



HUMAN RESOURCES REFERENCE MANUAL

**Chapter 2
Hiring**

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

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Chapter 2 Hiring

Review in detail the two major goals of the hiring process: (1) recruiting and selecting the best qualified application for the job and (2) compliance with all applicable laws to model best employment practices so the city is able to defend itself if legally challenged. Contains links to many model forms, letters and checklists for use in your hiring process.

RELEVANT LINKS:

[HR Reference Manual, Chapter 1.](#)

[General Plan actuarial evaluation for fiscal year 2017.](#)

[State Demographic Report March 2016.](#)

I. Applicable state and federal laws

A city needs to be aware of the many state and federal laws affecting 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.

There are a number of state and federal laws that may or may not impact a city during the hiring process depending on any number of factors. Many of these laws apply only to employers with a minimum number of employees. However, a city should consult an attorney before determining a law does not apply because there is often ambiguity in the definition of “employee.” For example, volunteer firefighters are actually considered employees in many circumstances.

Those laws likely to have the most impact for a city during the hiring process are discussed throughout this manual with regard to each applicable topic. For example, equal employment opportunity laws are discussed as they relate to recruitment, job ads, employment applications, interview questions, and most other aspects of personnel administration covered by this manual. Readers are encouraged to consult the Employment Basics Chapter for an overview on state and federal laws.

II. Demographics in your hiring process

Cities will want to consider how current, as well as anticipated, demographic changes impact a hiring process. While percentages will vary from city to city, it will not be uncommon for some jurisdictions to see close to half of a workforce nearing retirement. In fact, according to data from the Public Employees Retirement Association (PERA), as of June 30, 2018, approximately 45 percent of Minnesota city employees are over age 50 (excluding police and firefighters). These retirements will arrive just as the United States workforce will also be undergoing significant changes in demographics. As evidence of this in Minnesota, the racial and ethnic makeup of the workforce will dramatically diversify.

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:

Older Workers: [A Key to Bridging the Workforce Gap](#).

See section II B, Employer of Choice.

Populations of color in our state, including American Indian, Asian, Black, and Hispanic Minnesotans grew 74% between 2000 and 2014. In the Twin Cities seven -county metro area, it's estimated that by 2020 more than one third of the prime working age population will be people of color.

In the last two decades, in both private and nonprofit sectors, the workforce has been tilting to contain a greater share of older workers. In Minnesota this is even more evident compared to other parts of the country. A study conducted for the Minnesota Board on Aging by Humphrey School of Public Affairs students in partnership with Hennepin County, found Minnesota is one of the nation's top 10 states in its proportion of baby boomers (people born between 1946 and 1964) compared to the general population. Thus, cities must be planning for broad scale talent acquisition and retention efforts in the wake of the upcoming Boomers' retirements. As the MN Demographer report notes in the linked report, the ten years following 2019 will likely be the most severe in terms of labor supply in Minnesota.

Given these trends, each city will want to plan for a competitive workforce market as the new normal in many hiring processes. The League strongly encourages city officials to analyze their city government workforce needs for the years ahead and take actions to make their city an attractive employer, known as an "employer of choice". Taking steps to review and possibly change employment practices now, will position a city to be more competitive for workforce talent in the coming years, especially when faced with workforce shortages and large-scale retirements.

Cities will want to conduct an organizational audit of where you are now with diversity and inclusion goals. Determine what diversity means for your organization (is your city's desire to fill positions with persons of color? Advancement of women? Underrepresented groups?). How will those diversity goals tie into your city's strategic plan?

As outlined above, competition will undoubtedly be intense for workers who can fill workforce gaps left by retiring Baby Boomer. Local governments, state government, businesses, and nonprofits will all face similar challenges. The first step in workforce planning is problem identification. Begin by determining which jobs in your city are likely to experience retirements in the next five years. Cities can work with nearby colleges to collect diversity data as they work through diversity planning steps as well.

Addressing some key questions will help the city identify its own unique situation and the challenges associated with the changing demographics of the city and its workforce. While the questions may vary somewhat by city and by region of the state, there are a number of common questions that will apply in almost every city.

RELEVANT LINKS:

Getting the city's top leadership (e.g., city council, city administrator, department heads) together to talk about these issues is a good way to begin answering some of these questions and thinking about possible solutions. Another approach is to assign the questions to each department manager to address within their respective departments and bring possible solutions to the city council and/or city administrator/manager for further consideration.

1. Retirements in next five years

Think about which of your employees are likely to retire in the next five years. You can further define your situation by asking the following:

- How many of these individuals are key leaders/managers?
- How many of these individuals have specialized technical knowledge?
- How many of these individuals are in the same job class and/or same department?
- What does our recent history say about our ability to recruit for these jobs?

2. Workforce differences in five years

Think about the composition of your workforce. Based on trends you see today, ask yourself how it might be different in five years compared to its current composition. Questions that may help you include the following:

- Which generations will still be working? Which will be retiring? Which will be coming into the workforce? What are the characteristics of each of these generations?
- How will the racial and ethnic backgrounds differ from today?
- How will the gender balance differ?
- How will educational backgrounds be different?
- How will work preferences be different (e.g., working from home, flexible hours, etc.)?

Our taxpayers are our customers. As cities, we need to provide culturally relevant products and services and for our citizenry to better understand our operations. With changing demographics, hiring and retaining qualified employees offering different perspectives and who may best understand the diverse backgrounds of the citizenry, will be an important component to city success. As mentioned earlier, competition will be fierce for these highly desired employees and candidates, so cities offering a strong diversity-friendly culture will undoubtedly be ahead of the curve for attracting and retaining talent.

3. Human resources needs in five years

How will your human resources needs be different in five years? Think about things like the following:

- What role will technology play? Will it be able to replace some workers? Will we need a higher level of training in technology? Will we need to replace our technology in order to attract and retain new workers?
- How do the city's growth and development patterns play a role in human resources needs?
- How will the city's demographics play a role in human resources needs (e.g., older populations requiring different city services and housing)?
- How will the organization measure the return on investment for diversity initiatives? Some organizations initially look at turnover statistics (the industry standard looks at a cost of 1.5 times the salary of an exempt position and .75 times the pay and benefits for a non-exempt position an organization loses), reviewing enhanced skills of managers, the number of grievances from year to year (are numbers falling as inclusiveness efforts take hold and members of diverse populations become comfortable in your work environment?), and measures of public image and reputation.

4. Preparing for change

Once you begin to have ideas about what your needs and workforce might look like in five years, focus on what you can be doing now to prepare for these changes. Think about things such as:

- What strategies should we employ? What are some possible solutions to workforce shortages and changes? Do the solutions require outside assistance or legal authority?
- For promoting a diversity-friendly culture, some organizations have found offering a movie series or lunch and learn approach helpful. In the movie series, organizations identify films with themes exposing a different perspective that can not only translate into employee's personal lives but promote better understanding in the workplace as well (some organizations have found *42*, *The Butler*, *Selma* and *Race* as good options). Additionally, to promote a learning and diversity-friendly culture some organizations reach out to local resources, the city's Employee Assistance Provider or college and university professors for employee group speaker presentations or brown bag lunch discussions.
- While inclusion is an atmosphere which signals all persons are valued, respected and have access to equal opportunities; belonging usually equates to feeling you fit in and having positive relationships with the group where you can be your authentic self. Many organizations see real

RELEVANT LINKS:

Problem identification and gap analysis by city functions template.

value in having both at play for their employees and citizens alike. To promote more inclusion organizational initiatives, think about what specific part of the work experience the city wants to change or review more in depth? Some organizations focus on on-boarding, promotions, recruitment, decision making processes, interactions/social norms, meetings, conflict or the beginning or end of the day involvement processes.

- What are the constraints against implementing strategies? What are some possible solutions to those constraints?
- How can we match the skills of our current and future employees with our needs as an employer?

5. Gap analysis

In order to determine where the city will need to increase its efforts to meet future workforce needs, identify what functions the city currently performs (both direct service to residents and the administrative functions that support those direct services); what resources (staff, technology, vendors, contractors, joint powers arrangements) will be available to perform those functions in the future; and whether there is likely to be a gap between the functions needed and the resources available.

The League has developed a template to assist cities with this first step.

Once the city has identified the unique problems it will be facing with regard to the workforce shortage, the next step is to identify some possible strategies and solutions for addressing the problem as well as potential challenges and constraints.

6. Reinvention or retooling

This strategy explores whether the city should be thinking about alternative ways to get the work done—other than hiring new workers.

After identifying the job classes, departments, and key leadership positions that are likely to be vacant in the near future, the city can start analyzing how best to address the vacancies. Probably the first question to ask is this: Is it possible the city could decide to discontinue this service?

For example, where the city is currently providing a fall leaf-removal service for residents, and the primary person in charge of it is getting ready to retire, the city may want to ask itself these questions: Is this a core service? Is this service of high importance to our residents? Are there other entities—public or private—already providing this service? What would happen if we discontinued this service as far as liability, public relations, legal compliance, etc.?

RELEVANT LINKS:

If the service is determined to be essential, then the next question the city may want to consider is: Are there any other ways to accomplish this service for our residents?

For example, say the city employs its own city assessor, and she is retiring in three years. Assessments can't be discontinued entirely; they are needed to determine property taxes. However, is there another way to accomplish this service for city residents? Will the county be willing to handle assessments for the city and, if so, how much would they charge? Could the city hire an outside consultant to do the assessments? Should the city consider a joint powers arrangement or consider sharing an employee with another city?

If contracting out doesn't seem to be a viable option, another consideration may be investigate some nontraditional approaches such as these:

- Splitting up jobs. For example, the city engineer retires and is hired back on a part-time basis with no supervisory duties; all supervision is assigned to a different department director or to a lower level supervisor.
- Teamwork. Several different departments may join together to accomplish various aspects of a job; for example, the fire marshal retires and the various duties are re-assigned to the fire chief and the Building Inspection Department.
- Using volunteers. This strategy might be used where the city is unable to recruit a sufficient number of parks maintenance workers to maintain the city's parks. Instead, the city establishes a volunteer program in which the city's garden club takes over flower planting and other duties for all city parks.
- Working outside of job class. Consider a situation where the city is unable to recruit a utility billing clerk with an appropriate level of computer skills. However, there is a part-time public works employee who is very good with computers. The city hires and trains the public works employee to handle utility billing duties on a part-time basis and public works duties on a part-time basis.

B. Employer of choice

While there are likely numerous definitions of what constitutes an employer of choice, a very simple one can be thought of as an employer where employees choose to work, despite other employment opportunities in the workforce. Employers of choice strive to offer a work culture and workplace environment to attract and retain high quality employees. To accomplish this, several factors are important, but a great place to begin is reviewing the city's recruitment process.

See Section IV, *Recruitment Process*.

RELEVANT LINKS:

See [Checklist for Hiring City Employees](#), LMC Model Form.

HR Reference Manual, [Chapter 1](#).

III. Procedural considerations

In addition to important state and federal laws, as well as demographic impacts, the city will want to consider important procedural considerations. Important overall city environment procedural considerations include questions such as who has the authority to hire, what is the budgeted amount available to pay for the position, and are there any other issues that need to be resolved before the hiring can occur? The city should never place itself in the position of not following its own established policies or contracts. It should also maintain appropriate records of hiring policies, practices, and procedures to protect and defend itself against complaints and lawsuits.

A. Preliminary procedural questions

Hiring procedures are dictated by state and federal law as well as best practices for promoting employer of choice initiatives like enhancing successful employer-employee relationships. The major elements of these procedures are detailed in this chapter. It can be helpful to use a checklist to track city compliance with legal requirements, city policies and past practices.

1. Authority to hire

When the city is initially considering hiring a new employee, one of the first questions to be asked is, “Who has the authority to hire for the city?”

2. Other preliminary questions

The person responsible for the hiring process in the city, whether that is the clerk, the administrator, the city council, or the human resources director, should first ask him or herself several questions:

- Is this a new position in this year’s budget?
- What dollar amount was budgeted for the position? Is it sufficient to cover wages, insurance, and other benefits like social security, Medicare, and Public Employees Retirement Association (PERA) contributions?
- Did an existing employee leave? If so, are there some severance or other payouts that could reduce the budgeted amount available for this position?
- Was the previous employee laid off? If so, are there any civil service, personnel policy, or bargaining unit requirements to rehire from a lay-off list?
- Was an existing employee terminated? If so, are there any pending hearings that could require the city to put the employee back to work (e.g., veterans’ preference, union arbitration, etc.)?

RELEVANT LINKS:

[Personnel Policy](#), LMC Model Policy.

[Release for Employment Reference Checks](#), LMC Model Form.

See Section I-D, *Appointing authority and type of government*.

HR Reference Manual, Chapter 1.
[29 C.F.R. § 2](#).
U.S. Equal Employment Opportunity Commission: [Employment Test and Selection Procedures](#).

- Is there an existing eligibility list established by the civil service commission or by the city's own personnel policy?

B. Personnel policies

Before beginning a hiring process, the hiring authority should consider the city's own personnel policies to ensure the city is following the steps it said it would. Whether established by ordinance or by council resolution, personnel policies provide the guidelines necessary to keep the hiring process running smoothly.

The city's personnel policies on hiring should emphasize securing the most qualified city employees. Various methods of handling the hiring process such as examinations, testing, interviewing, and evaluating applications are discussed throughout this manual.

While competitive examinations for appointment and promotion may be used, they should be supplemented with additional methods of determining an applicant's qualifications such as interviewing, reference checks, and background checks. At minimum a personnel policy on hiring should address:

- Who will manage the hiring process.
- Who has final authority to hire for the city.
- How openings will be posted (e.g., internally, externally, both).
- What information will be contained in the postings.
- What is the basis for the hiring decision (merit, fitness, etc.)
- How applications will be reviewed (e.g., rated on 100-point scale).
- How promotional opportunities will be handled.
- Which types of exams and testing may be used (e.g., medical, psychological, drug and alcohol).
- Whether relatives of current employees will be hired or considered for openings; and,
- A statement of equal employment opportunity (and affirmative action, if applicable).

In most cities, the authority to hire rests exclusively with the city council. Regardless of the formal authority to hire, the actual administration of the hiring process is usually handled by an appointed official (city administrator, human resources director, or city clerk), rather than by an independent commission or by elected officials.

The EEOC enforces federal laws prohibiting employment discrimination or harassment based on age, disability, genetic information, national origin, pregnancy, race, color, religion, sex, and sexual harassment, among others. In 1978, the EEOC adopted the current guidelines on employee selection procedures. The guidelines apply to all selection procedures used as the

RELEVANT LINKS:

[29 C.F.R. § 1607.](#)
U.S. Equal Employment
Opportunity Commission:
[Employment Test and
Selection Procedures.](#)

basis for employment decisions and recommend an employer be able to demonstrate selection procedures are valid in predicting or measuring performance in a particular job.

A job applicant may be able to show a city has engaged in discrimination in one of the following ways:

- **Restricted Policy.** The city has a procedure or policy that excludes members of a protected class. For example, if the city only advertises job openings by word-of-mouth, an applicant may be able to show this practice has an adverse impact on minorities.
- **Population Comparisons.** By comparing the percentage of protected class employees with the percentage of that class in the general population of the surrounding community, an applicant may be able to show the city has (intentionally or unintentionally) engaged in hiring practices that have an adverse impact on that group. For example, if the city has a 20 percent Latino/Hispanic population but only 1 percent of city employees are Latino/Hispanic, an applicant may be able to support a claim of discrimination.
- **Four-Fifths Rule.** If the selection rate for any racial, ethnic, or gender group is less than 4/5 (80 percent) of the rate of the class with the highest selection rate, the city may be subject to a claim of adverse impact. For example, if 10 percent of all males applying for a job are hired, then the city may need to provide evidence that at least 8 percent of all females that apply for a job are hired.
- **Statistical Evidence.** This method examines the statistical evidence to see if there is any adverse impact on a protected group. For example, if an applicant can show that white supervisors in a city hire only 2 percent of black applicants but hire 20 percent of white applicants, the city may be subject to a discrimination claim.

Cities may want to evaluate their hiring process from time to time to see whether there is evidence of adverse impact as defined above. If there is evidence of adverse impact, a city will want to consider trying different selection methods or examining whether its selection methods are predictive of success on the job. However, even if the hiring process (or other employment actions) has a disparate impact, the city will not be found liable for discrimination if there is a business necessity (i.e., business reason) for its process or actions.

Cities can utilize hiring processes and testing components even if they have a disparate impact if there is business necessity for using them.

[Ricci v. DeStefano](#), 557 U.S.
557, (2009).

RELEVANT LINKS:

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

[Minn. Stat. § 179A.13.](#)

[Minn. Stat. ch. 44.](#)
[HR Reference Manual, Chapter 1.](#)

In addition, cities must be cautious because if they disregard a valid hiring process or test because of concerns about disparate impact, they may be liable for intentional disparate treatment of those applicants that successfully completed the hiring process and/or test.

Cities may be sued for discrimination if they have not had the opportunity to hire any candidates from members of a protected status. While it is helpful for the city to be able to show its hiring practices have resulted in a culturally diverse workforce, the second best option is to be able to show (through documented procedures) their nondiscriminatory hiring practices are designed to reach the widest segment of the workforce and which are valid predictors of success on the job. Not only will following these methods provide good defenses in case of a claim or lawsuit, they also exemplify best practices.

C. Bargaining agreement

When a city has one or more labor unions, at least some personnel procedures are likely to be addressed in the contract(s) between the city and the union(s). Such personnel matters may or may not include hiring practices for positions within the bargaining unit.

It is important for the city to review any bargaining agreements in existence when preparing to undergo the hiring process. This will prevent the city from committing an unfair labor practice that could be caused by not honoring a provision in the existing union contract.

For example, an order of “status quo” may impact a city’s hiring or promotion activities. It is an unfair labor practice to discriminate in regard to hire or tenure to encourage or discourage membership in an employee organization.

Therefore, you could not hire or promote an employee in an attempt to influence the election, or reward or discourage union participation. When filling open positions cities should take care to avoid any perception of bias by not asking any union-related questions of candidates or allowing union activities to factor into the hiring or promotional decision.

D. Civil service commissions

For a city with a civil service commission, some aspects of personnel administration in the departments covered by civil service (police, fire, etc.) fall under the jurisdiction of the civil service commission or personnel board.

RELEVANT LINKS:

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

[Minn. Stat. § 419.08.](#)
[Minn. Stat. § 419.09.](#)
[Minn. Stat. § 420.09.](#)
[Minn. Stat. § 420.10.](#)

[Minn. Stat. § 419.06 \(9\).](#)

Peterson v. Richfield Civil Serv. Comm'n, 864 N.W.2d 340 (Minn. 2015).

Specifically, civil service systems limit the city to hiring from a certified list of people who have passed the civil service examination provided by the city's civil service commission. Civil service commissions often develop rules or regulations governing specific hiring practices. For example, a civil service commission may establish a rule requiring an eligibility list (list of individuals certified by the commission for appointment) to expire after two years. For this reason, the city should always consult the rules of the commission before beginning a hiring process for a position subject to civil service.

The civil service commission generally has the responsibility for designing the hiring process (e.g., deciding which tests to use, how many candidates to interview, etc.), conducting examinations for employment and certifying applicants for employment and promotion, but they are never responsible for the actual appointment. City staff usually handles the logistical, day-to-day management of the hiring process such as placing the ad, conducting interviews, etc. and then provides a list of qualified candidates back to the civil service commission for review.

According to Minnesota statutes, Police Department Civil Service Commission rules must provide for "promotion based on competitive examination and upon records of efficiency, character, conduct and seniority." A 2015 Minnesota Supreme Court ruling noted that a promotion process involving a police officer did not adequately consider the officer's pertinent records. At issue was whether information disseminated during an oral interview constituted an adequate review of the "records." The posting for the open position included the instructions, "Do not submit a resume or supporting documents," the Supreme Court opinion notes responses to a candidate interview do not constitute records under state law and held that the Civil Service Commission must consider records "kept in the regular course of the administration of civil service." In light of this ruling, Civil Service Commissions may want to consider requiring interested candidates to submit resumes and letters of interest highlighting their credentials when posting for promotional exams.

E. Past practice

It is important to consider what the city has done in the past, especially in the absence of any written policies that would have otherwise provided guidance. Cities should consider their past practices with hiring processes, particularly for unionized positions, to be consistent and avoid possible accusations of arbitrary hiring processes (picking and choosing what rules to follow and what rules to ignore).

RELEVANT LINKS:

When a city has legitimate business reasons for changing a past practice, the city will want to work with the city attorney to ensure the changes are documented and handled through the appropriate process (by policy for nonunion employees or perhaps a letter of understanding for union employees).

There are almost certainly going to be times when a city makes a conscious decision to alter from past practice. On such occasions, it is important to document the reason for such a change and to be able to defend the change from a legal perspective. It is often helpful to give employees some notice of the intent to change a past practice, especially if the change may impact employees' lives or careers.

In unionized environments, the city may be obligated to notify appropriate representatives of a bargaining unit if it intends to change a past practice.

In some cases, the city may need the union's agreement in order to change a past practice; this is especially true if the contract language addresses the issue generally but does not speak to the particular past practice which the city wishes to change.

F. Hiring procedure file

One of the best ways for the city to track, coordinate, and defend its hiring practices is to maintain a "procedure file" each time there is a job opening. The procedure file should contain:

- Copies of advertisements for the job which were placed in newspapers, on the web, in magazines, or other publications.
- Copies of the job posting—if one was developed.
- A list of the interview panel members.
- A list of all the candidates interviewed in every round of interviews (a good way to do this is to keep a copy of the interview schedule but make sure any last minute changes, such as candidates not showing up for the interview, are reflected).
- A copy of any checklist used for the hiring process showing various steps the city took during the process.
- A copy of any tests, examinations, questionnaires, supplemental application forms, etc. used to narrow the list of candidates.
- A copy of the rating form showing how points were awarded to rank and rate applicants for veterans' preference purposes.
- A copy of the interview questions for each round of interviews.
- Notes from the interview process or other notes about how decisions were made during the process.

RELEVANT LINKS:

[Minn. Stat. § 13.03.](#)

[DPO: MN Department of Administration Data Practices.](#)

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

[Minn. Stat. § 13.04. Minn. Stat. § 13.43.](#)

[See HR Reference Manual, Chapter 1.](#)

[Minn. Stat. § 138.17. MN Municipal Clerks and Finance Officers Association: Records Retention.](#)

- If used, rating sheets from the interview process (e.g., ranking and rating forms used by the interviewer(s) to assign numeric scores to the candidates interviewed).
- A copy of each type of letter sent to applicants (one for those not interviewed; one for those interviewed but not hired; etc.).
- A summary of the reasons behind the decision to hire an applicant; and,
- The name and actual start date of the individual who was ultimately hired for the job.

The Minnesota Government Data Practices Act controls how government data are collected, created, 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. Personnel data are typically classified as public, private, or confidential.

While the general presumption is government data are public, the general presumption for personnel data is that such data are private, with some limited exceptions. When a city asks an employee or applicant to supply private data, the Data Practices Act requires the city inform the applicant or employee about why the private information is asked for and how it will be used, if they are legally required to supply it, what will happen if they don’t supply it, and any other persons or organizations that are authorized to have access to the information

The procedure file should be maintained in accordance with the city’s record retention schedule.

IV. Recruitment process

Throughout the years, the primary goal of recruitment has been to attract a pool of candidates large enough to be able to find and hire a qualified candidate for the job. A city will want to establish a recruitment process that not only meets this primary goal, but also satisfies applicable legal requirements.

In order to attract superior staff in a competitive job market, consider how effective your city’s current recruitment practices are and whether they can be made more effectual for the future, especially in those job classes you are likely to have problems recruiting.

RELEVANT LINKS:

For some job classes, the city will conclude that strengthening its recruitment efforts is the best approach. Assessing the city's current recruitment efforts and determining where they can be improved is vital in this process.

A. Assessment of strengths and challenges

The city should ask itself what currently works well and not so well. Questions like these will help focus your efforts:

- Do we track where applicants come from (e.g., newspaper ads, the web, postings at city hall, job fairs, word-of-mouth, etc.)? What do these statistics tell us about where best to spend our efforts?
- Do we poll our recent hires to find out what they did and didn't like about the recruitment as well as on-boarding process? Do we survey candidates who did not get the job to see what they think?
- Does our recruitment process take a long time to complete?
- Do we lose candidates along the way? If so, how do we lose them (e.g., finding other jobs, insufficient starting pay, insufficient benefits, etc.)?
- Does anything about our process (application procedures, minimum requirements, interviews, testing procedures, etc.) discourage candidates from applying?

Next, try to understand what you need to change in order to recruit the next generation of workers. Depending on your assessment of your strengths and weaknesses you might consider the following:

- More technological approaches.
- Offering telecommuting and remote work options.
- More flexibility in scheduling.
- Reducing the emphasis on "face time."
- Overcoming negative public perceptions of government work as boring and bureaucratic.
- Identifying what's good about your salary and benefits.
- Identifying what's missing from your salary and benefit package.
- Identifying what could be improved in your salary and benefit offerings.
- Identifying career investments and employee engagement opportunities provided.
- Improving your marketing efforts. (e.g., what does the city offer that we can "sell" to applicants?)

RELEVANT LINKS:

MN Dep't. of Human Rights:
[How to develop an Affirmative Action Plan.](#)
29 C.F.R. § 1608.4.

[Minn. Stat. § 43A.01.](#)

[Minn. Stat. § 43A.191.](#)

U.S. Equal Employment
Opportunity Commission: [Q & A: Enforcement Guidance on National Origin Discrimination.](#)

B. Affirmative Action plans

Minnesota cities receiving state money for any reason are encouraged by the Minnesota Department of Human Rights, and in some cases required by federal funding sources, to establish an affirmative action plan. An affirmative action plan is basically:

- An assessment of the city's current status with regard to employment of minorities, women, persons with disabilities, and other protected statuses (e.g., how many minorities, protected status employees does the city currently employ in each job class).
- An assessment of the number of qualified applicants of a protected status in various job classes used by the city within the city's normal recruitment area (e.g., how many minorities and protected status candidates are available in the work force in each job class); and,
- A plan to address insufficiencies of minorities and protected status employees within the job classes determined to be low by comparing the above two sets of numbers.

The plan may include efforts such as the following:

- Advertising job openings in diversity-focused newspapers, publications, websites, and other means likely to attract protected status candidates.
- Attending recruitment fairs in locations likely to attract diverse candidates.
- Examining the city's hiring and promotional processes to see if there are any inappropriate barriers for applicants.
- Making efforts where possible to interview as many diverse candidates as possible (this can be difficult because cities are barred from asking questions identifying protected statuses on the application form).
- Taking advantage of laws and rules allowing the city to amend its typical hiring practice in order to attract, interview, and hire diverse candidates (e.g., some civil service rules provide for the consideration and hiring of diverse candidates, even when such candidates would not normally meet the cutoff for consideration).
- Making efforts to ensure diverse candidates have opportunities to receive the training and education necessary to be qualified for a particular job class (e.g., some cities have established a "cadet" program for candidates of color and females for police officer positions); and,
- Ensuring all employees (especially protected class employees) receive the type of support required to perform well on the job and receive promotions (e.g., orientation and mentoring programs).

RELEVANT LINKS:

[City of Richmond v. J.A. Croson Co.](#), 488 U.S. 469, (1989).

[Gender Decoder.](#)
[Textio.](#)
[Joblint.](#)

Establishing and following an affirmative action plan has several advantages to the city. For example, a workforce reflecting the makeup of the community means the city is likely more able to have built-in language interpreters when needed. It also can mean the city is more “in-touch” with all segments of the city’s population and able to work with the leaders of different cultural populations.

Cities should be aware any affirmative action plan is subject to claims of “reverse discrimination” by non-minority applicants and contractors. In a landmark decision involving a public employer, the U.S. Supreme Court held an affirmative action plan that required prime contractors to subcontract at least 30 percent of their contracts to minority-owned businesses was unconstitutional. The Court determined the city did not have a compelling reason for the plan; nor was the plan narrowly tailored because it did not consider race-neutral alternatives.

C. Job descriptions

Job descriptions play an important part in the recruitment process by defining the duties and requirements of the position.

While not legally required, they can sometimes help defend the city’s employment decisions in legal actions in disability related hiring situations if the city develops job descriptions defining the essential functions and physical requirements of a job before it begins recruiting for any vacancies in that job.

Typically, courts and agencies reviewing will give more deference to an employer’s explanation of the essential functions of a job if those functions are documented in a job description.

The job description is the road map for the rest of the recruitment process. It is used to generate the advertisement and job posting for the position, to develop interview questions or other tests, and to measure the job candidates against each other. In addition, job descriptions providing clear expectations and responsibilities can provide employees with a vision of opportunities available to help develop their careers. Cities will want to be mindful of the language included in the job descriptions. Studies show there can be a bias toward attracting one gender in job ads. To combat this, there are free word coders for job descriptions to help promote neutral language, such as Gender Decoder for Job Ads, Textio.com and Joblint.com.

RELEVANT LINKS:

The best way to write a job description is to ideally gather input from the employee who currently does the job as well as the position's supervisor. The current employee and supervisor may be your most knowledgeable resources because they will have first-hand knowledge of the ins and outs of the position.

A standard format for job descriptions often includes the following:

- The title of the position and the date the job description was last updated.
- Primary objective of the position (the main reason the job exists).
The job description should illustrate the main reason why the job exists. In determining the main objective of the position, you can ask yourself: What important purposes does the job serve? How does this position connect to the city's mission and values?
- The essential functions of the position (the primary duties the city wants the person in this position to perform).
- The minimum requirements* a candidate needs to be considered for the position (e.g., any educational or degree requirements, minimum years of work experience, required licenses or certificates, special skills like typing speed or familiarity with computer software); and,
- Other desirable qualifications for the job (e.g., additional years or specialized experience, educational requirements above and beyond the minimum, such as a graduate degree).

Some cities like to include other items such as: FLSA status (exempt/nonexempt); the department the position is located in; the physical requirements of the job; the job title of the supervisor; examples of how the employee's performance will be judged (also known as performance criteria); the extent of supervision the position requires; the positions supervised by the position; and the amount of public contact required in the position.

a. Minimum requirements

*When establishing the minimum requirements, cities should keep in mind they may be called upon to prove the requirement is job-related or constitutes a business necessity. Examine job descriptions to ensure the minimum qualifications required for the job are not written to adversely impact persons of color or other members of diverse populations.

For example, does a position truly require a high school diploma or should someone with a successful track record of work experience in the field also qualify?

RELEVANT LINKS:

[Minn. Stat. § 299N.05, subds. 1, 4.](#)
[MN Bd. of Firefighter Training and Educ.: Licensing Frequently Asked Questions.](#)
For firefighter certification examinations information see [Minnesota Fire Certification Board.](#)

[Job Description, LMC Model Form.](#)

(1) Minnesota firefighters

Per state law, as of July 1, 2011, full-time firefighters are required to be licensed in Minnesota. Licensure requires International Fire Service Accreditation Conference (IFSAC) certification. Thus, if a city is hiring for a full-time firefighter a best practice may be to require this licensure, or the ability to obtain the licensure before completion of any city required probationary period, within the job posting and job description minimum requirements.

Further, every chief firefighting officer has a duty to ensure that every full-time firefighter has a license issued by the Minnesota Firefighter Training and Education Board. This licensing is not required, but optional for volunteer or paid-on-call firefighters.

(2) Physical and mental requirements

Job descriptions sometimes include the physical and mental requirements of the job (e.g., lifting 25 pounds, long periods of computer work, etc.). This can help the city defend itself if a candidate is not able to perform these requirements (even with reasonable accommodation) and he or she claims discrimination. It is important these requirements be publicly documented before the hiring process begins in order to be used as an effective defense against claims of discrimination.

Again, a city will want to review the physical and mental job requirements to ensure it is not establishing overly restrictive requirements excluding women, minorities, and/or individuals with disabilities. For example, a city may want to analyze if there are tools or methods to avoid heavy lifting when reviewing a job requirement to be able to lift 50 lbs.

b. Keep current

Keep city job descriptions current. Job duties and functions likely change from time to time. It is important to review job descriptions frequently for changes. To ensure job descriptions are maintained, one party should be designated (e.g., the supervisor or human resources department) as having the primary responsibility for keeping the job descriptions current. Job descriptions should always be reviewed prior to advertising an open position.

c. Behavioral components

Behavioral components are important. While skills and knowledge are important aspects, behavioral traits are just as important.

RELEVANT LINKS:

[Job Advertisement](#), LMC Model Form.
Special thanks to the city of Corcoran for sharing a sample: [Public Works Director position profile](#).

[38 U.S.C. § 4212](#).
U.S. Dep't of Labor: [Government Contractors Requirements under the Vietnam Era Veterans Readjustment Assistance Act of 1974 \(VEVRAA\)](#) as recently amended.

[38 U.S.C. § 4212](#).

Not only do you want an employee who can do the job, you also want an employee who is going to be a good fit with the culture of the city. For example, if the employee will be required to “prioritize and take direction from several individuals in a team environment,” make sure you include that in the job description. If the employee will work with customers, he or she needs to “provide polite and helpful customer service” to all customers.

d. Flexibility

Make sure job descriptions have enough flexibility so individuals can “work outside the box.” Job descriptions should be flexible enough so employees are comfortable cross-training to help other team members accomplish tasks, and promote employee confidence to make appropriate decisions to serve customers.

D. Advertisement

In most situations, a city will not be subject to any state or federal law specifically requiring it to advertise a job opening. However, there are several reasons cities may decide on their own to advertise or post all vacancies. Also, there are some limited situations in which there may be a legal obligation for the city to post a vacancy.

Cities sometimes establish a policy of publicly advertising or posting all of their job openings in conjunction with their equal employment opportunity or affirmative action policy. For example, to recruit a diverse workforce, the city specifies all positions will be advertised publicly in both general and diversity-focused newspapers. In addition to aiding with the recruitment of minorities, this type of policy will often help defend the city in a lawsuit or discrimination complaint over a hiring decision.

A city may also choose to publicly advertise all job openings simply to make sure it takes the opportunity to review the qualifications of all available candidates.

There may be some situations where a city is under a legal obligation to publicly advertise a job opening. One example would be a situation where the open position is under a civil service system and the bylaws require a public advertisement. Another example is a city personnel ordinance including this type of requirement.

A third example involves cities, which are considered government contractors, with contracts valued at \$100,000 or more. Such cities may be required to post job openings with the state job service and with the Federal Veteran’s Employment Training Service.

RELEVANT LINKS:

[ICMA Website.](#)
[City Engineers Association of Minnesota.](#)
[Minnesota Municipal Clerks and Finance Officers Association.](#)
[International Public Management Association for Human Resources \(IPMA-HR\).](#)
[MN Association of Assessing Officers: MAAO.](#)

[29 U.S.C. ch. 14.](#)
[Mount Lemmon Fire Dist. v. Guido](#), 586 U. S. ____ (2018).

[City Administrator Job Advertisement, LMC Model Form.](#)

Finally, a city could be under a court order (usually in conjunction with a discrimination lawsuit) to advertise all job openings.

Some reasons cities may choose not to publicly advertise a job opening include:

- The financial cost to the city of placing an advertisement.
- A collective bargaining agreement with an employee union that requires internal posting prior to public advertisement for all job openings in the bargaining unit.
- Employee morale issues if there are no internal promotion opportunities.
- The city has a sufficient number of qualified internal applicants.

If it is unclear whether a job opening should be posted externally and/or there is a conflict in authority (e.g., a conflict between a civil service commission and a collective bargaining agreement), the city should consult with its city attorney.

Advertisements for city job openings should be placed on websites or in publications that are most likely to be read by qualified applicants. For example, if the city is advertising for a city administrator, it may want to consider placing the ad on the International City/County Management Association (ICMA) website. There are professional associations for city engineers, finance officers, police chiefs, human resources staff, building officials, assessors, fire chiefs, public works employees, and many other positions.

A city will want to think carefully about the minimum qualifications. Minimum qualifications are important for certain legal purposes but the city should be careful not to limit the talent pool unnecessarily, especially if there is a shortage of talent in a particular job class or area of the state.

Under the Age Discrimination in Employment Act (ADEA), a city is prohibited from indicating age preferences in advertisements, except where the city is legally required to hire someone of a certain age (e.g., child labor laws may prevent a city from hiring someone under 18 to operate certain types of equipment). 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.

1. Job ads

To save money, many cities use a shorter job announcement when posting positions with advertising resources.

RELEVANT LINKS:

[Careers.](#)

[Forbes: 7 Surprising ways to motivate Millennial Workers.](#)

[Asian American Press.](#)

For an example of a job announcement, see the city administrator position announcement for the city of Mosquito Heights. When writing shorter job ads, you might consider appealing to the next generation of workers by:

- Keep the text clear and concise. Most ads will be constrained to a few sentences.
- Explain the purpose of the position and its link to common career goals.
- Show how the position fits in and is important to the mission of the city.
- Make sure to mention unique aspects or benefits to the position.

At minimum the ad should include the title of the position opening, a brief description of the duties, the application deadline, what is required to apply (e.g., completion of a city job application), and where to apply (e.g., city hall, website, etc.). In addition, the city can include the wage rate or salary range for the position and/or general employee benefits information, the title of the supervisor, and special situations like whether the position is part-time or seasonal.

A city actively seeking job candidates from diverse populations may want to consider adding language to its job recruitment website to make this intention clear.

2. Job advertising resources

Many cities choose to post ads on the city's and LMC's websites, share with professional associations, as well as post at various city hall locations and with newspapers and social media.

Organizations often use social media applications such as Twitter, LinkedIn, and Facebook to spread the word about open positions. Social media can be a great way to attract the next generation of workers. The millennial generation, (those workers born between 1980 and 1996), is more likely to apply for a city job that identifies career and personal development opportunities in the posting. In fact, a 2010 Pew research (article linked to the left), found millennials place a higher priority on helping people in need (21%) than having a high-paying career (15%). Regardless of the method used for advertising positions, it is recommended the city requires candidates to apply through a centralized process.

This helps to simplify records retention and ensure candidates are easily identified for veterans' preference and affirmative action purposes.

Cities should generally use more than one method of advertising. This is especially important if a city relies heavily on social media or employee referrals since these methods may limit the diversity of applicants.

There is no legal requirement to advertise in diversity focused publications, unless the city is subject to a court order resulting from a lawsuit.

RELEVANT LINKS:

[Minnesota Spokesman-Recorder.](#)

[Employment Application, LMC Model Form.](#)

[Minn. Stat. § 13.355.](#)

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

However, for affirmative action purposes, cities may elect to advertise in diversity-focused publications as part of their affirmative action efforts and/or a formal affirmative action plan.

This kind of advertising practice can also help a city show a good faith effort toward diversity recruitment in case the city's practices are challenged.

E. Application process

1. Application forms

Most cities have developed their own unique employment application forms. As laws and hiring practices change, the employment application forms should be updated to reflect these changes. In general, the same questions that are prohibited for interviewing are also prohibited on application forms. However, there are a few questions that frequently arise with regard to the form itself:

a. Social Security number, driver's license number, and date of birth

Minnesota statutes specifically identify the private nature of social security numbers collected by cities and other public entities. Special attention should be given to the collection, use, and retention of this and other private personnel data received during the application process.

Generally, the city should wait to ask for this information until it is actually needed. It is best to obtain this information after the employee signs a release form, separate from the employment application form. If this information is sought to conduct a background investigation, a written release form will be required. The release should include a Tennessee advisory.

A Tennessee advisory tells the applicant private data is being requested, how it will be used, why the information is needed, and who will have access to the data. By asking for the information in this manner, the candidate will understand why it is being requested. Also, having this private data and not using it may increase the potential for liability. For example, if the city has information on the age of the applicant and then does not hire him/her, the case for age discrimination is stronger.

In general, the city should not ask for dates enabling it to estimate the person's age; for example, the year of high school graduation or the year of college graduation. The city also should probably avoid asking for all dates or all previous employment.

RELEVANT LINKS:

[Employment Application, LMC Model Form.](#)

[Minn. Stat. § 364.021.](#)

A good practice is to ask only for previous employment going back a certain period of time (5-10 years) or ask only for the most recent 3-5 employers.

The city should decide whether it has a good business reason for asking for the dates associated with those years of employment. For example, the city may ask for these dates to check the accuracy of the information the applicant has given.

Some cities have decided to avoid asking dates altogether for liability reasons and instead rely on questions about how many years the applicant was employed with that organization.

The city should ask if the applicant is at least 18 years old. This is necessary in order to comply with state and federal child labor laws. Do not ask for the data of birth, however. The only information needed, to begin with, is whether the applicant is at least 18 years old. If the applicant is not 18 years old, the city may need to inquire further in order to determine what types of equipment and what hours the applicant can work under state and federal child labor laws.

b. Maiden name and other marital status questions

Application forms should not ask for the applicant's maiden name because that seeks information about marital status and sex. One way to get the information needed to check references and other background information under previously used names is to ask the applicant to provide his or her "prior name(s)" ONLY if needed to verify previous employment or education. The city should also avoid asking for the spouse's occupation.

c. Legal protections

Ideally, the employment application form should state (if it is true) that city employment is at-will. If the city is subject to civil service and some positions are covered by collective bargaining agreements, the city could modify the statement slightly to allow for those situations. The city attorney should review whatever statement is made on the application form.

Applications should also state any fraud or misrepresentation of any kind on the application will cause the applicant to be disqualified from further consideration or subject to termination if discovered after the applicant is hired. Finally, the form should include a Tennessee advisory about the private data included on the application form.

d. Conviction and arrest information

A 2009 law prohibits public employers in Minnesota from asking for information related to convictions on the employment application form.

RELEVANT LINKS:

[Minn. Stat. § 364.03.](#)

U.S. Equal Employment Opportunity Commission: [Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964.](#)

U.S. Equal Employment Opportunity Commission: [Pre-Employment Inquiries and Citizenship.](#) 8 U.S.C. § 1101.

[EEO Tracking Sheet](#), LMC Model Form.

[Employment Application](#), LMC Model. Includes Veterans' Preference Form.

U.S. EEOC: [Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act \(ADA\).](#)

Conviction information can only be requested after the applicant has been selected for an interview. This law does not apply to police officers, firefighters, or emergency medical personnel.

The law prohibits consideration of past convictions unless those convictions are directly related to the duties of the position being filled. This includes positions for which a license is necessary.

In 2012, the EEOC updated its enforcement guidance on the consideration of arrest and conviction records in employment decisions. The guidance stated, “As a best practice, and consistent with applicable laws, the Commission recommends that employers not ask about convictions on job applications and that, if and when they make such inquiries, be limited to convictions for which exclusion would be job related to the position in question and consistent with business necessity.”

e. Right to work legally in the U.S.

The city can ask whether the applicant is legally eligible to work in the United States in the position for which they are applying. However, the city should not ask about U.S. citizenship, as national origin is a protected category.

2. Application packets

The application packet typically includes a copy of the job description, an employment application, sometimes a supplemental application, an Equal Employment Opportunity (EEO) tracking sheet, and a Veterans Preference application. An application packet is an important tool because it provides a method of obtaining the information the city needs to determine which candidates should be granted job interviews. A job application ensures the city is requesting only the information needed to make this determination (i.e., no protected information is being collected).

a. Equal Employment Opportunity tracking sheet/ applicant flow data

It is an acceptable practice to collect information about the race, disability, and sex of applicants for tracking purposes. The EEO tracking sheet should be used **ONLY** for affirmative action purposes to collect data about race, disability, and gender on the applicants as a group.

The anonymity of the information should be protected by not providing a space for the candidate's name on the form and by separating it from other application materials. It should be separated from the rest of the applications

RELEVANT LINKS:

[Supplemental Applications, LMC Model Forms. Packet contains 7 models for each of the most common city positions.](#)

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

[Minn. Stat. § 43A.11.](#)

before being given to the person reviewing the application forms so this information is not linked to any individual candidate.

Some cities use this information to gauge whether its hiring practices are resulting in the recruitment of protected status applicants, or to defend itself against possible lawsuits, or to comply with requirements to have this information available for the Equal Employment Opportunity Commission should it be requested. To reiterate, the city must take measures to ensure those making the hiring decision do not see this information on a candidate.

(a) Supplemental application

Your city may also want to consider using a supplemental application. A supplemental application is a list of questions enabling the city to obtain more specific job-related information than may be provided by the application itself. All requests for information **MUST** be job related. Changes in the law and related rules that occurred in 2004 and 2005 have called into question whether the Veterans Preference rating scale maximum must be based on a 100-point rating scale or a different total, such as a 105 or 115-point scale.

Cities may find it helpful to follow a conservative approach and continue to use a 100-point rating scale, with a subtotal maximum of 85 points before Veterans Preference points are awarded, however, it is not clear this is legally required.

The city should decide in advance in what format it will accept applications. For example, will it accept only hard copy, signed application forms, or will it accept faxed or emailed applications? Does the city's website have a method for applicants to download an application or an actual online application method? These issues, once decided, should be communicated to all applicants in advertisements, websites, application packets, and job postings.

3. Application deadlines

The hiring authority should decide in advance if he or she wants to impose a deadline for the receipt of applications or leave the position "open until filled." An application deadline is helpful in meeting the requirements of the Minnesota Veterans Preference Act. All applications submitted must be rated and ranked to determine the interview pool.

An application deadline helps the city to clearly define the pool of candidates that qualify to have their applications rated and ranked for a particular job opening.

RELEVANT LINKS:

[Minn Stat. § 197.455 subd. 1\(c\).](#)

The decision to impose a deadline should be based on whether the hiring authority expects to receive a sufficient number of applications within a certain time period and on the city's need to conduct a speedy recruitment.

If the hiring authority wants to begin interviewing as quickly as possible, using the "open until filled" method may work out well. In this method, the hiring authority should wait until they receive enough qualified applicants to conduct a sufficient number of interviews. All of the applications received up until that time should be considered together and ranked/rated on a 100-point scale for veterans' preference purposes. All applications received after that time should be put aside to be ranked/rated and considered along with the first group if the first group does not result in a hiring decision.

If the hiring authority believes the city will receive a sufficient number of applications within a few weeks, it may want to consider establishing a firm deadline. The deadline should include both a date and time (e.g., January 31, 2019 at 4:30 p.m.).

It is important to decide ahead of time (and preferably to communicate to applicants) whether or not applications e-mailed, postmarked or faxed before that date/time will be accepted, even if they are not actually "received" until after the deadline. It is equally important the city enforces the deadline across-the-board with all applicants. Otherwise, the city may be open to challenges and complaints if it "picks and chooses" the applications it will accept after the deadline.

In some situations, the city has established a deadline for applications but then receives an insufficient number of qualified applicants. In this case, the city could extend the deadline and advertise the position again with a new deadline.

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

4. Application review

If there are no applicants claiming veterans' preference in the applications received by the city for a position, the city is probably not required to use a 100-point ranking and rating scale unless the city has a personnel policy,

RELEVANT LINKS:

LMC information memo,
*Data Practices: Analyze,
Classify, Respond.*
Minn. Stat. § 13.04.

Minn. Stat § 13.43 subd. 3.

Minn. Stat. § 13.04, subd. 3.

civil service system, or past practice requiring applications to be rated and ranked.

However, such a scale can still be useful as a means of determining which applicants will be interviewed and in defending any potential complaints or lawsuits.

The city should determine in advance what actions it will take when an applicant does not supply all of the requested application materials. For example, the city could send one letter to each applicant letting them know which materials were not received and giving them a timeframe for sending in those materials. Or, the city could determine if all of the required materials are not received by the deadline, the application will not be considered. The important issue is that all applicants are treated consistently.

5. Applicant communications

Applicants are likely to call the city with questions about job openings and the application process. It is a good idea for one primary contact person to be designated by the city to respond to those calls; the phone number for the contact person should be included with all advertisements, postings, and application materials. This will help ensure the same messages are communicated to all applicants and all applicants are treated consistently.

6. Applicant data

Some, but not all, data on applicants for employment with the city is considered public under the Minnesota Government Data Practices Act. This includes:

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

Where it is not clear whether the data would be considered public, private, or confidential, the city should consult with an attorney. In general, it is better to withhold information on applicants until it is clear the information can legally be released under the Data Practices Act.

However, the city should make this determination quickly because the Act may require the city to respond within certain timeframes in some circumstances.

RELEVANT LINKS:

[Mankato Free Press Co. v. City of North Mankato](#), 563 N.W.2d 291 (Minn. Ct. App. 1997).

[Minn. Stat. § 138.17.](#)

[Minnesota Municipal Clerks and Finance Officers Association](#).
29 C.F.R. § 1602.31.

[Minn. Stat. § 43A.11.](#)

[MN Dep't of Veterans Affairs](#).

Find more information on veterans' preference rights in hiring in HR Reference Manual, [Chapter 1](#).

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

[38 U.S.C. § 4212](#).
U.S. Dep't of Labor: [The Vietnam Era Veterans' Readjustment Assistance Act \(VEVRAA\)](#).

U.S. Dep't of Labor: [Federal Contractor Program](#).

The names of applicants are private data. However, when an applicant is certified as eligible for appointment to a vacancy or when the city determines that the individual is now a finalist for a position, the applicant's name then becomes public data.

The term "finalist" means an individual who is selected for an interview by the appointing authority, not when the candidates agree to go forward with the interview.

7. Retention of applications

The city should retain copies of all applications in accordance with its established records retention schedule as well as applicable guidelines, such as those established by the EEOC. Applications should be kept with the procedure file for each job opening.

V. Veterans preference

In the hiring process, the Minnesota Veterans Preference Act 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. Preference points are given to qualified veterans who meet the minimum qualifications for the job to increase the likelihood they will receive a job interview. There is no requirement the city hire a veteran who interviewed for a job.

For open, competitive positions, a city is required to evaluate job applications and assign veterans' preference points by using a training and experience rating. When the recruitment process results in no applications from qualified veterans, the city is not required to use the training and experience rating to evaluate application materials.

A. Vietnam Era Veterans Readjustment Assistance Act of 1974 (VEVRAA)

This law requires employers with federal contracts or subcontracts of \$100,000 or more provide equal opportunity and affirmative action for Vietnam era veterans.

As a part of affirmative action, such contractors and subcontractors are required to list with the local state employment service all employment openings except for executive and top management jobs; jobs which the contractor expects to fill from within; and jobs lasting three days or less.

RELEVANT LINKS:

For extensive training on interviewing take the [LMC on-line course through City Learning Point](#), *Select for Success: Effective Interviewing and Hiring*.

[Instructions for Interview Panels](#), LMC Model Form.

Cities questioning whether or not a particular funding source is covered by this requirement should contact that funding source directly.

VI. Interviewing

Interviewing serves two primary purposes: first, it provides a chance for candidates to learn more about the job and decide if your organization is a place where they wish to work; second it is an opportunity for the city to gather job-related information about the candidate(s) to help in selecting the most appropriate candidate for the job. To gather relevant information, you need an open and honest interview.

Interviewing is a skill that can be learned, but it takes preparation and practice. Learning how to interview effectively pays dividends in helping choose the best candidate for the job and avoiding lawsuits.

A. Interview Panel

Most cities include the immediate supervisor as part of the interview panel since he or she may be the best expert on the duties and responsibilities of the position and be able to assess the candidate's fit within the team. Other panel members may include another team supervisor, the department head, and human resources. If at all possible, an interview panel of at least three members can be helpful in providing varying perspectives of the candidates.

It is well documented in psychological literature that people like other people who are like them. In other words, an individual who is Caucasian, female, Midwestern, Lutheran, and 35 years old is most likely to be attracted to candidates who are also Caucasian, female, Midwestern, Lutheran, and about 35 years old.

While this is a very understandable human tendency, it is something that needs to be carefully watched in the hiring process in order to avoid unintentional discrimination. For this reason, it can be helpful to have a panel of interviewers that:

- Represents different areas of expertise.
- Represents different genders, cultures, races, religions, etc. represents different levels of management.

It is critical anyone conducting interviews on behalf of the city be trained in advance on interviewing skills and general legal requirements, as well as informed of the duties and responsibilities of the position being filled. The link to the left provides some model interview panel instructions to help explain roles and procedures.

RELEVANT LINKS:

[Minn. Stat. § 13.04.](#)
[Minn. Stat. § 13.34.](#)

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

DPO 00-049. DPO 10-006.
*Mankato Free Press Co. v.
City of North Mankato*, 563
N.W.2d 291 (Minn. Ct. App.
1997).

[Minn. Stat. § 13D.01.](#)

*Mankato Free Press v. City of
North Mankato*, No. C9-98-
677 (Minn. Ct. App. Dec. 15,
1998) (unpublished decision).
Handbook, [Meetings,
Motions, Resolutions, and
Ordinances.](#)
LMC information memo,
Meetings of City Councils.

This will help avoid awkward situations that can occur when a member of the interview panel asks an applicant a question considered illegal or inadvisable. If this type of situation arises, the individual coordinating the panel (usually an administrative or human resources staff person) should redirect the candidate to a more appropriate, job-related question.

The city should ask only questions related to the duties of the position. As a general rule, any questions related to the applicant's personal life or any protected status (race, sex, disability, sexual orientation, familial status, marital status, etc.) should not be asked.

While directly inquiring about disabilities is prohibited under state and federal laws, the city can supply the interview candidates with a copy of the job description and ask them if they are able to perform the essential functions of the position, with or without reasonable accommodations. In addition, workers' compensation laws prohibit the city from asking about prior workers' compensation injuries. The city can, however, ask interview candidates if they have ever been disciplined for a major safety violation.

Panel members should also be trained on taking professional and appropriate notes during the interview. Nothing in the interview notes should reflect any comments on attributes of the candidate that are not job-related (e.g., "candidate had blonde hair"), entirely subjective ("candidate wore too much makeup"), or related to a protected status ("candidate seemed too young"). It is possible interview notes will have to be released to the candidate if a request is made under the Data Practices Act.

The names of applicants become public only if they are chosen for an interview by the appointing authority. In a 1997 Minnesota Court of Appeals case, the Court opined the triggering event making a name public is the selection of a candidate to be interviewed, not when the candidates agree to go forward with the interview. Candidates may be less willing to apply for or be interviewed for the job opening since they may not want their current employer to know they have applied.

In most cases, the hiring authority will be the city council or city manager. Cities need to be aware if the council (or a quorum or committee of the council) or a civil service commission conducts interviews, the Open Meeting Law will apply.

A 1997 Minnesota Court of Appeals decision to remand a 1996 case back to a district court for a factual determination on whether a city used a one-on-one interview process to avoid the requirements of the open meeting law helped city conclude that a city cannot hold "serial interviews" with each councilmember if the purpose of the serial interviews is merely to avoid the Open Meeting Law by keeping a quorum of the council from convening.

RELEVANT LINKS:

LMC, Sample *"Do Not Ask" Questions*.

LMC training article, *Effective Interviewing: Are You Asking the Right Questions*.

Cities that are considering holding private interviews with job applicants should first consult their city attorney.

Because the interview is part of the selection process, it is important it be conducted in an objective, nondiscriminatory manner. For this reason, most cities choose to ask the same basic interview questions of all candidates. While this is a good practice, it is equally important to ask appropriate follow-up questions of each candidate and to make sure the city has the information it needs to make an effective hiring decision. For example, if the candidate is asked to describe his or her qualifications for the job, but fails to mention any education or training, it is appropriate to follow-up with, "Tell me a little bit about any education or training you have related to this job." Using phrases like "tell me more about that" keeps the candidate talking about areas where you need more information.

Interview questions should:

- Relate to job-related topics (past work experience, skills and abilities required for the job, education and training, etc.).
- Be consistent from candidate to candidate.
- Avoid personal questions not related to the job (e.g., family/children, daycare arrangements, marital status, disabilities, ethnic background, sexual orientation, and religion).

There are a number of different types of interview questions a city might use to determine the fit between an applicant and the requirements of the job:

- Behavioral questions ask the applicant to explain how he or she has handled situations in the past. One example is, "Tell us about a project that you've managed from beginning to end with a past employer. What was your role? What was the outcome?" The thinking behind this style is that past performance is the best predictor of future performance. Since past behavior is the greatest predictor of future behavior, most of your questions should be behavioral questions.
- Situational questions ask the applicant to put him or herself in a hypothetical situation and describe what they would do. For example, "How would you handle a call from an angry city resident who wants to speak with the city manager immediately when the city manager is out of town and can't be reached?" Situational questions should usually be avoided, because it is easy for a candidate to describe what they think the right response is versus how they actually have handled a situation in the past.
- Factual questions attempt to find out what the applicant knows about the technical issues of the job.

RELEVANT LINKS:

- An example is, “As a commercial driver’s license (CDL) holder, what do you need to do before getting in the truck to drive at the beginning of your shift?”
- Attitudinal questions attempt to find out how the applicant views different aspects of the job. For example, “Describe some things that frustrate you in your current position.”

Sometimes, despite a city’s careful preparation and question selection, a candidate will volunteer non-job related information, such as protected class information. The best way to handle this situation is not to pursue it nor to make note of it. An interviewer can't erase the information from his or her memory, but he/she can eliminate it as a discussion point and selection factor.

It is also important to give the applicant an opportunity (usually at the closing of the interview) to ask any questions they have about the position or about working for the city. This will allow the candidate to ensure the position will be a good fit for him/her. For example, if the job requires on-call weekend duty the person cannot perform because of other responsibilities, it is better to find that out in the first round of interviews rather than later when he or she is chosen as a finalist.

The questions a candidate asks might also provide information about what is important to him/her in a position.

B. Interviewing Style

An interviewing style that encourages an honest and open interview will be more effective in helping both the city and the applicant make the right choices about the candidate’s “fit” for the job opening.

The following are some tips to keep in mind:

- Greet the applicant warmly (take his/her coat, offer them water/coffee, make a little small talk).
- Avoid small talk topics that may reveal protected characteristics (e.g. children, spouse, or weekend activities); good topics to stick with include the weather, traffic or whether the applicant found your location easily.
- Give the candidate a copy of the job description and/or a list of benefits the city offers to read while they’re waiting for the interview to begin.
- Use a separate conference room for the interview if possible; if an office must be used, bring the chairs to the same side of the desk.
- Do not provoke the candidate or appear judgmental during the interview. No matter how poor you think a candidate’s answer may be, keep an open mind until the end of the interview.

Interview Plan, LMC
Training Sample.

RELEVANT LINKS:

LMC information memo,
*Local Government Pay
Equity: An Overview.*

Minn. Stat. § 181.67.
29 U.S.C. § 206.

- Introduce and explain to the candidate the role of each person sitting on the interview panel.
- Tell the candidates what to expect during the interview process (e.g., today's interview, likelihood of a second round of interviews, tentative hiring date, etc.).
- If you take notes, explain to the job applicant the notes are just to help you remember what he/she said.
- Show interest in what the job candidate is saying. Compliment them on any work achievements.
- Close the interview by asking whether the candidate has any questions for the panel, thank the candidate for coming, and remind them about the next steps in the process.

Providing a warm, friendly, nonjudgmental interview will not only increase the likelihood of an open and honest interview, it is likely to help the city avoid claims or lawsuits from disgruntled candidates who feel they were mistreated.

C. After the Interview

To avoid unintentional discrimination and to defend the city if there is a complaint or lawsuit, it is important an interview panel consider only job-related qualities and characteristics in making the hiring decision.

A city may not base a hiring decision on the sex of the applicant in an effort to bring its pay equity report into compliance; for example, deciding to hire a male instead of a female for the position of city clerk. It is illegal to discriminate on the basis of sex in hiring under both state and federal laws.

It is also important the interview panel form independent impressions about each candidate in their own minds before discussing the results of the interview with other panel members.

Otherwise it is easy to let the group influence individual panel member's impressions. For this reason, some cities ask panel members not to discuss candidates with each other until the entire interview process is completed. In addition, the interview panel should not discuss the results of the interview with others outside the panel unless there is a clear business reason to do so.

In order to help avoid unintentional; discrimination, some cities numerically rank and rate each candidate interviewed for a position. The city is not required to use a numerical rating system to rank job candidates in an interview, but the city should be prepared to defend whatever system it uses to decide which interview candidate to hire. At a minimum, the city should be able to express a nondiscriminatory business reason for each hiring decision.

RELEVANT LINKS:

[Employment Interview Panel Rating Sheet](#), LMC Model Form.

U.S. Equal Employment Opportunity Commission: [Summary of Selected Recordkeeping Obligations in 29 C.F.R. Part 1602](#).

[Candidate Selection Rationale](#), LMC Model Form.

[Job Applicant Turn Down Letter \(no hire, no interview\)](#), LMC Model Form.

[Stever, v. City of St. Paul](#), 2015 OAH 20-3100-32630.

The advantage of this approach is it is likely to be more objective and consistent, therefore, more defensible in court. A sample interview panel ranking sheet is linked on the left. The disadvantage of this approach is it is sometimes difficult to assign numeric value to things like interpersonal style, eagerness and interest in the job, and other less tangible but important factors. It is also often difficult to think of every relevant characteristic or skill that a candidate needs in advance of the interview.

Documents made or used as part of the hiring process should be retained for two years pursuant to federal law, or for a longer period of time if required by the city's records retention schedule. At a minimum, the city should be able to express a nondiscriminatory business reason for each hiring decision.

Some cities, in accordance with their recruitment policies, summarize the interview process in a memo to the file and include the reasons why a certain candidate was chosen for the position. This summary can be helpful to document the hiring process and consider for future hiring processes. There is some ambiguity with the courts and agencies that enforce employment laws about whether a city can retain this summary in lieu of the original interview notes. Therefore, the most cautious approach (or the best practice) is to retain interview notes as well as the summary.

Whichever method the city chooses to use, it is important the city be prepared to explain and justify, if necessary, each hiring decision it makes based on business job-related reasons, rather than personal characteristics that are not job related.

D. Follow-up letters

A city should make an effort to send letters out to all candidates who are not hired for an opening as soon as possible. This practice is important for several reasons:

- Common courtesy to the applicants who have taken the time to apply and show an interest in working for the city.
- Fostering the city's reputation as a good employer.
- Requirements of the Fair Credit Reporting Act (if the candidate was eliminated from consideration based on a consumer credit report).
- Requirements of the Veterans Preference Act to notify veterans of the results of their application, including the written reasons for the rejection as well as their final examination ratings and preference credit awarded.
- Decreasing the amount of time city staff spends on answering phone calls and e-mails from applicants who are wondering about their status in the process.

RELEVANT LINKS:

[Job Applicant Turn Down Letter \(no hire, no interview\), LMC Model Form.](#)

[Albemarle Paper Company v. Moody](#), 422 U.S. 405, (1975).
[Washington v. Davis](#), 426 U.S. 229, (1976).
[Ricci v. DeStefano](#), 557 U.S. 557, (2009).

[42 U.S.C. § 12112\(b\)\(5\) \(7\). Minn. Stat. § 363A.08.](#)

[42 U.S.C. § 12112\(b\)\(5\) \(7\). 42 U.S.C. § 12112\(d\). Minn. Stat. § 363A.08.](#)

However, these letters should, in most cases, be very general and be carefully worded to avoid any misunderstandings that could form the basis for a complaint or lawsuit. A sample rejection letter is linked to the left.

E. Calls from candidates

One person should handle all calls from job candidates to ensure the same message is given to all candidates. This person should be trained only to give out appropriate, accurate information about the hiring process and about the candidate's status within the process.

After the process is completed, this person should be trained not to give out specific information about a candidate's performance in the process. The best response is to state the city offered the position to the candidate that represented the overall best fit for the job opening. A city could also offer it is the city's policy not to conduct post-interview discussions with candidates. While this response may be frustrating for the job candidate, it is preferable to giving out specific information that may not be accurate. Also, the city staff person may try too hard to "soften the blow" for the candidate and unintentionally leave the candidate with the impression he or she was discriminated against in the hiring process.

VII. Testing and examinations

Cities use various types of tests and examinations to help them make hiring decisions or to narrow the field of candidates. However, tests are only useful to the extent they are able to help a city select those candidates who will be successful on the job.

The Supreme Court has indicated tests and examinations used for hiring decisions must be valid predictors of job success. It has also ruled just because a test screened out members of a protected class does not automatically mean the test is illegal, provided it is job related.

A city must provide reasonable accommodation in the testing process in order to avoid potential claims of discrimination on the basis of disability.

State and federal laws impose some restrictions on certain types of pre-employment testing and examinations, including background checks on applicants. Generally speaking, testing will be legal so long as it is closely related to the actual requirements of the position being filled. Testing and examination procedures should be carefully considered as they may subject the city to additional liability on the basis of unintentional discrimination.

Several professional organizations sell validated testing materials for use by cities.

RELEVANT LINKS:

U.S. Equal Employment Opportunity Commission: [FAQ's What Can't I ask when hiring?](#)
EEOC: [Depression, PTSD, & Other Mental Health Conditions in the workplace: Your Legal Rights.](#)
EEOC Notice: [Number 915.002, 10/10/1995.](#)
EEOC Notice: [Number 915.002, 7/27/2000.](#)

U.S. Equal Employment Opportunity Commission: [FAQ's What Can't I ask when hiring?](#)

U.S. Equal Employment Opportunity Commission: [Pre-Employment Inquiries and Medical Questions and Examinations.](#)

U.S. Equal Employment Opportunity Commission: [Questions and Answers about Cancer in the Workplace and the ADA.](#)
EEOC: [Prohibited Employment Policies/Practices.](#)
EEOC: [Number 915.003, 10/20/2000](#) See Question 20.

[42 U.S.C. § 12112\(b\)\(5\) \(7\).](#)
[Minn. Stat. § 363A.08.](#)
[29 C.F.R. § 1630.11.](#)

For example, the International Public Management Association for Human Resources (IPMA-HR) sells tests for police, fire, and other positions.

A. Reasonable accommodation

Generally, employers cannot ask applicants if they have any health conditions (including mental health conditions) before making a conditional job offer. The EEOC states in their on-line FAQs; “before a job offer has been made, you can’t ask questions about an applicant’s disability or questions that are likely to reveal whether an applicant has a disability. This is true even if the disability is obvious. You can ask the applicant to describe or demonstrate how she would perform specific job tasks, but you can’t ask about her disability.”

However, the EEOC notes, an employer is generally allowed to ask medical questions of a job applicant in these three circumstances:

- When an applicant is voluntarily reporting for affirmative action purposes. Note, applicants must be able to choose whether they wish to respond or not- employers may not request, persuade or pressure an applicant to disclose this information.
- If an applicant is requesting a reasonable accommodation.
- Once a conditional job offer has been made, and before an employee begins working for the city, as long as this is done for all applicants within the job class.

If job applicants do talk about their medical condition for any reason, they are protected from discrimination and the information must not be shared with co-workers if they are hired. Only supervisors and managers who need to know may be told about necessary restrictions on the work or duties of the employee and the necessary accommodation(s).

Additionally, the Americans with Disabilities Act (ADA) and the Minnesota Human Rights Act both require a disabled applicant must be given reasonable accommodation to take an employment test. Further, the ADA requires that employers administer tests in a format or manner that does not reflect a sensory, speaking, or manual impairment, or learning disability, unless the test is designed to measure those skills.

In the testing process, reasonable accommodation usually means a modification or adjustment that allows an applicant with a disability to be considered for the position.

RELEVANT LINKS:

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

[Employment Application,](#)
LMC Model Form.

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

[42 U.S.C. § 12112\(d\).](#)
[Minn. Stat. § 13.05.](#)

[Lewis v. Remmele](#)
[Engineering](#), 314 N.W.2d 1
(Minn. 1981).

This could mean the city needs to conduct testing in a wheelchair-accessible area or provide an oral testing method for a blind or learning-disabled applicant.

Reasonable accommodation is determined on a case-by-case basis and depends, in part, upon the resources available to the city. However, accommodation is not required in cases of undue hardship. Undue hardship is determined based in part on the financial and other resources available to the city on a case-by-case basis. Therefore, the city may want to consult an attorney before refusing an accommodation on the basis of undue hardship.

The city may state on its application form or advertisement for the position a test will be required and ask applicants to let the city know about any reasonable accommodation that may be needed in order to take the test within a reasonable time period before it is given.

The League's sample employment application includes this language, "The City of _____ accommodates qualified persons with disabilities in all aspects of employment, including the application process. If you believe you need a reasonable accommodation to complete the application process, please contact _____ at _____." Examples of reasonable accommodations in testing include:

- Braille test for a blind applicant.
- Oral test for an applicant with dyslexia.
- Giving the test in an area accessible by wheelchairs.

The Job Accommodation Network (JAN) provides free consulting services about all aspects of job accommodations.

B. Privacy issues

Several state and federal laws regulate how employers access, use and store medical information they receive on applicants and employees. As a general rule, the city should not ask for any more information than it absolutely needs or share information with anyone who does not have a clear business reason for knowing the information. For example, some cities conduct post-offer, pre-employment physical examinations on job candidates. The best practice for such examinations is to provide the doctor or clinic with a list of the essential functions of the position and ask them to state only whether or not the candidate can perform those functions.

Additional medical information is needed only if the city must attempt to provide reasonable accommodation or determine whether an applicant would be a direct threat of safety to themselves or others. If a reasonable accommodation must be provided, the city should work with the applicant and the doctor or clinic to determine the most appropriate accommodation.

RELEVANT LINKS:

U.S. Equal Employment
Opportunity Commission:
[Genetic Information
Discrimination.](#)

HR Reference Manual,
[Chapter 5.](#)
HR Reference Manual,
[Chapter 1.](#)

DPO 99-011.
DPO 05-040.

If a safety-related determination needs to be made, the city should never make this decision on its own. Instead, it should rely on competent medical information limited to job relatedness.

The medical provider should be directed not to inquire about genetic information in violation of the Genetic Nondiscrimination in Employment Act (GINA).

It is important any medical information be stored in a separate medical file, and not in the personnel file. This will help to avoid any potential problems related to Data Practices, MHRA, ADA, GINA, or HIPAA security regulations. This section discusses privacy issues in hiring.

More detail on privacy requirements for employee medical information and HIPAA requirements can be found in the Benefits and City Employment Basics Chapters.

C. Skills testing

Some cities implement task-oriented components to their interview process; for example, skills testing in which candidates complete a job activity. The advantage is the city is able to see the candidate's skills in action but it is vitally important that any requested assigned tasks are closely related to work the applicant will perform if hired. For example, a skills test for the position of firefighter must test for job duties likely to occur on the job. It should not test an applicant's ability to carry 250 lbs. down a high ladder if this duty is unlikely to be required on the job.

In addition, the city should not set standards at a level which most existing employees in the job class could not meet and should maintain the same standards throughout the testing process for all applicants.

Examples of tests which are likely to be seen as job related include:

- Keyboarding exercises for data entry positions.
- Writing exercises for positions requiring writing as part of the job duties.
- "In-basket" exercise for an administrative support position (sets up real-life scenarios and items that would likely be given to the position for action, and asks the candidate to list and prioritize the steps they would take to complete the tasks).
- Mock presentation to the city council for a planning director position.
- Scenarios of situations which police officers are likely to encounter on the job which test the candidate's decision-making skills (can be role played or multiple-choice questions).

RELEVANT LINKS:

[Minn. Stat. § 363A.20, subd. 8.](#)

[29 C.F.R. § 1630.13\(a\).](#)
[Minn. Stat. § 363A.20, subd. 8.](#)

U.S. Dep't of Labor:
[Disability Resources,](#)
[Americans with Disabilities Act.](#)

[Minn. R. 6700.0700, subp. 1\(J\).](#)

[Minn. Stat. § 363A.20, subd. 8 \(c\).](#)

Occupational Safety and Health Administration (OSHA): [Hearing Conservation Program \(2002\).](#)

A city must test all applicants for a job, not just members of a protected class. For example, if a city wishes to test applicants for maintenance worker positions on their ability to operate a piece of machinery, it cannot test only those applicants who the city believes may have trouble operating the equipment. It must test all finalists for that position.

D. Medical exams

Under the Americans with Disabilities Act and the Minnesota Human Rights Act, medical examinations are prohibited before an offer of employment is made. Therefore, a city must determine whether an examination will be considered “medical” under these laws. The following are some key factors in determining whether a test is a medical exam:

- Is it given by a health care professional or someone trained by a health care professional?
- Are the test results interpreted by a health care professional?
- Is it designed to reveal the existence, nature, or severity of a physical or mental impairment (including alcoholism, emotional or mental disorders, specific learning disabilities, or mental retardation), or the individual’s general physical or psychological health?
- Is the test physically invasive (e.g., blood draws, urine samples)?
- Is it usually administered in a medical setting such as a doctor’s office, clinic, or hospital?
- Is medical equipment used to give the test (e.g., stethoscope, blood pressure cuff, needles, etc.)?

For police officers, the city is required by law to conduct a physical exam. The city may want to conduct physical exams for other positions, but must take care to ensure examinations are job-related and administered to everyone who is offered a position in that particular job.

If any medical information adversely affects any hiring (or firing or promotion) decision concerning an applicant (or employee), the city must notify the applicant within ten days of the final decision. The city should take care to follow the guidelines in section VII-B, Privacy Issues.

OSHA requires employees in positions with exposures to high noise levels participate in a hearing conservation program. For cities, police officers will fall into this category due to noise exposure during firearm training. It is possible the city might have other employees in positions requiring participation, such as full-time firefighters or certain public works employees. One requirement of this program is to establish a baseline hearing test prior to being exposed to the noise, and then annual testing thereafter.

RELEVANT LINKS:

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

Minnesota Board of Peace
Officer Standards and
Training (POST): [Forms](#).

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

LMC information memo,
[Physical Ability Tests for
Firefighters](#).

Minnesota Board of Peace
Officer Standards and
Training (POST): [Forms](#).
[Minn. R. 6700.0700, subp.
1\(D\)](#).
LMC information memo,
[Police Department
Management and Liability
Issues](#).

This could be done during a pre-employment medical exam or soon after the employee is hired. More information on this topic is available in the Personnel Policies Chapter.

Generally, physical agility tests designed to measure an individual's ability to perform job-related tasks are NOT medical examinations. For example, testing firefighter applicants for their ability to drag a dummy for a certain distance would probably be considered a physical agility test, not a medical exam. Like other skills tests, physical agility tests must test for duties likely to occur on the job. It is highly recommended physical agility tests be designed by a qualified physician after review of applicable job requirements. Police officers are required to meet physical agility requirements as outlined by the Peace Officer Standard and Training (POST) Board.

Physical fitness tests measuring an applicant's ability to run or his/her strength are not medical exams. However, if the employer measures the applicant's biological or physiological response after performing these tests, the test is likely to be considered a medical exam.

For example, testing an applicant's ability to run a mile in a certain amount of time will probably not be considered a medical exam, but a treadmill "stress test" in a doctor's office is likely to be considered a medical exam.

E. Psychological exams

Some cities use psychological testing of applicants as a method of determining fit for the position. In some cases (e.g., police officers), the city is required by law to conduct a psychological exam. However, psychological tests found to be medical exams are subject to the same restrictions under the Americans with Disabilities Act (ADA) and the Minnesota Human Rights Act (MHRA) as other medical exams.

Psychological tests may be considered medical if they provide evidence of mental disorders or impairments, or are used by the employer to assess general psychological health. They are not likely to be seen as medical exams if they measure factors like work styles, preferences, tastes, and habits. For example, the Minnesota Multiphasic Personality Inventory (MMPI) is considered a medical exam under the ADA or MHRA because it is used to assess personality and emotional disorders.

Commonly administered tests that are not likely to be seen as medical exams include:

- Strong-Campbell Interest Inventory.
- Campbell Leadership Index.
- Campbell Interest and Skill Survey.

RELEVANT LINKS:

See Section VII-B, *Privacy issues*.

49 U.S.C. § 31306.
49 C.F.R. § 40.25.
LMC information memo,
Drug and Alcohol Testing Toolkit for the City Workplace.

U.S Dep't of Transportation:
Federal Motor Carrier Safety
Administration.
Minn. Stat. §§ 181.950 -
181.957.

Minn. Stat. § 181.75.

See also Section VI-E,
Psychological exams.

Minn. R. 6700.0700, subp.
1(K).
Minnesota Board of Peace
Officer Standards and
Training (POST): [Forms](#).

Minn. Stat. § 626.87, subd. 1.

Minn. Stat. § 299F.035, subd.
2.
Minn. Stat. §§ 299C.61 - .62.
See also Section VII-E-4,
Children service workers, and
Section VII-F-3, *Firefighters*.

- Myers-Briggs Type Indicator.
- California Psychological Inventory.

Whether these tests will be seen as medical exams depends on many factors, including how the test is used by the city; therefore, cities should consult with an attorney to determine whether the test is appropriately used before a conditional job offer is extended.

Cities should be aware even if a test is not considered a medical exam, it may create liability for the city if it asks questions about protected status.

F. Drug and alcohol testing

Drug and alcohol testing must be conducted if an employee is required to have a commercial driver's license (CDL); other employees CANNOT be tested for drugs or alcohol unless the city has a drug and alcohol testing policy per Minnesota statutes.

Minnesota law allows employers to test job applicants who have received conditional offers of employment.

G. Other employment tests

1. Polygraph tests

Cities may not ask or require applicants or employees to take a polygraph, voice stress analysis, or any test that measures physiological responses in order to determine whether an individual is lying. (Written psychological examinations are not prohibited by this statute but may cause other liability issues for cities, depending on the circumstances).

2. Oral exams for police officers

The Police Officer Standards and Training Board (POST) requires cities to conduct oral examinations on all candidates for licensed peace officer positions. To meet this requirement, the city should make sure it conducts oral interviews on all police officer candidates.

VIII. Background checks and bonding

State law requires thorough background investigations be completed for some city positions (e.g., peace officers), fire chiefs are required to conduct background checks on applicants to fire departments, and are permitted to conduct background checks on current employees. State law permits, and the

RELEVANT LINKS:

LMC information memo,
[Background Checks: The ABCs of BCA Data.](#)

Bureau of Consumer
Protection: [Using Consumer Reports: What Employers Need to Know.](#)
15 U.S.C. § 1681.

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

U.S. Equal Employment
Opportunity Commission:
[Enforcement Guidance.](#)
15 U.S.C. § 1681, §§ 605.

[Fair Credit Reporting Act.](#)
15 U.S.C. § 1681.

League encourages, cities to conduct background checks on candidates who will be working with children.

The League recommends cities conduct at least a basic background check on all new hires. Cities that have skipped this step in the hiring process often end up wishing they had invested the time and effort to conduct a thorough background check.

Hiring an employee without conducting a background investigation is a risky endeavor. If things do not work out, the city's reputation will likely suffer and morale issues may arise with current employees. When such a situation takes a turn for the worse, a city might have to deal with accusations of negligent hiring, as well as other serious and costly liability issues.

It is also possible not conducting a background check could result in harm to a city resident, other employee, or sometimes even a child. Finally, it is important cities conduct background checks in a fair and consistent manner.

A. Fair Credit Reporting Act

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).

The FCRA is designed primarily to protect the privacy of consumer report information and to guarantee the information supplied by consumer reporting agencies is as accurate as possible. Questions and concerns about the FCRA are addressed by the Federal Trade Commission.

The Equal Employment Opportunity Commission (EEOC) has concluded the rejection of an applicant based on credit history alone could be illegal discrimination. This is because the EEOC has found such practices can have a disparate impact on certain groups of people. A city can overcome this presumption, however, by showing a candidate's rejection was the result of legitimate business concerns. The city can only consider credit-related information going back the last seven years under the Fair Credit Reporting Act.

1. Written notice and authorization

Before the city can get a consumer report for employment purposes, the individual must be notified in writing—in a document consisting solely of this notice—that a report may be used. The city must get the person's written authorization before asking a consumer reporting agency for the report.

RELEVANT LINKS:

[15 U.S.C. § 1681, §§ 604\(b\).](#)
[Bureau of Consumer Protection: Consumer Reports: What Employers Need to Know.](#)
[FTC Advisory Opinion to Lewis \(June 11, 1998\).](#)

[Bureau of Consumer Protection: Consumer Reports: What Employers Need to Know.](#)
[15 U.S.C. § 1681, §§ 604\(b\).](#)
[15 U.S.C. § 1681b\(b\), §§ 615\(a\).](#) [15 U.S.C. § 1681m\(a\).](#)

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

[15 U.S.C. § 1681n.](#)

[Federal Trade Commission: FACTA Disposal Rule.](#)
[Federal Register, Securities and Exchange Commission.](#)

2. Adverse action procedures

In some cases, the city may rely on a consumer report for an "adverse action" such as not hiring an applicant, reassigning or terminating an employee, or denying a promotion.

Before the city can take any such adverse action, it must give the individual a pre-adverse action disclosure including a copy of the individual's consumer report and a copy of "A Summary of Your Rights Under the Fair Credit Reporting Act." If a city works with a consumer reporting agency (CRA) to obtain an individual's report, the summary of consumer rights will be provided by the CRA.

After the city has taken an adverse action, it must give the individual notice—orally, in writing, or electronically—that such action has been taken. An adverse action notice tells applicants about their rights to see information being reported about them and to correct inaccurate information. The notice must include:

- The name, address, and phone number of the consumer reporting company that supplied the report.
- A statement that the company that supplied the report did not make the decision to take the unfavorable action and can't give specific reasons for it.
- A notice of the person's right to dispute the accuracy or completeness of any information the consumer reporting company furnished, and to get an additional free report from the company if the person asks for it within 60 days.

For additional information on credit reporting, refer to the link on the left.

3. Noncompliance

There are legal consequences for employers who fail to obtain an applicant's permission before requesting a consumer report or who fail to provide pre-adverse action disclosures and adverse action notices to unsuccessful job applicants. The FCRA allows individuals to sue employers for damages in federal court. A person who successfully sues is entitled to recover court costs and reasonable legal fees. The law also allows individuals to seek punitive damages for deliberate violations. In addition, the Federal Trade Commission, other federal agencies, and the state may sue employers for noncompliance and obtain civil penalties.

The Fair and Accurate Credit Transactions Act requires reasonable measures for disposing of consumer report information.

RELEVANT LINKS:

Bureau of Consumer Protection: [Disposing of Consumer Report Information, New Rule Tells How](#). 69 C.F.R. § 68690.

[Minn. Stat. § 13C.02](#).

[Minn. Stat. ch. 13](#). Information Brief, Research Dep't Minnesota House of Representatives: [MN Government Data Practices Act](#).

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

[Minn. Stat. § 13.43](#).

Reasonable measures include burning or shredding paper reports, destroying electronic files or media so the information cannot be read or reconstructed, and conducting due diligence when hiring a document destruction contractor.

B. Minnesota law

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, and of his or her right to request additional information on the nature and scope of the report. It also requires employers to allow applicants to check a box in order to automatically receive a copy of the same report that the employer obtains. 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.

As with the FCRA, this statute only applies to background reports that are procured by employers from consumer reporting agencies, not to background checks that employers do themselves. 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.

C. Minnesota Government Data Practices Act

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

The information a city collects and maintains from the hiring process, including information obtained during a background investigation, 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. Personnel data are typically classified as public, private, or confidential. It is important that the city requests, uses, and retains personnel data in accordance with the Act.

Any background check requiring the use of private data on a candidate must only be conducted after obtaining the proper release form signed by the candidate.

RELEVANT LINKS:

[Minn. Stat. § 364.03.](#)
[Minn. Stat. § 364.09.](#)
[Minn. Stat. § 364.021.](#)
[Minn. Stat. ch. 364.](#)

U.S. Equal Employment
Opportunity Commission:
[Enforcement Guidance.](#)

[Minn. Stat. § 364.021.](#)

[Minn. Stat. § 364.04.](#)

[Minn. Stat. § 364.03.](#)

The release should also contain a “Tennessen” advisory telling the candidate why the private data is being requested, what it will be used for, whether it is legally required, what the consequences are for not supplying the information, and what other persons or entities are authorized to receive the information.

D. Criminal Offenders Rehabilitation Act

Background check laws must be read together with the law on criminal offender rehabilitation. The Criminal Offenders Rehabilitation Act prohibits cities from inquiring into the criminal history of an applicant for employment prior to being selected for an interview, unless the background check is required by state or federal law. The law does allow the city to provide notice “up front” of any particular criminal history background that will bar an applicant from employment, but cities will want to work with their city attorney to determine how 2012 EEOC guidance on criminal histories and employment selection will impact any such notice.

In 2009, the law was specifically designed to require public employers to remove the questions from their employment application forms that ask about criminal convictions, and then in 2012 the law was expanded to cover both private and public employers.

Therefore, criminal history questions will no longer be allowed under the new law unless the application form makes it clear the questions apply only to applicants for positions within the police or fire department or to emergency medical services personnel.

For certain employment and licensing decisions, the city may not rely on expunged convictions or misdemeanor convictions where a jail sentence may not be imposed. The Criminal Offenders Rehabilitation Act does not cover police, firefighter and emergency medical services positions.

In addition, in covered employment or licensing areas, an individual may not be disqualified because of a prior criminal conviction unless the crime relates directly to the employment or type of license sought. Even if the conviction relates directly to the job or license, the individual may show evidence of rehabilitation.

E. Background checks permitted by law

Every background investigation does not have to be an in-depth look into a new employee’s past. The duties of a position are a good indicator of the level of investigation that should take place.

RELEVANT LINKS:

[Google Search.](#)

For example, it is appropriate, and even advisable, to contact past employers, conduct a credit check, and run a criminal background check on any employee with access to city funds (accountant, finance director, etc.).

On the other hand, it is probably sufficient to simply verify education and conduct a thorough check of employment references on an entry-level support staff position without access to city funds. Because reference and other types of background checks can be time-consuming, a city may want to consider limiting these efforts to the top two or three finalists for a position.

It is a good practice to have the reference checks on job candidates conducted by someone who is trained to know what can and cannot be asked and what types of issues raise red flags needing further investigation. Ideally, the person responsible for human resources activities in the city will conduct the reference checks on candidates.

A city may choose to use a consultant to conduct a background investigation of a new employee, especially if the city does not hire frequently or is filling a position requiring an in-depth investigation.

1. Basic information gathering

a. Internet searches

A quick and easy method of doing a search on a candidate is by visiting www.google.com. This website enables anyone to search the web for public information. By going to the site and entering the candidate's name in quotes, the search engine provides a list of any information it locates about the name entered. Be aware this search is not perfect. It is possible to obtain information on other individuals with the same name as your candidate. The search is quick, free of charge, and results only in information accessible by any member of the public, so no release form is necessary.

While it is tempting for employers to use social media sites to conduct background research on employment applicants, there are potential pitfalls that need careful consideration as well. These pitfalls include obtaining information that is unlawful to consider in any employment decision, such as the applicant's race, religion, national origin, age, pregnancy status, marital status, disability, sexual orientation and genetic information just to name a few. Because this information is often prominently displayed on social networking profiles, even the most cautious employer may unwittingly find itself a defendant in a lawsuit. Protected information can be found both in the narrative form as well as in photographs and video. Geolocation applications, often attached to smart phones or other portable devices, allow an individual to check in or post their location to social networking sites.

RELEVANT LINKS:

Such location posts may reveal protected class information, such as a place of religious worship.

An Internet or social media search is only as worthwhile as the information that it produces. One of the difficulties with using Internet and social media searches to evaluate applicants is in the sheer volume of information that can be retrieved. It may be difficult to conduct a search effectively on someone with a relatively common name. Employers may not be able to determine whether the information retrieved in a search is actually information about the applicant and not another individual. Even in cases where a public entity is able to narrow the information retrieved to a specific applicant, the entity is faced with the task of determining whether the information found is accurate or reliable. The Web site or social networking profile found could be genuine or it could be fake, set up as a joke or by someone trying to cause difficulties for the applicant. Additionally, not all applicants will have an Internet presence.

Accordingly, employers will need to decide how to weigh the lack of information found from a candidate without an internet presence with someone with a lot.

Some employers will check an employee's publicly available Facebook profile, Twitter posts or other social media sites. This check is not without concern. By looking at someone's Facebook profile, you don't know exactly what you're getting. They may have some information set to be private and not available for you to view, or some things can easily be taken out of context. We have also heard of some organizations requesting applicant participate in what is commonly referred to as "shoulder surfing" where the applicant accesses his or her social media sites for an employer to review. This shoulder surfing arrangement or any type of request for an applicant's passwords to access their private social media sites are not recommended. Facebook, for example, has gone on record saying that this is a violation of their usage agreement. Accessing private sites without permission or in excess of the authority granted could raise claims of invasion of privacy, violation of state and federal stored communications laws, or unlawful search and seizure. Consequently, public employers conducting Internet and social media searches are generally limited to only publicly available sites.

If an entity wishes to conduct social background checks, here is some general advice to help ensure your checks do not run into problems:

- Inform the job applicant/employee that you will be doing the search
- Limit the search to the applicant to whom the conditional offer of employment has been made. Use it for conditional job offers only
- Be consistent -- use it with all the individuals being considered for that job class.

RELEVANT LINKS:

- Use publicly-available web sites only – i.e., do not ask the job candidate to give you their password to see everything available about them on social media.
- Discuss negative information with candidates
- Maintain documentation of what you did and did not use as far as social media goes AND verify any information independently that is going to be used as part of the hiring decision.
- Create a strategy for using social media in hiring decisions. Determine your purpose for using social media. Ensure that you are seeking applicant information for the right reasons.
- Do not make employment decisions based upon an applicant's "off-duty" lawful conduct (such as tobacco or alcohol use), which most states prohibit employers from considering.
- To minimize the likelihood of a charge of discrimination, employers should consider assigning a person not involved in the hiring process to review social media sites (pursuant to a standard written search policy), to filter out any information about membership in a protected class, and to only forward information that may be lawfully considered in the hiring process. In other words, create a “firewall” between the person looking at the social media and the decision-makers, having the person report to the decision-makers ONLY the job relevant information and NOT any protected class information.

b. Press search

A press search is a good method for finding out about a job candidate, especially if the candidate has worked in another area of the state or country. While it may cost the city a few dollars, it is a good idea to contact one or more of the newspapers in the area where the candidate has worked in the past. Because information in the newspaper is public information, the city does not need a release form before doing this kind of search.

c. Reference check

A telephone reference check with past employers is probably the most common kind of background check conducted. It is important a city have candidates sign a release form before contacting past employers and other references. Some cities include the release statement in their employment applications; others have finalists sign a separate release form. Either way it is important the candidate be aware that the city may be contacting his or her references. Sample language is included in the Recruitment Process section of this chapter.

Telephone Reference Checks,
LMC Model Form.

RELEVANT LINKS:

See Section VII-A *Fair Credit Reporting Act*.

[Minn. Stat. § 299C.72.](#)

U.S. Equal Employment Opportunity Commission: [Enforcement Guidance](#).

[Minn. Stat. § 364.021.](#)

d. Confirmation of education

It is a good idea to contact schools and licensing agencies to confirm finalists have earned the license or degree they are claiming (e.g., high school education or GED, commercial driver's license, Class C Water Operator License, master's degree in Public Administration, Attorney or Engineering license).

2. More extensive investigations

a. Criminal history

A criminal record check can be conducted with the written consent of the job candidate. This research is usually conducted by the Bureau of Criminal Apprehension (BCA) or by the city's police department.

A police department must be sure to use the proper codes when running the checks through the state's Criminal Justice Information System (CJIS) and follow all other requirements for appropriate use of the CJIS.

Information available from a local police department and the BCA is only applicable to Minnesota. If a candidate has worked in another state, it will be necessary to work with the Federal Bureau of Investigation to obtain information on criminal activity that may have occurred outside of Minnesota.

A city may choose to use a consultant to conduct a background investigation of a new employee, especially if the city does not hire frequently or is filling a position requiring an in-depth investigation. However, the city should ask the consultant to confirm it follows all laws pertaining to the public sector.

In 2013, a law was passed eliminating the requirement for a city to pass an ordinance in order to conduct criminal history background checks using their police department's access to the criminal justice information system. If a city already has an ordinance in place, it is important to work with the city attorney for a decision on whether to repeal it as well as to establish a policy that is substantially the same, outlining how a city will conduct the checks in order to ensure the city complies with the Criminal Offenders Rehabilitation Act and April 2012 EEOC guidance.

In an April 25, 2012 EEOC Criminal History Guidance, the EEOC encourages employers to use "individualized assessments" if considering eliminating a candidate from consideration based on his/her criminal history to avoid Title VII liability. In the guidance, the EEOC provides a number of considerations an employer should review when making an individualized determination regarding criminal history information, including:

RELEVANT LINKS:

[Minn. Stat. § 364.03.](#)
[Minn. Stat. § 364.09.](#)
[Minn. Stat. § 364.021.](#)
[Minn. Stat. ch. 364.](#)
[U.S. Equal Employment
Opportunity Commission:
Enforcement Guidance.](#)

[MN Driver and Vehicle
Services.](#)

- The facts of circumstances surrounding the offense or conduct.
- The number of offenses for which the applicant was convicted.
- Age at the time of conviction, or release from prison.
- Evidence the applicant performed the same type of work. Post-conviction with the same or a different employer, with no known incidents of criminal conduct.
- The length and consistency of employment history before and after the offense or conduct.
- Rehabilitation efforts, e.g., education/training.
- Employment or character references and any other information regarding fitness for the particular position.
- Whether the individual is bonded under a federal, state, or local bonding program.

Pursuant to the Criminal Offenders Rehabilitation Act, only information on convictions (not arrests) can be considered on applicants under state law. Convictions are not an automatic disqualifier to city employment. The city must consider whether the crime is related to the job for which the applicant is applying (e.g., embezzlement is related to a finance position; driving while intoxicated is related to a job as a police officer, etc.). The city must give the applicant an opportunity to show that he or she has been rehabilitated as defined under the law and must notify the applicant in writing if the city disqualifies the applicant from consideration based upon conviction information. One factor the applicant can use to show evidence of rehabilitation is the length of time elapsed since the crime.

b. Driving record

For insurance liability purposes, cities should conduct a motor vehicle record check on all job candidates who drive a city vehicle, even occasionally. A driving record can be obtained with the written consent of the job candidate. Local police departments have access to Minnesota Driver and Vehicle Services (DVS) data on driving records for law enforcement purposes only (not employment checks). Cities can enter into a business agreement with the DVS to obtain driver's license records for applicants other than law enforcement employees.

3. Juveniles/minors

The League recommends background checks be conducted on all employees prior to hire. This can be difficult when the candidate for hire is under age 18.

RELEVANT LINKS:

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

[Minn. Stat. § 299C.62.](#)

[Minn. Stat. § 299C.61, subd. 6.](#)

A criminal history check can be completed, but it is very likely no information will be obtained because of the legal protections afforded minors (with the exception of Children Service Worker Background checks described below). If a city is unable to get information through formal channels, it is often worthwhile to pursue more informal methods. For example, ask the candidate to provide contact information for anyone he or she has worked for in the past. As employment information may be limited for someone under 18, suggest the candidate provide you with contact information for high school teachers or guidance counselors, a family for whom they provided child care, mowed the lawn, etc.

The Minnesota Department of Administration, Information Policy and Analysis Division recommends, as a general rule, a parent or guardian's signature be obtained on the release form when the candidate is under the age of 18 or has a legally appointed guardian. However, depending upon the data being requested, the specific requirements for obtaining consent to release data from a minor vary.

For this reason, cities should work closely with their city attorney to determine if the information being requested from a juvenile requires the signature of a parent or guardian.

4. Children service workers

State law permits background checks to be conducted on any individual who is or seeks to be employed or volunteers as a children's service worker. Children's services are defined as the provision of care, treatment, education, training, instruction, or recreation to children.

A children's service worker is a person who has, may have, or seeks to have access to a child receiving such services through a volunteer or employment relationship with a business or organization providing the services. Cities often provide children's services through parks and recreation programs.

State law permits, but does not require background checks, on children's service workers. However, the League strongly recommends cities conduct such checks to avoid hiring inappropriate candidates to work with children. Children service worker background checks must be performed by the BCA in order to receive certain juvenile adjudication data for specific crimes listed in the Child Protection Act.

The city's police department is unable to obtain any juvenile data for this purpose.

RELEVANT LINKS:

[Minn. Stat. § 626.87.](#)

Minnesota Board of Peace Officer Standards and Training (POST): [Background/Pointer System](#).
Minnesota Board of Peace Officer Standards and Training (POST): [Forms](#).

[Minn. R. 6700.0700, subp. 1\(J\).](#)
[Minn. R. 6700.0700, subp. 1\(D\).](#)

[Minn. Stat. § 13.43, subd. 12.](#)
[Minn. Stat. § 626.87, subd. 2.](#)

[Minn. Stat. § 13.43, subd. 12.](#)

[Minn. Stat. § 299C.68.](#)

F. Background checks required by law

1. Peace officers

State law requires law enforcement agencies to conduct a thorough background investigation on an applicant for employment as a licensed peace officer or an applicant for a position leading to employment as a licensed peace officer before the applicant may be employed.

The background investigation must determine at a minimum whether the candidate meets the following standards:

- Standards established by the Minnesota Board of Peace Officer Standards and Training (POST Board); and,
- Established security standards for access to state and national computerized record and communication systems.

These requirements do not prevent a law enforcement agency from establishing higher standards for law enforcement employees if those standards are not contrary to applicable law.

POST Board rules also require cities to conduct medical and psychological exams on police officer candidates. For more information, see the section on Testing & Examinations.

Private employers are required under this law to provide employment information for this purpose and are protected from liability for doing so.

Upon the request of a law enforcement agency, a city must disclose or otherwise make available for inspection background investigation information on a current or former employee who is the subject of an investigation under Minn. Stat. 626.87, subd. 1.

Additional employment information requested for a background investigation on a peace officer is governed by the Minnesota Government Data Practice Act and requires an appropriate release stating exactly what is authorized to be given to the employing agency.

2. Managers of housing facilities

Some cities coordinate the hiring activities for their city housing and redevelopment authority or economic development authority.

When such an authority owns or manages residential property, a criminal background check of any employee who would have the means, within the scope of the individual's duties, to enter the tenants' dwelling units is required by state law.

RELEVANT LINKS:

[Minn. Stat. § 299F.035, subd. 2.](#)

[Minn. Stat. § 299F.036.](#)

[Minn. Stat. § 13.05 subd. 4\(d\).](#)

[Minn. Stat. § 181.645.](#)

[Minn. Stat. § 412.151, subd. 2.](#)
[Minn. Stat. § 469.051, subd. 6.](#)
[Minn. Stat. § 469.096, subd. 6.](#)
[Minn. Stat. § 349.167, subd. 1.](#)
[Minn. Stat. § 69.051, subd. 2.](#)

LMC information memo, *LMCIT Property, Crime, Bond and Petrofund Coverage Guide*, Section VI-A, Bond coverage.

3. Firefighters

Effective Aug. 1, 2013, chiefs for Minnesota fire departments are required to conduct background checks on applicants to fire departments, and are permitted to conduct background checks on current employees. Private employers are required by state law to disclose employment information (written information on job applicants, performance evaluations, attendance records, disciplinary actions, and eligibility for rehire) about any employees or former employee, who was the subject of a “previous employment investigation” being done by a fire chief.

The city conducting the investigation must provide a release form signed by the employee and the fire chief or administrative head of the fire department conducting the investigation. The private employer releasing the information is generally immune from liability for release of information under this section in the absence of fraud or malice. If employment information is subject to a confidentiality agreement, the private employer must disclose the fact that such an agreement exists.

When requesting information on a firefighter applicant from another public employer, the background check is governed by the Minnesota Government Data Practices Act. To gain access to private personnel data, state law requires the city to provide the public employer with a written document signed by the applicant authorizing the release of information and specifying what information is to be released.

G. Cost of background/credit checks

State law does not allow the employer to shift the cost of a credit check or other background check to the employee.

H. Fidelity and faithful performance bonds

The statutes require certain officials to be covered by a faithful performance bond. These include the treasurer of an EDA, HRA, or port authority, and the treasurer of a relief association. However, the recommended practice is for the city to have bond coverage on all officers and employees.

A fidelity bond covers the risk of employee dishonesty—that is, the risk that the employee will steal money from the city.

A faithful performance bond will cover the same dishonesty risks a fidelity bond would. In addition, it could come into play in two other kinds of situations.

RELEVANT LINKS:

[Minn. Stat. § 412.111.](#)
[Minn. Stat. § 412.151, subd 2.](#)
[Minn. Stat. § 469.051, subd. 6.](#)
[Minn. Stat. § 469.096, subd. 6.](#)
[Minn. Stat. § 349.167, subd. 1.](#)
[Minn. Stat. § 69.051, subd. 2.](#)
[Handbook, Insurance and Loss Control.](#)

The first situation occurs when there is a loss to the city resulting from the employee's carelessness or incompetence. Examples might include failing to meet a deadline for certifying taxes to the county or failing to issue proper notices on a special assessment project so the assessments are uncollectible.

The other kind of situation where a faithful performance bond might come into play is when the employee has been guilty of malfeasance, willful neglect of duty, or bad faith. The city's LMCIT liability coverage would not cover damages awarded against an employee because of the employee's intentional wrongdoing. Nor is the city required by statute to defend and indemnify the employee for the employee's own malfeasance, willful neglect of duty, or bad faith. In this situation, a member of the public injured by an employee's intentional wrongdoing might not receive any compensation if the employee didn't have sufficient assets to pay the damages.

The bond would pay the injured member of the public if the injured party could not recover from the guilty employee.

The statutes require certain officers to be bonded for the faithful performance of their duties.

IX. Job offers

There are a number of things a city should consider when making a job offer to a potential employee. It is important to have a good grasp of the offer the city wishes to extend before making the call. The process for arriving at the “details” varies greatly from city to city. While some cities allow for a flexible negotiating process, others define every aspect of the job offer in a personnel policy or other document.

A. Making an offer of employment

1. Preparation

The city's personnel policy, union contract, and/or civil service bylaws should be consulted for guidance when preparing to make an offer of employment.

Such documents often address any number of items that would be of concern to a new employee. Common examples include: starting wage calculation, eligibility for pay increases, vacation or sick leave accrual rates, paid holidays, and eligibility for insurance benefits.

RELEVANT LINKS:

HR Reference Manual,
Chapter 4.

Minn. Stat. § 181.55.
Job Offer Letter, LMC Model
Form.

In the absence of the aforementioned documents, a city should consider past practice as a guide to preparing an offer of employment.

When the city does not have a documented or consistent practice to follow in determining a compensation offer, it is important to consider internal equity to ensure new employees are not consistently being hired at a rate exceeding the wage of current employees. In addition, cities should think about how the wage offer might impact their compliance with the Minnesota Pay Equity Act.

Refer to the Compensation Chapter for more information about determining employee compensation.

2. Negotiation

One person should represent the city during the negotiating process. Ideally, the individual making the offer is also the individual responsible for human resources activities at the city. If this is not possible, it is a good idea to have someone other than the candidate's new supervisor in the negotiating seat. This arrangement helps avoid hard feelings between the supervisor and new employee if negotiations are strained.

While it is important only one city representative negotiate with the candidate, it is also important the city negotiate only with the candidate. While it may be tempting to answer questions for or discuss issues with an individual's spouse or parent, this should be avoided. It is far too easy for lines of communication to become crossed and points of agreement to be skewed when too many people get involved.

Once the candidate verbally accepts the terms of the offer, the city should follow up with a written version of the job offer. The original should be sent to the new employee with a copy placed in the personnel file. This will provide a written record of the terms agreed to between the city and the new employee.

B. Offer letter

Cities with more than 10 employees, like all Minnesota employers, are required to give an employee (with the exception of "casual," temporary employees) a written, signed "agreement of hire" under state law. By law, the letter must contain:

- The date of the agreement.
- The hire date.
- Rate of pay.
- Hours in a regular work day.
- Whether the employee is eligible for overtime and if so at what rate.

RELEVANT LINKS:

[Minn. Stat. § 181.56.](#)

[HR Reference Manual, Chapter 1.](#)

- A statement of any job duties or responsibilities, if not performed properly, can result in deductions from the employee’s paycheck and the terms of those deductions.

If the city does not provide the written agreement of hire, the city will have the burden of proof if there is a dispute with the employee over any of the terms described above (e.g., pay rate, hire date, etc.).

An offer letter or verbal offer of employment can unintentionally create a binding employment contract if it is not carefully worded. To avoid this, cities with at-will employment policies should:

- Include a clear statement that the employment relationship is “at-will.”
- Avoid stating wage rates as annual amounts—instead use the hourly wage rate for nonexempt employees and the payroll period rate for exempt employees.
- Avoid any language that could be interpreted as a commitment of employment, such as “appointment,” “permanent,” “contract,” “for cause,” and “welcome to your new home/family.”
- Be careful about how an offer of employment is made when it is subject to city council approval (i.e., make sure the candidate knows that only the council has the final authority to hire an employee).
- Refer to the City Employment Basics Chapter for general information related to employment at-will.

In addition to meeting a legal requirement and confirming terms of employment, the offer letter is a great tool for informing new employees of when and where to arrive on the first day, who to report to, and who to contact for any questions prior to the first day of employment.

X. Contracts and agreements

Cities sometimes use written contracts or agreements with individual employees to outline the terms and conditions of employment. This practice can create legal issues for the city that otherwise might have been avoided by using personnel policies that apply to all employees. However, there are some situations where an individual employment agreement may be necessary or desirable.

For example, it may be necessary for a city to offer this type of agreement in order to recruit qualified candidates for manager or administrator positions. In this situation, the employment agreement can offer some advantages.

Cities sometimes create unintentional contracts with employees through the use of verbal commitments, inadvisable employee handbook language, and offer letters to job candidates. These types of unintentional contracts can then cause problems for the city.

RELEVANT LINKS:

See HR Reference Manual, [Chapter 1](#), MN Dep't of Labor & Industry Labor Standards: [Frequently asked questions about termination](#).

[City Manager or Administrator Employment Agreement](#), LMC Model Contract.

Avoiding certain types of language and promises can help ensure that the city does not create an unintentional contract.

An attorney should review all contracts and written agreements to make sure they do not create unintended consequences for the city.

A. Employment-at-will

Minnesota is an employment-at-will state, which means either the city or the employee can end the employment relationship (e.g., the employee can quit or the city can terminate his or her employment) without giving notice or a reason. There are numerous limitations on employment-at-will. For example, a collective bargaining agreement (union contract), a civil service system, and various employment laws protect the rights of employees to be terminated completely at-will. In addition, a poorly worded employment agreement, contract, or handbook can take away a city's rights to terminate at-will.

B. Liability issues

From a liability perspective, the problems created by individual employment agreements generally outweigh any advantages. In fact, employment contracts can create potential claims just by their existence. Because a contract is legally binding on both parties, any disagreement over interpretation of the contract falls to the courts to decide. This process can be time consuming, difficult, demoralizing, and expensive to resolve. Furthermore, it is nearly impossible to write contract language so clear it will never be misunderstood or misinterpreted by any of the parties involved.

This is further complicated by the fact there is usually a period of time—years, sometimes decades—between signing the initial contract and the time when a disagreement occurs over its contents. For these reasons, the League generally advises cities use individual employment agreements sparingly, with careful thought, and upon advice of an attorney.

C. Why use contracts at all

The primary reason a city may want to consider using an individual employment agreement is for reasons of recruitment. Experienced city manager/administrator candidates may refuse to work for a city without an individual employment agreement that outlines their terms and conditions of employment, particularly severance pay issues. There are a number of reasons for this, but probably the one most often cited by these professionals is that the relationship between the city council and the chief administrative officer can change over time.

RELEVANT LINKS:

Due to the nature of the work, city managers/administrators are more likely than other city employees to be directly affected by political changes. Each city council hires those who will be able to work well with their individual personal styles and overall philosophy for running the city. However, the persons occupying council seats change at nearly every election. Over time, the styles and philosophy of the council changes and the relationship may no longer work well for the council. Employment agreements, and in particular severance pay provisions, acknowledge this change in relationship is a reality of city government and is not the fault of any of the parties. It allows the employee a safety net to protect his/her income.

There can be some advantages to an individual employment agreement once the city, in consultation with an attorney, decides an agreement is necessary. For example, an individual employment agreement, if well-thought-out and well-drafted, can sometimes:

- Help avoid miscommunication about verbal offers and terms.
- Clarify special terms and conditions of employment unique to the position, such as car allowances, additional vacation, or memberships in professional associations.
- Protect the city's "front-end" investment in the employee, such as relocation expenses, by specifying the employee must reimburse such expenses if he or she resigns within a certain period of time.
- Eliminate the need to negotiate a settlement at an emotionally difficult time for all parties concerned by addressing severance issues up-front.
- Specify how and when performance evaluations will be conducted, as well as outline the expectations for the position in general terms.
- Help to remove the appearance of self-interest when the manager or administrator recommends changes to personnel policies.

D. Other problems with contracts

Besides the liability issues mentioned earlier in this section, individual employment agreements can cause other problems. For example:

- Provisions in the agreement can become outdated when state and federal laws change.
- Allowing the chief administrative officer to operate under a separate contract may cause other levels of supervisors and managers to be resentful or demand their own contracts.
- Future councils may be bound by contract provisions the city previously agreed to.

RELEVANT LINKS:

See HR Reference Manual,
Chapter 6.

See, *Employee Orientation
Checklist*, LMC Model Form.

E. Unintentional contracts

1. Verbal commitments

Supervisors, managers, city administrators, and council members can sometimes unintentionally create a verbal “contract” with an employee by making statements that lead the employee to believe there is a commitment by the city to employ him or her indefinitely. Or at the very least, cities can take actions that give rise to employees claiming the city created a verbal contract. Examples of verbal statements to avoid include:

- Telling employees they don’t need to worry about losing their jobs as long as they continue to do good work.
- Telling employees their city “never fires anyone.”
- Describing a position as being a “job for life.”

The city increases the likelihood a verbal commitment will be seen as a contract by the courts if an official action is taken consistent with the verbal commitment (e.g., after a councilmember promises a “job for life” to a particular job candidate, the full city council then votes to approve the hiring of that job candidate).

2. Employee handbooks

While it is generally a good practice for a city to put its personnel practices in writing, sometimes written policies or employee handbooks can unintentionally create an employment contract between the city and its employees. This may restrict the city’s ability to terminate an employee or create other problems for the city. Furthermore, employee handbooks and/or personnel policies should include disclaimers that explicitly state they are not intended to create a unilateral contract and that employment with the city is at-will.

XI. Orientation and training program

An orientation program can be viewed as an extension of the recruitment and selection process. The goal is to help the employee prepare for his or her new role in an organized and efficient manner, resulting in a shorter learning curve, greater productivity, and increased job satisfaction and retention. It is in the best interest of the city to integrate new employees into the workplace in the most efficient and effective manner possible. Much of this process can be accomplished through a new employee orientation program. While the orientation programs used by cities vary widely in content and structure, a good orientation program provides information to new employees in a variety of ways and requires a great deal of planned communication.

RELEVANT LINKS:

[Minn. Stat. § 136A.1792](#)

U.S. Dep't of Educ, Fed.
Student Aid: [Public Service
Loan Forgiveness Program](#)

An orientation program is an excellent opportunity for a city to ensure new employees are well prepared to do the job they were hired to do. Studies show employees who are well informed about the organization they work for and are clear about what the organization expects of them are happier and more productive employees in the long run. A well-run orientation program can establish the foundation for open and effective communication between the city and its employees.

Basic elements of an orientation and training program include the following.

A. Before the first day

Many employers think of an orientation as a “first day on the job” activity. While it is true there is much to be done on an employee’s first day, there is a great deal that can and should be accomplished prior to and after the first day as well.

1. Information packet

The city can save time by sending out an information packet prior to the new employee’s start date.

Providing materials in advance gives the employee an opportunity to learn about the city and its programs. This proactive step also lets the employee know the city is looking forward to having him/her as a team member.

The city may wish to send general information about the city as well as information about the city as an employer: organizational structure, number of employees and departments, and an introduction to employee benefits and policies.

It may also be helpful to include a one-page letter, fact sheet and frequently asked questions by the Office of Higher Education on the federal student loan forgiveness program. Effective January 1, 2017, employers must provide a newly hired employee in written or electronic form the information from the Office of Higher Education on the federal student loan forgiveness program within two weeks of the employee’s first day of employment. If an employee requests, the city must provide the employee with a copy of the employment certification program (linked to the left).

2. Update current employees

Notify your current employees of the new employee’s name, background, job title, key responsibilities, start date, and where their office/work space will be located. Encourage employees to introduce themselves to the new employee.

RELEVANT LINKS:

HR Reference Manual,
[chapter 1](#) see I-9 Forms.

3. Work station setup

Be sure the employee has a “home,” a place to put their things. Provide the initial tools and supplies that the employee will need to do their job. Something as simple as having a nametag/nameplate and/or business cards in place on the employee’s first day of work can send a very positive message to a new employee and make them feel welcome.

The new employee’s job description and work station should be evaluated to determine what tools will be necessary for the new employee to perform his/her job. Consider things like having the computer set up with the employee’s e-mail name and the programs he/she will need to do the job. Have telephone/voicemail information at the workstation.

Make sure basic desk supplies have been purchased and are available. Review a typical day for this position in your mind. Where is the new employee going to park? How is he/she going to get into the building? More work on the front end of the orientation process means less stress for everyone during the new employee’s first few days on the job.

4. Assign a buddy

Designating a contact person or mentor to help the new recruit through the early stages of employment can be a good way to provide the individualized attention each employee needs. The ideal buddy is someone in the same department as the new employee who is familiar with the organizational structures, both formal and informal, and will be a reliable source of information. A buddy shows the new employee the ropes, introduces him or her to co-workers, gives personal assistance, and answers questions on an as-needed basis. Assigning a buddy provides a resource for questions the new employee may not need, or wish, to discuss with the supervisor such as, Where is the nearest restroom? or Do most employees eat in or go out?

B. On the first day

A new employee’s first day on the job should be welcoming and informational with some time for real job activities. In advance of the first day, someone should be assigned the responsibility of introducing the new employee, and it is always nice to have somebody take the new employee out to lunch for his/her first day. Certain paperwork and procedures need to be addressed, for example, time cards, pay schedules, lunch and break times, Form W-4, Form I-9 (refer to the link on the left to see how 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), emergency contacts, and required

RELEVANT LINKS:

benefits (e.g., contributions and benefits of the PERA retirement plan). It is also important to give the new employee a current job description, if a copy has not already been provided.

Give the new employee a tour of the facility and introduce them to staff members. Explain compensation and benefits plans, attendance procedures, work rules and policies, safety procedures, and who to contact with questions. Provide the employee with copies of any materials or policies that will be helpful, such as an employee handbook.

Over the course of the first week for the new hire, make orientation/onboarding a “big deal.” Devote time so the newly hired employee(s) can meet with existing employees to learn about the organization’s culture. Think through ahead of time how you would define and name your organization’s culture; be prepared to answer this question for new hires “what is the personality of our organization?” City leaders should be good role models, and convey a message while the city embraces all the uniqueness everyone brings to the workplace, the expectation remains that rules and policies will be followed. This messaging can go a long way to not only convey clear expectations but also appreciate the individuality everyone brings to the work.

Expectations should be discussed in a detailed manner, especially when an employee is new. Outlined in the orientation process should be the tasks, goals, policies, operating procedures, and standards to be met.

When discussing performance expectations, goals should be set. Goals direct attention, increase persistence, and motivate the employee to attain those goals.

Share with your new employee the many “unwritten rules” of the workplace that are not necessarily outlined in your personnel policies, such as the culture of the city, your supervisory styles, and following the protocol of “how it’s done here.”

C. After the first day

During the first week on the job it is essential the new employee have someone to go to with questions. The first week is an ideal time for the city to obtain completed enrollment forms for employee programs and benefits, discuss the city’s method of employee evaluation, discuss employee policies and guidelines, and review the city’s/supervisor’s expectations of the employee. Remember, orientation is an ongoing process of communication.

RELEVANT LINKS:

See, [Employee Orientation Checklist](#), LMC Model Form.

While it is important to cover certain items during the first days of employment, it is equally important for the new employee to receive ongoing education about his/her job and the organization. The supervisor should meet with the new employee regularly, particularly in the beginning of the employment relationship, to ensure he/she is receiving necessary direction and getting questions adequately answered.

Supervisors should remember a new employee is required to absorb a lot of new information in their first few weeks on the job and much of it will not “stick” until they have heard it several times.

It’s important to check in with your new employee to see how things are going. You could do this by scheduling standing “touch base” meetings with the new hire 20–30 minutes each week for the critical first three months. Be sure to give and ask for feedback regularly. These conversations can also be an excellent opportunity to also learn how to improve your onboarding process for the next new hire.

D. Checklist for orientation

Developing an orientation checklist reinforces the importance of planning ahead for the arrival of a new employee.

Studies show that employees who are well informed about the organization they work for and are clear about what the organization expects of them are more productive employees in the long run. The employee orientation is a great place to start sharing information and expectations!

XII. Employment status

Various laws provide definitions of “employee” for purposes of participating in certain programs specifically developed for public employees. These definitions are only useful when determining individual eligibility for the programs for which they were developed. In addition, while the term “employee” is defined for purposes of specific laws, there is no one definition of “full-time” or “part-time” status with regard to employment with the city under state or federal law. This is left up to the policies of the individual cities. Thus, cities need to define the employee classifications in their own personnel policies to clarify restrictions that may apply to different classifications of employment (full-time, part-time, temporary, etc.). Regardless of the employee classifications identified in a city policy, the city may want to avoid classifying employees as “permanent” as this may imply a permanent employment relationship or unintentional contract.

RELEVANT LINKS:

[HR Reference Manual, Chapter 1.](#)

[Minn. Stat. § 179A.03, subd. 14.](#)

[Minn. Stat. § 179A.03, subd. 14.](#)
See HR Reference Manual, Chapter 5.

A. Employment-at-will

Employment-at-will means an employee can quit without notice or reason, and an employer can terminate an employee without notice or reason. That said, employers cannot terminate for a discriminatory, retaliatory, or other unlawful reason. See the Introduction Chapter for more information.

B. Definitions of “employee”

1. Minnesota Public Employment Labor Relations Act (PELRA)

In accordance with the Minnesota Public Employment Labor Relations Act, a public employee or employee is any person appointed or employed by a public employer, except certain individuals including:

- Elected public officials.
- Election officers.
- Commissioned or enlisted personnel of the Minnesota National Guard.
- Emergency employees who are employed for emergency work caused by natural disaster.
- Part-time employees whose service does not exceed the lesser of 14 hours per week or 35 percent of the normal work week in the employee's appropriate unit.
- Employees whose positions are basically temporary or seasonal in character and: (1) are not for more than 67 working days in any calendar year; or, (2) are not for more than 100 working days in any calendar year and the employees are under the age of 22, are full-time students enrolled in a nonprofit or public educational institution prior to being hired by the employer, and have indicated, either in an application for employment or by being enrolled at an educational institution for the next academic year or term, an intention to continue as students during or after their temporary employment.
- An employee hired for a position under the previous clause if that same position has already been filled under that clause in the same calendar year, and the cumulative number of days worked in that same position by all employees exceeds 67 calendar days in that year. For the purpose of this paragraph, "same position" includes a substantially equivalent position if it is not the same position solely due to a change in the classification or title of the position.

The definition of public employee is important because only public employees can join a bargaining unit (union).

RELEVANT LINKS:

[Minn. Stat. §§ 181.66 - .71.](#)
[Minn. Stat. § 179A.03, subd. 14.](#)

[Minn. R. § 3920.0100 subp. 5.](#)
[Minn. Stat. § 179A.03 subd. 14.](#) LMC information memo, *Local Government Pay Equity: An Overview*.
HR Reference Manual, Chapter 4.

[Minn. Stat. § 353.01, subd. 2.](#)

HR Reference Manual, Chapter 5.

[29 U.S.C.A. § 201-219.](#)
LMC information memo, *FLSA Exempt Vs. Non-Exempt*.

[29 U.S.C.A. § 213.](#)

[29 U.S.C. § 207.](#)
LMC information memo, *FLSA: An Overview*.

2. Minnesota Pay Equity Act

The Pay Equity Act requires each local government to analyze its pay structure for evidence of inequities and to report this information to the Department of Employee Relations. Only those individuals meeting the definition of employee under the Minnesota Public Employment Labor Relations Act (MPELRA) need be included on the pay equity report.

Generally, an employee is one who works an average of at least 14 hours per week or 35 percent of the normal work week and 67 working days per calendar year; or one who works in a position filled for more than 67 working days in a calendar year. More information can be found in the Compensation Chapter.

3. Public Employee Retirement Association (PERA)

With some limited exceptions, for the purpose of PERA membership, a public employee is as an employee performing services for a governmental subdivision, whose salary is paid, in whole or in part, from revenue derived from taxation, fees, assessments, or other sources. More information on PERA can be found in the Benefits Chapter.

C. Full-time

There is no definition provided in federal or state law establishing the parameters of full-time employment.

Employers will often refer to their employees as “exempt” or “nonexempt” from overtime. This term is based on an employee’s classification under the Fair Labor Standards Act (FLSA). Employees are classified as “exempt” or “nonexempt” based on the kind of work they do. In order for an employee to be exempt from overtime pay requirements, employees must pass two tests: job duties and salary basis. Under FLSA rules, exempt employees do not earn overtime for hours worked over 40 in a work week.

The Fair Labor Standards Act requires nonexempt employees be paid overtime at 1.5 times their hourly rate when they have worked more than 40 hours in any work week. As a result, most cities, and most employers in general, consider an employee to be “full-time” if he or she works 40 hours per week.

Cities can and should use personnel policies or employee handbooks to establish their own definition of full-time and part-time employees. The definition most often used for full-time is 40 hours per week, which aligns with the overtime requirements of the Fair Labor Standards Act.

RELEVANT LINKS:

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

[Seasonal Employee Handbook](#), City of Coon Rapids sample.

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

Under health care reform, cities meeting the 50 FTE threshold, will often consider defining a lower number of hours per week (e.g., 30 hours per week) as full time for that city, at least for the purposes of defining eligibility for health insurance.

D. Part-time

Similar to full-time employment, there is no definition provided in federal or state law establishing the parameters of part-time employment. Generally, “part-time” indicates an employee works a schedule of less than 40 hours per week on a regular basis or less than the amount established by the city for full-time employees.

Cities will want to keep in mind possible federal health care reform impacts for those employees working 30+ hours per week.

In city personnel policies or employee handbooks part-time is usually defined as anything less than 40 hours per week. However, the city may want to establish a separate definition for part-time, benefit-earning employees (for example, 20 hours per week). Cities will want to keep in mind possible Health Care Reform impacts for those employees working 30+ hours per week.

E. Temporary/seasonal

Many cities hire temporary and/or seasonal employees to assist with seasonal programs or to help out with specific projects that have a start and end date. Depending upon a city’s use of temporary and/or seasonal employees, it may not be necessary to enroll them in PERA or report their wages for pay equity purposes.

Clearly defining the parameters for temporary and seasonal positions within a personnel policy can help a city limit costs associated with allowing a temporary employee to work enough hours to qualify for PERA participation or city-provided fringe benefits such as health or dental insurance or paid leave. Cities will want to keep in mind possible Health Care Reform impacts for those employees working 30+ hours per week.

F. Probationary

It is usually not in a city’s best interest to establish a probationary period in situations that would otherwise be “employment-at-will.”

This could create confusion as to employment status. While using the term “probation” does not in itself create a property right to continued employment, it does allow a disgruntled employee (or his or her attorney) to try to argue the employment status was something other than “at-will.”

RELEVANT LINKS:

LMC information memo,
[Veterans Preference in
Discipline, Discharge, or Job
Elimination.](#)
Minn. Stat. § 197.46.

LMC information memo,
[LMCIT Liability Coverage
Guide](#), Section III-U,
Volunteers.

Regardless of whether a city has a probationary period in place or not, a city cannot discipline or terminate an employee for a discriminatory, retaliatory, or other unlawful reason.

Civil service systems and union contracts generally establish a probationary period after which the employee has certain rights. In these situations, the city should use the probationary period as a final phase of the selection process or an “on-the-job” test of the employee’s skills and make the decision whether or not to terminate employment during that initial probationary period.

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 full-time 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 not be removed unless incompetency or misconduct is shown through a removal hearing. More information can be found in the memo linked to the left.

Given this change in law, some cities who have previously not required probationary periods for employees might consider doing so now. In those situations, it will be important to work with your city attorney to include strong disclaimer language stating no contractual relationship is created by the probationary period to avoid weakening the at will status of many city employees.

G. Volunteer

City volunteers are individuals who perform services as part of a city function and under the city’s direction and supervision. True volunteers do not receive compensation for the work they do. At the most, they receive reimbursement for their own costs or a minimal stipend.

“Minimal” generally can be defined as something that equates to substantially less than minimum wage. In many cities, “volunteer” firefighters are really paid on-call employees.

Keep in mind not every volunteer performing a community service is a city volunteer. Individuals often volunteer their services in connection with a project sponsored by a private organization of which they are a member. Sometimes individuals simply perform community services on their own, without being sponsored or requested to do so by the city or anyone else.

RELEVANT LINKS:

U.S. Dep't of Labor, Wage & Hour Div., [Internship Programs Under FLSA](#).

[Minn. R. 5224.0330](#).
See also [Minn. R. 5224.0340](#).

LMC information memo,
Employee or Independent Contractor?

LMC information memo,
Employee or Independent Contractor: Legal Implications and Ramifications

H. Intern

An intern is typically a student working for the city through a program offered by a school. The program might be through a local high school, work-study program or through a college as part of a degree program. Increasingly, internships are being performed by students who have already graduated from a program and are willing to do internships to gain work experience in their fields of study. Depending upon the program and the city, an internship might be paid or unpaid.

A city should learn the requirements of a school internship program and clarify the city's expectations as an employer before taking on an intern.

In addition, the intern classification should be included in the city's personnel policy so no questions arise regarding the provision of fringe benefits and other items.

Some laws, such as the Fair Labor Standards Act (FLSA), have special provisions applying to interns in certain circumstances. Each law must be consulted separately to determine whether the internship program meets the definition of that particular law.

A conservative, but generally safe approach regarding the use of interns, is to pay them at least state of Minnesota minimum wage and treat them like other temporary, non-benefit earning employees.

I. Independent contractor

The determination of whether a person conducting work for the city is an independent contractor or an employee is often out of the control of the city. The legal determination of whether a worker is deemed an employee or independent contractor can have far-reaching financial ramifications for the city, including, but not limited to, workers' compensation liability, unemployment insurance penalties, Fair Labor Standards Act obligations, pension and insurance benefits, wrongful termination lawsuits, and vicarious liability to the city for these worker's negligent actions.

Never before has it been so critically important for cities to ensure they have any independent contractors classified correctly. Significant changes have occurred related to the federal Department of Labor's guidance on classification of workers in recent years. For additional information, refer to the memo linked to the left.

Once the city is confident the relationship with a worker is indeed that of an independent contractor, it is essential to ensure the contractor has the necessary professional license to do the work and the insurance to cover the

RELEVANT LINKS:

Minnesota Dep't of Labor & Industry: [Labor Standards, Child Labor Laws](#).
29 C.F.R. § 570.
Minn. Stat. § 181A.01-.12.

Minn. Stat. § 181A.04, Subd 6.

Minnesota Dep't of Labor & Industry: [Child Labor-Proof of Age](#).
Minn. Stat. § 181A.06, subd. 1.

Minn. Stat. § 181A.04.
Minnesota Dep't of Labor & Industry: [Child Labor-Hours of Work](#).

Minnesota Dep't of Labor & Industry: [Child Labor-Prohibited Work for Minors](#).
Minn. R. 5200.0910.

risks. It is also important for the city to develop a written document describing the independent contractor relationship.

XIII. Employment of minors and high school students

Many of the seasonal employees hired by cities are often minors or high school students. Both the Fair Labor Standards Act and Minnesota law, including the Child Labor Standards Act, have restrictions about when minors can work and what they can and cannot do on the job. Additionally, Minnesota law requires high school students age 18 and older to provide a written request to their employer to work during restricted hours (see “High school workers age 18 and older” below).

A. High school workers age 18 and older

Current law limits high school students under the age of 18 (aged 16 and 17 years) from working between 11 p.m. and 5 a.m. on a school night without written permission from a parent or guardian. With a note, “the student may be permitted to work until 11:30 p.m. on the evening before a school day and beginning at 4:30 a.m. on a school day.” Effective August 1, 2017, a new law adds “a high school student age 18 or older” to those who can make a written request to the employer to work during the restricted hours.

B. Proof of age

Proof of age must be maintained as part of payroll records for every minor a city hires. Such proof can be a copy of a birth certificate, a driver's license (or other government -issued identification), a completed I-9 form, or an age certificate issued from the individual's high school.

C. Under 18 (16 and 17 years old)

1. Hours of employment

Minors who are 16 or 17 years old may be employed outside of school hours between 5 a.m. and 11 p.m. on school days (4:30 a.m. to 11:30 p.m. with written permission of parent).

2. Duty restrictions

a. Lifeguards

To be employed as a lifeguard, a minor must have a Red Cross Lifesaving Certificate or its equivalent and work under uninterrupted adult supervision. This means a lifeguard who is a minor CANNOT supervise other lifeguards.

RELEVANT LINKS:

[Minn. R. 5200.0910.](#)

[Minn. R. 5200.0920](#)

MN Dep't of Labor & Industry: [Penalties for Violation of Child Labor Standards Act.](#)

MN Dep't of Labor & Industry: [Exemption to Child Labor Standards Application.](#)

[Minn. R. 5200.0910.](#)

[Minn. R. 5200.0920.](#)

An adult must serve in that capacity. The Department of Labor and Industry has further noted that the adult cannot be performing this responsibility in a volunteer capacity.

b. Machinery

Minors are restricted from operating power-driven machinery. However, minors who are 16 and 17 years old can operate push mowers, weed whips, and snow blowers, but not riding lawn mowers, since the riding lawn mowers are considered power driven machinery. Employers can consider completing a child labor exemption application to have the Department of Labor determine whether certain jobs, such as operating a riding lawn mowers for minors aged 16 and 17 years, would be considered a lawful special exemption.

Please note, a child labor investigator at the Minnesota Department of Labor and Industry has shared some important considerations a city will want to keep in mind when applying for a lawful special exemption:

- It is not merely a matter of just filling out the exemption application and submitting it to the state; the more information the city includes in the application the better.
- The city will want to show the minor has a special talent, unique qualifications, or special need for the particular position for which the exemption is sought. Generally speaking, simply stating the minor has experience in mowing or just needs a job will not suffice. The city will want to detail how this work benefits the child, not how this benefits the employer.
- When reviewing these applications, the first thing a child labor investigator looks at is who signed the form. City employers should be aware they are not considered a “youth employment specialist” and only a “minor’s parent or guardian, school official, or youth employment specialist” can sign the exemption application.

The application form (linked at left) can be faxed to the attention of Ashley Nelson at 651-284-5740.

Minors cannot work where hazardous materials are present; for example, performing work on chlorine or chemical systems at swimming pools would be prohibited.

In addition, minors are generally not allowed to operate vehicles or motorized equipment on streets or highways during working hours as part of their normal job.

RELEVANT LINKS:

[DOL: Child Labor FLSA 33h02,d\(2\).](#)

[Minn. Stat. § 181A.115.](#)

Minnesota Dep't of Labor & Industry: [Child Labor-Prohibited Work for Minors.](#)
[Minn. Stat. § 181A.115.](#)

[Minn. Stat. § 181A.04, subd.2- 3.](#)
[29 C.F.R. § 570.35.](#)

[Minn. Stat. § 181A.05.](#)
[Minn. Stat. 181A.06.](#)

Minnesota Dep't of Labor & Industry: [Child Labor-Prohibited Work for Minors.](#)
[29 C.F.R. § 570.34.](#)
[Minn. R. 5200.0910.](#)
[Minn. R. 5200.0920.](#)

[Minn. Stat. § 181A.07.](#)
[Minn. Stat. § 181A.04.](#)
Minnesota Dep't of Labor & Industry: [Penalties for Violation of Child Labor Standards Act.](#)

There is an exception under federal law for 17-year olds for occasional and incidental driving on public roads, please refer to the link to the left for the required criteria.

c. Liquor

No individual under the age of 18 can serve, dispense, or handle intoxicating liquors that are consumed on the premises.

In addition, minors are prohibited from working in rooms where liquor is served or consumed except that 16 years olds may perform busing or dishwashing duties in a restaurant, and 16 and 17 year olds may provide musical entertainment in a restaurant.

D. Under 16 (14 and 15 years old)

1. Hours of employment

Minors who are 14 or 15 years old may be employed only outside of school hours between 7 a.m. and 7 p.m. when school is in session, and between 7 a.m. and 9 p.m. when school is not in session.

During the school year, minors age 14 and 15 are permitted to work no more than three hours per day up to a maximum of 18 hours per week. They may not work during school hours on school days without an employment certificate issued by the school district superintendent.

2. Duty restrictions

Minors under age 16 are prohibited from using powered machinery. Lifeguards who are 15 years old can only work at traditional swimming pools and water amusement parks. However, they cannot be stationed at the elevated areas of any power-driven water slides or at the top of ANY elevated water slide. They can be stationed at the bottom of the slide in the splashdown pools.

E. Under 14

In general, minors under age 14 should not be working at the city. The only employment permitted at this age includes: newspaper carrier (at least 11 years of age); agriculture (at least 12 years of age with parental/guardian consent); and actor, actress or model.

RELEVANT LINKS:

See section VII, *Background Checks and Bonding*.

[Minn. Stat. § 13.05, subd. 4\(d\).](#)

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

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

F. Other considerations

1. Background checks

The League recommends background checks be conducted on all employees prior to hire. This can be difficult when the candidate is under age 18. A criminal history check can be completed, but it is very likely no information will be obtained because of the legal protections afforded minors. However, if the employee will be working with children you can receive some juvenile adjudication data through the Bureau of Criminal Apprehension. See the Background Checks and Bonding section of this chapter for additional information.

If a city is unable to get information through formal channels, it is often worthwhile to pursue more informal methods. For example, ask the candidate to provide contact information for anyone he or she has worked for in the past.

As employment information may be limited for someone under 18, suggest the applicant provide you with contact information for high school teachers or guidance counselors, a family for whom they provided child care, mowed the lawn, etc.

2. Release forms

No background check should be conducted without first obtaining a signed release form. In obtaining a release form it may be necessary to request information considered private per the Minnesota Government Data Practices Act. Before requesting private data from a minor, a city must notify the minor he/she may request that the information obtained not be given to his/her parent (s).

The Minnesota Department of Administration, Information Policy and Analysis Division says, as a general rule, a parent or guardian's signature should be obtained on the release form when the candidate is under the age of 18 or has a legally-appointed guardian. However, depending upon the data being requested, the specific requirements for obtaining consent to release data from a minor vary.

For this reason, cities should work closely with their city attorney to determine if the information being requested from a juvenile requires the signature of a parent or guardian.

RELEVANT LINKS:

Minnesota Dep't of Labor & Industry: [Child Labor-Penalties](#).

[Minn. Stat. § 181A.12.](#)

[Minn. Stat. § 197.455.](#)
LMC information memo, *Veterans Preference in Hiring*.

[38 U.S.C. § 4212.](#)

3. Training

Training and information given to employees whose duties are similar to those performed by minors should be provided to minors as well.

This might include safety programs such as blood-borne pathogens, first aid, and what to do in the case of an emergency as well as general training like preventing sexual harassment and providing quality customer service.

G. Penalties

Based on the offense committed by the employer, fines range from \$250 to \$5,000 for each minor wrongly employed. Moreover, an employer who violates the child labor violations is or may be guilty of a misdemeanor or gross misdemeanor.

XIV. Promotions

In some cities, union contracts, civil service systems, or personnel policies and ordinances may govern whether or how a city handles employee promotions. However, in many cities, there are very few laws, rules, regulations, or limitations on how the city promotes employees to higher-level positions. The city may then choose to handle all job openings as open postings for which anyone inside or outside the city may apply. This is often done for affirmative action or equal employment opportunity reasons or to ensure all of the qualified available candidates are being considered for the position.

In some situations, the city may choose to promote from within the city using a limited recruitment process, considering only existing city employees. In any situation, the city should be prepared to present business reasons for the choices it makes.

In addition, all cities are subject to the requirements of the Veterans Preference Act (e.g., a disabled veteran receives preference points for the first promotional exam after entering public service).

Cities holding government contracts of \$100,000 or more may, in some situations, be required to list most job openings with the state job service and Federal Veteran's Employment Training Service.

A. Open vs. limited recruitment

Some cities choose to use an open recruitment process for all promotional opportunities within the city. Some advantages of this approach include:

RELEVANT LINKS:

- Increases ability for the city to attract candidates of a protected status (minorities, women, veterans, etc.) and to defend itself against claims of discrimination.
- May be required to comply with a government contract or with the city's own affirmative action plan.
- Provides some assurance the city is considering all of the qualified candidates for a position in order to select the overall best candidate.
- May be required to comply with a collective bargaining agreement, a civil service rule, or a city personnel policy or ordinance.

The disadvantages of this approach include:

- Employee morale issues if there is a perception there are no opportunities for advancement within the city or that a well-qualified, internal candidate should have been given the job. The time and expense associated with holding an open recruitment if the city already has a well-qualified candidate for the position.
- Disgruntled job-seekers if the city ends up hiring someone from within after holding an open recruitment.

Sometimes a city will choose to hold a limited recruitment for a promotional position within the city. For example, the city may post the job opening as an internal promotional opportunity only (e.g., only current city employees may apply). This option may make sense if:

- There are a sufficient number of qualified candidates available within the city for whom the position represents a promotion.
- The opening represents a natural career progression for a group of employees (e.g., a city planner opening in a city with a substantial number of planning staff).

Other advantages of using this option include:

- Increasing employee morale and the perception the city has opportunities for advancement.
- The ability to hire someone whose past performance and job habits are already known.
- Reducing turnover.
- The potential for promoting candidates of a protected status (depending on how well those in protected statuses are currently represented in the workforce); and,
- Decreased recruitment costs.

Some cities have established a compromise policy in which promotions are handled as both external and internal recruitments simultaneously or

RELEVANT LINKS:

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

consecutively. Sometimes, internal candidates are guaranteed an interview if they meet the minimum qualifications for the position.

B. Internal recruitment considerations

If a city decides to make efforts to recruit internally for a position it should ensure all city office locations receive notice of the opening.

The city should consider developing a policy or practice on internal promotions that explains items such as:

- Which types of jobs will be posted (only those at a certain level or in certain departments).
- What criteria an employee will have to meet to be considered for an opening (full-time employees only, a certain length of service with the city, etc.).
- The length of time a job will be posted (minimum of three days, etc.).
- What information the posting will contain (position title, salary, overtime status, minimum requirements, etc.).
- How to respond to a posting (call HR Dept., visit the website, stop by city hall, etc.).
- A statement the employee's prior performance record will be considered as part of the selection process; and,
- Privacy issues (e.g., when in the process will supervisors be notified if one of their employees applies for another job, etc.).

The issue of internal recruitment comes up often when considering promotion of a great employee to a supervisory position. The city is not necessarily required to open the position to the public and advertise it unless the city has a civil service system, personnel policy, or union contract provision stating otherwise. The city may establish its own policy with regard to promotions for supervisory as well as other positions. In some cases, a promotion from within is logical and justified for business reasons, such as when someone is already performing very well in a lower-level position that is related to the promotional opportunity. In other cases, the city may want to conduct an open recruitment for equal employment opportunity, affirmative action, or other reasons. An "in-between" approach for internal recruitment is to post the promotion opportunity internally and consider only existing city employees.

C. Personnel policies

It is important a city consult its own personnel policy or ordinance to see what it states about how promotions will be handled before it begins a selection process.

RELEVANT LINKS:

[Minn. Stat. § 179A.07, subd. 1.](#)
HR Reference Manual,
[Chapter 6.](#)

D. Union issues

Some collective bargaining agreements contain a clause about how job openings within the bargaining unit will be handled. For example, it may require the city post job openings internally for a certain period of time before opening the position up to outside candidates.

Others may state all internal candidates will be given preference over external candidates. There could be seniority or job bidding requirements. For example, a union contract may say seniority will be considered in promotion decisions. Usually such a provision merely requires the city look at seniority as one factor in making promotion decisions, particularly if all other qualifications are equal, but not that the city can only promote those candidates with the most seniority. The city may want to document how it has complied with this provision by showing how seniority was considered in the promotion decision. Any of these requirements could apply to any or all jobs within the bargaining unit.

Cities should always consult their collective bargaining agreements as well as their city attorney before proceeding with any recruitment process. From the standpoint of allowing the city maximum flexibility with recruitment, it is probably in a city's best interest not to negotiate this language into a new contract.

The Minnesota Public Employment Labor Relations Act (PELRA) provides a city cannot sign an agreement that limits its right to select supervisors or requires the use of seniority in the selection process for supervisors.