



Personnel Policies Required

Dear Reader:

The following document was created from the MTAS website ([mtas.tennessee.edu](http://www.mtas.tennessee.edu)). This website is maintained daily by MTAS staff and seeks to represent the most current information regarding issues relative to Tennessee municipal government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

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Personnel Policies Required

Reference Number: MTAS-504

All municipalities incorporated before June 13, 1997, that did not already have a personnel policy were required by July 1, 1998, to adopt such a policy by ordinance, resolution, or otherwise.

Municipalities incorporated after June 13, 1997, had two years after incorporation to adopt and implement a personnel policy.

A city may use the model personnel policy developed by MTAS or draft its own. The personnel policy must apply "fairly, impartially, and uniformly to the extent practicable to each department of the municipal government." Among other things, the policy should outline:

- hiring procedures;
- benefits and personnel rules and regulations;
- fair and reasonable complaint conference and hearing procedures for dismissed, demoted, or-suspended employees;
- procedures for compliance with relevant federal laws, such as the Fair Labor Standards Act and the Americans with Disabilities Act;
- drug and alcohol testing procedures; and
- sexual harassment regulations.

The law mandates that the policy may not grant a property right or contract right to the job to any employee.

A copy of the resolution or ordinance (or the caption) adopting the policy must be published in a newspaper of general circulation in the municipality prior to its adoption. Also, a copy of the personnel policy must be kept in the city recorder's office and made available to employees upon request. T.C.A. § 6-54-123.

A municipality with a personnel policy that places an employee on leave for any time immediately following any arrest must pay back pay to the employee if the charges are dropped or the employee is found not guilty. T.C.A. 7-51-1701.

Expense Reimbursements, Travel, Vehicle Use Policies

Reference Number: MTAS-968

T.C.A. §§ 6-54-901 provides that municipalities are authorized to reimburse expenses related to the office of the mayor; members of the governing body, boards, commissions, or committees; and to any official or employee whose salary is set by charter or general law. To reimburse such expenses, a city must:

- pass an ordinance authorizing a written expense reimbursement policy, which must be filed with the comptroller's office unless the city adopts MTAS's model policy. If the city adopts the MTAS model policy, it must notify the comptroller in writing that the policy was adopted and the date it was adopted;
- require the chief administrative officer or his or her designee to prescribe expense forms, examine expense reports, and determine whether it is reimbursable; and
- adopt a written vehicle use policy separate from the travel and expense policy.

Cities may pay travel expenses directly to the provider rather than to the official or employee.

Municipalities and metropolitan governments with a population of greater than 100,000 are exempt from these provisions. T.C.A. §§ 6-54-907, *et seq.*

If officials or employees are overcompensated for an expenditure, the overage is considered salary T.C.A. § 6-54-902. Such a payment could exceed salary limitations set in the charter, and this could violate T.C.A. § 39-16-402(a)(5). Receiving any benefit not otherwise authorized by law is a Class E felony.

Code of Ethics

Reference Number: MTAS-969

Each municipality must adopt a code of ethics by ordinance or resolution. Failure to do so can result in ouster of members of the governing body. MTAS has developed a model code of ethics. Municipalities that adopt the model must notify the Tennessee Ethics Commission that they adopted the model, along with the date of adoption. Municipalities that do not adopt the MTAS model must send a copy of their ordinance to the ethics commission. T.C.A. §§ 8-17-103, *et seq.*

Various Personnel Policies

Reference Number: MTAS-970

There are a number of personnel policies that are either required by state, federal or local laws.

Click on the listings below for more information on select policies.

Automobile Insurance

Reference Number: MTAS-2054

An accident by a municipal employee while driving a city-owned vehicle shall in no way be considered by the employee's personal automobile insurance carrier in fixing insurance premiums nor shall it cause any increase in the employee's personal automobile insurance premiums. T.C.A. § 56-7-1108.

Child Support

Reference Number: MTAS-2053

A court may assign a municipal employee's income for child support. Any disciplinary action or discharge action against the employee for this reason is prohibited. T.C.A. § 50-2-105(b)(1). Assignment of income by a court for child support or spousal support shall be made according to title 36, chapter 5. If an employer fails to comply with the order, a judgement may be entered against the employer in the same manner as set forth in title 26, chapter 2, part 2.

Convict Labor

Reference Number: MTAS-2056

Municipal offenders confined or subject to confinement in a county or municipal jail may be sentenced to public service work for the municipality. The statute exonerates the municipality, its officers and its employees from liability to the offender, his or her family, or other persons for acts of the offender if the municipality exercised due care in supervising the offender. T.C.A. § 41-3-107(b).

A city also may apply to the state Department of Corrections district work project coordinator for probationer labor for a specific work project. There is no liability for injury to a probationer so involved if due care was taken in his protection and supervision. T.C.A. §§ 41-9-104. A city also may apply to the county community work project coordinator for county probationer labor on specific projects. T.C.A. § 41-9-202(a).

Under another statute, a city may apply to the commissioner of corrections to use convicts on public works projects, which the commissioner may allow if required conditions are met and the governor approves. T.C.A. § 41-22-127(b). A city's chief executive and the sheriff may make agreements for the city to use certain prisoners under city supervision "for such duties and manual labor as the municipality deems appropriate. Convicts also may renovate substandard housing for low-income people. T.C.A. § 41-22-129(a).

A juvenile court may order a child who is found delinquent to perform community service work for a municipality. T.C.A. § 37-1-131(a)(7) exonerates the municipality and its officers and employees from liability resulting from the juvenile's work if the municipality exercised due care in supervising the juvenile.

Hiring Illegal Aliens

Reference Number: MTAS-2059

Individuals, corporations, partnerships, associations or any other legal entity are prohibited from knowingly employing an illegal alien. An "illegal alien" is defined as a person who is, at the time of employment, neither an alien who is lawfully admitted for permanent residence in the United States, nor authorized to be employed by the federal Immigration and Naturalization Act or the United States attorney general. T.C.A. 50-1-103(a)(4).

Verification of status consistent with the employer requirements of the Immigration Reform and Control Act of 1986 [1] is a defense if the verification information was false or the employer used the federal work authorization verification service. T.C.A. 50-1-103(c). Verification can be accomplished utilizing the I-9 verification form [2] or the Federal E-Verify [3] system.

Local government officers and employees with reason to believe they have knowledge of a violation must file a complaint with the Department of Labor and Workforce Development. T.C.A. § 50-1-103(e)(1).

Jury Duty

Reference Number: MTAS-2052

Local governments are among the employers that must give employees time off for jury services if presented an appropriate summons to report to jury duty. T.C.A. § 22-4-106(a)(1). The employee is entitled to his/her usual compensation, however, the employer has the discretion to deduct the amount of the fee or compensation the employee receives for serving as a juror. Local governments with less than five (5) employees on a regular basis or if the juror is employed for less than six (6) months, the government is not required to compensate the juror during period of jury service. T.C.A. § 22-4-106(b).

Military Service

Reference Number: MTAS-2050

Public employees have the right to a leave of absence for the purpose of being inducted or otherwise entering military duty. Municipal employees are among the public employees guaranteed re-employment rights after active or reserve military service if still physically qualified to perform the duties of such position. If the employee is not qualified to perform the duties of such position by reason of disability sustained during such service, such public employee shall be placed in such other position, the duties of which the employee is qualified to perform. T.C.A. §§ 8-33-101 - 105.

Members of reserve components of the U.S. armed forces (including members of the Tennessee Army and the Air National Guard) are entitled to leaves of absence while engaged in "duty or training in the service of this state, or of the United States, under competent orders." They must be given such leave with pay not exceeding twenty (20) working days in any one calendar year, including weekends if regularly scheduled for work. The intent of the pay provision is to allow employees to receive their regular pay, in addition to military pay, for two-week summer training camp and for weekends an employee is regularly scheduled for work but has military duty. In addition, this section allows public employers to provide partial compensation to employees while serving under competent orders, in addition to the 20 working days of compensation referred to above. After the twenty (20) working days of full compensation, members of any reserve component of the armed forces of the United States, including members of the Tennessee Army and Air National Guard, may use up to five (5) days of sick leave in lieu of annual leave for the purposes of not having to take leave without pay. T.C.A. § 8-33-109.

T.C.A. § 8-33-110 entitles a state or local government employee who is also a member of the Tennessee Army and Air National Guard on active duty or Tennessee State Guard and Civil Air Patrol to an unpaid leave of absence without loss of time, pay, or leave for all periods of service during which they are engaged in the performance of duty or training under competent orders.

Offsetting Employee Wages

Reference Number: MTAS-2058

Offsetting Employee Wages

T.C.A. § 50-2-110

(a) Except as provided in subsection (b), an employer may offset an employee's wages due and owing for an amount the employee owes the employer if:

- (1) An employer enters into an agreement with an employee to advance the employee wages prior to the date the wages are due and owing, agrees to otherwise lend the employee money, or permits the employee to charge personal items on the business or corporate credit card issued to the employee;
- (2) The employee signs a written agreement prior to any actions occurring pursuant to subdivision (a)(1) allowing the employer to offset the employee's wages for any amount the employee owes the employer, and the employer has in its possession at the time of the offset a copy of such signed agreement;
- (3) The employer notifies the employee in writing fourteen (14) days prior to the payment of wages due and owing that:
 - (A) There is an amount the employee owes the employer;
 - (B) The employee's wages may be offset if the amount owed is not paid prior to the payment of wages due and owing; and
 - (C) The employee may submit an affidavit as described in subsection (b); and
- (4) The employee has not paid the amount owed the employer that was described in the notice sent pursuant to subdivision (a)(3).

(b) The employer shall not be entitled to offset an employee's wages due and owing if the employee sends a sworn affidavit to the employer, and a copy of such affidavit to the department of labor and workforce development, no later than seven (7) days after receiving notification pursuant to subdivision (a)(3), contesting the amount owed. If an employee contests an amount owed pursuant to this subsection (b), then the employer may commence an appropriate civil action to recover the amount the employer alleges that the employee owes the employer.

(c) For purposes of this section:

- (1) "Amount the employee owes the employer" means any specific dollar amount the employer loaned or advanced the employee, including, but not limited to, any amount the employee charged for personal items to a business or corporate credit card issued to the employee; and
- (2) "Wages" means any remuneration owed to an employee for services, including, but not limited to, commissions, bonuses, incentive program rewards and tips.

Political Activities

Reference Number: MTAS-2055

Political Activities by Municipal Employees

A local government employee has the same rights as other citizens of Tennessee to participate in political campaigns and to run for certain elected offices. A city employee has the right to take an active part in local and state campaigns while off duty. However, a city employee shall not be qualified to run for election to the local governing body unless otherwise authorized by law or local ordinance. T.C.A. § 7-51-1501.

Professional Privilege Tax

Reference Number: MTAS-2057

Payment of Professional Privilege Tax

T.C.A. § 67-4-1709(a) allows municipalities to pay the professional privilege tax for their employees subject to the tax.

Smoking

Reference Number: MTAS-2051

Smoking Rights

A municipality is prohibited from discharging an employee for using an agricultural product not regulated by the alcoholic beverage commission that is not otherwise proscribed by law (tobacco) as long as the employee abides by the employer's work rules regarding tobacco use. T.C.A. § 50-1-304(d)(1).

Notification of Smoking Ban

The state ban on smoking in places of employment must be communicated to all existing employees and prospective employees when they apply for a job. T.C.A. § 39-17-1803(b).

Nonsmoker Protection Act

Public Chapter 410 added a new Part 18 to T.C.A. Title 39, Chapter 17, banning smoking in most enclosed public places in Tennessee, including places of employment. For details on the act, visit: <http://www.mtas.tennessee.edu/reference/non-smoker-protection-act> [4].

Links:

[1] <http://www.mtas.tennessee.edu/reference/immigration-reform-and-control-act-i-9>

[2] <http://www.mtas.tennessee.edu/reference/i-9-verification>

[3] <http://www.mtas.tennessee.edu/reference/e-verify>

[4] <http://www.mtas.tennessee.edu/reference/non-smoker-protection-act>

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