

**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**
- **Overtime**
- **FMLA**

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1. The Rule of Employment At Will



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Four Exceptions to the Employment-at-Will Rule

- Public Policy Exception
- Statutory Exceptions
- First Amendment Exceptions
- Fourth Amendment Exceptions
- Property Right Exception (SHRA Act)

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Models for County Human Services Organization

- Traditional
- Substantially equivalent variation
- Consolidated (a)
- Consolidated (b)

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Consolidated (b): Single Agency

- Human services board
- County managers appoints and supervises human services director
- Human services director appoints human services employees with consent of county manager.
- Human services employees subject to county personnel policies unless commissioners expressly provide to continue under State Human Resources Act.

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Discipline and Discharge for Just Cause

Performance

- Unsatisfactory Job Performance
- [Grossly Inefficient Job Performance]

Unacceptable Personal Conduct

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

An 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.

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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.

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Models for County Human Services Organization

- Traditional: Property Rights
- SE: Property Rights
- Consolidated (a): Property Rights
- Consolidated (b): Property Rights optional

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

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Public Information

- | | |
|--|---|
| 1. employee's name | 9. date and type of each promotion, demotion, transfer, suspension, separation, or other change in position classification; |
| 2. age | 10. date and general description of the reasons for each promotion; |
| 3. date of first appt. | 11. date and type of each dismissal, suspension, or demotion for disciplinary reasons; and |
| 4. terms of any contract | <i>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;</i> |
| 5. current position | and |
| 6. current job title | 12. office where currently assigned |
| 7. current salary, including pay, benefits, incentives, bonuses, deferred and all other compensation | |
| 8. Date and amount of each salary increase or decrease | |

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4. 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
- May require employee to use comp time before using other paid leave
- Cash-out at termination

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5. 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.

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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."

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6. 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.

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7. Although the FMLA permits an employer to terminate an employee who has exhausted his or her 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.

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8. You can call or e-mail me

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9. You or anyone you assign to have human resources responsibilities should take:

Introduction to Public Employment Law

- **September 13 – 15, 2022 and October 11 – 13, 2022 (two-week course)**

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