

CHAPTER XI

PERSONNEL ADMINISTRATION

Gary E. Friedman

INTRODUCTION

Personnel administration in county government is a complicated area, where a host of state and federal laws and regulations impacts the employment relationship. This chapter surveys these employment laws and gives a brief overview of some of the requirements with which county officials should be familiar.

County officials need to understand basically what the law requires; however, this guide will not answer every question or deal with every situation. It is merely a survey and a simplification of a number of complex laws. Employment law is a field ripe for lawsuits, which could result in individual liability, so before making any important decision regarding either a particular employee or county-wide employment practices and policies, county officials should discuss the matter with an attorney who has expertise in labor and employment law.

Of the eighty-two (82) counties in Mississippi, thirty-eight (38) are on the beat system of government, and forty-four (44) are on the unit system. Whether a county operates on the unit or beat system will be an important distinction for personnel administration practices. In unit system counties, state law requires that there be a county administrator to deal with all personnel issues. Furthermore, unit counties are required to adopt formal, written personnel policies.

In the beat system, on the other hand, the individual supervisors may hire, discipline and fire their own employees, and there is no requirement of written personnel policies. In both cases, supervisors should be familiar with the county's personnel policies, but the implementation of these policies is the responsibility of the county administrator in those counties having an administrator. Remember, unit system county administrators and road managers have the authority to do the county's hiring and firing and to make other personnel decisions, and the board should defer to them on specific personnel matters. However, it is up to the county boards of supervisors under both forms of county governments to adopt the broad personnel policies that are to be followed.

For counties operating under the beat system of government, it is strongly recommended that the board of supervisors adopt clear, specific written personnel policies if the county does not already have them. However, once a county has adopted such policies, it must follow them as written; otherwise, the county might be subject to a lawsuit. Also, in beat counties, all supervisors should try for a *consistent* application of personnel policies. County employees will not be happy about being disciplined by their supervisor for activities allowed by another supervisor. A listing of unacceptable behavior that can result in disciplinary action should be included in any personnel handbook. In sum, beat system supervisors *should* adopt clear, uniform, written policies and delegate the implementation of them to a personnel specialist; unit system supervisors *must* do so.

BASIC TERMS OF PERSONNEL POLICIES

In counties operating under the unit system of government, the board of supervisors is required to adopt and maintain a system of countywide personnel administration applicable to all county

employees, other than employees of other elected county officials who are authorized by law to employ their own employees, such as the sheriff, circuit clerk, chancery clerk, coroner and tax collector. These other elected officials with their own employees are still required to adopt personnel policies, and they can have the same policy as that adopted by the board. Any such policies adopted must be filed with the board.⁶¹⁸

The law governing unit system counties goes on to read:

The personnel system shall be implemented and administered by the county administrator. Such personnel system may include, but not be limited to, policies which address the following: hiring and termination of employees, appeal and grievance procedures, leave and holidays, compensation, job classification, training, performance evaluation and maintenance of records. All employees of the county shall be employees of the county as a whole and not of any particular supervisor district. However, any employee which the county administrator is authorized to employ may be terminated at the will and pleasure of the administrator without requiring approval of the board of supervisors. The board of supervisors of each county shall spread upon its minutes all its actions on personnel matters relating to hiring or termination and such other personnel matters deemed appropriate by the board.

The existence of a unified personnel system is one of the criteria utilized by the State Auditor's office to determine whether unit counties are complying with the County Government Reorganization Act and continue to be entitled to state funding.⁶¹⁹ The law also provides that the chancery clerk may be appointed to serve as county administrator.⁶²⁰

Beat system counties are authorized, in their discretion, to hire a person to serve as county administrator.⁶²¹ It is the best course, if at all feasible, for a beat system county to hire a personnel manager or someone with experience in personnel matters to oversee the day-to-day work of hiring, firing and managing employees. This policy can serve to protect county supervisors from individual liability in an employment practice lawsuit, should the county be sued for employment discrimination or any of the other offenses listed in the subsequent sections of this chapter.

As stated above, Mississippi law allows sheriffs, among other elected county officials, to set their own personnel policies and to hire their own deputies, although the funds for the compensation of deputies must be approved by the board as part of the sheriff's budget. Deputies serve at the will and pleasure of the sheriff, and the sheriff sets the wages.⁶²² The salary for the sheriff is set by statute, according to the county's population.⁶²³

⁶¹⁸ *Code*, § 19-2-9.

⁶¹⁹ *Code*, § 19-2-11.

⁶²⁰ *Code*, § 19-4-1.

⁶²¹ *Code*, § 19-4-1.

⁶²² *Code*, §§ 19-25-19, 19-25-13 and 25-3-27.

⁶²³ *Code*, § 25-3-25.

To further the goal of consistency when it comes to employee discipline, the board should always adhere to uniform standards of conduct that apply to all employees. If a rule of conduct is violated, there should be specified ways of dealing with the violations, perhaps with greater and lesser penalties (such as written warnings, varying periods of suspension, and then termination) for different types of infractions. In addition, the board should adopt a uniform grievance procedure for employees who feel they have been treated wrongfully. The implementation of grievance procedures can serve to air employee complaints and head off larger problems in the workplace. Rights to grievance procedures are discussed in a later section; however, if disciplinary or grievance procedures are adopted, they should be followed consistently and explicitly as written, so that an employee will not be able to complain he was denied the full hearing to which he was entitled. When a decision is made to terminate an employee, the board must note such termination upon its minutes, even if all the board does is to accept the recommendation of the county administrator or personnel manager.⁶²⁴

Supervisors also should be aware of various kinds of record keeping requirements. It is important to maintain personnel files on every employee and also to keep files on job applicants. You can draw from this applicant file for future hiring, and such information may be needed to show that the county does not discriminate in employment. For this reason, the applications of rejected job seekers should be retained for at least three (3) years. Furthermore, various government entities, such as the Department of Labor's Wage and Hour Board and Equal Employment Opportunity Commission, require that certain records be kept for county personnel.

Boards of supervisors may adopt sick leave and vacation policies for their employees, as long as these policies are consistent with state law.⁶²⁵ State law sets out certain holidays, and other holidays may be proclaimed by order of the Governor. Counties may, in their discretion, choose to give employees a day off on these extra days decreed by the Governor.⁶²⁶

MISSISSIPPI EMPLOYMENT LAW

At-Will Employment

Mississippi is an "at-will" employment state. Thus, an employer in Mississippi can fire an employee for a good reason, a bad reason, or no reason at all. This principle does not, however, allow you to ignore federal law. There are important federal laws which prohibit discrimination in hiring and firing, and employees commonly sue their employers under these laws.

Even under Mississippi law, you cannot fire someone for no reason if to do so will breach a contract of employment with that person. The Mississippi Supreme Court has held that a personnel handbook or similar document may be an *implied contract* of employment if certain conditions are met.⁶²⁷ For this reason, it is important to have a *disclaimer* at the beginning of your personnel manual which states that the manual does not operate as a contract of employment.

⁶²⁴ Code, § 19-2-9.

⁶²⁵ Code, § 19-3-63.

⁶²⁶ Code, § 25-1-99.

⁶²⁷ *Bobbitt v. Orchard, Ltd.*, 603 So.2d 356 (Miss. 1992).

Another limitation on the employment-at-will doctrine in Mississippi is the “public policy exception.” The state Supreme Court has said that an employer cannot fire an employee in retaliation for that employee having refused to do something illegal.⁶²⁸ A good example of this exception to employment at will is the case of the employer who instructed his employee to use unsafe and illegal amounts of a certain hazardous chemical. When the employee refused to follow these instructions, his employer fired him. The employee sued and won because the Supreme Court said it was against the state’s public policy to fire someone for refusing to do something illegal. So far, the public policy exception has been limited in its application; however, the Supreme Court might choose to expand upon it in the future. In general, it is illegal to fire someone for doing something that person has a legal right to do (like file an EEOC complaint, or support a certain political party).

In addition to the protections offered by the employment-at-will doctrine, supervisors are also shielded from liability by state-official immunity, which allows a supervisor to be held liable only when he acts substantially outside of his authority, or when he commits an intentional tort (such as assault and battery, slander, or intentional infliction of emotional distress).⁶²⁹ Generally, county employment decisions will fall within the scope of a supervisor’s authority and will not amount to intentional torts.

Workers’ Compensation

County employees are covered by Worker’s Compensation if they are injured on the job. It is important for all counties to have in place adequate safety procedures and training to minimize the risk of on-the-job injuries. Should an employee be injured at work, the county’s Worker’s Compensation insurance will compensate the eligible employee for his injury.

Unemployment Compensation

The Mississippi Employment Security Commission (MESC) is the state’s “unemployment office.” When an employee is terminated from his employment, he can apply for unemployment benefits with the MESC. However, no employee may receive benefits if, among other reasons, he voluntarily left the county’s employ or was terminated for misconduct.⁶³⁰ Misconduct is defined by the MESC as:

[C]onduct evincing such willful and wanton disregard of the employer’s interest as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect from his employee. Also, carelessness and negligence of such a degree, or recurrence thereof, as to manifest culpability, wrongful intent or evil design, and showing an intentional or substantial disregard of the employer’s interest or of the employee’s duties and obligations to his employer, came within the term. Mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, or inadvertences and ordinary negligence in isolated incidents, and good faith errors in

⁶²⁸*McArn v. Allied-Bruce Terminix Co., Inc.*, 626 So.2d 603 (Miss. 1993).

⁶²⁹*Code*, § 11-46-1 *et seq.*

⁶³⁰*Code*, § 71-5-513.

judgment or discretion were not considered “misconduct” within the meaning of the [S]tatute.⁶³¹

Garnishments and Child Support

Another obligation imposed upon employers by state law is the execution of writs of garnishment. Following proper service upon the chancery clerk, the sheriff, or in the case of county school employees, upon the school superintendent, of a writ of garnishment,⁶³² the county *must* withhold from an employee’s wages “the nonexempt percentage of disposable earnings” for the payment of a judgment or other debt.⁶³³ State law also requires that an employee’s wages or other payments for delinquent child support payments be withheld, should a proper order of withholding be served upon the county.⁶³⁴ The laws and procedures concerning garnishments and child support payments can be complex, and are areas with which the county’s payroll officer should be familiar. Federal law prohibits employers from discharging an employee because his earnings have been garnished for any one debt.⁶³⁵

Nepotism

The board should be aware that state law specifically forbids nepotism, that is, hiring one’s relatives.⁶³⁶ The statute prohibits the employment “as an officer, clerk, stenographer, deputy or assistant” any person related by blood or marriage within the third degree. Relatives within the third degree are parents, children, spouses, grandparents, aunts and uncles, siblings, and cousins, and these same relatives by marriage. If, however, you have relatives who were employed by the county *prior* to your having been elected supervisor, they may continue their county employment.

FEDERAL EMPLOYMENT LAW

Title VII and the Civil Rights Act of 1991

This federal law prohibits discrimination in employment based on race, color, religion, sex, pregnancy or national origin.⁶³⁷ A board of supervisors should inform employees and job applicants that the county is an “equal opportunity employer” and does not discriminate on any unlawful basis. An effective notice of nondiscriminatory personnel policies might read as follows:

⁶³¹*Shannon Eng’g and Constr. v. Miss. Employment Sec. Comm’n*, 549 So. 2d 446, 448-49 (Miss. 1989); *Wheeler v. Arriola*, 408 So. 2d 1381, 1383 (Miss. 1982).

⁶³²*Code*, § 11-35-11.

⁶³³*Code*, § 11-35-23.

⁶³⁴*Code*, § 93-11-101 *et seq.*

⁶³⁵15 U.S.C. § 1674(a).

⁶³⁶*Code*, § 25-1-53.

⁶³⁷42 U.S.C. § 2000e *et seq.*

It is the policy of the county to provide equal opportunity in employment to all employees and applicants for employment. There will be no discrimination against any employee because of race, creed, color, religion, national origin, sex, age, veteran status, or disability.

Further, counties may be sued for racial discrimination under 42 U.S.C. § 1981 (referred to as “Section 1981”). This law forbids racial discrimination in the “making and enforcing” of contracts. This clause includes the making of contracts for employment.

Title VII’s provisions against sex discrimination also include sexual harassment.⁶³⁸ Counties are encouraged to develop and publish a clear policy regarding sexual harassment and to make it known to all county employees. There are two kinds of sexual harassment claims – quid pro quo and hostile environment. Quid pro quo sexual harassment occurs when an employee demands sexual favors from another employee in return for job benefits, or threatens an employee with a job detriment for refusing sexual favors. Hostile environment sexual harassment occurs when the work environment becomes sexually offensive (through inappropriate remarks, innuendo, physical contact, or the like) so that it interferes with an employee’s work.

ADEA (Age Discrimination in Employment Act)

This law prohibits an employer from firing or otherwise taking adverse employment action against a person because that person is over forty (40) years of age. It also prohibits discrimination against an applicant for employment because of that applicant’s age.⁶³⁹ The ADEA also forbids retaliation against an employee or applicant who makes an age discrimination charge. Further, job advertisements that make any reference to age are prohibited.

ADA (Americans with Disabilities Act)

This law prohibits discrimination in employment against an otherwise qualified individual based on that individual’s disability.⁶⁴⁰ A disability is defined as “a physical or mental impairment which substantially limits one of more major life activities.”⁶⁴¹ These “major life activities” include performing manual tasks, walking, seeing, hearing, speaking, breathing, and working. Counties must make reasonable accommodations to cope with such disabilities, as long as the person with the disability is otherwise qualified to do the job, but no accommodation need be made if to do so will constitute an “undue hardship” for the county.⁶⁴² Disabled persons in the community also cannot be discriminated against in the provision of public services and accommodations.⁶⁴³

⁶³⁸29 C.F.R. § 1604.11(a).

⁶³⁹29 U.S.C. § 623 *et seq.*

⁶⁴⁰42 U.S.C. § 12101 *et seq.*

⁶⁴¹42 U.S.C. § 12102(2)(A).

⁶⁴²42 U.S.C. § 12112(b)(5)(A).

⁶⁴³42 U.S.C. § 12131 *et seq.*

FLSA (Fair Labor Standards Act)

This law requires that workers be paid the federal minimum wage for forty (40) hours per week of work, and one and one half times that wage for every hour over forty (40) worked per work week.⁶⁴⁴ There are many exceptions, or exemptions, to this law, however. The most widely used exemptions are for professional, administrative, or executive employees who may be paid on a salary basis, without regard to hours worked.⁶⁴⁵ The rules and regulations used by the Department of Labor to determine whether a particular employee will fall within the professional, administrative, or executive category are predicated on that employee's *actual job duties and functions*, not on the job title assigned to that employee.

In addition to the professional or administrative exception, there are many other categories of employees excluded from the Act, including elected officials, inmates, certain agricultural workers, and volunteers who provide service for free.⁶⁴⁶

Counties also have the option of offering employees compensatory (or "comp") time. "Comp" time allows employees to receive one and one half (1½) hours of paid time off for every hour over forty (40) worked in a week.⁶⁴⁷ However, any agreement regarding comp time must be worked out in advance of employment between the employee and the county.

There is a special provision of the Fair Labor Standards Act, commonly referred to as "7(k)," to govern law enforcement personnel, so work time for sheriff's department personnel (deputies and jailers) can be calculated differently from other employees.⁶⁴⁸ If a sheriff's department employee meets the statutory definition of an "employee engaged in law enforcement activities" (for example, is a trained, uniformed or plain clothes law enforcement officer with the power of arrest), then that employee's work period may be calculated for up to twenty-eight (28) consecutive days, and no overtime compensation will be required until the number of hours worked exceeds the number of hours which bears the same relationship to 171 hours as the number of days in the work period bears to twenty-eight (28) days. (Thus, no overtime is due for a 28-day work period if the hours worked are fewer than 171.)

The Equal Pay Act, an amendment to the Fair Labor Standards Act, prohibits discrimination on the basis of sex in regards to wages paid for jobs which require equal skill, effort, and responsibility and which are performed under similar working conditions.⁶⁴⁹

FMLA (Family and Medical Leave Act)

Employees must be offered up to twelve (12) weeks of unpaid leave time per year in certain situations, such as the birth or adoption of a child, to care for a seriously ill child, parent or

⁶⁴⁴29 U.S.C. § 201 *et seq.*

⁶⁴⁵29 U.S.C. § 213(a)(1).

⁶⁴⁶29 U.S.C. §213(a)(2)-(22).

⁶⁴⁷29 U.S.C. § 207(o).

⁶⁴⁸29 C.F.R. § 553.211.

⁶⁴⁹29 U.S.C. § 206(d)(1).

spouse, or for the employee's own serious health condition.⁶⁵⁰ Only employees who have worked for the county for at least twelve (12) months, and who have worked at least 1250 hours during that twelve month period are eligible to take FMLA leave. When these employees return from leave, they must be offered the same or a substantially similar position, and it is unlawful to discriminate or retaliate against an employee for exercising his rights to such leave.

Military leave

The Uniformed Services Employment and Re-Employment Rights Act of 1994 (USERRA) prohibits employers from discriminating against individuals because of past, present, or future membership in a uniformed service.⁶⁵¹ In addition, USERRA requires employers to promptly reemploy returning military service personnel in their former positions after absences taken for military training or service, with certain exceptions and special provisions based on the length of the absence.⁶⁵²

Mississippi law also prohibits employment discrimination against members or former members of the Armed Services or Reserve branches.⁶⁵³ Furthermore, Mississippi law requires counties to pay an employee for the first fifteen (15) days of absence from county employment in each calendar year to serve in a Reserve branch of the United States Armed Forces. If the leave exceeds fifteen days, it shall be without loss of seniority, annual leave or efficiency rating, and the employee is protected from discharge without cause for one (1) year.⁶⁵⁴

The Immigration Reform Act

It is unlawful for a county to employ, recruit for employment, or continue to employ a person known to be an illegal alien.⁶⁵⁵ All employers are required by federal law to take steps to ensure they do not hire any such person. The county must therefore verify, by reviewing specified documents provided by prospective employees, that all new hires are eligible for employment in the United States. These documents must be reviewed, affidavits signed as to their apparent genuineness, and a form I-9 submitted to the Immigration Naturalization Service.

COBRA (The Consolidated Omnibus Budget Reconciliation Act)

Under certain circumstances, an employee or the beneficiary of an employee may continue coverage under the county's group health insurance plan for up to eighteen (18) months after the termination of employment (or another event causing loss of benefits, such as the death of the covered employee, a divorce from the covered employee, or the child of the covered employee ceasing to be a dependent); however, the cost of continuing these benefits is the responsibility of

⁶⁵⁰29 U.S.C. § 2612.

⁶⁵¹38 U.S.C. § 4301 *et seq.*

⁶⁵²38 U.S.C. § 4313.

⁶⁵³*Code*, § 33-1-15.

⁶⁵⁴*Code*, § 33-1-21(a).

⁶⁵⁵8 U.S.C. § 1324A(a)(1).

the employee.⁶⁵⁶ The employer can charge the employee up to 102% of the amount of premiums for a continuation of coverage.⁶⁵⁷ This extra two percent (2%) is intended to cover administrative costs. COBRA also requires that notice be given to qualified employees and beneficiaries of their right to continue insurance coverage after termination.⁶⁵⁸

HIPAA

As of April 14, 2003, a federal law called “HIPAA” protects the privacy of health information (called “PHI” or “protected health information”) that is developed and maintained by health care providers, employer/plan sponsors, and health care clearinghouses.⁶⁵⁹ An employer that is not a healthcare provider or health care clearinghouse will typically use protected health information to administer its health plan. Among other restrictions and requirements, under the new law, limitations are placed on the manner in which protected health information can be stored, the persons who can have access to protected health information, and the purposes for which the information can be used and disclosed.

HIPAA privacy compliance is mandated, in most circumstances, by April 14, 2003. In order to insure compliance, employers should (1) have their plans reviewed by legal counsel, and amended as appropriate; (2) implement policies and procedures as required by HIPAA; (3) execute all necessary agreements, including all business associate agreements; (4) provide all required notices and certifications; and (5) train employees with access to protected health information.

Generally, government-sponsored plans must comply with all of the provisions of HIPAA. The plan sponsor of a non-federal governmental plan, such as a state or local government employer, however, may elect to be exempted from any or all of the following requirements: (1) limitations on pre-existing condition exclusion periods, (2) special enrollment periods for individuals (and dependents) losing other coverage, (3) prohibitions against discriminating against individual participants and beneficiaries based on health status, (4) standards relating to benefits for mothers and newborns, and (5) parity in the application of certain limits to mental health benefits.⁶⁶⁰ However, even though a governmental employer may opt out of many of HIPAA’s substantive requirements, it still must provide coverage certificates to individuals when they lose coverage. So, governmental employers should notify its employees of any discretionary decisions concerning HIPAA.

The United States Constitution

42 U.S.C. § 1983 (referred to as “Section 1983”) gives citizens a right to sue a government entity they allege has violated their Constitutional or other federal rights. The First, Fourth and Fourteenth Amendments establish certain Constitutional rights having bearing on the employment relationship.

⁶⁵⁶29 U.S.C. § 1162(2)(A)(i).

⁶⁵⁷29 U.S.C. § 1162(3)(A).

⁶⁵⁸29 U.S.C. § 1166.

⁶⁵⁹45 C.F.R. § 160, 164.

⁶⁶⁰29 U.S.C. § 1181, *et seq.*

Under the First Amendment, county employees have a constitutional right to free speech, as do all U.S. citizens. Thus, county employees have a right to criticize county government. While the county can require loyalty and dedication to the job, no employee generally can be terminated or treated unfavorably in his employment for criticizing the county or its officials.

A related problem that can arise with government employees occurs when county employees express a political (or even religious) point of view that is different from your own. It would be a violation of the law for a supervisor to fire or discipline an employee for expressing his political point of view. However, you may require that county employees refrain from such political expressions during working hours.

Another freedom guaranteed by the First Amendment is the freedom of association. In most contexts, this means the right to organize labor unions; however, county governments are excluded from the provisions of the National Labor Relations Act. Therefore, the county has no legally imposed duty to recognize and bargain with any union of county employees. Further, Mississippi law prohibits labor strikes by public employees.⁶⁶¹

The Fourth Amendment prohibits unreasonable searches and seizures. In the employment area, this amendment most often comes into play regarding drug testing. Drug testing is addressed in a later section of this chapter. However, the Fourth Amendment's guarantees against unreasonable search and seizure would also protect employees from having their lockers, and possibly their desks or locked file cabinets, searched unless there was a valid reason for the search, such as the need to retrieve county documents from the desk or file cabinet.⁶⁶² The first question courts ask to determine whether a county official has violated an employee's Fourth Amendment rights is whether the employee has a "reasonable expectation of privacy" in the area that was searched. Then the courts will look into whether the search that was conducted was reasonable under the circumstances.

The Fourteenth Amendment (along with the Fifth Amendment) contains a "due process" clause. Basically, no government entity, such as a county, can deprive a U.S. citizen of a liberty or property interest without due process of law. In the county personnel area, the concept of a property interest applies when an employee with a contract of employment (or an implied contract, such as a personnel manual which requires "cause" for termination) is terminated. To terminate a public employee with a protectable property interest in his employment, the employee must be given *notice* of the adverse employment action to be taken and an *opportunity* to have a hearing to present his side of the story.

School teachers have special protections under the Mississippi School Employment Procedures Act.⁶⁶³ This law affords teachers due process rights to hearings and other procedures which the courts have held endows school teachers in Mississippi with protectable property interests in their jobs. If these procedures are not followed specifically, then teachers can sue for reinstatement or back pay.

Public employees can bring suit for deprivation of their Constitutional right to liberty by alleging defamation. For instance, if an employee is falsely accused of misconduct on the job, and his

⁶⁶¹ *Code*, § 25-1-105.

⁶⁶² *O'Connor v. Ortega*, 480 U.S. 709, 107 S.Ct. 1492 (1987).

⁶⁶³ *Code*, § 37-9-101 *et seq.*

reputation in the community is impaired, he can file suit against the county alleging deprivation of his liberty. Courts then inquire whether a “stigma” has been placed on the employee so that he is no longer free to associate in the community or take advantage of other employment opportunities. If an employee claims he has been deprived of a liberty interest through such a defamation, then he must be granted a hearing upon request to refute the charges and clear his good name.

Drug Testing and the DOT

The Fourth Amendment gives United States citizens the right to privacy, and this impacts a public employer’s rights to conduct general drug testing of employees or applicants for county jobs. There are certain exceptions to the rule against random drug testing, including the exception for law enforcement personnel who carry firearms and employees involved in drug interdiction. Department of Transportation (DOT) regulations require employers to randomly drug test those employees having a commercial driver’s license.⁶⁶⁴ For county governments, this will include school bus and truck drivers. These employees may be randomly drug tested, as long as DOT regulations are followed. The regulations can be quite complex, allowing for the testing of a fluctuating number of employees, to be not fewer than twenty-five percent (25%) of the workforce or greater than fifty percent (50%). Another DOT regulation allows for drug testing of employees who will be working around gas or hazardous chemical pipelines. In the drug testing area particularly, because of the complexity of the laws, supervisors should be cautioned to consult legal counsel before implementing any drug testing policy. Otherwise, county employees could sue for invasion of privacy rights.

This being said, however, all counties should adopt and publish a clear policy regarding a drug-free workplace. Certain federal grants require that counties have drug-free workplace policies before grant money can be distributed. Mississippi state law also provides for drug testing employees and job applicants.⁶⁶⁵

⁶⁶⁴49 U.S.C. §§ 31136, 31302 *et seq.*, and 31502 (and the regulations thereunder).

⁶⁶⁵*Code*, § 71-7-1 *et seq.*