

INTRODUCTION TO SHAKMAN

Cook County Assessor's Office
December 13, 2012

www.shakmanassessor.com

(312) 603-8820

OVERVIEW

- ▶ What is the *Shakman* case?
- ▶ Does *Shakman* apply to all positions within the Assessor's office?
- ▶ Who are we and what is our role?
- ▶ How has the Assessor committed to ensuring compliance with *Shakman*?
- ▶ What conduct is prohibited by *Shakman*?
- ▶ How does *Shakman* affect you?
- ▶ What are some of the most frequently asked questions about *Shakman*?
- ▶ How do you make a claim for unlawful political discrimination?

WHAT IS THE *SHAKMAN* CASE?

- ▶ In 1969, a federal civil lawsuit entitled Michael L. Shakman, et al. vs. Democratic Organization of Cook County, et al., case number 69 C 2145 ("The *Shakman* Case"), was filed by a group of plaintiffs against various defendants including The Cook County Assessor's Office.
- ▶ In 1992, the Assessor's Office entered into a Consent Decree with the plaintiffs to resolve some of the claims made in the lawsuit. The 1992 Consent Decree specifically prohibited the Assessor from "conditioning, basing, or knowingly prejudicing, or affecting any term or aspect of governmental employment, with respect to one who is at the time already a governmental employee, upon or because of any political reason or factor." In 1995, the Assessor entered into another Consent Decree which extended the 1992 prohibitions to include the Assessor's hiring practices, with certain exclusions.
- ▶ On September 19, 2012, the Court, with the agreement of the Assessor and Plaintiff's Counsel, entered an Agreed Order to ensure, among other things, that the Assessor's Office makes all decisions relating to the employment actions involving Shakman *non-exempt* employees based on merit and not on political reasons or factors.

SHAKMAN-EXEMPT VS. SHAKMAN NON-EXEMPT EMPLOYEES

Shakman Non-Exempt Employees

- ▶ Make up the vast majority of employees at the Cook County Assessor's Office.
- ▶ May not have their employment at the Cook County Assessor's Office affected for political reasons or factors.

Shakman Exempt Employees

- ▶ A certain class of employees is *Shakman* Exempt and political factors *may* be considered in the hiring and termination of this class of employee.
 - Positions that involve policy-making OR
 - Positions that require confidentiality to an extent that political affiliation is an appropriate consideration for the effective performance of the position.
- ▶ The Agreed Order requires that the Assessor provide a list of proposed Exempt positions and the final Exempt list will be a product of negotiations between the State's Attorney's Office and Plaintiff's Class Counsel, not the Assessor Compliance Administrator ("ACA").

WHO ARE WE AND WHAT IS OUR ROLE?

- ▶ Under an Order from the Northern District of Illinois Federal Court, the Honorable Judge Clifford L. Meacham (ret.) has been appointed to serve as the ACA to ensure the Assessor's Office's future compliance with the *Shakman* decree.

- ▶ What is the role of the office of the ACA?
 - Train employees including "trainers"
 - Perform desk audits
 - Monitor employment actions
 - Review employment practices and procedures
 - Establish new employment plan
 - Adjudicate Pre-Agreed Order claims

- ▶ **Retaliation** for assisting the ACA and his staff in fulfilling his duties is strictly prohibited. More information at www.shakmanassessor.com

ASSESSOR'S COMMITMENTS & EXECUTIVE ORDER

- ▶ Assessor Berrios has committed to operate his office in compliance with all provisions of the Agreed Order that was entered by the Court.
- ▶ The Assessor has pledged his ongoing support and cooperation with the ACA, the Honorable Judge Clifford L. Meacham (ret.).
- ▶ Assessor Berrios has committed to developing an Employment Plan to increase transparency and accountability in all Employment Actions.
- ▶ The Assessor has issued an **Executive Order** prohibiting the conditioning of any employment decision, other than hiring and termination of a *Shakman* exempt employee, for Assessor employees on political factors. This can be found on the Assessor's and ACA's websites.

ASSESSOR'S EXECUTIVE ORDER

The Assessor's Executive Order:

- Prohibits unlawful political discrimination;
- requires all employees of the Assessor's Office to report unlawful political discrimination; and
- prohibits any retaliation for reporting potential *Shakman* violations.

All Assessor employees are strictly prohibited from directly or indirectly influencing any term or condition of employment because of political reasons or factors, including:

- any employee's or prospective employee's political affiliation;
- political support or activity;
- political financial contributions; and
- promise of future political support.

APPLICABILITY OF THE ASSESSOR'S EXECUTIVE ORDER

This Executive Order is applicable to all Assessor's Office positions, including *Shakman* exempt positions, once hired. Any employee found in violation of this Executive 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 and State or Federal statutes.

UNLAWFUL POLITICAL REASONS OR FACTORS - EXAMPLES

1. **Political Sponsorship or Recommendations:** Recommendations not based on personal knowledge of the person's work skills, work experience or other job related qualifications;
2. **Political Support or Activity:** Consideration of campaign work if not strictly about the quality of the work performed;
3. **Political Financial or other Contributions:** Consideration of monetary or other contribution or promises of such political support to a political office-holder, candidate, campaign, party, organization or other political entity;
4. **Party Affiliation;** and
5. **Political Views.**

WHAT IS PROHIBITED BY *SHAKMAN*?

Acts of Unlawful Discrimination occur when illegal political considerations affect the conditions of your employment with the Assessor's Office. It is impossible to capture all forms of prohibited conduct but examples of such conduct include, but are not limited to, the following:

- ▶ requiring applicants to have political connections in order to be hired;
- ▶ lowering minimum requirements so that a less accomplished, but politically connected, individual can qualify for the position;
- ▶ manipulating interviews, applications or test scores to favor a candidate for political reasons or factors;
- ▶ withdrawing or delaying a posting until the politically-favored candidate gains the minimum experience necessary for the job;
- ▶ requiring employees to assist at the polls on Election Day;

EXAMPLES OF PROHIBITED CONDUCT (CONTINUED)

- ▶ requiring contributions to any political party as part of any employment action;
- ▶ conditioning employment, promotion, termination, or transfer on political work or party affiliation;
- ▶ requiring employees to have political connections in order to be promoted;
- ▶ giving less qualified but politically connected individuals promotions or reclassifications sought by the non-connected employees;
- ▶ 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;
- ▶ requiring individuals without political protection to work outside their job description without a raise or the chance for upgrade or promotion;

EXAMPLES OF PROHIBITED CONDUCT (CONTINUED)

- ▶ forcing individuals without political protection to do the work of politically protected co-workers;
- ▶ rewarding political activity and contributions;
- ▶ permitting politically connected individuals to unfairly gain salary, or position, or to avoid discipline;
- ▶ subjecting individuals without political protection to false accusations and disciplinary charges;
- ▶ subjecting individuals without political protection to harassment at the hands of politically protected supervisors or co-workers;
- ▶ permitting job related benefits to induce or reward campaign work; and
- ▶ awarding overtime, availability of resources, shift and transfer requests based on political factors.

HOW WILL *SHAKMAN* AFFECT YOU?

- ▶ Desk Audits;
- ▶ Monitoring of Employment Actions including, but not limited to, pre-disciplinary hearing investigations, pre-disciplinary hearings, transfers, promotion requests, etc.;
- ▶ Development of Employment Plan and Procedures including, but not limited to, the general hiring process for non-exempt positions;
- ▶ Post-Agreed Order Claims Process; and
- ▶ Duty to Report Any Unlawful Political Discrimination

SHAKMAN CERTIFICATION FORMS

▶ ***Shakman Certification Forms***

- All employees involved in the hiring process will be required to execute the Assessor's *Shakman* Certification form, certifying that political considerations did not enter the hiring process.
- All applicants interviewed for *Shakman* covered positions will be required to execute the Assessor's *Shakman* Certification for Applicants and Candidates, which indicates 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.

MANAGEMENT

- ▶ **Managers have obligations under *Shakman*, and violations of these obligations have the potential to have very serious consequences.**
- ▶ ***Sorich Case***
 - 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, convicted and sentenced to 46 months' imprisonment and a \$10,000.00 fine. *See United States v. Sorich*, 523 F.3d 702 (7th Cir. 2008), *cert. denied*, 555 U.S. ____ (2009), 2009 WL 425807.

MANAGEMENT (CONTINUED)

► *Sanchez Case*

- 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. *See United States v. Sanchez and Delvalle, 07 CR 149.*

MANAGEMENT (CONTINUED)

- ▶ The *Sorich* and *Sanchez* cases discuss the many consequences that attend the improper application of patronage.
- ▶ **The import is clear; those engaging in prohibited conduct do so at great personal and professional risk.**
- ▶ 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.

IMPLEMENTATION OF *SHAKMAN*

Objectivity, Transparency and Accountability

- ▶ The most effective way to implement *Shakman* is through:
 - Merit-based Employment Plan and procedures;
 - Transparent and accessible Employment Plan and procedures;
 - Transparent and accessible Job Descriptions and Organizational Charts; and
 - Enforcement of violations of all of the above.

FREQUENTLY ASKED QUESTIONS

1. Am I *Shakman* exempt?

If your position is *Shakman* Exempt, your position will be listed on the 1995 Exempt list that can be obtained on the ACA's website.

2. 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 ACA, 69 W. Washington, Ste. 840, Chicago, IL 60602 at **312.603.8820**.

3. Must I do political work?

No.

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

Yes. If you are aware of political discrimination, you should report it to the ACA, 69 W. Washington, Ste. 840, Chicago, IL 60602 at **312.603.8820**.

FREQUENTLY ASKED QUESTIONS

5. 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 recommendation in writing and send it to the Assessor's Deputy of Human Resources, Vickie LaCalamita, at the Office of the Cook County Assessor's Office, 118 N. Clark, 3rd Floor, Chicago, IL 60602.

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

You must forward the letter to the Assessor's Deputy of Human Resources, at the address above.

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

You should put your recommendation in writing and send it to the Assessor's Deputy of Human Resources, at the address above.

CLAIMS OF UNLAWFUL POLITICAL DISCRIMINATION

- ▶ The Agreed Order contains two (2) distinct claims processes.
 - **Pre-Agreed Order Claims:** The first procedure governs the handling of claims where the former employees believe they were subjected to unlawful political discrimination in connection with their termination from the Cook County Assessor's Office occurring between December 6, 2010 and September 18, 2012. Currently, the ACA is investigating 14 timely filed Pre-Agreed Order claims of unlawful political discrimination.
 - **Post-Agreed Order Claims:** The second procedure governs the handling of claims for current or former employees of the Cook County Assessor's Office who believe they have been victims of unlawful political discrimination in connection with any aspect of government employment, including seeking employment with the Assessor, promotions, transfers, discipline, discharge, and overtime, since September 19, 2012.

HOW WILL PRE-AGREED ORDER CLAIMS AFFECT YOU?

- ▶ The ACA is responsible for investigating claims of unlawful political discrimination in connection with terminations occurring on or after December 6, 2010 and on or before September 18, 2012.

- ▶ The ACA may conduct interview(s) of witness(es).

- ▶ **What happens if you cooperate with the ACA?**
 - The Assessor's Executive Order states: *No Cook County Assessor's Office employee shall in any manner retaliate against, punish or penalize any other Cook County Assessor's Office employee or job applicant for complaining to **or cooperating with, or assisting the Compliance Administrator** in an investigation conducted by the Compliance Administrator . . .*

- ▶ **Zero tolerance** for retaliation. Report retaliation.

POST-AGREED ORDER CLAIMS

- ▶ Once hired, the Assessor's Director of Compliance ("DOC") is responsible for investigating claims of unlawful political discrimination occurring **on or after September 19, 2012.**

- ▶ **Where do I get the forms to file a Post-Agreed Order Claim?**
 - www.shakmanassesors.com, or
 - Assessor's Shakman page on Intranet and Internet

- ▶ **Where do I file my Post-Agreed Order Claim?**
 - Until the DOC is hired, individuals may submit their Post-Agreed Order Claim forms to the ACA who will hold the forms until a DOC is in place. You may submit a completed and notarized Post-Agreed Order Complaint Form to:
 - Honorable Judge Clifford L. Meacham (ret.)
 - Assessor Compliance Administrator
 - 69 W. Washington Street, Suite 840
 - Chicago, IL 60602

 - The limitations period for filing a lawsuit based on a claim of unlawful political discrimination will not be tolled until the Complaint Form is actually submitted to the DOC.

POST-AGREED ORDER CLAIMS (CONTINUED)

- ▶ **What should I include in my Post-Agreed Order Complaint Form?**
 - The date or dates of the alleged violation;
 - A detailed narrative description of the alleged violation;
 - A description of the alleged damages;
 - Identifying information including name, address, telephone #;
 - Copies of the appropriate Supporting Documentation; and
 - Explicit bases for why you feel you were the victim of unlawful **political** discrimination.

- ▶ The Assessor's DOC shall attempt to complete his or her investigation of these claims within 180 days after its initiation and then:
 - DOC's Report concluding whether impermissible political factors were considered in an employment decision.
 - Mandatory in person Settlement Conference – settlement offers may include, but are not limited to monetary damages, reinstatement, or other equitable relief.

NEED HELP DRAFTING YOUR POST-AGREED ORDER CLAIM FORM?

You have several options:

1. Call the ACA with any questions – (312) 603-8820
2. Retain your own legal counsel
3. Contact the University of Chicago Law School where volunteers are available to assist you on a pro bono basis. Their resources are limited, however, so they may not be able to help everyone who contacts them. Please contact:

Randall Schmidt
Mandel Legal Clinic
6020 University Avenue
Chicago, Illinois 60637
(773) 702-9611

SUMMARY

- ▶ The *Shakman* Decrees, the Agreed Order, and the Assessor's Executive Order 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 Assessor's Office and the individual to liability or disciplinary action. Such violations may also result in criminal prosecution punishable by fine or imprisonment.
- ▶ We are hopeful that a full understanding of the rights, duties, and obligations of Assessor's employees will lessen, if not eliminate, the instances of unlawful political decision making.
- ▶ Please see www.shakmanassessor.com for more information on everything discussed today or call the ACA at **(312) 603-8820**.