



Employment Policies

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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Employment Policies

Reference Number: MTAS-192

There are a number of employment policies that are voluntary while many are required. Click on the items listed below for more information.

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).

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].

Tennessee Military Service and Guard-Reserve-Civil Air Patrol Leave Laws

Reference Number: MTAS-2050

Military Service – Tennessee Laws

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 – 8-33-105.

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. During this 20-day period, the employee continues to earn regular pay, service credit, applicable annual and sick leave accruals, and all other rights and benefits to which the employee is otherwise entitled continue. 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.

This Tennessee Military Leave Law is an additional benefit of the job protection granted to all employees engaged in military service separate and apart from the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA [5]), 38 U.S.C. § 43 [6]. Under federal and state laws, all employees who are members of any reserve component of the armed forces of the United States or of the Tennessee National Guard are entitled to a leave of absence from their duties for all periods of military service during which they are engaged in the performance of duty or training. The duty or training must be in the service of the state or the United States under competent orders as stipulated in 38 U.S.C. §§ 4311-4318, T.C.A. §§ 8-33-101 – 8-33-109, and T.C.A. § 58-1-106.

An employee or applicant for employment, who performs, applies to perform, or has an obligation to serve in a uniformed service shall not, on that basis, be denied employment or re-employment or be discriminated or retaliated against for such service or application for service in any manner.

“Military Duty” means:

- Training and service performed by an inductee, enlistee, or reservist or any entrant into a temporary component of the armed forces of the United States;
- Time spent reporting for and returning from such training and service, or if a rejection occurs, from the place of reporting for such training and service; and

- Active duty training as a reservist in the armed forces of the United States or as a member of the National Guard when the call is for training only.

Frequently Asked Questions

Q: Does this apply to part-time employees?

A: Yes, the law applies to all public employees equally without regard to number of hours worked. However, the employer would only pay the employee for the actual hours the employee would have normally worked had he/she not been deployed. The Tennessee Attorney General stated in Opinion No. 00-093 that the act applies to part time employees, since that class of employees is not excluded in the statutory language.

Q: We have public safety employees who work different shifts (i.e., 24/48) and generally work more total hours per year than standard 8-5 positions. How much time do we provide to them under this law?

A: The Tennessee Legislature did not address work schedules in the language and makes no distinctions between different classes or work schedules of employees. At this time there have been no court cases in Tennessee that provide clarification.

Q: Does this apply to members of the Tennessee Army and Air National Guard?

A: Yes. Refer to Attorney General Opinion No. 01-169, which indicates that the act applies to members of the Tennessee Army and Air National Guard, regardless of whether they are mentioned in the statutory language.

Q: Are there any Tennessee cities that are exempt from having to provide this benefit?

A: No. All Tennessee cities and towns must comply with this law.

Q: If an employee who has not completed the city's probationary period is deployed, is he entitled to the 20 days of leave?

A: Any officer or employee is entitled to military leave pursuant to T.C.A. § 8-33-109. The statute explicitly says that the leave is "unaffected by date of employment or length of service" of the employee. Hence, despite any definition this specific language ensures that all employees and officers are granted this leave. Furthermore, the definition is for "public employee" and the language of Section 109 uses only "employee."

Confidentiality of Municipal Employees' Personal Information

Reference Number: MTAS-1222

While the personnel file of a municipal employee is a public record, some of its contents is confidential and must be redacted prior to public release. T.C.A. 10-7-504(f) makes the following information of a municipal employee, or former employee, or applicant to such position, or of any law enforcement officer and his or her immediate family confidential:

- Home telephone and personal cell phone numbers;
- Bank account and individual health savings account, retirement account and pension account information; provided, that nothing shall limit access to financial records of a governmental employer that show the amounts and sources of contributions to the accounts or the amount of pension or retirement benefits provided to the employee or former employee by the governmental employer;
- Social security number;
- Residential street address;
- Driver license information except where driving or operating a vehicle is part of the employee's job description or job duties or incidental to the performance of the employee's job;
- Emergency contact information;
- Personal, nongovernment issued, email address.

Information that is confidential must be redacted wherever possible.

Independent Contractor vs. Employee

Reference Number:

MTAS-1225

Types of Employment Relationships

All employers hire others to perform services. Some services must be performed routinely whereas others are needed less frequently, perhaps only once. Those hired by the employer to perform routine activities generally are considered to be employees and are paid taxable wages based on a salary or an hourly rate. Other services needed by the employer that occur infrequently generally are performed by contractors. Contractors have more than one employer and typically are paid by the job instead of with wages.

Most employment relationships are clearly identifiable by whether the one hired is an employee of the organization or a contractor. Other times, however, depending on the services needed by the employer, the distinction is not easily defined.

Employer/Employee Relationship

Municipalities offer a variety of services to their citizens relating to public safety, health and welfare. Typically, these activities are labor intensive and require the talents of individuals who have specialized skills and training. Because these services are part of the ongoing mission of the organization, individuals charged with delivering the services are hired as employees of the municipality.

As with any other employer, a municipal government is required to follow Internal Revenue Service guidelines regarding payroll reporting responsibilities. Standard application of payroll tax withholding from employees' gross wages based on the IRS *Publication 15, Circular E, Employer's Tax Guide* must be followed, including routine tax filings and annual reporting of employee wages.

Employer/Independent Contractor Relationship

Situations also occur that require knowledge and skills exceeding the ability of those employed by the city. In these cases, the decision makers of the local government find it necessary to hire on a one-time basis person(s), firm(s), or corporation(s) who are specialists in a specific field of endeavor to solve a problem or provide a service. Since the need is tied specifically to a single event, there is no need to employ the provider on an ongoing basis. Here, the one providing the service is engaged as an independent contractor under terms defined by a written agreement or contract.

The employment contract between the party requiring the service and the party providing the service defines the nature of what is to be performed and the amount of compensation to be paid to the contractor. If the contractor is not a corporate entity, the IRS requires the municipality to prepare a federal Form 1099 reporting the amount paid to the person or firm providing the service.

Employee or Independent Contractor?

The circumstances mentioned above clearly define the employment relationship between the person or persons needing the service performed and the person or persons delivering the service. Other situations, however, are recurrent, and the employment relationship is more difficult to determine.

It is critical that a city properly classify the employment relationship with those hired to perform services. Improper classification of an employee as an independent contractor may result in the city being held liable for the employee's taxes plus additional penalties.

Determining the Employment Relationship

How can a municipality determine whether the employment relationship between the city and the one hired is that of employer/employee or employer/independent contractor? The Internal Revenue Service provides guidance to help one hiring the services of another determine the classification of the employment relationship. This guidance can be reduced to the evaluation of three factors or categories of control. These categories are:

- Behavioral control;
- Financial control; and
- Relationship of parties.

Behavioral Control

Behavioral control relates to the amount of direction and control the one who hires exercises over the one who performs the services. Questions to be answered include:

- How much instruction is given to the one who performs the service?
- How much training is provided by the hiring party to the one who performs the service?

- How much supervision does the hiring party exercise over the one who provides the service?

If the hiring party provides direct supervision, training, and instruction and schedules the time when services are to be performed, the relationship is probably that of employer/employee.

If the one who hires does none or very little of the aforementioned, the relationship is probably that of employer/independent contractor.

Financial Control

Financial control relates to the financial risk taken by the parties in the relationship. Who of the two is most likely to risk a loss from the employment relationship?

- Who owns most of the equipment and other assets used in the delivery of the service to be performed?
- Does the one hired to perform service have other customers for whom similar services are performed?
- Does the one hired to perform the service have the potential to earn a profit or the risk of loss in delivering the service?

If the one who hires owns most of the equipment used in the delivery of the service, is the only one, or one of a very few, for whom the one hired performs the service, and takes the financial risk of profit or loss associated with the service, the relationship is probably that of employer/employee.

If the one who is hired to perform the service provides the equipment, has many customers for whom similar services are performed, and takes the financial risk of earning a profit or suffering a loss on the venture, the relationship is probably that of employer/independent contractor.

Relationship of the Parties

What is the nature of the relationship between the hiring party and the one who is performing the service?

- Is there a written contract between the parties specifying the scope of services to be provided, compensation method and length of time?
- How long is the service to be provided?
- Does the one who hires the services of another provide benefits for the one who provides the service?

If the hiring party has an expectation that the services needed will be ongoing, pays the one providing the service by the hour or some other routine method, and provides fringe benefits such as health insurance or workers' compensation to the one hired to perform the service, the relationship is probably that of employer/employee. If the hiring party issues a written contract specifying the scope of services, length of time, and compensation without ongoing fringe benefits such as health insurance and workers' compensation, the relationship is probably that of employer/independent contractor.

Additional Resources

The IRS website contains additional material to assist in the determination of the employer/employee relationship. Twenty (20) factors for the employer to consider to determine whether a worker is an employee or an independent contractor are presented. If you are not confident of making the employment relationship determination based on the information presented here and you prefer to let the IRS make that determination for you, IRS Form SS-8, Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding [7] with instructions for completion. Additional information is available online at www.irs.gov [8].

Interviewing and the Law

Reference Number: MTAS-884

Asking legally defensible questions is key to avoiding liability in the employment process. For information regarding lawful interviewing click on any of the bulleted items below. If you want a complete guide to "Interviewing and the Law" click on "View PDF of section".

Title VII of the Civil Rights Act

Reference Number: MTAS-885

Congress provided federal legal enforcement for equal employment in the Civil Rights Act of 1964 with strengthening amendments added in 1972. Unlawful discrimination in the employment process also is enforced through the Age Discrimination in Employment Act, and the Americans with Disabilities Act and the Genetic Information Non-Discrimination Act.

Title VII of the Civil Rights Act makes it unlawful for an employer:

- (1) to fail or refuse to hire or to discharge any individual or otherwise to discriminate against any individual with respect to his/her compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex or national origin, or
- (2) to limit, segregate, deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his/her status as an employee because of such individual's race, color, religion, sex or national origin. ^[1]

Congress established the Equal Employment Opportunity Commission (EEOC), a bi-partisan five person board, to enforce Title VII. ^[2] The president appoints the members, who then must be confirmed by the senate. Although the muscle behind the EEOC's enforcement power lies in its right to file lawsuits against employers in federal court, the commission's primary importance for public employers centers on the guidelines it issues to clarify Title VII's reach.

^[1] 42 USC § 2000e.

^[2] 29 U.S.C § 1 61; 49 Stat. 455.

Age Discrimination in Employment Act

Reference Number: MTAS-1552

The **Age Discrimination in Employment Act of 1967 (ADEA)** protects individuals who are 40 years of age or older from employment discrimination based on their age. The ADEA's protection applies to both employees and job applicants. Similar to Title VII, the ADEA makes it unlawful to discriminate against a person because of his or her age with respect to any terms, conditions, or privileges of employment, including hiring, firing, promotion, layoff, compensation, benefits, job assignments, and training. 29 U.S.C. § 621 - 29. U.S.C. § 634.

Similarly, it is unlawful to retaliate against an individual for opposing employment practices that discriminate based on age or for filing an age discrimination charge, testifying, or participating in any way in an investigation, proceeding, or litigation under the ADEA.

Americans with Disabilities Act of 1990

Reference Number: MTAS-1553

The **Americans with Disabilities Act of 1990 (as amended 2008) (P.L. 110-325)** prohibits discrimination against "otherwise qualified individuals with a disability who can perform the essential functions of the job either with or without a reasonable accommodation". The term "disability" means a

physical or mental impairment that "materially restricts" one or more major life activities or situations in which an individual has a record of an impairment or the individual is being regarded as having an impairment. Additionally, the amendment provides that the definition of disability shall be construed in favor of broad coverage of individuals under the act.

The act specifies that major life activities include, but are not limited to (non-exhaustive list), caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and **working**. Major life activities also include the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. An individual is "regarded as having such an impairment" if the individual establishes that he or she has been subjected to an action prohibited under the law because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.

Genetic Information Nondiscrimination Act

Reference Number: MTAS-1554

The **Genetic Information Nondiscrimination Act of 2008 (GINA)**, effective November 21, 2009, prohibits employers from requesting or requiring genetic information of employees or their family members. 'Genetic information,' as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, *the fact that an individual or an individual's family member sought or received genetic services*, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services. There is an exception for the inadvertent or accidental acquisitions of genetic information — the so-called "water cooler" exception — when an employer might accidentally overhear coworkers discussing health issues.

GINA prohibits employers from using genetic information to make decisions regarding employment, hiring, promotion, terms or conditions of employment, privileges of employment, compensation or termination. It also prohibits classifying, or depriving an individual or employment opportunities on the basis of genetic information.

Violations of GINA can result in compensatory and punitive damages, reasonable attorney's fees and injunctive relief including reinstatement and hiring, back pay, and other equitable remedies. A willful violation of GINA shall be punishable by a fine of not more than \$100 for each separate offense. U.S.C. § 216(e).

Pre-Employment Practices

Reference Number: MTAS-886

Pre-employment selection procedures, including tests and inquiries used to screen out prospective applicants, can be particularly vulnerable to adverse impact charges. Title VII allows the use of "professionally developed ability test" provided that such test, its administration or actions upon the results, is not designed, intended, or used to discriminate because of race, color, religion, gender or national origin." [3] The EEOC requires employers using selection tests to justify them with "data demonstrating that the test is predictive of, or significantly correlates with, important elements of work behavior which comprise or are relevant to the job or jobs which candidates are being evaluated." [4]

The EEOC also has published very technical and complicated standards for validating such tests. [5] In most circumstances, if a city cannot statistically tie a pre-employment test to specific characteristics necessary for successful job performance and the city does not desire or cannot afford to perform a validity study, the test should be discontinued or changed immediately.

Pre-employment screening procedures such as job application forms, interviews, and background investigations should be reviewed for their job relatedness. Interviewers should limit their questions to matters relevant to determining an applicant's competence and ability to perform the essential functions of the job. Title VII does not prohibit questions regarding an applicant's race, color, religion, gender or national origin, but they may be used as evidence of discrimination if a city cannot explain their

presence. In addition, these questions may be prohibited by state law. Questions about association or marriage with a particular group also may be used as evidence of discrimination. Employers should avoid questions about marital status, the age and number of children, plans for pregnancy or arrangements for child care. ^[6]

Pre-employment investigations for the purpose of examining an applicant's "fitness" or "character" or to verify statements made on the application should be reviewed carefully for job relatedness. The criteria used to qualify applicants through background investigations should be precise and well defined and should state clearly the information that will disqualify an applicant; if not, some courts refuse to find them job related. For example, a police department's investigations to seek disqualifying evidence of "bad character, dissolute habits, and immoral conduct" violated Title VII primarily because the criteria were so poorly defined. ^[7]

Cities also must conduct investigations using the same procedures and thoroughness, regardless of the applicant's gender, race, ethnic origin or religion. Proof that an employer compared the results of an in-depth investigation of a member of a protected class with a limited investigation of a non-minority will defeat an employer's claim that the procedure was public business related. When no proof of business necessity has been shown, courts have found that background investigations by police ^[8] and fire departments ^[9] into an applicant's financial history violate Title VII because they disqualify disproportionate numbers of blacks. In addition, using a less than honorable discharge from the military as a criterion for rejecting an applicant also may violate the act because statistics reveal a higher incidence of such discharges among minorities. ^[10]

Unless solid proof of public business necessity can be shown, cities also should not rely solely on arrest and conviction records to reject applicants. If a conviction would render an applicant unsuitable for a particular job, it might be a valid justification for rejecting the applicant. For example, a conviction for bank robbery would probably justify a city's refusal to hire an individual as a utility clerk or finance officer but perhaps not in another capacity not involving money. If a city questions an applicant about prior convictions, inquiries should be accompanied by a statement that a conviction record will not necessarily be a bar to employment and those factors such as age and time of the offense, seriousness and nature of the violation, and rehabilitation will be taken into account.

On April 25, 2012, the Equal Employment Opportunity Commission (EEOC) updated its enforcement guidance ^[9] ¹¹ on the consideration of arrest and conviction records in employment decisions. The EEOC determined that compliance with federal laws or regulations is a defense to a charge of discrimination. However, compliance with a state or local law or regulation may not shield the employer from liability if the employer's policy is not job related and consistent with business necessity.

According to the guidance, the EEOC recommends that employers not ask about convictions on job applications. Employers can consistently demonstrate job relatedness and consistency with business necessity if they: validate the criminal conduct screen for the position in question based on the Uniform Guidelines on Employee Selection Procedures, or develop a targeted screening considering at least the nature of the crime, the time lapsed, and the nature of the job and then provide an opportunity for an individualized assessment for people excluded by the screening. ¹²

^[3] 42 U.S.C.A. § 2000e-2(h). Note: other jurisdictions have overruled or treated this citation negatively: 42 U.S.C.A. § 2000e-2 Rweyemamu v. Cote, 520 F.3d 198, 198+, 1678+, 43141+, (2nd Cir.(Conn.) Mar 21, 2008) (NO. 06-1041-CV)(unconstitutional as applied); Miller v. Bay View United Methodist Church, Inc., 141 F.Supp.2d 1174, 1175, 1406 (E.D.Wis. Mar 31, 2001) (NO. 99-C-0676)(limited); Funai v. Brownlee, 369 F.Supp.2d 1222, 1223+ (D.Hawai'i Nov 23, 2004) (NO. CIV.03-00160 ACK/BMK)/

^[4] Guidelines on Employee Selection Procedures 29 C.F.R. § 1607.4(c), 35 Federal Reg. 12333 (Aug. 1, 1970).

^[5] 29 C.F.R. § 1607.5.

^[6] Romine, 518 F.2d at 332.

^[7] *United States v. Chicago*, 549 F.2d 415 (7th Cir. 1977) affirmed 567 F2d 730 (7th Cir. 1977).

[8] *Id.*

[9] *Dozier v. Chupka*, 395 F.Supp, 836 (S.D. Ohio, 1975).

[10] *Id.*

[11] U.S. Equal Employment Opportunity Commission, Enforcement Guidance, "Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964" April 2012.

[12] *Id.*

Inappropriate Pre-Employment Inquiries

Reference Number: MTAS-887

Generally, employers should not ask any question that would illicit information about an applicants race, color, religion, gender, national origin, age, genetic information or military status. Listed below are examples of inappropriate pre-employment inquiries found on employment applications that should not be on your applicaiton. ^[13]

Without EEOC Disclaimer

- What is your birth date?
- What is your birthplace?
- What was your age on your last birthday?
- What is your sex?
- What is your race or ethnic group?
- Do you have any handicaps or physical defects?

With or Without EEOC Disclaimer

- Are you known or have you been known by any other name(s)?
- Which do you prefer: Mr., Mrs., or Ms.?
- What is your marital status?
- How many dependants do you have?
- What is your height and weight?
- What are the dates of your education and/or degrees?
- Have you ever been convicted of a crime?
- Do you posses a valid driver's license?
- Do you have transportation to work?
- What were the dates of your military service?
- What was your rank when you left military service?
- If claiming veteran's preference, have you submitted the appropriate documentation?
- Do you read and write English?
- What is the lowest pay you will accept?
- Do you have any relatives employed by the state?
- Are you willing to travel?
- Are you willing to work shifts/overtime?
- Are you willing to lift heavy weights?
- Do any of your relatives have any disabilities or disorders?

Under the Americans with Disabilities Act, an employer may ask questions to determine whether an applicant can perform specific job functions. The questions should focus on the applicant's ability to perform the job, not a disability.

[13] Derbra D. Burrington, "A Review of State Government Application Forms for Suspect Questions," *Public Personnel Management Journal*, May 1982.

Lawful and Unlawful Inquiries During Pre-Employment Interviews

Reference Number: MTAS-1563

Any inquiry is prohibited that, although not specifically listed among the pages below, is designed to elicit information as to race, color, ancestry, age, gender, religion, genetic information, disability, military status or arrest and court record, unless based upon a bona fide occupational qualification.

Lawful Inquiries: Name, Family Status, Age, Disability

Reference Number: MTAS-1555

Name

- Have you worked for this company under a different name?
- Is any additional information relative to a change of name, use of an assumed name or nick-name necessary to enable a check on your work and educational record? If yes, explain.

Marital/Family Status

- **NONE** about marital/family status but may ask:
 - Whether applicant can meet work schedules or activities; commitments that may hinder the meeting of work attendance requirements.
 - Inquiries as to duration of stay or anticipated absences that are made to males and females alike.

Age

- **If a minor**, require proof of age in the form of a work permit or a certificate of age.
- Require proof of age by birth certificate after being hired.
- Inquiry as to whether or not applicant meets the minimum age requirements as set by law confirmed with a birth certificate or other forms of proof of age.
- If age is a legal requirement: "If hired, can you furnish proof of age?" or that hire is subject to verification of age.
- Inquiry as to whether or not an applicant is younger than the employer's regular retirement age.

Disabilities

The applicant could be asked:

- Can you perform the essential functions of this job?
- Are you able to perform these tasks? (If the applicant indicates that he or she can perform the tasks with an accommodation, you may ask:
- Can you show me how you would perform the task?

Under the Americans with Disabilities Act, an employer may ask questions to determine whether an applicant can perform specific job functions. The questions should focus on the applicant's ability to perform the job, not a disability.

Unlawful Inquiries: Name, Family Status, Age, Disabilities

Reference Number: MTAS-1556

The following inquiries should not be asked during the application process:

Name

- Inquiries about the name that would indicate applicant's lineage, ancestry, national origin or descent.

- Inquiry into previous name of applicant, whether it has been changed by court order or otherwise.
- Indicate: Miss, Mrs., or Ms.

Marital/Family Status

- Any inquiry indicating whether an applicant is married, single, divorced, engaged, etc.
- Number and age of children.
- Information on child-care arrangements.
- Any questions concerning pregnancy.
- Any questions that directly or indirectly result in the limitation of job opportunities in any way.

Age

- How old are you?
- When is your birthday?
- What year did you graduate from high school?
- Requirements that applicants produce proof of age in the form of a birth certificate or baptismal record prior to an offer of employment.

The Age Discrimination in Employment Act of 1967 forbids discrimination against persons over the age of 40 in your employment process.

Disabilities

- The Rehabilitation Act of 1973 and Americans With Disabilities Act (ADA) forbids employers from asking job applicants general questions about whether they are "handicapped/disabled" or asking them about the nature and severity of their "handicap/disability".
- An interviewer may not ask questions about a disability.
- Where an applicant has a visible disability or volunteered information about a disability, the interviewer may not ask questions about:
 - The nature of the disability;
 - The severity of the disability;
 - The condition causing the disability;
 - Any prognosis or expectation regarding the condition or disability;
 - Whether the individual will need treatment or special leave because of the disability; or.
 - **Whether the applicant needs accommodations.**
- An interviewer may not ask questions about the results of an individual's or family member's genetic tests.

An employer must be prepared to prove that any physical and mental requirements for a job are due to "business necessity" and the safe performance of the job. Except in cases where undue hardship can be proven, employers must make "reasonable accommodations" for the physical and mental limitations of an employee or applicant.

Lawful Inquiries: Sex, Race, Residence, Birthplace

Reference Number: MTAS-1557

Employers may make inquiries into the following areas:

Sex

- Inquiry or restriction in employment is permissible only where a bona fide occupational qualification (BFOQ [10]) exists. The bona fide exception is interpreted very narrowly by the courts and the EEOC and is defined as being based on the need for the individual to be a particular sex.
- The burden of proof rests on the employer to prove that a bona fide occupational qualification does exist and that all members of the affected class are incapable of performing the job.

Applicant's Race

- **NONE** but may ask about:
- General distinguishing physical characteristics such as scars, etc.

Address or Duration of Residence

- Applicant's address.
- Inquiry into place and length of previous address.
- Length of time a resident of this state or city.

Birthplace

- Are you either a U.S. citizen or an alien authorized to work in the United States?
- "Can you, after employment, submit a birth certificate, other proof of U.S. citizenship or authorization to work documents?"

Unlawful Inquiries: Sex, Race, Residence, Birthplace

Reference Number: MTAS-1558

Employers may not make inquiries in the following areas:

Gender (the state of being male or female)

- Gender of the applicant.
- Any other inquiry that would indicate gender.
- Name or relationship of persons with whom applicant resides.
- Gender cannot be used as a factor to determine whether or not an applicant will be satisfied in a particular job.

Gender is not a bona fide occupational qualification even if a job involves physical labor (such as lifting) beyond the capacity of some women. Employment cannot be restricted to a particular gender just because the job is traditionally labeled "men's work" or "women's work."

Applicant's Race

- Color of applicant's skin, eyes, hair, etc., or other questions directly or indirectly indicating race or color.
- Applicant's height or weight where it is not relative to the job.

Address

- Specific inquiry into foreign addresses that would indicate national origin.
- Names or relationship of persons with whom applicant resides.
- Whether applicant owns or rents home.
- Whether applicant has an automobile.

Birthplace

- Birthplace of applicant.
- Birthplace of applicant's parents, spouse or other relatives.
- Requirement that applicant submit a birth certificate, naturalization or baptismal record before employment.

- Any other inquiry into national origin.

Lawful Inquiries: Religion, Military, Photo, Citizenship, Education, Conviction

Reference Number: MTAS-1559

Employers may make inquiries into the following areas:

Religion

- An applicant may be advised concerning normal hours and days of work required by the job to avoid possible conflict with religious or other personal conviction.

Military

- Type of education and experience in service as it relates to a particular job.

Photo

- A photo may be required after hiring for identification.

Citizenship

- Whether applicant is prevented from lawfully being employed in this country because of visa or immigration requirements.
- Whether applicant can provide proof of citizenship (passport), visa, alien registration number after hiring.
- "If you are not a US citizen, do you have the legal right to remain permanently in the US?",
- "What is your visa status (if no to the previous question.)",
- Are you able to provide proof of employment eligibility upon hire?"

Ancestry of National Origin

- Languages applicant reads or writes frequently (**based on job requirements**).

Education/Experience

- Applicant's academic or professional education, school attended.
- Inquiry into language skills such as reading, speaking and writing foreign languages (based on job requirements).
- Applicant's work experience, names and addresses of previous employers, dates or reasons for leaving and salary history.
- Other countries visited.

Conviction

- Inquiry into the actual convictions that reasonably relate to the applicant's fitness to perform a particular job. (A conviction is a court ruling where the party is found guilty as charged. An arrest is merely the apprehending or detaining of the person to answer the alleged crime.) If an employer's exclusionary policy or practice is *not* job related and consistent with business necessity, the fact that it was adopted to comply with a state or local law or regulation does not shield the employer from Title VII liability.¹⁴
- When asking questions about criminal records, limit inquiries to records for which exclusion would be job related for the position in question and consistent with business necessity

[14] *Int'l Union v. Johnson Controls, Inc.*, 499 U.S. 187, 210 (1991)

Unlawful Inquiries: Religion, Military, Photo, Citizenship, Education, Conviction

Reference Number: MTAS-1560

Employers may not make inquiries in the following areas:

Religion

- Applicant's religion (affiliation, church, parish, pastor or religious holidays).
- Applicants may not be told that any particular religious groups are required to work on their religious holidays.
- Any inquiry to indicate or identify religious denomination or customs.

Military

- Current military status.
- Type or condition of military discharge.
- Applicants experience in other US armed forces.
- Request for discharge papers.

Photo

- Request for a photograph before hiring.
- Requirement that applicant affix a photograph to the application.
- Request the applicant, at his/her option, submit photograph.
- Requirement of photograph after interview but before hiring.

Citizenship

- Are you a citizen of the US?
- Of what country are you a citizen?
- Whether applicant or his/her parents or spouse are naturalized or native-born U.S. citizens.
- Date that applicant or parents or spouse acquired a U.S. citizenship.
- Requirement that applicant produce his/her naturalization papers.
- Whether applicant's parents or spouse are citizens of the U.S.

Ancestry of National Origin

- Inquiries into applicant's lineage or ancestry, national origin, descent, birthplace or native language.
- Asking how applicant acquired the ability to speak, read or write a foreign language.
- National origin, descent, birthplace or native language of applicant's parents or spouse.

Education

- Any inquiry asking specifically the nationality, racial or religious affiliation of a school.
- Inquiry as to the applicant's native language or how foreign language ability was acquired.

Conviction

- Any inquiry relating to arrests.
- Asking or checking into a person's arrest.
- Court or conviction record if not substantially related to functions and responsibilities of the prospective employment.

Lawful Inquiries: Relatives, Organizations, Credit Rating, References

Reference Number: MTAS-1561

Employers may make the following type of inquiries:

Relatives

- Names of applicant's relatives employed by this company.
- Names and addresses of parents or guardians of minor applicants.

Notice in Case of Emergency

- Names of persons to be notified in case of accident or emergency.

Organizations

- Inquiry into the organizations of which an applicant is a member providing the name or character of the organization does not reveal the race, religion, color, or ancestry of the member (must relate to the applicants professional qualifications).
- "What offices are held, if any?"

Credit Rating

- None

References

- "By whom were you referred for a position here?"
- Names of people willing to provide professional or character references of applicant.

Miscellaneous

- Notice to applicants that any mis-statements or omissions of material facts in the application may be cause for dismissal.

Unlawful Inquiries: Relatives, Organizations, Credit Rating, References

Reference Number: MTAS-1562

Employers may not make the following type inquiries:

Relatives

- Name or address of any relative of adult applicant.
- Questions concerning spouse, or spouse's employment, salary, child care arrangement, or dependents.

Notice in Case of Emergency

- Name and address of relatives to be notified in case of accident or emergency.

Organizations

- "List all the organizations, clubs, societies and lodges to which you belong."
- The names of organizations to which the applicant belongs if such information would indicate, through character or name, the race, religion, color or ancestry of the members.

Credit Rating

- Any questions concerning credit rating, charge accounts, etc.

References

- Require the submission of a religious reference.

- Request reference from applicant's pastor.

Damages for Violations

Reference Number: MTAS-1564

There are a number of remedies available to employees whose Title VII, ADA, GINA and ADEA rights are violated by the employer or by others whom the employer allowed to violate them. Cases under the acts are tried without juries, and judges have much discretion in shaping each remedy to fit the particular situation.

Like Title VII, GINA and the ADEA, the ADA also allows for compensatory and monetary damages, injunctive relief, reinstatement, restraint from further discriminatory conduct and back pay. In addition, with the passage of the Civil Rights Act of 1991 a judge may award attorney's fees to the winner in a Title VII suit. Punitive damages and awards for pain and suffering may also be granted. Punitive damages are not available against federal, state and local government employers.

Management of Personnel Records

Reference Number: MTAS-883

Some Tennessee cities maintain their personnel records in separate locations and by untrained personnel. Records are often maintained in each department where employees may have access and be free to look at any and all of the information contained in the files, including Social Security numbers, driver's license numbers, library cards, personally identifying information of police officers, health-related matters, and other such information that is protected by federal and/or state laws. Employees may review records of other employees and remove from the files information about reprimands, suspensions, demotions, and the like.

MTAS recommends that every city in Tennessee maintain its personnel records in a central location and that such records be under the custodianship of a trained employee, or employees, depending on the size of the city. The custodian should know what records are public and what records are private under state and federal laws. The custodian should know that personnel records are owned by the city and not the employee. It should never be permissible for an employee, or anyone else, to take a personnel file out of the records office, or to remove any document from the personnel records.

MTAS also recommends that the custodian of the records maintain a duplicate file for public and employee access that does not include private protected information. T.C.A. § 10-7-503 requires that certain confidential information be redacted before the record is inspected. Failure to comply with this requirement could create a cause of action against the municipality. Additional information about confidential records can be found under confidential records [11].

Legislation in Tennessee requires that the chief of police make the decision to release, or not release, information in a police officer's personnel file. If the personnel records are not disclosed, the chief must explain in writing the reason for refusing to release the information and then release the redacted file. If the personnel records are to be disclosed, the chief must first notify the officer whose files have been requested and give that officer an opportunity to oppose the release. The recorder or other records custodian should notify the chief that a request for an officer's personnel records has been made and then ask the chief to make the determination as to what should or should not be released. Additional information about the Police Chief's responsibilities can be found under Law Enforcement Officer's Records [12].

Confidential Information under HIPAA

Reference Number: MTAS-2122

Section 1172 (a) of the Health Insurance Portability and Accountability Act (HIPAA) of 1996 (Public Law 104-191 [13]) makes some cities responsible for maintaining and transmitting health information in accordance with reasonable and appropriate administrative, technical, and physical safeguards:

- To ensure the integrity and confidentiality of the information;
- To protect against any reasonably anticipated:
- Threats or hazards to the security or integrity of the information,
- Unauthorized uses or disclosure of the information, and
- Otherwise to ensure compliance with this part (Section 1172 (a)) by the officers and employees of the city.

The act requires a covered entity to consider:

- Its size, complexity, and capabilities,
- Its technical, hardware, and software infrastructure,
- The costs of security measures, and
- The likelihood and possible impact of potential risks to e-PHI.

The act provides that a person who knowingly obtains or discloses individually identifiable health information in violation of HIPAA faces a fine of \$50,000 and up to one year of imprisonment. Penalties may increase up to \$100,000 and up to five years imprisonment, depending on the circumstances.

Maintaining personnel records in a central location under the custodianship of a trained records keeper is the best insurance for the city and its employees to comply with HIPAA and to significantly reduce or avoid liability.

For a summary of HIPAA security information of key elements of the Security Rule including who is covered, what information is protected, and what safeguards must be in place to ensure appropriate protection of electronic protected health information, see the Department of Health and Human Services [14]webpage.

On January 25, 2013, the Department of Health and Human Services issued a final rule modifying HIPAA's Privacy, Security, and Enforcement Rules to implement statutory amendments under the Health Information Technology for Economic and Clinical Health Act ("the HITECH Act") which merits review.

Model Identity Theft Policy/FACTA Compliance

Reference Number: MTAS-1254

An individual's identity can be stolen with nothing more than a stolen string of numbers and malicious intent. With a few pieces of personal identifying information, an identity thief can easily secure an account in someone else's name. This information can be obtained from a variety of sources, including stolen mail, computer hacking, fraudulent address changes and other nefarious schemes.

Click on the items below to get detailed information regarding Identify Theft and FACTA Compliance.

Federal Legislation

Reference Number: MTAS-1583

In response to the growing threat of identity theft, the United States Congress passed the Fair and Accurate Credit Transactions Act of 2003 (FACTA). Public Law 108-159. This amendment to the Fair Credit Reporting Act charged the Federal Trade Commission with promulgating rules regarding identity theft. On November 7, 2007, the Federal Trade Commission promulgated the final rules, known as "Red Flag" rules, which had an effective date of November 1, 2008. 16 CFR 681. These rules, implemented sections 114 and 315 of FACTA, requiring certain municipal departments to enact certain policies and procedures by the November 1, 2008, effective date. The FACT Act contains seven major titles: Identity Theft Prevention and Credit History Restoration, Improvements in Use of and Consumer Access to Credit Information, Enhancing the Accuracy of Consumer Report Information, Limiting the Use and Sharing of Medical Information in the Financial System, Financial Literacy and Education Improvement,

Protecting Employee Misconduct Investigations, and Relation to State Laws. The focus of this section is on the Identity Theft Prevention and Credit History Restoration provisions.

Definitions and Scope

The rules apply to “financial institutions” and “creditors” with “covered accounts.” Financial institution is defined as a state or national bank, a state or federal savings and loan association, a mutual savings bank, a state or federal credit union, or any other person that, directly or indirectly, holds a transaction account belonging to a consumer. Creditor means “any person who regularly extends, renews, or continuation of credit; or any assignee or an original creditor who participates in the decision to extend, renew, or continue credit” and includes lenders such as banks, finance companies, automobile dealers, mortgage brokers, utility companies, and telecommunications companies. A covered account is an “account that a financial institution or creditor offers or maintains, primarily for personal, family, or household purposes, that involves or is designed to permit multiple payments or transactions, such as a credit card account, mortgage loan, automobile loan, margin account, cell phone account, utility account, checking account, or savings account.” A “red flag” is a pattern, practice or specific activity that indicates the possible existence of identity theft.

All municipal water, wastewater, natural gas, and electric utilities are explicitly covered under these rules. The Federal Trade Commission has suggested that municipal departments that “defer payments” for goods or services are also covered.

Identity Theft Program Requirements

Reference Number: MTAS-1584

Every affected municipality must develop and implement a written Identity Theft Prevention Program that is designed to detect, prevent and mitigate identity theft in connection with the opening of a covered account or any existing covered account. The program must be appropriate to the size and complexity of the municipality and the nature and scope of its activities.

The program must include provisions to:

- Identify relevant red flags for covered accounts signaling possible identity theft and incorporate those red flags into the program;
- Detect red flags that have been incorporated into the program;
- Respond appropriately to any red flags that are detected to prevent and mitigate identity theft; and
- Ensure the program is updated periodically to reflect changes in risks.

The policy must also provide for continued administration and oversight of the program, including:

- Obtaining approval of the initial written program by the governing body or an appropriate committee designated by the governing body;
- Involving the governing body, a committee of the governing body, or a designated management-level employee in the development, implementation, administration and oversight of the program;
- Staff training as necessary to effectively implement the program; and
- Exercise of appropriate and effective oversight of service provider arrangements.

The red flags fall into five categories:

- alerts, notifications, or warnings from a consumer reporting agency
- suspicious documents
- suspicious identifying information, such as a suspicious address
- unusual use of - or suspicious activity relating to - a covered account
- notices from customers, victims of identity theft, law enforcement authorities, or other businesses about possible identity theft in connection with covered accounts.

Annually, the designated overseer of the municipality’s identity theft program must report to the governing body on the effectiveness of the program and compliance with the regulatory requirements.

Identity Theft Policy

Reference Number: MTAS-1255

Employers who offer or maintain at least one covered account must develop and implement a written attached Identity Theft Program that is designed to detect, prevent and mitigate identity theft. The program should identify relevant red flags (risk factors and sources of red flags), address the detection of red flags, prevent and mitigate identity theft, be updated and indicate the methods for administering the program.

Following is a section-by-section breakdown of the model policy.

Section one of the policy states broadly that only a concerted effort of every affected employee can mount an effective defense against the threat of identity theft.

Section two lays out the intent of the policy, which is to define sensitive information, describe the relevant security of data, and to protect this data, thus placing the municipality in compliance with federal law.

Section three speaks to coverage, stating that all employees, contractors, consultants, temporary workers, and other workers at the municipality are covered.

The general policy is provided in **section four**. First, sensitive information is defined, and examples are provided. Generally, any personally identifying financial or medical information is deemed sensitive under the rules and thus subject to protections. Whether in hard copy or electronic form, sensitive information must be protected by the reasonable, common sense measures provided.

Section five provides detailed definitions of covered accounts and red flags.

The federal rules define a covered account as an “account that a financial institution or creditor offers or maintains, primarily for personal, family, or household purposes, that involves or is designed to permit multiple payments or transactions, such as a credit card account, mortgage loan, automobile loan, margin account, cell phone account, utility account, checking account, or savings account.”

Section 681.2 (3). This policy incorporates that definition and charges the municipality with monitoring any such account for which there is a reasonably foreseeable risk of identity theft.

This foreseeable risk of identity theft is assessed by the numerous red flags provided for in Section 5.B. Red flags are indicators of fraud and include, but are not limited to the following:

- On alert, notification or warning from a consumer reporting agency;
- A credit freeze imposed by a consumer reporting agency;
- Address discrepancy notice from a consumer reporting agency;
- Irregular or suspicious account activity;
- Suspicious documents;
- Personal identifying information inconsistent with external information used for verification; and
- Personal identifying information associated with prior fraud.

Further examples of these red flags are provided in the policy.

Upon detecting a red flag, a municipality must, under section six, take specific actions to quash or mitigate the threat. The first step is to gather all related documentation and prepare a brief description of the situation. This initial investigation must be immediately forwarded to the preparing employee's supervisor. The supervisor must then determine the merits of the potential red flag.

If the supervisor determines that the transaction is fraudulent, further action must be taken. These actions may include:

- Canceling the transaction;
- Notifying and cooperating with appropriate law enforcement;
- Determining the extent of liability to municipality; and
- Notifying the actual customer that fraud has been attempted.

As technology and nefarious scheming create new methods for attempting identity theft, this policy must be reviewed periodically to incorporate new red flags and new responses. This policy does not mandate

the time frame for periodic update, leaving that decision to those responsible for managing the program. It is recommended, however, that the policy be updated as often as needed to stay current with any new threat or response. At a minimum, the policy should be reviewed for needed updates.

While identity theft is the responsibility of the entire municipal staff and requires board adoption, direct administration should be designated to a single person. Logical choices for administrator are city recorder, finance director or IT director. This designee must be noted in section 8.A.3 of the policy.

The chosen director is also responsible for identity theft training as provided for in section 8.B. Training in all sections of the policy is mandated for all employees, officials and contractors who may come into contact with covered accounts. In assessing which employees to include in these trainings, MTAS recommends to err on the side of inclusion.

While MTAS does not currently endorse any specific training, a growing number of public and private entities are offering identity theft training at a wide array of costs. In assessing your training needs consider the scope of your program and number of affected employees. Investigate a number of potential candidates before making your selection.

In addition to in-house employee training, municipalities are required to ensure that external service providers are in compliance with the provisions of this policy. However, if the external service provider has adopted and implemented its own identity theft policy, this will suffice. It is advisable for municipalities using external service providers to either obtain a copy of the provider's policy or a statement from the provider stating the existence of the policy and a promise of due diligence.

Identify Theft Violations

Reference Number: MTAS-1585

The Federal Trade Commission is authorized to commence action in a federal district court in the event of a knowing violation of FACTA.

Civil liability for willful noncompliance – (a) In general. Any person who willfully fails to comply with any requirement imposed under this subchapter with respect to any consumer is liable to that consumer in an amount equal to the sum of:

- any actual damages sustained by the consumer as a result of the failure or damages of not less than \$100 and not more than \$1,000; or
- in the case of liability of a natural person for obtaining a consumer report under false pretenses or knowingly without a permissible purpose, actual damages sustained by the consumer as a result of the failure or \$1,000, whichever is greater; or
- such amount of punitive damages as the court may allow; and
- in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

Civil penalties for violations are capped at \$2,500 per offense.

For municipalities that pull consumer reports of customers, failure to comply with the address discrepancy regulations subjects violators to penalties not exceeding \$1,000.

Helpful Links

Fair and Accurate Credit Transactions Act of 2003 [15] (complete text).

Identity Theft Red Flags and Address Discrepancies under the Fair and Accurate Credit Transactions Act of 2003. [16]

Fair Credit Reporting Act. [17]

Federal Trade Commission. [18]

Model Identity Theft Policy and Resolution: Sections 1-4

Reference Number: MTAS-1257

Model Identity Theft Policy and Adopting Resolution

_____, Tennessee
RESOLUTION NO. _____

A RESOLUTION ADOPTING AN IDENTITY THEFT POLICY

WHEREAS, The Fair and Accurate Credit Transactions Act of 2003, an amendment to the Fair Credit Reporting Act, requires rules regarding identity theft protection to be promulgated; and

WHEREAS, Those rules became effective November 1, 2008, and require municipal utilities and other departments to implement an identity theft program and policy, and

WHEREAS, The _____ (insert governing body's name) has determined that the following policy is in the best interest of the municipality and its citizens. NOW, THEREFORE,

BE IT RESOLVED by the _____ (insert governing body's name) that the following is hereby approved:

IDENTITY THEFT POLICY

SECTION 1: BACKGROUND

The risk to the municipality, its employees and customers from data loss and identity theft is of significant concern to the municipality and can be reduced only through the combined efforts of every employee and contractor.

SECTION 2: PURPOSE

The municipality adopts this sensitive information policy to help protect employees, customers, contractors and the municipality from damages related to the loss or misuse of sensitive information. This policy will:

1. Define sensitive information;
2. Describe the physical security of data when it is printed on paper;
3. Describe the electronic security of data when stored and distributed; and
4. Place the municipality in compliance with state and federal law regarding identity theft protection.

This policy enables the municipality to protect existing customers, reducing risk from identity fraud, and minimize potential damage to the municipality from fraudulent new accounts. The program will help the municipality:

1. Identify risks that signify potentially fraudulent activity within new or existing covered accounts;
2. Detect risks when they occur in covered accounts;
3. Respond to risks to determine if fraudulent activity has occurred and act if fraud has been attempted or committed; and
4. Update the program periodically, including reviewing the accounts that are covered and the identified risks that are part of the program.

SECTION 3: SCOPE

This policy and protection program applies to employees, contractors, consultants, temporary workers, and other workers at the municipality, including all personnel affiliated with third parties.

SECTION 4: POLICY

4.A: Sensitive Information Policy

4.A.1: Definition of Sensitive Information

Sensitive information includes the following items whether stored in electronic or printed format:

4.A.1.a: Credit card information, including any of the following:

1. Credit card number (in part or whole)
2. Credit card expiration date
3. Cardholder name
4. Cardholder address

4.A.1.b: Tax identification numbers, including:

1. Social Security number

2. Business identification number
3. Employer identification numbers
- 4.A.1.c: Payroll information, including, among other information:
 1. Paychecks
 2. Pay stubs
- 4.A.1.d: Cafeteria plan check requests and associated paperwork
- 4.A.1.e: Medical information for any employee or customer, including but not limited to:
 1. Doctor names and claims
 2. Insurance claims
 3. Prescriptions
 4. Any related personal medical information
- 4.A.1.f: Other personal information belonging to any customer, employee or contractor, examples of which include:
 1. Date of birth
 2. Address
 3. Phone numbers
 4. Maiden name
 5. Names
 6. Customer number
- 4.A.1.g: Municipal personnel are encouraged to use common sense judgment in securing confidential information to the proper extent. Furthermore, this section should be read in conjunction with the Tennessee Public Records Act and the municipality's open records policy. If an employee is uncertain of the sensitivity of a particular piece of information, he/she should contact their supervisor. In the event that the municipality cannot resolve a conflict between this policy and the Tennessee Public Records Act, the municipality will contact the Tennessee Office of Open Records.

4.A.2: Hard Copy Distribution

Each employee and contractor performing work for the municipality will comply with the following policies:

1. File cabinets, desk drawers, overhead cabinets, and any other storage space containing documents with sensitive information will be locked when not in use.
2. Storage rooms containing documents with sensitive information and record retention areas will be locked at the end of each workday or when unsupervised.
3. Desks, workstations, work areas, printers and fax machines, and common shared work areas will be cleared of all documents containing sensitive information when not in use.
4. Whiteboards, dry-erase boards, writing tablets, etc. in common shared work areas will be erased, removed, or shredded when not in use.
5. When documents containing sensitive information are discarded they will be placed inside a locked shred bin or immediately shredded using a mechanical cross cut or Department of Defense (DOD)-approved shredding device. Locked shred bins are labeled "Confidential paper shredding and recycling." Municipal records, however, may only be destroyed in accordance with the city's records retention policy.

4.A.3: Electronic Distribution

Each employee and contractor performing work for the municipality will comply with the following policies:

1. Internally, sensitive information may be transmitted using approved municipal e-mail. All sensitive information must be encrypted when stored in an electronic format.
2. Any sensitive information sent externally must be encrypted and password protected and only to approved recipients. Additionally, a statement such as this should be included in the e-mail:
"This message may contain confidential and/or proprietary information and is intended for the person/entity to whom it was originally addressed. Any use by others is strictly prohibited."

Model Identity Theft Policy: Section 5

Reference Number: MTAS-1258

If the municipality maintains certain covered accounts pursuant to federal legislation, the municipality may include the additional program details.

5.A: Covered accounts

A covered account includes any account that involves or is designed to permit multiple payments or transactions. Every new and existing customer account that meets the following criteria is covered by this program:

1. Business, personal and household accounts for which there is a reasonably foreseeable risk of identity theft; or
2. Business, personal and household accounts for which there is a reasonably foreseeable risk to the safety or soundness of the municipality from identity theft, including financial, operational, compliance, reputation, or litigation risks.

5.B: Red flags

5.B.1: The following red flags are potential indicators of fraud. Any time a red flag, or a situation closely resembling a red flag, is apparent, it should be investigated for verification.

1. Alerts, notifications or warnings from a consumer reporting agency;
2. A fraud or active duty alert included with a consumer report;
3. A notice of credit freeze from a consumer reporting agency in response to a request for a consumer report; or
4. A notice of address discrepancy from a consumer reporting agency as defined in § 334.82(b) of the Fairness and Accuracy in Credit Transactions Act.

5.B.2: Red flags also include consumer reports that indicate a pattern of activity inconsistent with the history and usual pattern of activity of an applicant or customer, such as:

- A recent and significant increase in the volume of inquiries;
- An unusual number of recently established credit relationships;
- A material change in the use of credit, especially with respect to recently established credit relationships; or
- An account that was closed for cause or identified for abuse of account privileges by a financial institution or creditor.

5.C: Suspicious documents

5.C.1: Documents provided for identification that appear to have been altered or forged.

5.C.2: The photograph or physical description on the identification is not consistent with the appearance of the applicant or customer presenting the identification.

5.C.3: Other information on the identification is not consistent with information provided by the person opening a new covered account or customer presenting the identification.

5.C.4: Other information on the identification is not consistent with readily accessible information that is on file with the municipality, such as a signature card or a recent check.

5.C.5: An application appears to have been altered or forged, or gives the appearance of having been destroyed and reassembled.

5.D: Suspicious personal identifying information

5.D.1: Personal identifying information provided is inconsistent when compared against external information sources used by the municipality. For example:

- The address does not match any address in the consumer report;
- The Social Security number (SSN) has not been issued or is listed on the Social Security Administration's Death Master File; or
- Personal identifying information provided by the customer is not consistent with other personal identifying information provided by the customer. For example, there is a lack of correlation between the SSN range and date of birth.

5.D.2: Personal identifying information provided is associated with known fraudulent activity as indicated by internal or third-party sources used by the municipality. For example, the address on an application is the same as the address provided on a fraudulent application.

5.D.3: Personal identifying information provided is of a type commonly associated with fraudulent activity as indicated by internal or third-party sources used by the municipality. For example:

- The address on an application is fictitious, a mail drop, or a prison; or
- The phone number is invalid or is associated with a pager or answering service.

5.D.4: The SSN provided is the same as that submitted by other persons opening an account or other customers.

5.D.5: The address or telephone number provided is the same as or similar to the address or telephone number submitted by an unusually large number of other customers or other persons opening accounts.

5.D.6: The customer or the person opening the covered account fails to provide all required personal identifying information on an application or in response to notification that the application is incomplete.

5.D.7: Personal identifying information provided is not consistent with personal identifying information that is on file with the municipality.

5.D.8: When using security questions (mother's maiden name, pet's name, etc.), the person opening the covered account or the customer cannot provide authenticating information beyond that which generally would be available from a wallet or consumer report.

5.E: Unusual use of, or suspicious activity related to, the covered account

5.E.1: Shortly following the notice of a change of address for a covered account, the municipality receives a request for new, additional, or replacement goods or services, or for the addition of authorized users on the account.

5.E.2: A new revolving credit account is used in a manner commonly associated with known patterns of fraud patterns. For example, the customer fails to make the first payment or makes an initial payment but no subsequent payments

5.E.3: A covered account is used in a manner that is not consistent with established patterns of activity on the account. There is, for example:

- Nonpayment when there is no history of late or missed payments;
- A material change in purchasing or usage patterns

5.E.4: A covered account that has been inactive for a reasonably lengthy period of time is used (taking into consideration the type of account, the expected pattern of usage and other relevant factors).

5.E.5: Mail sent to the customer is returned repeatedly as undeliverable although transactions continue to be conducted in connection with the customer's covered account.

5.E.6: The municipality is notified that the customer is not receiving paper account statements.

5.E.7: The municipality is notified of unauthorized charges or transactions in connection with a customer's covered account.

5.E.8: The municipality receives notice from customers, victims of identity theft, law enforcement authorities, or other persons regarding possible identity theft in connection with covered accounts held by the municipality

5.E.9: The municipality is notified by a customer, a victim of identity theft, a law enforcement authority, or any other person that it has opened a fraudulent account for a person engaged in identity theft.

Model Identify Theft Policy: Sections 6, 7, 8

Reference Number: MTAS-1259

SECTION 6: RESPONDING TO RED FLAGS

6.A: Once potentially fraudulent activity is detected, an employee must act quickly as a rapid appropriate response can protect customers and the municipality from damages and loss.

6.A.1: Once potentially fraudulent activity is detected, gather all related documentation and write a description of the situation. Present this information to the designated authority for determination.

6.A.2: The designated authority will complete additional authentication to determine whether the attempted transaction was fraudulent or authentic.

6.B: If a transaction is determined to be fraudulent, appropriate actions must be taken immediately. Actions may include:

1. Canceling the transaction;
2. Notifying and cooperating with appropriate law enforcement;
3. Determining the extent of liability of the municipality; and
4. Notifying the actual customer that fraud has been attempted.

SECTION 7: PERIODIC UPDATES TO PLAN

7.A : At periodic intervals established in the program, or as required, the program will be re-evaluated to determine whether all aspects of the program are up to date and applicable in the current business environment.

7.B: Periodic reviews will include an assessment of which accounts are covered by the program.

7.C : As part of the review, red flags may be revised, replaced or eliminated. Defining new red flags may also be appropriate.

7.D : Actions to take in the event that fraudulent activity is discovered may also require revision to reduce damage to the municipality and its customers.

SECTION 8: PROGRAM ADMINISTRATION

8.A: Involvement of management

1. The Identity Theft Prevention Program shall not be operated as an extension to existing fraud prevention programs, and its importance warrants the highest level of attention.

2. The Identity Theft Prevention Program is the responsibility of the governing body. Approval of the initial plan must be appropriately documented and maintained.

3. Operational responsibility of the program is delegated to _____.

8.B: Staff training

1. Staff training shall be conducted for all employees, officials and contractors for whom it is reasonably foreseeable that they may come into contact with accounts or personally identifiable information that may constitute a risk to the municipality or its customers.

2. _____ is responsible for ensuring identity theft training for all requisite employees and contractors.

3. Employees must receive annual training in all elements of this policy.

4. To ensure maximum effectiveness, employees may continue to receive additional training as changes to the program are made.

8.C: Oversight of service provider arrangements

1. It is the responsibility of the municipality to ensure that the activities of all service providers are conducted in accordance with reasonable policies and procedures designed to detect, prevent, and mitigate the risk of identity theft.

2. A service provider that maintains its own identity theft prevention program, consistent with the guidance of the red flag rules and validated by appropriate due diligence, may be considered to be meeting these requirements.

3. Any specific requirements should be specifically addressed in the appropriate contract arrangements.

This resolution will take effect immediately upon its passage, the public welfare requiring it.

Approved this _____ day of _____, 20__

Mayor

Attest: _____
City Recorder

Non-Smoker Protection Act

Reference Number: MTAS-1232

It is estimated that about a quarter of all Tennesseans smoke. Tennessee, long labeled a "traditional tobacco" state with roots heavily tied to the tobacco industry, moved to the forefront of national regulation with the signing of the Non-Smoking Protection Act, Public Chapter 410. Smoking in public

places (notably municipal workplaces) is now recognized by the Tennessee Legislature as a public health issue and is, therefore, banned. If any municipalities in Tennessee still allow smoking in any of their enclosed public buildings, such practices are now in violation of the state statute. The Non-Smoker Protection Act had an effective date of June 11, 2007, for the promulgation of rules and regulations. Municipalities, however, had to comply with the ban no later than Oct. 1, 2007. The law required most every public and private employer in Tennessee to comply.

Public Chapter 410 added a new Part 18 to T.C.A. Title 39, Chapter 17, banning smoking in all enclosed public places in Tennessee, including places of employment. Section 1 of the new law defines "place of employment" as:

An enclosed area under the control of a public or private employer that employees normally frequent during the course of employment, including, but not limited to, work areas, private offices, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles. A private residence is not a "place of employment" unless it is used as a child care, adult day care, or health care facility.

T.C.A. 39-17-1803 defines a public place as an enclosed area to which the public is invited and provides that smoking in the following public places is prohibited:

- Aquariums, galleries, libraries, and museums;
- Areas available to and customarily used by the general public in businesses and nonprofit entities patronized by the public, including, but not limited to, banks, laundromats, factories, professional offices, and retail service establishments;
- Child care and adult day care facilities;
- Convention facilities;
- Educational facilities, both public and private, except as provided by § 49-7-135;
- Elevators;
- Health care facilities;
- Hotels and motels;
- Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities;
- Polling places;
- Public and private transportation facilities, including trains, buses, taxicabs and airports under the authority of state or local governments, and ticket, boarding, and waiting areas of public transit depots;
- Restaurants;
- Restrooms, lobbies, reception areas, hallways, and other common-use areas;
- Retail stores;
- Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of this state or a political subdivision of the state, to the extent the place is subject to the jurisdiction of the state;
- Service lines;
- Shopping malls;
- Sports arenas, including enclosed public places in outdoor arenas; and
- Theaters and other facilities primarily used for exhibiting motion pictures, stage dramas, lectures, musical recitals, or other similar performances.

The law (T.C.A. 39-17-1804) contains numerous exceptions, although only a few are applicable to municipally-owned facilities. These exceptions include:

- Private residences, except when used as a licensed child care, adult day care, or health care facility, taxi or other commercial vehicle for hire;
- Commercial vehicles when occupied solely by the operator;
- Hotel and motel rooms that are designated as smoking rooms;

- Retail tobacco stores that prohibit minors on their premises;
- Non-enclosed areas of public spaces, so long as tobacco smoke is not reasonably expected to enter areas where smoking is prohibited (open air patios, porches or decks; area enclosed by garage type doors on one or more sides; area enclosed by tents or awnings with removable sides or vents);
- Enclosed smoking areas of a building or facility that are physically separated and independently ventilated from areas of the building or facility where smoking is prohibited;
- Venues that restrict access to persons who are 21 years of age or older;
- Cigar bars;
- Private clubs;
- Private businesses with three (3) or fewer employees where smoking is allowed in an area not accessible to the general public;
- Private vehicles, except when used for the public transportation of children or for transportation by a health care facility or day care facility or when used as a taxi or other commercial vehicle for hire; and
- All premises of any manufacturer, importer, or wholesaler of tobacco products, of any tobacco leaf dealer or processor, and all tobacco storage facilities.

Display sign requirements are also included under the law, and municipalities must be aware that signage requirements apply. “**No Smoking**” signs or the international no-smoking symbol must be placed at every entrance to a public place or place of employment where smoking is banned.

The smoking ban is enforced by the Tennessee Department of Health or the Tennessee Department of Labor and Workforce Development. A person smoking in violation of the ban is subject to a civil penalty of \$50. Owners or managers of public places who violate the ban will be subject to a written warning for a first violation, a civil penalty of \$100 for a second violation in a 12-month period and a civil penalty of \$500 for a third or subsequent violation in a 12-month period (T.C.A. 39-17-1807).

Q: Is there a required distance, mandated by the Non-Smokers Protection Act, people should keep from the entrance of smoke-free buildings while smoking?

A: There is no distance requirement mandated by the Non-Smoker Protection Act. Employers, however, may set guidelines. Smoke should not be able to infiltrate the building when the door is opened.

Q: Would the new electronic aids to quit smoking, E6 Cigarettes I think they are called, fall under the prohibition to smoke in a city work place as is the case of regular cigarettes? These look like cigarettes but emit a water vapor instead of regular smoke. The city has a policy that prohibits smoking in city buildings and enclosed vehicles which is also found in state law.

A: The Tennessee Non-Smoker Protection Act prohibits smoking in certain public places including government buildings. Within that act, T. C. A. § 39-17-1802 (16) defines smoking as “inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or other lighted tobacco product in any manner or in any form ...”

Tennessee Department of Health has stated that an electronic cigarette does not meet the definition of smoking under the aforementioned statute, however on December 10th, 2018, the department updated a health advisory on e-cigarettes [19]. “The department continues to urge caution to consumers using or considering the use of electronic nicotine delivery systems including Juuls, electronic cigarettes, e-cigs, e-cigars, e-pipes, e-hookahs, personal vaporizers and similar emissions-producing devices.”

Across the country, more and more employers, including some government employers, have adopted regulations prohibiting electronic cigarettes. These employers have cited FDA research as basis for doing so. Supposedly, a city could prohibit these as well. Hence, such a policy could be challenged, and the ban could withstand a legal challenge.

To see a copy of the Non-Smoker Protection Act, visit <http://www.capitol.tn.gov/Bills/105/Amend/HA0739.pdf> [20].

Recruiting and Selecting Professional Personnel

Reference Number:

MTAS-1224

The purpose of this section is to provide Tennessee local governments with basic information and a general framework for recruiting and selecting managerial and professional personnel. Because a community's success and growth depend on its having competent managers and department heads, selecting the right candidate can be extremely challenging. Following the basic suggestions and guidelines in this section can help ensure that hiring decisions are made only after weighing the possible alternatives and outcomes. While this section focuses on hiring a public works director, similar processes can be used for hiring city attorneys, city managers, department heads and other key personnel.

Click on each bulleted item shown below for detailed information regarding each topic.

Recruitment Selection Process: Job Design Profile

Reference Number: MTAS-1261

Customizing your Recruitment Selection Process using the Job Design Profile

Hiring personnel is probably the most important function city officials will ever fulfill during their tenure. Consider the decisions and actions that the person you hire is going to generate and how those decisions and actions will affect your organization and your community. A sound recruitment and selection process should never use shortcuts. It is worth the time and effort required to do it correctly. A sound, systematic and fair recruiting and selection process also is an effective safeguard against potential challenges by rejected applicants.

When you have successfully created a mental picture of the new employee performing the job you want accomplished, you are ready to customize the job. Customizing means thinking through and writing down the specific characteristics that you desire. The word "specific" is key. When you customize, you are putting the mental picture into words. Customizing the job provides you with a valuable working tool called the job design profile. This also is referred to as a job analysis.

The job design profile is a guide used as a standard to evaluate the candidates who apply for the position. It also is the basis for the job description, which is discussed in the next chapter. Its contents may vary depending upon the position, but it always provides an outline of the qualities, skills, and characteristics that you, as the person conducting the hiring, are looking for in the new employee.

Let's look at an example:

You need to hire a department head. The city's public works director is preparing to retire, and you must hire a qualified replacement as soon as possible. You have given it a lot of thought. You may need to revise the job description.

Begin by writing a description of the job as you see it. Ask yourself the question "What is the public works director's job?" Be as specific and complete as you can.

Second, decide on and note the type and extent of education and experience required and desired. Is a bachelor's degree required or a master's degree? Or, are either desired but not required? Do you want the new person to have a degree in a specific educational area, for example, engineering or public administration? How much practical public works experience should the person have? State this in terms of years and the kind of experience required or desired (for example, more than 10 years as an assistant director or at least five years as a director in a community of at least 5,000 population).

Third, write down the five most important personal descriptive characteristics that you want the new public works director to have, and rank them. For example:

- Confident decision maker
- Innovative in creating new ideas
- Outgoing personality
- Practical problem solver
- Tactful in addressing adverse groups

Fourth, list the five most important professional characteristics you want the new public works director to have, and rank them. For example:

- Engineering skills
- Productivity oriented
- Results oriented
- Communication skills

In developing this list you must match characteristics to the written description that you have already prepared. Ask yourself, "Are these the characteristics needed to do the job that I want done the way that I want it?"

Fifth, write down the five most important job challenges or targets that you expect the new director to overcome and accomplish, and rank them. For example:

- Reorganize the department
- Develop a five-year street improvement program
- Improve employee productivity
- Be responsive to citizen requests
- Reduce the cost of garbage collection

Taken together these items are the job design profile.

Sample Completed Job Design Profile

Reference Number: MTAS-1570

Position of Public Works Director JOB DESIGN PROFILE

DUTIES and RESPONSIBILITIES

(Describe the position as you see it. What is the public works director's job?)

Oversees budgetary operations and prepares budgets as required; promulgates regulations to ensure proper organization and use of personnel; plans and directs activities of the public works department; performs administrative activities of the public works department; coordinates formal and on-the-job training programs for recruits and personal development; keeps records and prepares reports, including personnel reports; develops and recommends policy options and alternatives for consideration by the city manager and the city council.

Knowledge of public works operations, including construction, engineering, maintenance, office and business procedures; ability to plan, organize, schedule, coordinate, and direct public works functions, including streets, solid waste, water and sewer utilities, and engineering; knowledge of and experience in the application of management and supervisory principles and practices as applied to municipal government; knowledge of and experience in municipal procedures relating to finance, personnel, purchasing, office operations, risk management and public relations; knowledge of and experience in managing occupational hazards and safety precautions; knowledge of the principles and practices of engineering and construction, particularly as applied to municipal functions; ability to efficiently prepare and maintain thorough and accurate reports and records; ability to establish and maintain effective working relationships with the public, the news media, employees, external agencies and organizations, the city manager, and the city council.

EDUCATION and EXPERIENCE

(Indicate the level of education and experience required and desired for each item.)

Degree:	Required	Desired
B.S. Engineering	X	
M.S. Engineering		X
B.A. Public Administration		
M.A. Public Administration		

Degree:	Required	Desired
B.S. Business Administration		
M.B.A. Business Administration		

Experience As Public Works Director	Required	Desire
More than 10 years		X
More than 5 years	X	
More than 1 year		
None		

Experience As An Assistant Director or Division Head	Required	Desired
More than 10 years		
More than 5 years		
More than 1 year		
None		

OTHER EXPERIENCE: (Specify) _____

PROFESSIONAL CHARACTERISTICS

(Number 1, 2, 3, 4, 5 the five most important professional characteristics that you want the new director to have.)

- Administrative Skills _____ 1 _____
- Analytical Skills _____
- Business Minded _____
- Communication Skills _____ 5 _____
- Cost Conscious _____
- Democratic Decision Maker _____
- Detailed Oriented _____
- Engineering Skills _____ 2 _____
- Independent Decision Maker _____
- Objective _____
- Organization Skills _____
- People Oriented _____
- Planning Skills _____ 4 _____
- Policy Development Skills _____
- Productivity Oriented _____
- Public Relations Skills _____
- Quality Conscious _____ 3 _____
- Results Oriented _____
- Team Player _____
- Technically Oriented _____
- Other _____

COMMENT:

PERSONAL CHARACTERISTICS

(Number 1, 2, 3, 4, 5 the five most important personal characteristics that you want the new director to have.)

- Alert _____
- Ambitious _____
- Assertive _____
- Cautious _____
- Confident _____
- Conservative _____
- Considerate _____
- Cooperative _____ 3 _____
- Creative _____
- Decisive _____
- Deliberate _____
- Friendly _____
- Flexible _____ 5 _____
- Forthright _____
- Honest _____ 1 _____
- Humble _____
- Innovative _____ 4 _____
- Intellectual _____
- Mature _____
- Open _____
- Other _____
- Outgoing _____
- Patient _____
- Persistent _____
- Practical _____
- Prompt _____
- Reliable _____ 2 _____
- Resourceful _____
- Sensitive _____
- Stable _____
- Tactful _____
- Tolerant _____
- Unprejudiced _____
- Versatile _____
- Well Organized _____
- Other _____

COMMENT:

CRITICAL JOB TARGETS

List the five most important challenges or job targets that the new public works director will face. For example, develop a five-year street improvement program, reorganize the department, improve employee productivity, etc.

1. Address high fuel costs and long-range planning for use of new alternative fuels for fleets
2. Street repaving schedule.
3. Reorganize the public works department and hire assistant director.
4. Research and apply for grant funding opportunities for public works.
5. Make plans to relocate the equipment/vehicle storage area to a new facility within the next three years.

COMMENT: _____

Blank Job Design Profile

Reference Number: MTAS-1571

Position of Public Works Director JOB DESIGN PROFILE

DUTIES and RESPONSIBILITIES

(Describe the position as you see it. What is the public works director's job?)

EDUCATION and EXPERIENCE

(Indicate the level of education and experience required and desired for each item.)

Required Desired

Degree:

- B.S. Engineering _____
- M.S. Engineering _____
- B.A. Public Administration _____
- M.A. Public Administration _____
- B.S. Business Administration _____
- M.B.A. Business Administration _____

Experience: Required Desired

As Public Works Director

- More than 10 years _____
- More than 5 years _____
- More than 1 year _____
- None _____

As An Assistant Director Or Division Head:

- More than 10 years _____
- More than 5 years _____
- More than 1 year _____
- None _____

OTHER EXPERIENCE: (Specify) _____

PROFESSIONAL CHARACTERISTICS

(Number 1, 2, 3, 4, 5 the five most important professional characteristics that you want the new director to have.)

- | | |
|----------------------------------|---------------------------------|
| Administrative Skills _____ | People Oriented _____ |
| Analytical Skills _____ | Planning Skills _____ |
| Business Minded _____ | Policy Development Skills _____ |
| Communication Skills _____ | Productivity Oriented _____ |
| Cost Conscious _____ | Public Relations Skills _____ |
| Democratic Decision Maker _____ | Quality Conscious _____ |
| Detailed Oriented _____ | Results Oriented _____ |
| Engineering Skills _____ | Team Player _____ |
| Independent Decision Maker _____ | Technically Oriented _____ |
| Objective _____ | Other _____ |
| Organization Skills _____ | |

COMMENT:

PERSONAL CHARACTERISTICS

(Number 1, 2, 3, 4, 5 the five most important personal characteristics that you want the new director to have.)

Alert_____	Mature_____
Ambitious_____	Open_____
Assertive_____	Other_____
Cautious_____	Outgoing_____
Confident_____	Patient_____
Conservative_____	Persistent_____
Considerate_____	Practical_____
Cooperative_____	Prompt_____
Creative_____	Reliable_____
Decisive_____	Resourceful_____
Deliberate_____	Sensitive_____
Friendly_____	Stable_____
Flexible_____	Tactful_____
Forthright_____	Tolerant_____
Honest_____	Unprejudiced_____
Humble_____	Versatile_____
Innovative_____	Well Organized_____
Intellectual_____	Other_____

COMMENT: _____

CRITICAL JOB TARGETS

List the five most important challenges or job targets that the new public works director will face. For example, develop a five-year street improvement program, reorganize the department, improve employee productivity, etc.

1. _____
2. _____
3. _____
4. _____
5. _____

COMMENT: _____

Job Description

Reference Number: MTAS-1569

The emphasis in effective recruiting should always be on quality. A truckload of mediocre applicants will not accomplish the goal of finding the single candidate that best fits your job design profile. The job design profile is an important working tool in recruitment and selection. It will be used and referred to at several points during the process. Writing the job description is the first practical use of the information generated through the job design profile; the next step is the first application.

The job description is the principal means for conveying to the applicant pool your expectations and requirements for the job. It should be well organized and understandable. An acceptable format would include information presented within categories such as:

- General definition and nature of the job
- Essential duties and work performed
- Required knowledge and skills
- Desired qualifications

- Special requirements

The job description must meet American with Disabilities Act (ADA) standards for reasonable accommodations for the position. Much of the information you included in the job description will be derived from the job design profile. Once the job description has been developed, it can be used as a recruitment tool. Potential applicants typically are recruited through two methods — advertisement and personal contact. An accurate and complete job description is essential for both methods. It is, in a real sense, an advertising technique and, at the same time, a professionally acceptable means for you to communicate with potential applicants.

Sample Job Description for Public Works Director

Reference Number: MTAS-1572

General Definition and Nature of Job:

The public works director is appointed by and reports to the city manager. This is a department head level position, one of six within the city's organizational structure. The director has primary responsibility for the organization, operation and overall performance of the department. This specifically includes the department and administration of the departmental budget and the supervision of all department employees. Department functions include engineering, solid waste management, water and sewer utilities, streets and public works construction activities. Independent judgment is used according to the situation, and different courses of action must be taken to complete the department tasks. Work is performed in all kinds of weather conditions.

Essential Duties and Work Performed:

- Oversees budgetary operations and prepares budgets as required
- Promulgates regulations to ensure proper organization and use of personnel
- Plans and directs activities of the public works department
- Performs administrative activities of the public works department
- Coordinates formal and on-the-job training programs for recruits and personnel development
- Keeps records and prepares reports including personnel reports
- Develops and recommends policy options and alternatives for consideration by the city manager and the city council

Required Knowledge and Skills:

- Knowledge of public works operations, including construction, engineering, maintenance, office and business procedures
- Ability to plan, organize, schedule, coordinate and direct public works functions, including streets, solid waste, water and sewer utilities and engineering
- Knowledge of and experience in the application of management and supervisory principles and practices as applied to municipal government
- Knowledge of and experience in municipal procedures relating to finance, personnel, purchasing, office operations, risk management and public relations
- Knowledge of and experience in the management of occupational hazards and safety precautions
- Knowledge of the principles and practices of engineering and construction, particularly as applied to municipal functions
- Ability to efficiently prepare and maintain thorough and accurate reports and records
- Ability to establish and maintain effective working relationships with the public, news media, employees, external agencies and organizations, the city manager and the city council

Desired Qualifications:

- Graduation from a four-year college with major course work in engineering, public works, business administration, or public administration, master's degree or engineering license preferred

- Demonstrated management or high level administrative experience
- Progressively responsible experience in public works
- Must pass physical and drug screen
- Valid Tennessee driver's license

Special Qualifications/Requirements:

The public works director is expected to be an effective administrator concerned about productivity and quality performance. The public works director must bring to the job and at all times maintain a sense of objectivity and a business-minded approach. It is essential that the public works director be service oriented.

Recruiting

Reference Number: MTAS-1322

The best outlets in which to advertise often are dictated by the particular position you are seeking to fill. It is important that you target the most productive sources. For management- and professional-level positions, using the newsletters and trade journals of appropriate professional groups are essential for productive searches. Tennessee Town & City and the publications of other municipal leagues are helpful sources. A partial list of sources is in Appendix A. Advertising in the classified section of local or regional newspapers also is common. Advertising in widely circulated publications is likely to prompt additional applications, although many will lack desired levels of education and experience. In addition, opportunities exist to advertise on various websites, including the municipality's own site. The city must determine how broadly or narrowly it wishes to advertise.

Important elements to consider including in the advertisement are:

- A brief, attractive description of the city or town, including population, and an overview of the organization, including number of employees and budget
- Minimum requirements for experience and education
- A salary range, which may include "commensurate with experience"
- An application deadline of no fewer than three weeks and no more than eight weeks from the date of the ad
- A location to which applications should be submitted

The best candidates for the job may not respond to an advertisement, or they may never see it. Because good prospects may not be actively looking for a new job, do not rely exclusively on advertising to generate all applicants. You also need to ask others for suggestions. Within a particular profession, it is possible to secure the names of individuals who are highly respected and who may fit the job design profile you have developed. This can be accomplished by securing a directory of the appropriate professional association and making direct contact with current officers and members. Some local governments hire the services of an executive search firm, often referred to as a headhunter, to enhance the applicant pool. While often effective, executive search firms can be expensive. Local governments must weigh the costs and benefits of using an executive search firm with the overall criteria established for the position to determine if outside assistance is needed and the extra expense is justified.

Remember not to be shy about inquiring and making personal contact. There is nothing improper or unethical about informing people of employment opportunities. It is up to the individual to decide if he or she is interested enough to apply. As an equal opportunity employer, make every effort to attract qualified minority candidates. Minority recruitment is an obligation and a beneficial practice to promote community diversity. One final recruitment tip — Look right under your nose. The best qualified person may already be working for you.

Sample Job Advertisement

Reference Number:

MTAS-1573

THE CITY OF _____, TENNESSEE

Public Works Director

The public works director has primary responsibility for the organization, operation and overall performance of the public works department. Department functions include engineering, water and sewer utilities, solid waste management, streets and public works construction.

The public works director must be an effective administrator, business minded, and productivity and service oriented. The director should have a college degree. A masters degree in public administration or business administration is preferred. The director must have demonstrated management capabilities, with progressively responsible experience in the area of public works administration preferred.

The public works department has an annual operating budget of \$2.5 million. It has 25 full-time employees. The public works director is appointed by and reports to the city manager.

Salary Range: \$55,000 - \$70,000

Starting Salary: \$55,000 - \$60,000 depending upon qualifications.

Send complete resume to:

Deadline for receipt of resumes:

EOE

Reviewing Resumes

Reference Number: MTAS-1323

It is not uncommon for a good recruitment effort to generate 40 or more applications for a professional position. It is recommended that you acknowledge the receipt of each application. We have developed a resume checklist [21] that should be used as a tool to screen resumes by assigning a score to each. Criteria for reviewing and scoring resumes should include experience, education, quality and clarity of resume, and length of time in previous positions as related to the job design.

A resume is essentially a personal advertisement. It may be accurate and complete, or it may be exaggerated or deceptive. You decide as you sort through and decode what is before you. As you review each resume with your job design profile in mind, make notations and comments opposite each requirement or characteristic. In addition, we recommend requiring each applicant to complete your standard employment application. As you review each resume, there are other considerations to keep in mind. There are two areas in particular that will require your conscious attention:

- **Employment history.** Are there time gaps in employment? Has the candidate served a reasonable period of time in each job? Is the chronology consistent?
- **Accomplishments.** Experience is fine, but did the candidate accomplish the kinds of things you want accomplished? This is where resumes most often reflect exaggerated claims.

Narrowing the Field

Once you have completed your review of resumes and standard application forms, you are prepared to make some judgments. You will be able to assign applicants to one of three categories:

- Those who do not fit the job design profile (inactive)
- Those who do fit the job design profile (active)
- Those who are questionable

Set aside the resumes of candidates who do not fit the job design profile. Temporarily, also set aside the resumes of candidates who do meet the job design profile. For the moment focus on the questionables.

What you are attempting to determine is which, if any, of the questionable candidates should receive further consideration. To do that, you need additional information, and the best way to secure that information is through a telephone interview. Make a list of the questions and the items on which you need clarification before you make the phone call. When you speak to the applicant, make it clear that the reason for the call is to ensure that you have complete and accurate information to use for evaluation purposes. Record the new information on the resume checklist found later in this section. The summary of the scores can be posted on a screening worksheet, a sample of which also is located in this section. After assessing the new information, assign each of the previously questionable applicants to either the active or inactive category. Candidates who will not be considered further should be advised at this time.

Now, take the paperwork for the candidates in the active category, and review it thoroughly once again. These are the applicants you will be considering further.

Resume Checklist

Reference Number: MTAS-1574

POSITION OF PUBLIC WORKS DIRECTOR RESUME CHECKLIST

Applicant Name: _____ Rater Name: _____

Use the following scale:

OS: Outstanding (5) VG: Very Good (4) G: Good (3) F: Fair (2) P: Poor (1)
(Note: there are 50 possible points)

- | | | | | | |
|--|---|---|---|---|---|
| 1. Do the resume and cover letter suggest real interest in the position? | 1 | 2 | 3 | 4 | 5 |
| 2. Has the applicant had experience with the variety of services delivered by the city's public works department? | 1 | 2 | 3 | 4 | 5 |
| 3. Has the applicant had experience working in a local government of comparable size, including a comparable staff size and budget? | 1 | 2 | 3 | 4 | 5 |
| 4. Has the applicant worked in a similar geographic area? Is the applicant likely to be comfortable with the community? | 1 | 2 | 3 | 4 | 5 |
| 5. Has the applicant had broad administrative and supervisory authority in public works? | 1 | 2 | 3 | 4 | 5 |
| 6. Has the applicant had experience working with citizen groups and appointed boards or commissions? | 1 | 2 | 3 | 4 | 5 |
| 7. What is the applicant's educational background? | 1 | 2 | 3 | 4 | 5 |
| 8. Does the applicant have good tenure with most previous employers? | 1 | 2 | 3 | 4 | 5 |
| 9. Does the applicant show interest in continuing professional development by participating in training programs and professional organizations? | 1 | 2 | 3 | 4 | 5 |
| 10. Does the applicant's employment history suggest a pattern of broad experience and increasing responsibility? | 1 | 2 | 3 | 4 | 5 |

Total Score: _____

OVERALL RATING

OS = Outstanding VG = Very Good G = Good F = Fair P = Poor

Interviewing Process

Reference Number: MTAS-1575

A major milestone in the recruitment and selection process is reached when you have decided who you will interview.

Click on the items below to find more detailed information on preparing and conducting an interview.

Preparing to Interview

Reference Number: MTAS-1324

Prior to conducting interviews, there is one remaining procedure that you may wish to consider using — the pre-interview questionnaire [22].

The pre-interview questionnaire is a series of questions that are pertinent to the position for which you are recruiting. It has two purposes:

- To obtain insight into the candidate's knowledge and understanding on subjects that are important to the job and the organization
- To determine the candidate's ability to communicate in writing

Both of the above are important in evaluating candidates for managerial and professional positions.

The pre-interview questionnaire should be returned by each candidate well in advance of the interview date, so that each interviewer has an opportunity to review it and complete the pre-interview assessment form [23]. The assessment form should be completed and at hand when you interview the candidate. You may desire to audiotape or videotape the interview.

In preparing for the interview you may discover that some of the candidates you are considering have decided not to pursue the opportunity. There are a number of legitimate reasons why this may happen. Accepting another position, second thoughts about leaving the current job, or reaching a conclusion that this is just not the right move are not uncommon.

In deciding how many candidates to interview, you must be guided in part by budget and time constraints. Time and money have a way of helping make decisions. There is no magic number. Be guided by the specific situation that confronts you, and do not force the situation by striving for a particular number. Interviewing three candidates that you really feel good about is better than interviewing five against your better judgment.

You will need to decide who will be doing the interviewing for your organization. Your charter may dictate who will do the hiring for the position. For a management or professional position, it is a good idea for more than one person to participate. Sometimes a screening committee or a selection committee approach makes sense. Often it may be the governing body itself. What's important is to include some perceptive questioners and listeners. The interview is an important event leading to a big decision. You are about to do some heavy-duty comparison shopping.

It is necessary that you enter the interview with a clear plan and specific objectives. At a minimum, observe these basic principles:

- Know at the outset how the interview will be conducted and the kind of information you want to secure from each candidate
- Communicate, in general terms, with each candidate prior to the interview about the information you will be seeking
- Approach the interview as a two-way street, recognizing that the candidates also are interviewing you
- Prepare yourself psychologically to manage and control the interview
- Prepare in advance a list of basic questions that will be directed to each candidate
- Prepare in advance an evaluation form to be used by those doing the interviewing for your organization

The kinds of questions asked in the interview are important, and careful consideration should be given to the way they are worded and asked. For a professional management-level position, these are some of the areas that you should evaluate in the interview:

- Demonstrated leadership potential
- Demonstrated management potential
- Demonstrated knowledge of departmental operations

- Ability to work with people and groups
- Demonstration of good judgment and common sense
- Demonstrated ability to relate as a team player
- Demonstrated past performance
- Oral communication skills
- Extent to which the individual is goal directed
- Extent to which the individual is service oriented

These areas are general categories within which specific questions are developed and asked. All candidates should be asked the same questions. The emphasis and importance placed on each area will vary depending upon the needs and priorities of the position and the organization.

Sample Pre-Interview Questionnaire

Reference Number: MTAS-1577

TOWN OF ANYWHERE: PUBLIC WORKS DIRECTOR APPLICANT QUESTIONNAIRE

Please answer in the space provided.

- 1. How does this position relate to your long-term goals?

- 2. What would you do if the city council adopted a policy with which you disagreed?

- 3. What aspect(s) of your education and experience prepares you to be a department head of this organization?

- 4. Describe the leadership responsibilities and opportunities inherent in this position?

- 5. What special qualifications do you have that would enhance your potential for success in this position?

- 6. Describe your management philosophy and style.

Pre-Interview Assessment Form

Reference Number: MTAS-1580

NAME OF CANDIDATE: _____

KEY

OS: Outstanding (5) VG: Very Good (4) G: Good (3) F: Fair (2) P: Poor (1)

- 1. How well do the candidate’s qualifications meet the job requirements?
 - A. B.S./B.A. in engineering, business administration, or public administration
 - B. Master’s degree or engineering license
 - C. Demonstrated management experience
 - D. Progressively responsible experience in a similar type organization

- 2. Work History: Extent to which the candidate’s work experience can be applied to this position.

- 3. Communication skills (written).

- 4. Community oriented.

OVERALL RATING _____

Sample Letter to Accompany Pre-Interview Questionnaire

Reference Number: MTAS-1579

Date

Dear Public Works Director Candidate:

Thank you for applying for the position of public works director for the city of (name), Tennessee. We have received many applications for this position.

Of the applications we received, there are approximately (*number*) at which we would like to look closer. Your application is one of these. In order to find out more about you and your management style, we have enclosed a list of six questions we would like you to answer and return to us no later than (*date*). Based on these responses, we will select a small number of applicants whom we would like to bring to

(*city name*) to interview. Simply write or type your responses in the space provided, and please feel free to call if you have any questions.

In the meantime, I want to thank you again for your interest in the position of public works director. We look forward to receiving your responses so that we can learn more about you.

Sincerely,

City Manager

Encl: Public Works Applicant Questionnaire

Conducting the Interview

Reference Number: MTAS-1409

It is important to emphasize the importance of conducting each interview in a fair and equitable manner. It is not possible to develop identical interview situations, but every effort should be made to ensure a basic consistency in the interview format. This does not mean that concerns specific to a particular candidate cannot or should not be pursued. The interview is exactly the right time to do that.

What are the basic goals of interviewing for management and professional positions? There are two, and they must be kept uppermost in mind at all times:

- To determine if the candidate has the technical competence, experience, and skills to do the job you want done, in the way you want it done
- To determine if the candidate has the personal qualities and characteristics that fit the needs of the organization and the community

The interview begins by you welcoming the candidate and making him or her feel comfortable. Open the interview by highlighting the job description and reviewing with the candidates the salient features of their resumes. Allow and encourage candidates to tell you about themselves. Keep in mind that the interview is a two-way street. Both parties are buyers and both are sellers. As the potential employer, you must be prepared to answer legitimate questions. If a candidate does not ask you any questions, you have good reason to be concerned about that candidate's seriousness. Allow at least one-third of the total interview time for the candidate's questions and for your responses.

The uppermost concern of most job candidates is "Is this the right job for me?" The questions directed to you and the answers you give are significant because they will help the candidate make a decision on that most important of questions. In answering, be honest and straightforward. Anything short of honesty is a disservice to your own organization and grossly unfair to the candidate. Answering the question "Is this the right job for me?" is as important to you as it is to the candidate. If you are an inexperienced interviewer, there are a number of common pitfalls that you should be aware of and avoid. These include:

- Asking leading questions
- Making decisions too early in the interview
- Failing to properly relate questions and answers to job requirements (the job description)
- Talking too much and listening too little. The candidate should do at least 75 percent of the talking
- Failing to manage the interview. Keep it on track and under control
- Allowing one factor, positive or negative, to exert undue influence. Try to consider the person within the total framework of his personality and professional competency
- Failing to probe and ask follow-up questions when a response is incomplete or confusing
- Judging the candidate solely on personality

There are many legal concerns and questions related to hiring. Visit the section entitled "Interviewing and the Law" to get more detailed information regarding questions that can be asked during an interview.

During the interview do everything you can to get the whole story, the big picture and all the basic questions answered to your satisfaction. At the conclusion of the interview complete the interview evaluation form. It is not unusual that more than one interview with the same candidate may be necessary or desirable.

As you continue to narrow the field and to really zero in on one or two applicants, a second or third interview can be productive and decisive. Do what is necessary to completely achieve the two primary objectives of the interview. Do not ask questions regarding religion, ethnicity, health, marital status, dependents or politics.

Sample Interview Questions

Reference Number: MTAS-1410

1. What interests you most about the position?
2. What are your personal and professional strengths?
3. Why do you want to leave your present job?
4. What aspects of this job would you most enjoy?
5. Tell us about some major accomplishments you have achieved in your present position.
6. In your view, what is the most important aspect of this job?
7. What qualifies you to manage a department with ____ employees and an operating budget of million?
8. What are your personal and professional goals?
9. How would you describe your own personality?
10. If we walked up and down Main Street of the community you now serve, what would the business community and the public tell us about you?
11. What do your subordinates think of you?
12. What are the characteristics you look for when hiring people?
13. Have you terminated employees?
14. How would you go about terminating a key employee?
15. Describe your management philosophy and style.

Evaluation: Recording Information

Reference Number: MTAS-1411

Recording Information and Impressions

What should happen at the conclusion of an interview? The most important immediate step is to record, while it is fresh in your mind, information and impressions that you obtained during the interview. During an interview session with more than one interviewer, you should immediately record your information while the other interviewer(s) are asking questions.

To record information on and impressions of each candidate at the conclusion of the interview, it is suggested that you use a simple form such as an interview assessment form [24]. This form provides a 10-point checklist and space for your personal comments.

Completion of the interview assessment form [24] is the first post-interview step in moving toward a selection decision. It is the next item in a series that began with construction of the job design profile [25]. Then there was the job description [26], the job advertisement [27], the resume checklist [21], the pre-interview questionnaire [22] and pre-interview assessment form [23], the interview questions [28] and

now the interview assessment form [24]. All of these are part of the same cloth. They represent progressive steps in the process. Each is a working tool to be used at a different stage.

The post-interview assessment provides an opportunity to rank the candidate in the major areas of concern and incorporates the rankings that were made on the pre-interview assessment form.

Through a thorough consideration of all written and verbal communication, you will finally achieve a preliminary ranking of candidates. In some situations, there will be a clear preference. In other situations, follow-up interviews may be required to arrive at first, second and third preferences.

Interview Assessment Form

Reference Number: MTAS-1581

NAME OF CANDIDATE: _____

	Outstanding (5)	Very Good (4)	Good (3)	Fair (2)	Poor (1)
1. Pre-interview rating					
2. Good judgment and common sense					
3. Oral communication skills					
4. Team player					
5. Goal oriented					
6. Service oriented					
7. Ability to work with people and groups					
8. Knowledge of public works operations					
9. Potential for effective management					
10. Leadership potential					
OVERALL RATING					

Assessment Centers

Reference Number: MTAS-1412

The assessment center is an option available for use in the selection process. An assessment center places applicants in situations where they role play and participate in other exercises that help demonstrate their knowledge, skills and abilities (KSAs) required for the job. The benefit of the assessment center is that the selection panel is able to learn more about the management style of the candidate in the role for which he or she is interviewing. Elements of the candidate's style, demeanor and decision-making skills are exposed. This can allow the selection panel to compare each candidate against a description of the specific competencies desired for the ideal manager.

There are cautions for using assessment centers. Assessment centers use valid and reliable testing methods, but they are expensive, take considerable preparation time, demand extensive time of assessors and candidates, and should be conducted only by trained professionals with solid references and credentials.

Assessment centers attempt to simulate actual job situations and evaluate behavior through a series of job-related exercises. The principle is that behaviors displayed by a candidate during the exercises also can be expected in on-the-job performance.

Background Information and Reference Checks

Reference Number: MTAS-1413

It is absolutely essential that a careful and thorough verification of the preferred candidate's personal and professional background be made before a final selection decision is made. Under current circumstances, this may be a very difficult task. Because of potential liability, verifying anything more than employment dates can be a challenge. Verification should also include academic credentials and credit reports if positions involve money or property. The applicant must sign a release form if you will be performing a background check. If you use a credit report, you must abide by the Fair Credit Reporting Act.

You may already have made some preliminary checks when you were considering which candidates you would invite to interview. Usually a candidate will either include a list of references on the resume or will indicate that references are available upon request. It is now time to do some serious checking. Reference checks should not be restricted to just those references provided by the candidate. Keep in mind that the candidate will provide the names of individuals who will give favorable references.

The purpose of background checks is to make sure that you touch third base on your way home. It should not be a negative, "let's see if we can dig up some dirt" approach. Rather, it should be viewed as one additional fact-finding procedure that will let you develop a complete and realistic assessment of the candidate. The way to do that is to communicate with the right people and induce their responses to the right questions. Before doing so, however, tell the candidate that this will be the next step. Make sure the candidate is ready and willing to undergo this scrutiny.

Who are the right references? Usually, they are current and prior supervisors, personnel directors and fellow workers. It is recommended that you use the references provided by the candidate to develop a network of further references. Speaking with references is similar to interviewing the candidate. You observe the same principles and procedures in questioning. Avoid the same common pitfalls, and heed the same legal constraints regarding age, race, religion, disabilities and marital status.

What are the right questions? Whatever is most important to you that is job related. Are there things you are unclear on or uncertain about? Satisfy yourself before making a decision. At the very least, cover the key items on the job description. Do not ask questions out of curiosity.

In making reference and background contacts, you may write a letter, pick up the phone or make a personal visit. You are likely to secure a more complete and in-depth response through verbal communication. Many people are bothered by the idea of expressing a negative opinion in writing. Be probing, and allow your contacts ample opportunity to be long winded. Look for similarities and differences in the comments you receive. Both are important. If one of your sources brings up something that you hadn't previously heard, and it is important, do not hesitate to contact someone with whom you have already spoken.

When you have finished checking and re-checking and have recorded the results, you should be in a good position to make a final selection decision. Send appropriate letters of rejection to all applicants for your position opening.

Hiring

Reference Number: MTAS-1414

All that remains is to hire the person whom your evaluation has determined to be the most qualified and suitable candidate. This involves, among other things, reaching agreement on salary, benefits and conditions of employment. That may sound a little scary, but it is usually a pleasant, business-like experience.

In your job advertisement, you indicated a salary range for the position. The reason for doing that was to save potential applicants unnecessary time and effort. You can properly assume that individuals who

applied are willing to go to work for a salary that falls within the advertised pay range. If it is your intent to pay the starting rate, then do not advertise a range.

In the job advertisement you may also have indicated a maximum starting rate. That should make things go even smoother, but it does not mean there will not be a little give and take, a bit of honest, old-fashioned trying to get the best deal possible. Expect some of that because it is human nature. Just remember that your job is to keep the magic number at a level that is fair and within the salary parameters that have been established.

Benefits and conditions of employment for positions in city government are usually uniform and consistent for employees of the same classification, for example, department heads. This is generally understood, but to affirm that fact, many organizations provide this information to applicants prior to interviewing. It is recommended that you do so.

There are a few items other than salary that may require negotiation. Starting date is one. Another is moving expenses. Still another is use of an automobile. Go over the parameters of the job one final time with the person you are hiring so that there is absolutely no misunderstanding. This also is the time to communicate any expectations or preferences that were not thoroughly covered during the interview or subsequent conversations.

When you have verbally covered all of the above items to the satisfaction of the candidate and yourself, put it all in a written, formal job offer letter, and request a reply from the candidate in writing. Post-offer drug testing/physical examination may be acceptable at this point.

Finally, make an effort to really welcome your new employee. Take the time to arrange introductions with other staff members. Provide an appropriate orientation to the job, the organization and the community. Doing so will enable the new employee to be productive for you sooner.

MTAS and Municipal Recruitments

Reference Number: MTAS-1416

The recruitment and selection process involves a variety of steps and activities that must be performed in a timely and orderly manner. Because the hiring decision is so important to the organization and the community, a city may wish to request project assistance from MTAS.

MTAS can help in a variety of ways ranging from coordinating the total process to performing a single task. We can, for example, assist in the preparation of the job design profile, the job description or the job advertisement. We also can administer the pre-interview questionnaire or contact references on behalf of your city.

In short, the scope of MTAS' services in the recruitment and selection of management and professional employees can be tailored to the needs and preferences of each city. MTAS also can arrange an assessment center.

Advertising Resources for Recruiting Professional Positions

Reference Number: MTAS-1582

National Organizations

AMERICAN SOCIETY FOR PUBLIC ADMINISTRATION

1120 G Street, N.W., Ste. 700

Washington, D.C. 20005-3885

Phone: (202) 393-7878

Website: <http://www.aspanet.org> [29]

Publication: *Public Administration Times*

INTERNATIONAL CITY/COUNTY MANAGEMENT ASSOCIATION

777 N. Capitol St., N.E., Suite 500

Washington, D.C. 20002-4201

Phone: (202) 289-4262

Website: <http://www.icma.org> [30]

Publication: *ICMA Newsletter*

INTERNATIONAL PUBLIC MANAGEMENT ASSOCIATION FOR HUMAN RESOURCES

1617 Duke St.

Alexandria, VA 22314

Phone: (703) 549-7100

Website: <http://www.ipma-hr.org> [31]

Publication: *IPMA News*

GOVERNMENT FINANCE OFFICERS ASSOCIATION OF UNITED STATES AND CANADA

180 North Michigan Ave.

Chicago, IL 60601

Phone: (312) 977-9700

Website: <http://www.gfoa.org> [32]

Publication: *GFOA Newsletter*

INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE

515 N. Washington St.

Alexandria, VA 22314

Phone: (703) 836-6767

Website: <http://www.theiacp.org> [33]

Publication: *Police Chief: The Professional Voice of Law Enforcement*

INTERNATIONAL ASSOCIATION OF FIRE CHIEFS

4025 Fair Ridge Dr.

Fairfax, VA 22033-2868

Phone: (703) 273-0911

Website: <http://www.ichiefs.org> [34]

Publication: *ICHIEFS On Scene*

NATIONAL FIRE PROTECTION ASSOCIATION

1 Batterymarch Park

P.O. Box 9101

Quincy, MA 02269-9101

Phone: (617) 770-3000

Website: <http://www.nfpa.org> [35]

Publication: *Fire News*

AMERICAN SOCIETY OF CIVIL ENGINEERS

1801 Alexander Bell Dr.

Reston, VA 20191-4400

Phone: (703) 295-6300

Website: <http://www.asce.org> [36]

Publication: *Civil Engineering*

NATIONAL ASSOCIATION OF COUNTIES

440 First Street, N.W., Ste. 800

Washington, D.C. 20001

Phone: (202) 393-6226

Website: <http://www.naco.org> [37]

Publication: *County News*

NATIONAL ASSOCIATION OF TOWNS AND TOWNSHIPS

444 N. Capitol St., N.W., Suite 208

Washington, D.C. 20001

Phone: (202) 624-3550

Website: <http://www.natat.org> [38]

Publication: *NATaT's Reporter*

NATIONAL LEAGUE OF CITIES

1301 Pennsylvania Avenue, N.W.

Washington, D.C. 20004-1763

Phone: (202) 626-3000

Website: <http://www.nlc.org> [39]
Publication: *Nation's Cities Weekly*

Leagues of Municipalities

ALABAMA LEAGUE OF MUNICIPALITIES

P.O. Box 1270
Montgomery, AL 36102
Phone: (334) 262-2566
Website: <http://www.alalm.org> [40]
Publication: *Alabama Municipal Journal*

ARKANSAS MUNICIPAL LEAGUE

301 West 2nd
North Little Rock, AR 72115
Phone: (501) 374-3484
Website: <http://www.arml.org> [41]
Publication: *City & Town*

FLORIDA LEAGUE OF CITIES

301 South Bronough St.
Tallahassee, FL 32302
Phone: (850) 222-9684
Website: <http://www.flcities.com> [42]
Publication: *Quality Cities*

GEORGIA MUNICIPAL ASSOCIATION

201 Pryor St., S.W.
Atlanta, GA 30303
Phone: (404) 688-0472
Website: <http://www.gmanet.com> [43]
Publication: *Urban Georgia*

KENTUCKY MUNICIPAL LEAGUE

101 East Vine St., Ste. 600
Lexington, KY 40507-3700
Phone (859) 323-3700
Website: <http://www.klc.org> [44]
Publication: *The Kentucky City*

MISSISSIPPI MUNICIPAL ASSOCIATION

600 East Amite St., Ste. 104
Jackson, MS 39201
Phone: (601) 353-5854
Web site: <http://www.mmlonline.com> [45]
Publication: *Mississippi Municipalities*

MISSOURI MUNICIPAL LEAGUE

1727 Southridge Dr.
Jefferson City, MO 65109
Phone: (573) 635-9134
Website: <http://www.mocities.com> [46]
Publication: *Missouri Municipal Review*

NORTH CAROLINA LEAGUE OF MUNICIPALITIES

P.O. Box 3069
Raleigh, NC 27602-3069
Phone: (919) 715-4000
Website: <http://www.nclm.org> [47]
Publication: *Southern City*

MUNICIPAL ASSOCIATION OF SOUTH CAROLINA

P.O. Box 12109
Columbia, SC 29211
Phone: (803) 799-9574

Website: <http://masc.state.sc.us> [48]

Publication: *Uptown*

TENNESSEE MUNICIPAL LEAGUE

226 Capitol Blvd., Room 710

Nashville, TN 37219-1894

Phone: (615) 255-6416

Website: <http://www.tml1.org> [49]

Publication: *Tennessee Town & City*

VIRGINIA MUNICIPAL LEAGUE

P.O. Box 12164

Richmond, VA 23241

Phone: (804)649-8471

Website: <http://www.vml.org> [50]

Other Sources

TENNESSEE COUNTY SERVICES ASSOCIATION

226 Capitol Blvd., Ste. 700

Nashville, TN 37219

Phone: (615) 532-3767

Website: <http://www.tncounties.org> [51]

Publication: *Tennessee County News*

PUBLIC WORKS JOURNAL CORP.

200 South Broad St.

Ridgewood, NJ 07451

Phone: (201) 445-5800

Website: <http://www.pwmag.com> [52]

Publication: *Public Works*

COMMUNICATION CHANNELS, INC.

6255 Barfield Rd.

Atlanta, GA 30328

Phone: (404) 256-9800

Website: <http://americancityandcounty.com> [53]

Publication: *American City & County*

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>

[5] <http://www.mtas.tennessee.edu/reference/>

[uniformed-services-employment-and-reemployment-rights-act-userra](http://www.mtas.tennessee.edu/reference/uniformed-services-employment-and-reemployment-rights-act-userra)

[6] <https://uscode.house.gov/view.xhtml?path=/prelim@title38/part3/>

[chapter43&edition=prelim](https://uscode.house.gov/view.xhtml?path=/prelim@title38/part3/)

[7] <http://www.irs.gov/pub/irs-pdf/fss8.pdf>

[8] <http://www.irs.gov>

[9] http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm

[10] https://www.eeoc.gov/laws/practices/inquiries_gender.cfm

[11] <http://www.mtas.tennessee.edu/reference/confidential-records>

[12] <http://www.mtas.tennessee.edu/reference/law-enforcement-officers-records>

[13] <http://aspe.hhs.gov/admnsimp/pl104191.htm>

[14] <https://www.hhs.gov/hipaa/for-professionals/security/laws-regulations/index.html>

[15] <http://www.gpo.gov/fdsys/pkg/PLAW-108publ159/pdf/PLAW-108publ159.pdf>

[16] <https://www.federalregister.gov/articles/2007/11/09/07-5453/>

identity-theft-red-flags-and-address-discrepancies-under-the-fair-and-accurate-credit-transactions

[17] <http://www.ftc.gov/os/statutes/031224fcra.pdf>

[18] <http://www.ftc.gov/>

[19] https://www.tn.gov/content/dam/tn/health/healthprofboards/health-advisory/Health_Advisory_%20Electronic_Cigarettes_12-18.pdf

[20] <http://www.capitol.tn.gov/Bills/105/Amend/HA0739.pdf>

[21] <http://www.mtas.tennessee.edu/reference/resume-checklist>

[22] <http://www.mtas.tennessee.edu/reference/sample-pre-interview-questionnaire>

[23] <http://www.mtas.tennessee.edu/reference/pre-interview-assessment-form>

[24] <http://www.mtas.tennessee.edu/reference/interview-assessment-form>

[25] <http://www.mtas.tennessee.edu/reference/blank-job-design-profile>

[26] <http://www.mtas.tennessee.edu/reference/sample-job-description-public-works-director>

[27] <http://www.mtas.tennessee.edu/reference/sample-job-advertisement>

[28] <http://www.mtas.tennessee.edu/reference/sample-interview-questions>

[29] <http://www.aspanet.org/>

[30] <http://www.icma.org/>

[31] <http://www.ipma-hr.org/>

[32] <http://www.gfoa.org/>

[33] <http://www.theiacp.org/>

[34] <http://www.ichiefs.org/>

[35] <http://www.nfpa.org/>

[36] <http://www.asce.org/>

[37] <http://www.naco.org/>

[38] <http://www.natat.org/>

[39] <http://www.nlc.org/>

[40] <http://www.alalm.org/>

[41] <http://arml.org/>

[42] <http://flcities.com/>

[43] <http://gmanet.com/>

[44] <http://www.klc.org>

[45] <http://www.mmlonline.com>

[46] <http://www.mocities.com/>

[47] <http://www.nclm.org/>

[48] <http://masc.state.sc.us/>

[49] <http://www.tml1.org/>

[50] <http://www.vml.org>

[51] <http://www.tncounties.org/>

[52] <http://www.pwmag.com/>

[53] <http://americacityandcounty.com>

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