

RELEVANT LINKS:

XV.FREQUENTLY ASKED QUESTIONS

A. Appointing Authority & Type of Government

1. Can the City Administrator or City Clerk hire employees without the approval of the City Council?

[Appointing Authority & Type of Government](#)

Probably not. Under the Plan A form of government, the most common type found in Minnesota, the City Council retains the authority to hire employees. It is possible, however, for the City Council in a Plan A city to delegate most of the hiring process to city staff and then make the final, formal approval of the hire at a Council meeting.

B. Applicable State & Federal Laws

1. Can the City Council close a meeting to interview job applicants?

[Applicable State & Federal Laws: See Open Meeting Law](#)

No. If the full City Council (or a quorum of the Council) is interviewing job applicants, they must do so at an open meeting. There is no provision in the open meeting law to close a meeting for this purpose.

2. What if the I-9 form is not completed in the first three days of someone's employment with the city?

[Applicable State & Federal Laws: see Immigration Reform & Control Act](#)

The city should get the I-9 completed within the employee's first three days on the job, as required by federal law. One way to help this happen is to inform new hires of the documents they will be expected to bring on their first day of employment. If a new employee needs to renew or apply for another copy of some document, have him/her bring you a copy of the expired document and/or the renewal application. In all cases, the city should set a time limit for the employee to supplying required documents.

3. Does every city have to do an affirmative action plan?

[Applicable State & Federal Laws: see Affirmative Action](#)

No. Cities are encouraged but not required to develop an affirmative action plan unless they receive federal funding and the funding source requires it. Even if not required to develop an affirmative action plan, there are many good reasons why a city should consider doing so. Hiring a workforce representative of the community as a whole, promoting job openings to people across the diverse cultures of a community, and demonstrating the city's commitment to equal employment opportunity practices are just a few of the reasons that affirmative action plans are worthwhile.

RELEVANT LINKS:

4. Can the city give hiring preference to more mature employees in certain jobs?

Applicable State & Federal Laws: see Minnesota Human Rights Act and Civil Rights Act of 1964: Title VII

Employment of Minors

No. In most cases, the city cannot give preference to older employees because the Minnesota Human Rights Act also prohibits discrimination based on age. Unlike, the ADEA which covers employees 40 and over, the Minnesota Human Rights Act covers employees who are over the age of majority. One area in which age can be considered in the hiring process is when a city refuses to hire an employee under 18 for certain jobs in order to avoid violation of child labor laws.

5. Is a city required to hire someone with a disability if the disability may prevent the employee from performing the duties of the position safely?

Applicable State & Federal Laws

Probably not. However, the city must make good faith efforts to be sure that there is no reasonable accommodation available that would allow the employee to perform the job safely. A good faith effort may involve bringing in a consultant qualified to make such a determination.

6. Is the city likely to be sued for discrimination if it has not had the opportunity to hire any minority candidates or others of a protected status?

Applicable State & Federal Laws: see Equal Employment Opportunity Commission

Applicable State & Federal Laws: see Affirmative Action

Maybe, but the city can take measures to protect itself if it is sued. While it is clearly helpful for the city to be able to show that its hiring practices have resulted in a culturally diverse workforce, the second best option is to be able to show (through documented procedures) nondiscriminatory hiring practices. There are several methods by which applicants can try to demonstrate discriminatory hiring practices. In most cases, the city's best defense is to show that the methods used for recruitment and selection are designed to reach the widest segment of the workforce and are valid predictors of success on the job.

7. Is the city legally able to hire immigrants?

Applicable State & Federal Laws: see Immigration & Nationality Act and Immigration Reform & Control Act

Yes, under certain circumstances and with the proper documentation. Sometimes a candidate will inform the city that he/she is an immigrant during the interview process or at the time an offer of employment is accepted. If the new employee indicates that certain paperwork must be completed before he/she is able to begin a new job, the city should work with the employee and consult with the Minnesota Alien Labor Certification Unit through the Minnesota Department of Economic Security. Sometimes a city will not be aware that a new employee is an immigrant until the required I-9 form is completed. If the employee's documentation appears to be expired, the city should inquire further to determine what role, if any, it may need to play in obtaining permission for the employee to continue working in the U.S. In some situations, the city may be required to pay a certain wage rate in order to comply with the law and continue to employ the individual.

RELEVANT LINKS:

8. If the city hires a male for the position of City Clerk, the city’s pay equity report will be in compliance. Given this situation, can the city give preference to males?

Applicable State & Federal Laws: see Minnesota Human Rights Act and Civil Rights Act of 1964: Title VII

No. It is illegal to discriminate on the basis of sex in hiring under both state and federal laws.

9. Can the city require volunteer firefighters to live within the city limits?

Applicable State & Federal Laws: see Residency Requirements

No. Cities are prohibited from requiring a person to be a resident of the city as a condition of employment. However, any city may impose a reasonable response time requirement on persons employed as volunteer firefighters or members of a non-profit firefighting corporation if there is a demonstrated, job-related necessity. This requirement must be related to response time and established without regard to political subdivision boundaries.

10. The city collects information about the race, disability and sex of applicants for tracking purposes. Is this an acceptable practice?

Applicable State & Federal Laws: see Equal Employment Opportunity Commission and Affirmative Action

Yes. There are several reasons why the city may want to collect this information: to gauge whether its hiring practices are resulting in the recruitment of protected status applicants; to defend itself against possible lawsuits; and/or to comply with requirements to have this information available for the Equal Employment Opportunity Commission should it be requested. The city must take measures to ensure that those making the hiring decision do not see this information on a candidate. The anonymity of the information should be protected by NOT asking for the candidate’s name on the form and by separating it from other application materials.

C. Procedural Considerations

1. Does an order of “status quo” impact a city’s hiring/promotion activities?

Procedural Considerations: see Civil Service Commissions

Not usually. A police civil service commission is typically responsible for designing the hiring process (e.g., deciding which tests to use, how many candidates to interview, etc.). The city staff usually handles the logistical aspects of the hiring process (placing the ad, conducting interviews, etc.) and then provides a list of qualified candidates back to the civil service commission for review.

2. When a city has a police civil service commission does the commission actually do the hiring for the city?

Procedural Considerations: see Civil Service Commissions

Not usually. A police civil service commission is typically responsible for designing the hiring process (e.g., deciding which tests to use, how many candidates to interview, etc.). The city staff usually handles the logistical aspects of the hiring process (placing the ad, conducting interviews, etc.) and then provides a list of qualified candidates back to the civil service commission for review.

RELEVANT LINKS:

D. Recruitment Process

1. Is there a law that requires cities to post all job openings?

Recruitment Process: See Advertisement

No. However, a city may find it difficult to defend itself against claims of discrimination if it does not post and openly recruit for most job openings. The city may also have personnel policies or ordinances, union contracts or civil service bylaws that include language about the procedure(s) to be followed when filling a vacant position.

2. Does the Americans with Disabilities Act (ADA) require that a city maintain job descriptions on all of its employees?

Recruitment Process: See Job Descriptions

No. However, a city will be in a better position to defend itself against claims of discrimination under the ADA if it develops job descriptions that define the essential functions and physical requirements of a job before it begins recruiting for any vacancies in that job.

3. What is considered public information on an employment application?

Recruitment Process: See Applicant Data

The following data on applicants for employment is public:

- Name
- Veteran status
- Job history
- Education and training
- Relevant test scores
- Rank on eligible list
- Work availability

Names of applicants are private data except when certified as eligible for appointment to a vacancy (as in a civil service system) or when considered by the appointing authority to be a finalist for a position in the city. A *finalist* is an individual who is selected for an interview by the appointing authority prior to selection.

4. Can the city review completed employment applications and interview candidates before the position closing date?

Recruitment Process: see Application Review & Application Deadlines

Yes. However, at minimum, any qualified veterans ranked equal to or higher than another applicant who is interviewed must also be interviewed. The city should also be aware that qualified candidates could be overlooked if the city proceeds with ranking and/or interviewing before the application deadline. This could result in a highly qualified candidate of a protected status not receiving an interview when they otherwise would. Therefore, the best practice is to review and rank all applications before making final decisions on who will be interviewed.

RELEVANT LINKS:

5. Should the city request applicants' Social Security numbers on the city's employment application?

[Recruitment Process: see Application Process - Application Forms](#)

In general, it is not a good idea to ask for any private information from an applicant unless and until it is actually needed. While the city will need a social security number eventually if the applicant is hired, it does not need to ask for it until that point. The less private data collected, the less private data that the city needs to take measures to protect.

6. Is the city required to advertise job openings in minority publications?

[Recruitment Process: see Advertisement](#)

No. There is no legal requirement to advertise in minority publications unless the city is subject to a court order that results from a lawsuit. Cities may elect to advertise in minority publications as part of their affirmative action efforts and/or a formal affirmative action plan. This kind of advertising practice can also help a city show a good faith effort toward minority recruitment in case the city's practices are challenged.

7. What is a supplemental application?

[Recruitment Process: see Application Process - Application Packets](#)

A supplemental application form is a form with an additional set of questions that are specific to the job position opening. Cities primarily use it to rank and rate applicants on a 100-point scale as required by the Veterans Preference Act. The supplemental application enables the city to ask questions about specific qualifications (training, education, past employment, other experience, etc.) for the particular job that is open.

8. Does the city have to use an application deadline when it is recruiting for a position?

[Recruitment Process: see Application Process - Application Deadlines](#)

No. However, an application deadline is helpful in meeting the requirements of the Minnesota Veterans Preference Act. All applications submitted must be rated and ranked to determine the interview pool. An application deadline helps the city to clearly define the pool of candidates that qualify to have their applications rated and ranked for a particular job opening.

E. Veteran's Preference

1. The city failed to collect information about veteran's preference from applicants during the application process. Does the city have to re-do the entire hiring process?

[Veteran's Preference](#)

Probably not. If the city did not collect information about veteran's preference from applicants during the application process, the next best thing would be to send a letter to everyone who applied for the position who meets the minimum qualifications and ask them to return the veteran's preference form within a reasonable timeframe. Another alternative, if the applicant pool is small, is to interview everyone who applied for the job.

RELEVANT LINKS:

2. Are veteran's preference points still awarded to an applicant if he/she does not supply the DD214?

Veteran's Preference: see [Notice of Preference Availability](#)

No. The city can establish a reasonable timeframe for the applicant to supply a copy of the DD214 (discharge papers) such as seven days after the application deadline. Any timeframe established must be applied consistently to all applicants.

3. What is a courtesy interview?

Veteran's Preference: see [Training & Experience Rating](#)

A "courtesy interview" is a term often used to describe a situation where an applicant is interviewed as a matter of courtesy rather than because he/she is highly qualified for the job. Although this is not an ideal practice, cities sometimes extend courtesy interviews for a variety of reasons. Whenever possible, courtesy interviews should be limited to candidates who meet at least the minimum qualifications for the position. Also, it is important to remember that any qualified veterans who rank equal to or higher than the person receiving the "courtesy interview" must also be interviewed.

4. Does the city have to use a numerical rating system to rank applications received for a job opening?

Veterans Preference: see [Training & Experience Ratings](#)

Yes. The Minnesota Veterans Preference Act requires cities to evaluate job applications and assign veteran's preference points by using a training and experience rating. The preference points are given to qualified veterans who meet the minimum qualifications for the job to increase the likelihood that they will receive a job interview.

5. Does the city have to use a 100-point scale to rate and rank applicants if there are no veterans in the applicant pool?

Veteran's Preference

No, not unless the city has a personnel policy, civil service system or past practice that requires applications to be rated and ranked. It is important to note that the 100-point system, or something similar, is a good way to ensure an objective (nondiscriminatory) approach to evaluating the applications.

6. Are all positions in the city subject to veteran's preference?

Veteran's Preference: see [Exception for Department Heads](#)

No. One exception that applies to cities is for "department head" positions. In determining whether this exception applies, the city must carefully evaluate whether any given position would meet the definition of "department head." A position is likely a department head if the following eight factors apply:

- work requires technical professional training
- individual is the highest authority at that level of government as to his or her official duties
- employee supervises all the work in the department
- success of the department depends upon his or her technique
- employees of the department are under his or her direction

RELEVANT LINKS:

- employee's duties are more than merely different from other employees
- employee has the power to hire and fire subordinates.

In most cities, the definition of department head will be difficult to meet because either the City Council or the City Manager retains the right to hire and fire subordinates.

F. Interviewing

1. Does the city have to use a numerical rating system to rank job candidates in an interview?

Interviewing: see [After the Interview](#)

No. However, the city should be prepared to defend whatever system it uses to decide which interview candidate to hire. At minimum, the city should be able to express a non-discriminatory business reason for each hiring decision. Some cities summarize the interview process in a memo to the file and include the reasons why a certain candidate was chosen for the job offer.

2. Are any questions illegal to ask during an employment interview?

Interviewing: see [Interview Questions](#)

The city should ask only questions that are related to the duties of the position. As a general rule, any questions related to the applicant's personal life or any protected status (race, sex, disability, sexual orientation, marital status, etc.) should not be asked. While directly inquiring about disabilities is prohibited under state and federal laws, the city can supply the interview candidates with a copy of the job description and ask them if they are able to perform the essential functions of the position. In addition, workers' compensation law prohibits the city from asking about prior workers' compensation injuries. The city can, however, ask interview candidates if they have ever been disciplined for a major safety violation.

G. Testing & Examinations

1. What does it mean when a city offers "reasonable accommodation" in employment testing?

Testing & Examinations: see [Reasonable Accommodation](#)

Under the Americans with Disabilities Act (ADA) and the Minnesota Human Rights Act, employers are required to accommodate disabled applicants so that they can participate in the testing/selection process. This could mean that the city needs to conduct testing in a wheelchair-accessible area or provide an oral testing method for a blind or learning-disabled applicant. Reasonable accommodation is determined on a case-by-case basis and depends, in part, upon the resources available to the city.

RELEVANT LINKS:

2. Can the city require psychological exams of all applicants for employment?

Testing & Examinations: See Psychological Exams

It depends on the purpose for the exam. Certain types of psychological exams, such as those designed to diagnose mental illness, may be considered “medical examinations.” Medical examinations cannot be required until the city makes a conditional offer of employment to a candidate (employment is based on successful completion of the psychological exam). Other types of psychological exams, such as those designed to assess work style and preferences, may be permitted before an offer of employment is made. Cities should be aware that any exams asking questions about sexual orientation or disability may be seen as discriminatory under state and federal laws.

3. Can the city require drug and alcohol testing of applicants other than CDL holders?

Testing & Examinations: see Drug & Alcohol Testing

Yes, but the requirements differ from those applied to CDL holders. Typically, applicants are only subject to drug testing and then, once hired, employees may be subject to both drug and alcohol testing. Information on drug and alcohol testing of CDL holders is found in federal law. State law controls drug and alcohol testing of non-CDL employees in Minnesota. The city is required to establish a detailed written policy on drug and alcohol testing and to distribute that policy to all applicants and employees before testing may be conducted. There are also many restrictions on testing procedures. Similar to other medical testing, no drug test may be performed on an applicant for employment until a conditional job offer is made.

H. Background Checks & Bonding

1. Is the city required to perform background checks on all city employees?

Background Checks & Bonding

Not for all positions. However, the League strongly recommends that cities perform at least some limited background check (e.g., a reference check with past employers) on all job candidates. State law does require that a comprehensive background investigation be conducted on police officer candidates (full-time and part-time). Finally, state law permits and the League encourages cities to conduct background checks on candidates who will be working with children and on firefighters.

2. Can a city’s Police Department run criminal history checks on applicants for city jobs?

Background Checks & Bonding

Yes. But only if the city passes an ordinance that both requires such checks and defines the procedures to be used by the Police Department. A Police Department must be sure to use the proper codes when running the checks through the state’s Criminal Justice Information System (CJIS) and follow all other requirements for appropriate use of the CJIS. Criminal history checks of candidates who worked outside of Minnesota must be done through the Federal Bureau of Investigations (FBI).

RELEVANT LINKS:

3. Can the city refuse to hire someone who is a convicted felon?

Background Checks & Bonding: see
Criminal Offenders Rehabilitation
Law

It depends. If the felony conviction is related to the job for which the applicant is applying, the answer is probably “yes.” However, the city must meet certain procedural requirements of the Criminal Offenders’ Rehabilitation Act such as notifying the applicant and giving him/her an opportunity to show evidence of rehabilitation, before the final hiring decision is made.

If the felony conviction is not related to the job for which the applicant is applying, the answer is probably “no” unless the city has other legitimate, nondiscriminatory reasons for not hiring the applicant.

I. Contracts & Agreements

1. Should the city establish individual employment agreements/contracts with any or all of its employees?

Contracts & Agreements: see
Liability Issues

Employment agreements or contracts can hamper the city’s ability to terminate employees should the need arise. However, there are some situations where an individual employment agreement may be desirable. For example, it may be necessary for a city to offer such an agreement in order to recruit qualified candidates for certain positions within the city. Cities need to be cautious, however, not to form unintentional agreements or contracts by making promises to employees in offer letters or putting inadvisable language in personnel policies.

2. Should the city use a “probationary period” for new employees?

Contracts & Agreements: see
Employment-at-Will

Employment Status: see
Probationary

Probably not. The League generally recommends against establishing probationary periods for employees that are not covered by civil service or union contracts. This is because a probationary period may be used to imply that an employee has contractual rights after passing probation, making it more difficult for the city to terminate his or her employment. Civil service systems and union contracts generally establish a probationary period after which the employee has certain rights. In these situations, the city should use the probationary period as a final phase of the selection process or an “on-the-job” test of the employee’s skills and make the decision whether or not to terminate employment during that initial probationary period.

RELEVANT LINKS:

J. Employment Status**1. What is the difference between a full-time employee and a part-time employee?**[Employment Status](#)

There is no one definition of full-time and part-time employment. Instead, a number of laws define full-time and part-time employment for their own purposes. Cities can and should use personnel policies or employee handbooks to establish their own definition of full-time and part-time employees. The definition most often used for full-time is 40 hours per week, which aligns with the overtime requirements of the Fair Labor Standards Act. Part-time is usually defined as anything less than 40 hours per week. However, the city may want to establish a separate definition for part-time, benefit earning employees (for example, 20 hours per week).

2. Why can't a city work with independent contractors for all positions and avoid paying benefits?[Employment Status: see Independent Contractor](#)

The determination of whether a person conducting work for the city is an independent contractor or an employee is often out of the control of the city. The Internal Revenue Service establishes criteria that determine whether an individual will be considered an independent contractor or an employee for tax purposes. The Minnesota Department of Labor and Industry indicates that the more control an employer has over an individual, the more likely that person is an employee.

K. Employment of Minors**1. What equipment can a minor working in a city's Parks & Recreation Department use without violating child labor laws?**[Employment of Minors](#)

Minors aged 16 & 17 are restricted from operating certain power-drive machinery, but can operate push or riding lawn mowers and weed whips. They are not allowed to operate vehicles or motorized equipment on streets or highways during working hours as part of their normal job. There is an exception for incidental and occasional driving by licensed drivers. For those cities with municipal swimming pools, it is important to note that minors cannot be lifeguards without constant adult supervision.

RELEVANT LINKS:

L. Promotions**1. One of the city's union contracts says that seniority will be considered in promotional decisions. Does this mean the city can only promote those candidates with the most seniority?**

Promotions: see [Union Issues](#)

Not necessarily. The city should read the contract provision carefully. Usually such a provision merely requires that the city look at seniority as one factor in making promotional decisions. The city may want to document how it has complied with this provision by showing how seniority was considered in the promotional decision. It is also important to note that this language would not apply to a promotion to a supervisory position. PELRA (Minn. Stat. Sec. 179A.07, Subd. 1) provides that a city cannot sign an agreement that limits its right to select supervisors or requires the use of seniority in the selection process for supervisors.

2. The city has a great employee and would like to promote her to a supervisory position. Is the city required to open the supervisory position to the public and advertise?

Promotions: see [Open vs. Limited Recruitment](#)

Probably not. Unless the city has a civil service system, personnel policy or union contract provision that states otherwise, the city may establish its own policy with regard to promotions. In some cases, a promotion from within is logical and justified for business reasons, such as when someone is already performing very well in a lower level position that is related to the promotional opportunity. In other cases, the city may want to do an open recruitment for equal employment opportunity, affirmative action or other reasons. An "in-between" approach is to post the promotional opportunity internally and consider only existing city employees.