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Municipal Newsletter

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Municipal Employee/Employment Issues

Like companies and businesses in the private sector, municipalities have the capacity to hire and fire employees relative to the implementation of their specific purposes. Also, like these private entities, local governments and authorities have issues they must consider that is common with all employees.

The status of an employee is a significant influence on how a particular employee is treated, such as in termination of employment. Public workers in Pennsylvania are typically “at-will” employees if they possess the following characteristics:

1. They do not belong to a union;
2. They are non-civil service;
3. They are not under contract for a set, definite term; and/or
4. The state legislature has not restricted the power of the municipality to discharge them.

Because municipalities do not have the authority to enter into contracts with employees that would cause the municipality to forfeit its power, an employment contract cannot replace “at-will” employment for the municipality. Nevertheless, public employees do have the right to enter into collective bargaining with the public employer, pursuant to the Public Employee Relations Act (43 P.S. Section 1101.101 to 1101.2301).

Basically, for “at-will” employment, the public employer is in control of the worker’s employment. In other words, the “at-will” employee serves his/her term of employment at the will of the employer. The employee may be dismissed at any time, for any reason or for no reason at all. However, “at-will” employees are not as numerous as they once were.

There are two exceptions to this rule: the termination is not in violation of either the state or federal constitution, and the termination does not go against public policy. Most notably, the General Assembly has found the overall policy may best be accomplished by:

1. Granting to public employees the right to organize and choose freely their representative;
2. Requiring public employees to negotiate and bargain with employee organizations representing public employees and to enter into written agreement evidencing the result of such bargaining; and
3. Establishing procedures to provide for the protection of the public employee, the public employer and the public at large. 43 P.S. Section 1101.101.

This does not necessarily mean the public employee can act with impunity, since nothing in the Public Employee Relations Act “shall impair the employer’s right to hire employees or to discharge employees for just cause consistent with existing legislation.” 43 P.S. Section 1101.706.

The civil service in Pennsylvania is applicable to certain employees of the municipality and to the type of the municipality itself. For instance, according to 53 P.S. Section 811, “townships of the second class... [and] borough[s] and township[s] of the first class having a police force of less than three (3) members and not subject to [certain sections of] either ‘The Borough Code’ and their amendments or ‘The First Class Township Code’ and their amendments” shall be bound to the Police Tenure Act; otherwise, civil service laws would apply to those locations with municipal police. In addition, other laws contain provisions, such as the Housing Authorities Act (35 P.S. Section 1541 *et seq.*), depending upon the municipality, in which the civil service provides something like a merit system for all employees and managing personnel.

Unlike the employees who are employed “at-will,” employees under the civil service act are protected from removal from their position without “just cause.” That is, the authority that appointed these personnel has the burden of proof to show the just cause of the removal of the employee and the substance of the charges of the removal. Long v. Commonwealth, Pennsylvania Liquor Control Board, 112 Pa. Commw. 572, 535 A.2d 1233 (1988). As the Court deemed in Ellerbe-Pryer v. State Civil Service Commission, 803 A.2d 249 (Pa. Commw. 2002), just cause is demonstrated when the allegations supporting the removal are connected to

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the job performance of the employee and reasonably and logically involve the employee's competence and ability. Furthermore, a single instance of misconduct or error in judgment is sufficient for an employee's dismissal in the proving of to just cause if it adversely reflects on the fitness of a person for his/her duties. Davis v. Civil Service Com'n of the City of Philadelphia, 820 A.2d 874 (Pa. Commw. 2004).

Nevertheless, termination of this type of employee is not possible without the exercise of the person's due process rights. "Every person... shall be furnished with written notice of any personnel action [involving] him [or her]... Such notice . . . shall be furnished within the limits prescribed... The notice shall in the case of the permanent separation . . . or demotion of a regular employee set forth the [reason(s)] for the action." 71 P.S. 741.950.

Regardless of the details of each system varying from municipality to municipality, all civil service systems contain the following:

1. Hiring and promotions are based on merit, usually after competitive testing and the formation of a list of candidates who are eligible;
2. Safeguards against dismissal or other unfavorable actions except for good cause or budgetary reasons; and
3. Adherence to procedure, particularly for more unfavorable actions, such as a hearing before a civil service commission or the local governing body.

Notwithstanding the type of employee, whether "at-

will" or "civil service," which is applicable to all employees of the local government, residency requirements are an additional concern. For instance, municipalities prefer to have employees from addresses within their boundaries for various reasons; they may worry about potential employees from outside locations bringing an action against them, perhaps for discrimination. Although usually legally acceptable, it has fallen to the courts to determine whether the requirement of residency within the boundaries of the municipality is reasonable. In their decision-making, the courts decide whether such residency requirements are acceptable and tend to refer to substantive due process and the rationality of having such rules in place.

There are other issues of specific relevance to the local government-employee dynamic, though typically only affecting certain classes of individuals. These factors include: military leave, family and medical leave, whistleblower laws, and constitutional protections such as due process, equal protection, privacy and political discrimination.