

Ance! Glink DISAPPOINTED PERSONS
DISCUSSION
& EMPLOYMENT

Top 10 Things You Should Know about Employment Laws in Township Government

Presented by:
Keri-Lyn J. Krafthefer

Township Officials of Illinois
Monday, November 12, 2018

© 2018 Ance! Glink All Rights Reserved

Ance! Glink DISAPPOINTED PERSONS
DISCUSSION
& EMPLOYMENT

Introduction

Where do employment laws come from?
Who has hiring/firing authority?
"At will" employees/contractual employees/union employees
Personnel policies
Directing and Supervising employees
Hiring
Firing
Discrimination Laws
Leave Laws
Compensation Laws

© 2018 Ance! Glink All Rights Reserved

Ance! Glink DISAPPOINTED PERSONS
DISCUSSION
& EMPLOYMENT

1. Where do employment laws come from?

- Federal Laws
 - Title VII of the Civil Rights Act of 1964
 - Federal law prohibiting employers from discriminating against employees based on sex, race, color, religion and national origin
 - ADA – Americans with Disabilities Act (1990)
 - Civil rights law prohibiting discrimination against people with disabilities
 - ACA – Affordable Care Act AKA Obamacare (2010)
 - Comprehensive health care reform law
 - ADEA – Age Discrimination in Employment Act (1967)
 - Protects employees 40 and older from employment discrimination based on age
 - Equal Pay Act

© 2018 Ance! Glink All Rights Reserved

Ance! Glink STRATEGIC HR CONSULTING & TRAINING

Where do employment laws come from?

- Federal Laws
 - FLSA - Fair Labor Standards Act
 - Establishes minimum wage, overtime pay, recordkeeping responsibilities, child labor standards
 - FMLA (1993) Family and Medical Leave Act
 - Requires employers to provide employees with job protection and unpaid leave for qualified family and medical reasons
 - HIPAA (1996) Health Insurance Portability and Accountability Act
 - Protects data privacy and security procedures for safeguarding medical information
 - Pregnancy Discrimination Act (1978)
 - Amended Title VII to prohibit sex discrimination on basis of pregnancy

© 2018 Ance! Glink All Rights Reserved

Ance! Glink STRATEGIC HR CONSULTING & TRAINING

Where do employment laws come from?

- State Laws
 - Illinois Human Rights Act
 - Wage Payment and Collection Act
 - Nursing Mothers in the Workplace Act
 - Jury Duty Leave
 - Voting Leave
 - Prevailing Wage Act
 - Public Employees Labor Relations Act
 - Personnel Records Review Act

© 2018 Ance! Glink All Rights Reserved

Ance! Glink STRATEGIC HR CONSULTING & TRAINING

Where do employment laws come from?

- Court Cases
- Agency Interpretations (IDES, IDHR, EEOC)
- Personnel policies
- Employment contracts
- Union contracts

© 2018 Ance! Glink All Rights Reserved

Ance! Glink CONSULTING, TRAINING & SUPPORT SERVICES

2. Who has hiring authority?

- Township employees - 60 ILCS 1/100-5(a)
 "The township board may employ and fix the compensation of township employees that the board deems necessary, excluding the employees of the offices of supervisor of general assistance, township collector, and township assessor."
- General assistance employees - Supervisor
- Road District employees – Highway Commissioner

© 2018 Ance! Glink All Rights Reserved

Ance! Glink CONSULTING, TRAINING & SUPPORT SERVICES

Hiring Authority

- Assessor's employees - 35 ILCS 200/2-65(a)
 Where a township or multi-township assessor is unable alone to perform all duties of the office, he or she may appoint one or more suitable persons as deputies to assist in making the assessment, and may appoint other employees required for operation of the office. The deputies and other employees may be employed on an annual, monthly or daily basis.

© 2018 Ance! Glink All Rights Reserved

Ance! Glink CONSULTING, TRAINING & SUPPORT SERVICES

3. Supervising and directing township employees

- Sec. 70-15(a) of the Township Code
 The supervisor is the chief executive officer of the township.
- Moore v. Grafton Township
- Assessor directs assessor's employees
- Highway commissioner directs road district employees
- Keep an organizational chart (Per Section 140/4 of the Illinois Freedom of Information Act).
 - "Each public body shall prominently display at each of its administrative or regional offices, make available for inspection and copying...(a) A brief description of itself, which will include a block diagram giving its functional subdivisions..."

© 2018 Ance! Glink All Rights Reserved

Ancel Glink EMPLOYMENT
DISCRIMINATION
& BENEFITS

4. Understand “at will” employment

- Illinois is an “at will” employment state. This means that an employee may be fired for any reason, or no reason at all, provided that
 - the reason is not based upon unlawful discrimination
 - the employee does not have contractual rights to continued employment

© 2018 Ancel Glink All Rights Reserved

Ancel Glink EMPLOYMENT
DISCRIMINATION
& BENEFITS

Employment contracts

- Employment contracts protect both employees and townships
 - Set forth expectations, terms and conditions of employment
 - Provide process for separation

© 2018 Ancel Glink All Rights Reserved

Ancel Glink EMPLOYMENT
DISCRIMINATION
& BENEFITS

Union contracts

- Provide terms and conditions of employment for union employees
- May track personnel policies, or personnel policies may track collective bargaining agreement

© 2018 Ancel Glink All Rights Reserved

Ance! Glink TRAINING SERIES
TOWNSHIP
GOVERNANCE
& EMPLOYMENT

NOT employees

- Elected officials are not employees.
- Township attorneys are not employees.
- Independent contractors are not employees.

© 2018 Ance! Glink All Rights Reserved

Ance! Glink TRAINING SERIES
TOWNSHIP
GOVERNANCE
& EMPLOYMENT

5. Personnel policies

- Establish rights, responsibilities of employees
- Review and update them regularly
- Have the employees sign a receipt
- Keep the receipt

© 2018 Ance! Glink All Rights Reserved

Ance! Glink TRAINING SERIES
TOWNSHIP
GOVERNANCE
& EMPLOYMENT

Personnel policies - Township

- The township board must adopt “rules concerning all benefits” if the township employs 5 or more employees.
- Insurance coverage, compensation, overtime pay, compensatory time off, holidays, vacations, sick leave, and maternity leave.
- The rules shall be adopted and filed with the township clerk within 6 months.
- Amendments to the rules shall be filed with the township clerk on or before their effective date.
- 60 ILCS 1/100-5(b)

© 2018 Ance! Glink All Rights Reserved

Ance! Glink STRATEGIC PLANNING
POLICY
& EVALUATION

Personnel Policies - Assessors

- Every township or multi-township assessor with 5 or more deputies and other employees shall adopt rules concerning all benefits available to employees.
- Insurance coverage, compensation, overtime pay, compensatory time off, holidays, vacations, sick leave, and maternity leave.
- The rules shall be adopted and filed with the township clerk within 4 months after the assessor takes office.
- A multi-township assessor shall file the rules with the clerk of each township in the district.
- Amendments to the rules shall be filed with the appropriate township clerk or clerks by their effective date.
- 35 ILCS 200/2-65(b)

© 2018 Ance! Glink All Rights Reserved

Ance! Glink STRATEGIC PLANNING
POLICY
& EVALUATION

Personnel policies – Road District

- Every highway commissioner with 5 or more employees shall adopt rules concerning all benefits available to employees of that office.
- Insurance coverage, compensation, overtime pay, compensatory time off, holidays, vacations, sick leave, and maternity leave.
- The rules shall be adopted and filed with the township clerk within 4 months after the highway commissioner takes office
- The highway commissioner of a consolidated township road district shall file the rules with the clerk of each township contained within the consolidated district.
- Amendments to the rules shall be filed with the appropriate township clerk on or before their effective date.
- 605 ILCS 5/6-201.20

© 2018 Ance! Glink All Rights Reserved

Ance! Glink STRATEGIC PLANNING
POLICY
& EVALUATION

Best practice: uniformity

- The township board, assessor and highway commissioner can all have different policies, but it is better if they are all the same (to the extent possible).

© 2018 Ance! Glink All Rights Reserved

Ance! Glink TRAINING TOOL DISCUSSION & EXERCISES

6. Hiring – Dos and don'ts

© 2018 Ance! Glink All Rights Reserved

Ance! Glink TRAINING TOOL DISCUSSION & EXERCISES

No Illegal Hiring Criteria

- Race
- Color
- Religion



Ance! Glink TRAINING TOOL DISCUSSION & EXERCISES

- Sex
- National Origin
- Ancestry
- Age
- Marital Status
- Physical or Mental Disability
- Gender Identity



Ancel Glink TRAINING, RECRUITING & EMPLOYMENT




- Military Status
- Sexual Orientation
- Unfavorable Discharge from the Military

Ancel Glink TRAINING, RECRUITING & EMPLOYMENT

Avoid Discriminatory Searches

- Be sensitive to advertising that could result in exclusion of certain groups of candidates
- Examples include ads that seek "females", "recent college graduates", "only U.S. Citizens", "young and energetic" applicants or that say things like "great opportunity for a student" or "mature person wanted."

Now Hiring Cashier
 - Weekends- Must be 21+
 Applications avail. Inside
 Cannot look anything like "Skinner from 'The Man'"



Ancel Glink TRAINING, RECRUITING & EMPLOYMENT

Avoid illegal or inappropriate application questions

- Application should contain:
 - Employment at-will statement
 - Accommodation request

Are you pregnant?



Ance Glink DIAMOND STATE
DISABILITY
& EMPLOYMENT



- Certificate of accuracy
- Notice of pre-employment testing
- EEOC statement

Ance Glink DIAMOND STATE
DISABILITY
& EMPLOYMENT

- It should not contain:
 - Request for dates of graduation
 - Inquiries about disabilities



Ance Glink DIAMOND STATE
DISABILITY
& EMPLOYMENT

Don't ask about disabilities

- Provide a job description which contains all requirements of the position - including physical requirements



Ance! Glink Executive Search
Recruiting
& Staffing

- Avoid all questions which look like they are really about age, marital status, gender etc.
- For example:
 - Do you plan to have children?
 - How long do you plan to work?
 - Do you have children?
 - Are you religious?
 - You have an interesting accent. Where are you from?
 - When did you graduate from high school?
 - Are you married?
 - Etc.



Ance! Glink Executive Search
Recruiting
& Staffing

- Take notes during the interview and keep them in the file
- Some employers actually use scripted interview questions and take notes on the question form – good practice, but be careful of the content of the notes
- Have a defensible method of narrowing the applicant field such as required education and/or required experience

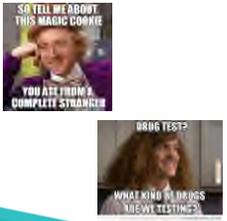


Ance! Glink Executive Search
Recruiting
& Staffing

- ▶ Panel Interviews
 - Ask the same questions of all applicants
 - Sometimes helpful
 - May not be feasible in all cases
- ▶ How to “score” applicants
 - The process should be consistent for all applicants
 - If points are to be awarded, they should be based on objective characteristics (knowledge of the field, experience, education etc.)



Don't ask about drug use but do conduct pre-employment tests



- ▶ When to Conduct Pre-Employment Tests
 - Test only those to whom a conditional offer is made

- Conduct only those tests that are job related:
 - A drug screen is always appropriate
 - Physical abilities testing – may or may not be appropriate depending upon the job



- A criminal background check is almost always appropriate
 - Remember – convictions count; arrests do not
 - Case specific analysis required for convictions



Ancel Glink EMPLOYMENT
DISCRIMINATION
& LABOR RIGHTS

Physical Examination

- ONLY WHEN NECESSARY
- Should be job specific
- Should be job related
- Can the candidate perform the essential functions with or without a reasonable accommodation

Ancel Glink EMPLOYMENT
DISCRIMINATION
& LABOR RIGHTS

Don't forget to follow the rules before taking adverse employment action based on a background check

- Provide the employee with notice which includes a copy of the consumer report you relied on to make the decision
- Provide a copy of "A Summary of Your Rights Under the Fair Credit Reporting Act" - this is typically obtained from the company that did the check



Ancel Glink EMPLOYMENT
DISCRIMINATION
& LABOR RIGHTS

- After taking adverse employment action, tell the applicant that he or she was rejected because of information in the report
- Give the name, address and phone number of the company that provided the report



Anceel Clark ATTORNEY AT LAW
CHICAGO, ILLINOIS

- Notify the applicant that the company that sold you the background report did not make the hiring decision and cannot provide the reasons for the decision
- Notify the applicant that he or she has the right to dispute the accuracy or completeness of the report from the reporting company within sixty (60) days.



Anceel Clark ATTORNEY AT LAW
CHICAGO, ILLINOIS

Don't rely on the Internet for

▶ References

- Can you "Google" applicants or review social web sites?
- Can you make a hiring decision based on this information?
- We don't recommend making decision based upon information found on the Internet (photo issues, information source etc.)



Anceel Clark ATTORNEY AT LAW
CHICAGO, ILLINOIS

- Illinois employers cannot require current employees or job applicants to disclose social networking passwords for private accounts - professional accounts maintained or created for the business of the employer are different and employers can require those passwords

Anel Glink ILLINOIS STATE JUDICIAL & CLERK SERVICES

Don't keep inappropriate information on applicants or current employees

- The Illinois Personnel Records Review Act prohibits an employer from gathering or keeping records on "an employee's associations, political activities, publications, communications or non-employment activities."



Anel Glink ILLINOIS STATE JUDICIAL & CLERK SERVICES

- This does not apply to
 - records of union membership or
 - other records submitted by the employee or
 - activities that occur on the employers' premises or during work hours that interfere with the performance of the employee's duties or the duties of other employees which constitute criminal conduct or may reasonably harm the employer's property, operations or business or could result in financial liability to the employer.

Anel Glink ILLINOIS STATE JUDICIAL & CLERK SERVICES

- ▶ The bottom line is that, while it may be tempting to keep tabs on your employees, it is risky and may result in a lawsuit.



Ance! Glink TRAINING, COACHING & CONSULTING

7. Firing

© 2018 Ance! Glink All Rights Reserved

Ance! Glink TRAINING, COACHING & CONSULTING

Termination of Employment: Strategies for Avoiding Litigation

- ▶ Wrongful termination cases are costly
- ▶ Financial Costs
 - Damages
 - Attorneys' fees and costs
 - Time lost from work
- ▶ Damage to the reputation of the employer



Ance! Glink TRAINING, COACHING & CONSULTING

Know the Law

- ▶ All employees with the authority to terminate employment should have a basic understanding of legal and illegal reasons for terminating employment
 - ▶ Legal reasons include but are not limited to such things as performance issues, attendance issues and work rule violations
 - ▶ Illegal reasons include but are not limited to race, age, religion, sex, sexual orientation, disability, gender status
- ▶ Supervisors should understand basic legal concepts that will help in avoiding pitfalls, such as
 - ▶ Discrimination
 - ▶ Retaliation
 - ▶ Employment laws that protect employment
 - ▶ FMLA
 - ▶ ADA
 - ▶ USERRA



Anel Glink DISCIPLINED THINKING
DISCREETLY
& SKILLFULLY

At-Will – What Does This Really Mean?

- ▶ Most employees who are not members of a collective bargaining unit are “at-will” employees
- ▶ They can be fired for any reason and regardless of whether or not they have done something wrong as long as they are not being terminated for an illegal reason



Anel Glink DISCIPLINED THINKING
DISCREETLY
& SKILLFULLY

Discrimination



- ▶ Race; Age; Nationality; Sex; Sexual Orientation
- ▶ Terminated employees are raising discrimination claims with greater frequency
- ▶ Legitimate work related reasons for termination are key to avoiding liability
- ▶ Good documentation is key to defending these claims

Anel Glink DISCIPLINED THINKING
DISCREETLY
& SKILLFULLY

- ▶ Burden Shifting Analysis:
 - Plaintiff – Prima Facie Case
 - Employer – Legitimate non-discriminatory reason for termination
 - Plaintiff – Proof that employer’s reason is pretext
- ▶ Again, documentation is key here



Ance! Glink EMPLOYEE BENEFIT DESIGN & RISK MITIGATION

Retaliation

- ▶ Don't fire people because they have sued you
- ▶ Don't fire employees who are sympathetic to employees who are suing you
- ▶ Don't fire witness employees who have provided adverse information or are witnesses in a case against you
- ▶ Be careful when terminating employees who have been on workers comp or FMLA - know the analysis
- ▶ Retaliation is not just termination of employment. Other examples include changing a schedule, name calling, undesirable assignments etc.
- ▶ Issuance of appropriate discipline is not retaliation

Ance! Glink EMPLOYEE BENEFIT DESIGN & RISK MITIGATION

Be Careful When Employees Are Under Contract

- ▶ If an employee has a contract (Administrator, etc.), it is likely that the contract states that the employee may only be fired for certain reasons
- ▶ Termination for unspecified reasons may result in a wrongful termination suit



Ance! Glink EMPLOYEE BENEFIT DESIGN & RISK MITIGATION

- ▶ Collective Bargaining Agreements
 - Termination for "just cause"
 - Sometimes, termination for "cause"
 - These employees are not at-will and will likely be able to challenge termination of employment through their contractual grievance procedures which often include arbitration



Ance! Glink EMPLOYEE BENEFITS, DISABILITY & RETIREMENT

Just Cause

- Employee knew of policy/rule
- Policy/rule is reasonable
- Investigation to determine violation
- Investigation was fair and objective
- Substantial evidence of violation exists
- Policy/rule applied fairly
- Punishment fits the crime

© 2018 Ance! Glink All Rights Reserved

Ance! Glink EMPLOYEE BENEFITS, DISABILITY & RETIREMENT

Using “Just Cause” Against Employers

- “Reasonable doubt” of labor law
- Termination of employment is the labor equivalent of the death penalty
- The punishment NEVER fits the crime

© 2018 Ance! Glink All Rights Reserved

Ance! Glink EMPLOYEE BENEFITS, DISABILITY & RETIREMENT

Defending “Just Cause” Attacks

- Follow the steps
- Documentation is critical
 - Use Performance Improvement Plans (“PIPs”)
 - Use Last Change Agreements

© 2018 Ance! Glink All Rights Reserved

Ancel Glink EMPLOYMENT
DISCRIMINATION
& RETALIATION

Reporting Illegal Acts or Failure to Commit Illegal Acts

- ▶ Whistleblowers
 - Cannot retaliate against employees who reasonably believe that they are reporting violations of state or federal law
- ▶ Cannot retaliate against employees who have refused to engage in illegal conduct



Ancel Glink EMPLOYMENT
DISCRIMINATION
& RETALIATION

Follow Your Own Policies

- ▶ Do employers fail to follow their own policies?
- ▶ Yes, this does happen
- ▶ Be aware of what your policies and procedures say about termination of employment and follow your own procedures – written notice, appeal rights etc.



Ancel Glink EMPLOYMENT
DISCRIMINATION
& RETALIATION

WORKER'S COMP

- Cannot terminate an employee for being on workers compensation
 - Filing a claim
 - Being out on TTD
 - Going to doctors' appointments etc.
- Can terminate for work related reasons

Anet Glink TRAINING, COACHING & CONSULTING

ADA

- Failure to provide a “reasonable accommodation”
- “Essential functions” analysis is key to avoiding discrimination claims
- Remember “regarded as”

Anet Glink TRAINING, COACHING & CONSULTING

Union Activities

- ▶ Union organizing is a protected activity
- ▶ Cannot terminate employees for union activities/organization
- ▶ Unfair Labor Practice Charges and defenses



Anet Glink TRAINING, COACHING & CONSULTING

Document, Document, Document



- ▶ Good documentation is all that stands between you and a swearing contest where a jury may have to decide whom it believes
- ▶ Too often juries side with unemployed workers
- ▶ Good documentation can save you here

Ance! Glink TRAINING, RESEARCH & CONSULTING

8. WHAT IS UNLAWFUL DISCRIMINATION

© 2018 Ance! Glink All Rights Reserved

Ance! Glink TRAINING, RESEARCH & CONSULTING

DISCRIMINATION

- Taking an adverse employment action
- Based upon membership in any protected classification (Title VII and IHRA)
 - Race
 - Color
 - Religion
 - National Origin
 - Sex
 - Age
 - Disability
 - Veteran Status
 - Genetic Information
 - Citizenship

© 2018 Ance! Glink All Rights Reserved

Ance! Glink TRAINING, RESEARCH & CONSULTING

Examples of Discrimination

- Cartoons
- Jokes
- Exclusion
- English only rules
- Social media

© 2018 Ance! Glink All Rights Reserved

Ance! Glink TRAINING, RESEARCH & CONSULTING

SOME THINGS TO THINK ABOUT:

- Focus will be on the effect of the behavior, not the intent of the speaker/actor – courts do not care about the different views of appropriate conduct
- It doesn't matter if the behavior is deliberate or intended
- An harassment/discrimination determination is based on the perceptions of the receiver of the behavior, not the intent of the accused

Ance! Glink TRAINING, RESEARCH & CONSULTING

EMPLOYER LIABILITY

- Employers are liable for quid pro quo sexual harassment by a supervisor, even if they didn't know or have any reason to know, of the harasser's behavior
- Employers can also be liable for hostile work environment harassment that they were unaware of

Ance! Glink TRAINING, RESEARCH & CONSULTING

SUPERVISOR LIABILITY

- Supervisors can be sued **individually**
- Supervisors can be demoted, suspended or terminated from employment



Ance! Glink SHAWNEE BROS. ATTORNEYS AT LAW

EMPLOYEE LIABILITY

- Employees may be sued individually by the victim
- Employees can be demoted, suspended or terminated from employment



Ance! Glink SHAWNEE BROS. ATTORNEYS AT LAW

WHAT CAN YOU DO ABOUT HARASSMENT/DISCRIMINATION IN THE WORKPLACE?

Ance! Glink SHAWNEE BROS. ATTORNEYS AT LAW

YOU CAN PREVENT HARASSMENT FROM AFFECTING YOUR WORKPLACE:



- Have a policy and review it annually
- Train your employees
- Encourage reporting
- Investigate
- Take formal action when necessary

Ancel Glink TRAINING, CONSULTING & COMPLIANCE

- Employees can report to outside agencies
- Illinois Department of Human Rights, 100 West Randolph Street, Chicago, Illinois 60601; (312) 814-6245 and/or the;
- Equal Employment Opportunity Commission, Suite 2800, 500 West Madison Street, Chicago, Illinois 60601; (312) 353-2713.

Ancel Glink TRAINING, CONSULTING & COMPLIANCE

9. Know the Leave Laws

- Family and Medical Leave Act
- Holiday Leave
- Voting Leave
- Bereavement Leave
- Jury Duty Leave
- Vacation Leave
- Family Military Leave
- Nursing Mothers in the Workplace Act

© 2018 Ancel Glink All Rights Reserved

Ancel Glink TRAINING, CONSULTING & COMPLIANCE

10. Know the Compensation Laws

- Fair Labor Standards Act
 - Exempt v. non-exempt employees
- Wage Payment and Collection Act
- Equal Pay Act

© 2018 Ancel Glink All Rights Reserved



Questions?

© 2018 AncestryDNA All Rights Reserved
