

Eight Things
Human Services Directors and Administrators
Need to Know about
Public Employment Law

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Four Broad Areas

- **Disciplining and Discharging Employees**
- **Personnel Privacy Statute**
- **Family and Medical Leave Act**
- **Overtime**



YOU ARE
FIRED

Five Exceptions to the Employment-at-Will Rule

- Public Policy Exception
- Statutory Exceptions
- First Amendment Exceptions
- Fourth Amendment Exceptions
- Property Right Exception (State Human Resources Act)

Anti-discrimination Law Exceptions

- ✓ **Title VII** of the Civil Rights Act of 1964
- ✓ Age Discrimination in Employment Act (**ADEA**)
- ✓ Americans with Disabilities Act (**ADA**)
- ✓ The Pregnant Workers Fairness Act (**PWFA**)
- ✓ Genetic Information Nondiscrimination Act (**GINA**)
- ✓ Uniformed Services Employment and Reemployment Rights Act (**USERRA**)



Race and Color

Sex

Sexual Orientation

Gender Identity

Pregnancy

Religion

Religious Affiliation

No religion

Religious Practice and Beliefs

Duty to Accommodate

National Origin

Age

Disability

A. Employers may not discriminate against qualified individuals with a disability.

B. A person with a disability is someone with a physical or mental impairment that substantially limits that person's ability to perform a major life activity.

C. A qualified individual with a disability is someone who can perform the essential functions of a position with or without a reasonable accommodation.

D. Failure to provide a reasonable accommodation may be a form of discrimination, unless the employer can show that the accommodation would be an undue hardship.

The Pregnant Workers Fairness Act

Basic rule: It is unlawful for an employer not to make a reasonable accommodation to an employee's or applicant's known limitations related to pregnancy, childbirth or related medical conditions unless that accommodation would pose an undue hardship on the employer's operations.

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Discipline and Discharge for Just Cause

Performance

**Unacceptable
Personal Conduct**

- Unsatisfactory Job
Performance
- [Grossly Inefficient Job
Performance]

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Dismissal for Unacceptable Personal Conduct

(b) Unacceptable personal conduct means:

- 1) conduct on or off the job **that is related to the employee's job duties** and responsibilities for which no reasonable person should expect to receive prior warning;
- 2) conduct that constitutes violation of State or federal law;
- 3) conviction of a felony that is detrimental to or impacts the employee's service to the agency;
- 4) the **willful violation** of work rules;
- 5) **conduct unbecoming** an employee that is detrimental to the agency's service;
- 6) the abuse of client(s), patient(s), or a person(s) over whom the employee has charge or to whom the employee has a responsibility, or of an animal owned or in the custody of the agency;
- 7) falsification of an employment application or other employment documentation;
- 8) insubordination that is the **willful failure or refusal** to carry out an order from an authorized supervisor;
- 9) absence from work **after all authorized leave credits and benefits have been exhausted**; or
- 10) failure to maintain or obtain credentials or certifications.

2. The 14th Amendment Property Right Exception to the Employment at Will Rule

A public employee with a legitimate claim to continuing employment, because of

- **state statute**
(e.g., the State Human Resources Act)
- **local ordinance**

has a “property right” that is protected by the 14th Amendment of the U.S. Constitution.

If a property right exists, so what?

- Fourteenth Amendment guarantees that no state shall “deprive any person of life, liberty, or property, without **due process** of law.”
- This means that:
 - employee gets “**notice and an opportunity to be heard**” **BEFORE** any adverse employment action, and
 - employee entitled to **impartial** review of any adverse employment action.

Models for County Human Services Organization

- ❑ Traditional: Property Rights
- ❑ SE: Property Rights
- ❑ 153A-77 (a): Property Rights
- ❑ Consolidated (b): Property Rights optional

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<https://oshr.nc.gov/state-employee-resources/local-government-support>

3. G.S. 153A-98 governs which parts of an employee's personnel file may be made public.

Public Information

1. employee's name
2. age
3. date of first appt.
4. terms of any contract
5. current position
6. current job title
7. current salary, including pay, benefits, incentives, bonuses, deferred and all other compensation
8. Date and amount of each salary increase or decrease
9. date and type of each promotion, demotion, transfer, suspension, separation, or other change in position classification;
10. date and general description of the reasons for each promotion;
11. date and type of each dismissal, suspension, or demotion for disciplinary reasons; and
12. ***If the disciplinary action was a dismissal, a copy of the written notice of the final decision of the county setting forth the specific acts or omissions that are the basis of the dismissal;***
13. office where currently assigned

4. The 14th Amendment's Liberty Interest and the Name-Clearing Hearing

1. "Liberty" includes the right "to engage in the common occupations of life, unfettered by unreasonable restrictions" imposed by the government.
2. That right is abridged when the government "unfairly imposes some **stigma** or disability that will itself foreclose the freedom to take advantage of employment opportunities."

Due Process is Required

When the government's statements about an employee:

- ❑ places a **stigma** on the employee's reputation, and
- ❑ are made **public** by the employer, and
- ❑ are made in conjunction with the employee's termination or demotion, and
- ❑ are false or are contested by the employee.

Stigma

Statements that impugn an employee's

- ethics**
- honesty**
- or
- morals**

Statements about an employee's performance,
knowledge, skills or abilities \neq stigma

Mere fact of termination or demotion \neq stigma

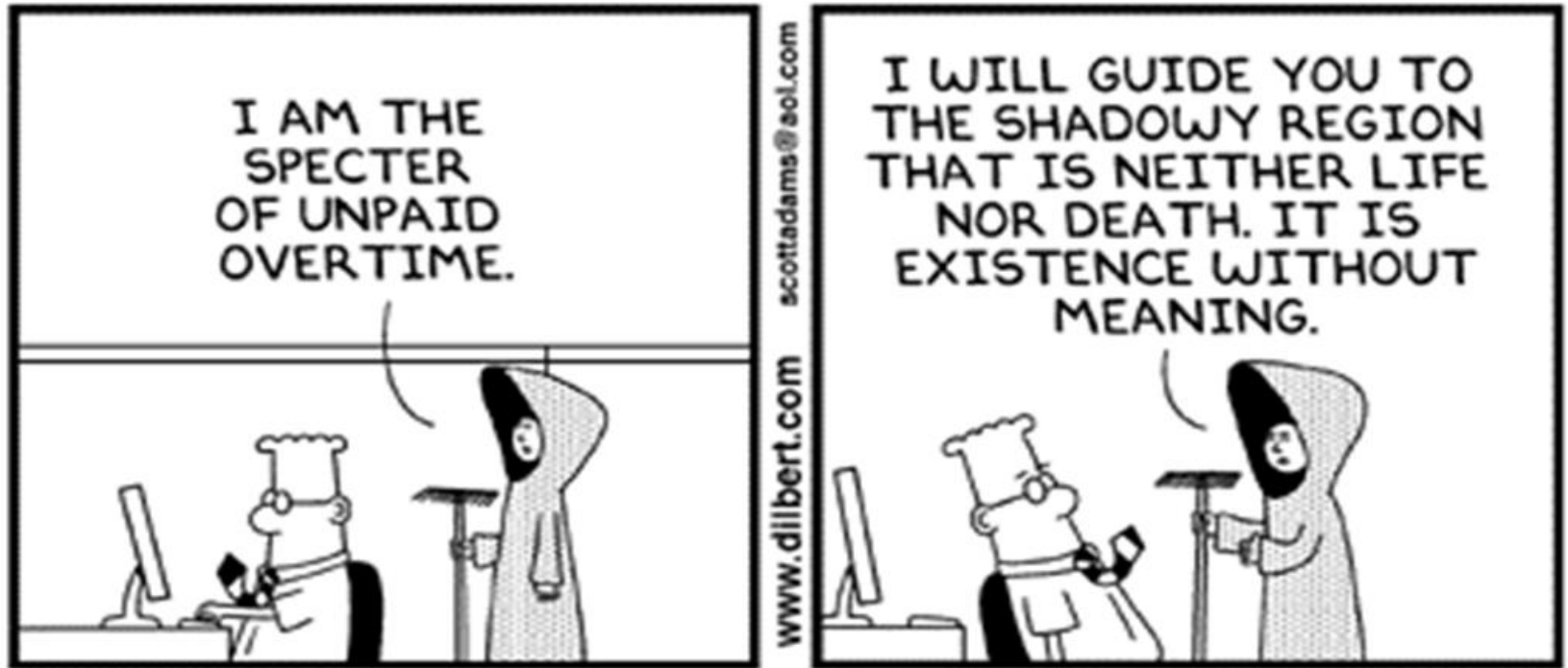
Due Process

1. Notice
2. A public hearing
 - a. Before or after termination or demotion
 - b. Before publication

5. Although the FMLA permits an employer to terminate an employee who has exhausted his or her 12 weeks of FMLA leave, the ADA may require the employer to give the employee additional time off as a reasonable accommodation.

6. Although the FMLA permits an employer to terminate an employee who has exhausted their 12 weeks of FMLA leave, the State Human Resources Act prohibits local SHRA departments from terminating an employee for lack of availability for work until the employee has exhausted all accrued sick time.

7. The public sector is allowed to compensate employees who have worked overtime with compensatory time off.



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Comp Time

- Rate: 1 ½ hours for every hour over 40
- Employee agreement needed
- Statutory Limit: 240 hours
- Cash-out at termination
- May require employee to use comp time before using other paid leave

- 8.** An employee who works overtime without prior authorization must always be paid for the time, even where the employer's policy requires authorization for overtime work.

Hours Worked:

- All time during which an employee is required to be on the employer's premises or at some other assigned workplace; and
- All time during which the employee is "suffered or permitted to work."

9. You can call or e-mail me

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9. You or anyone you assign to have HR responsibilities

should take:

Introduction to Public Employment Law

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