# PERSONNEL ADMINISTRATION

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## HUMAN RESOURCES MANAGEMENT

Human Resources (HR) management is the practice of recruiting, hiring, deploying, and managing an organization's employees.[1] This practice includes the processes and activities used to implement HR related goals, objectives, policies, and procedures. HR management also entails strategic planning of best practices to achieve the county's short- and long-term organizational needs. Such strategic planning helps to guide the county through inevitable change over time and to assess the contributions of county employees to organizational effectiveness and efficiency.

Although HR typically does not generate revenue and can surpass 65% of a county's non-capital expenses, it serves a crucial function to county government in both its internal and external operations. For example, HR is responsible for personnel record-keeping, such as personnel files, demographic information, performance evaluations, contracts, agreements, etc. and must comply with the law regarding release of any personnel information. Overlooking or undervaluing an HR department's importance can lead to a lack of needed funding and training for staff, which can be costly to counties if HR issues are not properly handled.

This chapter provides guidance for a robust and highly effective county HR management program. The chapter highlights many HR related challenges and opportunities faced by county employees and elected officials and encompasses the following HR functional areas:

- Recruitment.
- Hiring.
- Training and development.
- Performance reviews and appraisals.
- Discipline and termination.
- Position classification.
- Benefits and leave.
- Legal considerations.

## RECRUITMENT

The building of a great team begins with effective recruitment. The recruitment process requires sound planning, solicitation, and selection. Counties must have a knowledgeable recruitment staff that is skilled in analysis and strategic planning.

**Planning and Solicitation**

The best time to prepare for recruitment is when the county is planning and solidifying the next year's budget, which includes forecasting – as much as possible – for future vacancies. However, on occasion, new initiatives and programs launched in the midst of the fiscal year will activate the recruitment process. The foundation for successful staffing is an assessment of each department: the demands, goals, and objectives; who is retiring; what functions are being added or deleted; and turnover and retention rates. Once departmental goals are forecasted and established in accordance with the county's objectives and staffing needs are assessed, recruitment efforts can be planned. Building an accurate plan for each position that needs to be filled ensures that recruitment is aligned with the county's goals and overall strategy.

For each recruitment effort, HR must define essential duties and minimum requirements of the job, ensuring no changes have occurred since the last recruitment. Evaluating and identifying a position's essential functions (i.e., the fundamental duties that an employee must be able to perform, with or without a reasonable accommodation) assists the county with compliance with the Americans with Disabilities Act.[2] The Equal Employment Opportunity Commission recommends that the following factors be used to determine if a function is essential[3]:

- Whether the reason that the position exists is to perform that function.
- The number of employees available to perform the function or among whom the performance of the function can be distributed.
- The degree of expertise or skill required to perform the function.

Being accurate with these assessments and only measuring personal qualities that are job related limits exposure to liability.[4] The recruitment plan also needs to identify where and how HR will find and lure the strongest candidates.

Once the job announcement is complete, a strategy must be employed to ensure that the news of this recruitment effort reaches the target market. The solicitation effort must be resourced sufficiently to reach and attract the best fit for the county. Social media, professional associations, videotelephony software, online chat, and similar technologies must all be incorporated in the process to be competitive in today's market.

The county's own employees are the very best recruitment tool. Nurturing a healthy, respectful, and productive work environment generates a respect and admiration for the county that employees can share with others in their field of

work and communities. Being an employer of choice will draw talent to the county, subsequently delivering high quality services to citizens.

**Selection**

The last phase of the recruitment process is candidate selection. To be considered, candidates must meet the minimum requirements of the job posting. The method of selection is important. All selection processes – whether involving written examinations, physical examinations, skills tests, structured interviews, or assessments of training and experience – must be valid and reliable to be defensible.[5] In the selection process, HR is purporting to measure future performance. Selection methods administered correctly result in identification of the best candidates.

Validity, reliability, transparency, and accuracy in testing and assessment is the bedrock for success. Valid and reliable testing and selection methods minimize liability in cases where adverse impact exists. Adverse impact refers to employment practices that appear to be neutral, but have a disproportionate and discriminatory effect on legally protected groups (i.e., individuals of a particular race, religion, gender or sex, national origin, age over 40 years, disability). Background checks, professional references, asking the right questions regarding interests, and providing a clear picture of the job also are important for a fit that results in greater employee retention and lower labor costs.

Background checks must comply with the Fair Credit Reporting Act,[6] which governs how employee background checks are used. Any county policies on background screening should be reviewed to ensure that the county provides the required notices and uses information obtained in a background check properly. When reports on an applicant or employee are obtained from a consumer reporting agency, the county must provide written notice to the applicant or employee that information in their consumer report may be used for a decision related to their employment.[7] The applicant or employee must provide written consent.[8] Before the county uses such information to reject a job application, reassign or terminate an employee, deny a promotion, or take other adverse employment action, the county must provide a notice that includes a copy of the consumer report and a summary of rights under the Fair Credit Reporting Act.[9] If the county takes adverse action, then it must provide notice to the applicant or employee that contains information specified in the Fair Credit Reporting Act.[10]

When having discussions with job candidates, all key details of the job must be presented and discussed in order to determine the most qualified candidate who is the best fit. Once HR assesses the candidate's qualifications and interest, they must explain and emphasize the key job expectations, organizational goals, and

performance standards that will come with the job. There is a correlation between candidates that embrace the county's mission and their future performance.

Not only should a candidate possess the necessary skills and abilities and embrace the mission of the organization, good candidates demonstrate a continuity of professional development over time. There is a strong correlation between performance and professional development – the candidate who has worked to ensure they have all the necessary experience, education, and development is likely to be a strong member of the county's team.

Well-honed and executed selection processes result in higher retention rates and lower turnover rates – important for organizational stability and cost savings. Competition for great talent is high; counties must do all they can to retain the best and brightest.

## HIRING

Counties are required to register and participate in the federal work authorization program E-Verify to ensure that newly hired employees are eligible to work in the United States.[11]

There are a few special requirements in the Open Meetings Law and Open Records Law that county commissioners must follow when hiring employees. First, if a quorum of the board of commissioners wants to interview applicants for any position, they may do so in executive session as long as any vote is taken in public.[12] Boards may interview applicants in a meeting that is properly advertised and open to the public. However, this could pose a problem for an applicant if the person does not want his or her current employer to know that he or she is considering a different job.

Second, the Open Records Law contains special requirements when a county is hiring certain executive employees, such as a county manager, county administrator, or department head. The Open Records Law allows the county to keep records confidential that would identify all of the applicants for an executive position until up to three finalists are selected, unless the public has had access to the application and interview process.[13] Fourteen days prior to the final decision, the names and application materials of the three finalists must be released, unless the applicant no longer seeks the position.[14] Upon request, the county must provide the number of applicants, listed by such factors as race and sex.[15]

Therefore, when a board of commissioners is hiring an executive head of the county or department, it has two options:

1. Conduct the entire hiring process in the open, making all records available to the public for all candidates. Using this method means that the board of commissioners would not have to wait fourteen days before hiring a candidate.
2. Cloak the identity of all applicants to protect them from retribution from current employers. Once the board has identified up to three best qualified applicants under serious consideration, it must inform these applicants that their names will be publicly released if they choose to continue to seek the position. Any applicant may decline to have his or her name publicly released. Using this method means that the board of commissioners must wait fourteen days to hire one of the remaining finalists.

Most county personnel policies include a probationary period for selected candidates (from 3 to 12 months; 6 being common). During this period, the county assesses behaviors such as cooperation and initiative, as well as actual job performance before the candidate obtains permanent status.

## TRAINING AND DEVELOPMENT

The terms "training" and" development" are often used interchangeably. Although they work hand-in-hand to achieve a level of overall organizational development, they are mutually exclusive of one another.[16] Training – now commonly referred to as "upskilling" – focuses on enhancing an employee's knowledge, skills, and abilities (KSAs) that are specific to a task or job and can address a wide and varied skills gap. Training is geared toward growing and advancing a skillset that can be used readily to address a short-term gap or enhance a higher-level knowledge needed within the county. Certain county positions require certification, training, or continuing education by law.

| County Required Certifications, Training, and Continuing Education | | |
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| **Position** | **O.C.G.A.** | **Requirements** |
| Board of Tax Assessors Members | §§ 48-5-291, 48-5-294 | 40 hours of approved appraisal courses as designated by the State Revenue Commissioner<br>Daily compensation rate of at least $20 as established by the county for each day in attendance and reasonable expenses incurred in connection with the courses |
| Board of Equalization Members | § 48-5-311(b)(2) and (k) | 40 hours of instruction in appraisal and equalization procedures plus at least eight hours of continuing education instruction as designated by the State Revenue Commissioner<br>County required to pay a daily compensation of at least $25 for each day of instruction and any reasonably necessary expenses incurred |
| Bomb technicians, explosive ordnance disposal technicians, animal handlers | § 35-8-25(a)(1) | Complete training course approved by the Georgia Peace Officer Standards and Training Council |
| Communication officers | § 35-8-23 | Complete training course approved by the Georgia Peace Officer Standards and Training Council |
| Coroner, deputy coroners | § 45-16-6 | Training approved by Georgia Coroner's Training Council |
| County clerks | § 36-1-24 | Training course conducted by University of Georgia's Carl Vinson Institute of Government<br>All reasonable expenses of attending training paid by county |
| Newly elected county commissioners | § 36-20-4 | Under Georgia County Leadership Act, 18 hours of training<br>Funding from county funds |

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| Election superintendent and at least one registrar of the county or, in counties with boards of election or combined boards of election and registration, at least one member of the board or a designee of the board | § 21-2-100 | Minimum of 12 hours of training annually as may be selected by Secretary of State |
| Election superintendent and at least one registrar of each municipality | § 21-2-100 | Minimum of 12 hours of training biennially as may be selected by Secretary of State |
| Emergency management director and deputy directors | § 38-3-27(a)(3)(F) and (G) | Become certified under Georgia Emergency Management Agency's Certified Emergency Manager Program. Additionally, complete at least 24 hours of continuing education |
| Emergency medical service paramedics and cardiac technician applicants | §§ 31-11-52, 31-11-58.1, 31-11-5 | Training course approved by Georgia Department of Public Health |
| Paramedics and cardiac technicians | §§ 31-11-52, 31-11-58.1, 31-11-5 | Department-approved continuing education of no less than 40 hours biennially to recertify, and ambulance attendants and medical technicians may have required courses as designated by the department |
| Firefighters | § 25-4-9 through §25-4-11<br>Ga. Comp. R. & Regs. 205-1-3.04(7)(a)(5)(a) | Attend basic and yearly mandatory training as regulated by Georgia Fire Standards and Training Council; advanced training is also offered based on agency discretion |
| Jail officers, juvenile correction officers | § 35-8-24 | Training course approved by the Georgia Peace Officer Standards and Training Council |
| Juvenile court clerks | § 15-11-65 | 20 hours of training during their first year of service and 12 hours of annual training thereafter<br>Counties required to pay for reasonable expenses and tuition |

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| Magistrate judges | §§ 15-10-25,15-10-137 | 20 hours of training every year to retain their status<br>Counties pay for all reasonable costs and expenses for training |
| Peace officers | §§ 35-8-9, 35-8-12 (radar) and 35-8-26 (TASER) | Basic training course prior to appointment<br>Anyone trained to use radar, electronic control weapon, or similar devices must complete a training course |
| Police chiefs and department heads | §§ 35-8-20, 35-8-20.1, 35-8-9 (basic) | Newly appointed police chiefs and department heads - 60 hours of training, in addition to the basic training required of peace officers; 20 hours each year after |
| Probate judge | § 15-9-1.1 | Initial and annual training as established by Probate Judges Training Council and Institute of Continuing Judicial Education of Georgia<br>All required training expenses must be reimbursed to probate judge by the Institute or by the county if funds are not available |
| First year lawyers working as Public Defenders | State Bar Rule 8-104 | Required training provided by the Georgia Public Defenders Council |
| Public defenders | §§ 17-12-6(a)(3),17-12-9 | State Bar of Georgia requires 12 hours continuing legal education per year<br>A continuing legal education reimbursement provision allows public defenders to receive reimbursement for classes like those offered by the Georgia Public Defenders Council |
| Sheriffs | § 15-16-3 | Special new sheriff training course and 20 hours of annual training |
| State court judges | §§ 15-7-26, 15-1-11, and 15-7-21(a)(1)(E) | Annual 12 hour continuing legal education; may attend other educational programs<br>Must receive prior approval from governing authority for financial coverage of programs; costs for required continuing education could be included in expenses |

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| Superior court clerks elected or appointed to office after January 1, 2000 | § 15-6-50 | 40 hours of continuing judicial education prior to taking office; 15 hours annual training<br><br>(Note: certificates of training issued by the Institute of Continuing Judicial Education of Georgia must be filed with the probate court)<br><br>County required to reimburse the clerk for course registration and any other reasonable expenses |
| Tax commissioners | § 48-5-126.1 | New tax commissioners - 40 hours of training; veteran tax commissioners -15 hours of annual training<br><br>County is required to reimburse for registration fees and travel expenses |

In contrast, development activities are often more long-term and larger in scope than training activities. Development activities are more focused on an individual's long-term career enhancement and prepare them for upward matriculation throughout the organization. Bachelor and Master level degrees are coveted developmental programs, along with continuing education classes, professional certifications, stretch projects, cross-training, coaching and mentoring, short-term job assignments, and board or committee member appointments. These are key examples of development activities that are effective in growing management level talent within the organization.

An effective and inclusive training and development program produces thought leaders within a county and develops a strong leadership pipeline for the county to tap into when needed. Additionally, training and development activities help to cultivate, retain, and attract talent, which can reduce turnover and onboarding costs, as well as improve service delivery for county citizens. The Georgia Local Government Personnel Association (GLGPA) provides extensive training resources for local government HR departments at glgpa.org. The Association County Commissioners of Georgia (ACCG) also offers extensive training resources for local governments at accg.org.

It is prudent for counties to have a comprehensive policy in place that details the eligibility criteria for participation in the county's training and development program. Such criteria should include successful completion of the county's "probationary period" or "working test period," demonstration of initiative, and positive scores on the annual employee performance evaluation.

## PERFORMANCE REVIEWS AND APPRAISALS

Performance reviews and appraisals are the traditional process of assessing an employee's overall work performance and providing feedback.[17] In short, this process identifies, measures, and evaluates the degree to which an employee accomplishes their work requirements and is useful for both the county and the employee. Performance reviews and appraisals should not be taken lightly. Why? Performance evaluation plays a critical role in most HR related decisions made within a county, such as transfer, termination, layoff, promotion, demotion, and salary related decisions. In addition, appraisals provide vital information to determine employees for inclusion in training and/or management development programs, recognize valued performers, and help communicate a county's strategic vision. Appraisals can impact just about all aspects of an employee's current and future employment condition. Every effort should be made to increase the reliability, validity, and acceptability of a county's evaluation process and method.

Employees must understand the appraisal process and method and must see the performance review as fair and accurate to ensure their buy-in. All too often, supervisors tend to vary in the level of expectations they have for their employees. Uneven standards can create mistrust and the feeling that the playing field is not level for all employees. Uneven performance standards may cause an unintended adverse impact on protected classes related to pay, promotion, and access to training and development opportunities, triggering employment discrimination claims.

Unfortunately, there is no perfect method to appraise employee performance. The degree to which an evaluation outcome closely matches an employee's input determines the level of acceptability. How can this be achieved? It is essential that the employee clearly understands the appraisal process, recurrence, and expected standard of performance, which should be established in writing prior to an evaluation taking place. Updated job descriptions are the cornerstone to this process. Additionally, the most effective evaluation process is ongoing and not regulated to an annual event. Constant feedback to employees regarding performance and other work-related issues are paramount to acceptability of appraisals. Importantly, employees who receive ongoing feedback concerning their performance are more likely to make the needed performance and behavioral changes than those who do not receive such feedback.[18]

It is common to have five rating levels, which often range from "Outstanding" to "Unacceptable." Supervisors should be trained on each rating and how they should be applied. Some believe that an unacceptable performance should be

dealt with during the year and result in performance improvement plans that either correct the deficient performance or initiate disciplinary action. Evaluations should be honest, uniform, and address an employee's strengths and weaknesses.

Although the performance evaluation process is critical, often supervisors are uneasy and dislike the process due to a desire to avoid conflict. The following are the most common reasons why supervisors may avoid performance evaluations:

- Amount of time that goes into the process.
- Performance is often hard to measure, and outside factors may have an effect on employee performance.
- Lack of training on how to properly document and evaluate performance.
- Strong desire to be liked by employees and fear that an honest evaluation will impair relationships with employees.
- When increases are tied to performance evaluations, supervisors often desire to help their staff get the maximum salary increase and may not provide an honest evaluation.
- Inadequate evaluation method.

Counties must prioritize internal equity when performance standards are identified and used to appraise performance. Supervisors vary in their consideration of what represents unsatisfactory performance, marginal performance, meets expectations, exceeds expectations, and exceptional performance; steps must be put in place to offset these differences. Training, consistency in evaluating performance, and predetermined standards can help to address this issue.

Gaining agreement of employees that their performance ratings are fair and accurate will always be a challenge, especially when the results are unfavorable. Cognitive bias leads to people believing they are better performers than they really are and cannot be completely corrected. Recognizing that the bias exists and discussing it with employees can help to alleviate some unwarranted dissatisfaction with ratings that are believed to be too low. Employees can accept, to some degree, the difference of opinion between supervisors and themselves, but suspicions that inequity exists across supervisors will minimize acceptance. Perceived or apparent inconsistency across supervisors can elicit strong feelings of inequity, and counties should take steps to minimize it.

## DISCIPLINE AND TERMINATION

In Georgia, employees are considered "at-will" employees unless they are given a reasonable expectation of continued employment (i.e., that they will not be fired except for cause). At-will employees may be fired for a good reason, a bad reason, or no reason at all – as long as they are not fired based upon gender, sex, race, religious belief, disability, age over 40 years, sexual orientation, gender identity, or because they qualify as a whistleblower.[19]

Under Georgia law, a county employee generally has no protected property interest unless the employee is subject to a civil service system [20] (sometimes referred to as a merit system) or unless employed for a definite period of time (e.g., a one-year employment contract) and the employee is discharged before the end of that time.[21] Employees who have a reasonable expectation of continued employment have a "property interest" in their county job and may not be fired without receiving their "due process rights." When a county abolishes positions for budgetary or other reasons, an employee whose position is abolished does not have a property interest in his or her job.[22]

Additional rights may also be provided to employees through a civil service system. County governments may create a civil service system for county employees under the jurisdiction of the board of commissioners.[23] The employees of the constitutional officers[24] may be added to the civil service system only if (1) the constitutional officer applies in writing to the commissioners asking to have the employees covered and (2) the commissioners formally provide – by ordinance or resolution – that the positions be subject to the civil service system.[25] If these requirements for placing employees under a civil service system are not met, the employees remain at-will with no protected property interest.[26] Once positions have been moved under the county's civil service or merit system, they cannot be removed from that system when a newly elected official or department head is elected or appointed.[27]

If a county makes an employment decision affecting an employee's property interest, the employee is then entitled to procedural due process, which requires the county to provide both a pre-and post-termination hearing.

### The Pre-Termination Hearing

The U.S. Supreme Court has held that a public employee with a constitutionally protected right in continued public employment (i.e., an employee with a property interest who is no longer terminable at will) may not be terminated without a hearing *prior* to separation from employment.[28]

A pre-termination hearing is "an initial check against mistaken decisions – essentially, a determination of whether there are reasonable grounds to believe that the charges against the employee are true and support the proposed action."[29] A pre-termination hearing does not require an employer to provide full "trial-type" rights, such as the right to present or cross-examine witnesses,[30] but, rather notice and an opportunity to respond to proposed disciplinary action.[31]

**The Post-Termination Hearing**

Where there is a property right to employment (i.e., the employee may be terminated only for cause), procedural due process not only requires a pre-termination hearing, but also a post-termination procedure. The post-termination hearing must be held before an impartial tribunal and include opportunity to present and cross-examine witnesses.

The following are recommended procedural requirements:

- The employee should be given written notice of charges with sufficient detail to enable the employee to show any errors that may exist.[32]
- The employee should be given the names of all witnesses who will be called, as well as an explanation of their expected testimony.[33]
- The hearing must be held within a reasonable time.[34]
- The employee must be allowed to present evidence on their own behalf.[35]
- The employee must be given an opportunity to be heard at the hearing.[36]
- The employee must be allowed to cross-examine accusers in the presence of the decision maker.[37]
- The hearing must be held before a tribunal having apparent impartiality to the charges.[38]
- The employee be allowed the right to have a lawyer present to assist them.[39]

**Name-Clearing Hearings**

A name-clearing hearing is a limited procedure that provides an employee with an opportunity to cleanse their name or reputation.[40] It is not intended to evaluate the correctness of a termination decision or to reconsider the termination. The right to a name-clearing hearing stems from a county employee's "liberty interest" to maintain or protect their good name and reputation,[41] pursuant to the Fourteenth Amendment. The county may not

engage in actions that result in the deprivation of a protected liberty interest without due process of law.

A county employee's liberty interest exists regardless of whether the employee is terminable at will or has a property interest in continued employment. To establish a claim, the courts require a false statement of a stigmatizing nature attending a public employee's discharge, made public by the governmental employer, and without a meaningful opportunity for an employee name-clearing hearing.[42]

## POSITION CLASSIFICATION

The county's board of commissioners should have or adopt a position classification system. Such a system groups jobs in classifications, with a prearranged number of grade levels within the job or classification. A county's classification system establishes how its human resources are employed to perform its core services. The federal government's General Schedule (GS) is the best known and often duplicated classification system.

The system consists of titles and descriptions for the different classifications or positions, which define how work is organized and assigned. It is essential to depict this information accurately to ensure equity within the organization and to enable comparisons with positions at peer organizations. Through classification analysis, such issues as erroneous titles, outdated job descriptions, and inconsistent titles across departments can be identified and corrected.

The county's system should be regularly updated to reflect the most current duties performed by each employee in the classified services. In addition, a periodic review should be performed to thoroughly evaluate the county's present salary in comparison to comparable positions in both the private and public sectors. Proper maintenance also requires the following oversight of the classification system:

- Review of all current job descriptions: analysis for knowledge, skills, abilities, education, relevant experience, and internal consistency; job definitions and summaries; distinguishing characteristics; supervision received and exercised; conformity with the Americans with Disabilities Act (ADA)[43] relative to essential job functions (including physical demands); and special requirements including licensing and certifications.
- Review of the county's current Position Classification and Wage Administration Plans. Provide and consider recommendations for enhancement and specific guidelines for requests pertaining to creating

new positions, salary adjustments and reclassifications, retroactive pay, compensation for additional duties (temporary and permanent assignments), and internal equity adjustments.

- Analysis of all existing job family classifications, pay grades and salary ranges, and recommended modifications as necessary.
- Analysis of all positions to determine whether they are subject to the Fair Labor Standards Act (FLSA)[44] – nonexempt (i.e., required to be paid overtime or given compensatory time[45] for every hour worked above the 40-hour workweek or tour of duty for certain public safety positions[46]) or exempt (i.e., certain salaried employees who are not required to receive overtime or compensatory time[47]) – and recommended modifications as necessary.
- Establish appropriate benchmarking standards and conduct salary surveys as needed for similar positions with comparable local, state, and national counties.
- Identify potential pay compression issues and provide alternative solutions.
- Develop an applicable classification/reclassification questionnaire for departments upon request.

## BENEFITS AND LEAVE

### Health Insurance[48]

The employer-shared responsibility provisions of the Patient Protection and Affordable Care Act of 2010 require employers, including county governments, with at least 50 full-time employees to either

- offer minimum essential coverage to their full-time employees (and their dependents) or
- potentially make an employer shared responsibility payment to the IRS.[49]

To qualify as minimum essential coverage, the plan must cover at least 60% of the total allowed cost of benefits that are expected to be incurred under the plan and provide substantial coverage of inpatient hospitalization and physician services. A plan is considered affordable if the employee required contribution is no more than a certain percentage of that employee's household income.[50] Since counties generally do not know an employee's household income, W-2 wages may be used under the affordability safe harbor.[51] The employee required contribution

used for the affordability calculation is the employee's cost of enrolling in the least expensive coverage offered by the employer that provides minimum value.[52]

County governments typically offer two basic types of health plans – traditional or high deductible. Either type of plan can be fully insured or self-insured. When using a self-insured plan model, stop-loss insurance can be purchased to cover claims over a specific threshold. Please note: any questions regarding the types of healthcare coverage that is provided for your county's employees should be directed to your county attorney and/or the county's human resources director.

Traditional plans work on a system of copays and deductibles. With a traditional health plan, the employee and dependents are responsible for copays, deductibles, and coinsurance up to their annual out of pocket maximum. Flexible Spending Accounts (FSAs), which are subject to the Internal Revenue Code,[53] may be offered alongside traditional health plans to allow employees to set aside pre-tax dollars to pay for any out-of-pocket expenses.

High deductible health plans (HDPH) have a higher deductible that must be met before the plan will begin paying towards any medical expenses. To qualify as a HDHP, the minimum deductible defined by the IRS must be used. Each year, the IRS issues a Revenue Procedure to establish the minimum deductibles.[54] Health Savings Accounts[55] (HSAs) may be offered alongside HDHPs to allow employees to set aside pre-tax dollars to pay for any out-of-pocket expenses.[56] Most government employers offer medical and dental plans. Some employers also offer other voluntary plans – usually with no county contribution – to include vision and supplemental cancer, hospitalization, accident, or critical care plans.

**Retirement Plans**[57]

County government employers may offer two types of retirement plans to their employees – defined benefit and defined contribution. While county retirement plans are subject to Georgia law,[58] they must also comply with the Internal Revenue Code to remain in compliance with state law[59] and to maintain the tax benefits associated with retirement plans.[60]

### Defined Benefit Plan

A defined benefit plan, also known as a pension plan, provides a specified payment amount in retirement. The amount is based on a defined calculation once the employee qualifies to retire under the plan.[61] To qualify for retirement, plans may require a minimum retirement age, minimum years of service, or a point calculation that consists of years of service plus age. The annual pension calculation consists of three variables: (1) years of service, (2) multiplier (i.e., 1%, 1.5%, 2% or some other factor), and (3) final average compensation.

| Defined Benefit Plan<br>Retirement Pension Calculation |
| --- |
| Annual pension amount = years of service X multiplier X final average compensation |
| Monthly pension = annual pension amount ÷12 |

Monthly pension payments are paid from retirement until the death of the retiree. Some defined benefit plans offer retirees a joint and survivor option[62] that allows the retiree to choose a lower monthly pension amount to provide a monthly payment to their survivor (usually spouse) after the retiree's death. If a joint and survivor option is chosen, the survivor must be designated and cannot be changed after pension payments begin. When offered, defined benefit plans usually require that all employees participate and pension is taxable as income.

### Defined Contribution Plan

Defined contribution plans allow employees to contribute and invest funds over time to save for retirement.[63] Local government employers can establish a 401(a) defined contribution retirement plan[64] and/or a 457(b) deferred compensation plan for this purpose. In addition to employee contributions, county employers may provide a match contribution up to a specified percentage or amount. Employees can generally contribute as much as 100% of their compensation up to the annual IRS limit.[65] Employees over age 50 can also contribute an additional catch-up amount subject to the annual IRS limit.[66] Contributions to a 457(b) plan are tax deferred and plans can allow designated Roth contributions.[67] Contributions and earnings from non-Roth 457(b) plans are taxable at withdrawal.[68] Unlike 401(k) and 403(b) plans, 457(b) plans are not subject to an additional 10% tax penalty for withdrawals before age 59½.[69]

**Paid Time Off (PTO)**

No Georgia law requires public sector employers to provide employees with PTO, vacation, or sick time – paid or unpaid. However, most local government employers do offer their employees some version of PTO.[70] If offered, a PTO, vacation, or sick time policy should define the accrual rate and when/if unused time will be paid out or forfeited. Payment of unused accrued time at termination is not required unless the employer has promised to do so in the policy.[71]

**Compensatory Time ("comp time")**

Compensatory time, also known as comp time, is the practice of county employers giving employees paid time off to balance out hours the employee worked beyond their regular schedule. Compensatory time is intended for

occasional use as a response to irregular overtime hours. Some counties have regulated compensatory time policies to accommodate flexible work scheduling, while others use it as a case-by-case solution to unexpected schedule changes.

Additionally, if a nonexempt FMLA employee has earned unused comp time in lieu of overtime, then the employee must be paid out the unused comp time.[72]

**FMLA**

The Family and Medical Leave Act of 1993[73] (FMLA) applies to public sector employers regardless of the number of employees. FMLA entitles eligible employees[74] to take unpaid job-protected leave for qualifying family and medical reasons. To be eligible, an employee must have worked for the county for a minimum of 12 months and at least 1,250 hours in the 12 months prior to the leave.[75] Eligible employees may take up to 12 weeks (480 hours) of leave in a 12-month period for one of the following reasons:

- Birth of a child or placement of a child with the employee for adoption or foster care.
- To care for a spouse, child or parent who has a "serious health condition."[76]
- For a serious personal health condition that makes the employee unable to perform the essential functions of their job.
- For any qualifying exigency arising out of the fact that a spouse, child, or parent is a military member on covered active duty or call to covered active-duty status.[77]

An eligible employee may take an additional 14 weeks – up to 26 weeks of leave during a single 12-month period – to care for a covered military service member[78] with a serious injury or illness[79] if the employee is the spouse, child, parent or next of kin of that service member.[80]

FMLA leave may be taken intermittently if medically appropriate.[81] FMLA leave is unpaid,[82] but the county can require employees to use accrued PTO/vacation/sick time during FMLA approved leave.[83] If short term disability benefits are available to the employee because of a serious medical condition, the employee may receive those benefits and simultaneously receive the job protection benefits of FMLA. Some counties have policies in place that require an employee to use accrued time simultaneously with FMLA leave. This prevents an employee from being absent for FMLA and then taking separate time off to "extend" their time out of the office. Upon return from FMLA leave, the employee should be returned to their original position or an equivalent position with the same pay, benefits, and terms and conditions of employment.[84]

**USERRA**

The Uniformed Services Employment and Reemployment Rights Act (USERRA)[85] is administered by the Veterans' Employment and Training Service (VETS) division of the Department of Labor. USSERA prohibits discrimination in initial employment, reemployment, retention, promotion, or any other employment benefit on the basis of past military service, current military obligations, or intent to serve. USERRA also protects employees against retaliation. All county officers and employees who serve in the Army, Navy, Marine Corps, Air Force, Coast Guard, National Guard or in any of their reserves, are entitled to a military leave of absence while they are engaged in the performance of military duty, as well as traveling to and from such duty.[86] In addition to active duty, this includes both active and inactive duty for training.

In general, Georgia law requires counties to pay their officers and employees on military leave of absence their regular county salary or other compensation for the first eighteen days of ordered military service per federal fiscal year (i.e., October 1 through September 30).[87] In certain circumstances, members of the National Guard may be entitled to their county salary for thirty days per federal fiscal year.[88] Additionally, USERRA provides that these officers and employees may use any vacation leave that accrued prior to their military service. However, the county may not require an employee to use their vacation leave.[89]

**Required Leave to Perform Civic Duties**

Each county employee must be given up to two hours off work to vote in any municipal, county, state, or federal election in which the employee is qualified to vote unless the employee's shift begins at least two hours after the polls open or ends at least two hours before the polls close.[90]

Employees summoned to jury duty or served with a subpoena or court order requiring their attendance at a judicial proceeding may not be terminated, disciplined, or otherwise penalized because they are absent from work.[91]

**Required Leave for Nursing Mothers**

Counties with 50 or more employees must provide reasonable breaks to nursing mothers to express breast milk for one year after the birth of a child in a location (other than a bathroom) free from view of the public and coworkers.[92] These breaks do not have to be paid.[93]

**COBRA**

The Consolidated Omnibus Budget Reconciliation Act (COBRA) provides employees and their dependents the opportunity to continue group health coverage for a defined period of time after loss of coverage or a qualifying event.[94]

With COBRA coverage continuation,[95] the individual is covered under the same medical plan that they had prior to the qualifying event. Participants may be required to pay the entire premium for coverage up to 102% of the cost to the plan.[96]

## LEGAL CONSIDERATIONS REGARDING COUNTY EMPLOYMENT PRACTICES

### Anti-Discrimination Laws

#### Title VII of the Civil Rights Act of 1964

As an employer, county governments are – in most instances – subject to federal laws that prohibit various forms of discrimination in the workplace. Title VII of the Civil Rights Act of 1964[97] prohibits employment actions that are based on race, color, religion, sex (which includes pregnancy), sexual orientation or gender identity or national origin.[98] This law applies to recruitment and hiring decisions, the provision of compensation and job-related benefits, transfers and promotions, and employee discipline and termination (also known as "adverse actions").

The courts recognize that unlawful discrimination can take two forms: disparate treatment (or intentional discrimination) and disparate impact (facially neutral practices that disproportionately harm a protected class). With respect to disparate treatment, county officials must understand that employment decisions cannot be made because of a person's protected classification.[99] For example, if both a male and a female applicant for a law enforcement officer position are equally qualified, it would be a violation of Title VII to select the male applicant because the decisionmaker believes men are better suited to the job than women.[100] With respect to disparate impact, a job requirement, such as the ability to pass a written test, could violate the law if it is shown that (1) the test disproportionately disqualifies persons within a protected class and (2) achieving a passing score is not necessary for successful performance of the job.[101]

In an important decision issued in 2020, the U.S. Supreme Court ruled that Title VII protects persons based upon sexual orientation or gender identity.[102]

Title VII's prohibition of sex discrimination also protects employees against sexual harassment in the workplace. Two types of sexual harassment are recognized by the courts: quid pro quo and hostile environment. Quid pro quo harassment occurs when an employee must participate in sexual acts to retain employment or receive advancement within the organization. This type of harassment typically involves someone demanding sexual favors of a subordinate employee. The hostile environment form of sexual harassment occurs when

sexually oriented talk or behavior occurs within the workplace that is sufficiently severe and pervasive and that is unwelcomed by the person asserting the claim. This form of sexual harassment can occur peer-to-peer or through the actions of a supervisor, but the standards of proof vary depending upon the role of the alleged offender.

Every county should have a sexual harassment policy and county officials should have a clear understanding of the policy. Flirting and teasing within the workplace will probably always be with us, but there are lines that must not be crossed. Officials should also understand that the defense of a consensual relationship can be difficult to prove when one party to the relationship later claims there was pressure to go along to keep his or her position.[103]

Title VII's prohibition of religious discrimination in the workplace does not produce a great deal of litigation involving government employers, but county officials should be mindful that it exists. It is appropriate for like-minded employees to share their faith with their co-workers; the First Amendment grants them the right to do so. However, supervisors should guard against situations in which privileges within the workplace are extended based upon an employee's religious beliefs. Favoritism can be cast as discrimination – counties must remain equal opportunity employers.

Title VII not only prohibits discrimination, but also prohibits retaliation against employees who have asserted a claim or spoken up for alleged victims. To assert a claim, it is not always necessary to show that the underlying claim of discrimination was meritorious. It is the act of asserting a claim, or testifying in support of another employee's claim, that is protected. Accordingly, county employers must not punish or take adverse action against employees because they have availed themselves of their rights under Title VII. This does not mean, however, that an employee who has asserted a claim, or supported one who did, are forever immune from disciplinary action. The courts examine the amount of time that has passed between the protected conduct and the adverse action to determine if there is a link between the two events.

### Age Discrimination in Employment Act

The Age Discrimination in Employment Act[104] applies to local governments, and generally protects persons 40 years of age and older. As county employees advance in age and tenure, the cost of their salaries and benefits can become far greater than the expense for younger employees. When looking for ways to reduce costs, it can be tempting to encourage older employees to separate from employment. It is legally permissible to implement early retirement incentives so long as they are voluntary. With very few exceptions, counties cannot impose a

mandatory retirement age[105] and cannot implement reductions-in-force (or reorganizations) that are specifically targeted at older workers.

### Americans with Disabilities Act and Family and Medical Leave Act

The Americans with Disabilities Act (ADA)[106] and the FMLA[107] apply to county employees who have disabilities or medical conditions that require accommodation in the workplace. The ADA and the FMLA provide distinct protections to county employees, but there are also times when the laws overlap.

Stated simply, the ADA provides that a qualified individual with a disability is entitled to work and earn a livelihood if a reasonable accommodation provided by the county will enable the employee to do so.[108] Qualified and reasonable are important terms. A person is qualified for the position if he or she can perform the essential functions of the job, with or without accommodation. Therefore, it is important that every job within county government have a written job description that lists essential functions and physical capabilities. If a person cannot perform an essential function even with an accommodation, then that person is not a qualified individual. If a person can perform all essential job functions but needs the county to make an accommodation that enables the person to do so, then the county must provide the accommodation if it is reasonable. Examples of accommodations may include restructuring the position, modifying work schedules, or providing special equipment that is not unreasonably expensive. An accommodation is not reasonable if it would cause an undue hardship on the county. This determination is made based upon the county's size and financial resources and the impact of the proposed accommodation upon the county's operations.[109]

County officials should also understand that applicants for employment cannot be asked about disabilities or physical limitations on the application form or during initial interviews.[110] A county is allowed to make a conditional offer of employment, with the condition being that prior to commencing work the prospective employee must complete a medical examination designed to determine if the employee can perform all essential functions of the job, with or without accommodation.[111] The county must require all persons within the job category to complete such medical examinations and must consider all requested accommodations in good faith. The county will be held accountable for its actions based upon a balance of the employee's rights under the ADA with the extent of burden created by the requested accommodation.

The FMLA requires counties to provide up to 12 weeks of unpaid leave to employees who must miss work due a serious medical condition experienced by themselves or one of their close family members.[112] During the employee's

absence, all health insurance benefits must be maintained and the employee is entitled to return to work in the same or an equivalent position.[113] Leave under the FMLA may be taken intermittently or through a reduced work schedule if necessary.[114]

Although the FMLA sets the amount of leave entitlement at 12 weeks during a 12-month period, there are situations where an employer may be required to extend the leave beyond 12 weeks. This is where the FMLA and the ADA can overlap. An employee may experience a condition that qualifies as a serious medical condition under the FMLA and a disability under the ADA. If the employee exhausts all 12 weeks of FMLA and desires to return to work, but is still not medically certified to do so, the ADA may require the employer to allow additional unpaid leave as a reasonable accommodation under certain conditions.[115] However, a leave without end is not a reasonable accommodation.[116] To be prepared for such situations, counties should notify all employees at the time FMLA leave is approved that a fitness-for-duty certification will be required from their health care provider in order to return to work. A list of essential job functions must be provided with the notice.[117] While the employee is on leave, the county has the right to require the employee to provide periodic reports on their status and intent to return to work.[118]

If, at the conclusion of the FMLA leave, the employee states unequivocally that he or she does not intend to return to work, the county's obligations under the FMLA and the ADA cease.[119] However, if the employee states he or she may not be able to return to work at the expiration of the FMLA leave because of a qualifying disability, but desires and intends to return to work in the future, the county's obligations under the ADA continue.[120] At that point, the county should provide the employee with a fitness-for-duty certification to be completed by the employee's health care provider. The employee is allowed up to 15 days for the certification to be completed and returned to the county, or longer if extenuating circumstances are present.[121] If the employee fails to provide a completed fitness-for-duty certification or new medical certification for a serious health condition after the requisite time period, the employee may be terminated.[122]

However, if the medical provider states the employee will be able to return to work within a definite and reasonable time, but needs additional leave until that date, the county should allow the additional leave unless it can show an undue burden or hardship will be created. There must be a medical report stating the employee will be able to return to work at a definite point in the near future. Counties are not required to grant leave beyond 12 weeks if the health care provider states the employee requires an indefinite period of additional leave or states it is unknown whether or when the employee will be able to return to work

and perform the essential functions of the job.[123] Even then, the county would do well to consider whether there are any available positions the employee is able to fill or could fill in the near term, and explore those options with the employee and medical provider prior to terminating the employee. It is very important for the county to document all communications with the employee and obtain the employee's signature if possible. Should the case go to court it is always helpful to have a record of what was said and when it was said during the process.

**Employee Freedom of Speech and Whistleblower Reports**

Federal and state law may come into play if an employee is subjected to adverse action because of things the employee said, either verbally or in writing. In some circumstances, the First Amendment to the U.S. Constitution prohibits retaliation against local government employees who exercise the right of free speech. Under Georgia law, the state Whistleblower Act[124] protects local government employees who report violations of laws, rules, or regulations. While related, these two areas of the law are distinct, and different requirements exist for each claim. However, they do have one important thing in common: they apply even if the employee is at will and has no property right or civil service protections.

First Amendment

With respect to the First Amendment, government employees do not lose their right to free speech because of their positions. Conversely, not all speech by government employees is protected – and even where it is protected, there are circumstances where the government's rights as an employer outweigh the rights of the employee.[125] The elements of a First Amendment claim – and the defenses available to the government as the employer – are quite complex and beyond the scope of this chapter. For purposes of daily personnel administration, counties should know the following:

- County employees generally have a right to speak out on matters of public concern, as that term has been defined by the courts.
- If a county chooses to discipline an employee because of their speech on a matter of public concern, the county must be able to show its interests as an employer outweigh the employee's interests in exercising constitutional rights.

Important factors in determining if a county's interests outweigh the employee's interests include whether the speech

- impairs discipline by superiors or harmony among co-workers;

- has a detrimental impact on close working relationships where loyalty or confidentiality are necessary; or
- impedes the ability of the employee to perform his or her duties or interferes with the regular operations of the government's functions.[126]

While every case is fact-specific, the following scenarios are examples on each end of the spectrum. It would likely be a First Amendment violation if a county fired a county employee because the employee wrote an editorial in a local newspaper questioning the wisdom of the county's decisions regarding service delivery and resource allocation.[127] Conversely, a county would likely have valid grounds to discipline an employee who posted a message on social media calling his or her supervisor vulgar or obscene names, even if the comments touched upon matters of public concern.[128]

Another dimension of the First Amendment relates to political patronage claims. In its original usage, the term meant loyalty to one political party in such a way that people who claim allegiance to an opposing political party are not eligible for employment or retention by the party in office. While this is allowed at the very highest levels of government for policymaking and confidential positions where loyalty is essential, party affiliation generally is not a legitimate basis for employment decisions at the county level.

However, patronage cases can also mean a refusal to hire or retain an employee not because of party affiliation, but because the employee supported someone else in a contested election. May the winner of an election eliminate employees from the workforce who were supportive of the losing candidate? In order not to violate the First Amendment, the focus is on the position held by the employee. If the position holds the same legal authority as the elected official in the elected official's absence, then the person holding that position may be discharged based on loyalty.[129] Further, if the position requires a close working relationship with the person who won office, helps create policy for the elected official, or serves as a spokesperson for the elected official, it may be constitutional for the elected official to fill the position with a person he or she believes has demonstrated loyalty and support.[130] For example, courts have held that sheriffs in Georgia can insist on personal loyalty from deputy sheriffs, because deputy sheriffs are the legal extension of the sheriffs in public. However, sheriffs may not require personal loyalty for positions like record clerks, dispatchers, and jailers.[131]

Conversely, if the position is non-policymaking and has one or more levels of supervision between the position and the elected official, it is likely the elected official may not require personal loyalty as a job requirement.[132]

### Georgia Whistleblower Act

The Georgia Whistleblower Act prohibits retaliation against government employees who disclose a violation of, or noncompliance with, a law, rule, or regulation.[133] Several key points should be understood:

- The disclosure can be made within the organization to a supervisor or to an outside governmental agency (without following the employer's chain of command).
- The law, rule, or regulation reported to have been violated or not followed can include any law, rule, or regulation issued by any governmental agency (state or federal).
- There is no requirement that the disclosure of a violation or noncompliance with laws, rules, or regulations also concern state-funded programs or operations.
- Not only is the person making the disclosure protected from retaliation, but the law also prohibits retaliation against any employee who objects to or refuses to participate in any policy, practice, or activity reasonably believed to be in violation of a law, rule, or regulation.[134]

Even if the disclosure is determined to be unfounded, the act of reporting is protected so long as the employee making the disclosure did not knowingly make a false report or act with reckless disregard for the truth.[135] In addition, if an employee makes a disclosure of the possible existence of fraud, waste, or abuse relating to state programs or operations under the jurisdiction of the county, the employee's name cannot be disclosed without consent or prior notice.[136]

An employee may file suit under the Whistleblower Act (sovereign immunity is no defense) and, if successful, can recover reinstatement, back pay, compensatory damages, and attorney's fees.[137] Counties should be very careful if a disclosure is made by any of its employees that laws, rules, or regulations are not being followed. Such disclosures, if made with a reasonable belief they are true, are protected and the employee making the report cannot be punished for doing so.

**Employee Privacy Interests**

The Fourth Amendment applies only to the government. Therefore, county employees have rights under the Fourth Amendment to be free from unreasonable searches and seizures that employees of private companies may not have. Whenever a county searches the person or property of one of its employees, a Fourth Amendment analysis comes into play with two basic steps:

1. Determining whether the employee has a reasonable expectation of privacy in the place or thing being searched.
2. If there is a reasonable expectation of privacy, determining whether a search can occur without a search warrant in the context of an administrative investigation (as opposed to a criminal investigation).[138]

An employee has a reasonable expectation of privacy and the county should not conduct a search without reasonable suspicion of a rule violation or safety risk in these areas:

- The interior of an employee's personal vehicle while parked on county property.[139]
- The contents of a purse, briefcase, or backpack brought into a county building.[140]
- Where employees are allowed to change clothing or use bathroom facilities in private.[141]
- Telephone calls of a personal nature made while at work (i.e., they should not be monitored or recorded without the employee's knowledge and consent).[142]

With respect to video surveillance for security and loss control purposes, silent video monitoring of public spaces is permissible, but audio recordings of oral conversations without notice and consent may likely violate the federal Electronic Communications Privacy Act.[143]

The county's authority to require its employees to submit to drug and alcohol testing is covered by the Fourth Amendment. A county may require a drug or alcohol test of an employee holding any position when there is reasonable suspicion that an employee is under the influence of drugs or alcohol. "Reasonable suspicion" means more than a feeling, a guess, or a hunch — there must be some objective facts that would lead a reasonable person to conclude the person is under the influence. It is, however, a lesser standard than probable cause, which is required for a warrant. Suspicion-less tests may be required of employees in safety sensitive positions as a matter of routine practice after a conditional offer of employment has been extended[144] and after being involved in an accident in a county vehicle.[145] Also, random testing of persons holding high risk positions may also be authorized. The terms "safety sensitive" and "high risk" positions typically include positions that require the operation of vehicles (particularly where passengers are transported), heavy equipment, or machinery that could cause serious injury or death due to inattentiveness or impairment. Clerical positions, office workers, and positions where no dangerous equipment is

used do not qualify and should not be the subject of pre-employment or random drug testing. Employees who operate commercial vehicles, with limited exceptions, are subject to random testing as authorized by federal law.[146]

Requiring county employees to sign a waiver for release of criminal history information and having a policy against hiring or retaining employees with a criminal record also falls within the ambit of employee privacy. It is not a *per se* violation of the law to require criminal background checks of all applicants and to hire only those with no criminal record. However, several important points should be noted:

- The employee is entitled to receive a written statement of rights in connection with the background check.[147]
- If the employer declines to offer employment because of a criminal record, the employee is entitled to know what information within the record provided the basis for the decision.[148] The employee is also entitled to challenge the accuracy of that information, and the employer must provide a written explanation of the process for doing so.[149]
- All criminal history records obtained must be securely stored and cannot be unlawfully disseminated or used for unauthorized purposes.
- It is possible that a policy requiring no criminal record to be eligible for employment could violate Title VII. The EEOC has issued guidance suggesting that if such policies have a disproportionate impact on a racial group, the employer must show the policy is job related.[150] For example, such a policy may be job related for a position that is entrusted with money, but it may not be job related to a position that primarily calls for physical labor. The EEOC also encourages employers to provide individualized assessments when a criminal record becomes a factor, rather than making blanket rejections.

A county can – and should – adopt policies and procedures that inform employees that areas and equipment within their workspace and on or in county property are county controlled. Therefore, employees have no expectation of privacy in these areas. First and foremost, counties should have a clear policy that county-owned computers, cell phones, and email servers are county property and are subject to search or inspection at any time.[151] The same applies for county-owned vehicles, equipment, tools, desks, and filing cabinets that are made available for an employee's use. When such policies are in place, the county will generally have the right to inspect such devices and property at any time.[152] This includes internet browsing history, downloads, social media traffic on county

computers and devices, and emails sent or received by county employees on the county's email server (even if sent or accessed on a personally-owned device).

Voicemail messages and text messages stored on county-owned cell phones may be subject to some protection under the federal Stored Communications Act.[153] However, the U.S. Supreme Court has ruled such information can be inspected by a government employer without a warrant under the following conditions:

- The inspection is for a work-related purpose or for the investigation of work-related misconduct, and not for use in a criminal prosecution.
- The employer has a justifiable reason for making the inspection at its inception.
- The extent of the inspection is reasonably related to the objective of the search and not excessively intrusive.[154]

A county employee has no expectation of privacy with respect to materials or things readily visible on an open desk.[155] If policies and procedures are in place notifying employees that all areas of their workspace are subject to inspection at any time, then there should be no expectation of privacy in desk drawers, filing cabinets, or the glove box and consoles of county vehicles. This does not mean, however, that the employer is free to rifle through an employee's purse or wallet placed in a desk drawer or file cabinet without reasonable suspicion that a rule violation has occurred or safety risk exists. The employer has the right to see what is being kept within an employee's workspace, but the employee retains an expectation of privacy in the interior contents of a purse or wallet.

While a county employee may lawfully keep a firearm inside their personal vehicle while parked on county property, counties may adopt policies prohibiting firearms in government buildings or in county-owned vehicles by persons other than qualified and authorized law enforcement officials.[156]

County employees also have no expectation of privacy with respect to their social media posts that are readily accessible by the general public. Counties frequently monitor social media for references to the employer or its management officials to protect the county's reputation. Counties should have or consider adopting a social media policy advising employees that false statements, personal attacks against other employees or officials, or overt discriminatory statements on social media can be grounds for disciplinary action. There are First Amendment considerations here; counties should carefully define the type of speech that falls outside of a protected expression.

**Garnishment of Employee Wages**

A county employee's paycheck is subject to a garnishment action by a creditor, and the county must follow the law when dividing the paycheck between the employee and the creditor.[157] A county may not terminate an employee on account of one or more garnishments filed as the result of a single debt.[158]

**Personnel Records under the Open Records Law**

Counties are frequently asked to produce personnel records under the Open Records Law. What portions of an employee's personnel file are subject to release and what must be withheld? Under state and federal law, the following information must **not** be released, and the county is under an obligation to redact – to take out or make illegible – the following information before producing remaining portions of a personnel file:

- Home address.
- Home telephone number.
- Day and month of birth.
- Social security number.
- Insurance or medical information.
- Mother's birth name.
- Credit card and debit card information.
- Bank account information.
- Account numbers.
- Utility account numbers.
- Password used to access his or her account.
- Financial data or information other than compensation paid by the county (amount paid to all county employees and officials is a matter of public record that must be disclosed).
- Unlisted telephone number.
- If criminal history information was obtained, the GCIC or FBI records should not be produced.
- Identity of the public employee's immediate family members or dependents.[159]

In addition, confidential evaluations prepared in connection with a public officer's hiring or appointment are not subject to production.[160] If an employee is

the subject of an internal investigation in which disciplinary action is considered or taken, the written record of that investigation is not required to be released while the investigation is ongoing. However, ten days after the file materials are presented to the agency for action – or the investigation is otherwise terminated or concluded – the documents must be produced.

When litigation arises from a county employee's termination or disciplinary action, those lawsuits are sometimes settled out of court with an agreement that documents within the employee's personnel file will be purged pursuant to state law.[161] For example, if an employee is terminated based on reports of rule violations documented in the personnel file, but the employee sues claiming that the termination was actually motivated by the employee's race (or age, or gender, or protected speech, etc.), the suit may be settled on the condition that rule violation reports within the employee's personnel file be destroyed. The former employee seeks this condition to protect future job prospects and because the case was settled without a final court determination as to the validity of the charges or the actual motivation for the discharge. Georgia law assumes such settlements take place, but specifically provides that if documents are purged from a personnel file as a condition of a settlement, a notation must be placed in the file stating that documents have been removed as part of a settlement agreement. This notation must be made available to anyone requesting a copy of the former employee's file.[162]

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[1] DEFINITION human resource management (HRM), Wesley Chai, Shaun Sutner. Retrieved from techtarget.com/searchhrsoftware/definition/human-resource-management-HRM.
[2] 42 U.S.C. § 12111 et seq.; 29 C.F.R. §§ 1630.4 and 1630.7.
[3] *The ADA: Your Responsibilities as an Employer*, U.S. Equal Employment Opportunity Commission, eeoc.gov/laws/guidance/ada-your-responsibilities-employer.
[4] 29 C.F.R. § 1607. For guidelines on determining the proper use of assessments, see govinfo.gov/content/pkg/CFR-2017-title29-vol4/xml/CFR-2017-title29-vol4-part1607.xml, adopted by the U.S. Civil Service Commission, Department of Labor, Department of Justice, and Equal Employment Opportunity Commission.
[5] 29 C.F.R. § 1607.14(C).
[6] 15 U.S.C. § 1681 et seq.
[7] 15 U.S.C. § 1681b(b)(2).
[8] Id.
[9] 15 U.S.C. § 1681b(b)(3).
[10] 15 U.S.C. § 1681m.
[11] O.C.G.A. § 13-10-91(a).
[12] O.C.G.A. § 50-14-3(b)(2).
[13] O.C.G.A. § 50-18-72(a)(7).
[14] O.C.G.A. § 50-18-72(a)(11).
[15] O.C.G.A. § 50-18-72(a)(11).
[16] Kathryn Tyler, KT. (February 2020). Upskill or Fade Away. Retrieved from https://www.shrm.org/hr-today/news/all-things-work/pages/upskill-or-fade-away.aspx.

[17] Georgia Chamber & Troutman Sanders. (2013). *Georgia HR Manual*. Chicago, IL. American Chamber of Commerce Resources, LLC.
[18] James Grabowski; Robert J. Greene, PH.D; Peter Ronza; Valerie Johnson; and Lynn Lohman, "Effective Training: Key to Equitable Performance Appraisals." *PM Magazine*, January, 2020).
[19] O.C.G.A. § 34-7-1. If an employee serves "at the pleasure" of the county, or if he or she may be terminated if such action is found to be in the "best interest of the county" by a superior, and no other applicable laws, provisions, or contracts exist to create a property right, he or she does not have a property interest. Also, 29 U.S.C. § 621 et seq., 42 U.S.C. § 2000e et seq., and 42 U.S.C. § 12111 et seq.
[20] *Warren v. Crawford*, 927 F.2d 559, 562-563 (11th Cir. 1991); *Dixon v. Metropolitan Atlanta Rapid Transit Authority*, 242 Ga. App. 262, 264 (2000).
[21] O.C.G.A. § 34-7-1; *Mail Advertising Systems, Inc. v. Shroka*, 249 Ga. App. 484, 485-86 (2001); *Wojcik v. Lewis*, 204 Ga. App. 301, 303 (1992). If an employee is hired for an indefinite period of time or an initial trial period, however, there is no property interest in his or her employment. *Pickle Logging, Inc. v. Georgia Pacific Corporation*, 276 Ga. App. 398, 400 (2005); *Gunn v. Hawaiian Airlines, Inc.*, 162 Ga. App. 474, 474 (1982). Additionally, if the contract specifically provides for early termination or at-will status, then the employee may not have a property interest in his or her employment.
[22] *Newsome v. Richmond County*, 246 Ga. 300, 301 (1980).
[23] Ga. Const. art. IX, § I, para. IV and art. IX, § II, para. I(c)(1); O.C.G.A. § 36-1-21. The General Assembly may place employees under a county civil service system creating such a property right by passing specific authorizing legislation pursuant to a constitutional amendment. O.C.G.A. § 36-1-21(d)(1)(A); *Hill v. Watkins*, 280 Ga. 278, 279 (2006); *Ferdinand v. Board of Commissioners of Fulton County*, 281 Ga. 643, 645 n.4 (2007).
[24] Ga. Const. art. IX, § I, para. III(a). The constitutional officers include the superior court clerk, probate judge, sheriff, and tax commissioner.
[25] O.C.G.A. § 36-1-21(b); *Brett v. Jefferson County*, 123 F.3d 1429, 1434 (11th Cir. 1997).
[26] *Brett*, 123 F.3d at 1434; *Hill*, 280 Ga. at 289.
[27] *Wayne County v. Herrin*, 210 Ga. App. 747 (1993).
[28] *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985).
[29] *Loudermill*, 470 U.S. at 545, 546.
[30] *Kelly v. Smith*, 764 F.2d 1412, 1414-1416 (11th Cir. 1985). Overruled on other grounds. *McKinney v. Pate*, 20 F.3d 1550 (1994) (en banc); *Jones v. City of East Point*, 795 F.Supp. 408, 414 (N.D.Ga. 1992).
[31] *Gilbert v. Homar*, 520 U.S. 924, 929 (1997). Re-affirming *Loudermill*'s holding that pre-termination process only requires oral or written notice of the charges, an explanation of the employer's evidence, and an opportunity for the employee to tell his side of the story.
[32] *Hatcher v. Board of Public Education and Orphanage for Bibb County*, 809 F.2d 1546, 1554 (11th Cir. 1987).
[33] Id.
[34] *Loudermill*, 470 U.S. at 547.
35 *Adams v. Sewell*, 946 F.2d 757, 766 (11th Cir. 1991). Overruled on other grounds. *McKinney v. Pate*, 20 F.3d 1550 (11th Cir. 1994) (en banc); *Kelly*, 764 F.2d 1415-16; *Winkler v. County of DeKalb*, 648 F.2d 411 (5th Cir. Unit B 1981).
[36] *Loudermill*, 470 U.S. 546. The employee's opportunity to be heard includes his right to present evidence (including his own testimony).
[37] *Hatcher*, 809 F.2d 1554; *Kelly*, 764 F.2d 1415-1416.
[38] *Schweiker v. McClure*, 456 U.S. 188, 195 (1982); *McKinney v. Pate*, 20 F.3d 1550, 1561 (11th Cir.) (en banc), cert. denied, 513 U.S. 1110 (1995); *Kelly*, 764 F.2d 1415.
[39] *Carter v. Western Reserve Psychiatric Habilitation Center*, 767 F.2d 270, 273 (6th Cir. 1985).
[40] *Campbell v. Pierce County*, 741 F.2d 1342, 1346 (11th Cir. 1984).
[41] Damage to one's reputation alone is generally not enough to implicate the liberty interest. *Paul v. Davis*, 424 U.S. 693, 701 (1976). However, if other employment opportunities are foreclosed because false information is created and distributed by the governmental employer, then the employee's liberty interest is implicated.
[42] *Patterson v. City of Utica*, 370 F.3d 322, 330 (2d Cir. 2004); *Cox v. Roskelley*, 359 F.3d 1105, 1112-1113 (9th Cir.), cert. denied, 543 U.S. 924 (2004); *Quinn v. Shirey*, 293 F.3d 315, 320 (6th Cir.), cert. denied, 537 U.S.

1019 (2002); *Wojcik v. Massachusetts State Lottery Commission*, 300 F.3d 92, 103 (1st Cir. 2002); *Cotton v. Jackson*, 216 F.3d 1328, 1330 (11th Cir. 2000); *Hughes v. City of Garland*, 204 F.3d 223, 226 (5th Cir. 2000); *Strasburger v. Board of Education*, 143 F.3d 351, 356 (7th Cir.), cert. denied, 525 U.S. 1069 (1999).

[43] 42 U.S.C. § 12111 et seq.; 29 CFR §§ 1630.4 and 1630.7.

[44] 29 U.S.C. § 201 et seq.

[45] 29 U.S.C. § 207(o); 29 CFR § 553.1 et seq.

[46] 29 U.S.C. § 207(k); 29 CFR § 553.200 et seq.

[47] 29 U.S.C. § 13; 29 CFR § 541 et seq.

[48] Ga. Const. art. IX, Sec. II, para. III; O.C.G.A. § 36-1-11.1.

[49] 26 U.S.C. § 4980H; 29 C.F.R. § 54.4980H-0 et seq.

[50] 26 U.S. Code § 36B and 42 § U.S.C. 18022. Since 2014. it is adjusted annually by the Internal Revenue Service. Rev. Proc. 2014-37. The 2021 threshold was increased to 9.83%. See irs.gov/pub/irs-drop/rp-20-36.pdf.

[51] irs.gov/affordable-care-act/employers/minimum-value-and-affordability; 26 U.S.C. § 4980H; irs.gov/affordable-care-act/employers/questions-and-answers-on-employer-shared-responsibility-provisions-under-the-affordable-care-act - Affordability (Question 39).

[52] irs.gov/affordable-care-act/employers/minimum-value-and-affordability.

[53] 26 U.S.C. § 125.

[54] See, for example, IRS Rev. Proc. 2021-25, which establishes the HDHP for calendar year 2022 as a plan with an annual deductible of at least $1,400 for an individual or $2,800 for family coverage and annual out of pocket expenses of less than $7,050 for an individual or $14,100 for family coverage.

[55] 26 U.S.C. § 223; 26 CFR §§ 54.4980G-5 to 54.4980G-7.

[56] thebalance.com/traditional-vs-high-deductible-health-insurance-2385891.

[57] Ga. Const. art. IX, Sec. II, para. III; see also irs.gov/pub/irs-pdf/p4484.pdf.

[58] O.C.G.A. § 47-20-1 et seq. for county retirement plans. Other county officials and employees may have separate retirement plans: Georgia Firefighters Pension Fund, O.C.G.A. § 47-7-1 et seq.; Judges of the Probate Courts Retirement Fund of Georgia, O.C.G.A. § 47-11-1 et seq.; Superior Court Clerks' Retirement Fund of Georgia, O.C.G.A. § 47-14-1 et seq.; Sheriffs; Retirement Fund of Georgia, O.C.G.A. § 47-16-1 et seq.; Peace Officers' Annuity and Benefit Fund, O.C.G.A. § 47-17-1 et seq.; Georgia Judicial Retirement System, O.C.G.A. § 47-23-1 *et seq.*; and Georgia Magistrates Retirement Fund, O.C.G.A. § 47-25-1 et seq.

[59] See, for example, O.C.G.A. § 47-1-80 et seq.

[60] See, for example, 26 U.S.C. § 401 et seq. and § 457.

[61] investopedia.com/ask/answers/032415/how-does-defined-benefit-pension-plan-differ-defined-contribution-plan.asp.

[62] 26 U.S.C. § 401(a)(11).

[63] investopedia.com/ask/answers/032415/how-does-defined-benefit-pension-plan-differ-defined-contribution-plan.asp

[64] 26 U.S.C. § 401(a); irs.gov/retirement-plans/governmental-plans-under-internal-revenue-code-section-401a.

[65] COLA Increases for Dollar Limitations on Benefits and Contributions, *Internal Revenue Service,* Page Last Reviewed or Updated: 05-Nov-2021, irs.gov/retirement-plans/cola-increases-for-dollar-limitations-on-benefits-and-contributions.

[66] http://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-catch-up-contributions.

[67] irs.gov/retirement-plans/irc-457b-deferred-compensation-plans.

[68] Publication 590-A (2021), Contributions to Individual Retirement Arrangements (IRAs) | Internal Revenue Service (irs.gov).

[69] "Governmental 457(b) distributions are not subject to the 10% additional tax except for distributions attributable to rollovers from another type of plan or IRA." irs.gov/retirement-plans/plan-participant-employee/retirement-topics-tax-on-early-distributions.

[70] blr.com/Compensation/Benefits-Leave/Vacations-in-Georgia.

[71] *Superior Insurance Company v. Browne,* 196 Ga. App. 171 (1990).

[72] 26 U.S.C. § 207(o)(4).

[73] 29 U.S.C. § 2601 et seq.
[74] 29 U.S.C. § 2611(2).
[75] Id.
[76] 29 U.S.C. § 2611(11).
[77] 29 U.S.C. § 2612(a)(1).
[78] 29 U.S.C. § 2611(15).
[79] 29 U.S.C. § 2611(18).
[80] 29 U.S.C. § 2612(a)(3); see also dol.gov/agencies/whd/fact-sheets/28-fmla.
[81] 29 U.S.C. § 2612(b).
[82] 29 U.S.C. § 2612(c).
[83] 29 U.S.C. § 2612(d).
[84] 29 U.S.C. § 2614.
[85] 38 U.S.C. § 4301 et seq.
[86] 38 U.S.C. § 4303; O.C.G.A. § 38-2-279(b).
[87] O.C.G.A. § 38-2-279(e).
[88] Id.
[89] 38 U.S.C. § 4316(d).
[90] O.C.G.A. § 21-2-404.
[91] O.C.G.A. § 34-1-3.
[92] 29 U.S.C. § 207(r)(1).
[93] 29 U.S.C. § 207(r)(2).
[94] 26 U.S.C. § 4980B(f)(3); 26 C.F.R. § 54.4980B-4.
[95] 26 U.S.C. § 4980B(f); 26 C.F.R. § 54.4980B5.
[96] dol.gov/general/topic/health-plans/cobra.
[97] 42 U.S.C. § 2000e et seq.
[98] An anomaly exists with respect to national origin — while it is unlawful to discriminate against an American citizen because of the country where they or their ancestors originated, it is also unlawful to employ a person from another country who is in the United States without legal authorization. See *Espinoza v. Farah Manufacturing Company*, 414 U.S. 86 (1973). No violation of Title VII where employer refused to hire person who did not possess American citizenship. Also 8 U.S.C.S. § 1324a. Federal offense to hire unauthorized aliens.
[99] *McDonald v. Santa Fe Trail Transportation Company*, 427 U.S. 273 (1976. Contrary to what some may think, the law is not limited to the protection of minorities. It is a violation of Title VII to make employment decisions based on race, even if the person who has been discriminated against is of a majority race.
[100] *Hardin v. Stynchcombe*, 691 F.2d 1364 (11th Cir. 1982).
[101] *Griggs v. Duke Power Company*, 401 U.S. 424 (1971).
[102] *Bostoc v. Clayton County,* 140 S.Ct. 1731, 1737 (2020).
[103] *Oncale v. Sundowner Offshore Services*, 523 U.S. 75 (1998). A violation of Title VII can arise where sexual harassment occurs between people of the same gender.
[104] 29 U.S.C. § 621 et seq.
[105] To justify a mandatory retirement age an employer must show that age is a "bona fide occupational qualification (BFOQ)," and there are stringent requirements that must be met. Litigation in this area often involves public safety personnel. Two cases illustrate the difficulty employers face in attempting to meet the BFOQ defense: *EEOC v. Florida*, 660 F.Supp. 1104 (N.D. Fla. 1986) (mandatory retirement age of 62 for state troopers held to violate the Age Discrimination in Employment Act) and *Adams v. James*, 526 F.Supp. 80 (M.D. Ala. 1981) (mandatory retirement age of 60 for state troopers held to violate the Age Discrimination in Employment Act).
[106] 42 U.S.C. § 12111 et seq.
[107] 29 U.S.C. § 2601 et seq.
[108] The Act defines a "disability" as a physical or mental impairment that substantially limits one or more life activities, and includes people who have such an impairment or who are regarded as having an impairment.

[109] 42 U.S.C. § 12111(10) and 42 U.S.C. § 12112(b)(5)(A).
[110] 42 U.S.C. § 12112(d).
[111] 42 U.S.C. § 12112(d)(3).
[112] 29 U.S.C. § 2612.
[113] 29 U.S.C. § 2614.
[114] 29 U.S.C. § 2612(b).
[115] The Code of Federal Regulations ("C.F.R.") contains administrative rules adopted by the U.S. Department of Labor in connection with the administration of the FMLA and ADA. With respect to this scenario, the Rule states: "If [at the end of the employee's FMLA leave] the employee is unable to perform an essential function of the position because of a physical or mental condition, including the continuation of a serious health condition or an injury or illness also covered by workers' compensation, the employee has no right to restoration to another position under the FMLA. However, the employer's obligations may be governed by the Americans with Disabilities Act (ADA), as amended. 29 C.F.R. § 825.216 (c). Courts have ruled that in some circumstances extended leave beyond 12 weeks can be a reasonable accommodation under the ADA. See, e.g., *Wood v. Green*, 323 F.3d 1309 (11th Cir. 2003); *Toliver v. City of Jacksonville*, 2017 U.S. Dist. LEXIS 48523, 2017 WL 1196637 (M.D. Fla. March 31, 2017).
[116] See, *Santandreu v. Miami Dade County*., 513 Fed. Appdx. 92 (11th Cir. 2013), citing *Fogleman v. Greater Hazleton Health Alliance*, 122 F. Appdx. 581, 586 (3d Cir. 2004)("to be reasonable, the leave request must be temporary and set for a set duration; it cannot be indefinite or open ended.")
[117] 29 C.F.R. § 825.300(d)(3).
[118] 29 C.F.R. § 825.311.
[119] 29 C.F.R. § 825.311(b). Counties should insist upon a written statement signed and dated by the employee.
[120] Id.
[121] 29 C.F.R § 825.305. No adverse action should be taken against the employee prior to the expiration of this 15-day period, even if FMLA leave expires during that interval.
[122] 29 C.F.R § 825.313.
[123] *Wood v. Green*, supra; *Roddy v. City of Villa Rica*, 536 Fed. Appdx. 995 (11th Cir. 2013).
[124] O.C.G.A. § 45-1-4.
[125] See generally *Pickering v. Board of Education*, 391 U.S. 563 (1968); *Connick v. Myers*, 461 U.S. 138 (1983).
[126] *Rankin v. McPherson*, 483 U.S. 378, 388 (1987).
[127] *Pickering*, supra.
[128] *Xingzhong Shi v. Montgomery*, 679 Fed. Appdx. 828 (11th Cir. 2017); *Mitchell v. Hillsborough County*, 468 F.3d 1276 (11th Cir. 2006).
[129] *Underwood v. Harkins*, 698 F.3d 1335 (11th Cir. 2012).
[130] *Stegmaier v. Trammell*, 597 F.2d 1027 (5th Cir. 1979).
[131] *Terry v. Cook*, 866 F.2d 373 (11th Cir. 1989). See also *Epps v. Watson*, 492 F.3d 1240 (11th Cir. 2007) (tax commissioner cannot insist on political loyalty from a clerk in the office).
[132] *Rutan v. Republican Party*, 497 U.S. 62 (1990); *Elrod v. Burns*, 427 U.S. 347 (1976).
[133] O.C.G.A. § 45-1-4(d) and (e).
[134] Id.
[135] O.C.G.A. § 45-1-4(d)(2).
[136] O.C.G.A. § 45-1-4(b) and (c).
[137] O.C.G.A. § 45-1-4(e) and (f).
[138] *City of Ontario v. Quon*, 560 U.S. 746, 761 (2010).
[139] *True v. Nebraska*, 612 F.3d 676 (8th Cir. 2010). Although random, suspicion-less searches of correctional officers' private vehicles while parked in an area where inmates have unsupervised access is reasonable, if inmates do not have access to the vehicles the search would be a violation of the Fourth Amendment; the court also questioned whether employers can require blanket consent to an unreasonable search as a condition of employment.
[140] *O'Connor v. Ortega*, 480 U.S. 709, 716 (1987). Compare with *United States v. Esser*, 284 Fed. Appdx. 757 (11th Cir. 2008). In *Esser*, the Court upheld the warrantless search of a postal employee's purse after

she brought it inside postal property. There was a sign warning all employees that their purses were subject to being searched at any time. The Court noted: "In a governmental workplace, however, the "operational realities . . . may make *some* employees' expectations of privacy unreasonable when an intrusion is by a supervisor rather than a law enforcement official." Id. at 758. Counties should carefully consider whether the "operational realities" of a given workspace could provide reasonable grounds for a search of an employee's personal belongings.

[141] While this may be stating the obvious, county employees should not be required to disrobe or be subjected to intrusive physical examinations absent a warrant or a medical emergency when necessary to protect the employee's life or wellbeing.

[142] Under some circumstances it may be lawful for an employer to monitor business-related telephone calls to customers, and intra-office calls on extensions within the organization. See *Epps v. St. Mary's Hospital, Inc*., 802 F2d. 412 (1986). Counties should exercise caution in this area. If business calls are monitored for quality assurance, it would be a best practice to inform all parties, on every call, that this is occurring with a pre-recorded message or greeting. It would also be advisable to have all employees sign an acknowledgement that their business phones are monitored and recorded. With respect to intra-office business extensions, care must be taken not to use or disseminate any information obtained from personal calls inadvertently intercepted. As a rule, eavesdropping on telephone conversations, or "wiretapping," is generally unlawful and can result in both civil and criminal penalties. Further, a search warrant is normally required to inspect a personal cell phone. *Riley v. California*, 573 U.S. 373 (2014); *Port Authority. Police Benevolent Association v. Port Authority of N.Y. & N.J.*, 2017 U.S. Dist. LEXIS 162389 (S.D.N.Y. 2017). Employer's search of police officers' private cell phones not authorized as a work-related investigation.

[143] 18 U.S.C. §§ 2510-2522.

[144] *Friedenberg v. School Board of Palm Beach County***,** 911 F.3d 1084, 1096 (11th Cir. 2017); *AFSCME Council 79 v. Scott*, 717 F.3d 851 (1tth Cir. 2013). Executive Order requiring random drug testing of all state employees, without regard to "safety sensitive position," was overbroad.

[145] *Bryant v. City of Monroe*, 593 Fed. Appx. 291 (5th Cir. 2014); *Tanks v. Greater Cleveland Regional Transit Authority,* 930 F.2d 475, 477, 479 (6th Cir. 1991).

[146] 49 C.F.R. § 382.305.

[147] https://www.aps.gemalto.com/public/csv/ga/ApplicantAgreement.pdf; See also 15 U.S.C. §1681b(b)(3). If a county wishes to obtain an applicant's credit report, the county and the credit reporting agency must comply with the terms and conditions set forth in the Consumer Credit Protection Act, 15 U.S.C. § 1681b(b).

[148] O.C.G.A. § 35-3-35(b). In fact, it is a misdemeanor offense not to provide this information to the job applicant. Id.

[149] The employee's duty to inform the applicant of the process for challenging the accuracy of the information is stated in the GBI's notice of applicant's privacy rights, found here: https://www.aps.gemalto.com/public/csv/ga/ApplicantAgreement.pdf. The process for challenging the accuracy of the information is set forth in O.C.G.A. § 35-3-37.

[150] eeoc.gov/laws/guidance/background-checks-what-employers-need-know; eeoc.gov/laws/guidance/enforcement-guidance-consideration-arrest-and-conviction-records-employment-decisions.

[151] The policy should also inform employees that virtually all communications involving county business are subject to production under the Georgia Open Records Law, and that such communications must be retained pursuant to record retention schedules.

[152] "The workplace includes those areas and items that are related to work and are generally within the employer's control. At a hospital, for example, the hallways, cafeteria, offices, desks, and file cabinets, among other areas, are all part of the workplace. These areas remain part of the workplace context even if the employee has placed personal items in them, such as a photograph placed in a desk or a letter posted on an employee bulletin board." *O'Connor v. Ortega*, 480 U.S. 709, 715-716 (1987). An employee generally has no reasonable expectation of privacy in these areas.

[153] 18 U.S.C. § 2701 et seq.

[154] *City of Ontario v. Quon*¸ 560 U.S. 746, 761 (2010).

[155] *O'Connor v. Ortega*, 480 U.S. 709, 717-718 (1987).
[156] O.C.G.A. 16-11-127(e)(1). To bar entry into a government building other than the courthouse by persons who possess a weapons carry license, the law requires that entry with a firearm be "restricted or screened by security personnel." If this condition is met, counties may bar entry by the public, and their own employees, even if such persons possess a weapons carry license. The courthouse is a restricted area by law, but county officials should understand that most judges and prosecutors are allowed to possess a firearm inside the courthouse, subject only to the official courthouse security plan. See O.C.G.A. § 16-11-130 (c.1).
[157] O.C.G.A. § 18-4-26. If the debt arises from the county employee's performance of his or her official duties during an emergency, then the debt is to be paid by the county.
[158] 15 U.S.C. § 1674. If an employee is subject to garnishment actions from creditors on multiple and distinct debts, federal law does not prohibit the discharge of such an employee. See 15 U.S.C. § 1677(2).
[159] O.C.G.A. § 50-18-72 (a)(2) and (a)(20).
[160] O.C.G.A. § 50-18-72(a)(7). This code section addresses evaluations made at the time of hiring or appointment, which suggests that periodic performance evaluations made after that time are subject to production. O.C.G.A. § 50-18-72(a)(11). This code section addresses records in connection with the hiring of the executive head of a county (such as the county manager or administrator) or county agency (such as the director of a development authority).
[161] O.C.G.A § 45-10-5.
[162] O.C.G.A. § 45-1-5. Care should be taken before making such an agreement with a certified peace officer. See *Maner v. Chatham County*, 246 Ga. App. 265 (2000) and O.C.G.A. § 35-8-15. A related issue concerns an attempt to keep the monetary amount paid to settle a lawsuit confidential. As a rule, to the extent public funds are used to pay a settlement, the amount of public funds spent cannot be withheld from the public if requested under the Open Records Law.