

# PERSONNEL ISSUES



COUNTY OFFICIALS ORIENTATION PROGRAM 2024

August 2024

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# PERSONNEL MANAGEMENT IN COUNTIES

## HR Management in Counties

HR management not centralized

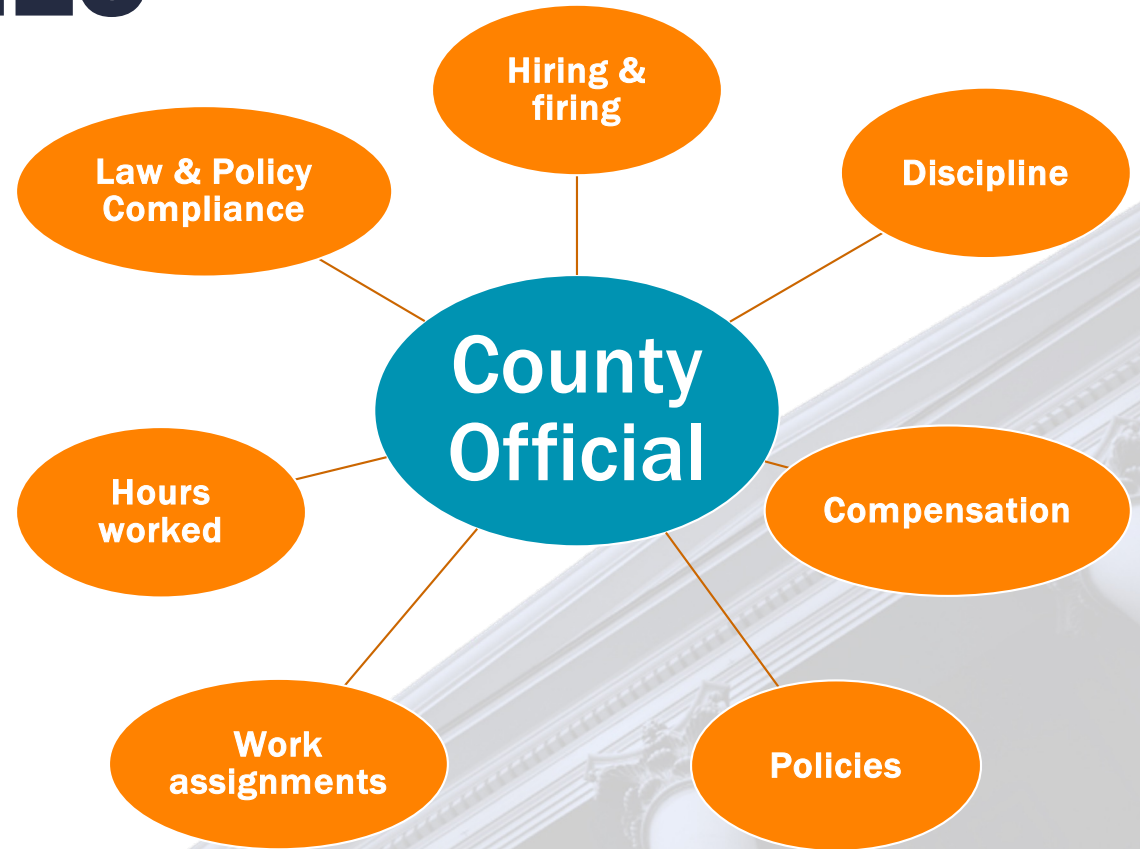
Financial aspects may/may not be centralized

About 1/3 of counties have a HR Director

Not uniform across the state



# GENERAL RULES



# WHOSE AUTHORITY?

## County Commission authority:

**No**

Day-to-day personnel  
decisions in county offices

**Yes**

Overall budget for employee  
compensation and benefits

Health insurance and other  
countywide benefits



# THREE BIGGEST ISSUES NOW



**Policies**



**Budget &  
Authority to Hire**



**Staffing**

# PERSONNEL POLICIES – REQUIRED

**T.C.A. § 5-23-101 *et seq.***

- **Leave**
- **Wage & hour**
- **Non-discrimination**
- **Drug testing (only safety sensitive employees)**



# PERSONNEL POLICIES – REQUIRED

- ▶ All county employees must be covered
- ▶ Policies may be countywide or office-specific
  - ▶ CLB approves countywide policies
  - ▶ If office files individually, CLB has no approval
- ▶ Approved by attorney (county attorney or other attorney appointed by county mayor for this purpose)
- ▶ Filed in office of county clerk

▶ **FIND YOUR POLICIES** ◀



# PERSONNEL POLICIES – REQUIRED

► Policies may be changed – method depends on how policies were adopted

Separate policies  
adopted for your office

*May be changed at any  
time with attorney  
approval*

Governed by  
countywide policies

*May file separate policies  
with attorney approval  
on or before November 30  
(or wait until next year)*



# PERSONNEL POLICIES – OTHER

Each official can adopt policies in addition to those that are required by law

Cover day-to-day operation of the office

No approval or filing required

Check with your county attorney to make sure nothing will cause you problems



# HOW EMPLOYEES ARE HIRED: HIGHWAY DEPARTMENTS



Chief Administrative Officer (Highway Superintendent) has broad authority to determine number and compensation of employees within the budget adopted by county legislative body (T.C.A. § 54-7-109).

# HOW EMPLOYEES ARE HIRED: PROPERTY ASSESSOR'S OFFICE

Limited by the budget adopted by the CLB

Authorized by statute to appoint one deputy for each 4,500 parcels over and above the first 4,500 parcels in the county.

9,000 parcels = one deputy

Each deputy has the same power, duties, and liabilities as the assessor concerning appraisal, classification, and assessment of property.

If the assessor does not have enough parcels to qualify for a deputy, a secretary may be appointed with approval of the CLB.

T.C.A. § 67-1-506



# HOW EMPLOYEES ARE HIRED: COUNTY MAYORS

## T.C.A. § 5-6-116

- ▶ The county mayor has the authority to hire clerical assistants where necessary to properly and efficiently transact the business of that office under T.C.A. § 5-6-116, as long as sufficient funds have been appropriated for this purpose.

# HOW EMPLOYEES ARE HIRED: “FEE OFFICES”

For clerks of court, county clerks, trustees, registers of deeds and sheriffs, number & compensation of employees is determined by one of two methods:

## Salary Suit

County mayor named as defendant

CLB must fund what court orders

## Letter of Agreement

Avoids lawsuit if officials agree with what CLB has budgeted



# HOW EMPLOYEES ARE HIRED

## Department of Education

School board hires employees within parameters set in Title 49 and within budget

## Other departments

Look to applicable statutory authority





We the People

# TO FIRE OR NOT TO FIRE?

First Amendment issues

Employees cannot be terminated, demoted, transferred, or otherwise punished solely for their political beliefs or activities

Lawsuits often result (not limited by TGTLA)

Personal liability is possible

# EMPLOYMENT LAW

## TO FIRE OR NOT TO FIRE?

### Other rights

Personnel policies may require written notice, appeal, hearing or other procedures

### Contractual rights

Consider cost of hiring and training new personnel

Consider loss of knowledge and experience



# TO FIRE OR NOT TO FIRE?

## Evaluate First!



# TO FIRE OR NOT TO FIRE?

**Consult your County Attorney  
before taking any action!**



# OVERVIEW OF PERSONNEL LAWS

State and Federal



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# FEDERAL FAIR LABOR STANDARDS ACT (FLSA)

- Minimum wage is \$7.25 per hour
- If employee works overtime, employee **MUST** be paid overtime at 1½ times regular rate of pay
- Compensatory time may be used IF policy in place or employee agrees prior to doing the work
- Administered by the U. S. Department of Labor, Wage & Hour Division



# OVERTIME EXEMPTIONS (FLSA)

Exempt employees are not entitled to overtime

- executive, administrative, professional

To qualify for exemption, employees must be paid on salary basis, at least \$844 per week/\$43,888 per year.

Must also meet primary duty test for exemption



# FAMILY AND MEDICAL LEAVE ACT (FMLA)

## ▶ Eligibility

- ▶ Employed 1 year in county AND
  - ▶ worked 1,250 hours in previous 12 months
- ## ▶ 12 workweeks leave (paid or unpaid)
- ▶ Birth or placement of child, serious health condition of employee or immediate family
  - ▶ Military family leave
  - ▶ Qualifying exigency and military caregiver leave
  - ▶ Administered by the United States Department of Labor, Wage & Hour Division

# TENNESSEE PARENTAL LEAVE ACT

- Applies to employers with 100 or more full-time employees
- Both male and female employees can take up to four months off for adoption, pregnancy, childbirth, and nursing an infant as long as the employee has been employed for 12 months
- Leave may be with or without pay
- Three months notice required unless there is a medical emergency

# AMERICANS WITH DISABILITIES ACT (ADA)



Prohibits discrimination against qualified individuals with disabilities

Requires reasonable accommodation

Medical records **CONFIDENTIAL**

Prohibits medical examinations prior to conditional job offers



# THE PREGNANT WORKER'S FAIRNESS ACT

## State Level

- Requires employers to make reasonable accommodations for medical needs arising from pregnancy, childbirth, or related medical conditions. (Effective October 1, 2020)

## Federal Level

- Requires employers to provide “reasonable accommodations” to a qualified employee’s known limitations related to pregnancy, childbirth, or related medical conditions, unless the accommodation would cause an undue hardship for the employer. (Effective June 27, 2023)

# THE PUMP ACT

Requires employers to provide reasonable break times for an employee to express breast milk for their nursing child for one year after the child's birth each time such employee has need to express the milk.

Employees are entitled to a place to pump at work, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public.

# DISCRIMINATION LAWS

Title VII & other discrimination laws prohibit discrimination and harassment on the basis of:

Race

Religion

Sex

Color

National Origin

Age (ADEA)

Disability (ADA)

Genetic  
Information  
(GINA)

# 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.
- Does not create a private cause of action.
- Does not apply to public safety employees if it would prevent the employee from performing the essential functions of the job.
- Does not apply to a policy an employer must adhere to for safety standards.



# DISCRIMINATION – MILITARY SERVICE

**No denial** of employment, reemployment, retention, promotion, or any benefit of employment...

...on basis of any manner of connection  
to the armed forces

# DRUG AND ALCOHOL TESTING

- ▶ 4<sup>th</sup> Amendment – warrantless search
- ▶ No law requires testing of employees except those whose jobs require a commercial driver license (CDLs)
- ▶ “Safety Sensitive” = *“fraught with such risks of injury to others that even a momentary lapse of attention can have disastrous consequences”*



**WRITTEN POLICY REQUIRED**

# FIRST AMENDMENT ISSUES



Governmental employees have a First Amendment right to speak out on “matters of public concern”

Limitation: First Amendment generally does not protect employees complaining about office management issues



# OTHER PERSONNEL LAWS

Retaliation/Whistleblower issues

Form I-9

State law issues

**Workers' compensation**

**Health insurance**

**Unemployment compensation**





# RECORDKEEPING



**Good documentation is important**

**Each department head is responsible for recordkeeping unless recordkeeping is centralized (T.C.A. § 5-23-107)**

**Disposition schedules**

# LIABILITY ISSUES

Tennessee Governmental Tort Liability Act only applies to state law issues

Most employment law issues are federal law

Many violations of employee's rights under employment laws can result in personal liability



# WHERE TO FIND HELP



Your County Attorney



County Technical Assistance Service

<http://www.ctas.tennessee.edu>

CTAS electronic library (“e-Li”)

<http://www.ctas.tennessee.edu/eli>



United States Dept of Labor, Wage & Hour Division

<http://www.dol.gov/whd>



U.S. Equal Employment Opportunity Commission  
(EEOC)

<http://www.eeoc.gov>





**REMEMBER...**

**Three biggest personnel  
issues now?**

