ARKANSAS MUNICIPAL LEAGUE

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Celebrating 85 Years of Service!

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CITY GOVERNMENT 101:
WHAT IS LOCAL GOVERNMENT AND WHAT DO I NEED TO KNOW?

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Executive Director
Arkansas Municipal League
You Are...

- ...on the verge of being out of office before you blink if you don’t take the oath!
- ACA 14-42-106
  - Must be done within ten days of January 1st!
  - Mayor may administer to alderman/council members.
  - Others can too: Secretary of State, justice, judge, county judge, county clerk, circuit clerk or JP.

Rules

- Keep order.
- Simplify meetings and issues.
- Focus the debate.
- Basic law, including your ordinances!
Quick Reference

• **League Publications:**
  – Guide for Municipal Officials/Mayoral Cities
  – Guide for Municipal Officials/Manager Cities
  – Municipal Law in Arkansas—Questions and Answers
  – City and Town

Know Your Role...

• **Legislative...**
  – Some similar words: legislate, legislature, legislator.

• **City Council or City Board**
  – Some similar words: council-member, alderperson, board-member.

• **Operate lawfully in a lawfully called meeting with a quorum.**
Know Your Role...

- Executive/Administrative...
- Mayor! (City Manager or City Administrator)
  - 24/7 job
  - Day-to-day operations as opposed to council members (board members) holding a lawfully called and attended meeting

Know Your Role

- Legislators/Council-Members (Board): legislate by setting policy.
- Policy comes in all forms: ordinances, resolutions, motions etc.
  - Examples: budget, employee handbook, record maintenance/retention etc.
Know Your Role

- Mayors (Managers/Administrators): run the day to day operations and implement policy.
- Mayors (Managers/Administrators): supervise department heads and officers.
  - Examples: spending within the confines of the budget, counseling employees etc..

Role of the Mayor

- CEO of city or town (sort of legislative and sort of executive)
- Ex-Officio member of council
- Presides over council meetings
- Mayor can vote sometimes (Cover later)
- Mayor can make up the quorum (A.C.A. § § 14-43-501; 14-44-107; & 14-45-101(b))
Role of the Mayor

- Mayor can call for a special meeting (yes, 3 council members can, too, and, yes, there must be an ordinance. A.C.A. § 14-43-502)
- Mayor signs ordinances along with Clerk/Recorder
- Mayor can veto (more on this later)

ROLES (rules):
THE MAYOR SHALL SUBMIT...

  - On or before December 1 of each year, the mayor of all cities and incorporated towns having the mayor-council form of government shall submit to the governing body of the city or town, for its approval or disapproval, a proposed budget for operation of the city or town from January 1 to December 31 of the forthcoming year.
  – ... [T]he governing body of the municipality shall, on or before February 1 of each year, adopt a budget for operation of the city or town.

  – (a) The approval by the municipal governing body of the budget under this subchapter shall, for the purposes of the budget from time to time amount to an appropriation of funds which are lawfully applicable to the items therein contained.
• EXCEPTIONS
  ◦ (1) Funds resulting from taxes levied under statutes or ordinances for specific purposes may not be diverted to another purpose;
    • (ILLEGAL EXACTIONS)
  ◦ (2) Appropriated funds may not be diverted to another purpose where any creditor of the municipality would be prejudiced thereby.
    • (CONTRACT LAWSUITS)

RULES: THE SHALLS CONTINUE

• 14-43-313. City clerks and attorneys generally.
  – “The city clerks and the city attorneys in cities of the first class shall . . . receive such salary as is prescribed by ordinance in each of these cities.”
RULES: THE SHALLS CONTINUE

• 14-43-316. City clerk, treasurer, or clerk-treasurer in mayor-council cities of fewer than 50,000. Only allowed in cities of the first class (see A.C.A. § 14-43-316(a))

  – (c) The city clerk and city treasurer, or city clerk-treasurer shall . . . receive a salary as is prescribed by ordinance in each of these cities.

• Cities of the second class and incorporated towns...lucky you!

Roles (Rules): More ...

• Mayor: report, report, report:
  – Within the first 90 days of the year, to the council the municipal affairs of the city; recommending such measures as may be advisable. See ACA § § 14-43-504, 14-58-302.

  • I suggest monthly financial reports. (14-59-115 Treasurer is required to do a monthly report)
    – What do you do? Monthly, weekly...

  • The better informed the council is, the better the budget.
Roles:
Legislative...Council/Board Duties

• SET POLICY
  – Management/Control money, property and policy
  – Finances
  – Property (real/personal)
  – Set Policy (written and by practice)

Roles (Rules): Vacancies...and it’s only January

• Hold over -
  – Ark. Const. Art. 19, § 5: All officers shall continue in office after the expiration of their official terms, until their successors are elected and qualified.
  – January 1 . . . who was there on December 31st?!
• Mayor’s vacancy -
  – Cities of the 1st class (A.C.A. § 14-43-401)
    • Less than 1 year - Council appoints the Mayor’s successor
    • More than 1 year – Special Election to fill the vacancy
  – Cities of the 2nd class (A.C.A. § 14-44-106)
    • Council: appoint or special election.
  – Incorporated towns (A.C.A. § 14-45-103)
    • Council: appoint or call for special election
Roles (Rules): Vacancies...and it’s only January

- Council Member/Alderman vacancies -
  - Cities of the 1st class (A.C.A. § 14-43-411)
    - Under 20K? City council appoints (quorum of whole council shall remain in order to fill the vacancy) (mayor cannot veto).
    - 20K or more and more than 1 year? Appoint or Special Election
    - 20k or more and less than 1 year? City council appoints
  - Cities of the 2nd class (A.C.A. § 14-44-104)
    - Council appoints — no veto

Incorporated Towns, (A.C.A. § 14-45-103)
- Council appoints

Roles: Who Appoints...Who Removes...

- Who’s Who?
  - Department Heads vs. Non-Department Heads
  - Non-Department Heads are those who aren’t department heads
- State Law dictates who appoints and removes department heads.
  - No State Law for non-department heads.
  - Non-department heads are a matter of local policy — it’s up to you!
Department Heads?! Appoint...Remove?! Local Policy?!

- Department Heads:
  - What It Means:
    - Appoint = Hire
    - Remove = Fire
  - A.C.A. § 14-42-110
    - Department heads are appointed and removed by the mayor
    - But... the council can over-ride with a two thirds vote
    - But... the council CANNOT appoint and remove department heads

More Appoint and More Removal Stuff

- Non-Department Heads
  - Non-department heads are a matter of local policy
    - What does your policy say?
  - What? No policy?!
    - What’s your practice? And let’s carefully take a look...
    - Recommendations versus decisions...
  - Who’s actually hiring and firing?!
Role of the Department Head

- Some duties or roles are the same for all department heads.
- Some, however, change depending upon the department in question.
- Some change from city to city.
  - Hint/Suggestion: read your ordinances, policies, handbooks, notes, memos, gum wrappers etc..
  - You just might learn what your role is and ISN’T.

All Department Heads

- City budget/department budget.
- Bidding and purchasing laws.
- Employee handbook and related policies and ordinances.
- “At Will Employment Doctrine”
- Working knowledge of labor laws (FLSA, FMLA, ADAAA, etc.).
- Specific laws, rules and regulations related to their department.
- Day to day operations.
- Managerial skills and education.
Police Chief

• A.C.A. §§ 14-52-101 through 102.
  – Covers how the department was created, general powers, holiday pay, vacation, sick leave, fees etc.

• Commission on Law Enforcement Standards and Training: http://www.clest.org/oles/Pages/default.aspx.
  – Various certification requirements and standards.
  – See also A.C.A. § 12-9-101 and following, commission powers, duties etc.

• A.C.A. § 12-2-209: Training Cost Reimbursement.

• A.C.A. §§ 12-9-301 through 308: Auxiliary Officers.

• A.C.A. §§ 12-9-601 through 603: Officer employment, appointment, or separation.

Police Chief, Continued


• A.C.A. § 12-12-103: Pawn Shop Reporting.


  – Note that the League has a publication and policy and that many of the training and reporting requirements are yearly.


• General working knowledge of policing and arrest practices, policies, customs, weapons, etc.
Fire Chief

  - Covers how the department was created,
  - General powers,
  - Hours,
  - Holiday pay,
  - Vacation,
  - Sick leave, etc.
- General working knowledge of fire fighting practices, policies, customs, equipment, etc.

Fair Labor Standards Act
21 Things you need to know!!

- Examples:
  - $8.50 minimum wage via Arkansas law.
  - Overtime is paid at time and half of regular pay. (Salaries averaged)
  - Be careful about folks volunteering…
  - Exempt versus non-exempt.
  - Prisoners are generally not employees.
  - Special rules for uniform employees.

Fair Labor Standards Act

Who is entitled to overtime pay?

- Generally, every employee is entitled to overtime compensation. However, there are key exemptions to this general rule.
  - **Key exemptions**
  - Title of position is not the determining factor of whether an individual is exempt.
Fair Labor Standards Act – Elected Officials

- Elected Officials aren’t just exempt, they aren’t even employees under the FLSA!
  - Not entitled to overtime or minimum wage.
- Also excluded are:
  - Personal staff of elected officials,
  - Persons appointed to serve as policy makers, and
  - Advisors on Constitutional or legal powers of elected official’s office.

Elected Officials’ Personal Staff

- This exception appears to be rarely used, and is “narrowly construed.”
- Don’t rely on it applying except in very rare instances.
Elected Officials’ Personal Staff

- Some factors to consider in determining “Personal Staff Exemption:”
  1) whether the elected official has plenary powers of appointment and removal,
  2) whether the person in the position at issue is personally accountable to only that elected official,
  3) whether the person in the position at issue represents the elected official in the eyes of the public,
  4) whether the elected official exercises a considerable amount of control over the position,
  5) the level of the position within the organization's chain of command, and
  6) the actual intimacy of the working relationship between the elected official and the person filling the position. *Rutland v. Pepper*, 404 F.3d 921, 924 (5th Cir. 2005)

Fair Labor Standards Act

*Executive Employees*: 29 C.F.R. § 541.100

http://www.dol.gov/dol/cfr/Title_29/Chapter_V.htm

(1) Compensated on a salary basis at a rate of not less than $455 per week, or $23,660 annually; ($913 per week $47,476 per year if the Obama rule gets life); and

(2) Whose primary duty is management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof; and

(3) Who customarily and regularly directs the work of two or more other employees; and
Fair Labor Standards Act

Executive Employees: 29 C.F.R. § 541.100

http://www.dol.gov/dol/cfr/Title_29/Chapter_V.htm

(4) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees are given particular weight.

EXAMPLES: Police Chiefs, Fire Chiefs, and Department Heads

Fair Labor Standards Act

Administrative Employees: 29 C.F.R. § 541.200

http://www.dol.gov/dol/cfr/Title_29/Chapter_V.htm

(1) Compensated on a salary basis at a rate of not less than $455 per week, or $23,660 annually; ($ 913 per week $47,476 per year if the Obama rule gets life); and

(2) Whose primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and
Fair Labor Standards Act

Administrative Employees: 29 C.F.R. § 541.200

http://www.dol.gov/dol/cfr/Title_29/Chapter_V.htm

(3) Whose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

EXAMPLES: HR Director, Computer/Systems Administrator, Financial Officer

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Fair Labor Standards Act

Professional Employees: 29 C.F.R. § 541.300

http://www.dol.gov/dol/cfr/Title_29/Chapter_V.htm

- Professional Employee Elements:
  - (1) Compensated on a salary basis at a rate of not less than $455 per week, or $23,660 annually; ($ 913 per week $47,476 per year if the Obama rule gets life); and
  - (2) Whose primary duty is the performance of work:
    - (i) Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction; or
    - (ii) Requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor

EXAMPLES: City Engineer, Wastewater Professionals, Planning Directors, City Attorneys
Highly Compensated Employees

• A highly compensated employee is deemed exempt if:

• 1. The employee earns total annual compensation of $100,000 or more.

• 2. The employee’s primary duty includes performing office or non-manual work; and

• 3. The employee customarily and regularly performs at least one of the exempt duties or responsibilities of an exempt executive, administrative or professional employee.

• Thus, for example, an employee may qualify as an exempt highly-compensated executive if the employee customarily and regularly directs the work of two or more other employees, even though the employee does not meet all of the other requirements in the standard test for exemption as an executive.
Things to Consider

- The DOL may change the rules in the future:
- You may need to raise salary;
- Hire extra help to prevent workers going overtime;
- Figure out an hourly rate which doesn’t change an employees salary
  - This might be unpopular
- What works will always depend on the situation, don’t expect a one size fits all solution.

Fair Labor Standards Act

Are all non-exempt employees the same?

- There is a key difference between uniformed (police and fire) and non-uniformed employees and their entitlement to overtime.

  What is a uniformed employee?
  - Generally, uniformed employees are police and fire personnel, but does not include radio operators, clerks, secretaries, or janitors. 29 C.F.R. § 553.210 & 211.
  - EMTs may qualify if their services are substantially related to firefighting or law enforcement activities. 29 C.F.R. § 553.215.
**Fair Labor Standards Act**

*To what overtime provisions are non-uniformed employees entitled?*

- Time-and-a-half for every hour of work over 40 for a workweek. 29 U.S.C. § 207.

*What is a workweek; does it need to be Monday thru Sunday?*

- Any 7-day period; the employer can establish a workweek that does not coincide with the calendar week. Generally, a workweek beginning and ending at 5pm on Friday is appropriate. 29 C.F.R. § 778.104.

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**Fair Labor Standards Act**

*Does every city owe its uniformed employees overtime?*

- There is an exemption for police and fire departments that have less than 5 employees, including chiefs. 29 U.S.C. § 213(b)(20).
  - Volunteer firefighters and auxiliary police officers are “volunteers” and are not treated as employees
  - Part-time Employees are considered employees. 29 C.F.R. § 553.200(b).
  - Employees who are on leave and not working are also considered employees. 29 C.F.R. § 553.200(b).
**To what overtime provisions are uniformed employees entitled?**

- The FLSA provides a partial overtime exemption to the 40 hour work week for law enforcement officers and firefighters who work a “work period” of no fewer than 7 days and no more than 28 days. 29 U.S.C. § 207(k).

**What is a uniformed employees “work period”?**

- An employer can establish a uniformed officers work period as anywhere between 7 and 28 days consecutively. 29 U.S.C. § 207(k).
What is a uniformed employees “work period”?

The Secretary of Labor has set maximum hour standards based on a 28-day work period for both fire department and law enforcement personnel. Law enforcement employees who work over 171 hours within a 28-day work period must be compensated for those hours in excess of 171. Fire department employees working in excess of 212 hours within a 28-day period must also be compensated for overtime hours in excess of 212. These amounts are prorated for shorter work periods. 29 C.F.R. § 553.201.

Is there an option other than paying overtime? Yes, but be careful...

Instead of paying overtime pay, an employer can compensate an employee with compensatory time (“comp time”), and that time must accrue at time-and-a-half. 29 U.S.C. § 207(o)(1).
Fair Labor Standards Act

Is there an option other than paying overtime? First be careful...

The City may only elect to provide “comp time” if an agreement or understanding existed between the employer and the employee before the performance of that work; the employee must understand that the city has a policy of giving compensatory time. 29 U.S.C. § 207(o)(2)(A)(ii).

The agreement between the employee and employer can be made individually or collectively (i.e. collective bargaining agreement), although the employee must understand prior to performing the work. See generally, United Food & Commercial Workers Union, Local 1564 of New Mexico v. Albertson’s, Inc., 207 F.3d 1193 (10th Cir. 2000).

Comp Time: BE CAREFUL’s

When can employees use “comp time”?  
• An employee can request the use of “comp time” at any time; the employer is obligated to allow the use of that “comp time” within a reasonable time unless by doing so, it would disrupt the operations of the employers. 29 U.S.C. § 207(o)(5)(B).

Can an employer require the use of comp time?  
• An employer can require an employee to use “comp time”. See Christensen v. Harris County, 529 U.S. 576, 585 (2000).
• Is there a limit on the amount of “comp time” an employee can accrue?

• A non-uniformed employee can only accrue a total of 240 hours of “comp time” (160 actual overtime working hours) before the employer is required to pay the additional hours of overtime in cash. 29 U.S.C. § 207(o)(3)(A).

Comp Time

• Is there a limit on the amount of “comp time” an employee can accrue?

• A uniformed employee can only accrue 480 hours of “comp time” (320 actual overtime working hours) before the employer is required to pay the additional hours of overtime in cash. 29 U.S.C. § 207(o)(2)(A)(ii).

• Do not eliminate unused comp time without paying the employee for that overtime!
Comp Time: **BE CAREFUL’S**

*How do I pay accrued “comp time” when the employee quits or is terminated?*

- Payment of “comp time” at termination is time-and-a-half at a wage equaling the average regular rate of pay for the final three years of employment or the final regular rate received by the employee, whichever is higher. 29 U.S.C. § 207(o)(4).

Comp Time: **BE CAREFUL’S**

*How do I pay accrued “comp time” when the employee quits or is terminated?*

- Because unused “comp time” must be paid at the time of termination, it is advised to “pay as you go.” Compensate employees for their unused “comp time at the end of each year, or mandate that the employees use their comp time at your discretion.
Uniformed personnel leave for Arkansas municipalities

Presented by the Arkansas Municipal League

For fire fighters employed by cities of the first or second class or incorporated towns

FIRE DEPARTMENTS
Legal Holidays

- All fire fighters employed by the municipality shall be compensated for all legal holidays which have been established by the municipality’s governing body.
- Compensation is based on the firefighter's daily rate of pay.
- Compensation can be prorated and paid during regular pay periods OR paid in one lump sum each year on a date in December.

Legal Holidays

- Under 14-53-106 the Firefighters receive the pay even if they receive the day off.
- The AG stated that firefighters would likely receive the compensation whether or not they worked the holiday. Referencing another opinion on police holiday pay:
  - “It was concluded therein that holiday compensation must be extended to off-duty officers.”
Sick Leave Generally

- ALL firefighters employed by the city accumulate sick leave, whether or not he is able to work. Op. Atty’ Gen. No. 2012-095.
- If the city reduces the amount of sick leave, the previously acquired sick leave will not be reduced in value.
- Unused accumulated sick leave will not be used to compute years of service for retirement purposes.
- Upon retirement/death, a firefighter will be paid for unused accumulated sick leave.

Sick Leave Cont’d:
Two Options for Cities

Option 1: ACA § 14-53-108(a)

- Beginning one year after hire, firefighters begin accruing sick leave at the rate of 10 – 20 working days per year.
  - “Working day” = not less than 12 hours in a 24-hour period
- If unused, sick leave will accumulate to a maximum of 1,440 hours (60 full 24-hr days), unless the city authorizes accumulation of more, but not to exceed 2,160 hours (90 full 24-hr days).

Option 2: ACA § 14-53-108(d)

- Firefighters begin accruing sick leave immediately upon hire at the rate of 15 days per year for the first 4 years of employment, after which the rate decreases to 12 days per year.
- Unused sick leave can accumulate to a maximum of 100 days.
Sick Leave Cont’d:

- A few other notes on Firefighter sick leave:
  - This law establishes when sick-leave accumulation begins, and the rate at which the accumulation proceeds. But it does not state when a firefighter is to receive - be credited with - accumulated sick leave.

  - The statute expressly contemplates a city ordinance addressing sick leave and setting the accumulation rate within the permitted range.

  - Because an ordinance establishing the time at which sick leave is credited would not - at least in that particular - conflict with state law, it is my view that state law leaves this timing decision to the city.


Vacation Leave


- The fire department chief is responsible for arranging for each department employee to receive at least 15 days of annual vacation days with full pay each year.

For law enforcement officers employed by cities of the first or second class or incorporated towns

POLICE DEPARTMENTS

Who is a law enforcement officer?

Yes:

• Any appointed officer who is responsible for the prevention and detection of crime, or for the enforcement of the criminal, traffic, or highway laws of this state. ACA § 12-9-102(2).
• (Hereinafter, “L.E.O.”)

No:

• Radio dispatchers
• Jailers
• Anyone whose duties do not include the investigation, prevention, detection of crime, or writing criminal or traffic citations. City of Pocahontas v. Huddleston, 309 Ark. 353, 358 (1992).
Why the distinction?

- Well some of the statutes regarding police leave, reference the “police department”
- Which appears to encompass LEOs and non-LEO employees, but;
- The best opinion we have says that these statutes were intended to only apply to LEOs

“While this Code section might at first glance appear to cover all employees of the police department, when placed in context, it clearly extends only to police officers.”

Legal Holidays
Ark. Code Ann. § 14-52-105(a)

- All L.E.O.s regardless of their titles who are employed by the municipality will be compensated for all legal holidays which have been established by the municipality.
- Compensation will be based on the L.E.O.’s rate of pay.
- Compensation can be prorated and paid during regular pay periods OR paid in one lump sum each year on a date in December.
Sick Leave

- L.E.O.s accumulate sick leave at the rate of 20 working days per year beginning one year after hire.
- If unused, sick leave will accumulate to a maximum of 60 days, unless the municipality enacts an ordinance allowing more (but cannot exceed 90 days).
  - When such an ordinance is enacted, the sick leave already earned is credited to the L.E.O., and he begins to accumulate again until he reaches the new maximum.

Sick Leave

- All L.E.O.s employed by the police department are entitled to sick leave, even if the officer is unable to work for several months. Op. Att’y Gen. No. 2008-094.
- Time off for an illness or injury may be charged against accumulated sick leave only on days the L.E.O. is scheduled to work.
- L.E.O.s who leave employment for any reason other than retirement or death will forfeit their unused sick leave.
- Upon death/retirement, unused sick leave will be paid to the L.E.O.
Sick Leave

• “In responding to this question regarding “buy[ing] back” unused sick leave, it should perhaps also be noted that because A.C.A. §§ 14-52-107 (c) and 14-53-108 (c), supra, are limited to officers who retire or who die,

• it must be concluded that officers who leave employment for any reason other than retirement or death will forfeit their unused sick leave.

• Consequently, if your question contemplates a city paying for previously accumulated sick leave, i.e., accumulated under the employees’ previous employment with the city, it is my opinion that the answer is “no.” Such payment would not be legal, in my opinion.”


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Vacation Leave
Ark. Code Ann. § 14-52-106

• The head or chief of each police department is responsible for arranging for each department employee to receive at least 15 days of annual vacation days with full pay each year.

Military Training Programs
National Guard and Reserves

- Municipal employees “who desire to take a leave of absence to participate in military training programs made available by the National Guard or any of the reserve and auxiliary branches of the armed forces. . . shall be entitled to a leave of absence for fifteen (15) days plus necessary travel time for annual training requirements or other duties performed in an official duty status in any one calendar year.” Ark Code Ann. § 21-4-102(a)(1).
- This unused training leave time accumulates so the employee can use it in the succeeding year until it totals fifteen days at the beginning of the calendar year. Ark Code Ann. § 21-4-102(a)(2).
Military Training Programs
National Guard and Reserves

• When a municipal employee is granted fifteen (15) days of training leave under this statute for a single calendar or fiscal year, then the military training leave will continue to accumulate for use in succeeding calendar years or fiscal years until it totals fifteen (15) days at the beginning of the calendar year or fiscal year, for a maximum number of military leave days available in any one (1) calendar year or fiscal year to be thirty (30) days. Ark. Code Ann. § 21-4-102(e).

• For example, a military employee could “roll-over” fifteen (15) days of leave from one year to the next year, and use that leave in January. The same employee will then begin accumulating new leave throughout the year so that by December the employee might have accumulated thirty (30) days of total leave for the year.

Military Training Programs
National Guard and Reserves

• Employees are entitled to their regular salary during the time they are away from their duties during a military leave of absence. Ark. Code Ann. § 21-4-102(b)(1). This leave of absence shall be in addition to the regular vacation time allowed to the employee. Ark. Code Ann. § 21-4-102(b)(2).
Leave of Absences for Military Leave Generally

- During a leave of absence, military employees retain all seniority rights, efficiency or performance ratings, promotional status, retirement privileges, life and disability insurance benefits, and any other rights, privileges, and benefits to which they have become entitled. Ark. Code Ann. § 21-4-102(d)(1).

- The period of military service shall, for purposes of computations to determine whether such person may be entitled to retirement benefits, be deemed continuous service and the employee shall not be required to make contributions to any retirement fund. Ark. Code Ann. § 21-4-102(d)(2).

- The municipality shall continue to contribute its portion of any life or disability insurance premiums during the leave of absence on behalf of the employee, if requested, so that continuous coverage may be maintained. Ark. Code Ann. § 21-4-102(d)(3).

Leave of Absences for Military Leave Generally – A little Ambiguous?

- The statute, Ark. Code Ann. 21-4-102, is titled Training Programs; leave.

- It does not specifically state that it applies to military leave for when an employee is on active duty.

- However, its reference to seniority rights, retirement computations, and how it mirrors the state statute specifically on the subject of military leave indicate these provisions apply to military leave generally, and not just training programs.
Leave for Municipal Officials
(and sometimes employees)

• Officers who are municipal officials, township officials, or all other officers who hold an elected office in Arkansas shall be granted a leave of absence from their offices and duties to perform active military service. Ark. Code Ann. § 21-4-302(a).

• When an officer volunteers or is called into active duty in the United States Armed Forces during war, the Governor, or person or persons whose duty it is to fill the vacancy should there be one, shall, upon application being made by the officer, grant the officer a leave of absence during the time the officer is retained in the military service. Ark. Code Ann. § 21-4-302(b).

Leave for Municipal Officials
(and sometimes employees)

• In the discretion of their employer, all municipal employees may be granted leave of absence under the terms of this subchapter and upon leave of absence’s being granted to officials under this subchapter. Ark Code Ann § 21-4-308(a).

• However, an employee shall not have the right to select or in any way control the selection of his or her successor. Ark Code Ann § 21-4-308(b).
Leave for Municipal Officials
(and sometimes employees)

- Any public employee who may be granted a leave of absence under the provisions of this subchapter and who serves for not more than four (4) years, plus any period of additional service imposed pursuant to law shall be entitled, upon release from service under honorable conditions, to reemployment rights as provided by federal law. The refusal of any state, county, or municipal official to comply therewith shall subject the official to removal from office. Ark Code Ann § 21-4-309(a)-(b).

- During a leave of absence, an official shall be entitled to preserve all seniority rights, efficiency rating, promotional status, and retirement privileges. Ark. Code Ann. § 21-4-310(a).

- The period of active military service shall, for purposes of computations to determine whether such persons may be entitled to retirement under the laws of the State of Arkansas, be deemed continuous service in the office of the official or employee. Ark. Code Ann. § 21-4-310(b). While absent on leave, the official or employee shall not be required to make contribution to any retirement fund. Ark. Code Ann. § 21-4-310(c).

USERRA

• In 1994, Congress adopted the preemptive Uniformed Services Employment and Reemployment Rights Act (the “USERRA”).

• USERRA prevents uniformed service members’ employers, including the state and its municipalities, from denying initial employment, reemployment, continued employment, a promotion, or any benefit of employment based on “membership, application for membership, performance of service, application for service or obligation.” § 4311(a).

• An employer cannot fire or punish an employee for asserting their rights under USERRA. § 4311(b). (Retaliation)

Discrimination Under USERRA

• USERRA prohibits an employer from engaging in acts of discrimination against past and present members of the uniformed services, as well as applicants to the uniformed services. 38 U.S.C. 4311(a).

• The anti-discrimination prohibition applies to both “employers” and “potential employers.”
Who is Covered?

- Prospective members of the U.S. armed services;
- Current members of the U.S. armed services;
- Past members of the U.S. armed services (veterans);
- Reserve components (Reserve, National Guard); and
- National Disaster Medical Service (NDMS) personnel

Who is Covered?

- USERRA extends reemployment rights to individuals who have been absent from a position of employment on account of military duty in the "uniformed services" which are defined as:
  - Army, Navy, Marine Corps, Air Force, or Coast Guard.
  - Army Reserve, Naval Reserve, Marine Corps Reserve, Air Force Reserve, or Coast Guard Reserve.
  - Army National Guard or Air National Guard.
  - Commissioned Corps of the Public Health Service.
  - Any other category of persons designated by the President in time of war or emergency.
USERRA - Definitions

• "Service" means the performance of such military duty on a commission or noncommission status, and on a voluntary or involuntary basis, in a uniformed service, including:
  – Active duty
  – Active duty for training
  – Initial active duty for training
  – Inactive duty training
  – Full-time National Guard duty
  – Absence from work for an examination to determine a person's fitness for any of the above forms of duty
  – Funeral honors duty by National Guard or reserve members.

USERRA - Notice

• Under USERRA, an employee must provide advance written or verbal notice to the employer of all military duty, unless giving notice is impossible, unreasonable, or precluded by military necessity.

• Notice may be provided by the employee or by an appropriate officer of the branch of the military service in which the employee will be serving. The law only requires "advance" notice, but does not specify how far in advance notice must be given.
USERRA – Case Law

• In Mace v. Willis, the plaintiff Mace returned to her job after military training, only to be told that she had been replaced. Mace immediately told her employer that its actions violated federal law.
• Later, her employer then attempted to telephone her, but she did not answer the phone as she wanted to speak with her attorney first.
• Three weeks after her request for reemployment, the employer wrote her a letter offering to place her back on the schedule, as another employee had quit. The district court held that the employer’s actions willfully discriminatory, as the employer “was on notice that she was asking not only for reemployment, but that by denying her that reemployment, she believed defendants were in violation of the law.”
• The court noted that the employer could have left her a voice message offering to reemploy her or texted her that. The employer waited three weeks to write her a letter offering to reemploy her and only when another employee had quit.
• Such constituted reckless disregard for her reemployment rights under USERRA.

USERRA – Case Law
Mace v. Willis

• A claimant may recover additional liquidated damages “equal to the amount of lost wages and benefits if the court determines that the employer’s failure to comply with [USERRA] was willful[, meaning] the employer either knew or showed reckless disregard for whether its conduct was prohibited by [USERRA].” 20 C.F.R. § 1002.312 (2017).
• Mace v. Willis was willful if that wasn’t clear.
• The three week time—period also wasn’t prompt reemployment.
• “Prompt reemployment” means as soon as practicable under the circumstances of each case. Absent unusual circumstances, reemployment must occur within two weeks of the employee’s application for reemployment. For example, prompt reinstatement after a weekend of National Guard duty generally means the next regularly scheduled working day. On the other hand, prompt reinstatement following several years of active duty may require more time, because the employer may have to reassign or give notice to another employee who occupied the returning employee’s position. See 20 C.F.R. § 1002.181
USERRA – Case Law
“Prompt” Roundup

- In *Vander Wal*, the employer’s reemployment of two plaintiffs on the day one said he was first available, and seven days after the second requested reemployment satisfied the “prompt reemployment” requirement.

- In *Petty*, the Sixth Circuit found the employer violated USERRA when it failed to reemploy the military beneficiary for a period of three weeks where the employee’s military leave lasted approximately 15 months. Petty v. Metro. Gov’t of Nashville-Davidson Cty., 538 F.3d 431 (6th Cir. 2008).

- In *Serricchio*, the Second Circuit found the employer violated USERRA when it failed to reemploy the employee for over four months following his request for reemployment and where the employee’s military leave had lasted approximately two years. Serricchio v. Wachovia Sec. LLC, 658 F.3d 169 (2d Cir. 2011)

THURSDAY – January 17, 2019

CITY GOVERNMENT 101:
The Arkansas Municipal League and how we serve Arkansas cities and towns?

**John Wilkerson**
General Counsel
Conducting Productive Council Meetings

Quorums, Passing an Ordinance, Executive Sessions,

... and so much more!

What is a quorum?

• For City Council governments
  
  – Cities of the First & Second Class – majority of the whole number of alderman is a quorum. ACA § § 14-43-501; 14-44-107. (mayor can be counted)
  
  – Incorporated Towns – majority of the whole number of alderman is a quorum. ACA § 14-45-101.

• For City Administrator/Manager cities
  
  – A majority of the elected membership of the board is a quorum for the transaction of business. ACA § 14-47-123.
Passing an ordinance

• Each ordinance is limited to ONLY one subject. A.C.A. § 14-55-201.

• **Reading Requirement**
  – Ordinances must be read on three (3) different days. A.C.A. § 14-55-202.
  – Two-thirds of the council membership may suspend the reading requirement. *Id.*
  – If the reading requirement is suspended, read the ordinance once, then proceed to vote on the ordinance at the same meeting.

Passing an ordinance (cont’d.)

• **Notice Requirement (A.C.A. § 14-55-206)**
  – All ordinances of a general or permanent nature imposing any:
    • Fines, Penalties, OR Forfeitures
  – Must be published in some newspaper of general circulation in the municipality.
    • If no newspaper, post the ordinance in five (5) of the most public places in the city.
  – Failure to provide notice: “Life never breathed into the ordinance”
    • Citizen can say “I didn’t know!” . . . and the court will agree.
Special City Council Meetings

• The mayor, or any three (3) council members of a town may call for a special meeting. See, e.g., A.C.A. § 14-43-502(b)(1)(B).

• Special meetings may only be called as provided by ordinance. See, e.g., id. (work sessions...a special word)

• MUST be open to the public. See, e.g., A.C.A. § 14-43-502(b)(2)(A) and 25-19-106

Passing an ordinance (cont’d.)

• **Effective Date**
  
  – Ninety-one (91) days after passage by the governing body of the city or town. See A.C.A. § 14-55-203(c)(1)(A).

  – Unless by ordinance set between 30-90, id.

  – Ordinances that are NOT of a general or permanent nature are effective on the date of passage, unless otherwise specified by the ordinance. See A.C.A. § 14-55-203(c)(2).
Passing an ordinance (cont’d.)

- Emergency Clauses (Ark. Const. art. 5, § 1)
  - Council wants an ordinance of a general or permanent nature to take effect immediately.
  - What is required?
    - Must be necessary for the preservation of the public peace, health, and safety.
    - In the ordinance, state WHY the emergency clause is necessary for the public’s peace, health, and safety.
      - You MUST state facts that give rise to the emergency.
    - Two-thirds of the roll call vote of the ordinance is required to pass.
    - Mayor may not vote on the emergency clause.

The mayor’s vote

- A mayor may vote, when the mayor’s vote is necessary for passage. ACA §§ 14-43-501; 14-44-107; 14-45-105.
- Tie sounds like the only time necessary to vote, but it isn’t.
  - 6 member council example.
  - 4 show for the meeting, but only three vote yes. You get the idea.
Understanding the veto

- Mayor can veto an ordinance, resolution, order, and/or motion.

- Mayor must veto within 5 days, in writing, and presented at the next council meeting. ACA § § 14-43-504; 14-44-107; 14-45-105.

- Statutes do not set forth a procedure to document, so, for example:
  - Veto “on the record” at council meeting (recorded in minutes);
  - File a written copy with the clerk or recorder with a date stamp.

January Rules Meeting

- A.C.A. § 14-43-501
  - All cities and towns
  - At the first meeting in January . . .
  - SHALL ORGANIZE!

- Requires:
  - Determine rules of proceedings
  - Keep a journal…must be open for inspection
  - Without limitation institute: rules for agenda setting, filing resolutions, citizen commentary, meeting dates, attendance, committees, reports...
January Rules Meeting

- Consider AML Procedural Rules
- Don’t be afraid to add to your rules as issues arise.
- Look at them every year as the statute requires.
- Put in ordinance form.
- Remember what an ordinance is…LAW!
- By doing so you lessen debate over form and encourage debate over substance.

Procedural rules for council meetings

- Order of the Meeting
  - Call to order
  - Roll call
  - Reading of the minutes (previous meeting)
  - Reports of boards or standing committees
  - Reports of special committees
  - Unfinished (Old) business
  - New business
  - Announcements
  - Citizen Commentary
  - Adjournment
PROCEDURAL RULES: MOTIONS AND THE LIKE

• More rules to remember . . .
  – Any member of the council may propose a motion
  – As soon as the member is recognized by the mayor, the member is entitled to the council’s undivided attention.
  – Discussion or debate not usually permissible until a motion has been re-stated by the mayor.
  – If the motion is not seconded, it is defeated.
  – Debate is restricted to the motion under consideration

Minutes mean…

• Webster again…
  – a: a brief note (as of summary or recommendation)
  – b: the official record of the proceedings of a meeting
Procedural rules: reading of the minutes

– Reading the minutes of the previous meeting.

– Mayor: “Clerk (or Recorder), please read the minutes unless there’s a motion to dispense with same.”
  • Postpone reading/passage the minutes to another meeting

Minutes can be amended!!

Procedural Rules: Motions & the Like

• More rules to remember . . .

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  – If the motion is not seconded, it is defeated.
  – Debate is restricted to the motion under consideration
Public comments: EGG TIMER

• Have Rules for Public Speech

• General Ideas
  – To allow or not to allow, that is the question.
  – And how long one gets to chat, etc.

• Topics
  – Time, place, and manner—NO CONTENT RESTRICTIONS! See U.S. Const. Amend. I.

• USE AN EGG TIMER!

Public comments

• Agenda Items
  – Complete a speaker’s card listing the specific agenda item to be discussed
  – Give the card to the City Clerk prior to the time when the item is called.
  – Enforce maximum time limits (typically 5 minutes)
  – Mayor calls for speakers after the item is called and before Council discussion on the item.
Public comments

- Non-Agenda Items
  - Use the Public Comment portion of the meeting (typically at the end of Old Business and before adjournment)
  - Speakers must fill out a comment card, and indicate they are planning to speak about a non-agenda item.
  - Give the comment card to the City Clerk prior to adjournment.
  - Enforce time limits (typically 5 minutes)

For example:
- Issues *not* on the agenda *may be* addressed.
  - While items on the agenda will be allowed for public comment when being discussed by the Council.

+ Have a time limit on the length of any individual citizen’s comment.
  - May be revoked in instances of inappropriate language or subject matter
Public comments

– Have the citizen state his or her name, address, and a concise statement of his or her position or concern.

– Remarks should be addressed to the Mayor or the Council as a whole, and not to any individual members of the Council.

– Only the Mayor, the Council and the person with the floor should speak during this time.

– Speak only when recognized!

Executive Session

Is the Executive Session allowed?

If so, someone must make a motion.

Must announce purpose of entering executive session.

Go to Executive Session
Executive Session

Who can be in Executive Session?

What can you discuss in Executive Session?

After the Executive Session

- If decision, take a vote on the record
- If no decision, no vote is necessary
THURSDAY – January 17, 2019

CITY GOVERNMENT 101:
The Arkansas Municipal League and how we serve Arkansas cities and towns?

Tracey Pew
Director of Human Resources

PERSONNEL FILES, I-9s AND OTHER IMPORTANT HR ISSUES

CITY GOVERNMENT 101
Arkansas Municipal League Winter Conference
Wednesday, January 16, 2019
BOO - 9 weeks

Fun, Fabulous Filing!

EMPLOYEE FILES
Employee Files & City Policy

• All organizations have files where important employee information is kept. Each filing system is specific to the individual employer.

• All organizations have their own policies regarding employee records and filing systems. In fact, many organizations have employee records maintained in many different areas. General and confidential employee files may be maintained by Human Resources; and payroll records may be kept by a Payroll Administrator. One person may maintain all files for a small city or organization.

• Your city attorney should be included in any recordkeeping policies and decisions.

Why Do I Need A Personnel Files?

• Whether in paper or electronic format, it is important to keep employee records. In some instances, it is a legal requirement.

• Documentation is needed so the employer has an accurate employment history.

• Documentation supports the employer’s decisions about the employee and his or her career.

• The documentation may protect an employer from a lawsuit – if maintained correctly.

• Not to mention record retention regulations...
Personnel File Storage

If you keep paper records - are your file cabinets:
- Locked?
- Secure?
- Fire Proof?
- Water Proof?
- Meet Requirements of the organization’s Disaster Recovery Plan?
- Meet HIPAA Privacy Rule Guidelines?
- If files are electronic, do they meet HIPAA Security Guidelines?

Types of Files - Generally
- General Personnel File
- Confidential Employee File
- Payroll File
- Common File

Others:
- WC File
- Medical File
- Department File
What Goes Where?? Consider access.

• Consider whether or not the document contains sensitive/protected information such as date of birth, marital status, dependent information, SSN, medical information, etc. Protected information should be stored in a confidential file with restricted access.
• Consider who will need access to the file. A supervisor may need access when making employment decisions. Is it related to an employees performance, knowledge, skills, ability or behavior? If so, it may go in the general file.
• Each type of personnel file may have different access requirements.
• Employee access to his or her personnel file is allowed, but most employers set up guidelines for access.
• Note: Even though an immediate supervisor or HR staff may access an employee file, there has to be a bona fide reason to do so.

General Personnel File Contents

• Recruiting and screening documents such as applications, resumes, transcripts, licensure.
• Job description. (Did employee acknowledge and sign?)
• Records related to job offer, promotion, demotion, transfer, layoff or training.
• Acknowledgements or Agreements such as an acknowledgement of receiving employee handbook or new policy.
• Emergency contact information.
• Letters of recognition.
• Disciplinary notices.
• Performance evaluations.
• Termination documentation.
Confidential Personnel Folder Contents

- EEO information.
- Reference checks, background checks.
- Drug testing results.
- Medical insurance applications and records. Supporting documentation - divorce decrees, child support orders, marriage license, etc.
- Doctors notes, accommodation requests.
- Child support or other garnishments.
- Litigation documents.
- Workers compensation claims.
- Investigation records related to disciplinary actions.
- Requests for employment/payroll verifications.

Payroll File

- Salary information.
- Benefit selection – both medical and supplemental as it relates to payroll deductions.
- Pay rate changes.
- Garnishments.
- Legal documentation that affects an employees paycheck.
- W-4.
- State withholding form.
Common File Contents

- I-9 documentation (Allows easy access for auditing purposes)
- Equipment assignments.
- Special skills in case of a disaster/emergency. For example, employees trained in CPR; bilingual employees and languages spoken; employees with medical training and licensure. Often this information is kept in an Emergency Action Plan File.

Personnel File Audit

- Are files maintained in a locked and secure cabinet?
- Have all documents containing confidential information been removed from the general personnel file?
- Are personnel files organized in a logical manner so that information is easy to find?
- Is there a policy or consistent practice regarding employee access to personnel files?
Confidential File Audit

- Are medical/confidential files maintained in a locked and secure cabinet?
- Do you restrict access to only those with a need to know?
- Are the contents organized in a logical manner so that information is easy to access?

Terminated Employee Files

- Are terminated files locked and secured with limited access?
- Does your organization have a regular disposal plan for documents that have exceeded record retention guidelines?
- Are employment records that have met or exceeded record retention requirements disposed of via shredding, burning or fully destroying these records prior to disposal?
- Are files related to current or potential lawsuits maintained by legal counsel or in some way marked to be exempted from any disposal process until the suit is closed?
- Does your company have a written record retention and destruction policy or procedure?
New Employee Documentation – Including Form I-9

- Application vs. Resume
- Employee Handbook and Acknowledgement
- Emergency Contact Form
- Internet Policy and Acknowledgement
- HIPAA Policy and Acknowledgement
New Employee Benefit Documentation

- Retirement Plan Information, if applicable
- Benefit Information, if applicable
  - Health Insurance
  - Dental
  - Vision
  - AD&D
  - Disability
  - Supplemental Benefits
- Holidays and Paid Leave
- To be benefit eligible, employees must work a minimum of 30 hours per week. There are special exemptions for temporary and seasonal employees. Mark covered this earlier this afternoon when he talked about the Fair Labor Standards Act.

New Employee Payroll Information and Documentation

- Make sure an employee knows and understands his/her starting salary or hourly wage and time keeping responsibility
- Advise employees of paydays
- Arkansas Withholding Form AR4EC (and instructions)
- Federal Withholding Form W4 (and instructions)
- Note – you cannot advise an employee on how to complete these forms. If an employee is uncertain, refer them to the instructions provided or their personal financial advisors.
What is a Form I-9?

- A Form I-9 is used for verifying the identity and employment authorization of individuals hired for employment in the United States.
- ALL US employers must ensure the proper completion of Form I-9 for each individual they hire.
- This includes citizens and non-citizens.
- Employees have three (3) days to present the required documentation that establishes identity and employment authorization. Expired documentation is unacceptable.
- Employers must retain the completed Form I-9 three years after the date of hire or one year after termination.

A Note of Caution -

It is illegal to discriminate against work-authorized individuals in hiring, firing, recruitment or in the employee eligibility verification (Form I-9 and E-Verify) process based on that individual’s citizenship status, immigration status or national origin. Employers CANNOT specify which document(s) the employee may present to establish employment authorization and identity.
I-9 File (Common File)

I-9 forms should be maintained in a separate file from the employee personnel file.

Access is highly restricted.

It should be kept in a locked cabinet or secured electronic database.

I-9 forms and supporting documentation should be easily accessible if required by U.S. Citizenship and Immigration Services personnel.

Another Note of Caution

- If caught, there are monetary penalties for both not completing an I-9 form and for incorrectly completing an I-9 form.
- DHS or an administrative law judge may impose penalties if an investigation reveals that you knowingly hired or knowingly continued to employ an unauthorized alien, or failed to comply with the employment eligibility verification requirements with respect to employees hired after Nov. 6, 1986. DHS will issue a Notice of Intent to Fine (NIF) when it intends to impose penalties. If you receive NIF, you may request a hearing before an administrative law judge. If your request for a hearing is not received within 30 days, DHS will impose the penalty and issue a Final Order, which cannot be appealed.
- In 2017, Asplundh, tree trimming company, was hit with a $96 million penalty after pleading guilty to hiring (and re-hiring) illegal alien workers. The violations were so egregious that their hiring executive was personally named in the suit.
- Not surprisingly, immigration officials have sharply increased audits of companies to verify that their employees are authorized to work in the country under the Trump administration.
- Interestingly enough, the government shutdown also meant that the E-Verify system was down as well. Employers that use E-Verify will not be penalized for any delays in creating E-Verify cases but should continue to complete I-9s in compliance with the law using other means of documentation.
Employee Handbooks

- Employment law is heavily litigated and constantly changing. Do not rely solely on the sample included in your meeting materials. You are encouraged to monitor and update your city’s handbook to ensure that it continuously meets the needs of your city from a legal and employee standpoint. It should be reviewed annually by city officials and city attorneys.
- If your city adopts an employee handbook, failing to follow and enforce its guidelines may result in legal liability.
- Policies are of no use if city employees, supervisors, department heads and city officials don’t follow them. When policies and/or updates are distributed, make sure that all employees and city officials sign the acknowledgement.
Do I Need One?

• YES!
• An Employee Handbook is an effective way to communicate policies, procedures and work rules to employees. It can be used to:
  – Properly orient new employees;
  – Maintain consistency among managers and supervisors;
  – Minimize misunderstandings over workplace policies;
  – Support disciplinary action and avoid charges of unlawful discrimination; and
  – Outline employee benefits.

Chapter by Chapter: What To Include in an Employee Handbook

Writing an employee handbook is a daunting task.

There are also many software packages available, and an example handbook available from the Arkansas Municipal League. All handbooks need to be reviewed by city officials and city attorneys.
Chapter 1 – An Overview

• CHAPTER 1:
  – Chapter 1 should contain general overview of what’s to come, such as the purpose and scope of the personnel policies.
  – It should also include definitions of terms frequently used through the handbook.
  – Chapter 1 should outline how amendments and revisions to the Employee Handbook will be made and communicated.
    • Note: Always have employees sign an Acknowledgement of Receipt when the policy is provided and another for any amendments or revisions.

Chapter 2 – The Legal Stuff

• Equal Employment Opportunity
  – EEO Statement
• American’s With Disabilities Act
• Policy Regarding Unlawful Discrimination – defining prohibited conduct

It is also a requirement that employers have the proper Employment Law Posters in place in your offices. These posters cover EEO, FMLA, Minimum Wage Information, etc.
Chapter 3 – Employment Policies & Practices

- General Employment Policies
  - At-Will Employer
  - Authority to Hire and Fire
  - Job Posting & Advertising
  - Employment Applications & Resumes
  - Post-Offer and Pre-employment Physicals
  - Fitness for Duty Exams
  - Drug and Alcohol Testing
  - Genetic Information (GINA)

Chapter 4 – Compensation & What Can Affect It

- Compensation and Matters Affecting Employment Status
  - Attendance
  - Work Hours
  - Unauthorized Work Time
  - Compensation – reporting time, payroll records, payday, withholding
  - Salary Basis Policy – FLSA, Exempt vs. Non-Exempt
  - Overtime & Compensatory Time
  - Emergency Situations
  - Temporary & Seasonal Employees
  - Vacancies and Promotions
  - Training
  - Performance Evaluations
  - Job Safety
  - Refusal to Work
  - Resignation/Termination
  - Exit Interviews
  - Job Descriptions - IMPORTANT
**Chapter 5 – Benefits or What’s In It for Me?**

- **Benefits**
  - Vacations (Uniformed vs. Non-Uniformed Employees)
  - Holidays & Holiday Pay
  - Inclement Weather Policy
  - Sick Leave (Uniformed vs. Non-Uniformed Employees)
  - Funeral or Bereavement Leave
  - Maternity Leave (not to be confused with FMLA)
  - Uniformed Services
  - Family and Medical Leave
  - Leave for Witness or Jury Duty
  - Health Benefits
  - Workers’ Comp for Occupational Injuries
  - Accidental Injury
  - Disability

**Chapter 6 – Work Behavior**

- **Standards of Conduct**
  - Communicating with the Public
  - Personal Communications
  - Uniforms and Personal Appearance
  - Guidelines for Appropriate Conduct
  - Sexual Harassment
  - Anti-Bullying
  - Absenteeism and Tardiness
  - Outside Employment or Moonlighting
  - Outside Compensation
  - Use of Narcotics, Alcohol & Tobacco
  - Drug-Free Workplace
  - Use of City Access & Resources
  - Waiver of Privacy
  - City Vehicles
  - Political Campaigns
  - Disciplinary Action
  - Procedure for Review of Disciplinary Action
Although it is not illegal, bullying can be a problem in the workplace. The way to combat bullying is to have an anti-bullying policy in place.

Bullying causes both an individual and corporate impact.

An effective bullying prevention policy should include: a definition in precise concrete language; provide clear examples of unacceptable behavior; clearly state your organization’s view and its commitment to prevention; reporting protocol; procedures for investigating and resolving complaints.

AML can provide training – “Achieving Respect and Understanding in the Arkansas Municipal Workplace.” Contact Whitnee V. Bullerwell at 501-374-3484 ext. 206 or wvb@arml.org if you are interested.
Chapter 7 – More Legalese!

• Miscellaneous Information
  – Policy Statement
  – Conflicts – Federal, State or Local Law takes precedence.
  – Severability
  – Policy Changes
  – Change of Address

Other

• There are many other things that you or your Human Resources department is responsible for knowing and maintaining. The laws are constantly changing and it is important to stay current. If you have questions, please do not hesitate to reach out to me.

• The Arkansas Public Employers Human Resources Association (APEHRA) is also very affordable and is an excellent resource specifically for public sector employers. If you would like more information about joining, it can be found at www.apehra.com
THURSDAY – January 17, 2019

CITY GOVERNMENT 101:
The Arkansas Municipal League and how we serve Arkansas cities and towns?

Dave Mims
Consultant
League’s IT in a Box
Cybersecurity

Is my city at risk? – What can I do?

Presenter

• Dave Mims
  • CEO

• davemims@sophicity.com
  770-670-6940 x110
Who remembers the story... Achilles?

It just takes ONE!

- 1 unprotected/unmanaged computer to be the way in for a cybercriminal.
- 1 unsuspecting employee to let the cybercriminal in through your best system of defenses.
- 1 critical best practice overlooked like regularly testing your data backups to lose your data to ransomware.
And if you are hit...

- Why would you ever pay a ransomware ransom?
- 1 in 4 who pay actually get their data back.
- Of those, half get hit again.
- Trust the criminal to put your data back just as it was?
- Trust the criminal to clean up their mess in your network?
- Trust the criminal to lock themselves out as they leave, never to come back?
- 3 in 4 lose their data after paying. Half who pay, get hit again.
- Why would you even have to consider paying the ransom?

Your biggest risks! – The 3Ps

- Passwords
- Patching
- People
Big Risk: Poor Passwords

• A study from a research company in California found:
  • 1 out of 3 people had their passwords written down somewhere around their desk.
  • Many used obvious passwords (child name, pet name, college mascot, birthdate, etc).
  • Overall, researchers figured out passwords of half of the people in the study!
  • Half of all security breaches involve stolen or easily guessable passwords!

Big Risk: Poor Passwords

• SplashData’s annual Worst Passwords List, compiled from millions of leaked passwords during the year, shows people continue putting themselves at risk. For 2018:

<p>| | | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>123456</td>
<td>2. password</td>
<td>3. 123456789</td>
<td>4. 12345678</td>
</tr>
<tr>
<td>6.</td>
<td>111111</td>
<td>7. 1234567</td>
<td>8. sunshine</td>
<td>9. qwerty</td>
</tr>
<tr>
<td>11.</td>
<td>princess</td>
<td>12. admin</td>
<td>13. welcome</td>
<td>14. 666666</td>
</tr>
<tr>
<td>16.</td>
<td>football</td>
<td>17. 123123</td>
<td>18. monkey</td>
<td>19. 654321</td>
</tr>
<tr>
<td>21.</td>
<td>charlie</td>
<td>22. a123456</td>
<td>23. donald</td>
<td>24. password1</td>
</tr>
</tbody>
</table>

• Remember, hackers are using automated software to look for holes. That automated software attempts common and weak passwords that are easy to crack.
Your biggest risks! – The 3Ps

- Passwords
- Patching
- People

Big Risk: Failing to Patch

- Government particularly lags on replacing outdated software, patching current software, implementing individual endpoint defense...

- It’s not unusual to see cities using software that is 8-10 (or more) years old and hasn’t been supported by the software vendor for a long time.

- By not regularly applying patches, you are choosing to leave security holes open for hackers to exploit.
Your biggest risks! – The 3Ps

• Passwords

• Patching

• People

Big Risk: Untrained People

• Who receives an email with ransomware?

• Who clicks on a malicious website link?

• Who opens a malicious file attachment?

• How does ransomware get into your city network?

• People: You, your staff, or some other user on your network.
Your biggest risks! – The 3Ps

- Passwords
- Patching
- People

How many have gotten...
Your Cybersecurity risks...

• will be considered by financial institutions to determine your bond rate.

• will be considered by insurance institutions to determine your premiums.

$$$  

• And, is considered by state and federal agencies for access to criminal information systems.

What do we do?
Fundamental

- Three (3) **fundamental** areas to **absolutely** get right!

1. The Wall
2. The People
3. The Escape

**Tips!**

Fundamental: The Wall

- Policies, Technology, and Professionals

**Tips!**
Fundamental: The Wall

- Policies, Technology, and Professionals
- Policies: passwords, computer usage, internet usage, access, …

Passwords

- Use a password on all devices – including tablet & phones.
- Use passphrases (preferred) or complex passwords.
- Use two factor authentication (2FA).
- Do not write passwords down and leave them visible.
- Do not use obvious passwords. Change your password today if in the top 25…
- Do not use the same password for all systems you access.
- Consider using a reputable password vault.
Fundamental: The Wall

- Policies, Technology, and Professionals

- Policies: passwords, computer usage, internet usage, access, …

- Technology: monitoring & alerting, patch management, modern/supported hardware, modern/supported operating system, modern/supported applications, antivirus, antispam, email, …

- Professionals: people who know what they are doing when setting up technology, configuring technology, upgrading technology, monitoring technology, managing technology, supporting technology, …
**Fundamental**

- Three (3) **fundamental** areas to **absolutely get right!**

1. The Wall
2. The People
3. The Escape

**Fundamental: The People**

- Training, Training, and Training
- **Who** gets the email, **who** clicks the link, **who** opens the attachment, **who** has access to the systems, **who**...
- **How** could they let that happen? **How** could they not see the danger or know better?

- **Have you trained** them?
Today, training employees about cybersecurity is more important than ever. Cities are targets for hackers and criminals who use ransomware, malware, viruses, and other cyberattack tools to harm city operations, networks, and data. Hackers use techniques that trick employees into handing over access to your systems—and criminals know that people can be the weakest link in your security.

- Spot email scams (phishing, spear phishing, whaling)
- Spot phone scams (vishing)
- Spot in-person scams (follows in)
- Simulate phishing attack
Fundamental

- Three (3) fundamental areas to absolutely get right!

1. The Wall
2. The People
3. The Escape

Fundamental: The Escape

- Data Backup and Disaster Recovery
- When the Wall is breached…
- When the People let the bad guys right in…
- Know you can recover!

- Why is ransomware growing? Why are people paying the ransom?
Fundamental: The Escape

- Data Backup and Disaster Recovery
- Address time to recovery for smaller incidents through onsite data backup.
- Plan for worst-case scenarios through offsite data backup.
- Monitor your data backup real-time.
- Test your data backups regularly.
- Your data backup is ultimately your escape plan (e.g., additional low-cost insurance) if the worst happens. Have it. Manage it. Test it. -- Know it will work!

REMEMBER: It just takes ONE!

- 1 unprotected/unmanaged computer to be the way in for a cybercriminal.
- 1 unsuspecting employee to let the cybercriminal in through your best system of defenses.
- 1 critical best practice overlooked like regularly testing your data backups to lose your data to ransomware.

- Don’t be that city who is the latest front page news!
AML’s IT in a Box

Cybersecurity and Computer Maintenance

We are a box against cyber attacks by keeping your computer hardware current, not healthy, outdated, patched against malware and viruses, and ongoing software patching to keep you secure.

24x7 Helpdesk

IT in a box-based Helpdesk provides sites both remote and onsite support. You will have dedicated IT engineers with many years of experience supporting most software and applications. Available 24/7/365, our Helpdesk supports your IT staff on staff in the office, working from homes and off the road.

Data Backup and Disaster Recovery

Onsite data backup for quick recovery from events like a server failure. Distributed offshore data backup for disaster recovery. A major incident like a natural disaster, like flood monitoring to quickly access data backup, and quarterly testing to ensure your disaster recovery.

Records / Document Management and Email

Software and policies to protect your city records, documents, e-mail, financial activities, records, access, and other information. Automated reporting for your annual reports including financial statement, CEO letter, and Board of Directors. Also includes Microsoft Office Professional Plus, and city email with 1GB of metered storage for each user.

Who guarantees IT services based on your expectations?

WE DO!

Video Archiving

An easy low-cost, cloud-based service that provides the ability to store video at a cost that is lower than other archive options. By using Sophicity video storage, we will ensure your video will be stored securely and accessible for years to come.

Policy and Compliance

We help you identify best practices and policies that address information security risks and assist with legislative and compliance. By making sure your staff is knowledgeable and prepared, we help your organization avoid security issues that could lead to failure of taking action to the best essential and internal audits.

Website

We provide you a modern website with a custom design that will reflect your community well online. To save you time, submit your website updates to us and we will post them for you.

Vendor Management and Procurement

As vendor contracts come up for renewal, we will do it. It’s part of your software or hardware refresh? Call us for support. Need a new computer? Call us and we’ll price it.

Questions?

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