

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

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1. The Rule of Employment At Will



Cathy's Internet Cafe



Four Exceptions to the Employment-at-Will Rule

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

Models for County Human Services Organization

- Traditional
- Substantially equivalent variation: HRM only
- Consolidated (a)
- Consolidated (b)

Alternative #2: 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.

Property Rights:
Discipline and Discharge for Just Cause

- Performance
 - Unsatisfactory Job Performance
 - [Grossly Inefficient Job Performance]
- Unacceptable Personal Conduct

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

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.

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.

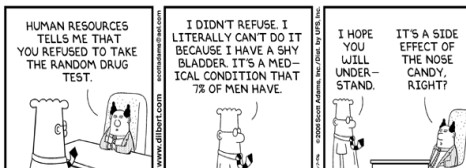
The Significance of Having a "Property Right" in Your Job



Models for County Human Services Organization

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

3. The 4th Amendment generally prohibits suspicionless drug testing, creating an exception to the employment at will rule that applies only to public employers.



Reasonable suspicion based on specific objective facts

1. Direct observations of drug use or possession;
2. Report of observed drug use by a reliable and credible source;
3. Direct observation of the physical symptoms of being under the influence of a drug, such as impairment of motor functions or speech;


4. Pattern of abnormal conduct or erratic behavior



5. Arrest or conviction for a drug-related offense, or the identification of employee as the focus of a criminal investigation into illegal drug possession, use or distribution;
6. On-the-job accident where evidence indicates drug use played a role;
7. Newly discovered evidence that employee tampered with a previous drug test



4. Social media is just another form of speech and standard First Amendment freedom of speech analysis applies to employee posts.



Public employees may speak *as citizens* on matters of public concern.

Question 1:

Was the employee's speech pursuant to their regular job duties?

Questions 2 and 3:

Is the speech on a matter of public concern?

Whose interests are greater –
the employee's or the employer's?




Hi, I'm Tiffany and I'm a firefighter with Savannah Fire and Rescue.



Marshall v. Mayor and Alderman of the City of Savannah, Georgia,
2010 WL 537852 (11th Cir. 2010)

The Drunken Pirate Student Teacher



"Drunken Pirate"

Snyder v. Millersville University, 2008 WL 5093140 (E.D.Pa. 2008)

5. G.S. 153A-98 governs which parts of an employee personnel file may and may not be made public.

Public Information

<ol style="list-style-type: none"> 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 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; 	<ol style="list-style-type: none"> 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 <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> and 12. office where currently assigned
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6. The public sector is allowed to compensate employees who have worked overtime with compensatory time off.



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

7. 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."

8. 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.

9. 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.

10. You can call or e-mail me

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Bonus # 11:

You or anyone you assign to have human resources responsibilities should take Introduction to Public Employment Law.

- September 26 – 30, 2016 at the School of Government
- Registration will open in June
