

# PERSONNEL LAWS

NEW SHERIFF'S SCHOOL  
TENNESSEE LAW ENFORCEMENT TRAINING ACADEMY  
AUGUST 31, 2018  
LIBBY MCCROSKEY, CTAS MANAGER OF LEGAL SERVICES

## Personnel Management in Counties

### HR Management in Counties

- HR management not centralized
- Financial aspects may/may not be centralized
- Most don't have HR director
- Not uniform across the state

## General Rules



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## 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

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## Three Biggest Issues Now



Personnel  
Policies



Budget &  
Authority to Hire



Staffing Issues

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## Personnel Policies – Required

### T.C.A. § 5-23-101 *et seq.*

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

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## Personnel Policies – Required

- ▶ Adopted countywide or by individual office
- ▶ Approved by attorney
- ▶ Current policies on file in County Clerk's office

▶ **FIND YOUR POLICIES** ◀

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## Personnel Policies – Required

- ▶ Policies may be changed – method depends on how policies were adopted
  - ▶ If separate policies adopted for your office, they may be changed at any time with attorney approval
  - ▶ If your office is governed by countywide policies, you may file separate policies with attorney approval on or before November 30 (or wait until next year)

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## Other Policies and Procedures

### Policies and Procedures for Sheriff's office

- These may be changed by the Sheriff
- No approval or filing required, but should check with county attorney

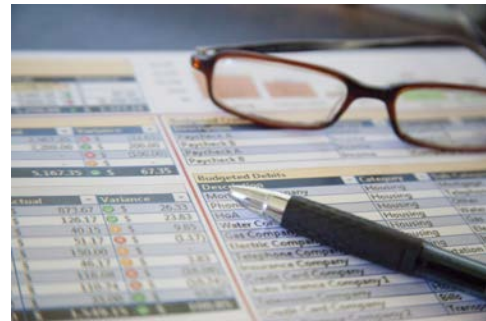
### Sheriff's Civil Service Law

- **T.C.A. § 8-8-401 et seq.** – only applies in counties that have adopted it
- **Private Act** – a few counties have civil service under a private act

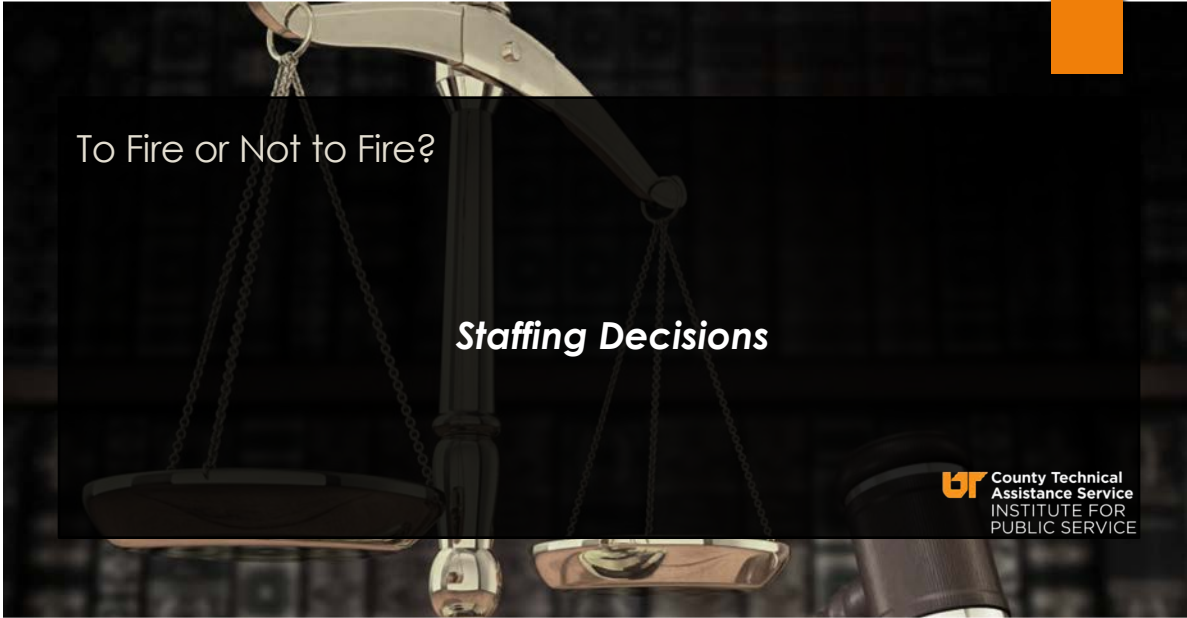
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## Personnel Budget & Authority to Hire

- ▶ Two things needed to hire deputies and assistants:
  - ▶ Budgetary authority (county budget)
  - ▶ Legal authority (court order or letter of agreement)
- ▶ Check your personnel budget
- ▶ If you agree, file Letter of Agreement
- ▶ If you disagree, file Salary Suit
- ▶ Filed in Circuit Court (or Criminal Court)



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To Fire or Not to Fire?

### Staffing Decisions

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To Fire or Not to Fire?



#### ▶ First Amendment issues

- ▶ Employees cannot be fired, demoted, transferred, or otherwise punished solely for their political beliefs or activities
- ▶ Lawsuits often result
- ▶ Personal liability is possible

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## Examples – Recent Lawsuits

### Cannon County Sheriff

- Sued for \$400,000 (\$250,000 county, \$150,000 sheriff)
- \$45,000 settlement in 2012

### Monroe County Highway Superintendent

- 17 workers sued after 2010 election
- \$500,000 settlement in June 2014

### Rutherford County Sheriff

- 1 employee sued after 2014 election
- Settled for \$137,500 in 2016

### City of Dunlap Mayor

- 1 employee sued on 5/4/18 after 2017 election for \$3 million

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## To Fire or Not to Fire?

- ▶ Other rights
  - ▶ Personnel policies
  - ▶ CIVIL SERVICE
- ▶ Consider cost of hiring and training new personnel
- ▶ Consider loss of knowledge and experience



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To Fire or Not to Fire?

## Evaluate First!



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To Fire or Not to Fire?

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

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# Overview of Personnel Laws

STATE AND FEDERAL

# Overview of Personnel Laws

- ▶ 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 employee agrees prior to doing the work
  - ▶ Administered by the U. S. Department of Labor, Wage & Hour Division

## EMPLOYEE RIGHTS UNDER THE FAIR LABOR STANDARDS ACT

### FEDERAL MINIMUM WAGE

**\$7.25** PER HOUR  
BEGINNING JULY 24, 2009

The law requires employers to display this poster where employees can readily see it.

**OVERTIME PAY** At least 1½ times the regular rate of pay for all hours worked over 40 in a workweek.

**CHILD LABOR** An employee must be at least 16 years old to work in most non-harmful jobs and at least 18 to work in non-farm jobs declared hazardous by the Secretary of Labor. Youths 14 and 15 years old may work limited hours in retail food establishments, non-hazardous farming, non-hazardous jobs with certain non-harmful occupations. Different rules apply in agricultural employment.

**TIP CREDIT** Employees of "tipped employees" who meet certain conditions may claim a "tip credit" against their minimum wage obligation. If an employer has complied with the employer's minimum wage of at least \$2.13 per hour, the employer may claim as the difference.

**NURSING MOTHERS** The FLSA requires employers to provide reasonable break times for a nursing mother employee who is subject to the FLSA's overtime requirements in order for the employee to express breast milk for her nursing child for one year after the child's birth each time such employee has a need to express breast milk. Employers are also required to provide a clean, safe place in which to do so.

**ENFORCEMENT** The Department has authority to receive back wages and an equal amount in liquidated damages in instances of minimum wage, overtime, and other violations. The Department may initiate and/or conduct administrative proceedings. Employees may be assessed civil penalties for each violation or repeated violation of the minimum wage or overtime pay provisions of the law. Civil penalties may also be assessed for violations of the child labor provisions. The Federal Child Support Enforcement System may be used to collect child support. The results of the Federal Child Support Enforcement System may be used to enforce the child support provisions of the law. The results of the Federal Child Support Enforcement System may be used to enforce the child support provisions of the law.

**ADDITIONAL INFORMATION**

- Certain occupations and establishments are exempt from the minimum wage, overtime, and other provisions.
- Equal provisions apply to workers in American Samoa, the Commonwealth of the Northern Mariana Islands, and the Commonwealth of Puerto Rico.
- Some state laws provide greater employee protections; employers must comply with both.
- Some employees are not covered by the FLSA, but are covered by other laws that provide similar protection and remedy. Such employees include: independent contractors, certain agricultural employees, domestic employees, and certain seasonal employees.
- Certain full-time students, student workers, apprentices, and workers with disabilities may be paid less than the minimum wage under special conditions issued by the Department of Labor.

## 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 \$23,660
- ▶ Must also meet primary duty test for exemption



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## Overview of Personnel Laws

- ▶ Family and Medical Leave Act (FMLA)
  - ▶ Eligible if employed one year and worked 1,250 hours in previous 12 months
  - ▶ Birth or placement of child for adoption or foster care, serious health condition of employee or immediate family, military family leave
  - ▶ 12 workweeks leave (paid or unpaid) (26 workweeks for military caregiver)
  - ▶ Administered by the United States Department of Labor, Wage & Hour Division



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## Overview of Personnel Laws

- ▶ Americans with Disabilities Act
  - ▶ Title I – prohibits discrimination in employment
  - ▶ Title II – prohibits discrimination in government services, programs and activities



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## Overview of Personnel Laws

- ▶ Americans with Disabilities Act
  - ▶ Prohibits medical/psychological exams before conditional job offer has been made; exams must be job-related
  - ▶ Prohibits discrimination against a qualified individual with a disability if that person is able to perform the essential functions of the job with or without a reasonable accommodation



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## Overview of Personnel Laws

- ▶ Americans with Disabilities Act
  - ▶ Prohibits discrimination and requires reasonable accommodation for known disabilities in all aspects of employment: applications, interviews, hiring, compensation, benefits, promotions, transfers, layoffs, terminations
  - ▶ **Focus is on reasonable accommodation**



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## Overview of Personnel Laws

- ▶ Americans with Disabilities Act
  - ▶ All medical information obtained from employees must be kept confidential – need to keep in separate files
  - ▶ Each county has an ADA Coordinator – find out who he or she is in your county

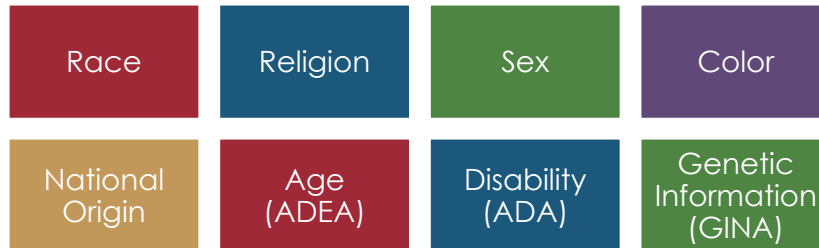


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## Overview of Personnel Laws

- ▶ Title VII and other anti-discrimination laws prohibit discrimination and harassment on the basis of:



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## 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**

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## 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**

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## 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

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## Overview of Personnel Laws

- ▶ **Retaliation:** Cannot take adverse employment actions against employees for exercising legally-protected rights or for participating in protected activities (Title VII, ADA, FMLA, worker's comp, etc.)
- ▶ **Whistleblower Laws:** Cannot terminate employees for refusing to participate in or remain silent about illegal activities
- ▶ Other state laws
  - ▶ Workers' compensation
  - ▶ Health insurance
  - ▶ Unemployment compensation



## Recordkeeping

- ▶ Each official is responsible for:
  - ▶ Maintaining all personnel records unless recordkeeping is centralized
  - ▶ Distributing copies of personnel policies to employees
  - ▶ Ensuring that all required posters and notifications are posted and/or distributed
    - ▶ FLSA, FMLA, ADA, EEO, etc.
- ▶ Check retention schedules
- ▶ Good documentation is important!





## 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



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## Where to Find Help

Your County Attorney

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[www.ctas.tennessee.edu](http://www.ctas.tennessee.edu)

United States Department  
of Labor, Wage & Hour  
Division  
[www.dol.gov/whd/](http://www.dol.gov/whd/)

U. S. Equal Employment  
Opportunity Commission  
(EEOC)  
[www.eeoc.gov](http://www.eeoc.gov)

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## Where to find more information



▶ The CTAS electronic library (e-Li) is a searchable database of all the information formerly found in CTAS publications. The information is organized by topic. You can find specific information by using the Ask e-Li search function.

▶ [eli.ctas.tennessee.edu](http://eli.ctas.tennessee.edu)

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## Remember...

▶ Three biggest personnel issues now?

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