



# CLAIMS BRIEF

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## Managing Employment Related Claims

*By Sherri Butler*

Sound familiar?

A police officer of a small municipal police department is disabled with a non-work related disability. He can no longer perform all of the functions of a police officer. Although the town has allowed the officer to perform administrative duties they have notified him that he must retire on disability. The employee through his attorney advises the town that they will be in violation of the Americans with Disabilities Act if they do not accommodate the employee's request to remain on administrative duty.

A minority clerical worker applies for a promotional position within her department. However, the job is awarded to a non-minority worker from another department who has job experience more specifically related to the position. The clerical worker files a Charge of Discrimination with the Equal Employment Opportunity Commission.

Newly elected county commissioners meet in a closed meeting and determine to terminate the head of the department of public works. They announce to the newspaper that he was terminated for cause. The former employee files suit against the County as well as the individual commissioners alleging constitutional violations, interference with property interest rights, and defamation.

*How can LGIT assist you with employment related matters?*

All of these scenarios are extracted from actual situations faced by LGIT member local governments and are considered employment-related claims. An employment claim is any assertion by an employee that an action or inaction on the part of a member or its employee has harmed the employment status of the employee.

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### Please Route to:

Sheriff \_\_\_\_\_  
Attorney \_\_\_\_\_  
Police Chief \_\_\_\_\_

Human Resources \_\_\_\_\_  
Risk Management or Claims \_\_\_\_\_  
Manager \_\_\_\_\_  
Clerk \_\_\_\_\_

Members should recognize that all decisions regarding employees that have a negative impact on the employee's work status are potential claims that may eventually be reviewed by a jury. Managing employment claims should begin at the decision making level. Here are some of the ways LGIT can assist with employment related matters in order to avoid litigation.

*Administrative Agency Representation:* An increasing number of dissatisfied employees and applicants make an administrative agency complaint to the Equal Employment Opportunity Commission (EEOC -Federal) or the Maryland Commission on Human Relations (MCHR -State) requesting relief for a perceived discrimination. These agencies are responsible for receiving, investigating and reconciling claims of discrimination based on race, sex, religion, age or disability under Title VII, the Equal Pay Act, Age Discrimination in Employment Act, and the Americans with Disabilities Act. The Maryland Commission on Human Relations is charged with similar responsibilities to investigate violations of discriminatory practices as established by Article 49B of the Maryland Code Ann.

Once you receive a Charge of Discrimination filed with the EEOC or the MCHR , the LGIT Claims Analyst assigned to your jurisdiction will establish a claim file and assign representation to respond to the administrative charges. LGIT will assign an attorney familiar employment law who is experienced at developing and advocating the facts necessary to rebut the allegations of discrimination. A victory at this stage of a complaint can discourage the employee from engaging in further costly litigation.

*Employment Law Hotline:* Anytime you are going to make an employment decision that may negatively impact an employee, we recommend that you seek legal advice from your city or county attorney. As a service to our members, LGIT operates an Employment Law Hotline that allows our members to seek advice on how to proceed with employment decisions to avoid liability. We encourage you to seek guidance or obtain a second opinion from the Hotline. Dan Karp is extremely experienced in public employment law including merit and at-will employment considerations. He will be able to walk you through the minefield of employment liability.

*Report Potential Claims:* The LGIT Scope of Coverage requires members to report potential and actual claims to the Trust. This enables the Claims Staff to be aware of potential liability and gives staff the opportunity to assist with a possible pre-litigation resolution to the matter. For instance, if you have received a letter of representation from an attorney on behalf of an employee regarding an employment issue, notify your Claims Analyst. Depending upon the circumstances, the Analyst may interpret the letter as a claim and assign counsel to assist our member with a possible resolution of the matter. If you need to report an employment claim contact Erik Walter (A – Garrett) or Sherri Butler (Garrett Co. Sanitary – Worcester).

Although the Office of the Sheriff is an elected State Constitutional Office, the legislature has transferred the responsibility of liability for law enforcement functions of the Sheriff to the County. *Section 9-108 State Gov. Art. Md. Code Ann.* Therefore, LGIT defends and covers Sheriff employees for law enforcement claims. What the legislature did not address is whether the State or the County will be responsible for the payment of any judgment arising from an employment-related matter. There is currently some dispute as to whether the State or the County is financially responsible for such employment matters.

Because of these concerns, LGIT will now represent County Sheriffs at the EEOC and/or MCHR administrative level as well as in litigation. This will allow us to orchestrate consistent representations regarding employment decisions on all possible fronts.

We understand that many LGIT member Sheriffs seek legal advice regarding employment issues from the Office of the Attorney General, however, you should understand that the Attorney General may not be representing or indemnifying the Sheriff in a lawsuit arising from that issue. We invite you to utilize the LGIT Employment Law Hotline to seek guidance for employment related issues.

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