

**2023 EMPLOYMENT LAW
SEMINARS FOR CONSERVATION
DISTRICTS**

Follow-Up Webinar

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FMLA Coverage for Districts

- **Family and Medical Leave Act (FMLA)**
 - Requires covered employers to provide covered employees with up to 12 weeks of unpaid leave every 12 months for absences due to a qualifying event
 - Covered employers – typically must have 50 or more employees within a 75-mile radius
 - Covered employees
 - **Must work at a worksite with 50 or more employees within a 75-mile radius**
 - **Must have worked for the employer for at least one year**
 - **Must have had at least 1,250 hours worked in preceding 12 months**



FMLA Coverage for Districts

- All public agencies are covered employers under FMLA without regard to number of employees
- However, to be eligible, employee of public agency must work at a worksite with 50 or more employees of the agency within a 75-mile radius
 - Districts whose employees are county employees – employees likely are covered for FMLA purposes
 - Independent districts – harder question to answer, but likely considered a subordinate agency of the county
 - **As such, all county employees would be counted in the “50 or more employees within a 75-mile radius” analysis**



Affordable Care Act – Health Insurance Coverage for Temps and Interns

- **Affordable Care Act – full-time employees are entitled to health insurance coverage**
 - Full-time definition – employee who averages 30 or more hours per week
- **Temporary workers and interns**
 - Employers can use a lookback measurement method of 1 year to determine FT status
 - Question – did temp/intern average 30 or more hours per week over lookback period?
 - **If no, no problem**
 - **If yes, will need to offer health insurance prospectively**



Employment Terminations – Board Involvement

- **Who should make the decision to terminate an employee’s employment – the Board by majority vote or the District Manager?**
 - Answer to the question is at the District’s discretion
 - **There is nothing unlawful with having the Manager make those decisions without Board involvement**
 - Involving the Board in personnel decisions below the District Manager level can be cumbersome and create complications, but it is not legally prohibited



Mileage Reimbursement and Compensation for Travel Time

- **Mileage reimbursement – generally not required by law**
 - FLSA – requires payment of minimum wages and overtime pay “free and clear”
 - If employee’s wages are close to minimum wage or if employee works OT, significant unreimbursed mileage expenses may create some risk



Mileage Reimbursement and Compensation for Travel Time

- **Travel time as hours worked for non-exempt employees**
 - Travel all in the course of the workday – compensable hours worked
 - Likely would include meetings after normal working hours
 - **Can exclude one round of home-to-work and work-to-home commuting per day**



Right-to-Know Requests – Employment Matters

- **Pennsylvania Right-to-Know Law**
 - Creates express presumption that all records in possession of government agencies are public
 - However, RTKL has over 30 exemptions that allow agencies to deny access to certain public records



Right-to-Know Requests – Employment Matters

- **Employment-related RTKL exemptions**
 - Records related to an individual's medical, psychiatric or psychological history or disability status
 - Drug test results
 - Records containing personal identification information
 - **SSNs, driver's license numbers, financial info, personal telephone numbers, spouse's name and dependents**
 - **Does NOT exempt the release of names, positions, salaries, compensation and other payments, or employment contracts**



Right-to-Know Requests – Employment Matters

- **Employment-related RTKL exemptions**
 - Certain personnel records
 - **Reference letters**
 - **Performance ratings and reviews**
 - **Employment applications for someone not hired**
 - **Written criticisms of employee**
 - **Documents related to discrimination or sexual harassment**
 - **Information regarding discipline, demotion, or discharge in the personnel file**
 - **Academic transcripts**



Right-to-Know Requests – Employment Matters

- **Employment-related RTKL exemptions**
 - Certain personnel records
 - **Records pertaining to strategy or negotiations related to labor relations or collective bargaining and related arbitration proceedings**
 - **Grievance arbitration exhibits, transcripts, and arbitrator opinions**
 - Final award or order of arbitrator is not exempted



Sunshine Act – Personnel Committee and Personnel Matters

- **Sunshine Act – provides right of public to be present at agency meetings**
 - Requirements on public agencies
 - **Official actions and deliberations must take place at an open meeting**
 - **Votes must be recorded, and written minutes must be taken and maintained**
 - **Advance public notice of all meetings must be provided**
 - **Opportunity for public comment must be provided at meetings**



Sunshine Act – Personnel Committee and Personnel Matters

- **Exception to requirements – executive sessions**
 - To discuss personnel matters, including hiring, promoting, disciplining, or dismissing of employees
 - **Individual employees whose rights could be adversely affected may request that matters relating to them be discussed at an open meeting**
 - To discuss information, strategy, or negotiations related to collective bargaining agreements or arbitrations
 - To consult with an attorney regarding litigation
 - To discuss agency business that would lead to the disclosure of confidential information including investigations of possible violations of law



Sunshine Act – Personnel Committee and Personnel Matters

- **Executive session exception**
 - Any official action based upon discussions held in an executive session must be taken at an open meeting
 - Boards can have executive sessions at any time, so long as the executive session and reason for it are announced at a public meeting either prior to or after the executive session is held



Sunshine Act – Personnel Committee and Personnel Matters

- **Committee meetings (such as Personnel Committees)**
 - Covered by the Act's requirements only if deliberations take place or committee is authorized by the full Board to take official action or render advice on matters of District business
 - Executive session exception rules apply equally to committees with such authority



QUESTIONS?



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