Human Resources 101
for Municipal Officials

Presented for League of Wisconsin Municipalities
Webinar Series

May 21, 2019

What We Will Cover

- Classification.
- Recruitment.
- Onboarding.
- Wage & Hour.
- Handbooks.
- Medical Situations.
- Safety.
- Supervisors.
- Training.
- Discipline/Termination.
- Documentation/Recordkeeping.
- Managing Conflict.

Learning Objectives

- Overview of the components of effective human resources management.
- Understand that there are a myriad of different laws that impact the human resources function.
- Touch on human resources best practices.
- Learn to spot potential areas of trouble.
- Know when to seek legal assistance.
Components of People Management
• Transactional – administration of employee services.
• Strategic –
  • Organizational development.
  • Talent management.
  • Alignment of organizational objectives.

Components of People Management
• Legal Compliance.
  • State and Federal statutes.
  • Common Law.
  • Wrongful discharge/discharge in violation of public policy.
  • Breach of contract.
  • Invasion of privacy.
  • Defamation.
  • Negligent hiring, training, retention, supervision.
  • Intentional infliction of emotional distress.

Independent Contractors
To be considered an independent contractor and not an employee, an individual must meet and maintain all nine of the following requirements.

Requirement One: Maintain a separate business.
Requirement Two: Obtain a Federal Employer Identification Number or has filed business or self-employment income tax returns with the IRS based on the work or service in the previous year.
Requirement Three: Operate under specific contracts.
Requirement Four: Be responsible for operating expenses under the contract.
Requirement Five: Be responsible for satisfactory performance of the work under the contracts.
Requirement Six: Be paid per contract, per job, by commission or by competitive bid.
Requirement Seven: Be subject to profit or loss in performing the work under the contracts.
Requirement Eight: Have recurring business liabilities and obligations.
Requirement Nine: Be in a position to succeed or fail if business expenses exceed income.
Non-exempt v. Exempt

• Hourly versus Salaried.
• Impending revision to salary threshold.
• What is employee’s primary duty?

Categories:
• Administrative ~ discretion and judgment= matters of significance (see WI).
• Executive ~ C-Suite and managerial who supervise others.
• Professional ~ engineers, attorneys, doctors, accountants= specialized study (see WI).
• Misc categories ~ sales, commission, IT-related, etc.

Recruitment

• Hire right without violating the law.
• Seek to prevent the use of arbitrary and irrelevant criteria that intentionally or unintentionally could screen out any candidate based on a protected class status.
• The law presumes that inquiries that are made are used in the hiring decision.
• The entire process must be designed to stay focused on only using job-related criteria to make a final determination.
• Job descriptions will be used as the applicable framework.

The Wisconsin Fair Employment Law prohibits employers from discriminating against employees and job applicants because of any of the following:

• Age Discrimination
• Arrest and/or Conviction Record
• Ancestry, Color, National Origin or Race
• Creed
• Disability
• Genetic Testing
• Honesty Testing
• Marital Status
• Military Status
• Pregnancy or Childbirth
• Sex Discrimination
• Sexual Orientation
• Use or possession of lawful products off the employer’s premises during nonworking hours
Interviewing

- Must have a very clear idea of the expectations for and duties of the position and formulate questions and assessments around that “picture” of the ideal candidate.
- No personal questions.

- Tailor all inquiries to an ability to do the job and fit the culture.
  - Questions and observations around attitude, demeanor; objective descriptions must be documented.
  - Utilize your organization’s stated mission, vision and values.
- Studies show that one of the greatest predictors of high-level performance is past performance.
- Heavily utilize behavioral, situational, and hypothetical-based questions.

- Can you end an interview with a candidate before asking every last question on the list??
- Documentation.
- Decision-making.
- Training for hiring managers/decision-makers.
Appropriate Interview Questions

- Why are you interested in this position?
- Can you perform the essential functions of the position as listed on the job description?
- The regular hours for this position are 8 a.m. to 4:30 p.m., will you be able to work those hours?
- What attributes do you think will be necessary to be successful in this job/career?
- Name one thing you have done or accomplished with prior employer that you are particularly proud of? One disappointment?
- Tell me about a time you dealt with a difficult customer and how you handled the situation?

Age/Date of Birth

- Unlawful:
  - What is your age or date of birth?
  - How old are you?
  - What year were you born?
  - What year did you graduate from high school/college?
  - At what age do you plan to retire?
- Lawful:
  - How long do you intend to work in the position you are seeking?

Arrest/Conviction

- Have you ever been arrested or convicted?
- Past arrests versus pending.
- Conviction:
  - “A conviction will not necessarily disqualify you from employment. It will be considered only as it may relate to the job you are seeking.”
Arrest/Conviction

- Applicable standard – "substantially related to the circumstances of the job."
- Requires a case by case determination.
- Involves assessing whether the tendencies to behave in a certain way in a particular context are likely to reappear in a related context based on the revealed traits.
- Best handled at background screen phase.

Weekend Availability

- Are you able to work on Saturday and Sunday?
- Make clear that a reasonable effort to accommodate religious practices will be made if possible without undue hardship on the employer.
  - Volunteers
  - Rotating schedules
  - Trades

Financial Background

- Do you have a garnishment record?
- Do you have credit problems?
- Describe your credit history? Bankruptcy?
- Are you a homeowner?
- Fair Credit & Reporting Act regulations.
Physical Status

Unlawful –
- Do you have a disability?
- Any family members with a disability?
- Have you ever been injured on the job?
- Have you ever filed a work comp claim?
- What is your health history?

Lawful –
- “Are you able to perform all of the duties and responsibilities of this position, with or without reasonable accommodation?”

Assessments

- Valid.
- Reliable.
- Job-related.
- Vendors matter.

Background Screening

- Consent.
- Conducted by someone other than hiring manager.
- Use of third parties and the Fair Credit Reporting Act requirements.
- Professional references, employment, education, credit/financial history, driving, criminal.
Onboarding

- Set up for success and retention.
- Goals:
  - Learn the new role and all that goes along with it.
  - Integration into the culture, expectations, and norms.
  - Develop relationships and feeling of belonging.
- Orientation checklist.
- Orientation guide for new hires.
- Set a 30/60/90 day plan and schedule follow-up at those same intervals.
- Survey/Exit interview.

I-9 Forms

- Form can be completed any time after new hire is cleared to start and prior to the first day of employment, but must be finalized within 3 days of the hire date.
- Employers must examine original and unexpired documents. New hires choose which documents to bring.
- Form must be completed to a “T.”
- Forms of identification must strictly adhere to the List of Acceptable Documents.
- Use the correct form.
- E-verify.
- Fines and penalties are stiff.
- Government has tripled the # of workplace audits.

Calculation of Overtime

- Must be calculated in a workweek.
- The calculation must include all compensation received.
- Hours worked?
- Travel, training, meals/rest periods.
- Vacation, holiday, sick, comp time?
- Employees processing payroll must be well trained in both state and federal laws.
Compensable Hours

- Meals.
- Travel.
- Training.
- Unauthorized overtime.
- Off-duty emails and phone calls.

Handbooks

- Do not use a form handbook.
- Keep it simple and not too specific.
- Ensure it contains needed disclaimers:
  - Not a contract/employment-at-will.
  - Right to modify.
  - No exceptions other than by signed writing.
- Mandatory grievance procedures.
- Terms to avoid – “permanent”, “probationary.”
- Final product reviewed by employment counsel.
- Keep it updated.
- Updates reviewed by employment counsel.

Medical Inquiries and Situations

- WFEPA.
  - Limit capacity to work.
- Reasonable accommodation.
- WFEPA v. ADA.
- Interactive process required by ADA.
- Pre-offer, Post-offer, Post-hire.
- Privacy and protection of medical information.
  - Locked and separate.
  - “Need to know.”
  - Avoid casual conversation.
Safety

- Care and concern for employees.
- Never know when DSPS will come knocking at your door.
- Complaint.
- Audit.
- Response to reporting.
- Employee right to refuse.
- Personal protective equipment.
- Training – employee and supervisors.
- Accident investigations.
- Injury reporting – the right way.
- Maintenance of records.
- Safety posters.

Importance of Supervisors

- Monitor work environment.
- Enforce zero tolerance for harassing, discriminatory, bullying behavior.
- Respond to complaints and observations.
  - All must be taken seriously, even off-hand comments or requests that nothing be done.
- Scan for and be aware of retaliation.
- Consistent enforcement of policies.
- Recognize how to handle medical situations.
- Act like leaders.
- Legal liability.

Training

- Safety.
- Harassment.
- Discrimination.
- FMLA.
- ADA.
- Privacy.
- Employee v. Supervisory.
**Discipline Best Practices**

- **Goal**: Behavior change and to promote fairness.
- Be aware of statutory standards, i.e., police and fire.
  - ‘Due process’ basics.
  - Expectations and consequences are clear.
  - Decision is based on factual evidence following fair and impartial investigation.
  - Employee given right to tell his or her side of the story.
  - Discipline imposed is proportionate to the infraction and equally applied in similar circumstances.
  - Uses progressive discipline where appropriate.
  - Consult employment counsel prior to denial of pay/position.

**Termination Best Practices**

- Give consideration for the location.
- Use a witness.
- Make it happen in a timely fashion.
- Early to mid-week is best; avoid important dates and times.
- Make it clear in the very first sentence.
- Do not debate and do not be led to make a statement you will later regret.
- Do not discuss the reason for termination with others.
- Do inform staff and third parties who need to know of the decision.

**Documentation**

- Do it.
- Important to:
  - Ward off claims.
  - Defend claims.
  - Demonstrate fair and lawful treatment.
  - Impede fabrication.
- If done incorrectly:
  - Can lead to claims.
  - Lead to a loss if claim is filed.
Recordkeeping

- Know federal and state laws.
- Understand obligations in the event of anticipated and actual litigation.
- Incorporate into municipal ordinances.
- Understand employees’ rights to access records.
- Audit recordkeeping, postings and reporting.

Conflict Management

- If neglected, can be a culture killer.
- If not equipped, some may have no idea how to negotiate conflict or resolve problems.
- Components.
- Training.

If you remember only one thing:

- Understand the applicable laws and how they apply to your municipality.
- One person appointed, educated and trained.
- Regularly assess human resources practices, policies and procedures.
Resources

• Wisconsin State SHRM – mid-October.
• HRCI/SHRM certifications.
• State Bar of Wisconsin.
• ICMA.
• WPFLRA.