

LEGAL GUIDE FOR LAWS AFFECTING TEXAS PEACE OFFICERS

Prepared by TMPA General Counsel, Randy Doubrava, 1-800-848-2088, version 02.08.10

1.0 CIVIL SERVICE

MUNICIPAL CIVIL SERVICE. LGC 143

- If perform temporary duties of higher position entitled to base pay of the higher position. LGC 143.038
- All officers in same classification entitled to same base pay. LGC 143.041
- Sick leave – accumulation, use, and paid on termination. LGC 143.045
- Vacation leave – minimum of 15 working days per year. LGC 143.046
- Military leave of absence. LGC 143.072
- Line of duty injury – leave with full pay required for up to 1 year. LGC 143.073
- Physical and Mental fitness. LGC 143.081
- Can't engage in political activities while in uniform or on-duty, otherwise political activity cannot be restricted, and can't be compelled to support or provide a service to a political candidate. LCG 143.086
- Personnel Files – if complaint unsustainable, then not subject to open records request. LGC 143.089

COUNTY CIVIL SERVICE. LGC 158.001-015

SHERIFF'S CIVIL SERVICE. LGC 158.031 et seq. (see also 158.0025)

2.0 CIVIL SUITS AGAINST OFFICERS

DUTY TO DEFEND

- Duty to pay for defense of civil suits against municipal peace officer. LGC 180.002
- Duty to defend off-duty law enforcement conduct (see *Harris County v. Gibbons*, 150 SW 3d 877 (2004 - Houston 14th dist))
- County has duty to defend its employees. LGC 157.901
- Duty to defend by special purpose district. LGC 180.002

TORT CLAIMS

- State tort law claims against both officer and political subdivision, officer should be dismissed. TX Civ. Rem. Code 101.106(a)

3.0 COMPENSATION, OVERTIME, BENEFITS, LEAVE & WORKING CONDITIONS

FLSA

- Exemption from overtime requirements if less than 5 full time employees. 29 US Code 213(b)(20)
- Officers can be forced to take comp time. 29 USC 207; *Christenson v. Harris County*, 529 US 576 (2000)

HOURS WORKED/OVERTIME UNDER STATE LAW

- Hours worked for peace officers limited to 48 in a county of 239,000 to 242,000 population, except in an emergency. LGC 180.003
- Hours worked limited to 40 for all peace officers in municipality of over 10,000 population, except in an emergency – LGC 142.0015
- Comp time and overtime for City with population over 10,000 – LGC 142.0016
- Comp time may only be used when both officer and city agree time may be used. LGC 142.0016(c).
- Counties over 1 MM. have 40 hour work week, except emergencies. LGC157.022
- City over 25,000 limited to 6 day work week, except emergency. LGC 142.0013

TESTIFYING TIME

- City must pay officer required to testify in civil, criminal, or administrative proceedings. LCG 142.009

LEAVE

- Municipality greater than 30,000, gets 15 vacation days a year. LGC 142.0013
- Municipal Officers must receive same Holidays and Vacation days as other municipal employees –LGC 142.0013
- Municipality that has Meet and Confer under LGC 143.301 et seq, officer entitled to be paid for sick leave up to 720 hrs upon ending of employment

COUNTY OFFICERS' WORKING CONDITIONS AND BENEFITS – LGC 157

- County greater than 75,000 shall classify all Sheriff department's positions and include duties and pay. LGC 152.071
- Sheriff's department member who performs duties of a particular classification are to be paid salary specified for that position. LGC 152.071(b)

PETITION TO INCREASE SALARIES

- Petition to increase officer salaries in municipalities greater than 10,000. LGC 141.034
- Petition to increase Sheriff deputies salaries in counties of more than 25,000. LGC 152.072

CONTRACT CLAIMS FOR WAGES OR BENEFITS ACCRUED – see LGC 271.151 et seq. for waiver of immunity for city, ISD, junior college district, or special purpose district

PROPERTY RIGHT TO EMPLOYMENT. TX Gov Code 614

TORT CLAIMS for defamation or invasion of privacy

4.0 CONTRACT BARGAINING

COLLECTIVE BARGAINING – LGC 174

- A city's charter may be amended to require the city to submit to binding interest arbitration in case of impasse, upon request by the exclusive bargaining agent. *See City of Port Arthur v. International Association of Fire Fighters, Local 397*, 807 S.W.2d 894 (Tex. App. – Beaumont 1991, writ denied).
- Duty to bargain in good faith
- A state or local civil service provision prevails over a collective bargaining contract under this chapter unless the collective bargaining contract specifically provides otherwise. LGC 174.006
- An association shall provide written notice at least 120 days before date on which current fiscal operating budget ends if compensation or other financial issue will be addressed. LGC 174.107

MEET AND CONFER

- **Municipalities greater than 50,000**, adopted 143, or officer not covered by collective bargaining agreement where such agreement exists. LGC142.051
 - While Meet and Confer Agreement in effect, cannot petition for Civil Service under LGC 143 or collective bargaining under LGC 174. LGC 142.059
 - The Meet and Confer agreement preempts any conflicting state statutes, local ordinances, executive orders, civil service provisions, or rules adopted by the head of the law enforcement agency or municipality. LGC 142.067
- **Municipalities greater than 1.5 million**. LGC 143.351, LGC 143 (Sub Chap. J)
- **Municipality greater than 460,000** that has city manager form of government. LGC 143.301; LGC 143 Sub Chap I.
 - The Meet and Confer agreement preempts any conflicting state statutes, local ordinances, executive orders, civil service provisions, or rules. LGC 143.307

- Municipality that has Meet and Confer under 143.301 et seq, officer entitled to be paid for sick leave up to 720 hrs upon end of employment. LGC 143.3015(E).
- LGC143.3015 contains provisions on accumulation of sick leave, vacation and holidays.
- LGC 143.312 contains investigation procedures and rights of officers for a city that has 143.301 Meet and Confer, including right to complaint, 48 hrs notice, interrogation can't be unreasonably long or the officer threatened, right to have investigation conducted by person who was not involved and not final decision maker.

WRITTEN COMPLAINT REQUIREMENT in Gov C 614.023 does not apply if meet and confer agreement under 143, or collective bargaining agreement under 174, has provisions related to investigation of and disciplinary action from a complaint. Gov C 614.021(b)

NAT'L LABOR RELATIONS ACT (does not apply to public employees). 29 USC 7

5.0 EMPLOYMENT LAW ISSUES, DISCRIMINATION & RETALIATION

UNION MEMBERSHIP

- Public employer can't deny employment based on membership in union. Gov C 617.004
- Right to work may not be denied because of labor union membership, and employee is entitled to be free from threats, force, intimidation or coercion; a person is liable for damages for a violation of subchapter. Labor C 101.301
- Right to work may not be denied or infringed on. Labor C 101.003

PREGNANCY

- Must assign to light duty if available. LGC 180.004 (applies to municipalities and counties only)
- Pregnancy Discrimination Act prohibits discrimination based on pregnancy. 42 USC 2000e (k)

WHISTLEBLOWER statute: Gov Code 554

WORKER'S COMPENSATION statute prohibits retaliation for filing worker's compensation claim. TX Labor C 451.001(1))

AGE DISCRIMINATION

- Age Discrimination in Employment Act (ADEA). 29 USC 621-634
- TX Commission on Human Rights Act. TX Labor C 21.051-21.061

SEX OR GENDER DISCRIMINATION

- Federal Law Title VII. 42 USC 2000 et seq.

- Equal Pay Act. 29 USC 206
- TX Commission on Human Rights Act. TX Labor C 21.001-21.556
- TX Public Employment Equal Pay Law. Gov C 659.001
- TX Public Servant Sexual Harassment Law. TX Penal C 39.03
- TX Constitution mandates non-discrimination with regard to sex. TX Const. Art. I, 3(a)

RACE DISCRIMINATION prohibited:

- Federal Title VII. 42 USC 2000e 2(a)(1)
- Texas - TX Labor C 21.051
- Texas Constitution - TX Const. Art. I, 3(a)

DISABILITY DISCRIMINATION

- Americans with Disabilities Act (ADA). 42 USC 12101-12213
- The Rehabilitation Act of 1973. 29 USC 791-794(e)
- TX Commission on Human Rights Act. TX Labor C 21.00-21.556

FAMILY MEDICAL LEAVE ACT. 29 USC 2601 to 2654

DEFAMATION

- Employer has immunity for statements made to prospective employers concerning job performance, unless acts with malice. TX Labor C. 103.004

6.0 GOVERNMENTAL IMMUNITY

WAIVER

- Waived for certain claims under LGC 141, 142, 143 or for municipal charter civil service. LGC180.006
- Waived for breach of written contract claims against municipality, ISD, and special purpose district. LGC 271.151 et seq.; *Tooker v. City of Mexia*, 197 SW 3d 325 (Tex 2006) (waived as to liability)

7.0 MILITARY SERVICE

- Leave of absence and reinstatement for military duty. Gov C 431.005-431.006
- Re-employment following military service. Gov C 613.001 et seq.
- Discrimination based on military service prohibited. 38 USC 4311 and 5 CFR 353

8.0 OFFICER'S RIGHTS

WRITTEN COMPLAINT and investigation required before disciplinary action can be taken. Gov C 614.023

- Gov C 614.023 does not apply if meet and confer agreement under 143, or collective bargaining agreement under 174, has provisions related to investigation of and disciplinary action from a complaint. Gov C 614.021(b)

POLYGRAPH EXAMINATIONS

- Officer not required to take polygraph unless 1) complainant takes a polygraph, or 2) extraordinary circumstances and integrity at issue. LGC 614.061
- Confidentiality of polygraph results. Occupations C 1303.306
- Employee Polygraph Protection Act of 1988; protects privacy interests of employees who are subject to polygraph testing and prohibits retaliation for refusal to take a polygraph - 29 USC 2001-2009
- DPS Officers' promotions or demotions must be based on merit; can't be disciplined for refusing to take a polygraph; can't be fired without just cause - Gov C 411.007

FIRST AMENDMENT

- Freedom of speech provides protection from an adverse employment action if the employee is speaking "as a citizen" and the speech involved is a matter of public concern and the interest in commenting on matters of public concern outweighs the employer's interest in promoting self efficiency. See *Modica v. Taylor*, 465 F3d 174, 179-80, 5th Cir. 2006). No first amendment protection if speech is in the course of the employee's job (made pursuant to official duties). *Garcetti v. Ceballos*, 547 U.S. 410 (2006).
- First Amendment protects against termination for political purposes (see *Brady v. Fort Bend County*, 58 F. 3d 173 (5th Cir. 1995))

GARRITY IMMUNITY RULE

- Officers' right to be free from compulsory self incrimination. Before an agency can discipline an officer for refusing to answer questions, the officer must be ordered to answer questions as a condition of employment and the questions must be specifically, directly, and narrowly related to the officer's duties (including related off-duty conduct), and the officer must be advised that the officer's answers will not be used in a criminal proceedings. (*Garrity v. New Jersey*, 385 U.S. 493 (1967)); (*Gardner v. Broderick*, 392 U.S. 273 (1968)).

WEINGARTEN RULE

- (*National Labor Relations Board v. J. Weingarten*, 420 U.S. 251 (1975)) Employee entitled to representation in disciplinary interview if reasonable belief that disciplinary action will result. Note case was decided under National Labor Relations Act, which does not apply to public employees in Texas. No Texas case decision granting or denying Texas public employees, who are members of a union, similar rights under Texas law. Practice note: consider making a written request for a representative to be present so a decision may be made later on whether to challenge a denial and create new Texas law.

REPRESENTATION IN APPEAL

- *Sayre v Mullins*, 681 SW2nd 25, (TEX 1984): public employee has right to be represented by an attorney during a grievance proceeding (appeal).

SEARCH AND SEIZURE of Officer's PERSONAL PROPERTY by agency:

- Fourth Amendment prohibits unreasonable searches and seizures. A balancing test is used to balance individual's privacy interest against the government's interest. (*O'Connor v. Ortega*, 480 U.S. 709, 107 S. Ct 1492 (1987))

RIGHT TO PRIVACY

- The Fourteenth Amendment protects an individual's right to privacy, including protection from disclosure of confidential information. (see discussion in *Jackson v. Singh*, U.S. D.C., Southern Dist. Texas, 2007 WL 2818322)

PROPERTY INTEREST in Job:

- Due process (Fifth Amendment) can be created by statute, CBA, city ordinances, or civil service rules
- TX Gov Code 614 has been held to create property right

LIBERTY INTEREST

- Due process right (Fifth Amendment) can arise when reason given for termination is false and defamatory and renders officer unemployable as a law enforcement officer (i.e. theft, untruthfulness, an affair, a crime, sex in custody)

LGC 143.301 MEET AND CONFER

- LGC 143.312 contains investigation procedures and rights of officers for a city that has 143.301 Meet and Confer, including right to complaint, 48 hrs notice, interrogation can't be unreasonably long or the officer threatened, right to have investigation conducted by person who was not involved and not final decision maker.

9.0 OPEN RECORDS AND OPEN MEETINGS

Open Records. Gov C 552

Open Meetings (must post notice of personnel decisions, and employee is entitled to request that it be heard in open session). Gov C 551

10.0 PRIVATE INSTITUTIONS OF HIGHER EDUCATION

Powers of private university police. Educ. C 51.212

Authority to enter into mutual assistance agreements. Educ. C 51.2125

Appeal of discipline to hearing examiner. Educ. C 51.2126

11.0 MISCELLANEOUS

No ticket quotas. Trans. C 720.002

Extra jobs - Private Security Act; must be a full time paid officer to come under exemption; Private Security Bureau of DPS enforces this provision. Occup. C 1702, 1702.322, 1702.323

F-5 Separation of Employment – 37 TAC 217.7 et seq. Occup. C 1701.452

TCLEOSE License Requirements. Occup. C 1701 et seq.

Physical fitness requirements and discipline. (*Tyra v. City of Houston*, 822 SW 2d 626 (1991)) (LGC 143 preempts local rule on dismissal for unfitness)

MUNICIPAL PETITIONS AND REFERENDUMS

- Petition to increase officer salaries in municipalities greater than 10,000. LGC 141.034
- Petition to increase Sheriff Deputies salaries in counties of more than 25,000. LGC 152.072
- Election contest. Texas Election C Chapters 221 and 233
- Election dates. Election C chapter 41
- Requirements for a petition allowed by a law outside of election code. Elec C Ch 277
- Review City Charter and Ordinance requirements
- A city's charter may be amended to require the city to submit to binding interest arbitration in case of impasse, upon request by the exclusive bargaining agent. *See City of Port Arthur v. International Association of Fire Fighters, Local 397*, 807 S.W.2d 894 (Tex. App. – Beaumont 1991, writ denied).

POLITICAL CAMPAIGNS

- Coercion of officer to participate or not participate in a political campaign is a criminal offense. LGC 180.001
- Municipal officer can't campaign in uniform or on-duty. LGC 150.002
- Political activity of officer can't be prohibited off duty if city has more than 10,000 and is non-civil service. LGC 150.002
- First Amendment prohibits termination for political purposes (see *Brady v. Fort Bend County*, 58 F. 3d 173 (5th Cir. 1995))

PAYROLL DEDUCTION

- Payroll deduction. LGC 141.008
- Payroll deduction for counties. LGC 155.001

Residency requirement to live in city limits can't be imposed on officers. LGC 150.021

Private Vehicle: Use as police vehicle. TX Trans. C. 541.201 (13-a).