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Required Personnel Policies

Dear Reader:

The following document was created from the CTAS website (ctas.tennessee.edu). This website is maintained by CTAS staff and seeks to represent the most current information regarding issues relative to Tennessee county government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

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Required Personnel Policies

Reference Number: CTAS-1097

State law, found at T.C.A. 5-23-101 *et seq.*, requires that each county^[1] have written personnel policies in place covering all county employees on four broad topics. Copies of these policies are filed with the county legislative body and are maintained in the county clerk's office. The law requiring written personnel policies covers only the specified four topics; any other policies a county employer may have or wish to adopt are outside the scope of this law. The four topics are:

1. Leave Policies
2. Wage & Hour Policies
3. Anti-discrimination and Sexual Harassment Policies
4. Drug Testing Policy (only for CDL drivers)

All "county officials" (defined in T.C.A. 5-23-102 as county trustees, registers of deeds, county clerks, judges who employ county employees, clerks of court, sheriffs, assessors, boards of education, and the chief administrative officer of the highway or public works department; also county mayors who choose to adopt separate policies under T.C.A. § 5-23-103(e)) are required to either (1) adopt written personnel policies on the four required topics to govern the employees of their respective offices or departments, or (2) be governed by policies adopted by the county legislative body and the county mayor, which policies govern all county employees who are not covered by separate policies.^[2]

[1] This law does not apply to any county with a population over 800,000 (Shelby County) or to any county with a metropolitan form of government (currently, Davidson, Moore and Trousdale counties). There are no other exceptions.

[2] Officials and department heads that are not included in the definition of "county officials" in T.C.A. 5-23-102 cannot adopt separate policies. See T.C.A. 5-23-103.

Leave Policies

Reference Number: CTAS-1099

Under T.C.A. 5-23-104(a), counties are required to have written policies stating "whether employees are entitled to paid vacation or annual leave, sick leave or other leave, policies for accrual and use of such leave, policies for compliance with state and federal family and medical leave laws and provisions for maintaining leave records."

There are two kinds of leave: (1) leave that employers are required by law to give, and (2) leave that is left to the discretion of the employer. Leave that falls in the "required" category includes leave under the FMLA, the state's parental leave law, and some miscellaneous leave laws.

Both the FMLA and the state parental leave law require only *unpaid* leave. An employer may choose to give paid leave, but it is not mandated. The policy should cover all issues, including what 12-month period will be used, whether employees will be required to take accrued paid leave before taking unpaid leave or whether the employee will be able to choose, how employees make a request for leave, and how insurance payments are handled while the employee is on leave. It is suggested that a copy of the FMLA Fact Sheet be included in the policies to ensure that employees are given the required notice of their rights under the FMLA.

The Tennessee parental leave law entitles a female employee to take up to four months of leave for pregnancy, childbirth and nursing an infant. Unless the employer wants to give 12 weeks under the FMLA *and* another four months under this state law, the policy should state that the FMLA leave and state parental leave entitlements will run concurrently, so that employees receive a total of four months under both laws combined.

There are a few other miscellaneous leave provisions required by state and federal law that will need to be included in the policies. These are jury and court duty, voting leave, military leave and Workers' compensation (in-line-of-duty injury) leave.

The policies also must set out any other types of leave that are given. These include sick leave, vacation, personal leave, administrative leave and any other kinds of leave that employees are allowed to take. The

policies should state whether the leave is paid or unpaid, how it accrues, whether it carries over to the next year if it is not used, whether there is a maximum amount an employee can accrue, and whether employees are entitled to payment for unused accrued leave when their employment terminates for any reason.

The policies should set out the procedure for requesting and using leave. Also, the policies are required to set out the procedures used to keep records of employee leave.

Wage and Hour Policies

Reference Number: CTAS-1100

Under T.C.A. 5-23-104, the county must have written policies covering “the compensatory time policy in effect for the office or department or a statement that no compensatory time is allowed, a statement of whether the salary received by salaried employees is intended to cover all hours worked up to and including 40 hours in a workweek in offices or departments where the regular workweek is less than 40 hours, policies for maintaining compliance with the overtime provisions of the federal wage and hour laws, and provisions for recordkeeping.”

These policies cover the requirements of the federal Fair Labor Standards Act (FLSA).

The policies must define the workweek—when it begins and ends, and the number of hours in the regular workweek. If the regular workweek is less than 40 hours, the employer will need to state whether the salary paid to salaried non-exempt employees is intended to cover just those hours in the regular workweek or whether it covers all hours the employee may work up to and including 40 in the workweek.^[1] This is a general policy that establishes the workweek for overtime purposes. It does *not* set individual work schedules—these should be set by the employee’s supervisor.

The policies must include overtime and compensatory time policies. The policies should state whether employees are required to receive approval in advance before working overtime; whether employees who work overtime will be paid in cash or whether they will receive compensatory time off; the procedure for requesting and using comp time; and the maximum amount of comp time an employee can accrue (the federally prescribed maximum is 240 hours for most employees but public safety employees may accrue up to 480 hours). Remember that compensatory time can only be given if there is a voluntary agreement or understanding with the employees that they are willing to accept compensatory time. If compensatory time is not used, employees must be paid overtime for time worked in excess of 40 hours in the workweek and the policy should so state.

Finally, the policies must provide for the recordkeeping procedures for wage and hour purposes.

Sample time record forms

[1] If the salary does not cover all hours worked up to and including 40 in the workweek, then the employer must compensate the employee at the employee’s regular rate of pay for any hours worked over the number of hours in the regular workweek up to and including 40, then at the overtime rate for any hours over 40.

Non-discrimination and Sexual Harassment Policies

Reference Number: CTAS-1101

Under T.C.A. § 5-23-104, the county's personnel policies must include “policies on non-discrimination and sexual harassment, including a complaint procedure as required under the federal Americans with Disabilities Act, and guidelines to enable compliance with the fair hiring requirements of the federal equal employment opportunity laws and regulations.”^[1]

These policies should include a general statement that the employer does not unlawfully discriminate in employment matters and that illegal discrimination in the workplace will not be tolerated. The policies also should provide some guidelines about hiring practices, such as whether job openings will be posted or advertised, how applications are accepted and any other measures to avoid any appearance of discrimination. Even though the statute only specifically addresses sexual harassment, it is recommended that the policies address all forms of illegal harassment since they are all forms of illegal discrimination. Finally, the policies should provide a statement advising employees what they should do if they believe they have been the subject of unlawful discrimination. Someone should be designated to receive complaints of perceived discrimination/harassment, and an alternate person should be designated in the event that the complainant for some reason feels uncomfortable talking with the first designee (for

example, where the person designated to receive complaints is the alleged harasser, the employee should not be expected to make the complaint to him or her). For purposes of the Americans with Disabilities Act (ADA), the person also should be advised to see the county's ADA Coordinator if the problem is not resolved within the office. It is recommended for most counties that they NOT enact a detailed grievance procedure with hearings, findings and complicated processes that the county is not equipped to administer. The purpose of the complaint process is to provide a mechanism for the county to be aware of problems and to make an attempt to remedy the situation before it gets out of hand. All that is needed is the name of a few persons to whom problems should be brought. Choose someone with sound judgment and leave it up to that person to determine the best way to handle the situation. Do not make complicated procedures that cannot or will not be followed. Lawsuits often include allegations that the employer failed to follow its own policies. On the other hand, lawsuits can be based on the employer's failure to take timely and appropriate action once a complaint has been brought to their attention, so the employer should ensure that the person designated will take appropriate steps to resolve the problem.

[1] For employees of county judges, procedures administered by the administrative office of the courts for complaints under the Americans with Disabilities Act may be used, if available.

Drug and Alcohol Testing Policies

Reference Number: CTAS-1102

Under T.C.A. § 5-23-104, the county's personnel policies are required to contain "for any employees who are required by law to be tested, policies and procedures for drug and/or alcohol testing."

Before doing anything on this topic, one question should be answered: Are any employees required to have a commercial driver's license (CDL) to perform their duties? If the answer is no, you are not required to test any of your employees and no policy is required under this act.^[1]

If the answer is yes, then you are required under federal law to have a testing program in place already for your CDL drivers. These policies must be carefully drafted to comply with the state and federal constitutions, as well as the federal law and regulations. It is strongly recommended that counties hire experts in this field to handle the testing program and to assist them in preparing these policies.

Sample Request for Proposals (RFP) to solicit bids for a Drug Testing Program

[1] If you do have a drug testing program in place for any of your employees who are not required to have a CDL, please review Governmental Employee Drug Testing-The Constitutional Issues.

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