



Arkansas Conservation District Directors Training Manual

Ethics Considerations

Public servants are guided by ethics, some which are defined in rules promulgated by the Arkansas Ethics Commission, some that are a condition of funding, and others that come from elsewhere. The Arkansas Ethics Commission defines “public servants” as public officials, public employees, and public appointees.

Accepting Gifts

According to Arkansas ethics rules, public servants generally may not accept gifts, with some exceptions.

- A public servant may receive food, lodging, or travel where he/she is appearing in an official capacity and the appearance bears a relationship to the public servant’s office or position.
- A public servant may accept a gift valued at less than \$100 only if the item is given to show public appreciation for the public servant’s job performance.
- A gift shall be prohibited if it is intended to reward a public servant for doing his or her job or it is intended as a reward for past or future action (e.g., bribery).
- A public servant may accept a gift given on account of an actual personal, professional, or business relationship independent of his or her official status.
- A public servant be prohibited from receiving outside compensation for doing his or her job.

Confidential Information

According to Arkansas ethics rules, no public official or state employee shall disclose any such information gained by reason of his or her position, nor shall he or she otherwise use such information for his or her personal gain or benefit.

No public servant shall purposely use or disclose to any other person or entity confidential government information acquired by him or her in the course of and by reason of the public servant’s official duties, to secure anything of material value or benefit for himself or herself or his or her family.

Fair Treatment

According to Arkansas ethics rules, no public official or state employee shall use or attempt to use his or her official position to secure special privileges or exemption for himself or herself or his or her spouse, child, parents, or other persons standing in the first degree of relationship, or for those with whom he or she has a substantial financial relationship that is not available to others except as may be otherwise provided by law.

A board member of an entity receiving state funds may participate in, vote on, influence, or attempt to influence an official decision in two situations:

- if the only personal financial interest is “incidental” to his or her position
- if the financial benefit accrues to him or her as a member of a profession, occupation, or large class will be no different than the benefit to any other member of the larger group.

Conflict of Interest

According to Arkansas ethics rules, no member of a state board or commission or board member of an entity receiving state funds shall participate in any discussion or vote on a rule or regulation that exclusively benefits the member.

Non-Discrimination in Program Delivery

Discrimination is prohibited in program delivery. The U.S. Department of Agriculture requires the following nondiscrimination statement shall be posted in all offices of programs that receive federal assistance and included in full on all materials regarding such recipients' programs that are produced for public information, public education, or public distribution.

"In accordance with Federal law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, or disability. (Not all prohibited bases apply to all program.)"

To file a complaint of discrimination write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410 or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer."

Employment Practices

The laws determining what conduct, or pattern of conduct, constitutes actionable employment discrimination are complex so Conservation Districts should contact their LRS or ANRC immediately after receiving a report of employment discrimination to review individual circumstances.

Hiring/Promotion. Under federal law, an employer doesn't have to hire, or promote, the most qualified applicant. But the employer cannot base decisions on personal characteristics that are not job-related. These characteristics typically include:

- Age
- Race
- Sex
- Religion
- National origin
- Disability

An interviewer isn't allowed to ask questions relating to these characteristics. Examples of interview questions that aren't allowed include:

- Are you married? Are you planning to get married?
- Do you have children? Are you planning to have children?
- Where were you born?
- What's your sexual orientation?
- Have you ever been arrested?

An interviewer can, however, ask about a personal characteristic if it could hinder your ability to fulfill the job requirements. Some examples might be:

- Have you ever been convicted of a crime?
- Can you prove that you are eligible to work in the US?
- Can you do this job with, or without, reasonable accommodations?

At Will Employment. Arkansas employees not working under an employment contract are deemed to be "**at will**." At-will employees may be terminated for any reason, so long as it is not illegal. Illegal reasons for termination fall into one of two large categories:

- Illegal discrimination or illegal termination in violation of a public policy.
- When an employee's employment is for an indefinite term, either party may terminate the relationship without cause or at-will, except where an at-will employee relies on a personnel manual or employment agreement that expressly states that he or she cannot be discharged except for cause. In this case, the employee may not be arbitrarily discharged in violation of such a provision.

Employee Handbooks. While an employer is not required by law to have an employee handbook, it is recommended. An employee handbook provides a centralized, complete and certain record of the Conservation District's policies and procedures. At a minimum, an employee handbook should include:

- A statement regarding the at-will employment relationship

- An equal employment opportunity statement
- A policy regarding sexual and other types of harassment in the workplace
- Internet access, e-mail, and voice mail policies

The laws regarding an employer's duties and responsibilities arising under an employee handbook are complex, and a conservation district should contact their LRS or ANRC to review unique situations not covered in the *Sample Conservation District Employee Manual* in the district office.

Workplace Safety. State laws require that public entities furnish a place of employment that is free from recognized hazards that are causing or are likely to cause death or serious physical harm to employees. In most instances, an employee may anonymously complain about an unsafe work environment and be protected against employer reprisals.

Workplace Injury. Workers compensation is designed to compensate employees who have been injured or killed in work related accidents without having to resort to litigation. Dependents of a fatally injured employee may also be entitled to benefits. ANRC purchases workers compensation insurance on behalf of conservation districts.

Sexual Harassment. Sexual harassment is illegal and is a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964. As an example, USDA is "committed to ensuring that employees and customers, male and female, are permitted to work in an environment that is free from harassment and from retaliation for reporting such harassment. NRCS defines sexual harassment as,

"Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when submission to or rejection of such conduct, explicitly or implicitly, affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile or offensive work environment."

Directors and supervisors are responsible for ensuring that the work environment is free from discrimination. To do otherwise is not acceptable and should not be tolerated. Officials must take prompt and appropriate action when sexual harassment is alleged. Reports of violations must be examined immediately and resolved swiftly, consistently and fairly. Reprisal against any person alleging sexual harassment should be taken seriously.

The laws determining what conduct, or pattern of conduct, constitutes actionable sexual harassment are complex so Conservation Districts should contact their LRS or ANRC immediately after receiving a report of sexual harassment to review individual circumstances.

Discrimination and Wrongful Termination.

Employers are not allowed to terminate or discriminate against employees on the basis of:

- Age
- Race
- Sex
- Religion
- National origin
- Disability
- Pregnancy

It is illegal for an employer to consider these characteristics with regard to:

- Promotions
- Job assignments
- Termination
- Wages

It is illegal for an employer to terminate an employee:

- For refusing to break a law
- In retaliation for filing a discrimination or safety claim
- For taking leave under the Family and Medical Leave Act
- Without following its own stated procedure or policy
- For reasons not contained in the employment contract, if one exists

Unemployment Benefits. Unemployment benefits are based on combinations of federal and state statutes. Unemployment compensation programs are administered by the state and normally provide temporary monetary compensation to workers who have been terminated without cause, through no fault of their own. Employees who voluntarily terminate their employment for “good cause” may also be entitled to benefits.

COBRA. Under the federal Consolidated Omnibus Budget Reconciliation Act (COBRA) employees may be allowed to continue their health insurance benefits at the employee’s expense for up to 18 months after either voluntary or involuntary termination, if the employer has 20 or more employees. To qualify for COBRA continuation coverage, an employee must have a qualifying event that causes the employee to lose group health coverage.

Arkansas has enacted a "mini" COBRA law similar to federal COBRA. Arkansas law requires employers with 2-19 employees to offer COBRA for four months.

Nepotism

nep-o-tism: Favoritism shown or patronage granted to relatives, as in business.

American Heritage Dictionary of the English Language, 3rd Edition

The Fair Treatment provisions of the Arkansas Ethics Commission and state and federal non-discrimination policies could be interpreted to prohibit nepotism. The Arkansas Office of Personnel Management rules prohibit a related person from supervising a relative.

The Fair Treatment provisions of the Arkansas Ethics Commission at least require that when filling a vacant position the Conservation District give fair treatment to all potential applicants. While there is no specified procedure to ensure fair treatment, the process might include:

- Developing a written job description, including minimum qualifications, before posting the vacancy
- Posting the position announcement in a way that individuals seeking similar employment can reasonably be expected to learn about the vacancy
- Developing criteria based on the job description to score applications and interviews prior to reviewing applications
- Using a standardized process that ensures fair treatment of all applicants to evaluate applicants to determine who will be invited to interview
- Using a standardized instrument to evaluate candidates invited to interview

Sources

Arkansas Ethics Commission rules at <http://www.arkansasethics.com/>.

NRCS discrimination policy for federally-assisted programs at:

http://www.nrcs.usda.gov/about/civilrights/nondiscrimination_statement.html

NRCS sexual harassment policies at:

http://www.nrcs.usda.gov/about/civilrights/pdf/Sexual_Harassment_Policy.pdf

Employment Law in Arkansas at

<http://research.lawyers.com/Arkansas/Employment-Law-in-Arkansas.html>