

Warning: Legal Quicksand. Some Common Municipal Employment Tangles and Suggested Guidance to Avoid Them. LMCA, Shreveport, March 2, 2018

Neil T. Erwin, Neil Erwin Law, LLC, Shreveport-Bossier-Baton Rouge.
neil.erwin@neilerwinlaw.com, www.neilerwinlaw.com, 318-820-4110 (cell)

Some “big” federal employment discrimination laws to remember whose coverage includes municipalities and what groups are protected:

#1: The “Familiar 5”: Discrimination in employment prohibited because of an individual’s race, color, religion, sex, or national origin.

This has been the law since 1964 under **Title VII of the Civil Rights Act of 1964**. Its coverage reaches all municipal employers.

#2: Age

Age discrimination in employment has been unlawful since 1967 since adoption of the federal **Age Discrimination in Employment Act (ADEA)**. Its coverage reaches all municipal employers. The group protected is workers 40 years or over from employment discrimination on the basis of their age.

#3: Right to Equal Pay under the federal Equal Pay Act adopted in 1963. Its coverage extends to all municipal employers.

It is unlawful discrimination to intentionally pay wages to an employee at a rate less than that of another employee of the opposite sex at the same workplace for equal work on jobs in which their performance requires equal skills, effort, and responsibility under similar working conditions.

#4: Right to unpaid leaves of absence from work for family and medical reasons.

Under the federal **Family and Medical Leave Act (FMLA)**, adopted in 1993, whose coverage includes all municipalities, employees who are

eligible by having worked for an employer for at least 12 months (which need not be consecutive) must be granted up to 12 work weeks of unpaid and job protected leave for birth, adoption, required medical care of an immediate family member, or for their own serious health condition which makes them unable to perform the essential functions of his or her job.

#5: Disabilities

Unlike the other laws discussed, coverage under the federal **Americans with Disabilities Act (ADA)**, adopted in 1990, does not cover all municipalities. It does cover municipalities which have 15 or more employees.

For municipalities which are covered for employment, then under the ADA, plus **the Americans with Disabilities Act Amendments** (effective in 2009), the burden is shifted to employers to justify any failure to provide reasonable accommodation for an employee with a covered disability (a **physical or mental** impairment that substantially limits one or more major life activities).

Some Practical Tips for staying out of the legal quicksand of potential claims of employment discrimination:

- **Receive training in employment law. (State discussing uniform policy)**
- **Document everything involving a potential employment discrimination claim. “Don’t discriminate, document!”**
- **Know and follow your municipality’s policies and procedures.**
- **For employees with a disability, make sure reasonable accommodation is provided.**
- **Investigate and conclusively confirm the factual basis for any termination.**
- **Terminate with compassion. Be nice – be resolved but with empathy.**
- **Call your legal counsel before making employment decisions, especially high risk ones. (Your legal discussion will be confidential & privileged.)**
- **Be careful about emails – if you don’t want a judge or jury to see it, don’t send it! (Same with social media.)**

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Patricia Doane, Neil Erwin Law, LLC, Shreveport-Bossier-Baton Rouge.
pat.doane@neilerwinlaw.com, www.neilerwinlaw.com, 318-670-4110, ext. 4

The LMA has two employee handbooks or policies on their web site.

1. Their own **agency handbook for LMA employees**, dated January 2018 is very detailed and also includes several useful forms.
 - This is located at LMA.org > Publications > LMA Information and Policies > LMA Personnel Policies and Procedures.
2. The other is a January 2017 **sample ordinance for municipalities**, and is Chapter 7 of the Municipal Handbook.
 - This is located at LMA.org > Publications > Municipal Handbook > Chapter 7 Municipal Personnel

Lawrason Act municipalities are required to have policies and procedures regulating employment of municipal employees.

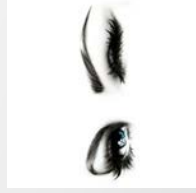
R.S. 33:362(A)(3) says:

Subject to law, including R.S. 33:423.2 and 423.3, and applicable civil service rules and regulations, the board of aldermen shall, by ordinance, provide policies and procedures regulating the employment of municipal employees including the hiring and firing of such employees.

Four Methods of Harassment



- **Written:** notes, post-its, emails,
- **Verbal:** to the victim, to others about the victim, inappropriate words, obscenities
- **Visual:** giving someone “bedroom” or “elevator” eyes, staring inappropriately, showing offensive pictures/videos
- **Physical:** unwanted touching, hovering, impeding progress



19TH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

NUMBER _____ DIVISION " ____ "

DAWN ROSS

VERSUS

TOM SCHEDLER, INDIVIDUALLY
AND IN HIS OFFICIAL CAPACITY
AS LOUISIANA SECRETARY OF STATE, AND
STATE OF LOUISIANA, THROUGH OFFICE OF SECRETARY OF STATE

PETITION

The Petition of Dawn Ross, a resident of the full age of majority of East Baton Rouge Parish, Louisiana, respectfully represents:

1.

The defendants enumerated below are justly and truly indebted unto Petitioner for all sums as are reasonable under the premises, punitive damages as to defendant Schedler, individually and as allowed by law, attorney's fees, all costs of these proceedings, legal interest thereon from the date of judicial demand until paid and all such other relief to which Petitioner is entitled at law or in equity:

1. Tom Schedler, individually and in his official capacity as Louisiana Secretary of State, a resident of the full age of majority of East Baton Rouge Parish, Louisiana;
2. State of Louisiana, through Office of Secretary of State, domiciled in East Baton Rouge Parish, Louisiana.

2.

Petitioner was hired by defendants on April 13, 2004, as an Administrative Specialist 1. Initially, Petitioner worked for the Commissioner of Elections and, throughout her employment enjoyed a spotless reputation and excellent evaluations.

3.

In 2007, defendant Schedler, a former Louisiana State Senator, began employment with the Louisiana Secretary of State's office under then Secretary of State Jay Dardenne (now Commissioner of Administration). Schedler began his employment with the Secretary of State's office as First Assistant under Mr. Dardenne.