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| Public Personnel Manual Template | Abstract  This manual was a collaboration of the Masters of Public Administration students in PA 528: Public Personnel Administration course and the Michigan Municipal League during the summer semester of 2014. It is intended as a suggestion and any public organization that uses it should have their legal counsel review it for accuracy.  *If you choose to use this manual, please acknowledge the Masters of Public Administration Program at NMU and the Michigan Municipal League. For questions about this manual please contact: Jennifer James-Mesloh, M.P.A., Ph.D. Northern Michigan University (906) 227-1858 jjamesme@nmu.edu* |

CITY OF ANYTOWN

PERSONNEL MANUAL

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## INTRODUCTION

## Welcome and Mission Statement

Welcome to the City of Anytown, one of America’s happiest communities! As an employee of the City of Anytown, your mission is to serve the people of the City in a friendly, dedicated, and effective manner so they may fully enjoy an attractive, clean, safe, secure and enriching environment.

## Purpose of this Manual

The primary purpose of this manual is to introduce new employees to the work rules, policies, procedures, and benefit plans covering City of Anytown employees, as well as serving as a reference for employees currently employed.

This manual is also intended to serve as a mechanism for promoting favorable employee relations by providing comprehensive information to employees regarding their employment. This manual does not and cannot provide a policy for every situation that may arise; rather, it is designed to give you an overall understanding of our policies.

This manual, or any other written or verbal communication by the City, is not intended as and does not create a contract of employment, either expressed or implied.

## Application of this Manual

These policies and procedures apply to all of the City's employees unless specifically addressed in a formal employment contract or insurance plan document. Where such documents specifically differ from these policies, then the applicable provision(s) of the subject agreement shall govern.

These policies are designed to work in combination with individual departmental policies and procedures; however, these policies shall prevail should they come into conflict with departmental policies or procedures.

No person, other than the Mayor and City Council or the City Manager as authorized by the mayor and council, has the authority to enter into any agreement for employment for any specified period of time, or to make any agreement contrary to the provisions of this manual.

These policies govern regardless of past practices or former policies. This manual supersedes any previous verbal or written policies, statements, understandings or agreements concerning terms and conditions of employment, except in cases of formal employment contracts or other legally binding agreements.

## Severability

If one or more provisions of this manual are superseded by or become in conflict with a formal employment contract, insurance plan documents, state or federal laws, or if they are determined by a court of competent jurisdiction to be inappropriate and voided, then the balance of the manual shall remain in effect.

## 

## Distribution and Revisions

A copy of this manual will be provided to each employee, who will be required to sign a standard form certifying his/her receipt and review of the manual.

The City reserves the right to change, modify, or discontinue any provision of this manual, or create new policies for inclusion. No person, other than the Mayor and City Council or the City Manager as authorized by the mayor and council, has the authority to enter into any agreement for employment for any specified period of time, or to make any agreement contrary to the provisions of this manual.

Revisions or updates to the manual will be provided to all employees in either paper form, by email, or by other electronic communication such as posting on the intranet. Employees are expected to review all changes and updates and remain abreast of all current personnel policies. Periodically employees may be required to provide an updated sign-off that they have received and reviewed the manual and changes in policy.

## City Government and Organization *(use this section to make community specific)*

*Example: In 1868, the Village of Anytown was incorporated by the Board of Supervisors of Somewhere County. It wasn’t until July of 1984 that Anytown was established as a City. The City Charter provides the government with its municipal powers and governs how the city is structured and organized. The City Council is comprised of the Mayor and six City Council Members who are elected in at-large, non-partisan elections.*

## HIRING AND EMPLOYMENT

This section addresses various topics related to how the City administers the personnel function, all the way from posting a vacancy to concluding employment with the City through termination or retirement.

## Equal Employment Opportunity

**Federal Law**

Age Discrimination in Employment Act of 1967, Pub. L. 90-202, U.S. Equal Employment Opportunity Commission

Retrieved from <http://www.eeoc.gov/laws/statutes/adea.cfm>.

Summary: Prohibits employment discrimination based on age (protects individuals who are at least forty and less than sixty-five years old).

Equal Employment Opportunity Act of 1972

Retrieved from <http://www.eeoc.gov/laws/statutes/titlevii.cfm>.

Summary: Amends Title VII and expands the protection of Title VII to “public and private employers with 15 or more employees, both public and private labor organizations with at least 15 members, and employment agencies” Prohibits employment discrimination based on “race, color, national origin, sex, religion, age, disability, political beliefs, and marital or familial status.” For an agency to be covered under this statue they must have 15 or more employees who worked for the agency for at least 20 weeks of the year. Employers with less than 15 members are exempt from Title VII however they must still comply with Michigan civil laws. See Elliott-Larsen Civil Rights Act below.

Pregnancy Discrimination Act of 1978, U.S. Equal Employment Opportunity Commission

Retrieved from <http://www.eeoc.gov/laws/statutes/pregnancy.cfm>

Summary: Amends title VII to include prohibiting discrimination on the basis of pregnancy. Employers are prohibited from refusing to hire someone because they are pregnant. If the employee is unable to perform the job temporarily due to pregnancy she must be treated the same as any other temporarily disabled employee. For example: perform alternative tasks, leave without pay or disability leave. In addition, Section 4207 of the Fair Labor Standards Act requires employers to provide reasonable break time for a women to express milk for her nursing child. See section on Lunch and Break periods.

Title I and V of the Americans with Disabilities Act of 1990, Pub. L. 101-336, U.W. Equal Employment Opportunity commission.

Retrieved from <http://www.eeoc.gov/laws/statutes/ada.cfm>

Summary: Prohibits discrimination of persons with disabilities and requires employers to make reasonable accommodations unless the accommodation would cause undue hardship. It is up to the employer to demonstrate the accommodation would cause an undue hardship. Undue hardship is determined by several factors: nature and cost of the accommodation, the overall financial resources of the facility, if the facility is part of a larger entity, the type of operation of the employer, and the impact of the accommodation on the operation of the facility. Examples of reasonable accommodations are making facilities accessible, modifying work schedules, training materials or job equipment.

Title II of the Genetic Information Nondiscrimination Act of 2008, U. S. Equal Employment opportunity Commission

Retrieved from <http://www.eeoc.gov/laws/statutes/gina.cfm>

Summary: Prohibits discriminated based on genetic information including genetic test results or disease/disorders of the employee and his/her family members.

Title VII of the Civil Rights Act of 1964, Pub. L. 88-352, U.S. Equal Employment Opportunity Commission.

Retrieved from <http://www.eeoc.gov/laws/statutes/titlevii.cfm>

Summary: This law prohibits discrimination on the basis of "race, color, religion, national origin,. or sex".

**State Law**

Elliott-Larsen Civil Rights Act

Retrieved from <http://www.legislature.mi.gov/(S(xwulsy45mn5sfvixfd5xavu1))/documents/mcl/pdf/mcl-act-453-of-1976.pdf>

Summary: This Act prohibits an employer (with 1 or more employees) from discriminating based upon “religion, race, color, national origin age, sex, height, weight, familial status, or marital status.”

It is the policy of the City of Anytown to provide equal opportunity to all qualified individuals in its recruitment, hiring, and employment practices and to prohibit discrimination against any person on the grounds of race, color, sex, age, religion, national origin, marital or veteran status, height, weight, disability, political affiliation, or other protected classes.

## At-Will Employment

**Federal Law**

There is no specific Federal Law for At-Will employment however, “At will” employees cannot be terminated based on illegal reasoning.

**State Law**

The Whistleblowers Protection Act.

Retrieved from <http://www.legislature.mi.gov/(S(xwulsy45mn5sfvixfd5xavu1))/documents/mcl/pdf/mcl-Act-469-of-1980.pdf>

Summary: This law protects an employee who reports a violation of a federal or state law. The law prohibits retaliation against an employee who reported a violation of a federal or state law.

The City of Anytown is an “at-will” employer. This means that employees may be terminated at any time for any reason or for no reason at all, with or without notice and with or without cause.

Similarly, any employee may resign his or her employment with the City at any time for any reason or for no reason at all, with or without notice and with or without cause.

This at-will employment relationship with the City exists regardless of any other written statements or policies contained in the Personnel Handbook or any other City document or any verbal statement to the contrary. The at-will employment relationship cannot be changed, except with the written and signed authorization from the City Council.

Nothing in this Handbook should be interpreted as being inconsistent with at-will employment.

## Accommodation of Disabilities

**Federal Law**

Title I and V of the Americans with Disabilities Act of 1990, Pub. L. 101-336, U.W. Equal Employment Opportunity commission.

Retrieved from <http://www.eeoc.gov/laws/statutes/ada.cfm>

Summary: Prohibits discrimination of persons with disabilities and requires employers to make reasonable accommodations unless the accommodation would cause undue hardship. It is up to the employer to demonstrate the accommodation would cause an undue hardship. Undue hardship is determined by several factures: nature and cost of the accommodation, the overall financial resources of the facility, if the facility is part of a larger entity, the type of operation of the employer, and the impact of the accommodation on the operation of the facility. Reasonable accommodations are defined as Examples of reasonable accommodations are making facilities accessible, modifying work schedules, training materials or job equipment.

**State Law**

Persons with Disabilities Civil Rights Act of 1976

Retrieved from <http://www.michigan.gov/documents/PWDCRA10-05_115444_7.pdf>.

Summary: “An Act to define the civil rights of persons with disabilities; to prohibit discriminatory practices, policies, and customs in the exercise of those rights; to prescribe penalties and to provide remedies; and to provide for the promulgation of rules.”

The Michigan Persons with Disabilities Civil Rights Act and the Americans with Disabilities Act (ADA) prohibit discrimination in employment against qualified individuals with a disability. These laws also require employers to reasonably accommodate applicants and employees with a disability so that they may participate in the job application process, perform essential functions of a job, and enjoy benefits and privileges of employment equal to those enjoyed by employees without disabilities.

According to the ADA, an individual with a disability is a person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment, or is regarded as having an impairment. A qualified employee or applicant with a disability is an individual who, with or without reasonable accommodation, can perform the essential functions of the job in question.

Through an interactive process, the City will provide reasonable accommodation to applicants and employees, provided the accommodation does not impose an undue hardship (accommodation is unduly costly, extensive, substantial or disruptive or would fundamentally alter the nature or operation of the business).

Under Michigan law, employees and applicants requiring a reasonable accommodation should make their request in writing with as much notice as possible, and within one hundred and eighty-two (182) days after the date he/she knows or reasonably should know that an accommodation is needed. Under Michigan law, failure to properly notify the City in writing within the 182 day timeframe will preclude any claim that the City failed to provide accommodation*.*

Although Michigan law requires employees to provide requests for accommodation in writing, the ADA does not include a comparable requirement. Consequently, those in need of accommodation may make oral requests under the ADA. Oral requests for accommodation should be confirmed in writing as soon as possible.

All requests should include the name of the person requesting the accommodation, contact information, date of request, accommodation requested and reason for request (medical condition/disability does NOT need to be identified, rather the activity requiring accommodation should be, for example “to participate in interview”.)During the interactive process of reviewing the request and identifying a reasonable accommodation, additional information, including medical verifications, may be sought to clarify the request.

Employees may submit accommodation requests to the City Manager’s office. Job applicants or representatives acting on their behalf may make accommodation requests to any employee of the City who will direct such requests immediately to the City Manager’s Office.

## Vacancies, Recruitment and Employment Postings

**Federal Law**

Equal Employment Opportunity Act of 1972

Retrieved from <http://www.eeoc.gov/laws/statutes/titlevii.cfm>.

Summary: Amends title VII and expands the protection of Title VII to “public and private employers with 15 or more employees, both public and private labor organizations with at least 15 members, and employment agencies” For an agency to be covered under this statue they must have 15 or more employees who worked for the agency for at least 20 weeks of the year. Employers with less than 15 members are exempt from Title VII however they must still comply with Michigan civil laws. It is illegal for an employer to discriminate based on “race, color, national origin, sex, religion, age, disability political beliefs, and marital or familial status” in recruitment or job advertisements. For example, it would be illegal for a recruitment ad to say “seeking females or “recent college grads” as it would discourage males or older people from applying.

**State Law**

Persons with Disabilities Civil Rights Act of 1976

Retrieved from <http://www.michigan.gov/documents/PWDCRA10-05_115444_7.pdf>

Summary: This law applies to all employers regardless of the number of employees. It is illegal for an employer to fail to recruit an individual based on physical or mental examinations that are not directly related to the requirements specific to the job. It is also illegal for an employer to refuse to recruit an individual when adaptive devices may be used to enable the individual to perform the job. State Law reasonable accommodations are based on number of employees. (See Table Below.)

|  |  |
| --- | --- |
| **Number of Employees** | **Maximum Accommodation Cost** |
| 0-3 | State Average weekly wage |
| 4-14 | 1.5 X state average weekly wage |
| 5-24 | 2.5 X state average weekly wage |
| 25 or more | On a case-by-case basis |

The City Manager is responsible for the selection and hiring of all City employees in full-time, part-time, or temporary/seasonal positions. In consultation with others as needed, the City Manager will determine whether and how to fill any vacancies.

The position may first be posted internally at the City’s option. Internal applicants may be required to complete a formal application and undergo the employment process as described herein.

If external recruitment is undertaken, the City Manager’s office will oversee the advertising, receipt of applications, testing (if required), and the employment screening process.

Recruitment will be tailored to the various classifications of positions to be filled and will be posted and published in local and regional publications, professional publications specific to the areas of expertise sought, and other venues as appropriate in order to attract an adequate number of candidates.

The City may opt to utilize an existing applicant pool to fill a position, provided that pool was developed through a recruitment effort within the past two years.

Occasionally, outside experts or consultants may be used to assist the City in recruiting, testing, and evaluating applicants.

## 

## Application for Position Opening

**Federal Law**

Employee Polygraph Protection Act

Retrieved from <http://www.dol.gov/whd/polygraph/>

Summary: Prohibits most private employers from requiring job applicants to take lie-detection test. This law does not apply to Federal, State and Local governments. There are other limited exemptions to this law for private employers such as employees who are reasonably suspected of theft.

Immigration Reform and Control Act

Retrieved from <http://www.dol.gov/ofccp/regs/compliance/ca_irca.htm>

Summary: Requires that employees prove their eligibility to work in the United States. The employer is responsible to “verify the identity and employment eligibility of anyone to be hired, which includes completing the Employment Eligibility Verification Form (I-9). This form must be kept on file for three years or one year after employment ends, whichever is longer. This act applies to employers who have at least four employees.

**State Law**

Persons with Disabilities Civil Rights Act of 1976

Retrieved from <http://www.michigan.gov/documents/PWDCRA10-05_115444_7.pdf>

Summary: It is illegal for an employer to fail to recruit an individual based on physical or mental examinations that are not directly related to the requirements specific to the job. It is also illegal for an employer to refuse to recruit an individual when adaptive devices may be used to enable the individual to perform the job. State Law reasonable accommodations are based on number of employees. (See Table Below.)

|  |  |
| --- | --- |
| **Number of Employees** | **Maximum Accommodation Cost** |
| 0-3 | State Average weekly wage |
| 4-14 | 1.5 X state average weekly wage |
| 5-24 | 2.5 X state average weekly wage |
| 25 or more | On a case-by-case basis |

All applicants seeking employment with the City, including former or current employees, must complete a job application form. Additionally, a résumé may be required depending on the particular position. The purpose of the application is to obtain pertinent information related to the applicants' education, training, and qualifications. Applications may be kept on file for two (2) years.

The City considers the accuracy of the information the applicant provides during the employment process to be of utmost importance. The City may reject employment applications or dismiss current employees if it finds inaccuracies in the job application or submitted résumé. Further, applications may be rejected for reasons including, but not limited to, the following:

* The applicant is found to lack any of the established qualifications or requirements for the position.
* The applicant has made a false statement on his/her application or résumé with regard to any material facts.
* The applicant has practiced or attempted to practice deception or fraud in their application or résumé, in his or her examination or interview, or in securing eligibility for appointment.

## Hiring and Selection

**Federal Law**

Persons with Disabilities Civil Rights Act of 1976

Retrieved from <http://www.michigan.gov/documents/PWDCRA10-05_115444_7.pdf>

Summary: It is illegal for an employer to fail to recruit an individual based on physical or mental examinations that are not directly related to the requirements specific to the job. It is also illegal for an employer to refuse to recruit an individual when adaptive devices may be used to enable the individual to perform the job.

Uniform Guidelines of Employee Selection

Retrieved from <http://www.gpo.gov/fdsys/pkg/CFR-2011-title29-vol4/xml/CFR-2011-title29-vol4-part1607.xml>.

Summary: These Guidelines are not a law but a set of guidelines adopted by the Civil Service Commission, the Department of Labor, the Department of Justice, and the Equal Opportunity Commission. The guidelines prohibit selection practices from negatively affecting the job opportunities for any gender, race or ethnic group unless it is a business necessity. The guidelines also provide standards for the proper use of employment testing.

**State Law**

Persons with Disabilities Civil Rights Act of 1976

Retrieved from <http://www.michigan.gov/documents/PWDCRA10-05_115444_7.pdf>

Summary: It is illegal for an employer to fail to hire an individual based on a disability or genetic information that is unrelated to the individual’s ability to perform the job. It is also illegal to require an individual to submit to provide genetic information as a condition of employment. State Law reasonable accommodations are based on number of employees. (See Table Below.)

|  |  |
| --- | --- |
| **Number of Employees** | **Maximum Accommodation Cost** |
| 0-3 | State Average weekly wage |
| 4-14 | 1.5 X state average weekly wage |
| 5-24 | 2.5 X state average weekly wage |
| 25 or more | On a case-by-case basis |

Employment decisions shall be based upon job-related factors which subscribe to the principles of equal employment opportunity. This means any employment decision made by the City will be without regard to race, color, sex, age, religion, national origin, marital or veteran status, height, weight, disability, political affiliation, or other protected classes, or other factors not pertinent to performance.

All offers of employment are contingent upon successful completion of a pre-employment screening process as described below.

The City Council is responsible for the selection and employment of the City Manager. The City Manager is responsible for the selection and hiring of all other City employees in full-time, part-time, or temporary/seasonal positions.

## Background and Reference Checks

**Federal Law**

Fair Credit Reporting Act (FCRA)

Retrieved from <http://www.consumer.ftc.gov/articles/pdf-0096-fair-credit-reporting-act.pdf>.

Summary: Employers must get permission from applicants before asking for any reports about the applicant. Also, the employer must inform the application if that information will be used to make a hiring decision. If the employer is going to deny employment because of the information contained in the report, they must first give the applicant a copy of the report and a document titled “A Summary of Your Rights Under the Fair Credit Reporting Act.

**State Law**

Elliott-Larsen Civil Rights Act

Retrieved from <https://www.legislature.mi.gov/(S(pyl3no55jsyhcwvtwhqvja45))/mileg.aspx?page=getObject&objectName=mcl-37->.

Summary: Section 37.2205a of this act prohibits employers from asking applicants about misdemeanor arrests not resulting in conviction. Employers may inquire about felony arrests and all convictions.

During the hiring process, the City will verify information provided during the application process through various background and reference checks. The City may utilize the services of professional firms to complete these reviews.

### Driving Record

For positions required to operate a vehicle in the course of conducting City-related business, even if the vehicle operated is the own employee’s, the City will verify the validity of the employee’s driver’s license and review their driving record to ensure a safe and consistent driving history and insurability.

### References

The City will contact the personal and professional references provided by the applicant, as well as previous employers and educational institutions to validate the information provided and gather information on past work performance.

### Criminal History

The City will review criminal conviction records to verify the information provided through the application process.

### Credit History

Credit history reviews will be conducted for those positions with access to public funds and/or accounting functions.

In accordance with the Fair Credit Report Act (FCRA), notices and forms will be provided to inform employees of the specific checks being conducted, and to obtain authorization prior to conducting the investigations.

## Physical & Psychological Exams, Drug Screening

**Federal Law**

49 CFR part 40

Retrieved from <http://www.dot.gov/sites/dot.dev/files/docs/PART40_2012.pdf>

Summary: Transportation employers, safety-sensitive transportation employees (including self-employed individuals, contractors and volunteers as covered by DOT agency regulations), and service agents, must comply with drug and alcohol screening as described in section 49 CFR (Code of Federal Regulations) part 40.

**State Law**

No State Law

Retrieved from <http://www.lawforchange.org/images/lfc/MichiganEmployment.pdf>

Summary: Pursuant to the Michigan Medical Marihuana Act, effective January 1, 2009, employers are not required to accommodate the ingestion and use of marihuana by its employees and therefore can lawfully enforce its work place policies against the use of marihuana the same as any other drug.

**Case Law**

The Federal District Court found that the Michigan Medical Marihuana Act (MMMA) does not regulate private employment. The Court found the MMMA merely provides a defense to criminal prosecution or other adverse actions by the state.

Casias v. Wal-Mart Stores, Inc., 764 F. Supp.2d 914 (W.D. Mich. 2011).

<http://www.onmedicalmarijuana.com/michigan-case-law-2/casiaSummary:v-wal-mart-stores-inc/>

The Michigan Persons with Disabilities Civil Rights Act allows an employer to base employment decisions on the results of a physical or mental examination provided the exam is directly related to the requirements of the job in question (Michigan Legislature – Section 37.1202)

[http://www.blr.com/HR-Employment/Staffing-Training-/Physical-Exams-in-Michigan#](http://www.blr.com/HR-Employment/Staffing-Training-/Physical-Exams-in-Michigan)

Upon receiving a conditional offer of employment from the City, applicants and returning temporary/seasonal employees may be required to undergo a medical examination including a drug and alcohol screening. The exam is conducted by a facility designated by the City and is paid for by the City.

In some circumstances and according to strict procedures, an employee may be required to undergo physical or psychological fitness-for-duty exams or submit to drug or alcohol testing.

## Orientation Period

**Federal Law**

Title VII of the Civil Rights Act of 1964

Retrieved from <http://www.eeoc.gov/facts/qanda.html>

Summary: “At will” employees cannot be terminated based on illegal reasoning. Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on race, color, religion, sex, or national origin.

**State Law**

Civil Rights Act of 1964 as amended Michigan Public Act 453 of 1976.

Retrieved from <http://www.legislature.mi.gov/%28S%28mlc0if55ekbigz55olfu0i55%29%29/mileg.aspx?page=getObject&objectname=mcl-37-2202>

Summary: New employees are provided an orientation period that typically spans twelve months during which the employee can learn their positional duties and become familiar with the organization as a whole. New employees typically require a year of orientation to fully master their position and learn the processes of the City; however, the City may provide an extension of the orientation period.

During the orientation period, the City will provide formal and informal training, instruction and direction, and employees should actively seek clarification on policies, processes, procedures and performance expectations.

An employee may be terminated with or without cause within the orientation period without recourse to the grievance procedure.

Employees who receive a new position within the City are provided with a job probationary period of two months. This gives an employee the opportunity to demonstrate their skill and ability in performing the requirements of the new position. The City may extend the job probationary period to allow an employee more time to learn the new job requirements. The City may, however, return the employee to their previous position if the requirements of the new job are not being met.

## Anniversary Date

**Federal Law**

There are no Federal Laws pertaining to Anniversary Date, however all evaluations should remain consistent to Title VII of the Civil Rights Act of 1964 and other labor laws.

**State Law**

There are no Michigan Laws

The City of Anytown calculates continuous service or “seniority” for employees based upon their most recent date of hire, or anniversary date. Part-time or temporary/seasonal employees do not accrue seniority and will not have previous service credited if full time employment is obtained.

In some cases, the use of unpaid leave will be considered a break in continuous service for purposes of calculating time off accruals or eligibility to participate in benefit programs. Employees who leave employment, but return within a year preserve their previously credited continuous service.

## 

## Outside Employment

**Federal Law**

Subpart H of 5 C.F.R. part 2635

Retrieved from <http://www.oge.gov/Topics/Outside-Employment-and-Activities/Outside-Employment-Limitations/>

Summary: An executive branch employee may not engage in outside employment or any other outside activity that conflicts with the employee’s official duties.

**State Law**

There are no Michigan Laws

Full-time city employees wishing to hold supplemental, part-time employment in addition to his or her City employment must request approval in writing to their department head, and must do so each year that supplemental employment is held on their City anniversary date.

The request should include the:

* employer
* nature of the employment and duties to be performed
* approximate number of hours to be worked per week

The City Manager will determine whether a conflict of interest exists or if the employee’s ability to effectively perform their City work will be hampered and will inform the employee in writing of his or her determination.

A conflict of interest may include, but is not limited to:

* any employment, activity, or enterprise which involves for private gain the use of the City’s time, facilities, equipment, supplies, or prestige or influence of the City Office.
* Any activity which involves receipt or acceptance of any money or other consideration from anyone other than the City for performance of an act with the employee should be required or expected to render in the regular course of their City employment.
* Any activity which involves a performance of an act other than in their capacity as a City employee which may later be subject to the control, inspection, review, or enforcement by the employee or the department in which they work.
* Any activity which involves so much of an employee’s time that it impairs their attendance or efficiency in the performance of their duties.

Employees may not wear a City uniform, work shoes/boots, or any other apparel furnished by the City in performing outside work. Outside work may not be performed during regularly scheduled city work hours or at a city facility, and no city resources, equipment, tools or supplies may be used for outside work.

## Performance Evaluations

**Federal Law**

There are no Federal Laws pertaining to Performance Evaluations, however all evaluations should remain consistent to Title VII of the Civil Rights Act of 1964 and other labor laws.

**State Law**

There are no Michigan Laws

From time to time, employees will be provided with a formal evaluation of their performance by their supervisors, which will also be reviewed by the City Manager or designee. A performance evaluation is an ongoing assessment process that assists employees and employers in reaching their goals by providing a formal opportunity to develop goals and objectives, to identify strengths, and to define training or improvement programs for areas requiring development. Completion of the performance evaluation form and discussion of noted ratings will facilitate communication and an understanding of expectations while providing a history of employee progress and development.

The results of evaluations support various employment actions and decisions such as promotion, discipline, and compensation. Employees will have an opportunity to meet with and discuss the results of their evaluation with their supervisor, and submit additional comment or points of disagreement to be included within their personnel file.

## Personnel Files

**Federal Law**

U.S. Equal Employment Opportunity Commission (EEOC) regulations require that employers keep all personnel or employment records for one year.

<http://www.eeoc.gov/employers/recordkeeping.cfm>

29 CFR 1904

Retrieved from <https://www.osha.gov/recordkeeping/>

Summary: Under the OSHA Recordkeeping regulation (29 CFR 1904), covered employers are required to prepare and maintain records of serious occupational injuries and illnesses, using the OSHA 300 Log.

**State Law**

Bullard-Plawecki Employee Right to Know Act

Retrieved from [www.legislature.mi.gov/documents/mcl/pdf/mcl-Act397-of-1978](http://www.legislature.mi.gov/documents/mcl/pdf/mcl-Act397-of-1978)

Summary: provides employees with the right to review, copy and file a response to any personnel record.

Personnel files containing payroll and benefits information, training records, job performance records, and related employment information are maintained on each employee. Employees are required to keep their information updated, including address, telephone numbers, emergency contacts and related information as required for benefits administration.

Personnel files are secured and are considered strictly confidential with access allowed for very limited reasons as specified by federal or state law. Medical information is filed separately in a secure area with access limited to the City Clerk and others on a strict, business-need-to-know basis only.

The City complies with the State of Michigan Social Security Number Privacy Act, the Federal Fair Credit Reporting Act (FCRA) and Fair and Accurate Credit Transactions Act (FACTA) and will take reasonable measures to secure and limit access to social security numbers and other consumer information that may be contained within a personnel file, including pre-employment background investigations or inquiries, credit checks and related information.

Personnel records that contain social security numbers or consumer information will be secured and held confidential with strictly limited access and uses. The City prohibits unlawful disclosure of social security numbers and/or consumer information, and will ensure all records are properly destroyed through shredding or other means that renders the information beyond reconstruction, including electronic information. The City will also take affirmative steps to ensure the reliability of any third party vendor used to dispose of this information.

All requests for personnel information are handled by the City Clerk’s office. The City only releases confirmation of employment, job title, date of hire, and if applicable, date of separation, unless written authorization is provided by the employee or the release of information is required by law.

Freedom of Information requests will be handled according to established FOIA procedure.

Any employee in violation of this policy will be subject to disciplinary action up to and including discharge and criminal prosecution as may be appropriate.

Employees are legally entitled to review their personnel records upon reasonable notice, generally not more than twice per year. The City Clerk or his/her designee will, at all times, observe the review of personnel files to protect against tampering. Copies of file contents may be obtained for a reasonable copy fee.

## Social Security Number Privacy and Protection

**Federal Law**

The Privacy Act of 1974, as amended at 5 U.S.C. 552a

Retrieved from <http://www.socialsecurity.gov/agency/privacyact.html>

Summary: Protects records that can be retrieved from a system of records by personal identifiers such as a name, social security number, or other identifying number or symbol.

**State Law**

Social Security Number Privacy Act 454 of 2004

Retrieved from <http://www.legislature.mi.gov/(S(c1rlbkajl3dql2q4acxn1e45))/mileg.aspx?page=GetObject&objectname=mcl-Act-454-of-2004>

Summary: An Act to establish the social security number privacy act in the state of Michigan; to prescribe penalties; and to provide remedies.

<http://www.lawforchange.org/images/lfc/MichiganEmployment.pdf>

Summary: Employers are prohibited from requiring an employee to transmit more than four sequential digits of the employee’s Social Security number over the internet or computer network unless the connection is secure and the transmission is encrypted.

Michigan law also requires that employers who obtain one or more Social Security numbers in the ordinary course of business must create a privacy policy that ensures the confidentiality of the numbers, prohibits unlawful disclosure of the numbers, limits access to records that contain the numbers, describes proper disposal procedures for the numbers, and establishes penalties for a violation of the privacy policy. Employers are further required to publish the privacy policy in an employee handbook, a procedures manual or in one or more similar documents.

Pursuant to Public Act 454 of 2004 the City of Anytown will protect the confidentiality of social security numbers. No person shall knowingly acquire, disclose, transfer, or unlawfully use the social security number of any employee or other individual unless in accordance with applicable state and federal law and the procedures and rules established by this policy.

The term “social security number” includes both the entire nine-digit number and more than 4 sequential digits of the number. Social security numbers shall not be placed on identification cards or badges, membership cards, permits, licenses, time cards, employee rosters, bulletin boards, or any other materials or documents that are publicly displayed. Documents, materials, or computer screens that display social security numbers or other sensitive information shall be kept out of public view at all times.

Only persons authorized by the City Manager or his/her designee shall have access to information or documents that contain social security numbers.

Documents containing social security numbers shall only be mailed or transmitted in the following circumstances:

1. State or Federal law, rule, regulation, or court order or rule authorizes, permits, or requires that a social security number appear in the document.
2. The document is sent as part of an application or enrollment process initiated by the individual whose social security number is contained in the document.
3. The document is sent to establish, confirm the status of, service amend, or terminate an account, contract, policy, or employee or health insurance benefit or to confirm the accuracy of a social security number of an individual who has an account, contract, policy, or employee health insurance benefit.
4. The document or information is a copy of a public record filed or recorded with the county clerk or register of deeds office and is mailed by that office to a person entitled to receive that record.
5. The document or information is a copy of a vital record recorded as provided by law and is mailed to a person entitled to receive that record.
6. The document or information is mailed at the request of an individual whose social security number appears in the document or information or his or her parent or legal guardian.

Documents containing social security numbers that are mailed or otherwise sent to an individual shall not reveal the number through the envelope window, nor shall the number be otherwise visible from outside the envelope or package.

Social Security numbers shall not be sent over the Internet or a computer system or network (e.g. through e-mail or websites) unless the connection is secure or the transmission is encrypted. No individual shall be required to use or transmit his or her social security number over the internet or a computer system, or to gain access to an internet website, computer system, or network (e.g. through e-mail or websites) unless the connection is secure, the transmission is encrypted, or a password or other unique personal identification number or other authentication device is also required to gain access to the internet website or computer system or network.

All documents or files that contain social security numbers shall be stored in a physically secure manner. Social security numbers shall not be stored on computers or other electronic devices that are not secured against unauthorized access. Documents or other materials containing social security numbers shall not be thrown away in the trash; they will be discarded or destroyed only in a manner that protects their confidentiality, such as shredding.

Social security numbers should only be collected where required by federal and state law or as otherwise permitted under the Michigan Social Security Number Privacy Act. If a unique identifier is needed, a substitute for the social security number shall be used.

Any officer or employee of the City of Anytown who violates the provisions of this policy shall be subject to disciplinary actions provided by City policies and applicable laws, up to and including dismissal or discharge, as well as civil and/or criminal action.

If any questions regarding social security number privacy and security should arise, contact the City Manager or the Manager’s designee for policy clarification and guidance.

Hiring and Employment: Grievances, Termination, and Layoffs

For the purpose of grievances, termination, and layoffs, non-supervisory employees working for the City of Anytown are divided into (2) classifications:

Unionized Public Sector Employees as defined by the Michigan Public Employment Relations Act 336 of 1947

**State Law**

Michigan Public Employment Relations Act 336 of 1947.

Retrieved from: [www.legislature.mi.gov](http://www.legislature.mi.gov)

Summary: Ensures that union public sector employees are protected by their respective union’s “Collective Bargaining Agreement” (CBA), which is regulated by the MERC (Michigan Employment Relations Commission):

“MERC, formerly the Michigan Labor Mediation Board, was established in 1939 pursuant to the Labor Relations and Mediation Act (LMA). MERC is responsible for administering the LMA, which is the law governing labor relations for private sector employers and employees not within the exclusive jurisdiction of the National Labor Relations Act. The LMA provides for the mediation and arbitration of labor disputes and guarantees the right of employees to organize and bargain collectively with their employers through representatives of their own choosing.” (Sperka, 2014)

“At-Will Employees”, ostensibly meaning that employees may be terminated at any time for any reason or for no reason at all, with or without notice and with or without cause.

The precedent for At-Will Employment derives from several historical legal rulings:

**Federal Law**

Retrieved from <http://www.eeoc.gov/facts/qanda.html>

“Employment-at-will” is sometimes referred to as “Wood’s rule,” after it was mentioned in Horace Wood’s 1877 treatise, Master and Servant. “Men must be left, without interference to buy and sell where they please, and to discharge or retain employees at will for good cause or no cause, or even for bad cause without thereby being guilty of an unlawful act per se,” Woods wrote. “It is a right which an employee may exercise in the same way, to the same extent, for the same cause or want of cause as the employer.”1 Wood added that, unless an employment contract explicitly said otherwise, the contract was terminable by either party at any time.

(Michigan Bar Journal, 2009, p.16)

“At will” employees cannot be terminated based on illegal reasoning. Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on race, color, religion, sex, or national origin.

**State Law**

Several high court rulings have complicated the issue of “At-Will” employment. For instance, the Michigan Supreme Court created an “implied-contract” exception in Toussaint v. Blue Cross Blue Shield of Michigan (1980):

“The Supreme Court unanimously agreed that a jury could consider testimony in the record on whether the employee and employer made an oral contract that included distinguishing features or provisions that made Mr. Ebling’s employment terminable at will but only for cause. The Court upheld a judgment that he was entitled to re­cover the value of stock options that he forfeited when fired with­out just cause.” (Michigan Bar Journal, 2009, p.16)

Furthermore, numerous “public policy” exceptions have been upheld in several other high court rulings. “Public policy exception holds that an at-will employee cannot be terminated if such termination would be counter to public policy”. (Swift, 2010, p.557). The anti-discrimination workplace and other labor laws listed below provide protections to At-Will Employees and should be strongly considered when applying the rules of this handbook.

## Grievance Procedure

**For Public Sector Union Employees:**

**State Law**

Michigan Public Employment Relations Act 379 of 1965

Retrieved from [www.legislature.mi.gov](http://www.legislature.mi.gov)

Summary: The Michigan Public Employment Relations Act (PERA) ensures that union public sector employee grievance procedures are protected by their respective union’s “Collective Bargaining Agreement” (CBA), which is regulated by the MERC (Michigan Employment Relations Commission).

Guide to Public Sector Labor Relations Law in Michigan.

Retrieved from [*www.****michigan****.gov/.../MERC\_****Guide****\_2014-\_rev\_final\_6-9-14*](file:///C:\Users\officer\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.IE5\O1ISTGPG\www.michigan.gov\...\MERC_Guide_2014-_rev_final_6-9-14)Summary: “Mediation is often used to resolve grievances arising under a collective bargaining agreement, either as the final step in the grievance procedure or as a step prior to arbitration. The Commission offers grievance mediation at no charge to the parties. A mediator generally is available within a few weeks of the request for mediation assistance. The process is flexible, since the parties may develop a remedy without being bound by the contract language, as an arbitrator would be. If the contract language is ambiguous, a mediator may assist in developing a mutually agreeable resolution to the dispute. A mediator has no authority to render a binding decision.”

***For At-Will Employees:***

**Federal Law**

National Labor Relations Act of 1935.

Retrieved from <http://www.nlrb.gov/rights-we-protect>

Summary: At-Will employees have the right to assemble as a group to address concerns in the workplace, and in doing so are protected by the National Labor Relations Board. If these employees choose to settle their grievances through a collective means, the National Labor Relations Board may elect to represent them regardless of their non-union status. Managers should be advised that the NRLB will seek voluntary compliance with their decisions, and if compliance is not achieved may take the issue before the U.S. Court of Appeals.

**State Law**

There is no State Law

The City intends to provide a constructive, positive work environment in which employees are empowered to contribute to the continuous improvement in the operations and services provided by the City. To this end a formal grievance procedure is available to help resolve complaints of employees who believe they are not receiving fair treatment in the workplace.

STEP 1: Verbal Communication with Supervisor

Employees are encouraged to share their suggestions, as well as discuss any complaints or issues that may arise related to their employment and work environment with their immediate supervisor within five working days from the time of the occurrence. The supervisor will endeavor to provide a verbal response to the complaint within five working days of the discussion with the employee.

STEP 2: Written Communication with Department Head

Should an employee not find adequate resolution through verbal discussion with their immediate supervisor, the complaint should made in writing to the employee’s department head within five working days from the oral response in Step 1.

The employee will submit his/her written grievance to their department head which must include:

* + Date of incident
  + Description of incident
  + Summary of previous discussion(s) with supervisor regarding the incident
  + Desired resolution
  + Employee’s printed name, signature and date of submission

The department head will provide a written response to the employee within five working days of the receipt of the grievance.

STEP 3: Written Communication with City Manager

If the grievance is not resolved in the first two steps, the employee may request a meeting with the City Manager. This request must be in writing, dated and submitted within five (5) working days after receiving the response from Step 2. The department head shall be copied on the request.

The meeting with the City Manager and the employee will occur within ten working days of receipt of the request to meet, or on a date mutually convenient for all parties. At the Manager’s discretion this meeting may include the department head and/or supervisor, and/or other City representatives as appropriate. At the employee’s option, the meeting may include a fellow employee or other representative of the employee’s.

The City Manager, or designated representative, will provide a written response to the employee within ten working days of the meeting. The City Manager’s response to the grievance is final.

## Disciplinary Action

**For Public Sector Union Employees:**

**State Law**

Michigan Public Employment Relations Act 379 of 1965

Retrieved from [www.legislature.mi.gov](http://www.legislature.mi.gov)

Summary: The Michigan Public Employment Relations Act of 1965 ensures that union public sector employees are protected by their respective union’s “Collective Bargaining Agreement” (CBA), which is regulated by the MERC (Michigan Employment Relations Commission). The disciplinary procedure is dictated by the rules contained within the CBA.

**For At-Will Employees:**

**Federal Law**

There is no Federal Law

**State Law**

There is no State Law

It is the intention of the City to utilize disciplinary action in a constructive manner to motivate the employee toward proper conduct in the future. Situations of a minor nature are expected to be handled informally by the employee’s immediate supervisor and may result in a verbal warning which may be documented and retained in the employee’s personnel file.

Formal disciplinary action will be administered by the Department Head in coordination with the City Manager. Suspensions and discharge are officially administered by the Mayor based on department head and City Manager recommendation.

Disciplinary actions may include any or all of the following, which are not necessarily administered in order, nor are all types of disciplinary action required prior to discharge. The City may immediately discharge an employee.

* Oral Reprimand is a verbal notice to an employee that his/her behavior or performance must be improved or corrected. A written record of the oral reprimand will be placed in the employee's personnel file and a copy provided to the employee.
* Written Reprimand is a written notice to an employee that his/her behavior or performance must be improved or corrected. Written reprimands will be placed in the employee's personnel file and furnished to the employee.
* Suspension is the temporary removal of an employee from duty, with or without pay. Suspensions will vary in length depending upon the seriousness of the offense or frequency of occurrence. Suspensions will be documented and placed in the employee's personnel file.
* Discharge (also may be referred to as Dismissal or Involuntary Termination) is the removal of an employee from the employ of the City.

Employees may submit written explanations or responses to disciplinary actions to their personnel file. In some cases, particularly discharge, an employee may have certain additional due process rights. See the section on “Involuntary Termination and Procedural Rights,” below.

## 

## Voluntary Termination

**Federal Law**

There is no Federal Law

All employees, union or “at-will”, are free to terminate their employment at any time without notice.

**State Law**

There is no State Law

The City desires written notification to the Department Head of an employee’s resignation at least two weeks prior to the effective date of resignation. Advance notice will allow the City to process paperwork and payments due the employee. Employees resigning will be paid for actual time worked, including compensatory time earned in lieu of paid overtime for non-exempt employees. Additionally, employees will be paid for earned, unused vacation on a prorated basis.

In the case of retirement, it is recommended that an employee provide the City with as much notice as possible; a minimum of 6 weeks is requested. This advance notice will ensure that retirement issues are satisfactorily addressed prior to the actual date of retirement.

## 

## Involuntary Termination and Procedural Rights

**Federal Law**

Age Discrimination in Employment Act of 1967, Pub. L. 90-202, U.S. Equal Employment Opportunity Commission.

Retrieved from <http://www.eeoc.gov/laws/statutes/adea.cfm>.

Summary: Prohibits termination based on age (protects individuals who are at least forty and less than sixty-five years old).

Title VII of the Civil Rights Act of 1964, Pub. L. 88-352, U.S. Equal Employment Opportunity Commission.

Retrieved from <http://www.eeoc.gov/laws/statutes/titlevii.cfm>

Summary: This law prohibits termination on the basis of "race, color, religion, national origin, or sex".

Equal Employment Opportunity Act of 1972

Retrieved from <http://www.eeoc.gov/laws/statutes/eeoa.cfm>

Summary: Amends title VII and expands the protection of Title VII to “public and private employers with 15 or more employees, both public and private labor organizations with at least 15 members, and employment agencies” Prohibits termination based on “race, color, national origin, sex, religion, age, disability, political beliefs, and marital or familial status.”

Pregnancy Discrimination Act of 1978,U.S. Equal Employment Opportunity Commission.

Retrieved from: <http://www.eeoc.gov/laws/statutes/pregnancy.cfm>

Summary: Amends title VII to include prohibiting termination on the basis of pregnancy

Title IV and V of the Americans with Disabilities Act of 1990, Pub. L. 101-336, U.W. Equal Employment Opportunity commission.

Retrieved from <http://www.eeoc.gov/laws/statutes/ada.cfm>

Summary: Prohibits termination of persons with disabilities and requires employers to make reasonable accommodations to maintain employment.

Title II of the Genetic Information Nondiscrimination Act of 2008, U. S. Equal Employment opportunity Commission

Retrieved from <http://www.eeoc.gov/laws/statutes/gina.cfm>

Summary: Prohibits termination based on genetic information including genetic test results or disease/disorders of the employee and his/her family members.

**State Law**

Elliott-Larsen Civil Rights Act

Retrieved from <http://www.legislature.mi.gov/(S(xwulsy45mn5sfvixfd5xavu1))/documents/mcl/pdf/mcl-act-453-of-1976.pdf>

Summary: This Act expands on the federal Equal Employment Opportunity Act of 1972, prohibiting an employer (with 1 or more employees) from terminating an employee based upon “religion, race, color, national origin age, sex, height, weight, familial status, or marital status.”

Michigan Persons With Disabilities Civil Rights Act Persons of 1976

Retrieved from <http://www.michigan.gov/documents/PWDCRA10-05_115444_7.pdf>

Summary: Michigan law prohibits employers from terminating an individual because of disability or genetic information that is unrelated to the individual’s ability to perform the duties of a particular job or position.

Michigan Occupational Safety and Health Administration Act (“MIOSHA”)

Retrieved from [www.**michigan**.gov/.../CIS\_WSH\_part\_42\_\_47164\_7.pdf](file:///C:\Users\officer\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.IE5\O1ISTGPG\www.michigan.gov\...\CIS_WSH_part_42__47164_7.pdf)

Summary:The Michigan Occupational Safety and Health Administration Act incorporates by reference the federal OSHA standards and gives them the same force and effect as a rule promulgated under Michigan law. The act protects employees who exercise rights afforded under the act from retaliatory action or termination. In order for an alleged act of retaliatory action or discrimination to be eligible for an investigation, the employee must file a complaint within 30 days and the complaint must stem from a safety and health issue.

The Whistleblowers' Protection Act Act 469 of 1980

Retrieved from [www.legislature.**mi**.gov/.../mcl-**Act**-469-of-1980.pdf](file:///C:\Users\officer\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.IE5\O1ISTGPG\www.legislature.mi.gov\...\mcl-Act-469-of-1980.pdf)

Summary: Michigan law prohibits employers from terminating an employee who reports or is about to report a violation or suspected violation of a federal or state law or regulation.

Employees who have been retaliated against may sue for lost wages, actual damages, and ull reinstatement of benefits and seniority rights. Employers that are found in violation of this statute may also be subject to a civil fine of up to $500. An employee who sues an employer for a violation of this law must do so within 90 days after the occurrence of the alleged violation.

Employees who are involuntarily separated (dismissed or discharged) from employment will be paid for actual time worked, compensatory time earned in lieu of paid overtime for non-exempt employees and earned, unused vacation on a prorated basis.

The City Manager serves at the pleasure of Council. Terminations of other employees are made by the City Manager. Terminated employees have certain due process rights prior to discharge or other adverse employment decisions if they have a liberty or property interest that is affected by the adverse employment action.

Where an employment decision could be stigmatizing to the employee, and the City intends to place a record of the action in the employee’s personnel file (which makes it potentially subject to public disclosure) or if the action would foreclose a definite range of future employment opportunities, an employee will be provided notice of the action and an opportunity to respond prior to the employment action.

Stigmatizing reasons for discipline or discharge may include dishonesty, immorality, moral turpitude, criminality, racism, harassment, falsifying forms, drug use, engaging in prostitution, use of position to obtain kickbacks or other privileges, or other charges impugning the employee’s moral character.

Charges of incompetence, negligence, poor attendance, insubordination, failure to meet performance standards, failure to submit required forms or documentation and related performance based criteria have typically been held to be insufficiently stigmatizing to trigger a liberty interest.

In cases where public disclosure of stigmatizing information is possible, the employee will receive oral or written notice of the charges, an explanation of the evidence and an opportunity to respond and clear his/her name prior to the decision being finalized and documented in the personnel file. Typically the employee would direct their response to the City Manager who will consult with Council or its designated committee as needed.

This process is a procedural protection and in no way limits the City’s at-will employment status. The findings of the City Manager are final, will be stated in writing and provided to the employee as well as documented within the personnel file.

## 

## Layoff and Recall

**Federal Law**

The Worker Adjustment and Retraining Notification Act (WARN)

Retrieved from <http://www.doleta.gov/programs/factsht/warn.htm>

Summary: WARN offers protection to workers, their families and communities by requiring employers to provide notice 60 days in advance of covered plant closings and covered mass layoffs. This notice must be provided to either affected workers or their representatives (e.g., a labor union); to the State dislocated worker unit; and to the appropriate unit of local government.

The Uniformed Services Employment and Reemployment Rights Act (USERRA)

Retrieved from <http://blogs.findlaw.com/free_enterprise/2012/01/how-to-legally-lay-off-an-employee.html>

Summary: Requires employers to reinstate service members to the jobs they would have held had they not been called to duty. An employer can't layoff a service member unless the employer can prove circumstances have drastically changed.

**State Law**

There is no State Law

If the City determines that a reduction in staff or “layoff” is necessary, affected employees will be notified of the effective date, pertinent benefits information and possibility of recall, if any, as soon as it is practical.

All layoffs and recalls of positions will be based upon the City’s operational needs, financial position and the employee’s employment history, performance and job related qualifications and abilities as determined by the City. Seniority may also be considered in making non-union layoff and recall determinations.

## Exit Interview

**Federal Law**

There is no Federal Law

**State Law**

There is no State Law

“Make it part of your policy that all employees who resign in "good standing" must take part in exit interviews. Explain that participation is necessary to be eligible for rehire. And note that the interview is on the clock, which means they'll be paid for participating.

Finally, while most exit interviews are held on the employee's final day, you'll likely obtain more candid (and constructive) answers by hosting the meeting a week or two after the employee departs. On that employee's final day, set up a date and time to talk by phone or in person.”

# Exit interviews: Use them to cut turnover, unveil legal risks. HR Specialist.

# Retrieved from: <http://www.thehrspecialist.com/article.aspx?articleid=274>

In the event of separation, voluntary or involuntary, the employee is encouraged to engage in an exit interview with the City Manager.

## 

## Return of Property

**Federal Law**

There is no Federal Law

**State Law**

Michigan ( Mich. Comp. Laws §§ 408.474, 408.475)

Retrieved from <http://smallbusiness.findlaw.com/employment-law-and-human-resources/final-paycheck-laws-by-state.html>

Summary: Michigan State Law requires that a terminated employee’s final paycheck be issued to them on the next scheduled payday.

An employee separating from employment with the City shall return all City-owned equipment, uniforms, property, City identification badges, and all building and equipment keys before picking up a final paycheck. The City may not, and will not withhold earnings for failure to return property, but will take appropriate action including legal prosecution for any City-owned items that are not returned by a separating employee.

**GENERAL EMPLOYMENT POLICIES & RULES**

The City has established the following employment policies and work rules to ensure a safe and productive work environment for all.  The work place brings together many different types of people whose unique perspectives and individual skills and talents add tremendous value to the organization.

The City of Anytown serves the public best when functioning well as a strong team.  As such, the City expects that staff from all departments and at every level within the organization treat each other as respected and valuable colleagues.  Individual preferences, opinions and personalities can cause healthy tension at times, and, unfortunately, conflict can sometimes arise.  These policies and rules are intended to provide a foundation for resolving issues in a consistent and objective manner.

Violation of any employment policies or work rules will be taken seriously and may result in disciplinary action up to and including discharge.  Retaliation against an employee exercising their rights or reporting on violations will not be tolerated and may result in disciplinary action up to an including discharge.

**Code of Conduct & Work Rules**

The work place brings together many different types of people whose unique perspectives and individual skills and talents add tremendous value to the City of Anytown.  All employees, officers, and volunteers, at every level within the organization, are expected to treat each other as respected and valuable colleagues.

With regard to general work rules, it is impossible to create an exhaustive list of behaviors or potential infractions.  The League expects that common sense, professionalism and general decency will govern personal conduct.  Employees, officers, and volunteers should act as good stewards of the League and should at all times be:

|  |  |  |
| --- | --- | --- |
| law-abiding | productive | professional |
| respectful | careful | efficient |
| honest | dedicated | courteous |
| trustworthy | discrete |  |
| reliable | mature |  |

**Customer Service**

The City of Anytown requires employees to represent the City in a positive manner and treat customers and residents with courtesy and respect at all times.

Employees should be prepared to listen patiently to complaints and deal with them in a helpful, professional manner.  Residents or customers who become unreasonable, abusive or harassing should be referred to the employee’s supervisor.

**Harassment**

**Federal Law**

Title VII of the Civil Rights Act of 1964

The Age Discrimination in Employment Act of 1967 (ADEA)

Americans with Disabilities Act of 1990 (ADA)

Retrieved from<http://www.eeoc.gov/laws/types/harassment.cfm>

Summary: “Harassment is a form of employment discrimination that violates Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, (ADEA), and the Americans with Disabilities Act of 1990, (ADA).

**State Law**

The Michigan Penal Code (EXCERPT). (1931, January 1). Michigan Legislature.   
Retrieved from<http://legislature.mi.gov/doc.aspx?mcl-750-411h>

Harassment is unwelcome conduct that is based on race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. Harassment becomes unlawful where 1) enduring the offensive conduct becomes a condition of continued employment, or 2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive. Anti-discrimination laws also prohibit harassment against individuals in retaliation for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or lawsuit under these laws; or opposing employment practices that they reasonably believe discriminate against individuals, in violation of these laws.

“[Harassment](http://www.legislature.mi.gov/(S(1vs3j5fkob4du055qchsooyi))/mileg.aspx?page=getobject&objectname=mcl-750-411h&query=on&highlight=harassment#2)” means conduct directed toward a victim that includes, but is not limited to, repeated or continuing unconsented contact that would cause a reasonable individual to suffer emotional distress and that actually causes the victim to suffer emotional distress.

“Unconsented contact” means any contact with another individual that is initiated or continued without that individual's consent or in disregard of that individual's expressed desire that the contact be avoided or discontinued. Unconsented contact includes, but is not limited to, any of the following:

* Following or appearing within the sight of that individual.
* Approaching or confronting that individual in a public place or on private property.
* Appearing at that individual's workplace or residence.
* Entering onto or remaining on property owned, leased, or occupied by that individual.
* Contacting that individual by telephone.
* Sending mail or electronic communications to that individual.
* Placing an object on, or delivering an object to, property owned, leased, or occupied by that individual.

It is the policy of the City of Anytown that harassment in the workplace will not be allowed or tolerated.  Each employee has a right to work in an environment free from intimidation.  This policy applies equally to all unlawful forms of harassment in the work place including sexual harassment and harassment or discrimination based on race, color, sex, age, religion, national origin, marital or veteran status, height, weight, disability, political affiliation, or other protected classes.

Harassment may include joking remarks, stories, nicknames, abusive conduct or speech, epithets, slurs, negative stereotyping; threatening, intimidating or hostile acts; and written or graphic materials that denigrate or show hostility or aversion toward an individual or group.

The City will not tolerate or condone harassment of its employees by their supervisors, co-workers or third parties on City premises or at City functions over which the City has control. The City will not permit any situation where an employee’s submission to or rejection of harassment is used as a basis for employment decisions, or where harassment has the purpose or effect of unreasonably interfering with an individual’s work performance, creating an intimidating, hostile or offensive work environment or otherwise adversely affecting an individual’s employment opportunities.

Any violation of this policy may subject the violator to disciplinary action including immediate discharge, at the sole discretion of the City, as well as any civil or criminal action which may be initiated by the victim.

Sexual Harassment

Title VII of the Civil Rights Act of 1964

The Age Discrimination in Employment Act of 1967 (ADEA)

Americans with Disabilities Act of 1990 (ADA)

Retrieved from<http://www.eeoc.gov/laws/types/sexual_harassment.cfm>

Summary: “It is unlawful to harass a person (an applicant or employee) because of that person’s sex. Harassment can include “sexual harassment” or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature.

Harassment does not have to be of a sexual nature, however, and can include offensive remarks about a person’s sex. For example, it is illegal to harass a woman by making offensive comments about women in general.

Both victim and the harasser can be either a woman or a man, and the victim and harasser can be the same sex.

Although the law doesn’t prohibit simple teasing, offhand comments, or isolated incidents that are not very serious, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted).

The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer.”

Details: “Title VII applies to employers with 15 or more employees, including state and local governments. It also applies to employment agencies and to labor organizations, as well as to the federal government.”

All of the above provisions also apply to conduct or communication constituting sexual harassment. Sexual harassment includes, but is not limited to, unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct or communication of a sexual nature when any of the following occur:

* Submission to such conduct or communication is made a term or condition, either explicitly or implicitly, of employment.
* Submission to or rejection of such conduct or communication by an individual is used as a factor in decisions affecting the person’s employment.
* Such conduct or communication:
  1. has the purpose or effect of unreasonably interfering with a person’s work performance
  2. has the purpose or effect of creating an intimidating, hostile or offensive work environment, or
  3. otherwise adversely affects a person’s employment opportunities.

Examples of sexual harassment include behaviors or actions of a sexual nature such as verbal kidding or abuse of a sexual nature, teasing or joking; foul or obscene language or gestures; display of foul or obscene printed or visual material; and physical contact such as suggestive patting, pinching, groping or rubbing against another’s body, sexual advances or propositions, or requests for sexual favors.

It is the policy of the City of Anytown that sexual harassment in the workplace will not be tolerated. If any unwelcome sexual advances are administered and the victim feels uncomfortable, it is essential that it is reported so the proper steps can be taken. Each employee has a right to work in a safe environment without feeling pressured into sexual favors by other employees.  This policy applies equally to all unlawful forms of harassment in the workplace including sexual harassment and harassment or discrimination based on race, color, sex, age, religion, national origin, marital or veteran status, height, weight, disability, political affiliation, or other protected classes.

Reporting Potential Violations

Any employee who believes that he or she has been harassed in violation of this policy or who has witnessed another employee who has been harassed in violation of this policy shall immediately report the conduct or communication to any supervisor, Department Head or the City Manager.  If none of these avenues is available, the employee may report the harassment to the Mayor, Council Member or the City Attorney.

An employee is not required to make a determination of whether the conduct or communication is a violation of this policy. For that reason, an employee shall report any offensive conduct or communication which occurs while the employee is conducting City business or as a result of the employee’s employment with the City, whether on or off City premises.

It is stressed that the employee may choose to report the conduct or communication to any of the above-named persons. An employee is under no obligation to report the conduct or communication to any person who is the subject of or perpetrator of the conduct or communication.

Supervisory personnel are expressly obligated to educate employees on this policy, manage staff in a way that proactively prevents harassment and report any incidences of harassment to the City Manager or Mayor, Council Member or the City Attorney if the Manager or elected officials are the subject of the complaint.   Failure to do so renders the supervisor complicit in the harassment and subject to corresponding disciplinary action related to harassment and dereliction of duty.

It is the policy of the City of Anytown that any potential violations are reported so proper action can be taken. The employee has the right to report the misconduct, or anyone who witnesses the incident

**Investigations**

**Federal Law**

There is no Federal Law

**State Law**

MIOSHA Safety and Health Standards - Part 13

Retrieved from <http://www.michigan.gov/documents/CIS_WSH_part4ad_37850_7.pdf>

Michigan Civil Rights Commissions Rule 37.4 related to filing complaints

<http://www7.dleg.state.mi.us/orr/Files/AdminCode/53_10052_AdminCode.pdf>

Summary:The Occupational Safety and Health Act ("OSHA") regulates workplace safety for employers in businesses which affect commerce. Under OSHA, employers are required to furnish their employees with a place of employment free from recognized hazards that are causing, or are likely to cause, them death or serious physical harm. Employers must also comply with occupational safety and health standards which are issued under the Act. "Right to know" regulations issued under OSHA require that employees in certain industries be warned about hazardous materials and chemicals to which they may be exposed. OSHA sets forth a detailed procedure for adopting safety and health standards and provides for inspection, investigation and enforcement. Citations issued for noncompliance can result in civil and criminal penalties, including fines and, for violations causing the death of an employee, imprisonment. States are allowed to develop and enforce their own plans setting and enforcing occupational safety and health standards. Some industries have specific statutes which regulate employee safety and health.

Law for Change, Michigan Employment Policies and Employee Handbooks

Retrieved from <http://www.lawforchange.org/NewsBot.asp?MODE=VIEW&ID=2621>

Summary: “An employer is required to take all reasonable steps necessary to prevent the occurrence of either type of harassment, which includes having an appropriate and comprehensive policy against harassment. For this reason, a harassment policy that both expressly prohibits harassment and provides avenues for employees to report harassing behavior are recommended in any workplace.  Employees should be encouraged to report any harassing behavior to their supervisor and/or a human resources person or senior manager.  Reasonable steps to prevent harassment would also include periodic dissemination of the harassment policy, harassment training (particularly for supervisors), investigations of any complaints, and, when harassment occurs, prompt and effective remedial action. Employers cannot retaliate against an employee who complains about harassment.”

All complaints and reports shall be referred immediately to the City Manager for review, or to the Mayor, Council Member or the City Attorney if the Manager or elected officials are the subject of the complaint.

A prompt and thorough investigation of the alleged harassment will be initiated, with concern for the principles of due process and fairness.  Outside experts, consultants or attorneys may be enlisted to assist with the investigation.

Every effort will be made to keep all complaints (and their details) as confidential as possible; however, it is understood that in the course of an investigation, some information may become known to others.

A typical investigation includes one or more meetings with the person making the complaint, the accused and any witness(es) to the alleged occurrence(s) of harassment.

If the complaint involves a direct supervisory relationship, the City may suspend the reporting relationship between the employee and the supervisor and designate another supervisor to whom the employee shall report during the period of investigation.  During the investigation, the City may take other measures to limit contact between employees involved in the investigation to prevent retaliation and limit any potential for ongoing hostility.

Following completion of the investigation, if the report has merit, disciplinary action up to and including dismissal will be taken against the perpetrator to remedy the situation.  Remedies will in no way disadvantage the victim of harassment.

It is the policy of the City of Anytown that all violations are reported. The employee may report the misconduct, or any employee who is directly involved or sees the incident occur should report it immediately.

**Retaliation**

**Federal Law**

U.S. Equal Employment Opportunity Commission

Retrieved from <http://www.eeoc.gov/laws/types/retaliation.cfm>

Summary: “All of the laws we enforce make it illegal to fire, demote, harass, or otherwise “retaliate” against people (applicants or employees) because they filed a charge of discrimination, because they complained to their employer or other covered entity about discrimination on the job, or because they participated in an employment discrimination proceeding (such as an investigation or lawsuit).”

State Law

Section 37.2701 of the Elliott Larsen Civil Rights Act of 1976

Retrieved from <https://www.michigan.gov/documents/treasury/ET-03055_200339_7.pdf>

Summary: “Two or more persons shall not conspire to, or a person shall not:

* Retaliate or discriminate against a person because the person has opposed a violation of this act, or because the person has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under this act . . . Coerce, intimidate, threaten, or interfere with a person in the exercise or enjoyment of, . . . any right granted or protected by this act.”

There will be no retaliation against an employee for reporting harassment or for cooperating with the investigation of a complaint of harassment. Retaliatory action or conduct of any kind is strictly prohibited and shall be regarded as a separate and distinct violation of the City's policies and procedures, also subject to disciplinary action up to and including immediate discharge.

Employees have the right to report any incidents of harassment without having to be concerned with the repercussions that it may face. It is the policy of Any Town that any person who is allegedly faced with any form of harassment and retaliates against the victim, the alleged will be dismissed from his position immediately and forwarded to the local police.

**Drug-Free Workplace**

**Federal Law**

Drug-Free Workplace Act of 1988 United States Department of Labor.

Retrieved from<http://www.dol.gov/elaws/asp/drugfree/screen4.htm>

Summary: Organizations that receive federal contracts or money are required to prohibit use of marijuana as a condition of participation under the Drug-Free Workplace Act of 1988.

**Federal Law**

Drug-Free Workplace Act of 1988

Retrieved from<http://www.gpo.gov/fdsys/pkg/USCODE-2009-title41/pdf/USCODE-2009-title41-chap10.pdf>

Summary: The establishment of a drug-free workplace should include – (A) publishing a statement notifying employees of unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person’s workplace and specifying the actions that will be taken against employees for violations of such prohibition; (B) establishing a drug-free awareness program about – (1) the dangers of drug abuse; (2) policy of drug-free workplace; (3) available drug counseling and rehabilitation; (4) penalties that may be opposed to violators; (C) giving the employee a copy of subparagraph (A); (D) notifying them their condition of employment regarding subparagraph (A).

Notification must be given to the employer of any criminal drug statute occurring in the workplace no later than 5 days after such conviction; the contracting agency should be notified within a 10 day period.

Employees who are taking prescription medication that may impair their ability to drive and/or operate equipment/machinery shall notify their supervisor prior to engaging in that activity for an alternative assignment. Employees to be in a violation will be subject to disciplinary action up to and including termination.

Employees required to maintain a Commercial Driver’s License as a condition of their employment are subject to state and federal provisions regarding Department of Transportation (DOT) drug testing.

**State Regulation Summary**

Michigan Drug Testing Laws and Regulations Summary.

Retrieved 2014 from<http://www.testcountry.com/StateLaws/Michigan.htm>

Summary: There is no specific legislation regarding employment and pre-employment drug testing. Drug testing and alcohol testing must still be conducted in a way that does not violate rights of the individual to privacy and reputation.  There is a notice from the state regarding a drug-free workplace.

**State Governor Notice**

Drug-Free Workplace Notice – July 1, 2009.

Retrieved from <http://www.michigan.gov/documents/mdch/DrugFreeWorkplace_Notice_-SOM_182783_7.pdf>

Summary: If your organization has over 52,000 employees, there must be an established drug-free workplace program. All employees are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession or use of controlled substance in the workplace or while preforming assigned activities. Violators will be subject to disciplinary up to and including dismissal. Employers must educate employees about the dangers of drug use and the criminal penalties, and implement a drug and alcohol testing policy and program.

**Medical Examinations**

**Federal Law**

Department of Labor Workplace Violence Program – Appendices Medical Examination. Retrieved from<http://www.dol.gov/oasam/hrc/policies/dol-workplace-violence-program-appendices.htm>

Summary: Agencies may offer an examination at any time they believe there may be a medical or psychiatric reason for unacceptable behavior. However, they may order a general medical exam only in these situations: when the position has medical standards/physical requirements; when the agency has an approved ongoing medical evaluation program (such as OSHA and MSHA); in continuation of pay/workers' compensation cases to assist in placement efforts; and in reduction-in-force actions if the new position to which the employee would have placement rights has different medical standards than the one currently occupied by the employee.

A psychiatric examination (including a psychological assessment) may be ordered only when a general medical examination, properly ordered, indicates no physical explanation for behavior or actions which may affect the safe and efficient work of the individual or others, or when such an examination is specifically required by the position.

**State Law**

No State Law as of July 2014

The City may require an employee to submit to a medical or psychological exam to determine fitness for duty provided the examinations are job related and consistent with business necessity.  Tests for alcohol or illegal drug use are not considered medical examinations, nor are physical agility tests.  Fitness for duty exams will be conducted by a licensed professional designated by the City and will be paid for by the City.

The City will comply with all requirements of the ADA, FMLA, Michigan Persons with Disabilities Civil Rights Act, Worker’s Compensation and related laws and guidelines in addressing circumstances where an employee is found to be unfit to perform some or all of their essential job functions.  This policy in no way shall be construed to limit employees’ rights under any federal or state law.

Employees determined to be unfit for duty and requiring associated leave, may access accrued leave banks and other paid or unpaid leave time consistent with the policies contained within this manual and state and federal laws.

Light duty or modified return-to-work arrangements are not guaranteed, and would not indicate continued employment if provided.

**Key Dispersal**

Keys to City buildings, facilities, vehicles or equipment may be issued to employees.  Keys are never to be duplicated, given or lent to anyone else, including a fellow employee.  Lost or stolen items must be immediately reported to the City Manager.

**Workplace Violence**

**Federal Law**

Department of Labor Workplace Violence Program.

Retrieved from<http://www.dol.gov/oasam/hrc/policies/dol-workplace-violence-program.htm>

Summary: The program addresses prevention by increasing employee understanding of the nature of the workplace violence, how to respond, and how to prevent it. It is up to each employee to help make the department be a safe workplace for everyone. The expectation is that each employee will treat all other employees, as well as customers or clients, with dignity and respect.

Prevention strategy is to maintain an environment in which minimizes negative feeling such as isolation, resentment and hostility. To help achieve this, the following steps should be taken:

* Promoting sincere and open communication
* Offering opportunities of professional development
* Fostering a family-friendly work environment
* Maintaining mechanisms for complaints and concerns, allowing them to be expressed in a non-judgmental forum
* Promoting “quality of life” issues, such as job satisfaction
* Maintaining impartial and consistent discipline

**Federal Reference**

Occupational Safety and Health Administration: Safety and Health Topics: Workplace Violence.

Retrieved from<https://www.osha.gov/SLTC/workplaceviolence/>

Summary: Good reference for other links and information. One of the best protections employers can offer their workers is to establish a zero-tolerance policy toward workplace violence. This policy should cover all workers, patients, clients, visitors, contractors, and anyone else who may come in contact with company personnel.

The City of Anytown is committed to reducing the potential for workplace violence.  In this regard, it is the policy of the City to prohibit acts or threats of violence by any party, directed toward employees, citizens, elected officials, and visitors to the City’s facilities or others.

The City is committed to providing a safe and healthful work environment, consistent with health and safety rules and will take prompt remedial action, up to and including discharge or criminal prosecution, against any employee who engages in threatening behavior or acts of violence.

The City will taking appropriate action against any non-employee who engages in threatening behavior including former employees and visitors to City facilities, up to and including criminal prosecution.

Employees who display a tendency to engage in violent, abusive or threatening behavior will be referred to the City’s health plan for counseling or other appropriate treatment.  Such employees will also be subject to disciplinary action, up to and including immediate discharge.

Additionally, it is the responsibility of City employees to assist in identifying problem employees.  The City Manager should be immediately notified of situations or incidents involving threats, acts of violence, aggressive behavior, threatening or offensive comments and similar acts.  Employee reports made pursuant to this policy will be held in confidence to the maximum possible extent. The City will not tolerate retaliation against any employee reporting a violation of this policy.

**Safety and Right to Know**

**Federal Law**

The Occupational Health and Safety Act of 1970 (OSH Act)

Retrieved from <https://www.osha.gov/workers.html>

Summary: “The law requires employers to provide their employees with working conditions that are free of known dangers. The Act created the Occupational Safety and Health Administration (OSHA), which sets and enforces protective workplace safety and health standards. OSHA also provides information, training and assistance to workers and employers. Workers may file a complaint to have OSHA inspect their workplace if they believe that their employer is not following OSHA standards or that there are serious hazards.”

**State Law**

The Hazard Communication Standard (OSHA 1910.1200; MIOSHA R.325.77001-77003)

Retrieved from <http://www.mml.org/insurance/shared/publications/s_and_h_manual/6A.pdf>

Summary: This law requires all employers inform their employees of all the dangers they may face from working conditions.

Each employee must be familiar with applicable safety rules and operating guidelines associated with their department and the machinery and equipment required of their work.

No employee should perform any work tasks or take any action which may endanger the employee, another employee or the public.  If an employee is in doubt about the safeness of a situation, the employee should report his/her concerns to their supervisor prior to engaging in the activity.

The City complies with federal and state Right-To-Know laws and will make every effort to provide information to employees about any hazardous chemical to which they may be exposed.  Right-To-Know information is posted near the areas in which employees may be exposed to chemicals or other potentially hazardous materials.  Employees are required to read and be familiar with all posted materials.

**Bulletin Boards**

Each City building has a bulletin board for official City business and important neutral informational postings.  Political, inflammatory, or controversial items are prohibited.  If you would like to post something, please request permission from your Department Head prior to doing so. Be aware that tampering, defacing, or destroying any posting is prohibited.

**Work Week & Hours of Work**

**Federal Law**

Fair Labor Standards Act (FLSA).

Retrieved from<http://www.dol.gov/dol/topic/workhours/>

Summary: “(For employees 18 and over), a workweek is a period of 168 hours during 7 consecutive 24 hour periods. This may begin any day of the week at any hour of the day established by the employer. Generally for purposes of minimum wage and overtime pay each workweek stands alone, and there can be no averaging of 2 or more workweeks. Covered employees must be paid for all hours worked in the workweek. Hours worked includes all time an employee must be on duty or on the employers premises/prescribed place of work.”

**State Law**

No state law for adults 18 and over. Currently follows the Fair Labor Standards Act (FLSA).

Retrieved from<http://www.michigan.gov/lara/>

Summary: “Restrictions are placed on minors (under 18) for work week and hours of work. If an employee is 18 years or older, an employer has the right to schedule employees to meet the need of the specific workplace in accordance with the Fair Labor Standards Act.”

A normal workweek for full-time staff typically consists of 40 productive work hours, with additional time for meal and rest breaks, with the workweek beginning at 12:00 a.m. on Saturdays and ending at 11:59 p.m. the following Friday.

An employee's hours of work may be rescheduled to satisfy workload demands, operational needs, or to accommodate special requests. An employee seeking modification of the established work schedule, either as a special circumstance or permanent change, must obtain prior approval from their Department Head.

All hourly employees are expected to accurately record their hours worked on a daily basis and supervisors are to review and approve all time sheets.

**Lunch and Break Periods**

**Federal Law**

Fair Labor Standards Act (FLSA).

Retrieved from [http://www.dol.gov/dol/topic/workhours/breaks.htm](http://www.dol.gov/dol/topic/workhours/breaks.htn)

Summary: Break Periods-“Federal Law does not require lunch or coffee breaks. If employers do offer short breaks (5-20 min) it is considered compensable work hours and must be included in the sum of hours worked. Short breaks also will be considered if overtime was worked. Unauthorized extensions to breaks will not be counted as hours worked when extension is contrary to employer's rules.”

Meal Periods- “Meals lasting 30 minutes or more are not considered compensable work time. An employee must be relieved of all duties during this time. If an employee has to perform any duties while on break or meal period it will need to be considered compensable work time and must be accounted for in pay.”

**State Law**

Follows Fair Labor Standards Act (FLSA).

Retrieved from<http://www.michigan.gov/lara/>

Summary: Michigan does not have requirements for meal breaks or rest periods for employees 18 years and older.

**Pending State Law**

Pending House Bill No. 5214, 2014.

Retrieved from<http://www.legislature.mi.gov/documents/2013-2014/billintroduced/House/pdf/2014-HIB-5214.pdf>

Summary: In Michigan there is currently a pending bill (House Bill No. 5214, 2014) which aims to set regulations and requirements for meal/rest periods and workweek/hours worked. It is currently being reviewed in the House commerce Committee.  

Employees are typically provided meal and rest breaks during the course of a normal working day.  Generally, employees working at least six hours per day will be provided with a half-hour lunch break around the middle of their workday.

Employees in the DPW department who work at least six hours per day will be provided with two additional 15 minute break periods; one in the first half of the workday and one during the second half.  Break schedules may be flexible with prior supervisor approval.

Break periods are provided and scheduled based on operational demands; in some cases breaks or lunch period may be shortened or eliminated.

**Attendance and Punctuality**

**Federal Law**

Fair Labor standards Act (FLSA).

Retrieved from <http://www.flsa.com/coverage/html>

Summary: “Exempt employees cannot be docked pay for missing less than a half day of work. Employers must set their own guidelines in areas of attendance and punctuality as long as they follow FLSA standards when dealing with exempt or nonexempt employees.”

Title VII of the Civil Rights Act of 1964.

Retrieved from<http://www.eeoc.gov/policy/docs/quanda_religion.html>

Summary: “Prohibits employers/employment agencies with 15 or more employees from discriminating against requested religious practices, shift swaps, and scheduling changes of reasonable accommodation.”

Family Medical Leave Act (FMLA).

Retrieved from<http://www.dol.gov/whd/fmla/>

Summary: “Federal Law requiring employers to provide covered employees with job protected unpaid leave for qualified medical and family purposes.”

Americans With Disabilities Act (ADA).

Retrieved fromhttp://www.dol.gov/compliance/laws/comp-flsa.htm

Summary: “Requires employers to make reasonable accommodations for qualified employees if necessary to perform essential job functions. For example, an employer may have to modify an employee's work schedule to cope with a specific disability.”

All employees are required to report for work punctually and to work all scheduled hours and any required overtime. Excessive tardiness and poor attendance will not be tolerated.

It is the employee’s responsibility to notify their supervisor, as far in advance as possible, when an employee will be late for their scheduled shift or when they will be absent.

An employee who misses three (3) or more consecutive working days without notifying their supervisor will be considered to have voluntarily terminated their employment with the City.

**Jury Duty Leave**

**Federal Law**

Fair Labor Standards Act

Retrieved from <http://www.dol.gov/dol/topic/benefits-leave/juryduty.htm>

Summary: “Federal law prohibits employers to threaten, intimidate, or fire an employee who is to serve jury duty. Employers can require employees to give reasonable notice prior.”

**State Law**

Michigan Persons with Disabilities Civil Rights Act. Retrieved August 8, 2014 from <http://www.lawforchange.org/images/lfc/MichiganEmployment.pdf>

Summary: “Requires employers to make reasonable accommodations for employees with disabilities unless such accommodations would impose undue hardship upon the employer.”

Military Leaves/Reemployment Act.

Retrieved from <http://www.lawforchange.org/images/lfc/MichiganEmployment.pdf>

Summary: “Provides rights for those returning to work from military service. Such a person is entitled to re-employment without exception. The federal government does have a law similar (Uniformed Services Employment and Reemployment Rights Act), however federal law is more lenient and provides an employer the ability to prevent rehire if they can prove it would provide undue hardship.”

At-Will Employment State

Retrieved from [http://www.bls.gov/opub/mlr/2001/01art1full.pdf](http://www.bls.gov/opub/mlr/2001/01artlfull.pdf)

Summary: “Michigan is an at-will employment state.  This means that employees can quit at any time, and employers can let a worker go at any time as long as employers abide by federal laws. All attendance and punctuality guidelines should be clearly presented to employees upon hire.

Exceptions:

* Employee is under an individual contract
* Termination of an employee must not oppose state public policy (employees cannot be fired for refusing to break state/federal law upon request of an employer)
* There was an implied contract (oral or written assurances between employer and employee)”

**Voting Leave**

There are no federal or state laws that require employers to grant leave for employees to vote.

Retrieved from<http://www.employmentlawhandbook.com/leave-laws/state-leave-laws/michigan/#5>

**Breaks for Breastfeeding**

**Federal Law**

Affordable Care Act amended the Fair Labor Standards Act (“FLSA”).

Retrieved from [http://www.dol.gov/whd/nursingmothers/faqBTNM.htm](%20http://www.dol.gov/whd/nursingmothers/faqBTNM.htm)

Summary: “to require employers to provide “reasonable break time for an employee to express breast milk for her nursing child for 1 year after the child’s birth each time such employee has need to express the milk.” Employers are also required to provide “a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk. The frequency of breaks needed to express breast milk as well as the duration of each break will likely vary.”

Specifics:

* Must provide a private safe space for breastfeeding that is not a bathroom.
* Exempt from FLSA if under 50 employee’s and can prove hardship. “...hardship is determined by looking at the difficulty or expense of compliance for a specific employer in comparison to the size, financial resources, nature, or structure of the employer’s business.”
* FLSA Breastfeeding Policy includes all employees-full time, part time, or “...any other individuals who meet the FLSA definition of employee found at 29 U.S.C. 203(e)(1).”

The Pregnancy Discrimination Act of 1978.

Retrieved from <http://www.eeoc.gov/laws/statutes/pregnancy.cfm>

Summary: “The terms 'because of sex' or 'on the basis of sex' include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in section 703(h) of this title shall be interpreted to permit otherwise”

The Equal Pay Act of 1963.

Retrieved from <http://www.eeoc.gov/laws/statutes/epa.cfm>

Summary: This law makes it illegal to pay different wages to men and women if they perform equal work in the same workplace. The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

Family and Medical Leave Act.

Retrieved from <http://www.dol.gov/whd/fmla/>

Summary: “The FMLA entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave.”

Federal Law does not indicate place to store breast milk or pumping equipment.

**State Law**

The Home Rule City Act 279 of 1909,117.5h.

Retrieved from:<http://legislature.mi.gov/doc.aspx?mcl-117-5h>

Summary: “... A mother's [breastfeeding](http://www.legislature.mi.gov/(S(ct0dr355hiqm1wrcccqddi45))/mileg.aspx?page=getobject&objectname=mcl-117-5h&query=on&highlight=breastfeeding#top) of her baby does not under any circumstances constitute nudity irrespective of whether or not the nipple is covered during or incidental to the feeding.”

The Elliott-Larsen Civil Rights Act.

Retrieved from <http://legislature.mi.gov/doc.aspx?mcl-37-2202>

Summary:  “Treat an individual affected by pregnancy, childbirth, or a related medical condition differently for any employment-related purpose from another individual who is not so affected but similar in ability or inability to work, without regard to the source of any condition affecting the other individual's ability or inability to work.”

Michigan State Law has no laws pertaining to the storage of breast milk or equipment.

The City of Anytown is committed to maintaining a family-friendly workplace and supporting the health and well-being of its employees.  Research shows that nursing mothers feel supported when they have the resources to continue breastfeeding after returning to work.  With this in mind, the City is devoted to providing nursing mothers with private space and time to express breast milk for the nursing child during the first year after birth.

**Call-In or Call-Back & Stand-By Status**

**Federal Law**

Fair Labor Standards Act.

Retrieved from<http://www.dol.gov/whd/regs/compliance/whdfs22.pdf>

Summary: “If an employee is physically at place of work or on employer premises it is standard to be paid (even if not physically working) if time exudes 7 minutes. Employees may be called in or back to work on a regularly scheduled day off.  In these instances, non-exempt employees will be paid at the appropriate rate of pay for number of hours worked including any overtime pay.

On Call Status- If an employee’s on-call status restricts free hours to a significant extent, pay is necessary. An employee will always receive pay for actual hours worked.”

**State Law**

Michigan Civil Service Commission Rules.

Retrieved from<http://www.michigan.gov/documents/Regulation_5_155756_7.02_April_2006.pdf>

Summary: “Under Michigan and federal law employers must pay employees for all labor in accordance with exempt/nonexempt status.

Stand by Status-

* Waiting to be engaged- any employee who can pursue other activities while on call will only be paid for hours spent actually working.
* Engaged to be waiting- employee who cannot engage in personal activities must be paid for all time spent on-call.

Call in/Call back-

* Nonexempt employees are to be paid at established overtime rates for call back times if hours surpass 40 hours in a week. If an employee is called back into work outside their normal work period they are to be compensated a minimum of 3 hours pay (compensation should reflect any work exceeding 3 hours)”

The City has extensive responsibilities during an emergency. As such, any employee may be called in to work at unscheduled times and may be required to perform duties outside his/her normal job function. As with mandatory overtime, employees are expected to be available and as flexible as possible to meet operational demands.

The City reserves the right to require employees to be in a “stand-by” status, meaning that the employee needs to be available to report to work during an off-duty. Stand-by status may be instructed verbally or in writing by the department supervisor, or the employee may be named on the official call-back roster.

Hourly employees who are called back to work after having completed a normal work day or are called into work on their day off will be paid for two hours or the actual time worked, whichever is greater. These call backs will be paid at time and a half of the employee’s straight hourly rate.

**Work Cancellation**

**Federal Law**

The Department of Labor manages the application of the Fair Labor Standards Act.

Retrieved from<http://www.dol.gov/whd/opinion/FLSA/2005/2005_10_24_41_FLSA.htm>

Summary: “If work is cancelled due to weather conditions such as inclement weather, federal law requires employers to pay exempt employees. Employers may require employees use accrued leave days during such closure. Non-exempt employees are not required to be paid.”

**State Law**

There are no state laws about work cancellation. Follows Federal laws.

On the sole authority of the City Manager, if the City is forced to temporarily close its operations for one day or less, employees who are scheduled and available for work will be paid the regular pay they would have received if the closure had not occurred. Employees are expected to remain available to return to work through the regular work day. Closures of more than one day will be addressed on a case-by-case basis, with the City Manager providing timely directive.

**Hygiene**

**Federal Law**

Americans With Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 328 (2009).

Retrieved from <http://www.gpo.gov/fdsys/pkg/USCODE-2009-title42/html/USCODE-2009-title42-chap126.htm>

Summary: Body odor, personal appearance, and hygiene issues potentially could be medical issues. Employer cannot ask if body odor, ect. is a medical issue. However, if employee freely states the issue is caused by a medical issue, follow regular ADA procedures.

Occupational Safety and Health Act of 1970.

Retrieved from <http://www.dol.gov/whd/regs/compliance/whdfs51.htm>

Summary: The OSHA field sanitation standards require covered employers to provide: toilets, potable drinking water, and hand-washing facilities to hand-laborers in the field; to provide each employee reasonable use of the above; and to inform each employee of the importance of good hygiene practices. Covered employers who fail to comply with the statute or regulations may be subjected to a range of sanctions, including the administrative assessment of civil money penalties and civil or criminal legal action.

**Personal Appearance**

**Federal Law**

Americans With Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 328 (2009).

Retrieved from <http://www.gpo.gov/fdsys/pkg/USCODE-2009-title42/html/USCODE-2009-title42-chap126.htm>

Summary: Discrimination based on “physical disfigurement” is not allowed.

Fair Labor Standards Act (FLSA): Determining Hourly Commensurate Wages to be Paid Workers with Disabilities.

Retrieved from <http://www.dol.gov/whd/regs/compliance/whdfs39e.htm>

Summary: “Evaluate, in terms of quality and quantity, the productivity of each individual worker with a disability as he or she performs the exact same job for which the standard was established in the above step. Behavioral factors - such as personal appearance and hygiene, promptness, social skills, willingness to follow orders, etc. - may not be used when evaluating the worker's productivity.”

Title VII of the Civil Rights Act of 1964.

Retrieved from <http://www.eeoc.gov/laws/statutes/titlevii.cfm>

Summary: “This law makes it illegal to discriminate against someone on the basis of race, color, religion, national origin, or sex. The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit. The law also requires that employers reasonably accommodate applicants' and employees' sincerely held religious practices, unless doing so would impose an undue hardship on the operation of the employer's business.”

The Pregnancy Discrimination Act of 1978.

Retrieved from <http://www.eeoc.gov/laws/statutes/pregnancy.cfm>

Summary: “The terms 'because of sex' or 'on the basis of sex' include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in section 703(h) of this title shall be interpreted to permit otherwise”

The Age Discrimination in Employment Act of 1967.

Retrieved from <http://www.eeoc.gov/laws/statutes/adea.cfm>

Summary: “This law protects people who are 40 or older from discrimination because of age. The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.”

The Genetic Information Nondiscrimination Act of 2008.

Retrieved from <http://www.eeoc.gov/laws/statutes/index.cfm>

Summary: “This law makes it illegal to discriminate against employees or applicants because of genetic information. Genetic information includes information about an individual's genetic tests and the genetic tests of an individual's family members, as well as information about any disease, disorder or condition of an individual's family members (i.e. an individual's family medical history). The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.”

Important Notes:

* Equal Employment Opportunity Commission (EEOC) is starting to look into discrimination based on “beauty” or “activeness.”
* Employer can set grooming and personal appearance standards for employees within federal law.

**State Law**

The Elliott-Larsen Civil Rights Act.

Retrieved from <http://legislature.mi.gov/doc.aspx?mcl-37-2202>

Summary: “ A complaint may be filed if, for reasons of religion, race, color, national origin, genetic information, age, sex, marital status, height, weight, arrest record, or disability, a person has been: refused employment, paid less money for equal work, harassed or subjected to unequal treatment on the job, denied membership in a labor organization, expelled from a labor organization, denied promotion, denied representation in a grievance, fired without just cause, and/or denied admission to a training program.”

Important Notes:

* Employer can set grooming and personal appearance standards within state law.

Your appearance is important to demonstrating the professionalism of our organization.  For this reason, each employee is expected to report for work each day with appropriate hygiene, appearance and attire for his or her position.

Personal cleanliness is a must for all employees.  Body odors, strong perfume or smoke may all be particularly offensive to the public or coworkers.  Employees should take pride in their personal hygiene and appearance and report to work clean and groomed appropriately.

Attire should be consistent with job responsibilities and should not jeopardize the safety of the employee or distract others.  Anyone reporting to work in inappropriate clothing will be sent home to change.

It is impossible to describe or define every possible acceptable or unacceptable example of attire.  Generally speaking, clothing should be in keeping with the image of a professional organization; the following is prohibited:

* Excessively worn, torn or dirty clothing.
* Clothing with suggestive or offensive logos, pictures, insignia, etc.
* Very tight, revealing or otherwise sexually suggestive clothing.
* Exercise attire including “sweats”

If in doubt, ask prior to wearing the item.  Your supervisor will determine whether or not attire is acceptable.

**Uniforms and Safety Attire**

**Federal Law**

Deductions from wages for uniform and other facilities under the fair labor act (FLSA) U.S. Department of Labor, Wage and Hour Division

Retrieved from<http://www.dol.gov/whd/regs/compliance/whdfs16.pdf>

Summary: If the wearing of a uniform is required by some other law, the nature of a business or by an employer, the cost and maintenance of the uniform is considered to be a business expense of the employer. If the employer requires the employee to bear the cost, it may not reduce the employee's wage below the minimum wage of $7.25 per hour effective July 24, 2009. Nor may that cost cut into overtime compensation required by the Act.

Occupational Safety and Health Standards, Personal Protective Equipment, General Requirements.

Retrieved from<https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_id=9777&p_table=STANDARDS>

Summary: Application. Protective equipment, including personal protective equipment for eyes, face, head, and extremities, protective clothing, respiratory devices, and protective shields and barriers, shall be provided, used, and maintained in a sanitary and reliable condition wherever it is necessary by reason of hazards of processes or environment, chemical hazards, radiological hazards, or mechanical irritants encountered in a manner capable of causing injury or impairment in the function of any part of the body through absorption, inhalation or physical contact.

Employee-owned equipment. Where employees provide their own protective equipment, the employer shall be responsible to assure its adequacy, including proper maintenance, and sanitation of such equipment

**State Law**

There is no Michigan Law as of July 2014

There is no law in Michigan prohibiting an employer from requiring employees to purchase uniforms as long as the cost of the uniforms plus the expense of maintaining them does not cause their net pay to drop below minimum wage. This determination is made in the week in which the purchase is made.

The City may issue directly, provide allowance for, or reimburse employees in certain departments for safety attire, work shoes/boots, uniforms, etc.  These items are to be clean and worn with reasonable care.  The City will replace worn or damaged items as needed and within reason, generally not more than once per year.  City attire or uniforms are considered City property and are to be worn while on duty for City business only.

**Personal Articles in the Workplace & Search of Property**

The City is not responsible for lost or damaged personal articles brought into the workplace.  All property belonging to the City, including City vehicles, computers, phones, desks, file cabinets, lockers and other storage areas, is subject to inspection or search at any time without notice to retrieve work-related materials or to investigate a violation of workplace rules.  Employees should not have any expectation to privacy with regard to City premises.

**Personal Workspace & Displays**

Personal workspace is also considered property of the City and is oftentimes accessible and viewable by co-workers and the public.  Reasonable, tasteful displays of personal pictures, decorations, and related items are acceptable.  However, any personal displays that violate harassment, code of conduct, or other policies will be addressed as a violation according to those procedures.  Your department head and/or the City Manager have the final authority to determine what is acceptable.

**Smoke-Free Workplace and Smokeless Tobacco Use**

**Federal Law**

As far as smoking bans in public places, U.S Congress has not enacted a nationwide federal smoking ban. This issue is currently left up to state/local law. Federal laws do exist that regulate issues such as advertising, minor possession, and taxation.

**State Law**

Dr. Ron Davis Smoke Free Air Law of 2009.

Retrieved from [http://www.legislature.Mi.gov/documents/2009-2010/Publicact/PDF/2009-PA-0188.Pdf](http://www.legislature.mi.gov/documents/2009-2010/Publicact/PDF/2009-PA-0188.Pdf)

Summary: “Effective May 1st, 2010 smoking is prohibited in almost all public places and workplaces. Workplace is defined as an enclosed indoor area that contains one or more work areas for one or more employees. Employees cannot smoke in private offices. “No smoking” signs are to be clearly placed in all entrances, and smoking paraphernalia such as ashtrays are to be removed from all workplaces. Smoke breaks during work hours are not mandatory by law. Employees can smoke in outdoor areas in a manner acceptable by their particular workplace guidelines. E-Cigarettes are not included in the law, although Michigan Legislature is currently reviewing this product. Exceptions to this law include:

* Gaming floors of casinos
* Cigar bars
* Specialty Tobacco Retail stores (must meet specific criteria)”

In accordance with Michigan’s 2010 Smoke Free Air Law, the City of Anytown prohibits smoking in all public places and places of employment and through this policy, will inform employees, vendors, customers, or visitors of this prohibition and the penalties involved for violation.

Smoking is strictly prohibited within all work areas and public spaces including City vehicles, conference rooms, private offices, reception areas, restrooms, stairwells, hallways, work stations, and all other enclosed areas. This policy applies to all employees, customers, contractors and visitors.

Employees who wish to smoke may do so only during regular break periods, and may smoke only outdoors in designated areas. Employees may not litter and must properly dispose of smoking materials.

Persons observing a violation of this policy report it to their supervisor or the City Manager. All complaints will be investigated and all personnel are expected to cooperate fully.

Employees or individuals smoking in violation of this policy will be asked to stop. If they refuse, they will be asked to leave the work area and may be subject to civil fines ($100 first offense, $500 subsequent violations). In addition, employees who refuse to comply will be considered insubordinate and will be subject to related disciplinary action up to and including discharge.

Retaliation against individuals for reporting violations of this policy or for exercising their rights under the law will not be tolerated. If you believe you are being retaliated against, immediately report it to your supervisor or the City Manager. Those engaging in retaliation are subject to disciplinary action up to an including discharge.

**Freedom of Information Act**

**Federal Law**

The Freedom of Information Act 5 U.S.C 552, as Amended by Public Law No. 104-231, 110 Stat. 3048.

Retrieved from<http://www.justice.gov/oip/foia_updates/Vol_XVII_4/page2.htm>

Summary: The following information must be available to the public:

* Descriptions of its central and field organization and the established places at which the information can be retrieved by submitting a request
* Statements of the general course and method in which functions are channeled
* Rules of procedure, descriptions of forms and instructions
* Interruptions of general policy
* Each amendment, revision or repeal of the foregoing

This Act gives you the right to request access to federal agency records or information. All U.S. government agencies are required to disclose agency records to the public unless the records are protected by one or more of the FOIA's nine exemptions or three exclusions. The nine exemption categories that authorize government agencies to withhold information are:

* classified information for national defense or foreign policy;
* internal personnel rules and practices;
* information that is exempt under other laws;
* trade secrets and confidential business information;
* inter-agency or intra-agency memoranda or letters that are protected by legal privileges;
* personnel and medical files;
* law enforcement records or information;
* information concerning bank supervision; and
* geological and geophysical information.

**State Law**

There is no Michigan Law as of July 2014

It is the policy of the City of Anytown to comply fully with the Freedom of Information Act.  All individuals are entitled to certain and specific information regarding the affairs of government and the actions of public officials and public employees.

All FOIA requests are to be immediately directed to and processed by the City Clerk or his/her designee.  Requests for public information may be either oral or written and ideally are handled within five business days after the request has been received.  In some cases, an extension may be required, and certain information may be denied or redacted.  Originals of any documents will not be allowed to leave City property, and the costs associated with compiling and providing the information will be charged.

**Sensitive Records**

**Federal Law**

Executive Order 12958; 60 Fed.Reg.19825

Retrieved from: <http://www.gpo.gov/fdsys/pkg/FR-1995-04-20/html/95-9941.htm>

Summary: “This order prescribes a uniform system for classifying, safeguarding, and declassifying national security information. Our democratic principles require that the American people be informed of the activities of their Government. Also, our Nation's progress depends on the free flow of information. Nevertheless, throughout our history, the national interest has required that certain information be maintained in confidence in order to protect our citizens, our democratic institutions, and our participation within the community of nations. Protecting information critical to our Nation's security remains a priority.”

Executive Order 13292; 68 Fed.Reg.15315

Retrieved from <http://www.loc.gov/rr/frd/pdf-files/sbu.pdf>

Summary: “To prescribe a uniform system for classifying, safeguarding, and declassifying national security information, including information relating to defense against transnational terrorism.”

**State law**

No State Law found

Though much of the information handled by the City is public information, employees may have access to sensitive or confidential information or records not intended for or required to be publicly released.

City employees are not to disclose any sensitive or confidential information without approval of the City Manager and should only discuss sensitive or confidential information when necessary to carry out job duties. In addition, employees should not attempt to acquire sensitive or confidential information that is not germane to their employment.

Under no circumstance may an employee remove documents, photos, reports, personal or personnel information or any sensitive material that is the property of the City of Anytown.

Employees found to be in violation of this policy may be disciplined, up to and including discharge.

**Public Statement/Press Calls**

Unless otherwise delegated, the City Manager is the official designated spokesperson for City staff.  Employees should refer all requests for formal statements, interviews, and related activities to the City Manager.  Employees may not make formal statements on behalf of the City, except in cases of sharing routine, factual information, without prior authorization.

**Federal Law**

Bill of Rights: First Amendment.

Retrieved from <http://www.law.cornell.edu/constitution/first_amendment>

Summary: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.”

Defamation Laws.

Retrieved from <http://www.law.cornell.edu/wex/defamation>

Summary: Any statement (written or oral) that injures another person reputation.

Specifics: “To establish a prima facie case of defamation, four elements are generally required:  a false statement purporting to be fact concerning another person or entity; publication or communication of that statement to a third person; fault on the part of the person making the statement amounting to intent or at least negligence; and some harm caused to the person or entity who is the subject of the statement.”

The Freedom of Information Act 5 U.S.C 552, as Amended by Public Law No. 104-231, 110 Stat. 3048.

Retrieved from<http://www.justice.gov/oip/foia_updates/Vol_XVII_4/page2.htm>

Summary: Must make information, records, proceedings, public in a timely matter. See Freedom of Information Act section for more information.

**State Laws**

Revised Judicature Act of 1961

Retrieved from <http://legislature.mi.gov/doc.aspx?mcl-600-2911>

Summary: Law outlining slander and libel.

**Gifts and Gratitude**

**Federal Reference Material**: USDOJ: JMD: Departmental Ethics Office: Regulations, Authorities & Reference Materials: Do It Right. (n.d.). USDOJ: JMD: Departmental Ethics Office: Regulations, Authorities & Reference Materials: Do It Right.

Retrieved from<http://www.justice.gov/jmd/ethics/generalf.htm>

Summary: “The Standards of Ethical Conduct are based on Executive Order 12674, as amended by Executive Order 12731, and a number of ethics-related statutes. The executive order sets forth 14 principles of ethical conduct that Federal employees must follow and on which the Standards of Ethical Conduct build.”

Specifics: “A Federal employee may not accept gifts from any person or organization that --

* Seeks official action by the employee's agency;\*
* Does business or seeks to do business with the employee's agency;\*
* Conducts activities regulated by the employee's agency;\*
* Has interests that may be substantially affected by performance or nonperformance of the employee's official duties;
* Is an organization a majority of whose members are described above; or
* Gives the gift because of the employee's official position.”

**Federal Law**

Internal Revenue Services: Estate and Gift Taxes.

Retrieved from <http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Estate-and-Gift-Taxes>

Summary: Proper forms and procedures to disclose gifts and inheritances.

**State Law**

The Michigan Penal Code. (1931, January 1)

Retrieved from<http://legislature.mi.gov/doc.aspx?mcl-750-125>

Summary: “750.125 Giving, offering, or promising commission, gift, or gratuity to agent, employee, or other person with intent to influence action of agent or employee; requesting or accepting commission, gift, or gratuity; using or giving document containing materially false, erroneous, or defective statement; evidence; use of truthful testimony, evidence, or other information against witness in criminal case; violation as misdemeanor.”

Standards of Conduct for Public Officers and Employees Act 196 of 1973 (Michigan Statutes §15.342).

Retrieved from<http://legislature.mi.gov/doc.aspx?mcl-15-342>

Summary: “A public officer or employee shall not solicit or accept a gift or loan of money, goods, services, or other thing of value for the benefit of a person or organization, other than the state, which tends to influence the manner in which the public officer or employee or another public officer or employee performs official duties.”

Specifics: “"Gift" means a payment, advance, forbearance, or the rendering or deposit of money, services, or anything of value, the value of which exceeds $25.00 in any 1-month period, unless consideration of equal or greater value is received therefor. Gift includes a payment, advance, forbearance, or the rendering or deposit of money, services or anything of value to aid the defense of an official in the legislative branch or an official in the executive branch against a legal action not directly related to the governmental duties of the official.”

“Gift does not include:

* A campaign contribution otherwise reported as required by Act No. 388 of the Public Acts of 1976,
* A loan made in the normal course of business
* A gift received from a member of the person's immediate family, a relative of a spouse, a relative within the seventh degree of consanguinity as computed by the civil law method, or from the spouse of the relative.
* A breakfast, luncheon, dinner, or other refreshment consisting of food and beverage provided for immediate consumption.
* a contribution to a legal defense fund that is registered with the secretary of the state under the legal defense fund act and whose purpose is to defend an elected official agains any criminal, civil, or administrative action, that arises directly out of the conduct of the elected officials governmental duties.”

Lobbyists, Lobbying agents, and Lobbying Activities Act 472 of 1978 (Michigan Statutes §4.414).

Retrieved from<http://legislature.mi.gov/doc.aspx?mcl-4-414>

Summary: “Details what constitutes as a gift under Michigan Law for lobbying activities.

As public servants, services must be rendered and business contracts awarded without favoritism or the suggestion that gifts and/or gratuities are expected in return.”

The City Manager may approve the acceptance of gifts presented for the benefit of the City as a whole, its employees and the public (such as a food basket that can be set out for general consumption.)  If a situation should arise that an employee considers inappropriate, they should promptly report it to the City Manager.

**Political Activity and General Solicitation**

**Federal Law**

Hatch Act

Retrieved from<http://www.gpo.gov/fdsys/pkg/USCODE-2010-title5/pdf/USCODE-2010-title5-partIII-subpartF-chap73-subchapIII.pdf>

Summary: “Hatch Act restricts the political activity of individuals principally employed by state, county or municipal executive agencies who work in connection with programs financed in whole or in part by federal loans or grants. An officer or employee of a state or local agency is covered by the Hatch Act, if he or she has duties in connection with an activity financed in whole or in part by federal funds.”

Details and Examples from the Office of Special Counsel:

* may be candidates for public office in nonpartisan elections, i.e., an election where no candidates are running with party affiliation. EXAMPLE: An employee may run for the school board in Washington D.C., as long as the school board elections in Washington D.C. remain nonpartisan.
* may hold elective office in political parties, clubs and organizations. EXAMPLE: An employee may serve as the vice president of the local Democratic or Republican party.
* may be appointed to fill a vacancy for an elective office. EXAMPLE: An employee may be appointed to finish the unexpired term of an elected officeholder. The employee may not run for reelection if the election is partisan.
* may actively campaign for candidates for public office in partisan and nonpartisan elections. EXAMPLE: An employee may campaign for candidates by making speeches, writing letters, working at the polls on election day and organizing political rallies and meetings.
* may contribute money to political organizations. EXAMPLE: An employee may make a monetary contribution to any candidate, political party, club or organization.
* may attend and give a speech at a political fundraiser, rally or meeting. EXAMPLE: An employee may attend and give a speech or keynote address at a political fundraiser.
* maynot be candidates for public office in partisan elections. EXAMPLE: An employee may not run for office in an election where any of the candidates are running as representatives of a political party, e.g., the Democratic or Republican party.
* maynot be candidates for public office in partisan elections. EXAMPLE: An employee may not run for office in an election where any of the candidates are running as representatives of a political party, e.g., the Democratic or Republican party
* may not directly or indirectly coerce contributions from other state or local employees. EXAMPLE: A supervisor should not advise employees that they may purchase tickets to a fundraising event.
* maynot orchestrate a “write-in” candidacy during a partisan election. EXAMPLE: An employee may not solicit voters to write his name on the ballot on Election Day.

Jumpstart Our Business Startups Act (JOBS Act).

Retrieved from <http://www.sec.gov/info/smallbus/secg/general-solicitation-small-entity-compliance-guide.htm>

Summary: “The JOBS Act requires that issuers wishing to engage in general solicitation take “reasonable steps” to verify the accredited investor status of purchasers… amending existing (Rule 506) exemptions from registration under the Securities Act of 1933 and creating new exemptions that permit issuers of securities to raise capital without SEC registration.”

## Securities Act of 1933.

## Retrieved from <http://www.sec.gov/about/laws.shtml>

Summary: “Often referred to as the "truth in securities" law, the Securities Act of 1933 has two basic objectives: require that investors receive financial and other significant information concerning securities being offered for public sale; and prohibit deceit, misrepresentations, and other fraud in the sale of securities”

**State Law**

Charitable Organizations and Solicitations Act (COSA)

Retrieved from <http://legislature.mi.gov/doc.aspx?mcl-act-169-of-1975>

Summary: “to regulate charitable organizations, professional fund raisers and other persons soliciting or collecting contributions on behalf of charitable organizations, and certain other persons involved in the solicitation of contributions to charitable organizations; to require certain charitable organizations and certain professional solicitors to register and disclose certain information before soliciting contributions; to require certain professional fund raisers to obtain a license and disclose certain information before soliciting contributions; to provide for reporting of financial and other information by those licensed or registered and those claiming exemption from licensing or registration; to prescribe standards of conduct and administration and prohibit certain actions in connection with charitable solicitations; to provide for powers and duties of the attorney general and county prosecuting attorneys; to preempt local regulation; to provide remedies and penalties for violations; and to repeal acts and parts of acts.”

**State Form to Apply for Solicitations:** Initial Solicitation Registration Form.

Retrieved from<http://www.michigan.gov/documents/ag/Fillable_Initial_App_2-9-09_266590_7.pdf>

Summary: Registrar if creating any fundraiser for a public work. If frequent, a Michigan resident must apply for a professional license.

The City does not discourage political participation or activity.  However, certain restrictions are imposed to insure the integrity and impartiality of the City.  In this regard:

* Employees of the City shall not engage in political activities on behalf of a candidate for partisan or non-partisan election during those hours when the employee is being compensated for the performance of his/her duties as a City of Anytown employee.  This includes distributing or circulating literature or paraphernalia for or against an issue or candidate.
* Solicitation and/or distribution of literature, including signing and circulating petitions for candidates, propositions and other political matters, is prohibited during working hours or in work areas.  Working hours include the actual working time of both the individual performing the solicitation or distribution and the employee to whom it is directed.
* Employees of the City shall not solicit, receive or in any way participate in soliciting or receiving any assessment, subscription or contribution for any political party or any political purpose whatsoever, during those hours when the employee is being compensated for the performance of his/her duties as a City of Anytown employee.
* Employees involved with political campaigns shall do so as private citizens.  Employment status with the City shall not be referenced when campaigning for or against any candidate or ballot issue, question or proposal.  Employees involved with political activity shall neither claim to represent the City nor claim their views or opinions reflect the views or opinions of the City.
* Equipment, materials and supplies belonging to the City, including the City's letterhead, business cards or other such material supplied by the City, shall not be used in support of political activities.

Employees who become candidates for the City Council of the City of Anytown will be required to take a leave of absence without pay when that employee complies with the candidacy filing requirements or 60 days before any election relating to that position, whichever date is closest to the election.  Employees who are elected to City Council must resign their City employment prior to the commencement of their term of office.

**Use of the City's Resources**

Vehicles, materials, facilities and equipment owned by the City are intended for City business use only.  Further, City employees are expected to perform work related only to City business while on work time.  Specifically:

* Mail & Letterhead - Employees may not use the City's postage for personal mail.  Additionally, employees should not routinely receive personal mail or package deliveries while at work.  City letterhead is to be used for official City business only.
* Phone - All phone lines are to be kept available for the City's business. Personal calls must be held to a minimum.  Employees are expected to reimburse any expense associated with personal long distance calls or excessive personal calls made using a City telephone.
* Cell Phone - Personal calls on City cell phones are to be held to a minimum and are allowed provided only where personal use does not result in an overage of the contracted minutes.  If the minutes are exceeded, the employee is required to pay the additional charges or costs.
* Vehicles – City-owned vehicles are to be used for official City business only, unless otherwise approved by the City Manager.
* Equipment, Facilities and Supplies - Equipment, facilities and supplies are to be used for City business only, including tools, machinery, computers, copiers, faxes and other office machines.
* Personnel – City personnel are only to perform work related to City business and/or projects while on work time.

The City’s resources, including City vehicles, may not be borrowed for personal use by employees.

**Care of Equipment**

Employees are expected to follow prescribed safety procedures for equipment and vehicle usage, refrain from and/or report equipment abuse and guard against equipment loss.

Should an employee encounter equipment malfunction or be involved in an accident, the incident should be immediately reported to the appropriate supervisor or department head.  Intentional equipment abuse, careless use of equipment, or habitual loss of equipment will not be tolerated and may result in disciplinary action, up to and including discharge.

**Vehicle Usage**

The City allows certain job classifications to use City-owned vehicles with prior supervisor approval.

Employees who use their personal vehicles for City business will be reimbursed at a rate set by the City Council.

Any employee driving on City business, whether using their own vehicle or the City’s, must have a valid Michigan driver’s license and a satisfactory driving record.  Any restrictions on, or revocation of, an employee’s legal right to drive must be immediately reported to the appropriate department head.

Employees who drive a vehicle on City business must exercise due diligence to drive safely, observe all traffic laws, speed limits and related rules of the road, and maintain the security of the vehicle and its contents.  Drivers are responsible for any driving infractions or fines that result from their driving and must report them to their supervisor.

No one other than authorized City employees is authorized to drive or ride in City vehicles, unless prior approval has been obtained from the City Manager.

Smoking is strictly prohibited in City vehicles.

**Credit Cards**

**Federal Law**

The Credit Card Accountability Responsibility and Disclosure Act. (2009).

Retrieved from <http://www.banking.senate.gov/public/_files/051909_CreditCardSummaryFinalPassage.pdf>

Summary: “Prevents Unfair Increases in Interest Rates and Changes in Terms, Prohibits Exorbitant and Unnecessary Fees, Requires Fairness in Application and Timing of Card Payments, Protects the Rights of Financially Responsible Credit Card Users, Provides Enhanced Disclosures of Card Terms and Conditions, Strengthens Oversight of Credit Card Industry Practices, Ensures Adequate Safeguards for Young People”

Specifics: Person under 21 must have a co-signer

**Consumer Credit Protection Act (**1969).

Retrieved from <http://www.federalreserve.gov/creditcard/regs.html>

Summary: “umbrella consumer protection law that includes the Equal Credit Opportunity Act, the Fair Credit Billing Act, the Fair Credit Reporting Act, and the Truth in Lending Act.”

**Equal Credit Opportunity Act** (1974).

Retrieved from <http://www.federalreserve.gov/creditcard/regs.html>

Summary:  “prohibits discrimination in credit transactions on the basis of certain personal characteristics, such as race, color, religion, national origin, sex, marital status, age, because you receive public assistance, or because you've exercised your rights under the Consumer Credit Protection Act.”

**Fair Credit Billing Act (**1974).

Retrieved from <http://www.federalreserve.gov/creditcard/regs.html>

Summary: “requires that a credit card company promptly credits your payments and corrects mistakes on your bill without damage to your credit score. It also lets you dispute billing errors on your credit card and withhold payment for damaged goods. See Truth in Lending Act.”

**Truth in Lending Act** (1968).

Retrieved from <http://www.federalreserve.gov/creditcard/regs.html>

Summary: “requires that lenders use uniform methods for computing the cost of credit and for disclosing credit terms so you can tell how much it will cost to borrow money. It also limits your liability to $50 if your credit card is lost, stolen, or used without your authorization, and it prohibits the unsolicited issuance of credit cards. The Fair Credit Billing Act and the Fair Credit and Charge Card Disclosures Act were later additions to the Truth in Lending Act, as are many provisions of the Credit CARD Act.”

**State Law**

The Fair Credit Card Billing Act.(1974).

Retrieved from <http://www.ftc.gov/sites/default/files/fcb.pdf>

Summary: “and to protect the consumer against inaccurate and unfair credit billing and credit card practices.”

Credit Card Arrangements: Act 379 of 1984, Sections 101-114.

Retrieved from <http://www.legislature.mi.gov/(S(x5py2e3pl1ksqj45gbxx0c45))/mileg.aspx?page=GetObject&objectname=mcl-Act-379-of-1984>

Summary: “AN ACT to define and regulate certain credit card transactions, agreements, charges, and disclosures; to prescribe the powers and duties of the financial institutions bureau and certain state agencies; to provide for the promulgation of rules; and to provide for fines and penalties.”

The City recognizes that in certain instances, it is in its best interests to issue a City credit card to certain employees.  City credit cards are limited to employees in positions that demonstrate that having a credit card will assist them in performing their assigned responsibilities.  Any issuance of a City credit card must first be authorized by the City Manager.

The credit card may only be used for the purchase of goods or services related to the official business of the City. It is not to be used for any personal business.

Any employee that is issued a City credit card is responsible for the card’s protection and custody and shall immediately notify the City Treasurer if the card is lost or stolen.

The issuance of a City credit card is a privilege that may be revoked at any time. Any card holder found in violation of this policy may be forced to surrender the card and may be subject to discipline. Employees shall surrender their League credit card upon request, including at the time of termination.

**Use of Communication Systems**

**Federal Law**

Bill of Rights: First Amendment.

Retrieved from <http://www.law.cornell.edu/constitution/first_amendment>

Summary: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.”

Defamation Laws.

Retrieved from <http://www.law.cornell.edu/wex/defamation>

Summary: “Any statement, whether written or oral, that injures a third party's reputation… A false statement purporting to be fact concerning another person or entity; publication or communication of that statement to a third person; fault on the part of the person making the statement amounting to intent or at least negligence; and some harm caused to the person or entity who is the subject of the statement.”

The Freedom of Information Act 5 U.S.C 552, as Amended by Public Law No. 104-231, 110 Stat. 3048.

Retrieved from<http://www.justice.gov/oip/foia_updates/Vol_XVII_4/page2.htm>

Summary: Must make information, records, proceedings, public in a timely matter. See Freedom of Information Act section for more information.

**State Law**

Revised Judicature Act of 1961

Retrieved from <http://legislature.mi.gov/doc.aspx?mcl-600-2911>

Summary: Law outlining slander and libel.

The City of Anytown provides its employees with the necessary communication equipment for prompt and efficient execution of City business such as telephones, cell phones, voice mail, radios, etc.  Supervisors are responsible for instructing employees on the proper use of communications equipment for both internal and external City communications.

All City communications equipment and services, including personal messages transmitted or stored by them, are City of Anytown property.  As they are City property, all City communications, services and messages are also subject to all Freedom of Information Act (FOIA) requirements and may be required to be made public upon request.  In addition, the City may access and monitor internal and external communications as deemed appropriate.

Improper use of City of Anytown communication equipment or systems will result in discipline, up to and including termination.  Improper use includes communication that violates the harassment policy or policies regarding personal use or abuse of City property or any other policy contained within this manual.

**Computer, Internet and E-Mail Policy**

**Federal Law**

The Bill of Rights: The Fourth Amendment.

Retrieved from <http://www.cyber.law.harvard.edu/privacy/Module3_Intronew.html>

Summary: “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures. The Fourth amendment does not account for new technology, and does not directly apply to privacy in electronic communications/internet. However, in O’Connor v. Ortega, the Supreme Court acknowledged that the Fourth Amendment may be applicable to situations where employee private information is obtained from electronic surveillance, (applies to public employers-not private). Consequently, government employees have stronger claims for protection against electronic monitoring by employers. It is important to note that in most cases employers can monitor employee usage when on company/employer owned electronic equipment.”

Electronic Communications Privacy Act (ECPA).

Retrieved from <http://www.sans.org/reading-room/whitepapers/legal/federal-computer-crime-laws-1446>

Summary: “This act amends the Federal Wiretap Law. The ECPA makes it illegal to intercept stored or transmitted data without authorization. It sets provisions for for access, use, disclosure, interception, and privacy for electronic communications. The ECPA was amended in 1994 by The Communications Assistance for Law Enforcement Act which requires ISPs to build capabilities into their networks for law enforcement to carry out electronic surveillance when necessary. Depending on the forum used to access personal information such as email (employer owned v. personal), this act can be used to enforce employee privacy in the workplace.

* Title II of ECPA: Stored Communications Act- This addresses both voluntary and compelled disclosure of stored wire and electronic communication and transactional records held by third party internet service providers. This act helps to regulate the ability of ISPs to reveal a person’s private information to another party without a subpoena.”

The Patriot Act.

Retrieved from <http://www.cnn.com/2011/politics/05/27/congress.patriot.act/>

Summary: “Provides tools for the government to prevent terrorist activity. It is important to note that this act may invalidate aspects of the ECPA depending on the situation. The Patriot Act was extended (four years) on three provisions by President Barack Obama in 2011:

* Roving wiretaps
* Searches of business records
* Conducting surveillance on individuals suspected of terrorist activity not linked to terrorist groups”

Computer Fraud and Abuse Act of 1984.

Retrieved from <http://www.sans.org/reading-room/whitepapers/legal/federal-computer-crime-laws-1446>

Summary: “This act deals with crime involving the computer itself. This is an important act for employers due to it specifying crimes being committed by a person with authorization/access to workplace electronic devices. It also addresses malicious codes designed to destroy, alter, or damage information on an electronic device. The Computer Fraud and Abuse Act was expanded in 1996 by the National Information Infrastructure Act (NIIA) to include unauthorized access to a protected electronic device. This makes it illegal to view information on a protected computer unless authorized. A protected computer is one used by the government, a financial institution, or interstate/foreign commerce communication.”

**State Law**

Internet Privacy Protection Act of 2012 (IPPA).

Retrieved from <http://wwwlegislature.mi.gov/documents/2011-2012/billenrolled/House/htm/2012-HNB-5523.htm>

Summary: “This act prohibits educational institutions and employers from requesting access to employee/student personal internet and social media accounts. Employers are also prohibited from retaliating against employees who fail to disclose such information. This does not prohibit an employer from monitoring or requesting access to electronic communications which are provided for by the employer/place of work. This act distinguishes between personal and employer owned electronic systems and social media accounts in terms or rights to privacy. Michigan is the fourth state to enact such a law.”

All documents, e-mail, and other electronic work products originating from or received by the City computer systems are the property of the City of Anytown, and are not considered private information. Employees should have no expectation of privacy with regard to computer use and communications.

*General Computer Policies*

* Only those persons given permission are permitted to use any computer resource owned, rented or leased by the City of Anytown.
* Only designated personnel or persons contracted by the City may install software or hardware on any City computer system. Prior approval from the City Manager’s office is required before installing anything on a City computer.
* All disks, CDs or any other file storage device brought from any outside entity must be scanned for viruses before being loaded on the City’s computer system.
* Unlawful copying of any software is strictly forbidden. This includes loading unlicensed software on City computers or loading City software on computers that are not owned, rented or leased by the City.
* Employees may not delete or destroy any electronic records or documents related to official City business except as provided in official record retention and disposal policies of the City Clerk.

### *Internet Use*

* Access to the Internet is provided as a tool for official City-related research and communication.
* Use of the City’s computer resources or Internet service for any unlawful purpose is strictly prohibited.
* The City actively monitors incoming and outgoing Internet traffic; employees should have no expectation of privacy.
* Inappropriate or unlawful use of the Internet may result in the loss of access for the user and/or disciplinary action up to and including discharge.

### *E-mail Use*

* E-mail usage is for official City communication purposes only, whether it is internal or external.
* Electronic mail may constitute a public record under certain circumstances and may be accessible or obtainable by individuals, agencies and others outside the City of Anytown.
* Employees may not delete or destroy any email communications related to official City business except as provided in official record retention and disposal policies of the City Clerk.
* The City actively monitors incoming and outgoing email; employees should have no expectation of privacy.

**Website**

**Federal Law**

Freedom of Information Act (FOIA).

Retrieved from <http://www.foia.gov/>

Summary: “Enacted July 4, 1966 (taking effect 1967), any person has the right to obtain access to federal agency records. This act helps citizens stay in the know when it comes to their government. Government information is to be freely obtainable through portals such as websites so people are able to access the information they desire. Exceptions to FOIA:

* Interferes with national defense/security
* Documents related solely to internal agency rules/practices
* Documents excluded from disclosure by another statute
* Documents that would reveal financial/trade information about a person
* Medical documents or any unnecessary invasion of personal privacy
* Documents compiled for law enforcement if harm would result
* Documents which would reveal oil well data
* Documents for use by agencies which regulate financial institutions”

**State Law**

Michigan’s Freedom of Information Act (FOIA).

Retrieved from, <http://www.michigan.gov/documents/ag/FOIA_Pamphlet_380084_7.pdf>

Summary: “The Freedom of Information Act gives citizens the right to access most public records. All state agencies, local governments, schools, commissions, councils, and boards are included. Information from these sources can be contained in any form (computer, photo, handwritten), although does not include computer software. Exemptions include:

* Information that would disrupt current court proceedings
* Safety/security issues
* Information exempted from disclosure by another statute
* Unwarranted invasion of privacy
* Confidential information in criminal proceedings”

Public Act 161 Sec.572 of 2003.

Retrieved from, <http://www.legislature.mi.gov/documents/2003-2004/billanalysis/House/pdf/2003-HFA-0270-x3.pdf>

Summary: “Donations, funds, and advertisement on state websites are accepted through the Department of Information Technology and must adhere to Public Act 161 when dealing with monetary provisions. Private or public advertising on state web pages can receive recognition.  The Department of Information Technology has the right to refuse grants/donations/gifts for state websites.”

The purpose of the City of Anytown’s website is to provide information about City operations and governance as well as information of general interest to the community.   The City Manager or his/her designee has final approval of any links or postings to the website.

## CLASSIFICATION AND COMPENSATION

Compensation levels are tempered by the City's ability to pay, overall financial condition, and general fiscal responsibility to the taxpayers, as well as an individual’s performance on the job.

Any merit increases to employees pay typically takes effect in July of each year, in conjunction with the City’s fiscal year.

## Classification and Compensation System

**Federal Law**

The Age Discrimination in Employment Act of 1967

Retrieved from <http://www.eeoc.gov/laws/statutes/adea.cfm>

Summary: The purpose of this chapter is to promote employment of older persons based on their ability rather than age; to prohibit arbitrary age discrimination in employment; to help employers and workers find ways of meeting problems arising from the impact of age on employment.

In the face of rising productivity and affluence, older workers find themselves disadvantaged in their efforts to retain employment, and especially to regain employment when displaced from jobs. The setting of arbitrary age limits regardless of potential for job performance has become a common practice, and certain otherwise desirable practices may work to the disadvantage of older persons.

Americans with Disabilities Act of 1990, as amended

Retrieved from <http://www.ada.gov/pubs/adastatute08.pdf>

Summary: In enacting the ADA, Congress recognized that physical and mental disabilities in no way diminish a person’s right to fully participate in all aspects of society, but that people with physical or mental disabilities are frequently precluded from doing so because of prejudice, antiquated attitudes, or the failure to remove societal and institutional barriers.

Congress intended that the Americans with Disabilities Act of 1990 (ADA), “provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities” and provide broad coverage.

Title VII of the Civil Rights Act of 1964 (Equal Opportunity Employment Act)

Retrieved from <http://www.eeoc.gov/laws/statutes/titlevii.cfm>

Summary:To enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations, to authorize the attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes.

This Act deemed it unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin.

The Equal Pay Act of 1963

Retrieved from <http://www.eeoc.gov/laws/statutes/epa.cfm>

Summary:To prohibit discrimination on account of sex in the payment of wages by employers engaged in commerce or in the production of goods for commerce.

No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.

The Fair Labor Standards Act of 1938

Retrieved from <http://www.dol.gov/whd/regs/statutes/FairLaborStandAct.pdf>

Summary: This Act provided for the establishment of fair labor standards in employments in and affecting interstate commerce, and for other purposes.

The Congress finds that the existence, in industries engaged in commerce or in the production of goods for commerce, of labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers.

The Genetic Information Nondiscrimination Act of 2008

Retrieved from <http://www.eeoc.gov/laws/statutes/gina.cfm>

Summary: It will be illegal to fail or refuse to hire, or to discharge, any employee, or otherwise to discriminate against any employee with respect to the compensation, terms, conditions, or privileges of employment of the employee, because of genetic information with respect to the employee.

The Acquisition of Genetic Information shall be an unlawful employment practice for an employer to request, require, or purchase genetic information with respect to an employee or a family member of the employee.

National Labor Relations Act

Retrieved from <http://www.nlrb.gov/resources/national-labor-relations-act>

Summary: Congress enacted the National Labor Relations Act ("NLRA") in 1935 to protect the rights of employees and employers, to encourage collective bargaining, and to curtail certain private sector labor and management practices, which can harm the general welfare of workers, businesses and the U.S. economy.

The denial by some employers of the right of employees to organize and the refusal by some employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce will hereby be illegal.

The Rehabilitation Act of 1973

Retrieved from <http://www.eeoc.gov/laws/statutes/rehab.cfm>

Summary: It shall be the purpose and function of the Committee for employees with disabilities to provide a focus for Federal and other employment of individuals with disabilities, and to review, on a periodic basis, in cooperation with the Commission, the adequacy of hiring, placement, and advancement practices with respect to individuals with disabilities, by each department, agency, and instrumentality in the executive branch of Government and the Smithsonian Institution, and to insure that the special needs of such individuals are being met.

There is established within the Federal Government an Interagency Committee on Employees who are Individuals with Disabilities, comprised of such members as the President may select.

**State Law**

Workforce Opportunity Wage Act

Retrieved from <http://www.legislature.mi.gov/(S(00qm2s555gpf3gbblux1y4ru))/mileg.aspx?page=GetObject&objectname=mcl-act-138-of-2014>

Summary: An act to fix minimum wages for employees within this state; to prohibit wage discrimination; to provide for a wage deviation board; to provide for the administration and enforcement of this act; to prescribe penalties for the violation of this act; and to repeal acts and parts of acts.

Fixing the minimum wage within the State allows for employers to have a bottom line for financial compensation for their employees. This act also alleviates many discriminatory opportunities for employers to change salaries on a case by case basis.

Employment Opportunity Commission laws page Retrieved from <http://www.eeoc.gov/laws/statutes/index.cfm>

Minimum wage increases and effected work rules covered by the passage of the Workforce Opportunity Wage Act should be referenced for compliance. The Senate Fiscal Agency bill analysis S.B. 934 <http://www.legislature.mi.gov/documents/20132014/billanalysis/Senate/pdf/2013-SFA-0934-N.pdf>, gives guidance

If a city employee is covered under any collective bargaining agreements, the City Manager should refer to the contract to insure that the contract is not violated when making a decision about pay (National Labor Relations Act).

The classification and compensation structure is based upon systematic internal job evaluation and an analysis of the external labor market. Comprehensive job analysis is used to establish written job descriptions for all positions, and these serve as the basis for all internal and external evaluations and comparisons.

Internal job evaluation determines how positions fall within the classification structure. External market data determines the corresponding salary ranges for each grade which may change periodically to reflect cost of living adjustments to the system.

While the competitive market and annual cost of living drives the pay ranges, individual employee compensation, or their placement in and progression through their respective pay range, is based upon time-on-the-job, performance, qualifications, experience, and other job-related factors. Newly hired employees are generally paid at or near the minimum rate in the pay range; however, the City Manager may approve a starting salary above the minimum based on the employee’s experience, qualifications, and/or other job related factors.

Newly hired employees are generally paid at or near the minimum rate in the pay range; however, the City Manager may approve a starting salary above the minimum based on the employee’s experience, qualifications, and/or other job related factors. The City Manager while evaluating a newly hired employee should be careful when diverting from the minimum rate in pay to use objective factors in the decision making process. Any concerns about a decision which could be preserved as discriminatory can be referenced on the Equal

## Job Classification / Descriptions

**Federal Law**

The Fair Labor Standards Act of 1938

Retrieved from <http://www.dol.gov/whd/regs/statutes/FairLaborStandAct.pdf>

Summary: This Act provided for the establishment of fair labor standards in employments in and affecting interstate commerce, and for other purposes.

The Congress finds that the existence, in industries engaged in commerce or in the production of goods for commerce, of labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers.

**State Law**

Michigan Occupational Safety and Health Act (MOSHA)

Retrieved from [http://www.legislature.mi.gov/(S(pft1ejytaovl5uqeaeg3aa3r))/mileg.aspx?page=getobject&objectname=mcl-act-154-of-1974&queryid=117792&highlight=](C:\\Users\\Owner1\\Desktop\\School\\PS 528\\Gauss, N_Group_3 revised draft 1.docx)

Summary: To prescribe and regulate working conditions; to prescribe the duties of employers and employees as to places and conditions of employment; to create certain boards, commissions, committees, and divisions relative to occupational and construction health and safety

This essential piece of legislation makes employers accountable for work conditions that their employees endure.

The City maintains a job classification plan with written descriptions for all job classifications. Each job description includes a title, a general statement of duties and responsibilities, a determination on whether or not the position is exempt from overtime pay, a listing of essential job functions, a statement of required knowledge, skills, and abilities, and the physical demands of the position. Job descriptions are reviewed periodically to ensure they are up to date.

An effective tool for city managers to utilize is the State and Local Government

Self-Assessment Tool. <http://www.dol.gov/whd/StateandLocalGovernment/media/SelfAssessmentTool-CountyGovernmentfinal071906.htm>.

Summary: This was created by the Department of Labor, and is helpful in preventing problems and achieving compliance with the Fair Labor Standards Act. If you answer YES to any question, you are likely out of compliance.

When classifying positions which may be considered hazardous, the City Manager should consult with Michigan Occupational Safety & Health Administration (MIOSHA), to ensure that each hazard is properly identified. An index of possible hazards can be found on the MIOSHA website’s topic list <http://michigan.gov/lara/0,4601,7-154-61256_11407_52824---,00.html> (Department of Licensing and Regulatory Affairs-MIOSHA, 2014).

## Employment Definitions

**Federal Law**

The Fair Labor Standards Act of 1938

Retrieved from <http://www.dol.gov/whd/regs/statutes/FairLaborStandAct.pdf>

Summary: This Act provided for the establishment of fair labor standards in employments in and affecting interstate commerce, and for other purposes. Sec. 203 of this Act explains the different definitions of employment, and sets a standard for all States to follow.

The Family and Medical Leave Act of 1993

Retrieved from <http://www.dol.gov/whd/fmla/fmlaAmended.htm>

Summary: To grant family and temporary medical leave under certain circumstances.

When defined as an employee, an employer must grant them privileges to attend to family in some circumstances. This is especially true in single parent homes.

**State Law**

Workforce Opportunity Wage Act

Retrieved from <http://www.legislature.mi.gov/(S(00qm2s555gpf3gbblux1y4ru))/mileg.aspx?page=GetObject&objectname=mcl-act-138-of-2014>

Summary: An act to fix minimum wages for employees within this state; to prohibit wage discrimination; to provide for a wage deviation board; to provide for the administration and enforcement of this act; to prescribe penalties for the violation of this act; and to repeal acts and parts of acts.

Fixing the minimum wage within the State allows for employers to have a bottom line for financial compensation for their employees. This act also alleviates many discriminatory opportunities for employers to change salaries on a case by case basis.

Worker’s Disability Compensation Act

Retrieved from <http://www.legislature.mi.gov/(S(adx5d555t3qa5d454n1i3fe0))/mileg.aspx?page=getobject&objectname=mcl-act-317-of-1969&queryid=7285555&highlight=>

Summary: This Act revises and consolidates the laws relating to worker's disability compensation; to increase the administrative efficiency of the adjudicative processes of the worker's compensation system; to improve the qualifications of the persons having adjudicative functions within the worker's compensation system; to prescribe certain powers and duties.

This is the blueprint for all Michigan organizations of Government to build their own workers compensation systems. The rules and regulations can be built upon, but not taken away.

The Department of Labor (DOL) has put together a Fair Labor Standards Act (FLSA) Fact Sheet that may assist City officials in general information concerning what constitutes compensable time under the FLSA.

<http://www.dol.gov/whd/regs/compliance/whdfs22.pdf>

Full-Time Employees

Full-time employees are regularly scheduled to work forty (40) hours per week and are eligible for the City's employee benefits program, as outlined in later sections.

Part-Time Employees

Part-time employees are regularly scheduled to work less than 40 hours per week on a year-round basis.

Part-time employees are not eligible for the City’s insurance benefits, but may be covered by certain statutory protections such as Family Medical Leave and worker’s compensation.

Seasonal or Temporary Employees

Seasonal or temporary employees may be scheduled to work on a full- or part-time basis, as dictated by operational needs, for specific, limited time periods. Seasonal or temporary employees are not eligible for employee benefits.

#### “Exempt” or “Non-exempt”

Based on job content, job duties, salary status and other criteria set by the Fair Labor Standards Act, each position within the City is classified as either “exempt” or “non-exempt”. Typically, Department Heads and the City Manager are designated as exempt employees, but each job description is carefully assessed to make that determination. Non-exempt positions are legally entitled to overtime pay (time and a half) for any time worked beyond 40 hours in a week, or as otherwise provided by the City.

In some cases, the City may offer compensatory time off, accrued at time and a half, in lieu of overtime pay; this requires previous agreement between the employee and the City, and specific rules apply. See the section on overtime pay for more detail.

Positions that are considered “exempt” are salaried positions that are professional, administrative, or executive in nature which are not entitled to paid overtime, except in special circumstances as approved by the City Manager.

## Transfers

**Federal Law**

The Family and Medical Leave Act of 1993

Retrieved from <http://www.dol.gov/whd/fmla/fmlaAmended.htm>

Summary: An employee requests intermittent leave, or leave on a reduced leave schedule, under subparagraph (C) or (D) of subsection (a)(1) or under subsection (a)(3), that is foreseeable based on planned medical treatment, the employer may require such employee to transfer temporarily to an available alternative position offered by the employer for which the employee is qualified and that has equivalent pay and benefits; and better accommodates recurring periods of leave than the regular employment position of the employee.

This law allows for employees to be excused for emergencies without being penalized by their employers.

**State Law**

Refer to Federal laws

A transfer is an assignment to a position with comparable duties, responsibilities, authority, and compensation.

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## Promotions

**Federal Law**

The Rehabilitation Act of 1973

Retrieved from <http://www.eeoc.gov/laws/statutes/rehab.cfm>

Summary: It shall be the purpose and function of the Committee for employees with disabilities to provide a focus for Federal and other employment of individuals with disabilities, and to review, on a periodic basis, in cooperation with the Commission, the adequacy of hiring, placement, and advancement practices with respect to individuals with disabilities, by each department, agency, and instrumentality in the executive branch of Government and the Smithsonian Institution, and to insure that the special needs of such individuals are being met

This Act pertains to promotion because of the possibility of individuals with disabilities to be discriminated during potential promotion situations.

Age Discrimination in Employment Act of 1967

Retrieved from <http://www.eeoc.gov/laws/statutes/adea.cfm>

Summary: The purpose of this chapter is to promote employment of older persons based on their ability rather than age; to prohibit arbitrary age discrimination in employment; to help employers and workers find ways of meeting problems arising from the impact of age on employment.

This Act pertains to promotion because of the possibility of older individuals to be discriminated against during potential promotion situations.

Title VII of the Civil Rights Act of 1964 (Equal Opportunity Employment Act)

Retrieved from <http://www.eeoc.gov/laws/statutes/titlevii.cfm>

Summary: To enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations, to authorize the attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes.

This Act pertains to promotion because of the possibility of discrimination during potential promotion situations.

**State Law**

Compliant with Federal Law

A promotion is a change in work assignment that results in an expanded scope of job duties and responsibilities. An employee can be promoted to fill an existing, vacant classification; or an employee’s position can be reclassified if duties and responsibilities have been expanded over time. Promotions may result in an increase in pay.

City officials should follow the EEOC regulations to ensure objectivity when filling a vacant position or reclassifying an employee’s current position (EEOC Regulations, 2014). <http://www.eeoc.gov/laws/regulations/index.cfm>

## Demotions

**Federal Laws**

The Fair Labor Standards Act of 1938

Retrieved from <http://www.dol.gov/whd/regs/statutes/FairLaborStandAct.pdf>

Summary: This Act provided for the establishment of fair labor standards in employments in and affecting interstate commerce, and for other purposes.

Demotions of Salary must stay within the above Acts guidelines.

**State Law**

Workforce Opportunity Wage Act

Retrieved from <http://www.legislature.mi.gov/(S(yo3gnq451o24jp554wwan345))/mileg.aspx?page=GetObject&objectname=mcl-act-138-of-2014>

Summary: An act to fix minimum wages for employees within this state; to prohibit wage discrimination; to provide for a wage deviation board; to provide for the administration and enforcement of this act; to prescribe penalties for the violation of this act; and to repeal acts and parts of acts.

In addition to Federal laws regarding demotions, there are state legislature that dictates salaries, and minimum compensation.

A demotion is a change in work assignment that results in a reduced scope of job duties and responsibilities. An employee can be demoted to fill an existing, vacant classification; or an employee’s position can be reclassified if duties and responsibilities have been reduced over time. Demotions may result in a decrease in pay.

## Temporary Assignments

**Federal Law**

Equal Employment Opportunity Act

Retrieved from <http://www.eeoc.gov/laws/statutes/titlevii.cfm>

Summary: To enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations, to authorize the attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes.

This Act deemed it unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin.

Fair Labor Standards Act

Retrieved from <http://www.dol.gov/whd/regs/statutes/FairLaborStandAct.pdf>

Summary: This Act provided for the establishment of fair labor standards in employments in and affecting interstate commerce, and for other purposes.

The Congress finds that the existence, in industries engaged in commerce or in the production of goods for commerce, of labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers.

Family Medical Leave Act

Retrieved from <http://www.dol.gov/whd/fmla/fmlaAmended.htm>

Summary: An employee requests intermittent leave, or leave on a reduced leave schedule, under subparagraph (C) or (D) of subsection (a)(1) or under subsection (a)(3), that is foreseeable based on planned medical treatment, the employer may require such employee to transfer temporarily to an available alternative position offered by the employer for which the employee is qualified and that has equivalent pay and benefits; and better accommodates recurring periods of leave than the regular employment position of the employee.

This law allows for employees to be excused for emergencies without being penalized by their employers.

**State Law**

Workforce Opportunity Wage Act

Retrieved from <http://www.legislature.mi.gov/(S(00qm2s555gpf3gbblux1y4ru))/mileg.aspx?page=GetObject&objectname=mcl-act-138-of-2014>

Summary: An act to fix minimum wages for employees within this state; to prohibit wage discrimination; to provide for a wage deviation board; to provide for the administration and enforcement of this act; to prescribe penalties for the violation of this act; and to repeal acts and parts of acts.

Fixing the minimum wage within the State allows for employers to have a bottom line for financial compensation for their employees. This act also alleviates many discriminatory opportunities for employers to change salaries on a case by case basis.

The City Manager may choose to temporarily fill a vacancy during the selection process. Temporary assignments are note generally made unless it is anticipated that it will take more than 30 days to fill the position. Employees in temporary assignments will be paid at the entry level rate for that position or at a rate of at least 5% higher than their current rate of pay during the duration of the assignment. The temporary assignment can be terminated at any time by the City Manager and will automatically end upon filling the vacancy.

## Overtime for “Non-Exempt” Employees

**Federal Law**

Fair Labor Standards Act

Retrieved from <http://www.dol.gov/whd/regs/statutes/FairLaborStandAct.pdf>

Summary: This Act provided for the establishment of fair labor standards in employments in and affecting interstate commerce, and for other purposes.

The Congress finds that the existence, in industries engaged in commerce or in the production of goods for commerce, of labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers

**State Law**

Workforce Opportunity Wage Act

Retrieved from <http://www.legislature.mi.gov/(S(00qm2s555gpf3gbblux1y4ru))/mileg.aspx?page=GetObject&objectname=mcl-act-138-of-2014>

Summary: An act to fix minimum wages for employees within this state; to prohibit wage discrimination; to provide for a wage deviation board; to provide for the administration and enforcement of this act; to prescribe penalties for the violation of this act; and to repeal acts and parts of acts.

Fixing the minimum wage within the State allows for employers to have a bottom line for financial compensation for their employees. This act also alleviates many discriminatory opportunities for employers to change salaries on a case by case basis.

Employees in positions that are defined as “non-exempt” by the Fair Labor Standards Act (FLSA) will be compensated for overtime work at the rate of time and one-half (1.5) for all time worked over forty (40) hours in a week. For purposes of overtime calculation, hours worked includes all hours actually worked as well as paid time off, including PTO, bereavement leave, jury duty, and holidays. Hours paid at time and one-half (1.5) for working on a holiday will not again be counted as hours worked for overtime calculation purposes.

Overtime must be approved in advance by the employee’s supervisor.

For non-exempt employees, overtime will be scheduled in a manner most advantageous to the City and consistent with the operational needs of the City. In some cases, at the City’s option, hours may be reduced later within the pay period to avoid overtime. All employees are expected to work overtime upon request.

## Compensatory Time or “Non-Exempt” Employees

**Federal Law**

Fair Labor Standards Act

Retrieved from <http://www.dol.gov/whd/regs/statutes/FairLaborStandAct.pdf>

Summary: This Act provided for the establishment of fair labor standards in employments in and affecting interstate commerce, and for other purposes.

The Congress finds that the existence, in industries engaged in commerce or in the production of goods for commerce, of labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers

**State Law**

Uniform Budgeting and Accounting Act

Retrieved from <http://www.legislature.mi.gov/(S(xcqsc2a11wou21450blrm445))/mileg.aspx?page=GetObject&objectname=mcl-Act-2-of-1968>

Workforce Opportunity Wage Act

Retrieved from <http://www.legislature.mi.gov/(S(00qm2s555gpf3gbblux1y4ru))/mileg.aspx?page=GetObject&objectname=mcl-act-138-of-2014>

Summary: An act to fix minimum wages for employees within this state; to prohibit wage discrimination; to provide for a wage deviation board; to provide for the administration and enforcement of this act; to prescribe penalties for the violation of this act; and to repeal acts and parts of acts.

Fixing the minimum wage within the State allows for employers to have a bottom line for financial compensation for their employees. This act also alleviates many discriminatory opportunities for employers to change salaries on a case by case basis.

Non-exempt employees may opt to take compensatory time off rather than overtime payment. Compensatory time off, like overtime pay, is earned at time and one-half (1.5) for all time worked over 40 hours in a week, with the same calculation used in paid overtime.

Employees may accrue up to 80 hours of compensatory time hours before cash payments are required.

All compensatory time must be used within the fiscal year it is earned. All accrued but unused compensatory time as of each June 30th will be paid to the employee at the rate of pay in effect on that date. Employees who separate employment with the City will receive pay for any accrued but unused compensatory time at the average regular rate received.

Compensatory time must be used before using Paid Time Off (PTO). Employees will be permitted to use accrued compensatory time within a reasonable period after making the request, and should provide as much notice as possible for their request. As with all time off, compensatory time requests are subject to approval and in cases where its use would unduly disrupt operations, requests may be denied or postponed.

The FLSA does not prohibit the employer from freely substituting cash in whole or in part for accrued compensatory time off. The City reserves the right to substitute cash payments for accumulated compensatory time at its discretion. Similarly, employees may request that accrued compensatory time off be converted to monetary payment, which will be made in the next applicable payroll.

## Fair Labor Standards Act Exemptions

**Federal Law**

Fair Labor Standards Act

Retrieved from <http://www.dol.gov/whd/regs/statutes/FairLaborStandAct.pdf>

Summary: This Act provided for the establishment of fair labor standards in employments in and affecting interstate commerce, and for other purposes.

The Congress finds that the existence, in industries engaged in commerce or in the production of goods for commerce, of labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers

**State Law**

Workforce Opportunity Wage Act

Retrieved from <http://www.legislature.mi.gov/(S(00qm2s555gpf3gbblux1y4ru))/mileg.aspx?page=GetObject&objectname=mcl-act-138-of-2014>

Summary: An act to fix minimum wages for employees within this state; to prohibit wage discrimination; to provide for a wage deviation board; to provide for the administration and enforcement of this act; to prescribe penalties for the violation of this act; and to repeal acts and parts of acts.

Fixing the minimum wage within the State allows for employers to have a bottom line for financial compensation for their employees. This act also alleviates many discriminatory opportunities for employers to change salaries on a case by case basis.

Section 13(a)(1) of the Fair Labor Standards Act (FLSA) provides an exemption from both minimum wage and overtime pay for employees employed as bona fide executive, administrative, professional, computer and outside sales employees.

To be considered “exempt”, the position generally must meet certain tests regarding job duties and, and the employee must be paid on a salary basis. Being paid on a “salary basis” means an employee regularly receives a predetermined amount of compensation each pay period regardless of variations in the quality or quantity of the employee’s work.  Some deductions from pay are permissible; for example:

* when an exempt employee is absent from work for one or more full days for personal reasons other than sickness or disability;
* for absences of one or more full days due to sickness or disability if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for salary lost due to illness;
* to offset amounts employees receive as jury or witness fees, or for military pay;
* for penalties imposed in good faith for infractions of safety rules of major significance;
* or for unpaid disciplinary suspensions of one or more full days imposed in good faith for workplace conduct rule infractions.

Also, an employer is not required to pay the full salary in the initial or terminal week of employment, or for weeks in which an exempt employee takes unpaid leave under the Family and Medical Leave Act.

### Discretionary Time for Exempt Employees

Exempt employees may be required to work more than forty hours in a workweek to satisfy work demands or to attend evening meetings. In these instances, exempt employees may take discretionary time off provided such time does not adversely impact operations.

Discretionary time off for exempt employees is provided as a professional courtesy and is not an entitlement, nor is it to be viewed as an hour-for-hour offset to hours worked in excess of forty. Exempt employees should expect that, from time-to-time, more than forty hours is required of their position.

Exempt employees should coordinate their use of discretionary time with the City Manager to ensure proper coverage and recognize that, in some cases, operational needs may not allow the use of discretionary time off.

Discretionary time is not intended to be used to take a full day off; rather it provides flexibility from time to time. It is in no way to be construed as “overtime” compensation; it is not tracked, accrued, banked or in any way owed to the employee.

## Pay Periods and Paychecks

**Federal Law**

Fair Labor Standards Act

Retrieved from <http://www.dol.gov/whd/regs/statutes/FairLaborStandAct.pdf>

Summary: This Act provided for the establishment of fair labor standards in employments in and affecting interstate commerce, and for other purposes.

The Congress finds that the existence, in industries engaged in commerce or in the production of goods for commerce, of labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers

**State Law**

**Payment of Wages and Fringe Benefits Act 390 of 1978**

Retrieved from <http://www.legislature.mi.gov/documents/mcl/pdf/mcl-act-390-of-1978.pdf>

Summary: An Act to regulate the time and manner of payment of wages and fringe benefits to employees; to prescribe rights and responsibilities of employers and employees, and the powers and duties of the department of labor

Minimum wage standards from the State, and provides penalties and remedies for settling disputes between employers and employees.

Workforce Opportunity Wage Act

Retrieved from <http://www.legislature.mi.gov/(S(00qm2s555gpf3gbblux1y4ru))/mileg.aspx?page=GetObject&objectname=mcl-act-138-of-2014>

Summary: An act to fix minimum wages for employees within this state; to prohibit wage discrimination; to provide for a wage deviation board; to provide for the administration and enforcement of this act; to prescribe penalties for the violation of this act; and to repeal acts and parts of acts.

Fixing the minimum wage within the State allows for employers to have a bottom line for financial compensation for their employees. This act also alleviates many discriminatory opportunities for employers to change salaries on a case by case basis.

Pay periods for City of Anytown employees cover two weeks, beginning at 12:00 a.m. every other Saturday. Paydays are every other Friday. When a payday falls on a holiday, employees will be paid the day prior to the holiday.

The City offers direct deposit as a convenient option for receiving paychecks and encourages employees to utilize this option. Employees who opt out of direct deposit will receive a physical paycheck. Paychecks shall not be released to anyone other than the employee unless a written note, signed by the employee, is provided. Lost or destroyed checks should be reported immediately to the City Treasurer.

It is the City’s policy to comply with the Fair Labor Standards Act, court-ordered garnishments, tax levies, and other legally required deductions from employee’s wages. An employee who believes that an improper deduction from his/her wages has been made should contact the City Treasurer. Upon determination that an improper deduction has been made, the amount of the deduction will be reimbursed to the employee.

An employee who believes that any other overpayment or underpayment of his/her wages has been made should contact the City Treasurer immediately. Corrections will be made as expeditiously as possible.

## Travel Reimbursement and Advances

**Federal Law**

IRS Code 162- Trade or Business Expenses

Retrieved from <http://www.irs.gov/publications/p463/index.html>

Summary: All Federal laws pertaining to Travel, Entertainment, Gift, and Car Expenses

One large area covered is deductible travel expenses that will be relevant to many local government officials when corresponding with Lansing.

**State Law**

State of Michigan Travel Regulations (Reference)

Retrieved from <http://michigan.gov/documents/DMB_StandardizedTravelRegulations_23541_7.pdf>

Summary:The Civil Service Commission is authorized to adopt travel regulations and rate schedules for the reimbursement of expenses incurred by classified state employees in connection with official state business.

Also applicable on interstate business travels, and advance payments for such events.

On occasion, employees may be required to travel on City business or attend professional development and training functions as a part of the job. Employees must always be mindful that they are stewards of the public’s trust and resources. Work-related travel must never be abused, treated as a “perk” or seen as opportunity to spend lavishly. The City will not cover expenses for spouses or other non-employees during City travel, unless prior approval is received from the City Manager. Travel on City business, including professional development, must demonstrate respect for the public’s trust and prudence with their resources.

Expenses related to professional conferences, seminars, technical meetings, trainings, or other professional development functions may be paid by the City or reimbursed to the employee if the expense has been adopted in the budget. Requests for reimbursements that are not included in the budget require approval from the City Manager.

Whenever possible, a City vehicle should be used to travel for City business and employees should carpool to limit travel expenses. Employees who are required to use their personal vehicle for work-related travel will be reimbursed at the rate established by the IRS for up to 250 miles. Employees are to record the exact number of miles traveled, by most direct route, from the first place of business to the next. No reimbursement will be made for travel between home and a normal place of business.

Employees will be reimbursed for reasonable, actual meal expenses incurred in conjunction with a program or meeting that provides a primary benefit for, or serves the best interests of, the City. Luxury meals, costs for alcohol, or excessive reimbursement claims will not be reimbursed without approval of the City Manager.

Employees will be reimbursed for reasonable, actual lodging expenses when a full day’s work must be performed a considerable distance from the City, or under other appropriate circumstances with prior City Manager approval. Luxury lodging or excessive claims will not be reimbursed.

Employees should avoid using unnecessary convenience services such as valet parking, in-room movies, laundry and room service. Only under specific circumstances where a reasonable need for such services is clearly demonstrated will such items be reimbursed.

Employees submitting reimbursement requests for travel expenses, or those requiring a travel advance, should use the appropriate form and must submit all receipts.

## Professional & Service Memberships

**Federal Law**

IRS Code 162- Trade or Business Expenses

Retrieved from <http://www.irs.gov/publications/p463/index.html>

Summary: All Federal laws pertaining to Travel, Entertainment, Gift, and Car Expenses

Many memberships can receive benefits due to from the Federal government for causes that benefit the greater population, such as carpooling.

**State Law**

State of Michigan Travel Regulations (Reference)

Retrieved from <http://michigan.gov/documents/DMB_StandardizedTravelRegulations_23541_7.pdf>

Summary: The Civil Service Commission is authorized to adopt travel regulations and rate schedules for the reimbursement of expenses incurred by classified state employees in connection with official state business.

Many memberships can receive benefits due to from the Federal government for causes that benefit the greater population, such as carpooling.

The City encourages department heads to take part in the activities of professional and service organizations, and may pay the cost of certain job-related memberships to professional organizations, job-related trainings, seminars, conferences and related events that enhance the employee’s job knowledge and performance. As well, the City may pay the cost to become licensed or certified in a job-related field, and may pay the cost to remain so qualified. Employer-paid memberships, training, licensing and certifications are subject to budgetary approval and require advance approval

**Recognition Programs and Special Events**

**Federal Law**

Fair Labor Standards Act

Retrieved from <http://www.dol.gov/whd/regs/statutes/FairLaborStandAct.pdf>

Summary: This Act provided for the establishment of fair labor standards in employments in and affecting interstate commerce, and for other purposes.

The Congress finds that the existence, in industries engaged in commerce or in the production of goods for commerce, of labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers.

The City Manager is responsible in the process of the creation, review and the overall evaluation of local events, special recognition programs, along with national and local observations.

**State Law**

Compliant with Federal Law

The City seeks to encourage peak performance and recognize exemplary service through various recognition programs and special events. Full-time and part-time employees may be eligible to receive and/or take part in the following:

Gift Certificates

A gift certificate may be issued to eligible full-time and part-time employees to observe the Thanksgiving Day holiday. No cash equivalent or other substituted payment is available. City Council, by resolution, may change the amount of the gift certificate or eliminate the program altogether.

Holiday Bonus

A holiday bonus may be issued to eligible full-time employees and included as part the regular payroll cycle prior to the December 25th holiday.

Winter Holiday Event

All full-time and part-time employees, as well as City Council members, are invited to participate in a winter holiday event, which includes a meal provided by the City. Employees and City Council members may invite a guest to attend the event, however, the employee/City Council member will be required to cover cost of the guest’s meal. Attendance is voluntary and requires prior notice. The event is held outside of normal City business hours and is not compensable. City Council, by resolution, may change the terms and conditions under which the winter holiday event is to occur.

**Unemployment Compensation**

**Federal Law**

Social Security Act  
Retrieved from <http://www.ssa.gov/OP_Home/ssact/ssact.htm>

Summary: Any State with an agreement under this subsection shall evaluate the comparative cost and employment effects of the use of the definition of unemployment in its demonstration project under this section by use of experimental and control groups comprised of a random sample of individuals receiving aid under section 407 and shall furnish the Secretary with such information as the Secretary determines to be necessary to evaluate the results of the project conducted by the State.

The social security act covers Federal aid to States with unemployment, as well as tax breaks for employers that hire unemployed individuals collecting unemployment benefits.

Federal law governs determinations involving coverage of state and local government employees. These determinations may be based on decisions regarding specific issues to which Federal law is applied and other issues to which state law is applied. It is important to know whether Federal or state law is applied in making a determination on a specific issue. Generally, questions involving interpretation or application of state law are resolved by the authorized legal officers of the state in accordance with applicable state and local laws, regulations and the state court decisions.

**State Law**

Michigan Employment Security Act

Retrieved from <http://www.michigan.gov/documents/uia_mesact_76382_7.pdf?20140526224856>

<http://www.michigan.gov/documents/uia/0999-_Employer_Handbook_Jan_2013_410040_7.pdf>

Summary: Any authority, powers, functions, duties, and responsibilities of the Unemployment Agency transferred to the Bureau of Worker’s and Unemployment Compensation. The Employer Handbook explains when the employer is liable under the Michigan Employment Security Act.

This legislation covers every regulation in regards to unemployment.

The City participates in the State of Michigan unemployment insurance program according to statutory guidelines. Terminated employees are advised to refer questions of benefit eligibility to the appropriate State office.

**Social Security**

**Federal Law**

Social Security Act

Retrieved from [**http://www.ssa.gov/OP\_Home/ssact/ssact.htm**](http://www.ssa.gov/OP_Home/ssact/ssact.htm)

[**http://www.ssa.gov/section218training/documents/Resource\_9.doc**](http://www.ssa.gov/section218training/documents/Resource_9.doc)

Summary: Any State with an agreement under this subsection shall evaluate the comparative cost and employment effects of the use of the definition of unemployment in its demonstration project under this section by use of experimental and control groups comprised of a random sample of individuals receiving aid under section 407 and shall furnish the Secretary with such information as the Secretary determines to be necessary to evaluate the results of the project conducted by the State.

State and local government employees hired after March 31, 1986, are mandatorily covered for Medicare, unless specifically excluded by law. Employees hired before April 1, 1986, are exempt from Medicare coverage if they are members of a public retirement system.

Beginning July 2, 1991, with certain exceptions, all State and local government employees are mandatorily covered for Social Security and Medicare unless those employees are covered by a public retirement system or a Section 218 Agreement.

This law describes and dictates the different benefits of Social Security as well as the costs it presents.

**State Law**

Social Security Number Privacy Act

Retrieved from <http://www.michigan.gov/documents/Social_Security_Number_Privacy_Act_118553_7.pdf>

Summary: Any State with an agreement under this subsection shall evaluate the comparative cost and employment effects of the use of the definition of unemployment in its demonstration project under this section by use of experimental and control groups comprised of a random sample of individuals receiving aid under section 407 and shall furnish the Secretary with such information as the Secretary determines to be necessary to evaluate the results of the project conducted by the State.

Public employers should initially discuss issues and questions with the State Social Security Administrator. If additional assistance is needed regarding coverage, the appropriate Parallel Social Security Office should be contacted. Public employers who have questions regarding magnetic media or electronic filing should contact the appropriate Employer Services Liaison Officer (ESLO).

IRS determines whether earnings are subject to social security and Medicare taxes. SSA decides issues regarding whether to report the earnings as wages.

In Michigan, a public official is defined as an official in the executive or legislative branch of state government (MCLS § 4.416).

Federal law governs determinations involving coverage of State and local government employees. These determinations may be based on decisions regarding specific issues to which Federal law is applied and other issues to which State law is applied. It is important to know whether Federal or State law is applied in making a determination on a specific issue.

Generally, questions involving interpretation or application of State law are resolved by the authorized legal officers of the State in accordance with applicable State and local laws, regulations and the State court decisions.

Employees are covered by Social Security, a federally administered plan for supplemental old age pensions and survivor's insurance. Questions concerning Social Security benefits and coverage should be directed to any Social Security office.

**HEALTH, RETIREMENT AND GENERAL BENEFITS**

The City of Anytown strives to provide a program of health, retirement and general benefits that protects employees and their families, promotes healthy lifestyles and ensures an available and productive workforce. The City values its employees and their health, and attempts to be fair in the scope and cost of benefits offered, while also being prudent and fiscally responsible. The City will attempt to consider employee preferences and concerns in selecting insurance plans, balanced against its responsibility to the tax payer.

In some cases, the City may determine that it is necessary to make changes to employee benefits, including, for example, modifying or eliminating benefit offerings, or plan choices, changing related co-pays or deductibles, or requiring employee contributions to the costs associated with insurance. The City reserves the right to modify, revoke, suspend, terminate, change or amend benefits as they apply to current, former and retired employees which, at its sole discretion, it deems necessary or desirable.

See the City Treasurer for detailed program information and materials and to complete all required enrollment forms or changes to your benefits.

**Eligibility and Enrollment**

**Federal Law Insurance**

Entitled The Patient Protection and Affordable Care Act

111th Congress Public Law 148

Retrieved from <http://www.gpo.gov/fdsys/pkg/PLAW-111publ148/html/PLAW-111publ148.htm>

Summary: The Affordable Care Act was instituted with the idea of increasing the quality and affordability of health care for all US citizens. The ACA hoped to achieve this by increasing public and private coverage and lowering the cost of health care. The Patient Protection and Affordable Care Act is a federal statute which was signed into law in 2010. It is often referred to as the Affordable Care Act, ACA, “Obamacare” or health care reform.

**State Law**Affordable Care Act Information

Open enrollment coverage in 2015 is November 15, 2014 through February 15, 2015

Retrieved from <http://www.michigan.gov/difs/0,5269,7-303-12902_35510-263899--,00.html>

Affordable Care Act Information

Summary: The Patient Protection and Affordable Care Act is a federal statute which was signed into law in 2010. It is often referred to as the Affordable Care Act, ACA, “Obamacare” or health care reform.  
  
New Health Coverage Exchange called the Health Insurance Marketplace  
If you are uninsured, purchase individual coverage or believe your employer provided coverage is inadequate or unaffordable, you may be able to shop for coverage directly in the federal Health Insurance Marketplace -- a new marketplace where you can shop for and compare health benefit plans. Open enrollment for coverage in 2014 was October 1, 2013 through March 31, 2014. Open enrollment for coverage in 2015 is November 15, 2014 through February 15, 2015. For more information, visit: [www.healthcare.gov](https://www.healthcare.gov/).   
  
Healthy Michigan Plan:  
Some Michigan residents may be eligible for the Healthy Michigan Plan, a new health coverage program that began on April 1, 2014. To be eligible for the Healthy Michigan plan, you must be:

* Ages 19-64
* Not currently eligible for Medicaid
* Not eligible for or enrolled in Medicare
* Not pregnant when applying for the Healthy Michigan Plan
* Earning up to 133% of the federal poverty level (The federal poverty level is adjusted annually. In 2013, 133% of the poverty level for an individual was $14,856 or $30,657 for a family of four)
* A resident of Michigan

For more information, visit [www.HealthyMichiganPlan.org](http://www.HealthyMichiganPlan.org) or call 855-789-5610.

Full-time employees are eligible for the insurance benefits outlined within this section. Enrollment forms, available through the Treasurer’s office, must be completed and employees are responsible for updating their enrollment forms, records and beneficiaries for all benefits.

Insurance coverage begins on the first day of the premium month following the start of employment with the City.

**Health Insurance**

**Federal Law**

The Patient Protection and Affordable Care Act

111th Congress Public Law 148

Retrieved from <http://www.gpo.gov/fdsys/pkg/PLAW-111publ148/html/PLAW-111publ148.htm>

From the U.S. Government Printing Office

HIPAA or the Health Insurance Portability and Accountability Act  
Act of 1996  
Retrieved from <http://www.hhs.gov/ocr/privacy/>   
Retrieved from <http://personalinsure.about.com/od/health/a/aa041806a.htm>   
President Bill Clinton

**State Law**

The Insurance Code of 1956 (EXCERPT)  
Act 218 of 1956

500.3426 Offer of wellness coverage by insurer

Retrieved from <http://www.legislature.mi.gov/%28S%285oqpsafjoerdvt55c3tojxmf%29%29/mileg.aspx?page=getObject&objectName=mcl-500-3426>

1. Summary: Legislative Council, State of Michigan  
   Each insurer providing a group expense-incurred hospital, medical, or surgical certificate delivered, issued for delivery, or renewed in this state and each health maintenance organization may offer group wellness coverage. Wellness coverage may provide for an appropriate rebate or reduction in premiums or for reduced copayments, coinsurance, or deductibles, or a combination of these incentives, for participation in any health behavior wellness, maintenance, or improvement program offered by the employer. The employer shall provide evidence of demonstrative maintenance or improvement of the insureds' or enrollees' health behaviors as determined by assessments of agreed-upon health status indicators between the employer and the insurer or health maintenance organization. Any rebate of premium provided by the insurer or health maintenance organization is presumed to be appropriate unless credible data demonstrate otherwise, but shall not exceed 30% of paid premiums, unless otherwise approved by the commissioner. Each insurer and each health maintenance organization shall make available to employers all wellness coverage plans that the insurer or health maintenance organization markets to employers in this state.
2. Each insurer providing an individual or family expense-incurred hospital, medical, or surgical policy delivered, issued for delivery, or renewed in this state and each health maintenance organization may offer individual and family wellness coverage. Wellness coverage may provide for an appropriate rebate or reduction in premiums or for reduced copayments, coinsurance, or deductibles, or a combination of these incentives, for participation in any health behavior wellness, maintenance, or improvement program approved by the insurer or health maintenance organization. The insured or enrollee shall provide evidence of demonstrative maintenance or improvement of the individual's or family's health behaviors as determined by assessments of agreed-upon health status indicators between the insured or enrollee and the insurer or health maintenance organization. Any rebate of premium provided by the insurer or health maintenance organization is presumed to be appropriate unless credible data demonstrate otherwise, but shall not exceed 30% of paid premiums, unless otherwise approved by the commissioner. Each insurer and each health maintenance organization shall make available to individuals and families all wellness coverage plans that the insurer or health maintenance organization markets to individuals and families in this state.
3. An insurer and a health maintenance organization are not required to continue any health behavior wellness, maintenance, or improvement program or to continue any incentive associated with a health behavior wellness, maintenance, or improvement program.

The City provides health insurance, including prescription coverage, to all full-time employees, their spouses and their dependent children. Coverage begins on the first day of the month following the start of employment with the City, and will meet all statutory requirements, including those created under National Health Care reform.

The City may determine that it is necessary to make changes to employee benefits, including, for example, modifying or eliminating benefit offerings, or plan choices, changing related co-pays or deductibles, or requiring employee contributions to the costs associated with insurance. The City reserves the right to modify, revoke, suspend, terminate, change or amend benefits as they apply to current, former and retired employees which, at its sole discretion, it deems necessary or desirable.

**Insurance Opt-Out Payment**

**Federal Law**

42 U.S. Code § 18115 - Freedom not to participate in Federal health insurance programs  
Retrieved from <http://www.law.cornell.edu/uscode/text/42/18115>  
Summary: “No individual, company, business, nonprofit entity, or health insurance issuer offering group or individual health insurance coverage shall be required to participate in any Federal health insurance program created under this Act (or any amendments made by this Act), or in any Federal health insurance program expanded by this Act (or any such amendments), and there shall be no penalty or fine imposed upon any such issuer for choosing not to participate in such programs.”

**State Law**2011 Public Act 152: Publicly Funded Health Insurance Contribution Act  
MCL 15.561 – 15.569 as Amended by 2013 Public Acts Numbered 269 through 273  
Retrieved from <http://www.michigan.gov/documents/treasury/Public_Act_152_of_2011_FAQs_377180_7.pdf>

Summary: “A local unit of government may elect to comply with Section 4 of the Act (MCL 15.564(1)) or exercise the exemption (“opt-out”) provision of Section 8 of the Act (MCL 15.568(1)) at any time prior to the beginning of the medical benefit plan coverage year.”

Employees may elect to receive payment-in-lieu of participating in City-provided health insurance, provided the employee receives insurance from another source and provides proof of such coverage. Payments-in-lieu of insurance are made each pay period through payroll.

**Continuation of Benefits (“COBRA”)**

United States Code   
TITLE 29 - LABOR   
CHAPTER 18 Employee Retirement Income Security Program

[PART 6](http://www.harp.org/erisatoc.htm#scIstAP6) - Continuation Coverage And Additional Standards For Group Health Plans (1161-1169)

Retrieved from <http://www.harp.org/erisatoc.htm>

Health Administration Responsibility Project

Retrieved from <http://www.dol.gov/ebsa/pdf/cobraemployee.pdf>

Summary: The Consolidated Omnibus Budget Reconciliation Act (COBRA) requires most group health plans to provide a temporary continuation of group health coverage that otherwise might be terminated. COBRA requires continuation coverage to be offered to covered employees, their spouses, their former spouses, and their dependent children when group health coverage would otherwise be lost due to certain specific events. Those events include the death of a covered employee, termination or reduction in the hours of a covered employee’s employment for reasons other than gross misconduct, divorce or legal separation from a covered employee, a covered employee’s becoming entitled to Medicare, and a child’s loss of dependent status (and therefore coverage) under the plan. Employers may require individuals who elect continuation coverage to pay the full cost of the coverage, plus a 2 percent administrative charge. The required payment for continuation coverage is often more expensive than the amount that active employees are required to pay for group health coverage, since the employer usually pays part of the cost of employees’ coverage and all of that cost can be charged to the individuals receiving continuation coverage. The COBRA payment is ordinarily less expensive, though, than individual health coverage. While COBRA continuation coverage must be offered, it lasts only for a limited period of time. This booklet will discuss all of these provisions in more detail. COBRA generally applies to all group health plans maintained by private-sector employers (with at least 20 employees) or by state and local governments. The law does not apply, however, to plans sponsored by the Federal Government or by churches and certain church-related organizations. Under COBRA, a group health plan is any arrangement that an employer establishes or maintains to provide employees or their families with medical care, whether it is provided through insurance, by a health maintenance organization, out of the employer’s assets on a pay-as-you-go basis, or otherwise. “Medical care” for this purpose includes

* Inpatient and outpatient hospital care
* Physician care
* Surgery and other major medical benefits
* Prescription drugs;
* Dental and vision care.

Life insurance is not considered “medical care,” nor are disability benefits; and COBRA does not cover plans that provide only life insurance or disability benefits. Group health plans covered by COBRA that are sponsored by private-sector employers generally are governed by ERISA. ERISA does not require employers to establish plans or to provide any particular type or level of benefits, but it does require plans to comply with ERISA’s rules. ERISA gives participants and beneficiaries rights that are enforceable in court.

The federal Consolidated Omnibus Budget Reconciliation Act (COBRA) gives you and your qualified beneficiaries the opportunity to continue, for a limited period, health insurance coverage under the City’s group health insurance plan when a “qualifying event” would normally result in the loss of coverage. Some common qualifying events are termination of employment (other than for gross misconduct), or death of an employee; a reduction in your hours; a divorce or legal separation; and a dependent child no longer meeting eligibility requirements.

Under COBRA, you or your qualified beneficiary pays the full cost of coverage at the City’s group rates plus an administration fee.  In addition, you will receive a separate notice(s) by mail following a qualifying event.

Each employee or family member has the responsibility to inform the City of a divorce, legal separation, or child losing dependent status under the plan. When the City is notified that one of these events has happened, it will in turn notify you that you have the right to choose continuation coverage. Under the law, you have 60 days from the date of notification to accept or decline COBRA.

The above is provided as a matter of information only. It does not, and is not intended to, create any contractual, legal, or other rights. Rather, your rights are only as expressly set forth in the plan and in federal and state law. The City reserves the right to amend and/or change the plan as permitted by the terms of the plan.

More information on COBRA can be found in the City’s Summary Plan Description available through the City Treasurer’s office.

**State Law**

Follows the Federal Laws

If you lose group health coverage through your employer, you have state continuation rights, federal COBRA rights or you may be eligible for the [Health Insurance Marketplace](http://www.michigan.gov/difs/0,5269,7-303-12902_35510-310214--,00.html).

Retrieved from <http://www.michigan.gov/difs/0,5269,7-303-12902_35510-263908--,00.html>

COBRA in the state of Michigan follows the federal guidelines.

As with other kinds of insurance, there are several types of health insurance policies and health care plans with many different features that are available to consumers in Michigan. Individual coverage can be purchased on your own; group health coverage can be obtained through an employer; association coverage can be obtained through your membership in an organization or association. Additionally, there are government programs such as Medicare and Medicaid available to those who qualify.   
  
Health carriers provide health coverage through several different entity types. The most common are health insurance companies and health maintenance organizations (HMOs). Throughout this web page, “health carrier” will mean any of these entity types. When specific differences occur for a given entity, we will specify the type of health carrier. The State of Michigan COBRA laws follow the Federal regulations.

Retrieved from <http://www.michigan.gov/documents/difs/HEALTHPLUS_139960_457250_7.pdf>

**Life Insurance**

**Federal Law**

McCarran-Ferguson Act, 15 U.S.C. § 1011 (1944).

Retrieved from <http://www.law.cornell.edu/uscode/text/15/1011>.

Summary: This Act gives states the power to control insurance, not U.S. Congress, because Congress believes that each State knows how to best regulate their insurance “business”. This law passed in 1944 during the era of anti-trust legislation. It intended to allow states to regulate insurance on their own, outside of federal interference.

**State Law**

The Insurance Code of 1956, Act 218. Mich. Comp. Laws Ann. 500.440 (1957).

Retrieved from <http://www.legislature.mi.gov/%28S%28ewkq21552cfct2qe1bnkfuq0%29%29/mileg.aspx?page=getObject&objectName=mcl-218-1956-44>.

Summary: Employees are not required to participate/purchase into the life insurance program. Group life insurance can be written in conjunction with Disability insurance plans.

The Insurance Code of 1956, Act 218. Mich. Comp. Laws Ann. 500.2226 (1957).

Retrieved from <http://www.legislature.mi.gov/%28S%28ewkq21552cfct2qe1bnkfuq0%29%29/mileg.aspx?page=getObject&objectName=mcl-500-2226>.

Summary: “ Every policy of life insurance hereafter issued or delivered within this state by any life insurer doing business within this state shall contain the entire contract between the parties and nothing shall be incorporated therein by reference to any constitution, bylaws, rules, application, or other writing unless the same are endorsed upon or attached to the policy when issued.”

Public Employee Domestic Partner Benefit Restriction Act, Act 297. Mich. Comp. Laws Ann. 15.580 (2011).

Retrieved from <http://www.legislature.mi.gov/%28S%28ewkq21552cfct2qe1bnkfuq0%29%29/mileg.aspx?page=getObject&objectName=mcl-Act-297-of-2011>.

Summary: Describes the restriction on transfer of employee benefits to people sharing residence with the employee (i.e. spouse, children, etc.). Applicable to all benefits (health, insurance, retirement, etc.).

The City provides group term life insurance to full-time employees. Coverage begins immediately upon of employment. Check with the City Treasurer for plan documents and additional detail.

**Disability Insurance**

**Federal Law**

See Life Insurance Above.

Americans With Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 328 (1990). Retrieved from <http://www.ada.gov/pubs/ada.htm>.

Summary: “Only injured workers who meet the ADA's definition of an "individual with a disability" will be considered disabled under the ADA, regardless of whether they satisfy criteria for receiving benefits under workers' compensation or other disability laws. A worker also must be "qualified" (with or without reasonable accommodation) to be protected by the ADA. Work-related injuries do not always cause physical or mental impairments severe enough to "substantially limit" a major life activity. Also, many on-the-job injuries cause temporary impairments which heal within a short period of time with little or no long-term or permanent impact. Therefore, many injured workers who qualify for benefits under workers' *compensation or other disability benefits laws may not be protected by the ADA. An employer must consider work-related injuries on a case-by-case basis to know if a worker is protected by the ADA.”*

**State Law**

Act 218: The Insurance Code of 1956. Mich. Comp. Laws Ann. 500.606 (1957).

Retrieved from <http://www.legislature.mi.gov/%28S%28utm4yf45hbfkut55qdy3rweu%29%29/documents/mcl/pdf/mcl-act-218-of-1956.pdf>.

Summary:“Disability” insurance is insurance of any person against bodily injury or death by accident, or against disability on account of sickness or accident including also the granting of specific hospital benefits and medical, surgical and sick-care benefits to any person, family, or group, subject to such limitations as may be prescribed with respect thereto: Provided, The insured under this section may be an employee of any person not subject to the provisions of the workmen's compensation law and in such case the liability may be limited to such as may arise out of and in the course of employee's employment and the premium may be paid by the employer under an agreement with the employee.”

Act 218: The Insurance Code of 1956. Mich. Comp. Laws Ann. 500.2214 (1957).

Retrieved from <http://www.legislature.mi.gov/%28S%28gv13a0zm1l5vrg45nyqxla3b%29%29/mileg.aspx?page=GetObject&objectname=mcl-500-2207>.

Summary: “The insured shall not be bound by any statement made in an application for a disability insurance policy unless a copy of such application is attached to or endorsed on the policy when issued as a part thereof. If any such policy delivered or issued for delivery to any person in this state shall be reinstated or renewed, and the insured or the beneficiary or assignee of such policy shall make a written request to the insurer for a copy of the application, if any, for such reinstatement or renewal, the insurer shall within 15 days after the receipt of such request at its home office or any branch office of the insurer, deliver or mail to the person making such request, a copy of such application. If such copy shall not be so delivered or mailed, the insurer shall be precluded from introducing such application as evidence in any action or proceeding based upon or involving such policy or its reinstatement or renewal.”

For more information on the various insurance laws and interpretation of their language, refer to the Michigan Municipal League. (November 2005). *Handbook for Municipal Officials*. Retrieved from <http://www.mml.org/pdf/hmo/13.pdf>.

The City provides group short-term disability insurance to full-time employees. Benefits are payable from the 1st day disability due to accidental bodily injury or from the 8th day of disability due to sickness, for a period not to exceed 26 weeks for any one period of disability. Check with the Treasurer for plan documents and additional detail.

**Worker’s Compensation**

**Federal Law**

Americans With Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 328 (1990).   
Retrieved from <http://www.ada.gov/pubs/ada.htm>.

Summary: “Only injured workers who meet the ADA's definition of an "individual with a disability" will be considered disabled under the ADA, regardless of whether they satisfy criteria for receiving benefits under workers' compensation or other disability laws. A worker also must be "qualified" (with or without reasonable accommodation) to be protected by the ADA. Work-related injuries do not always cause physical or mental impairments severe enough to "substantially limit" a major life activity. Also, many on-the-job injuries cause temporary impairments which heal within a short period of time with little or no long-term or permanent impact. Therefore, many injured workers who qualify for benefits under workers' compensation or other disability benefits laws may not be protected by the ADA. An employer must consider work-related injuries on a case-by-case basis to know if a worker is protected by the ADA.”

U.S. Equal Employment Opportunity Commission. (29 December 2005). *Americans with Disabilities Act Questions and Answers*.

Retrieved from <http://www.ada.gov/employmt.htm>.

Family and Medical Leave Act; H.R. 1--103rd Congress: Family and Medical Leave Act of 1993.

Retrieved from <http://www.govtrack.us/congress/bills/103/hr1>

Summary: This Act gives employees up to 12 weeks of unpaid leave per year to allow workers to balance work and family needs. Usually used in the case of taking care of a sick family member or to recover from a serious medical condition, the Act states that the employee must be reinstated to their former position and given insurance coverage during their leave.

H.R. 3103--104th Congress: Health Insurance Portability and Accountability Act of 1996.

Retrieved from <http://www.govtrack.us/congress/bills/104/hr3103>

Summary: HIPAA privacy protections might need to be examined in order to release private health information to qualify for workers’ compensation. This Act was created to protect individual’s health information and preserve the rights granted to individuals regarding that information. Municipal governments must be careful when asking for selective information regarding private health in order to be compliant with HIPPA.

**State Law**

Worker’s Disability Compensation Act of 1969. Mich. Comp. Laws Ann. 418.161 (1969).

Retrieved from <http://www.legislature.mi.gov/%28S%284zuj25uloutt0gmyesbgcpya%29%29/mileg.aspx?page=GetObject&objectname=mcl-418-161>.

Summary: As used in this act, "employee" means:

* A person in the service of the state, a county, city, township, village, or school district, under any appointment, or contract of hire, express or implied, oral or written. A person employed by a contractor who has contracted with a county, city, township, village, school district, or the state, through its representatives, shall not be considered an employee of the state, county, city, township, village, or school district that made the contract, if the contractor is subject to this act.”
* “Police officers, fire fighters, or employees of the police or fire departments, or their dependents, in municipalities or villages of this state providing like benefits, may waive the provisions of this act and accept like benefits that are provided by the municipality or village but are not entitled to like benefits from both the municipality or village and this act…”

Worker’s Disability Compensation Act of 1969. Mich. Comp. Laws Ann. 418.115 (1969).

Retrieved from <http://www.legislature.mi.gov/%28S%284zuj25uloutt0gmyesbgcpya%29%29/mileg.aspx?page=getObject&objectName=mcl-Act-317-of-1969>.

Summary: “This act shall apply to:

* All private employers, other than agricultural employers, who regularly employ 3 or more employees at 1 time.
* All private employers, other than agricultural employers, who regularly employ less than 3 employees if at least 1 of them has been regularly employed by that same employer for 35 or more hours per week for 13 weeks or longer during the preceding 52 weeks.
* All public employers, irrespective of the number of persons employed.”

The applicable Worker’s Compensation laws cover each employee. Employees are responsible for immediately reporting any work-related injury, no matter how slight, to their supervisor.

In many cases, leave compensated under worker’s compensation also qualifies as FMLA leave, in which case both programs will be coordinated. To learn more about Family Medical Leave Act requirements, use the citation above. As well, the City’s duty disability retirement provision may apply.

**Retirement Programs**

**Federal Law**

Employee Retirement Income Security Program. 29 U.S.C. 18.

Retrieved from <http://www.law.cornell.edu/uscode/text/29/chapter-18>.

Retirement programs are left up to states through establishment of state legislation. The federal government cannot tax retirement income.

**State Law**

Municipal Employees Retirement Act of 1984, Act 427. Mich. Comp. Laws Ann. 38.1539 (1984).

Retrieved from <http://www.legislature.mi.gov/%28S%28ia5wry45hmvyoe45nxyyf045%29%29/mileg.aspx?page=getObject&objectName=mcl-38-1539>

This established the retirement board system and through Public Act 220 of 1996 created MERS. MERS stands for the “Michigan Employees’ Retirement System. There are many available systems for differing businesses and institution through the MERS program. The entirety of Act 427 can explain in depth the various features and specific laws of the MERS system. This Act can be used as a main source for municipal governments to format MERS to fit their specific situation (dependent on employee number and various aspects of each government’s size and resource availability). Look at the various laws below to find more information about the structure of MERS.

Also available (searchable) at <http://www.manistique.org/government/MERSplan.html>.

Source for information about MERS:

Municipal Employees’ Retirement System of Michigan. (21 December 2012). *We Are: MERS*.

Retrieved from <http://mersofmich.com/Portals/0/Assets/Publications/CorporateBrochure.pdf>.

This is a good source for more information about MERS and its use.

Municipal Employees’ Retirement System. (2014). *457 Supplemental Retirement Program employer information*.

Retrieved from <http://mersofmich.com/Employer/Programs/457-Program>.

Summary: Once again this describes MERS and helps employers understand the features available through the program and the system of customization that accompanies the system.

Municipal Employees’ Retirement System. (2014). *Hybrid Plan employer information*.

Retrieved from <http://mersofmich.com/Employer/Programs/Hybrid-Plan>.

Public Employee Retirement Benefit Protection Act, Act 100. Mich. Comp. Laws Ann. 38.1681-89 (2002).

Retrieved from <http://www.legislature.mi.gov/%28S%28ia5wry45hmvyoe45nxyyf045%29%29/mileg.aspx?page=getObject&objectName=mcl-38-1681>

Summary: This protects the rights of public employees through retirement systems, it instituted MERS as a system to protect those rights.

Reciprocal Retirement Act, Act 88. Mich. Comp. Laws Ann. 38.1101 (1961).

Retrieved from <http://www.legislature.mi.gov/%28S%28ia5wry45hmvyoe45nxyyf045%29%29/mileg.aspx?page=getobject&objectname=mcl-Act-88-of-1961&query=on&highlight=reciprocal%20AND%20retirement%20AND%20act>

Summary: This law describes the preservation of retirement benefits and savings when public employees transfer between units of government. It allows employees to transfer specific benefits in certain situations. Because each situation is unique, refer to this Act with knowledge of the specific employee situation.

Eligible Domestic Relations Order Act, Act 46. Mich. Comp. Laws Ann. 38.1701 (1991).

Retrieved from <http://www.legislature.mi.gov/%28S%28ia5wry45hmvyoe45nxyyf045%29%29/mileg.aspx?page=getobject&objectname=mcl-Act-46-of-1991&query=on&highlight=eligible%20AND%20domestic%20AND%20relations%20AND%20act>

Summary: This Act describes how employee retirement payments get distributed in cases of divorce, separation, child support, etc. the establishment of the Act allowed Michigan to preserve the rights of individuals and employees while also upholding fairness and justice standards.

Social Security for Public Employees, Act 205. Mich. Comp. Laws Ann. 38.850 (1951).

Retrieved from <http://www.legislature.mi.gov/documents/mcl/archive/2014/May/mcl-Act-205-of-1951.pdf>

Summary: This describes how social security extends coverage to public employees. Social security is depended on assets and individual conditions, however this Act states public employees receive Social Security.

State Employee Retirement Act, Act 240. Mich. Comp. Laws Ann. 38.68c (2007).

Retrieved from <http://www.legislature.mi.gov/%28S%28ia5wry45hmvyoe45nxyyf045%29%29/mileg.aspx?page=getObject&objectName=mcl-38-68c>

Summary: This describes how state employee status is obtained and then retirement benefits gained through that. This is a part of MERS which contains different plans for different situations.

The City of Anytown provides a Hybrid retirement plan through Michigan Municipal Employees’ Retirement System (MERS), which combines the stability of a lifetime benefit with the flexibility of an investment account that is portable. The hybrid plan provides both a “defined benefit” for retirement based on years of service, final average compensation and a multiplier used to calculate the benefit amount, as well as provides a contribution to a “defined contribution” plan that is manageable by the participant and is portable should the participant separate employment. See the City Treasurer for complete details on vesting schedules, retirement calculations, eligibility and other details.

For full-time employees hired prior to May 2004 and part-time employees hired prior to May 2004 who work at least ten, 8-hour days each month, the City of Anytown provides a traditional pension program through the MERS. The pension program provides a “defined benefit” for retirement based on years of service, final average compensation and a multiplier used to calculate the benefit amount. See the City Treasurer for complete details on vesting schedules, retirement calculations, eligibility and other details.

The City also makes a defined contribution retirement savings plan (“457 Plan”) available to eligible employees. This is funded by employee contributions and the City does provide a match. See the City Treasurer for complete details on this program.

Retiree Appreciation Payments

All eligible full-time and part-time employees hired prior to May 2004 who retire under the City’s MERS plan with more than five years of continuous service will receive a retiree appreciation payment in the amount of $25 for each completed year of service with the City. For the purposes of this policy, retirement occurs when an employee is eligible for an immediate retirement allowance from MERS and does not include the circumstances where an employee leaves City employment and will be eligible to receive a retirement allowance at some later date because they are vested in the retirement system

**Health Insurance Portability and Accountability Act (HIPAA)**

**Federal Law**

The Privacy Rule  
Retrieved from <http://www.hhs.gov/ocr/privacy/hipaa/administrative/privacyrule/>

Summary: The HIPAA Privacy Rule establishes national standards to protect individuals’ medical records and other personal health information and applies to health plans, health care clearinghouses, and those health care providers that conduct certain health care transactions electronically.  The Rule requires appropriate safeguards to protect the privacy of personal health information, and sets limits and conditions on the uses and disclosures that may be made of such information without patient authorization. The Rule also gives patients’ rights over their health information, including rights to examine and obtain a copy of their health records, and to request corrections.

**State Law**

The Nonprofit Health Care Corporation Reform of 1980, Act 350. Mich. Comp. Laws Ann. 550.1406 (1980).  
Retrieved from <http://www.legislature.mi.gov/%28S%28ia5wry45hmvyoe45nxyyf045%29%29/mileg.aspx?page=getObject&objectName=mcl-550-1406>

Summary: 550.1406 Confidentiality of records; disclosures; consent; policy regarding protection of privacy and confidentiality of personal data; violation as misdemeanor; penalty; civil action for damages; effect of section on governmental agencies; compliance with federal law and regulations; “health care operations" defined.

Social Security Privacy Act of 2004, Act 454. Mich. Comp. Laws Ann. 445.83 (2004)

445.83   
Retrieved from <http://www.legislature.mi.gov/%28S%28ia5wry45hmvyoe45nxyyf045%29%29/mileg.aspx?page=getObject&objectName=mcl-445-83>

Summary: Prohibited use of social security number of employee, student, or other individual; exceptions.

The City sponsors group health plans that provide medical, dental, and other benefits to eligible employees. The Privacy Rules under the Health Insurance Portability and Accountability Act (HIPAA) generally restrict the ability to use and disclose certain health or medical information about you that is created or received by these group health plans or by the City in connection with these group health plans.

This Notice describes how medical information about you may be used or disclosed, and describes your legal rights regarding your medical information. References to the Plan throughout this notice also shall mean the City, as plan sponsor.

If you have any questions about this Notice, please contact Human Resources, which serves as plan administrator.

**Protected Health Information**

**State Law**

Public Employee Health Benefit Act of 2007, Act 106. Mich. Comp. Laws. Ann. 124.85 (2007)  
Retrieved from <http://www.legislature.mi.gov/%28S%28ia5wry45hmvyoe45nxyyf045%29%29/mileg.aspx?page=getObject&objectName=mcl-124-85&highlight=124.85>

Summary: Public employer with 100 or more employees; claims utilization and cost information; compilation; "relevant period" defined; disclosure; availability; protected health information not included; date of compilation.

The HIPAA Privacy Rules protect only certain medical information known as “protected health information: (PHI). Generally, PHI is individually identifiable health information, including demographic information, collected from you or received by a health care provider, a health care clearinghouse, a health plan or your employer on behalf of a group health plan that relates to:

* your past, present, or future physical or mental health or condition;
* the provision of health care to you; or
* the past, present, or future payment for the provision of health care to you.

Our Pledge and Responsibilities Regarding PHI

We understand that PHI about you and your health is personal and the Plan is committed to protecting PHI. The Plan is required by law to satisfy the following responsibilities with respect to any PHI created or received by the Plan:

* Maintain the privacy of your PHI;
* Provide you with certain rights with respect to your PHI;
* Give you this Notice of the Plan’s legal duties and privacy practices with respect to your PHI; and
* Follow the terms of the Notice that is currently in effect.

How the Plan May Use and Disclose Medical Information About You

Under law, the Plan may use or disclose your PHI under certain circumstances without your permission. The following categories describe different ways that the Plan may use and disclose PHI. For each category of uses or disclosures an attempt will be made to provide an explanation and present some examples. Not every use or disclosure in a category is listed. However, all of the ways the Plan is permitted to use and disclose PHI will fall within one of the categories.

For Treatment. The Plan may use or disclose your PHI to facilitate medical treatment or services by providers. The Plan may disclose PHI about you to providers, including doctors, nurses, technicians, medical students or other hospital personnel, who are involved in taking care of you. For example, the Plan might disclose information about your prior prescriptions to a pharmacist to determine if prior prescriptions contraindicate a pending prescription.

For Payment. The Plan may use and disclose PHI about you to determine eligibility for Plan benefits, to facilitate payment for the treatment and services you receive from health care providers, to determine benefit responsibility under the Plan, or to coordinate Plan coverage. For example, the Plan may tell your health care provider about your medical history to determine whether a particular treatment is experimental, investigational or medically necessary or to determine whether the Plan will cover the treatment. The Plan also may share PHI with a utilization review or pre-certification service provider. Likewise, the Plan may share PHI with another entity to assist with the adjudication or subrogation of health claims or to another health plan to coordinate benefit payments. The Plan may release PHI about you to a family member, friend or other person who is involved in your medical care or payment for your medical care, unless you tell us not to release such information.

For Health Care Operations. The Plan may use and disclose PHI about you for other Plan operations. These uses and disclosures are necessary to run the Plan. For example, the Plan may use PHI in connection with: conducting quality assessment and improvement activities; underwriting, premium rating, and other activities relating to Plan coverage; submitting claims for stop-loss (or excess loss) coverage; conducting or arranging for medical review, legal services, audit services, and fraud and abuse detection programs; business planning and development such as cost management; and business management and general Plan administrative activities.

To Business Associates. The Plan may contract with individuals or entities known as Business Associates to perform various functions or to provide certain types of services on the Plan’s behalf. In order to perform these functions or provide these services, Business Associates will receive, create, maintain, use and/or disclose your PHI, but only if they agree in writing with the Plan to implement appropriate safeguards regarding your PHI. For example, the Plan may disclose your PHI to a Business Associate to administer claims or provide support services, such as utilization, management, pharmacy benefit management or subrogation, but only after the Business Associate enters into a Business Associate Agreement with the Plan.

The Plan will disclose PHI about you when required to do so by federal, state or local law. For example, the Plan may disclose PHI when required by a court order in a litigation proceeding, such as a malpractice action.

To Avert a Serious Threat to Health or Safety. The Plan may use and disclose PHI about you when necessary to prevent a serious threat to your health and safety or the health and safety of the public or another person. Any disclosure, however, would only be to someone able to help prevent the threat. For example, the Plan may disclose PHI about you in a proceeding regarding the licensure of a physician.

To Plan Sponsor (i.e. The City). For the purpose of administering the Plan, PHI may be disclosed to certain employees of the City. However, those employees will only use or disclose that PHI only as necessary to perform plan administration functions or as otherwise required by HIPAA, unless you have authorized further uses or disclosures. Your PHI cannot be used for employment related purposes without your specific, written authorization. Information also may be disclosed to another health plan maintained by the City for purposes of facilitating claim payments under that health plan.

Special Situations. In addition to the above, the following categories describe other possible ways that the Plan may use and disclose your PHI.

* Organ and Tissue Donation. If you are an organ donor, the Plan may release PHI to organizations that handle organ procurement or organ, eye or tissue transplantation or to an organ donation bank, as necessary to facilitate organ or tissue donation and transplantation.
* Military and Veterans. If you are a member of the armed forces, the Plan may release PHI about you as required by military command authorities. The Plan also may release PHI about foreign military personnel to the appropriate foreign military authority.
* Workers’ Compensation. The Plan may release PHI about you for worker’s compensation or similar programs. These programs provide benefits for work related injuries or illness.
* Public Health Risks. The Plan may disclose PHI about you for public health activities. The activities generally include the following:
  + To prevent or control disease, injury or disability;
  + To report births and deaths;
  + To report child abuse or neglect;
  + To report reactions to medications or problems with products;
  + To notify people of recalls of products they may be using;
  + To notify a person who may have been exposed to a disease or may be at risk for contracting or spreading a disease or condition;
  + To notify the appropriate government authority if we believe a patient has been the victim of abuse, neglect or domestic violence. The Plan will only make this disclosure if you agree or when required or authorized by law.
* Health Oversight Activities. The Plan may disclose PHI to a health oversight agency for activities authorized by law. These oversight activities include, for example, audits, investigations, inspections, and licensure. These activities are necessary for the government to monitor the health care system, government programs, and compliance with civil rights laws.
* Lawsuits and Disputes. If you are involved in a lawsuit or a dispute, the Plan may disclose PHI about you in response to a court or administrative order. The Plan also may disclose PHI about you in response to a subpoena, discovery request, or other lawful process by someone else involved in the dispute, but only if efforts have been made to tell you about the request or to obtain an order protecting the information requested.
* Law Enforcement. The Plan may release PHI if asked to do so by a law enforcement official:
  + In response to a court order, subpoena, warrant, summons or similar process;
  + To identify or locate a suspect, fugitive, material witness, or missing person;
  + About the victim of a crime if, under certain limited circumstances, we are unable to obtain the person’s agreement;
  + About a death we believe may be the result of criminal conduct; and
  + In emergency circumstances to report a crime; the location of the crime or victims; or the identity, description or location of the person who committed the crime.
* Coroners, Medical Examiners and Funeral Directors. The Plan may release PHI to a coroner or medical examiner. This may be necessary, for example, to identify a deceased person or determine the cause of death.
* National Security and Intelligence Activities. The Plan may release PHI about you to authorized federal officials for intelligence, counterintelligence, and other national security activities authorized by law.
* Inmates. If you are an inmate of a correctional institution or under the custody of a law enforcement official, the Plan may release PHI about you to the correctional institution or law enforcement official. This release would be necessary (1) for the institution to provide you with health care; (2) to protect your health and safety or the health and safety of others; or (3) for the safety and security of the correctional institution.

**Required Disclosures**

**Federal Law**

H.R. 3103--104th Congress: Health Insurance Portability and Accountability Act of 1996. (1996).

Retrieved from <http://www.govtrack.us/congress/bills/104/hr3103>

Summary: In accordance with other HIPAA requirements, this Act mandates what is protected health information and what is not.

Patient Protection and Affordable Care Act, Pub. L. No. 111-148, §2702, 124 Stat. 119, 318-319 (2010).

Retrieved from <http://www.gpo.gov/fdsys/pkg/PLAW-111publ148/pdf/PLAW-111publ148.pdf>

Summary: Creates some changes, Section 6001 begins “Transparency”.

**State Law**

Public Health Code, Act 368. Mich. Comp. Laws Ann. 333.1101-333.25211 (1978).   
Retrieved from <http://www.legislature.mi.gov/%28S%28ia5wry45hmvyoe45nxyyf045%29%29/mileg.aspx?page=getObject&objectName=mcl-333-1101>

Summary: Many of these laws are actually strengthened by HIPAA. The limitations HIPAA imposes on PHI are much stronger than many Michigan State legislation.

See more information at:

State Bar of Michigan. (2014). *Must follow HIPAA*.

Retrieved from <http://www.michbar.org/health/pdfs/PREEMPTMUSTDOS1203.pdf>.

The following is a description of disclosures of your PHI the Plan is required to

make:

Government Audits. The Plan is required to disclose your PHI to the Secretary of the United States Department of Health and Human Services when the Secretary is investigating or determining the Plan’s compliance with the HIPAA Privacy rule.

Disclosures to You. When you request, the Plan is required to disclose to you the portion of your PHI that contains medical records, billing records, and any other records used to make decisions regarding your health care benefits. The Plan also is required, when requested, to provide you with an accounting of most disclosures of your PHI where the disclosure was for reasons other than for payment, treatment or health care operations, and where the PHI was not disclosed pursuant to your individual authorization.

Other Disclosures

**Federal Law**

H.R. 3103-04th Congress: Health Insurance Portability and Patient Protection and Affordable Care Act, Pub. L. No, 111-148.   
Retrieved from <http://www.gpo.gov/fdsys/pkg/PLAW-111publ148/pdf/PLAW-111publ148.pdf>

Summary: “Immediate Improvements in Health Care Coverage for All Americans”

**State Law**

Public Health Code, Act 368. Mich. Comp. Laws Ann. 333.1101- State Bar of Michigan. (2014).

Must follow HIPAA.

Retrieved from <http://Accountabilityactof1996>. (1996).

Retrieved from http:www.govtrack.us/congress/bills/104/hr3103

Summary: In accordance with other HIPAA requirements, this Act mandates what is protected health information and what is not.

124 Stat. 119, 318-319 (2010).

Retrieved from <http://www.gpo.gov/fdsys/pkg/PLAW-111publ148/pdf/PLAW-111publ148.pdf>:

Summary: Creates some changes, section 6001 begins “Transparency.” 333.25211 (1978).

Many of these laws are actually strengthened by HIPAA. The limitations HIPAA imposes on PHI are much stronger than many Michigan State legislation.

See more information at:

[www.michbar.org/health/pdfs/PREEMPTMUSTDOS1203.pdf](http://www.michbar.org/health/pdfs/PREEMPTMUSTDOS1203.pdf)**.**

Personal Representatives. The Plan will discuss your PHI to individuals authorized by you, or to an individual designated as your personal representative, attorney in fact, etc., as long as you provide the Plan with a written notice/authorization and any supporting documents (e.g. durable power of health care attorney). Note that under HIPAA privacy rule, the Plan does not have to disclose PHI to a personal representative if we have a reasonable belief that:

* you have been, or may be, subjected to domestic violence, abuse or neglect by such person;
* treating such person as your personal representative could endanger you; or
* in the exercise or professional judgment, it is not in your best interest to treat the person as your personal representative.

Authorizations. Other uses or disclosures of your PHI not described above will only be made with your written authorization. You may revoke written authorization at any time, as long as the revocation is in writing. Once we receive your written revocation, it will only be effective for future uses and disclosures. It will not be effective for any information that may have been used or disclosed in reliance upon the written authorization and prior to receiving your written revocation.

**Your Rights**

**State Law**

The Nonprofit Health Care Corporation Reform of 1980, Act 380. Mich. Comp. Laws Ann. 550.1406. (1980)  
Retrieved from <http://www.legislature.mi.gov/%28S%28ia5wry45hmvyoe45nxyyf045%29%29/mileg.aspx?page=getObject&objectName=mcl-550-1406>

Summary: 550.1406 Confidentiality of records; disclosures; consent; policy regarding protection of privacy and confidentiality of personal data; violation as misdemeanor; penalty; civil action for damages; effect of section on governmental agencies; compliance with federal law and regulations; "health care operations" defined.

You have the following rights regarding PHI that the Plan maintains about you:

Right to Inspect and Copy. You have the right to inspect and copy PHI that may be used to make decisions about your Plan benefits. To inspect and copy PHI that may be used to make decisions about you, you must submit your request in writing to the Contact Person listed above. If you request a copy of the information, you may be charged a fee for the costs of copying, mailing or other supplies associated with your request. The Plan may deny your request to inspect and copy PHI in certain very limited circumstances. If you are denied access to PHI, you may request that the denial be reviewed by submitting a written request to the Contact Person listed above.

Right to Amend. If you believe that PHI the Plan has about you is incorrect or incomplete, you may ask us to amend the information. You have the right to request an amendment for as long as the information is kept by or for the Plan. To request an amendment, your request must be made in writing and submitted to the Contact Person listed above. In addition, you must provide the reason that supports your request. The Plan may deny your request for an amendment if it is not in writing or does not include a reason to support the request. In addition, the Plan may deny your request if you ask us to amend information that:

* Is not part of the PHI kept by or for the Plan;
* Was not created by the Plan, unless the person or entity that created the
* information is no longer available to make the amendment;
* Is not part of the information which you would be permitted to inspect and
* copy; or
* Is already accurate and complete.

If the Plan denies your request, you have the right to file a statement of disagreement with the Plan and any future disclosure of the disputed information will include your statement. File this statement with Human Resources.

Right to an Accounting of Disclosures. You have the right to request an “accounting” of certain disclosures of your PHI. The accounting will not include

* disclosures made for purposes of treatment, payment or health care operations;
* disclosures made to you;
* disclosures made pursuant to your authorization;
* disclosures made to friends or family in your presence or because of an emergency;
* disclosures for national security purposes; and
* disclosures incidental to otherwise permissible disclosures.

To request this list of accounting of disclosures, you must submit your request, in writing, to Human Resources. Your request must state a time period which may not be longer than six years and may not include dates before April 14, 2004. Your request should indicate in what form you want the list (for example, paper or electronic). The first list you request within a 12 month period will be free. For additional lists, the Plan may charge you for the costs of providing the list. The Plan will notify you of the cost involved and you may choose to withdraw or modify your request at that time before any costs are incurred.

Right to Request Restrictions. You have the right to request a restriction or limitation on the PHI the Plan uses or discloses about you for treatment, payment or health care operations. You also have the right to request a limit on the PHI the Plan discloses about you to someone who is involved in your care or the payment for your care, such as a family member or friend. For example, you could ask that we not use or disclose information about a surgery you had. The Plan is not required to agree to your request. To request restrictions, you must make your request in writing to Human Resources. In your request, you must tell us what information you want to limit; whether you want to limit our use, disclosure or both; and to whom you want the limits to apply, for example, disclosures to your spouse.

Right to Request Confidential Communications. You have the right to request that the Plan communicate with you about medical matters in a certain way or at a certain location. For example, you can ask that we only contact you at work or by mail. To request confidential communications, you must make your request in writing to Human Resources. The Plan will not ask you the reason for your request. The Plan will accommodate all reasonable requests. Your request must specify how or where you wish to be contacted.

Right to a Paper Copy of This Notice. You have the right to a paper copy of this Notice. You may ask the Plan to give you a copy of this Notice at any time. Even if you have agreed to receive this Notice electronically, you are still entitled to a paper copy of this Notice. To obtain a paper copy of this Notice, contact Human Resources.

*Changes to This Notice*

**State Law**

The Social Welfare Act of 1939, Act 280. Mich. Comp. Laws Ann. 400-111a (1939).  
Retrieved from <http://www.legislature.mi.gov/%28S%28ia5wry45hmvyoe45nxyyf045%29%29/mileg.aspx?page=getObject&objectName=mcl-400-111a>

Summary: 400.111a Policy and procedures for implementation and enforcement of state and federal laws; consultation; guidelines; forms and instructions; “prudent buyer” defined; criteria for selection of providers; notice of change in policy, procedure, form, or instruction; power of director; informal conference; imposition of specific conditions and controls; notice; hearings; examination of claims; imposition of claims review process; books and records of provider; confidentiality; immunity from liability; prohibited payments or recovery for payments; making payments and collecting overpayments; development of specifications; estimated cost and charge information; notice to provider of incorrect payment*.*

The Plan reserves the right to change the terms of this Notice. The Plan reserves the right to make the revised or changed Notice effective for PHI the Plan already has about you as well as any information the Plan receives in the future. If the Plan makes any material change to this Notice, you will be provided with a copy of a revised Notice of Privacy Practices either by mail or electronically.

*Complaints*

**State Law**

The Nonprofit Health Care Corporation Reform Act of 1980, Act 350. Mich. Comp. Laws Ann. 550.1407 (1980).   
Retrieved from <http://www.legislature.mi.gov/%28S%28ia5wry45hmvyoe45nxyyf045%29%29/mileg.aspx?page=getObject&objectName=mcl-550-1407>

Summary: 550.1407 Complaint system; procedures; response to complaint; access to complaints and responses; record of complaints; annual report; other legal remedies.

If you believe your privacy rights have been violated, you may file a complaint with the Plan or with the Office of Civil Rights. Complaints to the Plan must be submitted in writing to Human Resources. A complaint to the Office of Civil Rights should be sent to Office for Civil Rights, U.S. Department of Health & Human Services, 233 N. Michigan Ave. - Suite 240, Chicago, IL 60601, (312) 886-2359; (312) 353-5693 (TDD), (312) 886-1807 (fax). You also may visit OCR’s website at: <http://www.hhs.gov/ocr/privacyhowtofile.htm> , for more information.

You will not be penalized, or in any other way retaliated against, for filing a complaint with the Plan or the Office of Civil Rights.

**PAID AND UNPAID LEAVES**

The City of Anytown provides paid and unpaid leave benefits to promote successful balance in work demands, family priorities and an overall quality of life. The City values its employees and desires to provide adequate paid leave to allow for protection in the event of illness or injury, to manage personal business, and to allow sufficient time away from the job to remain refreshed and positive about work.

Unpaid leaves are also available in some instances to provide job protection, and when used with various insurance programs, may provide income protection as well, in the event of long-term devastating illness, injury or disability.

The leave benefits provided herein are balanced against the City’s need to operate efficiently with consideration for employee preferences.

**Holidays**

The following 10 days are observed during each calendar year as paid holidays for eligible full-time employees, at the regular rate of pay, available immediately upon hire:

* New Year’s Day
* Good Friday
* Memorial Day
* Independence Day (4th of July)
* Labor Day
* Thanksgiving Day
* Day after Thanksgiving
* Christmas Eve Day
* Christmas Day
* New Year’s Eve Day

In the event that a scheduled paid holiday(s) falls on a Saturday, Friday will be observed as the holiday; or if the holiday falls on a Sunday, Monday will be observed as the holiday. When Christmas Eve or New Year’s Eve falls on a Saturday or Sunday, it will be celebrated the preceding Friday. When Christmas Day or New Year’s Day falls on a Saturday or Sunday, it will be celebrated the following Monday.

Employees on vacation over a holiday will be paid for the holiday rather than being charged for a day of paid time off.

**Federal Law**

5 U.S.C. § 6103: Holidays

Retrieved from <http://uscode.house.gov/view.xhtml?hl=false&edition=prelim&req=granuleid%3AUSC-prelim-title5-section6103&f=treesort&fq=true&num=0&saved=|NSBVLlMuQy4gNjEwMw%3D%3D|dHJlZXNvcnQ%3D|dHJ1ZQ%3D%3D|8|true|prelim>

Summary: The following are legal public holidays:

* New Year's Day, January 1.
* Birthday of Martin Luther King, Jr., the third Monday in January.
* Washington's Birthday, the third Monday in February.
* Memorial Day, the last Monday in May.
* Independence Day, July 4.
* Labor Day, the first Monday in September.
* Columbus Day, the second Monday in October.
* Veterans Day, November 11.
* Thanksgiving Day, the fourth Thursday in November.
* Christmas Day, December 25.

**State Law**

MCL Section 435.101: Legal Holidays

Retrieved from <http://www.legislature.mi.gov/%28S%28hfehi0rocd4yvu55v43ben45%29%29/mileg.aspx?page=getObject&objectName=mcl-435-101>

Summary: Public holidays as to bills, checks, notes, and holding of courts; validity of bank transactions performed on Saturday; holding court or transacting business on Saturday; continuation of action, matter, or proceeding; adjournment of circuit court to secular day; validity of legal process, holding courts, or transaction of business on Saturday afternoons; closing of county or municipal offices on Saturday; state employees working on Sunday.

**Eligibility**

Full-time employees are eligible for holiday pay if:

* The employee worked their scheduled hours on their last scheduled workday preceding the holiday and on their first scheduled workday following the holiday. Approved paid time off will not disqualify an employee from holiday pay.
* The employee must be on the active payroll as of the date of the holiday. For the purposes of this section, a person is not on the active payroll of the City during unpaid leaves of absence, layoff, when receiving Workers’ Compensation for more than 6 months, or during disciplinary suspension.

Employees scheduled to work on a holiday, but who fail to report for and perform such work, will not be entitled to holiday pay.

**Federal Law**

5 U.S.C §5542. Overtime rates; computation

Retrieved from <http://uscode.house.gov/view.xhtml?req=%28title:5%20section:5542%20edition:prelim%29%20OR%20%28granuleid:USC-prelim-title5-section5542%29&f=treesort&num=0&edition=prelim>

Summary: For full-time, part-time and intermittent tours of duty, hours of work officially ordered or approved in excess of 40 hours in an administrative workweek, or (with the exception of an employee engaged in professional or technical engineering or scientific activities for whom the first 40 hours of duty in an administrative workweek is the basic workweek and an employee whose basic pay exceeds the minimum rate for GS–10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law) for whom the first 40 hours of duty in an administrative workweek is the basic workweek) in excess of 8 hours in a day, performed by an employee are overtime work and shall be paid for, except as otherwise provided by this subchapter, at the following rates:

* For an employee whose basic pay is at a rate which does not exceed the minimum rate of basic pay for GS–10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law), the overtime hourly rate of pay is an amount equal to one and one-half times the hourly rate of basic pay of the employee, and all that amount is premium pay.
* For an employee whose basic pay is at a rate which exceeds the minimum rate of basic pay for GS–10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law), the overtime hourly rate of pay is an amount equal to the greater of one and one-half times the hourly rate of the minimum rate of basic pay for GS–10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law) or the hourly rate of basic pay of the employee, and all that amount is premium pay.
* Notwithstanding paragraphs (1) and (2) of this subsection for an employee of the Department of Transportation who occupies a nonmanagerial position in GS–14 or under and, as determined by the Secretary of Transportation,

The overtime hourly rate of pay is an amount equal to one and one-half times the hourly rate of basic pay of the employee, and all that amount is premium pay.

**State Law**

Michigan Civil Service Commission Rule 5-10.1 Paid Holidays

Retrieved from <http://www.michigan.gov/documents/mdcs/Michigan_Civil_Service_Commission_Rules_347183_7.pdf>

Summary: A full-time career employee is allowed 8 hours paid absence from work on 12 approved state holidays in odd numbered years and 13 approved state holidays in even numbered years. A less than full-time career employee is allowed paid holiday absence in proportion to the time actually in pay status, in accordance with the regulations.

* Procedure. The state personnel director shall establish the appropriate dates for holiday observances and additional standards for determining employee eligibility.
* Work on a holiday. An appointing authority may require an employee to work on a paid holiday. Such an employee is compensated in accordance with any applicable provisions governing compensation for overtime and shift differential.

**Holiday Work Premium**

It is understood that employees may be required to work on holidays in accordance with normal scheduling procedures. Hourly employees required to work on a recognized City holiday will be paid a one and one-half times their regular straight hourly rate for the hours actually worked, in addition to holiday pay if otherwise eligible. For the purpose of this section, a holiday is defined as a 24-hour period beginning at 12:01 a.m. of the holiday.

**Federal Law**

5 U.S.C. 5546 - Pay for Sunday and holiday work

Retrieved from <http://uscode.house.gov/view.xhtml?hl=false&edition=prelim&req=granuleid%3AUSC-prelim-title5-section5546&f=treesort&fq=true&num=0&saved=|NSBVLlMuQy4gNTU0Ng%3D%3D|dHJlZXNvcnQ%3D|dHJ1ZQ%3D%3D|4|true|prelim>

Summary: An employee who performs work during a regularly scheduled 8-hour period of service which is not overtime work as defined by section 5542(a) of this title a part of which is performed on Sunday is entitled to pay for the entire period of service at the rate of his basic pay, plus premium pay at a rate equal to 25 percent of his rate of basic pay. For employees serving outside the United States in areas where Sunday is a routine workday and another day of the week is officially recognized as the day of rest and worship, the Secretary of State may designate the officially recognized day of rest and worship as the day with respect to which the preceding sentence shall apply instead of Sunday.

An employee who performs work on a holiday designated by Federal statute, Executive order, or with respect to an employee of the government of the District of Columbia, by order of the District of Columbia Council, is entitled to pay at the rate of his basic pay, plus premium pay at a rate equal to the rate of his basic pay, for that holiday work which is not:

* in excess of 8 hours; or
* overtime work as defined by section 5542(a) of this title.

**State Law**

Michigan Civil Service Commission Rule 5-10.1(b) & 5-4.2: Paid Holidays

Retrieved from <http://www.michigan.gov/documents/mdcs/Michigan_Civil_Service_Commission_Rules_347183_7.pdf>

Summary: Work on a holiday. An appointing authority may require an employee to work on a paid holiday. Such an employee is compensated in accordance with any applicable provisions governing compensation for overtime and shift differential.

5-4.2 Overtime: Summary:

* Eligibility. The compensation schedules must identify each classification that is eligible for overtime pay. Overtime pay is paid to eligible employees for time in pay status, excluding sick and annual leave, in excess of 40 hours in a week or as otherwise provided in the regulations.
* Rate. The overtime rate of pay is one and one-half times the employee’s regular rate of pay, as defined in the regulations. The regulations may provide for accrual of compensatory time at the premium rate instead of a cash payment.

**Paid Time Off (PTO)**

The City provides a combined paid time off bank (PTO) for full-time employees to utilize for planned and unplanned time off. PTO may be used for vacations, sick leave, personal business (including to care for family members), or any other purposes the employee chooses, subject to the rules and procedures of scheduling time off.

Though the intent of PTO is to maximize flexibility of paid time off for employees, it is not intended to create an atmosphere in which employees feel entitled to “come and go as they please.” The City has limited staff and provides diverse services, often at very busy times of the year. All PTO requests are subject to approval by the department director, and may be denied to accommodate operational demands.

**Federal Law**

Code of Federal Regulations 451.104

Retrieved from <http://www.ecfr.gov/cgi-bin/text-idx?SID=9254d4b072d216df6d402a630bb2560c&node=5:1.0.1.2.62&rgn=div5#5:1.0.1.2.62.1.18.4>

Summary: “An agency may grant a cash, honorary, or informal recognition award, or grant time-off without charge to leave or loss of pay consistent with chapter 45 of title 5, United States Code, and this part to an employee, as an individual or member of a group, on the basis of:

* A suggestion, invention, superior accomplishment, productivity gain, or other personal effort that contributes to the efficiency, economy, or other improvement of Government operations or achieves a significant reduction in paperwork;
* A special act or service in the public interest in connection with or related to official employment; or
* Performance as reflected in the employee's most recent rating of record (as defined in §430.203 of this chapter), provided that the rating of record is at the fully successful level (or equivalent) or above, except that performance awards may be paid to SES members only under §534.405 of this chapter and not on the basis of this subpart.”

5 U.S.C. §4502(e) General provisions

Retrieved from <http://uscode.house.gov/view.xhtml?req=5+U.S.C.+4502&f=treesort&fq=true&num=4&hl=true&edition=prelim&granuleId=USC-prelim-title5-section4502>

Summary: “The Office of Personnel Management may by regulation permit agencies to grant employees time off from duty, without loss of pay or charge to leave, as an award in recognition of superior accomplishment or other personal effort that contributes to the quality, efficiency, or economy of Government operations.”

**State Law**

Michigan Civil Service Commission Rule 5-10.2(a) Paid Leave: Accrual and accumulation

Retrieved from <http://www.michigan.gov/documents/mdcs/Michigan_Civil_Service_Commission_Rules_347183_7.pdf>

Summary: “Initial annual leave grant. Upon entry into the classified service, an eligible employee is credited with an initial annual leave grant of 16 hours, which is immediately available for use, upon approval of the appointing authority. The 16 hours of annual leave cannot be credited to an employee more than once in a calendar year.”

**Accrual**

PTO is accrued each pay period immediately upon hire based on continuous service according the schedule shown below. PTO should be used only after it is earned, however, employees may request an advance of PTO in writing to the City Manager.

|  |  |
| --- | --- |
| **Anniversary Date** | **PTO Accruals** |
| Upon Hire – Year 5: | 25 days (200 hours) |
| Start of Year 6 – Year 10 | 30 days (240 hours) |
| Start of Year 11 + | 35 days (280 hours) |

**Federal Law**

5 U.S.C. 6303(a). Annual leave; accrual

Retrieved from <http://uscode.house.gov/view.xhtml?hl=false&edition=prelim&req=granuleid%3AUSC-prelim-title5-section6303&f=treesort&fq=true&num=0&saved=|NSBVLlMuQy4gNjMwNA%3D%3D|dHJlZXNvcnQ%3D|dHJ1ZQ%3D%3D|12|true|prelim>

Summary: An employee is entitled to annual leave with pay which accrues as follows:

* one-half day for each full biweekly pay period for an employee with less than 3 years of service;
* three-fourths day for each full biweekly pay period, except that the accrual for the last full biweekly pay period in the year is one and one-fourth days, for an employee with 3 but less than 15 years of service; and
* one day for each full biweekly pay period for an employee with 15 or more years of service.

In determining years of service, an employee is entitled to credit for all service of a type that would be creditable under section 8332, regardless of whether or not the employee is covered by subchapter III of chapter 83, and for all service which is creditable by virtue of subsection (e). However, an employee who is a retired member of a uniformed service as defined by section 3501 of this title is entitled to credit for active military service only if:

* his retirement was based on disability:
  + resulting from injury or disease received in line of duty as a direct result of armed conflict; or
  + caused by an instrumentality of war and incurred in line of duty during a period of war as defined by sections 101 and 1101 of title 38;
* that service was performed in the armed forces during a war, or in a campaign or expedition for which a campaign badge has been authorized; or
* on November 30, 1964, he was employed in a position to which this subchapter applies and thereafter he continued to be so employed without a break in service of more than 30 days.

The determination of years of service may be made on the basis of an affidavit of the employee. Leave provided by this subchapter accrues to an employee who is not paid on the basis of biweekly pay periods on the same basis as it would accrue if the employee were paid on the basis of biweekly pay periods.

**State Law**

MSCS Regulation 5-10.2(a) Paid Leave: Accrual and accumulation

Retrieved from <http://www.michigan.gov/documents/mdcs/Michigan_Civil_Service_Commission_Rules_347183_7.pdf>

Summary: Subsequent to the initial grant of sixteen (16) hours, annual leave shall not be credited and available for use until the unit employee has completed seven hundred twenty (720) hours of paid service in the initial appointment. Paid service in excess of eighty (80) hours in a biweekly work period shall not be counted for purposes of annual leave accrual. A unit employee in a permanent or limited term position shall be entitled to annual leave with pay for each eighty

(80) hours of paid service or to a pro-rated amount if paid service is less than eighty (80) hours in the pay period as follows:

**ANNUAL LEAVE ACCRUAL TABLE**

Service Credit Annual Leave

0-1 years = 4.0 hours/80 hours service

1-4 years = 4.7 hours/80 hours service

5-9 years = 5.3 hours/80 hours service

10-14 years = 5.9 hours/80 hours service

15-19 years = 6.5 hours/80 hours service

20-24 years = 7.1 hours/80 hours service

25-29 years = 7.7 hours/80 hours service

30-34 years = 8.4 hours/80 hours service

35-39 years = 9.0 hours/80 hours service

40-44 years = 9.6 hours/80 hours service

45-50 years = 10.2 hours/80 hours service

**Leave Requests**

The City will attempt to honor reasonable PTO requests, but reserves the right to deny a request if it would interfere with the efficient operation of a department, if PTO abuse is suspected, or other valid reasons.

Some PTO requests, such as vacations, can be planned in advance and employees are expected to provide advance notice of their request for leave to their department head. Vacation time may be used in full-day increments.

Typically, departments will not allow more than one employee to take PTO leave at the same time. When two or more employees from the same department request the same leave time, preference will be given to the employee with the most seniority, unless that employee continually takes the same period of time off.

In the case of unplanned PTO, for illness, unanticipated personal business or other emergent reasons, employees should give as much advance notice as possible to their supervisor. Employees are expected to call in each day of unplanned absence to their immediate supervisor, unless specific arrangements are made with their supervisor for a return to work date.

Failure to call in three or more days will be considered abandonment of position and a voluntary resignation. A doctor’s verification may be required where abuse of PTO is suspected.

Extended absence of three days or more due to illness may require verification of fitness for duty from a licensed physician prior to return to work, as determined by your supervisor.

As well, absences of three or more days may be designated as qualified leave under FMLA; the City will provide notification of such designation according to FMLA guidelines. Employees should see the City’s complete FMLA policy for additional detail, and are required to notify their supervisor if they are off work for any of the following reasons:

* To care for a seriously ill family member(s)
* Your own serious health condition
* The birth of a child or to care for a newborn child
* Placement of a child with you through adoption or foster care

**Federal Law**

There is no Federal law governing leave requests.

Retrieved from <http://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/annual-leave/>

Summary: Employees and their supervisors are mutually responsible for planning and scheduling the use of employees' annual leave throughout the leave year. Employees should request annual leave in a timely manner, and supervisors should provide timely responses to employees' requests.

**State Law**

MSCS Regulation 5.09-3(A)(3): Use of Annual Leave

Retrieved from <http://www.michigan.gov/documents/SPDOC_05-03_Reg_5_120539_7.09.pdf>

Summary: Regulation 5.09-3(A)(3) Use of Annual Leave:

An employee may use the initial grant of 16 hours immediately upon hire, with the prior approval of the appointing authority.

Annual leave is available for use only in biweekly work periods subsequent to the biweekly work period in which it is earned. Annual leave may not be credited or used in anticipation of future leave accruals. In the absence of applicable accrued leave, compensation reductions for lost time will be made for the work period in which the absence occurred.

An employee may use annual leave only with the prior approval of the appointing authority, except that an employee may use accrued annual leave when an insufficient amount ofsick leave exists to cover an absence for which sick leave is normally used. In this circumstance, the standards of regulation 5.10 [Sick Leave] pertaining to use of sick leave apply.

Annual leave cannot be used to extend employment, except that during November and December of 2010 up to three days of annual leave can be used to extend employment. An appointing authority may request that the State Personnel Director authorize an employee to use more than three days of leave to extend employment during November and December of 2010.

An employee allowed annual leave accumulation in excess of the maximums listed in the annual leave table under the exception in standard A.2.g., is allowed up to one year from the date of return to employment to liquidate the amount of annual leave above the maximum by use of paid time off work.

**Carryover & Pay Out**

(Current Policy)

Employees are required to take their vacation during the 12 months following its crediting, and all vacation accrued in excess of the employee’s current annual accrual shall be forfeited.

Employees who leave the employ of the City may receive pay for accrued but unused vacation leave in any of the following circumstances:

* If an employee retires in accordance with the retirement plan currently in effect.
* If an employee voluntarily resigns and provides a minimum of 2 weeks’ notice.
* If an employee is laid off and requests payment of PTO pay, provided that such pay will be designated to the period of the layoff.
* In the event of the death of an employee, PTO pay will be made to the employee’s estate.

(Sample Policy w/ carryover option)

Employees may carry forward a maximum PTO balance of XXX days into each calendar year (January 1st.) (Coordinate maximum balance with disability insurance, if any.) Any time left unused beyond the maximum as of January 1 will be forfeited. This “use or lose” approach is intended to encourage staff to take appropriate breaks from the workplace, which is vital to work/life balance.

Accrued and unused PTO balances will be paid at termination or retirement consistent with this policy. (Option: balances will be paid at termination or retirement, to a maximum of XXX days).

Any PTO advances will be deducted from an employee’s final pay. If an employee separates from employment and his/her final pay is less than the amount advanced, the employee shall be responsible for reimbursing the City for any difference.

**Federal Law**

5 U.S.C. 6304. Annual Leave, accumulation.

Retrieved from <http://uscode.house.gov/view.xhtml?hl=false&edition=prelim&req=granuleid%3AUSC-prelim-title5-section6304&f=treesort&fq=true&num=0&saved=|NSBVLlMuQy4gNjMwNA%3D%3D|dHJlZXNvcnQ%3D|dHJ1ZQ%3D%3D|12|true|prelim>

Summary: “(A)nnual leave…which is not used by an employee, accumulates for use in succeeding years until it totals not more than 30 days at the beginning of the first full biweekly pay period, or corresponding period for an employee who is not paid on the basis of biweekly pay periods, occurring in a year.

Annual leave not used by an employee of the Government of the United States of certain classes of employees stationed outside the United States accumulates for use in succeeding years until it totals not more than 45 days at the beginning of the first full biweekly pay period, or corresponding period for an employee who is not paid on the basis of biweekly pay periods, occurring in a year.

Annual leave in excess of the amount allowable remains to the credit of the employee until used. The excess annual leave is reduced at the beginning of the first full biweekly pay period, or corresponding period for an employee who is not paid on the basis of biweekly pay periods, occurring in a year, by the amount of annual leave the employee used during the preceding year in excess of the amount which accrued during that year, until the employee's accumulated leave does not exceed the amount allowed under subsection (a) or (b) of this section, as appropriate.

**State Law**

MSCS Rule 5-10.2 Paid Leave: Accrual and accumulation

Retrieved from <http://www.michigan.gov/documents/mdcs/Michigan_Civil_Service_Commission_Rules_347183_7.pdf>

Summary: An employee may accumulate credited annual and personal leave hours up to the combined maximum authorized in column 3 of the leave table. Any annual or personal leave hours earned above the maximum accrual cannot be credited and the hours are lost.

Maximum payoff. If any employee receives a payoff of all accumulated annual and personal leave hours, the maximum amount that may be paid off is the amount authorized in column 4 of the leave. Any annual or personal leave hours accumulated above the maximum amount authorized in column 4 are lost if not used before payoff.

|  |  |  |
| --- | --- | --- |
| Time in Service Seniority | Maximum Accumulation Limit | Maximum Payout Limit |
| 0 to 5 years | 296 hours | 256 hours |
| 5 to 10 years | 326 hours | 286 hours |
| 15 to 20 years | 341 hours | 301 hours |
| 20 to 25 years | 346 hours | 306 hours |
| 25 or more years | 356 hours | 316 hours |

**Voluntary Sharing of PTO**

(Sample Policy)

In certain circumstances, the City may permit employees to voluntarily share or “donate” accrued, unused PTO to fellow employee(s) who may be in crisis, typically due to a prolonged serious medical condition.

**Federal Law**

5 USC 6332: General authority

Retrieved from <http://uscode.house.gov/view.xhtml?hl=false&edition=prelim&req=granuleid%3AUSC-prelim-title5-section6332&f=treesort&fq=true&num=0&saved=|NSBVLlMuQy4gNjMzMQ%3D%3D|dHJlZXNvcnQ%3D|dHJ1ZQ%3D%3D|1|true|prelim>

Summary: Notwithstanding any provision of subchapter I, and subject to the provisions of this subchapter, the Office of Personnel Management shall establish a program under which annual leave accrued or accumulated by an employee may be transferred to the annual leave account of any other employee if such other employee requires additional leave because of a medical emergency.

**State Law**

MSCS Regulation 5.09-8(A) Annual Leave

Retrieved from <http://www.michigan.gov/documents/SPDOC_05-03_Reg_5_120539_7.09.pdf>

Summary:A direct leave transfer process and a central leave bank are available to assist nonexclusively represented employees facing financial hardship due to serious injury or prolonged illness of the employee or the employee's dependent spouse, child, or parent.

An employee may receive a direct transfer of annual leave from employees within their employing agency, or through the central leave bank, subject to the following condition:

* The receiving employee must have successfully completed the initial probationary period.
* The receiving employee must have exhausted all leave credits.
* The receiving employee's absence must have been approved.

An employee may receive a combined maximum donation of 240 hours per calendar year.

(3) Donations of annual leave (either by direct transfer or to the central leave bank) are irrevocable and are limited to a combined maximum of 40 hours in a calendar year. Donations must be in whole hour increments.

**Family and Medical Leave**

**Federal Law**

The Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2601-2654 (2006).

Retrieved from <http://www.dol.gov/whd/fmla/fmlaAmended.htm>

Summary: The Family and Medical Leave Act (FMLA) applies to all public agencies (including a local, state, or Federal government agency), regardless of the number of employees it employs.

U.S. Department of Labor Wage and Hour Division (2012). Fact sheet #28: The family and medical leave act.

Retrieved from: <http://www.dol.gov/whd/regs/compliance/whdfs28.pdf>

Summary: “The Family and Medical Leave Act (FMLA) entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons.”

**State Law**

The State of Michigan does not have specific medical leave legislation that provides greater coverage and would supersede the FMLA regulations.

The Family and Medical Leave Act of 1993, 29 U.S.C. 2654 § 825.700 (2013).

Retrieved from: <http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&amp;sid=abbd92cdff37c5d32de741cc5ccc1e81&amp;rgn=div5&amp;view=text&amp;node=29:3.1.1.3.54&amp;idno=29#29:3.1.1.3.54.7.489.2>

Summary: “Nothing in FMLA supersedes any provision of State or local law that provides greater family or medical leave than those provided by FLMA. … An employer must comply with the appropriate (applicable) provisions of [local, State and Federal law].”

The Family and Medical Leave Act of 1993, 29 U.S.C. § 2612(a)(3) (2006).

Retrieved from <http://www.dol.gov/whd/fmla/fmlaAmended.htm#SEC_102_LEAVE_REQUIREMENT>

Summary: In some cases the FMLA allows an employee to take intermittent leave or to work a reduced schedule for a limited time period.

The Family and Medical Leave Act of 1993, 29 U.S.C. § 2612(b) (2006).

Retrieved from <http://www.dol.gov/whd/fmla/fmlaAmended.htm#SEC_102_LEAVE_REQUIREMENT>

Summary: Spouses employed by the City are jointly entitled to a combined total of 12 weeks for the birth and care of a newborn, placement of a child by adoption or foster care or to care for a family member with a serious health condition.

The Family and Medical Leave Act of 1993, 29 U.S.C. § 2612(f)(1) (2006).

Retrieved from <http://www.dol.gov/whd/fmla/fmlaAmended.htm#SEC_102_LEAVE_REQUIREMENT>

The City of Anytown complies with all statutory requirements of the Family and Medical Leave Act (FMLA). The FMLA provides eligible employees up to twelve (12) weeks of unpaid, job-protected leave in a 12-month period:

* for the birth or care of a child
* to care for a child after placement through adoption or foster care
* to care for a close family member (spouse, parent, son or daughter) with a serious health condition
* for the employee’s own serious health condition which makes the employee unable to perform his or her job
* for “qualifying exigencies” arising from military service of a covered service member.

FMLA also allows up to 26 weeks of leave within a 12-month period for an employee to care for a covered military service member with a serious illness or injury. In some cases the FMLA allows an employee to take intermittent leave or to work a reduced schedule for a limited time period.

Spouses employed by the City are jointly entitled to a combined total of 12 weeks for the birth and care of a newborn, placement of a child by adoption or foster care or to care for a family member with a serious health condition.

**Eligibility**

To be eligible for leave under FMLA, an employee must have worked at least 1,250 hours over the previous 12 months, and must have worked for the City for a total of at least 12 months (does not need to be consecutive months.)

Only hours actually worked will count toward calculating 1,250 hours over previous 12 months for FMLA eligibility, NOT vacation, holidays, personal days, sick leave, etc.

For purposes of calculating FMLA eligibility, an employee on USERRA protected military leave will be given credit for time worked as if he/she had not taken the military leave and had worked continuously during that time.

**Federal Law**

The Family and Medical Leave Act of 1993, 29 U.S.C. § 2611(2)(A) (2006).

Retrieved from: <http://www.dol.gov/whd/fmla/fmlaAmended.htm#SEC_101_DEFINITIONS>

Summary: Only hours actually worked will count toward calculating 1,250 hours over previous 12 months for FMLA eligibility, NOT vacation, holidays, personal days, sick leave, etc.

The Family and Medical Leave Act of 1993, 29 U.S.C. § 2611(2)(C)(A)(ii) (2006).

Retrieved from: <http://www.dol.gov/whd/fmla/fmlaAmended.htm#SEC_101_DEFINITIONS>

Summary:FMLA requirements stipulate that the standards established by the Fair Labor Standards Act (FLSA), section 7, will determine whether an employee meets the hours of service requirement.

The Fair Labor Standards Act of 1938, 29 U.S.C. § 207 (e)(2) (2011).

Retrieved from: <http://www.dol.gov/whd/regs/statutes/FairLaborStandAct.pdf>

Summary: This section states that payments for “occasional periods when no work is performed due to vacation, holiday, illness…” are not included when calculating the employee’s regular rate.

For purposes of calculating FMLA eligibility, an employee on USERRA protected military leave will be given credit for time worked as if he/she had not taken the military leave and had worked continuously during that time.

Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C § 4316 (1994).

Retrieved from <http://www.dol.gov/vets/usc/vpl/usc38.htm>

Summary: USERRA provides coverage for service members to keep their benefits, seniority and other rights while deployed or otherwise in service. It states that they are entitled to the seniority, rights, and benefits they had before they left, plus those that they would have attained, had they remained continuously employed.

**Rolling Year**

**Federal Law**

U.S. Department of Labor, Wage and Hour Division. (2013, February). Fact Sheet #28H: 12-month period under the Family and Medical Leave Act (FMLA).

Retrieved from <http://www.dol.gov/vets/usc/vpl/usc38.htm>

Summary: The employer may use any of the following methods to establish the 12-month period:

* the calendar year
* any fixed 12-months – 12-month period such as a fiscal year (for example, October 1 through September 30), a year starting on an employee’s anniversary date (for example, September 22 through September 21), or a 12-month period required by state law;
* the 12-month period measured forward – 12-month period measured forward from the first date an employee takes FMLA leave. The next 12-month period would begin the first time FMLA leave is taken after completion of the prior 12-month period; or
* a “rolling” 12-month period measured backward – 12-month period measured backward from the date an employee uses any FMLA leave. Under the ‘‘rolling’’ 12-month period, each time an employee takes FMLA leave, the remaining leave entitlement would be the balance of the 12 weeks which has not been used during the immediately preceding 12 months.

The City uses a rolling year for calculating leave under FMLA, meaning eligible employees may use up to a total of 12 weeks FMLA time in the 12-month period following the commencement of any FMLA qualified leave. FMLA leave may be taken in a single 12 week period, or, when certified as medically necessary, on an intermittent basis such as blocks of time or work week reduction.

Prior approval from the City Manager is required where intermittent leave is sought for the birth and care of a newborn or placement of a child through adoption or foster care.

**Federal Law**

United States Department of Labor Wage and Hour Division. The Family and Medical Leave Act Fact Sheet.

Retrieved from <http://www.dol.gov/whd/regs/compliance/1421.htm#2d>

Summary: “The FMLA permits employees to take leave on an intermittent basis or to work a reduced schedule under certain circumstances. … Intermittent/reduced schedule leave may be taken to care for a newborn or newly placed adopted or foster care child only with the employer's approval.”

**Coordination with Other Leaves and/or Paid Time Off Plans**

**Federal Law**

The Family and Medical Leave Act of 1993, 29 U.S.C. § 2612 (d)(2)(A) (2006).

Retrieved from <http://www.dol.gov/whd/fmla/fmlaAmended.htm#SEC_102_LEAVE_REQUIREMENT>

Summary: Employers are allowed to require employees to utilize appropriate paid leave (vacation, personal, medical/sick) for any part of the 12-week period of FMLA leave. This does not mean that employers are required to offer paid leave, only that they may require its use concurrent with FMLA leave.

United States Department of Labor Wage and Hour Division. The Family and Medical Leave Act Fact Sheet.

Retrieved from: <http://www.dol.gov/whd/regs/compliance/1421.htm#2e>

Summary: “[E]mployers may require the employee to use, accrued paid leave to cover some or all of the FMLA leave taken. [E]mployers may require, the substitution of accrued paid vacation or personal leave for any of the situations covered by FMLA. The substitution of accrued sick or family leave is limited by the employer's policies governing the use of such leave.”

The City requires employees to draw down accrued paid leave while on FMLA leave. The City will designate any leave that qualifies as both FMLA and another type of leave as running concurrently (i.e. disability leave, worker’s compensation.) Accrued paid leave must be used to make up the difference in pay if on FMLA and receiving partial pay through some other means.

Where the City and employee agree, employees must use accrued compensatory time off concurrent with FMLA leave.

When a holiday falls within a designated FMLA leave, and the employee is actively drawing down accrual banks, the employee will be paid for the holiday. In the event the holiday falls within an unpaid portion of an FMLA leave because leave banks are exhausted, the holiday will not be paid.

**Health and Other Benefits**

**Federal Law**

The Family and Medical Leave Act of 1993, 29 U.S.C. § 2614(a)(2) (2006).

Retrieved from <http://www.dol.gov/whd/fmla/fmlaAmended.htm#SEC_104_EBP>

United States Department of Labor, Wage and Hour Division. (2012, September). *Fact Sheet #28A: Employee Protections under the Family and Medical Leave Act.*

Retrieved from <http://www.dol.gov/whd/regs/compliance/whdfs28a.htm>

Summary: “If an employee is provided group health insurance, the employee is entitled to the continuation of the group health insurance coverage during FMLA leave on the same terms as if he or she had continued to work. If family member coverage is provided to an employee, family member coverage must be maintained during the FMLA leave. The employee must continue to make any normal contributions to the cost of the health insurance premiums.

If paid leave is substituted for FMLA leave, the employee’s share of group health plan premiums must be paid by the method normally used during paid leave (usually payroll deduction). An employee on unpaid FMLA leave must make arrangements to pay the normal employee portion of the insurance premiums in order to maintain insurance coverage. If the employee’s premium payment is more than 30 days late, the employee’s coverage may be dropped unless the employer has a policy of allowing a longer grace period. The employer must provide written notice to the employee that the payment has not been received and allow at least 15 days after the date of the letter before coverage stops.

In some instances, an employer may choose to pay the employee’s portion of the premium, for example, in order to ensure that it can provide the employee with equivalent benefits upon return from FMLA leave. In that case, the employer may require the employee to repay these amounts. In addition, the employer may require the employee to repay the employer’s share of the premium payment if the employee fails to return to work following the FMLA leave unless the employee does not return because of circumstances that are beyond the employee’s control, including a FMLA-qualifying medical condition.”

The City will continue to provide health, dental and optical benefits as if the leave had not been taken. The employee must continue to pay their portion of the premium(s) if normally required, and the City will recoup the cost of premiums paid on the employee’s behalf if the employee fails to return after FMLA leave.

The City will also continue other benefits, including unconditional pay increases, that otherwise would occur while the employee is on FMLA.

Employees will continue to accrue paid time off while on FMLA leave if they otherwise would earn it.

United States Department of Labor, Wage and Hour Division. (2012, September). *Fact Sheet #28A: Employee Protections under the Family and Medical Leave Act.*

Retrieved from <http://www.dol.gov/whd/regs/compliance/whdfs28a.htm>

Summary: “An employee’s rights to benefits other than group health insurance while on FMLA leave depend upon the employer’s established policies. Any benefits that would be maintained while the employee is on other forms of leave, including paid leave if the employee substitutes accrued paid leave during FMLA leave, must be maintained while the employee is on FMLA leave.”

**Military Personnel and Families**

FMLA extends leave protection and other rights for military personnel and their families in need of leave for “qualifying exigencies” related to call-up or military service or to care for a family member recuperating from a serious illness or injury (a more expansive definition than the typical “serious medical condition applies”).

**Who Qualifies?**

**Federal Law**

The Family and Medical Leave Act of 1993, 29 U.S.C. § 2611(14-16) (2006).

Retrieved from <http://www.dol.gov/whd/fmla/fmlaAmended.htm#SEC_101_DEFINITIONS>

United States Department of Labor, Wage and Hour Division. (2013, February). *Fact Sheet #28M: The Military Family Leave Provisions under the Family and Medical Leave Act.*

Retrieved from: <http://www.dol.gov/whd/regs/compliance/whdfs28m.pdf>

Summary: AA covered service member is either:

* a **current member** of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy, is in outpatient status, or is on the temporary disability retired list, for a serious injury or illness, or
* a **veteran** of the Armed Forces (including the National Guard or Reserves) discharged within the five-year period before the family member first takes military caregiver leave to care for the veteran and who is undergoing medical treatment, recuperation, or therapy for a qualifying serious injury or illness. A veteran who was dishonorably discharged does not meet the FMLA definition of a covered service member.”

United States Department of Labor, Wage and Hour Division. (2013, February). Fact Sheet #28M(a): Military Caregiver Leave for a Current Service member under the Family and Medical Leave Act.

Retrieved from: <http://www.dol.gov/whd/regs/compliance/whdfs28ma.pdf>

Summary: “The “next of kin” of a current service member is the nearest blood relative, other than the current service member’s spouse, parent, son, or daughter, in the following order of priority:

* a blood relative who has been designated *in writing* by the service member as the next of kin for FMLA purposes
* blood relative who has been granted legal custody of the service member
* brothers and sisters
* grandparents
* aunts and uncles
* first cousins

When a service member designates in writing a blood relative as next of kin for FMLA purposes, that individual is deemed to be the service member’s only FMLA next of kin. When a current service member has not designated in writing a next of kin for FMLA purposes, and there are multiple family members with the same level of relationship to the service member, all such family members are considered the service member’s next of kin and may take FMLA leave to provide care to the service member.”

United States Department of Labor, Wage and Hour Division. (2013, February). *The Employee’s Guide to Military Family Leave Under the Family and Medical Leave Act* (WH-1513).

Retrieved from <http://www.dol.gov/whd/fmla/2013rule/FMLA_Military_Guide_ENGLISH.pdf>

Summary: “For qualifying exigency leave, son or daughter means your biological, adopted, or foster child, a stepchild, a legal ward, or a child for whom you stood in loco parentis, and who is of any age.

In Loco Parentis

A person stands in loco parentis if that person provides day-to-day care or financial support for a child. A person who has no biological or legal relationship with a child may nonetheless stand or have stood in loco parentis to the child for purposes of FMLA leave.”

The act defines “covered service members” as current members or veterans of the armed forces, including the National Guard or Reserves, or who are undergoing medical treatment, recuperation, therapy, or who are otherwise on outpatient status or on temporary disability retired list for a serious injury or illness.

The definition of “family member” for military personnel is more expansive and includes not only “parent, spouse or child,” but also encompasses “next of kin,” as designated by the service member. When not specifically designated, “next of kin” may include multiple individuals.

Further, an employee can take FMLA leave to care for a son or daughter who is a service member even if the son or daughter is an adult and does *not* meet the self-care and disability tests typically prescribed for non-military FMLA leave related to care for an adult child.

**FMLA Leave to Care for a Service Member**

FMLA allows up to 26 weeks of service member caregiver leave within a 12-month period for an employee to care for a covered service member with a serious illness or injury. An employee may qualify for more than 26 weeks to care for additional service members or to provide care for a subsequent injury or illness. The 12-month period must be a rolling year beginning on the first day of leave.

A serious injury or illness is incurred in the line of duty on active duty that may render the service member medically unfit to perform the duties of his/her office, grade, rank or rating. This includes a covered service member who:

* is on the temporary disability retired list, a covered service member
* is undergoing medical treatment, recuperation, or therapy for a serious illness or injury or
* is assigned to a military medical treatment facility as an outpatient (or is otherwise receiving outpatient care at a unit established for the armed forces.)

FMLA leave does NOT apply to care for former members of the armed forces who are on the permanent disability retired list.

**FMLA Leave for Qualifying Exigencies**

FMLA allows up to 12 weeks of leave within the normal FMLA 12 month period to address qualifying exigencies that arise as the result of a covered service member’s military service including:

* Short-notice deployment (7 days or less)
* Rest and recuperation (limited to 5 days per military r&r visit)
* Military events and activities (support groups, briefings, etc.)
* Childcare and school activities (make childcare arrangements, attend school meetings, provide emergency childcare, etc.)
* Financial and legal arrangements
* Counseling
* Post-deployment activities (ceremonies, briefings, etc.)
* Additional activities (other purposes as agreed to by the employer and employee)

More information can be found in *The Employee’s Guide to Military Family Leave Under the Family and Medical Leave Act.*

Retrieved from <http://www.dol.gov/whd/fmla/2013rule/FMLA_Military_Guide_ENGLISH.pdf>

**Notifications and Certifications**

**Federal Law**

The Family and Medical Leave Act of 1993, 29 U.S.C. § 2654 § 825.301 (2013, February 6).

Retrieved from <http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&amp;sid=abbd92cdff37c5d32de741cc5ccc1e81&amp;rgn=div5&amp;view=text&amp;node=29:3.1.1.3.54&amp;idno=29#29:3.1.1.3.54.3.489.2>

Summary: “The employer’s decision to designate leave as FMLA-qualifying leave must be based on information received from the employee or the employee’s spokesperson. … Once the employer has acquired knowledge that the leave is being taken for a FLMA-qualifying reason, the employer must notify the employee.”

The Family and Medical Leave Act of 1993, 29 U.S.C. § 2654 §§ 825.302-825.304 (2013, February 6).

Retrieved from: <http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&amp;sid=abbd92cdff37c5d32de741cc5ccc1e81&amp;rgn=div5&amp;view=text&amp;node=29:3.1.1.3.54&amp;idno=29#29:3.1.1.3.54.3.489.3>

Summary: Employees wishing to use FMLA leave may be required to provide notice. 30-day advance notice is required when the need is a foreseeable one, or “as soon as practicable” when the need is not foreseeable (i.e. a verbal notice one or two business days within learning of the need to take FMLA leave).

United States Department of Labor Wage and Hour Division. *The Family and Medical Leave Act Fact Sheet.*

Retrieved from <http://www.dol.gov/whd/regs/compliance/1421.htm#2g>

Summary: “An employer may require that the need for leave for a serious health condition of the employee or the employee’s immediate family member be supported by a certification issued by a health care provider. The employer must allow the employee at least 15 calendar days to obtain the medical certification. … An employer may, at its own expense, require the employee to obtain a second [or third] medical certification from a health care provider. … [The] third opinion shall be final and binding.”

The City will provide sufficient information for an employee to determine that a leave is protected by FMLA, which may be as simple as verbal notice. If the City has reason to believe a leave qualifies as FMLA, it may designate it as such and provide notification to the employee to that effect.

Employees should provide at least 30 days advance notice when the need for leave under FMLA is foreseeable, and as much notice as possible in other cases. Medical certification to support the request may be required, and the City may, at its own expense, require second or third opinions. Medical certification of fitness for duty is required prior to return to work.

**Job Restoration and Protection**

FMLA requires that, upon return from FMLA leave, an employee is returned to his/her same position or an equivalent position with equivalent benefits, pay and other terms and conditions of employment.

**Federal Law**

The Family and Medical Leave Act of 1993, 29 U.S.C. § 2614(a)(1) (2006).

Retrieved from: <http://www.dol.gov/whd/fmla/fmlaAmended.htm#SEC_104_EBP>

Summary: “With the exception of “key employees” (see below), employees who return from FLMA leave are guaranteed the restoration of the job held before leave was taken. An equivalent position may be offered, taking into account “equivalent benefits, pay, and other terms and conditions of employment.”

The FMLA prohibits discrimination or retaliation against employees who assert FMLA rights or who charge an employer with an FMLA violation.

Under specific and limited circumstances, certain “key employees” (those among the highest paid 10% of employees) may be denied job restoration. In this event, the “key” employee will be given a reasonable opportunity to return to work from FMLA leave.

The Family and Medical Leave Act of 1993, 29 U.S.C. § 2614(b)(1) (2006).

Retrieved from: <http://www.dol.gov/whd/fmla/fmlaAmended.htm#SEC_104_EBP>

Summary: “An employer may deny restoration [of an employee’s position] if such denial is necessary to prevent substantial and grievous economic injury to the operations of the employer. … [This applies to an employee who is salaried and] among the highest paid 10% of the employees employed by the employer, within 75 miles of the facility at which the employee is employed.”

United States Department of Labor, Wage and Hour Division. The Family and Medical Leave Act Fact Sheet.

Retrieved from: <http://www.dol.gov/whd/regs/compliance/1421.htm#2m>

Summary: “Under limited circumstances where restoration to employment will cause "substantial and grievous economic injury" to its operations, an employer may refuse to reinstate certain highly-paid, salaried "key" employees. In order to do so, the employer must notify the employee in writing of his/her status as a "key" employee (as defined by FMLA), the reasons for denying job restoration, and provide the employee a reasonable opportunity to return to work after so notifying the employee.”

United States Department of Labor, Wage and Hour Division. (2013, November). The Employee’s Guide to the Family and Medical Leave Act.

Retrieved from: <http://www.dol.gov/whd/fmla/employeeguide.pdf>

Summary: “Certain key employees may not be guaranteed reinstatement to their positions following FMLA leave. A key employee is defined as a salaried, FMLA-eligible employee who is among the highest paid 10 percent of all the employees working for the employer within 75 miles of the employee’s worksite.”

**Bereavement Leave**

**Federal Law**

5 U.S.C. 6326, 5 CFR 630, subpart H

Cornell University Law School, 2014. 5 CFR Part 630 – Absence and leave.

Retrieved from <http://www.law.cornell.edu/cfr/text/5/part-630>

Office of Personnel Management, 2014. Pay & leave: Leave administration.

Retrieved from: <http://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/leave-for-funerals-and-bereavement/>

Summary: “An employee is entitled to up to 3 workdays of funeral leave to make arrangements for or to attend the funeral of an immediate relative who died as a result of wounds, disease, or injury incurred while serving as a member of the Armed Forces in a combat zone. If the employee provides satisfactory reasons, the 3 workdays do not need to be consecutive.”

In the event of a death in an employee’s immediate family, the City provides up to three (3) consecutive days of paid bereavement leave. “Immediate family” is defined as the employee’s current spouse, child, father, mother, sister brother, father-in-law, mother-in-law, grandparent, or grandchild. Natural, step, or adopted mothers, fathers, brothers, or sisters are also considered immediate family.

Employees needing additional time off may request to use accrued paid time off.

Funeral Leave for Combat-Related Death of an Immediate Relative

An employee is entitled to up to 3 workdays of funeral leave to make arrangements for or to attend the funeral of an immediate relative who died as a result of wounds, disease, or injury incurred while serving as a member of the Armed Forces in a combat zone. If the employee provides satisfactory reasons, the 3 workdays do not need to be consecutive.

* Armed Forces means the Army, Navy, Air Force, Marine Corps, and Coast Guard, and includes the Reserve components, National Guard, and Air National Guard.
* Combat zones are areas the President designates by Executive order, in accordance with section 112 of the Internal Revenue Code, as areas in which the Armed Forces are engaging or have engaged in combat. Current areas designated as combat zones can be found in IRS Publication 3. (<http://www.irs.gov/pub/irs-pdf/p3.pdf>)
* Immediate relative covers a wide range of relationships, including spouse; parents; parents-in-law; children; brothers; sisters; grandparents; grandchildren; step parents; step children; foster parents; foster children; guardianship relationships; same sex and opposite sex domestic partners; and spouses or domestic partners of the aforementioned, as applicable. The list of immediate relatives for whom an employee may request funeral leave (as well as important associated definitions for the terms son or daughter, parent, domestic partner, and committed relationship) may be found in the fact sheet entitled Definitions Related to Family Member and Immediate Relative for Leave Purposes (<http://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/definitions-related-to-family-member-and-immediate-relative-for-purposes-of-sick-leave/>).

Note: When an employee requests funeral leave for a combat-related death of an immediate relative, the agency may require the employee to document his or her relationship to that immediate relative. Agencies should establish consistent rules and follow the same documentation requirements for all relationships, but agencies have authority to request additional information in cases of suspected leave abuse.

Funeral Leave for First Responders

A Federal law enforcement officer or firefighter may be excused from duty without loss of pay or charge to leave to attend the funeral of a fellow Federal law enforcement officer or firefighter who was killed in the line of duty (<http://www.law.cornell.edu/uscode/text/5/6328>).

Funeral Leave for Veterans Participating in a Funeral Ceremony

A veteran of a war, or of a campaign or expedition for which a campaign badge has been authorized, or a member of an honor or ceremonial group of an organization of those veterans, may be excused from duty without loss of pay or charge to leave for up to 4 hours of excused absence to serve as a pallbearer, member of a firing squad, or guard of honor in a funeral ceremony for a member of the Armed Forces whose remains are returned from abroad (<http://www.law.cornell.edu/uscode/text/5/6321>).

Military Leave for Funeral Honors Duty

An employee who is a member of the National Guard or a Reserve component of the Armed Forces may use military leave to attend to funeral honors duty under 10 U.S.C. 12503 and 32 U.S.C. 115 (<http://www.law.cornell.edu/uscode/text/10/12503>).

Sick Leave for Bereavement

An employee is entitled to use a total of up to 104 hours (13 days) of sick leave each leave year for family care and bereavement, which include making arrangements required by the death of a family member and attending the funeral of a family member (<http://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/sick-leave-for-family-care-or-bereavement-purposes/>).

* Family Member: The definition of family member covers a wide range of relationships, including spouse; parents; parents-in-law; children; brothers; sisters; grandparents; grandchildren; step parents; step children; foster parents; foster children; guardianship relationships; same sex and opposite sex domestic partners; and spouses or domestic partners of the aforementioned, as applicable. The list of family members for whom an employee may request sick leave for bereavement (as well as important associated definitions for the terms son or daughter, parent, domestic partner, and committed relationship) may be found in the fact sheet entitled Definitions Related to Family Member and Immediate Relative for Leave Purposes (<http://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/definitions-related-to-family-member-and-immediate-relative-for-purposes-of-sick-leave/>).

**State Law**

Article 40: Paid Sick Leave

Michigan.gov, 2014. Article 40: Paid sick leave.

Retrieved from: <http://www.michigan.gov/documents/ose/ARTICLE_40_219938_7.pdf>

Summary: “Every permanent employee covered by this Agreement shall be credited with four (4) hours of paid sick leave for each completed eighty (80) hours of service or to a prorated amount if paid service is less than eighty (80) hours in the pay period. The pro-rated amount shall be based on the number of hours in pay status divided by eighty (80) multiplied by four (4) hours. Paid service in excess of eighty (80) hours in a biweekly work period shall not be counted.”

Bereavement Leave

Retrieved from: <http://www.michigan.gov/documents/ose/ARTICLE_40_219938_7.pdf>

Summary: Employees shall be allowed reasonable and necessary time off by mutual agreement in the event of the death of a member of the immediate family. Such time shall be covered by accrued sick leave and/or annual leave credits. In the event of a dispute, an employee shall be guaranteed a minimum of five (5) days leave, if requested.

Funeral Leave

Retrieved from: <http://www.michigan.gov/documents/ose/ARTICLE_40_219938_7.pdf> .

Summary: In addition to bereavement leave, sick leave may be used for an absence caused by attendance at a funeral of a relative or person whose physical or financial care is the principal responsibility of the employee.

**Unpaid Leave of Absence**

**Federal Law**

29 CFR Part 825 - The family and medical leave act of 1993

Leave Entitlement

Cornell University Law School, 2014. 29 CFR Part 825 - The family and medical leave act of 1993.

Retrieved from <http://www.law.cornell.edu/cfr/text/29/part-825>

United States Department of Labor,2014. Wage and hour division.

Retrieved from <http://www.dol.gov/whd/regs/compliance/1421.htm>

Summary: A covered employer must grant an eligible employee up to a total of 12 work weeks of unpaid leave in a 12 month period for one or more of the following reasons: for the birth of a son or daughter, and to care for the newborn child; for the placement with the employee of a child for adoption or foster care, and to care for the newly placed child; to care for an immediate family member (spouse, child, or parent — but not a parent "in-law") with a serious health condition; and when the employee is unable to work because of a serious health condition.

Leave to care for a newborn child or for a newly placed child must conclude within 12 months after the birth or placement. (See CFR Section 825.201, (<http://www.law.cornell.edu/cfr/text/29/825.201>)

Spouses employed by the same employer may be limited to a combined total of 12 workweeks of family leave for the following reasons: birth and care of a child; for the placement of a child for adoption or foster care, and to care for the newly placed child; and, to care for an employee's parent who has a serious health condition.

**State Law**

Civil Service Regulation 2.03(4.D) Leave of Absence without Pay

Michigan.gov, 2014. Leave of absence.

Retrieved from:

<http://www.michigan.gov/documents/mdcs/Regulation_2.03_222163_7.pdf>

Summary: Leave of Absence without Pay

* Authorization
  + Permissive leave
    - Non-medical leave of absence. An appointing authority may grant an employee a non-medical leave of absence without pay and without loss of employment status.
    - Medical leave of absence. An appointing authority may grant a medical leave of absence without pay for up to 6 months to an eligible employee whose sick leave is exhausted. An employee is eligible for a medical leave of absence only if the employee has the equivalent of at least 6 months full-time employment at the time the leave is granted. If an employee on medical leave requests an extension before the leave expires, an appointing authority is authorized to extend the leave to a maximum of one year. Any extension of a medical leave beyond one year requires the written approval of the state personnel director.
    - Disaster response leave of absence. An appointing authority may grant a leave of absence without pay to an employee who is skilled in emergency relief assistance and certified as a disaster services volunteer by the American Red Cross to provide disaster or emergency relief assistance in this state.
  + Mandatory leave. An appointing authority must grant a leave of absence without pay when specifically required by the civil service commission.
* Expiration
  + A leave of absence without pay expires on the date established by the appointing authority, unless extended by the appointing authority. If an employee on a leave of absence without pay does not return to work on or before the end of the leave, the employee is separated.
* Restoration to Position
  + When an authorized leave of absence without pay expires or the appointing authority authorizes a return to work before the end of the leave, the employee is returned to work as follows:
    - Unless subsection (b) or (c) apply, the employee is returned to the position formerly occupied or an equivalent position.
    - If the appointing authority has demoted the employee since the beginning of the leave under rule 2-6 [Discipline] or rule 3-3 [Appointments and Job Changes], the employee is returned to a position at the classification level to which demoted and is compensated within the range of rates approved for that classification level.
    - If the employee’s position was abolished during the leave, the employee is returned to the classified service in accordance with rule 2-5 [Employment Preference].
    - At the expiration of a medical leave of absence, if the employee is medically qualified to return to work, the employee is returned to a position as provided in subsection (a), (b), or (c), as appropriate. If the employee is not medically qualified to return to work, the employee is separated.
* Annual Leave Balance
  + Retention during leave. An employee may choose to retain an annual leave balance during a leave of absence in accordance with the official compensation plan.
  + Limitation and exception. Payment for annual leave due an employee who does not return from a leave of absence is at the employee’s last rate of pay.
* Waived Rights Leave of Absence
  + Approval and extension. An appointing authority may grant a waived rights leave of absence without pay for up to one year to an employee if the employee has the equivalent of at least 6 months full-time employment at the time the leave is granted. Any extension beyond one year requires the written approval of the state personnel director
  + Ineligible employees. An employee in a limited-term appointment who has not achieved status in an indefinite appointment is not eligible for a waived rights leave of absence, unless authorized in writing by the state personnel director.
  + Operation. An employee granted a waived rights leave of absence cannot carry any annual leave balance during the leave. An employee on a waived rights leave has no right to return to the position formerly occupied or to an equivalent position upon expiration of the leave. If the employee returns to the classified service before the expiration of the waived rights leave through normal selection processes, the employee is not considered to have had a break in service.
  + Separation. If the employee does not return to the classified service before or upon the expiration of the leave, the employee is separated.

An employee may make a written request to the City Manager for an extended unpaid leave of absence that is not otherwise covered through policy provisions within this manual. Such leaves are subject to the same provisions requiring depletion of accrued leave banks as is outlined within the FMLA section.

A request for an unpaid leave of absence is not considered approved unless such approval is in writing and signed by the City Manager. An employee will not be paid or entitled to the accrual of benefits during the period of unpaid leave.

Employees returning from an approved unpaid leave of absence will be reinstated to their former job classification. The provisions of the foregoing notwithstanding, the City reserves the right not to reinstate the employee to their former job classification if the employee no longer has the necessary qualifications, skills, and/or abilities to perform the job functions.

**Jury Duty**

**Federal Law**

28 U.S. Code § 1875 - Protection of jurors’ employment United States Department of Labor, 2014. Leave benefits: Jury duty.

Retrieved from <http://www.dol.gov/dol/topic/benefits-leave/juryduty.htm>

Summary: The Fair Labor Standards Act (FLSA) (<http://www.dol.gov/compliance/laws/comp-flsa.htm>) does not require payment for time not worked, including jury duty. This type of benefit is generally a matter of agreement between an employer and an employee (or the employee's representative).

While federal law does not, some state laws require employers to pay employees who are asked to serve jury duty.

**State Law**

600.1348 Jurors; threats, discharge, or discipline by employer; requiring additional hours of

work; misdemeanor; penalty.

Michigan Legislative Website, 2014. Revised judicature act of 1961: Act 236 of 1961.

Retrieved from [http://www.legislature.mi.gov/(S(dqvz3r45h0hl3s45r23naf55) g.aspx?page=GetObject&objectname=mcl-600-1348](http://www.legislature.mi.gov/(S(dqvz3r45h0hl3s45r23naf55)%20g.aspx?page=GetObject&objectname=mcl-600-1348)

Summary: An employer or the employer's agent, who threatens to discharge or discipline or who discharges, disciplines, or causes to be discharged from employment or to be disciplined a person because that person is summoned for jury duty, serves on a jury, or has served on a jury, is guilty of a misdemeanor, and may also be punished for contempt of court.

An employer or the employer's agent who requires a person having jury duty to work any number of hours during a day which, if added to the number of hours which the person spends on jury duty during that day, exceeds the number of hours normally and customarily worked by the person during a day, or the number of hours normally and customarily worked by the person during a day which extends beyond the normal and customary quitting time of that person unless voluntarily agreed to by that person, or as provided in a collective bargaining agreement is guilty of a misdemeanor, and may also be punished for contempt of court.

Employees who are called to serve as a juror or subpoenaed as a witness in court, unless officially excused, shall be paid the difference between the fee that the employee receives for such services and the amount of straight time earnings lost by reasons of such service, up to a maximum of 20 days per year.

Employees completing a partial day of jury duty are expected to report back to work, unless there is 30 minutes or less left in the workday.

Employees called to jury duty must provide their supervisor prior notice and present proper evidence of the service performed.

**Military Leave for National Guard or other Reserve Units**

**Federal Law**

5 U.S. Code § 6323 - Military leave; Reserves and National Guardsmen

Cornell University Law School, 2014. 5 U.S. code § 6323 - Military leave; Reserves and National guardsmen.

Retrieved from <http://www.law.cornell.edu/uscode/text/5/6323>

Office of Personnel Management, 2014. Military leave.

Retrieved from: <http://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/fact-sheets/military-leave/>

Summary:

* Subject to paragraph (2) of this subsection, an employee as defined by section 2105 (<http://www.law.cornell.edu/uscode/text/5/2105>) of this title or an individual employed by the government of the District of Columbia, permanent or temporary indefinite, is entitled to leave without loss in pay, time, or performance or efficiency rating for active duty, inactive-duty training (as defined in section 101 of title 37 (<http://www.law.cornell.edu/uscode/text/37/101>)), funeral honors duty (as described in section 12503 of title 10 (<http://www.law.cornell.edu/uscode/text/10/12503>) and section 115 of title 32 (<http://www.law.cornell.edu/uscode/text/32>)), or engaging in field or coast defense training under sections 502–505 of title 32 (<http://www.law.cornell.edu/uscode/text/5/3401>) as a Reserve of the armed forces or member of the National Guard. Leave under this subsection accrues for an employee or individual at the rate of 15 days per fiscal year and, to the extent that it is not used in a fiscal year, accumulates for use in the succeeding fiscal year until it totals 15 days at the beginning of a fiscal year.
* In the case of an employee or individual employed on a part-time career employment basis (as defined in section 3401 (2) (<http://www.law.cornell.edu/uscode/text/5/3401>) of this title), the rate at which leave accrues under this subsection shall be a percentage of the rate prescribed under paragraph (1) which is determined by dividing 40 into the number of hours in the regularly scheduled workweek of that employee or individual during that fiscal year.
* The minimum charge for leave under this subsection is one hour, and additional charges are in multiples thereof.
  + Except as provided by section 5519 (<http://www.law.cornell.edu/uscode/text/5/5519>) of this title, an employee as defined by section 2105 (<http://www.law.cornell.edu/uscode/text/5/2105>) of this title or an individual employed by the government of the District of Columbia, permanent or temporary indefinite, who—
    - is a member of a Reserve component of the Armed Forces, as described in section 10101 of title 10 (<http://www.law.cornell.edu/uscode/text/10/10101>) , or the National Guard, as described in section 101 of title 32 (<http://www.law.cornell.edu/uscode/text/32/101>) ; and
    - (2)
      * performs, for the purpose of providing military aid to enforce the law or for the purpose of providing assistance to civil authorities in the protection or saving of life or property or the prevention of injury—
        + Federal service under section 331 (<http://www.law.cornell.edu/uscode/text/10/331>) , 332 (<http://www.law.cornell.edu/uscode/text/10/332>) , 333 (<http://www.law.cornell.edu/uscode/text/10/333>), or 12406 of title 10 (<http://www.law.cornell.edu/uscode/text/10/12406>) , or other provision of law, as applicable, or
        + full-time military service for his State, the District of Columbia, the Commonwealth of Puerto Rico, or a territory of the United States; or
      * performs full-time military service as a result of a call or order to active duty in support of a contingency operation as defined in section 101 (a)(13) of title 10 (<http://www.law.cornell.edu/uscode/text/10/101>); is entitled, during and because of such service, to leave without loss of, or reduction in, pay, leave to which he otherwise is entitled, credit for time or service, or performance or efficiency rating. Leave granted by this subsection shall not exceed 22 workdays in a calendar year. Upon the request of an employee, the period for which an employee is absent to perform service described in paragraph (2) may be charged to the employee’s accrued annual leave or to compensatory time available to the employee instead of being charged as leave to which the employee is entitled under this subsection. The period of absence may not be charged to sick leave.
      * An employee as defined by section 2105 (<http://www.law.cornell.edu/uscode/text/5/2105>) of this title or an individual employed by the government of the District of Columbia, who is a member of the National Guard of the District of Columbia, is entitled to leave without loss in pay or time for each day of a parade or encampment ordered or authorized under title 39, District of Columbia Code. This subsection covers each day of service the National Guard, or a portion thereof, is ordered to perform by the commanding general.
      * A military reserve technician described in section 8401 (30) (<http://www.law.cornell.edu/uscode/text/5/8401>) [1] is entitled at such person’s request to leave without loss of, or reduction in, pay, leave to which such person is otherwise entitled, credit for time or service, or performance or efficiency rating for each day, not to exceed 44 workdays in a calendar year, in which such person is on active duty without pay, as authorized pursuant to section 12315 of title 10 (<http://www.law.cornell.edu/uscode/text/10/12315>), under section 12301 (b) or 12301 (d) of title 10 (<http://www.law.cornell.edu/uscode/text/10>) for participation in operations outside the United States, its territories and possessions. (2) An employee who requests annual leave or compensatory time to which the employee is otherwise entitled, for a period during which the employee would have been entitled upon request to leave under this subsection, may be granted such annual leave or compensatory time without regard to this section or section 5519 (<http://www.law.cornell.edu/uscode/text/5/5519>).

Coverage

Any full-time Federal civilian employee whose appointment is not limited to 1 year is entitled to military leave. Military leave under 5 U.S.C. 6323(a)([http://www.law.cornell.edu/uscode/text](http://www.law.cornell.edu/uscode/text/5/6323)

[/5/6323](http://www.law.cornell.edu/uscode/text/5/6323)) is prorated for part-time career employees and employees on an uncommon tour of duty.

Types of Military Leave

5 U.S.C. 6323 (a) (<http://www.law.cornell.edu/uscode/text/5/6323>) provides 15 days per fiscal year for active duty, active duty training, and inactive duty training. An employee can carry over a maximum of 15 days into the next fiscal year.

Inactive Duty Training is authorized training performed by members of a Reserve component not on active duty and performed in connection with the prescribed activities of the Reserve component. It consists of regularly scheduled unit training periods, additional training periods, and equivalent training. For further information, see Department of Defense Instruction Number 1215.6, March 14, 1997

5 U.S.C. 6323 (b) (<http://www.law.cornell.edu/uscode/text/5/6323>) provides 22 workdays per calendar year for emergency duty as ordered by the President, the Secretary of Defense, or a State Governor. This leave is provided for employees who perform military duties in support of civil authorities in the protection of life and property or who perform full-time military service as a result of a call or order to active duty in support of a contingency operation\* as defined in section 101(a)(13) of title 10, United States Code.

5 U.S.C. 6323(c) (<http://www.law.cornell.edu/uscode/text/5/6323>) provides unlimited military leave to members of the National Guard of the District of Columbia for certain types of duty ordered or authorized under title 49 of the District of Columbia Code.

5 U.S.C. 6323(d) (<http://www.law.cornell.edu/uscode/text/5/6323>) provides that Reserve and National Guard Technicians only are entitled to 44 workdays of military leave for duties overseas under certain conditions.

The term "contingency operation" means a military operation that:

* is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or
* results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301(a), 12302, 12304, 12305, or 12406 of title 10, United States Code, chapter 15 of title 10, United States Code, or any other provision of law during a war or during a national emergency declared by the President or Congress.

Days of Leave

Military leave should be credited to a full-time employee on the basis of an 8-hour workday. The minimum charge to leave is 1 hour. An employee may be charged military leave only for hours that the employee would otherwise have worked and received pay.

Employees who request military leave for inactive duty training (which generally is 2, 4, or 6 hours in length) will now be charged only the amount of military leave necessary to cover the period of training and necessary travel. Members of the Reserves or and National Guard will no longer be charged military leave for weekends and holidays that occur within the period of military service.

A full-time employ working a 40-hour workweek will accrue 120 hours (15 days x 8 hours) of military leave in a fiscal year, or the equivalent of three 40-hour workweeks. Military leave under 6323(a) will be prorated for part-time employees and for employees on uncommon tours of duty based proportionally on the number of hours in the employee's regularly scheduled biweekly pay period.

**State Law**

Uniformed Services Employment and Reemployment Rights Act of 1994 Michigan.gov, 2014. Overview of military leave of absence.

Retrieved from <http://www.michigan.gov/documents/mdcs/MilitaryLeaveSummary_191581_7.pdf>

Summary: If you are a career classified employee and go on duty in one of the uniformed services, you may be eligible for a military leave of absence from your state job.

You are eligible for an unpaid Military Leave of Absence if you meet all the following criteria:

* You are absent from your state job due to service1 in one of the uniformed services.
* You (or your uniformed service) have given your state department advanced oral or written notice of your absence.
* Your cumulative, non-exempted absences for military service from your classified job do not exceed 5 years.

If you are eligible for an unpaid military leave of absence, you may also be eligible for Supplemental Pay and Benefits if you meet both the following additional criteria:

* You are a member of a National Guard or military reserve unit.
* Your military duty is (a) active or inactive duty training or (b) emergency active duty in response to an emergency declared by the governor or president.

Service

Service in the uniformed services includes active duty, training duty, full-time National Guard duty, fitness-for-duty examinations, and funeral-honors duty. Service in the uniformed service also includes service performed as an intermittent disaster response appointee upon activation of the National Disaster Medical System or participation in a related training program as authorized in 42 USC 300hh-11(e)(3)(A).

Uniformed Services

The uniformed services include the Army, Navy, Marine Corps, Air Force, Coast Guard, Reserves, National Guard, and the Commissioned Corps of the Public Health Service.

Full-time and part-time employees who participate in the National Guard or other reserve units of the United States Armed Forces will be provided time off for military exercises or voluntary or involuntary service in accordance with applicable state and federal laws (Uniformed Services Employment and Reemployment Rights Act: USERRA.) Temporary employees are not entitled to military leave.

Employees called to duty should provide as much advance notice as possible and are required to provide the City with written proof of military service within a reasonable time period of it becoming available.

Employees defined as exempt by the FLSA will be paid their regular pay for any workweeks in which any work is performed for the City while on military leave. Prior arrangements should be made regarding the performance of City work while on military leave.

Health insurance will continue under the same terms and conditions, including required employee contributions, for employees on military leave for fewer than 31 days. After that time, employees may continue participation in health insurance through COBRA-like rights provided by law.

Employees on military leave may opt to draw down accrued leave banks; benefits will continue so long as the employee is being paid through the draw-down of these banks, including paid time off accruals.

When a holiday falls within a military leave, and the employee is actively drawing down accrual banks, the employee will be paid for the holiday. In the event the holiday falls within an unpaid portion of a military leave, the holiday will not be paid.

Military leave is not considered a break in service with regard to retirement and pension plans.

Upon return from military duty, the employee will be reinstated to the position they *would have obtained* if they had remained actively employed. Job protection applies for up to five years, meaning an employee on military leave may return and bump an incumbent hired to replace the employee on military leave within five years of commencing the military leave.

In order to exercise these reinstatement rights, employees returning from military leave must report for work within specified time frames as follows:

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| LENGTH OF MILITARY SERVICE | REPORTING REQUIREMENT |
| 30 days or fewer | Report the first regularly scheduled workday following completion of service |
| 31 to 180 days | Report within 14 days of completing service |
| More than 180 days | Report within 90 days of completing service |

Employees returning from a military leave of more than 30 days can be discharged only for cause for six months following their return; leaves of more than 180 days require just cause for termination for 12 months following return.