

Different Strokes for Different Folks

The Risks of Different Employee Types

Employee Types

- At-Will
- Employees with contracts
- Elected Officials
- Appointed Officials - Constables
- Volunteers
- Interns
- Compensatory Service Workers
- Independent Contractors

Employment Issues

- Compensation
- Benefits
- Performance Review
- Discipline
- Termination
- Risk Management

At-Will Employees

- Most county employees are “at-will” employees, meaning they can leave anytime for any reason, and the employer may let them go anytime, for any reason, or without reason.
- You must be careful with language in your personnel policies, employee handbooks and correspondence with employees.
- While Utah courts generally recognize that government employees have a property right to their job, maintaining the position that employees are “at-will” provides the employer stronger defense in wrongful termination claims.
- This is the preferred status for employees.

Employees with Contracts

- There may be certain situations where the employer needs to have a written contract with an employee in order to recruit, retain or control and employee, or to allow the employer to treat the contracted employee differently than other employees.
- Be careful not to confuse employees with contracts with independent contractors.
- This employment status should be used on a limited basis when the employee provides services that are: professional or semi-professional; mandated by state or federal law; part-time..., but not to simply provide disparate treatment to different employees.

Elected/Appointed Officials

- Elected and appointed officials are treated as employees in many respects like compensation and benefits, and most importantly the employer is liable for the actions of these individuals.
- Elected and appointed officials are generally not subject the the methods used by the employer to control the actions of other employees like use of job descriptions, performance appraisals and discipline including termination.
- For those officials appointed by the county, you should consider setting out in written policy the duties and limitations on the officials along with the ability of the county to review performance and discipline the official (usually through revoking their appointment).

Constables

- As an example of an appointed official that is very difficult for the county to control from a risk management perspective.
- The entity that creates the Office of Constable is responsible for the constable and all of its deputies.
- Statute provides for a four year term once appointed, and the constable's appointment can only be withdrawn "for cause".
- The authority of the constable is laid out in statute, which limits the county's ability to restrict the activities of constables and their deputies.
- There have been several instances of constables using their office to be involved in activities not contemplated in the statute.
- Lets take a closer look at the discretion the county does have for this semi-mandated office.

U.C.A. 17-25a - Constables

- First step is governing body (commission or council) determines if they will have an office of constable.
- The nominating committee identified in statute must be established to review applications for appointment of constables.
- Committee recommends applicants most qualified.
- County legislative body must either appoint or reject any nominee.
- Constable may appoint deputies which the county is then responsible for.
- Qualifications: Special Function Peace Officer.

Volunteers

- An uncompensated person providing service to a government agency must be authorized in accordance with the Volunteer Government Workers Act (U.C.A. 67-20)
- Authorized volunteers are considered employees for the purposes of:
 - Workers Compensation Medical Benefits
 - Auto Liability
 - Liability provided to government employees
- The volunteer is immune from liability in accordance with the Immunity for Persons Performing Voluntary Service Act (U.C.A. 63G-8), but the agency is liable for their actions and must provide them a defense as if they were an employee.

Volunteer Safety Officer

- The Volunteer Government Worker Act defines “Volunteer Safety Officer” as a person providing public service to an agency while exercising peace officer authority or as a firefighter.
- Volunteer Safety Officers are considered employees for benefits of all other volunteers, and for all workers compensation benefits, with lost time benefits based on the statewide average weekly wage.

Volunteer Search and Rescue

- Volunteer Search and Rescue Team Members is defined in the Volunteer Government Workers Act as a person certified as a member of the county sheriff's search and rescue team when acting as a team member under the sheriff's supervision.
- Volunteer Search and Rescue Team Members are provided the same benefits as a Volunteer Safety Officer, except their lost time benefits are based on the average wage entry level deputies for the agency.

Compensatory Service Worker

- The Volunteer Government Workers Act defines "Compensatory Service Worker" as a person performing a public service for an agency as a condition their incarceration, plea, sentence, diversion, probation or parole.
- Under the Volunteer Government Workers Act, Compensatory Service Workers are considered an employee for purposes of receiving worker's compensation medical benefits only.
- However, by way of court decisions, the county is responsible for injury to a third party caused by a Compensatory Service Worker.

Interns

- Many counties accept interns from schools that require internship as part of their curriculum.
 - Most curriculum based internships allow for the intern to observe only, and not to provide services.
 - These interns should not be considered employees of the county, as they are correctly considered students of the school.
- Some counties solicit interns to county intern programs.
 - If the intern is compensated, they are an employee, although that employment status may be limited in duration or by ongoing receipt of grant funding.
 - If the intern is not compensated, they should be treated as a volunteer.

Spouses of Fallen Officers

- The legislature created a new pseudo employee for counties.
- Statute now requires the county to recognize the spouse of a fallen officer as an employee for purposes of providing health benefits to the spouse and dependents.

Independent Contractors

- The level of control you have over the activities will determine if they are an “independent contractor”, or an employee. Courts will make this determination after the fact.
- Can they provide service to others
- Do they advertise services to others
- Do they provide their own equipment
- Do you provide office space
- Do you supervise and direct their work
- Do you have a say in who they employ
- Is their compensation set up with a “win/lose” potential
- Do they have their own insurance
- Are they incorporated as a legal entity

Risk Management Methods

- “At-Will” Employee
 - Use of personnel policies, job descriptions, performance appraisal and disciplinary procedures.
- Contracted Employee
 - Use the contract to manage risk by identifying what personnel policies and procedures apply to the employee.
 - With the contract, you can place additional performance requirements, limitations of activities or disciplinary/termination procedures on the employment relationship.
- Elected or Appointed Officials
 - Elected officials risk is controlled through reasoned discussion with the officials on the risk they create for the county with their activities.
 - Appointed officials risk can be controlled through putting limitations on the official activities of the position and retaining the county’s right to terminate the appointment.

Risk Management Methods

- Volunteers
 - Volunteer risk is best managed by creating a rigorous process for application, authorization, identification of duties, training and dismissal of volunteers.
- Compensatory Service Workers
 - Review with the Sheriff the types of activities Compensatory Service Workers are involved in and consider those risks and how to control them.
- Interns
 - The risk of interns in curriculum based programs through their schools is properly managed using a contract with the school under which the school retains liability for the student, and provide indemnification to the county.

Risk Management Methods

- Spouses of Fallen Officers
 - Confirm with your health benefits carrier that they will amend their definition of employee to include the spouse of a fallen officer and include their dependents under the coverage.
- Independent Contractors
 - Assure they really are an independent contractor and not an employee.
 - Use the contract to define activities, provide for indemnification, require insurance and terminate the contract.