

**PUBLIC EMPLOYEES: LIFE IN A FISHBOWL OR A FEW THINGS**  
**ENVIRONMENTAL HEALTH SPECIALISTS SHOULD KNOW ABOUT EMPLOYMENT LAW**

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Diane M. Juffras  
School of Government  
UNC-Chapel Hill

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**GAME PLAN**

- 1. Working in a COVID-9 World**
- 2. Drug Testing of Employees**
- 3. The Fair Labor Standards Act**  
(Who Gets Paid What When?)
- 4. Discipline and Discharge**  
(under and out from under the SHRA)

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**WORKING IN A COVID-19 WORLD**

1. Vaccination
2. Where's Your Mask?
3. COVID-19 and Leaves of Absence

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WORKING IN A  
COVID-19  
WORLD:  
VACCINATION

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WORKING IN A  
COVID-19  
WORLD:  
WHERE'S YOUR  
MASK?

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WORKING IN A  
COVID-19  
WORLD: BEING  
SICK AND BEING  
ABSENT

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**DRUG TESTING OF PUBLIC EMPLOYEES**

1. Random Drug Testing
2. Reasonable Suspicion Drug Testing

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**HOW MANY OF YOU ARE SUBJECT TO  
RANDOM DRUG TESTING?**

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**Only  
safety-sensitive employees  
may be subject to  
random drug testing**

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**No one else.**

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**DEFINING SAFETY SENSITIVE**

A safety-sensitive position is one where the duties involve "such a great risk of injury to others that even a momentary lapse of attention can have disastrous consequences."

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**DEFINING SAFETY SENSITIVE**

"The point . . . [is] that a single slip-up by a gun-carrying agent or a train engineer may have irreparable consequences; the employee himself will have no chance to recognize and rectify his mistake, nor will other government personnel have an opportunity to intervene before harm occurs."

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**WHO IS SAFETY-SENSITIVE IN LOCAL GOV'T?**

- Law Enforcement
- ZEO
- Nurse
- Bus Driver
- Budget Analyst
- Health Director
- Public school teacher
- Vehicle/Heavy Machinery Maintenance
- Admin. Assistant
- Health Educator
- Parks & Rec staff
- EMT
- Nutritionist
- IT Director

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**Environmental Health Specialist?**

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**REASONABLE SUSPICION DRUG TESTING**

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**REASONABLE SUSPICION  
MUST BE BASED ON  
*SPECIFIC OBJECTIVE FACTS***

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**1. Direct observations of  
drug use or possession**

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**2. Report of observed drug use by  
a reliable and credible source**

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**3. Direct observation of physical symptoms**  
of being under the influence of drugs

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**4. A pattern of abnormal conduct or erratic behavior**

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**5. Arrest or conviction for drug-related offense**

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**6. On-the-job accident where evidence indicates drug use played a role.**

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**7. Evidence that employee tampered with a previous drug test**

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**THE FAIR LABOR STANDARDS ACT (FLSA)**  
**OR WHO GETS PAID HOW MUCH AND WHEN**

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**NONEXEMPT**  
**EXEMPT**

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HOW MANY OF YOU ARE EARN OVERTIME  
WHEN YOU WORK MORE THAN 40 HOURS  
IN A SINGLE WORKWEEK?

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**Exempt Employees**

1. Must be paid on a salary-basis
2. Must earn a minimum weekly salary
3. Must satisfy one of three duties tests
  - Executive
  - Administrative
  - Professional

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**OVERTIME**

Nonexempt employee's usual schedule is Mon. – Fri.  
8:30 – 5 with a ½ hour unpaid lunch

Employee:

- takes 8 hours paid leave on Mon.
- works her usual schedule Tues. – Fri.
- works 8 hours on Sat. per supervisor's request

**Does Employee get overtime for the Sat. hours?**

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**IS TRAVEL TIME  
TIME-WORKED FOR WHICH  
YOU MUST BE PAID???**

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• Paradise County is sending four nonexempt employees to a SOG workshop in Chapel Hill.

• The workshop runs from 8:30 – 3:30.

• Employees' usual hours are 8:30 – 5:30.

• The trip to Chapel Hill takes 2 hours.

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• Two employees drive together.

• They leave at 6:30 am.

• One of the two does all the driving.

1. Is the travel time compensable for either one of them?

2. Is their travel time on the return trip compensable?

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○ Travel away from the workplace is during working hours is compensable.

○ Time spent in traveling outside of regular working hours as a passenger in a car or on a plane is not worktime.

○ Work performed while traveling is compensable. An employee who drives is working while riding.

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**SECOND JOB W/ THE SAME EMPLOYER**

**An environmental health specialist takes a second job in the county parks & rec. dept.**

**Schedule: MWF 6 – 9 pm.**

**Does the EHS get overtime?**

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**COMP TIME**

- Rate: 1½ hours paid time off for every hour physically worked over 40
- Statutory Limit: 240 hours

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**COMP TIME**

- Employee agreement needed
- Cash-out at termination
- May require employee to use comp time before using other paid leave

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**DISCIPLINE AND DISCHARGE**

**UNDER AND OUT FROM UNDER THE STATE HUMAN RESOURCES ACT**

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**TYPES OF COUNTY EMPLOYEES**

- Regular County Employees – appted by County Manager
- Sheriff, Register of Deeds appt. own employees
- Commissioner appointees
- SHRA Employees
  - DSS
  - Health Dept.
  - Mental Health
  - Emergency Management

All hired/fired by their directors

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**THE HIRING AND FIRING OF COUNTY HEALTH DEP'T EMPLOYEES – TRADITIONAL MODEL**

G.S. 130A-40: County board of health appoints county health director. Dismissal of director governed by SHRA (Ch. 126).

G.S. 130A-41(b): County health director has exclusive authority to hire and fire county health dep't employees – but s/he must do so in accordance with the SHRA [G.S. 126-5.].

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**CONSOLIDATED HUMAN SERVICES AGENCIES**

Option 1: Comm'rs assume direct control.

Option 2: Consolidate public health and social services in a single agency

- Human services board
- County manager appoints and supervises human services director
- Human services director appoints human services employees with consent of county manager.
- Human services employees subject to county personnel policies.

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**EXCEPTIONS TO EMPLOYMENT AT WILL**

- Statutory Exceptions
  - ✓ Title VII  
Sex, race, color, religion, national origin
  - ✓ Age Discrimination in Employment Act
  - ✓ Americans with Disabilities Act
  - ✓ Uniformed Services Employment and Reemployment Rights Act (USERRA)
  - ✓ Genetic Information Nondiscrimination Act

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**EXCEPTIONS TO EMPLOYMENT AT WILL**

- Constitutional Exceptions
  - ✓ 4th Amendment protection against unreasonable searches
  - ✓ 1st Amendment free speech protection
  - ✓ 14<sup>th</sup> Amendment property right and liberty interest protection

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**A PROPERTY RIGHT IN EMPLOYMENT**

An employee with a legitimate claim to **continuing** employment,  
because of **the State Human Resources Act**  
**or a local ordinance**  
has a "property right" that is protected by  
the 14<sup>th</sup> Amendment of the U.S. Constitution.

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14th Amendment guarantees that no state shall  
"deprive any person of life, liberty, or property,  
without **due process of law.**"

- This means that:
  - employee gets "notice and an opportunity to be heard" BEFORE any adverse employment action, and
  - employee gets an impartial review of any adverse employment action.

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**POSSIBLE SITUATIONS**

- Health Dep't under SHRA
- Consolidated agency under SHRA
- Consolidated agency where local ordinance provides just cause protection/property right
- Consolidated agency where employees are at will.

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### THE STATE HUMAN RESOURCES ACT: DISCIPLINE AND DISCHARGE FOR JUST CAUSE

- Performance
  - Unsatisfactory Job Performance
  - Grossly Inefficient Job Performance
- Unacceptable Personal Conduct

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### UNACCEPTABLE PERSONAL CONDUCT



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### FOUR TYPES OF DISCIPLINARY ACTIONS

- Written Warning
- Suspension w/o Pay
- Demotion
- Dismissal

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Written Warnings

- Explicitly characterize as warning
- Specific issues leading to warning
  - ⇒ ⇒ Dates, others involved, consequences of poor performance/conduct to dept.
- Specific improvements required
- Time frame for improvements
- Consequences of failure to improve
- No appeal rights

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Suspending, Demoting, or Dismissing a SHRA  
Employee **Requires** a Pre-Disciplinary Conference

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**NOTICE**

1. In writing
2. Setting forth specific acts and omissions that form the basis for proposed action
  - Include specific dates, times, locations
3. Evidence of employer

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**PROPOSED TERMINATION FOR  
UNSATISFACTORY JOB PERFORMANCE**

- You failed to visit the required number of facilities in a day.
- You failed to complete your visit notes in a timely manner.
- You were insubordinate.
- You have had excessive absences.

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**Actions That May Be Appealed:**

1. Dismissal, demotion, suspension without pay without just cause
2. Discrimination or harassment in terms and conditions of employment or in termination

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**THE APPEALS PROCESS UNDER THE SHRA**

1. Decision by local health director
2. Follow local health department or county grievance procedure
3. Appeal to Office of Administrative Hearings
4. Decision after OAH hearing is binding on local health director
5. Appeal is directly to North Carolina Court of Appeals

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1. Appeal to OAH must be within 30 days of receipt of final agency decision.
2. OAH cannot hear any matter not set out in the SHRA.
3. Material in personnel file alleged to be inaccurate/misleading may be grieved, but only within agency procedure.
4. Contents of performance appraisal or written warning may not be grieved as inaccurate/misleading.
5. No grievances based on allegations of violations of federal FLSA, FMLA, ADEA and ADA allowed.

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Diane M. Juffras  
School of Government  
UNC-Chapel Hill  
(919) 843-4926  
[juffras@sog.unc.edu](mailto:juffras@sog.unc.edu)

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