

PROVIDING QUALITY LEGAL SERVICES TO
CITIES AND COUNTIES ACROSS IOWA



ANTIQUATED ORDINANCES, POLICIES AND PROCEDURES

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**UPDATING OUTDATED
SIDEWALK ORDINANCES
& THE NEW IOWA CODE
CHAPTER 20**

WHO IS LIABLE FOR A PUBLIC SIDEWALK SLIP AND FALL?



- **It depends.**
 - **Snow and ice? The abutting property owner.**
 - **Failure to repair or maintain? Need express city ordinance!**
 - **Madden v City of Iowa City (Iowa 2014)**
 - **Maintenance obligation and liability**

MODEL SIDEWALK ORDINANCE



“The owner of any lot or parcel thereof abutting upon any sidewalk on the city streets in the city shall maintain said sidewalk in a state of good repair, free from cracks, holes and unevenness so that the sidewalk does not constitute a safety hazard. A state of sidewalk disrepair is hereby declared a public nuisance. The owner of any lot or parcel who fails to repair said sidewalk shall be liable to any person injured as a result of such failure and shall further save, defend, indemnify and hold harmless the city of Fort Madison from and against any claim arising out of the failure to maintain said sidewalk. (Ord. C-407, 10-5-2004)”

2017 CHANGES TO CHAPTER 20 COLLECTIVE BARGAINING LAW



- **5 big changes**
 - **Public safety v non public safety-20.3**
 - **Scope of negotiations-20.9**
 - **Retention and recertification 20.15**
 - **Payroll deduction-20.9**
 - **Arbitration -20.22**

2017 CHANGES TO CHAPTER 20 COLLECTIVE BARGAINING LAW



- **Moving provisions out of the collective bargaining agreement-best practices**
- **What now? Dealing with employee morale and leadership in a time of change**

ANYTHING ELSE FOR PUBLIC EMPLOYERS IN 2017? YES!



- **Personnel records: section 22.7(11) expanded to include those who resign in lieu of termination or demotion-Notice to the employee**
- **Civil service- sections 400.12 and 400.18-expands City's right to extinguish seniority rights for non public safety employees and removes old grounds for discharge and replaces it with authority to fire, remove, demote, or suspend a civil service employee for "any act or failure to act that is in contravention of law, city policies or standard operating procedures," or that in management's judgment is "unsuitable or unfit for employment."**

**UPDATING OUTDATED
HANDBOOKS &
VETERAN'S PREFERENCE
IOWA CODE CHAPTER
35C**

COMMONLY OUTDATED CITY POLICIES WHICH CAUSE NEEDLESS LITIGATION



The default setting in Iowa, even in public employment, is:
EMPLOYMENT “AT WILL”

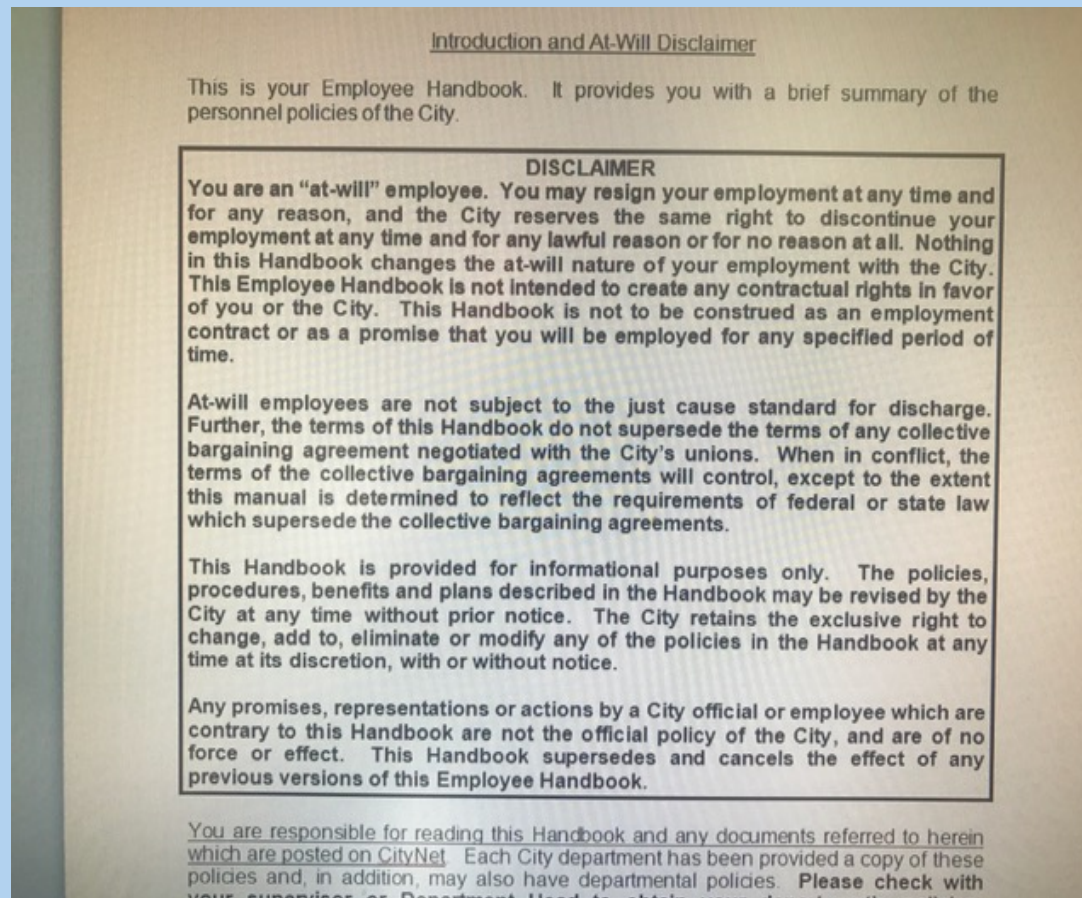


And yet, older handbooks are full of statements like, “the City normally will not terminate an employee without progressive discipline and a showing of good cause.”

Tip: Get yourself a great “AT WILL” Disclaimer and get rid of all contrary language

COMMONLY OUTDATED CITY POLICIES WHICH CAUSE NEEDLESS LITIGATION

Use a **INSET BOX** and make it obvious:



COMMONLY OUTDATED CITY POLICIES WHICH CAUSE NEEDLESS LITIGATION



**“EQUAL EMPLOYMENT OPPORTUNITY”
THIS IS 2017 – NOT 1984!**



COMMONLY OUTDATED CITY POLICIES WHICH CAUSE NEEDLESS LITIGATION



Decisions regarding all employment terms, conditions and privileges, including, but not limited to, recruitment, hiring, placement, training, promotion and layoffs, shall be made without regard to race, creed, color, religion, sex, pregnancy, sexual orientation, gender identity, genetic information, national origin, age, disability, military or veteran status, or any other characteristic protected by applicable federal, state or local law.

**Make sure your policy reflects Iowa Code
Chapter 216's Protections!**

COMMONLY OUTDATED CITY POLICIES WHICH CAUSE NEEDLESS LITIGATION

OTHER EQUAL EMPLOYMENT OPPORTUNITY ISSUES:

- Harassment
- Retaliation
- Complaint procedures
- ***Basic descriptions of illegal behavior, as well as a step-by-step process for how it will be handled.***



COMMONLY OUTDATED CITY POLICIES WHICH CAUSE NEEDLESS LITIGATION



Iowa Smokefree Air Act Policy / Use of Tobacco on City Property

“Smoking is prohibited in all City buildings, in all City vehicles, and on and all city property, except where specifically designated. Employees who smoke in designated areas, or who use smokeless tobacco, will not do so in view of the public and will remain sensitive to the appearance it portrays to the general public. Employees who smoke are required to limit smoking to the break and meal periods.”

COMMONLY OUTDATED CITY POLICIES WHICH CAUSE NEEDLESS LITIGATION



Iowa Smokefree Air Act Policy / Use of Tobacco on City Property

- Enforcement by IDPH is usually “informational,” (unless the City ignores IDPH’s warnings)
- Local law enforcement agencies are delegated enforcement authority, although Code states it is Iowa Department of Public Health’s responsibility
- Iowa Code 142D:
 - INFORM violators
 - POST all non-smoking areas, especially public entrances, depot platforms (IDPH has ready-made signs they will provide)
 - REMOVE all ash trays in prohibited areas
 - Turn over to police for CITATION if identified citizens continue to violate the posted restrictions

COMMONLY OUTDATED CITY POLICIES WHICH CAUSE NEEDLESS LITIGATION



Tips for Disciplinary Policies in Handbook

- Remove all references to “just cause” or similar terms
- Ensure progressive discipline policy includes a laundry list of nuclear options which circumvent the progression
- Require at least annual reviews, and make sure the employees expect them
- Remove any unnecessary limitations now disallowed or not required by the new changes to Chapter 20 and Chapter 400

“There is nothing so useless as doing efficiently that which should not be done at all.” – Peter F. Drucker

COMMONLY OUTDATED CITY POLICIES WHICH CAUSE NEEDLESS LITIGATION



FAMILY AND MEDICAL LEAVE ACT POLICY

- FMLA is an elaborate process and your coordinator *must know the policy and the law*;
- STATE THAT ALL FMLA LEAVE SHALL RUN CONCURRENTLY;
- Ensure all forms used in conjunction with the policy are the updated and legally sanctioned forms;
- Legal review of your policy and procedures is critical.



COMMONLY OUTDATED CITY POLICIES WHICH CAUSE NEEDLESS LITIGATION

- **Veteran's Preference – Iowa Code 35C**
 - Preference required if other applicants have no greater qualifications
 - Application must contain inquiry as to veteran status
 - If by competitive examination or appointment, ten days' notice requirement
 - If point ratings used, 5 percentage points must be added
 - Must investigate qualifications
 - Termination: “incompetency” or “misconduct” must be shown after hearing
 - Must investigate qualifications



COMMONLY OUTDATED CITY POLICIES WHICH CAUSE NEEDLESS LITIGATION



Veteran's Preference – Iowa Code 35C

Watch out for the “no greater qualifications” language!

Any honorably discharged veteran, as defined by Iowa law, shall be entitled to preference in appointment and employment over other applicants of no greater qualifications as required by Chapter 35C of the Code of Iowa. ***Said qualifications may include leadership, communication, and interpersonal skills important in City government.***



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UPDATING OUTDATED JOB DESCRIPTIONS AND EMPLOYEE EVALUATIONS

JOB DESCRIPTIONS



- **What are job descriptions?**
 - **Title, Department, and Supervisors**
 - **Employment Status**
 - **Qualifications/Requirements**
 - **Summary of Position**
 - **Typical Duties**
 - **Essential job functions**

PERFORMANCE EVALUATIONS



- **Why have performance evaluations?**
 - **Quality of performance**
 - **Self-reflection**
 - **Guide and create training schedules**
 - **Goal identification and satisfaction**

PERFORMANCE EVALUATIONS



- **Why have performance evaluations (*continued*)?**
 - **Job description updates**
 - **Creates evidence**
 - **Prevents avoidance**

PERFORMANCE EVALUATIONS



- **What is needed for successful performance evaluation?**
 - **Document everything**
 - **Be prepared**
 - **Be specific**
 - **Set goals**
 - **Follow-up**

PERFORMANCE EVALUATIONS



- **What is needed for successful performance evaluation (*continued*)?**
 - **Use self-reviews**
 - **Be honest, but not confrontational**
 - **Make it a conversation**
 - **Be transparent**
 - **Follow the rules**
 - **Know Weingarten**

Summary of Scope of Negotiations for Non-Public Safety Units

Old Iowa Code § 20.9			New Iowa Code § 20.9		
<u>Mandatory</u>	<u>Permissive</u>	<u>Excluded</u>	<u>Mandatory</u>	<u>Permissive</u>	<u>Excluded</u>
Wages	_____	_____	Wages		
Hours	_____	_____	_____>	Hours	
Vacations	_____	_____	_____>	Vacations	
Insurance	_____	_____	_____	_____>	Insurance
Holidays	_____	_____	_____>	Holidays	
Leaves of Absence	_____	_____	_____>	Leaves of Absence	Political Leaves of Absence
Shift Differentials	_____	_____	_____>	Shift Differentials	
Overtime Compensation	_____	_____	_____>	Overtime Compensation	
Supplemental Pay	_____	_____	_____	_____>	Supplemental Pay
Seniority	_____	_____	_____>	Seniority	
Transfer Procedures	_____	_____	_____	_____>	Transfer Procedures
Job Classifications	_____	_____	_____>	Job Classifications	
Health and Safety Matters	_____	_____	_____>	Health and Safety Matters	
Evaluation Procedures	_____	_____	_____	_____>	Evaluation Procedures
Staff Reduction Procedures	_____	_____	_____	_____>	Staff Reduction Procedures
In-Service Training	_____	_____	_____>	In-Service Training	
Dues Checkoff for Unions	_____	_____	_____	_____>	Dues Checkoff for Unions
Grievance Procedures	_____	_____	_____>	Grievance Procedures	
		Retirement Systems	_____	_____>	Retirement Systems

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Vacations	_____	_____	Vacations	_____	_____
Insurance	_____	_____	Insurance	_____	_____
Holidays	_____	_____	Holidays	_____	_____
Leaves of Absence	_____	_____	Leaves of Absence	_____	_____
Shift Differentials	_____	_____	Shift Differentials	_____	_____
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Grievance Procedures	_____	_____	Grievance Procedures	_____	_____
		Retirement Systems	_____	_____	Retirement Systems

QUESTIONS?



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