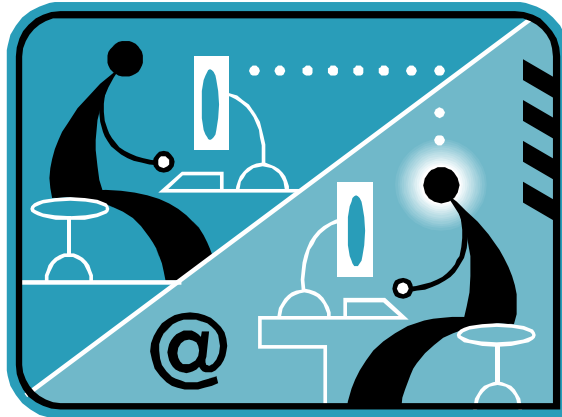


Candidate Information Guide

for the

Departmental Personnel Specialist – 10829 Selection Procedure



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Table of Contents

I.	Introduction	3
	Job Background Information	3
II.	Selection Procedure Development Process	3
	Background Information	3
	Work Behaviors and Task Statements	4
	Knowledge, Skills, and Abilities	9
III.	Selection Procedure Description.....	12
	Written Test.....	12
	Sample Questions.....	13
IV.	Studying for the Selection Procedure	16
	Strategies for Studying	16
	Resource Materials	16
	Appendices	16
V.	Exam Administration Information	17
VI.	Scoring Information.....	18
	Banded Scores.....	18
VII.	Frequently Asked Questions	20

I. Introduction

Your application indicates that you meet the qualifications for this job, and as such, you are invited to participate in the Departmental Personnel Specialist selection procedure. This guide is designed to acquaint you with the job of Departmental Personnel Specialist and the specific details of the selection procedure. **Please read this information carefully.** It is important that you know what to expect before taking the test.

Job Background Information

This is professional personnel administrative work participating in the operation of personnel programs and activities within a state agency. Employees in this class develop, implement and interpret personnel procedures; advise employees on rules, regulations and proper personnel procedures; coordinate in-house programs such as training and orientation; perform organizational/class and compensation studies, develop recruitment and retention policies, and maintain position and classification records. Supervision is received from a Departmental Personnel Manager and work is reviewed for adherence to policies and procedures. The salary range for this classification is \$36,705.60 to \$61,377.60.

II. Selection Procedure Development Process

Background Information

The first step in developing a selection procedure for a State Merit System job is to gather background information about the job. This is done to make sure that the test is job related and fair. We used individuals who would supervise Departmental Personnel Specialists with the State of Alabama to gather this information. This process is called a ***job analysis***.

Through this process, the activities performed on the job were identified and separated into specific ***work behaviors and task statements***. After identifying these work behaviors and tasks, we identified the specific competencies that personnel specialists must have in order to effectively perform all of the work behaviors and corresponding tasks. These competencies were broken into three categories: ***knowledge, skills, and abilities***.

To complete this job analysis process, we asked current Departmental Personnel Managers to rate each work behavior and task statement as well as each knowledge, skill, and ability statement. These ratings identified which work behaviors, tasks, and competencies are most important for effective job performance. The selection procedure developed by the State Personnel Department measures many of the important knowledges and abilities required for the job of Departmental Personnel Specialist.

Work Behavior & Task Statements

For the Departmental Personnel Specialist job, the job analysis process identified several work behaviors and tasks as being critical for effective job performance. New Departmental Personnel Specialist employees must be able to perform these work behaviors and their corresponding tasks upon entry into the position. These work behavior and task statements are listed below.

Work Behavior: Coordinates with personnel at all levels within the department, other state agencies, and related organizations to include exchanging information, making recommendations, advising, and clarifying policy using face to face interviews, personnel forms, computers (e-mail), FAX machines, and telephones following the Rules of State Personnel Board, agency manuals (i.e., departmental employee handbooks), and legal guidelines in order to provide information, collect information, or provide advice/recommendations regarding personnel actions.

- Advises and provides recommendations to department personnel (to include superiors and other staff) concerning personnel policy, guidelines, and related laws (e.g., wages and hours, progressive discipline, staffing, merit system, ADA and FMLA) in order to keep staff informed of alternative actions and to ensure departmental compliance with applicable rules and regulations.
- Advises staff (institutional heads, division/section chiefs, bureau heads) by reviewing personnel plans concerning drug testing, classification, and new hiring requirements in order to help them resolve personnel problems (e.g., staffing needs) and to ensure that plans are appropriate and meet relevant laws and regulations.
- Informs supervisors of benefits available to employees (i.e., EAP program, health insurance, retirement, leave, and work injury) in order to assist them in responding to employee problems, questions, and concerns.
- Consults with supervisors regarding performance appraisals in order to obtain additional information or justification for appraisals as needed to meet personnel rules and regulations.
- Investigates/collects information regarding EEOC-related complaints/policy violations (sexual harassment, preferential treatment) in order to effectively respond to such complaints and/or policy violations.
- Informs employees of their rights (e.g., right to mediation, merit system rights, Title VII rights, etc.) and benefits available to them (i.e., EAP program, health insurance, retirement, leave, and work injury) in response to their problems, questions, and concerns.
- Informs supervisors about employee rights (e.g., merit system rights, Title VII rights, etc.) in order to assist them in responding to employees' problems, questions, and concerns.
- Consults with attorneys in order to ensure agency/department procedures are consistent with legal precedents.
- Provides information to attorneys in order to assist in their preparation of cases for court, administrative actions or in-hours hearings to support the agency/department position.
- Provides information to agency personnel concerning registers (i.e., standing of various persons) while complying with privacy rules and rights in order to make appropriate employees aware of register status.

- Consults with the State Personnel Department in order to determine procedures for processing required personnel paperwork.
- Coordinates the development of selection and promotion procedures with the State Personnel Department in order to make sure the procedures are job-related and meet the needs of the agency/department.
- Coordinates with the State Personnel Department for the delivery of specific agency/department needs (i.e., registers, salary surveys, new class specifications) in order to fill vacancies, ensure employees are paid appropriately, and accomplish agency objectives.
- Establishes priorities with the State Personnel Department with regard to the timing of testing and the creation of registers in order to ensure timely staffing and promotions.
- Coordinates with other agencies (i.e., SEICTF, Retirement Systems) in order to ensure relevant forms are completed properly and procedures are followed.
- Communicates with other state agencies' personnel staff in order to exchange ideas, compare situations, and communicate information.
- Communicates with ASEA concerning employee issues (i.e., discipline, work environment, unfair hiring practices, and legislative issues) in order to clarify specific employee situations.

Work Behavior: Reviews information and develops plans and procedures using a computer, telephone, and fax machine following federal regulations, state laws, the Rules of State Personnel Board, and Finance Department directives in order to clarify/ensure consistency with departmental policy; to implement new policies, programs or other federally mandated acts; and to make recommendations.

- Develops new personnel procedures and guidelines for employees in agency/department in response to legal or other needs in order to improve the work environment or to standardize procedures throughout the agency/department.
- Develops recruiting plans in conjunction with department heads and the State Personnel Department and selects appropriate sources for job ad placement and other recruitment efforts in order to target applicants who will be most qualified for job openings.
- Reviews personnel requests from department in order to determine whether resources are available to permit them to hire staff.
- Reviews and provides written or oral comments on proposed legislation referred by legislative committee, the director of legislative services, or the agency/department director using current laws or policies in order to determine and communicate whether legislation would have an effect on personnel/compensation matters and costs to the agency/department.
- Develops and implements plan of action for achieving work goals in the personnel division based on immediate priorities and future goals of personnel department and agency, to include contingency plans in cases of emergencies and special events (i.e., natural disasters, economic crises) in order to ensure the agency/department can meet new standards, goals in response to these events and effectively carry out its mission.
- Develops documentation and prepares for court, discovery, and discipline and other hearings by reviewing and interpreting records using policies and procedures, SPD rules, employee records, and legal office in order to be able to present accurate information and support the agency/department position.

Work Behavior: Composes and completes documents using computers, software packages, forms, calculators, interviews and other investigative techniques following department policies and procedures, Rules of the State Personnel Board, agency manuals (i.e., departmental employee handbooks), performance appraisal manual, positive discipline manual, legal guidelines, and the State Personnel pay plan in order to document personnel activities; to meet legal, agency and SPD requirements; to provide guidance to agency employees; to respond to questions/requests from outside agencies (i.e. EEOC) and to exchange information.

- Writes manuals describing personnel and department rules and regulations on issues such as employee benefits and rights, work rules, and code of ethics in order to make employees aware of guidelines and regulations.
- Prepares and conducts surveys (e.g., salary surveys) using market wage reports, job specifications, interviews and other job analysis and investigative techniques to obtain relevant personnel information and data in order to have a sound basis for projections and requests (e.g., for salary budget).
- Composes written reports summarizing agency/department personnel activities for use by supervisor using relevant documentation, computers, software packages, and forms in order to update him/her on current and future personnel activities.
- Compiles and prepares statistical information for monthly and annual reports regarding information concerning personnel (i.e., hiring, firing, promotion, resignation, raises) in order to maintain a current record of personnel activity and trends.
- Responds to surveys and requests for information by completing/gathering requested data in order to assist other units and the State Personnel Department in their planning and projections.
- Develops and revises policy and guidelines for the department concerning personnel issues in order to ensure fairness and uniformity, to ensure that department has personnel policies that meet the needs of the work force and are consistent with agency/department and SPD policy, and to provide guidance to supervisors and employees.
- Composes general correspondence (i.e., letters, memos) concerning personnel issues in order to exchange information, clarify personnel action, and provide guidance.
- Reviews responsibilities and results statements for department positions using Form 40's and agency manuals in order to accurately describe the requirements and duties of various jobs.
- Develops recruiting materials in order to communicate accurate information regarding careers and benefits of employment to potential employees.

Work Behavior: Maintains professional self-development using own initiative following the Rules of the State Personnel Board, agency manuals (i.e., departmental employee handbooks), legal guidelines, periodicals, State Personnel Department training resources, and conference opportunities in order to keep abreast of current topics, laws, guidelines and to maintain professional competence.

- Attends meetings (e.g., personnel administrators/managers meeting) and/or conferences in order to stay informed about personnel activities, policies, and procedures.
- Obtains information by attending technical courses and training classes in order to develop knowledge, ability, and expertise concerning personnel activities, policies, and procedures.
- Meets with superior(s), supervisors, and legal staff in order to receive feedback/input and to improve personal competencies and performance.
- Reads and reviews materials (i.e., periodicals, guidelines, statutes) in order to remain current on policies, existing laws, and regulations.
- Maintains active membership in personnel professional organizations (e.g., Society for Human Resource Management) in order to stay abreast of current developments in the personnel arena.

Work Behavior: Represents the agency at community events, outside agency/organization meetings, and in other situations using job announcements, State Employee Guide and other relevant publications following the Rules of the State Personnel Board, agency manuals (i.e., departmental employee handbooks), legal guidelines, and other relevant manuals in order to maintain good public relations, to recruit potential job applicants, and to clarify agency goals before the public.

- Represents the agency at hearings to include termination/dismissal appeal hearings and State Personnel Board hearings using employee file in order to provide relevant information to the administrative law judge or hearing officer.
- Attends job fairs and colleges using job announcements, applications, and pamphlets to meet with the public and attract qualified applicants.
- Attends State Personnel Board meetings using relevant departmental information to represent agency position and present agency requests.
- Testifies in court, depositions, or other hearings using relevant records in order to present information concerning personnel practices of the agency/department.

Work Behavior: Processes personnel transactions to include using employment registers and composing contracts to fill vacancies using a computer, telephone, fax machine, and copier following the Rules of the State Personnel Board, employee records, Form 40's, and certifications of the register in order to provide work units with eligible candidates for selection into vacant positions and to ensure the agency maintains adequate staffing levels to perform all necessary activities.

- Requests and obtains certification of employment register from SPD using Form 15 or 15A and State Finance Director approval letter in order to fill vacant position(s) within the agency.
- Provides certification list and copies of candidate applications to appropriate agency staff members for their review prior to interviewing candidates for vacancies.
- Composes and sends letters of availability to individuals on certification in order to ensure that candidates are willing and able to accept offer of employment from the agency should an offer be made and to remove the names of individuals who are not available from consideration.
- Reviews hiring recommendations from agency staff members to ensure individual(s) being recommended is(are) reachable on the certification and to ensure that appointment of the individual(s) will not violate State Personnel Board Rules, Merit System laws, State or Federal laws.
- Enters action codes (e.g., "A" for appointed, "C" for considered, various for declinations) into appropriate spaces on the certification (or supervises others performing this task) and returns the certification to SPD in order to communicate to SPD the action taken with each individual on the certification.
- Completes paperwork (e.g., Form 11's) related to payroll, leave, and insurance for newly appointed employees (to include provisionals and transfers) in order to ensure that they begin accruing leave and benefits effective the beginning of the pay period in which they begin their employment.

The study also showed that several knowledges, skills, and abilities (KSAs) are associated with the above activities. These KSAs are described below.

- Knowledge of security procedures for personnel records and information as needed to protect private information, maintain confidentiality, and ensure information is only released to appropriate parties.
- **Knowledge of the Age Discrimination in Employment Act as needed to ensure compliance in all personnel actions (e.g., hiring, promotion, termination, performance reviews, etc.).**
- **Knowledge of Title VII of the Civil Rights Act (1964, 1991) as needed to ensure compliance in all personnel actions (e.g., hiring, promotion, termination, performance reviews, etc.).**
- **Knowledge of the Fair Labor Standards Act as needed to ensure employees are correctly categorized as exempt or non-exempt and are properly compensated for hours worked.**
- Knowledge of complaint and grievance procedures for the agency (e.g., due process) as needed to advise employees.
- Knowledge of the Rules of the State Personnel Board as needed to manage activities within the personnel function and advise department/agency officials on personnel matters.
- Knowledge of the State Personnel Department procedures manual as needed to manage activities within the personnel function and advise department/agency officials on personnel matters.
- Knowledge of recruiting sources and techniques as needed to communicate information to potential job applicants.
- Knowledge of supervisory techniques and management principles (i.e., participation in decision-making, delegation, the use of feedback and goal setting, managing for continuous improvement) as needed to assign, delegate, and monitor subordinates' work and ensure work objectives are accomplished.
- Knowledge of alternative dispute resolution techniques (e.g., mediation, employee counseling) as needed to resolve conflicts.
- Knowledge of planning techniques as needed to develop both long- and short-term plans for the personnel function (e.g., forecasting personnel needs, future salary requirements, changes in job classifications).
- **Knowledge of FMLA as needed to ensure compliance with federal regulations and state policy related to personnel actions.**
- **Knowledge of the Americans with Disabilities Act (ADA) as needed to ensure compliance with federal regulations and state policy related to personnel actions.**
- Knowledge of Drug Free Workplace Act and related drug and alcohol testing as needed to develop and enforce appropriate policies and procedures, and conduct drug and alcohol testing that is in compliance with federal and state guidelines.
- **Knowledge of the Immigration Reform and Control Act (i.e., maintaining an I-9 Form with appropriate documentation for agency employees) as needed to comply with federal law and maintain appropriate records.**
- **Knowledge of sexual harassment guidelines as needed to ensure compliance, deal with complaints, and formulate/enforce department/agency policy.**

- **Ability to read and comprehend written technical documents and manuals related to carrying out the personnel officer function (e.g., personnel board rulings, training manuals, budget documents, State Personnel guidelines) as needed to perform assigned job duties.**
- **Ability to read, comprehend and interpret legal documents that govern the personnel officer function (e.g., the Hatch Act, the Merit System, ADA, ADEA, FMLA, Title VII, EEOC rulings and laws, etc.) as needed to perform assigned job duties.**
- Ability to develop agency/department personnel policies consistent with rules and regulations that match needs of the agency/department as needed to ensure compliance with federal and state laws and manage programs within the personnel division.
- Ability to interpret personnel guidelines and policies as needed to apply them in the agency/department.
- Ability to interpret the impact of State and/or Federal legislation regarding personnel issues on own agency/department as needed to manage personnel programs and activities.
- Ability to write job descriptions of job openings and requests for new job classifications as needed to ensure descriptions of job duties are accurate, grammatically correct, and interesting to potential recruits for publication and circulation.
- Ability to develop effective recruiting programs and plans (i.e., recruiting materials, job fairs) as needed to realistically portray the job and job requirements to students, colleges, and job service recruiters.
- Ability to lead decision-making meetings as needed to resolve problems/issues concerning the personnel function.
- **Ability to perform basic arithmetic operations with calculators as needed to maintain various personnel records (i.e. absences, vacation, retirements) and budgets.**
- Ability to identify alternative procedures when existing procedures are no longer possible as needed to accomplish goals.
- Ability to respond to questions about personnel policies and guidelines even when the policies and guidelines may not be clear as needed to communicate information and advise employees.
- **Ability to analyze information as needed to identify inconsistencies, solve problems, and advise agency personnel.**
- Ability to communicate technical and legal information at the appropriate level for agency employees as needed to facilitate understanding to a diverse audience.
- **Ability to communicate in writing to include writing style, content and conciseness as needed to clearly present information to a diverse audience.**
- Ability to write agency personnel procedure manuals as needed to convey accurate information and establish/enforce personnel policies.
- Ability to communicate orally, to include adapting style and content to a diverse audience as needed to provide and obtain information.
- Ability to interview others to gather information as needed to conduct investigations (e.g., employee complaints, harassment charges) and employment interviews.
- **Ability to compose documents such as position papers, letters, and memoranda from information compiled through interviews and other investigative techniques as needed to communicate the agency's position on various issues.**

- Ability to communicate in front of a group as needed to deliver stand-up instruction in training classes, lead meetings, or make presentations.
- Ability to empathize with people in the department/agency when they have personnel-related problems as needed to advise agency personnel and provide or exchange information.
- Ability to remain calm, impartial, and flexible in conflicting and tense situations (i.e., conflict resolution, hearings) as needed to resolve problems/issues.
- Ability to maintain the confidentiality of personnel-related information as needed to prevent inappropriate or illegal release of personnel-related information.
- Ability to read and interpret computer print-outs summarizing personnel information as needed to complete reports, advise agency personnel, and provide/exchange information.
- Ability to testify in court or at other hearings as needed to provide factual information and represent the agency.
- **Ability to plan and organize work as needed to ensure that tasks are completed accurately and in a timely manner based on their relative importance.**
- Ability to interact with individuals from a variety of backgrounds as needed to build and maintain relationships with agency/state officials, provide and exchange information, and deal with personnel-related problems.
- Ability to identify and choose appropriate decisions as needed to implement changes, deal with conflict, and ensure effective operation of the personnel function.
- Ability to develop short-term and long-term plans as needed to plot courses of action, make decisions, and direct the work of the personnel function.
- Ability to use persuasion and tact when dealing with co-workers, department administrators, and other public officials as needed to gain cooperation and achieve objectives.
- Ability to problem solve as needed to manage the activities of the personnel division.

III. Selection Procedure Description

The selection procedure for Departmental Personnel Specialist is a Written Test. The Written Test will measure the specific knowledge areas and abilities listed below. The full KSA can be found bolded in the previous section. **Please review this material carefully.**

Written Test

The Written Test is a multiple-choice exam containing approximately 100 test questions measuring 14 knowledge areas and abilities. Test questions will follow a standard format with four response options from which to choose. The knowledge areas and abilities being measured by the written exam are listed below. Copies of reference materials used in the development of test questions are included as appendices to this Guide and are described in Section IV of the Guide.

Employment Law

- Knowledge of the Age Discrimination in Employment Act
- Knowledge of Title VII of the Civil Rights Act (1964, 1991)
- Knowledge of the Fair Labor Standards Act
- Knowledge of Family and Medical Leave Act (FMLA)
- Knowledge of the Americans with Disabilities Act (ADA)
- Knowledge of the Immigration Reform and Control Act
- Knowledge of sexual harassment guidelines

English and Proofreading

- Ability to communicate in writing
- Ability to compose documents

Reading Comprehension

- Ability to read and comprehend written technical documents and manuals
- Ability to read, comprehend and interpret legal documents

Mathematics

- Ability to perform basic arithmetic operations with calculators

Decision Making/Analyzing Information

- Ability to analyze information
- Ability to plan and organize work

The Written Test will be a closed book examination. You will **NOT** be allowed to use the reference materials provided in this Guide or any other study materials to answer the test questions. Any materials that you need to answer the questions that are not provided in this Guide will be provided to you at the test administration. Candidates will be given three hours to complete the Written Test.

Sample Questions

Questions found in the Employment Law section of the Written Test may be written in one of two formats. You may be required to demonstrate your knowledge of the content of a particular document, or you may be required to demonstrate your knowledge through the application of that knowledge to a specific situation. Examples of both types of questions are included below.

Employment Law Sample Question #1

Which of the following is not a reasonable accommodation according to ADA?

- A. Modifying one's work schedule to days due to a sight impairment which limits one's vision at night.
- B. Providing hearing aids to an employee suffering from hearing loss.
- C. Modifying equipment to adjust for the height of an employee's wheelchair.
- D. Providing a qualified "reader" to read test questions and record answers to aid a visually impaired job applicant take a multiple-choice selection test.

The correct answer is "B."

Employment Law Sample Question #2

According to ADA, an employer does not have to provide reasonable accommodations if it imposes an "undue hardship." Which of the following is not a consideration when determining an undue hardship?

- A. Structure of the building
- B. Financial resources
- C. Physical location of the agency
- D. Structure of the agency's operation

The correct answer is "C."

English and Proofreading Sample Question #1

Mark on your answer sheet the response that indicates the clearest and most concise use of Standard English.

- A. To implement a new policy, one must first obtain approval.
- B. A new policy needs approval before implementation.
- C. Approval must happen to write a new policy.
- D. Policies without approval cannot be implemented.

The correct answer is "A."

English and Proofreading Sample Question #2

Read the group of sentences and then identify the word that is misspelled.

The Department of Administration determined there was one vacancy for the Departmental Personnel Specialist position.

- A. Administration
- B. vacancy
- C. Personnel
- D. Specialist

The correct answer is "C."

English and Proofreading Sample Question #3

Select the word(s) that best fit the sentence according to standard English.

When _____ my supervisor, we discussed your situation at great length.

- A. talking
- B. I talked with
- C. in talking with
- D. having talked to

The correct answer is "B."

Reading Comprehension Sample Question #1

Read the following passage and choose the correct answer.

Standard formats promote efficiency and reduce the chance of error. Time is saved in training personnel because it takes less time to teach one letter and one memorandum style than it does teaching several. Since the word processing operator does not have to make decisions regarding personal preferences of authors, the possibility of using the incorrect style choice is eliminated.

According to the above passage, using standard formats for documents _____

- A. increases decision making.
- B. adds to the clarity.
- C. reduces the chance of error.
- D. All of the above.

The correct answer is "C."

Mathematics Sample Question #1

200 applicants have applied for a job. 112 of these applicants are female and the rest are male. 37 female applicants and 28 male applicants met the minimum qualifications.

What percentage of female applicants were qualified?

- A. 14%
- B. 18%
- C. 25%
- D. 33%

The correct answer is "D."

Decision Making/ Analyzing Information Sample Question #1

Your supervisor will be out of the office today. You arrived at work at 7:55 A.M. You and your spouse have an appointment today at 11:00 A.M. with your family doctor who has advised you that the appointment should not be rescheduled. You need to leave by 10:30 A.M. and will be unable to return to the office later today. Sue Beck, a clerical aide and office receptionist, is the only other employee in the office today. However, she does not type. Your supervisor left a note listing the following tasks that must be completed today:

1. Type the Zicker report (2 hours to complete).
2. Sort and distribute the mail (30 minutes to complete).
3. Call Virginia Hall about the Zicker project (10 minutes to complete).
4. Post the new dividend rates by 12 noon, today (20 minutes to complete).
5. Set up the conference room for the next day's 8:00 A.M. meeting (30 minutes to complete).
6. File dividend reports (2 hours to complete).

Which of the following tasks below would you be forced to perform yourself?

- A. file dividend reports
- B. set up the conference room
- C. type the Zicker report
- D. sort and distribute the day's mail

The correct answer is "C."

IV. Studying for the Selection Procedure

Strategies for Studying

The following suggestions may help you in preparing for the selection procedure for the Departmental Personnel Specialist written examination. These are merely suggestions, and do not guarantee success on any component of the procedure. You may have additional strategies that you have used successfully in the past. Preparing for the selection procedure is your responsibility, and you may adopt whatever approach you feel is helpful and appropriate.

- Read, review, and study the documents provided as appendices to this Guide which are listed below. Try to think of realistic work situations in which you might be required to apply the information contained in those documents. Review the list of Work Behaviors and Tasks found in Section II of this Guide to consider the context in which you might be required to use your knowledge of these documents.
- Review any textbooks, reference materials, and training manuals you may have related to personnel and employment.
- Have individuals ask you questions regarding personnel matters that you have to answer. Try to field questions without referencing any documents.

Resource Materials

The following is a list of resource materials that were used as a guide in developing the written exam. A copy of each document is provided as an appendix to this Guide. In many cases, rather than copying an entire document, only those sections used to develop test questions were copied. Please be aware that if you have excerpts from a document rather than the entire document, this is to prevent you from spending time studying information not included in the exam.

Appendices

- A. Summary of the Age Discrimination in Employment Act
- B. Summary of Title VII of the Civil Rights Act of 1964/1991
- C. Summary of the Fair Labor Standards Act
- D. Summary of the Family and Medical Leave Act
- E. Summary of the Americans with Disabilities Act
- F. Summary of the Immigration Reform & Control Act
- G. Summary of Sexual Harassment Guidelines

V. Exam Administration Information

- ✓ Do **NOT** bring this Guide to the exam location. You will not be permitted to bring it in the testing room.
- ✓ Do **NOT** bring any of your study materials to the exam. This includes notes, manuals, and other study materials.
- ✓ You must bring the test-scheduling card that you will receive from the State Personnel Department to the exam. This card lists the examination title; location of exam; and date, day, and time of examination.
- ✓ You must also bring picture identification to the exam location. This may be your driver license, a military identification card, or a passport.
- ✓ You will not be allowed to enter the exam location or take the exam without your NOTIFICATION CARD AND PICTURE IDENTIFICATION.
- ✓ Bring several number 2 pencils with erasers to the exam. It is also recommended that you bring a highlighter.
- ✓ You may bring a calculator to use for the exam. Small solar-powered or battery-operated calculators that perform basic functions such as addition, subtraction, multiplication, division, square roots, or percentages are allowed. Calculators that plug-in, utilize tape, have word processing, spelling, thesauruses, or other storage and retrieval capabilities (except basic memory functions), are **NOT** allowed. Candidates may **NOT** use a cellphone calculator app. Calculators are subject to inspection by exam monitors. Applicants may not borrow or share calculators at the exam site.

If you need testing accommodations due to a health problem or disability, please contact the State Personnel Department at (334) 242-3389.

VI. Scoring Information

Banded Scores

When the test for Departmental Personnel Specialist is graded, the scores will be grouped into bands. When you receive notification of how you did on the exam, you will not be given a numerical score (e.g., you will not receive a score of 95 out of 100.). Rather, you will be informed into which band your score fell. The following information is provided to help you understand the banding procedure.

What is banding?

Banding is one way to reduce the impact of fluctuations in test scores that do not provide meaningful information about differences in the ability to perform the job. One important purpose of testing is to identify the differences in test scores that reflect real differences among candidates. Banded scoring is a statistical procedure for grouping raw test scores that statistically are not meaningfully different from one another. In banded scoring, bands are set objectively and statistically. They are not manipulated arbitrarily.

- Misconception: Each band should have the same number of people.**

We do not force bands to be a certain size. The people in a band are similar to each other in that statistically there is no meaningful difference in their scores. Sometimes Band 1 may be very large, and at other times it may be small. People's scores determine the size of the bands. We never know how many people will be in each band until we receive the test scores.

- Misconception: Band numbers have no meaning. I don't have a score.**

Band numbers do have meaning. Think of a band as a group of tied scores. Consider that in school two students with average grades of 94.5 and 94.3 would both be grouped into the same band. Just because one student made a 94.5 and one student made a 94.3, the teacher cannot be sure that 0.2 of a point means that the student who scored 94.5 is smarter or is a better student. The fine print on the tests always cautions you not to focus on the numerical score rather on the comparative score which uses some grouping technique such as percentiles, standard deviations, grade levels, etc. These grouping techniques are considered forms of banding.

- Misconception: Band numbers are the same as letter grades.**

Band numbers are not the same as letter grades. Band 1 does not equate to an "A," Band 2 to a "B," and so on. In school, a predetermined numerical range of scores (i.e., 90-100) equals an A. In banding, scores are banded only in relation to one another. Unlike, grade school bands, the width of the bands is not set in advance. You compete only against your peers. Your scores are set in relation to your peers only.

- Misconception: A banded score on one test has the same value as a banded score on another test.**

Banded scores are test specific and cannot be compared from test to test.

•Misconception: People with the most seniority who have been on the job longest should be in the top bands.

Time spent in a job may not be the same as skill in doing the job. The people with the strongest skills (or who did best on the exam) should be in the top bands. Some of the people will have been in the job longer than others. Years of services do not always equal proficiency.

•Misconception: A standing in Band 4 or below automatically indicates failure or ineligibility for jobs.

This statement is false. A band score of 4 or lower is not automatically equated with failure. The true test of your employment opportunities is whether or not you can be certified and considered for a job vacancy.

•Misconception: Banding replaced the "Rule of 10."

Banding did not replace the "Rule of 10." The "Rule of 10" determines the number of bands to be certified. In the past, tied scores referred to an actual numerical score (e.g., two candidates with a score of 98.98 were considered tied) while now all of the scores within a band are considered tied.

•Misconception: People in a band do not differ.

When several people are placed in the same band, it does not mean that those people do not differ at all. Instead, it means that their scores on the exam do not differ enough to be separate scores.

VII. Frequently Asked Questions

How are vacancies filled for the Departmental Personnel Specialist?

The top ten applicants on the register are sent to the requesting agency for consideration. Since the banded scoring process is used, all of the scores within a band are considered tied. Therefore, all names within a band are certified out to the agency, which may include more than 10 names. The names of people not selected stay on the register to be considered for future jobs. Persons are usually hired at the minimum of the pay range.

How long will I remain eligible for appointment?

If you pass the examination, your name will remain on the employment register two years after you are placed on it. You will be notified by mail when to reapply.

How can I find out my standing on the register?

You may check your standing on the register, online at www.personnel.alabama.gov. From the home page, you should click on "OES Login," and follow the instructions. For security purposes, you must now create an online profile in order to access your standing.

How long will it take for me to receive a score?

It typically takes from 4 to 6 weeks to calculate final grades following a test administration. When final grades have been calculated, all candidates are sent a score card in the mail containing their grade from the examination. If you determine that all other candidates have received their score cards and you have not, please call the State Personnel Department. We will check your mailing address and, if necessary, send you a new score card or a letter with your grade enclosed.

Appendix A
Summary of
The Age Discrimination in Employment Act of 1967

The Age Discrimination in Employment Act of 1967

Who the ADEA Protects

The Age Discrimination in Employment Act of 1967 (ADEA) protects applicants and employees who are 40 years of age or older from employment discrimination based on age. The term “[employee](#)” means an individual employed by any [employer](#) except that the term “[employee](#)” shall not include any [person](#) elected to public office in any [State](#) or political subdivision of any [State](#) by the qualified voters thereof, or any [person](#) chosen by such officer to be on such officer’s personal staff, or an appointee on the policymaking level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include [employees](#) subject to the civil service laws of a [State](#) government, governmental agency, or political subdivision. The term “[employee](#)” includes any individual who is a citizen of the United [States](#) employed by an [employer](#) in a workplace in a foreign country.

Who the ADEA Covers

The ADEA applies to private employers with 20 or more employees, state and local governments, employment agencies, labor organizations and the federal government.

Actions Prohibited By the ADEA

Under the ADEA, it is unlawful to discriminate against a person because of his or her age with respect to any term, condition, or privilege of employment, including hiring, firing, promotion, layoff, compensation, benefits, job assignments, and training. Harassing an older worker because of age is also prohibited.

It is also unlawful to retaliate against an individual for opposing employment practices that discriminate based on age or for filing an age discrimination charge, testifying, or participating in any way in an investigation, proceeding, or litigation under the ADEA.

The ADEA permits employers to favor older workers based on age even when doing so adversely affects a younger worker.

ADEA protections also include:

Advertisements and Job Notices

The ADEA generally makes it unlawful to include age preferences, limitations, or specifications in job notices or advertisements. A job notice or advertisement may specify an age limit only in the rare circumstances where age is shown to be a "bona fide occupational qualification" (BFOQ) reasonably necessary to the normal operation of the business.

Apprenticeship Programs

It is generally unlawful for apprenticeship programs, including joint labor-management apprenticeship programs, to discriminate on the basis of an individual's age. Age limitations in apprenticeship programs are valid only if they fall within certain specific exceptions under the ADEA or if the EEOC grants a specific exemption.

Pre-Employment Inquiries

The ADEA does not explicitly prohibit an employer from asking an applicant's age or date of birth. However, such inquiries may deter older workers from applying for employment or may otherwise indicate possible intent to discriminate based on age, contrary to the purposes of the ADEA. If the information is needed for a lawful purpose, it can be obtained after the employee is hired.

It shall **NOT** be unlawful for an employer, employment agency, or labor organization to observe the terms of a bona fide seniority system that is not intended to evade the purposes of this chapter, except that no such seniority system shall require or permit the involuntary retirement of any individual specified by this title because of the age of such individual.

Similarly situated—A participant is similarly situated to any other individual if such participant is identical to such other individual in every respect (including period of service, compensation, position, date of hire, work history, and any other respect) except for age.

No civil action may be commenced by an individual under this section until 60 days after a charge alleging unlawful discrimination has been filed with the Equal Employment Opportunity Commission. Such a charge shall be filed-

(A) within 180 days after the alleged unlawful practice occurred; or

(B) in a case to which section 633(b) of this title applies, within 300 days after the alleged unlawful practice occurred, or within 30 days after receipt by the individual of notice of termination of proceedings under State law, whichever is earlier.

Bona Fide Seniority Systems

It shall not be unlawful for an employer, employment [agency](#), or labor organization to observe the terms of a bona fide seniority system which is not a subterfuge to evade the purposes of this Act except that no such seniority system shall require or permit the involuntary retirement of any individual because of the age of such individual.

(a) Though a seniority system may be qualified by such factors as merit, capacity, or ability, any bona fide seniority system must be based on length of service as the primary criterion for the equitable allocation of available employment opportunities and prerogatives among younger and older workers.

(b) Adoption of a purported seniority system which gives those with longer service lesser rights, and results in discharge or less favored treatment to those within the protection of the Act, may, depending upon the circumstances, be a “subterfuge to evade the purposes” of the Act.

(c) Unless the essential terms and conditions of an alleged seniority system have been communicated to the affected [employees](#) and can be shown to be applied uniformly to all of those affected, regardless of age, it will not be considered a bona fide seniority system within the meaning of the Act.

(d) It should be noted that seniority systems which segregate, classify, or otherwise discriminate against individuals on the basis of race, color, religion, sex, or national origin, are prohibited under title VII of the [Civil Rights Act of 1964](#), where that Act otherwise applies. The “bona fides” of such a system will be closely scrutinized to ensure that such a system is, in fact, bona fide under the ADEA.

Appendix B
Summary of Title VII of the Civil Rights Act of 1964/1991

Title VII of the Civil Rights Act of 1964

Title VII of the Civil Rights Act of 1964 (“Title VII”) is the broadest and most frequently litigated federal anti-discrimination measure. Title VII prohibits discrimination by employers, employment agencies and labor organizations on the basis of **race, color, religion, sex and national origin**. Additionally, Title VII was amended by the Pregnancy Discrimination Act in 1978 to prohibit discrimination based upon pregnancy. Further, the Civil Rights Act of 1991 modified Title VII to make all Title VII claims subject to jury trials. Title VII applies to any employment decision including hiring, discharge, compensation, promotion, classification, training, apprenticeship, referrals for employment, union membership and other terms and conditions of employment. The Equal Employment Opportunity Commission was established as a result of this Act.

The term “employer” means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or any department or agency of the District of Columbia subject by statute to procedures of the competitive service.

Unlawful Practices

It shall be an unlawful employment practice for an employer to make decisions about job assignments and promotions based on an employee's race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, age (40 or older), disability or genetic information. For example, an employer may not give preference to employees of a certain race when making shift assignments and may not segregate employees of a particular national origin from other employees or from customers.

An employer may not base assignment and promotion decisions on stereotypes and assumptions about a person's race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, age (40 or older), disability or genetic information.

If an employer requires employees to take a test before making decisions about assignments or promotions, the test may not exclude people of a particular race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), or national origin, or individuals with disabilities, unless the employer can show that the test is necessary and related to the job. In addition, the employer may not use a test that excludes employees age 40 or older if the test is not based on a reasonable factor other than age.

Bona Fide Occupational Qualification

Bona fide occupational qualifications (BFOQ) are employment qualifications that employers are allowed to consider while making decisions about hiring and retention of employees. The qualification should relate to an essential job duty and is considered necessary for operation of the particular business.

The Bona Fide Occupational Qualifications rule allows for the hiring of individuals based on race, sex, age, and national origin if these characteristics are bona fide occupational qualifications. This is an exception and complete defense to Title VII of the Civil Rights Act of 1964 which protects employees from discrimination based on religion, sex, age, national origin and color at the workplace.

In order to establish the defense of bona fide occupational qualification, an employer must prove the requirement is necessary to the success of the business and that a definable group or class of employees would be unable to perform the job safely and efficiently. An employer should demonstrate a necessity for a certain type of workers because all others do not have certain characteristics necessary for employment success. However, the employer's motivation for excluding the protected class is not significant in evaluating the BFOQ defense. The inquiry focuses on the necessity of using an expressly forbidden classification.

Examples of BFOQ's are: mandatory retirement ages for bus drivers and airplane pilots for safety reasons, churches requiring members of its clergy to be of a certain denomination and may lawfully bar, from employment, anyone who is not a member. However, for positions at a church such as janitors, discrimination based on religious denomination would be illegal because religion has no effect on a person's ability to fulfill the duties of the job. Other examples of bona fide occupation qualifications include the use of models and actors for the purpose of authenticity or genuineness, the requirement of emergency personnel to be bilingual, judged on language competency, not national origin.

Religious Discrimination

Religious discrimination involves treating a person (an applicant or employee) unfavorably because of his or her religious beliefs. The law protects not only people who belong to traditional, organized religions, such as Buddhism, Christianity, Hinduism, Islam, and Judaism, but also others who have sincerely held religious, ethical or moral beliefs.

Religious discrimination can also involve treating someone differently because that person is married to (or associated with) an individual of a particular religion.

The law forbids discrimination when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment.

The law requires an employer or other covered entity to reasonably accommodate an employee's religious beliefs or practices, unless doing so would cause more than a minimal burden on the operations of the employer's business. This means an employer may be required to make reasonable adjustments to the work environment that will allow an employee to practice his or her religion.

Examples of some common religious accommodations include flexible scheduling, voluntary shift substitutions or swaps, job reassignments, and modifications to workplace policies or practices.

Unless it would be an undue hardship on the employer's operation of its business, an employer must reasonably accommodate an employee's religious beliefs or practices. This applies not only to schedule changes or leave for religious observances, but also to such things as dress or grooming practices that an employee has for religious reasons. These might include, for example, wearing particular head coverings or other religious dress (such as a Jewish yarmulke or a Muslim headscarf), or wearing certain hairstyles or facial hair (such as Rastafarian dreadlocks or Sikh uncut hair and beard). It also includes an employee's observance of a religious prohibition against wearing certain garments (such as pants or miniskirts).

When an employee or applicant needs a dress or grooming accommodation for religious reasons, he should notify the employer that he needs such an accommodation for religious reasons. If the employer reasonably needs more information, the employer and the employee should engage in an interactive process to discuss the request. If it would not pose an undue hardship, the employer must grant the accommodation.

An employer does not have to accommodate an employee's religious beliefs or practices if doing so would cause undue hardship to the employer. An accommodation may cause undue hardship if it is costly, compromises workplace safety, decreases workplace efficiency, infringes on the rights of other employees, or requires other employees to do more than their share of potentially hazardous or burdensome work.

An employee cannot be forced to participate (or not participate) in a religious activity as a condition of employment.

Pregnancy Discrimination

In 1978, Title VII was amended to prohibit all forms of discrimination in employment based on pregnancy. The law now requires that a pregnant woman must be “treated” the same for all employment related purposes” as others “similar in their ability or inability to work.” Pregnancy is not considered a “disability” under the Americans with Disabilities Act. However, medical conditions related to a pregnancy are protected under the Pregnancy Discrimination Act.

The purpose of the Act is to protect women from adverse treatment at work due to their pregnant condition. The stereotype associated with “pregnant women” is the very basis of the law. As stated by the House of Representatives in discussing the Act, “The assumption that women will become [pregnant] and leave the labor force leads to the view of women as marginal workers, and is at the root of the discriminatory practices which keep women in low-paying and dead-end jobs.” H.R. Rep. No. 948, 90th Cong., 2nd Sess. 3 (1978).

Under this law, employers are prohibited from the following employment decisions:

1. Employers cannot refuse to hire or promote female employees because they were pregnant.
2. If an employee is able to perform her job, she cannot be forced to go on leave.
3. Employees who take leave because of their pregnancies are entitled to the same reinstatement rights and benefits as employees on leave for other medical reasons.
4. A pregnant employee cannot be forced to exhaust vacation or other leave benefits before qualifying for sick (maternity) leave unless this policy is required of all employees before going on sick leave.

Additionally, the pregnancy amendments to Title VII do not require special treatment for pregnant employees. Consequently, employers are not required to do any of the following for pregnant employees:

1. Provide less strenuous work assignments to pregnant employees unless this is done for employees having other disabilities or illnesses.
2. Hire pregnant employees who are physically unable to perform their job.
3. Exempt employees from the same requirements as employees with other disabilities are required to meet.

Appendix C
Summary of the Fair Labor Standards Act

Fair Labor Standards Act

The Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, recordkeeping, and child labor standards affecting full-time and part-time workers in the private sector and in Federal, State, and local governments.

The Wage and Hour Division (WHD) of the U.S. Department of Labor (DOL) administers and enforces the FLSA with respect to private employment, State and local government employment, and Federal employees of the Library of Congress, U.S. Postal Service, Postal Rate Commission, and the Tennessee Valley Authority. The FLSA is enforced by the U.S. Office of Personnel Management for employees of other Executive Branch agencies, and by the U.S. Congress for covered employees of the Legislative Branch.

Basic Wage Standards

Covered, nonexempt workers are entitled to a minimum wage of \$7.25 per hour effective July 24, 2009. Special provisions apply to workers in American Samoa and the Commonwealth of the Northern Mariana Islands. Nonexempt workers must be paid overtime pay at a rate of not less than one and one-half times their regular rates of pay after 40 hours of work in a workweek.

Wages required by the FLSA are due on the regular payday for the pay period covered. Deductions made from wages for such items as cash or merchandise shortages, employer-required uniforms, and tools of the trade, are not legal to the extent that they reduce the wages of employees below the minimum rate required by the FLSA or reduce the amount of overtime pay due under the FLSA.

The FLSA contains some exemptions from these basic standards. Some apply to specific types of businesses; others apply to specific kinds of work.

While the FLSA does set basic minimum wage and overtime pay standards and regulates the employment of minors, there are a number of employment practices which the FLSA does not regulate.

For example, the FLSA does not require:

1. vacation, holiday, severance, or sick pay;
2. meal or rest periods, holidays off, or vacations;
3. premium pay for weekend or holiday work;
4. pay raises or fringe benefits; or
5. a discharge notice, reason for discharge, or immediate payment of final wages to terminated employees.

Also, the FLSA does not limit the number of hours in a day or days in a week an employee may be required or scheduled to work, including overtime hours, if the employee is at least 16 years old.

Recordkeeping

The FLSA requires employers to keep records on wages, hours, and other items, as specified in DOL recordkeeping regulations. Most of the information is of the kind generally maintained by employers in ordinary business practice and in compliance with other laws and regulations. The records do not have to be kept in any particular form and time clocks need not be used. With respect to an employee subject to the minimum wage provisions or both the minimum wage and overtime pay provisions, the following records must be kept:

1. personal information, including employee's name, home address, occupation, sex, and birth date if under 19 years of age;
2. hour and day when workweek begins;
3. total hours worked each workday and each workweek;
4. total daily or weekly straight-time earnings;
5. regular hourly pay rate for any week when overtime is worked;
6. total overtime pay for the workweek;
7. deductions from or additions to wages;
8. total wages paid each pay period; and
9. date of payment and pay period covered.

Records required for exempt employees differ from those for nonexempt workers. Special information is required for homeworkers, for employees working under uncommon pay arrangements, for employees to whom lodging or other facilities are furnished, and for employees receiving remedial education.

Appendix D
Summary of the Family and Medical Leave Act

Family and Medical Leave Act

The FMLA entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave. Eligible employees are entitled to:

- Twelve workweeks of leave in a 12-month period for:
 - the birth of a child and to care for the newborn child within one year of birth;
- An employee's entitlement to FMLA leave for birth and bonding expires 12 months after the date of birth. Both mothers and fathers have the same right to take FMLA leave for the birth of a child. Birth and bonding leave must be taken as a continuous block of leave unless the employer agrees to allow intermittent leave (e.g., allowing a parent to return to work on a part-time schedule for 10 weeks).
 - the placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement;
- The placement with the employee of a child for adoption or foster care and to bond with the newly placed child within one year of placement. FMLA leave may be taken before the actual placement or adoption of a child if an absence from work is required for the placement for adoption or foster care to proceed. For example, the employee may be entitled to FMLA leave to attend counseling sessions, appear in court, consult with his or her attorney or the birth parent's representative, submit to a physical examination, or travel to another country to complete an adoption before the actual date of placement. FMLA leave to bond with a child after placement must be taken as a continuous block of leave unless the employer agrees to allow intermittent leave. An employee's entitlement to FMLA leave for the placement of a child for adoption or foster care expires 12 months after the placement.
 - to care for the employee's spouse, child, or parent who has a serious health condition;
- To care for the employee's spouse, son, daughter, or parent who has a serious health condition. An employee must be needed to provide care for his or her spouse, son, daughter, or parent because of the family member's serious health condition in order for the employee to take FMLA leave. An employee may be needed to provide care to the family member, for example when the family member is unable to care for his or her own medical, safety or other needs, because of the serious health condition or needs help in being transported to the doctor; or to provide psychological comfort and reassurance to the family member with a serious health condition. This leave may also be taken intermittently.
 - a serious health condition that makes the employee unable to perform the essential functions of his or her job;
 - any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on "covered active duty;" **or**
- Twenty-six workweeks of leave during a single 12-month period to care for a covered servicemember with a serious injury or illness if the eligible employee is the servicemember's spouse, son, daughter, parent, or next of kin (military caregiver leave).

Under some circumstances, employees may take FMLA leave on an intermittent or reduced schedule basis. That means an employee may take leave in separate blocks of time or by reducing the time he or she works each day or week for a single qualifying reason. Under certain conditions, employees may choose, or employers may require employees, to "substitute" (run concurrently) accrued paid leave, such as sick or vacation leave, to cover some or all of the FMLA leave period. An employee's ability to substitute accrued paid leave is determined by the terms and conditions of the employer's normal leave policy.

Eligible employees

Only eligible employees are entitled to take FMLA leave. An eligible employee is one who:

- Works for a covered employer;
- Has worked for the employer for at least 12 months;
- Has at least 1,250 hours of service for the employer during the 12-month period immediately preceding the leave; and
- Works at a location where the employer has at least 50 employees within 75 miles.

Employee Notifications

Leave that is Foreseeable: In general, the employee must give the employer at least 30 days advance notice of the need to take FMLA leave when he or she knows about the need for the leave in advance and it is possible and practical to do so. For example, if the employee is scheduled for surgery in two months, the need for leave is foreseeable and at least 30 days advance notice is required. If 30 days advance notice is not possible because the situation has changed or the employee does not know exactly when leave will be required, the employee must provide notice of the need for leave as soon as possible and practical. When the employee has no reasonable excuse for not providing at least 30 days advance notice, the employer may delay the FMLA leave until 30 days after the date notice is provided. When the employee could not have provided 30 days advance notice but has no reasonable excuse for not providing a shorter period of advance notice, the employer may delay the FMLA leave by whatever amount of time that the employee delayed in notifying the employer. In the case of FMLA leave for a qualifying exigency, the employee must give notice of the need for such leave as soon as possible and practical, regardless of how far in advance the leave is needed.

For planned medical treatment, the employee must consult with the employer and try to schedule the appointment at a time that minimizes the disruption to the employer. The employee should consult with the employer prior to scheduling the treatment in order to arrange a schedule that best suits the needs of both the employee and employer. Of course, any schedule of treatment is subject to the approval of the treating health care provider.

Leave that is Unforeseeable: When the need for leave is unexpected, the employee must provide notice to the employer as soon as possible and practical. It should generally be practicable for the employee to provide notice of leave that is unforeseeable within the time required by the employer's usual and customary notice requirements. For example, if the employee's child has a severe asthma attack and the employee takes the child to the emergency room, the employee is not required to leave the child to report the absence while the child is receiving emergency treatment. When the employee does not give timely notice of unforeseeable leave and does not have a reasonable excuse, the employer may delay or deny the FMLA leave. The extent of an employer's ability to delay FMLA coverage for leave depends on the facts of the particular case. For example, if it was possible for the employee to give notice of the need for leave the same day it was needed, but instead gave notice two days after the leave began, then the employer may delay FMLA coverage of the leave by two days.

Appendix E
Summary of the Americans with Disabilities Act

The Americans with Disabilities Act

Introduction

The Americans with Disabilities Act was legislation passed in 1990 that extends Civil Rights protection to persons with disabilities in such areas as employment, public accommodations, services provided by state and local governments, transportation, and telecommunication relay services. The Americans with Disabilities Act (“ADA”) has been described as the most comprehensive Civil Rights statute since the passage of the Civil Rights Act of 1964. The drafters of the legislation estimated that 43,000,000 Americans currently have one or more physical or mental disabilities.

Defining Disability

The definition of a disability under the ADA includes an individual who has:

1. A physical or mental impairment that substantially limits one or more major life activity; or
2. A record of such impairment; or
3. Is regarded as having such an impairment.

When the Americans with Disabilities Act (“ADA”) was first enacted, the scope of claims filed by “disabled” employees was astounding. The ADA was designed to bring individuals who had been excluded from employment due to severe limitations caused by disabling conditions into the work place. However, after a number of years, it became clear that the ADA was being abused by individuals who claimed they were disabled by everything from being too heavy to “sore” backs. The courts have limited ADA claims in past rulings and, now, the Supreme Court has also clarified what types of claim can be brought under the ADA.

Reasonable Accommodation

A “reasonable accommodation” must be provided by the employer to the known physical or psychological limitations of a qualified applicant or employee who has a disability. The exception to this is if the employer can show that to accommodate would cause an undue hardship on the business.

A reasonable accommodation is an ongoing commitment. The reasonable accommodation analysis is not only for the job the individual retains, the analysis also applies to other jobs the individual seeks or jobs where the individual may be considered for promotion. If the individual with a disability refuses accommodation and there is no other accommodation available, then the individual is no longer considered qualified for the job. An employer is not required to make an accommodation for personal use, such as providing an individual with a wheelchair, special eyeglasses, a hearing aid or an artificial limb. An employer generally does not have to provide a reasonable accommodation unless an individual with a disability has asked for one. Where more than one accommodation will work, the employer may choose the one that is less costly or that is easier to provide.

Examples of reasonable accommodation include the following:

1. Accessibility of facilities to applicants and employees with disabilities.
2. Restructuring a job by modifying or reallocating non-essential job functions.
3. Altering the timing or method in which an essential job function is performed.
4. Work schedule flexibility, if possible.
5. Obtaining special equipment or devices to assist the employee to reach the same standard of performance as any other employee.
6. For employees only, consideration of reassignment to a vacant position.
7. Designated parking for an individual with a disability.
8. Qualified interpreters or readers; hearing amplification devices.

Frequently Asked Questions

Q. Can an employer refuse to hire an applicant or fire a current employee who is illegally using drugs?

A. Yes. Individuals who currently engage in the illegal use of drugs are specifically excluded from the definition of a "qualified individual with a disability" protected by the ADA when an action is taken on the basis of their drug use.

Q. Is testing for illegal drugs permissible under the ADA?

A. Yes. A test for illegal drugs is not considered a medical examination under the ADA; therefore, employers may conduct such testing of applicants or employees and make employment decisions based on the results. The ADA does not encourage, prohibit, or authorize drug tests.

Q. Does an employer have to give preference to a qualified applicant with a disability over other applicants?

A. No. An employer is free to select the most qualified applicant available and to make decisions based on reasons unrelated to the existence or consequence of a disability. For example, if two persons apply for a job opening as a typist, one a person with a disability who accurately types 50 words per minute, the other a person without a disability who accurately types 75 words per minute, the employer may hire the applicant with the higher typing speed, if typing speed is needed for successful performance of the job.

Q. What are the limitations on the obligation to make a reasonable accommodation?

A. The disabled individual requiring the accommodation must be otherwise qualified, and the disability must be known to the employer. In addition, an employer is not required to make an accommodation if it would impose an "undue hardship" on the operation of the employer's business. "Undue hardship" is defined as "an action requiring significant difficulty or expense" when considered in light of a number of factors. These factors include the nature and cost of the accommodation in relation to the size, resources, nature, and structure of the employer's operation. Where the facility making the accommodation is part of a larger entity, the structure and overall resources of the larger organization would be considered, as well as the financial and administrative relationship of the facility to the larger organization. In general, a larger employer would be expected to make accommodations requiring greater effort or expense than would be required of a smaller employer.

Q. Must an employer modify existing facilities to make them accessible?

A. An employer may be required to modify facilities to enable an individual to perform essential job functions and to have equal opportunity to participate in other employment-related activities. For example, if an employee lounge is located in a place inaccessible to a person using a wheelchair, the lounge might be modified or relocated, or comparable facilities might be provided in a location that would enable the individual to take a break with co-workers.

Q. May an employer inquire as to whether a prospective employee is disabled?

A. An employer may not make a pre-employment inquiry on an application form or in an interview as to whether, or to what extent, an individual is disabled. The employer may ask a job applicant whether he or she can perform particular job functions. If the applicant has a disability known to the employer, the employer may ask how he or she can perform job functions that the employer considers difficult or impossible to perform because of the disability, and whether an accommodation would be needed. A job offer may be conditioned on the results of a medical examination, provided that the examination is required for all entering employees in the same job category regardless of disability, and that information obtained is handled according to confidentiality requirements specified in the Act. After an employee enters on duty, all medical examinations and inquiries must be job related and necessary for the conduct of the employer's business. These provisions of the law are intended to prevent the employer from basing hiring and employment decisions on unfounded assumptions about the effects of a disability.

Q. Does the ADA take safety issues into account?

A. Yes. The ADA expressly permits employers to establish qualification standards that will exclude individuals who pose a direct threat -- i.e., a significant risk of substantial harm -- to the health or safety of the individual or of others, if that risk cannot be lowered to an acceptable level by reasonable accommodation. However, an employer may not simply assume that a threat exists; the employer must establish through objective, medically supportable methods that there is genuine risk that substantial harm could occur in the workplace. By requiring employers to make individualized judgments based on reliable medical or other objective evidence rather than on generalizations, ignorance, fear, patronizing attitudes, or stereotypes, the ADA recognizes the need to balance the interests of people with disabilities against the legitimate interests of employers in maintaining a safe workplace.

Q. How are Essential Functions determined?

A. Essential functions are the basic job duties that an employee must be able to perform, with or without reasonable accommodation. You should carefully examine each job to determine which functions or tasks are essential to performance. (This is particularly important before taking an employment action such as recruiting, advertising, hiring, promoting or firing). Factors to consider in determining if a function is essential include:

- whether the reason the position exists is to perform that function,
- the number of other employees available to perform the function or among whom the performance of the function can be distributed, and
- the degree of expertise or skill required to perform the function.

Your judgment as to which functions are essential, and a written job description prepared before advertising or interviewing for a job will be considered by EEOC as evidence of essential functions. Other kinds of evidence that EEOC will consider include:

- the actual work experience of present or past employees in the job,
- the time spent performing a function,
- the consequences of not requiring that an employee perform a function, and
- the terms of a collective bargaining agreement.

Appendix F
Summary of the Immigration Reform and Control Act

Immigration Reform and Control Act

The [Immigration Reform and Control Act of 1986](#) (IRCA). IRCA prohibits employers from hiring and employing an individual for employment in the U.S. knowing that the individual is not authorized with respect to such employment. Employers also are prohibited from continuing to employ an individual knowing that he or she is unauthorized for employment. This law also prohibits employers from hiring any individual, including a U.S. citizen, for employment in the U.S. without verifying his or her identity and employment authorization on Form I-9. Both the employer's and the employee's handwritten (or electronic signature, if applicable) signatures are required to complete Form I-9.

Form I-9 regulations allow employers to choose whether to keep copies of documents employees submit to complete their Form I-9. Therefore, you may choose to begin or end the practice of keeping copies of documents at any time, as long as you do so for all employees, regardless of national origin or citizenship status, or you may be in violation of anti-discrimination laws.

Do not shred previously retained copies of documents. Department of Homeland Security regulations state that once you make copies of documents, you must retain them with the Forms I-9 or store them with the employee's records.

I-9 List of Acceptable Documents

All documents must be unexpired.

Employees may present **one selection from List A** or a combination of **one selection from List B and one selection from List C**.

List A: Documents that Establish Both Identity and Employment Authorization

1. U.S. Passport or U.S. Passport Card
2. Permanent Resident Card or Alien Registration Receipt Card (Form I-551)
3. Foreign passport that contains a temporary I-551 stamp or temporary I-551 printed notation on a machine-readable immigrant visa.
4. Employment Authorization Document that contains a photograph (Form I-766)
5. For a nonimmigrant alien authorized to work for a specific employer because of his or her status:
 - A. Foreign passport, and
 - B. Form I-94 or Form I-94A that has the following
 - I. The same name as the passport, and
 - II. An endorsement of the alien's nonimmigrant status as long as that period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the form.

6. Passport from the Federated States of Micronesia (FSM) or the Republic of the Marshall Islands (RMI) with Form I-94 or Form I-94A indicating nonimmigrant admission under the Compact of Free Association Between the United States and the FSM or RMI.

List B: Documents that Establish Identity

1. Driver license or ID card issued by a state or outlying possession of the United States provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address
2. ID card issued by federal, state or local government agencies or entities, provided it contains a photograph or information such as name, date of birth, gender, height eye color, and address
3. School ID card with a photograph
4. Voter's registration card
5. U.S. Military card or draft record
6. Military dependent's ID card
7. U.S. Coast Guard Merchant Mariner Card
8. Native American tribal document
9. Driver license issued by a Canadian government authority

For persons under age 18 who are unable to present a document listed:

10. School record or report card
11. Clinic, doctor or hospital record
12. Day-care or nursery school record

List C: Documents that Establish Employment Authorization

1. A Social Security Account Number card, unless the card includes one of the following restrictions:
 - A. Not Valid for Employment
 - B. Valid for Work Only with INS Authorization
 - C. Valid for Work Only with DHS Authorization
2. Certification of Birth Abroad issued by the Department of State (Form FS-545)
3. Certification of Report of Birth issued by the Department of State (Form DS-1350)
4. Original or certified copy of birth certificate by a State, county, municipal authority, or territory of the United States bearing an official seal
5. Native American tribal document
6. U.S. Citizen ID Card (Form I-197)
7. Identification Card for Use of Resident Citizen in the United States (Form I-179)
8. Employment authorization document issued by the Department of Homeland Security

Appendix G
Summary of Sexual Harassment Guidelines

Sexual Harassment Guidelines

Defining Harassment

Sexual harassment is any offensive conduct related to an employee's gender that a reasonable woman or man should not have to endure. Only one of these types of harassment is applicable to claims of harassment based on protected classes other than gender.

Effects

Investigations by the EEOC and/or litigation concerning claims of sexual harassment are disruptive and expensive. State agency investigations disrupts professional environments, services/work, and relationships; besides the cost to the State. Employers, managers, supervisors, and employees need to understand the seriousness of claims of sexual harassment and the impact those claims can have on both the employer and the individual.

Sexual harassment, if left unattended or unreported, will often have an adverse effect on the work environment and work force. Even slight or minor acts of sexual harassment will affect the quality of performance, morale, attendance, ability to work with others, loss of productivity, employee turnover, and use of sick leave, etc.

The individual who is the recipient of such harassment will have problems in the areas as mentioned above. In addition, harm may come to the psychological and physical well-being. One study found 96% of the recipients report emotional distress, and 35% experience physical and stress related problems. Typical symptoms include fear, anger, anxiety, lowered self-esteem, depression, guilt, humiliation, embarrassment, nausea, fatigue, headaches, and weight gain or loss.

Sexual harassment can also have an indirect effect on society. Scholars have noted that sexual harassment in schools limit females' participation and impair their academic achievements. Feminist scholars, whether intentional or not, say this role placed on young women contributes to lower achievement by women in society and oppression of girls in school.

Section 704(a) of Title VII makes it an additional violation of the law to discriminate against anyone because he/she has opposed any practice made unlawful by Title VII or because he/she has made a charge, testified, assisted, or participated in an investigation or trial, or has assisted a government agency or other employee in filing a charge.

Facts

Research does indicate some predictable insights:

1. Both men and women can be harassers or recipients of sexual harassment.
2. However, women are more likely to be recipients of sexual harassment.
3. Sexual harassment occurs more often between coworkers than between management and employee.
4. The recipient does not have to be the person being harassed but can be anyone offended or affected by the conduct.
5. Unlawful sexual harassment may occur without any economic injury to or discharge of the recipient.
6. The recipient as well as the harasser may be a man or a woman. Sexual harassment does not have to be by someone of the opposite gender.
7. The harasser may be the recipient's supervisor, co-worker, employee, vendor, contractor, or non-employee.

Examples of Sexual Harassment

- Referring to an adult in slang terms, such as a girl, hunk, doll, babe or honey
- Making obscene phone calls
- Making sexual comments about a person's body, clothes or looks
- Turning work discussions into sexual topics or making sexual innuendoes
- Telling sexual jokes, stories, exploitations, or rumors
- Asking about a person's sex history, sexual fantasies or preferences, or sexual life
- Asking someone out repeatedly who is not interested, pressuring for a date
- Making sounds of whistling, kissing, howling, and/or smacking lips
- Verbal or written propositions or threat
- Sexually derogatory language, either verbal or written
- Looking a person up and down, staring at someone
- Making facial expressions such as winking, kisses or licking lips
- Giving a massage around the neck or shoulders
- Hanging around a person, stalking, or following someone
- Blocking a person's path, standing close, or brushing up against a person
- Hugging, patting, kissing, pinching or stroking a person
- Touching or rubbing oneself sexually while around another; indecent exposure
- Giving personal gifts that are not wanted
- Displaying sexually suggestive visuals, cartoons, calendars, pin-ups, screen savers, computer backgrounds, pornography
- Any unwelcome advance requesting sexual action