

CRCOG's Model Job Application, Position Descriptions and Employee Handbook Training

Presented By:

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Session One:

- Unveiling CRCOG's Model Job Application, Position Descriptions and Employee Handbook: Training on Municipal Best Practices and Limiting Legal Exposure
- Covering:
 - Employment Applications
 - Position Descriptions
 - Employee Handbooks
 - Collective Bargaining Agreements

Introduction

- As part of its statewide Human Resources Portal Demonstration Project, the Capitol Region Council of Governments (CRCOG) partnered with Pullman and Comley, LLC to create a compendium of model HR documents.
- Pullman and Comley's team crafted best practice-based and legally-compliant templates for communities to draw from in order to update and customize editions for local implementation.
- These documents include:
 - a collection of model municipal job descriptions,
 - a comprehensive model Employee Handbook for non-union employees, and
 - an updated municipal employment application
- Available at CRCOG's new HR Portal website, www.Nutmeghr.org.

Learning Objectives

- Understand recent changes to the laws involving Job Applications, including the new “Ban the Box” legislation
- Understand what should and should not be included in a non-union Employee Handbook
- Get ideas for personnel policies to include in your next collective bargaining agreement
- Learn about best practices concerning what to include in a municipal position description

CRCOG's human resources consulting services firm for the HR Portal Project:

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MARCH 15, 2016



Employee Separation Agreements – A Refresher, Part Three


by  Jonathan Orleans

My first two posts on this topic have discussed provisions that must – under federal law, specifically the Older Workers Benefit Protection Act – be included in employee separation agreements if the employee's release of potential claims under the Age Discrimination in Employment Act is to be valid. And as I've pointed out previously, even...

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Alerts, commentary, and insights from the attorneys of Pullman & Comley's Labor, Employment and Employee

Employment Application Process and Background Checks

- Significant recent changes in the state and federal laws that apply to employment applications and background checks, including:
 - CT “Ban the box” legislation
 - Federal Fair Credit Reporting Act
 - CT credit check laws
 - Drug Testing laws
 - Discrimination laws and EEOC Guidance

Connecticut's Fair Chance Employment Legislation

- Connecticut Fair Chance Employment Act, Public Act No. 16-83 passed in 2016 (the “ban the box” law)
- the law took effect on January 1, 2017
- Prohibits employers from inquiring about a prospective employee’s prior arrests, criminal charges or convictions on an initial employment application unless:
 - (1) the employer is required to do so by an applicable state or federal law, or
 - (2) a security or fidelity bond or an equivalent bond is required for the position for which the prospective employee is seeking employment.
- The law does not prohibit employers from inquiring about a prospective employee’s criminal history after the employer makes a conditional offer of employment to the applicant.

Connecticut's Fair Chance Employment Legislation

- If an application form contains a question concerning the criminal history of an applicant -- either because it applies to a position that is an exception to the law or it is post-conditional job offer -- it must contain a notice in clear and conspicuous language as follows:
 - (1) The Applicant is not required to disclose the existence of any arrest, criminal charge or conviction, the records of which have been erased pursuant to section 46b-146, 54-76o or 54-142a, (2) criminal records subject to erasure pursuant to section 46b-146, 54-76o or 54-142a are records pertaining to a finding of delinquency or that a child was a member of a family with service needs, an adjudication as a youthful offender, a criminal charge that has been dismissed or *nolled*, a criminal charge for which the person has been found not guilty or a conviction for which the person received an absolute pardon, and (3) that any person whose criminal records have been erased pursuant to section 46b-146, 54-76o or 54-142a shall be deemed to have never been arrested within the meaning of the general statutes with respect to the proceedings so erased and may so swear under oath.

Federal Fair Credit Reporting Act

- The federal Fair Credit Reporting Act (15 U.S.C. § 1681 (“FCRA”)) has extensive disclosure requirements and limits on the use of employment applicant’s credit histories and reports.
- Applicants must be provided with notice of their rights, and if a negative employment decision is made based on the applicant’s credit history, the applicant must also be informed of his/her rights in relation to that decision.
- The disclosures are numerous and lengthy and required to conform to specific federal mandates.

Federal Fair Credit Reporting Act

- In a nutshell, employers using consumer reports, including credit histories, to screen job applicants, must follow specific procedures, including:
 1. Get written permission from the applicant to perform the credit check;
 2. Tell applicants how the employer will use the credit report;
 3. Not misuse the applicant's information;
 4. Give the applicant a copy of the credit report if the employer decides not to hire (or fires) the applicant; and,
 5. Give the applicant an opportunity to dispute the information contained within the credit report before making a final adverse decision.

Connecticut's Law on the Use of Credit Scores by Certain Employers

- Connecticut Public Act No. 11-223 prohibits employers' inquiries into job applicants' (or employees') credit histories unless the position applied for is of a financial or fiduciary nature.
- The exceptions to the law are as follows:
 1. The employer is a financial institution, as defined under the law;
 2. The report is required by law;
 3. The employer reasonably believes the employee has engaged in specific activity that constitutes a violation of the law related to the employee's employment; or
 4. The report is substantially related to the employee's current or potential job or the employer has a bona fide purpose for requesting or using information in the credit report that is substantially job-related and is disclosed in writing to the employee or applicant.

Connecticut's Law on the Use of Credit Scores by Certain Employers

- Under the fourth exception, the report is “substantially related to the employee’s current or potential job” and the inquiry is permitted if the position:
 1. Is a managerial position that involves setting the direction or control of a business, division, unit or an agency of a business;
 2. Involves access to customers’, employees’ or the employer’s personal or financial information, other than information customarily provided in a retail transaction;
 3. Involves a fiduciary responsibility to the employer, as defined in the law;
 4. Provides an expense account or corporate debit or credit card;
 5. Provides access to certain confidential or proprietary business information, as defined in the law; or
 6. Involves access to the employer’s nonfinancial assets valued at \$2,500.00 or more.

Drug Testing Laws

- If an employer wishes to drug test prospective employees at the time of application, it must comply with C.G.S. Sec. 31-51v, which provides as follows:
- No employer may require a prospective employee to submit to a urinalysis drug test as part of the application procedure for employment with such employer unless
 - (1) the prospective employee is informed in writing at the time of application of the employer's intent to conduct such a drug test,
 - (2) such test is conducted in accordance with the requirements of subdivisions (1) and (2) of subsection (a) of section 31-51u and
 - (3) the prospective employee is given a copy of any positive urinalysis drug test result.

Drug Testing Laws

- The results of any drug test shall be confidential and shall not be disclosed by the employer or its employees to any person other than any such employee to whom such disclosure is necessary.
- Employers may not drug test applicants who have worked for the employer within the last 12 months before any reapplication.
- There are exceptions to the testing restrictions if “(1) such test is authorized under federal law, (2) the employee serves in an occupation which has been designated as a high-risk or safety-sensitive occupation pursuant to regulations adopted by the Labor Commissioner pursuant to chapter 54, or (3) the urinalysis is conducted as part of an employee assistance program sponsored or authorized by the employer in which the employee voluntarily participates.”

Disability Inquiries

- The Americans with Disabilities Act prohibits employers from making specific inquiries into a job applicant's disability at the time of application.
- While general questions relating to an applicant's ability to perform the job are permitted, specific questions regarding an applicant's disabilities and/or need for reasonable accommodations cannot be made until after a conditional offer of employment has been made to the applicant.
- Similarly, a medical examination may only be required after a conditional offer has been made.

Inquiries into Various Protected Matters

- The Equal Employment Opportunity Commission has issued guidelines on prohibitions against inquiries into numerous protected matters including, but not limited to, age (unless age is a *bona fide* occupational qualification), marital status, sexual orientation, religion and other matters.
- These inquiries are viewed by the EEOC as attempts to discover information with a discriminatory animus that is prohibited.
- The EEOC states that “as a general rule, the information obtained and requested through the pre-employment process should be limited to those essential for determining if a person is qualified for the job; whereas, information regarding race, sex, national origin, age, and religion are irrelevant in such determinations.”

Do's and Don'ts of the Employment Application Process

- **DO** check all references carefully before hiring any employee.
- **DO** have all applicants sign a release/waiver form that releases all persons from liability for providing honest references to you.
- **DO** have a release/waiver form for your company relating to the use of information gleaned during the application process, including information about criminal misconduct, theft and other violations of law.
- **DON'T** ask a job applicant about physical or mental disabilities at the application stage, before a conditional offer of employment is made.
- **DO** ask an applicant whether “there is anything that could prevent you from performing this job?”
- **DO** have available detailed job descriptions that explain the physical, educational, and other requirements of the job.

Do's and Don'ts of the Employment Application Process

- **DO** ask about salary expectations.
- **DO** have the applicant sign a Drug Testing Consent Form if the position requires a drug test.
- **DON'T** make inquiries into the applicant's credit history unless your business or the position is exempt from Public Act No. 11-223.
- **DO** adhere to the Fair Credit Reporting Act if you are permitted to make inquiries into the applicant's credit history, which means making all necessary disclosures and providing all mandated forms at the time the application is provided.
- **DON'T** discriminate against the applicant on the basis of a protected characteristic such as age or disability, unless there is a "*bona fide* occupational qualification" for the position that permits you to do so (e.g., the State of Connecticut can refuse to appoint a person over 70 to a position as a judge).

Municipal Position Descriptions

- WHY UTILIZE THEM?
- Help ensure individuals with the right background and skills are matched to the appropriate role
- Identify expectations to guide performance (and reviews)
- Give prospective candidates an understanding of the role and expected responsibilities
- Discloses salary expectations
- Discloses exempt/nonexempt status
- Describes educational, experience and other requirements
- Discloses safety exposures and physical requirements of the job
- May aide in recruiting candidates

The Model Municipal Job Descriptions We Created:

1. Chief Elected Official	11. Town Manager
2. Finance Director/Treasurer	12. Assessor
3. Tax Collector	13. Town Clerk
4. IT Director	14. Public Works Director
5. Economic Development Director	15. Town Planner
6. Chief Building Official	16. Health Director
7. Town Engineer	17. Fire Chief
8. Police Chief	18. Personnel/HR Director
9. Parks and Recreation Director	19. Library Director
10. Purchasing Agent	20. Human Services Director

Using the Models

Important Disclaimer:

USE OF MODEL MUNICIPAL JOB DESCRIPTIONS

These model municipal job descriptions are provided to member cities/towns for use as a guideline and template for the creation of, or revision to, the cities/town's job descriptions. We have attempted to present comprehensive model municipal job descriptions, including all legally required aspects of each job. Those cities/towns who have labor unions may have to negotiate the implementation, or the impact, of these model municipal job descriptions.

What does that mean?

- Cities/Towns will need to modify the model forms to fit their needs, Charter and unique governance
- For example:
 - Do you have a Town Manager or First Selectman or Mayor or Council Chair? The description will need to be modified accordingly to describe the town's administrative officer.
 - Some positions may be combined in some towns
 - Some positions may have less/more responsibilities or qualifications
 - Reporting structure may be different than as drafted
 - Etc.

Sample Municipal Position Description

Town of _____
Director of Public Works
Job Description

Title:	Director of Public Works	Number/Code:
FLSA:	EXEMPT	Salary Range:
Union:	N/A	Created:
Revised:		Revision No.

Elected ___ Appointed ___ Hired ___

General Summary:

Performs a variety of technical, supervisory and administrative work in direct oversight and control of the Department of Public Works. Responsible for the maintenance of Town roads, wastewater collection and treatment, refuse disposal and recycling, facility operation and maintenance, vehicle and equipment maintenance and Town and Board of Education grounds.

Supervision Received:

Receives general direction from [chief administrative/executive officer].

Supervision Given:

Supervises the following departments/divisions:
Supervises all employees of Department of Public Works.

Examples of Essential Functions:

- Plans, supervises and evaluates the Department of Public Works operations and employees.
- Develops policies and procedures for the Department of Public Works as necessary to ensure efficient operation of all Department divisions or implements directives from the [chief administrative/executive officer].
- Plans, promotes and implements a comprehensive plan to address immediate and long range plans for public works improvements under policies established by [chief administrative/executive officer] and [legislative body if appropriate].
- Coordinates the preparation and review of plans, specifications and cost estimates for construction and repair projects; reviews progress of planning and construction to ensure conformity with goals, estimates and timelines.

Municipal Position Descriptions

- **General Items to Include:**
- **Job information** — that includes things like:
 - Job title
 - FLSA Exemption status
 - Pay grade (optional)
 - Division
 - Reporting structure
 - Shift
 - Department
 - Location
 - the essential functions of the job

Municipal Position Descriptions

- **General Items to Include:**
- **Qualifications** — including requirements for:
 - Education
 - Certification
 - Experience
 - General skills (basic skills needed for the position)

Municipal Position Descriptions

- **General Items to Include:**

- **Working conditions**

- Hours worked
- Requirements for overtime
- Specifications for breaks/lunch
- Demands for thoroughness or accuracy
- specific physical requirements (e.g. lifting, standing for long periods of time),
- health or safety hazards (e.g. working with dangerous material),
- working in unusual conditions (e.g. underground, isolated locations),
- travel requirements

Municipal Position Descriptions

- **General Items to Include:**

- At-will, Contractual, Elected, Appointed or Union status
- Term of Employment, if there is one
- Reference to Employee Handbook or Union affiliation
- Authorizations

Municipal Position Descriptions

- **What to Exclude:**
- Potentially Discriminatory requirements, unless justified as a Bona Fide Occupational Qualification, such as Age limits, Sex, Disability (extensive physical requirements not required for the job).
- Do not use titles that overstate the job. For example, if you're seeking a laborer, do not title the position "Labor Manager I."
- Do not list the position as exempt if the duties make the position non-exempt under wage laws.

Employee Handbooks

Using the Model Employee Handbook

Important Disclaimer:

USE OF MODEL MUNICIPAL EMPLOYEE HANDBOOK

The model municipal Employee Handbook is provided to member cities/towns for use as a guideline and template for the creation of, or revision to, the cities/town's non-union employee handbook. We have attempted to present comprehensive model policies, including those that are legally required. Those cities/towns who have labor unions will have to negotiate the implementation, or at least the impact, of these policies.

Purpose of an Employee Handbook

- Confirm Nature of Relationship
 - At-Will
 - Not Contractual/Union
- Compliance
 - Guide For Managers
 - Guide For Employees
 - Legal Protection
- Communication
 - Operational Policies
 - Effective Reference Tool For Employees
 - Puts employees on notice of expectations
 - Employee Benefits/entitlements are explained

The Employment At-Will Doctrine

- The general rule in Connecticut is that the employment relationship is one of "**at-will**" unless modified by words or actions of the parties.
- At-will means **an employee may be terminated at any time, for any reason - except an illegal one! - with or without notice.**
- If you intend to enter into a contract, it should be in writing and signed by an authorized person and approved by the appropriate governing body.

The Dilution of the Employment At-Will Doctrine

- Even in the absence of an explicit, written contract, Connecticut courts have found the existence of an **implied contract based on the words, actions, or conduct of the parties.**



Implied Employment Agreements

- Statements in documents such as **Employee Handbooks, personnel manuals, policies and offer letters**, as well as **certain oral representations**, may form the basis for a claim of an express or implied contract between the employer and the employee.
- However, such communications are considered employment contracts only if they contain **"language that could reasonably be construed as a basis for a contractual promise."**
 - the words must be considered an offer by the employer, subsequently accepted by the employee

Avoiding Unintentional Contracts

A. At-Will Disclaimers

- The most effective defense to a claim of an implied contract is a disclaimer.

B. Avoiding Representations or Promises

- Using terms such as “probation,” “job security” and “just cause” or “for cause” -- all Union or formal contract concepts -- may unintentionally modify the at-will relationship.



Equal Employment Opportunity Policies

- Commitment in all facets of employment
- Anti-Discrimination and Anti-Harassment
 - Zero tolerance
 - Identify protected status
 - Include gender identity and genetic information (Conn. Gen. Stat. § 46a-60)
- Complaint procedures with multiple reporting avenues
- Investigation
- Prohibition on Retaliation
- Americans With Disabilities Act

Compliance - Employee Classification

- Employee Classification
 - Regular, Full Time, Part Time, Probationary/Introductory
 - Benefits

- FLSA Status-
 - Exempt or non-Exempt
 - Salary and duties test
 - Executive, Administrative and Professional

Compliance - Wage & Hour

- Hours of Work
 - Regular, Special, Inclement Weather
- Compensable Work Time
 - Travel, lunch, breaks, etc.
- Payroll Practices
 - Timekeeping/Reporting
 - Non-exempt
 - Overtime
 - Permission
 - Pay Periods
 - Conn. Gen. Stat. § 31-71b
 - Deductions

Compliance - Attendance/Leave

- Attendance and Punctuality
- PTO-Leave
 - Vacation Pay Policy
 - Sick/Personal Day Policies
 - Conn. Gen. Stat. § 31-57r
 - Jury/Witness Duty
 - Bereavement
 - Military
 - Pitfalls
 - Ambiguity and caps
- FMLA Policy

Communication of Benefits

- Disclaimers
- Eligibility
- Right To Modify
- General Overview
- Refer To SPD/
Master Documents



Our benefit package is we don't block Facebook.

Communication - Conduct

- Employee Conduct
 - Workplace Violence
 - Drug/Alcohol
 - Confidentiality
 - MERA issues
 - Wages- P.A. 15-196

- Discipline & Termination/Separation
 - Procedure
 - Accrued benefits
 - Resignation Policy
 - Return of Company Property
 - Severance
 - References

Communication - Technology

- Workplace Monitoring
- Telephone
- Cellphone and Mobile Devices
- Computers
 - Use
 - Virus Protection
- VPN and Remote Access
- E-Mail Use
- Internet Use
 - Social Media Policy



*"They moved my cubicle
to my smartphone."*

Social Media Policies

- Key Challenges for Employers



- Employee privacy and free speech concerns

vs

- Employer's privacy concerns, protection of employer's reputation, trade secrets / confidential information and trademarks, to name a few

Rights of Employees

- Employees have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.
- Discipline of employees who misuse social media

Social Media - MERA

- When is a social media policy unlawful?
 - if a work rule explicitly restricts protected activities;
 - if employees would reasonably construe the language of a work rule to prohibit protected activities;
 - if rule was promulgated in response to union; or
 - if rule has been applied to restrict the exercise of protected rights
- What is a “protected activity”?
- What is not a “protected activity”?



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Crafting a Social Media Policy

- Conn. Gen. Stat. § 31-40x prohibits employers (private and public) from requesting or requiring employees (or job applicants) to:
 - (1) provide their user name and password, or any other means of access, to an employee's personal online account;
 - (2) access an online account in the employer's presence; or
 - (3) invite, or accept an invitation from, the employer to join a group affiliated with any personal online account of the employee or applicant.
- Covers any online account that is used by an employee or job applicant exclusively for personal purposes and unrelated to any business purpose of such employee's or applicant's employer or prospective employer, including, but not limited to, e-mail, social media and retail-based internet web sites.

Crafting a Social Media Policy

- Avoid rules that place undue burdens on employees or that tend to chill employees' engagement in protected activity.
- Incorporate language from other employment policies

Examples:

- anti-discrimination policies
- anti-harassment policies
- threats

Crafting a Social Media Policy

- Include a “Savings Clause”:
 - the clause should indicate that the employer will not construe or apply the policy in a manner that interferes with or restricts employees’ rights under applicable laws.
 - the clause should also identify a person at the employer who can answer questions regarding the employer’s social media policy.
 - the clause, alone, will not cure an otherwise unlawful social media policy, but it may help inform employees that the policy does not apply to protected concerted activities.

Sample Employee Handbook Provisions

- INTRODUCTION/HISTORY
- AT-WILL EMPLOYMENT DISCLAIMER
- OFFICE HOURS
- EMERGENCY CLOSINGS
- TIMEKEEPING
- DRESS STANDARDS
- EMPLOYMENT APPLICATIONS/REFERENCE VERIFICATION
- PERSONNEL RECORDS
- PERFORMANCE APPRAISALS
- PROBLEM RESOLUTION/COMPLAINT PROCEDURE
- PROTECTING PROPERTY
- USE OF CREDIT CARDS AND CHARGE ACCOUNTS
- BUSINESS EXPENSES
- MEDICAL EXAMINATIONS [*DEPENDS ON SITUATION*]
- SECURITY INSPECTIONS
- VISITORS IN THE WORKPLACE
- TELECOMMUTING



Sample Employee Handbook Provisions

- NO SMOKING
- RECYCLING
- SAFETY
- PAYROLL
- OVERTIME
- BENEFITS
- VACATION
- SICK TIME
- PERSONAL TIME
- HOLIDAYS
- BEREAVEMENT LEAVE
- JURY DUTY
- MILITARY DUTY
- HEALTH INSURANCE
- OTHER INSURANCES
- WORKERS' COMPENSATION



Sample Employee Handbook Provisions

- FAMILY AND MEDICAL LEAVE POLICY
- TERMINATION WHEN UNABLE TO WORK
- EDUCATIONAL ASSISTANCE PROGRAM
- PROFESSIONAL REIMBURSEMENTS
- CERTIFICATION BONUS
- EMPLOYEE REFERRAL BONUS
- EMPLOYEE ASSISTANCE PROGRAM
- CONFIDENTIALITY POLICY
- CONFLICTS OF INTEREST
- EQUAL OPPORTUNITY
- DISABILITY ACCOMMODATION
- WORKPLACE HARASSMENT
- SEXUAL HARASSMENT
- DRUG-FREE WORKPLACE POLICY STATEMENT
- OUTSIDE EMPLOYMENT



Sample Employee Handbook Provisions

- SOLICITATION POLICY
- GRATUITIES
- IMMIGRATION AND CITIZENSHIP VERIFICATION
- COMMUNICATIONS
- TELEPHONE
- CELL PHONES AND MOBILE DEVICES
- COMPUTERS
- VPN AND REMOTE ACCESS
- E-MAIL USE
- INTERNET USE
- VIRUS PROTECTION
- SOCIAL MEDIA POLICY
- ACKNOWLEDGEMENT FORM



Collective Bargaining Agreements

A. Laws

- **Municipal Employee Relations Act (MERA), C.G.S. § 7-467, et seq.**
 - MERA was enacted in 1965 and covers employees of local government with the exception of certified teachers and administrators. MERA governs the collective bargaining relationship between municipal employers and employee organizations representing municipal employees. It prohibits certain practices by employers and employee organizations. It provides procedures for filing, investigation and adjudication of election petitions and prohibited practice complaints. MERA prohibits strikes. Provides for compulsory mediation and arbitration of unresolved municipal labor issues.

Collective Bargaining Agreements

A. Laws

▪ **Teacher Tenure Act, C.G.S. § 10-151, et seq.**

- The teacher tenure law sets out strict termination and due process requirements for teachers, whether or not they have tenure. It covers certified professional employees below the rank of superintendent employed by a board of education for at least 90 days in a position that requires certification.
- Covered teachers first hired after July 1, 1996 attain tenure after working for 40 school months, if their contracts are renewed for the following school year. Teachers who attain tenure with one board of education and who are reemployed by the same or another board after a break in service attain tenure after 20 school months of continuous employment, if their contracts are renewed for the following school year.

Collective Bargaining Agreements


B. TYPICAL CBA PROVISIONS:

- RECOGNITION
- UNION SECURITY AND UNION DUES OR FEE CHECK-OFF
- NO DISCRIMINATION
- SENIORITY
- REGULAR HOURS OF WORK
- WAGES
- OVERTIME AND CALL IN
- INSURANCE
- SICK LEAVE
- LEAVES
- HOLIDAYS
- VACATION
- MANAGEMENT RIGHTS
- DISCIPLINE, GRIEVANCE AND ARBITRATION PROCEDURES
- UNION BUSINESS LEAVE
- LONGEVITY
- NO STRIKE/NO LOCKOUT
- PENSION
- DURATION



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Municipal Salary Survey



Cities and towns across Connecticut now have access to a robust on-line salary survey tool with extensive reporting capabilities.

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Model Documents



Update your human resource operations with our on-line toolkit of best practice templates, policies, checklists and more.

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Additional Resources



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HR Automation Tools



Coming Soon

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build: 1.883-alpha.dev | core: 16.12.5

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