

Spring Cleaning and Beyond: Take a Look Inside Your Operations' Performance

At various times of the year, it's good to review how your operations are performing, especially when it comes to personnel management. In my previous articles, I highlighted several areas that many of us overlook. It is not for wanting to have things right, but simply a matter of having time in a very busy schedule to perform the things that aren't absolutely necessary in order to keep your town running.

Many of the legal requirements of personnel management in New Jersey are fairly new, enacted over the past few years. A good practice is to take some time to review how your organization is doing when considering three major personnel matters: Compliance with Fair Labor Standards Act (FLSA); Workplace Democracy Enhancement Act (WDEA); and the New Jersey Equity Pay Act.

Fair Labor Standards Act

The FLSA is probably one of the most overlooked federal requirements that has been in place since 1986. The problem is that we all have our own interpretation of what causes overtime and who gets it. Some believe that the collective bargaining agreement, or the New Jersey Civil Service Commission governs the rules on FLSA. It does not. Towns may use stipends to pay for additional, after-hours work. An example is a clerical worker taking minutes at an Environmental Commission. A stipend in this example will not satisfy the requirements of the Act.

Every administrator or personnel director should take time to review those positions that are not covered by a labor agreement. Typically, these are management employees. Once identified, the reviewer needs to determine the exempt status of an employee.

Exempt or nonexempt status must be determined based on the employee salary and duties—the actual work being done.

If the employee is exempt, overtime or any compensation for time worked beyond 40 hours is a local policy decision. Oftentimes, we skip the process of determining if the status is in accord with the FLSA and simply say that the employee is “salaried” and therefore no overtime. That would be a mistake that could be costly. The exemption test must be done thoroughly and completely. And, keep all those records used

in making the determination!

Next, determine if stipends are being paid to nonexempt employees who are eligible for overtime according to the Act. Generally speaking, stipends for work that is done during the course of the normal workday do not satisfy the requirements of FLSA. Please note, that even if there is an agreement of any sort that provides for the stipend in lieu of overtime, there would still be a violation of the Act.

Workplace Democracy Enhancement Act

The Workplace Democracy Enhancement Act was put in place a few years ago (2018) and has several requirements that are important to have in place. While there are a number of requirements, I highlight a few that are easily done.

First, the municipality must allow the unions to meet with union members during work hours to discuss complaints or grievances. Secondly, when there is a new employee that would be a member of the union, time must be given for the union to meet with that employee.

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Third, when hiring an employee, local governments must provide the union, regardless of representation or not, the employee's name, job title, worksite location, home address, work telephone number, home telephone number, cellular telephone number, date of hire, work email, and personal email. Furthermore, this must be done within 10 days of the hiring. Additionally, every quarter the municipality must provide the unions with the information above for each of their unit employees.

Equal Pay Act

Likely one of the more difficult requirements of personnel management in New Jersey is ensuring that your municipality is complying with the Equal Pay Act. There is no question that the issues of pay equity throughout the United States, and in fact the world, needs to be addressed. The State provides guidance, but the work to comply still must be performed.

According to the NJ Division on Civil Rights Guidance (March 2020) on the Act, “[i]f a member of a protected class demonstrates that they are compensated less for substantially similar work than a person who is not a member of that protected class, the employer is liable under the Equal Pay Act unless it can demonstrate either:

1. That the pay differential is made pursuant to a seniority system or a merit system; or
2. That all five of the following are true:
 - a. That the [pay] differential is based on one or more legitimate, bona fide factors other than the characteristics of members of the protected class, such as training, education or experience, or the quantity or quality of production.
 - b. That the factor or factors are not based on, and do not perpetuate, a differential in compensation based on sex or any other characteristic of members of a protected class.
 - c. That each of the factors is applied reasonably.
 - d. That one or more of the factors account for the entire wage differential; and
 - e. That the factors are job-related with respect to the position in question and based on a legitimate business necessity. A factor based on business necessity shall not apply if it is demonstrated that there are alternative business practices that would serve the same business purpose without producing the wage differential.” N.J.S.A. § 10:5-12(t).”

This evaluation will take a lot of work. However, even after the evaluation is done, the municipality must determine how to implement changes in salaries where necessary. This will be a difficult exercise, but clearly is needed to address pay inequity that may exist in your organization.

I am hopeful that this information is beneficial and will assist you in complying

with these various and important rules of personnel management for your community. The League of Municipalities Labor Advisory Service is here to assist should you need further information. 🇯🇵

@ To discuss about the NJLM Labor Advisory Service, email Matt@njcs.us

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Every day, in countless ways, people are making this a great place to live, work and play. We're excited to see what you do every day. And we're proud to support the New Jersey State League of Municipalities.

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