

LEGAL CONSIDERATIONS FOR HIRING POLICE CHIEFS

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Primary Considerations in Hiring Police Chiefs



1. MCOLES Certification

- a. Police Chiefs and MCOLES certification
- b. Out-of-State Hires (i.e., Transfers)

2. Sources of Authority for Hiring Police Officers and Candidates

- a. General Law Townships: MCL 41.181
- b. Charter Townships: MCL 42.12
- c. Cities: MCL 117.4j
- d. Villages: MCL 70.13 and MCL 70.15

3. Certain Municipalities May Contract with Other Departments for Law Enforcement Protection

- a. Applies to all types of municipalities.
- b. General law and charter township boards may call on the county sheriff or another agency to provide law enforcement protection.
- c. Township boards may appropriate funds for this purpose.
- d. Villages and cities (with cities being subject to certain population limits) may also contract for joint police services, under 1951 PA 33 (Act 33)

4. Practical Hiring Questions to Consider when Hiring Police Chiefs

- a. Confirm that the police chief is an appointed position.
- b. Assuming the police chief is an appointed position, who appoints the police chief?
- c. Must the appointment be approved by the city commission/township board/village council?
- d. Once the police chief is sworn in, to whom do they report?
- e. Are you going to establish a written employment contract?
- f. If the police chief must be let go, who makes that decision and how must it happen?

5. Sources of Rules for Hiring Police Chiefs

- a. Village/city/township charter
- b. Ordinances
- c. Municipal employment policies or employee handbook
- d. Police union collective bargaining agreements (CBAs)

6. Police and Fire Civil Service Commission (PA 78)

- a. Michigan Police and Fire Civil Service Commission Act, MCL 38.501, et seq. (a/k/a “PA 78”)
- b. If your community has a Civil Service Commission established under PA 78, then the Civil Service Commission appoints the police chief
- c. BUT, the authority of a PA 78 Civil Service Commission can be limited by a union collective bargaining agreement

7. Law Enforcement Officer Separation of Service Act, 2017 PA 128

- a. Each law enforcement department must maintain a record “regarding the reason or reasons for, and circumstances surrounding, a separation of service for each law enforcement officer for whom the law enforcement agency is required to maintain an employment history . . .” MCL 28.563(1)
- b. Reemployment requires signed waiver releasing previous records
- c. Requires that the prospective employing agency first obtain the “separation of service” record from the previous employing agency

8. Internet Privacy Protection Act, 2012 PA 478

- a. Employers may not request that an employee or applicant for employment grant the employer access to the employee's personal internet account(s)
- b. Employers may not discharge, discipline, fail to hire, or penalize employee or applicant for failure to grant access or allow observation of employee's or applicant's personal internet account
- c. This Act does not prohibit an employer from accessing publicly available information about an employee or applicant

9. Non-Discrimination in Hiring

a. Title VII, (Federal) Civil Rights Act of 1964

Race, creed, color, religion, sex, or national origin

b. Michigan Elliott-Larsen Civil Rights Act

Same as Title VII but adds: age, height, weight, familial status, and marital status

Employer Liability Issues for Police Chiefs & Police Officers, Generally

10. Governmental Immunity

- a. Michigan Governmental Liability for Negligence Act, 1964 PA 170
- b. Governments are immune from tort liability unless an exception applies
- c. Moreover, governmental immunity provides further protection against employer liability for employees' intentional torts

10. Governmental Immunity (cont.)

d. Municipalities and employees, generally not liable so long as:

i. Employee acting within scope of authority (or reasonable belief as to scope of authority)

ii. Agency engaged in governmental function

iii. Employee's conduct does not amount to "gross negligence" that is the "proximate cause" of the injury/damage

11. Exception to Governmental Immunity for Negligent Motor Vehicle Operation

- a. Governmental agencies are liable for the negligent operation of a government-owned motor vehicle (MCL 691.1405)
- b. Covers bodily injuries and property damage as a result of the negligence

12. Doctrine of “Respondeat Superior”

- a. Generally, employers are deemed to be liable for the tort claims of their employees while the employee was acting in the scope of his employment, under the doctrine of “Respondeat Superior”
- b. This is sometimes also called “vicarious liability” and applies where the employee is acting within the scope of his/her employment and the scope of his/her authority
- c. Governmental immunity will generally apply

13. Negligent Hiring, Supervision, & Retention of Employees

- a. Michigan recognizes a tort for negligent hiring, supervision, and retention of employees
- b. To prove claim, plaintiff must show: (1) employer owed a duty to the victim, (2) the employer breached that duty, and (3) breach of the duty was the proximate cause of the plaintiff's injuries
- c. Governmental immunity applies to such claims

14. Federal Civil Rights Claims (Section 1983 Claims)

- a. A plaintiff can bring a civil claim alleging that a police officer (and/or police department) has violated their civil rights, pursuant to 42 U.S.C. § 1983 (a/k/a “a 1983 claim”)
- b. Elements of a 1983 claim include that plaintiff had a right secured by the Constitution or the laws of the United States and that the defendant violated those rights while acting under the “color of state law.”
- c. Theories under which a municipality may be liable to a plaintiff for a 1983 claim: (1) failure to train; (2) policy/custom; (3) ratification of violative acts.

14. Federal Civil Rights Claims (Section 1983 Claims) (cont.)

Elements for a “failure to train” Section 1983 claim:

1. Training or supervision inadequate for the tasks performed.
2. The inadequacy was the result of the municipality’s deliberate indifference.
3. The inadequacy was closely related to or actually caused the injury.

14. Federal Civil Rights Claims (Section 1983 Claims) (cont.)

Elements for a policy/custom 1983 claim:

The plaintiff must show that the municipality's "policy" or "custom" was the "moving force" behind the constitutional violation.

In pursuing a claim under such a theory, the plaintiff must set forth the policy or custom the municipality allegedly implemented.

The idea being that the employee acted in accordance with the policy, which violated the plaintiff's constitutional rights.

14. Federal Civil Rights Claims (Section 1983 Claims) (cont.)

A municipality can be held liable under a “ratification” theory if:

A plaintiff demonstrates that a “final municipal policymaker” approved of a subordinate’s behavior, approved of an investigation that was so inadequate as to constitute a ratification of the alleged behavior, or failed to punish the responsible parties.

15. Limits on Municipal Liability Under Section 1983 Claims

- a. In the absence of one of the theories of liability discussed above, a municipality cannot be held liable under Section 1983, a municipality cannot be sued solely for an injury inflicted by its employees or agents
- b. Further, police officers are entitled to qualified immunity from a 1983 claim, so long as they do not violate established statutory or constitutional rights of which a reasonable person would have known.

16. General Takeaways for Avoiding Liability

- a. Establish comprehensive police policies and procedures.
- b. Properly train officers on appropriate techniques and expectations.
- c. Thoroughly investigate complaints of misconduct.
- d. When hiring, properly vet potential candidates.

QUESTIONS?