Whether you have 2 employees or 75, personnel administration is a critical part of township governance. Your employees are the first line of service to your citizens. They put a “face” on local government. Because of this, managing your employees in a fair, uniform way is critical to both their performance and providing quality service.

There are many employment issues and very few “one-size-fits-all” answers. But there certainly are a core set of employment policies and common employment issues that should be considered that will enrich employment relations and, if necessary, improve your township’s defense against employment-related litigation and claims.

1. Create a Personnel Administration System – And Use It

- Get and use the right forms: applications, background check releases, I-9s, tax withholding forms, etc.
- Involve informed people in the process.
- Create a list of LAWFUL interview questions that gets you the essential information, but avoid those that seek or could reveal an applicant’s membership in a protected class. The Michigan Department of Civil Rights issues a pamphlet describing lawful and unlawful interview questions and we strongly recommend you review and use this as a guide. Remember, the goal of the interview to obtain the essentials:
  - Identification of the applicant (name, address, and telephone number);
  - Applicant’s previous employment (job titles, salary levels, etc.);
  - Summary of the applicant’s background (education, training, work history, special qualifications and skills);
  - Applicant’s interests; and
• Beyond this basic information, townships should design questions to elicit job-related information that will be applicable and useful in deciding which applicant will meet the employer’s needs.

• Run background checks at the right time—and use the information properly

• Whenever possible, be proactive with employment issues – not reactive!

• Document, document, document.

2. Learn and Utilize a Fundamental Concept

When deciding whether to be an at-will or a just cause employer, most townships and township attorneys opt for the greater discretion that goes with an at-will standard.

➢ **At-Will.** Most townships employ their employees under the concept of at-will employment. At-will employees may be terminated at any time for any lawful, non-discriminatory reason. In Michigan, employees are presumed to be at-will.

➢ **Just Cause.** Some townships declare that their employees are governed by principles of just cause. Just cause employees may not be discharged without a reason that amounts to just cause.

Caution: Whether or not a township declares itself an at-will employer, if an employee can establish a prima facie discrimination claim, that claim can effectively force the township to prove just cause. Thus, you should **always be prepared with a legitimate, good-faith business reason for any employment decision, whether it comes up in hiring, discipline, or termination of employment.**

3. Avoid Mistakes on Simple Overtime Basics.

Simply put: Salaries are not enough to avoid overtime compensation obligations. “Non-exempt” employees must be paid one and one-half times their regular rate of pay for all hours over forty (40) worked in a workweek. (Some townships also choose to pay overtime for hours worked over 8 in a workday. This is not legally required.)

To avoid overtime claims by current or former employees, your policies should:

- Refer to “exempt” and “non-exempt”—not salaried and hourly.

- Require all employees to document their time—exempt or not.

- Thoroughly review the tests for exemption on the basis of “Professional,” “Administrative,” and “Executive” classifications. The title is not controlling in determining whether an employee is eligible for overtime pay: it is all about job duties. The consequences are significant if you are wrong.

- State that employees may not work more than their regularly scheduled shift without advance approval from their supervisor—and enforce that part of your policy consistently.
Identify what hours count toward overtime—vacation, holidays, paid leave?

Observe special rules for law enforcement or fire protection employees:

- Exempt if fewer than 5 employees employed in that work week by agency.
- Partial exemption if the work period is between 7 and 28 consecutive days.
  - **Fire protection** employees paid overtime for over 212 hours in 28 day period. If work at least 7 days but less than 28 days, earn overtime when ratio of hours worked exceeds 212 hours to 28 days.
  - **Law enforcement** employees paid overtime for over 171 hours in 28 day period. If work at least 7 days but less than 28 days, earn overtime when ratio of hours worked exceeds 171 hours to 28 days.
  - But civilian employees who engage in support activities, such as dispatchers, not considered to be engaged in fire protection or law enforcement activities.

### 4. Don’t Overlook Alcohol and Drug Use

Most common issues:

- Off duty use of medical marijuana
- Inappropriate use of prescription medication
- Alcohol or drug use while on call

- The key to managing these circumstances is to maintain your focus on providing a safe and secure work environment for employees that is both alcohol and drug-free.

“No employees shall possess, distribute, use or be impaired by or under the influence of alcohol or illegal prohibited drugs at Township offices or buildings, while on Township business, or during working hours, including rest and meal periods, nor shall an employee have in their bodily system illegal prohibited drugs or alcohol in violation of the Zero Tolerance policy, while on Township property, Township business or during working hours, including rest and meal periods.”

“No employee shall be impaired by or under the impairing influence of legal prohibited drugs or substances while on Township property, on Township business, or during working hours, including rest and meal periods.”

- Advise that any employee who violates this policy may be disciplined up to and including discharge. (Strict enforcement)
• Consider requiring those taking a legal prohibited drug to notify his or her supervisor of its use and expected effect. Impose a duty to know if the legal prescription or non-prescription drugs they are taking may impair working ability.

• Reserve the right to search an employee, employee work area, and property and/or test an employee for alcohol or drugs if the Township has a reasonable suspicion that this policy may have been violated. Such searches or tests may be initiated without prior announcement and conducted at such times and locations as the Township deems appropriate. Refusal to cooperate with such searches or tests may result in discipline or discharge.

• Define terms! Example definitions:

“For purposes of this Manual, ‘illegal prohibited drugs’ are those drugs or substances that are illegal to sell or possess, including marijuana, whether prescribed for a medical condition or not. ‘Legal prohibited drugs’ include prescription or non-prescription drugs or substances used in a manner, combination, or quantity that is both contrary to the prescription or directions and may impair working ability, as well as prescription drugs issued to another person. Notwithstanding current State law, use or possession of or presence in one’s body of Medical Marihuana, which is marihuana acquired, possessed (externally or internally), cultivated, manufactured, used, delivered, transferred, or transported to treat or alleviate a registered qualifying patient’s debilitating medical condition or symptoms associated with the debilitating medical condition, is not permitted at any time. See MCL 333.26423(e).”

5. Put key policies in place

A. Equal Employment Opportunity

“The Township is an equal opportunity employer whose policy is to select personnel and conduct all personnel activities without regard to religion, race, color, national origin, age, sex, height, weight, disability, or marital status. The Township maintains a system of uniform and equitable personnel policies and procedures to assure equal treatment of all employees. The Township will not retaliate against any employee engaging in a protected activity in furtherance of this policy. As an equal opportunity employer, the Township, does not discriminate on the basis of race, color, gender, religion, age, marital status, national origin, height, weight, disability, or any other reason prohibited by federal or state law.

“Therefore, it is the Township’s policy to:

➢ “Recruit, hire and promote all job classifications without regard to race, color, gender, religion, age, marital status, national origin, height, weight, disability, or other reason prohibited by federal or state law;
“Ensure that all personnel actions such as compensation, benefits, dismissals, company-sponsored training, education, and social programs shall be based on qualifications, experience, or other legitimate, non-discriminatory considerations.”

B. Accommodating Disabilities

- An employee may not be discriminated against in employment because of a disability that can be reasonably accommodated to enable the employee to perform the essential functions of his or her job.

- Require employees who feel accommodation is needed to perform a job to notify the Township Supervisor/Superintendent/Manager of the need for accommodation as promptly as possible. Generally speaking, that request should be made in writing within 182 days or sooner after one knows or reasonably should have known that accommodation was needed.

- Require any employee who believes he or she has been the subject of unlawful discrimination or retaliation shall report the alleged act, in writing, immediately after the alleged discrimination or retaliation occurs.

C. Unlawful Harassment Policy

- Prohibit unlawful harassment of any kind—not just sexual harassment. The Equal Employment Opportunity Commission and the Michigan Department of Civil Rights will ask for a copy of this policy if unlawful harassment or discrimination is ever alleged by a current or former employee.

- Complaint Procedure, beginning with a written complaint, who reviews the complaint, and within what timeframe.

- Investigation Procedure that includes a clear statement that: a victim will never be required to confront the alleged harasser and that employees will be protected from coercion, intimidation discrimination or retaliation for filing a complaint or assisting in an investigation.

- Identify repercussions for intentionally filing a false complaint; intentionally providing false information during an investigation.

- Reserve for the Township the discretion to determine whether a particular action or incident arises from a purely personal, welcome social relationship without a discriminatory employment effect by acknowledging that each and every complaint requires a factual determination based on all facts in the matter.

- Invite employees and officials alike to act responsibly to establish and maintain a pleasant working environment, free of discrimination, harassment, and retaliation for all.
• Training, Training, Training.

• Failure to have and adhere to this policy can be a very costly mistake.

D. Limitations Period—Policy and Acknowledgement

“As a condition of employment, employees agree not to commence any action, claim, or suit relating to their employment or termination of employment against the Township more than 182 days after the date the employee knew or should have known that a claim existed or later than the applicable limitations period established by law, whichever is less.”

E. Family Medical Leave Act

All townships are “covered employers” under this federal law, but township employees are not automatically eligible for FMLA benefits of 12 weeks of unpaid leave. To be eligible under the FMLA for up to twelve weeks of unpaid, job-protected leave per twelve-month period for certain family and medical reasons, employees must:

1. have been employed by the township for twelve months;
2. have worked at least 1,250 hours during the previous twelve months; and
3. have worked at a location with fifty (50) or more township employees

If township employees are likely to be eligible for leave, the township must have an FMLA policy in place that describes the rights and responsibilities of both the employee requesting leave and the township. Whoever manages personnel matters in the township must become familiar with the tight timelines for providing certain notices and for obtaining forms from the employee. If your township does not have 50 employees, but still wants to offer family or medical leave, consider adopting your own program rather than incorporating the FMLA.

F. Employee Compensation and Benefits Generally

• Who qualifies?
• What type of benefit?

• Holiday Pay
• Personal Days
• Vacation
• Sick Leave
  o When?
  o Which of those benefits, if any, are paid out upon separation of employment—voluntary, or by discharge?

• Funeral Leave
• Insurance
• 401k?
• MERS?