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Miscellaneous Personnel Issues

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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Miscellaneous Personnel Issues

Reference Number: CTAS-182

Fingerprinting and Background Checks

Reference Number: CTAS-1077

Under T.C.A. § 5-1-126, a county may require persons, prior to employment with the county, to agree to the release of investigative records to the county for the purpose of verifying the accuracy of criminal violation information contained on an employment application, and supply a fingerprint sample and submit to a criminal history records check to be conducted by the Tennessee Bureau of Investigation (TBI). In addition, to the extent permitted by federal law, and at the discretion of the county, a check of such prints may be made against records maintained by the Federal Bureau of Investigation (FBI).

The county is responsible for payment of any costs incurred by the TBI or the FBI in conducting these investigations, but the county may require an applicant to pay these costs if the applicant is offered and accepts a position with the county. The county may establish the job titles or classifications to which these requirements apply, but the classifications do not supersede any mandatory fingerprint-based criminal history background requirements that may be applicable for any person who is seeking employment in a position in any program subject to licensure, approval or certification by any state agency (for example, teachers and others working with children).

Immigration and Form I-9

Reference Number: CTAS-1078

Federal Law.

Under the federal Immigration Reform and Control Act of 1986, employers are required to have all employees who were hired after November 6, 1986, to complete an Employment Eligibility Verification Form (Form I-9) when they begin employment. Failure to comply with the requirements of the Immigration Reform and Control Act of 1986 can lead to civil penalties for knowingly hiring unauthorized employees or for failing to comply with recordkeeping requirements.

The Form I-9 is not filed with any agency, but instead it is to be retained within the county in the employee's personnel file. In order to comply with this law, employers must do the following:

1. Have each new employee fill out Section 1 of Form I-9 as soon as they start to work.
2. Check documents establishing the employee's identity and eligibility to work.
3. Properly complete Section 2 of Form I-9.
4. Retain the form for three years after the date of hire, or one year after employment ends, whichever is later.
5. Present the form for inspection if requested by the U. S. Immigration and Naturalization Service (INS), the U. S. Department of Labor (DOL), or the Office of Special Counsel for Immigration Related Unfair Employment Practices.

Employers must not discriminate on the basis of national origin or citizenship. An employer is prohibited from requesting anyone to present more or different documentation than what is required. All employees must complete the form regardless of national origin or citizenship status.

Note that in 2003 the services formerly provided by INS were transferred to the U. S. Citizenship and Immigration Services (USCIS), a division of the Department of Homeland Security. The USCIS administers immigration services formerly handled by the Immigration and Naturalization Service (INS), including the I-9 form. Information to assist employers with issues concerning the employment of non-U.S. citizens can be obtained from USCIS.

USCIS Web site

The USCIS has a toll-free information number: 1 (800) 375-5283.

The field office serving Tennessee is located in Memphis:
U. S. Citizenship and Immigration Services

Memphis Field Office
80 Monroe Avenue, 7th Floor
Memphis, Tennessee 38103

State Law.

State law prohibits an employer from knowingly employing, rehiring, recruiting, or employing persons who are unlawfully in the United States. T.C.A. § 50-1-103. An employer will not be in violation of this prohibition if the employer obtained and documented, after commencement of employment, lawful resident verification information (I-9), or if the employer verified the work authorization status of the employee using E-Verify.

The Tennessee Unlawful Employment Act, T.C.A. § 50-1-701 et seq., imposes two additional requirements on Tennessee employers that are different from the federal Form I-9 requirements: (1) employers must document employment eligibility for non-employees (defined as any individual, other than an employee, paid directly by the employer in exchange for the individual's labor or services) as well as employees; and (2) employers must retain copies of the documentation.[1]For non-employees, employers must obtain and maintain a copy of any one of the following documents: (1) valid Tennessee driver license or photo ID issued by department of safety, (2) valid driver license or photo ID issued by another state that has been determined by the department of labor and workforce development to have issuance requirements at least as strict as those in Tennessee, (3) official birth certificate issued by a U.S. state, jurisdiction, or territory, or the U.S. government, (4) valid, unexpired U.S. passport, (5) U.S. certificate of birth abroad, (6) report of birth abroad of a U.S. citizen, (7) certificate of citizenship, (8) certificate of naturalization, (9) U.S. citizen identification card, or (10) valid alien registration documentation or other proof of current immigration registration recognized by the U. S. department of homeland security containing the person's complete legal name and current alien admission number or alien file number(s). T.C.A. § 50-1-703. For employees, employers must either (1) obtain and maintain one of the foregoing documents, or (2) enroll in and use the E-Verify system to verify the employment status, and maintain a record of the results generated by E-Verify. Verifying employment with E-Verify is a defense to a charge of hiring undocumented immigrants, but obtaining one of the listed documents, if this is the only evidence the employer has, is not a defense to such a charge. The employer must maintain records generated by E-Verify or the alternate documentation for 3 years after the date of employee's hire or 1 year after termination, whichever is later. T.C.A. § 50-1-703.

If an employer does not have internet access or less than thirty-five (35) full-time employees, the department of labor and workforce development's office of employment verification assistance is required to enroll at the employer in the E-Verify program or conduct work authorization status checks of the employer's employees by using the E-Verify program, at no charge, as long as the employer signs a prescribed form, under the penalty of perjury, that the employer is qualified for assistance and completes paperwork required by the E-Verify program to permit the office to provide the assistance. T.C.A. § 50-1-703.

State citizens and employees of federal agencies are authorized to file complaints with the department of labor and workforce development alleging violation of this law. Civil penalties are as follows: \$500 for first violation, plus \$500 for each employee or non-employee not verified; \$1,000 for second violation, plus 1,000 for each employee or non-employee not verified; \$2,500 for third or subsequent violation, plus \$2,500 for each employee or non-employee not verified. The commissioner is authorized to issue a warning in lieu of penalties for a first violation if the employer complies with all remedial action ordered and the commissioner finds that the failure to obtain proper documentation was not a knowing violation. Money collected goes to the lawful employment enforcement fund for enforcement and education efforts. T.C.A. § 50-1-703. Names and information of violators will be posted on the department's website. T.C.A. § 50-1-705. If an employer does not terminate an employee for whom the employer received a final non-confirmation result from E-Verify, the commissioner may consider this fact in determining whether to impose civil penalties. T.C.A. § 50-1-709.

There is no cause of action for wrongful or retaliatory discharge against an employer if (1) the employee is not authorized to work in the United States; and (2) the employer was not aware that the employee was not authorized to work in the United States under federal immigration laws. T.C.A. § 50-1-802.

If an employer discovers that an employee is not authorized to work in the United States through results produced by the E-Verify program, as defined in § 50-1-702, and discharges the employee based on those positive results, then the employee does not have a cause of action for discrimination based on national origin for the discharge. T.C.A. § 4-21-409.

E-Verify.

E-Verify is an Internet-based system that allows employers to determine the eligibility of their employees

to work in the United States. It is administered by the U.S. Department of Homeland Security, USCIS, Verification Division, and the Social Security Administration. Employers submit information taken from a new hire's Form I-9 (Employment Eligibility Verification Form) through E-Verify to the Social Security Administration and U.S. Citizenship and Immigration Services (USCIS) to determine whether the information matches government records and whether the new hire is authorized to work in the United States.

An advantage to using E-Verify under state law is that verifying employment with E-Verify is a defense to a state criminal charge of hiring an unauthorized alien, but obtaining one of the listed documents, if this is the only evidence the employer has, is not a defense to such a charge. Under federal law, the use of E-Verify creates only a rebuttable presumption that the employer has not knowingly hired an unauthorized alien.

More information about E-Verify can be found here: <https://www.uscis.gov/e-verify>.

[1] Employers are currently required under federal law to complete an I-9 form for all employees, but this does not extend to non-employees such as independent contractors. Also, federal law does not require employers to retain copies of identification documents used to complete the form I-9.

Residency Requirements

Reference Number: CTAS-1079

Under a state law found at T.C.A. § 8-50-107, county employers can require all new employees hired after a certain date to be residents of the county, but counties cannot dismiss or penalize current employees solely on the basis of non-residence in the county.^[1] Because county government is the servant of the area lying within its jurisdiction, a county may want to adopt a requirement that employees reside within the county. A residency requirement could be viewed as a method of providing job opportunities to residents who pay taxes in a particular county. A county employer that desires to enact a residency requirement should make it effective for all employees hired after the creation of the policy. In order to avoid requirements that could impact some group or class of people in a discriminatory way, new employees should be given time to comply with the residency provisions if they do not already live in the designated area..^[2]

First Responders. Counties are prohibited from denying employment, dismissing, disciplining, fining, or penalizing a first responder based on where the first responder resides. First responders include paid, full-time law enforcement officers, firefighters, emergency medical personnel, and dispatchers of law enforcement, fire, and emergency medical service departments, but do not include the chief or head of department. This law does not apply in Hamilton County. T.C.A. § 8-50-107(d).

[1] Op. Tenn. Att'y Gen. U91-137 (Nov. 19, 1991); Op. Tenn. Att'y Gen. U91-138 (Nov. 19, 1991). T.C.A. § 8-50-107 does not apply to counties having a metropolitan form of government nor to counties with populations between 275,000 and 400,000 according to the 1970 or any subsequent census.

[2] The constitutionality of governmental employers imposing residency requirements is discussed in Op. Tenn. Att'y Gen. 01-007 (Jan. 17, 2001), wherein the Attorney General opined that such requirements are considered constitutional under the Commerce Clause, the Privileges and Immunities Clause, and, as long as a rational basis for the requirement exists, under the Equal Protection Clause of the United States Constitution, as well as under the Tennessee Constitution. See *Civil Service Merit Bd. of City of Knoxville v. Burson*, 816 S.W.2d 725 (Tenn.1991). See also Op. Tenn. Att'y Gen. 12-92 (Oct. 3, 2012).

Nepotism

Reference Number: CTAS-1080

While there is no direct statutory prohibition against the employment of relatives in county offices, it is

possible that there are some instances in which it could cause a conflict of interest, particularly where the relatives commingle their assets.^[1] It also is easy to see how relatives supervising other relatives could cause management problems in the workplace, and many county offices have adopted policies against this. The county legislative body, however, is not authorized to enact a resolution prohibiting other elected officials from employing relatives.^[2]

The General Assembly has enacted a statutory anti-nepotism policy that applies to employees of the state (excluding the legislative branch), which is found in T.C.A. § 8-31-101 *et seq.* The state's policy does not absolutely prohibit relatives from working within the same governmental entity, but it does prohibit relatives from being placed within the direct line of authority whereby one relative is responsible for supervising the job performance or work activities of another relative. These statutes could be used as a guide for county officials wishing to adopt nepotism policies.

With regard to employees within the local school system, while there is no statutory prohibition against relatives working for the local education agency (LEA) there are provisions requiring members of local school boards having relatives employed by the board to disclose the relationship before voting on any matters affecting the relative, including but not limited to the annual budget, tenure, and personnel policies. The director of schools must notify the board when there is intent to employ a relative of either a school board member or of any other elected county official, certifying that the person is qualified to occupy the position. If two or more relatives are, or become, within the same line of direct supervision by marriage or promotion, the director of schools must attempt to resolve the situation by transferring one of the employees, and if that fails, must devise an alternate evaluation plan. T.C.A. § 49-2-202(a).

[1] See T.C.A. § 12-4-101.

[2] Op. Tenn. Att'y Gen. 82-68 (Feb. 12, 1982). Some counties have adopted county-wide nepotism policies by private act and while the Attorney General has opined that this is permissible, the constitutionality of such a private act has not been tested in court. See Op. Tenn. Att'y Gen. 82-283 (June 3, 1982).

Personnel Files

Reference Number: CTAS-1081

An important element of a sound personnel system is a complete and accurate set of personnel records for each employee. The file should contain documents which, when viewed in chronological order, would provide a complete history of that employee's employment with the government. Included in the personnel file should be the employment application, date of hire, rate of pay, attendance record, immigration form I-9, performance evaluations and any other information that is identifiable with that particular employee.

The information in the personnel file becomes important when problems arise with the Fair Labor Standards Act, Equal Employment Opportunity Commission complaints or simply to settle disputes that might exist with or between employees. Some of these records are required by law to be kept and others are required by common sense to be maintained.

Medical information contained in personnel files is confidential and must be maintained in a separate file pursuant to the Americans with Disabilities Act. See the retention schedules for information contained in personnel files.

Compensation Plans

Reference Number: CTAS-1082

While the adoption of a compensation plan (also known as a pay plan or compensation schedule) is not required by law, an employer may want to adopt a pay plan to avoid conflicts and misunderstandings with and between employees. The employer should be careful to ensure that equal pay is given to employees who perform equal work. Differences in pay can exist, however, to reward tenure and performance.

The most efficient way to make sure that employees are properly compensated is to first create a job description for each position. Then, a salary range is assigned to each position based upon the knowledge, skills and abilities needed to fill that position. The salary range for each position can include several levels or steps so the employer can reward the employee's performance or continued loyalty to the employer.

Breaks

Reference Number: CTAS-1083

State law requires that private employers give a 30-minute unpaid rest break or meal period to employees who are scheduled to work six hours consecutively, except in workplace environments that by their nature of business provide for ample opportunity to rest or take an appropriate break. T.C.A. § 50-2-103. However, this statute does not apply to public employers such as counties. Op. Tenn. Att'y Gen. 94-060 and 08-187. Many personnel advisors suggest, however, that allowing each employee a short break or rest, during morning and afternoon, may increase the productivity of the employee. Break periods also can be used by the employer to handle smoking problems within an office setting. No smoking or limited smoking policies are becoming prevalent in today's work force. The employer can allow the use of morning and afternoon breaks for employees who smoke. Since this break time is considered work time under the Fair Labor Standards Act, the employee would receive regular pay during this period.

All employers, both public and private, are required to provide reasonable unpaid break time each day to an employee who needs to express breast milk for that employee's infant child. These break periods are to run concurrently with any other breaks the employer provides whenever possible. The employer must make reasonable efforts to provide a room or other location in close proximity to the work area, other than a toilet stall, where the employee can express breast milk in privacy. T.C.A. § 50-1-305.

Smoking in the Workplace

Reference Number: CTAS-1084

Under Tennessee's Non-Smoker Protection Act, T.C.A. § 39-17-1801 *et seq.*, smoking, which includes the use of vapor products, is prohibited in any enclosed area under the control of a public (or private) employer that employees normally frequent during the course of employment. The act requires "No Smoking" signs or the international "No Smoking" symbol be clearly and conspicuously posted at every entrance to every place of employment where smoking is prohibited by the act by the owner, operator, manager, or other person in control of that place. A person who smokes in an area where smoking is prohibited is subject to a fifty-dollar (\$50) fine.

The Non-Smoker Protection Act does not apply to outdoor areas, as long as smoke from those areas does not infiltrate into areas where smoking is prohibited. T.C.A. § 39-17-1804. Employees who smoke may be required to do so only at specified times and in specified places that are not in violation of the law.

State law protects employees who use tobacco products from being discharged from employment solely because they use tobacco products, as long as the employee complies with all of the employer's policies regarding the use of tobacco products during working hours. T.C.A. § 50-1-304. This law does not, however, prohibit an employer from refusing to hire someone who uses tobacco products.

Monitoring of Electronic Mail

Reference Number: CTAS-1085

Counties are required to have a written policy in place if they monitor electronic mail communications in any way. This policy must include the circumstances under which the monitoring will be conducted, and a statement that correspondence of the employee may be a public record and be subject to public inspection. T.C.A. § 10-7-512.

Insurance

Reference Number: CTAS-1086

Two sets of statutes coexist that authorize counties to provide group insurance for county employees and officials. Under T.C.A. §§ 8-27-401 through 8-27-404, the county legislative body is authorized to provide group life, hospitalization, disability and medical insurance for county employees, and to provide for payment by the county of a portion of the premiums. The county legislative body is authorized to include retired county employees, officials, and their surviving spouses. The county legislative body approves the insurance contracts by majority vote. The county legislative body is also authorized to include volunteer firefighters who have passed the Firefighter I exam and have practiced as a volunteer firefighter for at least one year after completion of the exam before making application for benefits, as set out in T.C.A. §

8-27-401(b)(1)(B). Under T.C.A. § 8-27-404, counties that have elected to provide health insurance to first responders are authorized to provide health insurance to the surviving spouses and children of first responders who are killed in the line of duty, for a period not exceeding two years after the death of the first responder. Any county that provides this insurance is to notify the commissioner of finance and administration, and the state will reimburse the county in an amount equal to the portion of health insurance premiums and benefits for which the county is responsible under the health insurance policy. "First responders" means paid, full-time law enforcement officers and firefighters.

Counties also are authorized to provide group life, hospitalization, disability and medical insurance under T.C.A. § 8-27-501 *et seq.* Under this set of statutes, all county employees and county officials have the option of electing the coverage, and the county is authorized to pay all or any portion of the premiums with the remainder to be deducted from the employees' salaries. The county legislative body is authorized to include retired county employees, officials and their surviving spouses. A county insurance fund must be established for deposits of the county's share of the premiums as well as the payroll deductions. Once established, the insurance program cannot be discontinued except by two-thirds vote of the county legislative body and after three months notice to officials and employees.

On the state level, a local government insurance committee was created by the legislature in 1989 to establish a health insurance plan for employees of local governments and certain quasi-governmental organizations, with all costs of the plan to be paid by the participating local governments and eligible quasi-governmental organizations. The staff of the state group insurance program is to act as the staff of this program.^[1]

A state supported local education employee group insurance program is established under T.C.A. § 8-27-301 *et seq.* Group insurance is available under either the basic state plan or an optional plan.^[2] The state pays a portion of the cost of participation in the plan.^[3] Local education agencies that have group insurance determined to be equal to or better than the state plan are eligible for direct payments from the state for a portion of the costs.^[4]

If a county employee rejects or opts out of an insurance policy offered to the employee, the county may pay up to 15% of the premium that would have been paid by the county as long as the county continues to offer insurance coverage to its employees. T.C. A. § 8-27-503. Additionally, the Attorney General has opined that counties may provide "cafeteria plans" under § 125 of the Internal Revenue Code as a benefit to their employees.^[5] Cafeteria plans are authorized under T.C.A. § 8-25-501.^[6]

The Tennessee Supreme Court has held that unless a county employer expressly provides that benefits such as health insurance are intended to vest or are not to be terminated, those benefits may be modified or terminated at any time. Benefits of this type are welfare benefits, and must be distinguished from retirement or pension benefits that vest automatically.^[7]

[1] T.C.A. § 8-27-701 *et seq.*

[2] T.C.A. § 8-27-302.

[3] T.C.A. § 8-27-303.

[4] T.C.A. § 8-27-303.

[5] Op. Tenn. Att'y Gen. 87-165 (October 26, 1987).

[6] This statute also authorizes counties to have "qualified transportation fringe benefit plans" authorized under I.R.C. § 132(f).

[7] *Davis v. Wilson County*, 70 S.W.3d 724 (Tenn. 2002).

Expense Accounts

Reference Number: CTAS-1087

In counties having a population of 100,000 or more according to the latest federal census, salaried county officials who are paid from county funds and are elected by the people, the county legislative body or another board or commission, and any clerk or master appointed by the chancellor, must be reimbursed for actual expenses incurred incident to holding office, including but not limited to lodging while away on official business and travel on official business, both within and outside the county. The county legislative body may by resolution determine what other expenses are reimbursable.^[1]

In all other counties, the county legislative body may by resolution choose to pay the expenses of elected officials, and may promulgate procedural rules regarding the method and type of expenses reimbursed. In

counties where such a resolution has been adopted, the county mayor: (1) prescribes forms to be used to reimburse expenses; (2) examines expense reports or vouchers to insure items are legally reimbursable and filed according to legislative body rules; and (3) forwards proper expense reports to the disbursing officer for payment.^[2]

All officials who are authorized to incur reimbursable expenses are required to make out accurate, itemized expense accounts showing the date and amount of each item and the purpose for which the item was expended. The official must swear before an officer qualified to administer oaths that the expense account is correct and that the expenses were actually incurred in the performance of an official duty. Receipts should be attached to the expense voucher whenever practical, and vouchers must be numbered and referred to by number.^[3] Making a false oath on an expense account constitutes perjury.^[4]

[1] T.C.A. § 8-26-112(a).

[2] T.C.A. § 8-26-112(b).

[3] T.C.A. § 8-26-109.

[4] T.C.A. § 8-26-111.

Firearms in the Workplace

Reference Number: CTAS-2206

Under T.C.A. § 39-17-1314, counties, cities, and metropolitan governments are authorized to regulate by resolution, ordinance, policy, rule, or other enactment the carrying of firearms by employees or independent contractors of the county or city or metropolitan government when acting in the course and scope of their employment or contract, except as otherwise provided in T.C.A. § 39-17-1313. Under this statute the county may, by action of the county legislative body, allow or prohibit the carrying of firearms and may establish rules setting out circumstances under which firearms are allowed to be carried by their employees or contractors.

Counties choosing to allow employees to carry firearms at work should contact their liability insurance carrier to determine the extent of their insurance coverage. Also note that employees who carry firearms at work would be required to follow all applicable federal and state laws, rules, and regulations, including obtaining and maintaining a carry permit if applicable.

The sheriff is the only elected official that has statutory authority to authorize employees to carry a weapon, pursuant to T.C.A. § 39-17-1315.

Automobiles

Reference Number: CTAS-1088

Subject to appropriation by the county legislative body, counties may provide vehicles for the use of any salaried county official who is paid from county funds and who holds office by election of the people, by election of the county legislative body, or by election of any other county board or commission, and any clerk or master appointed by a chancellor, or, in the alternative, may provide a monthly car allowance to such salaried county officials. T.C.A. § 8-26-113.

Fringe Benefits

Reference Number: CTAS-1089

Fringe benefits are taxable for purposes of federal income tax and FICA tax. The most common form of fringe benefit provided by counties is the automobile. The amount of the taxable fringe benefit is the value of the amount of personal use of the automobile (as opposed to use for county purposes). There are four methods of calculating the value of the personal use of the vehicle:

1. fair market value method,
2. table value method,

3. cents-per-mile method, and
4. commuting value method.

The first two methods are based on the value of the automobile and the actual amount of personal use. The cents-per-mile method is the number of personal miles driven by the employee multiplied by the standard mileage rate, which is the same as the rate taxpayers use to deduct the business use of a personally owned car. If the employee pays for the gas, the rate is reduced. The commuting value method can be used only when the employer has a written policy that restricts the employee's personal use of the car to commuting to and from work. Under the commuting value method the use is valued at \$1.50 per one-way commute, or \$3.00 per round trip. The commuting value method can be used only for ordinary employees. It cannot be used for elected officials or certain other highly compensated employees. The rules governing taxation of fringe benefits are complex and must be carefully reviewed. These regulations can be found at 26 C.F.R. § 1.61-21.

Wage Assignments and Garnishments

Reference Number: CTAS-1090

Garnishment of wages, salaries or other compensation due from a county to any of its officers or employees is permitted.^[1] Employers cannot retaliate against an employee based on a wage assignment for alimony or child support, but the employer may impose a service charge of up to five percent, not to exceed \$5.00 per month.^[2] The maximum amount of earnings that may be garnished is set out in T.C.A. § 26-2-106. For federal law regarding garnishments, see 15 U.S.C. § 1672(b).

[1] T.C.A. § 26-2-221.

[2] T.C.A. § 36-5-501.

Whistleblower Statute

Reference Number: CTAS-1091

State law, found at T.C.A. § 50-1-304, prohibits an employer from terminating an employee solely for refusing to participate in an illegal activity or for refusing to remain silent about an illegal activity. Illegal activities are defined as those that are in violation of a state law (either criminal or civil) or any regulation intended to protect the public health, safety or welfare. Employees who are terminated in violation of this statute may sue the employer for retaliatory discharge. However, if an employee files a frivolous lawsuit for retaliatory discharge the employee may be required to pay the other party's attorney's fees and expenses.

Part-Time Employees

Reference Number: CTAS-1092

Employers may not want to provide the same benefits to part-time employees that full-time employees enjoy. So that there is no confusion on this issue, personnel policies should include a statement defining "part-time employee" and discussing the role and benefits of the part-time employee. The recordkeeping procedures of the Fair Labor Standards Act, provisions on discrimination and sexual harassment, breaks, and in-line-of-duty injury are all areas that affect part-time employees. However, benefits such as health insurance, sick leave, vacation time, holidays, bereavement leave, and other types of paid leave are often not extended to the part-time employee, and this should be clearly established in the policies. Because there is no law that establishes the maximum number of hours worked by part-time employees, the employer's policy must define this point.

COBRA

Reference Number: CTAS-1093

The Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA) applies to all employers who had 20 or more workers on a typical business day during the past calendar year and offered their employees

health coverage. Although there are many provisions and regulations in COBRA, local government health plans are affected only by the continuation coverage requirements.^[1]

In order to comply with COBRA, the government employer has the obligation to notify the employee of the right to continue health care coverage for a certain period of time at the group rate upon the occurrence of a qualifying event. A qualifying event includes but is not limited to such things as termination of employment (except for gross misconduct), death of the covered employee and reduction in hours of employment. Once the qualifying event occurs, the employee or qualified beneficiaries must then be given at least 60 days to elect continuation of health care coverage. The length of time coverage can be continued depends upon the qualifying event.

It is recommended that the county employer consult with its county attorney or health plan administrator for more detailed information if needed.

[1] Public employees covered by government health plans are technically exempt from COBRA, but they are covered by parallel requirements under the Public Health Service Act.

Termination Pay

Reference Number: CTAS-1094

When an individual's employment comes to an end, for whatever reason, he or she is legally entitled to payment for all accrued overtime, compensatory time and regular earnings. The employee also may be entitled to payment for accrued but unused sick leave or vacation time, or some other type of compensable leave, depending on the employer's policies. The employer should include a provision in the personnel manual explaining termination pay.

Upon the death of an employee, some wages often will have been earned but not paid. Generally, money that is owed to a deceased person must be paid to the executor or administrator of the estate. Pursuant to T.C.A. § 30-2-103, however, the employee may designate a beneficiary to receive payment of any wages that may be due the employee at the time of death, and employers are encouraged to advise their employees of this option. If the employee has not designated a beneficiary, the employer may pay limited amounts to the surviving spouse, and to surviving children, under the circumstances specified in the statute. The current limit is \$10,000.

Unemployment Compensation

Reference Number: CTAS-1095

Under the Tennessee Employment Security Law,^[1] unemployment insurance coverage is mandatory for county and other local government entity employees. All county employees are covered except popularly elected officials, members of the county legislative body, judges, members of the state national guard or air national guard, employees serving on a temporary basis in case of emergency (fire, storm, snow, earthquake, flood, etc.), and those in a position that is designated according to law as "a major non-tenured policymaker or advisory position" or "a policymaking or advisory position the performance of the duties of which ordinarily does not require more than eight hours per week."^[2]

Unemployment insurance premiums must be paid by the employer; no part of the premiums can be deducted from employees' wages. Governmental employers may finance unemployment insurance by implementing the reimbursement method or the premium/tax method. Under the reimbursement method, the employer submits quarterly payments to the Tennessee Department of Employment Security for the exact amount of unemployment benefits paid to former employees and chargeable to the employer's account. Under the premium/tax method, the assigned premium rate will be 1.5 percent until the account has been chargeable with benefits and subject to contributions throughout the 36 consecutive calendar month period ending on the computation date (the December 31 preceding a tax rate year that begins on July 1). After this condition is met, the governmental employer's premium/tax rate will be computed according to a new rate table for governmental employers only. Tax rates will range from 0.3 percent to 3 percent, depending on the reserve ratio. The reserve ratio is computed by subtracting cumulative benefits charged to the employer's reserve account from cumulative contributions paid and dividing the difference by the average taxable payroll of the three recent calendar years.^[3]

Counties that wish to change their method of financing must file a written notice with the Department of

Employment Security not later than 30 days prior to the beginning of the taxable year the change becomes effective. When a change is made from the reimbursement method to the premium/tax method, the employer remains liable for reimbursement of unemployment benefits that are paid after the change but are based on wages paid before the change. Benefit changes can occur up to nine calendar quarters after an employer pays wages to a worker. Either the fee official or the county may be deemed the employer, depending upon whether the fee official or the county pays the deputies and assistants.

When an employee is terminated, the employer is required to provide the employee with a Separation Notice within 24 hours of the time of separation stating the reasons for termination (sample Separation Notice).^[4]The employee takes the notice to the Department of Labor and Workforce Development if he or she wishes to file a claim for unemployment. The reasons for an employee's termination may affect unemployment compensation benefits. Employees who voluntarily quit or who are discharged for job-related misconduct are not eligible to receive unemployment compensation benefits. Former employees receiving unemployment benefits must be able to work, available for work, and making reasonable efforts to secure suitable work.^[5]

Information concerning the application and benefits of the unemployment security program can be obtained from local offices of the state Department of Employment Security. The Tennessee Department of Labor and Workforce Development's Employment Security Division administers the Unemployment Insurance Program. On the Labor and Workforce Development Website the employer will find a wealth of information concerning this program, including an Employer Handbook, contact information for the Employer Accounts Offices across the state, and forms. Also, employees can file unemployment claims electronically here.

[1] T.C.A. § 50-7-101 *et seq.*

[2] T.C.A. § 50-7-207(c)(5)(D).

[3] T.C.A. § 50-7-401 *et seq.*

[4] Tenn. Comp. R. & Regs. 0800-09-01-.02.

[5] T.C.A. § 50-7-303.

Providing Employee Information to Prospective Employers

Reference Number: CTAS-1096

Employers are granted qualified immunity from liability for providing information, upon request of a prospective employer, about a current or former employee's job performance as long as the information provided is truthful, fair and unbiased.^[1]

[1] T.C.A. § 50-1-105.

FIT, FICA Withholding, and Miscellaneous Reporting Matters

Reference Number: CTAS-1147

Counties are responsible for making the proper FICA and FIT withholdings. The county makes quarterly payments and reports to the Internal Revenue Service and the Social Security Administration. Counties must be aware of the taxation of fringe benefits, particularly the use of county-owned vehicles, as being income to the employees. If the county fails to make the proper withholdings from income, serious penalties can be imposed by the Internal Revenue Service. County officials may be responsible for filing Form 1099s with the IRS to report these benefits.

Commercial Driver Licenses

Reference Number: CTAS-1148

County employees operating commercial type vehicles and those requiring a special endorsement must obtain a commercial driver license in order to operate many county vehicles. Vehicles (including vehicle

combinations) that fall within the commercial classification include the following:

1. Vehicles weighing more than 26,000 pounds (gross vehicle weight rating);
2. Vehicles designed to transport more than fifteen (15) passengers (including the driver); and
3. Vehicles transporting hazardous material requiring placarding.

T.C.A. § 55-50-102.

Vehicles requiring a special endorsement listing on a driver license include:

1. Those authorized to pull multiple trailers;
2. Those designed to carry more than fifteen (15) passengers (including the driver);
3. Tank vehicles;
4. Those transporting hazardous materials requiring placarding; and
5. School buses.

The commercial driver license requirements include passing grades on certain knowledge and skills tests as well as a good driving record. A "grandfather" provision exists that exempts certain drivers from having to take the skills test. Furthermore, operators of emergency vehicles are exempt from these provisions.

School bus drivers must have a Class C commercial license with school bus endorsement. T.C.A. § 55-50-102; Op. Tenn. Att'y Gen. 89-122 (Sept. 21, 1989). This endorsement may be issued only if the applicant has had five years of unrestricted driving experience and can demonstrate good character, competency, and fitness. T.C.A. § 55-50-302.

Limitations of Liability for Employers

Reference Number: CTAS-2477

Under T.C.A. § 40-29-108, an action may not be brought against an employer or contracting party for negligent hiring, training, retention, or supervision of an employee or independent contractor based solely on the fact that the employee or independent contractor has been previously convicted of a criminal offense. In an action against an employer or contracting party for negligent hiring, training, retention, or supervision of an employee or independent contractor, evidence that the employee or independent contractor has been previously convicted of a criminal offense is inadmissible.

However, the above provisions of T.C.A. § 40-29-108 will not apply if the employer or contracting party knew or reasonably should have known of the employee's or independent contractor's prior conviction, and:

1. The employee or contractor was previously convicted of an offense that was committed while performing duties substantially like those reasonably expected to be completed in the employment or under the contract, or under conditions substantially similar to those reasonably expected to be encountered in the employment or under the contract; or
2. The employer or contractor was convicted of a violent offense, defined in § 40-35-120(b), or a violent sexual offense, defined in § 40-39-202.

Additionally, sections (a) and (b) of T.C.A. § 40-29-108 will not apply if:

1. The cause of action concerns the misuse by an employee or independent contractor of the funds or property of a person other than the employer or contracting party;
2. On the date the employee or independent contractor was hired, the employee or independent contractor had been previously convicted of an offense with an element which includes fraud or the misuse of funds or property; and
3. The employer or contracting party should have reasonably foreseen that the position for which the employee or independent contractor was being hired would involve managing funds or property of a person other than the employer or contracting party..

The CROWN Act

Reference Number: CTAS-2482

The CROWN Act prohibits employers from adopting a policy which does not allow employees to wear the

employee's hair in braids, locs, twists, or another manner that is part of the cultural identification of the employee's ethnic group. A policy adopted in violation of this law is discriminatory and void.

The law does not create a private cause of action. An employee may file a complaint with the department of labor and workforce development. The department will provide a warning to an employer in violation of this section.

The law does not apply to a public safety employee if it would prevent the employee from performing the essential functions of the employee's job and does not apply to a policy that an employer must adopt to adhere to safety standards, or to comply with federal or state laws, rules, and regulations relative to health or safety.

T. C. A. § 50-1-313.

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