



University of Kentucky
UKnowledge

MPA/MPP/MPFM Capstone Projects

James W. Martin School of Public Policy and
Administration

2007

Does the Incidence of Public Official Liability Claims Increase in Years Following a Mayoral Election?

Laurel A. Curtis
University of Kentucky

Follow this and additional works at: https://uknowledge.uky.edu/mpampp_etds



Part of the [Policy Design, Analysis, and Evaluation Commons](#)

[Right click to open a feedback form in a new tab to let us know how this document benefits you.](#)

Recommended Citation

Curtis, Laurel A., "Does the Incidence of Public Official Liability Claims Increase in Years Following a Mayoral Election?" (2007). *MPA/MPP/MPFM Capstone Projects*. 166.
https://uknowledge.uky.edu/mpampp_etds/166

This Graduate Capstone Project is brought to you for free and open access by the James W. Martin School of Public Policy and Administration at UKnowledge. It has been accepted for inclusion in MPA/MPP/MPFM Capstone Projects by an authorized administrator of UKnowledge. For more information, please contact UKnowledge@lsv.uky.edu.

Does the Incidence of Public Official Liability Claims Increase in Years Following a Mayoral Election?

Professional Paper

LAUREL A. CURTIS

**University of Kentucky
Martin School of Public Policy and Administration
MPA Capstone
Spring 2007**

TABLE OF CONTENTS

EXECUTIVE SUMMARY.....	1
INTRODUCTION & BACKGROUND.....	2
Mayoral Responsibilities and Council Functions.....	3
OVERVIEW OF KENTUCKY LEAGUE OF CITIES.....	4
Overview of KLC Insurance Services.....	4
LITERATURE REVIEW.....	7
Personnel and Employment Matters.....	7
Liability Coverage	8
Legislative History.....	11
Public Officials by the Numbers.....	13
METHODOLOGY.....	14
ANALYSIS & RESULTS.....	18
DISCUSSION & LIMITATIONS.....	23
CONCLUSION & RECOMMENDATIONS.....	25
REFERENCES.....	28

TABLES

TABLE 1 - Kentucky Elected City Officials (by class)..... 14

TABLE 2 - Can Years After Election Cycles 1 or 2 Predict Claims? 19

TABLE 3 - Can Years Following Both Election Cycles Predict Claims? 20

TABLE 4 - Can Years Following Both Election Cycles Predict Incurred? 20

TABLE 5 - Claims & Incurred Are Functions of Time..... 21

TABLE 6 - Time Explains Increases in Claims..... 22

TABLE 7 - Time Explains Increases in Incurred..... 22

TABLE 8 - Kentucky City Classifications..... 32

TABLE 9 - City Official Election Schedule..... 33

APPENDICIES

APPENDIX A - State and Federal Legislative Definitions..... 29

APPENDIX B - Classification of Kentucky’s Cities..... 32

APPENDIX C - City Official Election Schedule (TABLE 9)..... 33

EXECUTIVE SUMMARY

Elected and appointed public officials at every level of government face a growing number of lawsuits relating to countless activities such as zoning, budgets, administration, distributing permits and more. Public official (PO) liability claims alleging failure to promote employees, discrimination, and sexual harassment continue to skyrocket. It is critical to the vitality of American cities to protect officials who have chosen public service so that they can continue to focus on serving their communities.

The Kentucky League of Cities Insurance Services (KLCIS), a member-owned insurance pool of Kentucky municipalities, offers general liability, public official liability, law enforcement liability, automobile coverage including liability and property damage, worker's compensation, crime, K-9 mortality and unemployment insurance. Insurance claims data of all types are used to analyze why a provider is paying on certain types of claims more than others and how they can predict future trends. An analysis of PO liability claims makes for an interesting case because local public officials who hold positions of power in a municipality often times misuse or abuse their power for dishonest or unlawful gain. KLCIS PO liability coverage is designed to cover claims for errors, omissions, neglect or breach of duty, violation of civil rights, wrongful termination or sexual harassment claims brought against municipalities. On a superficial level, KLCIS has speculated that PO claims filed with their agency increase or decrease depending on Kentucky's mayoral election cycle due to unfair employment practices. KLCIS has asked that I perform a statistical analysis of this presumption. Therefore, the question this analysis seeks to answer is: "Does the Incidence of Public Official Liability Claims Increase in Years Following a Mayoral Election?"

To answer this question, I analyzed data provided by the Kentucky League of Cities Insurance Services to establish whether there was a clear causal relationship between the number of PO liability claims and the years following a mayoral election. I found no significant effect of mayoral election year trends in PO liability claims. I did, however, find that time contributes to the increase of PO liability claims and the dollar amount incurred associated with those claims. Applying claims as the dependent variable, rather than the amount incurred, also produces a stronger regression model. It seems only natural that if the number of cities who purchase a PO liability policy increases over the years, so too will the dollar amount incurred because it takes money to settle those claims.

Despite finding no significant relationship between PO liability claims and mayoral election years in Kentucky, it is important to identify, quantify and deliver insurance claims data analyses because it provides the ability to detect trends over time. Non-profit membership organizations resembling the Kentucky League of Cities which also provide insurance products and services through a self-insured pool may find claims data analysis beneficial. Cities, their agencies, boards, commissions, units of local government, and other non-profit public purpose organizations can learn valuable lessons from factors that may or may not contribute to the increase in the number of claims filed.

INTRODUCTION & BACKGROUND

The Constitution of the United States of America does not mention local governments. Local governments are created and regulated by the states. This means that to speak of cities or other forms of local government in the United States is to speak of many different legal and political situations. The men and women chosen by their fellow citizens to govern America's cities and towns play an essential role in ensuring that local governments are meeting community needs and in shaping the richness of the democratic process.

The State of Kentucky has 419 cities. These municipalities offer a broad range of services. Home rule authority allows cities to provide for the health, safety, and welfare of their citizens. Commonly offered city services include street maintenance, garbage collection, police and fire protection, emergency medical services, parks and recreation, public transportation, water and sewer services, electrical plants, historic preservation, and community events. As a result of offering these services for the benefit of the residents within their territory, it is crucial for cities to maintain adequate and appropriate staffing levels. City officials are an important element of efficient and effective local governance. Simply stated, it takes good people to keep cities running at high efficiency and low cost.

In addition to providing day-to-day services for citizens, local elected officials are charged with many ongoing tasks to ensure a city thrives cost-effectively. Each year, cities must adopt a budget and set applicable tax rates. Most cities also undergo an annual audit. To accomplish these duties, the mayor and council have very different personnel, administrative, budgetary and legislative functions. The following outline illustrates some of the responsibilities of a mayor and a council in a mayor-council form of government, the most common form of municipal government in Kentucky.

Mayoral responsibilities and Council functions include (but are not limited to) ^{xiv}:

Mayoral personnel duties

- Appoint non-elected officers (with council approval)
- Delegate authority to subordinate officers and employees when necessary
- Hire employees
- Supervise daily conduct of employees

Council personnel duties

- Establish non-elected offices and employment positions
- Set compensation for all officers and employees
- Investigate the activities of government officers and employees in furtherance of its legislative function

Mayoral administrative duties

- Establish city employee work schedules
- Establish work procedures and regulations to govern activities
- Make and sign contracts, notes, checks, purchase orders and other legal documents

Council administrative duties

- Authorize property to be purchased; declare property surplus and determine its value for sale
- Set contract specifications and authorize the acceptance and execution of contracts

Mayoral budgetary responsibilities

- Prepare a budget and submit the proposed budget to the legislative body
- Administer the budget once passed

Council budgetary responsibilities

- Adopt an annual budget appropriating funds to operate city government and amend the budget as necessary

Mayoral legislative functions

- Preside at council meetings
- Veto/approve ordinances
- Vote when necessary to break tie
- Call special meetings of the council

Council legislative functions

- Enact rules and regulations that apply to the general public to ensure the public's health, safety, and welfare
- Levy taxes and establish fees for city services
- Disapprove mayoral regulations
- Majority may call special meetings in writing

The considerable number of duties, responsibilities, and functions of municipalities implies some risk of complaints or even lawsuits filed against cities and/or specific city officials. Citizens injured by the actions of city officials may seek redress through the courts. Most cities have access to insurance services through insurance companies and carriers or self-insured programs that offer liability, property damage, worker's compensation and a multitude of claim-specific coverage.

Public entities can make for challenging organizational accounts. A municipality may operate a variety of departments such as water, sewer, fire, police, and parks and recreation. On any given day, a local entity may decide that the city's police department wants to open its firing range to the public, or the city council has decided to start a community medical clinic, or that a park district is thinking of building a rock-climbing wall. However, the largest and most consistent sources of insurance claims are allegations of employment discrimination or wrongful termination for municipalities and even school districts ^{xi}.

OVERVIEW OF KENTUCKY LEAGUE OF CITIES

The Kentucky League of Cities (KLC) is an association of 380 Kentucky cities, approximately 91 percent of the 419 cities across the state. KLC's 380 member cities account for 99.6 percent of the urban population in the state ^{xiv}. KLC was created to help city officials by providing resources, services and advocacy that improve local governance and support community innovation. KLC also partners with community stakeholders in business, education and all levels of government on a number of initiatives and innovative programs.

Overview of Kentucky League of Cities Insurance Services

Kentucky League of Cities Insurance Services (KLCIS) is a member-owned insurance pool. KLCIS provides insurance products and services through its own self-insured pool as well as through a number of KLC-sponsored programs with other companies and

carriers. Cities, their agencies, boards, commissions, units of local government, and other non-profit public purpose organizations are eligible to participate.^{viii}

KLC created the state's first workers' compensation self-insured group program in 1978 and consolidated its self-insured programs in 1987 in response to customer need^{xv}. KLC started this insurance pool to serve cities that could not find affordable insurance. These self-insured programs are member-owned and are governed by a Board of Trustees comprised of representatives from the participating KLC members. According to KLCIS, all insurance programs are nonprofit and are operated in the public interest^{viii}. KLCIS claims, "Citizens are our 'stockholders'."

All KLC member cities, with the exception of first class cities, are offered insurance coverage in various forms; however, all do not necessarily take advantage of this opportunity to purchase one type of insurance or another. Unfortunately, the quantity and names of cities that do purchase insurance are unavailable to anyone other than KLC personnel and the client cities that purchase it for themselves. Louisville-Jefferson County Metro Government and Lexington-Fayette Urban County Government are large entities relative to all other cities in the state. They are comprised of multiple units of government and a significant number of public officials. These entities are no longer considered a "city" and therefore, KLC does not offer its insurance services to consolidated governments or first class cities of this caliber. (For a detailed explanation of Kentucky city classifications, please refer to Appendix B.)

Today, KLCIS asserts that it insures more Kentucky municipalities than all other insurance carriers combined^{xv}. KLCIS offers general liability, public official liability, law enforcement liability, automobile coverage including liability and property damage, worker's compensation, crime, K-9 mortality and unemployment insurance.

Public official (PO) liability, also referred to as employment practices liability, is "currently the fastest growing area of litigation in the country," according to Jeffery A. Goldwater, a partner in the Chicago law firm of Bollinger, Ruberry & Garvey^{iv}. He said

three laws are contributing to the increase in employment practices claims: the Civil Rights Act of 1991, the Americans with Disabilities Act, and the Age Discrimination in Employment Act. Thomas E. Bell, director of risk management for the Middle Cities Risk Management Trust, an intergovernmental risk pool for schools in Okemos, Michigan, said it is probably the most troublesome exposure for risk managers at public entities^{iv}. Employment-related claims have been widely reported, and public entities are beginning to realize how vulnerable they are to lawsuits alleging discrimination, sexual harassment, or other conduct that could trigger a PO liability claim^{xi}.

On a superficial level, KLCIS has speculated that PO claims filed with it increase or decrease depending on Kentucky's city official election cycle. To them, it seems public official liability would be more sensitive to municipal elections than would general liability, law enforcement liability, worker's compensation, or unemployment insurance that are also offered by KLCIS. In their opinion, public official liability claims are linked to municipal elections due to employment capabilities and political ties associated with elected city officials. In fact, after the 2006 election, approximately 38 percent of Kentucky's elected city leaders are new to their jobs^{xiv}. The subtle suggestion by KLCIS insurance underwriters and database administrators lead me to speculate "unfair" hiring and firing practices of public officials, perhaps mayors, could be attributed to an increase in public official liability claims specifically. KLCIS has asked that I perform a detailed analysis of this presumption. The following analysis seeks to answer the question, "Does the Incidence of Public Official Liability Claims Increase in Years Following a Mayoral Election?"

Insurance claims data of all types of coverage are used to analyze why a provider is paying on certain categories of claims more than others and how they can predict future trends. Analyzing the incidence of PO claims makes for an interesting case because local public officials who hold positions of power in a municipality often times misuse or abuse their power for dishonest or unlawful gain. Opportunities to engage in corruption are numerous in local governments because of the many personal relationships involved as a result of the closeness of local governments to its citizens, and the trust blindly given

to local governing officials^{xvi}. Some are more common than others, and some are more prevalent in local governments than in larger units of government. Local governments may be more susceptible to corruption because there are more interactions between private individuals and local officials and there is more intimacy between them. Bribery, extortion, embezzlement, and graft are forms of corruption more likely to be found at the local level of government^{xvi}. This is not to say these offenses are not found at the highest level of government, but not with the same frequency, even though the stakes may be enormously higher. Other forms of political corruption include acts of nepotism and flourishing patronage systems. These practices can have corrosive and damaging effects on local entities, as well as businesses, and can erode the support of the public, the morale of government employees, reduce the quality and creativity of management, and even lead to increased liability claims against local governments and their officials^{xvi}.

LITERATURE REVIEW

Personnel and Employment Matters

The sensitive nature of the necessity to impose public employee discipline makes this area especially susceptible to allegations of unfair employment practices, which carry with them the potential for substantial financial liability. Public officials are subject to most of the rules and regulations imposed on private employers. These rules grant certain protections to employees from unfair and discriminatory employment practices^{xiii}. There are also numerous requirements that apply only to public employers. With regard to employment practices, municipalities will find it beneficial to become familiar with the complex and overlapping rules applicable to employee rights. They are comprised of state and federal legislative enactments and judicial decisions including the following:^{xiii}

- Employment At-Will
- Title VII of the Civil Rights Act of 1964
- Age Discrimination in Employment Act
- The American's with Disabilities Act
- Family and Medical Leave Act
- Due Process – The Fourteenth Amendment

- Kentucky Civil Rights Act
- Pregnancy Discrimination Act
- Worker's Compensation Retaliation
- Whistle Blower Statute
- Court Ordered Appearance
- Wage Garnishment
- National Guard Service
- Jury Duty
- Voting Time
- Special Rules for Cities
- Termination Following Injury in Line of Duty

Since 9/11, there has been an increase in the number of discrimination claims made on the basis of national origin, race, and civil rights violations. Many have been made by persons of Arab or Middle-Eastern descent¹. In order to prevent violations of discrimination and the applicable laws and rules listed above, municipalities must become familiar with the application of the law, must understand the rights and obligations of the city in a given situation, and must know when to consult the city attorney. Doing so will prevent the public entity from damaging the employment relationship and minimizing the city's liability exposure. If the public official is unaware of the law applicable to a given set of circumstances, he/she can inadvertently expose the city to great financial liability for improperly handling the situation, which can create problems even for the most knowledgeable and well-intentioned personnel professional. (Please refer to Appendix A for explanations of these rules.)

Liability Coverage

As previously stated, KLCIS offers general liability, public official liability, law enforcement liability, automobile coverage including liability and property damage, worker's compensation, crime, K-9 mortality and unemployment insurance. To provide a clearer understanding of these concepts in comparison to public official liability, a few of these liability coverages are explained in greater detail.

Does the Incidence of Public Official Liability Claims Increase in Years Following a Mayoral Election?

As classified by KLCIS, general liability coverage protects the city or entity, elected and appointed officials, and volunteers from claims and lawsuits alleging bodily injury, property damage or loss arising out of city operations. For the same basic premium, members are also protected from claims of wrongful eviction, invasion of privacy, slander or libel, discrimination, humiliation, products liability, and slip and falls. KLCIS also offers customized sewer backup coverage.

Law enforcement liability coverage through KLCIS protects a city and their police personnel when a claim is made that arises from police activities. Claims for false arrest, use of force, wrongful termination or discrimination and liability issues with canine units are included in this coverage.

Likewise, the directors and officers of nonprofit entities face a myriad of risks in the execution of their duties and also need protection tailored to their needs. In a kinder, gentler time, no one even thought of suing a nonprofit or entity, whether it was a small community hospital or an internationally known charity. The people who ran such organizations were assumed to be ethical, well-intentioned, and devoted to the good of humanity rather than the insensitive pursuit of power and money. Today, most nonprofits are indeed managed by people who have good motives and high standards. Yet, allegations of racial profiling and employee misconduct are on the rise, and new legal precedents are being set almost every dayⁱⁱⁱ. A noble character is no defense against allegations of wrongdoing.

Most nonprofits now operate like a business with experienced executives, outside directors, and clearly drawn lines of authority and accountabilityⁱⁱ. On both the for-profit and nonprofit sides, their objective is to protect personal and corporate assets. Given employment practices in the 1980's, public official liability was not a big exposure for nonprofits or public entities. Today, this type of liability is the most significant exposure these bodies face. In fact, about 95 percent of claim frequency and severity is employment relatedⁱⁱ.

Public official liability, similar in concept to directors and officers liability (D&O) purchased by both public and private corporations, provides protection for “wrongful acts” as defined by a particular insurance policy. While both public official and D&O policies also have their differences, possessing knowledge about the mechanics of the D&O policy is helpful in understanding what the public official policy is supposed to do. The D&O policy’s entrance into the market was much earlier than the public official policy, which undoubtedly became available with the erosion of governmental immunity that is discussed subsequently ^{vii}. KLCIS public official liability coverage is designed to cover claims for errors, omissions, neglect or breach of duty, violation of civil rights, wrongful termination or sexual harassment claims brought against municipalities. Municipal planning and zoning operations may also be included in this coverage.

The key element in determining whether or not public officials’ liability might be imposed is the extent to which the individual, whether elected, appointed, or employed, is functioning in a decision-making or policy-setting role. Typically, a general liability policy has very little coverage for public official liability losses, as these policies tend to address losses arising out of direct physical harm or injury and any ensuing economic loss. Public school teachers, administrators, and school boards; municipalities, public officials and law enforcement personnel, all are vulnerable to claims for which a general liability policy provides little or no coverage at all.

Mayors, city clerks, city attorneys, and executive directors of utility corporations are positions that more than likely come to mind when considering public officials. Police and fire personnel make up one of the largest groups of Kentucky’s city employees ^{xiv}. Sanitation workers are also a major employee group in cities with solid waste collection programs. In addition, cities employ many other types of professionals including attorneys, clerks, emergency medical technicians, building inspectors, engineers and accountants. Some cities employ such diverse personnel as cemetery sextons and golf course managers. These are examples of the elected and appointed officials that may be included in a particular public official liability policy.

In regard to KLCIS public official liability, it is generally citizens or disgruntled employees who file claims against a city official. The actual claim is either sent to KLCIS from the municipality itself or it is the result of a lawsuit filed against the municipality. This coverage is to protect the city and/or the public official. If a city did not have this insurance coverage, then the city or the official personally would be required to pay the claims made against them. For example; a city employee filed suit against the municipality claiming he/she was forced to retire due to race. Another example involves a citizen who filed a claim against the municipality for issuing a parking ticket. The following list provides additional instances in which claims were filed under public official liability.

- Water Company damaged tombstones in cemetery;
- Deprivation of Civil Rights, wrongful discharge, violation of Kentucky Whistle Blower Statute;
- Civil Rights violated when arrested for trying to participated in parade;
- Violation of Civil Right due to breach of labor/union contract;
- Hostile work environment, gender discrimination, wrongful discharge;
- Planning Commission denied application for license; and
- Contesting Zoning Board decision.

Legislative History

The Civil Rights Act of 1871, also known as the Ku Klux Klan Act of 1871, is now codified and known as 42 U.S.C. § 1983 ^{xvi}. For over 90 years, the thrust of this act was to protect the voting rights, and particularly those of the newly freed slaves. However, in the 1961 decision, *Monroe v. Pape*, the court held that the actions of police undertaking a warrantless search and conducting an abusive interrogation “under color of law” violated a person’s civil rights and the officers were personally liable for damages, but that the city employing the officers was protected by sovereign immunity. ^{ix}

In *Monell v. Department of Social Services of the State of New York*, seventeen years later, the court reversed itself by holding that a governmental entity was a “person” under

the law, and, therefore, was subject to liability^{ix}. This case ended the absolute protection of sovereign immunity, permitting suits against local governmental entities.

The liability of public officials is growing in importance as court decisions impose more responsibility on those positions and the persons holding those positions^{ix}. The source of most public officials' liability issues is the due process language found in the U.S. Constitution, particularly the Fifth and Fourteenth Amendments that address due process and equal protection, as well as similar language found in state constitutions that mirror the Federal Constitution^{ix}.

In *Lochner v. New York*, the court invalidated a state law limiting bakers to a 10-hour day, 60-hour week^{ix}. In this 1905 case, the court held that the state law interfered with the freedom of employees to enter into employment contracts, a deprivation of an aspect of their liberty. However, in *West Coast Hotel v. Parrish*, the *Lochner* decision was reversed, over 30 years later, with the court holding that protective legislation does not violate the due process clause of the Fourteenth Amendment^{ix}.

In a 1980 case, *Owen v. City of Independence, Missouri*, the qualified immunity of the government entity was largely destroyed, as the court held that if public officials violated a person's civil rights, the governmental entity was liable, even if the individuals were acting in good faith^{ix}. A later decision, *Harlow v. Fitzgerald* defined "good faith" with a two-step test. First, if the law allegedly violated was not clearly established at the time of the alleged violation, the official was immune. However, if the law was clear, then the official must prove good faith by establishing ignorance of the law and that an average person in his or her situation would not have known the law.^{ix}

In 2002, the Eighth Circuit Court of Appeals held that public officials acting as supervisors could be liable in their individual capacities for retaliating against employees who exercise their rights under the Family and Medical Leave Act (FMLA) in the case *Darby v. Bratch*^{vi}. Here, a municipal police department dispatcher took leave under the FMLA because of a medical condition. While on leave, she received an incident report

citing her for numerous absences and use of unpaid leave. Before she returned to work, she met with a department captain to discuss the consequences of the incident report and was told that because of her use of sick time, she would not be promoted. She returned to work but resigned shortly thereafter. Because of pending incident reports, including the one citing her absences, she was precluded from being rehired by the department. The dispatcher sued three supervisors from the city and its police department, individually and in their official capacities as managers. The plaintiff alleged unlawful retaliation under the FMLA.^{vi}

The most common type of civil right litigation brought against public entities and public officials are § 1983 actions^{ix}. Thus, the recent interpretations are important to public officials for understanding the impact of their actions. (For a more detailed explanation of § 1983, sovereign immunity, the Fifth and Fourteenth Amendments, and FMLA please refer to Appendix A.)

Public Officials by the Numbers

In this time of fiscal stress and the population's growing needs, maintaining adequate staffing levels needed to provide public services is a real challenge for local officials. Kentucky's 419 cities have almost 2,700 elected officials and employ approximately 20,000 people^{xiv}. Wages, benefits and contractual services make up about 70 percent of city budgets in Kentucky^{xiv}. Since Fiscal Year 1993, the expansion of city services and personnel has led to a 65 percent expenditure increase in employee wages and a 69 percent expenditure increase for their benefits^{xiv}. Remember a previous statement that affirmed approximately 38 percent of Kentucky's elected city leaders were new to their jobs after the 2006 election^{xiv}. Table 1 depicts the number of elected city officials by class in addition to Louisville Metro and LFUCG. (Please refer to Appendix B for a description of Kentucky city classifications.)

Table 1 – Kentucky Elected City Officials (by class)

Classification	City Officials
Louisville Metro	27
LFUCG	16
2 nd	74
3 rd	158
4 th	727
5 th	779
6 th	869

Kentucky Cities: The Basics, 2007

In the United States, there are more than 83,000 separate public bodies managed by public officials, both elected and appointed^{ix}. Not all of these public bodies are as large and conspicuous as the U.S. Congress, a state legislature, the city of Chicago, or Los Angeles County. Indeed, there are many more township boards, library boards, school boards, fire protection district boards, and other local governmental bodies that do not have the legal resources, the financial resources, or the internal personnel and expertise to identify and handle the public officials' liability exposure faced by "amateurs" who serve with minimal or no experience and/or compensation^{ix}. "The public official liability market is a seller's market," says Dr. Richard Rudolph of the Society of Chartered Property and Casualty Underwriters (CPCU). As the number of suits filed against public entities and their public servants has grown, so too has the number of exclusions^{vii}. The number of exclusions contained in the policies themselves leaves the public official facing a plethora of uncovered situations.

METHODOLOGY

Design Structure

I have been provided with a file from the KLCIS insurance database that serves as a standing report and was first collected so that Insurance Services could analyze if there were cycles in their claims. In particular, the file includes public official (PO) liability claims from August 1987 through September 2006. The Insurance Services department uses data of this sort frequently to see why it is are paying on certain types of claims

more than others. Similar analysis is done on law enforcement and workers' compensation/employer's liability claims regularly.

Throughout Kentucky, all mayors are elected to four-year terms and almost all council members and commissioners are elected to two-year terms. All regular elections for local officials are held in even-numbered years. Each of Kentucky's cities holds mayoral elections in what is called a staggered four-year term. This implies that one group of cities held mayoral elections in 2004 for example, while the remaining cities held mayoral elections in 2006. The two-year term legislative body was elected in each of these years, 2004 and 2006. As a result, there are no mayoral or legislative body elections in the state of Kentucky in odd-numbered years such as 2005, 2003, 2001, etc. (Please refer to Appendix C for an illustration of Kentucky's city official election cycles.)

An election schedule was obtained from Kentucky's Office of Secretary of State and the Kentucky State Board of Elections. In addition, KLC's Policy Development and Research Department made available a complete listing of Kentucky cities and the year in which they hold regular mayoral elections and council/commission elections. The listing of Kentucky cities' mayoral and legislative body election years is categorized by city name in alphabetical order, city classification, next regular mayoral election year, and the next council/commission election year.

The PO data set includes the years in which a PO claim was made between August 1987 and September 2006, the precise month, the number of claims filed and/or settled in that month, and the total dollar amount "incurred" for the claims in that month. The amount incurred includes the actual dollar amount that has been paid, not an amount the plaintiff was seeking. The amount incurred is a term often used in the insurance world to describe what has already been paid on the claim in addition to what is held in reserve should the claim require more payments. Insurance organizations set aside what they feel would be a sufficient estimate of what a particular claim would require to be settled. This is the reserve.

Variables within the PO data set include the number of public official liability claims made and the dollar amount incurred to settle the sum of those claims. The quantity of claims and the amount incurred, acting as dependent variables in the regression analysis, are sorted by years 1987 through 2006 and each month in those years. However, only data from the months August through December were available for 1987 and only data from the months January through September were available for 2006. Since these years were incomplete, they were omitted from the regression analysis. Therefore, my analysis focused on monthly data between the years 1988 and 2005, to answer the research question specifically.

With both the PO and City Election data sets, I am able to generate my own independent variables, “dummy variables”, in an attempt to establish causality for the purpose of this study. It was important for the analysis to distinguish which cities held mayoral elections with consideration of the staggered four-year election cycle. Remember that a portion of Kentucky cities held their last mayoral elections in 2004, while the remaining cities held mayoral elections in 2006. For example, I named the most recent election cycle “Election Cycle 1” in my statistical analysis because it includes the KLC member cities, without being identified, that have purchased a PO liability policy and had their last mayoral and legislative body election in 2006. Preceding four-year termed mayoral elections for cities in this group occurred in 2002, 1998, 1994 and 1990. Previous two-year termed legislative body elections held in these same cities took place in 2004, 2002, 2000, 1998, 1996, 1994, 1992, 1990, and 1988. Cities among “Election Cycle 1” include 405 of Kentucky’s 419 cities, approximately 96 percent.

“Election Cycle 2” also includes the KLC member cities that have purchased a PO liability policy, but their last mayoral and legislative body election occurred in 2004. Previous four-year termed mayoral elections for cities in this group occurred in 2000, 1996, 1992, and 1988. Preceding two-year termed legislative body elections held in this grouping also took place in 2004, 2002, 2000, 1998, 1996, 1994, 1992, 1990, and 1988. Cities among “Election Cycle 2” include only 14 of Kentucky’s 419 cities, a minute 3.34 percent.

The “No Election” variable contains all odd-numbered years within the PO data set. “No Election” includes all years that followed a mayoral election in both “Election Cycle 1” and “Election Cycle 2”. In these years, there were no city officer elections of a mayor or legislative body in the state of Kentucky. The years with no city officer elections contain 2005, 2003, 2001, 1999, 1997, 1995, 1993, 1991, and 1989.

Considering that there are, in fact, two separate mayoral election cycles among Kentucky’s cities, I also wanted to create a model separating the years following mayoral “Election Cycle 1” and the years following mayoral “Election Cycle 2”. It is important to distinguish these two election cycles because “Election Cycle 1” includes 405 cities, whereas “Election Cycle 2” only includes 14 of Kentucky’s 419 cities. The “Years After Election Cycle 1” consists of 2003, 1999, 1995, and 1991. The “Years After Election Cycle 2” consists of 2005, 2001, 1997, 1993, and 1989. (Appendix C includes a diagram of Kentucky’s city official election cycles according to years.)

Finally, in order to evaluate whether the number of claims or the amount incurred is a function of time, an additional variable was created. The “Time” variable accounts for all years included in the data set with the exclusion of 1987 and 2006 for reasons previously stated. Incorporating this variable will allow for an explanation of variance. For example: Do the number of claims or the amount incurred increase over time? And does election year, in fact, make a difference? In creating this particular variable, I used the formula below:

$$\text{TIME} = (1987 - \text{YEAR}) * -1$$

The creation of this variable has attributes numbering 1 through 18, where 1988 = 1, 1989 = 2, 1990 = 3 and so on until 2005 = 18.

ANALYSIS & RESULTS

The regression analysis utilized STATA Statistical Software. Integrating the data that was provided and the variables that were created, I was able to perform several different regression inquiries. The aim was to establish whether there was a clear causal relationship between the number of PO liability claims and the years following a mayoral election, considering “Years After Election Cycle 1” and “Years After Election Cycle 2” separately. I also performed several additional regression analyses in an attempt to find further statistical significance.

For each inquiry I compared the t statistic to 1.96, which is a statistically determined criterion level for testing whether the observed difference is due to sampling error instead of a true population difference ^{xvii}. If this t statistic is greater than 1.96, it can be concluded that 95 times out of 100 the difference between the number of claims or the amount incurred and mayoral election years is not due to sampling error alone. This .05 level of significance can also explain variations in the p-value. A p-value of 0.05 is a typical threshold used to evaluate the null hypothesis. The null hypothesis declares PO liability claims would not be expected to increase in years following a mayoral election. If the p-value is 0.05 or less, I can discern that the independent variable is statistically significant at the 0.5 level of statistical significance. Significance indicates there are, in fact, election year trends in PO liability claims and therefore, I can reject the null hypothesis that claims have no relationship with mayoral elections.

The first model utilized the number of claims as the dependent variable, where the number of claims is a function of time. It is important to account for the progression of time because an increased number of KLCIS PO liability policies may be purchased over the years, adding more and more Kentucky cities to the insurance pool. Perhaps in the late 1980’s, the beginning years of the PO claims data, policies were fewer than the total number of policies that were purchased in 2005.

With independent variables of “Time”, as well as “Years After Election Cycle 1” and “Years After Election Cycle 2”, the following model answers the research question precisely: “Does the Incidence of Public Official Liability Claims Increase in Years Following a Mayoral Election?” This model controls for the years following each election cycle separately, where “Years After Election Cycle 1” produces a t statistic of 0.19, lower than the 1.96 criterion for significance at the .05 level, and a p-value of 0.847. A p-value close to zero typically signals that a difference is likely to exist. Large p-values closer to 1 imply that there is no detectable difference for the sample size used. “Years After Election Cycle 2” produces a t statistic of 1.53 and a p-value of 0.126. The values included in Table 2 below indicate neither “Years After Election Cycle 1” or “Years After Election Cycle 2” are statistically significant predictors of PO liability claims.

TABLE 2: Can Years After Election Cycles 1 or 2 Predict Claims?

<i>Claims</i>	Coefficient	T statistic	P-value
Time	2.177083	11.00	<0.05
Years After Election Cycle 1	0.5034722	0.19	0.847
Years After Election Cycle 2	-3.721528	-1.53	0.126
Constant	-3.065972	-1.34	0.183
Number of Observations:	216		
Probability > F:	0.0000		
Adjusted R-squared:	0.3587		

The next model also utilized the number of claims as the dependent variable, where the number of claims is also function of time. I examined whether “No Election”, all odd-numbered years following both mayoral “Election Cycle 1” and “Election Cycle 2”, can be used to predict the number of PO liability claims. In this model, I applied a regression dependent on the quantity of claims, and independent variables including “Time” and “No Election”. The results indicate that “No Election” produces a t statistic of 0.90 and a p-value of 0.371. These values conclude “No Election” is not a statistically significant predictor of PO liability claims.

TABLE 3: Can Years Following Both Election Cycles Predict Claims?

Claims	Coefficient	T-statistic	P value
Time	2.177083	10.98	<0.05
No Election	-1.84375	-0.90	0.371
Constant	-3.065972	-1.33	0.184
Number of Observations:		216	
Probability > F:		0.0000	
Adjusted R-squared:		0.3553	

The following model utilized the amount incurred as the dependent variable instead of claims. The dollar amount incurred associated with PO liability claims is also a function of time. It seems only natural that if the number of cities who purchase a PO liability policy increases over the years, so too will the dollar amount incurred because it takes money to settle those claims. I was curious to know if the amount incurred would produce significance where the quantity of claims did not.

To examine whether “No Election”, can be used to predict the dollar amount incurred, I applied a regression dependent on the dollar amount incurred, with independent variables of “Time” and “No Election”. The results indicate no significance, with “No Election” producing a t statistic of 0.17 and a p-value of 0.868.

TABLE 4: Can Years Following Both Election Cycles Predict Incurred?

Incurred	Coefficient	T statistic	P-value
Time	7468.661	6.62	<0.05
No Election	-1953.063	-0.17	0.868
Constant	-18215.88	-1.39	0.165
Number of Observations:		216	
Probability > F:		0.0000	
Adjusted R-squared:		0.1635	

On the other hand, in each of the previous regression inquiries, “Time” proved to be statistically significant and accounts for PO liability claims and the amount incurred increasing over time. “Time” does not, however, explain whether to accept or reject the null hypothesis. For example; dependent on the number of claims, with independent

variables of “Time”, “Years After Election Cycle 1”, and “Years After Election Cycle 2”, the t statistic is 11.00 and the p-value is at least less than 0.05, the threshold for statistical significance. This concludes that “Time” is statistically significant and accounts for PO liability claims, as well as the amount incurred, increasing over time. In Table 5, the t statistic and p-values are illustrated for the regressions dependent on claims or the amount incurred.

TABLE 5: Claims & Incurred Are Functions of Time

"Claims" are a function of "Time"	T statistic	P-value
"Years After Election Cycle 1" and "Years After Election Cycle 2"	11.00	<0.05
"No Election"	10.98	<0.05
"Incurred" is a function of "Time"		
	T statistic	P-value
"No Election"	6.62	<0.05

Establishing that the number of claims and the amount incurred are both a function of “Time”, and is statistically significant in each of the previous regression inquiries, I believed it was necessary to also examine the R-squared. The R-squared indicates the strength of a particular regression model. I noticed the adjusted R-squared decreased when the amount incurred was incorporated as the dependent variable rather than the number of claims. Claims being the dependent variable in the regression models illustrated in Tables 2 and 3 produced an adjusted R-squared of 0.3587 and 0.3553 respectively. These figures explain approximately 36 percent of the variance in these regression models. However, when the amount incurred was applied as the dependent variable, the adjusted R-squared became 0.1635, explaining approximately 16 percent of the variance associated with the model illustrated in Table 4. Applying claims as the dependent variable produces a stronger regression model, where a larger percentage of the variance is accounted for, than using the amount incurred as the dependent variable.

To determine the variance associated with “Time” precisely, examining no other independent variables, I carried out two very straightforward regression analyses. The

results indicate that exactly 35.59 percent, over one-third, of the variance is explained by “Time” when the number of public official liability claims is incorporated as the dependent variable. On another note, the coefficient in Table 6 indicates that an additional 2.16 PO claims are filed each year from 1988 to 2005. When the dollar amount incurred is integrated as the dependent variable, exactly 16.73 percent of the variance is explained only by “Time”. The coefficient in Table 7 indicates the dollar amount incurred increases by approximately \$7,450.52 each year from 1988 to 2005. These figures reaffirm the adjusted R-squared findings in the previous regression models where “Years After Election Cycle 1”, “Years After Election Cycle 2”, and “No Election” were the independent variables, in addition to already being a function of “Time”. Again, using the number of claims as the dependent variable produces a stronger model than using the amount incurred. Tables 6 and 7 illustrate the results of these analyses.

TABLE 6: Time Explains Increases in Claims

Claims	Coefficient	T-statistic	P value
Time	2.159959	10.95	<0.05
Constant	-3.825163	-1.79	0.075
Number of Observations:			
	216		
Probability > F:			
	0.0000		
Adjusted R-squared:			
	0.3559		

TABLE 7: Time Explains Increases in Incurred

Incurred	Coefficient	T-statistic	P value
Time	\$7,450.52	6.65	<0.05
Constant	-19020.08	-1.57	0.118
Number of Observations:			
	216		
Probability > F:			
	0.0000		
Adjusted R-squared:			
	0.1673		

It should be noted that similar analysis was also done with “percent change” being the dependent variable while using the same independent variables. This inquiry tested the significance of the percent change in public official liability claims from one year to the next. This analysis produced comparable results with no statistical significance.

DISCUSSION & LIMITATIONS

Having found no statistical significance of mayoral election year trends in PO liability claims, I cannot reject the null hypothesis that claims have no relationship with mayoral elections. I did find that time contributes significantly to the increase of PO liability claims, an increase of approximately 2 claims each year; and the dollar amount incurred, an increase of approximately \$7,500 each year, where the number of claims produces a stronger regression model. It is important to identify, quantify and deliver insurance claims data analyses because it provides the ability to detect trends over time. For example, it may be that more cities have become members of the Kentucky League of Cities since its establishment. As a result, cities among the increased membership may decide to purchase KLC insurance services, particularly a public official liability policy, offered through KLCIS' self-insured pool. The increase in claims over time could also be attributed to a more litigious society, with the propensity to file suit against a municipality or its public officials becoming greater and greater.

A major problem in any evaluation can be the need to obtain permission to access individual records. Obstacles throughout the data collection process were experienced due to the sensitive nature of city-specific liability claims. Being an evaluator from outside the agency (Kentucky League of Cities Insurance Services), I found it difficult conveying to agency employees that certain individual characteristics and quantitative data were very important to the evaluation. In the interest of protecting the identity of individual city clients, KLCIS may have cleansed the data files more thoroughly than otherwise necessary had I been an employee. Pertinent information was transcribed without including individual identifiers such as KLC member cities that purchase public official liability and/or submit actual claims. It would have also been beneficial to know the total number of Kentucky cities that actually purchase a PO liability policy.

Had I been given access to additional insurance claims data through KLCIS, I believe the analysis would have been more thorough with comparison of public official liability

claims to other types of insurance claims such as general liability, law enforcement liability, worker's compensation or unemployment insurance. The financial attributes associated with the amount incurred were also very ambiguous. I would have liked to quantify how many claims are made annually for what amount of damages.

The agency records of PO liability claims were also less than perfect. I was given incomplete data regarding the number of claims and the amount incurred in years 1987 and 2006, therefore leaving me no choice but to eliminate the years altogether.

Given that my analysis focused on public official liability claims increasing in particular years to answer the research question, time did not permit further regression analyses with regard to precise months within the data set. The number of claims and the amount incurred figures were available by month within the years 1988 through 2005. It would have been interesting to see if there was a January effect on PO claims when elected city officials were initiated into a new office, began a new term, or returned to the same position but in a new year. Or, perhaps there may have been a May or November effect, or in months following, related to primary and general elections in Kentucky cities.

Had time allowed supplementary research and statistical analysis, it would also have been very interesting to identify which cities among "Election Cycle 1" and "Election Cycle 2" actually experienced the commencement of a new mayor. In addition to a new mayor winning office, perhaps there is also the possibility of the city experiencing a change in political party. A change in mayor and/or political party may or may not have proven to increase the number of public official liability claims within a particular city, or cities, in Kentucky. If a change was, in fact, experienced it could have been due to the employment capabilities, political ties, or "unfair" hiring and firing practices associated with elected city officials.

Non-profit membership organizations resembling the Kentucky League of Cities that also provide insurance products and services through its own self-insured pool may find claims data analysis beneficial. Cities, their agencies, boards, commissions, units of local

government, and other non-profit public purpose organizations can learn valuable lessons from factors that may or may not contribute to the increase in the number of claims filed.

CONCLUSION & RECOMMENDATIONS

An insurance policy for public official liability covers the entity itself; all elected, appointed or employed officials; commissions, boards and other entities; employees and volunteers; and estates, trustees and legal representatives. However, the people who serve on city councils come with varying degrees of background. Some don't have much idea of the legal consequences of their policies and procedures. It seems insurance companies would be well served to teach public officials more about liability. Many insureds will lose out on coverage by failing to notify the insurer when they learn of a circumstance that is likely to lead to a claim ^v. "The one thing seriously lacking in today's insurance industry is a lack of education on the part of industry to our public entities," says Bell of the Middle Cities Risk Management Trust ^{iv}.

A public entity may decide to depart from the traditional insurance marketplace. If the entity is sufficiently large or financially comfortable, such as Louisville Metro and LFUCG, it may opt for a retention plan. A nontraditional method of risk financing includes entering into a pool with other entities resembling the insurance coverage KLCIS offers to KLC member cities. Since the fortunes of the entity are dependent on the fortunes of the other participants in the pool, proper financial due diligence must be undertaken with respect to the level of capitalization of the pool, pool administration, eligibility requirements of pool members, reinsurance, and the extent to which the pool-provided coverage is combined with other coverage. Failure to do so may well create a new liability exposure for the public officials electing to participate in such risk financing mechanisms.

Many small public entities do not have resources available to guide them in managing their risks. Also, many insurance agents and brokers serving the small public entities are unfamiliar with the unusual risks faced by these public officials. It is imperative for

municipalities to be able to interpret legal opinions, understand underwriting guidelines, policy language, and promotional material provided by insurance carriers and brokers supporting public entity risk management programs. Municipalities may find it beneficial to coordinate with several departments within the entity to follow procedural guidelines. According to Dr. Rudolph, there are five general steps that form the basis for a public official's procedural guidelines:

- 1) Put all policies and procedures in writing.
- 2) Maintain accurate and complete minutes of all meetings, both open and closed sessions.
- 3) Conduct a thorough legal review of all ordinances and administrative policies prior to their implementation.
- 4) Define the specific duties to be performed by the public official and document those duties in writing after a thorough legal review.
- 5) Know and follow state and local due process requirements, reviewing all such actions prior to the implementation of any measures.

In addition, employment practices give rise to legal difficulties with the equal protection clause. Fair employment practices guidelines provide systematic means of identifying troubled areas and specifying corrective action prior to improper or illegal employment. Guidelines might contain implications to avoid references to gender, sexual preference, age, or race in job advertisements. These guidelines may also suggest the creation of employee handbooks with job descriptions and personnel policies. Establishing a procedure for documenting all evaluations and reprimands or other disciplinary measures in writing is also very important. Additionally, it is essential to establish a means of informing all eligible employees about promotion opportunities and to establish procedures for interviewing, hiring, evaluating, and terminating employees. The driving force of these measures can be condensed into two words: proper documentation.

Taking an action or setting a policy may create liability, but failing to take such measures may likewise create a liability. The initial difficulty for the public official is recognizing the various means by which decision-making and policy-making powers may create problems. Through my research on public official's liability, I have come to recognize the preferred set of solutions for public official liability issues is a combination of risk

reduction with traditional and nontraditional risk financing techniques. Guidelines that establish sound procedures for public office actions, fair employment, and documentation help minimize the effect of the inevitable losses, while traditional and nontraditional risk financing provides a creative means of paying for the legal costs and monetary damages that might be incurred.

REFERENCES

- i. Bernstein, W. E. (2006). Third-party Coverage Can Be An Important Part of EPLI Policies. American Agent & Broker. 78, 44-48.
- ii. Boone, E (2006). Nonprofit D&O: A Growth Market. Rough Notes. 149, 88-92.
- iii. Boone, E. (2002). Public liability: Creative solutions for a complex market. Professional Governmental Underwriters, Inc.
- iv. Cowan , D. S. (1995, December 11). Liability for employment practices growing problem for public entities; Insurance an option, but experts say education needed, too. Business Insurance, p. News, p.42.
- v. Dolan, Jr., J. B. (2006). The Growing Significance of Employment Practices Liability Insurance. Defense Counsel Journal. 73, 197-199.
- vi. Eighth Circuit Court of Appeals. (2002). Darby v. Bratch (287 F.3d 673 (8th Cir. 2002)). Kansas City: Association of Trial Lawyers of America.
- vii. Malecki, D. S. (2006). Public Official Liability Policies. Rough Notes. 149, 164-166.
- viii. N. Wertz, Director of Insurance Underwriting, Kentucky League of Cities, personal communication, January 26, 2007.
- ix. Rudolph, R. G. (1998). Public officials liability: An overview. CPCU Journal. 51, 164-169.
- x. Scotto, R. (2004). NewMarkets Insurance Agency. Rough Notes. 147, A36.
- xi. Vermeer, J. (2006). Covering the exposures of public entities. American Agent & Broker. 78, 32-37.
- xii. (2006). Nine Reasons to Conduct an Orientation for New Council Members. New Council Member Orientation: Instilling the Spirit of High Performance IQ Report.
- xiii. (2007). City Official Legal Handbook. Lexington, Kentucky: Kentucky League of Cities.
- xiv. (2007). Kentucky Cities: The Basics. Lexington, Kentucky: Kentucky League of Cities.
- xv. Kentucky League of Cities. Retrieved March 17, 2007, Web site: <http://www.klc.org>
- xvi. Wikipedia: The free encyclopedia. (2007, March 17). FL: Wikimedia Foundation, Inc. Retrieved March 17, 2007, from <http://www.wikipedia.org>.
- xvii. Levine, D, Stephan, K, Krehbiel, T, & Berenson, M (2005). Statistics for Managers. Upper Saddle River, NJ: Prentice Hall.

APPENDIX A: State and Federal Legislative Definitions

Employment At-Will: In 1896, Kentucky courts began recognizing the doctrine of “employment at will” in the case of *Louisville & N.R. Co. v. Offutt*. Essentially, employment at-will means that an employer can discharge an employee “for good cause, for no cause, or for a cause that some might view as morally indefensible.” Over the years however, the notion that an employee may be terminated “at-will” has become less and less popular and as result, numerous exceptions have been carved into the general rule. These exceptions can be contractual, statutory or common law in nature.^{xiii}

Title VII of the Civil Rights Act of 1964: A federal statute which prohibits and employer from discriminating against employees on the basis of sex, pregnancy, race, religion and national origin, sometimes referred to as “protected classes” of individuals. It also prohibits the discharge of any employee on the basis that they have made a complaint of, or otherwise opposed, any discrimination practice.^{xiii}

Age Discrimination in Employment Act (ADEA): A federal statute which prohibits an employer from making employment decisions on the basis of a person’s age. Anyone over the age of 40 is protected from age discrimination. Like Title VII of the Civil Rights Act of 1964, the ADEA also prohibits retaliation against anyone complaining of age discrimination.^{xiii}

The American’s with Disabilities Act (ADA): A federal statute designed to create a separate class of individuals who are protected from discrimination in their employment and in access to the benefits, services and programs offered to the public by government and private industry. In the employment context, the ADA essentially extended the remedies set forth in Title VII of the Civil Rights Act of 1964 to “qualified individuals with a disability” who are discriminated against on the basis of their disability.^{xiii}

Family and Medical Leave Act (FMLA): The Family and Medical Leave Act of 1993 is a United States labor law allowing an employee to take unpaid leave due to illness or to care for a sick family member. The law was enacted February 5, 1993 under the administration of President Bill Clinton. The stated intent of the FMLA is to balance the demands of the workplace with the needs of families, and promoted the goal of equal employment opportunity. FMLA provides twelve workweeks of leave per twelve months for various reasons such as caring for a newborn child, handling adoption or foster care placement issues, caring for a sick child, spouse or parent, or being physically unable to perform one's job.^{xvi}

Due Process – The Fourteenth Amendment (1868), Section 1: “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws”^{xvi}. Since cities are instrumentalities of the state, this prohibition applies to all city governments. Due process under the Fourteenth Amendment requires that city governments provide minimal procedural safeguards, including some form of notice and hearing, before taking action which deprives an individual of liberty and property.^{xiii}

Kentucky Civil Rights Act: As an added protection to individuals employed in the Commonwealth of Kentucky, the legislature adopted the Kentucky Civil Rights Act codified in the Kentucky Revised Statutes. In essence, the Act conveys upon all employees within the state employed with the public employer or an employer with eight or more employees, the same rights extended under Title VII of the Civil Rights Act of 1964, the ADEA and the ADA. The federal acts only apply to public employers and employers with 15 or more employees. In addition, the Act creates an additional class of protected individuals based on their status as a smoker or nonsmoker.^{xiii}

Pregnancy Discrimination Act: Part of Title VII of the Civil Rights Act of 1964, prohibiting discrimination of employees because of pregnancy, childbirth, or related medical conditions.^{xiii}

Worker’s Compensation Retaliation: In Kentucky, workers’ compensation provides for the swift delivery of benefits to person’s injured on the job. There is no guarantee of job protection for the employee. However, an employer is prohibited by Kentucky law from terminating an individual’s employment based on the fact they have pursued a worker’s compensation claim.^{xiii}

Whistle Blower Statute: Prohibits public employers from taking adverse employment action against an employee who reports or gives information on violations of law, mismanagement, waste, etc.^{xiii}

Court Ordered Appearance: Prohibits the discharge of an employee for taking time off, as required by law, for a court ordered appearance in any duly constituted local, state or federal court, or administrative tribunal or hearing.^{xiii}

Wage Garnishment: Prohibits employers from discharging any employee because the employees’ earnings have been subject to garnishment for any one indebtedness.^{xiii}

National Guard Service: Requires employees to be given a leave of absence without pay for national guard service. Employers must permit the employee to return to his former position of employment with full seniority, pay, and other rights and benefits.^{xiii}

Jury Duty: Prohibits employers from depriving an employee of employment, or threatening or otherwise coercing an employee regarding employment because the employee receives a summons, responds to a summons, serves as a juror, or attends court for jury service.^{xiii}

Voting Time: Prohibits employees from being penalized for taking reasonable time off to vote in accordance with the terms of the statute.^{xiii}

Special Rules for Cities: The at-will employment doctrine can also be limited by state and local government laws which grant public employees job protection. Kentucky law states that non-elected city officers “may be removed by the executive authority at-will unless otherwise provided by statute or ordinance.” This law also provides that a first class city mayor may “remove from office, by a written order, any officer appointed by him, unless otherwise provided by law.”^{xiii}

Termination Following Injury in Line of Duty: Prohibits any city government from terminating a volunteer firefighter, rescue squad member, emergency medical technician, peace officer, or member of an emergency management agency who is absent from work for twelve months or less because of injuries incurred in the line of duty.^{xiii}

42 U.S.C. § 1983: The Civil Rights Act of 1871, also known as the Ku Klux Klan Act of 1871, is now codified and known as 42 U.S.C. § 1983. This federal statute reads: “Every person who under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, Suit in equity, or other proper proceeding for redress...”^{xvi}

Sovereign Immunity: The doctrine that the sovereign or government cannot commit a legal wrong and is immune from civil suit or criminal prosecution. In the United States, the federal government has sovereign immunity and may not be sued unless it has waived its immunity or consented to suit. In *Hans v. Louisiana*, the Supreme Court of the United States held that the Eleventh Amendment re-affirms that states possess sovereign immunity and are therefore immune from being sued in federal court without their consent^{xvi}.

Fifth Amendment (1971): “No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation”^{xvi}.

APPENDIX B: Classification of Kentucky's Cities

Section 156a of the Kentucky Constitution provides that the General Assembly shall create classifications of cities as it deems necessary based on population, tax base, form of government, geography, or any other reasonable basis^{xiii}. Prior to 1994, Section 156 (now repealed) established six classes of cities based solely on population. The General Assembly has not yet acted to change the population-based classification system that has been in effect since 1891^{xiii}. If all cities were reclassified according to actual population, nearly one quarter of their classifications would change. Until it does so, Kentucky cities will remain classified based solely on population. The reason for the constitutional classification of cities was to provide an exception from the prohibition in Sections 59 and 60 of the Kentucky Constitution against “special or local” legislation^{xiii}.

The newly consolidated Louisville-Jefferson County Metro Government and the Lexington - Fayette Urban County Government now comprise almost half of the total Kentucky city population and nearly one-fourth of the total state population^{xiv}. Since the consolidation of Louisville with Jefferson County and Lexington with Fayette County, Kentucky no longer has a city of the first class. Two-thirds of Kentucky cities are in the fifth and sixth class. Out of 419 cities, 75 percent have populations of fewer than 3,000 people^{xiv}. Table 1 illustrates the classification of Kentucky's cities, their population thresholds and the number of cities in that particular classification.

Table 8 – Kentucky City Classifications

Classification	Population	Kentucky Cities
First Class	100,000 or more	0
Second Class	20,000 to 99,999	12
Third Class	8,000 to 19,999	19
Fourth Class	3,000 to 7,999	103
Fifth Class	1,000 to 2,999	119
Sixth Class	999 or less	164

Kentucky Cities: The Basics, 2007

APPENDIX C – TABLE 9: City Official Election Schedule

Does the Incidence of Public Official Liability Claims Increase in Years Following a Mayoral Election?

