

# ILLINOIS MUNICIPAL LEAGUE

## 2011 Conference

### September 15-17, 2011

### Hilton, Chicago

*Your Local Government  
Attorneys*

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**SATURDAY, SEPTEMBER 17, 2011**

**9:15 A.M. TO 11:30 A.M.**

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**MANAGING CRITICAL PERFORMANCE  
AND EMPLOYMENT ISSUES WITH HIGH  
LEVEL MUNICIPAL EMPLOYEES—LEGAL  
CONSIDERATIONS**

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**PRESENTERS:**

**KERI-LYN J. KRAFTHEFER**

**Ancel  
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## Managing Critical Performance and Employment Issues with High Level Municipal Employees – Legal Considerations

**98th Annual Illinois Municipal League Conference**  
Saturday, September 17, 2010

Presented By:  
Keri-Lyn J. Krafthefer

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## Steps of Legal Analysis of Discipline or Termination



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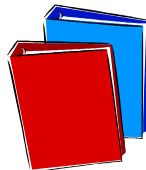
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## Where do employment rights come from:

- Employment Contracts
- Union Contracts
- Personnel Policies
- Laws



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**Is there an employment contract governing this relationship?**

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

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**Consider the municipality'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 municipality have to pay on termination?

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**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?

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**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



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**Title VII of the Civil Rights Act of 1964**

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

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**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

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**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.

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**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.

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**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.

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### Illinois Wage Payment and Collection Act

- 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.




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### 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




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### Determine what process is required

- Notice?
- Hearing?
- Response?





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**Evaluate the Problem**

- Performance?
- Particular Incident?
- Personality?



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**Review the "Evidence"**

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



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**If performance, generally, is the problem:**

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



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**If an incident is the problem:**

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



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**If personality is the problem:**

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



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**What is the appropriate remedy for the situation?**

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



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### Consider your Authority

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


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### Consider the Politics

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





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### If the Remedy is Less than Termination:

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


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**If the Remedy is Termination:**

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





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**If the Remedy is Termination:**

- 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
    - 21 day consideration period
    - 7 day revocation period




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**If the Remedy is Termination:**

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


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## Dropping the Bomb

- Timing of Termination
  - Operationally
  - Considerately
  - Other employees



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## Dropping the Bomb

- Who will be present?



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## Dropping the Bomb

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

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**Other legal considerations**

- Unemployment
- FOIA
- Confidentiality



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**What if the employee to be terminated is YOU?**

- Make sure your rights are acknowledged
- 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!



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**An ounce of prevention is worth a ton of lawyers**



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## Contact us...

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