

Q. As our town prepared to adopt our employee grievance procedure, some questions arose. First, how is "employee" defined and who exactly is going to be covered by this procedure?

A. The state law did not define "employee". That means the town board may decide to define the term itself in its procedure if you want to limit who may use it. Employment law attorneys have differing opinions on whether "appointed" officials that serve at the pleasure of the governing body should be (or are) included in the definition. For example, should plan commissioners be considered employees? What about election officials? Until a court is asked to decide who is an "employee" and provides further guidance on this issue, the town board is free to come up with its own reasonable definition. One possibility would be to adopt an employment policy or employee handbook and then define an employee as people that are subject to the provisions of the handbook in terms of work rules, entitlement to benefits like sick time, vacation pay, holiday pay, etc. That way, appointed officials like plan commissioners would not fall under the definition of employee. The board may also simply decide to explicitly *exclude* appointed officials that serve at the pleasure of the governing body from the definition of employee.

Q. Should the town have the employee sign the grievance procedure?

A. If your town does not currently have a collective bargaining agreement or some other type of employment contract in place, any general employees that you have would likely be "at will". The town must be careful to preserve that "at will" status and should not take actions that would imply that you are creating a contract with your employees if that is not your intention. As a result, it would be okay to have employees sign a form acknowledging that they have received a copy of your grievance procedure, employment policy, and/or handbook, but you do not want to ask for a signature in a way that could be interpreted as creating a contract or agreement. To make clear to employees that the employment relationship has not changed by the mere creation of a grievance procedure, you may wish to explicitly state in the grievance procedure that employee status remains "at will". Language such as "All employees of the Town of _____ are employees at will unless a state statute or written employment contract provides otherwise. Either the Town or the employee can terminate the employment relationship at any time, with or without cause, with or without notice" would suffice. Keep in mind, state law provides special procedures that must be followed before a town may remove a police officer, see s. 60.56(1)(am), Wis. Stat. and you may have a police or fire commission that puts procedural requirements in place for removing firefighters, etc. So, may sure that your grievance procedure is consistent with any statutory protections that are out there and do not attempt to eliminate any statutory protections.

Q. Are appointed clerks able to use the grievance procedure?

A. Appointed clerks and treasurers are often treated like employees in some respects. They may get benefits and typically have to comply with work rules such as working specific hours, etc. However, many appointed clerks have written employment contracts and, by statute, can only be removed for cause during a term of appointment. So, the town board will have to decide whether to allow appointed clerks or treasurers to use the grievance procedure by defining employee to either include or exclude such officials.