County
Employment Basics

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Fishel Downey Albrecht & Riepenhoff LLP (FDAR) is a mid-sized Columbus, Ohio, based law firm with a statewide practice. Today, FDAR represents hundreds of clients, with facilities in nearly three-fourths of Ohio’s 88 counties, as well as out-of-state and international clients with an Ohio presence.

Our Clients
Our client base includes publicly traded and privately held companies, and public-sector clients, in a variety of industries including but not limited to: Manufacturing; Food Processing and Distribution; Shipping; Hotel; Janitorial; Finance; Development; Milling; Sales; the State of Ohio; Counties; Cities; Townships; Government Districts, etc. We represent hundreds of employers in Ohio, whether private or public sector.

Our Purpose
FDAR’s purpose is to provide high-quality, affordable legal services. Our focus is meeting our clients’ needs with respect to litigation, employment and labor, government liability, business disputes and contracts. FDAR began with a pro-management philosophy decades ago; that same philosophy remains. Our continuous growth is reflected in our ability to remain on the cutting edge of our areas of practice. We promote the development of systems and human resource management to control risk, but are experienced and ready to litigate disputed matters through trial and appeal.

Our Strengths and Diversity
The firm’s strength and diversity stems from, and is maintained by, our staff. Our attorneys hail from a wide variety of backgrounds, from rural farm communities to large cities. Our perspectives and ideology are similarly varied.

This diversity is perhaps best reflected in our community involvement. FDAR attorneys serve leadership roles in, and are active members of, their churches and temples. They volunteer in a wide variety of community activities including school programs, Children’s Hospital, assisted living communities, numerous youth activities, humane societies, museums, art galleries, and community centers. This diversity allows us to successfully interact with a wide range of individuals as well as analyze and address legal issues and problems from many perspectives.

Our Standards
FDAR has been recognized once again, for 2019 U.S. News-Best Lawyers® in areas of Employment Law-Management, Labor Law-Management and Litigation-Labor & Employment. Additionally, several attorneys in the firm have been recognized by their peers as Best Lawyers®, Super Lawyers® and Rising Stars® or their outstanding work in areas of Employment and Labor Law and Litigation.
Marc A. Fishel

Marc A. Fishel is a Partner with Fishel Downey Albrecht & Riepenhoff LLP. He received his J.D. from Ohio State University and a Bachelor of Arts degree in political science from Cleveland State University. Marc regularly represents public employers throughout the State of Ohio in all matters relating to labor relations.

Marc has extensive experience in areas of representation including collective bargaining matters, disciplinary matters (arbitration and civil service), contract negotiations, mediation, and conflict resolution procedures. He also represents employers in state and federal courts in employment related litigation. Marc is a former member of the Board of Directors of the Ohio Public Employers Labor Relations Association and has served as an adjunct professor of employment law at Wittenberg University.

Marc also represents private companies and public jurisdictions in other matters including regulatory compliance, contract matters and day-to-day operations issues.

Marc is a frequent speaker and lecturer on numerous issues relating to employment law and served as the editor of “Employment in Ohio – A guide to employment laws, regulation and practices,” published by Matthew Bender. He has been named to the U.S. News listing of Best Lawyers® 2011-2019 and to the Ohio Super Lawyers® listing 2011-2019, recognized for his outstanding work in the areas of Labor and Employment Law and Litigation.

Marc serves as the City of Bexley Law Director representing the city in various aspects of municipal law. Marc is also a member of the Supreme Court’s Commission on Dispute Resolution.

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I. WHAT ARE THE COMMISSIONERS’ RIGHTS AND OBLIGATIONS?

A. O.R.C. § 325.17- Officers mentioned in O.R.C. § 325.27 may appoint, employ, fix compensation and discharge employees.
   1. Auditor, treasurer, probate judge, sheriff, clerk of common pleas court, engineer and recorder.
   2. County prosecutors- O.R.C. § 309.06.
   3. County Board of Commissioners.
      a. 305.17- Appointment of clerk.
      b. 305.16- Other employees.
      c. 305.17- Compensation of employees.

B. O.R.C. § 325.19- Vacation leave and holiday pay.
   1. County appointing authorities may establish alternative schedule for vacation leave and holidays upon notice to Commissioners.

C. O.R.C. § 305.171- Health insurance/medical insurance.


E. O.R.C. § 307.441- Liability insurance for County officers and employees.

F. Workers Compensation- Chapter 4123.
   1. Board of County Commissioners is the employer for purposes of certifying claims. Tudor v. Mayfield, 62 Ohio App. 3d 633 (Greene County, 1989).

G. The Tricky Issue of County Human Resources
   1. Payroll
   2. Other functions- Personnel policy manual, FMLA, FLSA, discrimination, benefits, hiring, orientation, etc.
II. HOW DOES THE COUNTY PREVAIL IN LAWSUITS?

A. Centralized Human Resource and Risk Management Functions.
   1. Creates consistency and oversight.

B. Personnel Policies.

C. Adequate Complaint Procedure

D. Proper investigation of claims.
   1. Virtually every claim of discrimination and/or wrongdoing needs to be investigated.
   2. The type of investigation depends on the circumstances.

E. Performance Evaluations and appropriate documentation.

III. PERSONNEL POLICIES/PERSONNEL FILES

A. What is the Content?
   1. Overtime.
   2. Family Medical Leave Act.
   3. Social Media.
   4. Unlawful Harassment.
   5. Conceal Carry.
   6. Medical Marijuana

B. When Were the Policies Last Reviewed/Updated?
   1. Who is responsible for reviewing and updating the policy?

C. How are Employees Made Aware of the Policies?
D. **Which Offices and Elected Officials Follow the County Policies?**

1. For those who do not follow the County policy, what policies do they have?

E. **Who Maintains Personnel Files and What is in the Files?**

1. Confidentiality of medical records.
   a. Records retention schedule.

IV. **COLLECTIVE BARGAINING- CHAPTER 4117**

A. **What Collective Bargaining Agreements Does the County Have and When Do They Expire?**

B. **Role of Commissioners as Employer.**

C. **Role of Commissioners as Legislative Body - O.R.C. § 4117.10(B).**

1. Wages.

2. Health insurance.


D. **Collective Bargaining Process.**

1. Subjects of bargaining.

2. Fact-finding and conciliation.


E. **Management Rights.**

1. O.R.C. § 4117.08 vs. collective bargaining agreement.

F. **Direct Dealing.**

V. **CIVIL SERVICE LAW**

A. **Classified/Unclassified.**
1. Employees are presumed to be classified unless they fall within a statutory exception.

2. Have employees of the BCC been designated as classified or unclassified?
   a. Designation does not always matter.

3. Generally, O.R.C. § 124.11 governs the designation of a position as classified or unclassified. Typically, if a person's position falls within any of the exceptions from the classified service enumerated in O.R.C. §§ 124.11(A)(1) through (31), that position is in the unclassified service. In contrast, all public employees not specifically included in the unclassified service hold positions in the classified service. It is important to note other specific provisions may exist elsewhere in the Ohio Revised Code regarding the classification of a position.

4. Examples of unclassified employees:
   a. Elected officers or those appointed to fill vacancies in the elected offices (O.R.C. § 124.11(A)(1));
   b. Members of all boards and commissions and heads of principal departments appointed by the governor, board of county commissioners or mayor/other city appointing authority or city school district (O.R.C. § 124.11(A)(3));
   c. Four clerical and administrative support employees for each of the elective state officers, four clerical and administrative support employees for each board of county commissioners and one such employee for each county commissioner, and four clerical and administrative support employees for other elective officers and each of the principal appointive executive officers, boards, or commissions, except for civil service commissions, that are authorized to appoint such clerical and administrative support employees; (O.R.C. § 124.11 (A)(8)).
   d. Deputies and assistants of state agencies authorized to act for and on behalf of the agency, or holding a fiduciary or administrative relation to that agency and those persons employed by and directly responsible to elected county officials or a county administrator and holding a fiduciary or administrative relationship to such elected county official or county administrator and the employees
of such county officials whose fitness would be impracticable to determine by competitive examination (does not apply to county DJFS positions created pursuant to Chapter 329) (O.R.C. § 124.11(A)(9));

e. County directors of DJFS (O.R.C. §§ 124.11(A)(22), 329.021);

f. Directors of economic development hired pursuant to O.R.C. § 307.07(A) (O.R.C. § 124.11(A)(23));

g. Employees placed in the unclassified service by another provision of the Revised Code (O.R.C. § 124.11(A)(32)).

B. Discipline of Non-Probationary Classified Employees.

1. O.R.C. § 124.34.

2. Investigation.
   a. Piper warnings.
   b. Garrity warnings.

3. Pre-disciplinary conference.
   a. Loudermill v. Cleveland Board of Education.
      i. Notice of charges.
      ii. Summary of employer’s evidence.
      iii. Opportunity to respond.
      iv. CHECK THE COUNTY POLICY.

4. Procedural requirements.
   a. Approving the disciplinary order.
   b. Serving the discipline.
   c. SPBR hearing.
C. Layoffs.


2. Based on lack of funds, lack of work or job abolishment.

3. Job abolishment may be for reasons of economy, lack of work or as a result of reorganization for the efficient operations of the employer.


5. Approving the layoff/job abolishment.

6. Notice to employees.

7. SPBR appeal.


F. Involuntary Disability Separation.