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Life After Act 10 – Policies, Procedures and Handbooks and Effective Management Techniques

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Topics to be Addressed

- Changes to the Collective Bargaining Law (MERA)
- Grievance Procedure or Civil Service Rules
- Reasons to Develop an Employee Handbook
- Sample Policies for Employee Handbooks
- Managing Employees Without Union Contracts
- Supervisory Discretion and Authority



CHANGES TO THE COLLECTIVE BARGAINING LAW (MERA)

Subjects of Bargaining

- Once the current collective bargaining agreement expires, the only issue that can be bargained is the general wage increase.
- Overtime, premium pay, merit pay, salary schedules and automatic wage progressions are not considered wages and cannot be bargained.
- The new law links the wage increase to the change in the Consumer Price Index-All Urban Consumers (CPI-U) over the preceding 12 months.



Subjects of Bargaining

- Act 32 amends Act 10 to state, if the CPI is flat or decreases, employees receive a wage freeze.
- Act 32 clarifies that only represented employees are subject to a wage increase linked to the CPI.
- The Budget Repair Bill does not identify what date to use for calculating the increase in the CPI-U.
- An employer may only provide a wage increase that exceeds the CPI-U if it passes a public referendum, with procedures set forth in the statute.

Other Terms of the Current Collective Bargaining Agreement

- All other items currently included in the collective bargaining agreement are prohibited subjects of bargaining.
- That means that a union cannot propose, and the employer cannot agree, to bargain over these issues any longer.
- In application, this means that when the current collective bargaining agreement has expired, then the employer basically can start over, and has the discretion to establish the terms and conditions which were previously included in contract language.

Application of The New Law

- Does not apply to represented public safety employees – police officers, firefighters and deputy sheriffs.
- Applies to civilian employees in a police or fire department (clerks, dispatchers, etc.).
- Does not apply to represented transit employees.

Health Insurance Carrier and Plan Design

Once the collective bargaining agreement has expired, an employer has the sole authority to decide:

- Carrier change
- Coverage and network options
- Co-pay, co-insurance and drug card changes
- Maximum out-of-pocket changes
- Funding options such as HSAs and HRAs

Bargaining Changes Under Act 32

- For public safety employees, the design and selection of health insurance plans is a prohibited subject of bargaining, as is the impact of the plan design and carrier on wages, hours and working conditions.
- Command staff are “aligned” with their subordinates on health insurance benefits.
- Interest arbitration factors are changed for public safety employees – greater weight given to local economic conditions.





GRIEVANCE PROCEDURE OR CIVIL SERVICE RULES

Grievance Procedure or Civil Service Rules

- Every employer must utilize existing civil service rules or create a grievance procedure.
- Issues that must be subject to review:
 - Employee discipline
 - Employee termination
 - Workplace safety
- An employer must adopt a grievance procedure on or before October 1, 2011.

Grievance Procedure or Civil Service Rules

At a minimum, the grievance procedure must include the following rights:

- A written document specifying the process that a grievant and the employer must follow;
- A hearing before an impartial hearing officer; and
- An appeal process in which the highest level of review is the governing body of the government unit.



Grievance Procedure or Civil Service Rules

- This legal requirement applies to public employers of any size.
- This legal requirement applies to all employees – union and non-union.
- This legal requirement applies to all types of employees – no exception for temporary, casual, seasonal or part-time employees.
- Appointed officials, who serve “at pleasure” of the appointing body, are also covered by the grievance procedure.

Grievance Procedure or Civil Service Rules

- The only exception to this requirement is public safety employees and transit employees who are covered by the grievance procedure in the collective bargaining agreement, but this needs to be addressed in your policy.
- Employees covered under a current collective bargaining agreement won't be covered until the contract expires, or is terminated, extended, modified or renewed.
- Important to link your grievance procedure to your discipline/code of conduct policy.



Employee Terminations

- What type of employee terminations are covered?
 - Rule violations
 - Poor performance
 - Other acts of misconduct
- What type of terminations should be excluded?
 - Voluntary quits
 - Layoff or failure to return from work when recalled
 - Retirement
 - Job abandonment or failure to report to work
 - Inability to perform job due to physical or medical limitations
 - Loss of license

Employee Discipline

- What type of employee discipline is covered?
 - Appears to include all forms of progressive discipline, including:
 - Oral warnings
 - Written warnings
 - Suspensions without pay
 - Demotions

Employee Discipline

- What type of “discipline” should be excluded?
 - Oral or written evaluations.
 - Counseling, employee meetings or other types of job coaching.
 - Placing employee on paid administrative leave pending an internal investigation.
 - Change in job assignments.

Possible Legislative Changes

- League of Wisconsin Municipalities has proposed:
 - Defining “termination to exclude layoffs, transfers, demotions, lack of qualifications, death and end of employment as a temporary, contract or part-time employee.”
 - Defining “discipline” to exclude oral or written warnings, voluntary terminations, layoffs, performance evaluations, documentation of employee conduct placed in personnel files, change in assignment or location.

End of Just Cause?

- What standard should an employer apply?
 - Just cause? Required in most CBAs to discipline or discharge an employee. Not a legal requirement.
 - Arbitrary and capricious? A lower burden of proof, simply requires the employer to demonstrate a reasonable basis for decision.

Workplace Safety

- No definition of workplace safety was included in the law. Employers must define in the grievance procedure.
- Two possible definitions:
 - Tie into violations of state and federal laws and regulations on health and safety.
 - Use a definition offered during the legislative process:

“conditions of employment affecting an employee’s physical health or safety, the safe operation of workplace equipment and tools, safety of the physical work environment, personal protective equipment, workplace violence, and training related to same.”

Grievance Procedure

- How many steps in the grievance procedure?
 - Supervisor can be the place to start for informal resolution of the problem.
 - Actual grievance can be filed with the supervisor, Human Resources, department head, administrator, or elected official, depending upon the size of the workforce.
 - Can be either a one or multiple step process prior to reaching the impartial hearing officer level.

What Should Be Included in the Grievance?

- A grievance form should be developed, which should include:
 - Name of the grievant
 - Summary of the relevant facts
 - Nature of any rule or policy violations
 - When event(s) occurred
 - Remedy requested
 - Any efforts to informally resolve grievance
 - Not – “What did management do wrong?”

Grievance Procedure

- Establish timelines for processing grievances through each step, including whether in work or calendar days.
- Lay out the steps of the grievance procedure. Encourage resolution at the lowest possible level.
- Clearly state the consequences of failure to pursue the grievance to the next step.
- Hearing procedure before the Hearing Officer.
- Whether the grievant is entitled to representation in the grievance procedure.

Impartial Hearing Officer

- Who should be the impartial hearing officer? Only requirement is that the person cannot have a direct interest in the case. No other statutory guidance except must be “impartial.”
- Safest course is to use an outside independent person who isn’t employed by the municipality.
 - Examples: local lawyer, retired human resource director, human resource director from a neighboring municipality, labor arbitrator

Conduct of Hearing Before Hearing Officer

- Informal or formal hearing?
- Tape recording or court reporter?
- Who will present the case for the municipality?
- Who will be allowed to present the case for the employee?
- Provide for questioning of all witnesses by both sides.
- Direction to the hearing officer regarding the written decision.



Appeal of Hearing Officer's Decision

- Appeal is to the governing body of the local government unit.
- The governing body should review the record before the hearing officer and not take any additional testimony or evidence.
- Act as a court of appeals and not the trial court.
- The statute does not appear to give the governing body the authority to delegate the function to a personnel committee or other subgroup.



Can the Governing Body's Decision Be Appealed?

- Statute does not provide for an appeal beyond the governing body.
- Possible that an appeal will be permitted under Chapter 227, Wisconsin Statutes.
- This would allow for a limited review by a court, without a jury and confined to the record from the grievance procedure.



EMPLOYEE HANDBOOKS

Developing An Employee Handbook

- Once the CBA expires, how will the municipality establish wages, hours and conditions of employment?
- Most municipalities have some policies in place and perhaps a handbook for nonrepresented employees.
- Now is the time to develop an employee handbook that covers the benefits and working conditions found in the expired union contract.

Why Should You Have Written Employment Policies?

- Make sure employees understand the rules they will be expected to follow.
- Make sure employees understand the consequences of failing to follow those rules.
- Make sure employees understand avenues for complaining about co-worker/supervisor violations of those policies.
- As a resource for supervisors.
- Adds stability and reassurance for represented employees.

What Are The Down Sides To Written Employment Policies?

- Inconsistent enforcement.
- They can create a legal binding employment contract.
 - This can be avoided with a properly worded disclaimer warning employees that their employment relationship is at-will.
 - Employment at-will means that employees are free to quit, and the municipality is free to discharge them, at any time, for any reason.
 - The municipality has the discretion to modify or deviate from any policies as the municipality deems appropriate.
- Critical policies may become out-of-date.

Reasons For Developing An Employee Handbook

- Inform Employees About:
 - Hours, terms and conditions of employment
 - Important policies and/or procedures
 - Benefits
 - The municipality's expectations.

Reasons For Developing An Employee Handbook

- Provide A Convenient Reference
 - For employees
 - For HR staff and supervisors
- Promote Positive Employee Relations
- Establish Communication Channels
- Promote Consistency
- Satisfy Legal Obligations
- Protect Against Lawsuits

How To Avoid Making A Contractual Handbook

- Have a solid “at-will” disclaimer. In addition, disclaimers can include:
 - The handbook is not intended to create nor should it be construed to constitute a contract.
 - No individual manager or supervisor has authority to create a contract or any agreement contrary to the foregoing.
 - The employer reserves the right to change the handbook with or without notice, in its discretion.

How To Avoid Making A Contractual Handbook

- Place “at-will” language in key sections
 - At the beginning (introduction).
 - In sections relating to orientation periods, discipline, termination or any other section where there is potentially contractual language.
 - In a signed acknowledgement of receipt.

How To Avoid Making A Contractual Handbook

- Avoid terms like “permanent,” “probationary,” “seniority,” “cause,” and “just cause.” In addition:
 - Avoid language concerning long-term employment, permanent employment, uninterrupted employment, or continued employment as long as a job is done well.
 - Use “introductory” or “orientation” period instead of “probationary” period of employment.
 - Avoid stating that employees will be terminated only “for cause” or for “good cause,” and do not use these concepts elsewhere.



How To Avoid Making A Contractual Handbook

- Avoid using the words “shall” and “will” in connection with actions the employer will take unless you outline the exceptions. Instead use the word “may.”
- Avoid promises or guarantees unless you mean to enforce them.
- Avoid the temptation of assuring employees in writing that they will be treated “fairly” or in “good faith.” Ultimately, a jury may be put in the position of deciding whether a termination was “fair” or whether the employer acted in “good faith”.
- Carefully limit the rights and benefits that seniority confers upon employees, and expressly reserve the right to consider skill and ability in making layoff decisions.

How To Avoid Making A Contractual Handbook

- Be suspect of provisions requiring that an employee give advance notice of specified duration prior to quitting.
 - An employee's promise in this regard may be deemed consideration for which an employee can expect something in return.
- Delete policies that guarantee a formal, periodic job evaluation process.
- Be careful with progressive discipline policies.

How To Avoid Making A Contractual Handbook

- Tie your introductory period to something other than continued employment, such as:
 - Eligibility for benefits.
 - Initial performance evaluation.
 - Training.
- Reserve discretion
 - To deviate from policies or procedures where appropriate.
 - To change policies at any time, with or without notice.
 - To interpret policies.
 - To determine when application of a general policy is not appropriate.

How To Create A Handbook

- Gather sample language or handbooks but do not use them unless you know:
 - What the policy is for.
 - Whether the policy is legal.
 - Whether the policy reflects your municipality.
 - Whether the policy is complete.
 - Whether the policy is well done.

How To Create A Handbook

- Use flexible language, such as “guidelines,” “generally,” “typically,” “usually,” “ordinarily,” “normally,” “currently,” and/or “discretion”
- Draft with clarity in mind
 - Short sentences and paragraphs.
 - Limit the number of pages.
 - Cross-reference other policies, when possible.

Putting A Handbook Together

- Use logical organization
 - Group similar policies together.
 - Number the sections for reference.
 - Cross-reference related policies.
 - Provide a table of contents or index.
- Use appendices or reference to other policies and guidelines for additional information
 - FMLA fact sheets.
 - Benefit SPDs.
 - Sample forms.

Putting A Handbook Together

- Show dates
 - Date policy or handbook was initially adopted.
 - Last revision date.

Putting a Handbook Together

- Obtain written acknowledgement
 - Receipt of Handbook.
 - Key policies (e.g., harassment, conflict of interest, electronic communications).
 - At-will status.



SAMPLE POLICIES FOR HANDBOOKS

Introduction Section

- Purpose
- Disclaimer Statement
- Mission Statement

Employment Policies Section

- Equal Employment Opportunities
- Employees with Disabilities
- Harassment Policy
- Employment Verification
- Personnel Records
- Orientation (or Training) Period

Employment Policies Section

- Job Classifications
- Hours of Employment
- Compensation
- Overtime
Pay/Compensatory
Time for Non-Exempt
Hourly Employees
- Compensatory Time
for Exempt Salaried
Employees
- Payroll Deductions
- Attendance
- Snow Day Attendance
- Performance
Appraisals
- Layoff and Recall
- Nepotism

Employee Conduct Section

- Conflict of Interest
- Political Activity
- Gift and Gratuities
- Dress Code/Personal Attire
- No Solicitation or Distribution
- Outside Employment
- Confidentiality

Employee Benefits Section

- Vacations
- Holidays
- Sick Leave
- Family/Medical Leave
- Funeral Leave
- Military Leave
- Jury Duty
- Health Insurance
- Dental Insurance
- Worker's Compensation
- Life Insurance
- Pension
- Education Reimbursement
- Expense Reimbursement
- Uniform Allowance

Workplace Safety Section

- Ensuring a Safe Workplace
- Safety Rules
- Physical Examinations
- Work Rules
- Drug and Alcohol Free Workplace
- Drug and Alcohol Testing

Technology and Communication Section

- Telephone Usage
- Electronic Communications
- Use of Social Media

Employee Discipline Section

- Discipline
- Code of Conduct
- Grievance Procedure

Acknowledgment Form

One form that:

- Acknowledges Employment Status
- Acknowledges Receipt of Handbook
- Acknowledges Employee Must Comply With Policies Contained in Handbook



MANAGING EMPLOYEES WITHOUT UNION CONTRACTS

Managing Employees Without Union Contracts

- Train all employees on policies
 - Be sure that all new employees (including temporary) receive copies of policies and applicable training.
 - Retrain annually on key policies.
 - Review, revise and reissue key policies annually.
- Train supervisors
 - Meet with supervisors regarding critical sections of handbook and their meaning (together if possible).
 - Identify/discuss need for consistency in application and provide for consultation procedures to address consistency issues.

Managing Employees Without Union Contracts

Long-Term Steps

- Develop and implement effective personnel policies.
 - Remember that, unlike union contracts, policies can be revised when necessary.
- Review and update job descriptions.
- Establish and implement meaningful performance evaluations.
- Review and revise benefit plans.

Managing Employees Without Union Contracts

- Review and revise salary schedules and compensation plans.
 - Will you retain existing salary schedules?
 - Will you do a compensation study?
 - Will you change salaries for existing employees or “grandfather” them from pay decreases?
- Consider extreme measures like subcontracting, consolidation or privatization of services.

Managing Employees Without Union Contracts

What Not to Do:

- Borrow an employee handbook from another municipality.
- Put a new cover on the collective bargaining agreement and call it an employee handbook.
- Leave the status quo in place; this is the prime opportunity to reinstate management rights.
- Fail to adopt personnel policies and leave your employees in “limbo.”
- Fail to move the organization forward and take advantage of the “tools” provided to municipalities.

Managing Employees Without Union Contracts

Short-Term Steps

- Create a transition team
 - Members should include human resources personnel, finance professionals and department heads
 - What about elected officials?
- Educate elected officials and obtain their support.
- Set objectives – Will policies and benefits be revised?
- Set a timetable – When do personnel policies need to be adopted?



Conclusion Questions? Comments