

2013 IAPD/IPRA Soaring to New Heights Conference January 24-26, 2013 Hilton, Chicago

Your Local Government Attorneys

MAIN OFFICE:
140 S. DEARBORN STREET, 6TH FL.
CHICAGO, ILLINOIS 60603

PHONE: 312-782-7606

FAX: 312-782-0943

WWW.ANCELGLINK.COM

OTHER OFFICE LOCATIONS:
175 E. HAWTHORN PARKWAY
VERNON HILLS, ILLINOIS 60061
(847) 247-7400

4 E. TERRA COTTA AVENUE
CRYSTAL LAKE, ILLINOIS 60014
(815) 744-8980

1979 N. MILL STREET, SUITE 207
NAPERVILLE, IL 60563
(630) 596-4610

207 NORTH JEFFERSON, SUITE 402
BLOOMINGTON, ILLINOIS 61701
(309) 828-1990

FRIDAY, JANUARY 25, 2013

8:00 A.M. TO 9:15 A.M.

SESSION #23

TRANSITIONING EXECUTIVE LEVEL EMPLOYEES SENSITIVELY AND LEGALLY

PRESENTERS:

KERI-LYN J. KRAFTHEFER, ESQ.

DONALD W. ANDERSON, ESQ.

**Ancel
Glink**

DIAMOND BUSH
DiCIANNI
& KRAFTHEFER

Transitioning Executive Level Employees Sensitively and Legally

IAPD/IPRA Conference

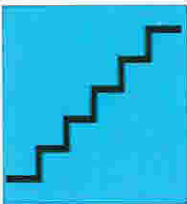
Friday, January 25, 2013
8:00 a.m. – 9:15 a.m.

Presented By:
Keri-Lyn J. Krafthefer and
Donald W. Anderson

www.ancelglink.com

Ancel
Glink
ATTORNEYS AT LAW
IN ILLINOIS AND CALIFORNIA

Steps of Legal Analysis of Discipline or Termination



Ancel
Glink
ATTORNEYS AT LAW
IN ILLINOIS AND CALIFORNIA

Where do employment rights come from:

- o Employment Contracts
- o Union Contracts
- o Personnel Policies
- o Laws



Ancel
Glink
ATTORNEYS AT LAW
IN ILLINOIS AND CALIFORNIA




Is there an employment contract governing this relationship?

- What are the provisions regarding discipline and termination?
- What severance language exists?
- What benefits will the district have to pay on termination?
- Early termination without a penalty?
- Is the contract silent?

Ancel
Glink

PERSONNEL
TRAINING
SOLUTIONS




Consider the district's personnel policies

- If the employee has a contract:
 - How are conflicts between the contract and policies addressed?
 - If silent, contract trumps.
 - Does the contract incorporate provisions of the personnel policies?
- If the employee does not have a contract:
 - What are the provisions regarding discipline and termination?
 - What severance language exists?
 - What benefits will the district have to pay on termination?

Ancel
Glink

PERSONNEL
TRAINING
SOLUTIONS



Is the employee covered by a collective bargaining agreement?

- What process is required by the union contract?
- Pre-disciplinary interview?
- Notice to union?
- Union involvement?
- Hearing requirements?

Ancel
Glink

PERSONNEL
TRAINING
SOLUTIONS

Consider the applicable laws

- o Title VII of the Civil Rights Act
- o Illinois Human Rights Act
- o Illinois Wage Payment and Collection Act
- o Fair Labor Standards Act
- o Age Discrimination in Employment Act
- o Other statutes
- o Common law



Ancel
Glink
ATTORNEYS AT
LAW
CHICAGO, ILLINOIS

Title VII of the Civil Rights Act of 1964

- o SEC. 2000e-2(a) Employer practices
 - o It shall be an unlawful employment practice for an employer -

Ancel
Glink
ATTORNEYS AT
LAW
CHICAGO, ILLINOIS

Title VII of the Civil Rights Act of 1964

- o (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

Ancel
Glink
ATTORNEYS AT
LAW
CHICAGO, ILLINOIS

Title VII of the Civil Rights Act of 1964

- o (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

Ancel
Glink

COMMUNITY
RELATIONS
SPECIALISTS

Illinois Human Rights Act

- o 775 ILCS 5/2-102
 - Section 2-102. Civil Rights Violations-Employment.
 - o It is a civil rights violation to refuse to hire, segregate, or to act with respect to recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure or terms, privileges or conditions of employment on the basis of unlawful discrimination or citizenship status.

Ancel
Glink

COMMUNITY
RELATIONS
SPECIALISTS

Illinois Human Rights Act

- o It is also a violation to refuse to temporarily transfer a pregnant female peace officer or pregnant female fire fighter to a less strenuous or hazardous position for the duration of her pregnancy if she so requests, with the advice of her physician, where that transfer can be reasonably accommodated.

Ancel
Glink

COMMUNITY
RELATIONS
SPECIALISTS

Illinois Wage Payment and Collection Act

o 820 ILCS 115/5

- Final compensation must be paid in full at time of separation or next regularly scheduled payday.
- Employee may request in writing for final compensation to be mailed to him/her.



Illinois Wage Payment and Collection Act

- Cannot make withholdings for anything the employee owes you.
- Must pay for any unused vacation time, unless otherwise provided in a union contract or employment agreement



Determine what process is required

- o Notice?
- o Hearing?
- o Response?



Evaluate the Problem

- o Performance?
- o Particular Incident?
- o Personality?



Ancel
Glink

EMPLOYMENT
DEFENSE
& LITIGATION

Review the "Evidence"

- o Two reasons:
 - To share with the employee to support any ultimate decision
 - To defend any wrongful discharge claim



Ancel
Glink

EMPLOYMENT
DEFENSE
& LITIGATION

If performance, generally, is the problem:

- o Performance Evaluations
- o Verbal Warnings
- o Written Warnings
- o Performance Improvement Plans



Ancel
Glink

EMPLOYMENT
DEFENSE
& LITIGATION

If an incident is the problem:

- Witnesses
- Impartial investigation
- What is the employee's version?
- Does everyone agree on the facts?



Ance! Clink
Teamwork
Training
& Solutions

If personality is the problem:

- How have the problems manifested?
- Is there any documentation indicating the problem?



Ance! Clink
Teamwork
Training
& Solutions

What is the appropriate remedy for the situation?

- Non-Disciplinary Alternatives:
 - Training?
 - Coaching?
 - Evaluation
 - Remediation?
- Disciplinary Alternatives:
 - Verbal Warnings
 - Written Warnings
 - Suspension
 - Termination



Ance! Clink
Teamwork
Training
& Solutions

Consider your Authority

- o Director?
- o Are you an elected official?
- o Has the Board conferred you with its power to hire and fire?
- o Is your Board supportive of your recommendations, generally?



Ance! Glink
A Practical Guide to
Effective Leadership

Consider the Politics

- o Friends and Family Plan?
- o Will the politicians share your values about the situation if you are a manager?
- o Will the Board share your view?



Ance! Glink
A Practical Guide to
Effective Leadership

If the Remedy is Less than Termination:

- o Document it and keep in the personnel files
- o Document "verbal" warnings



Ance! Glink
A Practical Guide to
Effective Leadership

If the Remedy is Termination:

- o Is the employee in a protected class?
- o Seek legal advice.



Ancel
Glink

DEPARTMENT OF
EDUCATION
NEW YORK CITY

If the Remedy is Termination:

- o Is an offer of resignation or retirement an option, in exchange for a release?
 - If so, what benefits can you offer? (severance, insurance continuation, neutral or positive letter of reference)
 - Learn the components of a waiver of all rights
 - o 21 day consideration period
 - o 7 day revocation period

Ancel
Glink

DEPARTMENT OF
EDUCATION
NEW YORK CITY

If the Remedy is Termination:

- o Consider how you will address operational needs in the person's absence – have a temporary transition plan
- o How will this be communicated within the district? What will be communicated?



Ancel
Glink

DEPARTMENT OF
EDUCATION
NEW YORK CITY

Dropping the Bomb

- o Timing of Termination
 - Operationally
 - Considerately
 - Other employees



Ancel Glink
DROPPING THE BOMB
A 90-MINUTE COURSE

Dropping the Bomb

- o Who will be present?



Ancel Glink
DROPPING THE BOMB
A 90-MINUTE COURSE

Dropping the Bomb

- o Where will this occur?
- o When will this occur?
- o Security concerns?
- o Removing personal property
- o Returning property back to district

Ancel Glink
DROPPING THE BOMB
A 90-MINUTE COURSE

Other legal considerations

- o Unemployment
- o FOIA
- o Confidentiality



Ancel
Glink

DISABILITY
LAW
ATTORNEYS

What if the employee to be terminated is YOU?

- o Make sure your rights are acknowledged
- o Try to end up in the best position for the future
 - Joint Statement?
 - Is Resignation or Retirement an Option?
 - Neutral or Positive Letter of Reference?
 - Call Heidi!



Ancel
Glink

DISABILITY
LAW
ATTORNEYS

An ounce of prevention is worth a ton of lawyers



Ancel
Glink

DISABILITY
LAW
ATTORNEYS



Contact us...

**Ancel, Glink, Diamond, Bush,
 DiCianni & Krafthefer**

www.ancelglink.com

Keri-Lyn J. Krafthefer

Chicago: (312) 782-7606
 Vernon Hills: (847) 247-7400
 Warrenville: (630) 658-2610
 Crystal Lake: (815) 477-8980
 Bloomington: (309) 828-1990

