be received to determine if an affirmative action plan is required.

B. Age Discrimination in Employment Act

[The Age Discrimination in Employment Act of 1967](#)

The Age Discrimination in Employment Act (ADEA) of 1967 prohibits employment discrimination against individuals 40 years of age and older. It applies to employers with 20 or more employees.

C. Americans with Disabilities Act

[The Americans with Disabilities Act of 1990, Titles I and V](#)

Title I of the Americans with Disabilities Act (ADA) prohibits employment discrimination against qualified individuals with disabilities. It applies to employers with 15 or more employees.

D. Benefit Continuation Laws

[MN and COBRA Continuation Coverage](#)

[U.S. Department of Labor](#)

Most employers are required under federal and state law to offer employees continuation of medical benefits for a period of time after they leave employment.

Generally, self-funded plans are subject to COBRA, but not state continuation laws. Fully insured plans are required to comply with both COBRA and Minnesota Continuation Law. Regardless of plan structure, most cities are required to comply with state law as well as COBRA requirements because they are either:

[Minnesota Statutes 471.617](#)

- Covered under a fully insured group plan; or
- Self-insured under MN Statute 471.617, which requires compliance with Minnesota insurance laws; or
- Covered under the League of Minnesota Cities Insurance Trust (LMCIT), which is self-insured under MN Statute 471.617 and required to comply with Minnesota laws.

RELEVANT LINKS:

1. Consolidated Omnibus Budget Reconciliation Act (COBRA)

[U.S. Department of Labor](#)

The Consolidated Omnibus Budget Reconciliation Act (COBRA) gives workers and their dependents who lose their health benefits the right to choose to continue group health benefits provided by their group health plan for limited periods of time. COBRA generally requires that group health plans sponsored by employers with 20 or more employees in the prior year offer employees and their families the opportunity for a temporary extension of health coverage (called continuation coverage) in certain instances where coverage under the plan would otherwise end.

2. Minnesota Continuation

[MN and COBRA Continuation Coverage](#)

While COBRA only applies to employers with 20 or more employees, employers in Minnesota with less than 20 employees are required to offer continuation of coverage under Minnesota law. Regardless of size, cities offering group health, dental, and life insurance benefits will need to offer employees who are leaving the city's employment with the option to continue these benefits for a certain period of time.

3. Retiree Coverage

[Minnesota Statutes 471.61, Subdivision 2b](#)

[Retirees: Continuation of Coverage](#)

In addition to federal law, Minnesota law requires that state and local governments allow some former employees and their dependents to continue to participate indefinitely in the employer-sponsored hospital, medical, and dental insurance group that they participated in immediately prior to retiring. In order to be eligible for this indefinite coverage, the former employees must meet certain criteria for receiving or being eligible to receive a retirement annuity from a Minnesota public pension plan.

City employees who retire before the age of 65 must be allowed to continue on the same benefit plan as active employees and at the same premium rates. This requirement, however, only applies until the early retiree reaches age 65. At the time the early retiree reaches age 65, the city must still make some benefit plan available to them, but the benefits and rates may differ from what is offered to active employees.

City employees retiring at or after age 65 also must be allowed to continue indefinitely, but the benefits and premium rates for these retirees may differ from those offered to active employees.

4. Police & Fire Special Continuation

[Minnesota Statutes 299A.465](#)

[Minnesota Department of Public Safety](#)

Minnesota law provides continued health insurance coverage for peace officers and firefighters disabled or killed in the line of duty and their dependents meeting the eligibility criteria. Through the Public Safety Officer Benefits Program, cities can apply for partial reimbursement of the employer's share of health care costs. (More information is available on the Minnesota Department of Public Safety web site.)

E. Civil Rights Act of 1964; Title VII

[Title VII of the Civil Rights Act of 1964](#)

Title VII of the Civil Rights Act of 1964 prohibits employment discrimination on the basis of race, color, religion, sex or national origin and applies to employers with 15 or more employees.

RELEVANT LINKS:

F. Civil Rights Act of 1991[The Civil Rights Act of 1991](#)

The Civil Rights Act of 1991 was enacted to amend the Civil Rights Act of 1964, to strengthen and improve federal civil rights laws, to provide for damages in cases of intentional employment discrimination, and to clarify provisions regarding disparate impact actions.

G. Civil Service[Minnesota Statutes 44.08](#)[Minnesota Statutes 419.07](#)[Minnesota Statutes 420.08](#)

Civil service rules may dictate the methods by which a city administers discipline to employees, including the circumstances that must be present to recommend that an employee be terminated.

H. Drug and Alcohol Testing (state & federal)**1. Minnesota Drug and Alcohol Testing in the Workplace Act**[Minnesota Statutes 181.950 to 181.957](#)

The Drug and Alcohol Testing in the Workplace Act provides strict requirements that a city must follow before it can test employees for drug or alcohol use.

Cities must have a written drug and alcohol testing policy that includes very specific information. Upon adoption of a drug and alcohol policy, cities must provide written notice of the policy to all affected employees and job applicants.

A city may not discharge or discipline an employee or withdraw a job offer on the basis of a positive test result that has not been verified by a confirmatory test. In addition, the city cannot discharge an employee for his first positive drug or alcohol test unless:

- The city has first given the employee the chance to participate in a drug or alcohol counseling or rehabilitation program at the employee's own expense; and
- The employee has either refused to participate in the counseling or rehabilitation program, or has failed to successfully complete the program by withdrawing from the program before its completion or by testing positive on a confirmatory test after completing the program.

The city can determine what type of rehabilitation or counseling program is most appropriate after consulting with a certified chemical use counselor or a physician trained in the diagnosis and treatment of chemical dependency. The city can also temporarily suspend the tested employee or transfer him or her to another position at the same rate of pay, pending the outcome of the confirmatory test, provided the city believes such an action is reasonably necessary to protect the health and safety of the employee, co-workers or the public. However, an employee who has been suspended without pay must be reinstated with back pay if the outcome of the confirmatory test or retest is negative.

Although a city cannot terminate an employee because of a positive test result, the city is not restricted from taking employment action for other reasons, such as for misconduct even if the misconduct is related to the drug or alcohol use (i.e., driving a city vehicle while intoxicated).

RELEVANT LINKS:

In general, an employee must be given access to all information maintained by the city relating to his or her own positive test results. The statute specifically mentions that the city must give the employee access to:

- Information in the employee's personnel file relating to positive test results.
- Information acquired in the drug and alcohol testing process.
- Conclusions drawn from and actions taken based on the reports or other acquired information.

2. Omnibus Transportation Employee Testing Act of 1991

The Omnibus Transportation Employee Testing Act of 1991 requires drug and alcohol testing of employees who drive motor vehicles in safety-sensitive functions. Cities must test any employees whose jobs require them to have a commercial driver's license. The city must have a written drug and alcohol testing policy, and each employee must sign a statement that he or she has received a copy of the policy.

Under the rules, local governments will generally be required to conduct pre-employment/pre-duty, reasonable suspicion, random, and post-accident alcohol and controlled substance testing of individuals who perform safety-sensitive functions and whose positions require a commercial driver's license (CDL).

3. Drug-free Workplace Act of 1988

The federal Drug-free Workplace Act of 1988 mandates that all federal grant applications and procurement contracts valued at \$100,000 or more require the grantee or contractor to certify they will provide a drug-free workplace for employees. Employers must:

- Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the workplace.
- Require employees to report to the employer within five days any conviction for any violation of any criminal drug statute that occurred in the workplace.
- Notify the awarding federal agency of such a conviction within 10 days of receiving notice of the conviction.
- Impose a sanction on or require the satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is so convicted.
- Establish an alcohol and controlled substance awareness program.
- Make a good faith effort to continue to maintain a drug-free workplace.

[Federal Motor Carrier Safety Administration](#)

Sample drug and alcohol testing policies are available from the League.

[41 U.S.C. Chapter 10](#)

RELEVANT LINKS:

I. Equal Employment Opportunity Commission (EEOC)

[Equal Employment Opportunity Commission \(EEOC\)](#)

The Equal Employment Opportunity Commission was established by Title VII of the Civil Rights Act of 1964. The EEOC enforces regulations covering employment:

- Title VII of the Civil Rights Act of 1964
- Age Discrimination in Employment Act (ADEA) of 1967
- Equal Pay Act (EPA) of 1963
- Title I and Title V of the Americans with Disabilities Act (ADA) of 1990
- Section 501 and 505 of the Rehabilitation Act of 1973 (*prohibits employment discrimination against federal employees with disabilities*)
- Civil Rights Act of 1991

J. Immigration and Nationality Act

[USCIS Web Site](#)

Pursuant to the Homeland Security Act of 2002, services formerly provided by the Immigration and Naturalization Service (INS) were transitioned into the Department of Homeland Security (DHS) under the Bureau of Citizenship & Immigration Services (BCIS). BCIS focuses exclusively on immigration and citizenship services.

[About Form I-9, Employment Eligibility Verification](#)

Upon hire, cities are required to have all new employees complete a Form I-9 for the purpose of documenting the new employee's ability to legally work in the United States. One part of the Form I-9 requires the employee to produce documentation, such as a driver's license and Social Security card or birth certificate, within three days of employment. If the employee is unable to produce documentation as required by the Form I-9, the city may be forced to terminate the employee.

[Minnesota Foreign Labor \(Alien\) Certification Unit](#)

When an immigrant is already legally working for the city, it is important that the city be aware of the special legal requirements that may come into play if the city decides to terminate the employment of that individual (for any reason). For example, the city may be required by law to pay the cost of sending the immigrant back to her country of origin. The League strongly suggests that a city consult with an immigration attorney in this type of situation.

K. Minnesota Government Data Practices Act

[Minnesota Government Data Practices Act](#)

The Minnesota Government Data Practices Act (MGDPA) controls how government data are collected, created, stored (maintained), used, and released (disseminated).

[Minnesota Department of Administration, Information & Policy Analysis Division](#)

[Public Personnel Data – Fact Sheet #9](#)

[Minnesota Statutes 13.04](#)

[Minnesota Statutes 13.43](#)

[Minnesota Rules 1205.0300](#)

[Minnesota Rules 1205.0400](#)

The information that a city collects and maintains from the employment process is "personnel data." Personnel data are information collected about an individual because that person has or had an employment relationship or applied for a job with the city. Personnel data are typically classified as public, private or confidential. In the discipline situation, the MGDPA sets forth specific requirements for cities in the area of classification and release of data.

RELEVANT LINKS:

L. Minnesota Human Rights Act[Minnesota Human Rights Act](#)

The Minnesota Human Rights Act (MHRA) builds on the U.S. Civil Rights Act of 1964 and offers additional protections to people employed in the state of Minnesota.

The MHRA makes it an unfair employment practice for an employer to discharge or to discriminate against a person with respect to employment because of race, color, creed, religion, national origin, gender (including pregnancy, childbirth and related medical conditions), marital status, status with regard to public assistance, membership or activity in a local commission, disability, sexual orientation, or age.

M. Open Meeting Law[Minnesota Statutes 13D](#)

The Minnesota open meeting law generally requires that all meetings of public bodies be open to the public. However, there are limited exceptions under which some meetings may be closed. This presumption of openness serves three basic purposes:

[Meetings of City Councils](#)

- To prohibit actions from being taken at a secret meeting where it is impossible for the interested public to become fully informed concerning decisions of public bodies or detect improper influences.
- To ensure the public's right to be informed.
- To afford the public an opportunity to present its views to the public body.

The Minnesota open meeting law may apply when a city is considering termination of an employee. For example, a public meeting *may* be closed if the city council meets to discuss the performance of an individual subject to the public body's authority. A public meeting *must* be closed for preliminary consideration of allegations or charges against an individual subject to the public body's authority.

N. Peace Officer Discipline Act[Minnesota Statutes 626.89](#)

The Peace Officer Discipline Act requires cities to follow certain steps and procedures when, during the course of investigating allegations against a licensed peace officer, it is necessary to take a formal statement of that officer. The Act does not apply to investigations of criminal charges against an officer.

O. Pregnancy Discrimination Act of 1978[Facts About Pregnancy Discrimination](#)

Discrimination on the basis of pregnancy, childbirth or related medical conditions constitutes unlawful sex discrimination under Title VII of the Civil Rights Act of 1964. Women affected by pregnancy or related conditions must be treated in the same manner as other applicants or employees with similar abilities or limitations.

[Minnesota Statutes 179A](#)**P. Minnesota Public Employment Labor Relations Act (MPELRA)**[Minnesota Statutes 179A.03, Subdivision 14](#)

The Minnesota Public Employment Labor Relations Act defines "public employee," thereby clarifying who is able to join a union per the Act. In matters of discipline and termination, the Act provides certain remedies for employees covered by a collective bargaining agreement.

RELEVANT LINKS:

[Minnesota Statutes 179A.21](#)

1. Grievance Arbitration

In the event that a city and a union representing its employees are unable to resolve a dispute about the application of a term in the collective bargaining agreement to a particular situation, the matter must be submitted to binding arbitration.

[Minnesota Statutes 179A.20, Subdivision 4](#)

A grievance may also be filed to contest written disciplinary action.

Atcas v. Credit Clearing Corp. of America, 292 Minn. 334, 197 N.W.2d 448 (1972).

In order to determine whether an issue is properly classified as a grievance, the city should determine whether the grievance alleges a violation of any term or terms of the applicable collective bargaining agreement. In the event that the matter clearly is covered by the collective bargaining agreement or it is reasonably debatable whether the matter is covered by the collective bargaining agreement, the matter will be properly before the arbitrator.

The city may refuse to arbitrate only in the instance in which no agreement to arbitrate exists. In the event that the city refuses to arbitrate the controversy, the union may go to court in an effort to compel arbitration.

2. Right of Independent Review

[Minnesota Statutes 179A.25](#)

According to Minnesota Statutes, every public employee should be provided with the right of independent review. According to Minnesota case law, this right of independent review does not extend to at-will city employees.

Garavalia v. City of Stillwater, 283 Minn. 335, 168 N.W.2d 336 (1969).

Case law suggests that this is a right that employees must request, and there is no obligation on the part of the city to inform employees of their rights under this section.

Q. Veterans Preference Act

[Minnesota Statutes 43A.11](#)

The Minnesota Veterans Preference Act (VPA) provides that no veteran employed by a city shall be removed from employment except for incompetence, misconduct or abolition of the position the veteran holds. The VPA also provides specific notice and hearing rights to veterans who are subject to termination from public employment.

[Minnesota Statutes 197.46](#)

[Minnesota Department of Veterans Affairs](#)

[Veterans Preference in Discipline, Discharge, and Demotion](#)

R. Whistleblower Law

[Minnesota Statutes 181.932](#)

The whistleblower law makes it illegal for an employer to discharge, discipline, threaten, otherwise discriminate against or penalize an employee regarding the employee's compensation, terms, conditions, location or privileges of employment because the employee:

RELEVANT LINKS:

- Or a person acting on behalf of an employee, in good faith, reports a violation or suspected violation of any federal or state law.
- Is requested to participate in an investigation, hearing or inquiry.
- Refuses an employer's order to perform an action that the employee has an objective basis in fact to believe violates any state or federal law or rule or regulation adopted pursuant to law, and the employee informs the employer that the order is being refused for that reason.
- In good faith, reports a situation in which the quality of health care services provided by a health care facility, organization or health care provider violates a standard established by federal or state law or a professionally recognized national clinical or ethical standard and potentially places the public at risk of harm.