

***Shakman* Training**  
**for the**  
**Sheriff of Cook County**

# ***Shakman v. Democratic Organization of Cook County, et al.,*** **69 C 2145**

- Briefly speaking, the *Shakman* case prohibits employment decisions based upon political factors. There are three kinds of employees in the Sheriff's Office:
  - (1) *Shakman* covered employees;
  - (2) *Shakman* exempt employees; and
  - (3) employees governed by the Senior Management Protocol.
- The vast majority of Sheriff's personnel are covered by the protections of the *Shakman* case. For *Shakman* covered employees, employment decisions cannot be based on political considerations.
- Employment decisions include:
  - (1) hiring;
  - (2) firing;
  - (3) promotions;
  - (4) transfers;
  - (5) decisions regarding discipline, and
  - (6) overtime.
- These kinds of decisions must not be made on the basis of political affiliation, contributions, precinct work, or other political factors.

# ***Shakman* exempt v. *Shakman* covered**

## ***Shakman* exempt employees**

- A certain class of employee is *Shakman* exempt and political factors *may* be considered for this class of employee.
- The theory behind exempt positions is that the Sheriff and certain political office holders are permitted to use political criteria in hiring persons who will play a role in policy making, including confidential assistants. If a given position is not included on the *Shakman* Exempt List, the presumption is that the position is covered by the *Shakman* criteria, and employment decisions cannot be based on political factors.
- There are currently approximately 175 *Shakman* exempt employees in the Sheriff's Office. The list of *Shakman* exempt employees is posted on the Sheriff's website, at the Cook County Jail and in the Sheriff's Personnel Office, Richard J. Daley Center.

# ***Shakman* exempt v. *Shakman* covered**

## **Senior Managers**

- Another class of employee is Senior Manager. Senior Manager positions are
  - (1) not covered by collective bargaining agreements;
  - (2) not career service positions;
  - (3) not *Shakman* exempt, and
  - (4) involve significant managerial responsibilities.
- The nature of the Senior Manager Position is such that discretion and flexibility in hiring is appropriate and justifiable in order to build an accountable and qualified management team.

# Sheriff Dart's General Order

- Sheriff Dart has committed to operate his office in compliance with the *Shakman* case and all provisions of the Supplemental Relief Order that was entered in connection with the Sheriff's Office (the "SRO").
- The Sheriff has pledged his ongoing support and cooperation with the Compliance Administrator.
- Sheriff Dart has issued a General Order prohibiting the conditioning of any employment decision for *Shakman* covered employees on political factors.
- These training materials have been developed consistent with the Sheriff's philosophy, and eventually will be incorporated into a comprehensive employee manual for the Sheriff's Office.

# Sheriff Dart's General Order

- It is the policy of the Office of the Sheriff of Cook County to prohibit unlawful political discrimination.
- It is the duty of all employees of the Sheriff's Office to report unlawful political discrimination.
- No individual who in good faith reports unlawful political discrimination shall be subject to retaliation.

# Requirements of the Sheriff's General Order

- All Sheriff's Office employees are strictly prohibited from unlawfully directly or indirectly influencing any term or condition of employment because of political reasons or factors, including:
  - a. any employee's or prospective employee's political affiliation;
  - b. political support or activity;
  - c. political financial contributions, or
  - d. promise of future political support (collectively "Political Consideration").

# Unlawful Political Reasons or Factors

- (1) **Recommendations.** Consideration of recommendations for hiring, promotion or other employment terms from public office holders or political party officials that are not based on personal knowledge of the person's work skills, work experience or other job related qualifications.
- (2) **Campaign Work.** The fact that the person worked on a political campaign or belongs to a political organization or political party. Or the fact that the person chose not to work on a political campaign or belong to a political organization or political party. However, the mere fact that a person worked for a political campaign for elective office does not prohibit consideration of a recommendation related to that person insofar as the basis for that recommendation relates to the person's relevant work experience.
- (3) **Contributions.** The fact that the person contributed money, raised money or provided something else of value to a candidate for public office or a political organization. Or the fact the person chose not to contribute to or raise money for a candidate for public office or political organization.

# Unlawful Political Reasons or Factors

- (4) **Party Affiliation.** The fact that the person is a Democrat or a Republican or a member of any other political party or group. Or the fact that the person is not a member.
- (5) **Political Views.** The fact that the person expressed views or beliefs on political matters such as what candidates or elected officials he or she favored or opposed, or what views on government actions or failures to act he or she expressed. However, nothing herein shall serve as a basis for an employee to disobey a lawful order or disobey the chain of command.

# Enforcement of the Sheriff's General Order

- (1) Complaints alleging unlawful Political Consideration in employment, as defined above, shall be made to the Sheriff's Office of Professional Review. The Sheriff's Office of Professional Review shall be responsible for conducting or directing an investigation of the complaint.
- (2) It shall be the duty of every employee who learns of unlawful Political Consideration at the Sheriff's Office, as described above, to report this information to the Sheriff of Cook County's Office for Professional Review without delay (*emphasis added*).**
- (3) There shall be no retaliation, punishment or penalty against a Sheriff's employee for complaining to, cooperating with, or assisting in an investigation, proceeding or hearing conducted by the Sheriff's Office of Professional Review in the performance of its duties.
- (4) Any retaliation for complaining to, cooperating with, or assisting in an investigation, proceeding or hearing conducted by the Sheriff's Office of Professional Review in the performance of its duties shall be reported to the Sheriff's Office of Professional Review without delay (*emphasis added*).**

# Applicability of the Sheriff's General Order

- This Order is applicable to all Sheriff's Office employees. Any employee found in violation of this General Order, including all procedures outlined, may be subject to discipline, up to and including termination of employment, in accordance with any applicable Collective Bargaining Agreements, Sheriff's Merit Board rules, and State or Federal statutes.

# The Cook County Ethics Ordinance

**The Sheriff's Policy and General Order relating to political discrimination are consistent with the Cook County Ethics Ordinance (Sec 2-560, *et al*). The Ethics Ordinance, as amended, prohibits unlawful political discrimination and states in pertinent part:**

## **Section 2-583**

- (a) No official or employee shall compel, coerce or intimidate any County official or employee to make or refrain from making any political contribution. No official shall directly solicit any political contribution from his or her employees or the spouses of or immediate family living with his or her employees. Nothing in this subsection shall be construed to prevent any official or employee from voluntarily making a contribution or from receiving a voluntary contribution.
- (b) No employee with contract management authority shall serve on the political fundraising committee of any elected official or candidate for County office.
- (c) County employees shall not intentionally perform any prohibited political activity during any compensated time (other than vacation, personal, or compensatory time off). County employees shall not intentionally misappropriate any County property or resources by engaging in any prohibited political activity for the benefit of any campaign for elective office or any political organization.
- (d) At no time shall any official or employee intentionally misappropriate the services of any County employee by requiring that employee to perform any prohibited political activity:
  - (1) As part of that employee's County duties;
  - (2) As a condition of County employment; or
  - (3) During any time off that is compensated by the County (such as vacation, personal, or compensatory time off).

# The Cook County Ethics Ordinance

- (e) A County employee shall not be required at any time to participate in any prohibited political activity in consideration for that employee being awarded any additional compensation or employee benefit, in the form of a salary adjustment, bonus, compensatory time off, continued employment, or otherwise.
- (f) A County employee shall not be awarded any additional compensation or employee benefit, in the form of a salary adjustment, bonus, compensatory time off, continued employment, or otherwise, in consideration for the employee's participation in any prohibited political activity.
- (g) Nothing in this Section prohibits activities that are otherwise appropriate for a County employee to engage in as a part of his or her official County employment duties or activities that are undertaken by an employee on a voluntary basis as permitted by law.

# The Cook County Ethics Ordinance

**Section 2-561 of the County Ordinance defines “prohibited political activity” as:**

- (1) Preparing for, organizing, or participating in any political meeting, political rally, political demonstration, or other political event.
- (2) Soliciting contributions, including but not limited to the purchase of, selling, distributing, or receiving payment for tickets for any political fundraiser, political meeting, or other political event.
- (3) Soliciting, planning the solicitation of, or preparing any document or report regarding any thing of value intended as a campaign contribution.
- (4) Planning, conducting, or participating in a public opinion poll in connection with a campaign for elective office or on behalf of a political organization for political purposes or for or against any referendum question.
- (5) Surveying or gathering information from potential or actual voters in an election to determine probable vote outcome in connection with a campaign for elective office or on behalf of a political organization for political purposes or for or against any referendum question.
- (6) Assisting at the polls on election day on behalf of any political organization or candidate for elective office or for or against any referendum question.
- (7) Soliciting votes on behalf of a candidate for elective office or a political organization or for or against any referendum questions or helping in an effort to get voters to the polls.

# The Cook County Ethics Ordinance

- (8) Initiating for circulation, preparing, circulating, reviewing, or filing any petition on behalf of a candidate for elective office or for or against any referendum question.
- (9) Making contributions on behalf of any candidate for elective office in that capacity or in connection with a campaign for elective office.
- (10) Preparing or reviewing responses to candidate questionnaires in connection with a campaign for elective office or on behalf of a political organization for political purposes.
- (11) Distributing, preparing for distribution, or mailing campaign literature, campaign signs, or other campaign material on behalf of any candidate for elective office or for or against any referendum question.
- (12) Campaigning for any elective office or for or against any referendum question.
- (13) Managing or working on a campaign for elective office or for or against any referendum question.
- (14) Serving as a delegate, alternate, or proxy to a political party convention.
- (15) Participating in any recount or challenge to the outcome of any election.

# Examples of Prohibited Conduct

**It is impossible to capture all forms of prohibited conduct. Examples of such conduct include, but are not limited to, the following:**

- conditioning employment, promotion, termination, or transfer on political work or party affiliation;
- requiring contributions to any political party as part of any employment action;
- requiring employees to assist at the polls on Election Day;
- permitting job related benefits to induce or reward campaign work;
- requiring applicants to have political connections in order to be hired;
- requiring employees to have political connections in order to be promoted;

# Examples of Prohibited Conduct

- withdrawing or delaying a posting until the favored candidate gains the minimum experience necessary for the job;
- lowering minimum requirements so that a less accomplished, but politically connected, individual can qualify for the position;
- manipulating interviews, applications or test scores;
- permitting politically connected individuals to unfairly gain salary, or position, or to avoid discipline;
- requiring individuals without political protection to work outside their job description without a raise or the chance for upgrade or promotion;
- giving individuals without political protection the duties of a higher position with a promise of a promotion but giving the promotion to a politically connected individual;

# Examples of Prohibited Conduct

- forcing individuals without political protection to do the work of politically protected co-workers;
- giving less qualified but politically connected individuals promotions or reclassifications sought by the non-connected employees;
- subjecting individuals without political protection to false accusations and disciplinary charges;
- failing to value self-improvement of employees and instead rewarding political activity and contributions;
- subjecting individuals without political protection to harassment at the hands of politically protected supervisors or co-workers, or
- awarding overtime, availability of resources, shift and transfer requests based on political factors.

# Management

- **Managers have obligations under *Shakman*, and violations of these obligations have the potential to have very serious consequences.**
  
- ***United States v. Sorich*, 523 F.3d 702 (7th Cir. 2008), cert. denied, 555 U.S. \_\_\_\_ (2009), 2009 WL 425807.**
  - The former Assistant to the Director of the City's Intergovernmental Affairs Department and his Deputy, as well as high officials in the Department of Streets & Sanitation for the City of Chicago, were charged with using fraudulent processes to award City jobs, promotions, and other job related benefits on bases other than merit in order to induce and reward political campaign work to benefit certain private and political organizations.
  - Sorich was tried and convicted and is currently incarcerated.

# Management

- ***United States v. Sanchez and Delvalle, 07 CR 149, also addresses Shakman violations.***
  - The *Sanchez* indictment identified several categories of co-schemers including personnel officials who allegedly manipulated the hiring process, falsified rating sheets, and falsely certified that political considerations played no part in the decision-making process.
  - Campaign coordinators who allegedly lobbied for jobs for political workers and other officials and employees who allegedly participated in or benefitted from the scheme were also implicated.
  - Sanchez was convicted on four counts of mail fraud and Delvalle was convicted of perjury.
- **The import is clear; those engaging in prohibited conduct do so at great personal and professional risk.**

# Management

- The *Sorich* and *Sanchez* cases discuss the many consequences that attend the improper application of patronage.
- Those in senior management and/or *Shakman* exempt positions should not assume that because they are following orders that liability, or criminal prosecution, cannot reach them as well.
- The legal theory underpinning these cases is “theft of honest services.” The “honest services” principle, as pointed out in the *Sorich* dissent, is that officeholders and employees owe a duty to act only in the best interests of their constituents and employers.
- The outer boundaries of this theory have yet to be tested. **You should, therefore, think about how a member of the public might react to a given job related decision.**

# Implementation of *Shakman*

- The most effective way to implement *Shakman* is to be aware of and to institute office procedures and policies that rest on merit and do not reward inappropriate conduct.
- Enforcement actions must be prosecuted where appropriate.
- Following an appropriate employment plan and instituting job descriptions and evaluations that track employee performance in a regular and fair manner are necessary.

# Implementation of *Shakman*

- An employment plan,
- job descriptions,
- hiring criteria, and
- systematic performance evaluations (including input from employees) will go far towards changing a culture that in the past rewarded political affiliation and not merit.

# The Hiring and Interview Process and *Shakman* Certifications

## ■ Hiring and Interview Process

- When participating in the hiring and interview process, political factors must not be considered for *Shakman* covered positions.
- An employee's or applicant's political affiliation, political support or activity, financial contributions, promises of such political support, activity or financial contributions or such employee's or applicant's political sponsorship or recommendation (or lack thereof) cannot be considered during the hiring or interview process.

# ***Shakman* Certification Forms**

## ■ ***Shakman* Certification Forms**

- All employees involved in the hiring process will be required to execute the Sheriff's *Shakman* Certification form, certifying that political considerations did not enter the hiring process. These employees include but are not limited to:
  - employees screening applications,
  - employees creating eligibility lists,
  - employees conducting interviews and
  - employees making final determinations to hire.

# ***Shakman* Certification Form**

- All persons interviewed for *Shakman* covered positions will be required to execute the Sheriff's *Shakman* Certification for Applicants/Candidates indicating that political considerations were not a part of the application process.
- **There are severe penalties, including discipline, discharge and possible criminal charges for falsifying a *Shakman* certification.**

# Other Employment Actions

- The *Shakman* Decrees, the Sheriff's General Order, and the Cook County Ordinance do not only prohibit unlawful political discrimination relating to hiring decisions, but also cover decisions related to **firing, discipline, transfer and promotion**.
- As in the hiring and interview process, all employees involved in these processes must certify that they did not consider political factors in making these decisions. Here too, there are penalties for signing false *Shakman* certifications.

# Claims

- Currently, the Compliance Administrator is adjudicating claims of political discrimination. The SRO contains two distinct claims processes.
  - The first procedure governs the handling of claims where the alleged discriminatory action or actions occurred between June 1, 2006 and October 30, 2008 (“SRO claims”).
  - The second procedure governs the handling of claims where the alleged discriminatory action or actions occurred on or after October 31, 2008 (“Post SRO claims”).
  - It should be noted that *Shakman* violations are not all encompassing, which is to say that causes of action that are not related to political considerations (for example, claims of age, sex, race and gender discrimination) must be made independently.

# SRO Claims

- **Zero Tolerance for Retaliation.** An employee in your Department may have brought an SRO claim against the Sheriff's Office. It is important that you understand that retaliation against any employees who have brought claims or who you believe have brought claims will not be tolerated.

# Post SRO Claims

- The SRO establishes a procedure for the Sheriff's Office to process claims based on political discrimination occurring after October 30, 2008. The Sheriff's Office of Professional Review is empowered to handle these claims.
- The procedure is set forth on the Compliance Administrator's website at [www.sheriffshakman.com](http://www.sheriffshakman.com). The Compliance Administrator has the authority to play a role in these types of proceedings, but it is clear that the primary responsibility for processing this class of claim rests with the Sheriff's Office of Professional Review.
- The Compliance Administrator is also empowered to investigate claims of retaliation. If, as a result of making a claim (whether sustained or not) an employee suffers retaliation, there is recourse with the Compliance Administrator. **Retaliation against individuals who have made SRO claims or Post SRO claims will not be tolerated.**

# Summary

- The *Shakman* Decrees, the SRO, the General Order and the Cook County Ordinance establish that employees and job applicants have a right to be free from political discrimination in public employment.
- Political factors must not be considered in employment decisions for *Shakman* covered positions and will not be tolerated.
- Violations of the *Shakman* Decrees may subject the Sheriff's Office and the individual to liability or disciplinary action. Such violations may also result in criminal prosecution punishable by fine or imprisonment.
- It is hoped that a full understanding of the rights, duties, and obligations of Sheriff's employees will lessen, if not eliminate, the instances of unlawful political decision making.

# Frequently Asked Questions

**1. Am I *Shakman* exempt?**

If your position is not covered by the *Shakman* Decrees, your position will be listed on the Exempt list which is posted in the Sheriff's Personnel Department, Richard J. Daley Center and at the Cook County Jail.

**2. What should I do if I get a call from an individual recommending a job applicant?**

Instruct the caller that he or she must put the request in writing and send it to the Office of the Sheriff of Cook County, Department of Personnel, 50 W. Washington, Room 702, Chicago IL 60602. Your Department is asked to keep a written log including the name of the applicant and the name and telephone number of the caller. You should report any contacts from aldermen or other public officials.

**3. What should I do if I receive a letter about a job applicant?**

You must forward the letter to Peter Kramer, General Counsel, Office of the Sheriff of Cook County, 50 W. Washington, Room 704, Chicago, IL 60602.

**4. What should I do if I want to make a call about a job applicant?**

You should put your request in writing and send it to Office of the Sheriff of Cook County, Department of Personnel, 50 W. Washington, Room 702, Chicago IL 60602.

# Frequently Asked Questions

**5. If my supervisor asks me to contribute to a campaign, do I have to?**

No. It is your decision whether or not to contribute. Your supervisor is aware of that. If your supervisor pressures you to make a contribution, you should report this to the Sheriff's Office of Professional Review, 3026 S. California, 4<sup>th</sup> Floor, Chicago, IL 60608.

**6. Must I do political work?**

No.

**7. Must I put a sign in my yard or in my window?**

No.

**8. If I am aware of political discrimination, do I have to report it?**

Yes.