



Member Owned, Member Driven

FROM HIRING TO FIRING: EMPLOYMENT LAW ESSENTIALS FOR IDAHO'S COUNTIES

Presented by:
Jessica Pollack
ICRMP Risk Manager Legal Counsel



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Hiring Considerations

NEPOTISM

Avoiding Unlawful Nepotism

Idaho Code §18-1359. USING PUBLIC POSITION FOR PERSONAL GAIN.

(4) No person related to a county commissioner by blood or marriage **within the second degree** shall be appointed to any clerkship, office, position, employment or duty within the commissioner's county when the salary, wages, pay or compensation of such appointee or employee is to be paid out of public funds.

(1)....Any public servant who pays out of any public funds under his control...for the payment out of any public fund of the salary, wages, pay, or compensation of any such ineligible person, knowing him to be ineligible, **is guilty of a misdemeanor....**

Avoiding Unlawful Nepotism

Did you catch that? It's a crime.

Idaho Code §18-1360. PENALTIES. Any public servant who violates the provisions of this chapter...shall be guilty of a misdemeanor and may be punished by

A fine of up to \$1,000; and/or

Incarceration for up to one (1) year; plus

May be required to forfeit his office; and

May be ordered to make restitution.



So...What is the Second Degree of Consanguinity?

It depends who you ask!

For elected officials in Idaho, ICRMP recommends you rely on the Attorney General's consanguinity chart. See pg. 15 of the Idaho Ethics in Government manual.

			4 Great Great Grandparent
		4 Great Grand Uncle/Aunt	3 Great Grandparent
	3 Child of Great Uncle/Aunt	3 Great Uncle/Aunt	2 Grandparent
3 Second Cousin	2 Cousin	2 Uncle/Aunt	1 Parent
3 Cousin's Child	2 Nephew/Niece	1 Sibling	1 Person 'A'
3 Grand Nephew/Niece			1 Child
			2 Grandchild
			3 Great Grandchild

NEPOTISM HYPOTHETICALS

Hypothetical 1: You've recently been elected county commissioner, and your son is currently employed by the county as jail deputy. Is your son's job in jeopardy?

No. An employee of a governmental entity holding a position prior to the election of a local government official, who is related within the second degree, shall be entitled to retain his or her position.

Hypothetical 2: You are a sitting county commissioner. The county assessor is hiring an appraiser and would like to hire your daughter who is an experienced appraiser in a neighboring county. Can the county assessor hire your daughter?

Not legally. No person related to you by blood or marriage within the second degree shall be hired for any position within your county when the salary is paid out of public funds.



Hiring Considerations

VETERAN'S PREFERENCE



Veteran's Preference in Idaho

- Idaho law grants veteran's preference to eligible applicants for positions with public employers, including counties.
- Applies to:
 - Qualified veterans & disabled veterans;
 - The widow/widower of preference-eligible veterans so long as they remain unmarried;
 - The spouse of a service-connected disabled veteran if the veteran themselves cannot qualify for public employment due to their disability.

Veteran's Preference in Idaho

Obligations during the hiring process:

1. Give notice in all job announcements of the right to veteran's preference.
Best Practices Tip: Always include a "closing date" on your job announcements.
2. All application forms must ask whether the applicant is claiming the preference.
3. Apply the preference: this usually means *selecting a veteran over other non-veteran applicants who are not more qualified.*
4. If a preference-eligible veteran is not selected, they must be notified of an appeal process.

Veteran's Preference in Idaho

Late Applications

- Certain preference-eligible veterans (those on active duty or disabled) have the right to file a late application under certain circumstances.
- A late application is not allowed if the selection process is no longer active or if the position has been filled.





At-Will Employment in the Public Sector

DUE PROCESS RIGHTS,
PERSONNEL POLICIES, AND
PROBATIONARY PERIODS

At-Will Employment: What it really means



Idaho is an at-will employment state, meaning employees can be terminated at any time for any lawful reason.



Public-sector employees often have additional protections, including constitutional due process rights.

Any “Lawful” Reason

At-will employment does not mean employers may terminate or discipline employees for unlawful reasons. All disciplinary decisions must comply with state and federal laws prohibiting discrimination, harassment, and retaliation.

Examples of unlawful reasons for disciplinary action:

- **Discrimination or harassment** based on protected characteristics, such as race, color, sex, religion, national origin, age, or disability.
- **Retaliation** for reporting fraud, safety violations, government waste, or other protected whistleblower activity.
- **Exercise of statutory rights**, such as requesting a reasonable accommodation or taking FMLA protected leave.

At-Will Employment Hypotheticals

A county road maintenance employee, Alex, has repeatedly arrived late to work over the past two months. His supervisor has spoken with him informally but has not issued any written warnings. After another late arrival on Monday, the supervisor becomes frustrated and terminates Alex the same afternoon, citing Idaho's at-will employment rule. The next day, Alex files a complaint alleging he was actually terminated because he recently requested an ergonomic accommodation for a shoulder injury. He claims that the timing shows the termination was motivated by disability-based discrimination rather than poor attendance.

1. Does at-will employment allow the county to terminate Alex without documentation?
2. What additional steps should the county have taken to avoid risk?

WHEN IN DOUBT, CALL YOUR ATTORNEY

Due Process Protections

Despite the default at-will employment status, county employees have certain due process rights imposed by law.

Liberty Interest: This is a constitutional protection afforded to all employees that protects reputation, good name, honor, and integrity.

Name Clearing Hearings: when an employee is demoted or terminated based on allegations of dishonesty, discrimination, or criminal conduct, they are entitled to a “name clearing” hearing.



At-Will Employment Hypotheticals

A county payroll technician, Morgan, is responsible for entering timecards and processing payroll adjustments. One pay period, several employees report missing overtime. HR discovers the changes were made under Morgan's login late at night from a remote location. When questioned, Morgan denies making the edits and suggests someone may have accessed her workstation. IT confirms the entries came from her credentials but cannot determine whether Morgan made them or whether someone made them from her computer. The county moves to terminate her for violating payroll policies. Morgan fears that the termination letter—stating she was discharged for “apparent falsification of payroll records”—will damage her reputation and future job prospects.

1. Does this situation involve allegations of dishonesty, discrimination, or criminal conduct?
2. Is Morgan entitled to a name-clearing hearing?

WHEN IN DOUBT, CALL YOUR ATTORNEY

WHAT ABOUT YOUR PERSONNEL POLICIES?

The BOCC has the authority to adopt a personnel policy and make updates.

Are you familiar with what is in your policy?

Your personnel policies may significantly alter the default at-will employment relationship or extend additional due process rights.

Due Process Protections Expanded by Policy

Does your handbook provide additional rights?

Property Interest: Does your personnel policy give employees a *reasonable expectation* their employment may only be terminated for good cause? Courts have found this expectation can be created by language in your handbook.

Expanded hearing right: Does your handbook afford the right to a hearing for *all terminations*?

When in doubt, call your attorney!



Policy Hypothetical

Right to a Hearing

Employees have the right to a hearing when facing **discharge, demotion with pay change, or suspension.**

Hearing Procedures

- **Notice:** Employee receives written notice of the charges and the hearing date/time.
- **Hearing Body:** Hearing is conducted before the Board of Commissioners, Director, and relevant department supervisor.
- **Length:** Oral hearing lasts up to one hour, unless extended by the Board.
- **Record:** A record, including an audio recording, will be maintained.
- **Explanation:** Employee is entitled to an explanation of the conduct at issue.
- **Representation:** Employee may have legal counsel at their own expense.
- **Evidence:** Employee may present evidence and rebut the information supporting the proposed action.

Question: what is the problem with this policy?

Progressive Discipline

What is progressive discipline?

- Progressive discipline is an employment practice in which an employer addresses an employee's performance or behavioral problems through a structured sequence of escalating disciplinary measures. The purpose of progressive discipline is to correct misconduct or poor performance by providing notice and an opportunity to improve, rather than proceeding directly to termination.

When is progressive discipline an issue?

- When it's mandatory.

Policy Hypothetical

Misconduct considered punishable by the [County] may take many forms. The rules set forth below are representative. The supervisor need not choose the least severe corrective action but may choose any of the actions listed above, based on the specific incident. Additionally, if the employee has had two or more offenses in any one-year period, dismissal may be considered based on the circumstances.

Question: what is the problem with this policy?

Probationary Periods

Probationary periods are an assessment tool that can be used to evaluate a new employee's skills and conduct.

Probationary policies should:

1. Define the purpose;
2. Define the length;
3. Set clear expectations for performance and conduct;
4. Describe how and when performance will be evaluated; and
5. Clearly state what will happen if the employee does/does not successfully complete probation.



ADA/PWF A Essentials

EMPLOYER OBLIGATIONS

Employer Obligations under the ADA

Reasonable Accommodation: Employers must provide effective accommodations that enable qualified individuals with disabilities to perform the essential functions of their position.

Interactive Process: Employers must engage in a collaborative dialogue with the employee to find an effective accommodation that would not pose an undue hardship.

What is an undue hardship: it depends!

Pregnant Workers Fairness Act

The federal PWFA (effective June 2023) applies to public employers, including counties, with 15 or more employees.

The PWFA requires covered employers to provide reasonable accommodations for employees' known limitations due to pregnancy, childbirth, or related conditions, unless it causes undue hardship.

Note: Be careful about leave as an accommodation.

ADA/PWFA Hypothetical

Your county has a juvenile detention officer who is seven months pregnant. She has continued working with juvenile residents and has not asked for any work adjustments or schedule changes. You are concerned about something happening to the officer or her unborn child. You would like to place her on light duty until the baby is born.

What are your obligations as her employer?

QUESTIONS?

JESSICA POLLACK

RISK MANAGER LEGAL COUNSEL

JPOLLACK@ICRMP.ORG

(208) 246-8227



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Member Owned, Member Driven