

What Clerks Need to Know About Public Employment Law

Clerks Certification Institute

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School of Government



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Personnel Records



Personnel Records Statutes

- **Municipal Employee: G.S. 160A-168**
- **County Employee: G.S. 153A-96**



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What is a Personnel Record?

“Any information gathered by [the employer] which relates to the employee’s application, selection or non-selection, promotion, demotion, transfer, leave, salary, suspension, performance evaluation, disciplinary action, or termination wherever located or in whatever form.”



Public Information

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

Dismissal

10. date and type of each dismissal, suspension, or demotion for disciplinary reasons; and
- If the disciplinary action was a dismissal,**
a copy of the written notice of the final decision setting forth the specific acts or omissions that are the basis of the dismissal.

Confidential Information

Everything else in a personnel record is confidential and is generally open only to employee or his or her agent, per court order or written release.

Section (c)



Knowledge Check:

You want a complete copy of your personnel file for your records.

Is your employer obligated to make a copy or can it restrict you to on-site inspection of the file?



Exception: Supervisors



**Exception: Government officials,
provided inspection is
“necessary and essential to the
pursuance of a proper function.”**



Knowledge Check:

Minnie Brothers, an employee in the public works department, has filed a gender discrimination complaint with the Equal Employment Opportunity Commission (EEOC). You receive a request from the EEOC for Brothers' complete personnel file.

Can you comply?

Knowledge Check:

You are the keeper of the personnel files. One of the governing board members comes in and asks to see the fire chief's personnel file.

May you allow the board member to see the file?

Knowledge Check:

The Manager has fired the EMS director, who is now very publicly threatening to sue. Before the next meeting of the governing board, the Chair asks you to copy the EMS director's personnel file and to bring copies with you to the meeting for distribution to the board.

Is this permissible?



Exception

When release of additional information is "essential to maintaining public confidence in the administration of [the employer's] services or to maintaining the level and quality of [the employer's] services."



Exception

Even if considered part of an employee's personnel file, the following information need not be disclosed to an employee nor to any other person

(2) Investigative reports or memoranda and other information concerning the investigation of possible criminal actions of an employee, until the investigation is completed and no criminal action taken, or until the criminal action is concluded. . . .



Exception

Even if considered part of an employee's personnel file, the following information need not be disclosed to an employee nor to any other person

(4) Notes, preliminary drafts and internal communications concerning an employee. In the event such materials are used for **any official personnel decision**, then the employee or his duly authorized agent shall have a right to inspect such materials.



Knowledge Check:

Your jurisdiction is searching for a new Manager.

The search is receiving a lot of publicity in the local paper. The paper's investigative reporter calls and asks for the names and resumes of the finalists for the position. Can you give out the resumes? Can you give out the names?

What Information May a City or County Release about Job Applicants?

None whatsoever. Not even a name.

- See G.S. 160A-168(a) and G.S. 153A-98(a) as interpreted by

Elkin Tribune, Inc. v. Yadkin County Bd. of Commissioners, 331 N.C. 735 (1992).

Job References



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Knowledge Check:

You receive a call from the HR director of the WAL-CO Corp. She tells you that Bob Lee, a former employee in your finance department, has applied for a similar position at WAL-CO. The HR director asks you whether Lee was terminated for cause or whether he voluntarily resigned.

Can you reveal this information to her?



Knowledge Check:

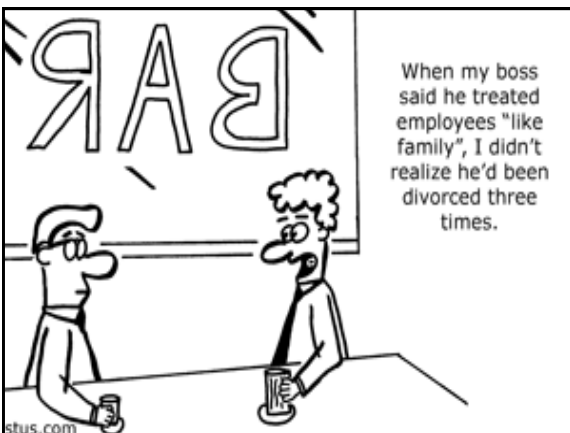
You receive a call from the HR director of Nuttree, a neighboring jurisdiction. She tells you that Pat Simons, a former employee in your planning dept., has applied for a similar position in Nuttree. The HR director asks you whether Simons was terminated for cause or whether she voluntarily resigned.

May you reveal this information to her?









Exceptions to Employment at Will

- Public Policy Exception
- Statutory Exceptions
 - ✓ Title VII: Gender, race, color, religion, n.o.
 - ✓ Age Discrimination in Employment Act
 - ✓ Americans with Disabilities Act
 - ✓ Uniformed Services Employment and Reemployment Rights Act (USERRA)



Exceptions to Employment at Will

- Public Policy Exception
- Statutory Exceptions
- Public Sector Only Constitutional Exceptions
 - 14th Amendment Property Right Exception
 - 1st Amendment Free Speech Exception
 - 4th Amendment Search & Drug Test Exception



A Property Right in Employment

An employee has a legitimate claim to
 continuing employment
 when a
 – state statute (State Human Resources Act) or
 – local ordinance
 says that the employee can only be fired
 for “good cause.”



The Fourteenth Amendment

guarantees that
no state shall
“deprive any person of
life, liberty, or property,
without due process of law.”



Pre-Disciplinary Hearing with Right of Appeal

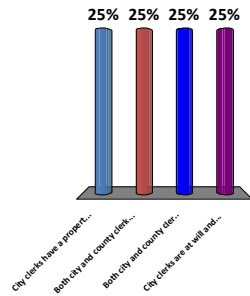


G.S. § 160A-171: There shall be a city clerk who shall give notice of meetings of the council, keep a journal of the proceedings of the council, be the custodian of all city records, and shall perform any other duties that may be required by law or the council.

G.S. § 153A-111: The board of commissioners shall appoint or designate a clerk to the board. The board may designate the register of deeds or any other county officer or employee as clerk. The clerk shall perform any duties that may be required by law or the board of commissioners. The clerk shall serve as such at the pleasure of the board.

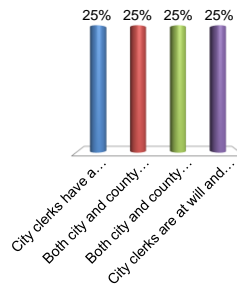
What is the status of city and county clerks in jurisdictions that have adopted just cause protection by ordinance?

- A. City clerks have a property right unless the charter says otherwise and county clerks are at will.
- B. Both city and county clerks are at will.
- C. Both city and county clerks have property rights.
- D. City clerks are at will and county clerks have a property right.



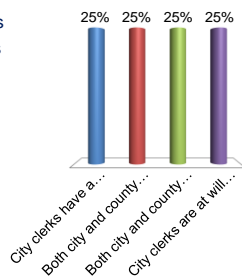
What is the status of city and county clerks in jurisdictions that have adopted just cause protection by resolution?

- A. City clerks have a property right unless the charter says otherwise and county clerks are at will.
- B. Both city and county clerks are at will.
- C. Both city and county clerks have property rights.
- D. City clerks are at will and county clerks have a property right.



What is the status of city and county clerks in jurisdictions that have not adopted just cause protection?

- A. City clerks have a property right unless the charter says otherwise and county clerks are at will.
- B. Both city and county clerks are at will.
- C. Both city and county clerks have property rights.
- D. City clerks are at will and county clerks have a property right.




**List all of the positions with
hiring and firing authority in a municipality
or
List all six positions with
hiring and firing authority in a county**

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Hiring and Firing Authority for Cities

Mayor-Council:

- Council appoints and removes all ees
- Council may delegate to dept. heads

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Hiring and Firing Authority for Cities

Council-Manager

- Council appoints Manager
- Manager appoints and removes employees

**Exceptions: City attorney
Clerk**

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Hiring and Firing Authority for Counties

1. Commissioners
2. County Manager
3. Sheriff
4. Register of Deeds
5. Health Director
6. Social Services Director



Hiring and Firing Authority for Counties

Commissioners appoint:

- Manager
- Clerk
- County Attorney
- Tax Collector
- Deputy Tax Collector
- County Assessor



Hiring and Firing Authority for Counties

Sheriff and the Register of Deeds “have the exclusive right to hire, discharge and supervise” employees in their offices.



Hiring and Firing Authority for Counties

County SHRA Employees

- Health Dept.
- Dept. of Social Services

All hired/fired by directors



Personnel Policies

Town council and county board of commissioners have ultimate personnel policy authority

- Create & abolish offices, positions, depts.
- Determine pay schedules, benefits
- Adopt personnel policies re: leave, holidays, drug-testing

Managers and “independent” department head are responsible for administration of compensation programs and personnel rules.



THE FAIR LABOR STANDARDS ACT AND THE OVERTIME RULE



Who is an Exempt Employee?

Salary Basis

**Executive,
Administrative or
Professional
Duties Test**

Executive Exemption

1. Management as primary duty



Executive Exemption

2. Supervises two or more employees



Executive Exemption

3. Hiring, firing or promotion authority or influence



Administrative Exemption

1. Primary duty is performance of office or non-manual work directly related to management or general business operations of the employer



Administrative Exemption

2. Work includes the exercise of discretion and independent judgment on matters of significance to the employer



What Is Work Directly Related to Management or General Business Operations?



- | | |
|--|---------------------------------------|
| ▪ Finance, accounting, auditing | ▪ Tax |
| ▪ Purchasing & procurement | ▪ HR management and employee benefits |
| ▪ Safety and health | ▪ Insurance and quality control |
| ▪ Public relations, advertising, marketing | ▪ Legal and regulatory compliance |
| ▪ Computer network, database and internet administration | |

Overtime

- Non-exempt employees
- 1 and 1/2 times the regular rate of pay
- for every hour over 40 the employee *physically* works in a given work week

Employee's usual schedule is Mon. – Fri.
8:30 – 5 with a ½ hour unpaid lunch

- Takes 8 hours paid leave on Mon.
- Works usual schedule Tues. – Fri.
- Called in to work 8 hours on Sat.

Employee's usual schedule is Mon. – Fri.
8:30 – 5 with a ½ hour unpaid lunch.

- Employer rule: No O/T w/o prior authorization
- Employee comes in ½-hr. early each day that week
- Employee leaves at scheduled time



Nonexempt Employee Comp Time


1 ½ hours paid time-off for
every hour employee works over 40




Prior notice needed




Limit: 240 hours



**May require employee to use comp time
before using other paid leave**



Cash-out at termination



Have a well-deserved
and great weekend!
