



# County Technical Assistance Service

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## Personnel Management in Counties

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Dear Reader:

The following document was created from the CTAS electronic library known as e-Li. This online library is maintained daily by CTAS staff and seeks to represent the most current information regarding issues relative to Tennessee county government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other e-Li material.

Sincerely,

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## Personnel Management in Counties

Reference Number: CTAS-127

## Personnel Authority in Counties

Reference Number: CTAS-123

As a general rule, each county official in Tennessee has authority over the employees within his or her office. This authority includes the hiring and firing of office employees and day-to-day office management within the parameters established by state and federal laws. It also includes responsibility for ensuring compliance with applicable laws. The funds available for county employee compensation and benefits is established by action of the county legislative body, but the official retains some discretion with regard to the compensation of individual employees within the office.

State laws, and sometimes resolutions of the county legislative body, establish the way that employees in various county offices are hired. The county mayor has the authority to hire secretaries and assistants where necessary to properly and efficiently transact the business of that office under T.C.A. § 5-6-116, as long as sufficient funds have been appropriated for this purpose. The chief administrative officer of the county highway department in the vast majority of counties has the authority to hire assistants under T.C.A. § 54-7-109, within the amounts set forth for that purpose in the highway budget.<sup>[1]</sup> County fee officials (which include clerks of court, clerk and masters, county clerks, trustees, registers of deeds and sheriffs) are authorized to hire deputies and assistants as necessary to properly conduct the business of their respective offices under the statutory framework set out in T.C.A. § 8-20-101 *et seq.*, which requires either a letter of agreement or a court order establishing the number and compensation of these employees. The assessor of property hires deputies under the provisions of T.C.A. § 67-1-506.

The county legislative body has basic personnel authority over some employees under general law. Appointed department heads will find the authority under which the employees of their offices are hired either in the state law (public or private act) or in the resolution of the county legislative body which created their department. For example, in counties under the County Financial Management System of 1981, the finance director is authorized to hire employees for that office within the budget established by the county legislative body and in accordance with the policies promulgated by the financial management committee, as provided in T.C.A. § 5-21-107.

Under a state law<sup>[2]</sup> enacted in 1997, county officials in almost all counties are required to establish written policies for compliance with certain laws, and the county legislative body is required to establish written policies for all employees who are not under written policies established by a county official. Finally, centralized personnel departments have been authorized by private act of the General Assembly in a very limited number of counties, and in some counties civil service laws have been enacted by general law or private act covering the sheriff's office.

It is important to determine who has the personnel authority in a particular office, as well as the extent of that authority. In general, the authority to hire employees carries with it the authority to terminate those employees; even if employment is subject to approval by the county legislative body, the employee generally may be dismissed without county legislative body approval.<sup>[3]</sup>

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[1] Only Shelby, Davidson, Knox, and Hamilton counties are excluded from the Tennessee County Uniform Highway Law. T.C.A. § 54-7-102.

[2] T.C.A. § 5-23-101 *et seq.*

[3] See Op. Tenn. Att'y Gen. 81-73 (No. 268) (February 2, 1981).

## County Employee Compensation

**Reference Number:** CTAS-124

The maximum amount that may be expended for employee compensation generally is established in the budget adopted by the county legislative body each year. The discretion to set individual compensation within the office depends on the laws pertaining to the particular county office.

The county mayor determines the compensation of secretaries and assistants in his or her office under T.C.A. § 5-6-116 to the extent that sufficient funds have been appropriated for this purpose. The chief administrative officer of county highway departments under the County Uniform Highway Law establishes the compensation of his or her employees within the budget adopted by the county legislative body pursuant to T.C.A. § 54-7-109. The assessor of property establishes the compensation of the employees of that office within the budget appropriated for that purpose under T.C.A. § 67-1-506.

The number and compensation of deputies and assistants for fee officials (which include clerks of court, clerk and masters, county clerks, trustees, registers of deeds and sheriffs) may be determined either by a letter of agreement or by a court order under T.C.A. § 8-20-101. If the fee official agrees with the amount budgeted by the county legislative body for deputies and assistants for his or her office, or if the fee official pays salaries directly from the fee account under the "fee system," the official and the county mayor may enter into a letter of agreement. The county legislative body is prohibited from reducing the amount budgeted for sheriff's department employees below current levels without the consent of the sheriff,<sup>[1]</sup> but this prohibition does not apply to other offices. Any fee official who does not agree with the budgeted amount must obtain a court order for additional funding by filing a lawsuit as outlined below.

Court orders for deputies and assistants are obtained by filing a petition with the appropriate court setting out the necessity for deputies and assistants, the number required and the salary that should be paid to each.<sup>[2]</sup> The county mayor is named as the defendant in the petition. The county mayor is required to file an answer within five days after service of the petition, either agreeing with or denying the matters stated in the petition. The court will then hold a hearing and issue an order determining the appropriate number and compensation of deputies and assistants.<sup>[3]</sup> The county legislative body cannot refuse to fund the salaries ordered by the court.

The courts in which the petitions are to be filed are set out in T.C.A. § 8-20-101, as follows:

1. Clerks of the circuit, criminal, and special courts file their petitions with one of the judges of their respective courts (but upon request of any party the case must be transferred to a court other than the one the clerk serves).
2. The sheriff files his or her petition with the criminal court, if there is one in the county, and otherwise with the circuit court.
3. Clerks and masters, trustees, county clerks, probate court clerks, and registers file their petitions with one of the chancellors.

Although court orders setting the number and compensation of deputies and assistants can be modified,<sup>[4]</sup> no court order increasing expenditures will be effective for any fiscal year unless the petition was filed within 30 days after final adoption of the budget for that fiscal year. However, a new officer has 30 days from taking office within which to file a petition.<sup>[5]</sup> The number and/or compensation of deputies and assistants can be decreased at any time by the official without the necessity of filing a petition.<sup>[6]</sup> The county mayor may request that the court decrease the number and/or compensation of deputies and assistants.<sup>[7]</sup> Either party may appeal the court's decision.<sup>[8]</sup> The costs of all cases are paid out of the fees collected by the respective offices.<sup>[9]</sup>

If the county official agrees with the amounts that are set forth in the budget adopted by the county legislative body, a court order is not necessary. Instead of filing a petition, the official can enter into a letter of agreement with the county mayor, using the form prepared by the state comptroller for this purpose. The letter of agreement is filed with the same court in which a petition would have been filed, but no litigation taxes, court costs or attorneys' fees can be charged in connection with the filing of the letter of agreement.<sup>[10]</sup>

- [1] T.C.A. § 8-20-120.
- [2] T.C.A. § 8-20-101.
- [3] T.C.A. § 8-20-102.
- [4] See T.C.A. § 8-20-104.
- [5] T.C.A. § 8-20-101(b).
- [6] T.C.A. § 8-20-104.
- [7] T.C.A. § 8-20-105.
- [8] T.C.A. § 8-20-106.
- [9] T.C.A. § 8-20-107.
- [10] T.C.A. § 8-20-101(c).

## Comptroller's Form - Letter of Agreement

Reference Number: CTAS-2189

LETTER OF AGREEMENT

COMPENSATION OF EMPLOYEES

\_\_\_\_\_ COUNTY, TENNESSEE

Pursuant to Tennessee Code Annotated, section 8-20-101, this agreement by and between \_\_\_\_\_ (Official/Office) and \_\_\_\_\_ (County Mayor/Executive) is for the purpose of establishing the number of employees and the authorized salaries for the \_\_\_\_\_ (Office).

The parties named herein have agreed and do hereby enter into this agreement according to the provisions set forth herein:

- A. The term of this agreement will be from \_\_\_\_\_ (Beginning Date) to \_\_\_\_\_ (Ending Date).
- B. In order to ensure the efficient operation of the office, it is agreed that the official is authorized to employ the following employees at salaries not to exceed the specified amounts:

Number of Employees in Job Classification	Job Classification	Annual Salary for Each Employee in Job Classification Not to Exceed

- C. It is further agreed that part time help may be employed at a rate of up to \$\_\_\_\_\_ an hour with a total cost not to exceed \$\_\_\_\_\_ for the term of this agreement.
- D. The parties agree to the following special provisions
  
- E. It is further agreed that in no event shall the amount of this agreement exceed \$\_\_\_\_\_. In witness whereof, the parties have set their signatures.

\_\_\_\_\_ (OFFICIAL) \_\_\_\_\_ (DATE)  
 \_\_\_\_\_ (COUNTY MAYOR/EXECUTIVE) \_\_\_\_\_ (DATE)

## Employment at Will

Reference Number: CTAS-125

Tennessee recognizes the doctrine of employment at will, which allows the employer (and the employee) to terminate the employment relationship at any time, with or without cause.<sup>[1]</sup> Normally, the employer can use whatever criteria he or she desires for hiring decisions in an employment-at-will relationship, unless the criteria is prohibited by law. For example, employment decisions cannot be made on the basis of race, color, religion, sex, national origin, disability, or under most circumstances, age or veteran status.

The United States Supreme Court has placed some additional restrictions on the employment-at-will concept. For example, in *Rutan v. Republican Party of Illinois*,<sup>[2]</sup> the Court ruled that the First Amendment constitutional rights of applicants for low-level public positions are violated when their employment applications are set aside because they have chosen not to support a particular political party. This same principle is applicable to promotions, transfers and recalls after layoffs. Thus, although the employment-at-will doctrine is still valid, it does have many limitations that the employer must keep in mind.

Unless the employer wishes to further limit the employment-at-will doctrine, he or she must be careful not to provide promises of continued employment. Under some circumstances, courts have found that provisions contained in an employee handbook could constitute a contract between the employer and employee. These courts have ruled that the employer is contractually bound by the rules and regulations set out in the handbook. This means that, regardless of the employer's contention that he or she can fire an employee, if the handbook gives the employee certain rights to continued employment the employer must be prepared to honor them. With this idea in mind, the employer should carefully consider the benefits included in an employee handbook, and the employer should include a clear statement that the policies are not to be construed as creating any kind of contractual obligation.

An employer who wants to retain the employment-at-will doctrine should be careful not to include policies in an employee handbook that could unreasonably hinder the termination process. If the handbook states that the employee can only be terminated for good cause and then sets out a disciplinary procedure or hearing process, the employer has diluted his or her authority to terminate an employee at will.

Another way an employer can inadvertently create a problem is language in the handbook concerning an employee's probationary period. Often an employer will adopt a rule stating that for the first few months of employment an individual is considered a "probationary" employee. Such a rule either states or implies that after the probationary period the employee becomes "permanent." If the employee is viewed as permanent, a court could question the employer's authority to terminate employment without a showing of good cause. One way to avoid this result is to define the terms differently, such as referring to the initial period as "newly hired" and the permanent position as "regular" employment. Also, the reason for making the distinction should be clear. For example, a newly hired employee may not be entitled to full benefits until he or she has been on the job for a certain period of time, and an employee who is entitled to full benefits may be referred to as a regular employee.

An employer who wants to retain employment-at-will status needs to include a statement in the handbook stating that the benefits set out in the rules and regulations are not to be considered an employment contract. The handbook should also state that all employment will be considered employment-at-will. Finally, the statement should advise employees that any of the policies can be amended by the employer at any time. For personnel policies adopted in counties under the provisions of T.C.A. § 5-23-101 *et seq.*, the law expressly provides that such policies are not to be interpreted as creating an implied contract or otherwise affecting the employment-at-will status of employees.<sup>[3]</sup>

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[1] See, e.g., *Gregory v. Hunt*, 24 F.3d 781 (6<sup>th</sup> Cir. 1994). This case examines a public employee's claim that the terms of an employee handbook abrogated the employment-at-will status of the employee; the court found that an implied contract cannot be recognized against the state.

[2] 110 S. Ct. 2729 (1990).

[3] T.C.A. § 5-23-108. See also *Williams v. City of Milan*, 2009 WL 989775 (W.D. Tenn. 2009).

