



HUMAN RESOURCES REFERENCE MANUAL

**Chapter 7
Personnel Policies**

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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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HUMAN RESOURCES REFERENCE MANUAL

Chapter 7 Personnel Policies

Learn about those public-sector personnel practices that can be effectively managed, at least in part, by following well written policy language. Links to a comprehensive model personnel policy to be used in conjunction with the chapter.

RELEVANT LINKS:

[LMC model, Personnel Policy Template.](#)

[Personnel Policies Self-Audit Checklist, LMC Model Form.](#)

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

I. City practices in setting personnel policies

In most cases, a city is not required to have personnel policies, however, the League of Minnesota Cities recommends cities have written personnel rules and procedures.

Practice varies in the procedure used to establish a personnel policy for a city. In some cities, the basic policy is established by ordinance; in some, by council resolution; and in others, by a general ordinance supplemented by a more detailed resolution. In a few cities, the home-rule charter provides for the adoption of personnel rules on at least some phases of personnel administration by an officer or group such as the manager, Human Resources (HR) director, or personnel board, often on recommendation of the city administrator or the HR director.

For better flexibility in stating the terms, conditions, privileges, and responsibilities of employment, and for ease in updating practices, a policy manual or handbook is preferable to an ordinance. The League developed a model personnel policy for use with this chapter. Cities are encouraged to review both this chapter and the model personnel policy before revising existing personnel policies or creating new ones. See also the personnel policies self-audit checklist to ensure you have considered the full range of topics that may be needed to keep your city running smoothly from a human resources perspective.

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. For additional information on federal and state laws, refer to Chapter 1 of the HRRM, linked to the left.

In any city with a police or fire civil service commission or a merit system established per Minnesota statute, some aspects of the personnel policy in the department(s) covered by civil service are within the rulemaking jurisdiction of the civil service commission or personnel board.

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

RELEVANT LINKS:

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

In any city with a labor union, some personnel management is likely to be a subject in the bargaining agreement between the city and the union.

A. Personnel policies as a guide

Personnel policies are written rules and guidelines necessary to keep the city functioning smoothly from a human resources perspective. Personnel policies help implement a consistent approach to management and can be looked at as the formal rules and guidelines the city puts in place to hire, train, assess, and reward employees. They may provide for competitive examinations, but are often supplemented with less formal methods for determining qualifications.

Personnel policies serve as a guide for managers. While there will always be unanticipated employee situations, there are many situations for which a city can and should prepare. The city's appropriate reaction to personnel issues can be documented in a policy and then relied upon by managers and supervisors.

Personnel policies ensure consistency in treatment of employee groups. When managers and supervisors use well written policies to guide them in their personnel management decisions, they are much more likely to treat everyone in a fair and just manner. This greatly reduces the likelihood of an employee accusing a supervisor of "playing favorites."

Personnel policies document evidence of a good faith effort on the part of the city. In other words, such policies are proof the city took some time to consider potential issues and to establish written rules and guidelines as employment conditions for city employees.

In order to hold employees accountable for the rules and guidelines set forth in a personnel policy, the city needs to take steps to ensure employees have the most up-to-date policies. The city should make it clear it is each employee's responsibility to familiarize himself/herself with the city's policies and ask questions if he/she does not understand some aspect of a policy. One way to ensure new employees are aware of the city's personnel policies and their associated responsibilities with those policies, is to send a copy of the policies to each new employee before his/her first day of employment with the city.

Personnel policies can be frustrating because they are truly "works in progress." Cities should expect revisions and updates will be necessary due to changes at the city and in state and federal law. Ideally, the city should review the city's personnel policies annually, and consider major revisions and overhauls at least once every three to five years

RELEVANT LINKS:

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

B. Comprehensiveness of personnel policies

It is unlikely a city with three employees really needs a 250-page personnel policy manual. On the other hand, a city with 75 employees should probably have something more comprehensive than a 10-page list of employment rules. In deciding how comprehensive the city's personnel policy should be, a city may want to consider the following:

- How many employees does the city have?
- What laws do or do not apply based on that number?
- What activities do we perform or do we wish to perform that require a policy (pre-employment background checks, Department of Transportation (DOT) drug and alcohol testing for commercial driver's license holders, drug and alcohol testing for non-DOT employees, etc.)?
- Have there been any issues with our existing employment practices (recruitment, termination, discipline, sexual harassment prevention, etc.)?
- What pieces of information need to be more clearly defined so employees understand the expectations (work hours, timesheets, overtime, etc.)?
- What programs or benefits do we offer (insurance benefits, vacation leave, funeral leave, paid time off, etc.)?

At a minimum, the League recommends cities have policy language in the following areas:

- Equal employment opportunity (nondiscrimination).
- Sexual harassment prevention.
- Work hours and FLSA overtime.
- Paid leaves.
- Discipline.
- Grievance.
- A drug and alcohol testing policy for CDL holders who perform "safety-sensitive functions" on commercial motor vehicles meeting specific criteria.

C. Coordination with laws and regulations

1. State and federal law

State and federal law take precedence over a personnel policy. Some laws only apply when a city exceeds a certain number of employees or when certain circumstances exist.

RELEVANT LINKS:

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

[Minn. Stat. § 179A.20.](#)

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

[Minn. Stat. § 44.02. Minn. Stat. § 419.01. Minn. Stat. § 420.01.](#)

Before deciding a law does not apply to your city or to the personnel situation at hand, it is important to consult with your city attorney. State and federal laws to be considered when developing the city's personnel policies are included in Chapter 1. It is a good practice to include a disclaimer like the following: "Where these policies differ from state or federal law, the applicable law will be followed."

2. Collective bargaining agreements (union contracts)

For union members only, provisions agreed to by the city and a bargaining unit in a union contract will prevail over requirements established in a personnel policy. It is recommended the following language be included whenever a city has both a personnel policy manual and one or more union contracts: "Where these policies differ from provisions found in a valid bargaining agreement, the language in the bargaining agreement will be followed. For issues not addressed in the bargaining agreement, the provisions of this policy manual will apply."

There may be some circumstances in which the city is obligated to negotiate on items covered by the city's personnel policies but not the union contract.

3. Civil service bylaws or rules

For those employees covered by civil service bylaws or rules, personnel management provisions established in civil service documents will prevail over those found in the city's personnel policies.

4. Department policies and work rules

While personnel policies are general guidelines regulating employee actions, procedures are customary methods of handling activities and can be more specific than personnel policies.

When managers or supervisors of individual departments are given the authority to establish policies or work rules in addition to those found in the city's overall personnel policies, it is a good idea to note this practice in writing. Department rules should not conflict with the city's general personnel policies. A good practice is to have the city administrator or another appropriate official approve department policies or work rules prior to implementation. Finally, the department policies or work rules should be established in writing and formally communicated to employees in that department.

RELEVANT LINKS:

LMC model, [Personnel Policy Template](#) see Introduction/Purpose.
[Pine River State Bank v. Mettillie](#), 333 N.W.2d 622.
[\(Cederstrand v. Lutheran Brotherhood\)](#), 263 Minn. 520, 532, 117 N.W.2d 213, 221 (1962). [Ries v. SEI Electronics LLC](#), No. C0-00-18 (Minn. Ct. App. July 11, 2000) (unpublished decision). Minn. 1983).
[Turner v. Fed. Express Corp.](#), 539 F. Supp. 2d 404 (D.D.C. 2008).

[Cleveland Bd. of Educ. v. Loudermill](#), 470 U.S. 532, 541 (1985).
[Board of Regents of State Colleges v. Roth](#), 408 U.S. 564, 577 (1972).

D. Policy enforcement

Policy language should clearly define the individual(s) charged with enforcing established personnel policies. This responsibility is commonly assigned to the head appointed official or to a designee (e.g., Human Resources Manager) in larger cities.

Suggested policy language may be: “Except where noted otherwise, the city administrator or his/her designee is charged with ensuring compliance with these personnel policies.”

Once a city has a personnel policy in place, it is important to follow the guidelines within that policy. The city runs the risk of being accused of arbitrary and capricious behavior in its human resource practices if it does not follow established policy.

That said, there will likely be times when policy language will not be current or applicable because of changes to state or federal law; increased or decreased employee numbers; or conflicting or confusing policy language. When this occurs, the city should be sure to document business reasons for varying from established policy language.

E. Contracts versus employment guidelines

Personnel policies may or may not create contractual obligations on the part of the employer. A city should know whether its policy language establishes a legally binding contract and should understand the consequences of an enforceable contract versus non-contractual guidelines. Sample disclaimer language is included in the League’s Model Personnel Policy.

1. Property interest

Contractual obligations not only create the potential for legal disputes, they can also trigger constitutional obligations on the part of the public employer. For example, only those public employees with constitutionally protected property interests in continued employment are entitled to due process prior to the termination of their employment. Public employment does not in itself create any protected property interest. Nor does the U.S. Constitution create property rights. Property interests are created by independent sources such as a contract or statute.

RELEVANT LINKS:

[*Rutherford v. County of Kandiyohi*](#), 499 N.W.2d 457, 460 (Minn. App. 1989).

[*Rowan v. K.W. McKee, Inc.*](#)
114 N.W.2d 692, 698 (Minn. 1962).

[*Pine River State Bank v. Mettille*](#), 333 N.W.2d 622, 630 (Minn. 1983).

[*Perry v. Sindermann*](#), 408 U.S. 593, 601 (1972).
Minn. Stat. ch. 419. Minn. Stat. ch. 420. Minn. Stat. § 197.46.

MN Dep't of Labor and Industry: [Labor Standards - Termination](#). [*Cederstrand v. Lutheran Bhd.*](#), 263 Minn. 520, 532, 117 N.W.2d 213, 221 (1962). [*Ferraro v. Koelsch*](#), 368 N.W.2d 666, 674 (Wis. 1985). [*Richard J. Pratt, Unilateral Modification of Employment Handbooks, Further Encroachment on the Employment-At-Will Doctrine*](#), 139 U. PA. L. J. Rev. 197, 208-09 n.76 (1990). [*Pine River State Bank v. Mettille*](#), 333 N.W.2d 622 (Minn. 1983).

[*Skagerberg v. Blandin Paper Co.*](#), 197 Minn. 291, 302 (Minn. 1936).

[*McDonnell Douglas Corp. v. Green*](#), 411 U.S. 792 (1973).

Thus, a property interest exists where there is an expectation of continued employment; unlike the at-will situation where there is no such expectation. Public employees who are employed at-will or considered probationary do not have a protected property interest and, therefore, are not entitled to constitutional due process. Examples of situations where property interests may be found in city employment include the following:

- Collective bargaining agreement (union contract).
- Personnel policy or employee handbook (intentional or unintentional).
- Individual employment contract.
- Civil service system/rules.
- Veterans' Preference rights.

2. At-will employment

Minnesota is presumptively 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/her employment) without giving notice or a reason. However, there are limitations on employment-at-will. For example, a collective bargaining agreement (union contract), a civil service system, laws such as Veterans' Preference, an individual employment contract, certain types of statements in employee handbooks, and oral promises can change the employment-at-will relationship and place restrictions on a city's ability to terminate employment.

The advantage of maintaining an at-will relationship with the city's employees is it makes it easier to defend a wrongful termination lawsuit. However, even in employment-at-will relationships, the League of Minnesota Cities recommends cities be prepared to document and show a business reason for terminating an employee. Even at-will employees are legally protected against discriminatory and other unlawful employment actions. If challenged, a city must be able to provide a legitimate, nondiscriminatory reason for the employment decision. Also, any employer terminating employees without justification runs the risk of damaging employee morale and impairing the city's ability to recruit desirable job candidates.

RELEVANT LINKS:

Ewald v. Wal-Mart Stores, inc., 139 F.3d 619 (8th Cir. 1998).

Feges v. Perkins Restaurants, inc., 483 N.W.2d 701 (Minn. 1992).

DePhillips v. Zolt Construction Co., Inc., 136 Wash. 2d 26, 959 P.2d 1104 (1998).

Feges v. Perkins Restaurants, inc., 483 N.W.2d 701 (Minn. 1992).

LMC model, [Personnel Policy Template](#), see page 2 Introduction/Purpose.

Pine River State Bank v. Mettillie, 333 N.W.2d. 622, 627 (Minn. 1983).
LMC model, [Personnel Policy Template](#), see page 2 Introduction/Purpose.

Premick v. Dick's Sporting Goods, Inc., No. 02:06cv0530, 2007 U.S. Dist. LEXIS 3702, at *8-10 (W.D. Pa. Jan. 18, 2007).
Lee v. Sperry Corp., 678 F. Supp. 1415 (D. Minn. 1987).

3. Implied / unintentional contracts

While the League encourages cities to put their practices in writing, sometimes written policies or employee handbooks can unintentionally create an employment contract between a city and its employees. This may restrict the city's ability to terminate an employee or create other problems for the city.

The more specific and definite a statement, the more likely it will be seen as creating a contract. General statements of policy are less likely to be seen by the courts as creating a contract. Therefore, it is crucial an employee handbook be carefully drafted. Cities should consider the following:

- Insert a disclaimer statement at the beginning of the handbook, after the disciplinary policy, at the end of the handbook, on a "sign-off" sheet the employee signs to acknowledge receipt at the time of hire, and on the city's employment application form.
- The disclaimer statement should indicate the employee handbook is not intended to create a contract of employment, that all employment is at-will, and that as such, employment may be terminated by the city at any time, with or without cause.
- Ensure revised versions of an employee handbook clearly state the revised handbook supersedes any and all prior versions, and all employees are subject to the new handbook's terms.
- Require all new employees to sign and submit an acknowledgement form indicating they have read and understand the handbook's terms and policies. In the case of a revised handbook, all new and existing employees should sign the acknowledgement form.
- Ensure written offer letters explicitly state the employment relationship is considered at-will, if applicable.
- Avoid disciplinary policies listing a specific set of offenses as sufficient grounds for termination of employment. Insert a statement the list is not intended to be all-inclusive and the city expressly reserves the right to terminate employment at any time for any reason.

F. Reviewing and revising policies

Personnel policies are really works in progress. Due to changes in law and changes in the workplace, various provisions in personnel policies can and should be reviewed and revised. While an annual review is ideal, the city should consider a process by which to periodically review all established personnel policies; to revise those needing to be changed; to adopt policy revisions; and to communicate said revisions to all city employees.

RELEVANT LINKS:

[Minn. Stat. § 179A.03, subd. 14.](#)

The city will want to consider major revisions and overhauls at least once every three to five years. As noted previously, as part of the general personnel policies, the city should note revised policies supersede any and all past versions of said policies.

II. Application of policies to employee groups

Policies should address who at the city should be covered by the guidelines established in a personnel policy. Full-time employees and part-time employees should be covered by the city's personnel policy. There usually is no business reason not to apply the policy to seasonal and temporary employees as well. Even though it is fairly common for such categories of employees not to be eligible for benefits, it is still important to have them covered by policies that address things like discipline, work rules, sexual harassment prevention/respectful workplace expectations, data practices, etc.

A. Employees

The legal definition of employee can vary depending upon the law being applied and the situation at hand. Before deciding an individual doing work for the city is not an employee, be sure to contact your city attorney and/or the League. The following paragraphs provide examples of different definitions of employee under various laws.

1. Minnesota Public Employment Labor Relations Act

The definition of "public employee" or "employee" found in the Minnesota Public Employment Labor Relations Act (MPELRA) includes most individuals appointed or employed by a public employer, with some exceptions like the following:

- Part-time employees whose service does not exceed the lesser of 14 hours per week or 35 percent of the normal workweek 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. As an example, if someone works 40 hours a week but less than 67 days they are not a public employee.

RELEVANT LINKS:

[Minn. Stat. § 471.992.](#)
[Minn. R. 3920.0100, subp. 5.](#)
LMC information memo:
[Local Government Pay Equity Act: An Overview.](#)
MN Dep't of Management and Budget: [Pay Equity: Reporting Forms, Instructions, Software.](#)

PERA: [Employer Manual.](#)
[Minn. Stat. § 353.01, subd. 2b.](#)

[Farrington v. City of Richfield](#), 488 N.W.2d 13 (1992).

As another example, if someone works 10 hours a week for 52 weeks, they are not a public employee in a unit where the normal work week is 40 hours.

2. Minnesota Pay Equity Act

The definition of employee provided in MPELRA is also used to determine who is an employee for purposes of the Minnesota Pay Equity Act. In accordance with the act, cities with one or more employees must file a pay equity implementation report as required by the Minnesota Department of Employee Relations.

3. Public Employees Retirement Association of Minnesota

Most full-time public-sector employees are required by law to participate in the Public Employees Retirement Association of Minnesota (PERA). The definition of public employee for PERA participation differs from that provided in the Minnesota Public Employer Labor Relations Act (MPELRA). Namely, under PERA public employees whose annual salary from one governmental subdivision is stipulated in advance to exceed \$5,100 are generally included in PERA membership. Under MPELRA statutes, as noted above there are differing exclusions with respect to the number of hours and working days an employee is employed. To determine whether an individual qualifies to participate in PERA, the city should consult with the PERA Employer Manual and/or call PERA directly.

B. Elected officials

Elected officials are generally not considered employees of the city and, therefore, are not covered by a city's personnel policy. However, it is a good practice to use a statement like "unless otherwise noted, this personnel policy does not apply to elected officials." Then, if the city would like, the city can include elected officials in important policies like sexual harassment prevention/respectful workplace expectations, data practices, etc., without the entire personnel policies applying to them.

Some larger cities do consider their elected officials to be part-time or even full-time employees who are then more likely to be covered by the personnel policies of the city. Some cities choose to designate elected officials as employees for purposes of workers' compensation coverage or other benefits, like health insurance.

RELEVANT LINKS:

See LMC website: [Health Care Reform](#).

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

[Farrington v. City of Richfield](#), 488 N.W.2d 13 (1992).

LMC information memo: [Fire Department Management and Liability Issues](#), Section II-A. Bylaws versus personnel policies.

LMC information memo, [Covering the City's Volunteers](#).

U.S. Dep't of Labor Wage and Hour Div., [Opinion Letter FLSA2008-15](#).

With respect to the Affordable Care Act, some cities may need to consider councilmembers as employees to determine whether their city meets the threshold of 50 full-time equivalent (FTE) employees. For more information, review the League's website on health care reform.

If a city wishes to treat information maintained on elected officials as personnel data under the Minnesota Government Data Practices Act, input from the city attorney and official action by way of a city council resolution is advised.

C. Appointed officials

Officials appointed to a city's various boards and commissions are generally not covered by a city's personnel policy. However, it is still a good practice to include these officials in key policies such as sexual harassment prevention/respectful workplace expectations or any policies regarding equal employment opportunity.

Similar to elected officials, a city may choose to treat information on appointed officials as personnel data under the Minnesota Government Data Practices Act. However, before implementing such a designation, the League encourages city attorney input and a resolution passed by the city council.

D. Firefighters / ambulance

Most fire departments have policies, standard operating procedures, or rules and regulations that guide personnel activities. If this information is in the form of bylaws, the League recommends it be changed to a policy manual since the fire department generally is not a separate entity, but rather a department within the city. The personnel policies of the fire department should be coordinated with the city's personnel policies to avoid giving employees conflicting information.

E. Volunteers

True volunteers would not be covered by employee policies. Even so, some cities develop separate policies applicable specifically to volunteers. Topics a city should consider in such a policy include supervision or direction, authority to represent the city, what to do in an emergency, appointment and removal procedures, etc.

Sometimes cities will question which personnel are considered true volunteers. To help answer this, cities will want to analyze with their city attorney whether or not the Fair Labor Standards Act would define the personnel as volunteers or employees.

RELEVANT LINKS:

[Minn. Stat. § 177.23.](#)

U.S. Dep't of Labor, Wage & Hour Div., "[Fact Sheet #71: Internship Programs Under Fair Labor Standards Act.](#)"

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

LMC information memo, [Employee or Independent Contractor: Legal Implications and Ramifications.](#)

U.S. Dep't of Labor: [Employee Misclassification as Independent Contractors.](#)

Generally speaking, if the personnel are paid anything more than just nominal pay, they are likely employees and covered by the Fair Labor Standards Act, and then subject to minimum wage and overtime provisions, to name just a few.

F. Interns

Depending on the circumstances surrounding the assignment, interns might be considered temporary employees or volunteers. Some cities have well-defined internship programs, while others work with educational institutions to obtain interns when the need presents itself. For additional information on internships, please refer to the Hiring Chapter linked to the left. It is a good practice to define the parameters surrounding internships with the city. For example:

- Are interns classified as temporary employees or are they volunteers?
- Must all interns currently be enrolled in a degree program?
- Do interns receive compensation?
- Are the parameters for every intern assignment the same, or does the city consider the details on a case-by-case basis?

G. Independent contractors

Independent contractors are not employees and are not be covered by a city's employment policies. However, it is possible for a city to incorporate certain policy language or personnel-type expectations into contracts. For example, some cities incorporate respectful workplace and/or sexual harassment prevention policy language into agreements with independent contractors or vendors.

Still, it is not uncommon to find an employee incorrectly classified as an independent contractor. For additional information regarding classifying employees or independent contractors, refer to the memo linked to the left.

Penalties for treating an employee as an independent contractor may include, but are not limited to, exposure to additional taxes, penalties and interest, additional wage and overtime obligations under the Fair Labor Standards Act, workers' compensation and unemployment liabilities, and the possibility of wrongful termination suits. Thus, it is very important that cities make well-informed decisions when classifying workers.

RELEVANT LINKS:

[Personnel Policy Template.](#)

See LMC website, [Health Care Reform.](#)

III. Definitions

It is important to define the key terms being used in the city's personnel policies. Some words and phrases are defined in state or federal law. For example, according to the federal Fair Labor Standards Act (FLSA) a workweek is a period of seven consecutive 24-hour periods.

However, it is much more common for the definitions in a city's personnel policies to be established and subject to interpretation by that city. When a definition in a personnel policy seems unclear, it is a good practice to look to the people who developed the policy and its definitions. The city attorney and the League can also be valuable resources in these circumstances.

A. Definitions listed in model policy

1. Authorized hours

Including this definition in policy language is important for nonexempt and part-time employees. Authorized hours are the number of hours an employee was hired to work. It is a good practice to note the city has the right to change an employee's actual hours worked during any given pay period depending on workload demands or other factors.

2. Benefits

These are privileges provided to qualified employees often consisting of paid leave (vacation, sick, paid time off, etc.), insurance coverage (health, dental, life, etc.), and pension plans (PERA, deferred compensation, etc.).

3. Benefit-earning status

Many cities have a complete policy noting the benefits offered to qualified employees. This definition should clarify which employees will qualify for city-offered benefits, if any.

It is important to remember that, in general, there is no legal requirement that a city provide employee benefits such as health insurance. However, once a city chooses to offer such benefits, a number of federal and state laws come into play.

There can also be significant penalties, beginning in 2016, for organizations meeting the 50 FTE threshold under federal health care reform which fail to provide affordable health care coverage to employees working 30 hours per week.

RELEVANT LINKS:

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

[Minn. Stat. § 471.426.](#)

4. Core hours

Core hours are those hours during which all city employees, both exempt and nonexempt, are required to be at their place of work. Because all city employees are accountable to the public in some manner, it is reasonable to expect employees to be at work for the majority of the business hours established for the city. For example, if city business hours are 8:00 a.m. to 5:00 p.m. each day, core hours might be 9:00 a.m. to 3:00 p.m. each day. It may not be reasonable to apply the core hours concept to certain departments (e.g., police and fire).

5. Demotion

A demotion occurs when an employee is moved from one job class to another. The maximum salary for the new position is lower than the employee's former position. A demotion generally takes place as the resolution to a performance or disciplinary issue. It is important to note that according to Minnesota law, a city wanting to remove a veteran from a position may need to follow specific procedures, even if the intent is to continue the veteran's employment but in a lesser position like that in a demotion. This may include providing the veteran with written notification of the intention to demote and the opportunity to challenge the decision and/or request a hearing within 30 days. Because these situations can be legally complicated, a city is strongly encouraged to consult with its legal counsel.

6. Direct deposit

State law permits cities to require all employees on the payroll system to participate in direct deposit. It is a good idea for any city implementing this requirement to clarify the practice in a written policy.

7. Emergency employee

Emergency appointments generally fall in the temporary employee category. An emergency employee is hired without a recruitment process when an employee is needed immediately to serve in a particular role. It is a good practice to note those individuals with authority to determine a situation is indeed an emergency that merits foregoing a recruitment process.

8. Employee

A city might define an employee simply as an individual who has successfully completed all stages of the selection process, including any required testing, medical examinations, training, and orientation.

RELEVANT LINKS:

U.S. Dep't of Labor, Wage and Hour Div., Fact Sheet #17A: [Exemption for Executive, Administrative, Professional, Computer & Outside Sales Employees Under the Fair Labor Standards Act \(FLSA\)](#).

LMC information memo, [FLSA: Determining Exempt vs. Non-Exempt Status](#).

[29 C.F.R. § 541.604](#).

[26 U.S.C. ch. 21](#).

[Social Security and Medicare Withholding Rates, IRS Topic 751](#).

[Social Security Administration: Police Officers and Firefighters](#).

For other definitions of employee a city might want to consider or at least should be aware of, refer to the Application section of this chapter.

9. Exempt employee

Many employers refer to exempt employees as salaried employees. However, providing an employee with a salary meets only one of the two tests that must be met before a position is considered exempt from the federal Fair Labor Standards Act (FLSA).

An exempt employee is an individual who is exempt from (not covered by) the overtime provisions of the FLSA. To be exempt, an employee must meet the salary basis test and a duties test, both defined in the FLSA. A city is not required by law to pay overtime to exempt employees, but can do so without impacting the employee's FLSA exempt status.

10. Flex hours

Flex hours or flexible scheduling can be defined in a variety of ways. Some cities permit employees to start work early and then leave earlier in the day than other employees; other cities permit employees to work four 10-hour days and then take one day off each week. Regardless of what a city might offer in the way of flexible scheduling, it is important to clearly define what flexibility in work hours is available to employees. This area would be used for a brief definition of any flexible scheduling the city permits. Separate written policy language should be developed to provide clear guidance on this practice.

11. Federal Insurance Contributions Act

The Federal Insurance Contributions Act (FICA) is the federal requirement that a certain amount be withheld from employees' wages. Specifically, FICA requires an employee contribution of 6.2 percent for Social Security and 1.45 percent for Medicare. The city is required to contribute a matching 7.65 percent. Certain employees may be exempt or partially exempt from these withholdings (e.g., police officers).

12. Full-time employee

Neither state nor federal law defines full-time employment. This is a matter generally to be determined by the city as the employer. Prior to health care reform, many cities defined a full-time employee as an individual who works 40 hours per week.

RELEVANT LINKS:

See LMC website, [Health Care Reform](#).

[Minn. Stat. § 471.992.](#)
[Minn. R. 3920.0300.](#)
LMC information memo,
Local Government Pay Equity Act: An Overview.
MN Management and Budget, [Local Government Pay Equity](#).

U.S. Dep't of Labor: [What does the Fair Labor Standards Act require?](#)

The 40-hours-per-week standard was likely based on the federal Fair Labor Standards Act as the FLSA requires employers to pay nonexempt employees overtime after 40 hours worked in a workweek.

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.

13. Hours of operation

The city's regular hours of operation should be defined. This definition should establish those days of the week city hall (and other city facilities) is open for business as well as the start and end of each business day. In the event the city hall holds different hours in the summer months as opposed to the rest of the year, that practice should be noted here.

14. Job classification

This is a number, ranking, or classification assigned to each job within the city. All cities are required to have a comparable worth plan or system in place to meet the reporting requirements of the Minnesota Pay Equity Act. As part of the comparable worth plan, cities are required to define job classes and assign point values for those job classes.

15. Non-exempt employee

Many employers refer to nonexempt employees as hourly employees.

A nonexempt employee is an individual who is not exempt from or is covered by the overtime provisions of the federal Fair Labor Standards Act. A city is required to pay nonexempt employees overtime at the rate of one and one-half times his/her hourly rate of pay.

16. Part-time employee

Neither state nor federal law defines part-time employment. This is a matter generally to be determined by the city as the employer. This definition is generally used for employees required to work less than 40 hours per week on a regular basis.

17. Pay period

The city's pay periods should be defined in this section. Some cities pay employees every two weeks; others pay employees twice per month, etc. The law requires employers to pay employees at least once every 31 days.

RELEVANT LINKS:

[Minn. Stat. § 181.101\(a\).](#)

[Minn. Stat. 181.101\(b\).](#)

[PERA.](#)

See LMC website, [Health Care Reform.](#)

See LMC website, [Health Care Reform.](#)

Payment must be made on a regular payday designated in advance of the payment, regardless of whether the employee requests payment at longer intervals. The city may also want to note the number of days in each pay period and how compensation is to be distributed.

Cities may pay volunteer firefighters, first responders, volunteer ambulance drivers and attendants, at longer intervals than once every 31 days, provided the employer and employee mutually agree to the arrangement.

18. Public Employees Retirement Association

Participation in the Public Employees Retirement Association (PERA) is required by law for most city employees. It is a good practice to provide a brief description of PERA and to clarify that contributions are to be made each pay period by both the employee and the city.

19. Promotion

This is generally defined as the movement of an employee from one job class to another where the maximum salary for the new position is higher than the employee's former position.

20. Reclassify

This occurs when there is a significant change in the duties and responsibilities of a job. The job may be reclassified to a higher class or a lower class within the city.

21. Seasonal employee

Seasonal employees usually work only part of the year to conduct seasonal work. Examples of seasonal work might include working at a warming house at an outdoor ice rink or being a lifeguard at the city's outdoor swimming pool. Seasonal employees do not typically earn benefits, but under health care reform cities meeting the 50 FTE employee threshold should be aware they may be subject to penalties for employees working 30 hours per week who are not offered affordable health care.

Some cities do not provide a separate definition for seasonal employees and instead include seasonal employees in the definition of temporary employee.

22. Temporary employee

These employees work in temporary positions. Such positions might have a defined start and end date or may be only for the duration of a specific project.

RELEVANT LINKS:

LMC information memo,
[FLSA: Police and Fire
Employees.](#)

Temporary employees do not typically earn benefits, but under health care reform cities meeting the 50 FTE employee threshold should be aware they may be subject to penalties beginning in 2016 for employees working 30 hours per week who are not offered affordable health care. The federal government provided guidance to employers permitting them to use a measurement period of up to 12 months (known as a “look-back period”) to determine if an employee is full-time for health care reform purposes. With a 12-month look-back period, only employees who are still employed full-time after 12 months would count when calculating employer penalties beginning in 2016.

23. Transfer

This is the movement of an employee from one city position to another of equivalent pay. Typically, a transfer occurs within the same job class.

24. Workweek

It is important the workweek be clearly established, especially for nonexempt employees. The federal Fair Labor Standards Act states a workweek is seven consecutive 24-hour periods. Any nonexempt employee working more than 40 hours in any workweek would be entitled to overtime compensation at the rate of one and one-half times his/her hourly wage.

A city can establish a workweek (also referred to as a work period) for police and firefighters of anything between 7 and 28 days. The police or fire protection employee would then earn time and one-half overtime only for those hours exceeding the limits established in federal law.

There is no law requiring all employees to have the same workweek. If the city does permit departments to establish varied workweeks as appropriate for the needs of the department, that practice should be noted in the personnel policy and on the employees’ payroll records.

IV. Equal Employment Opportunity / Affirmative Action

Most public employers include one of the following statements at the end of employment advertisements: “EEO/AA Employer” or “EEO Employer.” Such a tag line indicates to the reader the city promotes equal employment opportunities and affirmative action in all employment practices at that city.

An equal employment opportunity (EEO) policy statement reaffirms your organization’s commitment to fair employment practices.

RELEVANT LINKS:

[Minn. Stat. § 363A.36.](#)

[Minn. R. 5000.3400, subp. 3.](#)

[Minn. Stat. § 363A.36, subd. 1.](#)

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

[Title VII of the Civil Rights Act of 1964 - Public Law 88-352.](#)

The statement is voluntary, not required, for inclusion on city letterhead or applications, but it can be helpful, and a good practice, also include an equal employment opportunity statement in the city's personnel policy. Under State law cities are not required to have an affirmative action plan, but are encouraged, to have one. In practice, if the city does not have a formal Affirmative Action plan in place, it may be best to only include language in the policy noting the city is an EEO employer and refrain from the Affirmative Action reference. This section discusses the protections generally addressed in a city's equal employment opportunity policy and what to consider when deciding whether to adopt an affirmative action plan.

A. Affirmative Action plans

Minnesota Rules define an affirmative action program as: "a coherent set of goal-oriented management policies and procedures which implement a contractor's affirmative action policy including the contractor's self-examination of its workforce and entire employment practices and policies, availability and utilization analyses, and the establishment of goals and timetables for the correction of any underutilization of women, minorities, and qualified disabled persons identified in the self-analysis."

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

The Federal Government Office of Contract Compliance web site provides some guidance to cities regarding how to develop affirmative action plans. The city will also want to work directly with the federal agency from which funding is to be received to determine if an affirmative action plan is required.

B. Protected status

Protected status and/or protected class both generally refer to groups of people specifically protected from employment discrimination in federal and state law. The groups of people referenced in these laws should be listed within the city's EEO/AA statement.

1. Civil Rights Act of 1964; Title VII

Title VII of the Civil Rights Act of 1964 prohibits employment discrimination on the basis of race, color, religion, sex, or national origin.

RELEVANT LINKS:

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

[MN Dep't of Human Rights Act.](#)

[Minn. Stat. § 363A.08.](#)

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

[Minn. Stat. § 363A.08.](#)
[EEOC: Disability Discrimination.](#)
[ADA of 1990. 42 U.S.C. § 12101.](#)

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

[Hiring](#), LMC model policy. See HR Reference Manual, Chapter 2, See Section II B *Personnel Policies*.

2. Minnesota Human Rights Act

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

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

C. Americans with Disabilities Act

Even though individuals with a disability are protected under the Minnesota Human Rights Act, the Americans with Disabilities Act (ADA) provides additional protections for individuals with a qualified disability. Specifically, the ADA prohibits private employers and state and local governments with 15 or more employees from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions, and privileges of employment.

Some cities develop a separate policy addressing the steps to be taken in the event an ADA workplace accommodation needs to be explored. Other cities covered by this law include a general policy statement noting all requirements of the ADA will be adhered to in employment practices (e.g., necessary accommodations to enable a qualified candidate to interview for a job, job descriptions with essential functions and physical expectations clearly noted, etc.).

V. Recruitment and selection

Incorporating a hiring policy within the city's overall personnel policies will provide the guidelines necessary to keep the hiring process running smoothly. For practical information on hiring in the public sector, please refer to the Hiring Chapter of this manual.

A. Hiring policy

The city's personnel policy on hiring should emphasize securing the most qualified individuals as city employees. At minimum a personnel policy on hiring should address:

RELEVANT LINKS:

See HR Reference Manual, [Chapter 2](#), See Section I-D, *Appointing Authority and Type of Government*.

- Who has authority to make the hiring decisions for the city? While the process may be coordinated by the city administrator or another staff member, in a Plan A city, the city council is responsible for the final hiring decision and must approve all hires to city employment. In a Plan B form of government, the city manager has hiring authority for most city employees. The hiring authority in charter cities can vary, depending on how the city charter is written. It is a good idea to include a policy statement clarifying the authority of the city council in this process.
- Who will manage the hiring process?
- How openings will be posted (e.g., internally, externally, both)?
- What information will be contained in the postings?
- Will vacancies be advertised?
- What the basis is for the hiring decision (merit, fitness, etc.)?
- How will applications be reviewed (e.g., rated on 100-point scale)?
- How will promotional opportunities be handled?
- What types of exams and testing may be used (e.g., medical, psychological, drug and alcohol)?
- Will background checks be conducted?

B. Managing the process

It is important to identify the individual responsible for managing the recruitment and selection process at the city. The individual(s) coordinating the hiring activities might vary depending on the job being filled. Many cities use policy language assigning the recruitment and selection process to one position, but then permit that position to designate other individuals to manage the process where appropriate. For example: “The city administrator or designee will manage the hiring process for all positions within the city.”

C. Vacancies / position openings

Many cities have a policy defining how position vacancies will be handled. While every city should have hiring guidelines, too many policy restrictions and requirements will limit the city’s flexibility in this area. For example, if the city’s policies state every position vacancy will be filled through an open recruitment process, the city would be going against its own established policy if it chose to fill a vacant position through an internal recruitment or a promotion. A policy requiring a hiring process that is fair and just, but still enables the city to retain some flexibility is a good way to achieve balance in this area.

See HR Reference Manual, [Chapter 2](#), See Section XIII, *Promotions*.

HR Reference Manual, [Chapter 2](#), See Section III-C, *Advertisement*.

RELEVANT LINKS:

See HR Reference Manual, [Chapter 2](#), See Section XIII, *Promotions*.

See HR Reference Manual, [Chapter 2](#), See Section XIII, *Promotions*.
HR Reference Manual, [Chapter 2](#), See Section III-C, *Advertisement*.

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

[Employment Application](#),
LMC model form.
[Supplemental Applications](#),
LMC Form.

Keep in mind even when policy language on hiring provides the city with flexibility, a bargaining agreement or civil service bylaws may require the city to treat the hiring procedures different for different groups of employees.

A discussion of the advantages and disadvantages of open recruitment, internal recruitment, and promotion can be found in the Hiring Chapter of the HR Reference Manual (linked to the left).

D. Job postings / advertisements

A job posting serves as official notification a position at the city is vacant. Policy language regarding job postings can be as simple as stating the recruitment process for any opening will begin with a job posting.

In most situations, a city will not be subject to any state or federal law specifically requiring it to advertise a job opening. Policy language noting the city will advertise every open position might limit the city's options as to how certain positions are filled. When an internal promotion is the obvious best fit for a vacant position, it is not a very efficient use of city time and money to advertise and conduct a public recruitment. As such, it may be more reasonable to create policy language stating the majority of the vacancies at the city will be publicly advertised.

Some cities do establish a policy of publicly advertising all of their job openings in conjunction with their equal employment opportunity or affirmative action policy (i.e., to recruit a diverse workforce the city specifies all positions will be advertised publicly in both general and minority-focused newspapers). In addition to aiding with the recruitment of minorities, this type of policy may 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 considers 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. For additional information, refer to Chapter 2, the Hiring Chapter, linked to the left.

E. Applications and application review

Most cities have developed their own unique employment application forms. The League has a model employment application for reference linked to the left. As laws and hiring practices change, the employment application forms should be updated to reflect these changes.

RELEVANT LINKS:

LMC information memo,
[Veteran's Preference in Hiring.](#)
[Employment Application,](#)
LMC model form.

See HR Reference Manual,
[Chapter 2](#), See Section XII –
[Promotions](#), for additional
considerations.

[49 C.F.R. § 382.103 \(2013\).](#)
[49 C.F.R. § 382.107 \(2013\).](#)
[49 C.F.R. § 172, subp. F.](#)

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

Policy language should note how individuals may apply for an open position (e.g., application form, supplemental application, letter of interest, resume, etc.) and what will happen in the event all required materials are not submitted by the deadline.

It is a good practice to use the Veterans' Preference 100-point rating system to review application materials. Even when there are no applicants claiming Veterans' Preference in the applications received by the city for a position, 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.

F. Promotional opportunities

There probably is no need to establish detailed policy language addressing how promotional opportunities will be handled within the city. In some situations, the city may choose to promote from within using a limited recruitment process. In any situation, the city should be prepared to present business reasons for the choices it makes.

G. Testing and exams

It is not necessary for a hiring policy to go into detail regarding the tests and examinations a job candidate may have to pass in order to be hired by the city. However, policy language noting the city's right to require job-related testing and exams (including physical examinations and psychological examinations) should be developed. When a test or a pre-employment medical exam is required, the city should require the same of any finalist for a given job.

Federal law states any employee will be subject to drug and alcohol testing whose job duties include operating city vehicles that meet one of the following:

- Have a gross vehicle weight rating of 26,001 pounds or more.
- Have a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds.
- Are designed to carry 16 or more passengers including the driver.
- Are of any size and are used in the transportation of materials where the vehicle is required to be placarded under the Hazardous Materials Regulations 49 CFR part 172, subpart F (regardless of weight).

The city is required to have a complete policy establishing these procedures. Drug and alcohol testing for drivers who do not need a commercial driver's license is not required, but is permitted by state law.

RELEVANT LINKS:

[Minn. Stat. § 626.87.](#)
[Minn. Stat. § 299C.62.](#)
[Minn. Stat. § 299F.035.](#)
Law Enforcement
Administrator's Manual: [For
Peace Officer Hiring and
Licensing.](#)

[Minn. Stat. § 299F.036.](#)

HR Reference Manual,
[Chapter 2](#), See Section VII-E-
5 – *Firefighters.*

See HR Reference Manual,
[Chapter 2](#), See Section VII –
*Background checks and
bonding*, for more
information on background
investigations.

LMC information memo,
[Employee Probationary
Periods.](#)

The city must develop a written policy clearly defining the parameters of such a drug and/or alcohol testing policy. The policy permitting such testing under state law must be separate from the policy requiring testing under federal law.

H. References and background checks

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

In addition, the city is required by state law to disclose information (e.g., written information on job applicants, performance evaluations, attendance records, disciplinary actions and eligibility for rehire, etc.) about any firefighters currently or formerly employed by the city who are the subject of an employment background investigation by another city. While there are no such background check requirements for most other positions at the city, the League recommends cities conduct at least a basic background check on all new hires. Cities choosing to skip this step in the hiring process often end up wishing they had invested the time and effort to conduct a thorough background check.

The city's policy language should note all finalists for employment will be subject to a background check to determine suitability for the position to which they applied. In addition, the policy should clarify who will be responsible for determining the level of background investigation necessary for the position being filled.

I. Probationary period

Many cities require employees to go through a probationary or learning period when they are first hired at a city or to a new job within a city.

Policies often state probationary employees may be terminated from employment without cause at any time during the probationary period. Use of fringe benefits like paid vacation or sick leave might be restricted during the probationary period. The League encourages cities to consult with their city attorney when determining whether probationary periods make sense for their city since there are important considerations including:

RELEVANT LINKS:

Cleveland Board of Education v. Loudermill, 470 U.S. 532, 542, 84 L. Ed. 2d 494, 105 S. Ct. 1487 (1985).
Blankenbaker v. McCook Public Power District, 940 F.2d 384 (8th Cir. 1991).
Beeson v. Hudson, 630 F.2d 622, 626 (8th Cir. 1980).

Minn. Stat. § 197.46.
LMC information memo,
Veterans' Preference in Discipline, Discharge, or Job Elimination.
Minn. Stat. § 197.46.

HR Reference Manual,
Chapter 4.

HR Reference Manual,
Chapter 4.

Classification and Compensation Plan Framework for Smaller Cities, LMC Model.

- Case law indicates changing the status of an employee following the probationary period creates a risk that the employee could be perceived as having a property interest in his or her job at the city. In addition, it has been successfully argued that the “regular” or “permanent” status following completion of a probationary period implies the employee is not at-will.
- 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. 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

VI. Compensation

Many cities develop a compensation and job classification plan separate from the general personnel policies of the city. The information in such a policy is often quite in-depth and may be used for purposes of pay equity reporting.

In addition, compensation and classification plans are sometimes created and/or updated by a consultant rather than by the city. Having a separate document for this information is a practical way of dealing with a policy that must be reviewed on an ongoing basis. Detailed information on developing a compensation plan is available in the Compensation Chapter of this manual.

The following information addresses the practices and requirements related to compensation that are not subject to revision on such a frequent basis and, thus, can be handled most effectively in a city’s personnel policies:

A. Compensation and classification plans

An easy way to acknowledge the practice of having a compensation plan in a separate document is to develop simple policy language stating: “Employees of the city will be compensated according to schedules periodically adopted by the city council.” The League has developed a model compensation plan for small cities.

RELEVANT LINKS:

[29 U.S.C. § 201-219.](#)
U.S. Dep't of Labor:
[Minimum Wage.](#)
[Minn. Stat. § 177.24.](#)
MN Dep't of Labor and
Industry: [Labor Standards](#)
[State minimum-wage laws.](#)
LMC information memo,
[FLSA: An Overview.](#)
HR Reference Manual,
[Chapter 4](#), See Section II K-
[FLSA.](#)

[Minn. Stat. § 471.992.](#)
LMC information memo,
[Local Government Pay](#)
[Equity Act: An Overview.](#)

MN Dep't of Management
and Budget, [Pay Equity](#)
[Reporting Forms,](#)
[Instructions, Software.](#)

[Minn. Stat. § 471.426.](#)

B. Minimum wage

Cities are covered by both the federal Fair Labor Standards Act (FLSA) and the Minnesota Fair Labor Standards Act and are generally required to comply with the law that is least restrictive (e.g., more generous to employees). Because of this, cities should carefully review the provisions of both laws before determining the minimum wage for any given classification of employee. Detailed information on both state and federal minimum wage requirements can be found in the Compensation Chapter of this manual.

There is no real need to include minimum wage language in a city's personnel policies. The city may choose to include a simple statement such as: "The city complies with the minimum wage laws set forth in the state and federal Fair Labor Standards Acts."

C. Pay equity

The comparable worth plan cities are required to create for purposes of pay equity implementation reporting is generally developed in conjunction with a city's compensation plan, rather than being included in the city's personnel policies. Some cities do choose to include a statement in the personnel policy on compensation that says: "The city complies with the requirements of the Minnesota Pay Equity Act."

D. Paychecks

1. Distribution of paychecks

This policy explains when paychecks are issued and how they are distributed. If the paycheck distribution day changes when a payday falls on a city-observed holiday, this should be noted. In addition, the policy should indicate who will be eligible to receive a check on behalf of an employee in the event the employee is not available to receive it.

2. Direct deposit

State law permits cities to require all employees on the payroll system to participate in direct deposit. It is a good idea for any city implementing this requirement to clarify the practice in a written policy.

3. Changes in employee information

Policy language should make clear it is each employee's responsibility to notify the city with any change of status including address, phone number, names of beneficiaries, marital status, etc.

RELEVANT LINKS:

U.S. Dep't of Labor, Wage & Hour Div., [Fact Sheet #21: Recordkeeping Requirements under the FLSA](#).

[Minn. Stat. § 177.30.](#)
[Minn. R. 5200.0100.](#)

[Minn. Stat. § 412.271, subd. 2\(c\).](#)

U.S. Dep't of Labor:
[Overtime Pay](#),
[Overtime and Compensatory Time](#), LMC model policy,
LMC information memo,
[FLSA: Determining Exempt vs. Non-Exempt Status](#),
HR Reference Manual,
[Chapter 4](#), See Section III, C,
[4 overtime](#).

E. Time reporting

An accurate record of hours worked and any leave time used by nonexempt employees is necessary to comply with the provisions of the federal and state Fair Labor Standards Act. Timesheets are also a way of establishing a legitimate expenditure of public funds for auditing and other purposes. Time worked, including the beginning and ending time of work each day, and accrued leave used is recorded daily and typically submitted to payroll on a biweekly basis or twice per month (or as otherwise established). Timesheets should include the signature of the employee and the supervisor. Many cities include a policy statement that false information reported on a timesheet may be cause for immediate termination of the employee.

F. Electronic time reporting

More and more cities are moving away from signed paper timesheets and toward electronic time keeping. While state law permits cities to use electronic time recording systems, such cities are required to establish a policy to ensure the timekeeping and payroll methods used are accurate and reliable. Said policy must be adopted by the governing body of the city (i.e., city council).

G. Overtime

The federal Fair Labor Standards Act requires covered employees be paid time and one-half overtime (or time and one-half compensatory time) for all hours worked over 40 in one workweek. Certain employees are exempt from these requirements but may still be subject to the state's overtime law which requires time and one-half payment after 48 hours worked in one workweek.

Key items to be addressed in a city's overtime policy include:

- Which positions are eligible for overtime?
- When does the workweek begin and end, for purposes of calculating overtime?
- Will all overtime be paid to the employee or is compensatory time an option?
- Must overtime be approved before it is worked?
- Who has the authority to approve overtime?
- Are there any circumstances under which it would be acceptable to work overtime without prior approval?
- Will time taken as paid leave and/or paid holidays count as time worked?
- How do employees track overtime worked?

RELEVANT LINKS:

U.S. Dep't of Labor, [FAQ Extended Unusual Work Shifts](#).

U.S. Dept. of Labor, [FLSA Overtime Calculator Advisor](#).

U.S. Dep't of Labor Wage & Hour Div., [Fact Sheet #22: Hours Worked Under the Fair Labor Standards Act \(FLSA\)](#).

U.S. Dep't of Labor, [FLSA Overtime Calculator Advisor](#).
MN Dep't of Labor and Industry, [Labor Standards – Payment for hours worked](#).

Occasionally a city will inquire about the maximum number of hours an employee should work in a shift. While OSHA does not provide a specific threshold, it does offer some practical considerations, by noting when there is a choice, managers should limit the use of extended shifts and increase the number of days employees work. Ideally, managers should plan to have an adequate number of personnel available in order to enable workers to take breaks, eat meals, relax, and sleep. OSHA also encourages the use of micro breaks when shifts are extended past normal work periods for employees to change positions, move about, and shift concentration, in addition to providing additional formal meal break periods. It is also recommended, if possible, to assign tasks requiring heavy physical labor or intense concentration to be performed at the beginning of an employee's shift, versus later in the shift.

H. Compensatory time

Cities are not required by state or federal wage and overtime laws to provide the option of compensatory time off in lieu of paid overtime. (Be aware, a city policy or union contract may require the city to provide this option). As noted above, under certain circumstances, a city may give compensatory time off in lieu of paid overtime. If a city chooses to offer compensatory time to employees, policy considerations are as follows:

- Who is eligible for compensatory time (exempt and nonexempt)?
- How is the election of compensatory time accrual versus paid overtime determined?
- When do employees earn compensatory time?
- What is the maximum accrual for compensatory time?
- What is the procedure for requesting the use of accrued compensatory time?
- Is compensatory time paid out or bought down at any point during the year?
- Are there any defined work situations where overtime will always be paid out and others where compensatory time will always be earned?
- How do employees track compensatory time used?

I. Hours of work

It is important to clearly establish employees' hours of work in a policy. Without written work hour requirements it may be difficult for the city to act on performance issues related to absenteeism or tardiness. In addition, both the federal Fair Labor Standards Act (FLSA) and the Minnesota Fair Labor Standards Act impose certain record keeping and compensation requirements related to work hours. The following are some of the key areas cities should consider when developing a policy defining work hours.

RELEVANT LINKS:

MN Dep't of Labor & Industry: [Labor Standards Work breaks \(rest periods\)](#).

[Minn. Stat. § 177.253.](#)

[Minn. Stat. § 177.254.](#)

U.S. Dep't of Labor, [Breaks and Meal Periods](#).
[29 C.F.R. § 785.19.](#)

LMC information memo, [FLSA: Determining Exempt vs. Non-Exempt Status](#).

1. Business hours

This policy should establish the business hours for city hall and any other city facilities at which city employees may work.

2. Core hours

There is no requirement a city establish core hours for employees. Core hours are those hours during which all city employees, both exempt and nonexempt, are required to be at their place of work, unless out of the office conducting business activities or on an approved leave. Because all city employees are accountable to the public in some manner, it is reasonable to expect employees to be at work for the majority of the business hours established for the city. For example, if city business hours are 8:00 a.m. to 5:00 p.m. each day, core hours might be 9:00 a.m. to 3:00 p.m. each day.

3. Meal breaks and rest periods

Minnesota state law requires employers to provide restroom time and sufficient time to eat a meal. If a break is less than 20 minutes in duration, it must be counted as hours worked. Time to use the nearest restroom must be provided within each four consecutive hours of work. Meal time applies to employees who work eight or more consecutive hours.

Federal law does not require lunch or coffee breaks. Bona fide meal periods (typically lasting at least 30 minutes), serve a different purpose than coffee or snack breaks and, thus, are not considered work time nor are compensable.

Policy language regarding meal breaks and rest periods should address basic issues such as the following:

- What are the time limits on rest periods and meal breaks?
- Which breaks will be considered work time?
- Are there any groups of employees required to take breaks at specific times or at specific locations?
- Can breaks be “saved” to enable an employee to alter his or her work schedule?
- Are nonexempt employees required to take lunch breaks away from their work stations so as to avoid potential overtime claims?

4. Non-exempt work hours

Nonexempt employees are covered by overtime provisions of the federal Fair Labor Standards Act (FLSA).

RELEVANT LINKS:

[29 C.F.R. § 785.11.](#)

U.S. Wage and Hour Div.,
[Regulations Part 785 Hours worked.](#)

U.S. Dep't of Labor: [Q & A about the FLSA, Wages, Pay and benefits.](#)

LMC information memo,
[FLSA: Determining Exempt vs. Non-Exempt Status.](#)

This means a nonexempt employee is eligible for overtime compensation at the rate of one and one-half times his or her hourly rate for each hour worked over 40 in any workweek. Generally speaking, the way work time is defined under FLSA includes employee volunteered work time, unless the city prohibited the work and had no reason to know the employees was working it. Further, work not requested by, but suffered or permitted, is considered work time under FLSA regulations. Because of this requirement, many cities use a policy to define the work hour expectations and limitations for nonexempt employees so as to limit overtime compensation.

Some cities have policy language stating any paid or unpaid leave hours used during a workweek will not be included in the calculation of hours worked for purposes of determining FLSA overtime eligibility. In addition, many cities require employees to obtain prior authorization before working overtime hours except in an emergency situation.

5. Exempt work hours

Exempt employees are not subject to the overtime provisions of the federal Fair Labor Standards Act. The general understanding is exempt employees work as many or as few hours as needed to “get the job done” to the performance expectations established by the city. That said, some cities establish general work hour parameters even for exempt employees for purposes of public accountability.

6. Flexible scheduling

When a city permits employees or departments to establish work schedules varying from the schedule required of other employees or from the city hall hours of operation, it is a good idea to establish these parameters in writing. Coverage needs and city service level should be considered when approving flexible schedules.

In addition, policy language should note the city will evaluate flexible schedules on an ongoing basis and may discontinue a flexible schedule at any time. Some items to consider in establishing a flexible schedule policy include the following:

- Who has the authority to approve a flexible schedule?
- How is flexible or varied schedule defined at your city (e.g., employees can arrive anytime between 8:00 a.m. and 9:00 a.m. and leave 8.5 hours later; during the months of June, July, and August employees can work 9-hour days Monday-Thursday and then leave early each Friday; a certain department has an ongoing schedule different from other departments, etc.)?

RELEVANT LINKS:

- Can each employee have a different schedule or is a variable schedule established by department?
- Will job performance or seniority be considered when an employee requests a flexible schedule?
- Are there any employees or departments to which a flexible or varied schedule would never apply?
- Are there any seasonal schedule variances like summer hours?

7. Telecommuting/Working Remotely

Telecommuting or working remotely is generally defined as a work arrangement where the employee works from home or another remote work site away from his/her primary traditional workplace (primary workplace is usually city hall). Cities are not required to offer any sort of telecommuting option to employees. However, in some cases such an arrangement can be beneficial to both the city and the employee. Because telecommuting is a departure from typical employment circumstances, it is important to clearly define in writing the city's expectations regarding such an arrangement. It is also important the city put in writing that it will evaluate all telecommuting arrangements on an ongoing basis and reserves the right to discontinue a telecommuting arrangement at any time.

General policy considerations include the following:

- How does the city select telecommuters?
- How can an employee apply to be considered for a telecommuter arrangement?
- Will all employees be considered or only certain employees (i.e., only exempt employees so the city has no overtime concerns with the telecommuter arrangement)?
- What safety issues might exist (e.g., workers compensation, etc.)?
- Are there any potential issues related to confidentiality or security of city information?
- What are the expectations regarding work equipment?
- Has the city developed a written contract that defines hours of availability, equipment to be provided, safety issues, performance expectations, etc.?

Developing clear ground rules will help the city monitor and measure the success of any telecommuting arrangement. These rules may include:

- How often must the employee "check in"?
- Are there core hours during which the telecommuter must be available?
- When does the work day start and end?
- Can telecommuters work outside of normal business hours?

RELEVANT LINKS:

- How often should telecommuters check voice mail and email?
- How quickly should telecommuters return messages?
- How often should telecommuters communicate with co-workers or customers?
- Are there times when the telecommuter is required to report to city hall (e.g., staff meetings, project meetings, etc.)?

VII. Holidays and leave

While many cities do provide employees with holiday pay and other forms of paid leave, there is no law requiring a city to do so. Compensating employees for city-observed holidays is left to the individual city's discretion. Providing employees with paid leave such as vacation or sick leave is also left up to the individual city. However, those cities with a practice, policy, or bargaining agreement providing these benefits to employees must operate in compliance with such practices or documents.

A. Holidays

As noted above, there is no legal requirement for a city to compensate employees when city hall is closed for business in observance of a holiday. Many cities do elect to provide holiday pay for employees not working when the city hall is closed for a holiday. While not required by law, some cities also provide additional compensation to employees who must perform city work on a scheduled holiday. Whatever a city's practice is in this regard, it is important the city's policy on holidays is spelled out clearly to avoid confusion.

[Minn. Stat. § 645.44.](#)

Minnesota law states no public business shall be transacted on any holiday, except in cases of necessity. Holidays in which city halls are to be closed for business according to state law are:

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

RELEVANT LINKS:

[Minn. Stat. § 181.74.](#)

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

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

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

If the city does provide holiday pay for employees, it is important to note how part-time employees will be compensated for such days. A common practice is to provide prorated holiday pay based on the part-time employee's work hours versus a full-time schedule. Another way to handle holiday pay for part-time employees is to provide holiday compensation only for those hours the part-time employee would have normally worked (or was scheduled to work) on that day.

In the event the city provides premium pay for those employees required to work on a holiday (e.g., public works, police, utilities, etc.), the city should develop policy language as to how compensation will be determined. It is important to establish the method of compensating an employee if he/she is required to come in to work for a city-observed holiday. In addition, the city may want to consider policy language explaining holiday compensation for employees who work on the actual holiday versus the city-observed holiday.

B. Paid leave

1. Vacation

Cities are not required to provide paid vacation leave to employees. It is important to remember, however, that any city with a practice, policy, or bargaining agreement providing this kind of benefit, must comply with that practice, policy, or bargaining agreement.

In addition, once a benefit such as vacation is offered, there may be laws governing some aspects of its use. For those cities providing vacation time, it is important to clearly define the vacation benefits and the parameters surrounding its use. For example:

- Which employees qualify to earn vacation leave?
- Is there any period of time during which employees cannot use vacation leave?
- How is the vacation leave accrued?
- Is there a maximum number of vacation hours that can be accrued?
- What happens if an employee reaches maximum accrual?

RELEVANT LINKS:

HR Reference Manual,
Chapter 5.

Minn. Stat. § 181.9413.

- When can vacation leave be used?
- How do employees request to use vacation leave?
- Who has the authority to approve and/or question the use of vacation leave?
- Are there any circumstances under which the city would require an employee to use vacation leave?
- Is vacation leave “use it or lose it” or is it paid out when an employee leaves? (The city’s policy should specifically state any circumstances under which earned vacation leave would not be paid out when an employee leaves the city).
- Can employees with high balances cash out some of their vacation leave hours at any point?
- Are there any rewards for not using vacation during the year?
- Will vacation hours count as “hours worked” for purposes of calculating overtime under the federal Fair Labor Standards Act?

2. Sick and safety leave

a. Paid sick leave

While cities are not required to provide paid sick leave to employees, it is important to remember, however, that any city with a practice, policy, or bargaining agreement providing this kind of benefit must comply with said practice, policy, or bargaining agreement. In addition, once a benefit such as vacation is offered, there may be laws that govern some aspects of its use. For those cities providing sick leave, it is important to be aware of state law requirements, as well as clearly define the sick leave benefit and the parameters surrounding its use. For example:

- Which employees qualify to earn sick leave?
- Is there any period of time during which an employee cannot use sick leave?
- How is sick leave accrued?
- Are there a maximum number of sick leave hours that can be accrued?
- What happens if an employee reaches maximum accrual?
- When can sick leave be used?
- For what reasons can sick leave be used, i.e., for employee, for family, etc.? Note, there is state law impacting sick and safety leave for relatives.
- How do employees request to use sick leave?
- Who has the authority to approve and/or question the use of sick leave?
- Are there any circumstances under which the city would require an employee to use sick leave?
- What about unplanned use of sick leave versus planned use?

RELEVANT LINKS:

[Minn. Stat. § 181.9413.](#)

HR Reference Manual,
[Chapter 1](#), section IV-E-1-c
Sick and Safety Leave.

[Minn. Stat. § 181.9413.](#)

- When might a medical certification or fitness for duty statement be required?
- Is sick leave “use it or lose it” or is it paid out when an employee leaves?
- Can employees with high balances cash out some of their sick leave hours at any point?
- Can employees with high balances donate hours to those with medical emergencies?
- If an employee is on vacation leave, but is sick for part of that time, which account gets charged?
- Are there any rewards for not using sick leave during the year?
- Will vacation hours count as hours worked for purposes of calculating overtime under the federal Fair Labor Standards Act?

b. Permitted sick leave usage

(1) Use of sick leave for employee’s minor child

If a city does offer paid sick leave, an employee is entitled to use his/her personal sick leave benefits for absences due to an illness of or injury to the employee’s child when the employee’s attendance with the child is necessary. This sick leave may be used on the same terms as the employee is able to use this benefit for his or her own illness or injury. This requirement applies to employers with 21 or more employees.

(2) Use of sick leave for employee’s relatives

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

Under the law “child” includes stepchild, biological, adopted or foster child, either under 18, or under 20 if still attending secondary school. Sick leave used also applies to adult children, spouses, siblings, parents, grandparents, stepparents, as well as parent-in-laws (mother-in-laws and father-in-laws) and grandchildren (includes step-grandchildren, biological, adopted or foster grandchildren). Employers must provide at least 160 hours for personal sick or safety leave in any 12-month period for all covered relatives (adult children, spouses, siblings, parents, grandparents, stepparents, parent-in-laws or grandchildren), but the 160-hour limit cannot be imposed on time used to care for the employee themselves or the employee’s child(ren). The statute says the leave must be given “on the same terms upon which the employee is able to use sick leave benefits for the employee’s own illness or injury.”

RELEVANT LINKS:

[Minn. Stat. § 181.9413.](#)

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

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

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

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

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

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

3. Funeral leave

Funeral leave varies from city to city. It can be difficult to administer because it requires the city to make subjective judgments about employees' personal lives. For that reason, it is very important to clearly define the parameters of this kind of leave.

[Minn. Stat. § 181.9413.](#)

RELEVANT LINKS:

- Who is eligible to use funeral leave?
- For whom may funeral leave be used (immediate family, relatives, etc.)?
- How is funeral leave earned?
- Is this completely separate from other leaves or is the time taken from an employee's vacation or sick leave bank?
- Does funeral leave accrue from year to year?
- What if the employee has more than one cause to use funeral leave in the space of one year?
- How is funeral leave requested?
- Who has the authority to approve, extend, and/or question the use of funeral leave?

4. Paid time off

There are a wide variety of reasons why employees need to be away from work periodically. Traditional paid vacation, sick leave, and funeral leave programs are highly structured with many rules applied to their use. Such rules do not always provide the best "fit" for the circumstances of individual employees. In addition, the more kinds of leave a city provides, the more tracking the city must do regarding leave accrual and use. Finally, employees who rarely have a need for sick leave may feel as though employees using their sick leave and vacation leave are receiving a greater benefit.

Because of these issues, some cities choose to provide employees with one kind of paid leave to be used for any reason an employee needs to be away from work. This kind of leave is often called PTO or paid time off. A city with PTO would typically not offer vacation, sick, or funeral leave. As with the other forms of paid leave, the parameters surrounding a PTO benefit should be clearly defined in the city's personnel policy.

- What leaves does PTO replace?
- Which employees qualify to earn PTO?
- How is PTO accrued?
- Is there any period of time during which an employee cannot use PTO?
- What is the maximum number of PTO hours that can be accrued?
- What happens if an employee reaches maximum accrual?
- When can PTO be used?
- For what reasons can PTO be used, i.e., for employee, for family, for fun, etc.?
- How do employees request to use PTO?
- Who has the authority to approve and/or question the use of PTO?
- Are there any circumstances under which the city would require an employee to use PTO?

RELEVANT LINKS:

- What about unplanned use of PTO versus planned use?
- When might a medical certification or fitness for duty statement be required?
- Is PTO “use it or lose it” or is it paid out when an employee leaves?
- Can employees with high balances cash out some of their PTO hours?
- Can employees with high balances donate PTO hours to those with medical emergencies?
- Are there any rewards for not using PTO during the year?
- Will PTO hours count as hours worked for purposes of calculating overtime under the federal Fair Labor Standards Act?

5. Personal day

Some cities provide employees with one or more personal days per year. A common example of a personal day is an employee’s birthday. Personal days are usually in addition to other types of paid leave. Often employees are permitted to take advantage of these days with little or no advance notice to the city. Like other forms of paid leave, requirements surrounding these paid days away from work should be clearly defined.

- Which employees qualify to earn this leave?
- Is there any period of time during which an employee cannot use this leave?
- How is this leave accrued?
- How many personal days do qualified employees earn each year?
- If an employee does not use his/her personal day, does it carry over into the next year?
- When can this leave be used?
- For what reasons can this leave be used?
- How do employees request to use a personal day?
- Who has the authority to approve and/or question the use of this benefit?
- Are there any circumstances under which the city would require an employee to use this leave?
- Is this benefit “use it or lose it” or is it paid out at any point?
- Will this paid time off count as hours worked for purposes of calculating overtime under the federal Fair Labor Standards Act?

C. Medical-related leaves

A variety of laws come into play when an employee is absent from work for medical reasons. These laws are not only complex, but in many situations may overlap. It is crucial cities carefully evaluate leave requests and policies when considering how to handle a medical-related leave for a city employee.

RELEVANT LINKS:

U.S. Dep't of Labor: [Family and Medical Leave Act](#).
29 U.S.C. § 2612.
LMC information memo,
[Family and Medical Leave Act](#).

LMC information memo,
[Family and Medical Leave Act](#).

HR Reference Manual,
[Chapter 4](#), See Section III.
LMC information memo,
[Family and Medical Leave Act](#).

LMC information memo,
[Family and Medical Leave Act](#).

[29 C.F.R § 825.300\(a\)\(2\) and \(a\) \(1\)](#).
U.S. Dep't of Labor, [Family and Medical Leave Act](#)
poster, April 2016.

1. Family and Medical Leave Act

The Family and Medical Leave Act (FMLA) permits certain employees to take up to 12 weeks of unpaid, job-protected leave per year. Leave for military family leave may be taken for up to 26 weeks in a 12-month period. It also requires that the employee's group health benefits be maintained during the leave.

The FMLA applies to all public agencies. However, the fact that a city is covered by the FMLA does not mean city employees will necessarily qualify to use this protected leave.

For example, if a city has 12 employees, no employee would qualify for FMLA leave because part of qualifying is working for an employer with 50 or more employees. The number of employees (fewer than 50) would prevent the employee from qualifying for the protections of FMLA. For additional information on eligibility requirements under FMLA, see the link to the left.

Like many rules and regulations in human resources, cities can choose to be more generous than the FMLA requires. In other words, a city with fewer than 50 employees could choose to offer employees FMLA-like benefits even though that city is not legally required to do so. In the event a city has less than 50 employees and chooses to call these benefits "FMLA," then the city will need to follow all the guidelines of the federal FMLA. Some jurisdictions find it more helpful when they are under 50 employees to offer "medical leave" instead, in order to afford the city more flexibility in setting up leave policy guidelines. In the event a city decides to offer FMLA-like benefits to employees, it is important to consider the precedent such an action might set, to develop a clear policy, and to take steps to ensure the policy is administered in a fair and just manner.

For more information on administering FMLA leave, please refer to the League's FMLA memo.

a. Policy requirements

Even if the city has fewer than 50 employees, the U.S. Department of Labor requires the city to post a notice approved by the Secretary of Labor (WH Publication 1420) explaining employer and employee rights and responsibilities under FMLA.

RELEVANT LINKS:

U.S. Dep't of Labor, e-laws - Employment Law Guide, [Health Benefits, Retirement Standards and workers' Compensation: Family and Medical Leave](#).

See [Family and Medical Leave](#), LMC Model Policy.

[29 C.F.R. § 825.200](#).
[29 C.F.R. § 825.302\(a-d\)](#).
[29 C.F.R. § 825.303\(a\), \(c\)](#).

[29 C.F.R. § 825.300](#).

[29 C.F.R. § 825.205](#).

[29 C.F.R. § 825.209\(h\)](#).

[29 C.F.R. § 825.300\(d\)\(3\)](#).
[29 C.F.R. § 825.312\(d\), \(e\)](#).

[29 C.F.R. § 825.701](#).

b. Policy considerations

If a city has fewer than 50 employees (volunteer firefighters are usually included in the employee count for purposes of FMLA), no employees will qualify for FMLA leave. In this case the city may wish to develop some very limited FMLA-like policy language.

For those cities with 50 or more employees, as well as any city wanting to provide FMLA-like benefit leave even though not required due to employee numbers, it is important to develop a comprehensive FMLA or FMLA-like policy. A model FMLA policy is linked to the left. The following items should be addressed in a FMLA policy:

- Basic provisions of the Family and Medical Leave Act. How key qualifiers (e.g., caring, child, parent, serious health condition, etc.) are defined.
- Protections afforded to qualified employees under the FMLA.
- Circumstances covered by FMLA.
- How an employee qualifies for FMLA leave.
- Maximum duration of FMLA leave
- How your city's FMLA year is tracked (e.g., calendar year, rolling year, etc.).
- How an employee requests FMLA leave and specific forms the employee is to complete. Identify a specific person in the city to whom leave requests should be made. Identify any consequences for an employee if he/she fails to follow the identified procedure.
- Identify who in the city has the authority to approve or deny FMLA leave.
- Identify how the city will respond to an employee's request for FMLA leave.
- Identify any employee responsibilities following the granting of FMLA leave.
- State the increments in which FMLA leave may be taken.
- Identify whether the employee required to use paid leave (e.g., sick, vacation, PTO) during FMLA leave.
- Explain what happens to employee benefits, in the event a qualified employees goes on unpaid FMLA leave.
- Be familiar with what questions the city may ask before and during an employee's FMLA leave.
- Identify whether the city will require a fitness for duty certification before an employee out on FMLA can return to work.
- Address how FMLA coordinates with other medical leaves of absence and/or other city leave policies.

RELEVANT LINKS:

[29 C.F.R. § 825.216\(d\), \(e\).](#)

[29 C.F.R. § 825.500.](#)

[Minn. Stat. § 181.941.](#)

[Minn. Stat. § 181.940.](#)

[Minn. Stat. § 181.92.](#)

[Minn. Stat. § 181.941.](#)

- Identify the entitlements/limitations for an employee regarding FMLA leave if both parents work for your city.
- Address what reasons an employee may qualify to use intermittent leave under FMLA.
- If the city has a uniformly applied policy governing outside or supplemental employment, how such a policy may continue to apply to an employee while on FMLA leave. In this case, the employer may consider notifying employees that accepting or continuing other employment while on FMLA that is contrary to the restrictions as noted in the employee's FMLA certification or that filing unemployment insurance benefits while on FMLA leave may be treated as a voluntary resignation from employment.
- Address what happens if an employee does not return after FMLA leave.
- Employers are required to maintain records for at least three years.

2. Minnesota Pregnancy and Parenting Leave Act

Minnesota employers with 21 or more employees must provide up to twelve weeks unpaid leave to an employee who is a new biological or adoptive parent for parenting and pregnancy leave. The unpaid leave of absence must be granted to a biological or adoptive parent in conjunction with the birth or adoption of a child; or to a female employee for prenatal care, or incapacity due to pregnancy, childbirth or related health conditions. The start of leave must begin within 12 months of the birth or adoption, (which was increased from six weeks under previous state law) and the length of the leave shall be determined by the employee, but must not exceed 12 weeks, unless agreed to by the employer. To qualify, an employee must have been employed for at least 12 months prior to the leave request and must work an average number of hours equal to at least half the full-time equivalent for employees in that job class. The City may require an employee who plans to take Pregnancy or Parenting Leave to give reasonable notice of the date the he or she will be taking leave and the estimated duration of the leave (not to exceed 12 weeks). Employers with less than 21 employees may still be subject to a state law which requires employers, including cities, to grant time off, with or without pay to an employee who is an adoptive parent.

The length of the leave must be at least four weeks or the same amount given to biological parents, if that period is less than four weeks.

While on parenting leave, a city can require the employee to use other eligible paid leave (such as sick leave, vacation leave, disability leave), or leave required by the Family Medical Leave Act (FMLA), as long as the total does not exceed 12 weeks.

RELEVANT LINKS:

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

For more information on coordinating Parental Leave and FMLA see HR Reference Manual, [Chapter 5](#).

[Minn. Stat. § 181.945](#).

[Minn. Stat. § 181.9456](#).

Prior to 2014, Minnesota employers were not allowed to reduce Parental leave by accrued sick leave, which resulted in some situations where an employee was eligible to take more than 12 weeks when combining FMLA and the Minnesota Parenting Leave Law. However, with the July 1, 2014 change in law, the total leave between FMLA and Parenting or Pregnancy Leave is 12 weeks and indeed cities can now require employees on parental leave to use accrued sick or vacation leave for the absence. An employer will continue the city's share of the employer contribution toward insurance benefits for the 12 weeks for an eligible employee on Parenting Leave that is also covered under FMLA. If an employee is only covered under Parenting Leave, but not FMLA, then the employee and dependents must have the option to remain on the group insurance at the employee's cost. Cities will want to note if the city continues insurance payments for employees on other medical leaves, the city must do the same for these employees.

3. Leave for bone marrow donation

An employer, including cities, must grant paid leaves of absence to an employee who seeks to undergo a medical procedure to donate bone marrow. This requirement applies to employers with 20 or more employees. The length of the leave is determined by the employee, but may not exceed 40 work hours, unless agreed to by the city. The 40 hours is over and above the amount of accrued time the employee has earned. The combined length of the leaves is determined by the employee. The city may require a physician's verification of the purpose and length of each leave requested to donate bone marrow. If there is a medical determination the employee does not qualify as a bone marrow donor, the paid leave of absence granted to the employee prior to that medical determination is not forfeited. To qualify, an employee must work an average of 20 hours or more per week. This law does not affect an employee's rights with regard to any other employment benefit.

4. Leave for organ donation

Employees must be given paid leave in order to donate an organ or partial organ. An employee is defined as working an average of 20 hours per week.

The leave may not exceed 40 hours for each donation, unless the employer agrees to it. The 40 hours is over and above the amount of accrued time the employee has earned.

The city can require verification by a physician of the purpose and length of each requested leave. The city cannot change retroactively any leave granted, even if the employee receives a medical determination that he or she does not qualify as a donor.

RELEVANT LINKS:

[Minn. Stat. § 181.9414.](#)

[Minn. Stat. § 181.939.](#)

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

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

5. Minnesota Reasonable Accommodations to an employee for health conditions related to pregnancy or childbirth

In 2014, Minnesota law was amended to require employers to provide reasonable accommodations to an employee for health conditions related to pregnancy or childbirth if the employee so requests.

The accommodations must be made unless the employer demonstrates the accommodation would impose an undue hardship on the operation of the employer's business. The following accommodations are not considered an undue hardship and an employer may not obtain advice from the employee's licensed health care provider or certified doula for:

- more frequent restroom, food, and water breaks;
- seating; and
- limits on lifting over 20 pounds.

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

The City is not required to create a new or additional position in order to accommodate an employee's pregnancy or childbirth related health condition, nor is the city required to discharge or promote any employee, or transfer any other employee with greater seniority. Further, Statute states an employer cannot require an employee to take a leave or accept an accommodation. The city cannot penalize an employee for requesting a reasonable accommodation for her pregnancy or childbirth related health condition.

6. Nursing mothers

An employer must provide reasonable unpaid break time for nursing mothers to express milk for nursing her child for the first year after the child's birth. Minnesota law also allows that the break time, if possible, run concurrently with any break time already provided to the employee.

RELEVANT LINKS:

[Minn. Stat. § 145.905](#)

[Minn. Stat. 176.021.](#)

MN Dep't of Labor & Industry: [Workers' compensation: Benefits, General Information.](#)

HR Reference Manual, [Chapter 5](#), see section III-k-4 *Workers Compensation.*

LMC information memo, "[Workers' Compensation Claim Management](#)".

"[Compensating Employees on Workers' Comp Leave](#)", Minnesota Cities (May 2005, p. 21).

MN Dep't of Labor and Industry, [Mandatory Workplace Posters.](#)

LMC model, [Personnel Policy Template.](#)

Employers must also make a reasonable effort to provide a room shielded from view and free from intrusion from coworkers and the public, and under Minnesota law, provides a space with access to an electrical outlet, where the nursing mother can express milk in private.

This room needs to be in close proximity to the employee's work area and cannot be a bathroom. All cities are covered if they employ one or more employees. The city cannot penalize an employee for requesting the reasonable break time and private room to express her milk.

Additionally, Minnesota law clarifies women have a right to breastfeed any place they have a right to be with their children, even if there is some exposure of the breast.

7. Workers' compensation

Minnesota law states every employer is liable to pay compensation in every case of personal injury or death of an employee arising out of and in the course of employment. The workers' compensation system provides employees with benefits if they become injured or ill from their job. It covers injuries or illnesses caused or made worse by work or the workplace. Workers' compensation benefits are paid regardless of any fault of either the employer or employee.

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

The city's workers' compensation carrier will make decisions regarding the appropriate length of benefits. How long a city continues the employment of an individual on workers' compensation leave is not a workers' compensation decision. The city should decide each situation on a case-by-case basis, taking into account its obligations under other policies and laws (i.e., sick leave and paid time off policies, FMLA, ADA, etc.).

Some cities have workers' compensation information included in their general personnel policies. Other cities choose to include this information in a separate safety policy. Either way, workers' compensation policy considerations are as follows:

- Where has the city displayed the Employee Rights and Responsibilities poster (including the name of the city's workers' compensation insurer)?
- What must an employee do in the event of an on-the-job injury? For sample language, refer to "Reporting Accidents and Illnesses" in the League's model personnel policy linked to the left.

RELEVANT LINKS:

[Minnesota Workers' Compensation System Employee Information Sheet.](#)

[Workers' Compensation First Report of Injury Form.](#)

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

- Are actions in response to a minor injury clearly differentiated from those that will be necessary in the event of a major injury?
- What are the supervisor's responsibilities in the event of an injury in the workplace? (State law requires the employee's supervisor to complete the First Report of Injury. The employee who was injured is not responsible for completing the FROI).
- Where does the supervisor obtain the First Report of Injury Form and the Minnesota Workers' Compensation System Employee Information Sheet? To whom does the supervisor submit the completed FROI?
- Does the city supplement workers' compensation with additional compensation such as injury-on-the-job pay?
- How do the city's existing policies (e.g., sick leave, vacation leave, paid time off, etc.) interact with workers' compensation?
- How does the city coordinate workers' compensation with other state or federal laws (e.g., FMLA, ADA, etc.)?

8. Early return to work / modified duty

In general, promoting the early return to work of an employee who is absent due to an injury or illness is a good idea. This is especially true in cases of an on-the-job injury or work-related illness where workers' compensation costs are incurred. The odds an employee will be able to return to his/her regular job increase if the employee returns to work soon after an injury. In addition, the sooner an employee is able to return to work, the less the city will have to pay in both direct and indirect disability costs (e.g., lost time, disability benefits, sick time, etc.).

Even though there are proven benefits to getting people back to work sooner rather than later, an early return to work is not always the right answer for the city or the employee. In some instances, an early return to work is simply not the right option due to the medical treatment necessary for an employee to fully recover. Offering an early return to work might not be an option in many smaller cities because one position is often responsible for so many duties.

As with any request regarding a potential reasonable accommodation, a city should carefully consider an employee's request for a modified-duty assignment, including a light-duty assignment. Generally, when considering any accommodation request, a city should consider:

- (1) the nature of the employee's job, including the essential functions of the position;
- (2) the nature and duration of the employee's work restrictions;
- (3) the personnel, workload, and budgetary needs of the city in general and the employee's department in particular;

RELEVANT LINKS:

(4) the availability and reasonableness of other potential accommodations; and

(5) other relevant factors.

When considering an employee's request for a modified-duty assignment, the city should focus on the availability of modified-duty work (in the department and throughout the city), including light duty work, for which the employee is qualified to perform.

This analysis is particularly important if there is limited available work and two or more employees have requested such work. Under the Americans with Disabilities Act (ADA), the Minnesota Human Rights Act (MHRA), and cases interpreting these laws, there are risks if a city chooses to create modified-duty work assignments rather than rely upon available work (particularly if it does so for one employee but not another), chooses to create a long-term or permanent modified-duty position, or approves all requests for modified-duty assignments, thus giving the impression the city has an unlimited capacity for such assignments.

Policy considerations include the following:

- What is the real purpose of the program? Such programs are typically geared for short-term, temporary, disability-type injuries or illnesses.
- Who will be responsible for coordinating the return to work program?
- Who has the final say on approving or denying a request for an early return to work?
- Who will determine job responsibilities during the restricted-duty assignment?
- How is an employee to request an early return to work/restricted-duty assignment? The best practice is to develop a form and require that it be used for all requests submitted through such a program.
- Does the city's policy clearly establish the city's rights to:
 - Evaluate each request on a case-by-case basis.
 - Make no guarantee of any employee's assignment to light duty.
 - Request additional supporting documentation as needed.
 - Require an independent medical exam.
 - Re-evaluate arrangements on an ongoing basis.
 - Discontinue arrangements at any time for any reason.

D. Other forms of leave

1. School conferences and activities leave

State law requires a city with one or more employees must grant up to a total of 16 hours of leave during any 12-month period to attend school

[Minn. Stat. § 181.9412.](#)
[Minn. Stat. § 181.940.](#)

RELEVANT LINKS:

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

U.S. Dep't of Defense, [Employee Support of the Guard and Reserve \(ESGR\)](#) helps employers resolve conflicts arising from an employee's military commitment.
[38 U.S.C. §§ 4301 - 333.](#)
[Minn. Stat. §§ 192.26-192.261.](#)

[Minn. Stat. § 181.947.](#)

conferences or school-related activities related to the employee's child, provided the conference or activity cannot be scheduled during non-work hours.

The law also requires accommodation of certain activities for children in special education programs. Employees must provide reasonable prior notice of the leave when the leave is foreseeable and make reasonable efforts to avoid unduly disrupting the operations of the city. All employers are covered by the school conference and activities leave.

To qualify under this law, the employee must work an average number of hours equal to at least half the full-time equivalent for employees in that job class but does not need to work for any specified period of time prior to the leave request. Employees may choose to use vacation leave hours for this absence, but are not required to do so.

2. Military leave

State and federal laws provide for and regulate military leave for employees who are called to military service, whether in the reserves or full-time service. These laws apply whether the employee is "called to duty" or volunteers for service. Leave from employment to participate in military duty is addressed in federal law in the Uniformed Services Employment & Re-employment Rights Act (USERRA). Public employees in Minnesota engaged in military service have additional benefits under state law, including, among other benefits, up to 15 days of paid military service in a calendar year for qualified periods of military leave. For additional information, refer to Minn. Statute § 192.26 and the League's Employees and Military Leave memo linked to the left.

a. Family members of certain military personnel

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

b. Military Ceremonies

Unless the leave would unduly disrupt the operations of the city, a city must grant an unpaid leave of absence to an employee whose immediate family member, as a member of the United States armed forces, has been ordered into active service in support of a war or other national emergency.

RELEVANT LINKS:

[Minn. Stat. § 181.948.](#)

[Minn. Stat. § 593.50.](#)

[29 C.F.R. § 541.602\(b\)\(3\).](#)
U.S. Dep't of Labor: [Jury Duty, Military Leave and Serving as a Witness.](#)

[Minn. Stat. § 611A.036.](#)

[Minn. Stat. § 181.9413.](#)

[Minn. Stat. § 204B.195.](#)

The city may limit the amount of leave to the actual time necessary for the employee to attend a send-off or homecoming ceremony for the mobilized service member, not to exceed one day's duration in any calendar year.

3. Jury duty

All cities are required to provide employees with time away from work for jury duty. Requirements for compensating an employee on jury duty vary depending upon the status (exempt or nonexempt under the federal Fair Labor Standards Act) of the employee called to jury duty.

Federal regulations prohibit employers from making deductions from wages for exempt employees attending jury duty. However, the city may offset any amounts received by an employee as jury fees for a particular week against the salary due for that particular week without risking the employee's FLSA exemption. No such requirement exists for nonexempt employees.

Most cities have policies allowing employees to receive their normal compensation while serving on a jury; but some cities require the employee to turn over any jury compensation (less expense reimbursements) to the city in return.

4. Victim or witness leave

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

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

5. Time off to serve as an election judge

An individual who is selected to serve as an election judge may, after giving an employer at least 20 days' written notice, be absent from work for the purpose of serving as an election judge without penalty.

RELEVANT LINKS:

[Minn. Stat. § 204C.04.](#)

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

A city may restrict the number of employees to be absent from work for serving as an election judges to no more than 20 percent of the total workforce at any single worksite.

A city may reduce the salary or wages of an employee serving as an election judge by the amount paid to the election judge by the appointing authority during the time the employee was absent from the place of employment.

6. Voting

Every employee who is eligible to vote in an election has the right to be absent from work for the time necessary to appear at the employee's polling place, cast a ballot, and return to work on the day of that election, without penalty or deduction from salary or wages because of the absence. An employer or other person may not directly or indirectly refuse, abridge, or interfere with this right or any other election right of an employee.

7. Emergencies / inclement weather

There are no state or federal laws requiring a city to provide leave due to inclement weather. However, in the interest of employee safety, most Minnesota cities allow employees to make their own judgment about whether or not it is safe to travel to work. It is also common for the city's policy to allow employees to take vacation or compensatory time or to make up the hours missed due to inclement weather.

Often, city facilities remain open even during adverse weather conditions. It is a good practice, however, to enable employees to use their own judgment in evaluating weather and road conditions when deciding whether to report to work (or leave early). If a city is seeking related sample policy language, please refer to "Adverse Weather Conditions" included in the model Personnel Policy linked to the left.

The city's policy should specifically note any employees who will be required to report to work regardless of weather conditions. This requirement typically includes police officers and public works maintenance employees (snow plow drivers).

This policy should also address the procedure for cancelling city programs or meetings in the event of adverse weather conditions.

E. Leave without pay

There are a number of reasons why a city might wish to provide employees with the option of approved time away from work without pay or leave without pay (LWOP). It is most commonly used in situations where a long-term medical leave is necessary.

RELEVANT LINKS:

For example: An employee is out on medical leave. Her FMLA protection and paid leave have run out.

However, the treating physician has indicated she can come back to work in two weeks with no restrictions. Terminating an employee in this situation is probably not in the city's best interest, nor is compensating that person for work she is not doing.

In this scenario permitting the employee to take two weeks of LWOP would probably be in the best interest of both parties.

Policy considerations include the following:

- For what reasons might leave without pay be considered?
- Are the qualifications for LWOP across the board or will they be considered on a case-by-case basis?
- Does all of the employee's paid leave have to be depleted before an employee can qualify for LWOP?
- How does an employee request LWOP?
- Who has the authority to approve, extend, or deny LWOP?
- What are the time limitations on LWOP?
- Do benefits continue to accrue while an employee is out on LWOP?
- At what point(s) is an employee's approved LWOP situation re-evaluated?
- Is there a maximum amount of time that an employee can use LWOP?

VIII. Performance evaluation

Performance evaluations can be a great communication tool between the city management and its employees. Conducting regular performance evaluations provides both supervisor and employee alike with a structured opportunity to discuss what is going well and not so well.

In addition to serving as a good method of documenting communication on an employee's performance, the performance evaluation can be a critical tool for many management personnel decisions. When evaluations are not performed regularly, there may be a lack of defensible basis for the organization's decisions (e.g., promotions, terminations, etc.). It is essential to have supporting documentation for these kinds of actions. Performance evaluations are a good source of such documentation.

Even if your city does not have a formal performance evaluation program in place, you may wish to develop a policy identifying circumstances under which the city or a supervisor may conduct a formal performance evaluation.

RELEVANT LINKS:

800.925.1122
651.281.1200
HRbenefits@lmc.org

A. Purpose

The purpose of the performance evaluation process is to review with employees what is expected of them, what they are doing well, how they are deficient in performance (if at all), how they can improve, and what goals they are expected to achieve over the next performance period.

Performance evaluations, if done effectively, are a key component of performance management.

B. Job descriptions

All factors being considered in a performance evaluation must be job related. Each employee's performance evaluation should be based on a clearly defined, up-to-date job description. The responsibilities set forth in the job description and the expectations of the manager/supervisor for getting these duties accomplished must be clearly communicated to the employee. If these two steps are taken, it is much easier to ensure the focus of the performance evaluation will be on job content and specific performance criteria.

It may be more difficult to evaluate an employee's performance if your city does not have written job descriptions. The supervisor is put in the position of conducting a review of performance without an accurate description of job duties, responsibilities, and expectations. While performance evaluations should not necessarily be avoided in the absence of job descriptions, a great deal of care must be taken to ensure only job-related factors are evaluated.

The League maintains many sample job descriptions for jobs typically used in cities. Call the League to request copies.

C. City policies

When focusing on the responsibilities outlined in a job description, it is easy to forget expectations set forth in city policies and department work rules are also conditions of employment with the city. The performance evaluation provides the supervisor with an opportunity to evaluate the employee's compliance with these criteria. It also is a good idea to use some time during the performance evaluation to clarify expectations established in general city policy and department level work rules for any employee struggling in that area.

D. Evaluation form

The performance evaluation form is generally used as a tool to encourage discussion and ensure documentation for the personnel file.

RELEVANT LINKS:

800.925.1122
651.281.1200
HRbenefits@lmc.org

[Minn. Stat. § 13.04, subd. 4.](#)

The most common formats used include open-ended reviews requiring the supervisor to input all information and forced-choice reviews requiring the supervisor to select from a group of established or “canned” statements about performance. Some cities use a combination of these two formats. Policy language should clarify if a form is required or if it is optional.

The League maintains sample copies of performance evaluation forms; please call the League to request copies.

E. Employee input

The employee’s input may help the supervisor better understand why he or she might be struggling or may not be excelling as expected. A self-evaluation the employee completes and provides to his/her supervisor prior to the formal evaluation is a good way to obtain employee input without the employee feeling as though he/she is being “put on the spot.”

Unlike a private employee, a city employee does not have the right to have a “position statement” objecting to a performance evaluation placed in his or her personnel file. However, the city employee can contest the accuracy or completeness of the data contained in a performance evaluation under procedures established in the Minnesota Government Data Practices Act.

F. Key items to address

- Accomplishments of the past performance period (could be 6 months or one year).
- Suggestions for improvement/changes based on these accomplishments.
- Goals for the next performance period (maximum one year).
- Adherence to the organization’s mission, policies, and practices.
- Supervisor summary comments.
- Up-to-date job descriptions (on which to base evaluation).
- Employee comments.

G. Policy considerations

For those cities not conducting regularly scheduled performance evaluations, it is important to clearly define the parameters of the program. This can be done in a policy addressing the following:

- Are performance evaluations going to be conducted on an annual basis or as needed?
- If conducted on an annual basis, can evaluations be conducted in-between regular evaluations for performance reasons?
- Who has the authority to conduct a performance evaluation?

RELEVANT LINKS:

- Who is responsible for coordinating the performance evaluation program?
- Will evaluations be conducted of all employees?
- Will performance be tied to compensation?
- What happens to the performance evaluation document after the evaluation?
- Does the employee sign the evaluation?
- Is the employee provided with an opportunity to respond to the evaluation?

IX. Length of service programs

There are a variety of reasons why a city will want to track length of service. Many cities have benefit programs based on an employee's length of service at the city. For example, vacation and sick leave accruals might increase after an employee has been with the city for a certain number of years. Some cities restrict benefit access until an employee has worked for that city for a certain length of time. Other cities offer benefits like longevity pay or severance packages to long-term city employees. In order to determine who does and does not qualify for these kinds of benefits, it is important to have an accurate service record.

A. Seniority

Seniority is generally defined as the length of time an individual has been employed by a city. Seniority measures an employee's length of service as compared to other employees. For example, all things being equal an individual who began employment with a city on January 20, 2018, would have more seniority than someone who began employment with the same city on January 30, 2018.

One reason why cities track seniority is because many employee benefits are based on seniority. If a city's vacation policy states employees will accrue 40 hours of vacation after one year of employment, 80 hours of vacation after three years of employment, etc., that vacation policy would be considered "seniority based."

Another reason why some cities track seniority is to help determine who would be impacted first in a layoff situation. Generally, less senior employees in similar positions are terminated from service first. However, there is no legal requirement to base layoffs on seniority rather than other legitimate factors, such as performance, in the absence of such a requirement in city policy or in a union contract.

Policy considerations include the following:

RELEVANT LINKS:

U.S. Dep't of Labor, Wage and Hour Div., [Fact Sheet #23, Overtime Pay Requirements of FLSA](#), July 2008.
See HR Reference Manual, [Chapter 4](#), for a discussion on longevity pay.

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

- Under what conditions might an employee be on leave without a break in seniority (i.e., FMLA, military leave, etc.)?
- What conditions might create a break in seniority?
- How does the city's seniority policy language compare with language found in bargaining agreements at the city, if any?
- Are part-time employees given full credit or is the seniority credit prorated based on part-time hours worked as compared to a full-time position?
- Will seniority be a consideration in the event that the city needs to lay off employees?

B. Longevity pay

Longevity pay is a method of rewarding individuals who are long-term employees of the city. After reaching a pre-determined length of service (e.g., 10 years, 15 years, etc.) an employee is provided with added compensation. Depending upon the city's practice or policy, longevity pay might be added to the employee's hourly wage, paid on a monthly basis, or provided as a lump sum payment annually. While some cities choose to provide longevity pay, others are bound to provide it through bargaining agreements. Longevity pay is typically not related to job performance.

The Fair Labor Standards Act (FLSA) requires longevity pay be included in the base wage rate for purposes of calculating overtime for nonexempt employees. Because of this requirement, any city providing longevity pay to employees should consider providing it on an hourly basis rather than as a lump sum payment given monthly or annually.

Policy language regarding longevity pay should clearly define the parameters under which an employee will earn longevity pay.

- At what point is an employee eligible for longevity pay?
- How is length of service determined (for full-time employees, for part-time employees)?
- Are there any employee groups who are not eligible for longevity pay?
- Is it paid out in an hourly amount, a lump sum payment, a monthly sum, etc.?
- Does longevity pay increase over time?

X. Benefits

The benefit package offered by a city is an important part of an employee's overall compensation package and can be a crucial component when trying to recruit and retain good employees.

RELEVANT LINKS:

See LMC website, [Health Care Reform](#).

For detailed information on the most common types of benefits cities offer to their employees and some key considerations and concepts associated with those options, please refer to the Benefits chapter of this manual.

A. General versus in-depth policy language

Employer-provided benefits and the associated costs may change on a frequent basis. This means that a policy describing insurance plans and premiums in detail would have to be revised frequently. To prevent this, many cities put only basic benefit information in policy format and then refer employees to other resources for in-depth and up-to-date information.

Common sources of detailed benefit information might include a resolution the city council adopts each year establishing benefits to be provided, benefit premiums and city contribution to those premiums (if any), and the program documents from the actual insurance providers. In addition to limiting the need for continual revision of the benefits policy, this method of sharing information ensures employees will have up-to-date and accurate benefit information.

The fact that the city will comply with state and federal requirements regarding the provision and continuation of benefits should be noted, but neither the laws nor the requirements need to be included in policy language in detail.

B. Policy considerations

The city's answers to the following questions will help the city determine appropriate language for a benefits policy:

- What benefits are offered by the city?
- Which employees are eligible for benefits? Employers will want to be mindful of health care reform requirements for large employers meeting the 50 FTE employee threshold.
- Are there different requirements for different benefits or benefit levels?
- At what point after the start of employment is an employee eligible for city-offered benefits? Again, employers will want to be mindful of health care reform requirements for large employers meeting the 50 FTE employee threshold.
- Does the city contribute to the employee's insurance premium?
- Is it clear city contributions to insurance premiums (if any) can be changed from year to year?
- Has the city included a statement indicating it will comply with state and federal laws regarding benefits (e.g., COBRA, MN Continuation, HIPAA, early retiree, health care reform, etc.)?

RELEVANT LINKS:

[“Negotiating Changes in Group Health Insurance”](#), *Minnesota Cities* (Feb. 2004, p. 17).

[Minn. Stat. § 471.6161, subd. 5.](#)

LMC information memo, [Public Purpose Expenditures](#).

[Minn. Stat. § 15.46.](#)

MN Office of State Auditor: [Employee Recognition Programs and Events](#).

- Does the city offer any benefit programs enabling employees to save tax dollars (e.g., flexible spending account, health savings account, post-employment health savings plan, deferred compensation, etc.)? Again, employers will want to be mindful of health care reform requirements for large employers meeting the 50 FTE employee threshold.
- Does the city offer retiree benefits?

C. Bargaining agreements (union contracts)

Cities with union contracts may be limited in changing benefit levels or contribution structure under the city’s health plan. This is because the aggregate value of benefits provided under a group health contract generally cannot be reduced unless the city and the union agree to a reduction in benefits. Likewise, the city cannot change the contribution structure, if it is specified in the union contract, without negotiating with the union. If the city would like to change the benefit levels or contribution structure under the group health insurance plan for union employees, the city should begin negotiations with the union as soon as possible—it could easily take a year or longer simply to make a few minor changes in the benefit levels offered under the plan.

D. Employee recognition awards

The League has historically taken the position that cities can sponsor and pay for employee recognition programs (including social events such as employee picnics or holiday parties) if they are structured so they constitute part of an overall employee compensation program. The Attorney General has taken a narrow interpretation of the term compensation and has suggested the term means only monetary compensation. State law permitted cities to establish and operate a program of preventive health and employee recognition services for its employees. The Minnesota Office of the State Auditor published a Statement of Position on Employee Recognition Programs and Events. According to this statement, (linked to the left) cities wishing to provide employee recognition programs will need to have properly established programs in writing with clear recognition objectives, approved by the city council. The city council must determine what amounts can be expended as “necessary to achieve the objectives of the program.” Thus, when establishing an employee recognition program, cities will want to consider the following guidelines:

- Take formal action to adopt a program, preferably well in advance of any actual expenditures, using language specifying the program is adopted as additional compensation for work performed by the employees.

RELEVANT LINKS:

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

IRS Publication 15B,
[Educational Assistance](#).

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

For practical information
about separation from
employment in the public
sector, please see HR
Reference Manual, [Chapter 3](#).

- Develop a well-thought-out and modestly priced program applicable to all employees who meet certain conditions. For example, “all employees who reach 25 years of service will receive a plaque thanking them for their dedicated years of service to the community.” Or, “all regular full-time and regular part-time employees will be invited to attend the city’s summer employee picnic to thank them for their work throughout the year.”

Each city council should decide whether it believes these types of employee benefits promote a public purpose and serve the best interests of the citizens of their community. A good argument can be made that such expenditures are a natural incident of the employer/employee relationship and the authority for such expenditures is implied as part of the authority to compensate employees; however, each city should have its city attorney review the program prior to implementation.

For taxability issues regarding employee recognition awards, please refer to the Benefits Chapter of the HRRM

E. Tuition reimbursement

Tuition reimbursement is a common benefit offered by many Minnesota cities to employees. This optional benefit usually takes the form of reimbursing an employee for a portion of the costs of college and graduate level courses that are related to the employee’s job with the city. Sometimes, the program allows for reimbursement of courses relating to a promotional opportunity for the employee. These programs often stipulate an employee must receive a passing grade or tie the percentage of reimbursement to specific grade levels (e.g., a “C” = 50 percent reimbursement; “B” = 75 percent reimbursement, etc.). Some cities require an employee to pay back the reimbursement if they do not remain with the city for a year or longer after completion of the course; this type of requirement should ideally take the form of a written, signed agreement drafted or reviewed by the city attorney, executed prior to the employee receiving the reimbursement. For additional information regarding taxability on tuition plans, please refer to the Benefits Chapter of the HRRM.

XI. Discipline

Disciplinary actions, including terminations, can be cumbersome due to the many special protections given to public employees. Some of these protections limit the discretion a city has in its decision-making. And one or more procedural requirements can be missed by even the most careful city, so it’s important a city works closely with its City Attorney.

RELEVANT LINKS:

See Section I-E-2 *At-will employment*. More information on this topic see HR Reference Manual, [Chapter 1](#).

LMC model, [Personnel Policy Template](#), page 2 Introduction Purpose.

HR Reference Manual, [Chapter 3](#), section III C 2 *Due Process*.
[U.S. Const. art. XIV](#).

Policies outlining a city's discipline and termination procedures can protect the city by causing management to focus on the grounds, relevant factors, and procedures leading up to such a management decision. Like other policies, they contribute to uniformity in the decision-making process. When distributed to employees, the policies put employees on notice regarding conduct that is unacceptable. When employees know and understand the rules, they are less likely to bring forth employment-related claims against discipline administered by management.

Procedures established for the discipline and/or termination process should accomplish two major objectives. They should restrict the ability of lower-level supervisors to discharge employees, and help ensure there is a "paper trail" of documents in support of management's decision.

A. Important concepts

1. Employment-at-will

This concept reflects the idea the employer has no obligation to offer, and the employee has no obligation to provide, continued employment in the absence of an explicit contractual obligation.

In order to ensure the city's personnel policies and/or employee handbook do not unintentionally imply an employment contract exists, it is important for cities to include a clear waiver that the guidelines and policies in the handbook do not create contract rights.

2. Due process

Due process references the constitutional concept of a property interest. The Due Process Clause of the 14th Amendment provides, "no state shall deprive any person of life, liberty, or property, without due process of law." Generally, employees who are at-will do not have a constitutionally protected property interest. Public employment does not in itself create any property rights. Only those employees who by virtue of policy or statutory language have some expectation of continued employment have property interests and, thus, are entitled to due process prior to deprivation of these interests (i.e., prior to an employment termination).

While due process does not require formal hearings be held, a city is required to give the employee notice of the basis for, and an opportunity to respond to, the charges before making a final decision on termination.

Public employees who are employed at-will do not have a protected property interest and, therefore, are not entitled to constitutional due process. However, some pre-termination process should still be provided.

RELEVANT LINKS:

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

Some cities choose to provide employees with an opportunity to have a hearing in front of the city council or another authority prior to dismissal. This is not required unless stated in policy or contract language. Generally, a simple notice of charges and opportunity to respond to such charges will suffice. This action will effectively prevent any potential due process claim and can also be used as an additional check that defensible employment decisions are being made.

Some cities provide for a post-termination grievance or hearing. Again, a full trial-like hearing is not required unless stated in policy or contract language. Post-termination reviews can be less formal. A city has wide discretion to determine the procedures for review. It is common for policy language to indicate employees will be notified of the reason for recommended termination of employment and will have an opportunity to respond to those charges prior to being terminated.

3. Just cause

Despite the preference of many cities that all employees be covered under the employment-at-will doctrine, some cities apply the standard of just cause in situations of discipline and termination. The advantage of using this standard is, if followed carefully, it provides a record supporting the discipline that is likely to withstand legal challenge. The disadvantage is it can give the employee more ammunition to use in a formal hearing, especially if it is not followed or applied correctly (i.e., “the city did not meet the just cause standard it promised in its discipline policy”).

It is important to note if a city chooses to establish a just cause standard in its personnel policies, employees covered by those policies will not be considered at-will. Instead, the city will be required to meet the just cause standard prior to taking action on discipline or termination.

4. City’s expectations

It is important for the city to clarify and advise supervisors and employees of the city’s expectations as they relate to potential employee discipline. This includes specific performance expectations associated with individual positions, general expectations for all employees in the department, and city policies, procedures, and standards of performance.

5. City’s authority

When establishing policy language regarding discipline, a city should strive for broad authority to enable the city to determine the nature of any punishment based on a number of factors including prior history and the nature of the offense.

RELEVANT LINKS:

For questions to ask and related discussion see HR Reference Manual, [Chapter 3](#).

For additional information on progressive discipline see HR Reference Manual, [Chapter 3](#).

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

6. Appropriate level of discipline

There does not appear to be any universally accepted criteria to help a city determine what kind of disciplinary action should be taken based on the infraction that occurred. However, in union environments, there is a strong consensus that certain questions should be asked with regard to any discipline action.

B. Progressive discipline

It is common for unions to seek progressive discipline in their collective bargaining agreements. Many cities incorporate progressive discipline into their policies even if employees are not covered by a bargaining agreement. The advantage of progressive discipline is it's likely to be seen as fair if followed carefully. The disadvantage is it sometimes "ties the city's hands" in dealing with a disciplinary situation. For example, the city may wish to impose a harsher disciplinary action than the next step described in the policy for reasons it believes are justified. When this happens, the city can be viewed as not following its own policy—a situation difficult to defend. The League strongly recommends language be included in any progressive discipline policy reserving the city's discretion and enabling the city to skip steps where the city (as employer) deems necessary and appropriate.

Some of the more common forms of discipline found in both policy and contract language are oral reprimand, written reprimand, paid suspension, unpaid suspension, and termination. The following sections describe what generally happens at each stage. Similar language should be included in a city's progressive discipline policy to ensure employees know what to expect.

1. Verbal reprimand

Even though this is called a verbal or oral reprimand, some notation to the employee's personnel file should be made to verify this step took place. The verbal reprimand notifies the employee of the gap between his/her existing performance and what the city expects. It also notifies the employee it is his/her responsibility to the job he/she is being paid to do. The supervisor should document the time and date of the meeting, who was present, and briefly identify the issue(s) discussed. The documentation should also note this action meets the requirements of the progressive discipline policy and improvements must be made or additional step discipline may be imposed. The original documentation should be given to the employee and it is helpful if a copy is placed in the personnel file. Ideally, the documentation should state that its intent is to serve as written documentation of a verbal reprimand.

RELEVANT LINKS:

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

See HR Reference Manual,
[Chapter 3](#), for circumstances
under which an employee
might be placed on a paid
administrative
leave/suspension.

Policy language should indicate the verbal reprimand will be used where informal discussions with the employee's supervisor have not resolved the matter. Clarify who has the ability to issue verbal reprimands. In addition, it is important to state serious infractions may require skipping this step.

2. Written reprimand (warning)

A written reprimand is a document or memorandum generally considered more severe than a verbal reprimand and, as such, more information is documented. The written reprimand should state the problem, explain why said behavior is a problem, document what happened, clarify what the city expects from an employee in that situation (what the employee should have done or not done), describe the consequences of the employee's behavior, and clearly indicate what the consequences will be if the employee repeats this behavior.

The supervisor should meet with the employee to discuss the written reprimand and have the employee sign to acknowledge receipt (not agreement with) of document. A copy of the written reprimand should be placed in the employee's personnel file. Ideally, the document should clearly state it is considered a written reprimand.

Policy language should state a written reprimand is more serious and may follow a verbal warning when the problem is not corrected or the behavior is not consistently improved given a reasonable period of time for improvement. Indicate who has the authority to issue a written reprimand. And, again, note that serious infractions may require skipping either the verbal or written warning, or both.

3. Paid suspension

A paid suspension may or may not be disciplinary in nature. Where removal from job duties is necessary prior to a determination on discipline (e.g., during an investigation), it is a good practice to use terminology such as "administrative leave" instead of "suspension" to characterize the situation.

Prior to any required administrative leave or suspension or as soon thereafter as possible, an employee should be notified in writing of the reason for and the duration of the suspension.

In the case of a disciplinary suspension, when the employee returns to work the city should provide a written statement outlining the potential consequences to this employee should the behavior occur again and what is expected of the employee in the future. A copy should be provided to the employee with the original placed in the employee's personnel file.

RELEVANT LINKS:

Minn. Stat. § 13.43 subd. 2 (a) (5).
LMC information memo,
Data Practices: Analyze, Classify, Respond.

LMC information memo,
FLSA: Determining Exempt vs. Non-Exempt Status.

29 C.F.R. § 541.602(a).

LMC information memo:
Veterans Preference in Discipline, Discharge or Elimination.

In the event the employee was placed on administrative leave pending the outcome of an investigation, the results (not the details, just the results) of the investigation should be provided to the employee in writing. It is a good idea to wait until any investigation is complete and formal action has been taken and upheld before placing disciplinary information in an employee's personnel file. In the case of employees covered by a union contract, the discipline is not final until it has been grieved and upheld or until the timeframes for a grievance have passed. This way, if an investigation shows no discipline is warranted, no one needs to remember to remove the documentation from the employee's file.

The personnel policy should note who has the authority to suspend an employee with pay. Indicate a suspension may or may not be for disciplinary reasons. Again, to retain flexibility in applying discipline, language enabling the city to skip previous steps should be included here.

4. Unpaid suspension

An unpaid suspension is usually reserved for the most serious rule infractions and/or repeat offenders. One reason an employee might be placed on suspension without pay is for creating a risk to the health and/or safety of the employee or others (i.e., an OSHA violation, etc.). Cities should proceed with caution when placing any employee who is exempt under the provisions of the Fair Labor Standards Act on unpaid suspension for a period of less than one week. Cities can impose an unpaid disciplinary suspension on exempt employees for one or more full days, for workplace conduct of a serious nature, such as sexual harassment, workplace violence, drug or alcohol use, or violations of state or federal laws. Such suspensions must be imposed pursuant to a written policy applicable to all employees. On the other hand, an exempt employee's compensation should not be docked for less serious performance or attendance issues for anything less than a full week, to avoid risking the exempt status of that employer per the FLSA. Call the League for assistance with this issue. Qualified veterans, however, cannot be suspended without pay in conjunction with a termination.

File documentation for a situation of unpaid suspension is the same as that recommended for a case of paid suspension.

The personnel policy should note who has the authority to suspend an employee without pay. The policy should clarify unpaid suspensions are usually reserved for the most serious rule infractions and/or repeat offenders. Again, to retain flexibility in applying discipline, language enabling the city to skip previous steps should be included here.

RELEVANT LINKS:

HR Reference Manual,
[Chapter 3](#) for a discussion of
specific aspects of
discharge/termination.

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

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

5. Discharge / termination

A city should never discharge an employee without first consulting its legal counsel. The review of a possible discharge should include a careful examination of all the facts leading up to the decision to terminate; a review of discipline policies, union contracts, and employee handbooks; a review of the employee's personnel file; and a review of past practices to ensure the employee is treated consistently with employees who have committed similar offenses.

Also consider whether there are extenuating circumstances that may justify a lesser discipline. Terminating an employee for disciplinary reasons can be very complicated and emotionally charged. If handled inappropriately, it can result in serious legal problems for the city.

Because termination can only be approved by the city council (in a statutory A and some charter cities), policy language should note the city administrator, with the approval of the city council, may dismiss an employee for substandard work performance, serious misconduct, or behavior not in keeping with city standards.

It is also important to note if the termination action involves the removal of a qualified veteran, the appropriate hearing notice will be provided and all rights will be afforded the veteran in accordance with Minnesota law.

C. Other disciplinary actions

There are other options a city may want to consider when an employee is having performance or misconduct issues. It is always best for the city to reserve the right to apply any of the following remedies rather than offering them as solutions an employee might elect.

1. Demotion

When performance issues exist and the option of removing certain duties and/or transferring the employee to a job more commensurate with the employee's skill level is possible, the city may choose to demote the employee.

Due process requirements and other legal obligations (e.g., Veterans' Preference Act) may be applicable to a demotion situation. In some limited situations, a change in job duties alone may constitute a demotion thus invoking the statutorily required procedures of a veterans' preference notice and hearing.

RELEVANT LINKS:

For detailed information about separation from public service see HR Reference Manual, [Chapter 3](#).

[Minn. Stat. § 465.722.](#)
[Minn. Stat. § 465.72.](#)

HR Reference Manual,
[Chapter 3](#), See Section III-N-4 *Severance Pay*.

See [A.G. Op. 359-A-20 \(Aug. 17, 1983\)](#).
HR Reference Manual,
[Chapter 3](#).

2. Transfer

Similar to a demotion, some cities may transfer an employee to another position within the city when attempts at resolving an issue have failed. When considering such a remedy, the city should ensure the employee is qualified for the position to which he/she is being transferred.

3. Salary freeze or reduction in salary

The city may withhold an employee's salary increase or decrease the employee's existing salary due to performance deficiencies.

XII. Separation from employment

There are a number of ways in which an employment relationship ends, but the three most common ways are resignation, retirement, and involuntary discharge. Situations involving involuntary discharge are the most complex and the most likely to result in legal problems for the city. This section covers those items related to separation from employment that should be covered in city policy.

A. Severance payouts

A severance payout is often provided when an employment relationship ends. Regardless of how an employee is leaving a city, there are two key items to note about severance payouts: 1) All compensatory time on the books for nonexempt employees (those eligible for overtime) must be paid out; and 2) In certain cases, state law limits the amount of severance pay an employee may receive. Policy language should describe any severance available and clearly state the parameters for getting a severance package.

B. Resignation

Unless a specific statutory or charter requirement specifies otherwise, an employee's resignation takes effect as soon as it reaches the appointing authority. The employee may not later withdraw the resignation unless the city agrees to allow him/her to do so. A supervisor of a city employee may accept the resignation of an employee he/she supervises without further action of the city council. It is a good practice, however, to have the city council confirm the resignation in cities where only the city council has the authority to hire and fire employees.

It is common for cities to have a resignation policy stating employees must provide a written resignation and a certain period of notice (e.g., two weeks, one month, etc.) in order to leave the city in good standing.

RELEVANT LINKS:

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

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

[Minn. Stat. § 181.81.](#)

[Minn. Stat. § 363A.20, subd. 9.](#)

[Minn. Stat. § 423.076.](#)

[Age Discrimination in Employment Act.](#)

[29 U.S.C. §§ 621-634.](#)

By not providing a notice in accordance with city policy, the employee may forfeit certain benefits. For example, accrued vacation or sick leave hours might not be paid out, or the employee's personnel file might be noted so the city would not rehire the individual, etc.

C. Retirement

Demographics show more employees will be leaving the city workforce to retire than for any other reason over the next couple of decades. To ensure employees know what to expect from the city when they are preparing for retirement, it is a good practice to have certain information available in policy format.

For each of the following areas, policy language should indicate the city will follow state and federal requirements.

Please see Chapter Three (linked to the left) for detailed information on those things to be considered when an employee is preparing to retire from employment with the city.

1. Policy considerations

The following items (if provided to employees) should be addressed at some level in the city's retirement policy:

- Public Employees Retirement Association (PERA).
- Social Security.
- Severance payouts, if any (e.g., compensatory time, vacation, sick leave, paid time off, etc.).
- Benefit continuation.
- Deferred compensation.
- Post-employment health care savings plan.
- Early retirement incentives.

2. Mandatory retirement age

Although Minnesota law seems to permit cities to establish mandatory retirement ages for employees who are 70 years of age or older, federal law, in general, prohibits cities from establishing mandatory retirement ages for most types of employees.

Federal law does permit public employers to establish mandatory retirement ages for police and fire personnel, but many specific provisions apply. Minnesota laws continue to be ambiguous regarding a mandatory retirement age for police or firefighters.

RELEVANT LINKS:

[Minn. Stat. § 471.61, subd. 2b.](#)
LMC information memo,
[Continuation of Benefits.](#)

HR Reference Manual,
[Chapter 5.](#)
LMC information memo,
[Continuation of Benefits.](#)

If your city is interested in establishing a mandatory retirement age for any employees, the League encourages you to seek legal advice for assistance in defining the legal requirements applicable to your city. Policy language should be established with legal requirements in mind.

3. Early retiree benefits

Minnesota statutes allow some former city employees and their dependents to continue their health and dental insurance coverage indefinitely. Early retirees (those employees retiring before the age of 65) must be offered the same plan option at the same premium rate as active employees until they reach the age of 65. Some policies allow for an administrative fee. Minnesota retiree continuation law does not authorize a city to add an additional 2% to the premium. Because the statute is silent regarding whether an administrative fee may be charged, some cities have interpreted this to mean that, in general, a city has no authority to charge such a fee and choose not to charge a 2 percent administrative fee for pre-65 retiree health and/or dental insurance premiums. This requirement to continue on the same benefit plan as active employees, however, only applies until the early retiree reaches age 65. At the time the early retiree reaches age 65, the city must still make some benefit plan available to them, but the benefits and rates may differ from what is offered to active employees.

4. Retiree benefits

If an employee does not meet the requirements under Minnesota law for indefinite continuation of coverage, then the city must still offer written continuation of coverage options under COBRA and state continuation requirements.

5. Post-employment health care savings plan

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

Post-employment health care savings plans are funded by employer contributions, which may include conversion of unused sick leave, severance pay, and mandatory salary reductions.

Contributions made into these accounts are nontaxable and are used to pay for eligible medical expenses and certain insurance premiums once the employee leaves employment.

RELEVANT LINKS:

LMC model, [Personnel Policy Template](#), see page 39 Resignations.

LMC model, [Personnel Policy Template](#), See page 17 Layoff.

D. Termination / resignation

This section of the city's policies should clarify those circumstances under which an employee would be considered to have voluntarily resigned (e.g., absent for three or more consecutive days without calling in as required by city policy).

E. Layoff

A city's personnel policies should identify the procedures to be followed when preparing for a layoff. Specific items that should be covered include any compensation or severance pay (e.g., compensatory time, vacation, sick leave, paid time off, etc.) to be due an employee who will be laid off.

In the event a severance package is being offered as an incentive to encourage employees to leave voluntarily, offering it across the board is a good way to avoid potential claims of discrimination.

If the city chooses not to make such a package available across the board, it is important to document the business reasons for the decision to only offer the incentive to certain employees. The city can establish parameters (by policy or resolution) that an employee must meet to qualify for such a severance package, but it should not arbitrarily pick and choose the employees to whom the incentive will be offered.

Items the city should consider putting in a layoff policy include:

- Severance payouts.
- Benefit continuation.
- Layoff order/bumping rights.
- Call back order/limitations.

F. Separation and disability

A variety of laws may come into play when an employee is absent from work due to medical reasons. A city must work through these legal do's and don'ts to prepare a policy which addresses issues such as evaluating leave requests, requesting and reviewing medical documentation, and making decisions about continued employment. In some cases, when an employee is gone from work for medical reasons one or more forms of leave may overlap.

For example, an employee gone from work and receiving workers' compensation may at the same time qualify for protection under the Family and Medical Leave Act.

RELEVANT LINKS:

[29 U.S.C. § 2612.](#)
U.S. Dep't of Labor, Wage &
Hour Div., [Fact Sheet #28:](#)
[The Family and Medical
Leave Act.](#)

LMC information memo,
[Family and Medical leave
Act.](#)

[Americans with Disabilities
Act \(ADA\), 42 U.S.C. §§
12101 – 12213.](#)
[Minnesota Human Rights Act
\(MHRA\), Minn. Stat. ch.
363A.](#)

[Job Accommodation
Network.](#)

When an employee's medical situation creates a need for the city to consider terminating that employee, the most important things for the city to remember is to evaluate each employee's situation on a case-by-case basis and to seek legal guidance.

1. Family and Medical Leave Act

The FMLA requires covered employers to provide up to 12 weeks of unpaid leave to eligible employees for reasons relating to family and medical care. Leave for military family leave may be taken for up to 26 weeks in a 12-month period. The city is required to continue to pay its portion of health insurance premiums during this time. In general, the city can neither discipline nor dismiss employees because they are absent from work for a reason that qualifies for leave under the FMLA.

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

2. Americans with Disabilities Act and Minnesota Human Rights Act

The American with Disabilities Act (ADA) and the Minnesota Human Rights Act (MHRA) provide certain protections for the employee who has, or is regarded as, having a permanent physical or mental impairment that substantially limits a major life activity. In situations where an employee can no longer satisfactorily perform his/her job responsibilities due to a condition that may be covered by the ADA, the city should work directly with the employee to determine the best course of action.

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

It is important to note the ADA does not require a city to accept misconduct or substandard job performance as part of an accommodation.

It is also important to make sure the city can articulate the performance deficiencies or another objective basis for discipline in a way not related to the employee's disability or need for accommodation.

RELEVANT LINKS:

[U.S. Equal Employment Opportunity Commission \(EEOC\).](#)
[MN Dep't of Human Rights.](#)

LMC model, [Personnel Policy Template](#), See page 34
Sexual Harassment Prevention Policy. [Preventing Sexual Harassment](#), LMC Reference Page.

[Minn. Stat. § 363A.03, subd. 43.](#)

3. Workers' Compensation

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

The city's workers' compensation carrier will make decisions regarding the appropriate length of benefits. How long a city continues the employment of an individual on workers' compensation leave is not a workers' compensation decision. The city should decide each situation on a case-by-case basis, taking into account its obligations under other checklist items and laws (i.e., personnel policies, FMLA, ADA, etc.).

XIII. Other Policies

There are other policies that are important to consider, but don't always fit logically within the general policy manual developed by a city.

A. Sexual harassment prevention

All employers should be committed to creating and maintaining a workplace free of illegal harassment. Both state and federal law make sexual harassment illegal. The League advises all cities to have a policy statement on sexual harassment to sensitize employees to the issue and to inform them of their rights and obligations. A comprehensive sexual harassment prevention policy addresses the following:

1. Definitions

In order to recognize sexual harassment in the workplace employees need to have an idea of what is, and is not, sexual harassment. This section of the policy should include those definitions provided in Minnesota law and might also provide some examples of inappropriate behavior in the workplace.

2. Expectations

Policy language should be clear regarding the city's expectations of employees and supervisors. Items covered should include the overall expectation that all employees are responsible for promoting a work environment free from harassing behavior of any kind. It should also cover the following:

RELEVANT LINKS:

LMC model, [Personnel Policy Template](#), See page 37
Sexual Harassment
Prevention Policy.

[Preventing Sexual Harassment](#), LMC Reference
Page.
800.925.1122
651.281.1200
HRbenefits@lmc.org

- What the city expects of any employee who believes he/she is being harassed or who suspects harassment of another.
- The responsibilities of any supervisor who witnesses or suspects harassment.
- The actions to be taken by the city upon any report of unlawful harassment.
- The potential consequences for anyone committing sexual harassment in the workplace.

3. Consequences

The city's sexual harassment prevention policy should be clear regarding the potential consequences for anyone committing sexual harassment in the workplace. It should also include language regarding the potential discipline of any employee who falsely accuses another of sexual harassment.

4. Retaliation

Retaliation against anyone who reports sexual harassment or anyone who participates in an investigation related to such a report is unlawful. Policy language needs to be clear retaliation is also punishable through the city's discipline policy.

B. Respectful workplace—general harassment

Similar to a sexual harassment prevention policy, a respectful workplace policy should clearly define expectations and responsibilities of employees and supervisors. A respectful workplace policy is likely to address sexual harassment prevention but may also be more comprehensive. It may provide general guidelines about a variety of conduct that is, and is not, appropriate in the workplace. Common issues addressed in a respectful workplace policy are as follows:

- Sexual harassment.
- Illegal discrimination.
- Offensive behavior.
- Violent behavior/weapons in the workplace.
- Abusive behavior from customers.

Sample Respectful Workplace policies can be found on the link to the left or by calling the League of Minnesota Cities.

RELEVANT LINKS:

LMC model, [Personnel Policy Template](#), See page 43
Grievance.

800.925.1122
651.281.1200
HRbenefits@lmc.org

C. Grievance policy

A grievance policy provides a formal structure within which to address issues relative to the application, meaning, or interpretation of the city's established personnel policies. It sets forth the steps an employee may take when he/she believes further review of a situation related to the personnel policies is necessary.

A good grievance policy for unrepresented employees states the responsibilities of those involved in each step of the grievance process and establishes timelines for each grievance step.

1. Written grievance to supervisor

Policy language should require the employee present the grievance to his/her supervisor in writing. The supervisor should be provided with a defined amount of time within which to respond back to the employee in writing. In the event the employee does not agree with the response he/she receives at this level, or if the supervisor does not reply within the established timeframe, the employee may appeal to the next level.

2. Grievance level above supervisor

This step provides the employee with the opportunity to grieve the issue before a higher level authority at the city. The authority at this level may be the department head or the city administrator. Depending upon the size of the city and the grievance policy language, this may be the final step in the grievance process.

3. Additional grievance steps

The city may choose to provide additional steps for an employee to pursue a resolution to the situation being grieved. If a grievance above a supervisor is before a department head, then an additional grievance before the city administrator and even another grievance before the city council may be provided. It is important to note the decision provided at the highest level is final. For example, if the grievance process ends at the department head with an appeal before the city administrator, policy language should note the "decision of the city administrator is final."

4. Time limits

Language should be included to inform employees what will happen to their grievance in the event time limits are not observed. Generally, if a grievance is not presented by an employee within the time limits provided it will be considered waived.

RELEVANT LINKS:

For guidance on developing comprehensive data practices policies see [DPO](#), and LMC information memo, [Data Practices: Analyze, Classify, Respond](#).

[Minnesota OSHA](#).

[LMCIT loss control consultant services](#).

If a grievance is not responded to by the city representative within the time limits provided, some policies permit the employee to consider the grievance denied.

The employee may then appeal to the next step immediately. It is also a good practice to note the time limits defined at each step may be extended with the mutual agreement of the city and the employee.

5. Non-grievable actions

The city should identify actions or issues that may not be grieved under this policy. Any action commonly considered a management right might be included on this list. For example, pay increases or lack thereof, performance evaluations, etc. (Note that performance evaluations, though not generally grievable, may be challenged as to their accuracy under the Minnesota Government Data Practices Act).

D. Data Practices

A city's data practices policy is often separate from the city's other personnel policies because the Minnesota Government Data Practices Act applies to all government records and data, not just personnel information.

Cities interested in providing employees with information regarding their rights to access government data as city employees may wish to include basic data practices information in the personnel policies. The following should be considered:

- What kind of data might the city request/require from employees?
- How can an employee gain access to data that the city has about him/her?
- Are there any restrictions on access to personnel data being requested by the data subject (employee)?
- What kind of data is retained in an employee's personnel file?
- What kinds of government data are employees prohibited from releasing to the public?
- Who decides what government data can be released?

E. Health and safety

Many cities establish health and safety policies separate from their general personnel policies. It is important to be aware certain safety standards have training and policy requirements. These requirements are best determined by consulting the appropriate safety standards or by contacting OSHA or the city's LMCIT loss control consultant.

RELEVANT LINKS:

[Minn. Stat. §§ 181.950 - 181.957.](#)
LMC information memo,
Drug and Alcohol Testing Toolkit for the City Workplace.

[49 C.F.R. § 383.](#)
[49 C.F.R. § 384.](#)
[49 C.F.R. § 40.25.](#)
LMC information memo,
Drug and Alcohol Testing Toolkit for the City Workplace.

[Federal Motor Carrier Safety Administration.](#)

LMC information memo,
Drug and Alcohol Testing Toolkit for the City Workplace.

LMC information memo,
Drug and Alcohol Testing Toolkit for the City Workplace.

F. Drug and alcohol testing

1. State requirements

The Minnesota Drug and Alcohol Testing in the Workplace Act (DATWA) establishes the requirements a city must follow before it can test employees for drug or alcohol use. Cities must have a written drug and alcohol testing policy including very specific information. Upon adoption of a drug and alcohol policy, cities must provide written notice of the policy to all affected employees and job applicants.

2. Federal / Commercial Driver's License

The federal Omnibus Transportation Employee Testing Act of 1991 requires drug and alcohol testing of employees whose job duties include operating city vehicles that meet one of the following:

- Have a gross vehicle weighting of 26,001 pounds or more.
- Have a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds.
- Are designed to carry 16 or more passengers including the driver.
- Are of any size and are used in the transportation of materials where the vehicle is required to be placarded under the Hazardous Materials Regulations 49 CFR part 172, subpart F (regardless of weight).

The city must have a written drug and alcohol testing policy and each employee must sign a statement confirming he/she has received a copy of the policy. A sample DOT drug and alcohol testing policy is included in the League memo to the left.

Under the rules, local governments will generally be required to conduct pre-employment/pre-duty, reasonable suspicion, random, return-to-duty, follow-up, and post-accident alcohol and controlled substance testing of safety-sensitive employees who operate commercial motor vehicles requiring a commercial driver's license (CDL).

3. Commercial driver's license disqualification

Convictions for certain offenses (e.g., driving while under the influence of alcohol as prescribed by state law) or serious traffic violations (e.g., excessive speeding) committed in a commercial motor vehicle (CMV) or personal vehicle will count against a driver's ability to hold a CDL.

RELEVANT LINKS:

[Minn. Stat. § 171.165.](#)
[49 C.F.R. Subp. D \(§§ 383.51](#)
[– 383.53\).](#)
[49 C.F.R. § 384.219.](#)

[41 U.S.C. Ch. 81.](#)

[U.S. Dep't of Labor, Drug-](#)
[Free Workplace Advisor.](#)

[Computer Use](#), LMC model
policy.

Any offenses that occurred before August 1, 2005, are not covered by this state law.

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

Some cities have found employees (and unions) have approached the city with a request to establish policy language providing for certain accommodations for CDL holders who lose their CDL license due to infractions under the law. The League recommends cities reserve its right to evaluate every such situation on a case-by-case basis.

4. Drug-free workplace

The federal Drug-free Workplace Act of 1988 requires some federal contractors and all federal grantees to agree that they will provide drug-free workplaces as a condition of receiving a contract or grant from a federal agency. The Act mandates some federal grant applications and procurement contracts valued at \$100,000 or more require the grantee or contractor to certify they will provide a drug-free workplace for employees. Employers must:

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

G. Technology / electronic communications

An effective computer use policy governs when and how employees use city-provided technology resources, appropriate and allowable use of city-managed email and Internet access, what sorts of precautions employees should take against things like computer viruses, and what could happen if employees break the policy. A good computer use policy can help ensure city staff understand technology dangers, protect city technology, increase employee productivity, and prevent liability.

RELEVANT LINKS:

A comprehensive technology policy will address the following:

- When, if ever, can staff use city computers for personal reasons?
- What personal use of city computers is unacceptable?
- What kinds of websites are acceptable?
- Can city staff receive personal emails at a city email address?
- What precautions are necessary in relation to email and attachments?
- What are the requirements regarding passwords?
- What kinds of software can be downloaded or brought in and installed on city computers?
- Where and how should employees save city work and email messages, etc.?
- Who may delete information or materials from the city computer network?
- Can staff customize the look and operation of a computer?
- How will personal and business use of city computers be monitored?
- Social media use as an employee, on or off-duty, whenever it impacts city operations
- What are the consequences of violating the policy?