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8/27/2026

Municipal Clerks and Treasurers Institute

Fundamentals of HR Management

September 9, 2026
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Topics



- At will Employment
- Discrimination and Harassment
- Remote Work
- Public Records and FOIA
- First Amendment and Public Employees
- Disciplining Employees
- Requests for Accommodation

At Will Employment

- True or False:
 - South Carolina is an “at will” state
- True. 49 states, including South Carolina, are “at will” states.



At Will Employment

- At Will Employment means, essentially, that either the employer or the employee may end the employment relationship without giving either notice or reason.
- What employees aren't at will?
 - Employees who have a contract of employment for a definite period of time
 - Employees who cannot be terminated without cause

At Will Employment

- True of False:
 - When employees are "at will" it means that they can be terminated for any reason.
- False. An at will employee may be terminated for any reason or no reason, BUT NOT AN ILLEGAL REASON

Potentially Illegal Reasons

- Motivated by discriminatory intent based on a protected category
- Participating in a workplace investigation
- Reporting for jury duty
- Making an OSHA (Occupational Safety and Health Administration) complaint
- Refusing to perform illegal activities
- Requesting reasonable accommodation for a disability
- Taking legally protected leave (Family Medical Leave Act)
- Being a whistleblower regarding unsafe or illegal activity at the place of employment
- Filing a discrimination, wage, or harassment suit
- Complaining about wages, overtime, or the working environment



Federal Anti-Discrimination Laws

- The following federal civil rights laws cover the full spectrum of employment decisions, including:
 - recruitment
 - selection
 - termination
 - promotion
 - discipline
 - other decisions concerning terms and conditions of employment.



Federal Anti-Discrimination Laws

Defendant in a Title VII/ADA/ADEA/etc. trial:
 “Your honor, they were still in their probationary period.”

The judge:



Title VII of Civil Rights Act of 1964

- Prohibits discrimination on the basis of:
 - Race
 - Sex (including sexual orientation, gender identity and pregnancy)
 - Religion
 - Color
 - National origin



The Age Discrimination in Employment Act

- Age discrimination involves treating an applicant or employee less favorably because of his or her age.
- The ADEA forbids age discrimination against people who are age 40 or older. It does not protect workers under the age of 40.



The Age Discrimination in Employment Act

A twenty-three year old: "I'm being discriminated against based on my age!." Everyone in the world:



The Americans With Disabilities Act

- The ADA makes it unlawful to discriminate in employment against a qualified individual with a disability.
- Under the ADA, a person has a disability if he has a physical or mental impairment that substantially limits a major life activity.
- An individual with a disability must be qualified to perform the essential functions of the job with or without reasonable accommodation, to be protected by the ADA.



The Americans With Disabilities Act

- It is a violation of the ADA to fail to provide reasonable accommodation to the known physical or mental limitations of a qualified individual with a disability, unless to do so would impose an undue hardship on your municipality.
- Undue hardship means that the accommodation would require significant difficulty or expense in relation to the size and resources of the employer.



The Americans With Disabilities Act

- How does the ADA differ from the Family and Medical Leave Act?
 - The ADA only requires employers to employ 15 employees to be covered, rather than 50
 - There is no minimum length of employment required for an employee to be covered by the ADA, and in fact, it applies even before employment begins
 - The ADA does not require accommodations or leave be provided to employees who are caring for others; only for an employee's own disability
 - Leave as a reasonable accommodation is not limited to twelve weeks, and in fact, can extend to six months in some situations

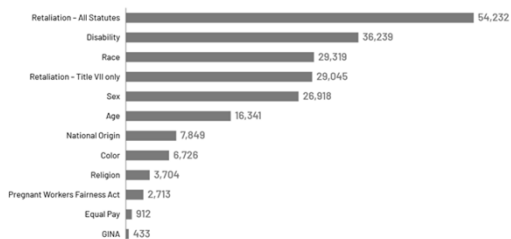


Retaliation

- Discrimination or harassment based on an employee's opposition to other unlawful conduct is illegal.
- Discrimination or harassment based on participation in an investigation into other unlawful conduct is illegal.



EEOC Charges by Type – 2025



Source: www.eeoc.com

Responding to Reports of Discrimination

- What constitutes a report of discrimination?
 - Comparisons concerning employee treatment
 - Allegations of unfairness
- What should supervisors do if they receive a report of discrimination?
 - Take it to HR
 - Avoid the appearance of retaliation



Harassment



Harassment

• What is unlawful harassment?

1. Unwelcome verbal, nonverbal or physical conduct
2. That denigrates, belittles, or puts down an individual or shows hostility, distaste, or aversion toward an individual based on his or her:



Harassment (cont.)

- race
- color
- religion
- sex (including sexual orientation, gender identity and pregnancy)
- national origin
- age (40 or older)
- disability

Practical Issues

- Conduct that may seem harmless to one person may not be harmless to others
 - Even to those in the same classification
 - Even if not technically unlawful, may still be inappropriate
- The fact that conduct may be culturally or socially acceptable outside of the workplace does not make it acceptable in the workplace

Is Everything Harassment?

- Petty slights, annoyances, and isolated incidents (unless extremely serious) will not rise to the level of illegality.
- To be unlawful, the conduct must create a work environment that would be intimidating, hostile, or offensive to reasonable people.



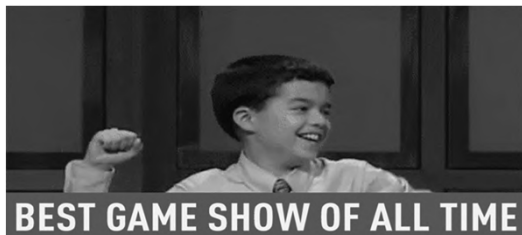
Is Everything Harassment?

- The U.S. Supreme Court has opined that Title VII is not a "general civility code for the American workplace."
- "Toiling under a boss who is tough, insensitive, unfair, or unreasonable can be burdensome, but Title VII does not protect from the 'ordinary slings and arrows that suffuse the workplace every day.'"

"Generally disagreeable behavior and discriminatory animus are two different things."



Let's play: Is it UNLAWFUL harassment?!!!!



Question # 1

I'm a huge Gamecock fan. My coworker's office looks like this:



Question # 2

I'm of Pakistani origin, and every time I see my coworker he says:



Question #3

I don't celebrate Halloween for religious reasons, because I think it promotes paganism and devil-worship. Here is what I see when I walk into work all of October:



Question # 4

My boss constantly makes fun of lazy millennial "snowflakes" who get offended by everything, are addicted to their phones, and think the world owes them something. This is my friends and I:



The most common form of harassment

- What is the most common and well-known type of harassment?

– Sexual harassment



Sexual Harassment

- Sexual harassment is a form of discrimination that involves unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, when:
 - Submission to such conduct is made either explicitly or implicitly a term or condition of a person's job, pay, career, or
 - Submission to or rejection of such conduct is used as a basis for career or employment decision; or
 - Such conduct has the purpose or effect of interfering with an individual's work performance, or creates an intimidating, hostile or offensive work environment.

Responding to Reports of Harassment

- What constitutes a report of harassment?
 - Verbal complaints
 - Disagreements
- What should supervisors do if they receive a report of harassment?
 - Take it to HR
 - Avoid the appearance of retaliation



Remote Work



Raise your hand if your municipality completely prohibits remote work.

Remote Work

Things to bear in mind if your Municipality permits remote work:

- Communication and Collaboration – avoid “out of sight, out of mind”
- Performance Management – supervisors must continue to supervise
- Set Clear Expectations – benchmarks and goals with follow-up
- Policies – have them in place and apply them evenly



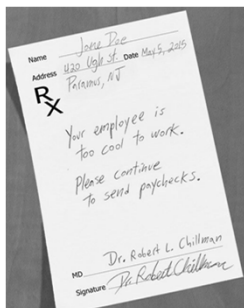
Remote Work

- Even if you have a “no remote work” rule, employers should not automatically deny a remote work request
- In *some* cases, remote work may be a reasonable accommodation to disability
- Permitting an employee to work remotely may be a reasonable accommodation, even if your municipality generally does not allow remote work.



Remote Work

- However, a doctor cannot “prescribe” remote work
- An accommodation should be reached through an interactive process between the employee and employer
- An employer is not obligated to adopt an employee's preferred or requested accommodation and may instead offer alternate accommodations as long as they would be effective







Public Records

- Public Records - all books, papers, maps, photographs, cards, tapes, recording, or other materials regardless of physical form (including emails and phone records for work cell phones and other work equipment)
- A person who unlawfully removes a public record from the office where it usually is kept or alters, defaces, mutilates, secretes, or destroys it is guilty of a misdemeanor and may be fined or imprisoned (SC Code § 30-1-30)



Public Records

- The Archives and Records Management Division of the State Archives has prepared general retention and disposition schedules for counties
- The schedules list permanently valuable records, which should be properly protected for future use, and they also supply a timetable that will allow records custodians to regularly and legally dispose of records of non-permanent value
- The municipality-specific retention schedule can be found here: <https://scdah.sc.gov/records-management/schedules>



General Research Retention Schedules
for Municipalities Revised 2020

Administrative	1
Archives	1
General Records	1
Applications of general records	1
Records to be preserved	1
Records to be destroyed	1
Records to be retained	1
Records to be disposed of	1

Records to be retained in accordance with the schedule

Public Records and FOIA

- The South Carolina Freedom of Information Act (SC Code § 30-4-10 et seq.) requires that public records and information must be made available to the public at a minimum cost or delay.
- SC Code Section 30-4-40(a) states that a "public body may but is not required to exempt" certain information from disclosure.
- Only a "citizen of the State may apply to the circuit court for a declaratory judgment, injunctive relief, or both, to enforce the provisions" of FOIA

Public Records and FOIA

- A commonly received FOIA request might look like this:

On Mon, Jun 1, 2026 at 12:37 PM, [REDACTED] wrote:

I am seeking public information. My request is for an electronic file that includes a roster or listing of every current employee for your entity.

Date range: (Current Fiscal Year)

This request includes employees coded as full-time, as well as elected officials. I am not seeking part-time or seasonal employees.

I am requesting the roster including information commonly found in an Employee Master File which is most commonly found in the Human Resources Department or Payroll Department.

The file would include information such as First Name, Last Name, Hire Date, Race, Ethnicity, Department, Job Title, Job Description, Minimum Salary, Range, Maximum Salary, Range, Annualized Salary, Bonus Amount (if any), Car Allowance (Annual), Cell Phone Allowance (Annual), Certification Pay (Annual).

If there are fees associated with this request, please inform me of the cost before fulfilling this request. If you have any questions regarding this request, please contact me via this email: [REDACTED]

If you need to redact a portion of the request in order to expedite the fulfillment of the request, I agree to redaction in advance. If you need to redact names of employees due to the nature of their employment (for example: law enforcement officers), I agree in advance to redacting these names.

If you seek to deny part or all of this request, please let me know the basis for a denial in part or in whole. My preferred delivery method is for the record to be sent via email as an Excel file, but a PDF file is also acceptable.

Public Records and FOIA

- There are dozens of organizations that send out hundreds of FOIA requests per day to public entities nationwide to gather information to create content for their website.
- A municipality is required to provide copies of public records in its possession but is not required to create records in response to a FOIA request.
- I recommend clients respond to requests like the one found on the previous slide as follows:

Public Records and FOIA

- [MUNICIPALITY] is not in possession of an electronic file that includes a roster or listing of every current employee of the [CITY/TOWN] that lists First Name, Last Name, Hire Date, Race, Ethnicity, Department, Job Title, Job Description, Minimum Salary Range, Maximum Salary Range, Annualized Salary, Bonus Amount (if any), Car Allowance (Annual), Cell Phone Allowance (Annual), Certification Pay (Annual). Because the [CITY/TOWN] is not in possession of the record you have requested, your request is denied.



Public Records and FOIA

- When your municipality receives a FOIA request for a personnel file, the municipality may be able to exempt it from disclosure because it contains information of a personal nature where disclosure would be an "unreasonable invasion of personal privacy." S.C. Code 30-4-40(a)(2)



Public Records and FOIA

- The courts have narrowly construed the “privacy exemption” and weigh the public’s interest against personal privacy.
- Whether a municipality should produce personnel records in response to a FOIA request will require an individual analysis.
- A good overview of the topic is: “Releasing Personnel and Compensation Information” found here: <https://www.masc.sc/uptown/07-2021/releasing-personnel-and-compensation-information>



Public Records

- What about work emails sent on a personal computer or work-related texts sent on a personal phone, do those constitute “public records”?
- See [Does Using Personal Devices Foil FOIA?](https://scpress.org/does-using-personal-devices-foil-foia/) from the SC Press Association for a full discussion (<https://scpress.org/does-using-personal-devices-foil-foia/>)
- The safest answer until a South Carolina court weighs in is “potentially”.
- Therefore, if those texts and emails are potentially FOIA-able, should your municipality consider prohibiting employees from using personal devices for work-related purposes?



The First Amendment and Public Employees

Workers fired, placed on leave for Charlie Kirk comments after assassination

Public Workers Are Getting Fired for Posting About Charlie Kirk

GOP leaders urged citizens to flag social media posts about Kirk, leading to investigations and dismissals across state and local agencies.



Educators fired after posting about Charlie Kirk allege in lawsuits that their free speech rights were violated

The posts were shared on their private social media accounts.



The First Amendment and Public Employees

- The First Amendment prohibits governmental entities from "abridging the freedom of speech."
- That means that a municipality cannot arrest, fine or even discipline or fire someone because they exercised their right to First Amendment protected free speech.



The First Amendment and Public Employees

- But not all speech is protected by the First Amendment.
- Speech not protected by the First Amendment includes:
 - obscenity
 - fighting words
 - defamation
 - child pornography
 - perjury
 - blackmail
 - threats of violence
 - incitement to imminent lawless action
 - solicitations to commit crimes
 - statements made pursuant to an employee's official job duties
 - plagiarism of copyrighted material



The First Amendment and Public Employees

- "[P]ublic employees do not surrender all their First Amendment rights by reason of their employment Rather, the First Amendment protects a public employee's right, in certain circumstances, to speak as a citizen addressing matters of public concern." *Garcetti v. Ceballos*, 547 U.S. 410, 417 (2006).
- "[T]he law is settled that as a general matter the First Amendment prohibits government officials from subjecting an individual to retaliatory actions . . . for speaking out BUT "in recognition of the government's interest in running an effective workplace, the protection that public employees enjoy against speech-based reprisals is qualified." *Mercado-Berrios v. Cancel-Alegria*, 611 F.3d 18, 25 (1st Cir. 2010).
- "When a citizen enters government service, the citizen by necessity must accept certain limitations on his or her freedom." *McGinagle v. City of Quincy*, 944 F.Supp.2d 113 (1st Cir. 2016).

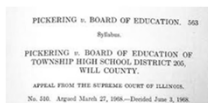
The First Amendment and Public Employees

- When analyzing whether employee speech is protected by the First Amendment, a public employer must ask whether a public employee spoke on a matter of public concern, defined as a matter of larger societal significance or importance.
- If a public employee was disciplined or discharged for expressing a private grievance, that would not violate the First Amendment.
- If, however, a public employee spoke on a matter of public concern, the municipality must engage in a balancing test.
- The municipality should balance the employee's right to free speech against the municipality's interests in an efficient, disruptive-free workplace.



The First Amendment and Public Employees

- The United States Supreme Court developed this test in Pickering v. Board of Education (1968), a case involving a public high school teacher who was terminated after writing a letter to the editor of a newspaper that was highly critical of school district officials but not people he worked with on a day-to-day basis.
- The Supreme Court reasoned that Pickering spoke on a matter of public concern – whether the school district spent too much money on athletics as opposed to academics.
- The Court then held that Pickering's rights to free speech outweighed the school board's interests in a disruptive free workplace, largely because Pickering did not criticize people that he worked with daily, such as fellow teachers or his principal.



The First Amendment and Public Employees

- If your municipality is considering disciplining or discharging an employee based on their speech, the questions to ask are:
 - (1) whether the speech falls into one of the categories not protected by the First Amendment listed above;
 - (2) whether the speech is on a matter of public concern rather than a private grievance; and
 - (3) whether the speech was so disruptive that the municipality's interest in maintaining an efficient and harmonious workplace outweighs the employee's right to free speech.

Employee Discipline

Disciplinary
Actions:
Issues and
Documentation



Disciplining Employees

Disciplinary action should be taken when:

- The employee has recurring issues such as absenteeism or tardiness
- The employee has continuing problems following instructions or policies despite additional training, coaching or counseling
- The employee engages in serious misconduct

Disciplining Employees

• Consequences of avoiding discipline:

- Recurring issues
- Allegations of unfairness
- Difficulty showing a pattern of behavior in the future



Disciplining Employees

- Make sure discipline is the appropriate tool. Consider coaching or performance appraisal as a first step
- Be honest, frank, fair and precise regarding your reasons for dissatisfaction and your future expectations for the employee
- Maintain a professional manner by keeping the disciplinary process confidential between you, the employee and HR
- Keep your criticism free of nonwork-related matters and personal judgement

Disciplining Employees

- If employees believe they are being treated fairly, they are much more likely to accept the consequences of their actions
- Consistent and fair discipline helps prevent successful claims of discrimination



Disciplining Employees

- Before disciplining an employee:
 - Thoroughly investigate the circumstances
 - Allow the employee an opportunity to respond to the allegations
 - Ensure the consequences are applied consistently



Documenting Disciplinary Actions

The following elements should be included in the documentation:

- A description of the performance issue or conduct that warranted the disciplinary action, with specific examples
- A summary of prior discussions regarding the issue, with specific dates if available
- A summary of prior related disciplinary or performance issues



Documenting Disciplinary Actions

The following elements should be included in the documentation:

- A description of the policies that were violated
- An outline of the supervisor's expectations
- A description of potential consequences for failing to meet those expectations
- A place for signatures acknowledging that the employee received the warning

Requests for Accommodation



Requests for Accommodation

- In addition to prohibiting discrimination and harassment, federal and state civil rights laws require accommodations be made for employees in three protected categories:

- Disability
- Pregnancy
- Religion



Requests for Accommodation

- Laws requiring accommodation:

- The Americans with Disabilities Act (ADA)
- The Pregnant Workers Fairness Act (PWFA)
- Title VII of the Civil Rights Act of 1964 (Title VII)



Disability Accommodation

- A reasonable accommodation for a disability is any change or adjustment to a job or work environment that permits an employee with a disability to perform the essential functions of a job, or to enjoy benefits and privileges of employment equal to those enjoyed by other employees

- Reasonable accommodations may include:
 - acquiring or modifying equipment or devices
 - job restructuring
 - part-time or modified work schedules
 - reassignment to a vacant position
 - adjusting or modifying examinations, training materials or policies
 - providing readers and interpreters
 - making the workplace accessible



The Pregnant Workers Fairness Act

- The Pregnant Workers Fairness Act (PWFA)
 - effective June 27, 2023
 - the Pregnant Workers Fairness Act (PWFA) requires a covered employer to provide a "reasonable accommodation" to a qualified employee's or applicant's known limitations related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an "undue hardship."
 - The PWFA applies only to accommodations. Other laws make it illegal to fire or otherwise discriminate against employees or applicants on the basis of pregnancy, childbirth, or related medical conditions.



**PREGNANT WORKERS
FAIRNESS ACT
(PWFA)**

Pregnancy Accommodations

Potential Accommodations for Pregnant Workers:

- Being able to sit or drink water
- Being excused from strenuous activities
- Receiving appropriately sized uniforms and safety apparel
- Receiving break time to use the bathroom, eat, and rest
- Taking leave or time off to recover



Religious Accommodations

Title VII requires an employer to reasonably accommodate an employee whose sincerely held religious belief, practice, or observance conflicts with a work requirement, unless doing so would pose an undue hardship.



Religious Accommodation



Schedule Modifications

- Observance of a holy day
- Prayer breaks



Dress/Grooming Exceptions

- Religious attire
- Beard



Religious Expression

- Prayer
- Religious displays

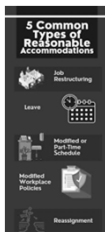
Religious Accommodations

- Examples of religious accommodations include:
 - An exemption from a work rule or grooming standard, such as an employee being allowed to wear a particular head covering, religious dress or facial hair
 - Work schedule changes to accommodate attendance at worship or services, or because of a religious holiday
 - Permitting employees to pray or engage in other forms of religious expression at work



Responding to Requests for Accommodation

- What constitutes a request for an accommodation?
 - Request for a change to work environment
 - Request for a change in duties
 - Request for a change to schedule
 - Request for leave
- What should supervisors do if they receive a request for an accommodation?
 - Take it to HR
 - Avoid the appearance of retaliation



Questions?