



GENERAL CIRCULAR OSE 2014-02 October 28, 2014

The Office of State Examiner is issuing this circular in order to provide information on the bills about the bills that were enacted in the 2014 Legislative Session which impact the Louisiana fire and Police Civil Service System and its stakeholders. The circular is for informational purposes and is not intended, and should not be taken, as legal advice. You may wish to consult with an attorney for specific legal advice. The full text of the Acts and Resolutions may be accessed from our website at www.ose.louisiana.gov. We have also provided other information we feel will be helpful to the classified fire and police employees and the civil service boards.

2014 ACTS THAT IMPACT THE MUNICIPAL FIRE AND POLICE CIVIL SERVICE LAWS

ACT 44 (HB 238 - Assistant chief of police; city of Plaquemine; unclassified service) - , effective August 1, 2014, enacts R.S. 33:2572 (A) (B) (C). Act 44 provides that the position of assistant chief of police in the city of Plaquemine is in the unclassified service. The right of selection, appointment, supervision and discharge for the position shall be vested in the chief of police of the city. Provides that any person who is appointed to assistant chief of police in the classified service as assistant chief of police shall not forfeit his seniority accumulated to the date of his appointment and shall continue to accumulate seniority during his/her time as assistant chief of police. Provides that should he/she resign or is terminated from the position of assistant chief

of police for any reason other than malfeasance in office, he/she shall be eligible for reemployment to the same position in the classified service in which he was employed immediately preceding the appointment as assistant chief of police. Provides that if the position has been filled or no longer exists, the department shall employ him in a comparable position.

ACT 68 (HB 456 - Police Chief; city of Covington; unclassified service) - effective May 16, 2014, enacts R.S. 33:2541.3 Section 1, A. (1), (2); B; Section 2; Section 3. Act 68 provides that the chief of police for the city of Covington is in the unclassified service, and the right of selection, appointment, supervision, and discharge for such position is vested in the mayor of the city. The appointment and selection of the chief of police shall be subject to the approval of the municipal governing authority.

Provides that the chief of police shall have not less than five years of full time law enforcement experience and shall have successfully completed a certified training program approved by the Peace Officer Standards and Training Council. Also provides that any person appointed to the position of chief of police shall meet all qualifications and requirements as provided in the Municipal compensation plan in effect at the time of his/her appointment.

Provides that any person who resigns from a position in the classified service to accept appointment as chief of police shall not forfeit

his seniority accumulated to the date of his resignation, but he shall not accumulate seniority during the time he is not in the classified service. Provides that if such person resigns from position of chief of police or is terminated for any reason other than malfeasance in office, he shall be eligible to be reemployed to the same position in the classified service in which he was employed immediately preceding his resignation from the classified service. If the position has been filled or no longer exists, he/she shall be employed in a comparable position.

Section 2 provides that the provisions of this Act are prospective only and shall not apply to the individual occupying the position of chief of police for the city of Covington on the effective date of this Act.

ACT 686 (SB 186 - New Iberia Municipal Fire and Police Civil Service Board) - effective July 18, 2014, enacts R.S. 33:2476(B)(1)(d) and (C)(4). Act 686 provides that only one member shall be elected from the city of New Iberia municipal fire and police civil service system in accordance with Paragraph (C)(4) of this section, provided that such exception is approved by resolution of the city of New Iberia governing authority.

(C)(4) provides that if New Iberia ceases to operate either its fire or police department (R.S. 33:2495.2), only one member shall be elected from the city of New Iberia municipal fire and police civil service system and one member shall be appointed by the mayor of the city of New Iberia upon his own nomination, provided that such exception is approved by resolution of the city of New Iberia governing authority.

ACT 583 (SB 564 - St. Martinville, deputy chief of police; qualification requirements) - effective June 9, 2014, enacts R.S. 33:2541.1(B)(1)(c). Act 583 provides that the qualifications for the position of deputy chief of police shall be not less than five years of full-time law enforcement experience.

ACT 869 (SB 549 - Reinstatement and reemployment; fire service; retirement due to injury) - effective August 1, 2014, enacts R.S. 33:2490(F) and 2550 (F). Act 869 provides that any regular employee who retires from a position in the classified fire service as a result of an injury or a medical condition which prevents him from performing the essential functions of his job, may, with the prior approval of the board, be reemployed in a position of the class in which he was employed immediately preceding his retirement or in a position in any lower class. Any such employee may be reemployed at any time after his retirement, but he shall be qualified for the position to which he is reemployed and be able to perform the essential functions of the position. In addition, the employee shall be reemployed with the seniority accumulated through the date of retirement. This shall not be applicable to employees whose injury or medical condition resulted from their own negligent or intentional act.

2014 ACTS THAT IMPACT FIRE DEPARTMENTS AND FIRE PROTECTION DISTRICTS

ACT 246 (HB 568 - financial benefits for surviving spouses and children of fire personnel) - effective August 1, 2014, enacts R.S. 33:1981.1. Act 246 In addition to the qualifying events enumerated in R.S. 33:1981, a fireman whose death is the direct and proximate result of a heart attack or a stroke shall be presumed to have died as the direct and proximate result of an injury sustained in the performance of his official duties for the purposes of if: (1) While on duty, the fireman engaged in an activity which was stressful or physical including but not limited to fire suppression, rescue, hazardous material response, emergency medical services, disaster relief, or other emergency response activity, or participated in a training exercise that involved stressful or strenuous physical activity. (2) The fireman died as a result of a heart attack or stroke suffered while engaging or participating, or on duty after engaging or participating, in the activities or exercises described above(number

1) or no later than twenty four hours after engaging or participating in the activities or exercises described above (number 1).

Provides that the presumption created by this Section shall be irrebuttable despite medical evidence to the contrary.

Provides that the surviving spouse and children of a fireman whose death meets the requirements under this Section shall be eligible for the payment of benefits enumerated in R.S. 33:1981.

Provides that payment of benefits pursuant to this Section shall be made according to the provisions of R.S. 33:1981 and shall be subject to review by the Law Enforcement Officers and Firemen's Survivor Benefit Review Board.

Provides that payments pursuant to this Section shall be made by the state risk manager from the Self-Insurance Fund provided for in R.S. 39:1533.

ACT 323 (HB 197 - relative to ex officio notaries for fire departments and fire protection districts) - effective August 1, 201, enacts R.S. 35:413. Act 323 provides that any fire chief of a municipal or parish fire department or fire protection district may designate no more than three employees in his office and appoint them as ex officio notaries public;

Provides that each employee so appointed as ex officio notary public may exercise the functions of a notary public only to administer oaths and execute affidavits and acknowledgments, all limited to matters within the official functions of the office of the municipal or parish fire department or fire protection district.

Provides that all acts performed by each ex officio notary public authorized by this Section shall be performed without charge or other compensation.

Provides that the fire chief of the municipal or parish fire department or fire protection district may suspend or terminate an appointment made

at any time, and separation from the employ of the municipal or parish fire department or fire protection district shall automatically terminate the powers of the ex officio notary public.

ACT 869 (SB 549 - minimum wage for firefighters; firefighter's starting salary; Fair Labor Standards Act) - effective August 1, 2014, amends and reenacts R.S. 33:1992(A)(1) and 2002 (A)(3)(a). Act 869 provides that a fireman shall receive a minimum monthly salary of four hundred dollars per month based on a regular hourly rate of pay compliant with the Fair Labor Standards Act. This salary shall be exclusive of supplemental pay received pursuant to R.S. 33:2002.

Provides that a municipality, parish, fire protection district, or other political subdivision maintaining a fire department, may enhance the first-year salary of every paid, regularly employed employee in the amount equivalent to the state supplemental pay, or any portion thereof, that the employee shall be entitled to be paid after one year of service pursuant to this Subpart, so long as the first-year salary, exclusive of the enhancement, meets the minimum age obligations of the Fair Labor Standards Act, 29 U.S.C. 201 et seq.

**2014 ACTS THAT IMPACT EVERY
MUNICIPAL FIRE AND POLICE CIVIL
SERVICE BOARD, FIRE AND POLICE
DEPARTMENT, FIRE BOARD OF
COMMISSIONERS**

ACT 628 (HB 614 - Open Meetings Law; time periods exclusive of legal holidays; postings on website) - effective August 1, 2014, amends and reenacts R.S. 42:17(A)(1), 19(A)(1)(b)(i) and (ii)(aa) and (2)(a), and 20(B). Act 628 provides that when applied to when a public body may hold an executive session, they must notify the person they will be discussing in the executive session at least twenty four hours prior, *exclusive of Saturdays, Sundays, and legal holidays* before the *scheduled time contained in the notice of the meeting at which such executive session is to take place.*

Provides that all public bodies shall give written

notice of a meeting no later than twenty four hours, *exclusive of Saturdays, Sundays, and legal holidays*;

Provides that the agenda should not be changed less than twenty-four hours, *exclusive of Saturdays, Sundays, and legal holidays*, prior to *the scheduled time* of the meeting;

Provides that a public body must post a notice of the meeting at least twenty-four hours *exclusive of Saturdays, Sundays, and legal holidays*, before *the scheduled time* of the meeting.

Provides that if the public body has a website, the public body shall post on its website a copy of the minutes and shall maintain the copy of those minutes on the website for at least three months after the posting. If the public body is not required to publish its minutes in an official journal, the public body shall post its minutes on its website within a reasonable time after the meeting. The inability of the public to access the public body's website due to any type of technological failure shall not be a violation of the provisions of this Chapter.

ACT 696 (SB 245 - boards and commissions; immediate family) - effective August 1, 2014, enacts R.S. 42:2.2. Act 696 provides that no appointing authority shall appoint to any board, commission, council, authority, or similar entity a person who is a member of the immediate family of a person who serves on the board, commission, council, authority, or similar entity at the time of the appointment.

2014 ACTS THAT IMPACT THE POLICE DEPARTMENT EMPLOYEES

ACT 683 (HB 837 - revision to number of training hours requirements for chief of police) - effective August 1, 2014, amends and reenacts R.S. 33:2345(B). Act 683 provides that beginning January 1, 2015, each municipal chief of police shall be required to complete twelve hours of continuing education as approved by the board (Law Enforcement Executive Management Institute Board) within every calendar year.

ACT 859 (SB 294 - Police Officer Bill of Rights) - effective July 1, 2014, amends and reenacts R.S. 40:2531. Act 859 deleted the word "Further" from the following sentence: . . . **Further**, nothing in this Paragraph shall limit any investigation of alleged criminal activity.

ATTORNEY GENERAL OPINIONS

The full text of these opinions may be accessed from the Attorney General's website at <http://www.ag.state.la.us/Opinions.aspx>.

13-0207 (March 19, 2014) (Fire Firefighters' Bill of Rights and Law Enforcement Officers' Bill of Rights) - The provisions of La. R.S. 33:2181 (Fire Firefighters' Bill of Rights) and La. R.S. 40:2531 (Law Enforcement Officers' Bill of Rights) are applicable to the municipal fire and police civil service board whenever it conducts investigations of fire or police classified employees with a view to disciplinary action. The opinion also defined "police officer" and included any elected or appointed head of a law enforcement agency.

13-0227 (May 20, 2014) (Investigations and Pre-Disciplinary hearings) (Subpoenas and civil service boards) - La R.S. 40:2531 requires the recording of any questioning of a police employee or law enforcement officer during a pre-disciplinary hearing conducted by the appointing authority. Such questioning, provided it arises out of the conduct which the police employee has been noticed is the subject of the hearing, would not constitute a new investigation under La. R.S. 40:2531.

Lastly, municipal fire and police civil service boards have the same power and authority as a district court to subpoena witnesses and compel the production of books and papers pertinent to any authorized investigation or hearing.

13-0146 (November 20, 2013) (Police Officer's Bill of Rights) - The city of Hammond may not discipline a police officer for his refusal to answer questions during a civil administrative investigation which failed to comply with the minimum standards mandated by La. R.S. 40:2531 (B), otherwise known as the Police Officer's Bill of Rights.

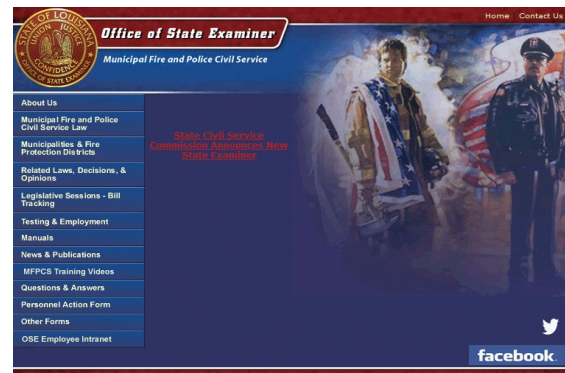
**PROHIBITED
POLITICAL ACTIVITIES
AND
SOCIAL NETWORKING SITES**

Louisiana's Fire and Police Civil Service Law prohibits classified fire and police employees from engaging in political activities, both on and off duty. Political activity is defined in the Louisiana Constitution as any effort to support or oppose a political candidate or party. Such activity includes, but is not limited to, making contributions of time and money to political candidates, parties, campaigns, organizations, and factions, as well as making statements of support or opposition in elections, except those which are expressed privately.

The growing popularity of social networking sites and smart-phone applications, such as Facebook, MySpace, Instagram, LinkedIn, and Twitter (to name just a few) represents a new and increasing exposure to prohibited political activity. Although these sites may appear to offer a venue of private expression, we advise that a text, a tweet, or a post to one's "wall" or "page", cannot be considered private, regardless of privacy settings. **Once a message is launched into cyberspace, expect that it may be shared by anyone with anyone for any purpose.** We believe it is necessary to caution classified employees to avoid making any statement or comment of a political nature which may be construed to be in violation of the political prohibitions. Be cautious also of "liking" political sites, comments, and photographs made by social networkers, making online contributions to political parties or campaigns, or promoting or disparaging political web-sites.

The only penalty for violating the prohibitions of Article X, Section 20 of the Constitution of the State of Louisiana, R.S. 33:2504, and R.S. 33:2564 is termination, a \$500 fine, and ineligibility to serve in the fire and police classified service for a period of six years.

As always, if you have any questions, please do not hesitate to call our office at 225-925-4400. We look forward to the opportunity to assist you.



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