



HUMAN RESOURCES REFERENCE MANUAL

**Chapter 1
City Employment Basics**

Table of Contents

- I. Public sector employees2
- II. Appointing authority and type of government3
 - A. Employment of elected officials.....3
 - B. Standard plan and statutory Plan A3
 - C. Statutory Plan B.....4
 - D. Home rule charter4
 - E. Civil Service laws.....5
 - F. Townships8
- III. General public employment concepts9
 - A. Employment-at-will protections.....9
 - B. Employment-at-will limitations.....10
 - C. Conflicting requirements11
 - D. Equal Employment Opportunity Commission12
- IV. Applicable state and federal law.....14
 - A. Laws prohibiting discrimination and harassment.....14
 - B. Compensation.....24
 - C. Benefits laws31
 - D. Drugs and alcohol.....46
 - E. Leave benefits and time off48
 - F. New hires.....73
 - G. Employment relationship.....77
- V. Best Management Practices.....86
 - A. Effective recruitment practices.....86
 - B. Informal praise and recognition.....87
 - C. Information and support87
 - D. Empower employees to make decisions.....87
 - E. Managers are available to employees.....87
 - F. Opportunities to develop new skills87
 - G. Flexibility in the workplace.....88

This material is provided as general information and is not a substitute for legal advice. Consult your attorney for advice concerning specific situations.



HUMAN RESOURCES REFERENCE MANUAL

Chapter 1 City Employment Basics

Learn successful human resources practices taking into consideration legal requirements such as understanding your appointing authority and general public employment concepts like “employment-at-will.” Discover best management practices for effective recruitment, employee recognition and opportunities to develop new skills. Find brief introductions to applicable state and federal laws.

RELEVANT LINKS:

[HR Reference Manual, Table of Contents.](#)

[HR Reference Manual, Chapter 2.](#)

[HR Reference Manual, Chapter 3.](#)

[HR Reference Manual, Chapter 4.](#)

[HR Reference Manual, Chapter 5.](#)

I. Public sector employees

Managing employees in the public sector is an important job. City employees represent the overall city to the public. From a financial perspective, employee compensation and benefits take a significant portion of the budget. Employment litigation and poor management practices can prove costly. Successful human resources practices take into consideration both legal requirements and best management practices.

Sound human resources practices are important regardless of the size or location of a city. This chapter outlines some of the requirements affecting many different areas of employment. More information on specific topic areas can be found in other chapters of the HR Reference Manual.

Following are some of the most common areas that can cause problems for the city, in terms of legal liability or employee performance, if not handled correctly. More information on these topics can be found in the identified chapters.

- Does your city conduct thorough, objective, and legally sound recruitment processes?
- Does your city correctly classify employees versus independent contractors?
- Does your city legally and effectively manage employee performance?
- Does your city follow appropriate procedures for closing council meetings to discuss employee performance?
- Does your city follow good management practices?
- Does your city comply with laws related to overtime and salaried employees?
- Does your city comply with legally-protected job leaves?
- Does the city comply with laws regarding employer provided benefits and continuing coverage?

This material is provided as general information and is not a substitute for legal advice. Consult your attorney for advice concerning specific situations.

RELEVANT LINKS:

[HR Reference Manual, Chapter 6.](#)

[HR Reference Manual, Chapter 7.](#)

[LMC information memo, Management of Personnel Files.](#)

[Handbook, Elected Officials and Council Structure and Role.](#)

[Minn. Stat. ch. 410-414.](#)

[HR Reference Manual, Chapter 7.](#)

[Minn. Stat. § 410.191.](#)
[Minn. Stat. § 412.02.](#)

[Handbook, The Statutory City.](#)

[Minn. Stat. § 412.541 subd. 1.](#)
[Minn. Stat. §§ 412.572-.591.](#)

- Does your city know which subjects of bargaining it must negotiate, which can be declined and those that are prohibited subjects of bargaining?
- Does your city know who is a public employee, a supervisor or a confidential employee?
- Does your city have documented and consistently enforced personnel policies?
- Does your city appropriately maintain and manage access to employment-related files?

II. Appointing authority and type of government

Minnesota has two basic types of cities: statutory cities, those operating under the statutory city code; and home rule charter cities, those operating under a local charter.

Without specific statutory or charter authority, a city council in a Standard Plan or statutory Plan A city may not delegate its responsibility for hiring and firing personnel, determining working conditions, setting salaries and establishing personnel policies. Councils may delegate to others only those functions not involving the exercise of discretionary administrative power. Ministerial functions, including day-to-day supervision of employees, however, may be delegated to an officer or committee.

While the council must make the final decisions in these matters, it should consider the studies and recommendations of administrative officers, council committees, or other advisory bodies. No matter which system a city uses, it should review and update personnel policies on a continuous basis. Ideally, the council should review the city's personnel policies annually and consider major revisions and overhauls at least once every three to five years.

A. Employment of elected officials

A mayor or councilmember in a home-rule charter city or statutory city is prohibited from being employed by the city. "Employed" is defined as full-time, regular status employment as defined by the city's employment policy.

B. Standard plan and statutory Plan A

The Standard Plan has the common weak mayor-council form of government consisting of an elected mayor, elected clerk (or clerk-treasurer) who serves as a voting member of the council, and three or five council members. The treasurer is also an elected official, but is not a member of the council.

RELEVANT LINKS:

[Minn. Stat. § 412.601-.751.](#)
[Minn. Stat. § 412.611.](#)

[Minn. Stat. § 412.651, subd. 3.](#)

[Minn. Stat. § 412.641.](#)

Handbook, *The Home Rule Charter City*.
[Minn. Stat. ch. 410.](#)

Plan A is a modification of the Standard Plan. It retains the weak mayor-council characteristics, but provides for an appointed clerk, treasurer (or combined clerk-treasurer), and a mayor and four or six council members. All new cities automatically organize under Plan A unless they complete the required legal steps to put one of the other plans into effect. Voters must approve the change from Plan A to another form of city government.

In Standard Plan and Plan A cities, the city administrator or city clerk does not have authority to hire, rather the council is responsible for personnel administration. The City Council has the authority and responsibility to hire and fire personnel, determine working conditions, set salaries, and establish policies regarding promotions, vacations, training opportunities and fringe benefits. It is possible, however, for these city councils to delegate most of the hiring process to city staff and then make the final, formal approval of the hire at a council meeting. Merely ministerial functions, including day-to-day supervision of employees, may be also delegated to an officer or committee.

C. Statutory Plan B

Optional Plan B is the council-manager plan. While the Standard Plan and Plan A are available to all cities, only cities over 1,000 population may adopt Optional Plan B.

In Plan B cities, direct responsibility for personnel administration (including hiring and firing employees) resides with the city manager. The council establishes basic policies and exercises general oversight for administrative activities.

Notably, in this form of government, if the city council moves to terminate a city manager's services after one or more years of service, the manager may demand the charges in writing and request a public hearing on said charges before termination becomes effective.

- The demand for written charges must be within seven days of the council's notice of intent to terminate the city manager.
- A public hearing must be held within 30 days of said demand.
- The final decision to retain or terminate the city manager must be provided by city council within five days of the public hearing.

D. Home rule charter

The distinction between home rule cities and statutory cities is one of organization and powers, and is not based on differences in population, size, location, or any other physical feature.

RELEVANT LINKS:

See section II E 2 *Civil Service Commission*.

[Minn. Stat. ch. 44.](#)
[Minn. Stat. ch. 419.](#)
[Minn. Stat. ch. 420.](#)

[HR Reference Manual, Chapter 6.](#)

[Minn. Stat. § 44.03.](#)

[A.G. Op. 120-GRP-1 \(Jan. 8, 1985\).](#)

[Minn. Stat. § 44.07.](#)
[Minn. Stat. § 44.08.](#)

Home rule charters are, in effect, local constitutions. State laws give cities a wide range of discretion in the contents of a charter when one is adopted. The charter may provide for any form of municipal government, as long as it is consistent with state laws applying to all cities in Minnesota. The four forms of government Minnesota home rule charter cities have used are: weak mayor-council, strong mayor-council, council-manager and commission.

Like Plan B cities, in most charter cities the city manager has direct responsibility for personnel administration. Like Plan B cities, many charter cities provide for city managers with direct responsibility for personnel administration; however, administration and hiring authority in charter cities can vary, depending on how the city charter is written. The council provides general oversight on administrative activities.

E. Civil Service laws

Civil service systems may dictate a number of the personnel management practices at a city. Such rules and/or bylaws established under these rules only apply to employees covered by civil service. In cities with an adopted civil service system, the commission is involved in the hiring, promotion, demotion, suspension, and discharge of city employees. Civil service systems may also limit the authority a city council (or city manager) has in the selection or removal of city employees. Additionally, the three types of civil service commissions established by state statute (municipal, police, and fire) give the authority and duty to establish compensation and classification plans to the commission itself. When a civil service system is adopted, candidates for employment are selected from a certified list of people who have passed an examination provided by the civil service commission. A city may establish a civil service commission by adopting one of three different models provided in state statute:

- Municipal merit systems.
- Police civil service commissions.
- Firefighters' civil service commissions.

While it is possible any group of employees could be covered by the civil service rules established in state law, those employee groups most commonly covered are firefighters and police officers. These systems are very similar in structure and operation. However, the municipal merit system can provide the council more discretion in establishing the scope of a civil service program. For example, unlike police and fire civil services commissions, under the merit system, cities have the ability to exclude particular positions from the system (though any position must be specifically excluded). The merit system also allows for the use of oral interviews.

RELEVANT LINKS:

[Minn. Stat. § 419.01.](#)
[Minn. Stat. § 420.02.](#)

[Minn. Stat. § 44.02.](#)

[Minn. Stat. § 44.02.](#)
[Minn. Stat. § 419.01.](#)
[Minn. Stat. ch. 420.](#)

[Minn. Stat. § 44.04.](#) [Minn. Stat. § 419.02.](#) [Minn. Stat. § 420.03.](#)

[Minn. Stat. § 44.05.](#) [Minn. Stat. § 419.05.](#) [Minn. Stat. § 420.06.](#)

[A.G. Op. 120 \(Jan. 27, 1953\).](#)

[A.G. Op. 270-d-12 \(Oct. 7, 1959\).](#)

[Minn. Stat. ch. 420.](#)

1. Establishment

Police civil service commissions and firefighters' civil service commissions are established by ordinance. The ordinance is adopted in the same manner as any other city ordinance, but at least 30 days must elapse between introduction and final passage. A municipal merit system is established by an ordinance that must be approved at a general or special election.

2. Civil Service Commission

The three types of civil service commissions established by state statute (municipal, police, and fire) give the authority and duty to establish compensation and classification plans to the commission itself. In cities that have adopted a civil service system, the civil service commission usually supervises the hiring, promotion, demotion, suspension, and discharge of city employees.

Each type of program creates an independent civil service board, comprised of three people serving staggered three-year terms. Civil service commissions generally have the following duties:

- Grading and classifying all positions or jobs in the city according to their duties and responsibilities.
- Establishing appropriate lines of promotion.
- Preparing and maintaining an employee roster showing the name, age, class of employment, compensation, period of past employment, and any other pertinent facts for each individual employee.
- Conducting examinations and certifying applicants for employment and promotion.
- Conducting hearings on dismissals.
- Adopting rules and regulations necessary to implement the city's personnel program.

With the above noted duties, generally speaking, there appears to be no statutory authority for civil service commissions to become involved in union negotiations. A 1953 Attorney General Opinion to the city of Arlington, suggests the power to fix salaries rests with the City Council and not the Commission. A second 1959 Attorney General Opinion to the city of Austin suggests the Commission may issue "a statement of policy to the police labor union."

Civil service systems limit appointing authorities to the selection of an appointee from a certified list of people who have passed the civil service examination provided by the civil service commission. In addition, more limitations are placed on the removal of unsatisfactory employees.

RELEVANT LINKS:

[A.G. Op. 120 \(Oct. 5, 1978\).](#)

[Putzke v. City of Brainerd](#), No.CO-01-790 (Minn. Ct. App. Oct. 30, 2001) (unpublished decision).

[Anderson v. City of Minneapolis](#), 363 N.W.2d 886 (Minn. Ct. App. 1985).

[A.G. Op. 120 \(Apr. 26, 1960\)](#), [A.G. Op 785e2 \(Apr. 10, 1967\)](#).

[Minn. Stat. § 44.10.](#)

[Minn. Stat. § 197.46.](#)

LMC information memo, [Veterans' Preference in Hiring](#).

[Minn. Stat. § 44.08.](#)

Occasionally, a city will ask whether a Police Chief or other police department position may be excluded from coverage under Civil Service laws. While there may be special legislation applicable to particular cities, as the 1978 Attorney General Opinion notes, generally there is no authority to exclude the police chief or any other police department position from the reach of civil service laws.

3. Discretion

Discretionary decisions made by a civil service commission will generally not be overturned by an appellate court unless there is proof of fraudulent, arbitrary, or unreasonable actions by the commission.

4. Examination and certification

When a civil service system is in effect, applicants for all covered positions must pass a competitive exam that is impartial, fair, and tests only the relative qualifications and fitness of the applicants for a specific position.

The city council (or city manager) may only appoint a person from the certified list of names provided by the commission. The civil service commission does not make the actual appointment, unless such authority is provided by the home rule charter.

5. Probationary period

Individuals hired under a civil service system are subject to a six-month (12-month for peace officers) probationary period. During that time, the appointing authority may discharge the employee. Effective July 1, 2016, a city may require employees, including veterans, to complete an initial probationary period as defined under Minn. Stat. § 43A.16 (defined to be no less than 30 days but not exceed two years of fulltime equivalent service). However, after serving an initial probationary period for a city, a veteran would not be subject to additional probationary periods such as for a promotion or new assignment. Thus, once the initial probationary period expires, a veteran may be not be removed unless incompetency or misconduct is shown through a removal hearing.

6. Suspensions

Under a merit system, the appointing authority may suspend a civil service employee without pay for up to 30 days. A longer suspension may only occur:

- For just cause, and
- After both the employee and the civil service board have received notice of the action in writing.

RELEVANT LINKS:

[Minn. Stat. § 419.07.](#)
[Minn. Stat. § 420.07.](#)
HR Reference Manual,
Chapter 3.
U.S. Dep't of Labor, [FLSA](#)
[Overtime Security](#)
Advisor.
[29 C.F.R. 541.602\(b\).](#)

[Minn. Stat. § 44.08.](#)
[Minn. Stat. § 419.07.](#)

[Minn. Stat. § 420.08.](#)
Nyhus v. State, 305 Minn.
184, 232 N.W.2d 779
(Minn. 1975).

[Minn. Stat. §§ 44.08-.09.](#)

[Minn. Stat. § 44.16.](#)

[Minn. Stat. §§ 419.16-17.](#)

[Minn. Stat. §§ 420.14-.15.](#)

[Minnesota Association of
Townships.](#)

However, under the other alternative systems, suspensions with or without pay may be for up to 60 days. Personnel managers must follow administrative procedures relating to dismissals if suspensions exceed these time periods. The federal Fair Labor Standards Act (FLSA) should also be reviewed before suspending an “exempt” employee.

7. Discharge

Cities cannot discharge any civil service employee except for cause and until after the employee has received notice in writing.

If requested by the employee in writing, the discharge must be reviewed in a public hearing conducted by the civil service board.

A civil service position has been held to be a property right of the person holding the position. The proceedings should comply with state law and satisfy all due process requirements. The city must be careful to follow all due-process requirements. Decisions of the civil service commission may be appealed to the district court.

8. Abandonment

A municipal merit system may be abandoned by a simple majority of those voting on the question at a general or special election.

However, if the merit system replaced a police or firefighter’s civil service commission, abandonment will require a two-thirds vote.

A police civil service commission may be abolished by either:

- A two-thirds vote at a general or special election.
- A unanimous vote of the city council.

A firefighters’ civil service commission may be abolished by a two-thirds majority at the first following general municipal election. This does not apply to commissions that have been in continuous operation for eight years or more.

F. Townships

The Legislature describes township government as the form of local government that most efficiently provides governmental services in areas used or developed for agricultural, open space, and rural residential purposes.

People often incorrectly use the term "town" to describe a small city. In the strictest sense, a town is the governmental or political organization, while a township refers to the geographical congressional territory without connection to the governmental organization. For the most part, Minnesota laws, particularly state statutes, use the terms interchangeably.

RELEVANT LINKS:

[*Pine River State Bank v. Mettill*](#), 333 N.W.2d 622.

[*Cederstrand v. Lutheran Brotherhood*](#), 263 Minn. 520, 532, 117 N.W.2d 213, 221 (1962).
[*Ries v. SEI Electronics LLC*](#), No. C0-00-18 (Minn. Ct. App. July 11, 2000) (unpublished decision) Minn. 1983.

[Minn. Stat. § 181.932](#).
[*Phipps v. Clark Oil & Ref. Corp.*](#), 396 N.W.2d 588 (Minn. Ct. App. 1986).
[*Phipps v. Clark Oil & Ref. Corp.*](#), 408 N.W.2d 569 (Minn. 1987).
[*Abraham v. Cnty. of Hennepin*](#), 639 N.W.2d 342 (Minn. 2002).
[*Nelson v. Productive Alts., Inc.*](#), 715 N.W.2d 452 (Minn. 2006).
[*Schmitz v. U.S. Steel Corp.*](#), 831 N.W.2d 656 (Minn. Ct. App. 2013).

III. General public employment concepts

A. Employment-at-will protections

Minnesota is an employment at-will state. The employment-at-will concept maintains that when an employee does not have a protected right to continued employment (i.e., union contract, veterans' preference), the employer can terminate the employee at any time for any reason or no reason at all.

This concept reflects the idea that the employer has no obligation to offer, and the employee has no obligation to provide, continued employment in the absence of an explicit contractual obligation. While this sounds harsh, most cities attempting to maintain employment at-will do not do so with the intent of terminating employees for frivolous reasons. There are many laws protecting employees from discrimination and unlawful discharge. Therefore, it is advisable for cities to justify their disciplinary or discharge actions.

The city should proceed cautiously in applying this idea and work closely with an attorney to make sure each employee is truly an employee at-will and the city is not violating the law (i.e., unlawful discrimination, retaliation, etc.). This concept has been narrowed significantly in the past three decades by both statutory and common law protections against wrongful discharge. In Minnesota, in addition to the many statutory and civil rights protections, the public policy exception to the employment-at-will concept is widely recognized.

Most cities maintain employment at-will so if they are ever sued by an employee for wrongful termination, they do not have to show a "just cause" standard (which can be difficult sometimes, even when the employee has engaged in misconduct).

Again, it is important to note many employment laws, both state and federal, already protect at-will employees against discriminatory and/or retaliatory actions by employers. Thus, by establishing at-will employment relationships, a city is not insulating itself from all employment lawsuits but it can help prevent messy and unpredictable contract disputes with employees.

Also, any employer terminating employees without justification runs the risk of damaging employee morale and impairing the city's ability to recruit desirable job candidates.

RELEVANT LINKS:

[Phipps v. Clark Oil & Ref. Corp.](#), 396 N.W.2d 588 (Minn. Ct. App. 1986).
[Phipps v. Clark Oil & Ref. Corp.](#), 408 N.W.2d 569 (Minn. 1987). [Dukowitz v. Hannon Sec. Services](#), 841 N.W.2d 147 (Minn. 2014).

[Pine River State Bank v. Mettillie](#), 333 N.W.2d 622 (Minn. 1983).

LMC information memo, [Veterans' Preference in Discipline, Discharge, or Job Elimination](#).

LMC information memo, [Veterans' Preference in Discipline, Discharge, or Job Elimination](#).
See section IV A 11 [Veterans Preference](#).
[Minn. Stat. § 197.46](#).
[Minn. Stat. § 419.07](#).

HR Reference Manual, [Chapter 6](#).

B. Employment-at-will limitations

Even in employment at-will relationships, the League recommends cities be prepared to document and show a business reason for terminating an employee.

The public policy exception to employment-at-will states an employee is wrongfully discharged when the termination is against a well-established public policy of the state. Minnesota courts have narrowly applied the public policy exception.

The implied contract exception to employment-at-will is relevant when an implied contract is formed between an employer and employee, even though no written document explicitly identifying the contractual employment relationship exists. The most common example of this exception occurs when a city's employee handbook makes representations that are interpreted to be a contract. In order to ensure the city's personnel policies and/or employee handbook do not unintentionally imply an employment contract exists, it is important for cities to include a clear waiver that the guidelines and policies in the handbook do not create contract rights.

Some common public employment situations which are not considered employment-at-will include:

1. State and federal law

At-will employees are still protected by various state and federal laws prohibiting discrimination of protected classes or retaliation for engaging in lawful activities such as reporting illegal behavior or requesting a reasonable accommodation for a disability. In addition, veterans are further protected by the Veterans' Preference Act. The Veterans' Preference Act allows removal from most positions (following any city required initial probationary period) only for misconduct or incompetence.

2. Qualified veterans

Qualified veterans are protected by law and must be afforded certain benefits from the date of hire. State law provides that no veteran employed by a city (following any city required initial probationary period) shall be removed from employment except for incompetence, misconduct or abolition of the position the veteran holds.

3. Union contracts

Employees covered by a collective bargaining agreement (union contract) are not at-will employees. Contract language related to discipline and grievance must be followed.

RELEVANT LINKS:

See section II-D *Civil Service Laws*.
[Minn. Stat. § 420.08](#).

HR Reference Manual,
[Chapter 7](#).
Brekke v. City of Blackduck, 984 F. Supp. 1209 (D. Minn. 1997).

HR Reference Manual,
[Chapter 4](#).
MN Dep't of Labor and Industry, [Minimum wage laws](#).

MN Dep't of Labor and Industry: [Minimum wage in Minnesota](#).

4. Employment contracts

Written employment contracts, or sometimes even oral promises of continued employment, can jeopardize an employee's at-will status. While it is certainly the city's decision to create contracts with employees and/or to guarantee employees certain rights, the city should be aware such a decision may make it more difficult to make final employment decisions because of the risk the contract dispute may result in reversal and reinstatement.

5. Civil service rules

Employees covered by civil service rules are not considered at-will employees. Civil service rules governing the removal of employees from employment must be followed.

6. Personnel policies

Progressive discipline sections of personnel policies for nonunionized employees where no disclaimer language is included stating the policies do not create contract rights can undermine at-will employment. In order to preserve the "employment-at-will" rights, attorneys often recommend cities craft their personnel policy in certain ways. For example, some attorneys recommend against disciplinary policies referencing "just cause." The reason for this recommendation is to make it clear an employee can be terminated at any time for any reason so there is no need for anything called "just cause."

C. Conflicting requirements

When requirements of various laws, contracts or policies conflict, they generally need to be followed in this order:

1. State and federal law

Employment contracts or personnel policies cannot violate state or federal law. If state and federal law conflict, the requirement of each law that is more advantageous to the employee needs to be followed. For example, for a position that is covered by both federal and state minimum wage laws, a "large employer" (as defined by the Minnesota Fair Labor Standards Act) in 2018 in Minnesota is \$9.65 per hour (increasing to \$9.86/hour as of January 1, 2019), while the federal minimum wage is \$7.25; thus, the city must pay the higher rate of \$9.65 (or \$9.86/hour as of January 1, 2019).

RELEVANT LINKS:

[Equal Employment Opportunity Commission \(EEOC\). Title VII of the Civil Rights Act of 1964. 42 U.S.C. §§ 2000e-2000e-16. "Laws Enforced by EEOC," U.S. Equal Employment Opportunity Commission \(EEOC\).](#)

[U.S. Equal Employment Opportunity Commissions: Laws Enforced By EEOC. Title VII of the Civil Rights Act of 1964. 42 U.S.C. § 2000e. Civil Rights Act of 1991. 42 U.S.C. § 1981. Pregnancy Discrimination Act of 1978. 42 U.S.C. § 2000e. 42 U.S.C. § 2000e\(k\). "Facts About Pregnancy Discrimination," U.S. Equal Employment Opportunity Commission.](#)

[Equal Pay Act of 1963. 29 U.S.C. § 206.](#)

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

[29 U.S.C. § 621. ADA of 1990. 42 U.S.C. § 12101.](#)

[Rehabilitation Act of 1973. 29 U.S.C. § 791.](#)

2. Collective bargaining agreements and other employment contracts

If personnel policies conflict with union contracts or other employment contracts, the contract will generally need to be followed.

3. Personnel policies

Personnel policies can typically cover any work rules not regulated by laws or contracts. Outdated or inconsistently followed personnel policies can cause liability for the city. Personnel policies should always be reviewed in conjunction with actual practices to avoid claims of illegal discrimination.

D. Equal Employment Opportunity Commission

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

- Title VII of the Civil Rights Act of 1964. Title VII of the Civil Rights Act of 1964 and the Civil Rights Act of 1991 prohibit employment discrimination on the basis of race, color, religion, sex, or national origin and applies to employers with 15 or more employees.
- Civil Rights Act of 1991.
- Pregnancy Discrimination Act. 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.
- Equal Pay Act (EPA) of 1963. The Equal Pay Act of 1963 prohibits discrimination on the basis of gender in compensation for substantially similar work under similar conditions. Compensation includes salaries, expense accounts, car allowances, use of city-owned cars, group insurance, retirement benefits, leave, and other similar conditions of employment. Under the Lily Ledbetter Fair Pay Act of 2009, the statute of limitations for these claims restarts every paycheck, rather than from the time the employer made the discriminatory pay decision.
- Age Discrimination in Employment Act (ADEA) of 1967.
- 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).

RELEVANT LINKS:

[Civil Rights Act of 1991.](#)
42 U.S.C. § 1981.

[The Lilly Ledbetter Fair Pay Act of 2009.](#) 42 U.S.C. § 2000a.
[GINA.](#) 42 U.S.C. § 2000ff.

[U.S. Equal Employment Opportunity Commission, 2015 EEO-4 Survey](#) Phone Number 1-877-439-2572.
[EEO-4 instructions.](#)

[29 C.F.R. § 1602.30.](#)

[29 C.F.R. § 1602.31.](#)

[Handbook, *Records Management.*](#)

[MCFOA, General records retention schedule for Minnesota Cities.](#)

- 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.
- Lily Ledbetter Fair Pay Act of 2009.
- Sections 102 and 103 of the Civil Rights Act of 1973 (as amended in the Civil Rights of 1991).
- The Genetic Information Nondiscrimination Act (GINA) of 2008.

State and local governments with 15 or more employees as well as other political jurisdictions with 100 or more employees are required to file an EEO-4 report biennially in odd years. Employers with less than 100 full-time employees are required by EEOC to contact their help desk (contact information linked to the left). EEO-4 instructions are linked to the left and many reports are filed by the employer electronically.

The EEOC has authority to examine and copy records and documents related to employment practices, and to seek a temporary injunction to stop discrimination.

Cities with 15 or more employees must keep certain employment and personnel records. These records must be readily available at the city's central office for EEOC review at any time, and for use in submitting Form EEO-4 when necessary. Cities may wish to refer to that form as a guideline, indicating the kinds of records the city needs to keep.

Essentially, the city needs to keep data on personnel (employees) and on employment actions along with copies of the EEO-4 report for at least a three-year period. Employee's personnel data should include annual salary, employee's sex and race, and function in which the person is employed. Records should include part-time employees and new, regular full-time hires during the fiscal year.

Cities need to keep data on employment or personnel actions for each fiscal year, relative to hiring, termination, resignations, layoffs, promotions, demotions, transfers, or salary changes, for at least two years from the date of the action or the making of the record, whichever occurred later. Other applicable laws, regulations, and rules, such as a city's own retention schedule, may require retaining records for longer periods of time. For example, the MCFOA Model General Record Retention Schedule states wage assignment documentation needs to be retained for six years.

It is easier, for reporting purposes, if the city keeps all the data from every agency or function in one central location. However, either the individual agencies or the central office responsible for the preparation of the EEO-4 form can maintain the data.

RELEVANT LINKS:

[LMC Online Training - Respectful Workplace.](#)

[Minn. Stat. § 363A.36, subd.1.](#)

[MN Dep't of Human Rights - Affirmative Action Plans.](#)

[HR Reference Manual, Chapter 2.](#)

IV. Applicable state and federal law

Many state and federal laws affect all aspects of the employment relationship, from application and hire, through compensation, benefits and protections while on the job, and finishing with end-of-employment requirements and sometimes continuing employer obligations in a post-employment relationship. This chapter provides an overview of the major employment-related laws most cities must follow (some laws are only activated by having a certain number of employees).

Other chapters of the League's Human Resources Reference Manual provide more detail and sample documents a city may need to comply with a particular segment of the employment relationship, such as hiring or setting employee compensation.

Laws are grouped according to their major purpose. For example, the veterans preference law's overarching purpose is to prohibit discrimination against veterans by offering preferences in hiring and promotion and protections in the case of discipline or discharge. While there are groupings of laws about new hires, and laws affecting the continuing employment relationship, the veterans preference law is grouped with other laws prohibiting discrimination or harassment.

A. Laws prohibiting discrimination and harassment

Several laws prohibit discrimination in employment related to a protected class or activity. Employment practices cannot be based on a person's protected class (e.g. age, race, or religion) or because the employee participated in a protected activity (e.g. making a complaint of sexual harassment). Employment practices include actions such as recruitment, pay, hiring, firing, promotion, discipline, job assignments, training, leave, lay-offs, and benefits. Below is information on state and federal laws related to protected classes and activities. It is not meant to be an exhaustive list, and there may be additional local laws as well.

1. Affirmative Action

The Minnesota Department of Human Rights advises cities receiving state money for any reason that they are not required, but are encouraged, to establish and comply with an affirmative action plan.

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 affirmative action plans are worthwhile.

RELEVANT LINKS:

[U.S. Dep't of Labor - Affirmative Action.](#)

[MN Dep't of Human Rights, FAQ about affirmative action plans & certificates of compliance.](#)

[U.S. Dep't of Labor, Office of Federal Contract Compliance Programs.](#)

[U.S. Dep't of Labor, Office of Federal Contract Compliance Programs.](#)

[29 U.S.C. § 621-634.](#)

[Mount Lemmon Fire Dist. v. Guido](#), 586 U. S. ____ (2018).

See Section IV-A-5 *Minnesota Human Rights Act*.

[Minn. Stat. ch. 363A.](#)

[Minn. Stat. § 363A.03.](#)

[42 U.S.C. §§ 12101-12117.](#)
[Minn. Stat. § 363A.08.](#)
“Americans with Disabilities Act,” U.S. Dep't of Labor.

In most cases, cities are not required to have Affirmative Action Plans. Under the Minnesota Human Rights Act, Section 363A.36, organizations who have more than 40 full-time employees in Minnesota on a single working day during the previous 12 months, must have a certificate of compliance issued by the Commissioner of the Department of Human Rights before a state contract or agreement for goods or services in excess of \$100,000 can be executed.

Under federal law, non-construction (service and supply) contractors with 50 or more employees and government contracts of \$50,000 or more are required, under Executive Order 11246, to develop and implement a written affirmative action program (AAP) for each establishment.

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.

2. Age Discrimination in Employment Act

The Age Discrimination in Employment Act (ADEA) of 1967 prohibits employment discrimination against individuals 40 years of age and older, and is administered by the Equal Employment Opportunity Commission (EEOC).

While the term "employer" is defined in the ADEA as a "person engaged in an industry affecting commerce who has 20 or more employees," the Supreme Court ruled 8-0 in *Mt. Lemmon Fire District v. Guido* that the federal Age Discrimination in Employment Act (ADEA) applies to state and local government employers with less than 20 employees.

Sometimes cities want to give preference to older employees, but in most cases the city cannot do this 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 18. 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.

3. Americans with Disabilities Act and Americans with Disabilities Act Amendment Act

The American with Disabilities Act (ADA) and the Minnesota Human Rights Act (MHRA) provide certain protections for an employee who is a qualified person with disabilities.

RELEVANT LINKS:

[Americans with Disabilities Act Amendment Act. 42 U.S.C. § 12111\(5\), \(8\). Equal Employment Opportunity Commission \(EEOC\): Disability Discrimination. ADA Summary.](#)

[EEOC – Facts about Title I Americans with Disabilities Act of 1990. U.S. Equal Employment Opportunity Commission, The Americans with Disabilities Act of 1990, Titles I and V.](#)

[LMC information memo, Reasonable Accommodations in the City Workplace.](#)

[42 U.S.C. § 12112\(b\)\(4\).](#)

[PL 110-325 \(S 3406\), ADA Amendments Act of 2008, September 25, 2008. U.S. Equal Employment Opportunity Commission: Fact sheet on the EEOC's final regulations implementing the ADAAA.](#)

Title I of the Americans with Disabilities Act (ADA) prohibits employment discrimination or harassment against qualified individuals with disabilities. In addition it requires employers to provide a reasonable accommodation to an employee or job applicant. It applies to employers with 15 or more employees and is administered by the EEOC.

The ADA prohibits cities from discriminating against qualified disabled employees in any aspect of employment, including compensation and benefits. In 2008, the law was amended (ADAAA) to broaden the definition of disability.

To be covered by the ADA, an employee must be a qualified individual – one who, with or without reasonable accommodation, can perform the essential functions of the employment position).

A person can show that he or she has a disability in one of three ways:

- A person may be disabled if he or she has a physical or mental condition that substantially limits a major life activity (e.g. walking, talking, seeing, hearing, sleeping, communicating, working, or learning).
- A person may be disabled if he or she has a history of a disability (such as cancer that is in remission). The ADA also covers past history of alcoholism and drug abuse if the person is no longer currently using illegal substances. Alcoholism is covered as a disability if a person is still abusing alcohol, although it does not prohibit an employer from taking disciplinary action for unsatisfactory performance or failure to comply with company policy.
- A person may be disabled if he is believed to have a physical or mental impairment that is not transitory (lasting or expected to last six months or less) and minor (even if he does not have such an impairment). Some examples of people covered in this category may include a person who may have been hospitalized for depression as a teenager, or a person receiving therapy or medication to control some condition that is not disabling.

The ADA also includes a statutory provision specifically prohibiting discrimination based on the “known disability of an individual with whom the qualified individual is known to have a relationship or association.”

A qualified employee or applicant with a disability is an individual who, with or without reasonable accommodation, can perform the essential functions of the job in question.

RELEVANT LINKS:

LMC information memo, [Reasonable Accommodations in the City Workplace](#).

EEOC enforcement guidance, 915.002, October 17, 2002.

42 U.S.C. § 12111(9).
Minn. Stat. § 363A.08, subd. 6.
[Job Accommodation Network \(JAN\)](#).

ADA: [Information and technical assistance](#).

U.S. Dep't of Justice, Civil Rights Division, [Disability Rights Section, Title II Highlights](#).

This law was amended under the Americans with Disabilities Act Amendments on September 25, 2008. The U.S. Equal Employment Opportunity Commission described the amendments as “the focus is on how the person was treated rather than on what an employer believes about the nature of the person’s impairment.” The definition of disability should be interpreted in favor of broad coverage for individuals.

The effect of these changes is to make it easier for an individual seeking protection under the ADA to establish that he or she has a disability within the meaning of the ADA.

The ADA requires employers to reasonably accommodate a disability. An important piece of this requirement is engaging in an interactive process with the employee or applicant to discuss what types of accommodations would allow the employee to meet the essential functions of the job. Because the definition of a disability is broad, employers should put greater focus on whether or not the impairment can be reasonably accommodated, instead of whether or not the impairment rises to the level of a disability.

Reasonable accommodation may include, but is not limited to the following:

- Making existing facilities used by employees readily accessible to and usable by persons with disabilities.
- Job restructuring, work schedules modifications, reassignment to a vacant position.
- Acquiring or modifying equipment or devices; adjusting or modifying examinations, training materials, or policies; and providing qualified readers or interpreters.

The accommodation process can involve a variety of professionals who are familiar with functional limitations, job analysis, technology, and accommodation tools and techniques. The city may benefit from contacting outside resources like a consultant, rehabilitation counselors, information and assistive technology specialists, rehabilitation engineers, and others

Title I prohibits medical exams or asking medical-related questions prior to a job offer. It also limits the employer’s ability to require medical exams or ask medical questions except in certain circumstances. The law requires employers keep all medical records and information in a separate, confidential medical file.

Title II prohibits discrimination by state and local government agencies. It is not appropriate to assume because an individual has a disability or limitation(s) that he or she will require accommodations in the workplace. An individual may have a disability that does not necessarily limit his ability to perform job functions. Individuals with disabilities may need no accommodations, a few, or many. Each accommodation analysis should be handled on a case-by-case basis to meet the needs of the specific individual.

RELEVANT LINKS:

[42 U.S.C. § 12113.](#)

[Job Accommodation Network \(JAN\) for State and Local Government Employers.](#)

[U.S. Equal Employment Opportunity Commission: Facts About the Americans with Disabilities Act.](#)

[Wilking v. Cnty. of Ramsey](#), 153 F.3d 869 (8th Cir. 1998).
[Minn. Stat. § 363A.08](#), subd. 2.
[Kallail v. Alliant Energy Corporate Servs., Inc.](#), 691 F.3d 925 (8th Cir. 2012).

A city need not hire an individual with a disability if the individual is unable to safely perform the essential functions of the job, with or without reasonable accommodation.

An employer has the burden of proving an employee cannot safely perform the job and must provide a reasonable accommodation that would allow the employee to perform the job safely. Before deciding not to hire such an individual, the city must make good faith efforts to be sure there is no reasonable accommodation available that would allow the employee to perform the job safely. This may involve bringing in a consultant qualified to make such a determination.

An employer is required to make a reasonable accommodation to the known disability of a qualified applicant or employee if it would not impose an undue hardship on the operation of the employer's business.

Undue hardship is defined as an action requiring significant difficulty or expense when considered in light of factors such as an employer's size, financial resources, and the nature and structure of its operation. A helpful resource to reference when considering accommodations is the Job Accommodation Network (JAN). JAN provides free consulting services for state and local government employers, including one-on-one consultation about all aspects of job accommodations, ADA compliance assistance, and referral to helpful resources.

It is important to note the ADA does not require a city to accept substandard job performance as part of an accommodation, nor is an employer obligated to provide personal use items such as glasses or hearing aids. It is also important to make sure the city can articulate the performance deficiencies or other objective basis for discipline in a way that is not related to the employee's disability or need for accommodation. A city may terminate the employment of a disabled individual if:

- The reason for the termination is not related to the disability.
- The employee is no longer able to perform the essential functions of the position.
- There is no accommodation available that would allow them to perform the job.
- The city cannot make a reasonable accommodation due to undue hardship.

While the ADA does not require that qualified employees with disabilities receive paid leave or other special treatment with regard to benefits, it does require they be treated as well as other similarly situated employees. For example, if employees on other types of unpaid leave of similar length receive the city's contribution toward health insurance, then the city should provide the same benefit for a qualified employees requesting leave under the ADA.

RELEVANT LINKS:

[42 U.S.C. § 12111\(10\),
Minn. Stat. § 363A.08,
subd. 6\(b\).](#)

[U.S. equal Employment
Opportunity Commission:
Notice 915.002 \(July 27,
2000\).](#)

[Genetic Information Non-
discrimination Act.](#)

Allowing an employee to use paid or unpaid leave may be a reasonable accommodation under the ADA. For example, leave may be required to allow an employee to receive or recover from treatment related to a disability or recover when a condition “flares up.” If an employee asks for leave related to a disability, the city should consider the following:

- Determine whether the request is covered by the city’s leave policies, including its FMLA policy. If yes, the leave should be granted.
- If the employee requests more leave than available under the city’s policies, the city should consider whether granting the additional leave could be provided as a reasonable accommodation or whether it would cause undue hardship. (One example of undue hardship in this situation could include a job that is highly specialized and very difficult to replace on a temporary basis.

Another example might include a situation where the employee cannot provide a date of return so that holding the position open indefinitely is an undue hardship).

Undue hardship is defined as an action requiring significant difficulty or expense when considered in light of factors such as an employer’s size, financial resources, and the nature and structure of its operation and is determined on a case-by-case basis. In general, the larger the city and the more resources it has available, the more difficult is the burden to show undue hardship.

The city may require an employee who has requested leave under the ADA to provide a doctor’s statement clearing them to return to work after a period of leave. The city should develop guidelines about when such statements will be requested and apply those guidelines uniformly across all medical situations and employees.

Additionally, a city will want to ensure the doctor has accurate, updated information on the job duties so he or she can make an informed judgment about the employee’s return to work and/or work restrictions.

Accommodating an employee’s work restrictions may be required by the ADA if the accommodation does not cause undue hardship.

The ADA is complex and changing. Cities are encouraged to work with an attorney to make determinations about whether a practice or policy is discriminatory and about reasonable accommodation and undue hardship.

4. Genetic Information Nondiscrimination Act (GINA) of 2008

GINA prohibits the use of genetic information in employment decisions including hiring, firing, pay, job assignments, training, etc. Family medical history is included in the definition of genetic information.

RELEVANT LINKS:

Equal Employment
Opportunity Commission
(EEOC): [Genetic
Information
Discrimination](#).
Pub. L. 110–233.

Background Information of
EEOC [Final rule on Title II
of the Genetic Information
Nondiscrimination Act of
2008](#).

[Minn. Stat. ch. 363A.](#)
[42 U.S.C. § 2000e.](#)
[Minn. Stat. § 363A.08.](#)

[Minn. Stat. § 363A.08,](#)
[subd. 2.](#)
[Minn. Stat. § 363A.03,](#)
[subd. 42.](#)

[2014 Minn. Laws ch. 239.](#)

MN Dep't of Human
Rights, [Federal laws that
prohibit employment
discrimination](#).

GINA also makes it illegal to harass an employee because of his/her genetic information. Like many other statutes, GINA prohibits discrimination and harassment on the basis of protected class and prohibits retaliation against an employee who has filed a complaint or participated in an investigation. Cities should ensure their hiring processes and employment actions comply with GINA, given that the law is evolving, and GINA includes stringent provisions.

Genetic information includes information about an individual's genetic tests and the genetic tests of family members. It also includes family medical history. Physicians should not ask for family medical history as part of a pre-employment physical. Family medical history can be acquired to document a request to care for a family member with a serious health condition under the Family Medical Leave Act, but cannot be used for employment decisions and must be kept in a separate medical file.

Retaliation against an employee who has filed a complaint, or participated in an investigation of, genetic discrimination or harassment is prohibited.

5. 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. In some situations, the MHRA provides greater protection to employees than federal law.

Like the ADA, the MHRA prohibits discrimination against persons with disabilities in all terms and conditions of employment. The MHRA covers all employers in Minnesota with one or more employees. Therefore, cities not covered by the ADA are likely still covered by the MHRA.

The MHRA and ADA define disability similarly, but the Minnesota's Human Rights Act replaces the word "substantially" with "materially." 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, sex (including pregnancy, childbirth, and disabilities related to pregnancy or childbirth), marital status, status with regard to public assistance, membership or activity in a local commission, disability, sexual orientation (including gender identity or gender expression), age or familial status (this protected class was included in Minnesota Statute, under the Women's Economic Security Act (WESA) effective May 12, 2014). "Familial status" means the condition of one or more minors being domiciled with (1) their parent or parents or the minor's legal guardian or (2) the designee of the parent or parents or guardian with the written permission of the parent or parents or guardian.

RELEVANT LINKS:

[Minn. Stat. § 363A.08 subd. 6.](#)

[Minn. Stat. § 363A.03, subd. 36.](#)

See Section IV-B-4
Minnesota Pay Equity Act,
LMC information memo,
*Local Government Pay
Equity Act: An Overview*.

[Minn. Stat. § 181.9414.](#)

The protections afforded against discrimination on the basis of family status apply to any person who is pregnant or is in the process of securing legal custody of an individual who has not attained the age of majority.

The MHRA excludes any condition resulting from alcohol or drug abuse which prevents a person from performing the essential functions of the job in question or constitutes a direct threat to property or the safety of others. It also defines reasonable accommodation similarly to the ADA, but only cities with 15 or more employees are required to make reasonable accommodations for physical or mental disabilities of an employee or applicant. If a city follows the requirements of ADA, they are likely to meet the requirements for reasonable accommodations under the MHRA.

Cities are encouraged to consult with an attorney if there is any question about whether or not an employee may be entitled to the protections of the MHRA.

As with the ADA, the city does not need to accommodate an employee when it would cause undue hardship. The ADA's statute of limitations requires an employee to file a charge within 300 days of the day the discrimination took place. The MHRA allows a full year.

Under both the ADA and the MHRA, an employer can make a requirement that the applicant pass a medical exam as part of a conditional job offer. The MHRA requires any medical exam, testing, or questions be related to the essential functions of the job.

The Minnesota Department of Human Rights (MDHR) is a neutral state agency that investigates charges of illegal discrimination and harassment under Minnesota state law.

6. Minnesota Pay Equity

The Minnesota Pay Equity Act requires each local government to analyze its pay structure for evidence of inequities, and to report this information to Minnesota Management and Budget. For additional information click to the link on the left.

7. Minnesota Reasonable Accommodations to an Employee for Health Conditions Related to Pregnancy or Childbirth

Effective May 12, 2014, Minnesota law was amended to require employers to provide reasonable accommodations to an employee for health conditions related to pregnancy or childbirth if the employee so requests. The accommodations must be made unless the employer demonstrates the accommodation would impose an undue hardship on the operation of the employer's business.

RELEVANT LINKS:

[42 U.S.C. § 2000e.](#)
[U.S.EEOC: Facts About Pregnancy Discrimination](#)
[U.S. EEOC: Fact Sheet for small businesses: Pregnancy Discrimination.](#)
[U.S. EEOC: Enforcement guidance: Pregnancy discrimination and related issues.](#)

[EEOC Notice No 915.004 \(August 25, 2016\).](#)

See [Personnel Policy](#), LMC model policy. See Retaliation section.

[Thompson v. N. Am. Stainless, LP](#), 562 U.S. ___, 131 S.Ct. 863 (2011).

[EEOC Enforcement Guidance, 915.004, August 25, 2016.](#)

The following are not considered an undue hardship and an employer may not obtain advice from the employee’s licensed health care provider or certified doula for:

- More frequent restroom, food, and water breaks;
- Seating; and
- Limits on lifting over 20 pounds.

The statute requires the City and the employee to engage in an interactive process regarding the employee’s request for a reasonable accommodation due to her pregnancy or childbirth. A reasonable accommodation is defined under Statute as one that may include, but is not limited to, temporary transfer to a less strenuous or hazardous position, seating, frequent restroom breaks, and limits to heavy lifting.

The City is not required to create a new or additional position in order to accommodate an employee’s pregnancy or childbirth related health condition, nor is the city required to discharge or promote any employee, or transfer any other employee with greater seniority.

Further, the statute states an employer cannot require an employee to take a leave or accept an accommodation. The city cannot penalize an employee for requesting a reasonable accommodation for her pregnancy or childbirth related health condition.

8. Pregnancy Discrimination Act of 1978

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 who are pregnant or affected by pregnancy-related conditions must be treated in the same manner as other applicants or employees with similar abilities or limitations.

9. Retaliation

Typically, retaliation claims stem from a complaint of discrimination or harassment or a request for religious or disability discrimination.” The EEOC suggests practices for employers to implement to minimize the likelihood of retaliation violations, including training and a written anti-retaliation policy. A city will want to take extra caution if planning to discipline an employee who has engaged in a “protected activity” in the recent past. In light of a January 2011 U.S. Supreme Court decision and EEOC position, not only do cities need to pay special attention to the treatment of employees who complain of discrimination, but also to the treatment of employees who have strong ties to other employees who complain of discrimination. Contact the League and your city attorney for further information.

RELEVANT LINKS:

[42 U.S.C. ch. 21, subc. VI.](#)

[42 U.S.C. ch. 21, subc. VI.](#)

[Minn. Stat. § 43A.11.](#)
[Minn. Stat. § 197.46.](#)
[Minnesota Department of Veterans Affairs.](#)

LMC information memo,
Veterans Preference in Discipline, Discharge or Job Elimination.
Johnson v. Cnty. of Anoka,
536 N.W.2d 336 (Minn. Ct. App. 1995).
[Minn. Stat. § 541.05.](#)

[Minn. Stat. § 197.455.](#)
LMC information memo,
Veteran's Preference in Hiring.

LMC information memo,
Veteran's Preference in Hiring.

[Minn. Stat. § 181.932, subd. 1.](#)

10. Title VII of the Civil Right 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. The law requires employers to reasonably accommodate the religious beliefs or practices of employees or applicants.

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.

11. Veterans' Preference

The Minnesota Veterans' Preference Act (VPA) provides a preference for qualified veterans to recognize training and experience in the military services of the government and loyalty and sacrifice for the government are qualifications of merit that cannot be readily assessed by examination.

Qualified veterans are protected by law and must be afforded certain benefits from the date of hire. State law provides that no veteran employed by a city (following any city required initial probationary period) shall be removed from employment except for incompetence, misconduct or abolition of the position the veteran holds. There is a six-year statute of limitations for claims brought under the VPA.

As applied to the hiring process, the Act requires cities to grant additional points to applicants who are veterans as defined in the law, to assist them into the interview stage of hiring.

Certain employees, such as department heads and confidential employees are exempt from the VPA.

12. Whistleblower law

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:

- Or a person acting on behalf of an employee, in good faith, reports a violation, suspected violation, or planned violation of any federal or state law, or common law.
- Is requested by a public body or office to participate in an investigation, hearing or inquiry.

RELEVANT LINKS:

[29 U.S.C. § 206\(d\)](#).
U.S. Equal Employment
Opportunity Commission,
[The Equal Pay Act of
1963](#).
HR Reference Manual,
[Chapter 4](#) for more
information on job
evaluation and pay equity.
HR Reference Manual,
[Chapter 5](#), for information
on types of benefits.

[Ledbetter v. Goodyear Tire
and Rubber Co.](#), 550
U.S.618, 127 S. Ct. 2162
(2007).

[42 U.S.C. § 2000e-
5\(e\)\(3\)\(A\)](#).

[29 U.S.C. § 206\(d\)\(1\)\(iv\)](#).

- 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.
Note: It is strongly recommended to take all reports of policy violations and/or illegal activity seriously. Investigate complaints fully and document the investigation findings and the city's response.
- Communicates the findings of a scientific or technical study that the employee, in good faith, believes to be truthful and accurate, including reports to a governmental body or law enforcement official.

B. Compensation

1. Equal Pay Act (federal)

The Equal Pay Act of 1963 prohibits employers from paying unequal wages to men and women who perform jobs requiring substantially equal skill, effort and responsibility, and are performed under similar working conditions within the same workplace. Job duties, not job titles, are used to determine whether two jobs are equal or not. Compensation includes salaries, expense accounts, car allowances, use of city-owned cars, group insurance, retirement benefits, leave, and other similar conditions of employment.

Pay differences are permissible when they are justified by: 1) a merit system; 2) a system based on quality or quantity of production; 3) a seniority system; or, 4) any other system which is not gender-based. These are known as "affirmative defenses" and it is the employer's burden to prove they apply. Some factors that have been found to justify pay differentials include retention offers, different physical locations and different working conditions.

The U.S. Supreme Court ruled discrimination complaints could only be undertaken after the first act had been committed, which spurred Congress to take action and explicitly state that the employee retained the right to sue against continued discrimination. Under the Lily Ledbetter Fair Pay Act of 2009, the statute of limitations for these claims restarts every paycheck, rather than from the time the employer made the discriminatory pay decision.

In correcting a pay difference, no employee's pay may be reduced. Instead, the pay of the lower paid employee(s) must be increased.

RELEVANT LINKS:

[Minn. Stat. § 181.66.](#)
[Minn. Stat. § 181.67.](#)
[Minn. Stat. § 181.68.](#)
[Minn. Stat. § 181.70.](#)
[Minn. Stat. § 181.71.](#)

See Section IV-B-4,
[Minnesota Pay Equity Act.](#)

LMC information memo,
[Local Government Pay Equity Act: An Overview.](#)

LMC information memo,
[Fair Labor Standards Act \(FLSA\): An Overview.](#)
[29 U.S.C. § 201-219.](#)
[Minn. Stat. § 177.21-.35.](#)

[29 U.S.C. § 201-219.](#)
U.S. Dep't of Labor, Wage
& Hour Div., [Compliance Assistance - Wages and the Fair Labor Standards Act.](#)

[MN Dep't of Labor & Industry.](#)
U.S. Dep't of Labor, Wage
& Hour Div., [Nursing Care Facilities Under the Fair Labor Standards Act.](#)

LMC information memo,
[FLSA: Police and Fire Employees.](#)
[29 U.S.C. § 201-219.](#)

2. Equal Pay for Equal Work Act (Minnesota)

Like federal law, state law prohibits employers from discriminating against employees on the basis of gender by paying wages to employees at a rate less than the rate the employer pays to employees of the opposite sex for “equal work.” Equal work is defined as that which requires equal skill, effort, and responsibility and which is performed under similar working conditions, except where such payment is made in accordance with a seniority system, merit system, a system which measures performance on the basis of production, or based on something other than gender. Like the federal law, employers are prohibited from reducing the wages of employees in order to come into compliance. Cities which have a civil service system based on merit are exempt from this law.

Minnesota’s Pay Equity requirement is a separate set of laws from the Equal Pay for Equal Work Act. As the Minnesota Management & Budget webpage describes, Pay Equity is a method of eliminating discrimination against women who are paid less than men for jobs requiring comparable levels of expertise. This goes beyond the familiar idea of “equal pay for equal work” where men and women with the same jobs must be paid equally. Generally speaking, if a city is in compliance with the state’s pay equity requirements, then it is very likely the city is also in compliance with the Equal Pay Act. For additional information on Minnesota Pay Equity, refer to the section on the left.

3. Fair Labor Standards Act

In situations where both the federal and the state FLSA address an issue, the employer is required to follow the law that is of greatest benefit to the employee.

a. Federal Minimum Wage law

The federal Fair Labor Standards Act (FLSA) defines the employer requirements for minimum wage, overtime compensation and compensatory time, exempt and nonexempt status, child labor standards, and record keeping in relation to these requirements. The overtime compensation and compensatory time requirements for police and fire are different than those applied to other employees. There may also be situations where the exception for nursing care facilities is applicable. These laws also define the salary and types of duties required for an employee to be exempt from overtime requirements.

The FLSA requires cities to pay at least the federal minimum wage, to pay time and one-half overtime after 40 hours worked, and to comply with certain record-keeping requirements.

RELEVANT LINKS:

LMC information memo,
[FLSA: An Overview](#).
29 U.S.C. § 213 Section
3(e)(2)(C) of the FLSA,
29 U.S.C. 203(e)(2)(C).
LMC information memo,
[FLSA: Determining
Exempt vs. Non-Exempt
Status](#).

[Minn. Stat. § 177.21-.35](#).
LMC information memo,
[FLSA: An Overview](#).
LMC information memo,
[FLSA: Determining
Exempt vs. Non-Exempt
Status](#).

[Minn. Stat. § 177.24](#).

[Minn. Stat. § 177.24](#).

[Minn. Stat. § 177.24](#).
MN Dep't of Labor and
Industry: [Minimum wage
in Minnesota](#).

Jessica Looman, Assistant
Commissioner, MN Dept.
of Labor, letter to Tom
Grundhoefer, LMC
General Counsel, August
4, 2014.

All cities are covered by the Fair Labor Standards Act (FLSA). However, some employees are exempt from the overtime requirements of the act. Generally speaking, council members (individuals who hold a political office and are not subject to any civil service laws) are not considered an employee under FLSA and, therefore, are not subject to the FLSA's minimum wage or overtime rules.

b. Minnesota Minimum Wage law

The state of Minnesota also has a Fair Labor Standards Act. The purpose of this Act is to establish minimum wage and overtime compensation standards, safeguard existing minimum wage and overtime compensation standards, sustain purchasing power, and increase employment opportunities.

Effective August 1, 2014, the Minnesota Fair Labor Standards Act increased the state minimum wage with yearly wage increases for the next few years and adjusted the definition of "large employer." This definition expansion effectively captures more cities to be classified as a "large employer," based on their city's total budget, which will in turn lead to a higher state minimum wage rate. As before, the minimum wage a city must pay depends on whether an organization is a large or small employer and if the employee is covered by the law. While the statute is not entirely clear, the League generally advises using the city's total budget amount to determine whether a city is classified as a large or small employer for Minnesota Fair Labor Standards Act purposes. For cities, annual gross volume of sales would likely be interpreted to mean the city's total budget.

As of August 1, 2014, cities with a total budget over \$500,000 are considered large employers for purposes of the state minimum wage law. Conversely, cities which have a total budget under \$500,000 are considered small employers. Prior to August 1, 2014, a large employer was considered one with a total budget of at least \$625,000.

As of 2019, large employers must pay most employees covered by minimum wage law at a rate of at least \$9.86 per hour (up from \$9.65/hour in 2018), and small employers must pay all applicable employees at a rate of at least \$8.04 per hour (up from \$7.87/hour in 2018). The League generally advises cities with a total budget of \$500,000 or more to comply with the higher Minnesota minimum wage rate (i.e., in 2019 paying the \$9.86 per hour rate).

Some cities have questioned whether to include monies from separate entities, such as economic development authorities for example, within their calculation to determine whether the city meets the definition of "large" or "small" employer.

RELEVANT LINKS:

[Minn. Stat. § 177.24.](#)
MN Dep't of Labor and Industry: [Minimum wage in Minnesota.](#)

[Minn. Stat. § 177.23, subd. 7.](#)

[Minn. Stat. § 177.25, subd. 1.](#)

[Minn. Stat. § 204B.31.](#)
[Minn. Stat. § 471.665.](#)

[Minn. Stat. § 177.24.](#)

[29 U.S.C. § 201-219.](#)
U.S. Dep't of Labor: [Fact Sheet #23: Overtime Pay Requirements of the FLSA.](#)

The Minnesota Department of Labor states that, for purposes of determining city status as a “large employer” or “small employer” under Minnesota’s minimum wage law, would generally not be required to include revenue received by municipal entities they have created, if those entities operate as separate and distinct legal entities. Examples of legally separate and distinct public entities generally include economic development authorities, local redevelopment agencies, municipal power or gas agencies, and other special taxing districts created and organized under Minnesota law. These separate entities are subject to the Minnesota minimum wage law as large or small employers based on their own annual gross revenues. However, if an entity is not operated as a separate and distinct legal entity from the city, they may be determined to be part of the municipal enterprise. This analysis would be made by the Department of Labor and Industry on a case-by-case basis.

There are two exceptions to these wage amounts for younger employees. First, large employers must pay employees under age 18 a rate of at least \$8.04 per hour (effective August 1, 2019). Second, in 2019, large employers may elect to pay employees under age 20 at a rate not less than \$8.04 per hour, but only for their first 90 consecutive days of employment. After the 90 days, the minimum hourly rate becomes \$9.86/hour.

As before, these minimum wage requirements do not pertain to elected officials; individuals who serve on any governmental board, commission, committee, or other similar body; city volunteers; or any individual employed, directly or indirectly, by the city to provide police or fire protection services. Also continuing is the cities responsibility to pay time and one-half overtime to non-exempt employees for those hours worked over 48 in one workweek.

However, Minnesota election judges must be paid at least the State of Minnesota minimum wage for each hour carrying out their duties at the polling places and in attending training sessions required by Minnesota Statute § 204B.25, except as provided in the volunteering service section of subd, 2 of that section.

Beginning in 2017 and each year after, the Department of Labor and Industry will determine with feedback of stakeholders any appropriate minimum wage increase. The minimum wage increase, if any, will be effective as of January 1 of the following year.

c. Overtime – federal law

The federal Fair Labor Standards Act requires covered employees be paid time and one-half overtime (or time and one-half compensatory time) for all hours worked over 40 in one workweek.

RELEVANT LINKS:

[29 C.F.R. § 778.100.](#)

LMC information memo,
[FLSA: An Overview.](#)

[29 U.S.C. § 213.](#)
LMC information memo,
[Determining Exempt vs.
Non-Exempt Status.](#)
[Lederman v. Frontier Fire
Protection, Inc.](#), 685 F.3d
1151 (10th Cir. July 11,
2012).

[29 U.S.C. ch. 8.](#)

[29 U.S.C. § 213.](#)

[29 U.S.C. § 207\(k\).](#)
LMC information memo,
[FLSA: Police and Fire
Employees.](#)

This means the city is not required to include holidays, vacation, sick leave, or other time off when calculating hours “worked” unless the city has a past practice, personnel policy, or union contract requiring the hours be counted. Certain employees are exempt from these requirements, but in some cases may be subject to the state’s overtime law which requires time and one-half payment after 48 hours worked in one workweek.

The League has several informational memos on the federal Fair Labor Standards Act and how it applies to overtime in cities:

(1) Overview of the Fair Labor Standards Act

This memo explains the basic requirements of the federal FLSA and defines some key terms such as hours worked, regular rate of pay, and workweek. It discusses compensatory time in lieu of overtime pay and covers recordkeeping requirements of the Act.

(2) Determining exempt vs. nonexempt status

This memo discusses the factors necessary for city jobs to be considered exempt under the Fair Labor Standards Act. Sometimes an exempt employee is referred to as a salaried employee, but the two terms are not truly the same things.

Salaried refers to a term referring to payroll treatment, but does not determine overtime exemption status. Thus, being salaried does not always mean the same thing as being exempt.

Even though a city may pay an employee a salary, that employee may still very well be entitled to overtime pay when he/she works more than 40 hours in a seven day workweek (unless the city falls under one of the special exemptions addressed below). Salary is only one part of the FLSA’s exempt and nonexempt analysis. In order for an employee to be exempt from overtime pay requirements, an employee who is paid on a salary basis must meet specific requirements. What determines an employee’s right to overtime compensation depends on two things: first, whether they are paid on a salary basis; and second, the nature of their duties. The city holds the burden of proving an employee’s exempt FLSA status, so it’s helpful to retain documentation supporting the rationale.

(3) Police and fire employees

Various aspects of the Fair Labor Standards Act are unique to public safety employees, such as the ability to use an extended workweek of up to 28 days and the special exemption for small police departments.

RELEVANT LINKS:

[29 C.F.R. 778.419.](#)
LMC information memo,
*FLSA: Police and Fire
Employees.*

[29 U.S.C. § 203\(e\)\(4\)\(A\).](#)
[29 C.F.R. § 553.106\(e\).](#)

[LMC Model Overtime
Policy.](#)

LMC information memo,
*FLSA: Determining
Exempt vs. Non-Exempt
Status.*
[29 C.F.R. § 778.602 \(b\).](#)

[Minn. Stat. § 177.25.](#)

[Minn. Stat. § 177.25.](#)

[Minn. Stat. § 177.25, subd.
1.](#)

Cities with less than five employees performing police and fire work during any given workweek are not required to pay overtime to those employees during that workweek. Part-time employees and employees on leave should be counted. Employees of the department who do not perform police or fire work (e.g., clerical staff) should not be counted.

Many cities have paid on-call firefighters who also hold full-time city jobs. In most cases, the city will be required to combine the hours worked in both positions to determine overtime. That is, if the combined hours for the two positions exceed 40 in one workweek and the firefighter is not a true volunteer.

In order to be a volunteer for purposes of the Fair Labor Standards Act (FLSA), the city cannot pay the employee more than a “nominal amount.” Paying anything at or close to the minimum wage or paying the employee by the hour is very likely to result in the individual being seen as a paid on-call employee instead of a volunteer for purposes of overtime laws.

(4) Model overtime policy

The League has developed a Model Overtime Policy to help cities protect themselves from claims based on incorrect application of the Fair Labor Standards Act.

(5) Special exemptions and partial exemptions

The FLSA provides some special overtime exemptions and partial exemptions under certain circumstances. It also allows special treatment for unionized employees and employees with irregular work hours.

d. Overtime—state law

Even if an employee is exempt from the federal Fair Labor Standards Act, the city must still determine whether he or she is subject to the state’s overtime law. The state law requires payment of time and one-half overtime or compensatory time for all hours worked over 48 in one workweek.

Like the federal law, the state law does allow some exemptions from overtime. The ones that are most likely to apply to city employees are listed in the following three sections:

(1) 1040/2080 plans for unionized employees

The state law specifically mentions if an employer has a certain type of agreement in place with a collective bargaining unit (typically called a 1040/2080 plan), the employer is not subject to the state law requirement to pay overtime after 48 hours in one workweek.

RELEVANT LINKS:

[Minn. Stat. § 177.25, subd. 2.](#)

[Minn. Stat. § 177.23.](#)
See LMC information memo: *FLSA: Police and Fire Employees.*

[Minn. Stat. § 471.991.](#)
[Minn. Stat. § 471.992.](#)
[Minn. Stat. § 471.993.](#)
[Minn. Stat. § 471.994.](#)
[Minn. Stat. § 471.995.](#)
[Minn. Stat. § 471.996.](#)

[Minn. Stat. § 471.997.](#)
[Minn. Stat. § 471.9981.](#)
[Minn. Stat. § 471.999.](#)
MN Mgmt. and Budget:
[Pay Equity Resources.](#)
LMC information memo,
[Local Government Pay Equity Act: An Overview.](#)
HR Reference Manual,
Chapter 4.

MN Mgmt. & Budget:
[Local Government and Salary Cap and Salary Waiver Process.](#)

LMC information memo:
[Governor's Salary Cap Law.](#)

[Minn. Stat. § 471.701.](#)

(2) Hospital employees

Under state law, an employer who operates a health care facility can use a 14-day workweek if the employee and employer agree to it before any work is performed. However, the employer must agree to pay time and one-half overtime for all hours worked over eight in one day and over 80 in one 14-day period.

(3) Other exemptions

There are several exemptions to the state's wage and hour law for positions such as elected officials and others.

4. Minnesota Pay Equity Act

The Minnesota Pay Equity Act requires cities to evaluate each job in the city and to establish "equitable compensation relationships" between job classes that are "male-dominated," "female-dominated," and "balanced" in order to eliminate sex-based wage differences.

This means every job class in the city meeting the definition of a covered job class must be evaluated and assigned job value points to provide a basis on which to evaluate the relationships between job value and wages. Every three years, the city must issue a report to the state to show it is in compliance with the pay equity statute. Substantial monetary penalties can be assigned to cities that do not meet this requirement.

5. Governor's salary cap law

State law limits the amount of compensation political subdivisions may pay employees. Under the current law, statutory and home rule charter city employees may be paid 110 percent of the governor's salary. Adjustments are made annually based on the Consumer Price Index.

6. Requirement to post salary data

Cities with a population of more than 15,000 population must annually notify residents of the positions and base salaries of its three highest paid positions. Cities can fulfill this requirement by doing one of the following:

- posting the information on the home page of the city's website for at least ninety consecutive days;
- including the information in a city publication that is distributed to all residents; or
- including the information in the annual notice of proposed property taxes.

RELEVANT LINKS:

[Minn. Stat. § 465.722.](#)

[Minn. Stat. § 465.72.](#)

[HR Reference Manual, Chapter 3.](#)

[HR Reference Manual, Chapter 5.](#)

[LMC information page: Federal Health Care Reform Update.](#)

A frequent question regarding this requirement is whether the city should consider overtime when determining the three highest paid positions for purposes of complying with the requirement to post salary data. The League's response is probably not, since the statute refers to "base salary;" thus additional compensation such as overtime, which can vary from year to year, should likely not be considered.

7. Severance pay

Severance pay for a highly compensated employee as defined in the statutes cannot exceed six months of wages. Severance pay for this purpose does not include sick leave, vacation, or health insurance payments. The severance pay must be excluded from retirement deductions and from any calculations in retirement benefits. There are also certain exceptions to the maximum allowable severance pay for a highly compensated employee found in the statute, including severance pay that is part of certain early retirement programs.

Severance pay for city employees not defined as highly compensated must not exceed one year of wages and must be paid in a manner mutually agreeable to the employee and employer over a period not to exceed five years from retirement or termination of employment. Severance pay for this purpose does not include sick leave or health insurance payments. For additional information on severance pay, refer to Chapter 3 of the HRRM.

C. Benefits laws

There is no legal requirement that cities offer health or other group insurance plans. However, most employees view health benefits as a crucial part of their compensation package. If the city is going to offer group health benefits to its employees, a variety of state and federal laws and regulations govern these plans.

"Large employer" cities (those with at least 50 full-time equivalent employees) will want to keep in mind, to avoid possible penalties under health care reform, the city should offer affordable coverage to employees working an average of 30 or more hours a week. A city is not required to offer coverage or pay any part of the coverage.

However, under health care reform, cities with at least 50 full-time equivalent employees who don't offer coverage or whose employee contributions exceed a certain percentage of the employee's income could be subject to a penalty starting in 2016, if any full-time employee receives a premium tax credit towards purchasing their own coverage through an exchange.

RELEVANT LINKS:

LMC information memo,
[Continuation of Benefits](#),
29 U.S.C. §§ 1161-1169,
Minn. Stat. § 62A.17.

[Minn. Stat. § 471.617.](#)

[29 U.S.C. §§ 1161-1169.](#)

[DOL Continuation of
Health Coverage -
COBRA.](#)

LMC information memo,
[Continuation of Benefits](#)

[Minn. Stat. § 62A.17.](#)

LMC information memo,
[Continuation of Benefits](#).

[Minn. Stat. § 62A.17.](#)

[Minn. Stat. § 61A.092.](#)

1. Benefit Continuation laws

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 federal 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 one of the following:

- Covered under a fully insured group plan.
- Self-insured under state law, which requires compliance with Minnesota insurance laws.

a. Consolidated Omnibus Budget Reconciliation Act (COBRA)

Federal continuation (Consolidated Omnibus Budget Reconciliation Act, or COBRA) requires public sector employers to offer a temporary extension of group health coverage (referred to as “continuation of coverage”) to certain qualified beneficiaries (typically employees, former employees, spouses, former spouses, and dependent children) for up to 18, 29, or 36 months, depending on the qualifying event.

In Minnesota, most cities with 20 or more employees are required to comply with state law as well as federal COBRA requirements.

Key questions include:

- Does COBRA apply in this situation?
- To whom does the COBRA notice need to be sent?
- Did I mark the important dates regarding this COBRA notice on my calendar?
- Does finance/payroll need a copy of the COBRA notice?

b. Minnesota Continuation

Minnesota continuation law provides continuation of group health benefits (medical, dental, vision, and prescription drug plans), for periods equal to and often longer than COBRA provides, and group term life benefits, generally for up to 18 months, for all public sector employers providing group health insurance or life insurance coverage to Minnesota resident employees. 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.

RELEVANT LINKS:

[Minn. Stat. § 471.61 subd. 2b.](#)

[LMC information memo, Continuation of Benefits.](#)

[Minn. Stat. § 471.61 subd. 2b.](#)

[LMC information memo, Payroll Pandemonium.](#)
[IRS: Publication 15-A.](#)
[IRS: Bulletin 2008-24.](#)

c. Retiree coverage

In addition to federal law, Minnesota law requires state and local governments to allow some former employees and their dependents to continue to participate indefinitely in the employer-sponsored hospital, medical, and dental insurance group they participated in immediately prior to retiring. City employees (other than volunteer firefighters) who are receiving a disability or retirement annuity from a Minnesota public pension plan (PERA) or have met the age and service requirement necessary to receive an annuity from a public pension plan are eligible to continue group health and dental benefits that they participated in before retirement.

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. The city does not have to continue its monetary contribution to health and dental insurance coverage, unless required by a collective bargaining agreement or personnel policy

Minnesota law does not require coverage be continued indefinitely for those employees retiring at age 65 or older. However, a city's collective bargaining agreement or personnel policy may give retiring employees these rights and benefits. If an employee does not meet the requirements under Minnesota law for indefinite continuation of coverage, then the city must still offer continuation of coverage options under COBRA and state continuation requirements.

COBRA continuation generally allows for an administrative fee to be assessed. Because Minnesota statute is silent regarding whether an administrative fee may be charged for early retiree continuation, some cities have interpreted this to mean that, in general, a city has no authority to charge such a fee and choose not to charge a two percent administrative fee for pre-65 retiree health and/or dental insurance premiums.

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.

Sometimes a retiring employee receiving a sick leave payout will ask the city if he/she may use the funds to pay for retiree health and dental premiums. Cities should be aware, depending on how the sick leave payout is handled, there may be tax consequences to the employees and tax filings required for the city.

RELEVANT LINKS:

[Minn. Stat. § 299A.465.](#)

LMC information memo,
[Continuation of Benefits.](#)

“Public Safety Officer
Benefit Programs,” MN
Dep’t of Public Safety.

[Minn. Stat. § 181.74.](#)

LMC information page:
[Federal Health Care
Reform Update.](#)

d. Police and fire special continuation

Minnesota law provides continued health insurance coverage for peace officers and firefighters disabled or killed in the line of duty and their dependents who meet the eligibility criteria. The law requires cities to pay the city’s share of the health insurance premium if the employee or dependent meets the criteria. Through the Public Safety Officer Benefits Program, cities can apply for partial reimbursement of the employer’s share of health care costs by submitting an initial application and claim forms prior to an annual deadline. (More information is available on the Minnesota Department of Public Safety website).

2. Failure to pay benefits

If a city enters into an agreement to pay or provide benefits such as health, welfare, and retirement benefits, vacation, severance or holiday pay, or expense reimbursement, and fails to do so within 30 days after they are due, it is guilty of a gross misdemeanor. However, the institution of bankruptcy proceedings is a defense to any criminal action.

The Minnesota Department of Labor has indicated this statute requires an employer to pay accrued, unused vacation at termination of employment unless there is a policy or practice stating the circumstances under which vacation will be forfeited and the terms of such policy or practice are met.

3. Patient Protection and Affordable Care Act

On March 23, 2010, the Patient Protection and Affordable Care Act (PPACA), otherwise known as federal health care reform, was signed into law. Health care reform provides a number of mechanisms to increase the coverage rate and improve health care. Individuals must carry health insurance coverage or be subject to penalty. Employers must, in most cases, offer coverage to employees working 30 or more hours on average per week or be subject to penalty. Small employers may be exempt from the employer penalty provisions. Included in health care reform is the employer mandate and shared responsibility requirements, coverage of essential benefits without annual or lifetime limits, preventive care coverage with no-cost sharing, dependent coverage to age 26, enhanced claims and appeals rules, and other benefit plan design requirements.

4. Public employee pension plans and deferred compensation plans

As a general rule, a city should never put itself in the position of providing investment advice to employees.

RELEVANT LINKS:

[Minn. Stat. 352.965, subd. 2.](#)

[Minn. Stat. § 356.24.](#)

[Minn. Stat. § 353.028, subd. 3.](#)

[PERA, City Managers/Administrators.](#)

[MN State Auditor: Pension/Fire Relief Association FAQs.](#)

[Minn. Stat. § 353D.01.](#)

The city can, however, provide contact information so an employee can make informed decisions about any existing savings or retirement accounts upon departure from the city.

State law allows city contributions to supplemental pension and deferred compensation plans only under certain conditions:

- To a supplemental pension plan established before May 6, 1971.
- To a plan that provides solely for group health, hospital, disability, or death benefits.
- To a plan that provides solely for severance pay to a retiring or terminating employee.
- To an IRS 403(b) plan, the State of Minnesota deferred compensation plan, or any other deferred compensation plan offered by the employer under Section 457 of the Internal Revenue Code (only on a dollar-for-dollar matching basis with a limit of 50 percent of the IRS maximum per employee per year).
- To a post-retirement health care savings plan qualified under IRS rules for tax-preferred treatment.
- To the laborers' national industrial pension fund (subject to \$5,000 limit per employee per year).
- To the plumbers' and pipefitters' national or local pension fund (subject to \$5,000 limit per employee per year).
- To the international union of operating engineers pension fund (subject to \$5,000 limit per employee per year).
- To a supplemental plan under IRS Code wholly or solely funded by the employee's accumulated sick leave, accumulated vacation leave, and accumulated severance pay.
- To a city manager/administrator who opts out of PERA.

a. Firefighter relief associations

Many cities have established volunteer firefighter relief associations to administer a pension plan for their volunteer firefighters. There are different methods by which the city contributes to these plans, but there are no payroll deductions associated with relief association pensions.

b. Ambulance service volunteer retirement benefits

A defined contribution retirement plan under PERA is available for personnel of publicly operated and publicly subsidized ambulance services. Ambulance personnel include first responders and other emergency medical personnel with basic and advanced life support training or those volunteering for an ambulance service.

RELEVANT LINKS:

[Minn. Stat. § 353D.02, subd. 3.](#)

[26 U.S.C. § 457.](#)
[Minn. Stat. § 352.965.](#)
Internal Revenue Service:
[IRC 457 \(b\) Deferred Compensation Plans.](#)

[Minn. Stat. § 352.965.](#)

[Minn. Stat. § 352.965, subd. 2.](#)

[Minn. Stat. § 352.965, subd. 6.](#)

[Minnesota State Deferred Compensation Plan.](#)

[ICMA Retirement Corporation.](#)

[Minn. Stat. § 352.965, subd. 3.](#)

[Minn. Stat. 352.965, subd. 2.](#)
[ICMA: 457 Deferred Compensation Plans.](#)

If the council of the city operating the ambulance service elects to offer this pension option, the election is irrevocable. Once the option is offered, each ambulance volunteer or employee not covered by another public pension plan may elect within 30 days to participate. New ambulance personnel have 30 days from starting to elect coverage.

Participants of this plan who are preparing to retire should work directly with PERA regarding this benefit.

c. Deferred compensation plans

Deferred compensation plans are voluntary retirement savings plans offered by a public employer. This kind of plan is authorized under section 457 of the Internal Revenue Code and Minnesota statutes.

It is a pretax payroll deduction plan that helps employees save for retirement by using pretax contributions and tax deferred growth. In other words, employees are able to defer paying taxes on the contributions as well as the earnings on those contributions until they decide to withdraw funds for retirement.

To participate in a deferred compensation plan, the employee and city must have a written agreement authorizing deductions for deferred compensation, and each employee must request the deduction in writing.

Employer contributions to Social Security (FICA), Medicare, and Federal Unemployment Insurance (FUTA) must be calculated and paid on any deferred compensation.

Providing a deferred compensation plan for employees requires the city to comply with a number of very involved state and federal regulations. Many of these regulations have changed during the past several years. The League encourages any city interested in beginning a deferred compensation program, as well as those already offering one, to work closely with the plan provider and a tax advisor. Two commonly used plan providers are the Minnesota State Deferred Compensation Plan and the ICMA Retirement Corporation.

The city must comply with an employee's request to implement the state's deferred compensation plan within 45 days, and may not use any other deferred compensation plan until the state's plan is implemented as requested.

In addition to the State of Minnesota deferred compensation plan, many cities offer to choose to offer other types of deferred compensation plans to their employees.

RELEVANT LINKS:

[MN State Retirement System.](#)
[Nationwide: 457 Retirement Plans.](#)

Three commonly used plan providers are the Minnesota State Deferred Compensation Plan, Nationwide and the ICMA Retirement Corporation. Each of these organizations offer slightly different plan provisions, so the city should examine each type of plan carefully to choose the one that is most likely to meet its needs. Also, the city should use due diligence to investigate any plan's compliance with IRS rules and regulations. The city could ultimately be liable for a plan's failure to comply.

An employee preparing to retire should work directly with his or her deferred compensation provider to learn about the various payout options available. If the employee is not leaving due to retirement, the employee should still be instructed to contact the deferred compensation provider for information about options that exist upon departure from the city's employment.

(1) Employee contributions

(a) Regular contribution

[26 U.S.C. § 457.](#)

Employee contributions to a 457 deferred compensation plan are made on a pretax basis through payroll deduction. IRS rules limit the contributions that employees can make to deferred compensation plans under various sections of the IRS Code. Section 457 plans are limited as follows:

[IRS: COLA Increases for Dollar Limitations on Benefits and Contributions.](#)

The 2016 and 2017 Annual Deferral Limit is \$18,000 (and is indexed each year).

(b) Catch-up provisions

[26 U.S.C. § 457\(b\)\(3\).](#)

457 plans offer two catch-up provisions which allow you to contribute over and above the normal annual contribution amount. The "pre-retirement" catch-up provision allows an enrollee who is within three years of the age at which he/she becomes eligible for normal retirement age or unreduced retirement benefits to make additional contributions, provided he/she has not deferred the maximum amount allowed for all applicable years after January 1, 1979. This provision allows the employee to "make up" for those years in which he or she did not contribute the maximum. The "Age 50" catch-up provision allows an enrollee to contribute an additional amount when he/she reaches age 50 or older.

[26 U.S.C. § 457\(e\)\(18\).](#)

The 2016 and 2017 catch-up limit (for individuals age 50 and over) is \$24,000 (and is indexed each year).

[IRS: COLA Increases for Dollar Limitations on Benefits and Contributions.](#)

(c) Deferring paid leave (sick, vacation, etc.)

It is generally not advisable for a city to defer payment of paid leave for an employee who is retiring in order to set up an account to pay health insurance premiums without using a plan that has been legally reviewed to meet IRS requirements and other legal standards

RELEVANT LINKS:

[Minn. Stat. § 356.24.](#)

[“Implementing New Benefit Programs”](#), *Minnesota Cities* (Jan. 2005, p. 21).

[PERA.](#)
[Minn. Stat. § 353.01.](#)

[Minn. Stat. ch. 353D.](#)

(2) Employer contributions

Cities wishing to make contributions to participating employees’ deferred compensation accounts should work directly with their tax advisor and the plan provider. Employer contributions are only allowed under certain, limited circumstances and are generally limited to one-half of the available elective deferrals permitted annually per employee under the Internal Revenue Code. For example, if the current IRS annual maximum is \$15,500 for section 457 deferred compensation plans, the city would be limited to a contribution of no more than \$7,750.

d. Post-employment health care savings plans

In many cases, employees pay the full premium price for their insurance after leaving the city’s employment unless otherwise provided by state law, a collective bargaining agreement, or personnel policy. The city can help employees fund their health insurance costs after employment by implementing a post-employment health care savings plan.

Post-employment health care savings plans are funded by employer contributions, which may include conversion of unused sick leave, severance pay, and mandatory salary reductions. Contributions made into these accounts are nontaxable and are used to pay for eligible medical expenses and certain insurance premiums once the employee leaves employment.

These plans must meet certain IRS and other legal requirements in order to maintain the nontaxable status of the contributions. For this reason, it is generally not advisable for a city to set aside these dollars and pay the employee’s premiums on behalf of the employee without using a plan that has been legally reviewed to meet IRS requirements and other legal standards.

Many vendors in Minnesota offer post-employment health care savings plans. The League does not endorse any particular post-employment health care vendor and suggests cities consult with an attorney specializing in benefits issues before selecting a vendor for post-employment health care benefits.

e. Public Employee Retirement Association (PERA)

The Minnesota Public Employees Retirement Association (PERA) was created by the legislature in 1931. PERA administers four different defined benefit retirement plans that provide retirement, survivor, and disability benefits for city and county employees and nonteaching employees of the schools.

RELEVANT LINKS:

[Public Employees Retirement Association of Minnesota](#), 60 Empire Drive, St. Paul, MN 55103. 800.652.9026 or 651.296.7460.

[PERA: Defined Contribution Plan.](#)

[Minn. Stat. § 353.028.](#)

[Public Employees Retirement Association of Minnesota.](#)

In defined benefit plans, participants received fixed scheduled payments based on a formula. PERA also provides a defined contribution plan government officials, ambulance personnel, and physicians working in the public sector. Cities and city employees with questions about PERA are encouraged to access one of the many information resources available through PERA.

Information in this section provides a broad overview of the plans available through PERA and the circumstances under which a city employee would be required to participate. The PERA plans available include:

- **Basic Plan.** This plan includes members who are not subject to Social Security. It is no longer open to new membership (it was closed to employees hired after 1967). Some cities, however, may have employees who participate in this plan.
- **Coordinated Plan.** This plan includes members who are subject to Social Security rules. The majority of city employees participate in this plan.
- **Police and Fire Plan.** This plan is not subject to Social Security rules. It is made up of police officers and firefighters.
- **Correctional Plan.** Effective July 1, 1999, correctional officers new to PERA coverage and those formerly members of the PERA Coordinated or Police & Fire Plan, became members of the PERA Correctional Plan.

PERA provides a defined contribution plan for government officials (namely, city managers and local elected public officials, except county sheriffs), ambulance personnel, and physicians working in the public sector. The contributions for elected officials and governmental physicians are available on the PERA website. Generally, defined contribution plans do not guarantee any benefit upon retirement, and instead the amount available at retirement is dependent upon how much is contributed by the employee and employer

For city managers who opted out of the Coordinated Plan, the contribution rates are the same as for the Coordinated Plan. For volunteer ambulance service personnel, the contribution can be established by assigning a unit value for each call or each period of alert duty for the purpose of calculating ambulance service contributions. The PERA website has much more information on these plans.

The plans listed above differ from one another, so it is important that cities and employees consult the various PERA resources when questions arise. PERA has a comprehensive and useful handbook for each of the four plans. Representatives from PERA are available to answer employer and employee questions. In addition, a great deal of information about PERA benefits is available on the PERA website.

RELEVANT LINKS:

[Minn. Stat. § 353.01.](#)

Membership in PERA is automatic for nonelected public employees who meet the eligibility requirements established by state statute. In other words, employees and employers are required to participate. Both the employee and the city contribute to PERA.

(1) Eligibility

(a) Employers

[Minn. Stat. § 353.01, subd. 6.](#)

To join PERA and enroll employees in a PERA-administered plan, employers must meet the definition of a governmental subdivision as defined in Minnesota statute.

Governmental employers subject to coverage under PERA are the counties, cities, towns, and school districts within Minnesota, a department, unit, or instrumentality of state or local government, or any other governmental body whose revenue is derived from taxation, fees, assessments, or other public sources. In addition to the employers meeting this definition, there are certain employers specifically included for PERA participation, as well as others specifically excluded from PERA participation by Minnesota law.

(b) Employees

[Minn. Stat. § 353.01, subd. 2a.](#)

Public employees whose annual salary from one governmental subdivision is stipulated in advance to exceed \$5,100 (\$3,800 for school employees) are required to participate as members of PERA. If the annual compensation from one governmental subdivision to an employee exceeds the stipulated amount of under \$5,100, the stipulation is no longer valid and contributions must be made on the employee's behalf starting the first month in which the employee receives salary exceeding \$425 in a month. If the employee's salary dips below \$425 in any month, the employee is still eligible to participate in PERA.

[Minn. Stat. § 353.01, subd. 2b.](#)

Certain city positions do not qualify to participate in PERA for various reasons. Before deciding that a position does not qualify for PERA, cities should consult directly with Minnesota statutes or the appropriate PERA handbook or representative. The following are examples of the kinds of positions not eligible to participate in PERA:

[Minn. Stat. § 353.01, subd. 2b.](#)

- Elected officials. Public officers (other than county sheriffs) elected to a governing body, or people appointed to fill a vacancy in an elective office of a governing body whose term of office first commences on or after July 1, 2002 for the service to be rendered in that elective position.
- Seasonal or temporary personnel. Any city employee whose period of employment is less than six consecutive months and whose earnings are less than \$5,100 annually.
- Election judges and employees administering elections.

[Minn. Stat. § 353.01, subds. 12a, 12b.](#)

RELEVANT LINKS:

[Minn. Stat. § 353.01, subd. 2b.](#)

[Minn. Stat. § 353.028, subd. 2.](#)
[Minn. Stat. § 43A.17.](#)

[Internal Revenue Service: Circular E, Employer's Tax Guide \(2015\).](#)

[Minn. Stat. § 353.27, subd. 4.](#)

[PERA, 60 Empire Drive, St. Paul, MN 55103. 800.652.9026 or 651.296.7460.](#)

[PERA Employer Manual – Contribution Reporting.](#)

- Full-time students. Any city employee who has not reached the age of 23 and is enrolled full-time to attend or is attending classes on a full-time basis at an accredited school, college, or university in an undergraduate, graduate, or professional-technical program, or at a public or charter high school.

For more information on those positions exempt from PERA participation, follow the link in the left column.

(c) City managers and administrators

City managers or administrators may elect to be excluded from membership in PERA. They must choose exclusion within six months of the day they begin employment.

The law also provides for refunds of contributions made before the election. If they elect exclusion, they and their city may agree the city will defer and contribute additional compensation on behalf of the employees to a deferred compensation program. The program must meet federal income tax laws. The city contribution cannot exceed the amount it would have made under the PERA contribution. This amount is not subject to the salary limitation (governor's salary cap) established by statute.

(2) Contributions

The PERA fund receives matching contributions from the employee and the employer, plus an additional contribution from the employer to amortize actuarial deficits in the fund. Social Security (FICA) also receives matching contributions from both employer and employee. The contributions, in both cases, are expressed in percentages of covered payroll. PERA percentages are based on total salary. FICA percentages are capped at a certain amount with annual changes.

The city collects employees' contributions through payroll deductions and should remit them to PERA within 14 days from each paycheck. The city should remit employer contributions along with employee contributions. Both employer and employee contributions to Social Security go directly to the IRS, which acts as an agent for the Social Security Administration.

Current contribution rates are available on the PERA website or by contacting PERA directly.

(3) Taxes

Federal and state income taxes on PERA contributions are deferred; thus, most PERA benefits are taxable when they are received

Generally, Social Security and Medicare deductions are taken on total gross wages before PERA deductions are made. Federal and state taxes are taken on salary less PERA deductions.

RELEVANT LINKS:

[Social Security Administration;](#)
(800) 772-1213.

[Minn. Stat. § 353.34.](#)

[Minn. Stat. § 353.35.](#)

[Minn. Stat. § 353.30.](#)

[PERA](#), 60 Empire Drive,
St. Paul, MN 55103.
800.652.9026 or
651.296.7460.

[Minn. Stat. § 353.29.](#)

(4) Social security

PERA members may be eligible for benefits through Social Security. PERA benefits are in addition to any payment an employee may receive from Social Security. Cities should advise any employee preparing to retire to contact the Social Security Administration directly.

(5) Refund of payments

An employee ending public service and remaining out of public employment for more than 30 days may elect to receive a refund of contributions instead of leaving them with PERA and drawing a deferred pension later.

The refund consists of the employee's contributions plus 4 percent interest, compounded annually.

(6) Repayment of a refund

If an employee returns to Minnesota public service after receiving a refund, the employee may repay all or a portion of the refund plus 8.5 percent interest compounded annually to restore prior service credit with PERA. Partial repayments are allowed under certain conditions.

(7) Options for payment

There are a number of payment options available from PERA. Each plan offers a full retirement, early retirement, and/or combined service pension. In addition, each plan has a disability benefit and a survivor benefit. Employees preparing to retire or interested in learning more about another payment option should contact a PERA representative.

Employees leaving the city for another job not covered by PERA should contact a PERA representative for information on options for payout and/or leaving funds in the PERA account. In general, an employee leaving the city for another job covered by PERA does not need to do anything as the new employer will take care of the necessary paperwork to notify PERA.

(8) Calculating payment

The PERA pension is paid as equal monthly payments for the employee's lifetime with annual adjustments. The benefit is a product of the employee's age, average salary, and years of credited service. These factors vary from member to member and from plan to plan. The amount of pension also depends upon whether the employee elects to provide income protection to a survivor in the event of the employee's death.

RELEVANT LINKS:

[Minn. Stat. § 353.01, subd. 17a.](#)

[PERA](#), 60 Empire Drive,
St. Paul, MN 55103.
800.652.9026 or
651.296.7460.

[Minn. Stat. § 181.82.](#)

LMC information memo,
*Fire Department
Management and Liability
Issues.*

[Minn. Stat. ch. 424A.](#)

[Minn. Stat. ch. 424A.](#)

[Minn. Stat. § 424A.02.](#)

[Minn. Stat. § 424A.04.](#)

City employees approaching retirement may refer to their “high five salary” to be used for retirement. The “high five” is the gross salary an employee earns during the 60 consecutive months in which her salary was greatest, not calendar or fiscal years. If the employee worked less than five years in public service and qualifies for a benefit, the salary for all years of service will be averaged. Benefit formulas are available on the PERA website or by contacting a PERA representative.

5. Terminating benefits based on job performance

No employer may terminate or threaten to terminate group accident and health insurance coverage, group life insurance coverage, or pension benefits for an employee based on the employee’s job performance unless the employer has first given the employee the opportunity to continue coverage by making the same contribution the employer would have to make to continue coverage for the employee.

6. Volunteer firefighters’ relief fund

Relief associations are separate from the fire department. Fire departments are organized under separate rules and each exists as a separate entity. A relief association owns no equipment and has no control over the fire department. It is a separately incorporated organization made up of fire department members. Like the municipal fire department, a relief association is a governmental entity. It is not, however, a subdivision of the municipality, but a separately incorporated, not-for-profit organization. A relief association’s basic purpose is to provide financial support or relief in the form of pension benefits to the retired or disabled relief association members and their dependents.

Over 700 volunteer firefighters’ relief funds exist in Minnesota. Every volunteer firefighter is eligible for membership in a relief association. Benefits from these funds are in the form of lump sum service pensions, and monthly service pensions upon retirement, disability, and funeral benefits. Eligible employees should be advised to contact the relief fund for retirement information.

State law controls the amount of pensions and the handling and disbursement of these funds. Cities should be aware of the specific responsibilities they have over retirement benefits and funding. State law limits volunteer firefighters’ service pensions based on the current funding adequacy of the relief association.

If there is a volunteer firefighter relief association in your city, an elected official, another elected or appointed official, and the fire chief must represent the city on the relief association’s board of trustees. These officers have a fiduciary responsibility to the members of the retirement plan.

RELEVANT LINKS:

[Minn. Stat. § 424A.01.](#)

[Minn. Stat. § 424A.02.](#)

LMC information memo,
[Fire Department
Management and Liability
Issues.](#)

LMC information memo,
[Budget Guide for Cities.](#)
MN Office of the State
Auditor: [Pension/Fire
Relief Association FAQs.](#)
[Legislative Commission on
Pensions and Retirement.](#)

The city may also have a financial responsibility to support the plan, so it is important for the city to be aware of the amount it may need to budget for this obligation.

Every volunteer firefighter is eligible for membership in a relief association. Persons serving in fire prevention positions are also able to participate if approved by the city. The association may not approve an application from a person who is not eligible to participate under state law.

Minnesota Statute provides for retirement after at least five years of active membership with the relief association and 50 years of age.

In-depth information on volunteer firefighters' relief associations is included in the League's Fire Department Management and Liability Issues Memo.

In addition, more information may be found in the League's annual Budget Guide, the Office of the State Auditor, and the Legislative Commission on Pensions and Retirement.

7. Workers' Compensation

Workers' compensation benefits protect employees when they are injured on the job by paying the cost of medical care and paying lost wages. Cities are required by state law to provide these benefits. Many issues with regard to workers' compensation benefits (such as the amount of payments for certain types of injuries) are dictated by state law and generally handled by the city's workers' compensation provider (for most cities, this is the League of Minnesota Cities Insurance Trust). Other aspects of workers' compensation benefits are up to the city, such as how sick leave benefits, health insurance, and wages are handled when employees are out on workers' compensation leave.

[Minn. Stat. § 176.82.](#)

State law says "Any person discharging or threatening to discharge an employee for seeking workers' compensation benefits or in any manner intentionally obstructing an employee seeking workers' compensation benefits is liable in a civil action for damages."

[Minn. Stat. ch. 176.](#)

Workers' compensation laws do not address leave requirements. These laws address benefits, including medical expenses and wage loss that employees are entitled to for work-related injuries.

The city's workers' compensation carrier will make decisions regarding the appropriate length of benefits. How long a city continues the employment of an individual on workers' compensation leave is not a workers' compensation carrier's decision.

RELEVANT LINKS:

[“Compensating Employees on Worker’s Compensation Leave”](#), *Minnesota Cities*, (May 2005, p. 21).

[EEOC Notice 915.002, Guidance on Workers Compensation and ADA.](#)

Although the city cannot terminate an employee simply because the employee filed a workers’ compensation claim, the city can terminate an employee because he or she is no longer able to physically perform the essential functions of the job. The city should decide each situation on a case-by-case basis, taking into account its obligations under other checklist items and laws (i.e., personnel policies, FMLA, ADA).

a. Supplementing workers’ compensation benefits

Workers’ compensation payments for time lost due to a work-related injury are paid at two-thirds of an employee’s normal weekly wage.

Some cities supplement these payments either through use of paid leave or “injury on duty pay.” Many union contracts and personnel policies provide for this type of supplement. However, cities must ensure the workers’ compensation payments are treated as nontaxable income and the supplemental wages are treated as taxable income. There are also differences in how these two types of income are treated for purposes of PERA contributions.

b. Health insurance and other benefits during workers’ compensation leave

The workers’ compensation law does not require cities to continue their contribution toward insurance (health, dental, life, etc.) while an employee is out on workers’ compensation leave. However, if the workers’ compensation injury qualifies under the Family and Medical Leave Act, the city must continue its contribution toward group health benefits during the period of time covered by FMLA—up to 12 weeks.

In addition, if the city’s policy is to continue the city’s insurance contributions for employees out on other types of unpaid leave, then it should also do so for employees out on workers’ compensation leave. Otherwise, the city could be open to claims of discrimination or retaliation under the workers’ compensation law. Some cities establish a time limit on unpaid leave (e.g., often 12 weeks in order to meet the FMLA requirement) after which it will send a COBRA notice to employees and discontinue the city’s contribution to health and other types of insurance.

The Equal Employment Opportunity Commission has also issued guidance saying an employer “may not avoid its obligation to accommodate an individual with a disability simply by asserting that the disability did not derive from an occupational injury.” The EEOC guidance on this issue is complex and may require legal assistance.

RELEVANT LINKS:

c. Restricted duty

If the employee can return to work with restrictions, consider whether restricted duty, often called light duty, work is an option. Leave benefits, workers' compensation laws, or union contract requirements may result in the city paying the employee's wages whether or not the employee is at work. Some cities, therefore, prefer to bring the employee back to work as soon as possible. It may be necessary, however, to defend such a decision if such work is granted to some employees and not to others. If offered, the city should develop a written policy on light duty that includes, at a minimum:

- When light duty will be provided (specific criteria).
- Data required to be provided prior to granting light-duty assignments, including verification employee will be able to return to full duty in the future.
- Who has authority to approve light duty.
- Periodic review of light-duty assignments (i.e., every 30 days).

D. Drugs and alcohol

While both federal and Minnesota laws permit drug and alcohol testing of employees in certain circumstances, a city must have two separate written policies to conduct both kinds of testing. Minnesota law permits employers to conduct workplace drug and alcohol testing and, among other things, requires a written policy based on parameters established in state law before any such testing can be conducted. Federal law requires certain employees be tested and requires a written policy based on the parameters established in federal law.

1. Drug-Free Workplace Act of 1988

The federal Drug-Free Workplace Act of 1988 mandates 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.

2. Minnesota Drug and Alcohol Testing in the Workplace Act

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

[41 U.S.C. § 8102.](#)

[Dep't of Labor's Drug-Free Workplace Policy Builder.](#)

[Minn. Stat. §§ 181.950-181.957.](#)

RELEVANT LINKS:

LMC information memo, [Drug and Alcohol Testing Toolkit for the City Workplace](#).

Minn. Stat. § 181.951, subd. 1(b).
Minn. Stat. § 181.952.

See *LELS v. Sherburne County*, 695 N.W.2d 630 (Minn. App. 2005).

[42 U.S.C. § 31306](#).

[49 C.F.R. § 383](#).
[49 C.F.R. § 40.25](#).

Federal Motor Carrier Safety Administration [Drug and Alcohol Testing Program](#).

[49 C.F.R. § 383.50](#).

[49 C.F.R. § 382](#).
[49 C.F.R. § 40](#).

US Dep't of Transp.: Documents and Forms. "What Employers Need to Know About DOT Drug and Alcohol Testing (Guidance and Best Practices)", U.S. Dep't. of Transp.

LMC information memo, [Drug and Alcohol Testing Toolkit for the City Workplace](#).

Cities must have a written drug and alcohol testing policy including 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. In addition a city is required to meet and negotiate the implementation (not adoption) of any testing policy as a subject of collective bargaining. A sample Non-Department of Transportation (NonDOT) policy is included within the memo linked to the left.

3. Federal Omnibus Transportation Employee Testing Act of 1991

The Omnibus Transportation Employee Testing Act of 1991 requires drug and alcohol testing of employees operating commercial motor vehicles requiring a commercial driver's license in safety-sensitive functions.

Cities must test any employees whose jobs require them to have a commercial driver's license, that is, whose job duties include operating city vehicles that meet one of the following:

- Have a gross vehicle weighting of 26,001 pounds or more.
- Have a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds.
- Are designed to carry 16 or more passengers including the driver.
- Are of any size and are used in the transportation of materials where the vehicle is required to be placarded under the Hazardous Materials Regulations 49 CFR part 172, subpart F (regardless of weight). The city must have a written drug and alcohol testing policy and each employee must sign a statement he/she has received a copy of the policy. The League has copies of sample Department of Transportation (DOT) drug and alcohol testing policies.

The city must have a written drug and alcohol testing policy, and each employee must sign a statement 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).

A sample Department of Transportation (DOT) policy is included within the memo linked to the left.

E. Leave benefits and time off

Traditionally, public sector employers, including cities, have provided relatively generous leave benefits. This helps compensate employees for other “perks” that generally aren’t offered in the public sector (i.e., bonuses, prizes awarded for meeting company sales, profit sharing, etc.). Although most Minnesota cities retain a traditional set of leave benefits (vacation and sick leave, paid holidays, etc.), some cities have adopted more contemporary approaches to leave benefits such as the paid time off (PTO) model often used by the private sector. Whatever approach is taken, the city must be careful to communicate leave benefits to employees and to ensure all applicable state and federal laws have been considered.

In general, state and federal laws do not mandate any paid leave benefits (with a few exceptions such as military leave). However, once a city offers a paid leave benefit, there are often laws protecting employees’ rights to equal access to that benefit. In other words, if a city elects to offer some type of paid leave like vacation or sick leave, there are a number of laws to ensure all employees will receive that benefit, without regard to race, color, national origin, or any other protected status.

In addition, state and federal laws will often dictate that if a city offers paid leave in one type of situation, it must also do so in another. For example, if a city offers paid leave for an employee who breaks his or her leg, it will also have to offer it when an employee has complications during pregnancy requiring her to miss work.

There are some leaves requiring insurance benefits to be offered, such as during military leave and FMLA. It is important to check for compliance with your insurance plans and contracts to permit continuation of benefits during these types of leaves.

Lastly, depending if or how a city structures any cashing out options for accrued leave and compensatory time, there may be important tax implications as well. For additional information, please refer to constructive receipt issues in the following sections.

1. Electing Compensatory Time in Lieu of Overtime

a. Constructive Receipt Implications

Some cities allow employees who work overtime to choose between receiving overtime pay and receiving compensatory time (comp time). Providing employees such an election, unless properly designed, can create significant taxability issues for both cities and employees alike under the tax doctrine known as Constructive Receipt.

RELEVANT LINKS:

[26 U.S.C. § 451](#)

[Treas. Reg. 1.451-2\(a\)](#)

The doctrine of Constructive Receipt is addressed in the regulations under Section 451 of the Internal Revenue Code. It requires that if a taxpayer has a current right to receive taxable income, then the taxpayer is taxed on the income currently, that is, at the earliest date the taxpayer could have received it. This is the case unless “substantial” limitations apply to the individual’s right to receive the income currently. Accordingly, if an individual has an unfettered right to either receive taxable income currently or defer its payment to a later year, the individual is taxed on the income currently.

Although the Internal Revenue Service has not specifically ruled that the Constructive Receipt doctrine applies to an election between overtime pay and compensatory time, it is likely to apply in this situation because once employees have worked the overtime hours, they have a right to receive taxable income without any substantial limitation. Note, the same constructive receipt issues arise if compensatory time is awarded in lieu of overtime pay and employees are given the opportunity to cash out the compensatory time at any time.

b. Permissible alternatives

(1) No Choice

It is the level of control that an employee has over his or her ability to receive cash currently or defer it for payment to a future year that triggers constructive receipt. One alternative to avoid constructive receipt, then, is to simply eliminate the choice. Under this alternative, cities would structure their comp time policies to provide either mandatory overtime pay or mandatory comp time according to objective terms set out in their policies. This alternative may be less attractive to an employee, but preferable to being taxed on an amount not yet received.

If comp time awards are mandatory, this option may be coupled with an automatic cash out of all or a portion of unused comp time at specified times.

(2) Election, but applicable to future comp time accruals only

In several private letter rulings related to the cash out of accrued leave, the IRS has found that no constructive receipt occurs if the election between cash-outs and retaining accrued leave where the election is made in the calendar year (the “Election Year”) prior to the year in which the leave accrues (the “Accrual Year”). In these cases, the election applies only to leave not yet “earned” and so not yet available. Accordingly, a cash-out election is permitted and no constructive receipt occurs.

RELEVANT LINKS:

[Overtime Pay or
Compensatory Time
Election, LMC Model
Form](#)

These private letters rulings have not addressed the choice between comp time and overtime pay, and private letter rulings cannot be relied upon by taxpayers other than the taxpayer who requested it. However, these rulings provide helpful insight into the IRS's current position regarding application of the Constructive Receipt doctrine. According to the manner in which the Constructive Receipt doctrine was applied, these private letter rules suggest if an employee makes an election in the Election Year to receive either comp time or overtime pay in the Accrual Year, no constructive receipt will occur. A model election form is linked to the left. This option may be coupled with an automatic cash out of all or a portion of unused comp time at specified times.

A variation of this approach is to allow employees to make the election during the Accrual Year so long as it is made before the overtime is worked. Under this approach, the election could be made any time before overtime is worked and a new election could be made by the employee prior to each time he/she will work overtime hours. The basis for this approach is that the requirement to work the overtime hours is a substantial limitation on the employee's right to receive the overtime pay. Accordingly, an election made prior to working the overtime hours does not cause constructive receipt because the right to overtime pay is subject to a substantial limitation at the time the election is made. In light of the fact there are no analogous private letter rulings in which the IRS approved it, this approach involves more risk than the approach under which elections are made during the Election Year as described above.

(3) Election as overtime is worked, but with automatic cash out of comp time at end of year

Because the Constructive Receipt doctrine is concerned with the tax year in which taxable income is received, if all comp time is cashed out in the year in which it is earned, the Constructive Receipt doctrine becomes irrelevant. Accordingly, cities may allow employees to choose between overtime pay and comp time accruals even after the overtime is worked provided that all comp time elected by employees is automatically cashed out by the end of the year in which it was earned.

2. Cashing out of accrued leave

a. Constructive Receipt Implications

Some cities allow employees to elect, during a period of time during a year, to cash out up to a specified number of hours of accrued vacation, sick or PTO (Paid Time Off).

RELEVANT LINKS:

[26 U.S.C. § 451.](#)

See section IV 1 a,
Affirmative Action

[Treas. Reg. 1.451-2\(a\).](#)

In these situations, if the employee does not make the election, then typically the hours are carried over to the following year and credited to the employee's vacation, sick or PTO "bank" for the following year. This cashing out of accrued sick, vacation, or PTO leave elections, unless properly designed, can create significant taxability issues for both cities and employees alike under the tax doctrine Constructive Receipt.

The Constructive Receipt doctrine is described in more detail in section 1a above, but the premise is if a taxpayer has a current right to receive taxable income, then the taxpayer is taxed on the income currently, that is, at the earliest date the taxpayer could have received it. This is the case unless "substantial" limitations apply to the individual's right to receive the income currently. Accordingly, if an individual has an unfettered right to either receive taxable income currently or defer its payment to a later year, the individual is taxed on the income currently.

Thus, if, for example, an employee accrues 120 hours of PTO a year, uses 40 of those hours as vacation, and is allowed to either carry the remaining 80 hours over to the next year to be used as PTO or be paid the value of the 80 hours in cash at the end of the year, he or she is taxed on the value of the 80 hours at the end of the year, even though he or she may have elected to have the 80 hours carried over.

Note, whether a "substantial" limitation applies is a factual question. In the regulations addressing the constructive receipt rules, the IRS has permitted a financial penalty (sometimes called a "haircut") equal to at least 25% to be "substantial," but the regulations addressed a somewhat different situation than a PTO/vacation/sick leave cash-out. At least to date, the IRS has not ruled on what sort of limitation would be sufficiently "substantial" in the case of a PTO cash-out to avoid constructive receipt. At least theoretically a substantial financial penalty, that is, a substantial reduction to the value of the PTO/Vacation/Sick leave the employee would otherwise have been able to use (but for the cash-out) should be supportable. At this time, however, we simply do not know how much of a reduction the IRS would require.

Importantly, it is the fact that the employee *has control* over the time that payment is made that is material to the Constructive Receipt doctrine. If the employee does not have control such that the payment is automatic under the employer's policy then there is no constructive receipt. For example, if in the above example, the employer's policy required that the 80 hours of unused PTO be cashed out at the end of the year with no carry over, there is no constructive receipt. Similarly, if the employer required that 40 of the hours be carried over and the remaining 40 be cashed-out there would be no constructive receipt. This is because the employee does not have the right to elect between the amount of cash paid and hours carried over. The cash-out and carryover are automatic.

RELEVANT LINKS:

[PTO / Vacation / Sick
Leave Cash-Out Flow
Chart.](#)

This is the case as well for unused PTO that is cashed out at termination of employment. If the cash-out is automatic, there is no opportunity for constructive receipt. This would also be the case if the employer's policy required that the value of the unused PTO would instead of being cashed-out be contributed to retiree health benefits for the employee (or the employee's spouse or dependents).

However, it would not be the case if the employee was given the choice of receiving cash or retiree health benefits. In this case, even though the retiree health benefit might otherwise be non-taxable, because the employee was given the choice of cash or the retiree health benefit and chose the retiree health benefit, the employee would be taxed on the cash payment he or she could have received.

If an employer maintains a PTO, vacation or sick leave cash-out policy that results in constructive receipt to the employee, the employer must report and withhold on the amount in constructive receipt in the year the cash could have been paid. Failure to do so generally results in the need to file amended returns and additional taxes and penalties.

To reiterate, the constructive receipt rules of the Internal Revenue Code place restrictions on PTO/Vacation/Sick leave policies, but only to the extent that an employee has the ability to receive cash or another taxable benefit in lieu of the leave, and then only if the employee is given control over how and when the cash or other taxable benefit will be paid. A flow chart to follow when analyzing constructive receipt impacts for payouts on accrued leave, is linked to the left. Recall, even where the employee is given some control, the IRS has carved out exceptions under which employees may make an election with respect to PTO/Vacation/Sick leave not yet accrued (as long as the leave policy is structured correctly) or in the case of a 457(b) plan with respect to PTO/Vacation/Sick leave already accrued.

b. Permissible alternatives

(1) No choice

As mentioned above, it is the level of control that an employee has over his or her ability to receive cash currently or defer it for payment to a future year that triggers constructive receipt. One alternative to avoid constructive receipt, then, is to simply eliminate the choice. Under this alternative, cities would structure their PTO/Vacation/Sick leave policies to provide mandatory cash-outs and carry overs according to objective terms set out in their policies. This alternative may be less attractive to an employee, but preferable to being taxed on an amount not yet received.

RELEVANT LINKS:

[PTO / Vacation / Sick Leave Cash-Out Election, LMC Model Form.](#)

(2) Election, but applicable to future PTO/Vacation/Sick leave accruals only

In several private letter rulings the IRS has approved of PTO/Vacation/Sick Leave cash-out policies where the election is made in the calendar year (the “Election Year”) prior to the year in which the PTO accrues (the “Accrual Year”). In these cases because the election applies only to PTO/Vacation/Sick leave not yet “earned” and so not yet available, a cash-out election is permitted. Private letters rulings are issued to individual taxpayers and, according to the IRS rules cannot be relied upon by other taxpayers. However, they are published guidance and provide helpful insight into the IRS’ current position regarding a matter.

For example, in our example above where an employee earns 120 hours of PTO a year, the employee could elect by the end of 2018 to receive a cash-out of 80 hours of PTO earned in 2019, with payment of the cash-out amount paid to him or her by the end of 2019. Under these rulings there does not appear to be a requirement that PTO/Vacation/Sick leave be used or forfeited during the Accrual Year. The IRS has, however, expressed some concerns that this type of policy may be an impermissible disguised deferred compensation plan. In order to avoid this, the policy should:

- Assure that enough PTO is required to be left in the bank to address reasonable anticipated requirements of the employee (e.g., illness or other time off)
- Assure that the total amount of PTO given to employees is reasonable, and not an amount so great that they cannot use it as PTO;
- Require the election to be made by the end of the Election Year, and does not allow any changes to the election after December 31 of the Election Year; and
- Make payments late enough in the Accrual Year to assure employees have actually accrued the number of hours being cashed out.

A model election form is linked to the left.

(3) Election under Cafeteria Plan

A Section 125 “cafeteria” plan can be structured to allow employees to “sell” PTO/Vacation/Sick leave in return for cash or for nontaxable benefits, such as health plan premiums or flexible spending account contributions. One advantage of using a cafeteria plan to cash out accrued leave is that employees can apply their paid leave accruals towards nontaxable benefits such as health or dental coverage, which would not be the case for the type of policy described in (2) above. However, there are a number of requirements that make this type of PTO cash-out somewhat complex to administer and less advantageous, including:

RELEVANT LINKS:

Prop. Treas. Reg. § 1.125-1(o)(4).

- As with the type of policy described in (2), above, only future PTO/Vacation/Sick leave can be sold in a cafeteria plan. If an employee makes an election in 2018 to receive a PTO cash out in 2019, only the PTO actually accrued in 2019 can be used toward the cash out.
- All employees would have to be offered the same amount of PTO for cash out, and that amount would have to be used, sold, or forfeited by December 31, 2019. This is regardless of what each individual employee's choice is. This means that 40 hours (or another amount the employer chose) of PTO accrued each year for every employee would have to be used one way or another—it could not be banked.

This approach is approved by the IRS in proposed regulations. Prop. Treas. Reg. § 1.125-1(o)(4), 72 Fed. Reg. 43938, 43953 (Aug. 6, 2007). Taxpayers may rely on the proposed regulation pending issuance of the final regulations. 72 Fed. Reg. at 43944.

(4) Contributions to 457(b) Plan

The regulations under Section 457(b) of the Internal Revenue Code allow employees participating in a 457(b) plan (an “eligible” deferred compensation plan maintained by a tax-exempt or governmental entity) to enter into an election before the beginning of a month to contribute PTO/Vacation/Sick leave which they have earned to the plan. This allows employees to convert some or all of their accrued PTO to a retirement benefit. Unlike with the elections made in Section (2) or (3) above, the election is not limited to PTO/Vacation/Sick leave that has yet to be accrued and allows elections on a more frequent basis. There are some limitations, though: (1) contributions to a 457(b) plan are subject to an annual dollar limitation (generally, \$18,500 for 2018 with a \$6,000 catch-up for participants age 50 or greater); (2) once contributed to the 457(b) plan the amounts are subject to the 457(b) distribution rules, which generally do not allow for payment prior to termination of employment.

To reiterate, the constructive receipt rules of the Internal Revenue Code place restrictions on PTO/Vacation/Sick leave policies, but only to the extent that an employee has the ability to receive cash or another taxable benefit in lieu of the PTO/Vacation/Sick leave, and then only if the employee is given control over how and when the cash or other taxable benefit will be paid. Even where the employee is given some control, the IRS has carved out exceptions under which employees may make an election with respect to PTO not yet accrued (as long as the PTO policy is structured correctly) or in the case of a 457(b) plan with respect to PTO already accrued.

RELEVANT LINKS:

3. Vacation

A city's practices with regard to vacation benefits are usually governed by the city's personnel policy or collective bargaining agreement (union contract). It is very important the city consults these documents and considers its past practices before making a decision about a particular vacation request.

Most cities offer paid vacation benefits to all of their regular full-time employees. Many cities also offer pro-rated paid vacation benefits to all of their regular part-time employees. Vacation leave provides a number of advantages to the city:

- It helps the city attract and retain qualified employees.
- Employees who periodically take breaks from their work are likely to be more productive and less likely to suffer "burn out."
- Employees need time off to attend to their personal affairs and vacation allows the employee to take paid time away instead of using work time for this purpose.
- Finally, from an auditing standpoint, it is a good practice to have employees away from the job from time to time. This increases the likelihood that any illegal or inappropriate practices will be discovered by the employee who is filling in for the absent employee.

a. Common vacation practices

There are a number of practices common among Minnesota cities when it comes to vacation benefits:

- Vacation is generally earned according to seniority or years of service with the city (e.g., new employees may earn two weeks, but employees with 10 or 15 years of service may earn three or four weeks of vacation).
- Often cities have a waiting period (e.g., six months) before a new employee can take vacation – sometimes this waiting period can be "waived" by the hiring authority.
- Vacation policies often have a "use-it-or-lose-it" provision by which an employee must keep his/her vacation balance below a certain maximum (often 1.5 times their annual accrual rate) and anything over the maximum is lost if the employee does not take it by the end of the year in which it is accrued.
- Many city vacation policies have provisions allowing employees to accrue vacation if they are out on paid leave but not to accrue it if they are out on an extended unpaid leave.
- Often cities do not grant paid vacation to part-time casual employees, paid-per-call, intermittent, temporary, or seasonal employees.
- Employee requests to take vacation are generally required to be in writing in advance of the date requested. Sometimes the city requires as much as 30 days advance notice.

RELEVANT LINKS:

[HR Reference Manual, Chapter 7](#), (for additional information on how to craft a vacation policy for the city).

[Minn. Stat. § 181.13](#).

[Lee v. Fresenius Medical Care, Inc.](#) 741 N.W.2d 117 (Minn. 2007).

[IRS Publication 15 \(2013\) –Supplemental Wages](#).
Minnesota Revenue:
[Withholding on Supplemental Payments](#).
LMC information memo,
[Payroll Pandemonium](#).

Other vacation practices can vary between cities:

- Accruing vacation on a per pay period basis (e.g., three hours per pay period) versus accruing at the beginning of the calendar year in one lump sum (e.g., the employee gets two weeks at the beginning of the calendar year to take throughout the year).
- Allowing employees to take vacation immediately prior to resignation or retirement versus a policy provision restricting or prohibiting this practice.
- Allowing employees to take vacation in quarter-hour, half-hour, half-day, or full-day increments (because the Family and Medical Leave Act allows employees to use leave intermittently, it may be advisable for cities to allow smaller units than one day—at least for FMLA purposes).

b. Vacation payouts at termination

State law requires an employer to pay wages earned to any employee who has been discharged. A city's vacation policy, not statute, covers what, if any, unused vacation or PTO leave will be paid to the separating employee. Although state statute does not define wages earned, a 2007 court decision indicated accrued vacation is considered wages earned that does need to be paid to the employee at termination when a city's policies require the payout of unused vacation or PTO leave upon separation. On the other hand, if a city's policies or a union contract explicitly define situations when vacation or PTO will not be paid out (e.g., under dishonorable conditions and or without two weeks' notice) then the city will want to consult with the city attorney to determine whether any vacation or PTO payout will apply.

Sometimes cities with policies in place requiring payment of accrued leave hours upon separation question if those payments would be considered supplemental pay for taxation purposes.

Generally speaking, if the city is going to pay accrued vacation and sick leave or PTO hours with a regular paycheck, then the city will tax the amounts according to the employee's W-4. In the event, however, the city is making a separate check for payment of the accumulated leave, then the amounts will be taxed at the supplemental (6.25 percent) rate.

c. Requiring use of vacation

In general, the city has the right to require an employee to use paid vacation before using unpaid leave to cover an absence. The following are some examples of times when the city may want to do this:

RELEVANT LINKS:

- When an employee, exempt or nonexempt, has not worked sufficient hours in the payroll period to account for his or her work schedule (e.g., employee worked 32 hours instead of the scheduled 40).
- When an employee asks for a leave of absence for medical or other personal reasons and sick leave is either not applicable or is exhausted.
- The city can also require the use of vacation during a Family and Medical Leave Act absence if it is part of the city's policy on FMLA and is applied consistently. The city may have to negotiate this issue with employee unions.

Sometimes employees will request they be able to leave some vacation time "on the books" (i.e., use unpaid leave instead of vacation) so it is available when they return from an extended leave of absence.

This decision is usually up to the city, in accordance with its personnel policies and practices, but the city should probably set a limit on the number of hours and apply the policy/practice consistently.

The city cannot force the use of vacation during a military leave of absence.

d. Legal considerations

Several laws (military leave, Family and Medical Leave Act, Pregnancy Discrimination Act) require the city treat persons who have rights under the law at least as well as it would in similar situations. In other words, if the city allows the use of vacation or allows the accrual of vacation for a medical leave of absence in other situations, it should also allow it for a person using FMLA leave. Therefore, the League generally recommends cities be consistent with practices across similar types of leave.

4. Sick leave

Like vacation, many Minnesota cities offer paid sick leave to their regular full-time employees and sometimes pro-rated sick leave to their regular part-time employees. The advantages to the city are similar to those mentioned above with regard to vacation. An additional advantage is employees who are ill and come to work anyway are apt to be contagious to their co-workers and also not very productive.

a. Common sick leave practices

- Unlike vacation, sick leave is generally accrued in the same manner for all employees, e.g., one day per month.
- Often cities have a waiting period (e.g., six months) before a new employee can take sick leave—sometimes this waiting period can be "waived" by the hiring authority.

RELEVANT LINKS:

- Some cities have a maximum amount of sick leave that can be earned; other cities have a maximum only for purposes of payment at termination.
- Sick leave is not usually “use-it-or-lose-it” in the same way practiced with vacation (e.g., it disappears from the books at the end of the calendar year). However, some cities do not pay sick leave at termination or only pay a portion (e.g., one-third or one-half) at termination up to a maximum. Sometimes sick leave is paid on the condition that the employee leaves in good standing.
- Many city vacation policies have provisions allowing employees to accrue sick leave if they are out on paid leave, but not to accrue it if they are out on an extended unpaid leave.
- Often cities do not grant paid sick leave to part-time casual employees, paid-per-call, intermittent, temporary, or seasonal employees.
- Most sick leave policies require the employee report sick leave as soon as possible after the start of the scheduled workday and usually to the direct supervisor.
- Many cities require an employee to provide a doctor’s statement after a specified number of days of absence. Often, cities also require a “return to work” certification from a doctor if there is an extended absence, which can also be required after an FMLA leave of absence for the employee’s own medical condition. This certification should either state the employee can return to work with certain restrictions or the employee can work without restriction. It is a good practice for the city to ensure the employee’s doctor has seen a copy of the job description and has a good idea of the physical and other requirements of the job. The city should develop a written policy for this policy practice, stating under what conditions the city will ask for such a note and apply the policy consistently. The city may have to negotiate some aspects of such a policy with an employee union.
- Some cities require an employee to use paid sick leave before taking an unpaid leave of absence. Cities will want to review any union contract language prior to requiring this.

b. Legal requirements associated with sick leave

(1) Sick and safety leave

Minnesota statutes require a city to allow an employee to use sick leave for an injured or sick child on the same basis as the city allows it for the employee. State law does not require cities to allow employees to use sick leave for doctor appointments.

[Minn. Stat. § 181.9413.](#)

RELEVANT LINKS:

[Minn. Stat. § 181.9413.](#)

[“Compensating Employees on Worker’s Compensation Leave,” *Minnesota Cities* \(May 2005, p. 21.](#)

[IRS: Notice 2006-59.](#)

However, if the city allows this use for the employee, (for employee’s doctor appointments), then the city must also allow sick leave to be used for an employee’s children (for the child’s doctor appointments as well). The leave must be approved for whatever amount of time that the illness or injury “reasonably” requires the employee’s presence. For example, the city might disapprove an entire day of paid sick leave for one doctor appointment, unless there are extenuating circumstances.

The law does not apply to short- or long-term disability benefits or other paid leave programs.

As detailed [HERE](#), this law was expanded in to allow the use of sick leave for additional relatives: adult children, spouses, siblings, parents, grandparents, stepparents, as well as parent-in-laws (mother-in-laws and father-in-laws) and grandchildren (includes step-grandchildren, biological, adopted or foster grandchildren) for cities with 21 or more employees working at least at one site.

(2) Consistency in use and accrual of sick leave

Again, it is important to note several laws (military leave, Family and Medical Leave Act, Pregnancy Discrimination Act) require the city treat persons who have rights under the law at least as well as it would in similar situations. In other words, if the city allows the use of sick leave or allows the accrual of sick leave for a medical leave of absence in other situations, it should also allow it for a person using FMLA leave. Therefore, the League generally recommends cities be consistent with practices across similar types of leave.

(3) Workers’ compensation and sick leave

While the law does not require the city to allow an employee to supplement workers’ compensation payments for time lost with the use of sick leave, it is a common practice in Minnesota cities to do so. This practice has a number of practical and legal considerations discussed in depth in article linked to the left from the *Minnesota Cities* magazine.

5. Leave donation policies

Some cities have implemented a leave donation policy for medical emergencies. This type of policy is generally used to help an employee who is undergoing a catastrophic illness either themselves or in their family and do not have enough paid leave to cover the amount of time off required. The policy allows another employee to donate some of his or her accrued vacation and/or sick leave hours to the employee who is in need. In addition to medical leave sharing programs, the IRS has also approved major disaster leave-sharing plans. While it is very rare for Minnesota to experience the types of disasters that would qualify, a link to additional information regarding disaster leave-sharing plans is linked to the left.

RELEVANT LINKS:

While leave donation policies can serve an important need, cities should carefully think through the policy provisions before implementing one.

Some of the main drawbacks of offering a medical leave donation policy include the following:

- These policies can be viewed as a “popularity” contest of sorts—if an employee is well-liked, they receive donations, while others may receive none.
- Some people think this program rewards employees who use their leave time as they go instead of saving it for a “rainy day.”

Some issues that should be covered include the following:

- Which employees or employee groups are eligible to participate—either as a donor or as a recipient of the donated leave? If a city has probationary periods, will the policy apply to probationary status employees as well?
- When a city is establishing eligibility requirements, a city should take care to ensure the requirements are not discriminatory (i.e., exclusions do not apply to protected classes). An employer has been sued under the ADEA for excluding employees who were eligible to retire from receiving donated leave.
- Any medical documentation that will be required.
- How to process incoming donations when there is more donated time received than can be used. Some cities may choose to process based on the date the payroll department receives the request from the donor, while others may process by the recipient employee’s division, then department, and then from the overall city employee group in alphabetical order.
- Consider how the city will handle the transfer of leave through payroll systems. If an employee receives more leave than is needed, what will the organization do with the unused donated leave? Will it be refundable or nonrefundable to the donating employee(s)? If the leave will be refundable, consider the process the city will follow to return the leave.
- Consider how the donation will be calculated. Some employers convert the dollar value of the donor’s leave before paying it to the employee; others stipulate that one hour of donor time is equivalent to one hour of recipient time, without consideration of differences in pay rates between the two employees.
- Whether the donated leave can be revoked once it has been donated.
- Whether employees receiving Workers’ Compensation benefits can receive donated leave.
- Include a statement that the policy does not limit or extend the time available under the Family and Medical Leave Act.

[Rev. Rul. 90-29, 1990-1 C.B. 11.](#)

RELEVANT LINKS:

- Include a statement that abuse will not be tolerated.
- Typically cities want to retain a list of who donated leave confidentially. Consider who will have access to this list in the city?
- Limitations on the amount that can be donated and the smallest increment that can be donated (e.g., one hour, one day, etc.).
- The IRS has issued guidance on "bona-fide employer-sponsored (medical) leave-sharing arrangements." If correctly designed, these plans do not trigger tax consequences for employees donating their accrued leave; instead only the compensation paid to the leave recipients is taxable. In cases where a leave-sharing program does not qualify as a "bona fide" employer-sponsored (medical) leave sharing plan, the donating employee will be subject to payroll taxes (i.e., both FICA and income taxes) on the leave just as if the employee was taking the leave him/herself.

If a city wishes to design a (medical) leave donation/sharing plan to avoid taxing leave donors, work with your City Attorney and consider the following (If the city does not establish a leave donation program correctly, the donated leave will be included in the donating employee's wages for purposes of both FICA and income taxes):... :

- ✓ Have a written policy regarding the program and limit the program to medical emergencies for employees themselves or family members, available only after the employee has exhausted all of his or her own accrued leave. The IRS defined a "medical emergency" (see link on the left) as a medical condition (e.g. heart attack, cancer, etc.) of the employee or a family member that will require the prolonged absence (including intermittent absences) of the employee from work and will result in a significant loss of income to the employee due to exhausting all available paid leave, aside from the leave-sharing plan.
- ✓ Within the policy, outline and specify limits on the amount of leave that may be donated by another employee in any given year.
- ✓ Have employees requesting leave donation submit a written application describing the medical emergency or condition as well as donating employees complete an authorization form.
- ✓ Stipulate in the policy a recipient may not liquidate donated leave and receive a cash payout . To do so would likely mean the plan would not be considered a "bona-fide employer-sponsored (medical) leave-sharing plan" and thus, the donor and recipient would both be treated as a receiving taxable wages

RELEVANT LINKS:

[LMC Model Personnel Policy](#) (containing model language on paid time off).

LMC information memo, [City Employees and Military Leave](#).

U.S. Dep't. of Labor "Vets USERRA Fact Sheet 3. 38 U.S.C., §§ 4301-4333. LMC information memo, [City Employees and Military Leave](#). 38 U.S.C. §§ 4301-4335.

- ✓ The IRS has approved programs where employees can elect to donate leave to specific recipients for medical emergencies as well as donate leave to a bank or pool of donated leave that can be used by any recipient who satisfies the eligibility requirements. Additionally, the IRS has approved a program that allowed recipients to use the donated leave following the death of an immediate family member (e.g., spouse, child, or parent).

6. Paid time off

In recent years, many employers, both private and public, have discontinued their separate vacation and sick leave programs in favor of a paid time off (PTO) arrangement. Under a PTO plan, employees do not earn separate accruals for vacation and sick leave. Instead, they receive only one type of leave, –that being PTO, which they can use for any personal absence. The advantage of this program is employees do not need to justify their leave usage to the same extent they do for sick leave.

Therefore, supervisors do not have to ask personal questions about the employee's health or that of their children or spouse. As long as the employee follows the rules associated with taking PTO, the use of the leave is approved

An advantage of PTO to employees is that unused leave is generally paid at 100 percent at retirement or resignation. Traditional sick leave is usually paid at a reduced percentage or not at all.

To offset the increased costs of this type of benefit, PTO is generally accrued in a lower amount than vacation and sick leave combined. For example, if a city typically grants 10 days of vacation plus 12 days of sick leave per year (total 22 days per year), it might only offer 18 days of PTO per year. Employees with high sick leave usage may see this program as a net loss in benefits because of this issue. However, employees often welcome the change to a PTO plan.

7. Military leave

State and federal laws provide for and regulate military leave for employees who are called to military service, whether in the reserves or full-time service.

a. Uniformed Services Employment and Reemployment Rights Act (USERRA)

Leave from employment to participate in military duty is addressed in federal law in the Uniformed Services Employment and Reemployment Rights Act (USERRA). State and federal laws require cities to grant employees with both paid and unpaid military leave, depending on the circumstances. These laws:

RELEVANT LINKS:

[Minn. Stat. §§ 192.26-192.261.](#)

LMC information memo, [City Employees and Military Leave.](#)

[Minn. Stat. § 181.947.](#)

[Minn. Stat. § 181.948.](#)

HR Reference Manual, [Chapter 5.](#)

- Protect the employee’s ability to return to work after a period of military leave.
- Protect the employee’s accrual of vacation and sick leave during a period of military leave.
- Protect the employee’s right to any seniority-based benefits—including any promotions that the employee would likely have received had he or she been present.
- Permit (but do not require) the city to pay an employee the difference between his or her military pay and city wages.
- Protect the employee’s right to the use of paid vacation during a period of military leave if the employee wishes to use it; however, the city cannot require an employee on military leave to use accrued paid leave.

The laws regarding military leave are complex and have changed frequently in recent years. Cities should consult with an attorney or the League before denying any benefits to employees engaged in military service.

b. State law and military leave

Public employees in Minnesota engaged in military service have additional benefits under state law, including up to 15 days of paid military service in a calendar year for qualified periods of military leave.

c. Family members of certain military personnel

All cities must grant up to 10 working days of unpaid leave to an employee (including independent contractors) whose immediate family member is a member of the United States armed forces who has been injured or killed while engaged in active service. The 10 days may be reduced if an employee elects to use appropriate accrued paid leave.

d. Military ceremonies

Unless the leave would unduly disrupt the operations of the city, a city must grant an unpaid leave of absence to an employee whose immediate family member, as a member of the United States armed forces, has been ordered into active service in support of a war or other national emergency. The city may limit the amount of leave to the actual time necessary for the employee to attend a send-off or homecoming ceremony for the mobilized service member, not to exceed one day’s duration in any calendar year.

8. Parental leaves

There are many state and federal laws that require cities to allow employees time off under certain circumstances such as a serious health condition, parental leave, or jury duty. It is critical for city management to understand applicable laws prior to granting or denying a leave.

RELEVANT LINKS:

[Minn. Stat. § 181.940.](#)

[Minn. Stat. § 181.941.](#)

MN Dep't of Labor and Industry: [A guide to Minnesota's laws about Parental Leave.](#)

See Section IV-A-7, *Reasonable Accommodations to an employee for health conditions related to pregnancy or childbirth.*

a. Minnesota Pregnancy and Parenting Leave Act

In addition to the Family and Medical Leave Act, Minnesota employers with 21 or more employees must provide up to twelve weeks unpaid leave to an employee who is a new biological or adoptive parent in conjunction with the birth or adoption of a child; or a female employee for prenatal care, or incapacity due to pregnancy, childbirth, or related health conditions. The start of leave must begin within 12 months of the birth or adoption, (which was increased from six weeks under previous state law) and the length of the leave shall be determined by the employee, but must not exceed 12 weeks, unless agreed to by the employer.

To qualify, as of July 1, 2014, an employee must have been employed for at least 12 months prior to the leave request and must work an average number of hours equal to at least half the full-time equivalent for employees in that job class. The City may require an employee who plans to take Pregnancy or Parenting Leave to give reasonable notice of the date the he or she will be taking leave and the estimated duration of the leave (not to exceed 12 weeks).

While on parenting leave, a city can require the employee to use other eligible paid leave (such as sick leave, vacation leave, disability leave), or leave required by the Family Medical Leave Act (FMLA), as long as the total does not exceed 12 weeks. Prior to July 1, 2014, Minnesota employers were not allowed to reduce Parental leave by accrued sick leave, which resulted in some situations where an employee was eligible to take more than 12 weeks when combining FMLA and the Minnesota Parenting Leave Law. However, with the 2014 change in law, the total leave between FMLA and Parenting or Pregnancy Leave is 12 weeks.

An employer will continue the city's share of the employer contribution toward insurance benefits for the 12 weeks for an eligible employee on Pregnancy and Parenting Leave that is also covered under FMLA. If an employee is only covered under Parenting Leave, but not FMLA, then the employee and dependents must have the option to remain on the group insurance at the employee's cost. Cities will want to note if the city continues insurance payments for employees on other medical leaves, the city must do the same for these employees.

Effective May 12, 2014, Minnesota law was amended to require employers to provide reasonable accommodations to an employee for health conditions related to pregnancy or childbirth if the employee so requests. For additional information on Minnesota's law regarding reasonable accommodations to an employee for health conditions related to pregnancy or childbirth refer to the section on the left.

RELEVANT LINKS:

[Minn. Stat. § 181.9412.](#)

[Minn. Stat. § 181.9413.](#)

[HR Reference Manual, Chapter 5.](#)

[Minn. Stat. § 181.9413.](#)

[Minn. Stat. § 181.9413.](#)

[See HR Reference Manual Chapter 5, Benefits, section II-Q \(3\).](#)

b. School conference and activities leave

State law also provides that a city must grant up to a total of 16 hours of leave during any 12-month period to attend school conferences or school-related activities related to the employee's child, provided the conference or activity cannot be scheduled during non-work hours. An employer may substitute any accrued paid vacation leave or other appropriate paid leave for any part of the leave. If the employee has no appropriate paid leave balances, the employee may take the time as unpaid leave. The law also requires accommodation of certain activities for children in special education programs. Employees must provide reasonable prior notice of the leave when the leave is foreseeable and make reasonable efforts to avoid unduly disrupting the operations of the city.

All employers are covered by the school conference and activities leave. To qualify under this law, the employee must work an average number of hours equal to at least half the full-time equivalent for employees in that job class but does not need to work for any specified period of time prior to the leave request.

c. Sick and safety leave

There is no legal requirement to allow employees to accrue sick and/or vacation time. Although, for most organizations paid time off is an important part of its overall compensation package. If employees accrue sick leave, state law grants employees the right to use sick leave for absences due to illness or injury of the employee's child to the extent that the employee's presence with the child is necessary. The leave must be granted on the same terms the employee is able to use sick leave benefits for his or her own illness or injury.

State law grants employees the right to use sick leave for absences due to illness or injury of the employee's child to the extent that the employee's presence with the child is necessary. The leave must be granted on the same terms the employee is able to use sick leave benefits for his or her own illness or injury. For example, if the city's policy allows use of sick leave for doctor appointments, sick leave must also be allowed for an employee to attend his/her child's doctor appointments. Benefits under this statute are limited to sick leave benefits; short-term, long-term, or other disability or salary continuation is not included.

In 2013, the law was clarified to define "child" to include stepchild, biological, adopted or foster child, either under 18, or under 20 if still attending secondary school.

RELEVANT LINKS:

See Section IV-E-3-d,
Victim or Witness Leave.

[Minn. Stat. § 181.9413.](#)

See Section IV-E-3-d,
Victim or Witness Leave.

For years 2013 and 2014, Minn. Stat. § 181.9413 also expanded the legal requirement, for cities with 21 or more employees at one site, to allow the use of accrued personal sick leave benefits for an absence due to illness or injury to an employee's child to other relatives. Therefore, if none of a city's facilities have 21 or more employees working there, then that city is not covered by the sick leave portion of Minn. Stat. §181.9413 and not required to offer personal sick leave benefits.

Effective July 1, 2014, sick leave used on or after that date also applies to adult children, spouses, siblings, parents, grandparents, stepparents, as well as parent-in-laws (mother-in-laws and father-in-laws) and grandchildren (includes step-grandchildren, biological, adopted or foster grandchildren). Employers must provide at least 160 hours for personal sick or safety leave in any 12-month period for all covered relatives (adult children, spouses, siblings, parents, grandparents, stepparents, parent-in-laws or grandchildren), but the 160-hour limit cannot be imposed on time used to care for the employee themselves or the employee's child(ren).

The statute says the leave must be given "on the same terms upon which the employee is able to use sick leave benefits for the employee's own illness or injury."

A city may impose a 160-hour combined limit on the use of sick leave for all covered relatives (adult children, spouses, siblings, parents, grandparents, or stepparents). However, the 160-hour limit cannot be imposed on time used to care for the employee's child or for the employee themselves.

Therefore, if the city has a policy requiring a medical certificate or doctor's note in order for an employee to use sick leave, it can do the same for the expanded list of relatives.

While often sick leave will run simultaneously with FMLA in a city with eligible employees, it is feasible there could be situations where a child's illness or injury does not meet the definition of a "serious health condition" under FMLA. In these situations, the employee is entitled to take leave for their child's illness or injury under state law

A city will want to document how the city defines the 12-month period under Minn. Stat. §181.9413, and consistently apply that defined measurement period to all employees. Some cities will find it easier to use the same 12-month period they use for their Family Medical Leave policy, while others may choose to use a calendar year for counting the 12-month period. If a city opts for using a calendar year, then it's important to note an employee would be able to use 160 hours in December and then another 160 hours in January.

RELEVANT LINKS:

Some cities have eliminated sick leave plans in lieu of Personal Time Off (PTO) plans. These cities have questioned whether the sick leave portion of Minn. Stat. §181.9413 applies to their jurisdiction. While a compelling argument may be made that PTO plans are not “sick leave benefits,” and, as such, not subject to the sick leave law, a city will want to consult with their city attorney before denying PTO leave in a situation where this law could apply, in order to analyze the specific circumstances of the request being made.

[Minn. Stat. § 181.9413.](#)

In 2014, a new “safety leave” provision was added to allow employees to use sick leave for absences for themselves or relatives (employee's adult child, spouse, sibling, parent, mother-in-law, father-in-law, grandchild, grandparent, or stepparent) who are providing or receiving assistance because they, or a relative is a victim of sexual assault, domestic abuse, or stalking. The City cannot penalize an employee for requesting this time off or for taking the time off.

d. Adoptive parents

[Minn. Stat. § 181.92.](#)

State law provides that adoptive parents be given the same time off as biological parents. If a city allows paternity or maternity time off to a biological father or mother, it must also allow it to an adoptive parent. The minimum amount under the law is four weeks unless the city allows less for biological parents. When the leave begins is up to the adoptive parent but must begin before or at the time of the child’s placement in the adoptive home. The leave must be for the purpose of arranging the child’s placement or caring for the child after placement. The city cannot penalize an employee for requesting this time off or for taking the time off..In addition to the Family and Medical Leave Act and the Minnesota Parental Leave Law, state law provides that adoptive parents be given the same time off as biological parents. While this law refers to a minimum period of four weeks, Minnesota’s pregnancy and Parenting Leave Act provides for up to up to 12 weeks of unpaid leave.

[Minn. Stat. § 181.941.](#)
See Section IV-E-2-a,
*Pregnancy and Parenting
leave Act.*

e. Nursing mothers

U.S. Dep’t of Labor Fact
Sheet #73, August 2013
[“Break time for Nursing
Mothers Under the FLSA.”](#)

There are both federal and state law workplace protections in place to protect or promote breastfeeding. Under federal law, an amendment to the Fair Labor Standards Act (FLSA) of 1938 provides women time and space to express breastmilk at work. Section 4207 of the ACA amended the FLSA to requires that many employers covered under FLSA provide reasonable break time to employees to express breast milk, as needed, for the first year after the child's birth. While the employer is not required to compensate the employee for that break time, the employer must provide a private space that is not a bathroom. The amendment also provides employees with protection from retaliation for asserting their rights or filing complaints about these rights.

RELEVANT LINKS:

[Minn. Stat. § 145.905.](#)

[Minn. Stat. § 181.939.](#)
MN Dep't of Health:
[Breastfeeding Information for Employers.](#)

State law protects the right of a mother to breastfeeding in public, clarifying that a woman can breastfeed anywhere she has the right to be. Minnesota law also states an employer must provide reasonable unpaid break time for nursing mothers to express milk for nursing her child for one year after the child's birth. The break time must, if possible, run concurrently with any break time already provided to the employee. However, an employer is not required to provide break time under this section if to do so would unduly disrupt the operations of the employer.

Minnesota employers must also make a reasonable effort to provide a room shielded from view and free from intrusion from coworkers and the public that includes access to an electrical outlet, where the nursing mother can express milk in private. This room needs to be in close proximity to the employee's work area and like federal law notes, cannot be a bathroom. All cities are covered if they employ one or more employees. The city cannot penalize an employee for requesting the reasonable break time and private room to express her milk.

9. Miscellaneous leaves

a. Blood donation leave

Cities may, but are not required to, provide paid leave for an employee to donate blood.

b. Bone marrow donation leave

A city must grant paid leave of up to 40 hours to an employee who is seeking to undergo a medical procedure to donate bone marrow. The 40 hours is over and above the amount of accrued time the employee has earned. The combined length of the leaves is determined by the employee. The city may require a physician's verification of the purpose and length of each leave requested to donate bone marrow.

If there is a medical determination the employee does not qualify as a bone marrow donor, the paid leave of absence granted to the employee prior to that medical determination is not forfeited. To qualify, an employee must work an average of 20 hours or more per week. The city cannot retaliate against an employee for requesting or obtaining a leave of absence for bone marrow donation. The city can also provide leave for the actual donation of bone marrow, but it is not required by law. This law also does not affect an employee's rights with regard to any other employment benefit.

[Minn. Stat. § 181.9458.](#)

[Minn. Stat. § 181.945.](#)

RELEVANT LINKS:

[LMC Model Personnel Policy](#) (containing model language on funeral leave).

[Minn. Stat. § 181.9456.](#)

[LMC Model Personnel Policy](#) (providing model adverse weather language).

[Minn. Stat. § 611A.036.](#)

c. Funeral leave

There are no state or federal laws requiring cities to grant leave due to bereavement or to attend funerals. However, many Minnesota cities do offer paid leave for employees who have lost a loved one or who must attend the funeral.

Generally, these policies allow employees to use sick leave for this purpose and impose a limit of about two to three days. Also, it is typical for a city to limit the use of bereavement or funeral leave to immediate family and household members.

d. Organ donation leave

Employees must be given paid leave in order to donate an organ or partial organ. An employee is defined as working an average of 20 hours per week. The leave may not exceed 40 hours for each donation, unless the employer agrees to it. The 40 hours is over and above the amount of accrued time the employee has earned. The city can require verification by a physician of the purpose and length of each requested leave. The city cannot change retroactively any leave granted, even if the employee receives a medical determination that he or she does not qualify as a donor.

The city cannot retaliate against an employee for requesting or obtaining a leave of absence for organ donation.

e. Inclement weather

There are no state or federal laws requiring a city to provide leave due to inclement weather.

However, in the interests of employee safety, most Minnesota cities allow employees to make their own judgment about whether or not it is safe to travel to work. It is also common for the city's policy to allow employees to take vacation or compensatory time or to make up the hours missed due to inclement weather.

f. Victim or witness leave

Employers must allow victims and witnesses, who are subpoenaed or requested by the prosecutor to attend court for the purpose of giving testimony, time off from work in order to attend criminal proceedings related to the victim's case. Additionally, employers are also required to allow a victim of a violent crime, as well as the victim's spouse or immediate family members, reasonable time off from work to attend criminal proceedings related to the victim's case.

RELEVANT LINKS:

[Minn. Stat. § 181.9413.](#)

In 2014, a new “safety leave” provision was added to Minnesota’s sick leave law allowing employees to use sick leave for absences for themselves or relatives (employee’s adult child, spouse, sibling, parent, mother-in-law, father-in-law, grandchild, grandparent, or stepparent) who are providing or receiving assistance because they, or a relative is a victim of sexual assault, domestic abuse, or stalking. The City cannot penalize an employee for requesting this time off or for taking the time off.

[Minn. Stat. § 593.50.](#)

g. Jury duty

All cities are required to provide employees with time away from work for jury duty and prohibits employers from discharging or otherwise threatening an employee who is called to or serves on a jury. Requirements for compensating an employee on jury duty vary depending upon the status (exempt or nonexempt under the federal Fair Labor Standards Act–FLSA) of the employee called to jury duty.

[29 C.F.R. § 541.602\(b\)\(3\).](#)
[29 C.F.R. § 541.118.](#)

The FLSA requires employers to compensate exempt employees who are away from work for jury duty. Most cities have policies allowing employees to receive their normal compensation while serving on a jury; but some cities require the employee to turn over any jury compensation (except expense reimbursement) to the city in return. Regulations under the federal Fair Labor Standards Act (FLSA) prohibit employers from making deductions from wages for exempt employees attending jury duty.

However, the city may offset any amounts received by an employee as jury fees for a particular week against the salary due for that particular week without risking the employee’s FLSA exemption. No such requirement exists for nonexempt employees.

[29 U.S.C. §§ 2601-2654.](#)
[The Family and Medical Leave Act \(FMLA\), U.S. Department of Labor.](#)

h. Family Medical Leave Act (FMLA)

The Family and Medical Leave Act (FMLA) provides certain employees with up to 12 weeks of unpaid, job- and benefit-protected leave per year. Leave for military family leave may be taken for up to 26 weeks in a 12-month period.

[29 C.F.R. § 825.](#)

FMLA requires group health benefits be maintained during the leave, so city is required to continue to pay its portion of health insurance premiums during this time. FMLA is designed to help employees balance their work and family responsibilities by allowing them to take reasonable unpaid leave for certain family and medical reasons.

U.S. Dep’t of Labor: [Leave Benefits.](#)
U.S. Dep’t of Labor, [FMLA factsheets, guidance, forms and regulations.](#)
LMC information memo, [Family and Medical Leave Act.](#)

RELEVANT LINKS:

[29 C.F.R. § 825.110.](#)

See *Family and Medical Leave*, LMC Model Policy.

[29 U.S.C. § 2614\(a\)\(1\).](#)

[Minn. Stat. § 645.44.](#)

All public agencies are covered; however, employees must still meet eligibility requirements. Whether an employee can use the leave is dictated by employee eligibility requirements. If a city has less than 50 employees, it may not be required to offer FMLA leave. The city should consider whether or not volunteer firefighters are truly volunteers or are more likely to be seen as paid on-call employees when calculating the number of city employees. Cities with 50 or more employees are likely to have employees eligible for FMLA-protected leave at some point. The League of Minnesota Cities recommends cities of this size develop policy language regarding use of paid leave during FMLA absences and coordination of FMLA with other leaves of absence.

When an employee returns from FMLA leave, the city must restore the employee's original job or provide an "equivalent" job. An equivalent job is one that is virtually identical to the original job in terms of pay, benefits, and other employment terms and conditions.

Cities must communicate FMLA policies through handbooks or other employee communications and must display a poster outlining FMLA rules.

i. Holidays

Minnesota law states no public business shall be transacted on any holiday, except in cases of necessity. Cities can maintain police, fire, and medical services and probably snowplowing on holidays on the basis of necessity. However, other types of services are less clear.

As a general rule, cities should probably not require any employee (other than police/fire/snowplowing) to work on a holiday unless there is a pretty clear-cut emergency situation. However, the city can probably allow an exempt (non-overtime earning) employee to "catch up" by working on a holiday if it is clearly a voluntary choice on that employee's part.

Holidays on which city halls are to be closed for business according to state law are the following:

- New Year's Day (January 1)
- Martin Luther King's Birthday (third Monday in January)
- Washington's and Lincoln's Birthday (third Monday in February)
- Memorial Day (last Monday in May)
- Independence Day (July 4)
- Labor Day (first Monday in September)
- Christopher Columbus Day (second Monday in October)
- Veterans Day (November 11)
- Thanksgiving Day (fourth Thursday in November)
- Christmas Day (December 25).

RELEVANT LINKS:

[Minn. Stat. § 645.44.](#)

When New Year’s Day, Jan. 1, Independence Day, July 4, Veterans Day, Nov. 11, or Christmas Day, Dec. 25, falls on Sunday, the following day shall be a holiday (Monday). When any of these holidays fall on Saturday, the preceding day shall be a holiday(Friday).

[Minn. Stat. § 645.44.](#)

Cities have the option of determining whether Christopher Columbus Day and the Friday after Thanksgiving will be observed as holidays. In cities where Columbus Day and/or the Friday after Thanksgiving are not holidays, public business may be conducted on those days.

[Minn. Stat. § 340A.504.](#)

Municipal liquor stores may be open on holidays with the exception of Thanksgiving Day, Christmas Day, and after 8:00 p.m. on Christmas Eve.

The following are common practices among Minnesota cities with regard to payment of holidays:

- Regular part-time employees often receive pro-rated holiday pay.
- Some cities require an employee to be in paid status the day before or the day after a holiday in order to receive holiday pay. Paid status generally includes paid leave.
- Employees required to work on a holiday based on need are usually either paid some type of premium pay (e.g., double-time) or receive another day off of their choice with pay.
- Some cities have “personal” or “floating” holidays which either change from year to year or can be personally designated by the employee in accordance with normal leave request procedures.

j. Time off to serve as an election judge

[Minn. Stat. § 204B.195.](#)

An individual who is selected to serve as an election judge may, after giving an employer at least 20 days’ written notice, be absent from work for the purpose of serving as an election judge without penalty. A city may restrict the number of employees to be absent from work for serving as an election judges to no more than 20 percent of the total workforce at any single worksite. A city may reduce the salary or wages of an employee serving as an election judge by the amount paid to the election judge by the appointing authority during the time the employee was absent from the place of employment. The Secretary of State’s website notes employees can voluntarily take a vacation day to be fully paid by the employer and receive the judge salary earned as extra income. An employer cannot force an employee serving as an election judge to take vacation.

Office of the Secretary of State, [MNVotes](#).

RELEVANT LINKS:

[EEOC v. Verizon Communications.](#)

Disability suit involving company's "no fault" attendance plans and "reasonable accommodation". Settled by consent decree.

[Minn. Stat. § 204C.04.](#)

[Minn. Stat. § 299C.62.](#)
[Minn. Stat. § 626.87.](#)
[Minn. Stat. § 299F.036.](#)
[Minn. Stat. § 299C.68.](#)
LMC information memo,
[Background Checks: The ABCs of BCA Data.](#)
HR Reference Manual,
Chapter 2.

k. Unpaid leave of absence

Although not required by law, cities often have an open-ended policy regarding leave of absence for any personal reason (medical, travel, etc.). Such policies generally limit the leave to six months or one year.

This type of policy can be helpful in many circumstances (i.e., allowing the city to retain a trained, experienced employee), but the city should ensure the policy clarifies that approval of such a leave is at the sole discretion of the city. The city should carefully examine the parameters of requests under this type of leave policy to ensure they are treated consistently and to make sure the employee's request doesn't fall under some other law (e.g., FMLA or ADA). Cities will want to avoid leave policies specifying a set, inflexible maximum amount of leave, after which time an employee is terminated. Instead, cities will want to ensure there is an opportunity to review reasonable accommodations regarding any maximum leave policies.

I. Voting

Every employee who is eligible to vote in an election has the right to be absent from work for the purpose of voting on the day of that election, without penalty or deduction from salary or wages because of the absence. An employer or other person may not directly or indirectly refuse, abridge, or interfere with this right or any other election right of an employee.

For purposes of this law, election means a regularly scheduled state primary or general election, an election to fill a vacancy in the office of United States senator or United States representative, or an election to fill a vacancy in the office of state senator or state representative.

Any person who violates this law is guilty of a misdemeanor, and the county attorney shall prosecute the violation.

F. New hires

1. Background checks

Background investigations are an important part of the hiring process. Minnesota Statutes provide guidance on background investigations for child service workers, peace officers, firefighters, and housing managers.

RELEVANT LINKS:

[Minn. Stat. ch. 13.](#)
[Minn. Stat. § 13.43, subd. 4.](#)

Federal Trade
Commission: [15 U.S.C. § 1681.](#)

[Minn. Stat. § 13C.02.](#)

[15 U.S.C. § 1681n.](#)

[15 U.S.C. § 1681b.](#)

Federal Trade
Commission: [Fair Credit Reporting Act.](#)

Federal Trade
Commission, [Using Consumer Reports: What Employers need to know.](#)

Consumer Finance:
[Updated FCRA Model Disclosures.](#)

Data provided by an individual to enable a city to conduct a thorough background investigation or reference check, as well as data obtained by the city when conducting the background investigation, are subject to the Minnesota Government Data Practices Act and are presumptively private data.

2. Fair Credit Reporting Act

As an employer, a city may use consumer reports when hiring new employees and when evaluating employees for promotion, reassignment, and retention—as long as the city complies with the Fair Credit Reporting Act (FCRA) and Minnesota law.

Please note this area of the law is evolving and potential exposure is significant, with potential statutory damages of \$100 to \$1000 for willful violations so cities should consult with their city attorneys before using consumer reports in their hiring processes.

The FCRA is designed primarily to protect the privacy of consumer report information and to guarantee that the information supplied by consumer reporting agencies is as accurate as possible.

The FCRA places certain restraints on employers seeking to use the information contained in credit reports when making employment decisions. Generally, an employer must certify to the agency providing the report that a clear, written disclosure was made to the subject of the report. Furthermore, the employer must certify it received written permission to retrieve the report. If the information contained in the report is considered when making an adverse employment decision, the employer must give the consumer a copy of the report along with a written description of the consumer's rights with regard to the report.

The FCRA has detailed procedural requirements, including:

- A notice and authorization form/consent form- Note that this Notice must be in a separate document and cannot be contained within a job application form. Cities may want to add this disclaimer to the form: *“Providing date of birth information is voluntary, and used only for purposes of the background check and is not considered part of the employment application or used in the application process.”*
- Pre-Adverse Action Notice- When a report contains information that could negatively impact an applicant's hiring, the FCRA requires certain steps be taken before any adverse action is actually taken.

RELEVANT LINKS:

Consumer Financial Protection Bureau, [A summary of your rights under the Fair Credit Reporting Act.](#)

[Minn. Stat. § 13C.02.](#)

[8 U.S.C. § 1324a.](#)

[6 U.S.C. §§ 271-279.](#)

[U.S. Citizenship and Immigration Services.](#)

- **Summary of Rights-** As of September 21, 2018, employers must provide a new consumer notice allowing consumers to request a security freeze, free of charge, from the nationwide credit reporting agencies (Equifax, Trans Union, and Experian) whenever the consumer is required to receive a summary of rights under section 609 of the Fair Credit Reporting Act . The linked Summary of Consumer Rights from the FCRA is linked to the left.
- **Post-Adverse Action Notice** – Upon taking an adverse action, the city must provide notice to applicant of the action, and this is second, separate notification form from the pre-adverse action notice with specific content requirements.

Minnesota also imposes requirements when an employer is using a consumer report to make an employment decision. Minnesota law requires the employer provide clear and accurate written disclosure to the consumer that the report will be sought. Minnesota law also specifically discusses investigative consumer reports. If an employer seeks this type of report, it must notify the consumer that the report may contain information obtained through personal interviews regarding the consumer’s character, general reputation, personal characteristics, and mode of living. This statute does not apply to an investigation of a current violation of criminal or civil law by a current employee or to an investigation of employee misconduct for which the employer may be liable.

3. Immigration and Nationality Act

The Immigration and Nationality Act, or INA, was created in 1952. Before the INA, a variety of statutes governed immigration law but were not organized in one location. The McCarran-Walter bill of 1952, Public Law No. 82-414, collected and codified many existing provisions and reorganized the structure of immigration law. The Act has been amended many times over the years, but is still the basic body of immigration law.

The League strongly recommends consulting with an immigration attorney before hiring or discharging an immigrant if the city is not certain of the immigrant’s status regarding permission to work in the U.S.

4. Immigration Reform and Control Act of 1986

The Immigration Reform and Control Act amended the Immigration and Nationalist Act by making all U.S. employers responsible for verifying the employment eligibility and identity of all employees hired to work in the United States after November 6, 1986. To implement the law, employers are required to complete Employment Eligibility Verification forms (Form I-9) for all employees, including U.S. citizens.

RELEVANT LINKS:

U.S. Citizenship and Immigration Services, [Handbook for Employers, Guidance for completing form I-9.](#)

U.S. Citizenship and Immigration Services: [Question and answers.](#)

U.S. Citizenship and Immigration Services, [I-9, Employment Eligibility Verification.](#)

The Homeland Security Act of 2002 created an executive department combining numerous federal agencies with a mission dedicated to homeland security. On March 1, 2003, the authorities of the former Immigration and Naturalization Service (INS) were transferred to three new agencies in the U S Department of Homeland Security (DHS): U S Citizenship and Immigration Services (USCIS), U S Customs and Border Protection (CBP), and U S Immigration and Customs Enforcement (ICE) The two DHS immigration components most involved with the I-9 matters are USCIS and ICE USCIS is responsible for most documentation of alien employment authorization, for Form I-9, and for the E-Verify employment eligibility verification program. Under the Homeland Security Act, the U. S. Department of Justice (DOJ) retained certain important responsibilities related to Form I-9 as well.

a. I-9 Forms

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, (but note that an employer cannot ask an employee to provide the city with a specific document with the employee's social security number on it, since requesting a specific document may constitute unlawful discrimination), within three days of employment. Some cities find it a helpful practice to include a copy of the Form-I-9, along with the instructions and the Lists of Acceptable Documents page, in the city's offer letter to individuals the city has offered the job to and who also have accepted the city's employment offer. If the employee is unable to produce documentation (or a valid receipt, for the application of a replacement document, if the original document was lost, stolen or damaged, and the replacement document must be presented to the employer within 90 days of hire or reverification of employment authorization, if applicable.

This is commonly referred to as the "receipt rule") as required by the Form I-9, the city may be forced to terminate the employee. However, the city must apply these practices consistently to all employees in order to avoid claims of discrimination

When an immigrant is already legally working for the city, it is important 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 a city consult with an immigration attorney in this type of situation. The Minnesota Department of Economic Security, through the Minnesota WorkForce Centers, works with the U.S. Department of Labor to assist employers in processing labor applications that enable employers to hire foreign workers to work in the United States.

RELEVANT LINKS:

About E-Verify ([Federal](#)).
About E-Verify ([State of MN](#)).

MN Dep't of Human Services: [Minnesota New Hire Reporting Center](#).

[Minn. Stat. § 256.998](#).

[Minn. Stat. § 256.998, subd. 6](#).

MN Dep't of Labor & Industry: [Child Labor Laws](#).
[Minn. Stat. ch. 181A](#).
[29 U.S.C. § 201-219](#).
HR Reference Manual, Chapter 2.

b. E-Verify

E-Verify is an Internet-based system allowing employers to electronically verify eligibility of their workforce to work in the United States. Employers may compare work eligibility documentation required by the federal Immigration Reform & Control Act with records from the U.S. Dept. of Homeland Security and the Social Security Administration. E-Verify is voluntary in Minnesota (with some exceptions) and cities are not required to use E-Verify. However, like immigration legislation in general, this area of the law is evolving, and cities should work with their city attorneys to ensure they are complying with the newest versions of the law.

5. New hire reporting

All cities are required to submit information on new hires and re-hires within 20 days of the new employee's hire date. The information is submitted to the state for purposes of child support enforcement. The information must include all the information required by federal law, such as the new employee's name, address, social security number, and date of birth (when available). When acting in the capacity of an employer, the city is also required to submit information on independent contractors. Employers are not required to report the hiring of any person who will be employed for less than two months duration and will have gross earnings less than \$250 per month.

There are a variety of ways to report new hires, including online reporting, electronic reporting, and by mail or fax. If reporting by non-electronic means, the city may use the reporting form provided by the state or use the W-4 filled out by the employee at time of hire.

A second violation of noncompliance with this law can bring a civil penalty of \$25 for each intentionally unreported employee. Any subsequent violation is subject to a \$500 penalty for each intentionally unreported employee.

G. Employment relationship

1. Child labor laws

The federal Fair Labor Standards Act and Minnesota law both have restrictions about when minors can work and what they can and cannot do on the job.

RELEVANT LINKS:

See Section II-D, above,
Civil Service Laws.

[Minn. Stat. § 171.165.](#)

[49 C.F.R. Subpart D \(§§ 383.51 – 383.53\), and 49 C.F.R. § 384.219.](#)

[Minn. Stat. ch. 13. Minn. Stat. § 13.03. MN Dep't of Administration, Information & Policy Analysis Division.](#)

LMC information memo:
Data Practices: Analyze, Classify, Respond.

[Minn. Stat. § 13.43.](#)

2. Civil Service

Civil service rules may dictate a number of the personnel management practices at a city. For additional information regarding civil service and its impact on cities, refer to the link on the left.

3. Commercial driver's license disqualification

Convictions for certain offenses (e.g., driving while under the influence of alcohol as prescribed by state law) or serious traffic violations (e.g., excessive speeding) committed in a commercial motor vehicle (CMV) or personal vehicle count against a driver's ability to hold a CDL. Any offenses that occurred before August 1, 2005, are not covered by this state law.

State law adopts commercial driver license disqualifications and penalties by reference.

4. Constitutional issues for public employees

Public employees have constitutional and common law rights to free speech, free association, and privacy. Protected free speech for employees includes commenting on matters of public concern such as political, social, or community issues. Before attempting to regulate conduct or discipline an employee for conduct that touches on any of these rights, make a specific determination that the city's interests in promoting efficiency or other operational concerns are greater than the employee's interests in expressing himself/herself or in his/her personal relationships and associations.

5. Minnesota Government Data Practices Act

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

The information a city collects and maintains from the hiring process is "personnel data." Personnel data are information about an individual collected because the person has or had an employment relationship or applied for a job with the city. Unlike most government data, personnel data are assumed to be classified as private data, unless the statute specifically states the data is public.

RELEVANT LINKS:

LMC information memo:
[Management of Personnel Files.](#)

[Minn. Stat. § 13.43.](#)

[Minn. Stat. § 13.02.](#)
[Minn. R. 1205.0300.](#)
[Minn. R. 1205.0400.](#)

[Minn. Stat. § 13.04, subd. 2.](#)

[Informed Consent for Release of Information, LMC Model Form..](#)

[Minn. Stat. § 13.43, subd. 2.](#)

[DPO 03-048.](#)

[DPO 03-008.](#)

[DPO 08-023.](#)

[DPO 02-030.](#)

[DPO 95-001.](#)

[DPO 95-036.](#)

[DPO 01-063.](#) [DPO 03-045.](#)

Personnel data is typically classified as public, private, or confidential. Most data about an employee's compensation is public. However, information about an employee's insurance benefits is usually private data with the exception of the gross value of the benefit, which is generally public. The MGDPA sets forth specific criteria and requirements for cities in the area of classification and release of personnel data, including:

- Providing different levels of access to information, depending on its MGDPA classification. For example, private data can be accessed by the subject and those who have a legitimate business need to have the information.
- Requiring the city to provide a "Tennessee Warning" or "Data Practices Advisory" when collecting private information.
- Requiring an informed consent if the city wishes to release the data to an outside entity or person other than described, or use the data in a way other than what was indicated in the Tennessee Warning.

The following data on government employees is public:

- An employee's name
- Employee identification number (must not be Social Security number).
- An employee's actual gross salary
- Salary range
- Terms and conditions of employment relationship
- Contract fees.
- Actual gross pension
- The value and nature of employer paid fringe benefits
- Basis for and amount of any compensation in addition to salary (including expense reimbursement).
- An employee's job title and job description
- Bargaining unit.
- Date of first and last employment.
- An employee's education and training background and previous work experience
- An employee's work-related continuing education
- Honors and awards received.
- Existence and status of any complaints or charges against the employee, whether or not any disciplinary action is taken.
(Note: nothing can be released regarding the nature of the complaint unless discipline is imposed).
- Final disposition of any disciplinary action, the reasons for the action, and data documenting the basis for the action, excluding data that would identify city employees who were confidential sources.

RELEVANT LINKS:

[DPO 96-045](#). [DPO 02-051](#).

[DPO 12-006](#).

[DPO 96-020](#).

[DPO 04-030](#).

[DPO 04-032](#).

[DPO 01-006](#).

[Minn. Stat. § 13.43, subd. 5.](#)

[Minn. Stat. § 176.138.](#)

[Minn. Stat. § 13.43, subd. 3.](#)

[DPO - Minnesota Department of Administration, Data Practices Office.](#)

[Minn. Stat. § 471.426.](#)

- Complete terms of any agreement settling any dispute arising out of an employment relationship, including buyout agreements, except that the agreement must include specific reasons for the agreement if it involves the payment of more than \$10,000 of public money.
- An employee's work location
- An employee's work telephone number
- Badge number
- Payroll time sheets or other data used to account for an employee's time (as long as the data doesn't reveal the employee's reason for using sick or other medical leave or other data which are not public).

All personnel data relating to an individual employed as, or an applicant for employment as, an undercover law enforcement officer is private data. Once the individual is no longer assigned to an undercover position, the same data that is public on other employees becomes public unless the city determines that revealing the data would threaten the personal safety of the officer or jeopardize an active investigation.

The city must treat medical data that it receives in association with a workers' compensation claim as private data.

The following information regarding job applicants is public:

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

The names of applicants are private until the applicant is selected for an interview by the appointing authority.

The Minnesota Department of Administration's Information Policy Analysis Division (IPAD) is responsible for issuing advisory opinions on questions related to Data Practices. While not legally binding, it is important to seek competent legal advice if the city makes decisions contrary to an IPAD opinion.

The city will be liable for a complainant's reasonable attorney's fees if the administrative law judge finds the city did not act in conformity with a directly-related opinion.

6. Direct deposit

A city may require direct deposit for all employees who are being paid by its payroll system.

RELEVANT LINKS:

[Minn. Stat. § 410.191.](#)
[Minn. Stat. § 412.02.](#)

[HR Reference Manual, Chapter 3.](#)

[LMC information memo, Data Practices: Analyze, Classify, Respond.](#)

[Garrity v. New Jersey, 385 U.S. 493 \(1967\).](#)

[Minn. Stat. ch. 179A.](#)

7. Employment of council members

A mayor or councilmember in a home-rule charter city or statutory city is prohibited from being employed by the city. “Employed” is defined as full-time permanent employment as defined by the city’s employment policy

8. Garrity/Tennessee

Depending on the circumstances surrounding the allegations of wrongdoing, a city may or may not need to provide employees with a formal notice prior to questioning them.

The Tennessee warning comes from the Minnesota Government Data Practices Act. It is given at the point of data collection whenever the city requests private or confidential data about an individual from that individual.

The Garrity warning comes from the United States Supreme Court case involving police officers who were under investigation for allegedly fixing traffic tickets.

The officers were given a choice of either to provide a statement to their employers which may subject them to criminal prosecution or to forfeit their jobs. The Supreme Court held that any employee statements made to the public employer under these circumstances were coerced and the Constitution prohibited their use in a subsequent criminal proceeding.

The Garrity warning was thus established. Therefore, if a city forces an employee to answer questions in an investigative interview by threat of disciplinary action, it must inform the employee that the statements and any resulting evidence cannot be used in any criminal proceedings against that employee. This warning should be used very sparingly. Only if the city is certain that compelling a statement is in its and the public’s best interest, and adequate safeguards are in place for securing the data, should the employee be presented with the choice of either talking or losing his/her job.

9. Minnesota Public Employee Labor Relations Act

The Public Employment Labor Relations Act (PELRA) establishes rules for collective bargaining in the public sector. PELRA provides:

- “Public employee” the right to unionize and collectively bargain.
- The basic criteria used to determine appropriate bargaining units.
- Procedures for union campaigns and elections.
- Procedures for resolving negotiation impasses and allegations of unfair labor practices

RELEVANT LINKS:

[Gallagher v. city of Minneapolis](#), 364N. W. 2d 467 (Minn. St. App. 1985).

[Minn. Stat. ch. 179A](#), HR Reference Manual, Chapter 6.

[Minn. Stat. § 179A.21](#), HR Reference Manual, Chapter 6.

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

Bureau of Mediation Services (BMS).
[Minn. R. ch. 7300-7320](#).
[Minn. Stat. § 572B.06](#), subd. (b).

Bureau of Mediation Services (BMS).

State law, under Minnesota Public Employment Labor Relations Act (MPELRA) also requires public employers to meet and negotiate in good faith with the union representatives, regardless of any contrary provisions in a city charter, ordinance, or resolution. Also no provision of a contract may conflict with a city charter, ordinance, or resolution – provided that they are consistent with what is provided in PELRA.

MnPELRA is the primary law governing public-sector collective bargaining in Minnesota. As such, it is the law that will be most applicable to Minnesota cities when they are dealing with employment issues in a unionized setting. It defines public employee, thereby clarifying who is able to join a union per the act, the rights and obligations of employers and employees during union organizing. It allows the right for employees to discuss employment terms and conditions with other employees and provides certain remedies for employees covered by a collective bargaining agreement.

a. Grievance arbitration

In the event 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 as the last step in the grievance procedure. The city may only refuse to arbitrate in the instance in which no agreement to arbitrate exists.

In order to determine whether an issue is properly classified as a grievance (and therefore subject to arbitration), the city should determine whether the grievance alleges a violation of any term or terms of the applicable collective bargaining agreement. In the event 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 arbitrability of the grievances is determined by an arbitrator.

In the event a city refuses to follow the grievance procedure's arbitration clause, there are two potential avenues for a union to pursue. In one instance, the union may file an unfair labor practice charge with the Public Employment Relations Board. The 2016 Minnesota Legislature delayed until July 1, 2017, the PERB's authority to hear unfair Labor Practice Charges (ULPs). Parties may file ULPS in District Court until July 1, 2017. In a second instance, the union may make a motion to district court for an order directing the dispute to be heard by an arbitrator.

Because of the potentially negative consequences of having the matter go before PERB or an arbitrator through court order, a city should consult with its city attorney to determine whether the grievance alleges a violation of any term or terms of the applicable collective bargaining agreement.

RELEVANT LINKS:

[Minn. Stat. § 179A.25.](#)

[Boe v. Polk County Library Board](#), 299 Minn. 226, 217 N.W.2d 208 (1974).

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

[Minn. Stat. § 471.6161, subd. 5. "Negotiating Changes in Group Health Insurance"](#), *Minnesota Cities* (Feb. 2004, p. 17).

[Minn. Stat. ch. 13D.](#)

[LMC information memo, Meetings of City Councils.](#)

[Minn. Stat. § 13.43. Minn. Stat. § 13D.05.](#)

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 city may wish to address the arbitrability of the grievance by noting that it is preserving its jurisdictional objection but proceeding to arbitration through the grievance procedure in the collective bargaining agreement.

b. Right of independent review

According to Minnesota statutes, every public employee should be provided with the right of independent review for any grievance related to the terms and conditions of employment. The interpretation of what constitutes independent review has been hotly debated with no clear answers from either the statutory language or the courts.

Some have argued that the statute requires grievances be reviewed by a third-party agency or individual while others assert that the review must simply be conducted by someone other than the initial decision-maker, which may include internal venues such as the city council or legal venues such as the court of appeals by writ of certiorari. Minnesota courts have made it clear, however, that this right of independent review does not extend to at-will employees.

This is a very delicate issue and legal advice is strongly encouraged before deciding when or how to provide independent review of employee grievances under this statute.

c. Aggregate value of benefits

Under Minnesota law, the city cannot reduce the value of group insurance benefits for employees covered by a collective bargaining (union) agreement without the agreement of the union. This may mean, in some cases, the city cannot increase the co-payments of their health insurance plan or increase the deductible without the agreement of the union.

10. Open Meeting Law

The Minnesota Open Meeting Law generally requires all meetings of public bodies be open to the public. A common mistake is for a city to consider any personnel-related discussion proper for a closed meeting. Even though personnel data are protected as private, all discussions on employee-related issues must be at an open meeting unless they fall into one of the explicit statutory exceptions.

This presumption of openness serves three basic purposes:

RELEVANT LINKS:

[Minn. Stat. § 13D.05, subd. 1\(d\).](#)

[Minn. Stat. § 13D.03.](#)

[Minn. Stat. § 13D.05, subd. 3\(a\).](#)

[Minn. Stat. § 13D.05, subd. 2.](#)
LMC information memo:
[Meetings of City Councils.](#)

[Minn. Stat. § 13D.05, subd. 2\(a\)\(2\).](#)

[Minn. Stat. § 13D.05, subds. 2\(b\) and 3\(a\).](#)

- 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; and
- To afford the public an opportunity to present its views to the public body.

The Minnesota open meeting law may impact a city's hiring procedures if employment interviews are conducted by a quorum or more of one of the city's governing bodies. For example, employment interviews conducted by the city council or a civil service commission must be conducted as a public meeting, since there is no provision in the OML to close a meeting for this purpose.

There are very limited employment-related exceptions to the Open Meeting Law. Each exception has specific procedures including notice requirements, record-keeping requirements such as keeping a written roll of all people present at the meeting, stating on the record the specific grounds for closing the meeting and describing the subject to be discussed, and tape-recording the meeting. The following meetings MAY be closed:

- Meetings to consider strategies for labor relations negotiations under PELRA but the actual negotiations must be undertaken at an open meeting if a quorum of the council is present.
- Meetings to evaluate the performance of an employee subject to the council's authority. Under this exception, however, the employee who is the subject of the meeting has the ability to request the meeting be open to the public. It is important to note, however, that discussion of an employee's compensation is generally open.
- Attorney-client privilege for active, threatened, or pending litigation.

The following meetings MUST be closed:

- Meetings for preliminary consideration of allegations or charges against an employee subject to the council's authority. Under this exception, however, the employee who is the subject of the meeting must be notified and allowed to open the meeting to the public at his/her discretion.
- Meetings that would reveal internal affairs data relating to allegations of law enforcement personnel misconduct or active law enforcement investigative data.

In addition, city employees have specific rights to prior notice that certain meetings will be conducted, and, at the employee's request, an otherwise closed meeting must instead be open to the public. It is very important, therefore, that the city work with the city attorney before deciding to close a public meeting involving discipline and termination issues.

RELEVANT LINKS:

[Minn. Stat. § 13D.05, subd. 2\(b\).](#)

[Minn. Stat. § 13D.05, subd. 3\(a\).](#)

[Minn. Stat. § 13D.05, subd. 2\(b\).](#) [Minn. Stat. § 13.43, subd. 2\(b\).](#)

[Minnesota Department of Labor and Industry - Minnesota OSHA Compliance.](#)

[Minn. Stat. § 415.16.](#)

If the city council finds that discipline is warranted, formal action must be taken at an open meeting and all further meetings must be open.

Each closed meeting represents a unique situation and unless the meeting is a routine performance evaluation unlikely to result in any further legal action, the city attorney should be consulted. However, these guidelines are provided to help cities that are considering options of how to handle the actual meeting and these guidelines assume the council is the hiring/firing authority:

- Present the employee's performance/misconduct to the city council (usually the presentation will be by the department head or city administrator unless he or she is the subject of the meeting).
- Call the employee in to present anything they wish the council to consider.
- If necessary (and if the employee has not requested the meeting be open to the public), the employee can be asked to leave while the council deliberates.
- If the employee refuses to leave, the council could respond by adjourning the closed session and asking if the employee would like to exercise his/her option to open the meeting.
- If the council is able to come to a decision, then the meeting would be opened for the council to take formal action on the misconduct/disciplinary decision. In the case of a performance evaluation, the council must summarize its conclusions regarding the evaluation at its next open meeting.
- Remember, once a disciplinary decision is made, all future meetings on this issue are open so if further investigation or discussion needs to take place, the council should refrain from making a decision until that occurs.

Note that the law does not require an employee's name be listed on the council agenda when the council meets to discuss the performance of an individual subject to its authority. However, if a person inquires who the agenda item is about, the city would need to disclose the name.

11. Safety

Under the federal and state OSHA (Occupational Safety and Health Act), employers are responsible for providing a safe and healthful workplace.

12. Residency

Cities are prohibited from requiring a person to be a resident of the city as a condition of employment.

RELEVANT LINKS:

[Minn. Stat. § 415.16, subd. 2.](#)

Cities inside the metropolitan area cannot impose area or response time residency requirements on any employees except firefighters. But the law permits nonmetropolitan area cities to impose reasonable area or response time requirements if a demonstrated, job-related necessity exists.

A requirement that all employees reside in the city, or that they be Minnesota residents, is invalid under this statute.

Any city may impose a reasonable response time residency requirement on persons employed as volunteer firefighters or members of a nonprofit firefighting corporation if there is a demonstrated, job-related necessity. This response time residency requirement must be related to response time and established without regard to political subdivision boundaries.

The law also allows residency requirements if the continuous presence of an employee is necessary.

A city considering either area or response time requirements or preferences should consider whether the policy is in the best interest of the city. Cities may find these requirements substantially diminish the pool of interested and qualified potential employees.

13. Peace Officer Discipline Procedures Act

The Peace Officer Discipline Procedures Act (PODPA) 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 from that officer. While public employees are entitled to a number of procedural protections, those public employees who are also peace officers have even more protections. As a result, the public employer is left with more steps to take before it can be ensured a disciplinary action will not be successfully challenged. The Act does not apply to investigations of criminal charges against an officer.

V. Best Management Practices

Following the law is always important, but it is not enough to ensure an engaged and productive workforce. The sections below describe some important factors in creating a top-notch workforce.

A. Effective recruitment practices

How employees are recruited, selected and trained has a huge impact on their ultimate success in the organization. Do candidates go through a thorough selection process where their skills and abilities are objectively evaluated? Are candidates given a realistic job preview so they truly understand what the job involves? Are employees provided with an initial orientation and training to get them started on the right track?

[Minn. Stat. § 626.89.](#)

LMC information memo:
[Police Department Management and Liability Issues.](#)

Information in this section comes from the books: "1001 Ways to Reward Employees", Bob Nelson. "The 7 Hidden Reasons Employees Leave", Leigh Branham.

HR Reference Manual,
[Chapter 2.](#)

B. Informal praise and recognition

Giving employees sincere praise and recognition is easy to do.

Unfortunately, it's all too common to focus only on what's going wrong. Behavior that is rewarded gets repeated, and positive reinforcement for good work is one of the strongest motivators.

C. Information and support

Employees perform better when they receive information about, not just what work needs to be done, but why decisions are made. Support includes involving employees in the decision-making, and using mistakes as learning opportunities.

D. Empower employees to make decisions

Empowering employees requires being clear about the needed results and trusting employees to make decisions. It also includes holding employees accountable for delivering those results.

Employees need to be able to make decisions regarding their work, or they can become so scared of making a mistake that they become dependent on others.

E. Managers are available to employees

One of the most common reason employees leave employment is the relationship they have with their manager. It is important to get to know employees and be available for assistance as needed.

Reporting to council (versus an individual) can be particularly challenging if council members provide conflicting direction. It is important for the council as a whole to agree on direction for employees.

F. Opportunities to develop new skills

Employee development plans play an important role in workforce planning by helping to ensure the city has a plan to gain the skills, knowledge, and ability its workforce will need in the future. There are many ways for employees to develop new skills including formal training, professional networking, coaching, and taking on stretch assignments (assignments that help you develop skills in a certain area).

RELEVANT LINKS:

G. Flexibility in the workplace

Ensuring employees have the flexibility to attend to personal or family needs, while still meeting work goals, can help to improve productivity, increase retention, and reduce unscheduled absences. Examples of work/life balance programs include flexible schedules, telecommuting, personal time-off, or leaves of absences when needed.