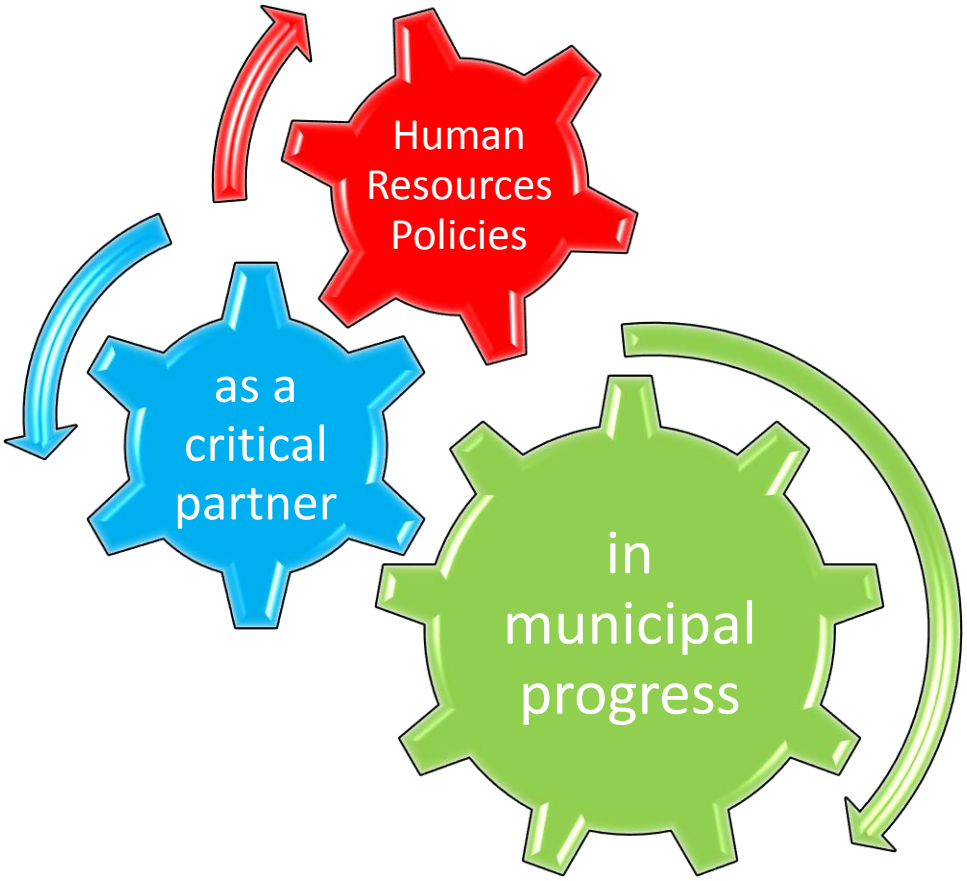

Human Resources Policies as a Critical Partner in Municipal Progress

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Executive Summary

Project Background

The City of Roseville has undergone significant pressures and challenges as a result of the "mortgage meltdown" and ensuing economic crisis (aka the "Great Recession"). While the city's revenue sources and general fund have declined significantly, the population has not. Like many cities, Roseville must find ways to continue delivering the same outstanding services with fewer resources and less funding. A review of the community's financial trends reveal that its revenue has stabilized in recent years. Current strategies to maintain a steady course toward economic recovery appear to be working.

In order to deliver its services, Roseville employs approximately 220 individuals with varying backgrounds and duties, which have a similarly wide range of responsibilities. Many Roseville employees are governed by contracts, but not all. Some of these contracts spell out work rules, work conditions, expectations etc., but these contracts by nature will fail to cover a number of employer/employee issues. Furthermore, collective bargaining agreements as the primary source of policy neglects non-union personnel entirely. This lack of "umbrella" policies that complement labor contracts or establish policies for non-union personnel places the Personnel Director and the City at risk, especially when it comes to taking disciplinary actions against employees or mitigating risk and liability for non-disciplinary issues. An employee can hardly be disciplined for violating a policy that is not in writing. The City would likely be the loser in any litigation, including contractual arbitration, were it to be sued for disciplining an employee on a policy that is only implied but not explicit.

Motivation

This lack of written policies prevents the community from instituting a unified personnel management strategy and has placed the city at risk for poor labor relations, costly arbitration, and litigation and unemployment costs. One legal suit could cost tens of thousands of dollars, and have a significant negative effect on the progress the City has made in recent years. Valuable and scarce resources would have to be redirected into defensive legal maneuvers, and deprive residents of the services they expect.

Question

What actions can the City of Roseville take to develop, implement and maintain comprehensive and effective human resources policies that will protect the fiscal progress it has made so far, and prevent costly issues in the future?

Analytical Methods

In order to answer that question, contracts and policies from neighboring municipalities were gathered. Many cities, townships and counties (Sterling Heights, Warren, Clinton Township, Eastpointe and Oakland, Washtenaw, Kent, St. Clair, Macomb and Genesee Counties) were solicited for copies of their contracts and

policies, although only a handful responded. Fortunately, many municipalities publish their contracts (and sometimes their non-union personnel manuals) online and were obtained for analysis.

Surveys soliciting information regarding their personnel policies were sent to the same communities. The survey questions are attached in the appendices. The surveys solicited qualitative, and not quantitative, data. The questions were open ended, and focused on the motivation behind the policies the leaders in local municipalities draft. When reasons for policies can be clearly articulated, the policies can be written to accomplish the objective. Three municipalities responded. The feedback indicates policies are written with a goal of maintaining compliance with the law, and limiting liability for the employer, but because of the lack of response, the results cannot be used to establish reliable patterns.

Through the research, it was observed that most organizations have "boiler-plate" policies and subjects covered in their contracts. For the purposes of this report, "boiler-plate" policies address issues like attendance, holidays, stipulations regarding confidentiality, employment records, discipline, holidays, harassment, and drug and alcohol use, etc. Some municipalities had separate policies for non-union personnel, and some had policies that were meant to complement or supplement contracts. Some, like the City of Eastpointe, had an internet policy on line. One municipality- Macomb County - had a policy that specifically mentioned the use of marijuana as medicine.

These two specific topics – marijuana as medicine and social media – have been the subject of recent and costly litigation for employers. They are evolving issues, and the laws regarding these issues are under pressure from many different directions. Employers need clear and defensible policies regarding these two issues; therefore this analysis focuses heavily on those two subjects. The research focused on litigation and a review of case law. An overview of the current legal environment and the relevant applications of case law are contained herein.

Conclusions Summarized

The City of Roseville has made major adjustments in order to regain its financial footing. Their fiscal condition has stabilized, and it appears as though the mortgage crisis is largely behind them. Human Resources Policies are a necessary element in their effort to restructure, as policies can shield the city from certain liabilities and prevail in, or ideally, even prevent, costly employment related litigation. To that end, Roseville should strive to meet the following short, intermediate and long term goals:

Short-term

- Using current contracts as a foundation, identify which issues need to be included in an employee manual. Appendix E is a list of possible subjects garnered from existing contracts from multiple municipalities.
- Address subjects not included in contracts, applicable to all employees, in the manual.
- Be proactive in developing policies that will address current evolving issues, including (but not limited to) marijuana as medicine, and social media use. Proposed policies are attached to this report as appendices.

Intermediate-term

- Distribute and implement policies systematically, through in person presentations.

Long-term

- Create and fill an Assistant City Manager (ACM) position.
- As part of his/her duties, task the ACM with monitoring changing laws, maintaining compliance and updating policies as necessary.

Introduction

Background

The City of Roseville has undergone significant pressures and challenges as a result of the "mortgage meltdown" and ensuing economic crisis (aka the "Great Recession"). In 2008, the total taxable value within the city was just over 1.3 billion dollars.[1] In 2016, the total taxable value was not quite 850 million dollars. During the same time frame, the City's general fund balance slipped from just over 11 million dollars to just over 4 million dollars.[2] Many non-essential services were in jeopardy. The City sought alternative means of funding in order to maintain the "non-essential" services, such as parks and recreation programs, and its library. In November 2011, a measure to create the Roseville Library Authority, with its own source of funding in the form of a special millage, was crafted and put to the voters. The voters approved the authority and it is still in place today.[3] The move provided the library a separate means of funding through a special millage. In 2012, the city put another measure in front of the voters. The measure proposed a partnership between the City of Eastpointe and the City of Roseville to form the Recreational Authority for Roseville and Eastpointe (RARE).[4] This allowed both cities to maintain and even increase some valuable parks and recreation services but also reduce expenses by sharing them. Both of these proactive measures indicate that the voters and the city leadership alike understand how essential "non-essential" services are when it comes to making a city feel like home, and to attracting homebuyers, families and even businesses. The voters were willing to "pony up" in the form of a special millage. City personnel and leadership have skin in the game as well. The City sought, and received, concessions from its workforce, in the form of salary changes and changes to the structure of employee benefit packages. Roseville proved it was committed to finding ways of delivering the same outstanding services with fewer resources and less funding.

In order to deliver these services, Roseville employs approximately 220 individuals with varying backgrounds and duties, which have a similarly wide range of responsibilities and needs.[5] The majority of their employees are governed by contracts. Some of these contracts spell out work rules, work conditions, and expectations etc., and can fulfill some of the functions of personnel policies, albeit in a limited manner. However, these contracts by nature will fail to cover a number of employer/employee issues, and this practice neglects non-union personnel entirely. The City lacks a comprehensive set of umbrella personnel policies applicable to all employees.[6]

Motivation

Economic recovery involves strategic allocation of resources and funds. Fundamentally, it is about how to fully utilize the city's resources in the most efficient way possible, garnering the biggest return on every investment. One area of strategic planning often overlooked is the role of human resources. Human resources is often viewed as a cost center, with little to offer except the ability to manage and administer personnel records, and health and retirement benefits. This is short-sighted. A human resources manager can be a strategic partner, helping the organization to properly leverage one if its greatest – and most expensive – investments: personnel.

Human resource managers recognize the importance of policy. Policies drive personnel decisions throughout the entire employment lifecycle, from recruitment, selection, day to day management, and eventually, termination (voluntary or involuntary) of employment. Solid personnel policies, written with the goal of creating an effective and efficient workforce, are an important means of leveraging the strength of the workforce and maximizing the return on the investment.

A lack of "umbrella" policies that complement labor contracts or establish policies for non-union personnel prevents the City from instituting a unified personnel management strategy and has placed the city at risk for poor labor relations, costly arbitration, litigation and other unnecessary costs. Without policies, work rules become less consistent across the board, and can lead to disparate treatment. This could create an environment where some employees feel they are being treated differently and unfairly, and thus jeopardize the relationships between the city leadership and its personnel.

A policy void also places the Personnel Director and the City at risk, especially if it is evident that employees in similar situations are being treated differently, or when it comes to taking adverse personnel actions against employees. The lack of policies also exposes the city to extra costs in other areas, such as unnecessary unemployment charges.

An employee can hardly be disciplined for violating a policy that is implied but not explicit. One legal suit could cost tens of thousands of dollars, and have a significant negative effect on the progress the City has made. Valuable and scarce resources would have to be diverted into defensive legal maneuvers. This is a risk that can be mitigated through a comprehensive personnel policy manual.

Question

What actions can the City of Roseville take to develop, implement and maintain comprehensive and effective human resources policies that will protect the fiscal progress it has made so far, and prevent costly personnel issues in the future?

Research Methods

This question can best be answered by gathering qualitative data. There are a multitude of sources from which to obtain the information necessary to answer this question. Existing labor agreements are an excellent source. They enumerate common employment issues applicable for unionized employees and can provide a template for non-union issues. Several municipalities, including Clinton Township, the City of Eastpointe, Kent County, Macomb County and Genesee County have published their labor agreements online. Both Macomb and Saint Clair Counties have published their contracts and their employee handbook online. Overall, seven contracts and two policy manuals were retrieved from the websites of neighboring municipalities to identify common themes. A list of the contracts and policies are attached as Appendix A. All of the contracts and policies addressed issues such as attendance, paid time off in all its many forms (vacation days, holidays, jury duty, bereavement pay, sick leave, etc.), insurance benefits and many other "boilerplate" employment areas. Some of the contracts contained drug and alcohol policies (particularly those with positions regulated by the Department of Transportation). None of the organizations had specific policies addressing social media use.

Another rich source of qualitative data is case law. State and Federal Court rulings, as well as rulings made by agencies such as the National Labor Relations Board, and state labor relations boards, are an excellent source of information on policy. Policies are often at issue in employment litigation and the rulings are helpful guides in what makes a policy survive legal scrutiny. A list of the cases examined are attached as Appendix B.

Finally, a survey questionnaire regarding policy development was sent to Roseville's neighboring communities, including Clinton Township, Eastpointe, Sterling Heights and Warren. The Counties of Macomb, Kent, Washtenaw, St. Clair, and Genesee were also solicited. Few municipalities responded to the request. The survey questions are attached as Appendix C.

Two areas of particular importance are the Drug and Alcohol policies, and Technology/Social Media policies. At this time, these two issues are creating significant difficulties for employers. A personnel manual that lacks policies addressing marijuana as medicine and technology/social media is ill-equipped to handle the challenges ahead. As such, this paper will provide in-depth focus on those two issues.

Marijuana as Medicine

Marijuana as medicine is becoming a pressing issue for employers. Conflicting state and federal laws are creating confusion. Arguably the most influential law is the Federal Controlled Substances Act (CSA), which regulates drugs and other substances in the United States. This legislation includes "schedules,", or lists, of substances,

which categorize various compounds based on different characteristics and potential uses. Schedule I of the CSA is the most severely restricted of the five classifications and is reserved for substances that 1) have a high potential for abuse; 2) have no currently accepted medical use; and 3) lack accepted safety for use under medical supervision.[7] Marijuana currently occupies a position on Schedule I.

Despite marijuana's status on Schedule I of the CSA, many states, including Michigan, have legalized the use of marijuana for medicinal purposes.[8] The common thread among all of the state legislation legalizing marijuana as medicine is the attempt to shield individuals who use marijuana for medical purposes from criminal prosecution from the state. However, state laws cannot exempt individuals from prosecution on a federal level. Past presidents have exercised their executive discretion and approached the issue in varying ways.[9] Presidents William Clinton and George W. Bush vowed to actively pursue criminal prosecutions for the use of marijuana (although in practice, their actual efforts to do so could be described as half-hearted). The Obama administration went another direction, and assumed a "hands-off" posture. In 2009, David Ogden, the Deputy Attorney General to Selected U.S. Attorneys, (United States Department of Justice) issued a memorandum stating that users of marijuana who were clearly compliant with their state medical marijuana laws would not be a high priority for federal prosecution.[10]

Many people using marijuana as medicine report they are doing so to treat a disability. This brings the federal Americans with Disabilities Act (ADA), and similar state legislation, into play. Enacted in 1990, the federal ADA acts as an Equal Opportunity law for people with disabilities. These types of laws on the federal and state levels define what a disability is, and most require employers to make "reasonable accommodations" to employees with a disability, provided the accommodation does not cause an "undue" hardship on the employer. The ADA defines "undue" hardship as a "significant difficulty or expense incurred by a covered entity."[11] Employers are struggling with how to reconcile state and federal legislation requiring them to accommodate employees with disabilities, the legalization of medical marijuana on the state level, and the continued criminalization of marijuana on the federal level.

At-will employment laws play a role here as well. At-will employment is the condition which exists when an employer or an employee may end the employment relationship for any reason, or no reason. It is the law in many states, including Michigan. There is a narrow exception to "at-will" employment – employers are prohibited from discharging an employee at-will if doing so would "frustrate a clear manifestation of public policy."[12] Some parties in related litigation have argued that allowing employees to be terminated from employment for testing positive for marijuana, when they are using it in accordance with state law, frustrates a clear manifestation of public policy.[13]

Finally, one must consider the limitations of current drug testing technology and legal definitions of what it means to be 'impaired.'[14] Testing for marijuana ingestion or marijuana related impairment is profoundly and materially influenced by many variables, including the method of delivery, the frequency of use, the potency of the drug, and the physiological makeup of the individual.[15] Marijuana can be "delivered," or administered, to the human body through many different means, such as smoking, or taking it orally as an oil or tablet. It can be rubbed on the skin as a lotion, or mixed into and eaten in food products. The method of ingestion affects the speed and length of impairment. For example, marijuana that is smoked will be distributed through the body quickly, but the effects will be shorter lived. Marijuana that is ingested orally will take longer to disburse throughout the body, but the effects will last longer.

Infrequent users of marijuana will metabolize the marijuana differently and more quickly than frequent users and will test positive anywhere from 2 to 12 days post ingestion. Chronic users will not only ingest more of the drug, but since tetrahydrocannabinol (THC), the chemical responsible for the mind-altering effects of cannabis, is fat soluble, the body will store it in its fat stores, where it can linger for months. The potency of the drug is also a significant factor.

The types of available testing present another challenge. Saliva can measure recent use, provided the marijuana was delivered in a manner that involved the oral membranes. Most urine tests can detect marijuana use for up to

30 days; hair tests can confirm historical use, up to 90 days. Marijuana that is taken in pill form will not be detectable in a saliva test; marijuana that is smoked will be detectable for a short time period in a saliva test, and marijuana that is eaten will be detectable in saliva for a longer period of time. Those are just a few examples of challenges related to testing.[16] A fact sheet from Quest Diagnostics is available online and is also included as Appendix D.

Finally, interpreting the test results is problematic. Alcohol, for example, has a well-developed 'per se' measurement (well defined and measureable legal limits of impairment). There is no such measurement for marijuana because of the various aforementioned factors affecting distribution within the body, impairment differentials and detectability. A first time user with a relatively small detectable level could be significantly impaired; a chronic user with high detectable levels could be only moderately impaired, or not impaired at all. Furthermore, for urine and saliva tests, there is absolutely *no* correlation between THC levels in the sample and impairment.[17] Hair tests can only indicate a pattern of use and are not able to detect impairment. Blood tests are best able to be correlated to impairment, but are expensive and much more invasive than saliva, urine or hair tests. And again, there is no 'per se' measurement standard with which to compare the results of the tests.

Cases of Interest

Employers can begin to develop a strategy to address marijuana as medicine by reviewing the legal history of the issue, and there are plenty of cases to choose from. A good place to begin tracing the legal journey of marijuana as medicine would be Gonzales v. Raich (2005).[18] In this ruling, issued by the Supreme Court, the United States Congress was found to have behaved lawfully when, under the Commerce Clause, it prohibited the possession, manufacture and distribution of marijuana, even if a state had approved the use of marijuana for medicinal purposes. Effectively, the decision means that the use of marijuana for medicinal purposes may be exempted from criminal law on a state level, but not on the federal level.

Many cases in different states have set precedent. This includes two cases in the state of Oregon. After the Raich ruling in 2009, Oregon's Attorney General concluded that the Raich ruling did not impact the Oregon Medical Marijuana Act or its operations.[19] Marijuana for medical purposes is authorized under the Oregon Medical Marijuana Act, and persons with debilitating conditions can obtain a registry card if the use of medical marijuana can ease the symptoms of their condition. The card exempts persons from state criminal prosecution, as long as certain conditions are met. Oregon also has laws that make it illegal to discriminate against otherwise qualified individuals because of a disability, and these laws also require employers to make reasonable accommodations for a disability, absent an undue hardship, much like the federal ADA.

Enter Robert Washburn, an employee of Columbia Forest Products Incorporated, who suffered from muscle spasms that limited his ability to sleep. Per his doctor's recommendation, he was a participant in the Oregon Medical Marijuana Program, and smoked marijuana before going to bed. Columbia's workplace drug policy prohibited employees from reporting to work with controlled substances in their system, and when Mr. Washburn tested positive for marijuana, he was placed on a leave of absence, and then fired. Mr. Washburn sued, claiming he was being discriminated against because of his disability.[20] Oregon Courts issued conflicting rulings, with the trial court finding that Mr. Washburn's condition (muscle spasms accompanied by insomnia) did not qualify as a disability under Oregon law; the Appeals Court disagreed and found him to be disabled. Columbia appealed to the Oregon Supreme Court, which found Mr. Washburn was not disabled, because his condition did not substantially limit a major life activity. While the case appears to have turned on the issue of what constitutes a disability, it is important to note one of the Supreme Court Justices remarked "*federal law preempts state employment discrimination law to the extent that it requires employers to accommodate the use of medical marijuana."*[21]

In another Oregon case, Emerald Steel Fabricators, Incorporated v. the Oregon Bureau of Labor & Industry (BOLI) (2010), Emerald Steel sued the Bureau, which had filed a complaint with the state on behalf of an employee who was fired after revealing he used marijuana for medical purposes.[22] According to the employee, he suffered from anxiety, panic attacks and nausea, among other things, and a physician signed a statement

confirming that his condition was debilitating. BOLI's complaint alleged Emerald Steel had discriminated against the employee because he was otherwise qualified for the job. Like the Washburn case, the lower court decisions went back and forth, and Emerald Steel v. BOLI also worked its way up to the Oregon Supreme Court. There, the Court ruled that the Oregon disability anti-discrimination employment laws do not require employers to accommodate the use of illegal drugs. The decision was based in part on the intersection between Oregon's anti-discrimination laws and the federal Controlled Substances Act (CSA). According to the Court, just because the Oregon Medical Marijuana program shields a person who uses marijuana as medicine from *criminal* prosecution from the state of Oregon, it does *not* mean that the use of the drug is *entirely* legal.[23] Individuals can still be charged under federal law, regardless of their participation in the Oregon Medical Marijuana program. Furthermore, Oregon anti-discrimination *employment* laws are tied to medications as defined by the *federal* Controlled Substances Act. As such, Oregon's anti-discrimination employment laws do not shield people from adverse employment actions which may result from their use of marijuana as medicine.

In another western state, the Washington Supreme Court also cited federal law in their decision of the case between Roe v. Teletech Customer Management (2011).[24] In this case, the plaintiff suffered from migraines and was a patient at a medical marijuana clinic. In June 2006, the clinic gave her an authorization to possess marijuana. In October 2006, Teletech offered her a customer service position. She underwent a drug test as part of her pre-employment physical, and began working. Shortly after she started, the company was advised that she tested positive for marijuana, and her employment was terminated. She sued, claiming the company had violated the Washington State Medical Use of Marijuana Act (MUMA). The judges found that the Act, which was written to protect individuals from criminal prosecution, did not provide protection from adverse employment actions. The Court asserted that requiring an employer to accommodate an activity that is a federal crime is *not* a reasonable accommodation under their state ADA guidelines.[25]

In California, the initiative that legalized the use of marijuana for medical purposes is called the Compassionate Use Act .[26] It was approved by voters in November 1996. In September of 1999, Gary Ross, who was suffering from strain and muscle spasms as a result of injuries he sustained while serving in the United States Air Force, began to use marijuana on the advice of his physician. In early September, 2001, Ross was hired by RagingWire Telecommunications as a lead systems administrator, and was required to undergo a drug test as part of a pre-employment exam. He submitted to the test on September 14, 2001, and began working a few days later. His employment was terminated on September 25, because he tested positive for marijuana. Ross sued, alleging that RagingWire had violated California's Fair Employment and Housing Act (FEHA).[27] He asserted he was otherwise qualified for the job, and RagingWire had failed to make reasonable accommodations for his condition. The case went to the California Supreme Court, where the Justices ruled that marijuana does not enjoy the same status as legal prescription drugs, because it remains illegal under federal law, and that FEHA does not require employers to accommodate the use of an illegal drug for any reason.[28]

A Michigan case features prominently in the case law surrounding this issue. In Casias v. Walmart Stores, Incorporated, Joseph Casias, a former employee of the year, sued Walmart after he was terminated for testing positive for marijuana. Casias had obtained the necessary card from the State of Michigan when his doctor recommended he use marijuana to treat the head and neck pain he was experiencing as a result of an inoperable brain tumor and cancer of the sinuses. A Michigan court upheld Walmart's right to terminate his employment, stating that the Michigan Medical Marijuana Act did not obligate employers to accommodate the use of marijuana under the ADA.[29]

In all of these cases, the rulings also cited the fact that none of the medical marijuana laws, as passed or approved by voters, were intended to force employers to accommodate the use of marijuana by employees or potential employees. Some states are trying to address that. At this point in time, Arizona, Delaware, Minnesota and Nevada provide the greatest protection in their legislation for employees who test positive for marijuana in compliance with state law.[30] In these states, employees cannot be disciplined for testing positive for marijuana, provided the employee is not actively under the influence of the drug at work (impaired), or in possession of the drug while on the job. These employment protection clauses have yet to be tested through litigation, so whether or not a state can compel any organization to accommodate federal criminal behavior remains to be seen.

Social Media and Technology

Many organizations are embracing social media and technology, and use it to promote their products and services. They may use it to advertise, and many use social media in recruiting. Some organizations have formed their own discussion boards in an effort to promote communication and knowledge sharing. However, technology and social media are also causing complications for employers. They range from mere nuisances to more serious instances of bullying and harassment. For example, employees might post derogatory comments about their supervisors, subordinates, co-workers or customers. They might blog or tweet complaints about their wages, workplace policies, working conditions or benefits. They may (accidentally or deliberately) publish confidential information or trade secrets. They may take "selfies" while on the job and post them online, inadvertently exposing elements of a classified environment - or occupational safety conditions. Employees may post videos of themselves engaging in serious misconduct while on the job. Employees have been known to use their employer's email servers or drives for personal reasons, or to "surf the web" during work hours, for non-work related reasons. A disturbing trend is that people have taken to using technology or social media to bully, harass or intimidate their coworkers. In fact, recently, in Macomb County, an employee of the Macomb County Public Works Commission pled no contest to charges that he deliberately posted his co-workers personal phone numbers on backpage.com, an "adult" website that is currently under federal investigation for sex trafficking.[31] His coworkers received numerous phone calls, at all hours of the day and night, soliciting them for sexual favors. These coworkers expressed they endured stress and felt bullied because of his behavior.[32] Employers are grappling to keep up with the challenges.

In response to the challenges, many employers have developed policies regarding the use of technology and social media.[33] The policies sometimes address the use of employer owned devices, such as tablets, laptops, or smart phones. Employers have attempted to regulate the use of employer owned servers. Sometimes the policies attempt to address employees' use of social media both on and off the job. Employers have installed sophisticated internet blocking and filtering software, or monitoring software. Employers who have acted on their policies have often found themselves in court, defending their employment decisions and policies.

As with the marijuana issue, case law aids in identifying legal trends, but it has proven difficult in this instance, as there are many rulings, and they sometimes conflict with one another.[34] Furthermore, they are being tried through many different venues. Some cases are being resolved through arbitration, others are being put before Administrative Law Judges at the National Labor Relations Board (NLRB). In fact, in 2011, the NLRB received so many of these types of cases, they began requiring all cases involving employer rules prohibiting or disciplining employees for their conduct over social media be submitted directly to the General Council's Division of Advice.[35] Still other cases have worked (and are working) their way through state and federal courts. It is extremely difficult to keep up with all the rules and precedents being promulgated from these varied legal actions.

Cases of Interest

With that in mind, there are a few cases that have established helpful guidelines for employers. One such case involves Costco Wholesale Corporation, a private sector employer.[36] They developed a policy that read, in part, "Employees should be aware that statements posted electronically (such as online message boards or discussion groups) that damage the Company, defame any individual or damage any person's reputation...may be subject to discipline, up to and including termination of employment,[37]" Costco's policies prohibited online discussion of "confidential" information, including "payroll" and "all information relating to Costco and its employees." In 2012, the National Labor Relations Board (NLRB) concluded that Costco's policies had a "chilling effect" and could reasonably be interpreted as prohibiting activities that are protected under Section 7 of the NLRA, such as the right to discuss wages or working conditions.[38]

An older case, also from the private sector, offers additional insight into the risks employers assume when they take adverse action against employees for their conduct on the internet. In 2004, Delta Airlines terminated the

employment of Ellen Simonetti, a flight attendant, for taking "inappropriate" pictures of herself in her uniform, while she was on a Delta airplane, and posting those pictures to her blog, entitled "Diary of a Flight Attendant.[39]" In one photo, her skirt was hiked to her mid-thigh. In another, she was leaning over a seat, with her blouse partially unbuttoned, and a portion of her bra exposed. She sued, claiming that her male counterparts had engaged in similar conduct but had not been disciplined. Delta declared bankruptcy, so this case was never decided, but whether or not Ms. Simonetti was actually treated differently than her male counterparts, history teaches us that courts have a disdainful view of gender based disparate treatment.

Mattingly v Mulligan (2011), was a case involving a public sector employer.[40] Dana Mattingly was an employee of the Clerk's office in Saline County Circuit of Arkansas. During a lunch with her friends at a restaurant, she posted several comments to her Facebook page from her personal mobile device, expressing her disappointment that some of her coworkers were being fired by the newly elected Clerk Dennis Mulligan. Ms. Mattingly had 1,300 "friends" who saw the post. Six unknown constituents called the Clerk's office to complain about the firings. Mr. Mulligan then fired Ms. Mattingly. Ms. Mattingly sued. The courts ruled that Ms. Mattingly had met what is commonly known as the "Pickering Test.[41]"

The Pickering test is older, well-established precedent, set in 1968, and applicable to public sector employees.[42] Marvin Pickering was a teacher at Lockport Central High in Illinois. He wrote a "letter to the editor" criticizing the way the Board of Education had handled recent, and failed, funding proposals, and alleged the Board was placing more emphasis on athletics than on academics. The letter was published in the local papers, and the Board fired Pickering. He sued, and the case worked its way up to the Supreme Court of the United States. The Court ruled that Mr. Pickering's letter constituted free speech, and they established legal principles which became known as the "Pickering Test." It is a three prong test to determine if statements made by a public sector employee are protected under the first amendment.[43] First, the employee must have uttered the speech as a private citizen, and outside the scope of his/her official duties, and the speech must be about a matter of public concern. Secondly, the employee must prove that his First Amendment interests, combined with the interests of the public, outweigh the government's legitimate interest in the efficient performance of the workplace. Finally, even if the balance of interests favors the employee, he must still prove that his protected speech was a substantial factor in the employer's adverse employment action against him.[44] This old, but sound, legal precedent was applied to the dispute between Ms. Mattingly and Mr Mulligan, and Ms. Mattingly prevailed. The justices felt the actions of a newly elected county clerk were a matter of public concern; that members of the public saw the post and called the office further established it as a matter of public concern; that Ms. Mattingly's interest in expressing the concern outweighed the clerk's interest in efficient operations; and finally, that her termination was a direct result of her comments online. The justices also offered additional commentary that sheds light on what may be to come: they noted Ms. Mattingly had posted from her own private device, on her own time. [45]

The court found that Ms. Mattingly, who had made complete statements, was protected by her first amendment rights. However, on some social media, an individual can indicate support for a position, candidate or statement simply by "liking" something. In. Bland v Roberts, the Courts actually had to decide if "liking" something constituted free speech, and was protected under the first amendment.[46] Bobby Bland had been an employee for nine years at the Hampton, Virginia, Sheriff's office. In 2009, Sheriff B.J. Roberts was running for re-election. During the campaign, Bland "liked" the Facebook campaign page of Roberts' opponent. Roberts won re-election, and shortly thereafter, Bland was terminated. He sued, alleging he had been fired for "liking" the Sheriff's opponent's Facebook page. The Courts found that "liking" something was akin to putting a candidate's bumper sticker on a car, or their political sign on a lawn, and ruled that, indeed, "liking" something qualifies as free "speech.[47]"

As already mentioned, it seems the courts are offering hints about the direction they are heading when it comes to employees using their own personal devices on their own time. However, more and more municipalities are issuing devices to their employees. Naturally, this has given rise to new problems. One such case is Quon v. Ontario. This case revolved around electronic communications sent and received by Jeff Quon, a member of the City of Ontario (California) Police Department's SWAT team.[48] The City had issued two way pagers to employees, including Quon. They established policies, including that the pagers were not to be used for personal communications, and that the City retained the right to monitor all of the communications.[49] Despite that, Quon's supervisor assured him and others that he would not enforce the inspection policy, and Quon actually paid fees

for overages above what was allotted by the City. However, the City did audit Quon's usage, and found many of the texts were personal and not work related. He was disciplined, and he sued, alleging his fourth amendment rights had been violated, because the device had been searched. The Supreme Court disagreed. A majority of the justices found Quon's expectations of privacy for his personal messages on a City owned device were unreasonable, the City had a reasonable suspicion (the overage charges) and the scope of the search was reasonably related to the suspicion. Here again, the justices relied on precedent established in 1987, and applied it to the new technology.

The 1987 case was O'Conner v Ortega and it was also decided by the United States Supreme Court.[50] This case involved the search and seizure of items from the office of Dr. Magno Ortega, a psychiatrist employed at a state hospital. He had been accused of sexual harassment, coercing residents in training to purchase an Apple computer for him and inappropriately disciplining a resident. He was placed on administrative leave and his office was searched. The search was quite thorough, and personal as well as professional items were seized and used against him in a decision to terminate his employment.[51] Though the Court did not produce a majority decision, it essentially established three questions government-employers must ask themselves when determining whether or not a search is justified:

1. Does the employee have a reasonable expectation of privacy?
2. Does the employer have a reasonable and work-related need or suspicion?
3. Was the scope of the search commensurate with the employer's need or suspicion?[52]

These cases indicate that, while the technology and circumstances are becoming more and more "high-tech," old principles are solid, and can still be applied effectively. This is very helpful when it comes to establishing policies for the use of technology and social media, both on and off the job.

Special Considerations for the Public Sector

The public sector employer/employee relationship has dynamics unmatched by any in the private sector. This is because of the dual relationship that exists between the private individual and the public employer. One party is both an employee who has inherent obligations as an employee and a private citizen with Constitutional Rights. The other party is both an employer with all of the accompanying rights and responsibilities, as well as a government entity, with Constitutional constraints laid upon it. It is a relationship that has proven challenging to navigate.

Marijuana as Medicine

When it comes to marijuana as medicine, the public sector employer must be mindful of the following:

- Fourth Amendment protections against unreasonable search and seizure. In order to test for marijuana, saliva, blood, urine or hair must be "seized" and then "searched" (tested). A public employer must have a compelling legal reason (such as Department of Transportation Regulations that require it) OR, in the absence of a legal compulsion, a compelling "reasonable" suspicion to seize bodily elements and search (test) them.

- Fifth Amendment protections against self-incrimination. Citizens have a constitutional right to refrain from testifying against their own best interests. That may be difficult for an individual to do when a positive drug test is set on the table and a citizen/employee is asked to explain him/herself to the government/employer.

- The Ninth Amendment "Right to Privacy." As more and more individuals claim to be using marijuana for medical reasons, this could put the citizen/employee into a position of having to disclose personal information to the government/employer that he/she would not necessarily disclose otherwise.

- The Drug Free Workforce Act (the Act). This legislation requires all organizations that receive federal grants to enact a zero-tolerance drug policy. Many municipalities receive federal funds and will need to make sure their drug and alcohol policies are in compliance with the guidelines established by the Act.[53]

- Labor Agreements. The public sector is heavily unionized and labor agreements govern much of the employment relationship. Labor agreements may specifically address drug testing, as well as the types of testing the union will agree to (i.e., only urine, and not blood, saliva or hair). Some contracts specify the consequences of a positive test, and unions may have secured rights for "last" or "second" chances for their members if they test positive for drugs. Unions may have also negotiated treatment options (Substance Abuse Programs or Employee Assistance Programs) as well. Employers need to be diligent about complying with both the contract(s) and the law(s).[54]

Social Media and Technology

- First Amendment protections. Citizens of the United States are guaranteed the right to speak freely and even critically about their government, and other matters of public concern. Government employers must balance their rights to efficient operations against the citizen employee's right to exercise first amendment freedoms.[55]

- Fourth Amendment protections against unreasonable search and seizure. In order to access and search an employee's email, hard drives, text messages or other electronic devices, government employers must have a compelling legal interest, and limit the scope of the search to what is necessary in order to meet the needs of their interest.[56]

- Ninth amendment rights to privacy. Employers must be clear and upfront and advise their employees that there is no expectation of privacy on employer issued devices, including cellphones tablets, and laptops etc. They must also establish similar "no expectation of privacy" disclaimers for the use of employer owned email accounts, and employer servers and computer drives.[57]

Ethical Considerations for Marijuana as Medicine, and the Off-duty Use of Social Media

Compassionate Use policies. Compassionate Use policies are policies that extend the spirit of the ADA to include medical marijuana, despite the fact that possession of marijuana is a federal crime. Compassionate Use has many proponents. However, the scientific jury is still out, and the Controlled Substances Act has rendered its verdict. Marijuana, on the federal level, is illegal. However, policy makers often battle their conscience when writing policies which could put loyal and well performing employees at risk. City leaders may have genuine concern about long term employees who are battling diseases such as cancer, and they may wish to enact policies to accommodate the use of whatever treatments their employees find effective, including the use of marijuana as medicine. They may be genuinely distressed over having to accommodate the use of legally prescribed narcotics that are assumed to be much more powerful and highly addictive than marijuana, such as Xanax, Percocet, Vicodin, and Dilaudid, when taken for a disability, but not being able to accommodate what some argue is a mild drug (relatively speaking).[58].They would not be alone – in fact, in the Ross v. RagingWire ruling, the dissent argued that marijuana should be treated like other prescription drugs that have the potential to negatively impact employee attendance and productivity.[59]

Compassionate Use advocates also cite the aforementioned testing limitations and argue that zero tolerance policies do not address the issue of impairment.[60] It is interesting to note that the Drug Free Workforce Act does not mandate random testing of employees. Some organizations enact Zero Tolerance policies, but do not enforce testing, thus establishing a "Compassionate Use" policy in practice, if not in writing. This creates another ethical dilemma: Is a de facto "Compassionate Use" policy, which could put organizations at significant risks for certain

liabilities, in the best interests of taxpayers? Taxpayers have a right to expect their tax contributions to be used with due diligence, and this includes protecting them from preventable liabilities.

"Off-duty" use of social media. There is little doubt that employers, both public and private, are legally entitled to restrict the use of their equipment for anything other than work-related purposes. Many private sector companies also restrict, or attempt to restrict, their employees' "off-duty" social media activities, in order to protect their organization's interests and reputation. In some cases, they have been able to do so. However, government employers have a challenge when it comes to monitoring off duty "online" activities of their employees. In the public sector, the government has assumed a dual role - it is both government and employer. When, if ever, is it appropriate for the government to be dictating the expressions of a free people? Public employers are being called upon to develop policies which do not inhibit free speech but they are also obligated to protect their operations. Questions of censorship and transparency naturally arise, and are difficult to answer.

Recommendations

Develop and distribute a comprehensive policy manual

Using existing contracts, existing employment law, and policies from other municipalities as templates, draft an employee policy manual. A sample list of subjects, gathered from the policies and contracts listed in Appendix A, are attached as Appendix E. Many of these could be considered "boilerplate" policies. Once drafted, each policy should be approved on an individual basis. Many organizations have personnel manuals which were approved in their entirety. This is not a practical approach. In the event that just one policy needs to be amended or updated, the organization would have to re-approve the entire manual. By having each policy approved on an individual basis, any policy that needs to be updated can be amended, and approved, one at a time, without having to reconsider the whole document. Especially given the dynamic nature of the two focal issues discussed in this paper, approving policies on an individual basis is the best practice for the City to follow.

Once the policies are approved, there are a number of ways to distribute them. Due to the size and organizational characteristics of the City, it is possible to schedule multiple face to face meetings with groups of employees. Employees respond well to face to face interaction which provides opportunity for discussion. A quick overview of the policies, along with visuals such as PowerPoint or Prezi would add substance and help retention. These face to face meetings would be especially beneficial to Roseville. Their workforce demographic is rather split; there are a substantial number of older employees, and an almost equal number of younger, newer employees, but there are not many in between.[61] There is a technology gap among generations of employees, a situation which is not unique to Roseville.[62] A hard copy of the policy manual and the face to face conversation will appeal to employees who may be unfamiliar with technology, and the visual graphics may be enough to capture the attention of younger employees who grew up with it. Meeting with the employees personally and in small groups will reinforce the idea that City Leadership is invested in their employees. It enhances the perception that management's goal is to make sure there is equity in the organization, and that everyone is going to be treated the same way. This perception of organizational justice improves the likelihood of success in a change environment.[63] As part of the process, employees should be required to sign individual documents acknowledging that they received a copy of the policies, and the original acknowledgement document should be filed in the employee's personnel file. Policies, once updated, would need to be distributed to employees, and could be done through supervisors, email blasts or even online.

As noted throughout this paper, two current issues - marijuana as medicine and social media - are presenting special challenges to policy makers. Recommendations for those specific subjects are discussed now.

Marijuana as Medicine: Focus efforts on proving impairment as opposed to ingestion

The Drug Free Work Force Act (DFWA), coupled with the Controlled Substances Act (CSA), and the Department of Transportation regulations, takes the matter out of the hands of city leadership. Legal precedent from multiple courts in multiple jurisdictions have made it clear that a state act legalizing the use of marijuana

as medicine does not require employers to accommodate use of the drug under federal or state ADA legislation. However, given current trends, simply adopting a Zero-Tolerance policy is no longer enough. The City and its leaders need to prepare for what is coming down the pipeline.[64]A sample Drug Free Workplace Policy, modeled after Macomb County's Drug Free Workplace policy, is attached as Appendix F.

All of the cases discussed considered state medical marijuana laws, state disability laws, at-will employment laws and the federal Americans with Disabilities Act, and then held them against the Controlled Substances Act (CSA). City leadership should note that the common theme of the rulings of the aforementioned cases was marijuana's present status as an illegal substance on Schedule I of the CSA. However, the movement toward decriminalizing marijuana on the federal level has momentum. In almost all of the aforementioned court cases, the decisions were not unanimous. In Emerald, the dissent argued that the Oregon Medical Act did not violate the Federal Controlled Substances Act.[65] In Roe, the dissent felt Roe had established a public policy exception to Washington State's at-will employment law.[66] In Ross, the dissent reasoned that employers should be required to accommodate marijuana in the same manner as they are required to accommodate other, very powerful prescription medications.[67] Several states have already enacted legislation protecting citizens from adverse employment actions based on their use of marijuana as medicine. Although those laws have not yet been tested in federal courts, the City of Roseville can be proactive and behave as if the accommodation is already required.

To that end, Roseville should focus on proving impairment, as opposed to ingestion.[68] The City should provide comprehensive training on the signs of active impairment to their supervisors.[69] A checklist of signs of impairment would be a valuable tool. There are many sample checklists available for free online. A proposed checklist, similar to the one used by Macomb County, is attached as Appendix G.[70] When an employee's state of mind is in question, the supervisor should rely on his/her training and immediately retrieve their checklist to document the symptoms that are causing the suspicion. The ability to clearly articulate the behaviors that prompted suspicion and the information contained in the checklist lays the groundwork for proving that the suspicion was reasonable, and that impairment was likely. It also aids in justifying the seizure and search of bodily fluids for testing. If there are other individuals who witnessed the behavior that led to the supervisor's suspicions, their accounts of their observations should be solicited as close to the event as possible. It would be wise to ask witnesses to fill out a checklist of their own, and/or write a statement about what they observed, heard, or smelled.[71]

Technology and social media: Focus on clarity and compliance

Many of the cases struck down by the Courts and the National Labor Relations Board were criticized as being overly broad.[72] The NLRB has published three separate memorandums discussing their findings, in April 2011, January 2012 and May 2012.[73] Key takeaways from the memos are this:

- Policies cannot be so broad as to cause an employee to reasonably presume that protected behavior under the National Labor Relations Act, such as the discussion of working conditions and wages is prohibited. The NLRB has found such overly broad policies have a "chilling effect.[74]"

- For expressions on social media to be protected, there "must be evidence that it is a concerted activity related to the terms and conditions related to employment." This would include comments about wages, working conditions, certain employer liabilities, union activities, etc.[75]

- Employee complaints are not protected activity under Section 7.[76]

- A disclaimer is not a cure-all for an overly broad policy.[77]

- Employers can legally prohibit employees from posting anything in the name of the employer, or in a manner which could reasonably be attributed to the employer.[78]

Two factors weighed in making decisions are the extent to which 1) employees may engage in protected concerted activity using social media and 2) employer policies may be so overly broad as to chill Section 7 rights.[79] The Acting General Counsel for the NLRB publicized what it called a "model policy." [80] It would be in the City's best interest to follow the language in the model as closely as possible. A proposed social media policy is attached (Appendix H).

Earlier in this paper, it was mentioned that there have been disturbing instances of bullying and harassment taking place through technology and over social media. It was not possible to include the many examples in the scope of this paper; however, suffice it to say that the NLRB has upheld policy language that prohibits harassment, bullying and discrimination through these channels, even outside of regular work hours and on privately owned devices.[81] The City is legally able to and should adopt language prohibiting these behaviors. However, this language would be best placed in a policy prohibiting harassment and workplace bullying in general, so as to keep it in proper context, and ensure it is not misconstrued to prohibit protected Section 7 activities. A sample harassment and workplace bullying policy, modeled after Macomb County's policy, is attached as Appendix I.

Finally, to protect their rights as employers and give adequate notice to employees of their privacy rights pursuant to the 9th Amendment, Roseville should establish a policy regarding the status of privacy on employer owned devices. Many public entities have done so in the form of a disclaimer, which is a brief declaration of the privacy expectations on employer owned devices.[82] A proposed privacy disclaimer is attached (Appendix J).

Restructure Management

The pace of change in employment law is dizzying, even without the added challenges of marijuana as medicine, or the advances surrounding technology and social media. Many organizations the size of Roseville have dedicated Human Resources managers. Roseville does not. Currently, personnel management is tasked to the City Manager. While this may have worked in the City's early days, it is an outdated model that no longer serves the City well. The City Manager has many challenges to address - under the current model, personnel management is necessarily relegated to maintaining the 'status quo," as opposed to taking a proactive stance. Therefore, the City should divest the City Manager of his personnel management responsibilities, and create the position of Assistant City Manager. An Assistant City Manager would be able to support the City Manager in his/her many other duties, but his primary focus should be personnel management. St. Clair Shores, a neighboring community, has an organizational arrangement with exactly that model. This frees up the City Manager to perform his functions fully, and also provides the City with someone who is able to focus on maintaining compliance, and being proactive, with personnel and policy issues.

As part of his/her HR responsibilities, the Assistant City Manager would be tasked with maintaining compliance with employment law and updating employees about changes to existing policies. The City Manager should be responsible for overseeing the creation and development of a Cite of Roseville human resources website. The City should have all of their contracts and policies on line. This would make them available to supervisors and employees for practical purposes, and contribute to the City's reputation of being open and transparent by making these public documents easy for citizens to access. Publishing the policies online also allows the City to update them and provide them to employees as needed. This is important, because face to face meetings for every update would not be prudent or practical.

There are companies that provide e-learning services to employers, and these services will create training slides. Macomb County has engaged an e-learning service and tasked that entity with creating training slides related to all their policies. While that could be considered a modern and proactive approach, it may not be a good investment for the City of Roseville at this time. There are two issues to consider. The first is that it takes time to develop the training slides, and it is possible that policies could be updated while the slides are still in development. There is a lag, which could easily result in employees receiving outdated information. Secondly, given the demographics of Roseville's workforce, e-learning mandates might be met with resistance. Employees might find the process frustrating and cumbersome. Older employees who are not comfortable with technology

may feel left out of the process and adopt a negative attitude that interferes with implementation.[83] E-learning that might be worth looking into, once there is a dedicated Human Resources manager who can take the time to assess the financial investment necessary, and to weigh that against the needs of the City and traits of the current workforce.

Conclusion

Roseville has managed to avoid emergency management, and implemented many strategies to regain its footing. It has many exciting developments planned for the future. It was the first city in the state to be certified as a "Redevelopment Ready Community," which smooths the path for development within the City, and helps reduce the amount of "red tape" developers have to cut through in order to invest in the City's redevelopment.[84] In 2016, they formed a Downtown Development Authority, which is actively wooing small businesses to the area. All of these efforts could be undermined or undone by one untimely lawsuit from a disgruntled employee or former employee.

Maintaining the "status quo" when it comes to personnel management is not sustainable. Human resources as an afterthought is something the City cannot afford. Implementing and maintaining a comprehensive personnel strategy, which by necessity includes solid employee policies, is essential. In order for the city to fulfill its goals of being reinvented and rediscovered, Roseville's "city manager as personnel manager" practice must be updated to reflect the changes that have occurred since the City Charter was written. Human resources represents a significant investment of the City's revenues. Successful reinvention requires that human resources management be a strategic partner in the growth of the City. It's time for Roseville leadership to give human resources a seat at the table.

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Appendix A

List of Collective Bargaining Agreements and Policies Considered For Analysis

- City of Eastpointe Administrative Rules and Regulations
- Collective Bargaining Agreement between the Charter Township of Shelby and Shelby Township Municipal Employee's Unit UAW Local 1777
- Collective Bargaining Agreement City of Fraser & Teamsters Local 214 Clerical Unit
- Agreement Between Charter Township of Clinton and International Union, United Automobile, Aerospace & Agricultural Implement Workers of America – UAW
    - UAW Local 412 Unit 52 – Technical Office Professionals
- Labor Agreement Between Genesee County (As Defined) and Local 496, Chapter 00 Affiliated with Council #25 of the AFL-CIO
- Agreement Between the St. Clair County Board of Commissioners and the St. Clair County Public Service Employees Local 1089 AFSCME, AFL-CIO
- Agreement Between the County of Kent and United Auto Workers Local 2600
- Agreement Between County of Macomb and American Federation of State, County and Municipal Employees Local 411
- Macomb County Human Resources Policies

Appendix B

List of Cases Considered for Analysis and Recommendations

Marijuana as Medicine

- Gonzales v. Raich 545 U.S. 1, 125 S.Ct. 2195 162 L.Ed.2d. 1 (2005)
- Washburn v. Columbia Forest Products, Incorporated, 135=4 P.3d 161, 340 Or. 469 (OR 2006)
- Emerald Steel Fabrications v. Bureau of Labor & Industry (BOLI), 348 Or. 159,230 P.3d 518 (OR 2010)
- Roe v. TeleTech Customer Care Management, 171 Wash.2d 736, 257 P.3d 586 (Wash.2011)
- Ross v. RagingWire Telecommunications, Incorporated. 174 P.3d 200, 70 Cal. Rptr.3d 382, 42 Cal.4th 920 (Cal.2008)
- Casias v. Walmart Stores Inc. 695 F. 3d428 – Court of Appeals, 6th Circuit (2012)

Technology and Social Media

- Bland v. Roberts No 12-671, 2013 WL 5228033 (4th Circuit Federal Court of Appeals 2013)
- City of Ontario v. Quon, 130 S. Ct. 2619 (Supreme Court of the United States, 2010)
- Mattingly v. Mulligan, 4:11CV00215 JLH (U.S. Eastern District Court, AK 2011)
- O'Connor v. Ortega, 480 U.S. 709, (United States Supreme Court 1987)
- Pickering v. Board of Education, 391 U.S. 536, 568, 88 (S. Ct. 1968)
- Simonetti v. Delta Airlines, Inc. 1:05-CV-2321, 2005 WL 2407621 (N.D. GA September 7, 2005)

Appendix C

Survey Questions

1. If you had a "policy wish list," what would it include?

2. Policy violations can lead to discipline, which can lead to grievances/arbitrations. Tell me about a discipline/policy matter that went to arbitration, and the arbitrator interpreted the policy differently than you expected. What changes were made to your policy (if any) as a result of the arbitrator's interpretation?

3. What makes a policy troublesome or difficult to enforce?

4. What do you think about when you are trying to construct a policy statement? Do you favor detailed, specific policy language, or do you think a certain level of ambiguity is beneficial? Why?

5. What new challenges has technology presented to your organization? How does your internet/social media policy address them?

6. Which of your policies (if any) have been impacted by the advancement of LGBT rights? What (if any) future policy changes do you think may be required because of this emerging issue?

7. Medicinal marijuana has been legalized in some states, but not at the federal level. How do your drug and alcohol policies address the "Marijuana as Medicine" issues? If they don't, how do you anticipate addressing this issue?

8. If a new human resources director was tasked with writing or re-writing a policy manual, what advice would you give him/her? What (if any) are the universal principles or themes that should "lead the way?" What should be avoided?

9. What value do you place on "stakeholder buy-in?" How do you involve department heads/directors?

10. How would you implement new policies? Why do you favor that implementation method?

11. When it comes to implementation, how important is employee "engagement?" How do you encourage that?

Appendix D – Quest Diagnostics Drug Testing Solutions

Drug Testing Solutions At-A-Glance

Quest Diagnostics™

	Lab-Based Urine	Instant Urine	Oral Fluid	Hair
Collection and Testing Procedure	Donor provides minimum 30 mL urine (45 mL for a DOT collection) in the privacy of a restroom.	Donor provides minimum 30 mL urine in privacy of restroom.	Donor places collection device in mouth, in full view of collector. Oral-Eze® oral fluid collection system collects 1.0 mL.	Recommend 100-120 strands of hair. This is approximately the diameter of a pencil.
	Collector pours specimen into bottle.	Depends on whether test device is integrated into collection cup. Non-negative test specimens and CCF should be sent to the lab for confirmation. Negative specimens are discarded, results reported, and CCF filed.	When the indicator window on the Oral-Eze handle turns blue, the collection device is removed from the mouth.	Collector folds foil around hair specimen and then places specimen in the envelope.
	Bottle sealed with tamper-evident tape.	Specimen sealed with tamper-evident tape.	The collection pad is detached from the handle and inserted into the transport tube. The cap is pressed until completely closed and the tube is sealed with tamper-evident tape.	Hair envelope sealed with tamper-evident tape.
	Entire Custody and Control Form (CCF) completed.	Entire Custody and Control Form (CCF) completed.	Entire Custody and Control Form (CCF) completed.	Entire Custody and Control Form (CCF) completed.
	Specimen and CCF sent to lab.	Instant test interpreted. Non-negative test specimen and CCF sent to lab for confirmation. Negative specimens are discarded.	Specimen and CCF sent to lab.	Specimen and CCF sent to lab.
Collection Time	15–20 minutes	15–25 minutes	3–10 minutes	5–10 minutes
Specimen Validity Testing	Testing for adulteration /substitution routinely performed.	Depends on device. Adulterant testing may not be as extensive as in-lab test.	Observed collection.	Observed collection.
Common Cut Off Levels (Screen/Confirm) for Illicit Drugs* *				
Amphetamines* **	500* / 250* ng /mL	1000 / 500 ng /mL	150 /40 ng /mL	300 / 300 pg /mg
Methamphetamines	-	1000 / 500 ng /mL	120 /40 ng /mL	-
Cocaine/Metabolite	150* / 100* ng /mL	300 / 150 ng /mL	15 /6 ng /mL	300 / 300 pg /mg
Opiates	2000* / 2000* ng /mL	2000* / 2000* ng /mL	30 / 30 ng /mL (6-AM is confirmed at 3)	500 / 500 pg /mg
PCP	25* / 25* ng /mL	25 / 25 ng /mL	3 / 1.5 ng /mL	300 / 300 pg /mg
THC/Metabolite	50* / 15* ng /mL	50 / 15 ng /mL	3 / 1.5 ng /mL	1 / 0.01 pg /mg
Detection Window				
Amphetamines	24–72 hours	24–72 hours	24 – 36 hours	1– 3 months
Cocaine/Metabolite	24–72 hours	24–72 hours	24 – 36 hours	1– 3 months
Opiates	24–72 hours	24–72 hours	24 – 36 hours	1– 3 months
PCP	Occasional use: 1 to 5 days; Habitual /chronic use: up to 30 days	Occasional use: 1 to 5 days; Habitual /chronic use: up to 30 days	24 – 36 hours	1– 3 months
THC/Metabolite	Infrequent use: 1 to 3 days; Habitual /chronic use: up to 30 days	Infrequent use: 1 to 3 days; Habitual /chronic use: up to 30 days	<24 hours	1– 3 months
Average Time from Specimen Collection to Results Report				
Negative	<24 hours	< 1 hour	<24 hours	<24 hours
Positive	24–72 hours	24–72 hours	36 – 96 hours	48– 96 hours

* Fedrally-regulated | * * Other drugs and cut off levels are available for non-federally-regulated testing | * * * For lab-based urine and hair testing, includes amphetamine and methamphetamine

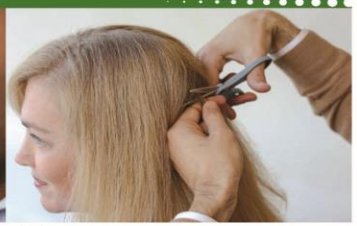
Appendix D – Quest Diagnostics Drug Testing Solutions

Drug Testing Solutions At-A-Glance

Quest Diagnostics

Quest Diagnostics Advantages

- We offer a broad range of drug screening options, allowing you to combine test types and to customize your program.
- Our proven track record speaks for itself. We stand behind the accuracy and quality of every result that leaves our laboratory.
- Our laboratory certifications and accreditations lead the industry and include SAMHSA (urine), CAP-FDT (oral fluid, urine and hair) and New York State (oral fluid, urine and hair) where applicable.
- We pride ourselves in forming partnerships with our clients. Our goals are to answer your questions, to ensure your program runs smoothly and to show that we're there when you need us.



	Lab-Based Urine	Instant Urine	Oral Fluid	Hair
Reasons for Testing	Pre-Employment, Random, Reasonable Suspicion, Post-Accident, Return-to-Duty, Department of Transportation.	Pre-Employment, Random, Reasonable Suspicion, Post-Accident, Return-to-Duty.	Pre-Employment, Random, Reasonable Suspicion, Post-Accident, Return-to-Duty.	Pre-Employment, Random, Return-to-Duty.
Specimen Type Benefits	The most commonly utilized specimen type — applicable for all testing reasons.	Near instant results reduce donor downtime and enable a fast, accurate decision.	On-site, observed collections reduce donor downtime and improve productivity.	Longest detection window typically returns a greater number of positive results, depending on the drug.
	Hundreds of different panels, combinations of drugs and cut off levels are available.	Express Results™ *Online* screens for up to 11 different drugs/drug combinations with negative results available within minutes from time of collection.	Observed collections reduce the opportunity for tampering.	Observed collections reduce the opportunity for tampering.
Quest Diagnostics Specimen Type Advantages	Collections performed at thousands of company-owned and contracted collection sites across the U.S. and around the world.	Collections performed at thousands of collection sites. Presumptive positive results are confirmed in the laboratory.	The Oral-Eze® built-in indicator window helps to ensure that a sufficient quantity of oral fluid has been collected.	Collections performed at more than a thousand company-owned and contracted collection sites across the U.S.
	Testing performed at one of our four redundant laboratories across the U.S.	Six, ten and twelve panel Express Results cups are available.	Fast, non-invasive collections with no salty or citric taste improve the donor experience.	Supplies are stocked at our collection sites reducing employer cost, time and hassle.

Appendix E

Proposed Subjects for the City of Roseville's Human Resources Policies

Terms and Conditions of Employment

Introduction and Scope

Purpose and Intent

Employee Information and Records

Confidential Information

Disciplinary Action

Disciplinary Appeal Process

Driver Safety

Drug Free Workplace – attached (Appendix F)

Drug and Alcohol Testing Policy – attached (Appendix K)

Employment Relationship

Employee Defined

Equal Employment Opportunity

Harassment and Workplace Bullying attached (Appendix I)

HIPAA

Injuries

Law Enforcement and Investigative Contacts

Layoff and Recall

Privacy – attached (Appendix J)

Probationary Period

Promotions

Qualifications, Licensures, Certifications and Credentials

Residency

Social Media – attached (Appendix H)

Temporary Employment

Workplace Violence

COMPENSATION AND BENEFITS

Increments

Insurance Benefits

Health Savings Account

Longevity

Mileage Reimbursement

Overtime

Retirement Benefits

Shift Premium Pay

Temporary Assignment

Tuition Reimbursement

Workers Compensation

TIME AND ATTENDANCE

Attendance

Funeral Leave

Jury Duty

Leave of Absence

Military Leave

Personal Leave

Paid Holidays

Personal Leave

Regular Work Schedule and Breaks

Sick Leave

Vacation

Appendix F – Proposed Drug Free Work Place Policy

As recipients of Federal grant funds, the City of Roseville is required by law to comply with the Federal Drug Free Workplace Act of 1988. Roseville fully supports the purpose of the Act, which is to maintain a safe and drug-free workplace. Therefore, you are hereby notified that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance in the work place is strictly prohibited. **This includes the abuse or misuse of prescription drugs.**

Employees may not manufacture, distribute, dispense, possess or use any illegal and/or non-prescribed controlled substances. These substances are listed in Schedules I through V of the United States Controlled Substances Act. Examples include but are not limited to:

Heroin	Morphine	Marijuana*	Cocaine		Crack
Tranquilizers	Ecstasy	LSD	Peyote	Meth	Codeine
Stimulants	Depressants				

The work place is defined as any site where work for or on behalf of the City of Roseville is being performed.

Compliance with this policy is a condition of employment. Failure to abide by this policy could result in discipline, up to and including termination of employment. For information about the consequences of violating this policy, please refer to the Drug and Alcohol Testing policy.

Any employees convicted of criminal drug statute must notify their supervisor, the Assistant City Manager or the City Manager **within five (5) days** of such conviction.

*Possession of a Michigan Marihuana Registry Identification Card pursuant to the Michigan Medical Marihuana Program does ***not*** exempt employees from this policy. Marijuana is a controlled substance listed on Schedule I of the Federal Controlled Substances Act. Therefore, the City of Roseville cannot accommodate the use of marijuana under any circumstances.

Appendix G

Reasonable Suspicion/Impairment Checklist

Supervisors: If you suspect an employee is under the influence of drugs or alcohol while on duty, contact the City Manager or Assistant City Manager **immediately**, and complete this form to document the reasons for your suspicion.

Employee Name: _____

Classification: _____

Please describe the observations leading to your suspicions:

MINDSET

- ☐ Bizarre or unusual ideations
- ☐ Anxiety
- ☐ Irritability
- ☐ Hallucinations
- ☐ Paranoid
- ☐ Delusional
- ☐ Depressed
- ☐ Preoccupied/Distracted
- ☐ Nervous
- ☐ Confused/forgetful

EYES

- ☐ Watery
- ☐ Glassy
- ☐ Droopy
- ☐ Dilated Pupils
- ☐ Pinpoint Pupils
- ☐ Bloodshot
- ☐ Closed (can't keep open)
- ☐ Avoiding eye contact

MOVEMENTS

- ☐ Jerky
- ☐ Slow
- ☐ Lack of coordination
- ☐ Fumbling
- ☐ Shaking/trembling
- ☐ Twitching
- ☐ Fidgeting

DEMEANOR

- ☐ Aggressive
- ☐ Combative/hostile
- ☐ Sleepy/drowsy
- ☐ Crying
- ☐ Talkative
- ☐ Excited
- ☐ Sarcastic
- ☐ Easily startled

SPEECH

- ☐ Shouting/loud outbursts
- ☐ Silent/refusing to talk
- ☐ Slow
- ☐ Slurred
- ☐ Slobbering/drooling
- ☐ Incoherent
- ☐ Shaky voice
- ☐ Profane/using profanity
- ☐ Whispering
- ☐ Delayed

APPEARANCE

- ☐ Dirty
- ☐ Odorous
- ☐ Partially dressed
- ☐ Sloppy
- ☐ Urine or feces on clothing
- ☐ Unkempt

BREATH

- ☐ Strong odor of alcohol
- ☐ Faint odor of alcohol
- ☐ Breath spray, gum, mouth wash

STANDING

- ☐ Swaying
- ☐ Rigid
- ☐ Unusually wide stance
- ☐ Sagging at the knees
- ☐ Leaning
- ☐ Unable to stand

WALKING

- ☐ Staggering
- ☐ Holding on
- ☐ Unable to walk
- ☐ Stumbling/falling
- ☐ Unsteady

ACTIONS/BEHAVIORS

- ☐ Threatening
- ☐ Boisterous
- ☐ Fighting
- ☐ Dizzy/fainting
- ☐ Excessive eating/snacking
- ☐ Argumentative
- ☐ Temper outburst
- ☐ Disappearance from work area

BODY

- ☐ Sweaty/sweating
- ☐ Nail biting
- ☐ Frequent trips to restroom
- ☐ Fatigued appearance
- ☐ Headaches
- ☐ Cold hands/sweaty hands
- ☐ Stomachaches
- ☐ Nausea/vomiting
- ☐ Smell of Marijuana
- ☐ Odorous

FACIAL

- ☐ Pale
- ☐ Sweaty
- ☐ Flushed

ADDITIONAL COMMENTS: _____

SURROUNDINGS/WITNESSES: _____

INSTRUCTIONS GIVEN/ACTIONS TAKEN:

Supervisor Signature: _____

Supervisor Name (print): _____

Date Submitted: _____ Time Submitted: _____ ☐ a.m. ☐ p.m.

Appendix H

Proposed Social Media Policy for the City of Roseville

The City of Roseville understands that social media can be a fun and rewarding way to share your life and opinions with family, friends, and co-workers around the world. However, use of social media also presents certain risks and carries with it certain responsibilities. With that in mind, the City of Roseville has developed this Social Media Policy, which applies to all City of Roseville employees.

- **Definition:** Social Media includes all means of communicating or posting information or content of any sort on the internet, including to your own or someone else's web log or blog, journal or diary, personal web site, social networking or affinity web site, web bulletin board or a chat room, whether or not affiliated with the City of Roseville, as well as any other form of electronic communications.

- **Know and Follow the Rules:** Carefully review the City of Roseville's Human Resources Policies, Statement of Ethics Policy, and the Workplace Harassment and Bullying Policies. Ultimately, you are responsible for what you post online. You should avoid using statements, photographs, video or audio that reasonably could be viewed as malicious, obscene threatening, or intimidating, that disparage customers, coworkers, suppliers or contractors, or that might constitute harassment or bullying. Inappropriate postings that may include discriminatory remarks, harassment, and threats of violence, or similar inappropriate or unlawful conduct will not be tolerated and may subject you to disciplinary action, up to and including discharge. Examples of such posts might include posts meant to intentionally harm someone's reputation, or posts that could contribute to a hostile work environment on the basis of race, sex, disability, religion, or any other status protected by law or company policy.

- **Accuracy:** Be honest and accurate when posting information or news. Never post any information or rumors that you know to be false about the City of Roseville, fellow employees, customers, contractors, volunteers or others working on behalf of the City of Roseville.

- **Speak for yourself:** Employees should not represent themselves as a spokesperson for the City of Roseville. If the City of Roseville is a subject of the content you are creating, be clear and open about the fact that you are an employee of the City, and make it clear that your views do not represent those of the City of Roseville. If you do publish a blog or post online related to work, make it clear that you are not speaking on behalf of the City.

- **Social Media at Work:** Employees are not to use social media while on work time or on equipment provided by the City of Roseville, unless it is work-related as authorized by your supervisor or consistent with the policies of the City of Roseville. Do not use your City of Roseville email address to register on social networks, blogs, or other online tools utilized for personal use.

- **Retaliation:** The City of Roseville prohibits taking negative action against any employee for reporting a possible violation of this policy or for cooperating in an investigation. Any employee who retaliates against another employee for reporting a possible violation of this policy or for cooperating in an investigation will be subject to disciplinary action, up to and including, discharge.

- **Media Contacts:** Employees should not speak to the media on behalf of the City of Roseville without contacting the City Manager. All media inquiries should be directed to the City Manager.

Appendix I - Proposed Sexual Harassment and Workplace Bullying Policy

Roseville is committed to a workplace free from sexual harassment, workplace bullying and retaliation. All employees should expect to be treated fairly and respectfully by supervisors, co-workers, contractors, vendors, elected officials and other individuals who conduct official business with the City.

SEXUAL HARASSMENT:

Sexual harassment is a form of sexual discrimination and is a violation of Title VII of the Civil Rights Act of 1964. All employees are protected from sexual discrimination under this Policy, as well as Federal and State law. Section1604.11 of the Code for Federal Regulations states that "Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

1. Submission to the conduct is either an explicit or implicit term or condition of employment; or
2. Submission to or rejection of the conduct is used as the basis for employment decisions affecting the person who did the submitting or rejecting; or
3. The conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive environment."

WORKPLACE BULLYING:

Workplace bullying is the repeated, unreasonable actions or comments of an individuals (or a group) toward an employee or group of employees, which are intended to demean, degrade, humiliate or undermine the person(s) whom the actions or comments are directed toward. Examples of workplace bullying include being shouted or sworn at; unwarranted and invalid criticism; being isolated/excluded; unjustified blame; being targeted, or being treated differently than other, similarly situated co-workers.

CYBER BULLYING:

Harassment, bullying, discrimination, or retaliation that would not be permissible in the workplace is not permissible between employees online, even if it is done after hours, away from the worksite and by using personal devices.

COMPLAINT PROCEDURE:

Employees who feel they have been victims of harassment, workplace or cyber bullying, or retaliation from supervisors, co-workers, contractors, vendors, elected officials, or other individuals who conduct official business with the City should bring such matters to the attention of their supervisor, Department Head, Assistant City Manager or City Manager. All such complaints will be treated seriously.

INVESTIGATIONS AND RETALIATION:

All employees are expected to cooperate fully with any investigation of a reported violation. Retaliation against an employee bringing a complaint to the attention of the City is illegal and is strictly prohibited.

FALSE ALLEGATIONS:

False allegations of sexual harassment and workplace bullying can have a serious effect on innocent individuals. All employees are expected to act in good faith and with due diligence when it comes to reporting suspected sexual harassment or bullying.

Appendix J

Proposed Privacy Disclaimer for the City of Roseville

Employees should have no expectation of privacy in any message, file, image, data created, sent, retrieved, or posted using the City's equipment, servers, or drives. The City has the right to monitor any and all aspects of electronic communications and social media usage on or through the City's equipment, servers or drives. Such monitoring may occur at any time, without notice, and without the user's permission. Equipment includes but is not limited to desktop computers, laptops, tablets, pagers, cell phones, smart phones, etc.

The City is authorized by law to conduct searches of City owned property, or personal effects placed in City owned property, under Reasonable Suspicion, provided:

- The search serves a non-investigatory purpose, or;

- The search is carried out as a component of an investigation into an employee's work-related misconduct, provided that 1) the search is not unreasonably intrusive and 2) the search is commensurate with the scope of investigatory needs.

When possible and practical, the employee whose property is to be searched will be present during such search. If the employee is represented by a collective bargaining agreement, a union steward may be present, upon the request of the employee.

Appendix K

Drug and Alcohol Testing Policy

The City of Roseville is committed to a safe, productive and efficient workplace free from the effects of drug and alcohol impairment. Consequently, under certain circumstances, it may be necessary to test employees for the presence of drugs or alcohol in their system.

For employees not in safety sensitive positions, or for employees who are not in classifications regulated by the Department of Transportation, or who are not governed by other, special state or federal regulations, drug and alcohol testing will be administered as follows:

In the presence of **reasonable suspicion**: An employee shall submit to a drug and alcohol test if there is reasonable suspicion that the employee in question is under the influence, impaired, or otherwise affected by the use of an unauthorized prescription or non-prescription drug, illegal drug, or controlled substance;

OR

Post-accident: An employee involved in an on-the-job accident/injury requiring a clinic or emergency room visit will be subject to drug and alcohol testing immediately following the accident/injury. In cases where the employee is taken to the Emergency Room, the employee must follow-up with the County's clinic as soon as the employee is able.

Certain employees who are in safety sensitive positions, who are in classifications regulated by the Department of Transportation, or who are governed by other, special state or federal regulations, will be subject to those rules/regulations regarding the use of drugs and alcohol, and the City will administer drug and alcohol testing in accordance with those rules/regulations. In the event any provision of this policy is less strict than the alternate set of rules/regulations, the special rules/regulations shall govern for these employees.

Refusal to submit to the drug and alcohol test will be treated as a positive test result.

When an employee is directed to submit to a drug and alcohol test, the City will notify the employee of the results as soon as possible after receiving the results from the clinic and/or laboratory.

Test Results

- A positive drug test will be a drug and/or alcohol test that indicates the employee had a positive marker for one of the drugs screened and/or a blood alcohol level of .04 or greater.

- The City acknowledges that certain substances, when lawfully prescribed, may result in a "positive" result. In the event an employee tests "positive" for a controlled substance, the result will be reviewed by a Medical Review Officer (MRO) before being reported to the City. The MRO will attempt to contact the employee up to three times to discuss the results, and the employee will be given an opportunity to provide evidence of a valid prescription for the controlled substance. Failure or refusal to cooperate with the MRO will be treated as a positive drug test result.

- Employees are on notice that possession of a Michigan Marihuana Registry Identification Card pursuant to the Michigan Medical Marihuana Program does ***not*** exempt employees from this policy.

The City is authorized by law to conduct searches of City owned property, or personal effects placed in City owned property, if there is reasonable suspicion that illegal drugs, controlled substances, alcohol and/or unauthorized prescription drugs will be found in the property searched. The search is considered lawful when:

- The search serves a non-investigatory purpose, or;

- The search is carried out as a component of an investigation into an employee's work-related misconduct, provided that 1) the search is not unreasonably intrusive and 2) the search is commensurate with the scope of investigatory needs.

When possible and practical, the employee whose property is to be searched will be present during such search. If the employee is represented by a collective bargaining agreement, a union steward may be present, upon the request of the employee.

Voluntary Disclosure

The City of Roseville supports employees who voluntarily seek help for drug or alcohol dependency. Therefore, an employee who voluntarily discloses a problem with controlled substances or alcohol will not be disciplined for such disclosure alone, if and only if, the problem is disclosed **before** the occurrence of an event that gives rise to reasonable suspicion that the employee violated this Policy.

An employee who voluntarily discloses he or she is drug or alcohol dependent will be granted an immediate leave of absence **to obtain medical treatment or to participate in a rehabilitation program**. It is the employee's responsibility to seek help and comply with his/her treatment program. The employee will be removed from the duties of his/her position until he/she submits to and passes a follow-up drug and/or alcohol test. Participation in a drug or alcohol treatment or rehabilitation program does not exempt employees from meeting satisfactory performance expectations. Satisfactory job performance is still required, and failure to meet satisfactory job performance expectations will result in discipline. Follow-up, random drug and/or alcohol testing as a condition of returning to work and maintaining employment may be required.

Violations

Disciplinary action for violations of this Policy shall be as follows:

1. Employees in positions regulated by the Department of Transportation will be terminated immediately.

2. For all other employees:

   a) A first offense will result in a ten (10) work day disciplinary suspension coupled with a mandatory referral to the Employee Assistance Center and future random drug/alcohol testing.

   b) A second offense will result in termination of employment and shall not be subject to the disciplinary action appeal process.