



County Technical Assistance Service

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Adoption of Required Policies

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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Adoption of Required Policies

Reference Number: CTAS-2048

Adoption of Required Policies by County Officials

Reference Number: CTAS-1098

Each county official (defined in T.C.A. § 5-23-102 as county trustees, registers of deeds, county clerks, judges who employ county employees, clerks of court, sheriffs, assessors, boards of education, and the chief administrative officer of the highway or public works department; this also includes county mayors who choose to adopt separate policies under T.C.A. § 5-23-103(e)) must determine whether he or she wants to adopt policies separately from the rest of the county, or whether it would be better to be governed by the policies adopted by the county legislative body.

There are several things to consider in making this decision. Probably the most important consideration is the method the county mayor and the county legislative body choose for dealing with the countywide policies. Is the need recognized for each affected office to have input and to participate in the process? Does the county already have countywide policies in place that are working? A positive answer to either of these questions points toward joining the rest of the county. It is often helpful to have a single set of policies that cover all county employees. On the other hand, if an office is different in some way that affects the basic policies that are needed and these issues are not adequately addressed by the countywide policies, then the official may want to prepare separate policies.

If a county official chooses to prepare separate policies, the policies are required to be reviewed for compliance with the law by an attorney appointed by the county mayor with the approval of the county legislative body, and then the approved policies must be presented to the county legislative body to be included in the minutes and filed in the office of the county clerk. These policies are *not* subject to approval by the county legislative body. The procedure is set out in T.C.A. § 5-23-103.

If a county official chooses not to adopt separate policies for his or her office, that official's office will be covered by the policies adopted by the county legislative body and the county mayor for all other county employees.

Adoption of Required Policies by County Mayor/County Legislative Body

Reference Number: CTAS-1106

For all county offices that are not covered by separate policies authorized in T.C.A. § 5-23-103, the county legislative body and the county mayor each have responsibilities in connection with the adoption of personnel policies on the four required topics. The procedures are set out in T.C.A. § 5-23-103 and include the following:

- The county mayor, with confirmation of the county legislative body, designates an attorney to review all policies for compliance with the law.
- The county mayor prepares a list of all offices and departments to be governed by the policies, which includes all departments, agencies and boards whose funds are handled by the county trustee (except those filing separate policies), and submits the list to the attorney for review and to the county legislative body for approval.
- The policies may be prepared by one person or several, appointed by the county mayor with confirmation by the county legislative body. The act is very flexible in this regard: one person could be appointed to compile all of the policies, or one person from each office or department on the list could be appointed to a committee, or each office could be directed to develop its own set of policies to be submitted to the county legislative body for review and approval, or some other method could be used.
- When the policies have been prepared, they must be reviewed and approved for compliance with the law by the designated attorney.
- The approved policies must be submitted to and approved by the county legislative body and included in its minutes, and filed in the office of the county clerk.

When making the list of which departments and agencies the policies will govern, there may be some that seem to be hybrid organizations (for example, joint city-county library boards, county health departments, etc.). For these entities, look at the documents under which the entity was formed. If the contracts, resolutions, or other written materials do not state who is considered the employer of the employees of that entity, the county should go back and make some provision for this (i.e., amend the resolution or contract). This provision is important for liability and other purposes, in addition to the personnel policies.

Attorney Review

Reference Number: CTAS-1107

The county mayor is required to retain, subject to confirmation of the county legislative body, an attorney to review all of the policies that are adopted under this law. The attorney is to review the policies for compliance with this law and with other applicable laws. The county attorney may be retained for this purpose, or the county may retain some other attorney with appropriate expertise. The compensation of the attorney is established by the county legislative body and paid out of the general fund.

This attorney is responsible for reviewing the separate policies adopted by the county officials as well as the countywide policies. The attorney also reviews the list of offices and departments covered by the countywide policies. The board of education is authorized to employ its own attorney. T.C.A. §§ 5-23-103 and 5-23-105.

If a county official filing separate policies disagrees with the designated attorney's conclusion, there is a provision in the act allowing the official to have the policies reviewed by another attorney selected by the official and paid from the fees of the office or from funds budgeted for that office. T.C.A. § 5-23-103.

Approval and Filing of the Policies

Reference Number: CTAS-1110

When the policies have been prepared, they must be sent to the designated attorney for review for compliance with the law.

When the attorney is satisfied that the policies are in compliance with the law, they are submitted to the county legislative body. Depending on the type of policy, the county legislative body either approves the policies or notes their filing, as follows:

- Countywide policies must be submitted to the county legislative body for approval. *The county legislative body must approve or disapprove the policies as a whole.* The county legislative body cannot make changes in individual policies. If the county legislative body disapproves the policies, they must be sent back to the person or group who prepared them for revision and re-submission to the county legislative body for approval. The designated attorney must review any changes as well. The policies must be approved by the county legislative body and filed in the minutes in the office of the county clerk.
- Individual office policies adopted separately by county officials are filed with the county legislative body *but are not required to be approved by the county legislative body.* These separate policies prepared by county officials are submitted only for inclusion in the minutes to be filed in the county clerk's office. The only reason for not accepting these policies for inclusion in the minutes would be failure to obtain the required review and approval of the attorney.

Amendment of Policies

Reference Number: CTAS-2078

Once adopted and approved, personnel policies may be amended, modified, or repealed at any time by the same process used for the original adoption of the policies. Any personnel policies governing county employees shall be subject to change at any time, and shall not give rise to any contractual rights between the county and its employees. T.C.A. § 5-23-106.

Policy Preparation Tips and Suggestions

Reference Number: CTAS-1111

This process will work best with the cooperation of all parties involved. The officials, department heads and supervisors whose offices will be governed by these policies must be given an opportunity to provide the necessary information and input to enable the preparation of practical and workable policies. Lawsuits often result when an employer fails to follow its own policies.

The objective is to have minimum policies in place to enable the county to comply with existing law. The purpose is not to micro-manage offices or departments. The only policies authorized are those listed in the act (leave, wage and hour, anti-discrimination and sexual harassment, and required drug testing). All other personnel policies remain the responsibility of the individual under whose direction the employees work.

Any policies that are not in one of the four required categories are outside the scope of this law and should remain within the official's office. They should not be filed with the county legislative body.

In making the decision whether to file separate policies, the official should consider the advantages to having one set of policies for all of the employees of the county. For instance, employees may be happier knowing that they are receiving the same benefits as other county employees, and there will be less jealousy between county employees working in different offices. Most of the policies on the required topics throughout the county probably will be similar, with only a few differences. There will be variations, for example, in the overtime policies for the sheriff's office because the overtime law is different for law enforcement employees. Countywide policies can take into account these variations, noting any different provisions that apply to particular offices. Also, with the limitation on the scope of the policies under the act, the county legislative body cannot establish the hours the official's office is open or the actual hours each official's employees are required to work, nor can they make hiring and firing decisions for the official. These remain the responsibility of the official, and this authority is not relinquished if an official decides to come under the countywide policies. The policies under this act are limited to such general things as establishing the number of hours in a regular workweek, and if the workweek is less than 40 hours, stating whether the salary paid to non-exempt salaried employees is intended to cover all hours worked up to and including 40. They also set overtime policies, which for most offices will be the same. As long as the county mayor and county legislative body allow the official to participate in the preparation of the policies and are willing to work with the officials and department heads within the county to arrive at policies that are workable and everyone is reasonably pleased, there are many advantages to policies of countywide application. Finally, the act allows an official to withdraw from the countywide policies if he or she later becomes dissatisfied.

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