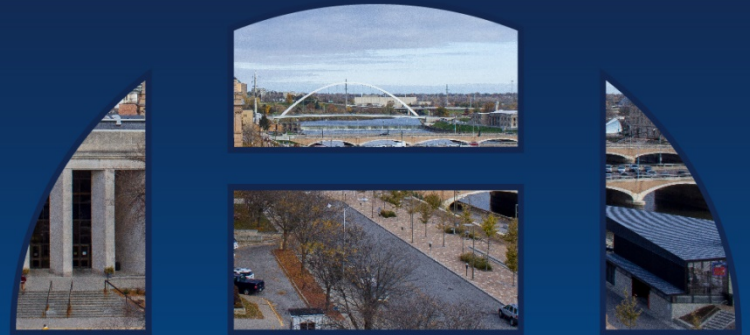




AHLERS COONEY
ATTORNEYS



Human Resources for County Officials

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ISAC New Officers' School

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3 Keys for Successful Management

1. Don't hire "bad" employees

- Implement rigorous hiring practices
- Investigate prior to hiring
 - References and former employer
 - Google (with caution)
 - In person interview

2. Train supervisors to identify "bad" employees or bad traits in workplace

3. Terminate "bad" employees

- Probationary periods
- Work rules

Hiring



NOTICE OF VACANCIES

- Advertising the Position
- Veterans Preference Requirement
 - Iowa Code Section 35C.1(2)(a) provides:
 - In all jobs of political subdivisions of the state which are to be filled by competitive examination or by appointment, **public notice of the application deadline to fill a job shall be posted at least ten days before the deadline** in the same manner as notices of meetings are posted under section 21.4
 - Internal Requirements under CBAs

EMPLOYMENT APPLICATIONS

- Veterans Preference – opportunity for applicant to share info pertaining to military service
- Refer to Job Description
- Minimum qualifications
- Statement affirming truth of application



JOB DESCRIPTIONS

- Describe expectations of position
 - Performance evaluations
 - Career advancement
 - Compensation decisions
 - Unfair hiring
- American with Disabilities Act
 - Essential functions of the job
 - Minimum requirements for applying
- Prepare before advertising or interviewing applicants

Pre-Employment Inquiries

Prohibited Questions (ADA)

1. Questions pertaining to health

- Have you ever had or been treated for any of the following conditions or diseases?
- Please list any conditions or diseases for which you have been treated in the past three years?
- Have you ever been hospitalized? If so, for what condition?
- Have you ever been treated by a psychiatrist or a psychologist? If so, for what condition?
- Have you ever been treated for any mental condition?
- Is there any health-related reason that you may not be able to perform the job for which you are applying?

Prohibited Questions (ADA)

2. Questions pertaining to disability
 - Have you had a major illness in the past five years?
 - How many days were you absent from work last year because of illness?
 - Do you have any physical defects which prevent you from performing certain kinds of work? If yes, describe work limitations.
 - Do you have any disabilities or impairments which may affect your performance in the position for which you are applying?

Prohibited Questions (ADA)

3. Questions pertaining to drug use

- Are you taking any prescribed drugs?
- Have you ever been treated for drug addiction or alcoholism?

4. Questions pertaining to past Worker's Comp

- Have you ever filed for workers' compensation benefits or had a work-related injury?

Acceptable/Unacceptable Pre-employment Inquiries

Name

“Name,” or “other names used” NOT
“maiden name”

Health
History

“Are you capable of performing the
essential functions of the job with or
without accommodation?”

Religion
Work Days

“Are you available to work the days and
hours of the job?”

Acceptable/Unacceptable Pre-employment Inquiries

Child
Care

“Is there anything that would interfere with your regular attendance at work?”

Citizen
Status

“Do you have the legal right to work in the U.S. and can you provide verification?”

School
Education
Background

“What is your educational background (w/out giving dates to degrees)?”

Acceptable/Unacceptable Pre-employment Inquiries

Emergency
Contact

“What is the name and address of a person we can notify in case of an emergency?”

Activities

“Are you a member of any organizations that have relevancy to your ability to perform the job?”

License

Limit questions to licenses required for the job, for example, holding a CDL.

Management

Break Time

- No federal or state law requires breaks
 - OSHA requires bathroom as needed
 - FLSA requires time to express breastmilk
 - CBAs often include breaks
- If breaks are unpaid, ensure that work is not performed (per FLSA)
 - Rules to prohibit off-the-clock work
 - Require approval for OT
 - Do not allow EEs to “volunteer” or stick around after hours

On Call Time

- Is on call time compensable?
 - Consider restrictions on employee's time
 - Is the employee waiting to be engaged (and thus not working), or
 - The employee is engaged to wait (and therefore working)
- Impact on benefits, including ACA
- Review expectations for “on call” employees to ensure restrictions are not so severe to render all their on-call time compensable.

Avoid Discrimination

- Title VII, Civil Rights Act of 1964 - prohibits discrimination on the basis of race, color, national origin, sex, or religion.
- Age Discrimination in Employment Act of 1967 - prohibits discrimination based on age against employees who are at least age 40
- Americans with Disabilities Act - prohibits discrimination against those who are disabled, who are perceived as disabled, or who have a record of disability.
- Iowa Civil Rights Act – race, color, creed, sex, religion, sexual orientation, gender identity, national origin, disability

Avoid Allegations of Harassment

- Investigate complaints, even anonymous ones
 - Consider if outside investigator needed
 - Seriousness of accusation
 - Protect investigation from discovery
 - Interview target, accuser, and alleged bad actor, separately
 - Speak to management for observations
 - Action will depend on findings
- Periodic training –employees & management
- Investigative report – mindful of Chapter 21

ICRC Process

ICRC

300 Days

ICRC immediately cross files unless complainant tells them not to.

EEOC

300 days

EEOC almost always defers to ICRC

Initial Screening

Administrative Closure
(30 days to request reconsideration;
2 years to request right to sue letter)

Right to sue letter

90 days to file in District Court

Further Investigation Warranted

Mediate

Settle

NO Settle

Investigate

Probable Cause

Conciliation

Set for Hearing

Public Hearing

Appeal to Commission
(*de novo*)

Judicial review §17A

§17A appeal

NOT Set for Hearing

Right to sue letter

90 days to file in District Court

NO Probable Cause

Petition for judicial review and request for reopening within 30 days
(Commission can reopen within 1 year)

Judicial review §17A

§17A appeal

EEOC will sometimes send out closure and the right to sue letter

90 days to file in District Court

ICRC will sometimes send out closure and the right to sue letter at Plaintiff's request

Personnel Files

- Employees must have access to and permitted a copy of personnel files per §91B
 - Performance evaluations
 - Disciplinary records
- EE is not entitled to references
- EE may be charged a reasonable fee for copy
- Public Records
 - Name and compensation, employment K
 - Dates of employment and position held
 - Educational background
 - Terminated for disciplinary reasons

“Supervisor files”

- Supervisor/HR files are discoverable
- May be a public record
- Do not include this information in file:
 - Health information
 - Personnel file materials
 - The only copy of evaluations, etc.
- HR should carefully review what is maintained in separate files and what belongs in the personnel file.

Handbook Policies

- Expectations for the Workplace
- Wording Matters – ex. Vacation “earned”
- Generally applicable policies
- Support for discipline or critical evaluation



Effective Discipline

- Enforce rules based on legitimate principles affecting the workplace
- Training
 - Fairness
 - Consistency
- Documentation
- CBAs



Employee use of Technology

- Written policies
 - Identify prohibited use (ex. streaming)
 - Integrate into anti-harassment policy
- ER property is subject to search/monitoring
- Public record reminder
 - EE use of personal devices for work
 - Caution when it comes to privately owned devices and ER control
- Expectations for “off duty” work

Drug Testing

- Due process rights (4th Amendment)
 - Is it reasonable? Consider:
 - Specific facts
 - Intrusiveness of test
 - Existence of individualized suspicion
- Caution: Constitutional Rights, ADA
 - Potential liability for damages, attny fees
 - Defamation or other torts against county
- Separate rules for DOT

Termination

At-Will Employment Limitations

- Collective Bargaining Agreements
- Employee Handbooks/Personnel Policies
- Individual Contracts
- Civil Service Employees
- Protected Veterans



Statutory Prohibitions on Discharge

- Title VII, Civil Rights Act of 1964 - prohibits discrimination on the basis of race, color, national origin, sex, or religion, or for asserting rights under the Act.
- Age Discrimination in Employment Act of 1967 - prohibits employment discrimination based on age against employees who are at least age 40, or for asserting rights under the Act.
- Americans with Disabilities Act - prohibits employment discrimination against individuals who are disabled, who are perceived as disabled, or who have a record of disability.
- Fair Labor Standards Act - prohibits discrimination for asserting rights under the Act.
- Occupational Safety & Health Act of 1970 - prohibits discrimination for asserting rights under the Act.
- Consumer Credit Protection Act - prohibits the discharge of employees because of garnishment of wages for any one indebtedness.
- Judiciary and Judicial Procedure Act - prohibits the discharge of employees for serving on a jury.

Veterans Preference Requirement

- Iowa Code Section 35C.6 provides:
 - No person holding a public position by appointment or employment, and belonging to any of the classes of persons to whom a preference is herein granted, shall be removed from such position or employment except for **incompetency or misconduct** shown after a hearing, upon due notice, upon stated charges, and with the right of such employee or appointee to a review by a writ of certiorari or at such person's election, to judicial review in accordance with the terms of the Iowa administrative procedure Act, chapter 17A, if that is otherwise applicable to their case

Final Paycheck

- Iowa Wage payment Collection Act prohibits, among others, the following deductions:
 - Cash shortage in common money
 - Losses due to damage property
 - Lost or stolen property
 - Cost for personal protective equipment
- Continuation of insurance, if applicable



Severance Pay

- Not required, but consider pros and cons
- Release
 - May send EE to attorney (req. if >40 yr)
 - Strength of ER's defense to claim
- Settlement agreement and any required summary is a public record per §22.13
- IPERS

Contesting Unemployment

Successfully contesting unemployment is challenging.

1. Voluntary resignation without good cause attributable to county
 2. Misconduct (high standard)
- Incentivizes employee to seek legal counsel
 - Adverse finding in unemployment proceeds is not binding on any other proceedings.

Questions

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