

Saving Your Government Money Through Cutting Personnel Costs

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Introduction

Have you ever heard the statement we should “run government like a business?”

The problem with this philosophy is that there are numerous road blocks that government employers have to deal with that businesses in the private sector do not encounter. This course will look at those restrictions and delve into innovative and creative personnel practices that will enable Employers to adapt and reduce personnel costs.

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Public Sector Overview

- Public Sector Employment is NOT Private Sector Employment
 - Public employment is different because public employees simply have more rights and more agencies before whom to seek “review.”
 - In addition, for whatever reason, public employees are simply more aware of their rights under federal and state law.
- Many local governments are facing funding crises.
- Litigiousness of our society is compounded by economic downturn.

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Public Sector Employment

At the Federal Level:

- Age Discrimination in Employment Act
- Americans With Disabilities Act, as amended
- Brady Bill
- Civil Rights Act of 1866
- Civil Rights Act of 1871
- Civil Rights Act of 1964
- Civil Rights Act of 1968
- Civil Rights Remedies for Gender Motivated Violent Crime
- Clean Air Act
- Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA)
- Consumer Credit Protection Act

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Public Sector Employment

- Drug Free Workplace Act of 1988
- Employee Retirement Income Security Act of 1974
- Equal Pay Act of 1963
- Fair Credit Reporting Act
- Fair Labor Standards Act
- Family and Medical Leave Act
- Federal Merit System Standard
- Federal Water Pollution Control Act
- Federal Wiretapping Act
- GINA
- Hatch Act

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Public Sector Employment

- HIPAA (Health Insurance Portability and Accountability Act)
- Immigration Control Reform Act
- Jury System Improvement Act
- Occupational Safety and Health Act
- Older Workers Benefit Protection Act
- Omnibus Transportation Employee Testing Act
- Rehabilitation Act of 1973
- Veterans Reemployment
- Vietnam Era Veterans Readjustment Assistance Act
- Violence Against Women Act of 1994

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Public Sector Employment

At the State Level:

- 3.06 Deputies and Clerks "serve at the pleasure of."
- 9.84 Witness has right to counsel.
- 102.03 Ethics in government, public employees. Complex interaction with R.C. 2921.42. Some nepotism prohibited.
- 102.03(B) Prohibition against revealing confidential information.
- 102.09(E) Appointing authorities are required to furnish each new appointee with a copy of ethics law.
- 117.01 "...Public officials are liable for all public money received or collected by them or by their subordinates under color of office..."
- 117.28 Finding for recovery by state auditor.
- 121.22 Open meeting law. 24 hour notice.
- 124.01-124.57 Classified and Unclassified Employment (State, County, City, limited Township applicability)
- 149.43 Public records law, limited exceptions. Must provide copy on request.
- 153.59 All construction contracts by political subdivisions must have nondiscrimination clause and an affirmative action program.

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Public Sector Employment

At the State Level:

- 153.59 All construction contracts by political subdivisions must have nondiscrimination clause and an affirmative action program.
- 505.491 Township procedure for discipline (police).
- 737.12 Municipal procedure for suspension (police & fire).
- 1333.81 Employee cannot knowingly disclose confidential information.
- 1347 Personal Information Systems, annual report, rights of individuals.
- 1347.05 One person must be named to coordinate system.
- 1347.09 Disputes over information in database.
- 2313.18 A permanent employee may not be discharged for having taken time off for jury duty.
- 2317.02 Physician-patient privilege (this is frequently an issue in ADA and FMLA-related cases).
- 2506 Appeals to common pleas court from adjudications, quasi-judicial proceedings.
- 2711 Arbitration and appeals from arbitration.
- 2716.05 Prohibits discharge based upon a single wage garnishment within a twelve month period.

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Public Sector Employment

- 2744.02(C) Any order denying immunity is immediately appealable.
- 2744.03 Political subdivision tort immunity. Immunity for officials as to state court actions, causes of action.
- 2921.02 Bribery/accepting bribes by public employees prohibited.
- 2921.03 Intimidation of public servants prohibited.
- 2921.05 Retaliation against public servants prohibited.
- 2921.13 Falsification with purpose to mislead public officials prohibited.
- 2921.41 Theft in office by public employees prohibited. Forfeit PERS.
- 2921.42 Unlawful interest on public contract prohibited; applies to civil service employment, nepotism.
- 2921.43 Soliciting improper compensation prohibited.
- 2921.431 Soliciting political contributions from public employees prohibited.
- 2921.44 Dereliction of duty; criminal; bar to reinstatement.
- 2921.45 Public officials, employees criminally liable for deprivations of civil rights.
- 2961.01 Convicted felon cannot hold public office.
- 3517.092 Elected officials cannot solicit or accept contributions from employees
- 3599.05 Employer cannot threaten employee with termination in order to affect his vote in an election; cannot put political fliers in pay envelopes.

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Public Sector Employment

- 3599.06 Employee cannot be discharged for taking a reasonable amount of time off in order to vote.
- 3735 MHA
- 3923.38 (MINI-COBRA) Right to group coverage for six months. Not available unless employee was entitled to U.C. at time of separation.
- 4101.10 Employer duty to respond to inquiries by State Department of Industrial Relations.
- 4101.12 Prohibition against requiring, permitting, or suffering an employee to work in an unsafe place.
- 4101.17 Prohibits age discrimination; not available where employee can go to arbitration.
- 4111.03 State, city, and county employers, and employers with sales gross over \$150,000 per annum, must pay overtime; county comp time outlined.
- 4111.08 Duty to maintain employee records for three years.
- 4111.09 Duty to post regulations.
- 4111.13 Nonretaliation against employee who enforces overtime right.
- 4111.17 Prohibition against discrimination based upon sex, race, color, religion, or national origin in payment of wages (MINI-EQUAL PAY ACT). Merit pay exception.

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Public Sector Employment

- 4112.02 State level Title VII, prohibits discrimination on basis of race, color, religion, sex, national origin, handicap, age, or ancestry (OCRC).
- 4113.21 Employer must pay cost of medical examinations required of applicants for employment.
- 4113.23 Employee is entitled to a copy of any medical report from a work-related examination.
- 4113.52 General "Whistleblower" protection. County application.
- 4113.71 Limited immunity for employee reference checks.
- 4117 Public sector collective bargaining law.
- 4167.13 Unlawful to retaliate against employee who files OSHA charge; separate appeal rights to civil service commission or SPBR.
- 5903.02 Unlawful to fire public employee who is called to military duty.
- 5906 State FMLA - Military Leave

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Public Sector Employment

- **Constitutional Roots Affecting Public Employment**
 - First, Fourth, Fifth, and Fourteenth Amendments to the U.S. Constitution
- **Contractual Roots Affecting Public Employment**
 - Contracts under R.C. 4117 (collective bargaining)
 - (see also R.C. 2711) (arbitration)
 - Individual contracts of employment
 - (see R.C. 737.05, R.C. 3319, R.C. 5126)
 - State and federal grant "contracts"
 - (see 28 CFR §42.301, relating to special requirements under COP grants)
 - Federal Hatch Act requirements

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The Problem

Many local government budgets are decreasing, but the demand for services still exists (or is increasing). Consequently, we must adjust.

A public sector employer's number one expense is "people." That brings us to these questions:

- Why do we have certain personnel systems/policies in place?
- Can we make changes?
- How can we increase efficiencies?

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Some Major Personnel Costs

- Wages
- Insurance
- Leave
- Hiring the "wrong" person
- Promoting efficiencies through use of alternative staff/contracting out
- Best Practices

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Wages

- The time has come to look at what we are paying. We need to be able to justify the wages we pay. Gone is the day of the "rolling 3% increase."
- Best Practices
 - Conduct Wage Surveys (both public and private sector)
 - Establish Compensation Plans with internal and external equity
 - Examine Total Compensation (wage supplements, pension pick-up, insurance, etc.)
 - "Pay-for-Performance" Systems
 - Look at the demographic of your workforce (there may be creative solutions such as a non-pension ERIP)

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Insurance

- As health care costs continue to skyrocket, public sector employers need to look at their options.
- Options
 - Consortiums – spreading the “risk” over more bodies
 - Increasing employee contributions (moving towards the “85/15” split)
 - HSA, HRA, HDHP
 - Spousal carve-outs/penalties
 - Incentive opt-outs
 - Implications of the ACA

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Leave Benefits

- How much flexibility do you have with setting leave benefits?

What type of employer are you?

- County, City, Village, other political subdivision
- Civil Service, At-will
- Are your benefits set by statute?

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Leave Benefits

What leave benefits do we generally have in the public sector? Also, the state auditor recommends you budget for leave expenses, such as:

- Vacation
- Sick Leave
- Personal Leave
- Civil Leave
- Military Leave
- Compensatory Time (breeds more CT or OT in 24/7 operations)

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Leave Benefits

- Do we have options?
 - Reduce accrual rates
 - 4.6 hours to 3.1 hours or the State Model (10 days sick leave, 5 personal days)
 - Allowing the vacation carry-over?
 - Paid Time Off Programs
 - According to a recent survey conducted by the International Public Management Association for Human Resources (IPMA-HR), a growing number of public-sector organizations are turning to integrated paid time off (PTO) programs as one way to do so. Rather than allowing employees to accrue various banks of leave for vacation, illness, and bereavement, employees each have a single block of paid leave that they can use however they want.

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Long-term Liability of Leave Benefits

- Sick Leave Payout
 - Annual Conversions
 - Upon Separation (Do we have to?)
 - Upon Retirement
- Vacation Payout (generally a vested benefit unless stated otherwise)
 - Annual Conversions
 - Upon Separation (Can we limit?)

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Hiring the Wrong Person

- Job Posting/Advertisement
- Interviewing
- Selection
- Training
- Probation/Instructional Period

Do it over again...

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Hiring the Wrong Person

- Hiring and Selection
 - A proper hiring and selection process can streamline all the documentation involved which can sometimes prove to be tedious. Uniform methods can also insulate an employer from possible discrimination claims. Because choosing the “right” candidate is so important in the public sector (hard to get rid of a public employee once they complete a probationary period), it can save money and time on the back end.
- Job Posting Policies – Standard policy for asking candidates to apply for jobs.
- Structured Interviews – Consistent, job-related questions asked to each applicant set (or sub-set).
- Validated Tests and Assessment Centers

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Promoting Efficiency

- The Use of Dual Jobs
 - Do we have FLSA Issues? Weighted Average?
- Use of Independent Contractors
 - Checklist
 - New Forms
 - Pension Systems are checking on you!
- Regionalization/Contracting for Services
 - Authority to contract
 - More pension issues
- Reorganization

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Best Practices

- Practice Point: This begins **BEFORE** an employee is ever hired!
 - “Exception” Log: Allen v. City of Chicago (pending)
 - On the front end.
 - Thurman v. Daimler-Chrysler, 397 F.3d 332 (6th Cir.)
 - Oswald v. BAE Industries, (2012).
 - Going out the door.
 - Cole v. Temple Israel, et al., 2007-Ohio-245 (9th App. Dist.)
 - Intentional Tort Immunity for Public Entities No Longer Exists.
 - Sampson v. Cuyahoga MHA, 131 Ohio St. 3d 418 (2012)
 - George v. Village of Newburgh Heights, (8th App. Dist.)

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Best Practices

- Training
 - Perhaps the most important and overlooked aspect of a sound Human Resource System is training. Proper training can save MONEY and limit our liability!
- Why Train?
 - Educate
 - Increase Efficiency
 - Career Development
 - Mandated (e.g., Discriminatory Harassment, Safety Training, Certifications, Ethics)
 - Legal Defense

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Questions???



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