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It is hard to believe it's October already and this is our fourth issue of the *Legal Advisor!* It has been a busy year in the County Attorney's Office and we have enjoyed bringing you this newsletter. As we look to 2014 and the goals of Leon County, we will continue to bring you information that we believe will better assist you as a Leon County employee. We also hope to continue providing legal training and other events that may benefit you in your professional capacity. As always, we appreciate your feedback and suggestions. If you have a topic you would like us to cover please contact our Editor.

See you again in January 2014!

Herb Thiele



WITNESS PREPARATION TRAINING 7/16/2013

PUBLIC RECORDS IN THE DIGITAL AGE

By: Laura Youmans, Assistant County Attorney

Whether through e-mail, texts, or cloud computing, digital communications play an ever increasing role in improving the efficiency and effectiveness of county employees. Of course with the adoption of new technology, new challenges will arise and the use of these new technologies to transact public business has meant that the Board of County Commissioners has had to create policies to address public disclosure of these communications. In 2011, the Board of County Commissioners adopted updates to Board Policy 96-4 "Public Records Law, E-mail, Social Media/Networking, and Archiving" to address the challenges inherent in public records retention of digital communications.

Under Chapter 119 of the Florida Statutes, which governs public access to government records, public records are defined as "all documents, papers, ...films, sound recordings, data processing software or other material, regardless of physical form, or characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." In short, a public record is any

record, regardless of physical form or means of transmission that is made or received in connection with the transaction of Leon County business. This would include e-mails, texts, spreadsheets, images, audio files, and video files related to the transaction of Leon County business.

The determining factor in whether a communication is a public record is the nature of the record, not its physical location. *State v. City of Clearwater*, 863 So. 2d 149, 154 (Fla. 2003). This means that personal communications which are not made or received in the course of official business are not public records, regardless of whether they are made or stored on publicly-owned computers or phones. Though a personal communication will typically not be a public record subject to disclosure, employees should still be mindful of Board Policy 01-01 "E-mail/Internet Use" which defines the extent to which County-owned devices may be used for non-County business.

We would encourage employees to familiarize themselves with these policies and, when in doubt, feel free to contact the County Attorney's Office for assistance.

WHAT YOU NEED TO KNOW ABOUT FLORIDA'S VETERANS' PREFERENCE

By: LaShawn Riggans, Assistant County Attorney

Florida laws related to Veterans' Preference date back to the 1949 passage of Chapter 295, Florida Statutes, which followed the passage of similar federal legislation. As such, Section 295.065 and Section 295.07, Florida Statutes, address preference in appointment, reinstatement and reemployment.

Chapter 295 (as may be amended from time to time), together with administrative rulings and court decisions, continues to be Florida's basis for granting veterans' preference with the state and its covered political subdivisions, including special districts, public universities, community colleges, public school districts, counties and municipalities.



Who is eligible? "Veteran" refers to a person who served in the Armed Forces of the United States on active duty, for reasons other than training, and was discharged under other than dishonorable conditions.

"Eligible Veteran" means:

- A veteran who has served during a period of war; or
- A veteran with a service-connected disability; or
- The spouse of a veteran who cannot qualify for employment because of a total and permanent service-connected disability; or
- The un-remarried widow or widower of a veteran who died of a service-connected disability.

For more information on these classes please go to: http://floridavets.org/?page_id=62.

Minimum Qualifications

An eligible veteran is entitled to preference at each stage of the hiring process; however, the preference is not absolute. In order to claim Veterans' Preference, eligible veterans must provide qualifying documentation, must meet the minimum qualifications for the position and must be capable of performing the duties assigned to the position (current and detailed job descriptions are extremely important).

Lifetime Veterans' Preference

A person eligible for Veterans' Preference in appointment (defined by s. 295.07, F.S.) does not lose employment preference eligibility once that veteran or eligible spouse of the veteran has been employed by a state agency or any political subdivision of this state. Effective July 1, 2007, Florida law restores Veterans' Preference in employment for all categories of

protected individuals previously employed by a state agency or any political subdivision of this state.

Preference in Layoffs

Where a layoff is necessitated in a covered position, similar preferences must be given to the covered employee in the retention process.

Preference in Reinstatement or Reemployment

When an employee in a covered position leaves employment for the purpose of serving in the armed forces, he or she is entitled to reinstatement or reemployment upon release or discharge from active military service.

Promotion Preference

Promotion preference applies only to a veteran's first promotion after reinstatement or reemployment, without exception.

It is **required** by law that employers document what preference was given to the eligible veteran. Although interviewing the veteran is not required by Chapter 295, it is one way preference may be shown. However, if the veteran is a qualified applicant that would have been interviewed regardless of being an eligible veteran, preference has not been given. Preference must be shown in some alternative manner.

Leon County Board of County Commissioners has adopted procedures in line with Chapter 295, Florida Statutes. Section III of the Leon County Board of County Commissioners Human Resources Policies and Procedures states in pertinent part:

Human Resources screens for minimum qualifications before referring applications to the supervisor. Based on these facts the applications are reviewed by the committee and the interview candidates are chosen. The number of candidates...**must include** each applicant designated by Human Resources as a genuinely displaced state worker and applications of veteran(s) who are eligible for preference. See Leon County HR Policy at: <http://www.leoncountyfl.gov/hr/pdf/Policies/RECRUIT.pdf>.

This article is intended to provide the bare basics and general guidance in administering the provisions governing Veterans' Preference. As always, if you have any questions or concerns we encourage you to contact the County Attorney's Office for further assistance.

COMPENSATORY TIME IN LIEU OF WAGES IN THE PUBLIC SECTOR

By: Patrick Kinni, Deputy County Attorney

Public sector employers, including federal, state, county and municipal governmental entities are permitted to award compensatory time off, in lieu of overtime wages, to those workers who work more than forty (40) hours in a week. Federal Law defines compensatory time as, "time off in lieu of overtime pay". Generally, comp time must be awarded at time-and-a-half for each hour worked in excess of forty (40) hours per week. Comp time, should not be confused with flex time or overtime.

Interestingly, private sector employers are not allowed to offer compensatory time. However, they may permit employees to arrange and adjust their schedules through the use of flex time to meet the needs of their personal lives. City, county, state and federal agencies on the other hand may provide their employees with comp time in lieu of overtime provided same is permitted under an employment agreement, collective bargaining agreement, or memorandum of understanding, and the employee has no accrued compensatory time in excess of certain statutory limits.

The Fair Labor Standards Act (FLSA) provides very specific requirements on who may use comp time and how it should be recorded and administered. For example, law enforcement, fire protection, emergency response and seasonal employees are permitted to accrue up to 480 hours of compensatory time before any overtime payment must be made. All other employees however may accrue only up to 240 hours of comp time. Special record keeping requirements are also mandated for governmental employees who are eligible for compensatory time. Employers that provide comp time to their employees must maintain and preserve records that include: the number of hours of comp time earned each work week (or other applicable time period), calculated at a rate of one and one half

hours for each hour worked in excess of forty (40) hours worked; the number of hours of comp time actually used by the employee during a pay period; and the number of hours of comp time paid in cash.

Employees who accrue comp time must be permitted the opportunity to utilize the time within, what federal law describes as, "a reasonable period" of time after making such a request, provided same does not "unduly disrupt" the work place. While the FLSA does not define the terms "reasonable period" or "unduly disrupt" in the context of the provisions governing compensatory time, in such circumstances, use of the plain and ordinary meaning of the terms would be



most appropriate and it is the employer who will determine whether or not to grant individual employee requests for use of

comp time, given the work circumstances peculiar to the given situation.

Further, it is the employer who maintains the right to pay for compensatory time in the event it is unable to allow the employee to utilize such time away from work because of the factors which might constitute an "undue disruption" of the workplace. Thus, while recognizing that each situation is unique, public employers may substitute cash, either in part or in whole, for compensatory time.

In conclusion, federal law recognizes a distinction between public and private sector employees in regard to regulations governing the terms, conditions, compensation and benefits provided in the work place, none more divergent than concerning overtime pay and, in lieu thereof, compensatory time.

UPCOMING EVENTS!!

WHAT'S YOUR EMERGENCY?



The County Attorney's Office is finally getting some medical treatment! The third stop on our "getting to know you" breakfast tour will be with

EMS. Hope they are ready for us!!

If you are interested in scheduling a visit with your Department please contact our Legal Administrator, Marcia Labat either by phone or email at labatm@leoncountyfl.gov.

We look forward to visiting your Department sometime soon!

CONGRATULATIONS "HAVE A CHANGE OF HEART"

In support of Leon County's goal to raise \$15,000 for the American Heart Association's Heart Walk, team "Have A Change of Heart" not only exceeded but more than doubled its goal of \$1,000 by raising a total of \$2,013!!!

Thank you to all donors
&
participating
members!!

"United Way Fundraisers!"

It's time for the
**County Attorney's Office's
Annual Breakfast Bake Sale
&
Pumpkin Bowling Contest!!!**

Thursday, October 24
8 a.m. – 4:30 p.m.
Room 202, 2nd Floor
County Courthouse



Back By Popular Demand!!!

Just in time for Veteran's Day Weekend!



\$25.00 each

6.5 lb. Boston Butt

6 lb. Hickory Smoked Ham

5 lb. box of Johnston's

Famous Smoked Sausage

Last Day to Order: November 5th

Please direct all questions, comments, and submission requests to LaShawn Riggins at: LegalAdvisor@leoncountyfl.gov



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