

From: Kenneth Walton [<mailto:krwper038@gmail.com>]
Sent: Thursday, May 25, 2017 10:14 AM
To: Legal Inquiries <legalinquiries@nhmunicipal.org>
Subject: Fwd: Website Ask Us Form

Dear Legal Inquiries - I was referred to you by the NH Library Trustees Assn. I am seeking advice on the issue described below. It seems to me that if 202-A:17 applies without exception during a probationary period, there is little or no reason to have a probationary period. Thank you in advance for your help.

“Many library personnel policies (including ours) have a probationary period for new hires (e.g., 6 months) during which they can be discharged for unsatisfactory performance.” But RSA 202-A:17 says a library employee can only be discharged for just cause. Doesn't 202-A:17 apply during the probationary period? Or is "unsatisfactory performance" broader than "just cause", such that it is easier to discharge a new employee who perhaps is not meeting expectations but is nonetheless not at the level that rises to "just cause"? Would appreciate your advice.

Thank you.

Ken Walton, Chair of Trustees
Chesterfield Public Library

From: Legal Inquiries <legalinquiries@nhmunicipal.org>
Date: Thu, May 25, 2017 at 12:07 PM
Subject: Chesterfield Library
To: krwper038@gmail.com <krwper038@gmail.com>

Good Afternoon Kenneth:

I believe you are correct to be concerned with the impact of RSA 202-A:17 as applied to the discharge of a “probationary” library employee. The language of that statute would apply to all persons working for the library as an employee, including those employees who are working in a probationary status. Even though the library’s personnel policies permit the discharge of a probationary library employee for “unsatisfactory” performance, such disciplinary action must still comply with RSA 202-A:17.

That statute provides that:

“No employee of a public library shall be discharged or removed from office except by the library trustees for *malfesance, misfesance, or inefficiency in office, or incapacity or unfitness to perform the employee's duties.*”

“Unsatisfactory” performance is clearly not the same as “malfesance, misfesance, or inefficiency in office, or incapacity or unfitness to perform the employee's duties.” I would interpret the word “unsatisfactory” to be a less demanding standard of improper job performance than “malfesance, misfesance, or inefficiency in office, or incapacity or unfitness to perform the employee's duties.”

For those reasons, **simple unsatisfactory job performance would not justify the discharge of a probationary library employee. There must be evidence of “malfesance, misfesance, or inefficiency in office, or incapacity or unfitness to perform the employee's duties.”** In addition, all of the procedural safeguards in RSA 202-A:17 would have to be followed, and allow the affected probationary employee to request a hearing before the library trustees before the employment termination went into effect.

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