

RELEVANT LINKS:[Personnel Policy Template](#)

III. PURPOSE

Overview: The League of Minnesota Cities recommends that cities have written personnel rules and procedures. Personnel policies offer cities a method of establishing and maintaining a reasonable system for administration of personnel matters.

A. Policy Enforcement

Policy language should clearly define the individual(s) charged with enforcing established personnel policies. This responsibility is commonly assigned to the head appointed official or to a designee (e.g., Human Resources Manager) in larger cities. Suggested policy language: “Except where noted otherwise, the City Administrator or his/her designee is charged with ensuring compliance with these personnel policies.”

B. Policies versus Laws

Once a city has a personnel policy in place, it is important to follow the guidelines within that policy. The city runs the risk of being accused of arbitrary and capricious behavior in its human resource practices if it does not follow established policy.

That said, there will likely be times when policy language will not be current or applicable because of changes to state or federal law; increased or decreased employee numbers; or conflicting or confusing policy language. When this occurs the city should be sure to document business reasons for varying from established policy language.

State and federal law take precedence over a personnel policy. Some laws only apply when a city exceeds a certain number of employees or when certain circumstances exist. Before deciding that a law does not apply to your city or to the personnel situation at hand, it is important to consult with your city attorney.

C. Contracts versus Employment Guidelines

Personnel policies may or may not create contractual obligations on the part of the employer. A city should know whether its policy language establishes a legally binding contract and should understand the consequences of an enforceable contract versus non-contractual guidelines.

RELEVANT LINKS:

1. Property Interest

Contractual obligations not only create the potential for legal disputes, they can also trigger constitutional obligations on the part of the public employer. For example, only those public employees with constitutionally protected property interests in continued employment are entitled to due process prior to the termination of their employment. Public employment does not in itself create any protected property interest. Nor does the U.S. Constitution create property rights. Property interests are created by independent sources such as a contract or statute. Thus, a property interest exists where there is an expectation of continued employment; unlike the at will situation where there is no such expectation. Public employees who are employed “at-will” or considered probationary do not have a protected property interest, and therefore not entitled to constitutional due process. Examples of situations where property interests may be found in city employment:

- Collective Bargaining Agreement (union contract)
- Personnel Policy or Employee Handbook (intentional or unintentional)
- Individual Employment Contract
- Civil Service System/Rules
- Veteran’s Preference Rights

2. At-will Employment

Minnesota is an employment-at-will state, which means that either the city or the employee can end the employment relationship (e.g., the employee can quit or the city can terminate his/her employment) without giving notice or a reason. However, there are limitations on employment-at-will. For example, a collective bargaining agreement (union contract), a civil service system, another law such as veterans preference, an individual employment contract, certain types of statements in employee handbooks and oral promises can change the employment-at-will relationship and place restrictions on a city’s ability to terminate employment.

The advantage of maintaining an at-will relationship with the city’s employees is that it makes it easier to defend a wrongful termination lawsuit. However, even in employment-at-will relationships, the League of Minnesota Cities recommends that cities be prepared to document and show a business reason for terminating an employee. Even at-will employees are legally protected against discriminatory and other unlawful employment actions. If challenged, a city must be able to provide a legitimate, non-discriminatory reason for the employment decision. Also, any employer that terminates employees without justification runs the risk of damaging employee morale and impairing the city’s ability to recruit desirable job candidates

3. Implied/Unintentional Contracts

While the League encourages cities to put their practices in writing, sometimes written policies or employee handbooks can unintentionally create an employment contract between a city and its employees. This may restrict the city’s ability to terminate an employee or create other problems for the city.

RELEVANT LINKS:

The more specific and definite a statement, the more likely it will be seen as creating a contract. General statements of policy are less likely to be seen by the courts as creating a contract. Therefore, it is crucial that an employee handbook be carefully drafted. Cities should:

- Insert a disclaimer statement at the beginning of the handbook, after the disciplinary policy, at the end of the handbook, on a “sign-off” sheet that the employee signs to acknowledge receipt at the time of hire, and on the city’s employment application form.
- The disclaimer statement should indicate that the employee handbook is not intended to create a contract of employment, that all employment is at-will, and that as such, employment may be terminated by the city at any time, with or without cause.
- Make sure that revised versions of an employee handbook clearly state that the revised handbook supersedes any and all prior versions and that all employees are subject to the new handbook’s terms.
- Require all new employees to sign and submit an acknowledgement form indicating that they have read and understand the handbook’s terms and policies. In the case of a revised handbook, all new and existing employees should sign the acknowledgement form.
- Make sure that written offer letters explicitly state that the employment relationship is considered “at-will.”
- Avoid disciplinary policies that list a specific set of offenses that are sufficient grounds for termination of employment or insert a statement that the list is not intended to be all-inclusive and the city expressly reserves the right to terminate employment at any time for any reason.

D. Reviewing and Revising Policies

Personnel policies are really works in progress. Due to changes in law and changes in the workplace, various provisions in personnel policies can and should be reviewed and revised. The city should consider a process by which to periodically review all established personnel policies; to revise those that need to be changed; to adopt policy revisions; and to communicate said revisions to all city employees.

As part of the general personnel policies, the city should note that revised policies supersede any and all past versions of said policies.