

# Elected officials can fire holdover appointees

Sometimes, elected officials act as if the post in which they were elected comes with total authority. That's when the new mayor or board member may create a new position for a favorite supporter, business associate or relative.

Naturally, the newly elected official may want to terminate those employees politically tied to his predecessor—and he often may ask HR how to handle the firings. Because such cases can be close calls, always refer the matter to experienced legal counsel. Your attorney will be in the best position to decide whether someone is protected from discharge because of his political affiliation or simply a political appointee who can be fired at will.

**Recent case:** When Gerard McGroarty's brother was elected mayor of Wilkes-Barre, Pa., he created a new department: the Department of Facilities, Parks and Recreation. McGroarty managed the department until a new mayor took office, dismantled the department and fired him.

He sued, arguing that he had been fired for his political affiliation with the prior administration, in violation of the Constitution. But the court pointed out that such discharges are appropriate for many high-level positions. They allow newly elected officials to bring in new blood to accomplish new goals that the electorate presumably wanted.

McGroarty argued that his was a rote job, not a managerial one. His regular duties were to cut grass, remove garbage and graffiti and schedule use of public recreational facilities. According to McGroarty, his brother—the former mayor—micromanaged him, making him into just another employee.

The court tossed out the case, reasoning that McGroarty was a political appointee who could be fired since he held a management position with at least theoretical powers. (*McGroarty v. Wilkes-Barre*, No. 08-2316, 3rd Cir., 2009)