



Human Resources for New County Officers

Amanda Fesenmeyer, HR Director, Black Hawk County

Emily Wilson, Partner, Hasso & Wilson

Josh Hughes, Associate, Dorsey & Whitney



Roadmap

- Introductions
- Overview: Your Role to Manage HR Issues
- Introduction: Employment & Labor Law 101
- Practical Examples & Discussion
 - Screening & Hiring
 - Requests for Accommodation & Disability
 - Return to Work & FMLA
 - Harassment & Investigations
 - Performance Management
- Questions

Why me?

Your role in HR management

- HR and employment issues are *constant* for leaders in any type of organization
- Why should everyone be aware?
 - Ethical and moral: we all want positive and productive workplaces. Benefits everyone, especially your constituents!
 - Legal: as officers, your conduct and knowledge may be “imputed” on the organization. Implied duty to act on behalf of entire county
 - Financial: employment lawsuits can be expensive and result in negative publicity for counties! Fix issues before they happen.



Overview: Employment & Labor Law 101



These statutes...

Iowa Civil Rights Act
Title VII & ADEA
ADA & FMLA
FLSA & Ch. 91A
Constitutional
Provisions – State &
Federal

Apply to....

Employment actions
(hiring to termination)
Benefits
Wages & pay



And prohibit....

Discrimination or
retaliation on
protected bases
Underpayment of
wages or benefits
Retaliation

Protected Classes

Race, color, creed, sex,
gender identity, sexual
orientation, religion,
national origin, marital
status, disability



Other Specific Laws

USERRA, GINA, PDA,
EPA, § 1981, Workers'
Compensation (Ch.
85); NLRA/Ch. 20,
Davis-Bacon Act

Generally...

- ICRA & Title VII prohibit employment discrimination...
 - Actions *motivated* by an improper motive
 - Actions with a *disparate impact*
 - Failure to *prevent* discrimination
 - Retaliation – take complaints seriously!



Framework:

1. Protected class
2. *Adverse Action*
3. Based on the protected class

Legitimate, non-discriminatory reason?

Pretext

Labor Law Basics

- State vs. Federal Apparatus—counties fall under the state
- **Federal:** National Labor Relations Board (NLRB)—governs most private sector workplaces. POTUS-appointed board, administrative agency and complaint procedure. Can make rules based on cases like a court—quasi-judicial.
- NLRB cases can be instructive and many principles remain the same

2. It shall be a prohibited practice for a public employer or the employer's designated representative to:

- a.** Interfere with, restrain or coerce public employees in the exercise of rights granted by this chapter.
- b.** Dominate or interfere in the administration of any employee organization.
- c.** Encourage or discourage membership in any employee organization, committee or association by discrimination in hiring, tenure, or other terms or conditions of employment.
- d.** Discharge or discriminate against a public employee because the employee has filed an affidavit, petition or complaint or given any information or testimony under this chapter, or because the employee has formed, joined or chosen to be represented by any employee organization.
- e.** Refuse to negotiate collectively with representatives of certified employee organizations as required in this chapter.
- f.** Deny the rights accompanying certification granted in this chapter.
- g.** Refuse to participate in good faith in any agreed upon impasse procedures or those set forth in this chapter.
- h.** Engage in a lockout.

Iowa Code § 20.10(2) (2024).

- **State Framework:** Iowa Code Chapter 20: Public Employment Relations (Collective Bargaining)
- Many boards appoint a chief negotiator to represent county in talks with union
- Guidelines for subject matter of negotiations, prohibited practices, rights of employees, rights of unions
- Employee classifications: “public safety employee,” “confidential employee,” and “professional employee”
- Governed by Public Employee Relations Board (PERB)

Practical Examples

- Personnel issues happen. Do you notice them, and how do you respond?
- Concepts for consideration:
 - Organizational Risk – understand *real* risk and who makes risk-based decisions
 - Duty to Notice, Duty to Report: you won't be able to resolve every issue. It may not be your job to fix or prevent an issue, but it likely is your responsibility to tell someone who can fix it (HR!)
 - Best Practices vs. Legal Minimum: understand how going above legal requirements with best practices can mitigate risk



Disability Accommodation, Injuries, and Leave



Susan's Story:

Susan, an auditor's clerk, slips down some stairs while carrying a box and catches herself, injuring her hand and leg, and aggravating some recurring migraine issues. She reports the fall and makes a workers' compensation claim. Her medical provider indicates that she needs to be on bedrest for a few weeks and that her hand will be in a cast for five months, preventing her ability to type. Susan, who typically helps visitors at the auditor's office, also requests to work from home until her migraines become less severe.



Key HR Considerations:

- What is the entitlement for leave?
 - FMLA
 - ADA – leave as an accommodation?
- What are our obligations to accommodate?
 - Disability? Essential functions? Safety risk or undue hardship? Alternatives?
- Return to work?
 - What documents can you ask for?

What makes an accommodation not “reasonable?”



- *Groff v. DeJoy* – June 29, 2023
- SCOTUS: Title VII requires undue hardship, which means it is “substantial in the overall context of [an employer’s] particular business.”
- Coworker complaints are not an undue hardship
- Accommodation generally reasonable when:
 - Doesn’t alter/remove essential functions
 - Doesn’t fundamentally alter nature of program
 - No undue financial or administrative burden
 - No threat to others

Gerry works for county roads. When hired, he requested an accommodation not to work on Sunday for his religious beliefs. At first, the county was able to keep him in a division with no Sunday work, but eventually he needed to work on Sundays, too. Gerry renewed his accommodation request, and other staff had to cover his shifts on Sundays. Eventually, the county determined it could not continue accommodating his no-Sunday schedule, and terminated employment.



Union Activity & Management

John, an employee working for the Public Works Department, has consistently struggled with meeting performance standards. His work quality has been subpar, resulting in missed deadlines and frequent errors, despite repeated feedback and attempts at coaching. After several formal and negative performance reviews, John's supervisor puts him on a "PIP" and asks for authority to terminate employment if John doesn't approve. John, who is a member of a union, files a grievance, claiming that the corrective actions were unfair and that he was not given adequate support to succeed. The supervisor moves forward with termination anyways.



- What policies apply? The CBA, or does the handbook apply?
- What should have happened with the grievance? What is the issue with going forward with termination anyways?
- Inference of retaliation – protected activity and prohibited practices under Ch. 20
- Consequences? Reinstatement, backpay, penalties.

Discrimination & Investigations



- Is this a complaint of discrimination?
- What does policy state about to whom to report?
- Supervisory reporting requirement
- Investigation Considerations
 - Confidentiality
 - Reporting the investigation
 - Following up
- Violations uncovered by investigation – Hannah's disclosure

Lily is one of two longtime IT professionals for the county. Her coworker retires, and the county hires a male student, newly-graduated from college to work with Lily. A few weeks after they're hired, Lily chats with her friend Hannah in Human Resources. Hannah discloses that she saw the new employee's checks, and wondered why their salary base was set higher than Lily's. Lily is surprised, and casually asks her boss (General Services Director) if there has been a mistake.



Harassment Investigation & Duty to Engage

Allen is an assistant to the county treasurer. The treasurer is expected to run for higher office and attends many outside work events, bringing Allen as a staffer. At one event, another county employee makes an inappropriate advance toward Allen, which the treasurer observes. The treasurer makes a joke to Allen and the other employee but does nothing else. Word gets back to HR from a different employee who also witnessed this.

Allen, however, never reports this to HR. When asked about it by HR later, Allen denies it being an issue. Allen is not demoted or punished, and leaves the county after the treasurer is elected to higher office. Then, he files a claim alleging harassment.

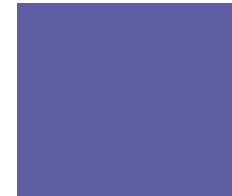
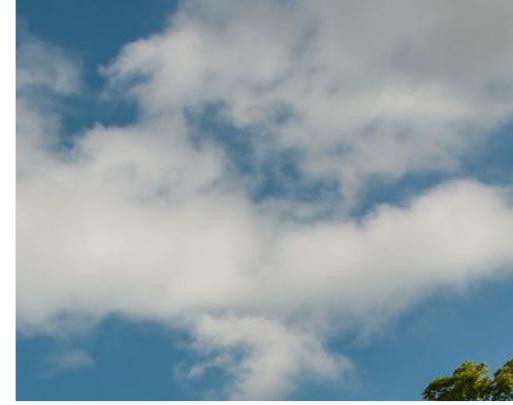
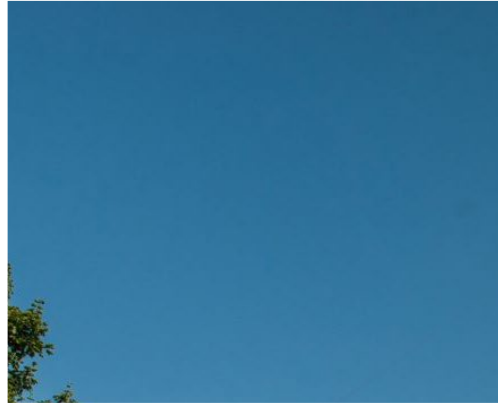


- Coverage: Inside vs. Outside work
- **Supervisory reporting requirement**
- Investigation Considerations
 - Confidentiality
 - Reporting the investigation
 - Following up
- HR's investigation here: enough?
- Liability avoidable where:
 - No tangible adverse employment action against employee;
 - Employer exercised reasonable care to prevent and promptly correct the harassing behavior; and
 - The employee unreasonably failed to take advantage of any preventative or corrective opportunities provided by the employer or to otherwise avoid harm.

Performance Management

Pat is a longtime public works employee, wearing many hats including truck operator for the county. He and his boss are friendly outside of work and know each other through the community. Pat starts arriving late for some shifts because his beloved family dog is ailing. Pat's boss is aware and is flexible, but Pat also starts leaving jobsites mid-shift to run home and check on his pup. At one point, Pat's absence at a small construction site allowed some concrete to set incorrectly, requiring it be torn out and redone at expense to the county. Boss likes Pat, his work, and his family, and doesn't want to make a tough time harder on Pat.

- Any legal considerations to Pat's leave for pet?
- Balance job requirements vs. human compassion – communicating feedback to employees
- Risks if Boss doesn't record these performance issues?
- Remember: it's not personal!





Questions? Thank you!