

OFCA'S BEST PRACTICES

CHIEF'S EMPLOYMENT AGREEMENT

Revised November 1, 2001

**Developed by the Oregon Fire Chiefs Association
Endorsed by the Oregon Fire District Directors Association
and Special Districts Association of Oregon
*for the OFDDA/OFCA joint conference 2001***

INDEX

The Model Chief's Employment Agreement includes the following:

- | | | |
|----|---------------------------------------|-------------|
| 1. | A Statement of Purpose | Page 3 |
| 2. | An Overview of the Agreement Sections | Pages 4-7 |
| 3. | A Sample Agreement | Pages 8-15 |
| 4. | Sample Addendums A through D | Pages 16-19 |

OFCA's Model Chief's Employment Agreement

PREFACE

One of the most difficult tasks facing a fire department and a candidate for the chief's position is the employment Agreement. The duties and demands from each department vary greatly. The needs and expectations of each candidate are different. While there is no legal requirement that an agreement exist, having an agreement allows each party's expectations and obligations to be clearly stated.

The most important function of the governing body in the hiring and agreement renewal process is to cause a written agreement to be produced that articulates all the expectations of the department and the agreed compensation and benefits. Although this task can be laborious, it is the basis for a quality relationship. The more thorough the agreement, the better the understanding of the work to be performed and the less likely the relationship will be problematic or lead to litigation.

As you review the Model Chief's Employment Agreement, you will be confronted with many variables. These variables have been included to allow for many of the different situations which a department and chief may face. You may choose to include some options and exclude or modify others. It is our hope that by addressing each of the options, the possibility of misunderstandings or of an incomplete agreement will be reduced.

This Model Chief's Employment Agreement has been developed with the support of the Oregon Fire Districts Directors Association (OFDDA) and the Special Districts Association of Oregon (SDAO), and is endorsed by both associations as a reference document for a governing body to review with their respective legal counsel.

Prior to interviewing or offering employment to a chief executive officer, it is recommended that the governing body review model agreements with their legal counsel. Disagreements in negotiations may be avoided if it is clear at the beginning of candidate interviews that there are certain Agreement requirements. The last thing anyone would want is to go through the long and expensive hiring process and then not be able to reach an agreement because of disagreement on a significant employment contract issue that is non-negotiable for one of the parties.

AS WITH ANY AGREEMENT, IT IS IMPORTANT FOR YOUR DEPARTMENT AND CHIEF TO HAVE YOUR

RESPECTIVE ATTORNEYS PRODUCE THE EXACT DOCUMENT THAT MEETS YOUR NEEDS. THE ATTACHED MATERIAL IS INTENDED TO ASSIST BOTH PARTIES IN BETTER UNDERSTANDING SOME OF THE INGREDIENTS YOU MAY WISH TO INCLUDE IN YOUR AGREEMENT.

About the Sections

The sections in this Agreement are typical representations of what you might find in an employment agreement with a chief. Each section should be reviewed and made specific to meet your needs.

Section I Employment

This section defines the parties of the Agreement and the scope of their relationship.

Section II Term/Non-Renewal

This section defines when the Agreement starts and finishes. It further defines what happens if the renewal date is overlooked. The Model Chief's Employment Agreement lists three variations to consider. You will need to select and have legal counsel review the variation (or develop a new variation) that addresses the term of an agreement. There are specific legal restrictions as to the enforceability of an Agreement that exceeds the term of the governing body.

Section III Duties

This section outlines what work the employer expects. An addendum has been attached to assist you in making this Agreement specific to your needs. A job description may also be a desirable attachment. Addendum "A" will need to be completed and attached listing all specific duties that are not spelled out in A through F. Any items addressed in A through F that are not part of the chief's duties should be removed from the final draft before signing. Likewise, other specific duties, based on an employer's needs, should be added.

Section IV Evaluation

This section defines the evaluation process of the employer, including how often and on what basis the employee will be reviewed. Addendum "B" will need to be completed and attached to the final draft before signing. Please refer to the "Model Chief's Performance Assessment Tool" which is designed to match the template for this Employment Agreement. Remember that the unique elements selected for

inclusion in the final version of the Employment Agreement may also need to be addressed in the performance assessment document.

Section V Compensation

This section defines the salary being paid to the employee. You will need to select or create a variation that best addresses salary expectations.

Section VI Benefits

This section defines benefits and all other items that are "additional" compensation. Each subsection has been included in the draft to minimize a chance of overlooking a critical component that needs your review. The subsections are optional benefits that the department can offer or withhold as part of the chief's benefits package. All options are not available at every department.

It is important that each benefit line item, including both offered or withheld items, be addressed in the Agreement. Notes of Items that are not part of the package should be retained or even listed as not applying. This practice will help to eliminate the possibility of disagreements once the Agreement is signed. Be specific when describing a benefit. Alternatively, language stating:

"Except as set out in this section, no other benefits apply, whether or not they are included for other employees or in the policies of Employer."

This section is one that should be thoroughly reviewed by both parties. The more clearly each benefit can be defined, the less likely a dispute will arise at a future date. This section will go a long way in developing a good working relationship at the time of hire.

Most departments allow some de minimus use of department property for personal purpose, i.e., cell phone, pager, etc. This should be addressed under the use of department property benefit. You may wish to address this issue with a department-wide policy.

This section requires that Addendum "C" be completed and attached, explaining each benefit. Vacation, for instance, is a listed benefit. You should spell out the actual vacation benefit in the Agreement or addendum.

Section VII Outside Employment

This section defines whether the chief can have outside employment and, if so, what kind and how much work can be performed while employed by the department. You will need to complete and attach Addendum "D" to the final Agreement.

Section VIII Discipline

This section defines the discipline process. You will need to select one of the various options for the final draft. You may decide, depending upon other provisions in the Agreement or your policies, that a specific discipline section is not needed. This section should have careful review by legal counsel. For exempt employees, the Fair Labor Standards Act (FLSA) restricts certain types of discipline. The inclusion of those types of discipline as an alternative in the Agreement may call into question Employee's exempt status. Depending on the type of entity and who imposes the discipline, you may need to follow the open meetings laws.

Section IX Termination

This section is one of the most important and often the most contentious portion of employment agreements. Section IX should clearly define how the employment relationship ends and under what rules the parties expect to abide during the termination. The range of employment security can range from "at will" to "for cause", and could include civil service protection. This must have careful review by legal counsel. If there are specific policy rights or contract rights that apply to the employment situation so that employment can only be terminated for cause, this creates an expectation of continued employment and raises constitutionally protected property rights issues.

An issue regarding this section is, how realistic it is to expect a candidate to move his/her family to the community and accept the role as chief executive without the employer sharing some risk? The employer, on the other hand, wants protection from a bad hiring decision and the unfortunate situation of hiring an individual who does not smoothly fit with your organization. This is a critical area that an employer should carefully discuss with its attorney and the candidate in an effort to provide mutual protection and to attempt to "balance the risk" between the parties. This section should be discussed by the employer in the job formation process. The goal is to provide the employer with flexibility and the employee with some security and predictability. After all, employees who are afraid to take risks on behalf of the employer are less effective than they should be. Conversely, employees who do not perform or are not willing to work with the employer should be dealing with an employer who has the tools necessary to alter the employment relationship without litigation or unnecessary controversy. If your entity is a city, extra care needs to be taken to address the relationship of fire chief, city administrator and the governing body.

Under C, Disability, consult with legal counsel regarding requirements as they may apply under the ADA and FMLA.

Section X Waiver of Breach.

Section XI Amendments

Section XII Exclusive Term/Assignment

This section provides that the Agreement is exclusively between the employer and employee, and does not involve third parties.

Section XIII Severability/Scope

This section states that the Agreement will continue in force, even if one or more sections are found to be unenforceable. Without language similar to this, if a portion of an Agreement were found to be unenforceable, it might mean the entire Agreement thus becomes unenforceable.

Section XIV Representation

Section XV Paragraph Headings

Section XVI Governing Laws

Section XVII Entire Agreement

This section states that this Agreement is the entire agreement between the employer and employee. This is to eliminate any misunderstandings that oral statements or other previously referenced documents would apply.

Employment Agreement

THIS AGREEMENT is made and entered into on this _____ day of _____, 20____, between _____, _____, Oregon, a duly formed (rural fire protection district, water district or city) under ORS Chapter (____), hereinafter referred to as "Employer", "City" or "District", and _____, Fire Chief, hereinafter referred to as "Employee" or "Fire Chief". [Choose one or both, but be consistent throughout the Agreement.]

It is hereby agreed as follows:

Section I Employment

Employer hereby employs Employee, and Employee accepts employment pursuant to the terms and conditions of this Agreement. All prior agreements, oral or written, are terminated by the execution of this Agreement and have no further force or effect unless expressly stated herein.

Section II Term/Non-Renewal

The term of this Agreement shall begin on the date signed and shall terminate on _____ (date).

Variations to consider:

Variation 1: The term of this Agreement shall begin on the date signed and shall continue until terminated.

Variation 2: This Agreement can only be extended by the mutual written consent of both parties on or before _____ (insert date).

Variation 3: This Agreement will automatically extend for an additional _____ (insert period of time), unless Employer issues a letter of intent not to renew, at least _____ days prior to _____ (date).

Variation 4: This Agreement will automatically extend for an additional _____ (period of time), unless Employer issues a letter of non-renewal within thirty (30) days of issuing Employee's annual performance appraisal.

Variation 5: The initial term of this Agreement shall be ____ years, commencing on _____. On the (anniversary date) (or on a specific date to be inserted) the term shall be automatically extended for one year so that, following the

extension, the Agreement term remains _____ years. However, Employer may notify Employee on or before _____ (date) that the provision for annual extension has been terminated. In that event, the annual extension provision shall be terminated and the Employment Agreement shall expire at the end of the then-existing term.

Section III Duties

Employee's title is (Fire Chief/Administrator) and, in consideration of the compensation and benefits to be paid by Employer, Employee hereby agrees:

- A. To initiate, administer and supervise all services of Employer;
- B. To initiate, administer and supervise all functions and programs of Employer;
- C. To supervise the maintenance and upkeep of any facilities and equipment owned or maintained by Employer, and to recommend to Employer the acquisition of new or sale of used equipment and facilities;
- D. To keep and maintain proper fiscal records for Employer, and cause an annual budget to be produced in a timely manner.
- E. To hire and fire all personnel necessary to carry out the business of Employer.
- F. To perform all functions necessary to completely and fully administer Department in accordance with the directives and policies of Employer.

Variation 1: Employee shall be bound by all rules, regulations and policies now in existence or hereafter adopted by the Governing body of Employer and shall administer the affairs of Employer in accordance therewith and pursuant to the laws of the State of Oregon.

Variation 2: Perform additional duties as described in Addendum "A", attached hereto and incorporated herein by this reference.

Variation 3: To hire and fire all personnel necessary to carry out the business of Employer, subject to the limitations of ORS 478.260, and department operating procedures;

Section IV Evaluation

Employee, in carrying out his/her responsibilities, shall demonstrate the following:

- A. Ability to cooperate with the governing body staff, community citizens and leaders,

peer organizations and neighboring towns, districts and the County;

- B. Ability to effectively communicate;
- C. Ability to effectively lead employees and volunteers;
- D. Good work habits as an example to employees;
- E. Full and efficient utilization of all facilities and services;
- F. Management skills necessary to maximize the fire services made available to the patrons and minimize the cost to the taxpayers; and
- G. Performance measured against the strategic plan, including those specific goals set forth in Addendum "B" attached hereto.

The Employer shall do a performance review based upon the above criteria and overall performance of job duties. The review will be completed by the _____ (date) of each year. It is the duty of Employee to meet with Employer and establish a time and place for the annual evaluation. The procedures for evaluation will be adopted by Employer in accordance with the open meetings laws of the State of Oregon, Employer's policies, or a combination thereof, as applicable.

Section V Compensation

Employer shall compensate Employee as set forth below:

- A. Salary: Employee's base annual salary shall be \$_____, payable in monthly amounts of \$_____ per month, commencing on _____ (insert date Agreement becomes effective).

Variations to consider:

Variation 1: The annual base salary of this Agreement will be subject to modification at the conclusion of the annual performance review, to be effective at a date to be designated by Employer. Subsequent years of this Agreement will recognize the adjusted base salary as the new base salary.

Variation 2: The annual base salary of this Agreement is not subject to annual increases. All future pay increases will be negotiated at the conclusion of the then-current Agreement.

Variation 3: The annual base salary of this Agreement will automatically increase annually by _____% on the anniversary date of Employee. Exceptional performance will be recognized through performance awards, which are in addition to the annual

adjustment.

Variation 4: The annual base salary of this Agreement is subject to annual renegotiations following the annual performance review of Employee. In any event, the base salary of Employee shall not be adjusted lower than the amount indicated in the original Agreement signed and dated _____ (insert original date of Agreement).

Section VI Benefits

The following items A through ____ are hereby identified as benefits for the purposes of this Agreement. Each benefit and how it is applicable to Employee is further defined in Addendum C.

- A. Holidays
- B. Vacation
- C. Sick leave
- D. Leaves of absence
- E. Jury duty
- F. Leave without pay
- G. Vehicle (or vehicle allowance)
- H. Continuing Education
- I. Insurance - personal liability, medical, disability
- J. Retirement (PERS - deferred compensation)
- K. Use of District property
- L. Personal vacation accumulation

Variation 1: Except as set out in this paragraph, no other benefits apply whether or not they are included for other employees or in the policies of Employer.

Variation 2: The policies adopted by Employer, as listed on Addendum C, shall specifically apply to this Agreement and to the employment of Employee.

Section VII Outside Employment

It is understood that the uniqueness of the work to be performed by Employee requires that we define what constitutes "Outside Employment", and what this contractual Agreement will allow. The definition of "Outside Employment" is in Addendum "D". This addendum further defines acceptable and unacceptable outside employment.

Variation 1: Employee shall devote Employee's entire time, attention and energies to the Employer's business in performing the duties as Fire Chief. During the term of this Agreement, Employee shall not be engaged in any business activities which interfere with Employee's current duties or accept remuneration for services from any source other than Employer, except as approved by Employer.

Variation 2: It is expected that Employee, as Employer's chief executive officer, shall devote more than 40 hours per week to performance of his/her duties. Employee may regulate his/her hours in accordance with the instructions of Employer and fulfillment of Employee's duties.

Variation 3: It is expected that Employee, as Employer's chief executive officer, shall devote Employee's entire attention and energies to the successful fulfillment of his/her duties. Employment outside the scope of this Agreement for another employer or the operation of any Employee-owned business shall only be allowed with the express permission of Employer.

Section VIII Types of Discipline

Employer's general disciplinary policies do (not) apply to Employee. In the event Employer deems it necessary to issue discipline to Employee, that discipline may include performance improvement and/or corrective action plans, reprimands, reimposition of probationary status, suspensions (only in conformance with the Fair Labor Standards Act relating to an exempt position), prospective reduction in pay, demotion or termination, depending upon the severity of the offense or actions involved. All discipline processes will be conducted in accordance with the Oregon Open Meetings law, as applicable.

(To the extent the Open Meetings law applies to the discipline involved, it may or may not eliminate the availability of some of the variations, depending on the type of organization district/city.)

Variation 1: All discipline shall be conducted in a confidential session with an Employer representative, representing the intent of Employer;

Variation 2: All discipline shall be conducted in a public meeting held by Employer;

Variation 3: Employee shall have the choice of public or confidential disciplinary proceedings;

Variation 4: Employer shall have the choice of public or confidential disciplinary proceedings, subject to the requirements of the Oregon Open Meetings law, as applicable.

Section IX Grounds and Process for Discipline and Termination

A. Employee's employment may be terminated under this Agreement (choose one) "for cause" or "at will".

Variation 1: Employee is, at all times, an "at will" employee who can be terminated at any time, with or without cause. Nothing in this agreement is to be interpreted as changing Employee's status as an "at will" employee.

Variation 2: Employee may only be terminated for cause during the term of this Agreement or any extension thereof. As the Chief Executive Officer, Employee is in the highest operational and administrative position in the organization and is, therefore, held to higher standards of performance and attitude than other employees. In most cases of misconduct committed by an employee at this level, either counseling or discharge would be warranted, but intermediate levels of disciplinary action would be rare. "Cause" for discipline or termination includes, but is not limited to:

- (1) Intentional or repeated failure to comply with legal requirements or with Employer's policies or directives;
- (2) Commission of any act of fraud, dishonesty, misappropriation of funds, embezzlement, breach of confidence, immoral conduct, or other misconduct in the rendering of services on behalf of Employer;
- (3) Current illegal use of drugs, substance abuse, or being under the influence of alcohol while on duty;
- (4) Repeated discourteous treatment of employees, subordinates, volunteers or the public; or
- (5) Failure or refusal to faithfully, diligently and effectively perform any of the provisions of this Agreement.

Variation 3: Nothing in this Agreement shall be construed to include any requirement that Employer have specific cause for non-renewal of the employment Agreement in accordance with the terms set forth herein.

B. Discipline or termination for cause.

If Employer, for disciplinary reasons, considers imposing termination, demotion, reduction in pay, reimposition of probationary status, suspension without pay (only as permitted by the FLSA for exempt employees), or any other action which would affect Employee's due process rights, Employee shall receive notice of any charges against him/her and the possible sanctions being considered. Employee shall also

be advised of the date and time when Employer will consider the charges and possible sanction. He/she will be afforded an opportunity to refute the charges, either orally or in writing before Employer and to have representation of his choice at the hearing.

Variation 1: Probationary Employment. Employee is considered a probationary employee for a period of one year from the date he/she commences providing services to Employer. It shall take action of Employer after a first review of Employee to end the probationary period. Employer may extend the probationary period after the annual review. None of the rights listed in paragraphs _____ adhere to or become applicable until the expiration of the probationary period.

Variation 2: Without Cause by Employer. Employer may terminate this Agreement at any time upon _____ () days' written notice to Employee. In such event, Employee, if requested by Employer, shall continue to render his/her services and shall be paid his/her regular compensation up to the date specified in the termination. Employee shall be paid on the date of termination a severance allowance of _____ () months' compensation, less all amounts required to be withheld and deducted. In addition, Employee shall be entitled to compensation for all earned but unused vacation, accrued holiday and personal time, subject to the general guidelines of Employer. Employee acknowledges that this contract provision cannot be changed or modified by any statement or policy of Employer which would tend to indicate that he/she may not at any time be dismissed without cause, or that Employee is other than an "at will employee". Acceptance of severance pay by Employee shall constitute a waiver and release of all claims of Employee and any persons legally entitled to assert claims as a result of Employee's dismissal, against Employer, its directors, employees, volunteers, agents, or representatives, whether known or unknown to Employee at the time such severance pay is accepted.

C. Disability.

If Employee is permanently disabled or is otherwise unable to perform his/her duties because of sickness, accident, injury, mental incapacity or health, for a period of _____ successive weeks beyond any accrued sick leave, vacation, or other authorized leave, Employer shall have the option to terminate this Agreement, subject to the requirements of section _____.

D. Termination by Employee.

Employee shall have the right to terminate this Agreement at any time by giving _____ days notice thereof, in writing, to Employer. In such event, Employee shall continue to render services and be paid regular compensation and benefits up to the date of termination.

Section X Waiver of Breach

Waiver by Employer of any breach of any provision of this Agreement shall not operate nor be construed as a waiver of any subsequent breach nor a waiver of this provision.

Section XI Amendments

No amendment nor variation of the terms and conditions of this Employment Agreement are valid unless the same is in writing, references this Agreement, and is signed by both parties.

Section XII Exclusive Term/Assignment

The provisions of this Agreement are for the benefits of the parties solely, and not for the benefit of any person, persons or legal entities. Neither this Agreement nor any rights hereunder may be assigned by either party.

Section XIII Severability/Scope

If any provision of this Agreement is determined to be illegal, invalid or unenforceable, all other provisions shall remain in full force and effect. If any provision is found to be overbroad in scope or duration, the breadth of the provision shall be reduced to the maximum allowable by law.

Section XIV Representation

At all times, Employer has been represented by its attorney. Employee acknowledges that Employee, at all times, had the right to and the availability of independent counsel of Employee's choosing in regard to this Agreement, whether or not Employee chose to exercise that right.

Section XV Paragraph Headings

Headings are used solely for convenience and are not to be used in construing or interpreting the Agreement.

Section XVI Governing Laws

The laws of the State of Oregon shall be used at all times to interpret and govern the interpretation in enforcement of this Agreement.

Section XVII Entire Agreement

The parties agree that this instrument represents the entire Agreement between the

parties, and that all prior representations, promises or statements merge with the written Agreement and, unless specifically set out herein, are not enforceable.

IN WITNESS WHEREOF, the Employer, acting through its _____ (governing body) has authorized this Agreement to be signed and executed on this ____ day of _____, 20___. The Employee has executed this Agreement on the date entered below. Each party acknowledges receipt by their signature of a signed copy of the Agreement.

EMPLOYER

EMPLOYEE:

By: _____

Date: _____

Address: _____

Address: _____
