



## 2018 WMCA "Super Clerks" 38th Annual Conference

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# *Employment Issues and Your Personnel Manual*

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# *Purpose of Personnel Manuals*

- Provide employees notice of work rules and standards of conduct.
- Outline compensation, hours of work, and conditions of employment.
- Protect the employer in the event of legal claims.
- It is not a contract or an agreement.

# *Legal Impact*

- Harassment
  - Employers should have policies prohibiting all forms of harassment and establishing complaint procedure. *Farragher v. City of Boca Raton*, 118 S.Ct. 2275 (1998). In a large sphere of harassment claims, an employer can avoid liability if it implements a proper policy and enforces it.

# *Legal Impact*

- Wage and Hour
  - The implementation of policies regarding hours of work and overtime help to delineate status and procedures relevant to federal and state laws regarding overtime.

# *Legal Impact*

- FMLA

Employers are required to inform employees of their rights and responsibilities under these laws.

# *Handbook Issues – Extinct Provisions*

- Seniority
  - Layoffs
  - Time off selection
  - Promotions/vacancies

# *Handbook Issues – Extinct Provisions*

- Probationary Period
  - At-will employment
  - Introductory Period
  - Compensation

# *Handbook Issues – Separation of Employment*

- **At-Will Employment**

“This manual is not a contract, express or implied. It does not guarantee employment for any specific duration. Either you or \_\_\_\_\_ may terminate your employment at any time, for any reason, with or without case or notice, so long as that reason is not illegal. No supervisor, manager, or representative of \_\_\_\_\_ other than \_\_\_\_\_ has authority to enter into any agreement with you for employment for any specified duration. Any employment agreement entered into by \_\_\_\_\_ shall not be enforceable unless it is a formal written agreement and signed by you and \_\_\_\_\_.”



# *Handbook Issues – Separation of Employment*

- **Progressive Discipline**

“The following corrective actions are available for supervisors to use. The City is not required to follow a progression of discipline, but may impose such corrective action as it deems appropriate for the circumstances. These procedures are not all inclusive and therefore departments may pursue other discipline methods appropriate to a situation, subject to approval by the Personnel Committee.”

# *Handbook Issues – Separation of Employment*

- Grievance Policy

“The Impartial Hearing Officer shall issue a written decision containing findings of fact and analysis. The IHO shall uphold the administrative decision unless that decision was arbitrary or capricious, which shall mean without a rational basis.”

“The Impartial Hearing Officer shall have no power to issue any remedy, but the Impartial Hearing Officer may recommend a remedy. Remedial authority shall be subject to the determination and approval of the City Council, and shall be addressed by the City Council in the event the Grievance is sustained.”

## *Handbook Issues – Hours of Work*

“The normal work day for full-time employees shall be eight (8) hours. The normal work week for full-time employees shall be forty (40) hours. The hours of operation each day and week will be determined by the City.”

## *Handbook Issues – Hours of Work*

- “The workweek is designated at 12:01 A.M. Sunday through Saturday 12:00 Midnight. All overtime for a pay period must be reported through Saturday evening at 12:00 Midnight.”

# *Handbook Issues - Overtime*

- **FLSA Issues - Exempt/Non-exempt**

- **“Non-Exempt:** Employees who are not exempt from minimum wage and overtime provisions of the Fair Labor Standards Act, as amended. Non-exempt employees by law receive overtime pay for work performed over forty (40) hours per week.”
- **“Exempt:** Employees who are exempt from the minimum wage and overtime provisions of the Fair Labor Standards Act, as amended. Exempt employees are not entitled by law to receive overtime pay.”

# *Handbook Issues - Overtime*

- “The Village will compensate non-exempt employees under the Fair Labor Standards Act time one and one-half (1.5) of the regular hourly rate of pay for all hours worked, not paid, in excess of forty (40) hours per week.”

# *Handbook Issues - Overtime*

- “There may be times when it will be necessary for employees to work overtime. At such times, a supervisor will notify employees as early as possible regarding the Village’s overtime needs. Employees shall work overtime when requested to do so by the Village.”

# *Handbook Issues - Overtime*

- “There may be times when an employee believes the employee needs to work overtime to complete Village work assigned to the employee. In that case, the overtime must be approved in advance by the employee's supervisor. Failure to get such approval may result in discipline up to and including discharge.”



# *Handbook Issues –Compensatory Time*

- Flex v. Compensatory Time
- FLSA rules:
  - Exempt versus non-exempt
  - Must be in writing
  - 1.5 times overtime hours
  - Limit on Accumulation (240/480 hours)
  - Scheduling
  - Payout versus carryover

## *Handbook Issues –Compensatory Time*

- “Non-exempt-employees under the Fair Labor Standards Act may receive compensatory time off in lieu of overtime pay. Compensatory time allowance is subject to the following:”

## *Handbook Issues –Compensatory Time*

- “An employee may elect to accumulate compensatory time rather than be paid overtime. Compensatory time shall be earned at the rate of one and one-half (1.5) hours for every hour of overtime worked. For example, four hours of overtime work will result in six hours of compensatory time.”

# *Handbook Issues –Compensatory Time*

- “An employee who elects to accumulate compensatory time rather than be paid overtime must make an election to designate overtime hours as compensatory time on the employee’s weekly time sheet. Once the time sheet is submitted, the designation cannot be changed.”

## *Handbook Issues –Compensatory Time*

- “Compensatory time shall not be accumulated beyond forty (40) hours. Employees who have reached forty hours of compensatory time will not be permitted to accumulate additional compensatory time until such time as their balance is below forty (40) hours and then only up forty (40) hours.”

## *Handbook Issues –Compensatory Time*

- Compensatory time must be used prior to December 10 of the year earned. Compensatory time not used by this date shall be paid to the employee on a straight time basis in the pay period following December 10.”

# *Handbook Issues –Compensatory Time*

- “Use of compensatory time must be scheduled with the prior approval of the Department Head or designee. Compensatory time may be granted by the Department Head as requested by the employee, provided the final determination of the number of employees who may use compensatory time at any given time is vested in the Department Head to insure the **orderly and efficient operation** of the Village. Failure of the employee to secure prior approval shall constitute leaving the work place without permission and may result in discipline, up to and including termination.”

## *Handbook Issues –Compensatory Time*

- “Exempt employees under the Fair Labor Standards Act are not eligible for overtime. In recognition for time worked necessitated by circumstances above and beyond expectation of the job or for time worked which is unusually more than normal, exempt employees may ...



# *Handbook Issues –Compensatory Time*

- request time off from the City Administrator This time off is not intended to be accumulated, paid out or used to supplement vacation or sick leave.”

or

- receive a total of five days (40) hours on January 1<sup>st</sup> of each year in lieu of compensatory time and may be taken any time during the year and may not be carried over.”

# *Handbook Issues –Sick Leave*

- Earning rate
- Accumulation
- Usage
- Payout upon separation from employment
- “Cash in lieu” option

# *Handbook Issues –Sick Leave*

- Earning Rate/Accumulation

“Regular full-time employees shall earn one day per month of sick leave which may be accumulated to a maximum of ninety (90) days.”

# *Handbook Issues –Sick Leave*

- Usage

“Sick leave shall be used for the purpose for which it was intended; namely, to provide an employee protection against loss of pay due to illness or injury. Sick leave shall be used only for an employee or an employee’s spouse or dependent’s sickness, injury, or medical condition.”

“Employees shall not engage in any other employment during the time they are granted the use of accrued sick leave.”

# *Handbook Issues –Sick Leave*

- Usage:

“To qualify for sick pay, an employee must notify the employee’s supervisor of the absence and the reason by 7:30 a.m. of the morning of the absence, unless circumstances preclude such notice. If the supervisor is not available, the employee should inform the Department Head. “

“The Village may require an employee to submit medical documentation to verify the use of sick leave or to support a request for leave. In addition, the Village may require a fitness for duty examination, as allowed by law, prior to an employee being allowed to return to work.”

# *Handbook Issues –Sick Leave*

- **Payout**

“Employees who retire pursuant to Wisconsin Retirement System standards may use accumulated and unused sick leave to pay health insurance premiums calculated based upon the number of hours times the employee’s hourly rate of pay at the time of retirement. Sick leave will not be paid out upon any other separation of employment except upon agreement by the Village.”

or

“There will be no payout of sick time at year end or upon an employee's separation from Utility employment.”



# *Handbook Issues –Sick Leave*

- “Regular Full-time Employees who leave the service of the Village through death, retirement pursuant to WRS standards shall be entitled to 100% of any unused sick leave to **be paid** to the employee at the employee's his/her current hourly pay rate at the time of separation up to a maximum of 120 days or at the time of separation, an employee shall designate this benefit, up to 150 days, for **continued health insurance coverage** as provided above. **The Village shall designate the option to be used in consultation with the employee.**”

# *Handbook Issues - Vacation*

- First year accrual
- Anniversary date versus calendar year
- Carry-over
- Payment upon Separation from employment



# *Handbook Issues - Vacation*

“Full-time Utility employees shall be entitled to the following vacation leave, subject to conditions stated:

Employees who successfully complete their orientation period shall at that time be entitled to one (1) work week of vacation, equivalent to forty (40) hours regular time.

Employees continuously employed for one (1) year from the date of employment shall be entitled to one (1) work weeks of vacation, equivalent to forty (40) hours regular time.”

# *Handbook Issues - Vacation*

- “On January 1 of each year, the Village will credit each employee’s vacation bank with the amount of vacation each employee will earn as of the employee’s anniversary date that year. An employee may use the vacation credited to the employee’s vacation bank prior to the employee’s anniversary date.”
- “However, if the employee leaves Village employment prior to the employee’s anniversary date and has used unearned vacation time, the employee will be required to repay the Village for the amount paid to the employee for the vacation, either by means of deduction from the employee’s last paycheck or otherwise. Vacation must be used each calendar year and cannot be carried over or accumulated for subsequent use.”

# *Handbook Issues - Vacation*

- “Vacation may be taken with pay only after completing the work year to the anniversary date for which vacation is earned. “
- “Vacations requested during the year when the vacation is being earned may be granted on a leave basis without pay, and the vacation pay will be granted at the completion of the employee’s anniversary year.”

# *Handbook Issues - Vacation*

“Vacation cannot be taken until earned. Vacation must be used each calendar year and cannot be carried over or accumulated for subsequent use.”

or

“Unused vacation shall not be carried over from one anniversary year to the next anniversary year unless approved by the General Manager.”

or

“Employees may carry over 40 hours of vacation. All other accrued vacation must be taken prior to the anniversary day following its accrual or lost forever.”



# *Handbook Issues - Leaves of Absence*

- Discretionary
- Length
- Payment of insurance premiums
- Accrual of sick leave and vacation

## *Handbook Issues - Leaves of Absence*

“Employees may request an unpaid personal leave of absence in writing to the General Manager. Such request must set forth the period of leave and the reason for such leave. Approval of such requests is in the Utility's sole discretion. No leave will be granted for the purpose of seeking other employment. If medically related, the employee shall provide medical documentation stating the nature of and verifying the necessity for the leave.”

## *Handbook Issues - Leaves of Absence*

“No benefits shall accrue during an unpaid leave of absence. An employee may continue the employee’s health insurance during an approved leave of absence in accordance with applicable state and federal continuation requirements.”

## *Handbook Issues - Leaves of Absence*

- “An employee on unpaid leave of absence shall give at least one week’s written notice before returning to work. If the leave was medically related, the Utility may require medical documentation that the employee is fit to return to work. An employee returning from an approved leave of absence shall be reinstated into the employee’s former position subject to operational considerations.”



# *Handbook Issues –Health Insurance*

- Opt Out Provisions

“The City shall make a monthly reimbursement to each qualified employee or elected official who does not participate in the City’s health insurance plan in an amount annually determined by the City. Spouse who both work for the City are only entitled to one opt out payment. Employees and elected officials shall be required to sign a waiver opting out of the City’s health plan coverage and must provide proof that they have coverage under another employer/union-sponsored health plan. The opt out payments shall be made into the employees’ IRS Section 125 plan for payment of qualifying expenses.”