

We're
HIRING
YOU'RE
FIRED!

KACo Leadership Institute
2020

Hon. Tim Sturgill, General Counsel
Hon. Rich Ornstein, Attorney

800.264.5226
400 Englewood Drive
Frankfort, Kentucky 40601

HIRING & FIRING COUNTY GOVERNMENT

SESSION TOPICS

- Roles & Responsibilities
- At-Will Employment
- Law Enforcement
- Political Activities

Roles & Responsibilities Who's the Hiring/Firing Authority?

County Judge/Executive

- ▣ KRS 67.710(7)
Exercise with the approval of the fiscal court the authority to appoint, supervise, suspend, and remove county personnel

Sheriff

- ▣ KRS 70.030
The sheriff may appoint his or her own deputies and may revoke the appointment at his or her pleasure, except where that revocation is prohibited by the provisions of KRS 70.260 to 70.273.

KRS 15.520, the Law Enforcement Officers Bill of Rights, provides required investigatory/disciplinary procedures which may restrict the 'at his or her pleasure' revocation powers.

3

Roles & Responsibilities Who's the Hiring/Firing Authority?

County Clerk

- ▣ KRS 64.530
County Clerk is the sole hiring and firing authority. Hiring authority is only limited by the KRS 64 salary cap.

Jailer

- ▣ KRS 71.060
A Jailer with a jail has sole hiring authority subject to available positions as set out in the jail budget. Deputy jailers may only be terminated with cause.
- ▣ KRS 71.065
A Jailer without a jail has no hiring/firing authority. CJE/Fiscal Court hire/fire pursuant to KRS 67.710(7).

4

Roles & Responsibilities Who's the Hiring/Firing Authority?

County Attorney

- ▣ County attorney is the hiring and firing authority for deputy county attorneys.

Coroner

- ▣ KRS 72.010
Coroner is the hiring and firing authority for deputy coroners. The number is subject to KRS 64.185.

Constable

- ▣ KRS 70.320
Deputy constables are only authorized in consolidated local governments and counties that contained a first or second class city as of January 1, 2015.

Deputy constables can only be hired/fired by the constable with CJE/Mayor (Greater Louisville/Lexington) permission.

5

AT-WILL EMPLOYMENT

Kentucky recognizes "*at will*" employment... *Edwards v. Kentucky Utilities Co.*, 286 Ky. 341, 150 S.W.2d 916 (1941)

The doctrine of "*employment-at-will*" basically means that either party has the right to terminate the employment relationship, at any time, for any LAWFUL reason, or for no reason at all.

However, an employee cannot be terminated for an unlawful or discriminatory reason, or in violation of a protected constitutional right.

6

AT-WILL EMPLOYMENT

EXAMPLES OF UNLAWFUL OR DISCRIMINATORY REASONS

United States Constitution, 1st Amendment – Freedom of Speech
 Kentucky Equal Opportunities Act, KRS 207.140 To 207.240
 Kentucky Civil Rights Act, KRS 344.010 *Et. Seq.*
 Kentucky Wages And Hours, KRS 337.010 *Et Seq.*
 Kentucky Equal Pay Act, KRS 337.420 To 337.433
 Kentucky OSHA, KRS 338.011 *Et. Seq.* (KY OSHA)
 Kentucky Workers Compensation, KRS 342.197
 TITLE VII Of The Civil Rights Act Of 1964, 42 USC §2000e, *Et. Seq.*, As Amended By The Civil Rights Act Of 1991.
 Age Discrimination In Employment Act Of 1967, 29 USC § 621, *Et. Seq.*
 Equal Pay Act Of 1963, 29 USC §206(d)
 Americans With Disabilities Act Of 1990, 42 USC §12101 *Et. Seq.*

(THIS LIST IS NOT ALL INCLUSIVE)

7

AT-WILL EMPLOYMENT

'For Cause' Terminations

- ▣ Statutory (e.g. Deputy Jailers)
- ▣ Term of Office (e.g. Treasurer, Road Engineer/Supervisor)
 - Review the statute—KRS 179.060 requires 10 days notice; KRS 68.010 does not provide that level of detail
 - Having a term of office is not completely definitive—The Emergency Management Director serves at the CJE's pleasure.
- ▣ County Creation
 - Probationary Periods—Counties that have adopted probationary periods, but not stated what the employee receives upon completion of the probationary period, may have impaired at-will terminations.

8

AT-WILL EMPLOYMENT

What is Cause?

Cleveland Bd. of Educ. V. Loudermill, 470 U.S. 532, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985)

- ▣ A public employee's dismissal for cause relating to, and affecting, the administration of the office, must be restricted to something of a substantial nature directly affecting the rights and interests of the public.

9

Due Process

Cleveland Bd. of Educ. V. Loudermill, 470 U.S. 532, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985)

- ▣ Due Process Clause of the U.S. Constitution – 14th Amendment
 - While the legislature may elect not to confer a property interest in public employment, it may not constitutionally authorize the deprivation of such an interest, once conferred, without appropriate procedural safeguards.
- ▣ What Process is Due?
 - An essential principle of due process is that a deprivation of life, liberty, or property be preceded by notice and opportunity for hearing appropriate to the nature of the case.
 - Employee has an interest in continued employment vs. the governmental interest in immediate termination
 - Employee's interest outweighs the governmental interest
 - Notice/Pre-Termination Hearing – Something less than a full-evidentiary hearing is acceptable
 - It should be an initial check against mistaken decisions; essentially, a determination of whether there are reasonable grounds to believe that the charges against the employee are true and support the proposed action.

10

Due Process

Martin v. Osborne, 239 S.W.3d 90 (Ky. Ct. App. 2007)

- ▣ Allegations
- ▣ Internal Investigation
- ▣ Interview—Allegations/Miranda Rights/Interview—Law Enforcement Matter
- ▣ Paid Leave Pending Investigation
- ▣ Termination
 - Detailed termination letter
- ▣ Post-Termination Hearing
 - Conducted by Jailer Osborne
 - Attorney represented
 - Termination upheld

11

Due Process

Loudermill v. Osborne

- ▣ Pre-termination hearing v. Post-termination hearing
 - The Loudermill U.S. Supreme Court pre-termination hearing process is similar to the Commonwealth's Merit System termination process
 - Both processes are permissible

12

Law Enforcement

KRS 15.520 – Bill of Rights

- ▣ Deputy Sheriffs/ County Police Officers
 - Investigative/Hearing Process for citizen complaints and violations of law enforcement procedures
 - Not applicable to general employment practices
 - Rigorous timeline
 - Specific and regimented

13

Law Enforcement

KRS 70.260-70.273 – Deputy Sheriff Merit Boards

- ▣ Fiscal court created
 - Two members appointed by the Sheriff, two members appointed by the CJE, one member appointed by the deputies
- ▣ Meet for disciplinary matters and at other times
- ▣ Adopt Rules
 - Qualifications
 - Temporary Appointments
 - Advancement
 - Demotion
 - Disciplinary Actions
 - Administrative Procedures
 - Public Hearing procedures
 - Appointment and promotion procedures
- ▣ Political activity restrictions: fundraising, candidacy for office
- ▣ Protection from disciplinary action for not making political campaign contributions
- ▣ Disciplinary action
 - May be taken by the Sheriff with Board appeal rights
 - May be taken by the Board on their initiative

14

Political Activity

KY Const. § 179 prohibits spending public money for a private purpose

- Utilizing county property for political purposes is prohibited
- Employees are prohibited from campaigning while working

Certain positions have political activity restrictions/potential ramifications

- Deputy sheriffs covered by a merit board
- Emergency Management Director
- [Greenwell v. Parsley, 541 F.3d 401, 2008 U.S. App. LEXIS 18722, 2008 FED App. 0332P \(6th Cir.\), 156 Lab. Cas. \(CCH\) P60,667, 28 I.E.R. Cas. \(BNA\) 233](#)

15

Last Steps

Consult With Your County Attorney Prior To Taking Action

Call Your Friends At KACo

Check With Your Insurer

16