



By Patrick Callahan

Employment agreements: A growing trend in municipal government?

One of the most important and critical decisions in a person's life is whether to resign their current job or position and accept a new one. This decision making process can be very difficult if you are leaving a position in which you have a good working relationship with your current boss for a new position with an organization that may experience a substantial change in the leaders of the entity within two years or less. This dilemma is fairly common for people who work in city government.

Some people who have chosen a career in city government as a city manager, city administrator, city clerk or department head have been reluctant to accept a new position unless they have negotiated an employment agreement with their next employer or city. In fact, there are some observers of municipal government who think that there may be a growing trend for the use of employment agreements.

Employment Agreement in Other Sectors

The use of employment agreements is a fairly recent practice for many cities in Iowa. However, employment agreements in the private sector has been common for many years, especially for managers and chief executive officers of major corporations. While these employment agreements are confidential documents and rarely made available to the public, the use of contracts will occasionally make headlines in newspapers when the two parties take legal action to settle a dispute.

School districts in Iowa have numerous employment agreements, and those between a school district and a school superintendent will typically generate the most coverage in the local news media. However, most school districts have written agreements or contracts with all of the administrative staff members and teachers. Most teacher contracts are for one year duration and can only be changed or modified during the school year with the approval of the school board.

The Employee's Perspective

The reasons why a prospective or current city employee may request consideration of an employment agreement will vary. Some of the most common reasons include the following:

1. There may be a need to clearly define the terms and conditions of employment in a written contract that is binding upon both the city and the employee, rather than in a verbal offer of employment as oral agreements ordinarily are not binding.
2. An employment agreement will stipulate the terms of employment, such as vacation time, health insurance, auto allowance, paid leave and holidays, and any variations from the city's standard policies or plans.
3. The most common reason that an employee may request an employment agreement may be the desire for a severance clause or termination provision to define what happens when the employee is fired for something less than "just cause."

The City's Perspective

While an employment agreement may initially appear to be something that would only be advantageous for the employee, there may be reasons why they are also beneficial for the city. The benefits to the city could include the following:

1. The city's willingness to consider an employment agreement will most likely expand the number and level of experience of potential candidates for the city's open position.
2. The agreement may specify that the employee will be required to adhere to a specified code of ethics, such as the International City Management Association (ICMA) Code of Ethics.
3. It is very common for employment agreements to contain a clause requiring the employee to provide a reasonable notice, such as 30 to 60 days, prior to voluntarily resigning from employment.
4. Lastly, an employment agreement will also stipulate the terms and conditions of employment for both the employee and the city, which would reduce the possibility of misunderstandings or differences of opinion after the person has accepted the city's offer of employment.

Severance Packages

Prospective city employees may request an employment agreement that includes a provision that is often called a "severance package" that would provide financial remuneration to the employee if they are terminated. These types of clauses usually state that the city will pay the individual an amount equal to "x" months of salary. Many such clauses state that the employee will be paid the severance payment in one cash payment or over a period of time. The amount and method of payment can vary.

Most severance packages contain various stipulations or exclusions. For example, a severance package may not apply to an employee who has been terminated for "gross misconduct", criminal activity or violations of a code of ethics. The severance clause would not apply to a situation whereby the employee voluntarily resigns without being pressured or asked to end employment with the city.

Some severance packages include provisions for the city's contribution to the continuation of health insurance for a specified period of time or until the former employee qualifies for another insurance program. Once again, the terms and conditions for the extension of health insurance will vary. The city should consult their insurance provider prior to including such a provision in the employment agreement.

The inclusion of a severance package in an employment agreement may be viewed as troublesome or unnecessary by some council members or citizens. However, many prospective employees may seek some type of protection in the event that a future council may want a "change in leadership or administration" or possibly eliminate their position. This turn of events could be very problematic if the employee previously held a secure position or had asked their spouse to change jobs or move their family to a different community and possibly a different state.

While a city certainly has a significant financial investment in hiring a new employee, including training, moving expenses and hiring costs, the prospective employee may also have made a significant

financial investment such as a spouse's lost or reduced wages, the fees to sell a house, relocation expenses and related costs for moving their family to another community. Since both the city and the prospective employee will have made a substantial financial investment in this new partnership, it may be in the best interest of all parties to at least consider the merits of an employment agreement.

The Process of Preparing an Employment Agreement

The terms and conditions of an employment agreement can vary considerably from one city to the next and from one employee to the next. It may be safe to say that no two employment agreements are exactly the same. For example, some employment agreements may be for only one year in duration, but other agreements may be open ended with automatic renewal clauses.

One of the advantages of writing legal documents for cities is that virtually all documents created by other cities are public records that can be obtained by anyone. Therefore, the first step in the process may be to contact other cities and request a copy of their employment agreement. The Iowa City Management Association (IaCMA) has prepared a model employment agreement for city managers and city administrators. City managers who are members of the IaCMA may be able to access this model agreement for the city's reference. It is important to note that the IaCMA model agreement contains numerous provisions that may not be needed or desired by your city or perspective city manager or city administrator.

The second step would be to negotiate the general terms and conditions with the prospective city employee. Once these various terms and conditions have been agreed to in principle, the overall content of the agreement can be drafted for review by the city attorney. The draft can then be sent to the employee, mayor and city council for final review.

Once all parties have reached agreement on the content, the document is ready for city council approval, which can be accomplished by passage of a council resolution. The employment agreement can then be signed by the city employee and the mayor on behalf of the city.

If your city has never used employment agreements, the initial reaction to them may not be positive. However, the advantages to both the city and the prospective employee may deserve a "second look" or consideration of employment agreements. As the "baby boomers" exit the city workforce some cities may experience difficulty in recruiting and hiring qualified applicants for positions, such as city clerk, public works director and city administrator. The city's willingness to approve an employment agreement may help ease the fear of an employee that a future mayor or city council will fire the city employee for political reasons or something less than a "just cause."

It is important to remember that an employment agreement is a public document as soon as it has been drafted and made available to the mayor and city council members. Lastly, it is strongly recommended that the city refer the employment agreement to the city attorney for review and recommendation.

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