

Selected Municipal Employment Issues

Generally

Municipalities are vested with the power to create employment positions and fill them, subject to restrictions in their individual codes, statewide mandates, civil service laws, and the Federal and State constitutions. These limitations vary considerably between and among the different classes of municipalities in the Commonwealth. Often the law provides very specific grants of employment power for a particular class of municipality. Some examples of specific grants include the following: Third class cities are entitled to establish a fire marshal position. A borough council and a board of supervisors of a second class township, upon the request of school directors, may appoint special school crossing guards to direct traffic near schools. Second class township supervisors may employ a roadmaster, who shall do, or direct to be done, maintenance, repairs or construction of township roads.

The “At-Will” Rule

In Pennsylvania, nonunion, non-civil service public employees are employees at-will, unless they are parties to a contract for a defined term or the Legislature has otherwise limited the municipality’s power to discharge them.¹ Furthermore, municipalities generally have not been granted the authority to enter into contracts with employees that would result in the municipalities forfeiting their power to summarily dismiss employees. In other words, a contract of employment may not supersede the rule of at-will employment.² A public employer may generally dismiss an at-will employee at any time, for any reason or for no reason at all, provided that the dismissal does not violate a constitutional protection and is not in contravention with a clear mandate of public policy.

Civil Service Laws

Pennsylvania has civil service systems for certain municipal employees. With regard to municipal police, civil service laws apply in cities, boroughs, towns and first class townships with three or

¹ Certain municipal codes authorize the governing body to create the office of municipal manager or city administrator by permitting the governing body to enter into an employment agreement with the manager for a term of up to two years. The agreement may provide for the terms and conditions of employment and a severance package for the manager, but neither is it a guarantee of employment through the term of the agreement, nor does it confer upon the manager any legal remedy based upon specific performance. *See* Act 566 of 1956 (incorporated town manager office created), §§ 1-2 (53 P.S. §§ 53163-53164); Borough Code, 8 Pa.C.S. §§ 1141-1142; The First Class Township Code, Act 331 of 1931, § 1301-A-1304-A; The Second Class Township Code, Act 69 of 1933, § 1301 (53 P.S. § 66301); The Third Class City Code, 11 Pa.C.S. §§ 112A02-112A03.

² *See Short v. Borough of Lawrenceville*, 548 Pa. 265 (1997). Questions may arise under some home rule charters concerning a municipality’s power to summarily dismiss certain employees. *See Delliponti v. DeAngelis*, 545 Pa. 434 (1996); *Katzenmoyer v. City of Reading*, 158 F.Supp.2d 491 (E.D. Pa. May 21, 2001).

more police officers.³ First class townships, towns and boroughs provide civil service or tenure protection only for police and firefighters. Cities' civil service laws cover a wider group of employees:

Municipal employment outside the police and fire services is governed in Philadelphia by its civil service regulations adopted under the authority of its home rule charter, in Pittsburgh, under the provisions of the second class city laws, in second class A cities, under their statute, and in third class cities, under the provisions of the third class city code. . . . Where a class of municipalities is governed by a police civil service act and also by a civil service statute relating, by its terms, to all employees, the police legislation overrides the general civil service legislation with respect to police matters where both deal with the same subject.⁴

Municipal civil service systems have the following common elements:

- (1) hiring and promotion on merit, often after a competitive examination and creation of a list of eligible candidates;
- (2) protection against dismissal or other adverse employment action except for good cause or budgetary constraints;
- (3) procedural rights prior to most adverse employment action, including a hearing before a civil service commission or the municipal governing body.⁵

Veterans' Preference

Veterans' preference provisions are codified at Title 51 of the Pennsylvania Consolidated Statutes, Sections 7101-7109, and apply to all municipalities for both civil service and non-civil service employment. Veterans receiving an honorable discharge,⁶ the spouses of disabled veterans and qualified widows or widowers of veterans are entitled to certain preferences in hiring. The Pennsylva-

³ All second class townships and, if they have fewer than three police officers, boroughs, towns and first class townships are subject to Act 144 of 1951 (Regulating the Suspension of Police Officers) (53 P.S. § 811 et seq.), which deals only with adverse employment actions and does not regulate hiring.

⁴ 22A Summ. Pa. Jur. 2d, Municipal and Local Law § 10:14 (2009) (citations omitted). The Second Class Township Code has no civil service provisions. In boroughs, townships of the first class and the incorporated town (Bloomsburg), civil service is restricted to police and firefighters. *See* The Borough Code, 8 Pa.C.S., Ch. 11, Subch. J (Civil service for police and fire apparatus operators); The First Class Township Code, §§ 625-650 (Civil Service for Police and Firemen); Act 45 of 1941 (53 P.S. § 53251 et seq.), Act 427 of 1945 (53 P.S. § 53301 et seq.) (civil service for local police officers and paid firefighters, respectively, in towns).

⁵ *Solicitor's Handbook*, 3rd ed., Governor's Center for Local Government Services, Pennsylvania Department of Community and Economic Development, Harrisburg, Pa., 2003, p. 56., *citing Delliponti v. DeAngelis*, 545 Pa. 434 (1996).

⁶ A reservist receiving an honorable discharge from active duty during a conflict, but still obligated as a reservist, qualifies as a "soldier" entitled to veterans' preference under the act. *See Soberick v. Salisbury Tp. Civil Service Com'n*, 874 A.2d 155 (Pa. Cmwlth. 2005).

nia Supreme Court has determined that veterans' preference for purposes of promotion is unconstitutional.⁷ With regard to hiring, eligible applicants who pass civil service appointment tests receive ten points added to their final test score.⁸ If they are among the top three available candidates on an employment certification, they receive mandatory preference in appointment over nonveterans.⁹ Pennsylvania courts have held, however, that employers may deny employment to a veteran who does not have the level of expertise demanded for the position.¹⁰

Other Factors Affecting Municipal Employment

The municipal employer also must be cognizant of other issues when making employment decisions, including military leave legislation, family and medical leave laws, “whistleblower” protection and various constitutional considerations, such as due process and equal protection guarantees, protections against political discrimination and privacy considerations.

⁷ See *Housing Authority of the County of Chester v. Pennsylvania State Civil Service Com'n*, 556 Pa. 621 (1999).

⁸ 51 Pa.C.S. § 7103(a).

⁹ 51 Pa.C.S. § 7104(b); 556 Pa. at 647-648 (1999).

¹⁰ See 556 Pa. at 639 (Pennsylvania Supreme Court restricting its holding in *Brickhouse v. Spring-Ford Area Sch. Dist.*, 540 Pa. 176 (1995) to non-civil service cases).