



## **Doña Ana County**

# **Human Resources Policies and Procedures**

Adopted May 28, 2008  
Amended June 9, 2009  
Amended May 25, 2010  
Amended May 24, 2011  
Amended December 9, 2014  
Amended June 14, 2016  
Amended August 23, 2016  
Amended November 12, 2019

Welcome, new employee!

On behalf of the Board of County Commissioners and your colleagues, I welcome you to Doña Ana County. We believe that each employee contributes directly to the County's growth and success. We hope you will take pride in being a member of our team and wish you every success here. Together we provide many valuable services to the community.

We recognize the key role played by County employees. Your dedication and commitment to the County is essential to successfully providing high quality service to the community. It is our goal to provide a safe work environment that is conducive to both personal and professional growth.

This manual was developed to describe some of the expectations of our employees and to outline the policies, procedures, rules of conduct, and benefits available to eligible employees. Employees should familiarize themselves with the contents of the policies and procedures manual as soon as possible, for it will answer many questions about employment with Doña Ana County.

As a large and diverse organization, these policies offer a framework within which to make human resources decisions consistently and equitably. The policies and procedures are also a supervisory guide in the daily management of Departments and employees.

The Board of County Commissioners is responsible for establishing policy to guide the administrative functions of the County. Therefore, these policies may be revised, supplemented or rescinded any policies or portion of the manual as it deemed necessary and appropriate. Questions regarding the interpretation of these policies or procedures should be directed to Human Resources at 575-647-7210.

We hope your experience here will be challenging, enjoyable and rewarding.

Fernando R. Macias  
County Manager

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## **I. GENERAL PROVISIONS**

The policies and the management practices contained in this manual are designed to support and promote the mission of Doña Ana County. The purpose of this section is to describe the rights and responsibilities of management, employees and volunteers. Mutual commitment to these rights and responsibilities creates a safe, collegial work environment that is essential to providing quality services to the public.

- A. Purpose. The purpose of the Human Resource policies and procedures is to establish consistent, basic policies and practices concerning relations between Doña Ana County and its employees.
- B. Scope. As rules and regulations cannot be reality formulated for every possible situation, these policies and procedures serve as a general basis and guide for the proper, efficient and effective administration of Doña Ana County.
- C. Supplementation of Policy. The County Manager may issue rules, regulations and procedures to provide further clarification and guidance so long as they are consistent with the Human Resources policies approved by the Board of County Commissioners.

### **1-1. PRIOR POLICIES AND PROCEDURES**

- A. In accordance with Doña Ana County Code, Section 45 Human Resources, the Human Resources Policies and Procedures in effect prior to December 9, 2014, and all amendments and directives thereto, are hereby repealed and superseded.

### **1-2. COLLECTIVE BARGAINING AGREEMENTS**

- A. An employee, where permitted by state law, shall have the right to form, join and participate in the lawful activities of employee organizations of the employee's own choosing.
- B. An employee has the right to be free from interference, intimidation, restraint, coercion, unlawful discrimination or reprisal on the part of his/her Department Head, County Manager, supervisor, other employees or an employee organization, with respect to his/her membership or non-membership in any employee organization or with respect to any lawful activity associated with the meet-and-confer process.

### **1-3. MANAGEMENT RIGHTS AND RESPONSIBILITIES**

- A. Management has the exclusive right to operate, administer and manage its services and the work force performing these services. Except as limited under law, the exclusive rights and responsibilities of the County shall include, but are not limited to, the following:
  - 1. To control, monitor and inspect all facilities, their furnishings and equipment, as well as any electronic data stored or transmitted through any County system, as there is no expectation of privacy by any employee, Elected Official, or volunteer in County furnishings or electronic

data.

2. To determine the priorities and appropriate use of public funds.
3. To determine the organization, mission and structure of the County and its component agencies.
4. To determine the necessity, nature, quantity and quality of services to be offered to the public along with the means of operations, oversight, the materials and personnel to be used.
5. To hire, promote, reclassify or transfer employees to serve the needs of the County.
6. To establish and implement standards of recruiting and selecting County personnel and for continuing employment with the County.
7. To communicate job performance expectations to employees and to provide guidance, training, and evaluation as appropriate.
8. To lawfully reprimand, suspend, demote, terminate or take other disciplinary action against employees or volunteers.
9. To relieve employees or volunteers from duties under circumstances involving lack of work, funds, health, violation of policies or safety or welfare of employees or others.
10. To introduce new or improved methods, technology or facilities to serve the needs of the county.
11. To review the County's policies and procedures periodically and recommend policy updates to improve the quality of our workplace for all employees and discontinue them at any time in accordance with Doña Ana County Code, Section 45, Human Resources; to establish and implement policies and procedures consistent with applicable law and which support the mission and goals of the County.
12. To act in the best interest of the County and to reduce risk and protect it from liability by following and enforcing policies and procedures.
13. To take whatever action it deems appropriate to manage an emergency where the health, welfare and/or safety of employees, volunteers, or the public is at risk. The determination of whether an emergency exists is solely within the discretion of the County Manager.

**1-4. EMPLOYEE AND VOLUNTEER RIGHTS AND RESPONSIBILITIES.**

- A. The County strives to provide to every County employee or volunteer/intern a work environment that is free of discriminatory or harassing behavior. Each

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member of the County has a responsibility to treat others fairly without unlawful discrimination or retaliation.

- B. Employees have the right to seek guidance through their chain of command, the Human Resources Department, Assistant County Manager, or County Manager; and to pursue one's right to file a grievance, appeal, and internal complaint of unlawful discrimination, harassment or retaliation under County policies, without reprisal.
- C. It is the County's goal to respect the dignity of its employees and at the same time maintain a safe and secure workplace. When issues requiring investigation or audit arise, including but not limited to matters of safety and security, employees, volunteers or interns will be instructed to cooperate with an investigation, which may include interviews about other individuals, searches of work areas and possibly polygraph examinations. The assigned investigator or auditor has the authority to direct an employee, volunteer or intern to cooperate in the investigation or audit separate and apart from the employee/volunteer/intern's supervisor(s). Failure to cooperate with or providing false information during any investigation or audit may lead to discipline, up to and including termination. Employees may have a representative present as an observer during an investigative interview. The observer is not to participate in nor obstruct the investigative process. In the event that the observer is disruptive to the process, the investigator may remove them from the investigative interview.
- D. Every classified employee who has completed his/her probationary period and volunteer firefighter has the right to be informed of charges against him/her and to be given an opportunity to respond, prior to the imposition of any discipline step.
- E. Employees have the right to be made aware of job performance expectations and to be provided with the appropriate resources and tools to perform the job.
- F. Employees and volunteers have the right to non-disclosure of confidential employee information contained in personnel, medical or other County records. Confidential information includes: date of birth, social security number, performance evaluations, medical and disciplinary records, except as otherwise required by law. See 6-8 Official Personnel Records; 6-9 Public Record Information; 6-10 Access to the Official Personnel File.
- G. Employees have the right to review the employee's own personnel file in accordance with 6-8 Official Personnel Records.

## II. EMPLOYMENT RIGHTS AND RESPONSIBILITIES

The purpose of this section is to describe Doña Ana County's commitment to a work environment that has the highest ethical standards, as is expected by the public we serve. This includes providing equal employment opportunities; a workplace free of unlawful discrimination; avoiding conflicts of interest; and an environment free of unlawful retaliation if misconduct is reported.

### 2.1. EQUAL EMPLOYMENT OPPORTUNITY

- A. The County shall provide equal employment opportunities to all individuals and shall not discriminate against any individual on the basis of any protected class as defined by Federal and State law including: race, color, age, religion, sex, sexual orientation, gender identity, national origin, ancestry, physical or mental disability or medical condition, or any other legally protected status. This anti-discrimination policy applies to all phases of the employment process and includes a prohibition of retaliation against anyone who has asserted his/her rights under this policy.
- B. All people with disabilities shall be free from unlawful discrimination and provided equal opportunity in accordance with the Americans with Disabilities Act (ADA) and the Americans with Disabilities Act Amendment Act (ADAAA). The County does not discriminate on the basis of disability in employment or in the admission and access to its services, programs or activities. This policy applies equally to employees of the County and members of the general public who access public services through County Departments and related agencies.

### 2-2. DISCRIMINATION AND HARASSMENT

- A. Doña Ana County strictly prohibits any form of unlawful discrimination based on race, color, religion, gender identity, sexual orientation, sex, national origin, age, disability, political affiliation as defined by State and Federal law. Improper interference with the ability of the County's employees to perform his/her expected job duties will not be tolerated.
- B. The County endeavors to maintain an environment that is free from all forms of unlawful discrimination, including unlawful harassment and retaliation.
- C. Each member of management is responsible for creating an atmosphere free of unlawful discrimination, including unlawful harassment and retaliation. Further, employees are responsible for respecting the rights of his/her co-workers.
- D. Unlawful discriminatory practices include:
  - 1) Discrimination on the basis of race, religion, sex, sexual orientation, gender identity, color, ancestry, serious medical condition, national origin, age, and/or disability. Unlawful harassment based upon the protected classes noted above is a form of unlawful discrimination.

- a. Sexual harassment includes, but is not limited to: requests for sexual favors; unwelcome sexual advances and other non-verbal, verbal or physical conduct of a sexual nature that creates a hostile environment for persons of either gender; sex- oriented verbal kidding, teasing, jokes, comments, display of sexually suggestive objects or pictures; physical contact such as hugging, patting, or brushing up against another's body. Prohibited harassment also includes unwelcome conduct that is because of gender even if it is not sexual in nature (e.g., degrading or offensive comments about women).
  - i. Prohibited harassment also includes unwelcome conduct that is because of gender even if it is not sexual in nature (e.g., degrading or offensive comments about women, inappropriate comments about sexual-orientation, displaying sexual materials, etc.). The County harassment policy is more expansive than the protections required by Federal and State law regarding harassment. County policy prohibits conduct of a harassing nature that does not rise to the level of harassment under the law.
- b. A hostile environment is a result of severe or pervasive unlawful harassment based on the protected classes listed above which creates a hostile or abusive work environment. The unlawful harassment must have been unwelcome and offensive to the victim and of a nature that would be offensive to a reasonable person in the victim's situation.
  - i. The definition of hostile environment includes unlawful harassment on the basis of race, religion, sex, sexual orientation, gender identity, color, ancestry, serious medical condition, national origin, age, or disability.
  - ii. Examples of harassing conduct include, but are not limited to:
    - 1) Sexual harassment: gender-based jokes or comments;
    - 2) Race or national-origin harassment: epithets, slurs, or negative stereotypical comments, jokes or cartoons;
    - 3) Age harassment: comments or jokes relating to a person's age.
    - 4) Disability harassment: disparaging remarks, slurs or jokes relating to a person's physical or mental disability.
    - 5) Religious harassment: coercion of employee participation in religious activities, verbal attacks or religious slurs.
- 2) Employment decisions based on stereotypes or assumptions about the abilities, traits, or performance of individuals of a certain sex, race, color, religion, sexual orientation or ethnic group, or individuals with disabilities.

- 3) Denying employment opportunities to a person because of marriage to, or association with, an individual of a particular race, color, religion, sexual orientation, national origin, or an individual with a disability.
  - 4) Retaliation against an employee who takes one of the following actions: filing a complaint of unlawful discrimination, participating in an investigation of unlawful discrimination, opposing unlawful discriminatory practices or exercising any other right under federal anti-discrimination laws. The County will not tolerate retaliation and any violation should be reported immediately.
- E. Conduct prohibited by this policy is unacceptable in the workplace and in any work-related setting outside the workplace, such as during County business trips, business meetings, and business-related social events.

### **2-3. DISCRIMINATION AND HARASSMENT PROCEDURES**

- A. Employees are expected to treat each other with courtesy, respect and professionalism during work time and in work areas. The County will not tolerate verbal or physical conduct that has the purpose or effect of creating an objectively hostile, intimidating or offensive work environment or unreasonably interfering with or disrupting another employee's work performance. The County prohibits conduct that is based on or motivated by a person's race, color, religion, sex, sexual orientation, national origin, disability, age, genetic information or any other characteristic protected by applicable federal, state or local law. Unwelcome conduct that is based on or motivated by factors that are not protected by law (such as hair style, choice of transportation, political opinions, etc.) is also prohibited. The County does not prohibit lawful conduct that is protected under the National Labor Relations Act (such as discussing terms and conditions of employment). Examples of prohibited conduct include, but are not limited to:
1. Persistently or severely antagonizing, annoying, attacking, criticizing or interfering with a person (e.g., ridiculing a person so often or so harshly that it interferes with his/her ability to concentrate on the work);
  2. Making frequent or severe demeaning, insulting, intimidating or provocative comments to or about a person or group (e.g., derogatory comments about someone's mother);
  3. Using offensive epithets, slurs, innuendo, gestures, symbols or items regarding or negatively associated with a protected characteristic (e.g., racial slurs);
  4. Making jokes or remarks, or otherwise perpetuating negative stereotypes, regarding or negatively associated with a characteristic (e.g., making disparaging statements regarding a particular religion or ethnicity); or
  5. Distributing, displaying or discussing written or graphic material that ridicules, denigrates, insults, belittles or shows hostility or aversion regarding a protected characteristic (e.g., images of nooses, swastikas, nude images, etc.).

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- B. Sexual harassment is a special form of unlawful harassment and is prohibited by state and federal laws and the County. All employees must be allowed the opportunity of employment in an environment free from unwelcome sexual conduct. The County will not tolerate known sexual harassment of any employee by any other employee, including Department Heads, supervisors and Managers. Unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature are prohibited if:
1. Submission to the conduct is either an explicit or implicit term or condition of employment;
  2. Submission to, or rejection of, the conduct is used as basis for an employment decision affecting the person rejecting or submitting to the conduct; or
  3. The conduct has the purpose or effect of substantially interfering with an affected person's work performance or creating an intimidating, hostile or offensive work environment.
- C. The County also prohibits:
1. Unwelcome and offensive sexual innuendoes, suggestive comments, jokes of a sexual nature, sexual propositions, lewd remarks or threats;
  2. Requests for any type of sexual favor (e.g., repeated, unwelcome requests for dates);
  3. Verbal abuse or "kidding" of a sexual nature or directed only toward members of one sex;
  4. Distribution, display (i.e., others can see it) or discussion of any written or graphic material that is sexually suggestive or shows hostility toward an individual or group based on sex; suggestive or insulting sounds; leering; staring; whistling; obscene gestures; and content in letters, notes, facsimiles, e-mail, etc., that is sexual in nature; and
  5. Unwelcome, unwanted physical contact, including but not limited to, touching, tickling, pinching, patting, brushing against, hugging, cornering, kissing, fondling; and forced sexual intercourse, contact or assault.
- D. This policy is not intended to prohibit occasional, appropriate compliments and other normal, courteous, respectful conduct of a socially acceptable nature.
- E. The Human Resources Department shall be responsible for formally notifying all employees, Department Heads, Elected Officials and volunteers of the policy prohibiting unlawful discrimination and harassment. The Human Resources Department shall ensure that training on discrimination and harassment prevention is periodically conducted, and that all employees and volunteers receive this training. Such training shall be offered to elected and appointed officials. The County shall make its discrimination and harassment policy, forms

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and training available in English and Spanish.

- F. The County Manager, the Assistant County Manager, the Human Resources Director, Elected Officials, Department Heads, Managers and supervisors are responsible for creating a productive work environment in which unlawful discrimination, offensive conduct which is unlawful and unlawful harassment are not tolerated. They are responsible for taking immediate and appropriate corrective action in response to any confirmed violation of this policy and for assuring that no retaliation occurs against those who complain or participate in an investigation or oppose discriminatory conduct.
- G. An employee or volunteer, who feels they have been subjected to any unlawful harassment or believes that they have been treated in an unlawful, discriminatory manner, should report the incident promptly to the supervisor, Department Head, the Human Resources Department or the Assistant County Manager; unless the complaint is against the County Manager, in which case the complaint should go directly to the BOCC Chairperson who will then inform the remaining County Commissioners. The complaint will be kept confidential to the extent permitted by law and that is consistent with the need for a complete investigation.
- H. All Elected Officials, Department Heads, Supervisors, Managers or Directors who become aware of possible discrimination, harassment or retaliation against any employee, either as a result of having received a complaint directly from the employee or volunteer, from personal observations, or being given notice of a complaint on behalf of another, shall immediately report the situation to a Department Head, the Human Resources Director or the Assistant County Manager; unless the complaint is against the County Manager, in which case the complaint should go directly to the BOCC Chairperson who will then inform the remaining County Commissioners and Human Resources Director. Supervisors are required to report a complaint or action if the supervisor knew or should have known that conduct may constitute unlawful discrimination, harassment and/or retaliation. All non-supervisory employees and volunteers are strongly encouraged to report possible discrimination, harassment or retaliation of which they become aware to a Department Head, the Human Resources Director or the Assistant County Manager. It is important to not only report this information, but to do so in a timely manner, to minimize exposure to all employees and attempt to provide a safe working environment for everyone.
- I. The individual who receives a complaint shall request that the employee or individual reporting the complaint complete the County's Internal EEO Complaint Form or shall document the complaint himself or herself if the employee refuses or is unable to complete the form. A copy of the completed Internal EEO Complaint Form shall be provided to the complaining employee and to the Human Resources Department within two (2) work days of the employee's complaint.
- J. A supervisor who fails to take appropriate action under this policy or otherwise engages in inappropriate conduct will be subject to disciplinary action up to and

including termination.

- K. All complaints of unlawful discrimination, harassment or retaliation received by a member of the Human Resources staff shall be communicated to the Human Resources Director by the close of business of the day the complaint was received.
- L. Within two (2) work days of being notified of a complaint of unlawful discrimination, harassment or retaliation the Human Resources Director, or designee, will notify the County Manager and County Attorney, who will assign an Internal Affairs Investigator ("investigator") or retain an external investigator to investigate the complaint which has been made. When a complaint involves an employee at the Director level or above, an external investigator shall be retained. If the complaint involves the County Manager, the Chairperson of the Board of County Commissioners shall be notified. If in consultation between the Human Resources Director, Assistant County Manager (if the County Manager is the alleged offender, the BOCC Chairperson) and County Attorney or their respective designee, it is determined that the complaint is not a complaint of unlawful discrimination, harassment or retaliation the matter will be referred to Human Resources, or the BOCC Chairperson if the matter involves the County Manager, for appropriate follow up and resolution. Based upon the complainant's request, appropriate follow up and/or resolution may include a facilitated discussion with the parties involved; an investigation into the allegations of misconduct at the Department level or other actions as deemed appropriate based upon the specifics of the situation unless the Human Resources Director determines the request for follow up and/or resolution to be inappropriate. If facilitation is requested, the facilitation shall take place within fifteen (15) work days of the internal EEO complaint form being submitted to Human Resources. If the complaint is unresolved, the investigation shall resume. The County is committed to investigate each complaint of unlawful discrimination, harassment and/or retaliation and to take immediate corrective action. The County Manager is responsible for the enforcement of these policies. The Human Resources Department shall provide guidance and assistance during the investigative process.
- M. At no time shall the alleged offender assist in conducting the investigation. When facilitation is determined to be appropriate by the Human Resources Director, the alleged offender may participate in facilitation.
- N. The investigator shall thoroughly investigate the complaint and document the investigation. The investigator shall electronically record the interview by audio and/or video recording when reasonably able to do so unless good cause exists to not electronically record the interviews. The County Manager shall assure that all complaints are resolved promptly and effectively.
- O. The investigation shall begin within ten (10) work days of the investigator being notified of any unlawful discrimination, harassment or retaliation complaint from the Human Resources Department and shall be completed as soon as practicable with the target being forty-five (45) work days of the initiation of the

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investigation. The Investigator will notify the complainant in writing of the need for any extensions beyond forty-five (45) days of the initiation of the investigation. In cases of complaints alleging unlawful harassment or an unlawful hostile work environment, the investigation will be expedited so as to be concluded as quickly as practicable to meet the County's obligation to take prompt and appropriate action under applicable law.

- P. The investigator, or Human Resources Director, may recommend to the County Manager that the alleged offender be placed on administrative leave pending the outcome of the investigation.
- Q. During the investigation of a complaint, the complainant, witnesses, alleged offender, and persons within the complainant's and alleged offender's chain of command shall be reminded by the investigator and/or the Human Resources Director of the County's prohibition against retaliation.
- R. The investigator shall ask the complainant and witnesses not only about the alleged unlawful discrimination, harassment or retaliation but also about any efforts by the interviewee to complain about the alleged unlawful discrimination, harassment or retaliation and the responses, if any, of those who received such complaint(s). If it is determined that any person with authority to receive such complaint(s) failed to ensure that such complaint(s) were documented and forwarded to the Human Resources Department, that individual shall be subject to appropriate disciplinary action up to and including termination.
- S. Within two (2) work days of the conclusion of the investigation, the investigator shall schedule a meeting with the determination panel members which shall consist of the Assistant County Manager, County Attorney and Human Resources Director, or their respective designees, to present the report verbally and in writing containing the results of the investigation into allegations of unlawful discrimination, harassment and/or retaliation. Following the investigator's presentation of the report, the panel members will determine whether or not a discriminatory or retaliatory practice has occurred.
- T. Within fifteen (15) work days of the investigator's presentation, the Human Resources Director shall issue a written determination summarizing the determination of whether or not a discriminatory, harassing or retaliatory practice has occurred. Within the same fifteen (15) work day period, the Human Resources Director shall send a copy of the written determination to the Department Head (or, if the Department Head is the alleged offender, to Management), and the Human Resources Director or Human Resources Administrator and Department Head shall confer regarding any disciplinary action recommended by the Department Head.
  - 1. For any employee proposed to be disciplined who is not a member of the collective bargaining unit, if there is a disagreement between the Department Head and Human Resources Director about the imposition of or appropriate level of disciplinary action warranted, the determination panel members consisting of the Assistant County Manager, County Attorney and Human

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Resources Director, or their respective designees shall become the sole decision-makers for the purpose of determining the appropriate disciplinary action and the Department Head shall effectuate the disciplinary action within ten (10) work days of the written determination being issued. Any request for an extension of time to administer the proposed corrective action must be approved by the County Manager.

2. For any employee proposed to be disciplined who is a member of the collective bargaining unit, the Human Resources Director and Department Head shall make a recommendation (or separate recommendations, if they disagree regarding proposed discipline) to the County Manager, who shall be the sole decision-maker for the purpose of determining the appropriate disciplinary action. The Department Head shall effectuate the disciplinary action within ten (10) work days of the written determination being issued. Any request for an extension of time to administer the proposed corrective action must be approved by the County Manager
- U. Within ten (10) work days of the written determination being issued, the offender's Department Head will impose any disciplinary action that was determined to be warranted. If the alleged offender is a Department Head, Management shall impose any disciplinary action that was determined to be warranted within ten (10) work days of the written determination being issued. Any request for an extension of time to administer the proposed corrective action must be approved by the County Manager.
- V. Failure to comply with any timeline for taking disciplinary action shall not preclude the admissibility of any information, statements or evidence obtained during the investigation nor shall such a violation be used in a manner that a lack of technical compliance by County would preclude the discipline of an employee who otherwise should be disciplined as a result of violating the County's policies prohibiting unlawful harassment, unlawful discrimination and unlawful retaliation.
- W. Failure to issue disciplinary action in accordance with Section U may result in disciplinary action of the responsible management employee up to and including termination.
- X. If an investigation is the basis of disciplinary action, the alleged offender will be provided a summary of the investigation. Investigation documentation shall not be photocopied or disseminated beyond the County Attorney's Office, the Human Resources Department or Investigator's Office. Relevant documentation for purposes of any resulting predetermination hearing shall consist of a summary of the findings.
- Y. No retaliatory action of any kind shall be taken against an employee who has asserted a complaint in good faith or who has reported or assisted in the investigation of a complaint of unlawful discrimination, including a complaint of unlawful harassment based upon a protected class.
- Z. A closure notice shall be provided to the complainant within ten (10) work days

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of the issuance of the investigative determination informing the complainant of the results of the investigation and, where appropriate, that action will be or has been taken. The closure notice will be provided by the Human Resources Department. The Department Head(s) of the complainant and alleged offender will be informed of the results of the investigation by the Human Resources Department.

- AA. The Human Resources Department will conduct a follow-up inquiry with the complaining party and participants in the investigation process within thirty (30) work days after the Human Resources Department receives the written determination has been issued to ensure that the behavior alleged in the complaint has not reoccurred, and that the complaining party and participants in the investigative process have not experienced retaliation for asserting a complaint, reporting a complaint s/he received or participating in the investigation. The follow-up inquiry will be documented and the documentation maintained within the investigative file.
- BB. In computing the timelines specified above, if the required deadline falls on a weekend or on a holiday for which the County is closed, the deadline will be the next business day.
- CC. If after the investigation of any complaint, it is determined that the complaint is not *bona fide* and was not made in good faith or that an employee has provided false information regarding the complaint, disciplinary action may be taken against the individual who filed the complaint or who gave the false information, up to and including termination.
- DD. Nothing in this policy precludes an employee from making a report to the State of New Mexico Human Rights Division or the Federal Equal Employment Opportunity Commission at any time.

EEOC El Paso Area Office  
100 N. Stanton Street, Suite 600  
El Paso, Texas 79901  
1-800-669-4000  
[www.eeoc.gov](http://www.eeoc.gov)

New Mexico Human Rights Division  
1596 Pacheco Street, Suite 103  
Santa Fe, New Mexico 87505  
505-827-6838  
<http://www.dws.state.nm.us>

#### 2-4. NEPOTISM

- A. Members of an employee's immediate family will be considered for employment on the basis of his/her qualifications only. For the purpose of this policy, immediate family includes a spouse, parent, child, stepchild, sibling, in-law, aunt, uncle, niece, nephew, cousin, grandparent, grandchild, members of a household or domestic partners.
- B. Immediate family members may not be hired, assigned, transferred or promoted if by doing so it would create a supervisor/subordinate relationship with another family member;

1. The term "supervisor/subordinate relationship" is broader than the immediate supervisor. An employee cannot work for a family member at any level in the same line of authority.
2. Employees who become immediate family members after employment with the County shall inform the Human Resources Department within thirty (30) calendar days. Failure to inform Human Resources may result in discipline up to and including termination.
3. Employees who become immediate family members, up to and including the fourth level of consanguinity, as a result of marriage or domestic partnership, may continue employment as long as it does not involve any of the conditions outlined in this Section.
4. In the event an employee becomes an immediate family member as defined herein that involves any of the conditions outlined in this Section, the County will make reasonable efforts to assign job duties so as to minimize problems of supervision. If this is not feasible, attempts will be made to find a suitable vacant position to which one of the employees will be transferred provided the employee is qualified for that position. If no suitable vacancies exist, the employees involved will be permitted to determine which of them will resign. If the employees cannot make a decision, the County Manager will have sole discretion to decide which employee will remain employed.
5. The terms and conditions described above for employees will also apply to volunteers.

## **2-5. CONFLICT OF INTEREST AND CODE OF ETHICS**

### **A. Conflict of Interest and Ethical Principles.**

1. The County defines "conflict of interest" as a business activity or relationship with another organization or person, which may compromise employee or volunteer loyalty to the County or which may create the appearance of an impropriety.
2. All Elected Officials, political appointees, employees or volunteers shall comply with the New Mexico statutes and county rules that regulate the conduct of governmental employees and officials. Disclosure and/or disqualification from taking official action are required in the event of a real or potential conflict of interest.
3. An Elected Official, political appointee, employee or volunteer shall not seek or accept any reward, gift, service, favor, employment, engagement or economic opportunity in excess of \$25. This restriction does not apply to meals.
4. An Elected Official, political appointee, employee or volunteer shall not use

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his/her position with the County to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself/herself, any member of his/her household, any business entity in which they have a monetary interest, or any other person.

5. An Elected Official, political appointee, employee or volunteer shall not participate as an agent of government in the negotiation or execution of a contract between the County and any private business in which they have a significant monetary interest.
6. An Elected Official, political appointee, employee or volunteer shall not accept any salary, retainer, augmentation, expense allowance, or other compensation from any private source for the performance of his/her duties as an official or employee.
7. An Elected Official, political appointee, employee or volunteer shall not perform services which may jeopardize the interest of the County, or otherwise detract from the employee's ability to perform his/her duties and responsibilities.
8. If an Elected Official, political appointee, employee or volunteer acquires, through his/her public duties or relationships, any information which by law or practice is not at the time available to people generally, they shall not use the information to further the monetary interests of himself/herself or any other person or business entity.
9. An Elected Official, political appointee, employee or volunteer shall not suppress any governmental report or other document because it might tend to affect his/her personal or monetary interests.
10. An Elected Official, political appointee, employee or volunteer shall not use governmental time, property (including monies or funds), assets (including personnel) equipment, or other facility whether tangible or intangible for illegal purposes or to benefit his/her personal gain or financial interests.
11. An Elected Official, political appointee, or employee or volunteer shall not attempt to benefit his/her personal or financial interests through the influence of a subordinate.
12. An Elected Official, political appointee, employee or volunteer shall not seek other employment or contracts through the use of his/her official position.
13. An Elected Official, political appointee, employee or volunteer shall not, in any manner, directly or indirectly, receive any commission, personal profit, or compensation of any kind resulting from any contract or otherwise engage in another transaction that is adverse to the interest of the County.
14. Elected Officials and Supervisors shall not ask subordinates to perform

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duties that fall outside the employee's scope of employment duties for the County, or that provide a direct or indirect personal benefit to the supervisor, their respective families or business associates.

15. Violations of the above may result in an Elected Official or appointee's censure or an employee or volunteer's discipline, up to and including termination of employment.
  16. Elected Officials, political appointees, employees and volunteers are also governed by the separate Code of Conduct adopted by the Board of County Commissioners and violations may result in an Elected Official or appointee's censure or an employee or volunteer's discipline, up to and including termination of employment.
  17. The County Manager, Department Head, Elected Official, political appointee or supervisor shall not hire, nor give preferential treatment to, nor direct the hiring or giving of preferential treatment to, any relative, friend or other person.
- B. **Duty to Complete Annual Financial Disclosure form.** County Elected Officials, employees and volunteers shall report any real, apparent or potential conflict of interest or commitment to their supervisors. The primary means of doing this is through the completion of the Conflict of Interest Disclosure form upon hire and on an annual basis, with disclosure updates submitted on the basis of changes in circumstance. Completed disclosure forms will be approved by the employee's Department Head or Director, and submitted for approval to the responsible County official. Maintenance of the form is the responsibility of the Human Resources Department.
  - C. **Duty to Report Suspected Ethical Violations.** See 2-12. Reports of Misconduct or Wrongdoing.
  - D. **Freedom from Retaliation.** See 2-12. Reports of Misconduct or Wrongdoing.

### **2-6. PERSONAL RELATIONSHIPS**

- A. A personal relationship is defined as a consensual, mutually acceptable relationship between individuals who have or have had a relationship of a romantic or intimate nature. The County reserves the right to take prompt action if an actual or potential conflict of interest arises concerning individuals who occupy positions at any level in the same line of authority that may affect employment decisions. Supervisors are prohibited from dating or otherwise engaging in an intimate or romantic relationship with subordinates and may be disciplined for such actions, up to and including termination of employment.
- B. Interpersonal relationships within the working environment shall be professional at all times. Personal, familial or romantic involvement on the part of an employee with an outside provider of goods or services, or with another

employee of the County, may create a potential conflict of interest. Those relationships that impair an employee's ability to exercise good judgment in the performance of their duties for the County are discouraged and may be cause for discipline up to and including termination of employment.

- C. In the event that a supervisor becomes aware of a conflict of interest, created by a consensual relationship, the supervisor shall investigate and take appropriate action pursuant to this policy and section 10-2 Grounds for Disciplinary Action.

## **2-7. LEGAL MATTERS**

- A. **Notification.** Legal matters include but are not limited to lawsuits, settlement conferences, administrative and court hearings, and arbitration or mediation proceedings. Employees shall notify supervisors of legal matters that arise in the course of the County's operations, and supervisors shall inform the Legal Department of any legal matters that may affect the County.
- B. **Deadlines.** Notification of deadlines is critical. Employees and supervisors shall be sensitive to and comply with any deadlines related to each individual case or hearing and shall promptly notify the Legal Department sufficiently in advance of any deadline for the Legal Department to take whatever action is appropriate under the circumstances.
- C. **Communication with External Parties.** The County makes every effort to communicate in a full and timely manner regarding its legal business. However, County legal matters sometimes require the County to control the flow of information among County employees, as well as between County employees and external parties. Examples of external parties who might want to communicate with County employees about legal matters include attorneys who are not employed by the County either in the County Legal office or as "outside counsel"; administrators or officials of other governmental agencies; the press or news media; and external investigators.
  - 1. **Reporting-**All communications between employees and external parties pertaining to legal matters shall be reported to the County Legal Department.
  - 2. **Consultation-**Employees, supervisors, managers and officials should not speak with external parties about legal matters without first consulting with the Legal Department. See 2-8 External Communication
  - 3. **Deferring Communication-**If a County employee is contacted by an external party regarding a matter that may involve or raise a legal concern, the employee shall ask for the person's name, who the person represents, what the person wants and a phone number to call back with the information. Then, the employee must notify the employee's supervisor who can notify the Legal or Risk Management Departments. See 2-8 External Communication.
- D. **Legal Process.** Under no circumstances shall an employee respond to a

subpoena, summons or deposition notice that involves or may affect the County without advising the employee's supervisor and making sure that the Legal Department is notified. See 2-8 External Communication.

E. Media Communications. See 2-8 External Communication.

F. Employee Duty to Cooperate in Litigation.

1. From time to time employees are named individually in lawsuits either in their official or individual capacities. Usually, the County is defended by lawyers assigned by the County's insurance company. When an employee is named as a party defendant in addition to the County, depending on the lawyer assigned and the facts of the case, the individual employee may be very involved or may be kept on the outskirts of the case.
2. Therefore, if an employee is involved in a lawsuit against the County as a named defendant, or through involvement in the incident giving rise to the lawsuit, it is vital that the employee immediately inform assigned counsel, the Risk Manager or the County Manager of any changes in the employee's whereabouts and contact information.
3. Employees may only discuss the case with the attorney(s) representing the County; direct communication with opposing counsel may only be made through and with the assistance of the attorney(s) assigned to defend the County. If an employee is contacted by anyone, including an attorney or an investigator or other person gathering facts relating to an incident which may be involved in existing or future litigation, the employee shall contact the Legal or Risk Management Department immediately in order that arrangements may be made for the interview, affidavit or deposition. Employees, especially management, are expressly directed to not speak with opposing counsel or employees of opposing counsel about pending or threatened litigation. See 2-8 External Communication.

## **2-8. EXTERNAL COMMUNICATION**

A. Media Relations.

1. Statements to the public on behalf of the County are to be made only by the County's Media and Public Communications Manager or designee, the Assistant County Manager or the County Manager. County employees shall direct media inquiries to the Media and Public Communications Manager. The County Manager, Assistant County Manager and/or Media and Public Communications Manager may authorize others, verbally or in writing, to speak on behalf of the County, only in limited circumstances.
2. No County employee will make a public statement on any matter involving litigation or other matters within the scope of their official duties without express authorization from the County Manager.

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3. Media access to non-public work areas of County facilities shall be coordinated through the Media and Public Communications Manager, the County Manager, the Assistant County Manager or his/her designee.

### B. Regulatory Agency Communication.

1. Communications with any and all regulatory agencies having oversight over Doña Ana County must come only from County personnel for whom the County Manager has given written authority to engage in such communication.

### C. Representation by Non-County Legal Counsel.

1. On occasion, there is a court case(s) pending, which involve current or former employees that an employee may know. From time to time, such employee may be contacted by investigators or attorneys desiring to question the employee about one of the matters in litigation. In the event that an employee is contacted, rather than responding directly, the employee shall refer the inquiry to the County Attorney's Office. The County Attorney's office will assist or direct the employee to the attorney representing the County in the case.

### D. County-Owned Social Media

1. Social networks are online communities comprised of people with similar interests and/or activities that provide a means of communication through email, instant messaging, video, etc. Social network sites include, but are not limited to: Facebook, Google+, Twitter, LinkedIn, YouTube, Flickr, Pinterest, Instagram, Snapchat, Vine, Vimeo, Periscope and many more.
2. The Media and Public Communications Department is responsible for the County's centralized, coordinated social media outreach.
3. No other Department is authorized to establish or maintain its own social-media site(s) without written permission from Media and Communications Department Manager
4. Departments are encouraged to submit content to the County's Social Media Coordinator for inclusion on the centralized social-media site(s) maintained by the Media and Public Communications Department.
5. Creating or maintaining unauthorized sites is grounds for discipline up to and including termination.

### E. Employee Owned Social Media

1. Privacy - Although some sites may offer privacy settings, be aware the internet is public domain. Assume that everything you write and post is public. Please follow the

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standards below, regardless of privacy settings. You should be mindful that any comments, videos, pictures or other information you post may be seen by members of the Doña Ana County community and could reflect poorly upon your character or upon the County.

- a. All Doña Ana County policies, procedures and guidelines apply to the online realm of social networks and social media as they do to the day-to-day execution of your respective position (e.g., policies prohibiting unlawful harassment, discrimination and threats of violence). Violations of County policies on social media accounts may result in disciplinary action up to and including termination of employment.
- b. All professional association rules, regulations, requirements, policies and guidelines apply to electronic and social media interactions, communications, conversations, postings, etc.
- c. You are personally and professionally responsible for content you publish or place on all user-generated media sites.
- d. Only advocate on the County's behalf if your online profile or site is appropriate for all audiences. If you share content that is politically charged, satirical or offensive, you should make it clear that you are not speaking on the County's behalf.
- e. When posting content to a personal social media site not related to Doña Ana County, please consider adding a content disclaimer such as, "These views are mine alone and not those of my employer."
- f. Respect content, fair use and financial disclosure laws.
- g. Do not provide any confidential or private information about the County's employees and/or residents.
- h. Use good judgment.
- i. Do not issue a "friend request" to any employee over whom you have supervisory authority. Should a supervisor receive a friend (or similar) request from a direct report, the supervisor is advised to carefully consider the numerous potentially negative implications of accepting such a request. Additionally, consider the personal information available online when you choose to "friend" a co-worker, donor or volunteer.
- j. Never initiate or respond to communications with a minor (outside of immediate/extended family) through a social networking site unless it is solely personal and unrelated to work.
- k. Remember that data is forever. While you may think you are deleting a posting, the information lives on and is searchable for all time.

- I. Be thoughtful and accurate in what you post; be respectful of how others may be affected. All County employees can be viewed (correctly or incorrectly) as representatives of Doña Ana County, which can add significance to your public reflections on the County (whether or not that is your intent).
- m. As a Doña Ana County employee you have the opportunity to contact employees who are responsible for different Departments or initiatives about which you may wish to post information. To ensure you are not misrepresenting the facts, consider contacting a member of the relevant team before posting. If there is someone at the County who knows more about the topic than you, you can consult with them to verify your understandings are accurate.
- n. It's always helpful to provide enough support in your posting to help others understand your reasoning, whether it be positive or negative. Whether you are posting in praise or criticism of the County, an issue, etc., develop a thoughtful argument that extends beyond "that's really cool" or "that totally stinks."

#### **2-9. OUTSIDE EMPLOYMENT**

- A. Outside employment cannot interfere with County work, including required overtime, standby and on-call status.
- B. No outside employment shall be conducted on County premises or using County equipment, materials, supplies or resources.
- C. Employees are prohibited from engaging in any outside employment activities that may damage or reflect negatively upon the County's image or members of its workforce; that may interfere with any employee's ability to work for the County in a safe, productive, or efficient manner; that are illegal; or that may be adverse to any official activity or project of the County.
- D. County employees shall be prohibited from engaging in outside employment as independent contractors of Doña Ana County. This prohibition shall not apply to a contract for employment as a Doña Ana County employee.

#### **2-10. POLITICAL ACTIVITY**

- A. Employees and volunteers shall not engage in political activity of any kind during work hours. Prohibited activity includes, but is not limited to, soliciting money, influence, service, or any other valuable thing to aid, promote, or defeat any political committee or the nomination or election of any person to public office while on the job.
- B. No person shall directly or indirectly attempt to coerce, command, or require a person holding or applying for any position, office, or employment with the employer to influence or to give money, service, or other valuable thing to aid, promote, or defeat any political committee, organization, or agency, or aid, promote, or defeat the nomination or election of any person to public office.

- C. An employee or volunteer shall not campaign on County property, on County time, or with County resources for any candidate or issue on the public ballot.
- D. An employee of the County is subject to the Hatch Act if, as a normal and foreseeable incident of his/her principal position or job, the employee performs duties in connection with an activity financed in whole by Federal funds including loans or grants.
- E. In accordance with the Hatch Act, duly elected Department Heads or individuals who have advanced by succession to fill elective offices are exempted from the Act's candidacy prohibition.
- F. Employees and volunteers shall not wear or display apparel, buttons, insignia, or other items at work, which advocate for or against a political candidate or a political cause.
- G. Employees and volunteers shall not distribute fliers, emails or other materials endorsing or discrediting any political candidate while on County time or property or by utilizing County resources.
- H. Any employee of the County Clerk's Office running opposed for any elected position that is not municipal shall take a leave of absence without pay or use accrued vacation leave or comp time for a period of fourteen (14) calendar days before and the day of the applicable primary and/or general election.

**2-11. FRAUD**

- A. The Board of County Commissioners, Elected Officials, management, county employees, volunteers and interns share responsibility for maintaining a fair, honest and ethical business environment. Elected Officials are considered employees for the purpose of this policy.
- B. Supervisors and managers have a responsibility to prevent fraud by initiating appropriate preventative measures, implementing the necessary internal controls and initiating investigations by promptly reporting allegations of fraud to the County Manager, Assistant County Manager Internal Auditor or the reporting hotline.
- C. All employees shall avoid fraud (defined below) and are expected to report possible fraudulent activity or any internal or external practices that may allow for or facilitate fraudulent activity.
- D. The County has a "zero tolerance" policy regarding fraud. This includes the individual(s) committing fraud and those with knowledge of a fraudulent act who did not report the act in accordance with this policy.
- E. Reports can be made to the employee's supervisor, the Internal Auditor, or through the County's reporting hotline. See 2-10 Reports of Misconduct or

Wrongdoing.

- F. Any violation(s) of this policy may result in disciplinary action up to and including termination.
- G. No individual will be retaliated against for reporting fraud, or for cooperating, giving testimony, or participating in a fraud investigation, proceeding or hearing as long as the individual can show they are doing so in good faith.
- H. Fraud includes but is not limited to the following:
  - 1. Falsifying any document or electronic data. Falsifying includes but is not limited to forgery, alteration, providing false or incomplete information. Document and electronic data include but are not limited to documents or data related to time entry, leave entry, job applications, job performance, permitting or approval of any county monitored activities, or procurement.
  - 2. Forgery or alteration of a check, bank draft, any other financial document or electronic data representing funds belonging to the County.
  - 3. Misappropriation of or impropriety in the handling or reporting of money or financial transactions involving the County and any other entity.
  - 4. Making false or incomplete representations that cause or contribute to the County's taking action that it otherwise would not have taken or to the County's foregoing an act that it otherwise would have taken if true or complete information had been provided.
  - 5. Embezzlement, larceny, or any other misapplications of County funds.
  - 6. Any official misconduct involving the misapplication or misuse of County funds and property.

## **2-12. REPORTS OF MISCONDUCT OR WRONGDOING**

- A. It is the County's intent to comply with all applicable laws. All Elected Officials, managers, supervisors, employees and volunteers/interns are expected to report any suspected misconduct or wrongdoing by contacting the Internal Auditor, the County Attorney, the Director of Human Resources, the Assistant County Manager or the County Manager. Employees shall report suspected illegal conduct in person or by voicemail, e-mail, or the reporting hotline.
- B. All reports of wrongdoing will be investigated and prompt corrective action will be taken, as appropriate. To the extent possible, information provided by the reporting employee will be treated as confidential, and will be provided only to those who have the need for the information. False information provided in the course of the investigation may lead to discipline, up to and including termination.

- C. Freedom from Retaliation. Confidentiality about individuals reporting suspected violations of ethical standards will be maintained, within the circle of individuals with a need to know under applicable County policies. All employees and volunteers/interns that voice concerns or participate in an investigation into reported concerns shall be free from retaliation. Employees who engage in any form of retaliation action against an employee who reported suspected ethical misconduct or participated/cooperated with any investigation arising from a report of suspected ethical misconduct shall be subject to discipline, up to and including termination of employment.

## **2-13. USE OF PUBLIC PROPERTY**

- A. No employee shall request, use or permit the use of County-owned vehicles, clothing, equipment, materials, or other property for unauthorized personal convenience, for profit, for private use, or as part of secondary employment. Use of County property is to be restricted to the conduct of official County business.
- B. Any employee of the County found responsible for damage to or loss of County property through negligence or abuse shall be subject to disciplinary action and may be required to reimburse the County for such damage or loss. No County equipment, materials or supplies shall be removed from its location without the approval of the Department Head, Assistant County Manager or County Manager.
- C. Clothing Purchases: The County shall not expend funds on any clothing items for employees unless the items are deemed necessary to conduct County business. This policy applies to all Departments that report to the County Manager. Elected or appointed officials are encouraged to follow this policy in the interest of administrative uniformity.
  - 1. Definitions.
    - a. "Clothing" means shirts, trousers, skirts, jackets, coats, hats or caps, and footwear that are not considered to be either uniforms (as defined immediately below) or personal protective equipment as described in the Doña Ana County Personal Protective Equipment Policy.
    - b. "Uniforms" means shirts, trousers, skirts, jackets, coats, hats or caps, and footwear that have an identical appearance and for which employees have been formally directed to wear during work hours by their Department.
  - 2. Guidelines.
    - a. No County funds may be expended on the purchase, alteration, or laundering of any article of clothing except as specified in b. iii below.
    - b. Departments that require their employees to wear uniforms must obtain

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prior approval of the County Manager or Assistant County Manager. The following information must be submitted when seeking approval:

- i. Description of the "uniform" and any variations.
  - ii. Reason(s) why a uniform is needed by the Department to conduct County business.
  - iii. Total annual cost projected to purchase, alter, and launder each uniform item.
  - iv. Description of policies and procedures the Department will use to issue, inspect, inventory, alter, replace and dispose of uniform items.
  - v. A list of all job classifications in the Department that will be required to wear uniforms.
  - vi. A projected inventory of all uniform items proposed for use.
3. Departments must obtain the approval of the County Manager or Assistant County Manager before imposing or modifying any uniform requirements on employees.
  4. When reviewing requests to impose or modify the use of uniforms, the County Manager or Assistant County Manager shall ensure that uniforms are necessary, promote a professional image of the County, are consistent in style with other uniforms used by the County and are a value to the taxpayer.
  5. Uniforms and protective clothing provided by the County to employees shall be worn while performing official County duties and, except in the performance of official duties shall not be worn in bars, liquor establishments, or places of public entertainment.
- D. Authorized personal uses of equipment include taking a County vehicle to lunch when going to and from meetings or when working in the field on workdays, and other nominal personal uses as permitted by the County Manager on a case-by-case basis.
- E. Use of County Vehicles. This policy establishes the conditions and limitations for using County vehicles. It also describes the requirements for users of County vehicle and when private vehicles can be used on County business.
- F. Authorized Drivers. County vehicles may only be driven by Doña Ana County employees, Elected Officials, volunteers and others approved by Department Heads who:
1. Meet the requirements for Users of County Vehicles in J below,

2. Have a business need to use a vehicle, and
3. Have reviewed this policy and agree to abide by it.

G. Approved Uses for County Vehicles.

1. Doña Ana County employees, Elected Officials, volunteers and others, hereafter referred to as public servants, may only use a County vehicle for business use. Business use is defined as operating a vehicle as part of a county activity or going to or returning from a place, by a direct route, where County business occurs. Incidental non-business stops along the way to or from County business are acceptable as long as there is no material deviation from the direct route.
  - a. Generally, County vehicles shall be locked and left at the public servant's primary work location when not being used for business.
  - b. County vehicles that cannot be left at a work for safety or security reasons shall be parked at the nearest secure County facility to the public servant's work location.
2. While at a work location or on a business trip, County vehicles may be used to take care of necessary personal needs such as dining. Care should be taken to avoid parking a vehicle at any location that may result in public criticism.
3. County vehicles are approved to take home only when one or more of the conditions below are met:
  - a. For those infrequent occasions where the public servant is departing directly to, or returning home from, a work assignment outside of normal business hours.
  - b. The public servant frequently does not report first to a routine work location but goes directly to a field work site and is approved in advance and in writing by the County Manager or designee.
  - c. The public servant is off duty but "on call", operates a service or initial response vehicle and may have to go back to work after normal working hours.
  - d. The vehicle is a law enforcement patrol vehicle or emergency response vehicle.
4. Each Department shall submit a written report to the Fleet Manager each July listing the names, title, vehicle make and model and reasons for each public servant having a take-home vehicle.

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5. Vehicles at the home of public servants shall not be moved except to conduct County business. Use of County vehicles for personal business, i.e., to run errands, go shopping or to go to dinner, is specifically prohibited without the County Manager or designee's approval in advance and in writing.
6. Insurance coverage on County vehicles applies only where the actual use is within the scope of this policy. Public servants who use vehicles outside the scope of this policy may be personally responsible for any claims or damage arising from an accident.

### H. Passengers in County Vehicles.

1. Only business passengers may ride in County vehicles. Business passengers include those who are traveling in County vehicles for purposes of work that involves the County. Citizens participating in Departmental approved ride-along programs are considered business passengers. Transporting citizens for humanitarian reasons are considered business passengers.
2. Transporting family, friends or others who do not meet the above criteria in County vehicles is prohibited. Public servants who wish to take others on County approved trips where the person does not meet the definitions in above should request approval to use their personal vehicle and seek reimbursement from the County if funds are available.

### I. Use of Personal Vehicles on County Business.

1. Whenever possible, County vehicles should be used for routine County business rather than using personal vehicles.
2. Public servants using personal vehicles for work:
  - a. Are expected to show proof of liability insurance on the personal vehicle as requested by the supervisor;
  - b. Shall notify the public servant's insurance company of the business use of the public servant's vehicle if required by the public servant's insurance company;
  - c. Shall be reimbursed actual mileage according to current County policy upon submission of proper documentation;
  - d. May claim parking and tolls in addition to standard mileage rates;
  - e. Shall record beginning and ending odometer readings for all business mileage claimed;
  - f. Shall be responsible for any damage to the public servant's vehicle

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during business use unless the personal vehicle was being used because no County vehicle was reasonably available and the employee would have been eligible to use a County vehicle under this policy;

- g. Are hereby on notice that the employee's personal liability insurance will be the primary insurance in the event of an accident.

### J. Requirements for Users of County Vehicles.

#### 1. Users of County vehicles:

- a. Shall maintain a valid New Mexico or Texas driver's license, a military ID or be a student with license in the state of primary residency and show the license to supervisors upon request;
- b. Shall comply with applicable state and local traffic laws;
- c. Shall obtain permission from their supervisor or Department Head to use a County vehicle;
- d. Shall conduct and record a pre-trip safety inspection on forms provided by the user's supervisor. Any safety problems noticed shall be reported immediately to the user's supervisor or the fleet manager;
- e. Shall maintain a daily log that records who used the vehicle, the purpose of the trip, the date of use and the mileage. Logs shall be turned into management as requested;
- f. May have their driving record periodically checked, and such record must be acceptable as a condition for further vehicle use. Failure to disclose license suspension or revocation shall result in disciplinary action;
- g. Shall not use, or be under the influence of alcohol or illegal drugs, or have alcoholic beverages or illegal drugs in County vehicles. Vehicle users shall not smoke or use tobacco products in County vehicles. Additionally, public servants shall report any use of prescription drugs or any medication that will impair their ability to safely operate a vehicle;
- h. Shall notify their supervisor before operating a County vehicle of any condition that changes their legal or physical ability to operate a vehicle;
- i. Are responsible for any fines and tickets they receive in County vehicles that are due to the manner in which the vehicle was operated; and
- j. Shall be required to attend defensive driving training as a condition of vehicle use.

#### 2. In addition to the above requirements, users who drive as an essential part of

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their job must meet and maintain all driver approval standards for their position, including CDL if applicable.

3. Use of cell phones while driving a county vehicle is prohibited except in the event of an emergency or for hands free GPS driving directions. See 6-20 Cell Phone Usage.

K. Accidents or Incidents.

1. Upon any accident or incident involving a county vehicle, personal vehicle, or a rented vehicle on county business, public servants shall:
  - a. Report the accident or incident immediately to the public servant's supervisor;
  - b. Fully complete a County Auto Accident Report form;
  - c. Obtain any police report, accident report or incident report that may be generated; and
  - d. Submit to a post-accident drug and alcohol test if required by law or County policy. See 6-30 Alcohol and Drug Testing.

L. Renting a Vehicle on County Business.

1. When renting a vehicle on County business, public servants shall:
  - a. Use the current County contract if one exists;
  - b. Rent the vehicle in the name of the County if the car rental agency will allow;
  - c. Decline all non-mandatory insurance; and
  - d. Refill the vehicle with fuel prior to returning it to the rental agency, if possible.

M. Violations.

1. All allegations of violations of this policy shall be investigated.
2. Findings of violations of this policy may result in suspension of the privilege to use County vehicles or to drive for the County or more severe discipline up to and including termination.
3. With the exception of specially equipped service vehicles, any vehicle taken home by a County employee shall be considered a form of compensation.

The assignment of a take-home vehicle must be approved in advance by the Department Head and County Manager, and shall be reported by the Finance Department (Payroll) to tax authorities as required by the Internal Revenue Code.

4. No employee will affix bumper stickers or other items of display on a County vehicle without prior approval of the County Manager.
5. Department Directors shall at all times maintain records pertaining to equipment being taken by employees. Such records must document purpose, duration of use and Department Director's approval and be made available upon request.

**2-14. REASONABLE ACCOMMODATION POLICY.**

- A. The County is committed to the fair and equal employment of qualified persons with disabilities. While many individuals with disabilities can apply for and perform jobs without accommodation, workplace barriers may keep others from entering and performing jobs without reasonable accommodation. It is the policy of the County to reasonably accommodate qualified individuals with disabilities unless the accommodation would impose an undue hardship. "Undue hardship" is defined as an "action requiring significant difficulty or expense" when considered in light of a number of factors. Undue Hardship is evaluated based upon the factors set out in 29.C.F.R. § 1630.2(P(2)).
- B. A person with a disability, or his/her designee, may start the process by making an oral or written request for a reasonable accommodation to his/her supervisor, a supervisor or manager in his/her immediate chain of command; the Human Resources Department; or EEO Specialist/ADA Coordinator. This policy does not require people with disabilities to use particular words in their request; nor does it require the person with the disability to submit a written form.
  1. First-line supervisors are authorized to consider and approve requests for reasonable accommodation whenever the request is straightforward and clearly falls within existing County policy. Typically, this will include requests such as for assistive software; simple modifications to desks, chairs, computer screens or keyboards; or amplifiers for phones. However, requests involving exceptions to County policies such as to Section VI Work Rules must include participation of the EEO Specialist/ADA Coordinator and of County management where appropriate. Supervisors must keep confidential all information related to any request for reasonable accommodation.
  2. When appropriate, the supervisor may engage in an interactive discussion with the employee or volunteer requesting a reasonable accommodation or refer the individual directly to the EEO Specialist/ADA Coordinator. If the supervisor and employee have engaged in the interactive process, that process and any agreement will be formalized and documented on the Reasonable Accommodation Request Form. The supervisor will forward the completed Reasonable Accommodation Request Form to the EEO

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Specialist/ADA Coordinator. The EEO Specialist/ADA Coordinator is available to provide technical assistance at all points in the process.

3. If the front-line supervisor is unable to make a definitive decision, for whatever reason, about providing the accommodation, the supervisor shall forward a written request for accommodation along with his/her recommendation to the EEO Specialist/ADA Coordinator within five (5) work days following the employee's or volunteers request.
  4. If the EEO Specialist/ADA Coordinator is unable to make a definitive decision after receipt of all supporting documentation from the employee and/or physician, the EEO Specialist/ADA Coordinator will forward a written request, along with a recommendation to the County Manager within five (5) work days from the date the supporting documentation has been received.
  5. The County Manager will provide a decision in writing to the EEO Specialist/ADA Coordinator and employee or volunteer within five (5) work days.
- C. The determination of whether an ADA disability is present will be made by the EEO Specialist/ADA Coordinator on a case-by-case basis.
1. The County is entitled to know that an individual has a disability as defined in the ADA as amended that requires a reasonable accommodation and may request appropriate medical information.
  2. The County may also request supplemental documentation when the information already submitted is insufficient to determine eligibility as a disability and/or the functional limitations it causes. Failure to provide necessary documentation where it has been properly requested could result in a denial of reasonable accommodation.
  3. When medical information is requested and received, the information will not be kept in employee personnel files, and will only be disclosed on a strict need-to-know basis to individuals directly involved in determining whether to grant the reasonable accommodation.
- D. Reassignment is a form of reasonable accommodation for an employee who, because of a disability, can no longer perform the essential functions of the position the employee holds, with or without reasonable accommodation. Reassignment consideration will occur only after no effective accommodations that would enable the employee to perform the essential functions of his/her current job are identified, or if accommodations would impose an undue hardship. Reassignment is available only to employees, not to applicants.
1. Reassignments are made only to a vacant position for which the employee is qualified. An employee will be qualified if the employee (1) satisfies the requisite skill, experience, education, and other job-related requirements of

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the position, and (2) can perform the essential functions of the position with or without reasonable accommodation.

2. If reassignment is determined to be the appropriate accommodation, the Human Resources Department shall first look for an equivalent vacant position in the County, equivalent to the one presently held by the employee in terms of pay and other job status.
  3. If the employee is not qualified, with or without reasonable accommodation, for an equivalent vacant position (or a position the County knows will become vacant within a reasonable period of time) or no equivalent vacant position exists, the County may reassign the individual as a reasonable accommodation to a lower-grade vacant position for which the employee is qualified. If this occurs, the County is not required to maintain the individual's salary at the previous level.
  4. The County is not required to create a new job or to bump another employee from a job in order to provide reassignment as a reasonable accommodation.
- E. Regarding Applicants: The Human Resources Department shall post and notify all applicants for employment of this accommodation policy and shall make this policy available in alternative formats upon request.
1. When a request for accommodation is received from an applicant, the EEO Specialist will discuss the needed accommodation and discuss possible alternatives with the applicant. The EEO Specialist is entitled to know that an individual has a covered disability that requires a reasonable accommodation and may request medical information about the disability.
  2. The EEO Specialist will make a decision regarding the request for accommodation and, if approved, take the necessary steps to see that the accommodation is provided.
  3. If the accommodation is not approved, the EEO Specialist will inform the applicant the reason for denial, in writing, within three (3) work days of the decision.
- F. Funding for accommodations will be provided by the Department for accommodations which do not cause an undue hardship.
1. Any Department concluding a requested accommodation would result in an undue hardship for the Department shall meet with the EEO Specialist to discuss the requested accommodation.
  2. If the EEO Specialist determines the accommodation would impose an undue hardship, the EEO Specialist will forward an undue hardship analysis and recommendation to the County Manager or his/her designee within five (5) work days following receipt of the request.

3. The County Manager or his/her designee will provide a decision in writing to the EEO Specialist, supervisor, and employee/applicant within five (5) work days.
  4. If the County concludes that the cost of an accommodation would impose an undue hardship and no funding is available from another source, an applicant or employee with a disability must be offered the option of paying for the portion of the costs that constitutes an undue hardship, or of providing the accommodation.
- G. Applicants, volunteers or employees who believe they have a grievance under the ADA are encouraged to use the County's discrimination policy as outlined in Section 2-3 Discrimination and Harassment Procedures.
- H. Nothing in this procedure prevents any individual who believes they have a grievance under the ADA from taking other action to seek resolution.

**2-15. BREAK FOR EXPRESSING BREAST MILK.**

- A. In order to foster the ability of a nursing mother who is an employee to express breast milk in the workplace, the County will provide a space for expressing breast milk that is clean and private; near the employee's workspace and not a bathroom for a period of time not to exceed one (1) year after the child's birth.
- B. Flexible break times will be provided.
- C. The County is not responsible or liable for storage or refrigeration of breast milk.
- D. The County is not responsible for payment for a nursing mother's break time in addition to established employee breaks; or payment of overtime while a nursing mother is expressing breast milk.
  1. If the nursing mother requires break time beyond what is specified in policy 6-3. Meal and Rest Periods, section E, the appropriate leave time must be submitted or it will be time without pay; or
  2. If the nursing mother requires break time beyond what is specified in policy 6-3. Meal and Rest Periods, section E, the employee may work with the supervisor to coordinate a modified schedule to ensure the regularly scheduled time per week is worked.

### **III. EMPLOYMENT PROCESS**

The purpose of this section is to clarify the policies and procedures that apply when filling a position, in order to ensure fair and non-discriminatory hiring practices. It is also to establish a process by which the County may best ascertain whether prospective employees are qualified to perform the duties and responsibilities of the position.

#### **3-1. RECRUITMENT**

- A. Recruitment efforts shall be planned and carried out in a manner that assures open competition based on merit principles. Development and implementation of recruitment plans shall be a cooperative venture between Departments and the Human Resources Department and shall be based on projected workforce needs and labor market conditions.
- B. Doña Ana County strives to recruit and select the best-qualified applicants for all positions and to ensure an equal employment opportunity for all applicants. Any qualified applicant shall have the opportunity to compete for available positions without regard to race, color, religion, national origin, ancestry, gender, age, gender identity, sexual orientation, mental or physical disability or medical condition or other legally protected status.
- C. Vacancies may be filled by transfer, promotion, demotion, re-employment, from an eligibility list or other selection process established for filling each particular vacancy. Eligibility lists will be valid for ninety (90) days following the closing date of the original recruitment. This process applies to all full-time and part-time classified, fixed-term, or grant funded positions that are budgeted to work more than 20 hours per week.

#### **3-2. ELIGIBILITY FOR EMPLOYMENT**

- A. To be eligible for County employment, employees must present evidence that they are eligible to be employed in the United States on the first day of work.
- B. To be eligible for promotion or transfer, an employee must be in good standing and have an acceptable overall work record. The County Manager may approve a promotion or transfer for an employee who has not completed the probationary period upon the recommendation of the Department Head and the Assistant County Manager.

#### **3-3. MINIMUM QUALIFICATIONS**

- A. Minimum qualifications state the threshold education and work experience required in order for an individual to be given consideration for selection to a position. Minimum qualifications, including whether or not equivalents will be accepted will be specified on the position posting. Job qualifications shall not be changed after the job announcement is posted. Hiring Departments wishing to rescind postings without selecting a candidate will need approval from Human Resources unless the position funding has been eliminated.

**3-4. PLACEMENTS WITHIN THE DEPARTMENT**

- A. When a vacancy occurs, the Department Head, with the approval of the Human Resources Director, may choose to fill the position by an internal promotion, transfer, or implement a professional development plan. When the Department Head chooses to fill the position by an internal promotion, the Department Head shall post the position and follow the exact process that all other applicants would be required to adhere to in the external recruiting process.
- B. Only classified, fixed-term, and grant-funded employees are eligible for internal promotion, transfer, or professional development opportunities.

**3-5. POSTING PROCEDURES FOR POSITIONS NOT FILLED THROUGH PLACEMENTS WITHIN THE DEPARTMENT**

- A. All vacancy announcements will remain open for a minimum of seven (7) calendar days. Postings may end on a specific date or may allow acceptance of applications until filled. The Human Resources Director may rescind or extend a posting at any time
- B. The County may choose to recruit internally or externally to obtain qualified applicants.
- C. For those Departments with employees who do not have Internet access, the Department is responsible for downloading position announcements and posting them on the Department's bulletin board(s).
- D. External Recruiting efforts are directed at local residents and include area newspapers, job centers and the County website. Specialized and more senior jobs may require a broader recruiting market to identify qualified candidates.
- E. The Department Head and the Human Resources Director or designee will define the appropriate recruitment market at the beginning of the recruitment and may modify this market definition as the recruitment proceeds. They will also determine the scope of the advertising and the publications to be used.
- F. The Department Head will submit to the Human Resources Department a completed Position Recruitment Form, to authorize the recruitment process.

**3-6. EXCEPTIONS TO POSTING**

- A. There are situations in which the Human Resources Director may choose not to post a position vacancy. These situations may include:
  - 1. A vacancy filled through the re-assignment of a current employee to another position on a temporary basis.
  - 2. A vacancy filled through the reassignment of an employee in accordance

with the Americans with Disabilities Act.

3. An employee transferred into an existing vacancy to best serve the needs of the County with the approval of the County Manager.
4. A vacancy filled by the recall of a previously laid off or a soon-to-be laid off, qualified County employee.
5. A vacancy filled through the disciplinary or voluntary demotion of an employee.
6. A vacancy in a temporary or other unclassified position in which it is necessary to hire on an emergency basis or for seasonal employment (e.g. election/poll workers).
7. A vacancy filled through utilization of an eligibility list developed in accordance with Policy 3-1. Recruitment.

### **3-7. APPLICATION FORMS**

- A. The Human Resources Department shall develop and maintain an application form which requests relevant employment information in accordance with Federal and State laws, regulations and guidelines, and resolutions adopted by the BOCC. The form may be amended or updated, as needed, with the approval of the Human Resources Director.

### **3-8. FILING OF APPLICATIONS**

- A. Applications are accepted only for positions that are posted.
- B. Applications will be required for candidates applying for any vacant position, except where a search firm has been retained to conduct the recruitment process in which case a resume can be accepted in lieu of the application form. Applications will be accepted for a posted vacancy until 11:59 p.m. of the closing date, unless other procedures are published.
- C. Applications for employment must be made through the electronic application system of the County, except where a search firm has been retained to conduct the recruitment process for a vacancy or as otherwise required by law
- D. A separate application form must be submitted for each position. Each application submitted shall include the acknowledgment of electronic signature of the applicant on the electronic application. The electronic signature on the application certifies that all applicant statements and information are true and correct.
- E. For specific positions, as stated on the position posting, evidence of training, licenses or certifications shall be submitted either with the application or before

the closing date on the announcement.

- F. Submitted applications, along with supplemental documentation, are the property of the County and will not be returned to the applicant. Applications are public record and may be released to the media or other requesting parties, except for confidential materials as identified in the New Mexico Inspection of Public Records Act, NMSA 1978 § 14-2-1.
- G. The County may retain selected applications on the eligibility list at its discretion. These applications may be used in future recruitments for the duration of the eligibility period. See 3-1 Recruitment.

### **3-9. SUBSTITUTIONS**

- A. When a position allows for an equivalent combination of education and experience the following procedures will be used: See 3-3 Minimum qualifications.

- 1. Substitution of Experience for Education.

Unless otherwise specified, two (2) years of relevant experience may be substituted for each year of required education to a maximum of 4 years of educational credit up to a Bachelor's degree. Relevant experience is experience that has equipped the applicant with the particular knowledge, skills, and abilities to perform successfully the duties of the position and is typically in or related to the work of the position to be filled.

- 2. Substitution of Education for Experience.

Unless otherwise specified, one (1) year of relevant education from an accredited college or university may be substituted for one (1) year of required experience. Relevant education is education that has equipped the applicant with the particular knowledge, skills, and abilities to perform successfully the duties of the position and is typically in or directly-related to the work of the position to be filled.

- 3. Level of Experience.

Only related professional-level experience will be credited for professional positions. Professional level experience involves work that is intellectual and varied in nature, requires advanced knowledge and education, and the exercise of discretion and judgment. Professional-level experience may include professional-level experience obtained during military service.

Non-professional level-experience may not be substituted for the required professional-level experience.

Supervisory-level experience, when required, will be credited if the

experience involves supervision of two or more full-time positions. Supervisory experience involves work with the authority to conduct performance evaluations, approve requests for leave, and make recommendations regarding hiring, termination or other decisions affecting the employment status of others.

4. Non-Allowable Substitution.

For professions that require a college degree in order to obtain a license or certification to practice within the discipline, experience cannot serve as a substitute for education.

**3-10. DISQUALIFICATION OF APPLICANTS**

- A. The Human Resources Director may reject an application, remove an application from consideration or disqualify an applicant for hire, rehire or promotion for appropriate reasons. Some of these reasons include but are not limited to:
1. The applicant fails to submit a complete application or has missed the established closing date.
  2. The applicant fails to establish that the applicant meets the required minimum qualifications as stated in the job announcement; fails to complete or pass required tests, fails to complete or pass post-offer examinations including physical agility testing, or other requirements, as determined by the Human Resources Department.
  3. The applicant makes a materially false statement, affirmatively, or by way of omission.
  4. The applicant directly or indirectly obtains information regarding any recruitment examination to which the applicant is not entitled, regardless of the source.
  5. The applicant participates in the compilation, administration or any part of the selection process in which the applicant is competing.
  6. The applicant fails to notify the interview panel that the applicant has a familial, personal or romantic relationship with a member of the interview panel.
  7. The applicant has previously been terminated or resigned prior to being terminated from County employment for a disciplinary reason and determined ineligible for re-hire. See 11-6 Eligibility for Rehire.
  8. The applicant fails to appear for a scheduled interview or any other step of the selection process, without extenuating circumstances at the discretion of the department head.

9. The applicant directly or indirectly gives, pays, offers, solicits or accepts any valuable consideration, or secures or furnishes any special or secret information, for the purpose of affecting the rights or prospects of any person with respect to employment in the County.

### **3-11. ASSESSMENT OF APPLICATIONS**

- A. The Human Resources Department will review all applications, unless the Department has an assigned recruiter, and determine which applicants meet the minimum qualifications on the basis of their application.
- B. The Human Resources Department will provide the Department Head or designee with a list of the qualified applicants, as well as their applications.

### **3-12. APPLICANT TESTS**

- A. Applicants for vacant positions may be required to pass a selection test. The test may be written, oral, physical, performance-based, assessment center, in-basket or any other appropriate selection device that is impartial, practical and position-related. In any examination, the County may include qualifying and/or competitive components and may set minimum standards for passing each component and/or the entire examination.
- B. Any test proposed for use in the applicant-screening process must be reviewed in advance by the Human Resources Department. The Human Resources Department will either validate the selection exam or will assist in obtaining a test that meets established professional-selection techniques. Human Resources may monitor or assist the hiring Department in the administration of the tests.
- C. The candidate selected to fill a vacant position may be required to submit to pre-employment medical examinations after a conditional job offer has been made. The offer of employment shall be contingent upon the qualified medical provider's statement that the employee can perform the essential duties and functions of that position. A confirmed positive test for drugs or alcohol shall disqualify an applicant.
- D. Human Resources will provide guidance to the hiring Department in developing the interview questions and selecting proposed interview panelists. Human Resources will also provide a summary of EEOC guidance for interviews, an applicant-rating form and telephone reference-check forms.

### **3-13. APPLICANT INTERVIEWS**

- A. Interviews will be conducted after the announcement deadline. Interviews will be limited to applicants who meet the minimum qualifications. Not all applicants who meet or exceed the minimum qualifications will be interviewed. The hiring Department will select the best-qualified applicants to be interviewed.

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- B. Interviews will be conducted in English. If the vacant position requires bilingual skills, Human Resources and the hiring Department will identify a language test for use in the process.
- C. Interview panels shall be comprised of at least three individuals, one of whom must be a County employee from a Department other than the hiring Department, one of whom will be from the hiring Department and one of whom shall be a member from outside of the County organization. Selection panels comprised of four or more individuals shall have at least one employee from the hiring Department, two panel members from outside of the County organization, and one employee from another County Department. Interview panelists shall disclose and be removed from the interview panel if there is a personal, familial or romantic relationship with any applicant. Failure to disclose this information will void the selection process and will result in disciplinary action up to and including termination if the panelist is a County employee.
- D. Interview panelists will independently rate the answers provided by each applicant during the interview. At the conclusion of the testing and interview phases, the interview panelists will submit candidate scores derived from the interviews and tests, and complete the applicant rating form and make a recommendation to the Department Head.
- E. Additional interviews may be conducted with the top rated applicant(s) prior to making the final recommendation for hire. Department Directors, with the approval of Human Resources, decide the need and nature of additional interviews, if any.
- F. The final candidate will be selected from among the top-scoring applicants. The best qualified applicant shall be selected. No commitment is made to hire the individual with the highest numeric score. If the candidate recommended for hire is not in the top two scoring candidates, a memorandum of justification for the selection must be submitted to the Human Resources Director and the County Manager has authority over the final selection decision.
- G. The chair of the interview panel, hiring Department Head or supervisor will conduct and receive at least two acceptable reference checks from two of the three most recent supervisors or the Human Resources Department of the selected candidate. Any negative references should be assessed with Human Resources prior to proceeding with a hiring recommendation. If a reference cannot be reached or the applicant has no previous work history, the hiring manager shall contact the Human Resources Administrator.

### **3-14. HIRING RECOMMENDATIONS**

- A. The hiring Department Head will compile the information from the selection process and will forward it to the Human Resources Department along with a cover memo/form indicating the recommended hire and Human Resources Action Request for the selected applicant. The information that documents the interview process includes:

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1. Applications from the individuals interviewed.
  2. The EEOC Guidelines and Selection Panel Member's Code, signed by each interview panelist.
  3. The interview questions, the panelists' notes and the completed rating sheets.
  4. Test/assessment, answer key and ratings whenever a test or assessment is conducted as a part of the selection process.
  5. The results of all reference checks but no fewer than two supervisory references, on the applicant who will be recommended for hire. See 3-13 Applicant Interviews.
- B. The Department Head will discuss the recommended hiring decision with the Human Resources Department. They will review any issues that may relate to the hiring decision and will determine the hiring rate based on an equity analysis of the classification and/or assigned range. The Department Head will prepare a Human Resources Action Request (P-1) form for the recommended candidate. Upon approval of the Human Resources Department, Finance Department and County Manager, Human Resources will extend the formal offer to the selected candidate.
- C. As a part of the offer, the candidate will be notified of the pay level and the date to report for orientation, which will typically be the first Monday (or Tuesday in the event an approved holiday falls on Monday) of the beginning of a pay period.
1. All offers of employment and continued employment are conditional on the applicant furnishing satisfactory evidence of identity and legal authority to work in the United States, in accordance with the Immigration Reform and Control Act of 1986. Depending on the individual position, offers of employment may also be contingent upon passing a pre-employment physical and/or psychological examination, any applicable drug test and background investigation, and/or obtaining job-required licenses or certifications.

### **3-15. RE-EMPLOYMENT AFTER LAYOFF.**

- A. A classified employee who has been laid off by the County and is eligible for re-employment, will be offered a position for which the employee qualifies that becomes vacant within twelve (12) months of his/her layoff. This offer will be made before any other applicant is considered. The former employee shall have five (5) work days to consider the offer. If the former employee declines or fails to respond to the offer, the employee forfeits re-employment eligibility rights. See Policy 11-7. Reductions in Force (Layoffs)

**3-16. CLOSEOUT OF OTHER APPLICATIONS.**

- A. The Department Head will advise the Human Resource Department of the status of the selection process weekly to allow appropriate notification to applicants.
- B. Once a recommendation for hire has been approved by the County Manager or designee, and the finalist has accepted the offer, those applicants who were interviewed but not selected for the position will be notified in writing of the selection of another candidate.
- C. Applications received for the vacancy announcement along with interview questions, tests, notes, score sheets, and vacancy announcement will be retained by Human Resources for three (3) years.
- D. The Human Resources Director may place those qualified candidates who were not selected on an eligibility list. This eligibility list may be active for as long as ninety (90) days. If another vacancy occurs for the same position within the County, the Human Resources Director may choose to select candidates from this list for further consideration.
- E. The decision to recruit from the eligibility list is a decision to be made by the County and does not represent a commitment to prior applicants.

**3-17. RECRUITMENT FOR UNCLASSIFIED POSITIONS**

- A. Department Heads will provide to the Human Resources Department a completed application, at least two acceptable reference checks from two of the three most recent supervisors or the Human Resources Departments of the preferred candidate and the Human Resources Action Request form on each individual recommended for hire for an unclassified position. Any negative references should be assessed with Human Resources prior to proceeding with a hiring recommendation. If a reference cannot be reached or the applicant has no previous work history, the hiring manager shall contact the Human Resources Administrator. Human Resources will ensure the candidate meets the minimum qualifications for the position and will validate that the recommendation is appropriate.
- B. Department Heads may request that the Human Resources Department conduct the recruitment for unclassified positions. In those cases, Human Resources will oversee the advertising, applicant processing and assessment steps as a courtesy to the Department.

**3-18. APPLICANT EXPENSES**

- A. Unless approved in advance by the County Manager, the County does not reimburse any applicant for travel costs in conjunction with the hiring process. Relocation costs are paid in full by the employee. The County Manager may authorize reasonable relocation expenses for Director level positions and above.

**3-19. BACKGROUND CHECKS**

- A. All final candidates for temporary, fixed-term, classified and grant-funded positions must have a background check completed prior to starting employment, or a new position to include a promotion or transfer, with the County. All volunteers whose job duties include unsupervised contact with minor children or the elderly or other sensitive duties, such as handling cash or access to confidential information must complete a background check prior to starting employment with the County.
- B. The County reserves the right to conduct background checks for all applicants, volunteers and interns.
- C. Credit checks will be completed for all positions which handle financial transactions, including but not limited to cash handling, credit card transactions and other banking duties.
- D. Notification that a background check is required will be contained in the applicable job announcement.

## IV. EMPLOYMENT

The purpose of this section is to clarify the policies and procedures for determining position types and designations so employees understand the rights and benefits associated with their particular position.

### 4-1. EMPLOYMENT ELIGIBILITY VERIFICATION

- A. Every employee shall complete an I-9 form for verification of employment eligibility on the first day of hire and provide the required supporting documentation within three (3) work days of hire. It shall be the employee's responsibility to provide the supporting documentation.
- B. Each employee shall provide the allowable form(s) of identification in support of the I-9 form. This documentation shall be provided within three (3) work days of hire or the employee will be subject to termination. If this documentation has expiration dates, it shall be the employee's responsibility to provide updated documentation.
- C. All new hires will have their identity verified through the federal E-Verify system, and appropriate action will be taken based on the verification received and in compliance with the law.
- D. Any applicant who submits false documentation is subject to termination and Federal penalties.

### 4-2. CLASSIFIED AND UNCLASSIFIED POSITIONS

- A. **Classified Position.** A classified position is a regular, approved position. All classified employees are covered by the policies and procedures outlined herein. While there is no guarantee of continued employment, once an employee has completed the probationary period, the employee can be separated from the County only through the reduction-in-force processes or for just cause.
- B. **Unclassified Position.** An unclassified position is a temporary, appointed, or grant-funded position. An employee in an unclassified position does not have a probationary period, is in an "at-will" status and serves at the pleasure of the County. The employee in an unclassified position does not have access to the discipline and grievance procedures defined herein.

### 4-3. EMPLOYMENT CLASSIFICATIONS

- A. Elected Officials. Elected Officials are voted into their respective positions by the registered voters of the County.
- B. Appointed Employees. The County Manager is appointed by, and serves at the pleasure of the Board of County Commissioners. The Undersheriff, Executive Secretary to the Sheriff, and the Deputies for the County Clerk, County Assessor and County Treasurer are appointed by, and serve at the pleasure of their respective Elected Officials.

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- C. Department Directors. Department Directors may have individually negotiated employment agreements that define specific aspects of their employment relationship with the County. The terms of these agreements may vary.
- D. Regular/Classified Employees. Regular employees are employed in a classified position that has no defined ending date. A regular employee may be full-time or part-time. Probationary employees are considered unclassified employees until the successful completion of the probationary period.
- E. Full-Time Employees. Full-time employees are regular employees budgeted to work 40 hours per week.
- F. Part-Time Employees. Part-time employees are regular employees budgeted for either 20 or 30 hours per week.
- G. Temporary Employees. Temporary employees are employees hired for unclassified positions that have a defined ending date. The position may be full- or part-time and scheduled for any number of hours per week, not normally to exceed 40. Temporary employees do not serve a probationary period and are at-will employees.
  - 1. Temporary employment is intended for employment of one-year or less. When there are extenuating circumstances, the length of employment may be extended with the approval of the Human Resources Director and County Manager.
  - 2. Persons filling temporary positions must meet the minimum qualifications of the position assigned. The compensation for a temporary employee will be within the range of the comparable classified position. Temporary employees are not entitled to paid leave or other benefits except as required by law.
  - 3. After nine (9) months of continuous service, temporary employees become eligible and subject to withholding for the PERA retirement program. Temporary employees may not be separated for less than ninety (90) days in order to be rehired and excluded from PERA participation. In no case shall the temporary employment continue beyond 12 months unless an exception is approved in accordance with 1. above.
- H. Grant Funded Employees. Grant funded employees are full- or part-time employees hired to fill an unclassified position funded in full or in part by State or Federal funds. The grant position will continue only so long as the grant funding continues. The employee does not have a right of employment or compensation beyond the funding period.
  - 1. Grant funded employees do not serve a probationary period and are at-will employees. The performance of grant employees should be evaluated in accordance with Sections 9-2. Compensation shall be based on the pay range assigned to comparable classified positions, unless the grant specifies an alternative pay level approved by the Human Resources Director and County Manager.

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2. The terms, conditions and funding of the grant agreement shall determine whether the employee will be entitled to benefits, including paid leave, holidays, and insurance.
  3. The grant agreement or other documentation reflecting the salary and benefits shall be provided to the Human Resources and Finance/Payroll Departments. The employee shall sign the Soft Money Agreement prior to or on the effective date of hire or renewal.
- I. Fixed Term Employees. Fixed-term employees are employees hired full- or part-time to perform work on a project or other work of a non-permanent nature and for a limited period of time, to last at least 12 months but not to exceed 36 months.
1. Fixed-term opportunities will be advertised in accordance with Policy 3-5. Posting Procedures for Positions Not Filled Through Placements Within the Department. The vacancy announcement will specify the duration of the agreement or that the agreement is terminable upon a specific future event or completion of a specific task or project.
  2. The first year of fixed-term employment will serve as a probationary period and the employee is at-will. Upon successful completion of the probationary period, a fixed-term employee may only be terminated for cause prior to the previously agreed upon end date for the project except as specified in 5. below. Cause includes the completing of the project or assignment, expiration of the fixed term or just causes (10-2. Grounds for Disciplinary Action).
  3. Fixed-term employees are eligible to earn leave and have the same benefits as classified employees.
  4. There are no renewals or extensions of fixed-term employment unless warranted by exceptional, objective circumstances as determined by the County Manager.
  5. A fixed-term employee will be provided written terms and conditions of employment and be required to confirm understanding and acceptance of the terms in writing. The original terms and conditions of employment shall specify that in the event of early termination of the fixed-term agreement due to unforeseen circumstances, such as loss of funding, the County will not be liable for the remaining period of the fixed-term agreement

**4-4. POSITION DESIGNATIONS**

- A. Non-Exempt. Non-exempt employees are entitled to overtime pay or compensatory time under the specific provisions of federal and state laws. See 5-9 Overtime/Compensatory Time.
- B. Exempt. Exempt employees are excluded from specific provisions of federal and state statutes and are not entitled to overtime pay. The County may authorize a stipend or additional pay for an exempt position to meet unusual or special situations as approved by the County Manager.

**4-5. FAIR LABOR STANDARDS ACT (FLSA) COMPLIANCE**

- A. The FLSA is a federal law first passed in 1938 and amended many times since to regulate minimum wage, overtime pay, maximum work week, child labor and equalizing pay scales for men and women. Many of the County's policies are for the purpose of ensuring compliance with this Act.
  
- B. FLSA EXEMPTION AND NOTIFICATION POLICY.
  - 1. FLSA exemptions to the overtime requirements do not apply to manual laborers who perform work involving repetitive operations with their hands, physical skill and energy. The exemptions also do not apply to First Responders as defined by the 2003 FLSA Amendments.
  
  - 2. The County prohibits improper pay deductions for exempt employees and will reimburse employees for any improper deductions made. Any exempt employee who believes there have been improper pay deductions made shall immediately notify the Human Resources Department and present the relevant evidence of said deductions. The Human Resources Department will take immediate action to investigate the issue and, if founded, correct the improper deduction.

**4-6. PROBATIONARY STATUS**

- A. New Employee Probation. All new employees hired into a classified position will serve a one (1) year probationary period. The employee will be "at-will" during this probationary period, and the employee's work performance, work habits and adherence to County policies will be continually evaluated.
  - 1. The probationary employee will complete a self-evaluation and the supervisor will prepare a performance evaluation every 4 months following the employee's hire date for one full year. The status of a new employee does not change from probationary to classified, until the employee has successfully completed the probationary period and the evaluation forms and a Personnel Action Form is submitted to Human Resources. Successful completion is documented by at least a "satisfactory" rating on the end of probation performance evaluation.
  
  - 2. During the probationary period, employees accrue leave and are eligible for benefits.
  
  - 3. If an employee changes position, through transfer, promotion or demotion, during the initial probationary period, the one (1) year probationary period shall be restarted in the new position. If the probationary period is restarted, an evaluation shall be completed every 4 months for one full year in the new position.
  
  - 4. An employee on probation may be terminated without notice or hearing at any time, with written approval of the County Manager or designee. A probationary employee is not entitled to the pre-determination process defined in Section

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10-5 Pre-Determination Process.

- B. An employee who previously completed probation and accepts a position as a Sheriff's Office Cadet, Trainee, or Certified Law Enforcement Officer will serve a one (1) year probationary period from the date of certification or hire into the law enforcement position, whichever is greater. These employees will continue to be eligible for the benefits in which they are enrolled.

**4-7. LICENSE/OCCUPATIONAL CERTIFICATION**

- A. Any employee filling a position that requires a license, certificate, permit or other occupational certification will notify his/her supervisor in writing the first business day after the employee receives notice of suspension, revocation or non-renewal before commencing any work following receipt of notice. If the employee fails to notify his/her supervisor as stated or an employee's license is no longer valid, the employee may be subject to termination of employment.
- B. If a job offer, offer of promotion or offer of transfer has been made to an employee, contingent on the applicant's ability to obtain a license, certificate, permit or occupational certification and the individual cannot obtain the required documentation the offer will be withdrawn.
- C. The Department Head will notify the Human Resources Department and will determine if there is a vacant position for which the employee is qualified to which the employee can be transferred and for which there are no priority assignments under Workers' Compensation or ADA. If an appropriate position is identified, the employee will be transferred to that position with a reduction in pay commensurate with the new position. If there are no vacant positions for which the employee is qualified, the employee shall be placed on leave for a period of time not to exceed ninety (90) days. If the employee has vacation leave the employee may choose to use it, otherwise the employee will be placed on unpaid leave. The County reserves the right to cancel the leave at any time.
- D. While on leave, the employee may seek other positions within the County for which the employee is qualified for up to ninety (90) consecutive calendar days and/or pursue reinstatement of the required license/certification.
- E. If the employee has his/her license or certification re-instated within ninety (90) consecutive calendar days, the employee may be returned to his/her previous position, if available, or compete for vacant positions.
- F. If a suitable vacancy is not located, or the license or certification is not re-instated by the end of the ninety (90) consecutive calendar day period, the employee will be processed for termination in accordance with Section 10-5.

**4-8. VOLUNTEERS/INTERNS/WORK-STUDY STUDENTS**

- A. Volunteers may receive nominal compensation for their service without changing their volunteer status. Internships and work-study assignments may be paid or unpaid depending upon the duties performed. Unless otherwise employed by the

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## SECTION IV- EMPLOYMENT

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County, a volunteer, intern or work-study student is not eligible for County benefits. As an exception to this rule, Volunteer Firefighters who meet the established standards are eligible for retirement benefits under PERA.

- B. As defined by the Fair Labor Standards Act (FLSA), a volunteer is an individual who performs a service for the County without expectation of payment for the service. Employees of the County may volunteer hours of service to the County as long as the service is not the same type of service the employee normally performs in the course of his/her regular employment.
- C. Volunteers, interns, and work-study students are responsible for complying with all policies in this manual, as well as any policies of their assigned Department. Volunteer firefighters have the same access to the disciplinary system and the grievance procedures described in this manual as do regular employees.
- D. Prior to the commencement of any volunteer/intern/work-study service for the County, assigned Departments shall require the individual to complete a volunteer application and other acknowledgements contained in the Volunteer Packet. Those volunteers whose assignments will include unsupervised contact with children, the elderly, driving responsibilities for the County or other safety sensitive duties will be required to undergo a background and/or driver's license check. See 3 -19 Background Checks.
- E. The Department Head or designee shall coordinate with the Human Resources Department to provide all volunteers/interns/work-study students with basic training in County policies. Volunteers, interns, and work-study students shall abide by County policies. Violations of these policies may result in the release of the individual from County service.
- F. All attendance and performance records for volunteers/interns/work-study students will be maintained by the individual Departments. The Department for whom the intern/work-study student is performing the assignment is also responsible for completing and submitting any documentation which is required for the internship or work-study assignment.

### **4-9. NEW-EMPLOYEE ORIENTATION**

- A. All new employees and volunteers will attend a County orientation on the first day(s) of employment. In circumstances requiring the emergency hire of an employee, the Human Resources Director may approve a start date and orientation other than the first work day of a pay period. The orientation will explain the County's organization and services, work rules, standards of performance, and personnel policies and procedures. Each employee will receive a copy of the Policies and Procedures Manual and will be informed of the locations where the complete manual can be viewed.
- B. The Human Resources Department will provide an overview of employment benefits eligibility and enrollment procedures, and will provide the necessary forms and deadlines for enrollment.

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- C. For each employee, the Department supervisor will complete a Departmental orientation checklist, which covers the provision of appropriate supplies, tools and keys, information on Department policies and safety requirements, performance standards and objectives, attendance, absence, payroll and timekeeping requirements. The checklist will be completed and forwarded to the Risk Management Department and then to the Human Resources Department for inclusion in the Official Personnel File.

## **V. CLASSIFICATION AND COMPENSATION**

The purpose of Section V is to describe generally the County's compensation system and to set forth the various types of compensation paid to employees. It also describes the County's classification system, provides procedures for the creation and modification of job classifications, and defines promotions, transfers, demotions and temporary assignments.

### **5-1. CLASSIFICATION AND COMPENSATION PLAN**

- A. The County shall establish and maintain the Classification and Compensation Plan covering all employees. The Classification Plan defines and organizes all approved job titles, establishes the approved salary range for each job title, and defines procedures for making salary changes.
- B. The Classification and Compensation Plan will be administered by the Human Resources Department within established guidelines. The Human Resources Department will recommend the Plan and Plan updates to the County Manager who will, as appropriate, recommend them to the Board of County Commissioners (BOCC).

### **5-2. OBJECTIVES FOR THE CLASSIFICATION AND COMPENSATION PLAN**

- A. The following objectives guide the design of the Classification and Compensation Plan and will govern the ongoing management and administration of the Plan.
  - 1. Provide market-competitive salaries and salary ranges for all employees.
  - 2. Establish and maintain internal equity among job classifications and positions.
  - 3. Reward excellent performance through career opportunities, training and related programs.
  - 4. Attract high-quality, trained and experienced applicants.
  - 5. Retain high-quality, trained and experienced staff.
  - 6. Be administered in a manner that is fiscally responsible and within established financial guidelines.

### **5-3. CLASSIFICATION PLAN ADMINISTRATION**

- A. Each job classification will be defined in a job specification or job description. The job description will include the primary purpose, the essential functions, the required knowledge and skill, the minimum qualifications and the environmental and physical factors.

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- B. The Human Resources Department shall maintain a complete set of job descriptions/specifications for all County classifications. These job descriptions shall be reviewed periodically by the Department and the Human Resources Department.
- C. The Classification Plan and the job descriptions shall document each position's status under the Fair Labor Standards Act (FLSA). The Human Resources Department shall establish the exempt/non-exempt status of each position in accordance with the FLSA.
- D. The Classification Plan will be reviewed and may be revised twice a year, in March and in October. At these times, the Human Resources Department will evaluate requests to establish new classifications and to revise existing classifications. Once the evaluation has been completed, the Human Resources Department will recommend changes, if appropriate, to the County Manager. Except in emergency situations, requests for classification changes will not be considered other than during the specified times.
  - 1. The Department requesting changes to a job description will submit a draft of the revised position description and a position description questionnaire to the Human Resources Department for review prior to the job description or position specification being approved.
- E. If the County Manager concurs, the County Manager will recommend any new classifications to the BOCC. The BOCC has the sole authority to authorize the establishment of a new classified or grant-funded position. The County Manager may approve the reallocation of existing positions from one Department to another. The County Manager may also approve reclassifications.

**5-4. POSITION RECLASSIFICATIONS**

- A. If a Department Head believes that the duties assigned to a position have changed to the extent that they no longer fit within the current job class, the Department Head will submit a completed Position Description Questionnaire (PDQ) to the Human Resources Department. The Department Head will also submit an accompanying written request recommending a reclassification review.
- B. The Human Resources Department will review the PDQ and Classification Plan to determine whether the position should remain in the same title, be assigned to a different existing title, or requires the development of a new title.
- C. The Human Resources Director may authorize a classification review when, in his/her judgment, the request indicates that permanent, clearly defined and substantial changes in the duties assigned to a position have occurred. A desk audit may be scheduled and conducted, if deemed necessary by the Human Resources Director.

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- D. A written job evaluation will be completed by the Human Resources Department and, if appropriate, a reclassification of the position with a new title, salary grade and FLSA designation will be recommended by the Human Resources Director and approved by the County Manager or designee. If approved, the Finance Department will revise the County's Position Control Roster and the Human Resources Department will revise and maintain the Salary Schedule.
- E. Reclassification shall not be used as a method of awarding an employee a salary increase.
- F. A job that is reclassified may or may not have an incumbent. If there is an incumbent, and the reclassification results in either a higher or lower range, Section 5-8. A. 1. Compensation Administration will apply.

**5-5. NEW JOB CLASSIFICATIONS**

- A. Requests for new job classifications are normally done in the budget process. When a request is made for the creation of a new job classification, the Department Head shall:
  - 1. Submit a completed PDQ describing the duties, responsibilities and qualifications of the requested job classification to the Human Resources Director.
  - 2. The Human Resources Director, or his/her designee, will conduct a job evaluation of the essential factors of the position, including a comparison with internal and external positions, to determine the appropriate classification. The evaluation may require a review of other positions within the Department.
  - 3. The Human Resources Department will prepare a written recommendation based on the findings of the evaluation. This recommendation will be forwarded to the County Manager and provided to the Department Head.
  - 4. If approved, the County Manager will present the proposal for the new position to the BOCC in the form of a resolution. If approved by the BOCC, a new position number will be assigned by the Human Resources Department and the PCR revised by the Finance Department. The Human Resources Department shall revise and maintain the Salary Schedule.

**5-6. JOB EVALUATION CRITERIA**

- A. All requests for job evaluation, whether for newly created or existing jobs, will be evaluated based on the PDQ and the Decision Band Method (DBM) and compared to other jobs in the County. Newly created positions may be compared to jobs in the marketplace.
- B. The Human Resources Director, or designee, will determine whether the

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requirements of the position meet the definition of an exempt or non-exempt position as defined in FLSA.

**5-7. COMPENSATION PLAN UPDATE**

- A. The Compensation Plan will be reviewed annually to maintain competitiveness.
  - 1. **Market Review.** The Human Resources Department will conduct a market analysis to determine salary changes in the benchmark positions. This may be done through a custom survey of the market competitors or through the analysis of trend data.
  - 2. **Salary-Grade Assignments.** The Human Resources Department will evaluate the salary-grade assignments and recommend changes to respond to changes in the market conditions.
  - 3. **Cost-Impact Analysis.** The Human Resources Department will analyze costs associated with the recommended changes and develop a recommended budget for salary changes. This recommended budget will be reviewed with County management for approval. If approved, the County Manager will present the proposal for the compensation plan to the BOCC in the form of a resolution.

**5-8. COMPENSATION ADMINISTRATION**

- A. All employee pay levels will be established within the approved salary ranges and available budget. No employee will be paid below the minimum of the salary range for the position. If an employee's salary is above the maximum, his/her salary will be frozen until, as a function of regular plan updates, his/her salary again falls within his/her salary range.
  - 1. Starting Salary.
    - a. Starting salary for a newly hired, promoted, or reclassified employee shall be at least the minimum of the pay range for the job classification. Individuals whose qualifications exceed the minimum qualifications for the job classification may be hired at a salary above the minimum of their range.
    - b. The Human Resources Director or designee will review and recommend starting salaries that are within the established salary range. Human Resources recommendation will be based on an analysis of education and experience as it relates to the position qualifications. The recommendation shall be consistent with internal equity for positions in that classification. The County Manager shall make the final approval of starting rates.
  - 2. Promotions.

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SECTION V- CLASSIFICATION AND COMPENSATION

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- a. A promotion occurs when an employee moves from one position to another position that is in a higher salary grade through the process described in Section 3-3. Placement within The Department or Section 3-4. Posting Procedures For Positions Not Filled Through Placements Within The Department.
- b. The employee shall be placed in the pay grade for the position to which s/he is being promoted at a rate of pay commensurate with education, years of service and directly related experience when compared to other employees in the same classification.

3. Lateral Transfers.

- a. A lateral transfer occurs when an employee changes from one position to another position that is in the same salary grade or from one Department to another within the same job classification. This may be a voluntary change initiated by the employee. It may also be a change initiated by the County to meet specific needs and best utilize the employee's skills and background.
- b. The employee's pay does not generally change as a result of a lateral transfer however, if the minimum qualifications for a position in the same salary range differ, the employee's education and experience will be analyzed for proper placement based on internal equity within that position classification.

4. Demotions.

- a. A demotion occurs when an employee moves from one position to another where the new position is in a lower salary grade. This may be a voluntary change initiated by the employee or a disciplinary change initiated by the County.
- b. In the case of a demotion, the employee shall be placed in the pay grade for the position to which he is being demoted at a rate of pay commensurate with education, years of service and directly related experience when compared to other employees in the new classification.
- c. In the event that an unrepresented employee is demoted into a represented position, the employee shall be placed in the pay grade for the position to which he is being demoted at the average wage of all employees within that position with the similar length of service with the County.
- d. When an employee, who has, within the previous year, been promoted or reclassified to a higher position, is demoted for any reason, the employee shall be demoted to the position and salary prior to the reclassification or to a vacant position for which the employee is qualified.

5. Temporary Assignment.

- a. A temporary assignment occurs when an employee is assigned additional, significantly higher-level duties to meet operational needs or in order to fill in for a vacant position. The temporary assignment is intended to recognize the higher-level, more responsible duties. It is not intended to recognize an increase in workload.
- b. The Department must complete a Human Resources Action Form to detail the change resulting in the request for a temporary assignment. A memo describing the specific additional duties, as well as identifying the vacant position, shall accompany the personnel action form.
  - i. The form should also include the specific beginning and ending dates for the proposed assignment. Typically, the temporary assignment lasting at least five (5) work days after the employee is assigned the additional duties will be eligible for temporary assignment pay. The temporary assignment will normally run for ninety (90) calendar days; however, the assignment may be extended, with approval of the County Manager or designee, if the conditions are unchanged. A temporary assignment is intended to be for one year or less. When there are extenuating circumstances or the temporary assignment is necessary to ensure the continuity of operations, the length of the temporary assignment may be extended with the approval of the County Manager.
- c. An employee performing a temporary assignment shall receive an increase of 10% or the minimum of the range whichever is greater. The Human Resources Director will review all temporary assignments and, under special circumstances, may recommend a higher increase. The County Manager will have final approval of all temporary assignments and corresponding salary increases.
- d. When temporary assignment is to fill in for a vacant position, the temporary assignment compensation shall end on the date the applicant hired for the vacant position begins employment with the County.

6. Move from Unrepresented to Represented.

- a. If an employee, through open competition or transfer, moves from an unrepresented position to a represented position, the rate of pay will be determined based on the adopted pay policies for the bargaining unit.
- b. If an employee applies for and is accepted into the Doña Ana Sheriff's Office (DASO) Academy or Detention Center Officer Training Program, that employee will enter the academy at the same rate of pay as all other cadets/trainees and will serve a probationary period in the new position the same as other cadets/trainees.

7. Professional Development Plan.

- a. A professional development plan will be used to facilitate internal growth for employees within a Department. For a development plan to be utilized, the Department must have a vacancy they want to fill where the competitive recruitment process has been unsuccessful and interested employees do not meet the minimum qualifications of the vacant position, but could meet the qualifications if the employee gains some additional experience or time to complete the educational requirements.
- b. The opportunity to be considered for a professional development plan must be posted internally to the hiring Department for interested employees to apply for consideration. If more than one employee applies for the professional development plan opportunity, the hiring Department shall have an interview panel conduct interviews following the process in Policy 3-13. Applicant Interviews.
- c. Once an employee is selected for the professional development plan, the Department will work with the Human Resources Department to have a development plan initiated. The objectives and timeline for proposed pay adjustments will be determined by the Department Director or Elected Official, with the assistance of the Human Resources Department. The plan shall not exceed two years in duration and include measurable goals and objectives to determine progress on the plan and whether it should continue.
- d. An employee shall not start working on the objectives of the development plan until all paperwork is submitted and approved.
- e. If the employee on the development plan fulfills all of the plan requirements ahead of schedule, the employee's pay will be increased to the final rate of pay for the remaining period of time on the development plan.

**5-9. OVERTIME / COMPENSATORY TIME**

- A. All non-exempt employees are eligible to earn overtime. Overtime pay or compensatory time shall be given when the employee has worked over 40 hours in a work week except for DASO, Detention Center, and Fire and Emergency Service employees as provided by the 207K provisions of the Fair Labor Standards Act (see D below). All overtime shall be paid at a rate of 1.5 times the employee's regular hourly wage for time worked. A Department may elect to provide compensatory time in lieu of wages for overtime hours worked. When compensatory time is provided in lieu of wages, compensatory time will be accrued at 1.5 times the rate for each hour of overtime worked. When Department budgets permit, the Department may elect to pay overtime, provide compensatory time or a combination of compensatory time and overtime pay. Whichever form of compensation is used, the rate will be at one and one-half (1 1/2) times the non-exempt employee's regular hourly rate. Overtime or

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compensatory time requires approval of the Department Head in advance.

- B. Management must advise employees in advance of the scheduled work resulting in overtime whether the employee will be compensated monetarily or with compensatory time off.
- C. Developing the work/shift schedule for employees is the responsibility of Management. Overtime will be assigned by Management based upon the needs of the County. Non-exempt employees are required to work any overtime assignment they are given. Failure to do so is considered insubordination and may result in disciplinary action up to and including termination.
- D. Actual time worked in excess of forty (40) hours during a designated workweek shall be compensated in accordance with the FLSA for non-exempt employees. Only actual hours worked shall be considered in the overtime calculation. Holiday, vacation, sick and other leave shall not be considered. All overtime for designated public-safety employees will be paid in accordance with the applicable 207K provisions of the Fair Labor Standards Act.
- E. A non-exempt employee who works overtime during a scheduled workweek shall record the actual hours worked on the County approved timekeeping system.
- F. Overtime may be authorized only under circumstances which call for immediate action, or in other special situations authorized in advance by the Department Head.
- G. Overtime hours worked by a non-exempt employee without prior approval shall be regarded as a violation of County policy and subject to disciplinary action. However, the non-exempt employee shall be paid for all time worked even if it had not been authorized.
- H. A non-exempt employee may not accumulate more than 80 hours of compensatory time. Accrued compensatory time shall be used by June 30 or paid out the last pay period of the fiscal year. It is the responsibility of the employee to ensure that compensatory time is used by June 30. A Department Head may direct the employee to use the compensatory time during the 60 calendar days prior to June 30. Management reserves the right to pay for earned compensatory time at its sole discretion.
- I. If an employee demotes or transfers from one non-exempt position to another non-exempt position; or from one Department/section to another within a classification eligible for compensatory time, the employee's accrued compensatory time off balance, up to the maximum allowable accrual will be carried forward with the employee. Any accrual in excess of the allowed maximum shall be paid at the time of promotion, transfer or demotion.
- J. If an employee promotes from one non-exempt position to another non-exempt position, the employee's accrued compensatory time off balance shall be paid by

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the Department/section the employee is promoting from at the employee's current regular rate of pay before promoting.

- K. Compensatory time accrual balances will be paid by the Department/section the employee is moving from at the employee's current regular rate of pay prior to demoting or transferring when the new classification is not eligible for compensatory time or accruals of compensatory time exceed the maximum of the employee's new job classification.
- L. Non-exempt employees shall use and supervisors shall direct the use of accrued compensatory time prior to using accrued vacation time.

**5-10. ON-CALL DUTY**

- A. On-call time will be considered hours worked when employees are required to restrict their personal activities and cannot use the time effectively for their own purposes including:
  - 1. Employees' on-call who are required to stay within a thirty (30)-mile radius or thirty (30) minute response time of their worksite; or within 10 minutes of a telephone if the employee is using an electronic pager; and,
  - 2. On-call, employees who are to remain fit for duty and cannot consume alcoholic beverages or other substances which may impair an employee
- B. On-call time will not be considered hours worked when employees are free to engage in activities for their own purposes but are required to inform the employer how they can be reached or to carry an electronic pager or cellular phone.
  - 1. A non-exempt employee required to be on-call beyond the employee's regularly scheduled hours and is free to engage in activities for his/her own purposes shall be compensated at the rate of \$8 per day.
- C. Employees on leave, whether paid or unpaid, are not eligible to be on-call.
- D. Non-exempt employees who respond to a call are to record all time worked in response to the call. Employees who respond to a call are paid for a minimum of two (2) hours worked. Responses to a call which are handled by telephone or instant messaging are to be paid for the actual time worked. There is no additional compensation for exempt employees who are on-call or actually respond to calls

**5-11. CALL-BACK PAY**

- A. Call-back occurs when an employee is off duty, not on-call, and notified unexpectedly to return to work due to unforeseen circumstances.

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SECTION V- CLASSIFICATION AND COMPENSATION

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- B. Authorized call-back shall be compensated at one and one-half (1 1/2) times the non-exempt employee's hourly rate from the time the employee is notified until the employee has completed the unexpected work and/or has returned home or to the place where the employee received the call. A non-exempt employee on call-back shall be guaranteed a minimum of two (2) hours pay for each authorized call-back.
  
- C. Call-back pay does not include an employee being called in to cover another employee's absence unless the employee called back has already worked that day. It also does not include the situation when the time worked immediately follows or precedes regular time, in this case, overtime may apply.
  
- D. There is no additional compensation for exempt employees who are called back to work.

## VI. WORK RULES

Section VI clarifies work rules and the expectations for workplace conduct for employees, volunteers, and interns. The policies and procedures in this section are essential to maintaining a climate of fairness, cooperation and professionalism. It affirms each individual's right to be treated with dignity, respect and courtesy by employees at all levels within the County.

### 6-1. HOURS OF WORK

- A. An employee is expected to work the days and hours necessary to perform all assigned responsibilities and tasks in order to provide continuity in access by and service to the County residents and to facilitate teamwork and supervision. Attendance shall be a consideration in determining promotions, transfers, satisfactory completion of evaluation periods and continued employment with the County.

#### 1. Normal Workweek and Work Hours.

The basic workweek is generally 40 hours of work beginning at 12 a.m.

- a. Sunday and ending at 11:59 on Saturday. The normal work schedule for employees is 8 hours a day, 5 days a week (86 hours per pay period for designated Detention and Sheriff Department employees in accordance with the 207K provisions of the Fair Labor Standards Act). For most administrative and public service offices the normal schedule is Monday through Friday from 8:00a.m. to 5:00p.m.
- b. Departments wishing to adjust the normal work schedule must submit the request in writing to the Human Resources Department and, in turn, to the County Manager for approval on an annual basis.
- c. One time or occasional adjustments to an employees work schedule may be granted at the supervisor's discretion subject to any Federal or Statutory limitations relating to hours of work.

#### 2. Flexible Work Time.

- a. The Department Head may adjust work schedules within any given workweek to avoid overtime. If a non-exempt employee works more than eight hours in a day but has not yet worked 40 hours, the Department Head may schedule time off during the same week to avoid overtime.
- b. The schedule must be flexed within that same workweek. The schedule cannot be flexed in the following week, even if it is in the same pay period. Once a non-exempt employee has worked more than 40 hours in one workweek, the employee will be paid overtime or credited for compensatory (comp) time.

## SECTION VI -WORK RULES

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### 3. Alternative Work Schedule.

- a. An alternative work schedule is a regular, weekly schedule that is based on other than the normal working hours for the position or Department. In no case can an alternative work schedule result in overtime.
- b. The Department Head shall consider whether the proposed alternative work schedule will better meet the needs of the public/clientele and/or better serve the needs of the individual employee without adversely affecting the clientele or the operational efficiency of the Department. Not all jobs are conducive to an alternative work schedule.
- c. Alternative work schedules shall be of a semi-permanent nature (i.e. 6 months or 12 months at a time). A change to the employee's work schedule does not alter the normal work week for FLSA purposes.
- d. Departments wishing to set up alternative schedules must submit the request in writing to the Human Resources Department and, in turn, to the County Manager for approval. Alternate work schedules must be re-submitted for approval at the beginning of each calendar year thereafter. Any changes to a previously approved alternate work schedule during the course of the calendar year must be submitted for approval as described above.
- e. One time or occasional adjustments to an employees work schedule may be granted at the supervisor's discretion.

### 4. Interview Time for Doña Ana County Positions.

- a. The time spent by employees who are interviewed for Doña Ana County positions shall be considered hours worked for payroll purposes. An employee shall not be required to clock out, use compensatory time, or vacation leave when being interviewed for a Doña Ana County position.

## **6-2. ABSENCES AND TARDINESS**

- A. Employees are expected to be available and ready for work at the beginning of their assigned shifts and at the end of their scheduled rest and meal periods. Rest and meal periods include the time spent going to and from the place where the break is taken.
- B. Advance notice of an absence to the immediate supervisor is expected. Notice of unavoidable absences is expected within one-half hour prior to the beginning of duty or as soon as possible if the employee is physically unable to notify his/her supervisor.
- C. Advance notice of anticipated tardiness to the immediate supervisor is expected. Notice of unavoidable tardiness is expected as soon as possible. If approved by

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the supervisor, tardiness may be made up during the workweek in which it occurs.

- D. Notification of an absence or tardiness by another employee, friend or relative is not considered proper except in an emergency situation where the employee is physically unable to make the notification.
- E. Failure to provide notice of absence or tardiness to the immediate supervisor, poor attendance and tardiness are disruptive and may result in disciplinary action, up to and including termination of employment.

### **6-3. MEAL AND REST PERIODS**

- A. Employees who work six (6) or more hours in a work day may be allowed an uninterrupted, unpaid meal period of a minimum of thirty (30) minutes and a maximum of sixty (60) minutes at or about midpoint of their work day. The length and scheduling of the meal period shall be at the discretion of the supervisor or Department Head.
- B. Supervisors or Department Heads will be responsible to ensure that, wherever and whenever possible, employees will be permitted at least a half-hour uninterrupted meal period.
- C. Non-exempt employees shall be entirely relieved of their job responsibilities and are required to take their meal period away from their work areas.
- D. Non-exempt employees shall not be allowed to work through their meal period or exchange their meal period for other time off unless they have requested and received permission to do so from their supervisor or Department Head.
- E. Paid rest breaks are at the discretion of the appropriate Department Head. Schedules permitting, full time employees may take one, fifteen (15) minute break in the morning and one, fifteen (15) minute break in the afternoon. Employees taking a paid break are to remain on County property or at the designated work site.
- F. Rest breaks may not be taken at the beginning or ending of a work shift, taken immediately before or after lunch, applied toward an alternative work schedule, or used as leave time. Work demands may preclude the granting of a rest break. If the breaks are not used, they are lost; they do not accumulate.
- G. Breaks or rest periods will be scheduled so that service to the public and other Departments is not interrupted. Breaks are paid time and are to be used only for the purpose intended and cannot be exchanged for any other purpose.

### **6-4. STANDARDS OF CONDUCT**

- A. The County seeks to ensure an orderly business operation for the benefit and

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protection of the rights and safety of all employees and the public. Unacceptable conduct may result in disciplinary action up to and including termination.

Unacceptable conduct includes, but is not limited to:

1. Alteration of Records: Except to correct errors, employees are prohibited from changing any County record unless otherwise permitted by law.
2. Confidentiality: Seeking or revealing confidential information regarding employees, County business or discussing confidential matters with unauthorized personnel is prohibited. This includes the unauthorized use or dissemination of confidential information.
3. County Property: The use of County property for personal gain.
4. Misuse or Destruction of Equipment/Property: Abusing, defacing or destroying County equipment or property, or the property of others. Careless, negligent, improper or malicious use of property, equipment or funds.
5. Discourtesy: Failing to render the appropriate degree of service or courtesy to anyone; including not helping when in a position to do so; speaking abruptly or offensively; spreading rumors or gossip; conduct that interferes with the work of others.
6. Dishonesty: Dishonesty in any form, including but not limited to falsification of any information, record or report; giving a false reason for use of leave; the filing of repeated false or frivolous grievances found to be unsubstantiated; the intentional omission of or fabrication of events; knowingly lying or making an untrue statement about a material fact, either orally or in writing, in relation to an investigation, assignment, inquiry or testimony.
7. Disorderly Conduct: Interference with others in the performance of their position, horseplay or unprofessional conduct resulting in disruption to others. Conduct that interferes with the efficient operation of the county.
8. Excessive Absence: Excessive absence, even when caused by excused and justifiable illness or injury, not including Family Medical Leave Act; tardiness in reporting or in returning to duty following rest or meal breaks.
9. Gambling: Betting or promoting gambling during work hours or on County property.
10. Inattention: Sleeping or inattention while on duty.
11. Insubordination: Disregard of, or refusal to obey, any lawful order or directive to perform work as assigned or required; and/or a willful slowdown or neglect of duty. Willful disregard of policies or a defiant attitude of noncompliance toward regulations, directives, policies or procedures applicable to the employee.

## SECTION VI -WORK RULES

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12. Negligence: Carelessness, inattention or mischief that results in loss, damage, waste or destruction of any property, or which creates unsafe or unsanitary conditions; failure to follow safety rules and/or engaging in any unsafe conduct which jeopardizes the safety or health of an employee (including one's self), guest or customer of the county.
13. Performance: Incompetent, inefficient or unacceptable performance of duties. Less than satisfactory job performance as determined by the immediate supervisor. Inability or unwillingness to perform the duties required of the position. Misconduct which adversely affects the interest or reputation of the County or its employees. Repetition of offenses which resulted in notification of unacceptable performance or other corrective action.
14. Aggression: Threatening, assaulting, abusive or bullying language or behavior towards a supervisor, employee, guest or customer of the county; including but not limited to fighting or engaging in any act of physical aggression; any attempt or threat to engage in a fight or provoke a fight, either by words or actions.
15. Solicitation: Distribution of literature or verbal promotion of any non-work related cause or activity.
16. Substance or Alcohol Use: Possession or use of alcohol, drugs or narcotics; reporting to work under their influence; or being under their influence while on the job. Possession of drug paraphernalia is also prohibited.
17. Theft: Misappropriation or misuse of County property or the property of others.
18. Unauthorized Possession: Custody or use of any property that belongs to a member of the public, another employee, Elected Official, or the County, including any item lost or otherwise found on, or present on, the County premises without permission.
19. Uncooperative: Failure to report any work-related injury/illness; accident with, or damage to County property; refusal to cooperate in a County investigation; failure to cooperate with others in the County.
20. Unauthorized Work Time: Nonexempt employee who commences work prior to the scheduled starting time, work during their meal break, or work past the scheduled end of their shift without prior approval of their immediate supervisor.
21. Unexcused Absence: Unauthorized or unreported absence from work; leaving work during working hours without prior notice and approval. Job abandonment.
22. Weapons: Possession or storage of any weapon or explosive device without authorization on County property or at any worksite.

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SECTION VI -WORK RULES

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23. Bullying/Abusive Conduct: Acts and/or omissions that a reasonable person would find hostile based on the severity, nature and frequency of such conduct including but not limited to: 1) repeated infliction of verbal abuse such as the use of derogatory remarks, insults and epithets; 2) verbal or physical conduct which is threatening, humiliating or intimidating in nature; 3) work interference, undermining, or sabotage of one's work which prevents work from being completed or performed; or 4) exploitation of a known psychological or physical vulnerability. A single act normally will not constitute bullying or abusive conduct but an especially severe or egregious act may meet this standard.

**6-5. PAY PERIODS**

- A. The County shall have a two (2)-week pay period, beginning at 12 a.m. on alternate Sundays and ending at 11:59 p.m. on the following second Saturday.

**6-6. TIME REPORTING**

- A. Exempt employees may be required to use a designated timekeeping system and are required to account for hours worked, including business trips and leave.
- B. All non-exempt employees will accurately record all hours worked and all leave time taken in hours and minutes, and the type of leave to be charged utilizing the County approved timekeeping system.
1. Non-exempt employees will record meal breaks on the approved timekeeping system.
  2. Non-exempt employees may not perform any work off-the-clock. All work time must be recorded and paid for non-exempt employees.
  3. A rest break of 20 minutes or less is considered work time and must be paid. See policy 6-3. Meal and Rest Periods.
  4. Travel time for non-exempt employees will be paid in accordance with the Fair Labor Standards Act.
- C. Each employee is responsible only for their own record keeping, unless the employee is absent from work. A supervisor shall not alter or adjust the hours that an employee reports in the timekeeping system without the employee's knowledge. If an employee is found to have punched a time clock or otherwise submitted time to be credited to another employee, disciplinary action, up to and including termination, may be taken against both the employee who commits the act and the one receiving the benefit of the act.
- D. If a non-exempt employee forgets to clock or sign in or out, the employee must notify his/her supervisor immediately so the time may be accurately recorded for payroll. Repeated failure to sign in or out may result in disciplinary action up to and including termination.

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- E. Once an employee clocks or signs in, work is to commence immediately. Failure to do so is considered falsification of timekeeping records. Non-exempt employees shall not clock-in in advance of their scheduled starting time unless prior approval of their supervisor has been granted.
- F. By signing/verifying and submitting a timesheet or electronically verifying in the timekeeping system, the employee and supervisor are certifying that the number of hours reported were worked or taken as authorized leave, and that payment therefore is lawfully due and payable by the County.
- G. Each Department shall submit bi-weekly time records for all employees to the Finance (Payroll) Department. The Finance (Payroll) Department shall periodically audit time records to ensure accuracy and accountability. The Finance (Payroll) Department shall maintain the official time records for all County Departments for a minimum of three (3) years.

### **6-7. PAYROLL DISBURSEMENTS**

- A. Direct Deposit is required for employees hired after April 12, 2011. A direct deposit authorization form must be completed within the first three (3) days of employment with Doña Ana County.
- B. For employees who do not have direct deposit, payroll checks should be picked up after 11 AM from the County Manager Front Desk on the payroll day. Directors, Elected Officials and Department Heads must authorize in writing to the Finance Department those personnel who may pick up payroll checks for that Department. It is the responsibility of the Department appointee to ensure that all payroll checks for that Department are received before signing the payroll distribution register. Directors, Elected Officials and Department Heads are responsible for distributing checks to their employees in a timely manner. Any payroll checks not picked up by an employee after five (5) work days will be returned to the Finance Department.

### **6-8. OFFICIAL PERSONNEL RECORDS**

- A. The Human Resources Department will maintain an Official Personnel File on each employee. Departments may elect to maintain separate Departmental working files for their personnel which may contain copies of personnel documentation as well as the supervisor's working notes. Original documents that comprise the contents of the Official Personnel File must be forwarded to the Human Resources Department for retention in the Official Personnel File.
- B. Departments that choose to maintain employee's Departmental working files shall ensure that nothing unrelated to the job and the employee be entered in the file. These Departmental files are accessible in the event of arbitration or other legal actions.
- C. Those Departments utilizing the services of volunteers will maintain their own personnel working files.

## SECTION VI -WORK RULES

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- D. Following separation from County employment, the contents of an employee's Departmental personnel file will be forwarded to the HR Department for retention in accordance with public records requirements.
- E. It is the employee's responsibility to notify the Human Resources Department of any change in his/her home address, telephone number, marital status, number and names of dependents, or other necessary information required for accurate and current personnel records.
- F. Leave File. A Leave file is maintained by the Finance Department for each pay period for three years, and includes all request-for-leave forms which are signed by the employee, supervisor, and Department Head.
- G. Medical File. A separate, confidential medical file is maintained as necessary for each employee. This file contains documents related to the employee's medical or psychological condition. Access to all medical information is restricted to a need-to- know basis.
- H. Employment Eligibility (1-9) Information. In compliance with the Immigration Reform and Control Act of 1986, as amended, employment-eligibility forms are maintained in the Human Resources Department for three (3) years after an employee's date of hire or one (1) year after termination, whichever is later. These documents are made available for inspection by auditors and representatives from the Departments of Labor and Homeland Security. In the event of the expiration of an employee's eligibility to work in the United States, it is the employee's responsibility to provide to the Human Resources Department updated eligibility documentation.

### **6-9. PUBLIC RECORD INFORMATION**

- A. Employee personnel files are the property of the County. For the purpose of inspection of public records, the employee's application form and personnel actions shall be regarded as public record and may be subject to disclosure upon request, per NMSA 1978 §14-2-1.

### **6-10. ACCESS TO THE OFFICIAL PERSONNEL FILE**

- A. With the exception of the application and Human Resources Action forms, the remainder of the Official Personnel File is confidential to the extent allowable by law and accessible only to: 1) the employee; 2) supervisors in the employee's chain of command up to and including the County Manager; 3) the Human Resources Director or designee; 4) the hiring supervisor, in the event the employee seeks another position within the County; and 5) the County's legal representative. If an employee wishes someone other than those authorized to have access to his/her Official Personnel File, the employee must provide written authorization to the Human Resources Department.

**6-11. COPIES OF PERSONNEL RECORDS**

- A. An employee may inspect the contents of his/her Official Personnel File upon request to Human Resources. All inspections must be conducted in the presence of the Human Resources Director or his/her designee. When copies are needed, the employee will be required to pay a nominal processing fee for the copies.

**6-12. NEGATIVE OR DEROGATORY INFORMATION**

- A. Negative or derogatory material shall not be placed in an active employee's file unless the employee has had an opportunity to review the material. Employees will be asked to sign such material to indicate they have reviewed it. If the employee refuses to sign such material, it may be placed in the employee's file with a dated notation that the employee refused to sign the material after being given an opportunity to do so.

**6-13. VERIFICATION OF EMPLOYMENT**

- A. All requests for release of employment information shall be forwarded to the Human Resources Department. An employee's address or telephone number shall not be given without proper authorization, such as a release signed by the employee, a court order, or a subpoena.
- B. The County will only provide the dates of employment, job titles and salary in response to external requests for confirmation of employment.
- C. The County may provide the requestor access to the employee's personnel file if the employee has provided an authorization specifying which sections of the personnel file may be reviewed and releasing the County of any liability for releasing such information to the requestor. The County retains the right to deny the requestor access to the personnel file.
- D. No employee shall respond to external inquiries about County employees, including but not limited to job reference inquiries, without first coordinating with and obtaining approval to respond from their respective Human Resources Administrator.

**6-14. REFERENCES/RECOMMENDATIONS**

- A. No employee in their official capacity shall provide a letter of reference/recommendation for any current or former employee of the County without first having the letter of reference/recommendation reviewed and approved by the Director of Human Resources and the Director of the Legal Department.
- B. No employee shall respond to inquiries for a reference about County employees, including but not limited to job reference inquiries, without first coordinating with and obtaining approval to respond from their respective Human Resources Administrator.

**6-15. PERSONAL APPEARANCE**

- A. Dress, grooming and personal hygiene are important aspects of individual comfort and expressions; they are also important indications of the degree to which an employee is considerate of his effect on fellow employees and mindful of the effect his or her appearance may have on the public. It is the policy of the County that each employee's dress, grooming, and personal hygiene should be appropriate to the work situation. During business hours, employees are expected to present a clean and neat appearance and to dress according to the requirements of their respective positions.
  
- B. Office workers and any employees who have regular contact with the public must comply with the following personal appearance standards:
  - 1. Employees are expected to dress in a manner that is normally acceptable in similar work situations.
  
  - 2. Employees who are presenting or speaking to the Board of County Commissioners in the course of their employment for the County shall be dressed appropriately for their position.
  
  - 3. Casual business attire may be permitted on Friday. In all cases, clothing must be in good condition and not torn or frayed.
  
- C. Employees who do not regularly meet the public should follow basic requirements of safety and comfort, but should still be as neat and businesslike as working conditions permit.
  
- D. Certain employees may be required to meet special dress, grooming, and hygiene standards, such as wearing uniforms, depending on the nature of the job.
  
- E. At its discretion, the County may allow employees to dress in a more casual fashion than is normally required. On these occasions, employees are still expected to present a neat appearance and are not permitted to wear ripped or disheveled clothing, athletic wear, or similarly inappropriate clothing.
  
- F. Department Heads are responsible for determining and enforcing the dress standards for their respective areas of responsibility.
  
- G. The County reserves the right to advise any employee at any time that his/her grooming, attire or appearance is unacceptable.
  
- H. After having been so advised, the employee will be expected to comply with the suggested change. Failure to do so will result in the discipline. Repeated lack of compliance may result in further disciplinary action, up to and including termination of employment.

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- I. Employees who are required to wear uniforms of any type in the performance of their duties will be provided such uniforms by the County. Uniforms that are provided by the County become the property of the employee during the employment service to the County. Laundering, cleaning and general upkeep of uniforms is the responsibility of each employee. Uniforms which do not qualify for exemption from taxation, will be appropriately taxed by the Finance Department.
  
- J. Uniforms provided by the County shall be worn only while performing official County duties and, except in the performance of official duties, shall in no event be worn in bars, liquor establishments or places of public entertainment.
  
- K. Any employee who does not meet the standards of this policy will be required to adhere to corrective action, which may include leaving the premises to change clothing or address hygiene concerns before returning back to work that day. Nonexempt employees will not be compensated for any work time missed because of failure to comply with this policy. Violations of this policy will result in disciplinary action up to and including termination.

**6-16. ELECTRONIC MAIL, COMPUTER AND ON-LINE SERVICES USAGE**

- A. As a condition of employment and continued employment, employees agree to the following:
  - 1. All electronic storage and communication systems - including, without limitation, facsimiles, copiers, computers, software and telephones - and all information transmitted by, received from or stored in these systems are the property of the County and there is no expectation of privacy by employees on any of the devices;
  - 2. These systems are to be used for job-related purposes and not for personal purposes, unless expressly authorized in advance by the employee's supervisor. If authorization is given, it shall be limited to non-working time and there is no expectation of privacy;
  - 3. Employees have no expectation of privacy in connection with the use of this equipment or with the transmission, receipt or storage of information in the equipment;
  - 4. The County may monitor and review an employee's use of this and other similar equipment at any time at its discretion, which may include printing and reading all e-mail entering, leaving or stored in these systems as well as listening to any voice-mail messages;
  - 5. To obtain approval for, and have virus-scanned, all outside files prior to loading such files into the County's computer system.
  
- B. Software Copyright.

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1. The County purchases and licenses various computer software for business purposes and does not own the copyright to this software or its related documentation. Employees may not reproduce such software or use it on more than one computer unless authorized to do so by the software-license agreement. Employees with questions or concerns regarding the use of software or its related documentation should contact the Information Technology Director.

### C. Prohibited Use.

1. Improper use of the County's electronic storage and communications equipment is strictly prohibited. This includes, without limitation, transmission or reception of any material in violation of Federal, State or local law or regulation - including copyrighted material, threatening or obscene material or material that is trade secret or confidential.
2. This also includes using the County's equipment or resources for commercial activities, religious or political causes, outside organizations or other non--employment related matters; and transmitting offensive jokes, sexually explicit material, chain letters or material that is otherwise disruptive to the orderly operation of the County.

### D. Passwords.

1. Employees should remember that log-on and other passwords should not be shared with anyone else. Failure to cooperate with an authorized County Official in any investigation involving the County's electronic communications systems is a violation of the policy and may result in discipline, up to and including termination of employment.

### E. Consequences of Prohibited Use.

1. Any violation of this policy may result in disciplinary action, up to and including termination of employment.

## 6-17. U.S. MAIL AND TELEPHONE SYSTEMS

- A. The U.S. mail delivery systems are resources available for use within the course and scope of employment and should not be used for personal reasons. Employees' use of these systems has the effect of granting permission to Management to access, read and print any messages created or received using the systems.
- B. On those occasions an employee needs to receive or make a personal telephone call or email, the calls/transmissions should be brief and infrequent. Long-distance personal calls resulting in charges to the County are discouraged and must be reimbursed to the County within thirty (30) calendar days. Upon termination of employment, any outstanding charges will be billed to the employee.

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- C. County records involving telephone and the U.S. mail are subject to access by management and potentially to public disclosure. Therefore, employees should assure that the information contained therein is accurate, appropriate and lawful.
- D. County mail systems shall not be used to create or send any offensive or inappropriate message. Among those which are considered offensive or inappropriate include but are not limited to any messages which contain sexually suggestive statements or implications; racial, gender or religious slurs or proselytizing; or those containing vulgar or profane language.
- E. County mail systems shall not be used to solicit for outside business ventures, personal parties, charities or membership in any political, social and/or religious organizations.

**6-18. BULLETIN BOARDS**

- A. County bulletin boards shall be located in each County facility in areas that are easily visible and accessible to employees. Each Department Head is responsible for the content of its bulletin board.
- B. The bulletin boards shall be used to post official notices dealing with legally required employee notices and those from the Employee Activity Committee. These bulletin boards are not available for posting personal employee items. County bulletin boards shall not be accessible to outside vendors or solicitors for advertisement purposes.

**6-19. PHOTOGRAPHS**

- A. With the exception of official, County issued identification badges, images of employees may be captured and used only with the employee's permission and only in the conduct of County business. At County functions or special celebrations, the County may designate an employee to capture the event on film. (Refer to policy 6-26. Identification Badges)

**6-20. ELECTRONIC COMMUNICATION DEVICE**

This policy applies to County and personal communications devices and technologies and must be followed in conjunction with other County policies governing appropriate workplace conduct and behavior. Violations of this policy may result in disciplinary action up to an including termination.

- A. Excessive personal calls, texts or emails during the workday, regardless of the device used, can interfere with employee productivity and be distracting to others. Employees shall keep personal communications to a minimum while on-duty, whether they are using the County electronic communication device, or the employees' personal electronic communication device. If excessive use is suspected employees may be required to provide phone bills and usage reports for utilization during work hours.

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- B. Employees shall abide by acceptable business etiquette for cell-phone use by placing phones or other electronic communication devices on silent or vibrate during meetings, conferences and in other locations where incoming calls may disrupt normal work flow.

County issued cell phones and pagers are to be used primarily for County business.

- C. Employees' airtime must remain within the parameters of their assigned calling Plan as established by Management. Employees may not use County cell phones or pagers to conduct business for others or themselves. Employees may never use County phones or pagers to call 900 numbers. Additional charges or overages charged to the County as a result of misuse will be submitted to the employee for reimbursement to the County.
- D. Cell phone and pager bills are reviewed to determine if there has been any abuse of the system. Such abuse includes excessive personal calls or making inappropriate or harassing calls.
- E. Cell phones and other electronic devices are to be used in a safe manner. Use of cell phones and other electronic devices while operating a County vehicle or other equipment is prohibited except in the case of an emergency. This prohibition includes the use of hands free devices while operating a County vehicle. An exception to the use of hands free devices for communication will apply to emergency service positions and certified law enforcement positions when the use of such communication devices are necessary to the performance of duties and can be used in a safe manner.
- F. Employees are expected to exercise the same discretion in using their personal devices as is expected for use of County devices. County policies pertaining to harassment, discrimination, retaliation, confidential information, and ethics apply to employee use of personal devices during work time or for work-related activities.
- G. The County prohibits taking negative action against any employee for reporting possible deviation from this policy or for cooperating in an investigation. Any employee who retaliates against another employee for reporting a possible deviation from this policy or for cooperating in an investigation will be subject to disciplinary action, up to and including termination.
- H. Nonexempt employees may not use their personal devices for work purposes outside of their normal work schedule without authorization from management. This includes reviewing sending and responding to emails or text messages; responding to phone calls or making phone calls.
- I. Employees may not use their personal communication devices for work purposes during periods of unpaid leave without authorization from management. The County reserves the right to deactivate County applications and access on an employee's personal device during periods of unpaid leave.

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- J. County issued electronic devices are County property and are to be turned in upon request and/or separation from County employment.
- K. All County data on personal devices will be removed by Information Technology upon termination of employment.

**6-21. CHILDREN OF EMPLOYEES AT WORK**

- A. For reasons related to liability, child-labor laws, confidentiality and the disruption of work activities, employees are not permitted to allow their children to remain in the employees' work areas in lieu of off-site daycare, school, or other child care arrangements, or to allow other family members to remain in the employees' work areas. In the event of a daycare or school cancellation, the employee must use appropriate leave for dependent care. On occasion the County Manager or his/her designee may grant exceptions to this policy for state-wide or national events encouraging employees to bring a child to work.

**6-22. COUNTY DRIVER TRAINING**

- A. County employees and volunteers who drive vehicles as part of their duties for the County are to attend Risk Management's Defensive Driving Course (DDC) or equivalent course approved by Risk Management. Eligibility to operate county vehicles or other equipment requiring a driver's license or operators permit requires completion of the DDC.
- B. Newly hired employees and volunteers, and current employees being reassigned to operate vehicles for County business are to attend or be scheduled to attend a DDC, or equivalent, course within the first three (3) months of employment or reassignment.
- C. Risk Management shall provide notice to the Department Head and Human Resources Department if an employee or volunteer does not successfully complete the required course within the first three (3) months of employment or reassignment.
- D. All County employees and volunteers who drive for the County must recertify on the following schedule from the initial certification date:
  - 1. Sheriff's Office every two (2) years in accordance with the emergency operator course used by the Sheriff's Office;
  - 2. Animal Control and Codes personnel every two (2) years; and
  - 3. All other personnel who operate a vehicle for a business purpose every three (3) years.
- E. Anyone who does not complete the re-certification process is not permitted to operate any County owned equipment or drive for business purposes until such

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time that they successfully recertify. Anyone that violates this policy when not authorized to do so is subject to disciplinary action up to and including termination. Risk Management will notify the employee's supervisor of employee-driver training needs.

- F. The supervisor of an employee who is involved in a preventable accident while driving a County vehicle is responsible for scheduling that employee to the next available DDC.
- G. Employees and volunteers assigned to operate towing vehicles and tow trailers should successfully complete additional training hours through Risk Management or the Fleet Services Department.
- H. Risk Management and Human Resources may designate additional training requirements for those County Departments with employees who have specialized driving requirements.

### 6-23. MOTOR-VEHICLE RECORDS CHECKS

- A. The Human Resources Department will conduct a check of the driving records of all employees and volunteers who drive as part of their duties for the County at a minimum on a semi-annual basis. Human Resources will notify supervisors of any citations found in this check. Departments that utilize volunteers to drive County vehicles will provide Human Resources the information necessary to conduct this motor vehicle records check at the beginning of service and on a semi-annual basis thereafter.
- B. Driving records of applicants for driving positions, including present County employees, must be reviewed before making an *offer* of employment for a position that requires driving. Applicants must have an acceptable driving history to be considered for employment.
- C. All employees and volunteers in driving positions must maintain an acceptable driving record.
- D. Driving records are evaluated based on moving-violation convictions, chargeable accidents and related performance.
- E. An acceptable driving record will be evaluated based upon the most recent three- year history reflected on motor vehicle record and points will be assigned accordingly. If the total points equal four (4) or more for the immediate preceding 36 months, the person shall be deemed to have an unacceptable driving record and the person shall not be authorized to operate a vehicle County business.
- F. Points will be determined as follows:
  - 1. Type A Violations - Convictions for Type A violations appearing on the motor vehicle record count as four (4) points against an employee's, volunteer's or

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applicant's record. Type A violations include:

- a. Criminal negligent homicide - 1st or 2nd degree
- b. Driving while intoxicated
- c. Driving while under the influence of drugs
- d. Drag Racing / Speeding Contest
- e. Aggravated Assault with motor vehicle
- f. Driving while license suspended
- g. Murder/homicide- with motor vehicle
- h. Reckless driving
- i. Fleeing from police officer
- j. Hit and run
- k. Failure to stop for school bus
- l. Felony use of Commercial Motor Vehicle (CMV)- controlled substance
- m. Felony use of CMV
- n. Driving while license disqualified - CMV

For the purposes of this policy, and the violations contained in this section, any proceeding that results in a finding of guilt, either by law, administrative proceeding, or County investigation is deemed a conviction including an order for deferred sentence or conditional discharge.

2. Type B Violations - Convictions for Type B violations appearing on the motor vehicle record or known to the County count as one (1) point against a driver's or applicant's record. Type B violations are all moving traffic violations not listed above as a Type A violation or below as an At-Fault Accident. Type B violations do not include non-moving administrative offenses (examples: outdated inspection stickers, no proof of insurance, license plate missing).
3. At-Fault Accidents- Each at-fault accident appearing on a motor vehicle record or known to the County counts as two (2) points. If a moving traffic violation conviction appears on a driving record along with an accident on the same date, this usually means that person was at-fault in the accident. Accidents shall be reviewed by Human Resources and Risk Management, or

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other individual as designated by the County Manager, shall make a determination if there is an at-fault question. Accident reports may be obtained at the employee's expense to assist in making the determination.

G. Reporting Responsibilities.

1. An employee or volunteer who drives a County-owned vehicle shall immediately report to his or her supervisor a suspension or revocation of his/her driver's license, limitations put on their license, any accident while on County business or in a County vehicle, or any Type A violation as defined in this policy, including the nature of the charge, the pleas entered by the driver, the scheduled court date, and the findings of the court. An employee who fails to provide the required notice shall be subject to disciplinary action up to and including termination. Additionally, an authorized driver shall promptly report to his or her supervisor if the employee has been involved in a Type B violation as defined by this procedure or an automobile accident while operating a County-owned vehicle or driving while on County business. The supervisor will in turn report the violation to Human Resources.
2. An employee or volunteer who operates a County-owned, rented, leased, or personal vehicle for official County business at a time when his or her license was suspended or revoked, shall be subject to disciplinary action up to and including termination.

**6-24. LOSS OF DRIVER'S LICENSE**

- A. This policy applies to all County employees and volunteers who are required by the essential functions of their job to operate a County-owned motor vehicle or who are asked to drive on County business. For the purpose of this policy, employee refers to volunteers with driving privileges.
- B. An employee must have the appropriate, valid license in his/her possession to drive on County business. Only authorized employees are allowed to drive vehicles on County business. Employees are required to comply with all applicable federal, state and local regulations relevant to driving a motor vehicle. Employees will be permitted to operate County-owned motor vehicles only if they possess a current and valid New Mexico Driver's License or Texas Driver' License, or have a valid and unexpired New Mexico or Texas Temporary Driving Privilege License. A valid unrestricted CDL is required for employees operating equipment that requires this license.
- C. Department Heads, or their designee, shall prohibit any employee without an appropriate driver's license in his/her possession from driving on County business.
- D. Department Heads, or their designee, will regularly, not less than quarterly, inspect the drivers' license of each employee who operates a County-owned motor vehicle to ensure possession of the required license.

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- E. Department Heads, or their designee, shall immediately remove from a driving position any employee whose license is cancelled, expired, refused, revoked, suspended, or restricted in a manner which affects the employee's ability to drive on County business.
  
- F. If a supervisor learns that an employee has had his/her driver's license revoked or suspended or that the employee does not have a valid and un-expired New Mexico Temporary Driving Privilege License, the supervisor will take the following actions:
  - 1. Immediately prevent the employee from operating a County-owned motor vehicle until further notice from the employee that the license has been returned.
  - 2. Inform the Department Head in writing of the suspension, revocation or non-renewal and the facts surrounding the loss of the license by the next business day.
  - 3. The Department Head will determine if there is a vacant position for which the employee is qualified to which the employee can be transferred for which there are no priority reassignments under Workers' Compensation or ADA. If an appropriate position is identified, the employee will be reassigned to that position with a reduction in pay commensurate with the new position.
  - 4. If there are no vacant positions for which the employee is qualified, the Department Head shall issue a Personnel Action Form placing the employee on leave. If the employee has vacation leave or compensatory time the employee may opt to use it, otherwise, the employee will be unpaid for missed work time subject to FLSA regulations.
  - 5. While on leave, the employee may seek other positions in the County for which the employee is qualified for up to ninety (90) calendar days, or pursue reinstatement of lost license or certification during this time.
  - 6. If the employee has his/her license re-instated within ninety (90) calendar days, the employee may be placed back into his/her previous position if available, or compete for vacant positions for which the employee is eligible.
  - 7. If a suitable vacancy cannot be found, or license cannot be re-instated at the end of the ninety (90) calendar day period, the employee will be terminated.
  - 8. An employee in a driving position who has a status change in his/her driver's license for a period of more than ninety (90) calendar days shall be terminated.
  
- G. An employee in a driving position must be able to drive as an essential job function. Each driving employee is responsible for:

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1. Being aware of, understanding, and complying with federal, state, and local laws and County policies applying to the operation of vehicles on County business.
  2. Ensuring that the privilege to drive is maintained and that an acceptable driving record is maintained as defined in 6-23 F.
  3. Maintaining in his/her possession the appropriate driver's license at all times while driving on County business and to prove the employee has valid driving privileges upon request.
  4. Complying with all license restrictions issued by the DMV.
  5. Immediately reporting to their immediate supervisor prior to starting the next work shift if they do not have a valid drivers' license for any reason or if there is any change in status of his/her driver's license.
  6. Refraining from driving on County business after there has been a change in status of his/her driver's license, even if the cancellation, expiration, refusal, revocation, suspension, or restriction has ended, unless the license has been reinstated. Proof of reinstatement must be provided to the supervisor before driving on County business.
  7. If an employee is cited for DUI/DWI or incurs any other action that threatens his/her driver's license the employee will comply with the following continuing notice requirements:
    - a. Provide notice of such citation, non-renewal or other action to his/her direct supervisor prior to starting the next work shift.
    - b. Provide proof of his/her Request for Hearing or appeal within twenty (20) calendar days of the date of the citation, non-renewal or other action.
    - c. Provide a copy of the Notice of Hearing from the Department of Motor Vehicle (DMV) within 72 hours of receipt.
    - d. Provide a copy of the DMV ruling within three (3) calendar days of the ruling to the Human Resources Department, but no later than 90 calendar days from the citation, non-renewal or other action.
  8. Failure to comply with these reporting requirements will result in immediate termination.
- H. An employee in a non-driving position must:
1. Comply with federal, state, and local driving laws.
  2. Follow all regulations pertaining to driving on County business if requested to

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drive a vehicle on County business.

3. Immediately notify his/her supervisor if requested to drive a vehicle on County business and the employee does not have the appropriate driver's license in his/her possession.
  4. Sign a release of information form authorizing the County to verify drivers' license status.
- I. No employee will drive on County business after consuming an alcoholic beverage(s) or any other substance that may impair driving. Any impairment affecting the ability to operate a vehicle safely must be immediately reported to the supervisor.

### **6-25. EMPLOYEE PARKING**

- A. Employees are to follow all pertinent laws, rules and regulations for stopping, standing and parking while operating a motor vehicle on County property including adhering to all posted traffic signs, signals, and markings.
- B. All of the County's facilities have parking lots available for use by employees at no charge. Spaces that have been reserved for access by persons with disabilities at each facility require the occupant to display an appropriate placard from the Motor Vehicle Division. Employees also are prohibited from parking in areas reserved for the general public or officials.
- C. The County is not responsible for damage, theft or loss to employees' vehicles, or personal property within those vehicles, while parked on County property, unless damage or loss occurs due to County negligence

### **6-26. IDENTIFICATION BADGES**

- A. In order to promote safety, accountability and security of personnel, facilities and assets, County employees and volunteers shall wear identification (ID) badges or have the badge in their possession while in a County building or facility or working in the field in an official capacity.
- B. The following employees are exempted from wearing an ID badge:
  1. Members of the Sheriff's Department, Detention Center and Fire Marshal's Office are exempted from wearing ID badges while in uniform. These employees must carry their County ID and be able to provide their identification, upon request.
  2. Employees who operate machinery or equipment, where the wearing of an ID badge would create a safety hazard, are exempted from wearing an ID badge during periods of machinery or equipment operation.

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3. Employees of agencies other than Doña Ana County whose primary workplace is a County facility, such as employees of the District Attorney's office, District Court or Public Health Department.
- C. There is no substitute for the official County ID badge nor may it be altered in any way. Departments must receive County Manager approval to create secondary badges.
- D. If an employee's original badge is lost, damaged or excessively worn, if the picture no longer resembles the employee or the employee changed names, a replacement badge may be obtained from the Human Resources Department for a nominal processing fee.
- E. ID badges belong to the County and must be surrendered to the Human Resources Department upon demand. Badges are to be used solely for identification as a County employee, volunteer or official visitor.
- F. Vendors, contractors and other visitors must wear the identification badge when they are in any part of the building that is not open to general public access and are not accompanied by a County employee. General public access areas are the public side of customer service counters, reception areas, lobbies, hallways, public meeting room, restrooms, stairwells, sidewalks, grounds, and parking areas. The visitor or contractor shall obtain the identification badge from the Department for whom they are visiting or performing services.

### **6-27. SMOKING AND/OR USE OF TOBACCO PRODUCTS IN AND AROUND COUNTY PROPERTY**

- A. Smoking and/or use of tobacco products is prohibited in all County-owned or leased buildings and vehicles. This policy includes smoking in any form including through the use of tobacco products or vaping with electronic cigarettes or similar devices. Smoking or use of tobacco products is restricted to marked, designated areas which are to be no less than 25 feet from an accessible entrance or air intake of any County building.
- B. Smoking is prohibited within 50 feet of any area where flammable materials are handled or stored, or where other significant fire hazards may exist.

### **6-28. WORKPLACE VIOLENCE**

- A. The County shall not tolerate any threat or act of violence within its work environment. The County shall enforce the level of discipline appropriate for any action or threat of workplace violence, or intimidation. Every reported incident determined to allege workplace violence will be investigated and the County will take corrective action, up to and including termination, against employees who engage in workplace violence or are in possession of unauthorized firearms or lethal weapons on County property. If in consultation between the Human Resources Director, County Attorney, and Assistant County Manager, it is determined that the complaint is not a complaint of workplace violence, the matter will be referred to Human Resources for appropriate follow up and

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resolution.

- B. The County will provide awareness training and make every reasonable *effort* to prevent violence in the workplace from occurring.
- C. Definitions:
  - 1. Threat -Any oral or written expression or gesture that would be interpreted by a reasonable person as conveying intent to cause physical harm or intimidation to persons or damage property. Any indication of impending danger or harm. Any signs or warnings of impending danger or harm.
  - 2. Workplace Violence -any action, whether verbal, written or physical aggression that is intended to control, cause, or is capable of causing injury or emotional damage to oneself or others or to damage property. Examples include but are not limited to: hitting, shoving, pushing, kicking, and sexual assaults; verbal outbursts which may take the form of threats, harassment, abuse, or intimidation.
  - 3. Workplace - means any physical location, either permanent or temporary. This includes vehicles, whether or not owned or controlled by the County, or anywhere a County employee performs any work-related duty.
  - 4. Aggressor - means anyone who threatens or initiates a workplace violence incident.
- D. Possession of a firearm or any other lethal weapon in the workplace is strictly prohibited, unless it is required by the employee's job.
- E. Employees who experience or witness workplace violence, whether or not physical injury has occurred, are required to verbally report the incident immediately to a supervisor in the area where the violent incident occurred. If there is no supervisor in the area, the employee shall immediately contact the Department Head.
- F. The area supervisor shall immediately call emergency medical personnel, if necessary, report the violent incident to a local law-enforcement agency, and attempt to secure the work area where the disturbance occurred.
- G. After security measures have been taken, the area supervisor shall immediately verbally report the violent incident to the Human Resources Department, if during work hours. Otherwise, it will be reported at the beginning of the next work day. The Human Resources Department shall immediately notify the Assistant County Manager, County Manager and the Risk Manager.
- H. The area supervisor shall complete a Violent Incident Investigative Report within twenty-four (24) hours of the incident, or as soon thereafter as possible.

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- I. All reports of workplace violence shall be forwarded to the Human Resources Department immediately.
- J. The supervisor may contact the Employee Assistance Program (EAP) for crisis intervention or to refer the victimized employee(s) and employees who may be traumatized by witnessing a workplace-violence incident.
- K. The alleged aggressor may be placed on administrative leave with pay immediately, with management approval, when the incident is reported, and may remain on administrative leave during the investigation.
- L. The Human Resources Department shall report the incident to the County Attorney who will assign an Internal Affairs Investigator who shall commence an investigation of the violent incident within one (1) work day of receiving the report. In the absence of an Internal Affairs Investigator, the Human Resources Director (or designee) shall conduct the investigation. The County Attorney retains the right to assign an external investigator as the County Attorney deems appropriate.
- M. The results of all investigations of workplace violence shall be forwarded to and reviewed by the County Attorney and Human Resources Director within three (3) work days of the conclusion of the investigation. The Human Resources Director shall report the determination and any recommendation to the County Manager and Department Head.
- N. If the investigation confirms the report of workplace violence, the Department Head will recommend disciplinary action, up to and including termination of the aggressor and others who may have been party to the incident.
- O. Disciplinary action will be issued in accordance with the applicable Human Resources policies and procedures, administrative policies, and any applicable collective-bargaining agreement. Use of any weapon in the commission of the violent incident will result in immediate termination of employment.
- P. If the incident does not result in termination of the employee(s), the supervisor, in accordance with Policy 8-8. Fitness for Duty, will arrange for the employee(s) to undergo an evaluation to determine the employee's ability to perform his/her essential job functions without posing a direct threat to self or others.
- Q. If it is determined that the employee does not pose a direct threat, the Supervisor(s), Human Resources Director or designee, and Employee Assistance Program will develop a plan under which the employee may continue to work. This plan will include all recommendations that have come as a result of the Fitness for Duty Evaluation. The employee will provide a signed commitment to comply with the established plan. Failure to sign and/or comply with the established plan will result in further disciplinary action, up to, and including termination of employment.
- R. Threatening violence against another person is a violation of the law. It is the

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victimized employee's option to report the incident to law enforcement.

- S. Human Resources shall conduct a closure interview the complainant within ten (10) work days of the determination informing the complainant of the results of the investigation and, where appropriate, that action will be or has been taken. The Department Head(s) of the complainant and alleged offender will be informed of the results of the investigation.
- T. The Human Resources Department will conduct a follow-up inquiry within thirty (30) work days after the corrective actions have been taken to ensure that no further or additional instances of workplace violence have occurred, and that the complaining party and the victim have not experienced retaliation for filing the complaint. The results will be documented and filed.
- U. If the investigation finds the allegation of workplace violence to be unsubstantiated, the Human Resources Director or designee will notify the complaining party, the alleged victim, and the alleged aggressor of the results of the investigation and state clearly that no disciplinary action is warranted. Filing a false workplace violence complaint may lead to disciplinary action, up to and including termination.

**6-29. DRUG-FREE WORKPLACE**

- A. It is the County's intent to comply with the Drug-Free Workplace Act (41 U.S.C. 701). As a condition of employment, the County prohibits the manufacture, distribution, dispensation, possession, sale or use of any illegal drug, alcohol or controlled substance or other mind-altering chemical or organism, narcotic or related paraphernalia on County premises or in a County vehicle.
- B. Employees shall not unlawfully manufacture, distribute, dispense, possess or use a controlled substance while on the job or in the workplace, or be under the influence of a controlled substance, not prescribed for him/her by a physician, while on the job or in the workplace. Any employee violating this policy will be subject to discipline, up to and including termination.
- C. Employees with substance-abuse problems are encouraged to participate in a counseling or rehabilitation program prior to being in a disciplinary situation. Employees should be advised of the Employees Assistance Program provided by the County and any available drug counseling or rehabilitation programs.
- D. "*Controlled substances*" are specifically defined in federal law and consist of two classes of drugs: (1) those commonly thought of as "illegal" drugs; and (2) certain medications if not being taken under a physician's prescription or according to a physician's orders, which the federal government has determined have a potential for abuse, or are potentially physically or psychologically addictive.
- E. Employees must give notification in writing to the Human Resources Director within five (5) calendar days of any conviction for violation of a criminal drug

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statute if the violation occurred in the workplace. A conviction means a finding of guilt (including a plea of nolo contendere) and/or the imposition of a sentence by a judge or jury in any federal or state court. This reporting requirement is in addition to any agency work rules that require notice of arrests and/or convictions. An employee who is so convicted or who fails to report such a conviction is subject to discipline, up to and including termination.

- F. Employees in violation of the policy are subject to disciplinary action up to and including termination. The County reserves the right to require an employee to undergo a medical evaluation when there is reasonable suspicion of abuse per this policy.
- G. The County must notify the appropriate federal agency in writing within ten (10) calendar days of receiving notice that one of its employees funded under a federal grant or contract has been convicted for a violation of a state or federal drug statute occurring in the workplace.

**6-30. ALCOHOL AND DRUG TESTING**

A. Random Alcohol and Drug Testing (CDL).

- 1. The County complies with the Omnibus Transportation Employee Testing Act of 1991. Random alcohol and/or substance abuse testing is required for County CDL drivers on an unannounced basis in compliance with these Federal Department of Transportation (DOT) rules. Random alcohol and/or substance- abuse testing is characterized by randomly selecting designated employees for drug and alcohol testing on an unannounced basis.
- 2. Random alcohol testing shall be administered at a minimum annual rate of 25 percent of the average number of designated employees. Random controlled- substances testing shall be administered at a minimum annual rate of 50 percent of the average number of designated employees. Doña Ana County shall ensure testing-site facilities and procedures to be in compliance with Federal DOT rules through the approved contractor providing such services.
- 3. All applicants or present employees being considered for a job that requires a CDL must be tested.

B. Voluntary Self-Identification by Employees.

- 1. An employee who self-identifies and requests referral to a drug or alcohol rehabilitation program prior to being randomly selected for drug or alcohol testing shall be referred to such program without reprisal or disciplinary action, provided that self-identification is not made to avoid disciplinary action.
- 2. Employees shall be tested during the rehabilitation period. A positive test result shall be grounds for termination of employment.

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C. Refusal to Submit to Alcohol or Drug Testing.

1. Refusal to submit to a drug or alcohol test shall be considered a positive test result. Any employee who refuses or fails to cooperate in the drug or alcohol-testing procedure shall be subject to termination.

D. Positive Results of Alcohol and Drug Testing.

1. If an employee tests positive for drugs or alcohol, regardless of the level, the employee will be placed on administrative leave pending disciplinary action and/or rehabilitation alternatives. Adulterating, diluting or otherwise tampering with a test specimen will be considered a positive test.
2. If the employee is required to successfully complete an approved drug rehabilitation program as part of the disciplinary action, the employee shall be responsible for paying the cost of the rehabilitation program personally or through insurance coverage for such treatment.
3. Accrued vacation, compensatory and sick leave may be used to attend any rehabilitation program scheduled during normal work hours. If leave is exhausted, the employee will be unpaid for missed work time subject to FLSA regulations.
4. Prior to the employee's return to work, the employee shall be required to submit to an alcohol/drug test. If the employee tests positive, the employee shall be subject to disciplinary action, up to and including immediate termination.
5. Upon the employee's return to work after completion of the rehabilitation program, the employee shall be required to submit to unannounced, unscheduled tests for drugs/alcohol for a period of twelve (12) months. The employee will be responsible for the cost of these tests.
6. If the employee tests positive during this twelve (12) month period, the employee shall be subject to disciplinary action, up to and including immediate termination.

E. Confidentiality.

1. The laboratory reports and test results shall be maintained in a separate file. They shall not be included in the Official Personnel File, unless they are part of a disciplinary action.

**6-31. CONTROLLED SUBSTANCES ABUSE AND MISUSE**

It is the policy of the County that all employees have the right to a workplace that is free of controlled substances and alcohol and that no employee shall be permitted to perform job functions while under the influence of controlled substances or alcohol due to the potential

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results of use and misuse which can range from personal injury or equipment damage to the death of co-workers or members of the public. This policy is applicable to all employees including classified, temporary, grant-funded and probationary as well as volunteer, interns or others providing service to the County. Employees determined to be in violation of this policy will be subject to disciplinary action up to and including termination.

- A. Reasonable Suspicion Alcohol and Controlled Substance Testing (CDL and non-  
- CDL)
  - 1. Reasonable suspicion testing is performed when supervisors, managers or County officials have a reasonable suspicion to believe that an employee's behavior or appearance may indicate controlled substance or alcohol misuse or abuse. Supervisors, managers or County officials have the right and the responsibility to require an employee to submit to controlled substance and alcohol testing when reasonable suspicion is present.
  - 2. The determination for reasonable suspicion testing must be based on the following:
    - a. First-hand observations seen or heard by supervisors, managers or County officials who have received specific training in the observation of controlled substance or alcohol misuse or abuse related factors.
    - b. Documentation of specific clearly stated observations concerning the appearance, behavior, speech or body odor of the employee.
    - c. Observations made just before, during or just after the performance of job functions.
  - 3. At the time of reasonable suspicion observation, the employee will be escorted immediately by the supervisor or other member of management to an approved testing facility. For the name of the closest facility, contact the Human Resources Department or the Legal/Risk Management Department.
    - a. Alcohol testing must be completed within two (2) hours of the observed behavior or appearance. If testing was not completed within two (2) hours, the supervisor shall submit a memorandum to the Department Head and Director of Human Resources explaining why the testing was not done in a timely manner and the testing should be completed as soon as possible thereafter. Under no circumstances shall alcohol testing be after eight (8) hours.
    - b. Controlled substances testing must be completed within twenty-four (24) hours of the observed behavior or appearance, if testing is not completed within twenty-four (24) hours, the supervisor shall submit a memorandum to the Department Head and Director of Human Resources explaining why the testing was not done in a timely manner and the testing should be completed as soon as possible thereafter. Under no circumstances shall the controlled substances testing be completed after thirty-two (32)

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hours.

- c. Employees are required to submit to reasonable suspicion testing upon request.
  - i. If an employee tests positive for drugs or alcohol, regardless of the level, the employee will be placed on administrative leave pending disciplinary action and/or rehabilitation alternatives.
  - ii. Refusal to be tested or failure to comply with the time requirements will be regarded the same as a positive test result.
  - iii. Adulterating, diluting or otherwise tampering with a test specimen will be considered a positive test.
- d. Employees may be placed on administrative leave with pay pending the results of the test. See 8-17. Administrative Leave with Pay.
- e. A positive drug or alcohol test will result in disciplinary action up to and including termination.

**B. Post-Accident Alcohol and Controlled Substance Testing (CDL and non-CDL)**

- 1. In the event of a work-place or work-related injury resulting in the need for medical treatment for any party or property damage, the employee shall be tested for controlled substances and alcohol testing.
- 2. The employee's supervisor or another member of management shall transport the employee to an approved facility for controlled substance and alcohol testing as soon as practicable. For the name of the closest facility, contact the Human Resources Department.
- 3. If for any reason the supervisor or designee fails to take the employee for testing within two hours of the accident being reported, the supervisor will be required to provide written documentation to the Department Head and Human Resources Director. Failure to adhere to the requirements of this policy will result in disciplinary action up to and including termination.
- 4. Employees may be placed on administrative leave with pay pending the results of the test. See 8-17. Administrative Leave with Pay.

**6-32. RECORDING OF CONVERSATION**

- A. Video and/or audio recording of conversations or other activities in the workplace is prohibited unless express written permission has been given by the County Manager except where required by law or contractual agreement with a collective bargaining unit, with the exception of required recordings for internal affair's investigative interviews and predetermination hearings.

**6-33. SUPERVISORY TRAINING COURSE**

- A. Supervisory training courses are provided to ensure that all County managers and supervisors receive training in the Human Resources core subjects in order that Doña Ana County may equip supervisory staff to be aware of legal and county requirements and obligations in the supervision of its staff and to help maintain employee satisfaction and productivity.
  
- B. All individuals in positions that involve supervision, including "lead" positions, of others are required to attend all HR core courses including but not limited to the following:
  - 1. Preventing Discrimination;
  - 2. Interviewing and Selecting;
  - 3. Performance Management;
  - 4. ADA Amendments;
  - 5. Fair Labor Standards Act (FLSA);
  - 6. Family Medical Leave Act (FMLA);
  - 7. Workplace Violence;
  - 8. Discipline and Termination
    - a. This list may be altered in the future and attendance at any additional courses that are developed will become mandatory as well. Some training courses will be offered on a recurring basis and supervisors will be required to take refresher courses on a periodic basis.
  
- C. Supervisors are also required to attend Risk Management training as appropriate for their area of responsibility.
  
- D. Each supervisor shall sign up for and attend any class s/he has not attended and sign up for each refresher course as required.
  
- E. Training session information and enrollment instructions will be maintained on El Sol and are also available from the Human Resources Department.
  
- F. Attendance will be tracked by the HR Department and reported to management. Professional development efforts will be measured on the performance evaluation form. Failure to attend required sessions may be grounds for discipline up to and including termination.

**6-34. SAFE COMMUNITIES ACT POLICY - IMMIGRATION STATUS**

- A. Pursuant to Doña Ana County Resolution #2014-91, this policy establishes the procedures by which Doña Ana County employees interact with residents of the County to insure those residents live in "Safe Communities", (for our purposes, a Safe Community is defined as a place where residents may go about their daily activities without fear or undue risk of harm or injury). This policy is intended to promote a cohesive, vibrant and participatory community which will contribute to fewer incidents of injury and crime as well as eliminate instances where County employees inappropriately consider the immigration status or citizenship of residents.
- B. This policy is not intended to create any new rights for which the County may be liable in monetary damages to any person who claims injury due to a breach of such rights. This subsection shall not be construed to limit or proscribe any other existing rights or remedies possessed by such person.
- C. All employees of Doña Ana County shall act toward all residents in a manner that is respectful of human rights, promotes the conditions necessary to create Safe Communities and allows all residents to pursue a healthy, productive life free of fear.
- D. Immigration Status; Use of County Funds for Processing Information, Applications for Services or Employment and Cooperation with Enforcement of Civil Provisions of Immigration Laws.
  - 1. Unless required by federal or state law, no Department, agency, commission, officer or employee of Doña Ana County shall use any County funds or resources to assist in the enforcement of federal immigration law or to gather, transmit or disseminate information regarding the immigration status of individuals in Doña Ana County. This prohibition shall include, but is not limited to:
    - a. Requesting, transmitting or disseminating information regarding the immigration status of any individual or conditioning the provision of services or benefits by Doña Ana County upon immigration status, except as required by federal or state law.
    - b. Including on any application, questionnaire or interview form used in relation to benefits, services or opportunities provided by Doña Ana County any question regarding immigration status other than those required by federal or state law. Any such questions existing or being used by the County as of September 9, 2014 not otherwise required by law shall be deleted within sixty days thereafter.
    - c. Assisting or cooperating, in one's official capacity, with any Immigration and Customs Enforcement (ICE) or Customs and Border Protection (CBP) investigation, detention or arrest procedures, public or clandestine, relating to alleged violations of the civil provisions of the federal

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immigration law.

E. Severability

If any part of this directive, or the application thereof, is held to be invalid, the remainder of this directive shall not be affected thereby, and this directive shall otherwise continue in full force and effect. To this end, the provisions of this directive and each of them, are severable.

F. Violations

Violations of the provisions of this policy shall be enforced in accordance with the provisions for misconduct under Doña Ana County's Human Resources Policies and Procedures Section X. Discipline, Grievances and Complaints.

## VII. EMPLOYEE BENEFITS

Section VII describes various benefits available for County employees including, but not limited to, retiree health insurance, worker's compensation insurance, retirement, the employee assistance program, the educational assistance program and other benefits provided to eligible County employees.

### 7-1. WORKER'S COMPENSATION INSURANCE

Employees are insured under the provisions of the New Mexico Worker's Compensation Act, NMSA 1978 §§ 52-4-1 to 52-4-5 for job-related injuries or occupational illnesses.

#### A. Reporting.

1. Employees are required to report all on-the-job accidents, regardless of how minor. The supervisor shall ensure that the employee immediately receives all required medical treatment.
2. Accident" form (completed by the employee) and "Employer's First Report of Injury or Illness" packet (completed by the supervisor), within 24 hours of the incident. In addition, the employee must submit a HIPAA compliance "Authorization for Disclosure of Protected Health Information" form within twenty- four (24) hours of the incident, whenever possible.

#### B. Medical Procedures.

1. Emergencies. In traumatic on-the-job injury/illness situations or when a medical emergency exists, the employee may go to the nearest emergency room or urgent care center. All follow-up medical treatment must be coordinated by a physician designated by the County.
2. Non-emergencies. An employee with a non-emergency, work-related injury/illness shall see a physician designated by the County. That physician will provide medical treatment and/or initiate all referrals for advanced or specialized care, depending upon the nature of the medical problem.
3. Post-Accident Alcohol and Controlled Substance Testing (CDL and non-CDL). See 6-30.
4. Compensation. The decision to approve or deny a claim for benefits is made by the County's insurer of record, not by the County itself. If an employee's claim is approved for benefits, any and all payments relating to the injury/illness will be made directly by the County's insurer.
5. Waiting Period. There is a seven (7) day waiting period before an employee becomes eligible to receive payment for lost wages. Employees will use sick leave, vacation leave, or accumulated compensatory time during this seven

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SECTION VII- EMPLOYEE BENEFITS

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(7) day waiting period. Employees will not be reimbursed for this time regardless of whether their workers compensation claim is approved or denied.

- C. Employees will receive their regular rate of pay for all time missed from work for all approved medical appointments and treatments due to a work-related injury/illness. Employees must schedule their appointments early in the morning or late in the day to avoid interruptions to the workday. Human Resources reserves the right to contact the medical provider to ensure the appointment is scheduled for a time that will have the least business impact and reschedule the appointment if necessary. Coordination.
  - 1. FMLA will run concurrently with Workers' Compensation Leave. The Human Resources Department and Legal/Risk Management Department will coordinate FMLA and Workers' Compensation Administration.
- D. Re-employment of an Injured County Employee.
  - 1. A County employee unable to return to work in his/her former job classification within the twelve (12) week period following the job-related injury/illness may apply for another position for which he qualifies. If qualified, the employee will receive preference in hiring. The employee's treating physician must certify that the employee is fit to carry out the job duties of the new position without significant restrictions or risk of injury.

**7-2. MODIFIED DUTY**

- A. Any County employee who incurs an injury or illness which limits his/her ability to perform one or more of the essential functions of his/her job for a temporary period of time will return to work as soon as possible, consistent with any medical limitations arising from that injury or illness. When an employee is temporarily unable to perform his/her usual and customary duties, the County will endeavor to place the employee in a modified-duty assignment as long as meaningful and necessary work is available. This assignment will be consistent with the employee's skills and abilities and any medically necessary work restrictions.
- B. A modified-duty assignment is an alternate assignment within an employee's current job classification, or an assignment in a different job classification, while recovering from an accident/injury.
- C. All requirements for modified-duty assignments will be evaluated on a case-by-case basis with consideration given to the skills and abilities of the employee, the medical or physical restrictions, and the availability of work. The physician's statement releasing the employee for modified or light duty shall include a description of the injury/illness, prognosis, work restrictions or limitations, the estimated length of time the employee may require modified work and, if applicable, any follow-up treatment or therapy required.

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- D. The County may require periodic medical updates from the physician regarding the employee's ability to perform the duties of the temporary assignment or be released to return to full duty.
- E. The County may require an employee to submit to an examination with a physician chosen by the County at County expense, if the length of time for the temporary assignment appears to be excessive, if the restrictions/limitations cannot be adequately interpreted or clarified with the employee's physician, or if the County has reason to believe the employee's release for duty is inconsistent with job requirements.
- F. Work-Related Injury/Illness Return to Work
  - 1. Prior to returning to work, an employee injured in the course of employment shall obtain a release from the treating physician and shall take that release, including any restrictions to the Legal/Risk Management Department.
  - 2. If the employee is released without restrictions, the Legal/Risk Management Department prepares a Supervisor Return to Work Notification that the employee presents to the supervisor. The employee then returns to his/her work location.
  - 3. If the employee is released with temporary restrictions, the Legal/Risk Management Department notifies the employee's Department Head or designee and provides a report of all restrictions. The Department Head or designee, will determine if the employee can be utilized temporarily within the Department or its sub-units consistent with the limitations. If work is available consistent with the employee's restrictions, a Modified Duty Agreement will be executed by the Legal/Risk Management Department. The employee will report to that Department/sub-unit on modified duty.
  - 4. The Department Head or designee will arrange the work schedule to permit the injured employee to keep physician appointments and any prescribed physical therapy or work-hardening sessions. If, while on temporary assignment, the employee needs to be absent during work hours for medical treatment or a doctor's appointment, the employee must bring a statement from the treating physician/facility indicating whether there are any changes in the employee's condition that would impact the temporary assignment. This statement shall be delivered to the Legal/Risk Management Department prior to returning to the work site. The Legal/Risk Management Department will advise the Department Head or designee of any changes in restrictions and determine if the Modified Duty Agreement can be extended.
  - 5. If no work is available consistent with the employee's restrictions, the employee shall be sent home.
  - 6. The Legal/Risk Management Department shall maintain contact with the injured worker, the treating physician, the Department and Human

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SECTION VII- EMPLOYEE BENEFITS

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Resources in order to provide information on the employee's workers' compensation status and any changes in restrictions.

G. Non-Work Related Injury/Illness Return to Work

1. Any employee who suffers an illness or an accidental injury which does not arise out of or in the course of employment, and who is unable to report to work, will immediately notify his/her supervisor of that fact. If the employee is absent from work for three or more work days, the supervisor of that employee shall notify the Human Resources Department. The Human Resource Department will implement the Family and Medical Leave Act (FMLA) procedures if applicable.
2. Prior to returning to work, an employee who has been absent from work three or more work days shall visit his/her health-care provider and obtain a written excuse for the absence and a fitness-for-duty or return to work statement as to the employee's ability to return work including any restrictions which may exist. The medical statement is to be presented to the Human Resources Department.
3. If the employee is released without restrictions, the Human Resources Department prepares a Supervisor Return to Work Notification that the employee presents to the supervisor. The employee returns immediately to his/her original position.
4. If there are temporary restrictions in the release, the Human Resources Department shall contact the employee's Department Head or designee to determine if the employee can be utilized temporarily in the Department consistent with the limitations. If work is available consistent with the employee's restrictions, a Modified Duty Agreement will be executed in the Human Resources Department. The employee will report to that Department/sub-unit on modified duty.
5. If there is such work, the employee shall report to that workstation. If there is no such work available, the Human Resources Department, with the approval of the originating Department Head or designee, will contact other Department Heads/designees to determine if there is any temporary work available within the County that is consistent with the medical limitations of the employee. If such work is available, the employee shall be sent to that workstation for assignment.
6. If, while on modified duty, the employee needs to be absent during work hours for medical treatment or a doctor's appointment, the employee must bring a statement from the treating physician/facility indicating whether there are any changes in the employee's condition that would impact the modified-duty assignment. This statement shall be delivered to the Human Resources Department prior to returning to the work site. The Human Resources Department will advise the Department Head/designee of any changes in restrictions and determine if a Modified Duty Agreement can be extended.

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7. If no work is available consistent with the employee's restrictions, the employee shall be sent home and will utilize accrued vacation, sick, compensatory time, personal leave or will be unpaid for missed work time subject to FLSA regulations. The Human Resources Department will assist the employee in procuring any County benefits information that would assist the employee in considering options and/or decision-making.
  
- H. Pregnancy: Whenever an employee becomes pregnant, she will work in her current position in accordance with her physician's recommendations, as long as she is able to perform the essential functions of the job. If her physician submits information indicating that she can no longer perform her current job duties, she will be eligible for modified-duty assignment.
  
- I. If an employee believes his/her restrictions may rise to the level of a disability as defined by the ADA, the employee is responsible for following the Reasonable Accommodation Policy and Procedures.
  
- J. In no event will a modified duty assignment last for more than ninety (90) calendar days in a 12-month rolling calendar year. This applies to both work-related and non-work related conditions. The 90 days may be continuous or intermittent. If the employee is not able to return to full duty within 90 calendar days, an evaluation will be conducted by the Human Resources Department to identify options available to the employee, which may include consideration of medical retirement or termination. The County reserves the right, for good reason, to discontinue a modified-duty assignment at any time. Good reason shall include, but not be limited to, temporary work no longer being available, operational requirements prohibiting the continuance of temporary assignment, or the employee's inability to satisfactorily perform the duties of the modified duty assignment.

**7-3. GROUP INSURANCE COVERAGE**

- A. The County may offer full-time and part-time employees group insurance for health, life, dental, vision and voluntary plans administered by a third party. Employees budgeted to work 30 hours or more per workweek are eligible to participate in the group insurance program. Employees are not eligible if hired in a temporary position or in a grant-funded position that has no funding for benefits unless otherwise required by law.
  
- B. The terms of the policies will determine periods of enrollment/disenrollment, and coverage of family members or other persons.
  
- C. The County may pay a portion of the group health-insurance premiums. It is the employee's responsibility to complete and return to the Human Resources Department all necessary forms to initiate insurance coverage within 31 calendar days of date of hire.
  
- D. The employee or members of the employee's family shall notify the Human Resources Department in writing within 31 calendar days of any qualifying and

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disqualifying events such as divorce, legal separation or when a child loses dependent status. The employee will notify, in writing, the Human Resources Department of other changes in status or address.

- E. The employer portion of employee benefits contributions will only be paid if the employee is paid for at least 50% of the employee's normal hours per pay period (as defined in the County payroll data system) including his or her own vacation and/or sick leave hours taken but not including any hours withdrawn from the sick leave bank or other sources such as worker's compensation or disability payments.

**7-4. RETIREE HEALTH INSURANCE**

- A. Employees who retire from the County and immediately begin collecting PERA retirement may elect to continue health and life insurance plans. Other plans (such as dental or vision) may also be elected if offered by the County.
- B. The County will make contributions towards the health-care plan for retirees with a minimum of ten (10) years PERA service credit from employment with the County, based on the following formula:

Years of County Service	Percentage County	Maximum Monthly County Contribution
10-19Years	45%	\$350
20-24 Years	55%	\$350
25+	65%	\$350

- C. For retirees who qualify for PERA retirement with twenty (20) years or more as a commissioned law enforcement officer or firefighter with a minimum of ten years PERA service credit from employment with the County, the County will contribute 65% to a maximum of \$350 per month toward the health care plan.
- D. Retirees who terminate their participation in any of the Insurance Plans either through an enrollment cancellation form or nonpayment of premiums on or before the first of each month are thereafter ineligible to re-enroll in the plan. Only the dependents enrolled at the time of retirement will be covered on any of the plans; dependents may not be added at a later point in time.

**7-5. COBRA**

- A. An employee who separates from County employment for any reason other than for gross misconduct may elect a continuation of coverage in the County's group health/dental/vision plans, along with eligible family members. The employee will be responsible for the payment of the full premium plus an administrative fee for continued coverage.

**7-6. DOMESTIC PARTNER BENEFITS**

- A. All County employees who have domestic partners as defined herein, shall be provided group insurance coverage benefits in the same manner provided to legal spouses. For Sick Leave, immediate family is defined in Section XII - Definitions. Policies on Bereavement Leave and Nepotism contain specific definitions of immediate family. All other Federal, State or local mandated policies will follow the definitions for each statute.
- B. The County defines domestic partners as two (2) individuals who are in a mutually exclusive, committed relationship for the last twelve (12) months, who share a primary residence, who are jointly responsible for the common welfare of each other, who share financial obligations and have executed an affidavit of domestic partnership with the Human Resources Department and granted domestic partnership status. There must be an exclusive mutual commitment similar to that of marriage in which the partners agree to be financially responsible for each other's welfare and share financial obligations.
- C. To be recognized as domestic partners by the County, both individuals must meet all of the following criteria, sign an Affidavit of Domestic Partnership form, and submit necessary documentation to the Human Resources Department.
  - 1. Both domestic partners must be unmarried.
  - 2. Domestic partners must have been in a mutually exclusive relationship for the last twelve (12) months, intending to do so indefinitely, and must share the same primary residence.
  - 3. Domestic partners must meet the age requirements for marriage in New Mexico and be mentally competent to consent to contract.
  - 4. Domestic partners must not be related by blood to the degree prohibited in legal marriage in the State of New Mexico.
  - 5. Domestic partners must be jointly responsible for the common welfare of each other and share financial obligations. An Affidavit of Domestic Partnership form signed to that effect and proof of three (3) of the following must be submitted to the Human Resources Department:
    - a. Joint mortgage or lease
    - b. Joint ownership of a motor vehicle
    - c. Joint bank account
    - d. Joint credit account

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- e. Domestic partner named as beneficiary of the other's retirement benefits.
  - f. Domestic partner named as beneficiary of the other's life insurance.
  - g. Domestic partner named as primary beneficiary in the other's will.
  - h. Domestic partner assigned durable property or health care power of attorney.
6. Providing false information may result in disciplinary action up to and including termination, and reimbursement of costs involved in providing benefit coverage and expenses paid by insurer for which the individual who was not eligible for the coverage.
- D. Termination of Domestic Partnership. Individuals granted domestic-partnership status must report any change in status that terminates the relationship to the Human Resources Department, within thirty-one (31) calendar days, by completing a Termination of Domestic Partnership form. Upon completion of a Termination of Domestic Partnership form, the employee would not be eligible to re-enroll a domestic partner until the plan's next open enrollment.
- E. The child of a domestic partnership qualifies as an eligible dependent under the group insurance plans:
- 1. If either of the domestic partners is the biological parent of the child;
  - 2. If either or both partners are adoptive parents of the child, or
  - 3. If the child has been placed in the domestic partner's household as part of an adoptive placement.
- F. Domestic partners and their dependents, as defined within this section, shall be granted all and the same services and benefits as those provided to married spouses and their dependent(s), except where expressly prohibited by law.
- G. The value of insurance benefits provided to the domestic partner is considered taxable income to the employee by the Internal Revenue Service and is subject to Social Security and Federal and State income tax withholding.

**7-7. PUBLIC EMPLOYEES RETIREMENT ASSOCIATION (PERA)**

- A. PERA is designed to provide the employee with a retirement income. The County will adhere to all regulations for participation

**7-8. ALTERNATIVE RETIREMENT PLAN FOR EDUCATIONAL RETIREMENT BOARD (ERB) RETIREES**

- A. ERB retirees are excluded from participation in the Public Employee Retirement Association (PERA) plan. For an ERB retiree elected or hired into a classified

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position not subject to a collective-bargaining I, a 401A plan is offered. If the employee chooses to participate, the County will contribute 9.15% of salary and the employee will contribute a minimum of 3.29% of salary to the plan. When the ERB retiree separates from employment, for whatever reason, contributions cease from the County and the ERB retiree receives all contributions that he has contributed and that portion of the County contribution according to the following vesting schedule. The employee is 20% vested in the employer's share at the first employment anniversary date and 20% vested on each subsequent anniversary date until the fifth anniversary when the ERB retiree is 100% vested.

**7-9. DEFERRED COMPENSATION RETIREMENT PLAN**

- A. The Deferred Compensation Plan provided for in IRS Code § 457 is a tax-deferred retirement plan offered to public employees to help build additional retirement income. The Plan allows a County employee to defer a portion of his/her current earnings into an account for retirement. Temporary employees are not eligible.
- B. Enrollment may be made at any time during the year for earnings beginning with the first day of the following month.

**7-10. EMPLOYEE ASSISTANCE PROGRAM**

- A. The County will provide professional and confidential assistance to any employee and anyone in the household who may wish to consult with a professional counselor regarding a work performance, personal or family problem. The services provided are confidential and are available at no cost to the individual.
- B. Counseling Sessions. EAP counseling services are short-term and limited to a maximum number of visits as per the contract. If more sessions are required, the person will be referred to an appropriate professional with consideration given to the individual's insurance plan. Also, the EAP routinely offers referrals to low-cost or no- cost facilities or services in the area.
- C. Confidentiality. All information given to EAP will remain confidential and will not be shared with any person or agency outside the EAP without the client's written permission. The only exceptions to confidentiality are those situations required by law to be reported under the EAP provider's professional duty; all clients are given a full explanation of these exceptions at the time of intake.

No one without a need to know shall be apprised of EAP utilization. When Human Resources or a supervisor is involved in assisting an employee utilize EAP service, strictest confidentiality will be maintained.

- D. Voluntary Program. EAP is a voluntary program. The County cannot require employees to seek assistance except when there is a violation of the Workplace Violence Policy or the Drug Free Workplace Policy.

E. Referrals.

1. Informal.

The supervisor responds to an employee who has volunteered information about a personal problem, but his/her work is not affected. The supervisor informs the employee that EAP services are available and provide the phone number, email, or web address of the EAP provider.

2. Formal.

a. Performance Issues.

When a performance or behavioral issue arises in the workplace, the supervisor should focus on performance/conduct standards, but may use the opportunity to inform the employee about the availability of EAP services.

b. The supervisor makes referrals in the context of work-related behavior. In a private meeting a supervisor can point out an employee's declining job performance and suggest that, if there are any personal problems contributing to the declining performance, the employee may want to contact the EAP. The supervisor should maintain a neutral approach with the employee and not attempt to counsel or diagnose.

c. The supervisor provides the employee the contact information for the EAP or offers to assist the employee in arranging an appointment. If assistance in arranging the appointment is requested, the supervisor is encouraged to call in the presence of the employee so the employee is aware of the information being conveyed.

d. EAP contact with supervisors/HR.

EAP will contact the referring supervisor/HR Administrator only when a client consents and signs the release form. The release form will specify the nature of the information that can be disclosed. An EAP client may choose not to have any information shared with the referring supervisor/HR Administrator.

e. Repeated referrals.

Supervisors may need to make more than one referral if performance is not improving.

3. Mandatory Referrals.

a. Mandatory referrals are to be utilized by the County only for violation of the Workplace Violence Policy or the Drug Free Workplace Policy.

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- b. The supervisor contacts the Human Resources Director to request the mandatory referral.
- c. The HR Director/HR Administrator contacts the EAP to arrange for a mandatory referral.
- d. Case management services are provided concurrently for each mandatory referral and consist of feedback and follow-up from the EAP.
- e. Human Resources will receive confirmation from the EAP provider whether or not the referred employee complies with required consultations. Feedback from the EAP to HR will only include that treatment is being recommended, the appointments, employee return to work information, and whether the employee is compliant with the recommended treatment.

F. Disciplinary Action.

- 1. If an employee is utilizing the EAP, the supervisor will continue to monitor and document job performance, taking the necessary action to assist the employee in correcting deficiencies. The supervisor should explain clearly what will happen if work performance/conduct does not improve.
- 2. Referral to EAP is not a disciplinary action and should not be viewed as a substitute for progressive discipline.
- 3. The supervisor should not reference EAP referrals in an employee's performance evaluation nor should assessment of the employee's job performance be tied to the employee's decision to utilize EAP.

G. Documentation of EAP Referral.

- 1. Supervisors should document their attempts to refer the employee. The supervisor should maintain an objective record of performance problems with dates and times, the date of the EAP referral, what was said during the performance evaluation meeting and the employee's response
- 2. Supervisors should not keep any medical or other specific treatment information

No medical or specific diagnosis or case specific information will be kept in the Departmental files. The Mandatory Referral forms are kept only in the HR Department.

H. Leave Usage.

- 1. Self-Referral.

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SECTION VII- EMPLOYEE BENEFITS

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The employee may request compensatory, vacation, or sick leave for appointments during work hours. If there is no leave balance available, then the employee is unpaid subject to FLSA regulations.

2. Community Resources.

When EAP refers the employee to community resources, the employee uses sick leave for health-related issues covered under insurance plans and vacation leave for all other concerns, i.e., financial, career, and marriage counseling.

3. Management referrals.

The employee utilizes work time.

4. Mandatory referrals.

The employee will be compensated at the regular rate of pay (or overtime if applicable) for EAP time as reported by the EAP provider.

5. Additional Services.

The EAP Contractor may offer additional services. Information is available on El Sol or in the Human Resources Department.

**7-11. EDUCATIONAL ASSISTANCE PROGRAM**

- A. Subject to the availability of budgeted funds, the County may provide educational assistance for tuition and/or lab fees for off-hour, career-related education. The following qualifications must be met:
1. The employee must be in a full-time, classified, non-probationary status with work performance that has been rated by the immediate supervisor as satisfactory or better. Grant employees will be eligible only if funding is provided for educational assistance under the terms of the grant.
  2. The course must be taken from an institution of higher learning and be on the list of County-approved institutions. This list includes the University of New Mexico, New Mexico State University, University of Texas, Troy State University and Doña Ana Community College. Other educational institutions may be approved at the discretion of the County Manager.
  3. The course must be job-related or be required for a degree that is job-related.
  4. Written requests for tuition assistance must be made before class registration and are subject to the recommendation of the employee's Department Head, and the approval of the Human Resources Director.

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SECTION VII- EMPLOYEE BENEFITS

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5. The County will reimburse for approved course tuition and lab fees when the employee receives a grade of B or higher on a zero to 4.0 scale.
  6. A maximum of one course per Fall and Spring semester per employee.
  7. The employee will not receive educational assistance for any course for which the employee has received a grant/scholarship which covers the costs for the same course.
- B. After an employee completes the course, the paid course receipts and proof of grade received should be presented to the Human Resources Department for approval. Once the approval is received, the receipts will be forwarded to the Finance Department for payment.
1. If an employee can prove that the employee has a financial hardship that would prevent him from paying the tuition in advance, the employee may request approval from the County Manager for the County to pay the tuition prior to commencement of the class.
- C. An employee who voluntarily resigns or is dismissed shall reimburse the County for any education/training assistance provided within the immediate preceding twelve (12) months from the date of separation from County employment. Before distribution and acceptance of these funds, the employee must authorize the offset against his/her final paycheck, in the event repayment may be necessary, to the extent permitted by law.

**7-12. CERTIFICATION/LICENSE EXAMINATION EXPENSES**

- A. The County will pay expenses incurred in obtaining specialized certification required for the employee's position the first time an employee applies for such testing. Expenses include registration, lodging, travel and testing on County time.
- B. The County will pay only for expenses incurred relative to the first examination of any specific certification which is applicable to the employee's position within the County's organizational structure. If the employee fails the tests on his/her first attempt, all expenses related to subsequent testing to receive the certification will be the sole responsibility of the employee.
- C. When the County pays expenses incurred in obtaining specialized job-related certification, the employee will incur an obligation to continue employment with the County for one (1) year from the date of certification completion. If an obligated employee voluntarily resigns from County employment within a year after the end date of the certification completion, the employee will reimburse the County a prorated portion of the cost of the certification expenses.

**7-13. MEDICAL PRIVACY**

- A. From time to time the County may require and obtain employee medical information as it relates to that employee's ability to perform the essential functions of his/her position. This information may be obtained as a result of a Workers' Compensation injury, Family and Medical Leave qualifying event, request for reasonable accommodation under the Americans with Disabilities Act, or Fitness for Duty Evaluation.
  
- B. It is the policy of the County to maintain strict confidentiality of all medical information obtained in accordance with all state and federal regulations and to use medical information obtained for the purposes stated in the Release of Information. Managers and supervisors will be informed of any current restrictions; however, medical information will only be released to those with a need to know.

**7-14. LIFE INSURANCE FOR UNDERCOVER AGENT**

- A. Life Insurance in the amount of \$250,000 is provided for undercover agents. The total insurance premium is paid by Doña Ana County as required in NMSA 1978, Chapter 10, Article 7-21.

## VIII. LEAVE

Section VIII describes the various leave and holiday benefits provided by the County. It also provides employees with detailed procedures for employees to document requests for and usage of leave.

### 8-1. LEAVE ACCRUAL AND USAGE

- A. Authorized leave. Eligible employees will accrue leave time as outlined in this section. Elected Officials, their appointees, and temporary employees will not accrue vacation, sick or personal-holiday leave. Grant employees may or may not accrue vacation, sick or personal-holiday leave depending on the terms of the grant agreements that fund their positions.
1. Any requests for authorized leave, with or without pay, shall be submitted to an employee's immediate supervisor in advance whenever possible. Each request for leave shall describe the duration and kind of leave to be recorded for payroll.
  2. Requests for leave will be subject to the employee's accrued leave balance; the workload requirements in the Department as determined by the Department Head; the timing of the employee's requested leave in conjunction with other approved absences of employees within the Department; and the approval by the Department Head.
  3. County management reserves the right to approve or cancel leave at any time based on the operational needs of the County, and must document the reason for the disapproval or cancellation of leave in the approved timekeeping system.
  4. The designated timekeeper in each Department shall be responsible for the maintenance and transmittal of leave records to the Finance Department.
- B. Unauthorized leave. Leave without authorization may subject an employee to disciplinary action and loss of pay. Unauthorized leave for two (2) consecutive work days may be considered job abandonment and voluntary resignation. Procedures in Section 10-5. Pre-Determination Process shall be followed if the employee has completed his/her probationary period.

### 8-2. LEAVE DEDUCTIONS FOR EXEMPT EMPLOYEES

- A. Exempt employees shall receive deductions from their leave balance for any vacation, sick or personal leave taken, whether or not the leave is for less than one full work day.
- B. Exempt employees shall adhere to the same procedures followed by non-exempt employees governing requests for and documentation of all leave.

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**8-3. VACATION LEAVE**

A. Vacation leave is provided to eligible employees for the purpose of rest and relaxation from their duties and for attending to personal business. Grant employees may or may not accrue vacation leave, depending on the terms of the grant agreement or funding source.

1. All full-time probationary and classified employees, and grant employees if the grant allows, will accrue vacation leave during periods of work time and paid leave time subject to "6" below, in accordance with the following terms and schedule:

Total Years of County Service	Accrual Rate Per Pay Period	Maximum Hours Per Year
0<3	3.08	80
3<5	4.08	106
5<7	4.62	120
7 < 10	5.08	132
10 or more	6.15	160

2. An employee may not carry over more than 240 vacation hours beyond the pay period that includes the last day in the fiscal year (June 30). All time in excess of 240 hours will be lost unless an employee has been denied requested vacation time in which case he will be given an opportunity to reschedule and utilize his/her vacation accruals above 240 hours. The Department Head shall submit a list of those employees who have been denied requested vacation time prior to June 25th each year and request approval of the County Manager to carry over more than 240 hours into the new fiscal year. If approved, the County Manager will forward the approval list to the Human Resources Department by July 1.
3. Classified employees shall be compensated in cash at their regular rate of pay for any accumulated but not used vacation leave of up to 240 hours when they are separated from the County.
4. An employee shall not accrue additional vacation leave for time worked in excess of forty (40) hours per week.
5. An employee who is absent from work and who has exhausted his/her vacation leave balance will be unpaid subject to FLSA regulations.
6. Leave will accrue only if the employee is paid for at least 50% of the employee's normal hours per pay period (as defined in the County payroll data system) including his or her own vacation and/or sick leave hours taken but not including any sick leave bank withdrawn hours or other sources such as worker's compensation or disability payments.

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7. During periods of unpaid leave when the employee's earnings are not sufficient to cover the employee's group insurance premiums, the employee will be responsible for the payment of both the employee and employer contributions to maintain coverage unless the unpaid leave time is certified as FMLA covered time.
8. Part-time employees shall accrue vacation leave on a pro-rated basis, according to the number of hours budgeted to work.
9. Leave shall not be granted in advance of accrual. Vacation hours accrued in one pay period cannot be used in the same pay period.
10. Vacation leave shall be requested and approved at least forty-eight (48) hours in advance whenever possible. Approval will be subject to advance notification, and the needs of the Department.
11. Department Heads shall submit their requests for vacation leave to the County Manager or his/her designee.
12. Vacation leave shall be charged in increments consistent with the time keeping system.
13. In the event of the death of an employee, compensation for earned vacation leave shall be payable to the employee's estate.

### **8-4. SICK LEAVE**

- A. Sick leave may be requested, and must be authorized by an employee's supervisor, if an employee is unable to perform normal job duties. Sick leave may be authorized due to personal illness or injury; to care for an immediate family member who is ill or injured and requires the personal attention of the employee; or to obtain preventive medical, vision, dental or mental health care for the employee or members of the employee's immediate family.
  1. All requests for compensation for sick leave are subject to supervisory approval.
  2. Eligible employees shall accrue sick leave at the rate of four (4) hours per pay period subject to "3" below. Eligible employees in part-time positions with a schedule of twenty (20) hours per week shall accrue sick leave at the rate of two (2) hours per pay period. Eligible employees working thirty (30) hours per week shall accrue sick leave at the rate of three (3) hours per pay period. There shall be no limit to the amount of sick leave that can be accrued during an employee's service with the County.
  3. Leave will accrue only if the employee is paid for at least 50% of the employee's normal hours per pay period (as defined in the County payroll data system) including his or her own vacation and/or sick leave hours taken

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but not including any sick leave bank withdrawn hours or other sources such as worker's compensation or disability payments.

4. Leave shall not be granted in advance of accrual. Sick hours accrued in one pay period cannot be used in the same pay period.
5. Requests for sick leave shall be made by the employee to the supervisor at the beginning of the shift or work day, or as soon as practicable with a sudden onset of illness. For an ongoing illness or incapacitation, an employee shall call his/her supervisor as instructed.
6. An employee's supervisor may require a physician's certification be provided to the Human Resources Department on the existence of a medical condition necessitating the employee's absence if abuse of leave is reasonably suspected by the supervisor or Department Head or for excessive use of sick leave.
7. Abuse of sick leave may result in a supervisor withholding approval for leave, and is cause for disciplinary action up to and including termination of employment. Abuse of sick leave may include but is not limited to the following:
  - a. An employee who continually exhausts his/her accrued sick leave balance without a certification under the FMLA;
  - b. An employee who develops a pattern of being absent from work without pre- approved sick leave for days immediately before or after scheduled days off or on the same day of the work week;
  - c. An employee who is absent from work and fails to notify his/her supervisor of an illness or injury that prevents him/her from being at work;
  - d. An employee who falsely indicates he will be at his/her place of residence, a medical facility or other location identified by the employee to the supervisor.
  - e. Any leave without a supervisor's authorization.
8. In order to promote a safe and healthy work environment and protect employees and citizens, a supervisor may direct an employee to use sick leave or other accrued leave when an employee is obviously ill. Signs of illness can include fever, cough, sore throat, runny or stuffy nose, body aches, headache, chills, fatigue and sometimes vomiting and diarrhea. The County will consider guidance from the U.S. Department of Health and Human Services (HHS) Centers for Disease Control and Prevention (CDC), with input from the U.S. Department of Homeland Security (DHS), and the New Mexico Department of Health (NM DOH) for measures employers may take to prepare for or put in place during health alerts or emergencies. This

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may include directions from Elected Officials such as the State Governor, City Mayor or County Manager which may also come via the State or Local Office of Emergency Management (OEM) regarding situations when employees should stay home if they are sick or to limit the likelihood of exposure to a specific health threat.

### 8-5. SICK LEAVE BANK

- A. The Sick Leave Bank (hereafter referred to as "the Bank") provides a voluntary shared bank (a shared pool of leave) to allow continued pay to members of the Bank for qualifying personal illness. Eligible employees donate sick leave to become members.
- B. Eligibility
  - 1. Employees must:
    - a. Have 1 year of service with 1,250 hours worked,
    - b. Be benefits eligible, and
    - c. Contribute the required amount of sick and/or vacation leave.
    - d. Grant-funded employees, Elected Officials and appointees are not eligible.
  - 2. Members are required to have a minimum number of sick leave hours remaining after the contribution. Members will contribute additional hours each year during the open enrollment period until the required total number of hours has been contributed.
- C. Sick leave will be deducted from the employee's accrued sick leave and will no longer be available to the employee.
- D. A minimum number of hours must be in the bank to sustain it. If there are not enough hours, the members may be asked for additional contributions.
- E. Withdrawals
  - 1. Withdrawals are only for serious health conditions of the employee. Work-related injuries or illnesses are not eligible. All other leave balances must be depleted before an employee's withdrawal of leave from the bank would begin.
  - 2. The Bank does not provide for the first seven (7) calendar days of the time not at work; this amount of time is the employee's responsibility and is covered by the employee's sick, vacation, personal day, compensatory time, or unpaid leave.

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3. To be a "qualifying illness," the condition will be certified using the Family and Medical Leave Act (FMLA) form and the FMLA definition of a serious health condition.
  4. There is a minimum and maximum withdrawal allowed.
  5. Vacation and sick leave will continue to accrue while utilizing withdrawn leave subject to Sections 8-3. A.6 and 8-4. A.3.
- F. Program requirements and application procedures are maintained by the Human Resources Department.

**8-6. FAMILY MEDICAL LEAVE ACT**

- A. The County will provide up to combined total of twelve (12) weeks of job-protected leave during a rolling calendar year for family and medical reasons consistent with the Family and Medical Leave Act (FMLA) and relevant State law. A combined total of twenty-six (26) weeks of FMLA is provided for caregiver leave as defined in Section 8-7. Accordingly, when the County determines that leave is for an FMLA qualifying reason, the qualifying leave is FMLA protected and counts toward the employee's FMLA entitlement leave.
- B. The County will use a rolling calendar year measured back from the date an employee's FMLA leave begins except for Caregiver Leave.
- C. Eligibility.
1. The employee must have worked for Doña County for at least one year; and
  2. The employee must have worked at least 1,250 hours during the twelve (12) months immediately preceding the request. Time worked does not include vacation, holidays, sick pay, unpaid leave, or any period of layoff.
  3. Any period of employment preceding a break in service of seven (7) years or more is not counted toward the one (1) year employment requirements.
  4. Elected Officials and appointees are not eligible for FMLA.
- D. Qualifying Leave:

The employee may take family/medical leave for any of the following reasons:

1. the birth of a son or daughter and in order to care for such son or daughter;
2. the placement of a son or daughter with the employee for adoption or foster care and in order to care for the newly-placed son or daughter;

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3. to care for a spouse, son, daughter (even if the employee has no biological or legal relationship with the child but intends to assume the responsibilities of a parent in *loco parentis*), or parent ("covered relation") with a serious health condition;
4. The employee's own serious health condition that renders the employee unable to perform an essential function of the position.
5. Employees who choose to use FMLA leave in connection with the birth or placement for adoption or foster care of a child will be required to use their FMLA leave on a continuous, rather than on an intermittent, basis and must use such leave within 12-months of the birth or placement of the child.

### E. Married employees.

1. In cases where a married couple is employed by the County, the two spouses together may take a combined total of twelve (12) weeks' leave during any 12-month rolling calendar year for reasons 1 and 2 in section D immediately above, or to care for the employee's parent or child's serious health condition.

### F. Serious Health Condition includes:

1. Inpatient care; or
2. Conditions resulting in three (3) calendar days of incapacitation; or
3. Chronic health conditions; or
4. Treatment to prevent incapacitation or restorative surgery; or
5. Pregnancy-related conditions.
6. Continuing treatment by a health care provider.

### G. Types of FMLA Leave.

1. One block of 12-weeks due to a single qualifying event.
2. Intermittent Leave taken in separate blocks of time due to a single qualifying reason. Intermittent leave time will be tracked in the smallest increments of time used for tracking other types of leave (e.g. sick and vacation leave).
3. Reduced Leave Schedule per workweek or workday.
4. Leave may only be taken intermittently or on a reduced leave schedule when medically necessary for planned and/or unanticipated medical treatment of a related serious health condition by or under the supervision of a health care

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provider, for recovery from treatment or recovery from a serious health condition, or to provide care or psychological comfort to an immediate family member with a serious health condition.

5. Employees on intermittent leave must continue to comply with the call-in procedures of Section 6-2.

### H. Medical Certification Requirement.

1. When FMLA qualifying leave is foreseeable and thirty (30) calendar days' notice has been provided, an employee must provide a medical certification before leave begins.
2. When FMLA qualifying leave is not foreseeable, an employee must provide notice to the employer of the need for leave as soon as practicable (1 or 2 work days is expected except in extraordinary circumstances). The employee must then provide medical certification within fifteen (15) calendar days.
3. Failure to provide requested medical certification in a timely manner may result in denial of leave until it is provided. The County, at its expense, may require an examination by a second health care provider designated by the County, if it reasonably doubts the medical certification you initially provide. If the second health care provider's opinion conflicts with the original medical certification, the County, at its expense, may require a third, mutually agreeable, health care provider to conduct an examination and provide a final and binding opinion.
4. The County may require subsequent medical recertification. Failure to provide requested certification within fifteen (15) calendar days, except in extraordinary circumstances, may result in delay of further leave until it is provided.

### I. Substitution of Paid Leave for FMLA Leave.

1. The County requires an employee to substitute paid leave, unless stated otherwise in this policy, for FMLA leave. Therefore, FMLA leave runs concurrently with any accrued paid leave such as vacation leave, sick leave, compensatory time and with workers' compensation dependent upon the qualifying event. Compensatory time shall be used prior to using vacation leave if available.
2. Employees may, but are not required, to use any accrued sick leave when the FMLA qualifying event is for the serious health condition of a family member as defined in the section XII. Employees are required to use vacation leave and compensatory time if sick leave is exhausted or if the employee has chosen not to use sick leave. Compensatory time shall be used prior to using vacation leave if available.

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3. An Employee is required to use sick leave when the FMLA qualifying event is for his/her own serious health condition. If sick leave is exhausted, the employee uses vacation leave and compensatory time.
  4. An employee will use vacation or compensatory time for qualifying exigency.
  5. For service member caregiver leave, an employee may use sick leave if for an individual for whom sick leave is allowed in Section XII. Otherwise, vacation and compensatory time are used.
  6. For adoption and placement or paternity bonding, sick leave, vacation leave and compensatory time are used.
  7. For childbirth and maternity bonding by an employee, the employee is required to use sick leave and then vacation or compensatory time.
  8. Once accrued paid leave is exhausted, the employee, whether exempt or non-exempt, shall be placed on unpaid leave and shall pay the employee portion of any insurance benefits if benefit continuation is desired. If the employee does not continue insurance benefits during an FMLA-qualifying leave-without-pay, the employee may reinstate terminated benefits on the first day of the return to work without penalty.
- J. Employees are not permitted to work in an outside job during FMLA leaves of absence unless a specific request for outside employment during the FMLA period is made in advance of the leave and approved by the Department Head and Human Resources Director.
- K. FMLA Designation.
1. Employee Requests. Employees must request FMLA leave 30 calendar days in advance or as soon as practicable by completing the FMLA Leave Request Form and submitting it to his/her immediate supervisor or directly to the Human Resources Department. If submitted to the supervisor, the form shall be routed to the Human Resources Office. If the employee is unable to complete the form, due to circumstances relating to a serious health condition, the form may be initiated by the supervisor or the Human Resources Department.
  2. Employer Initiation. A supervisor will notify Human Resources when an employee has been absent three (3) consecutive calendar days, at which time the Human Resources Department will make a preliminary designation of leave as FMLA qualifying.
- L. Transfer of Employee to an Alternative Position.
1. If an employee needs planned intermittent leave or leave on a reduced leave schedule, Doña Ana County may require the employee to transfer

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temporarily, to an available alternative position for which the employee is qualified and which better accommodates recurring period of leave than does the employee's regular position.

### M. Job Benefits and Protection.

1. During FMLA leave, the employee and dependent health, dental and vision insurance is maintained on the same basis as coverage would have been provided if the employee had been continuously employed during the entire leave period.
2. An eligible employee returning from a FMLA qualifying leave is entitled to be restored to the same position and shift that the employee held when the FMLA qualifying leave began, or to an equivalent position and shift with equivalent benefits, pay and other terms and conditions of employment.
3. Provided the employee returns to work immediately following his/her FMLA qualifying leave, benefits will be resumed upon the employee's return to work at the same level as were provided when leave began. Any new or additional coverage or changes in health benefits will be made available to an employee while on FMLA qualifying leave.
4. If the employee does not return to work from FMLA leave for a minimum of thirty (30) calendar days following any unpaid period of FMLA, the employee is responsible for reimbursing the County for all benefit costs borne by the County during the FMLA leave period unless the reason the employee does not return is due to:
  - a. The continuation, recurrence, or onset of a serious health condition of the employee or the employee's family member which would otherwise entitle the employee to leave under FMLA;
  - b. Circumstances beyond the employee's control; or
  - c. An employee who transfers directly from taking FMLA leave to retirement, or who retires during the first thirty (30) calendar days after the employee returns to work is deemed to have returned to work.

### N. Return to Work.

1. Employees returning from FMLA leave for a qualifying event related to personal illness or injury must provide a medical release to return to work to the Human Resources Department before returning to work.

### O. Appeal Process.

1. If an employee believes that his/her rights under the FMLA have been violated, the employee may:

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- a. File a written complaint with the Human Resources Department; or
- b. File or have another person file on his/her behalf a complaint with the Secretary of Labor. The complaint may be filed in person, by mail or by telephone with the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. The complaint may be filed at any local office of the Wage and Hour Division; the address may be found in the telephone Directory.
- c. File a private lawsuit pursuant to Section 107 of the FMLA.

### 8-7. FAMILY MILITARY LEAVE

#### A. Exigency Leave

1. Employees eligible for FMLA leave are entitled to leave for a covered family member in the regular armed services, National Guard, and military reserve and can qualify for military exigency leave if the military member is deployed to a foreign country in support of a contingency operation under the following circumstances:
  - a. Up to twelve (12) weeks of unpaid leave in any twelve (12) month period for a qualifying exigency arising out of a covered employee's spouse, son, daughter, or parent's active duty or notification of an impending call or order to active duty in the Armed Forces to a foreign country; or
2. Qualifying exigency. A "qualifying exigency" means:
  - a. For a short-notice deployment, meaning a call or order that's given no more than seven (7) calendar days before deployment, the employee can take up to seven (7) calendar days beginning on the date of notification;
  - b. For military events and related activities, such as official military-sponsored ceremonies and family support and assistance programs sponsored by the military and related to the family member's call to duty;
  - c. For urgent child-care and school activities;
  - d. For financial and legal tasks or legal arrangements to deal with the family member's active duty;
  - e. For counseling for the employee or his minor child that isn't already covered by FMLA;
  - f. To spend time with the covered service member on rest and recuperation breaks during deployment for up to fifteen calendar days per rest and recuperation break;

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- g. To attend post-deployment activities for up to ninety (90) days following the termination of the military member's covered active duty, including attending arrival ceremonies, reintegration briefings and events, and other official ceremonies or programs sponsored by the military, and to address issues arising from the death of a military member including attending funeral services for the military member;
  - h. For other purposes arising out of the call to duty, as agreed on by the employee and the County; and
  - i. To address certain activities related to the care of the military member's parent who is incapable of self-care. These include arranging for alternative parental care; providing care on a non-routine, urgent, immediate need basis; admitting or transferring the parent to a new care facility; and attending certain meetings at a care facility or with hospice staff.
3. Qualifying exigency certification requirements. The following documents may be required when requesting leave for a qualifying exigency:
- a. Copy of military member's active duty orders (or other official documentation issued by the military) which indicates the military member is on covered active duty or call to covered active duty status. The County may contact the Department of Defense to request verification that the military member is on covered active duty.
  - b. Statement or description of the appropriate facts regarding the qualifying exigency. May include information on the type of leave needed and any available written documentation (for example, copy of meeting announcement, appointment confirmation with counselor or school official, copy of bill for legal or financial arrangements, or R & R orders).
  - c. Approximate date on which the leave began (or will begin); and how long and/or how often you will need leave.
  - d. Contact information for any third party you are meeting. For example, the name, title, organization, address, telephone number, fax number, and e-mail address of the third party, as well as a brief description of the purpose of the meeting. The County may contact the third party to confirm the nature of the meeting.

### B. Caregiver Leave

- 1. Employees eligible for FMLA leave are entitled to leave for a covered service member under the following circumstances:
  - a. Up to twenty-six (26) weeks of unpaid leave in a single, twelve (12) month period for an employee to care for his or her spouse, son, daughter, parent, or next of kin recovering from an injury or illness suffered while on

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active duty in the armed forces.

- b. Next of kin is defined as the nearest blood relative of that individual in the following order or priority: blood relatives who have been granted legal custody of the service member by court decree or statutory provisions; brothers and sisters; grandparents; aunts and uncles; and first cousins, unless the service member has specifically designated in writing another blood relative as his or her nearest blood relative.
2. Qualifying illness or injury. In order to obtain family military leave to care for a family member who is recovering from an injury or illness suffered while on active duty in the armed forces, an employee must demonstrate a qualifying injury or illness is suffered by a covered family member.
  3. A covered service member is:
    - a. A member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list for a serious injury or illness and who have been placed on the disability roster of the military branch.
    - b. A veteran who was released or discharged other than dishonorably and is undergoing medical treatment, recuperation, or therapy for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the previous five (5) years or whose serious injury or illness, to include a preexisting injury or illness, was aggravated by active duty. For any veteran who was discharged prior to March 8, 2013, the period of time between October 28, 2009 and March 8, 2013 will not count as part of the five (5) year period. For example, if your family member became a veteran on October 28, 2009 then you may begin to use your military caregiver leave entitlement at any time up until March 8, 2018. As long as your military caregiver leave begins within five (5) years of the veteran's discharge, the 12-month period may extend beyond the five (5) year period.
  4. Serious injury or illness is:

One that occurs in the line of duty on active duty that may render the service member medically unfit to perform the duties of his or her office, grade, rank or rating. A serious injury or illness also includes injuries or illnesses that existed before the service member's active duty and that were aggravated by service in the line of duty on active duty. In the case of a veteran, an injury or illness that was incurred in the line of duty on active duty, and that is either:

- a. A continuation of a serious injury or illness that was incurred or aggravated when the veteran was a member of the Armed Forces and rendered the service

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member unable to perform the duties of the service member's office, grade, rank, or rating; or

b. A physical or mental condition for which the veteran has received a Department of Veterans Affairs Service-Related Disability Rating (VASRD) of 50 percent or greater and the need for military caregiver leave is related to that condition; or

c. A physical or mental condition that substantially impairs the veteran's ability to work because of a disability or disabilities related to military service, or would do so absent treatment; or

d. An injury that is the basis for the veteran's enrollment in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

e. Any **one** of these definitions meets the FMLA's definition of a serious injury or illness for a veteran regardless of whether the injury or illness manifested before or after the individual became a veteran.

5. The term "outpatient status" means:

The status of a covered service member assigned to a military medical treatment facility as an outpatient, or a unit established for the purpose of providing command and control of members of the armed forces receiving medical care as outpatients. The illness or injury must be serious enough to render the person unable to perform the duties of the member's office, grade, rank, or rating.

6. Certification Requirements

If military caregiver leave is requested, the County may require that certification is provided to support the leave request that includes:

a. Contact information for the authorized health care provider completing the certification, the type of medical practice or specialty, and affiliation with the military, if any;

b. Whether the injury or illness was incurred or aggravated by service in the line of duty on active duty, when it began or was aggravated, and its likely duration;

c. A statement of appropriate facts regarding the service member's health condition sufficient to support the need for FMLA leave;

d. Information to show that the service member needs care and estimates for the period and dates of treatment or recovery needed;

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- e. If care is needed intermittently or on a reduced schedule, the schedule of treatments or appointments, or an estimate of the frequency and duration of periodic care;
- f. Your name, the name of the covered service member, and your relationship to the service member; and
- g. Information on the service member's branch, rank, and unit assignment or the veteran's date and type of separation.

If your family member is a current service member who needs care, you may present a copy of an Invitational Travel Order (ITO) or Invitational Travel Authorization (ITA) issued to any member of the covered service member's family for certification for the time specified on the ITO/ITA.

If your family member is a veteran with a serious injury or illness, you may provide a copy of a VASRD rating determination or the enrollment notice from the VA's Program for Comprehensive Assistance for Family Caregivers for certification of the veteran's serious injury or illness. The enrollment notice may be issued to any member of the veteran's family. However, you may need to provide additional information to support your leave request. An authorized health care provider may be a DOD, VA, TRICARE network, non-network TRICARE, or non-military-affiliated health care provider. An employer may request a second and third opinion of a covered service member's serious injury or illness only when a certification is provided by a non-military-affiliated health care provider. Recertification is not permitted for a certification for military caregiver leave.

C. Substitution of paid leave for family military leave.

- 1. For leave taken for a qualifying exigency, the County requires substitution of paid vacation leave or compensatory time. Compensatory time shall be used before vacation leave if available.
- 2. For injured service member caregiver leave, the County requires substitution of vacation leave, compensatory time or sick leave. The same rules apply as if the employee took leave for the serious health condition of a family member. The County will not provide paid sick leave in any situation in which the County would not normally provide paid leave. Compensatory time shall be used before vacation leave if available.

D. Married employees.

- 1. When both husband and wife work for the County, the aggregate amount of leave that can be taken by the husband and wife is twenty-six (26) weeks in a single 12-month period for Caregiver Leave, or a combination of Exigency leave and Caregiver leave. The aggregate number of work weeks of leave to which both that husband and wife can take for Exigency Leave is twelve (12)

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weeks.

E. Notice and certification.

1. If the need for leave is foreseeable, the employee must provide such notice to the County as is reasonable and practicable. The County may require that a request for leave be supported by certification.

F. Calculating the 12-month period.

1. For leave for Exigency Leave, the County will use a rolling calendar year measured back from the date an employee's leave begins.
2. Caregiver Leave is a one-time benefit and as such, the twenty-six (26) weeks are only available during a single, 12-month period. The County will begin counting the 12-month period on the first day of leave taken to care for the injured or ill service person.

### 8-8. FITNESS FOR DUTY

A. The County may require an employee to undergo a fitness-for-duty examination when there is a reasonable belief, based on objective information obtained or reasonably available, that the employee's ability to perform essential job functions will be impaired by a medical condition or that s/he will pose a direct threat due to a medical condition. The need for a medical evaluation must be clearly supported by the nature of the work and objective medical or other factual information. The examination shall be conducted by a medical professional selected by the County. All costs associated with such an examination will be borne by the Department in which the employee is assigned.

B. If an employee is impaired in his/her capability to safely and effectively complete work assignments, and a fitness-for-duty examination supports this conclusion, options may include:

1. Transferring the employee to a vacant position for which the employee is qualified and that accommodates his/her medical condition limitations;
2. Temporarily accommodating the employee in his/her current position by modifying work assignments and/or the work environment.
3. If an accommodation is not feasible in enabling the employee to perform the essential functions of the job held or vacant positions for which the employee is qualified; and if an accommodation does not reduce any direct threat issues to an acceptable level, the employee may be terminated.

C. Procedure:

1. If a supervisor has an employee who appears to be impaired in his/her

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capabilities to safely and effectively perform the essential functions of the job, or who poses a direct threat, the Human Resources Director shall be contacted pertaining to a possible fitness-for-duty. The supervisor must be prepared to discuss the following:

- a. What objective evidence supports the need for a fitness for duty examination?
  - b. What is the reasonable belief that the employee's ability to perform essential job duties is impaired?
  - c. What is the basis for any belief of direct threat?
  - d. What knowledge exists that performance issues are linked to a medical condition?
2. A physical, psychiatric or psychological assessment must be conducted in accordance with accepted professional standards by a licensed practitioner or physician authorized to conduct such examinations, and may only be used to make a legitimate inquiry into an employee's fitness to perform the essential functions of his/her position without direct threat to the individual or others.
  3. The scope of any fitness-for-duty examination shall be limited to any condition and how such condition affects or may affect the employee's ability to perform essential functions or pose a direct threat.
  4. All medical information obtained through the fitness-for-duty provisions shall be maintained by the Human Resources Department as strictly confidential and shall not be a part of the employee's personnel file.
  5. When a supervisor requests a medical examination, he must inform the employee in writing of the requirement to cooperate in the fitness for duty assessment and the consequences of failure to cooperate. The County will designate the examining physician or other appropriate practitioner, but will offer the individual an opportunity to submit medical documentation from his/her personal physician or practitioner. The County will review and consider all such documentation supplied by the individual's personal physician or practitioner along with any documentation from the examining physician selected by the County. Should the employee wish to submit medical documentation from his/her personal physician or practitioner, the employee shall pay for all examinations or documentation charges.
  6. Any employee who refuses to undergo a required fitness-for-duty examination shall be found insubordinate and subject to discipline up to and including termination.
  7. Time off from work for a fitness-for-duty evaluation and any subsequent time

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off from work before the employee is certified fit for duty, should be charged to the employee's appropriate leave account if available. Time off related to impairment due to medical or psychological conditions may be charged to accrued sick leave. Time off related to violent, abusive or threatening behavior that is not due to medical or psychological condition may be charged to accrued vacation leave. If there are insufficient leave balances available, the time will be without pay subject to FLSA regulations.

### **8-9. MILITARY LEAVE**

- A. Military Leave. It is the policy of the County to grant military leave of absence as required by state and federal law. There are two (2) types of military leave(s): Military/Reserve Training and Military Service Leave for Tour of Active Duty.
- B. Military/Reserve Training.
  - 1. Active Duty/Active Duty for Training. For persons who are members, or become members, of the United States Armed Forces Reserve Units, National Guard or Naval Militia, and are on federally funded military duty. During a military service training leave (not to exceed a total of fifteen (15) work days in any federal fiscal year), an employee will continue to receive regular pay from the County, provided the reservist gives advance notice to the County that they will be absent from their position of employment to perform active duty training.
  - 2. All employees ordered to active duty must present their orders, or other official military documentation validating military leave requirement, to supervision no later than three (3) calendar days after orders were received. Upon receipt of such documentation from the employee, the supervisor will forward a copy to Human Resources for inclusion in the personnel folder and attach a copy to the leave request form for Payroll.
  - 3. All employees, including, seasonal, temporary or provisional employees and those on probation status, shall be compensated at the base rate for all days usually worked up to 15 work days of annual active duty or active duty training based on the federal fiscal year of October 1 through September 30.
  - 4. Military leave is a special paid leave benefit and is not charged against the accumulated annual or sick leave balance, unless additional military duty is needed. Military leave in excess of fifteen (15) calendar days per year may be charged to vacation leave, or unpaid leave at the employee's option.
- C. Inactive Duty Training.
  - 1. Military Reservists and Guard persons shall be allowed to attend Inactive Duty Training (IDT); however, the County is not obligated to provide compensation for the period of IDT.

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D. Military Service Leave for Tour of Duty.

Applicable to any employee who enters active duty or is called to active duty.

1. The County will grant an authorized absence to employees who elect or are required to perform service in uniformed services, to the full extent required by the Uniformed Services Employment and Reemployment Rights Act (USERRA). An individual employee's service limitation, available benefits, and reemployment rights will be determined in accordance with applicable provisions of this law.
2. Persons Covered.
  - a. USERRA covers a person, who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform "service" in a "uniformed service" and who separate military service under "Honorable" conditions.
  - b. The term "service in the uniformed services" means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty, a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to any such duty, and a period for which a person is absent from employment for the purpose of performing funeral honors duty as authorized by section 12503 of title 10 or section 115 of title 32.
3. Notice Requirements.
  - a. All employees being called to military service must provide the County with advanced notice either written or orally. Unless otherwise impossible or unreasonable, an employee who fails to give notice prior to military service will not be afforded the protections offered by USERRA.
4. Duration of Rights:
  - a. The accumulated length of a person's absence from employment may not exceed five (5) years. Each time an employee is absent due to military service, the time the employee is absent will be counted against the five-year limit.
  - b. Certain categories of service are exempt from the five-year limitation and include:
    - i. Service required beyond five years to complete an initial period of obligated service;

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- ii. Service from which a person through no fault of the person, is unable to obtain a release within the five-year limit;
- iii. Required training for reservist and national guard members (the fourteen or fifteen days of full time duty for training each year and the one weekend per month);
- iv. Service under an involuntary order to, or to be retained on, active duty during a domestic emergency or national security-related situation;
- v. Service under an order to, or to remain on, active duty during a war, a national emergency declared by the president or Congress;
- vi. Active duty in support of an "operational mission" for which selected reservists have been ordered to active duty without their consent;
- vii. Service by persons who are ordered to active duty in support of a "critical mission or requirement"; and
- viii. Federal service by members of the National Guard called into action by the President to suppress an insurrection, propel and invasion, or to execute the laws of the United States.

### 5. Insurance Plans.

- a. An employee on active duty may keep insurances for self or dependents by paying 100% of premiums for up to twenty-four (24) months. Otherwise, Insurance coverage is suspended until return to work at the County

### 6. Returning to Work:

Depending on the duration of the veteran's military service, USERRA grants windows during which a veteran released from active duty must return to work.

- a. Service Less than Thirty-One Days: A veteran serving less than thirty-one (31) calendar days must report to work by the beginning of the first regularly- scheduled day that would fall eight hours after the veteran return home from military leave. If timely reporting back to work would be impossible or unreasonable, through no fault of the veteran, the veteran must report back to work as soon as possible.
- b. Absence for Fitness-for-Service Examination: For veterans who are absent to take a fitness test, the veteran must report to his/her employer by the beginning of the first regularly-scheduled work day that would fall eight hours after the veteran returns home.

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- c. Service from Thirty-One to One Hundred Eighty Days: For veterans absent from employment for thirty-one (31) to one hundred and eighty (180) calendar days, an application for reemployment must be submitted either orally or in writing no later than fourteen (14) calendar days after completion of the veteran's service. If timely submission of an application is impossible or unreasonable, through no fault of the veteran, the veteran must submit the application as soon as possible.
  - d. Service of One Hundred Eighty-One or More Days: For veterans serving for one hundred and eight-one (181) or more calendar days, an application for reemployment must be submitted either orally or in writing, no later than ninety (90) calendar days after completion of service.
  - e. Extension of Deadlines: For veterans who are hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, the performance of service, the reporting or application deadlines are extended for up to two years. A veteran who does not report or submit an application for reemployment becomes subject to the employer's rules governing un- excused absences.
7. Documentation:
- a. The County has the right to request documentation showing that a veteran is eligible for reemployment if that veteran has been absent for a period of service of thirty-one (31) calendar days or more.
    - i. The County may replace employees ordered to active duty or active duty training with other persons provided the employee is hired with full knowledge and understanding that the veteran returning from active duty has a right to his/her previous position with the County and the replacement worker will be separated.
8. Undue Hardship.
- a. The County is not required to reemploy a veteran if the County's circumstances have so changed to make such reemployment impossible or unreasonable. Undue hardship is defined as:
    - b. Where reinstatement would require creation of a useless job or where there has been a reduction in workforce that reasonably would have included the veteran.
    - c. When the veteran is not qualified for a position due to disability or another bona-fide reason after reasonable efforts have been undertaken to qualify the person.
9. Re-employment.

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- a. A regular full-time employee who has completed the Tour of Duty Military Leave and returns from active service to the County will:
  - b. Will be added to the County's health plan for self and eligible dependents on the return date without additional probationary period or exclusion of pre-existing conditions.
  - c. Receive retirement service credit as though continuously employed by the County.
  - d. Be credited with continuous accumulation of seniority for up to four years while on active duty.
  - e. Be reinstated to the same job or one of similar seniority, status and pay (even if that means bumping or otherwise removing the employee's replacement). If the employee has; a) received an honorable discharge or satisfactory completion certificate; b) sought reemployment with the County the guidelines stated in 7. Returning to Work above.
  - f. Be placed in a position of similar status, pay, and seniority for which the returning employee is qualified if the employee is no longer qualified for the position held prior to active duty because of a disability sustained while in the military unless the County's circumstances have so changed as to make it impossible or unreasonable to do so.
10. Dismissal.
- a. Depending on a returning employee's length of military service, he or she may be terminated only for cause upon reemployment for a period of 6 months (if service was more than 30 but less than 181 days) or 12 months (if service was more than 180 days). If an employee is discharged for cause, the County must demonstrate that the cause is based on the employee's conduct or the application of other legitimate nondiscriminatory reasons (e.g. job elimination, layoff).

### **8-10. CIVIC DUTY LEAVE**

#### **A. Jury and Subpoena Duties**

1. The provisions of this subsection, 8-10 (A) - Jury and Subpoena Duties, do not apply in matters in which the employee is a private litigant.
2. Immediately upon receipt of the notification from the court or other legal process, the employee shall present to the Department Head the subpoena, jury summons or other document that gives instructions to report for duty.
3. All employees in classified positions and Elected Official appointees will be paid regular wages for time spent on jury duty or responding to the subpoena

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during normal work hours and not on paid leave status. If the employee is on paid leave status when performing such duty, the time may be re-designated as regular time or civic duty assignment at the employee's request. Payment of regular wages shall not be authorized when an employee serves on civic duty while in an unpaid leave status.

4. The employee's regular pay for performing civic duty shall be limited to compensation for time at the legal proceeding and travel time which occurs during the employee's regularly scheduled hours of work.
5. Because the County pays employees' regular wages during their time of service in civic duties, if released from such duty or placed in on-call status prior to the end of the County's normal work day, the employee shall return to work.
6. Any fees and allowances paid to an employee by the court or a party (except reimbursement for travel and actual out-of-pocket expenses) may be retained only if the employee is on leave status. Otherwise, all fees received from the court (except for actual out-of-pocket expenses) shall be remitted to the Finance Department. If the employee receives a check for both actual out-of-pocket expenses and another purpose (e.g. per diem expenses not actually incurred or jury compensation), such check shall be remitted to the Finance Department, and the employee shall be entitled to payment from the County for reimbursement of the actual expenses incurred by the employee pursuant to County travel regulations.
7. Temporary employees who are called to serve as jurors will be granted time off without pay for court appearances.

### B. Voting Time

1. The County encourages employees to register and vote in every election where they are eligible to vote. On election day, the employee shall be allowed up to two (2) hours leave with pay to vote, provided the employee's work day does not begin more than two (2) hours after the polls are open or ends more than the three (3) hours before the polls close.
2. The employee shall request such leave at least three (3) work days in advance with his/her Department Head in order to allow adequate time to make arrangements for full Department coverage.

### C. Election Workers

1. Employees may serve as members of a precinct board or work as an election poll worker.
  - a. The employee must receive approval from his/her supervisor in advance.

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- b. The employee will receive the regular rate of pay for a precinct board member or election poll worker.
- c. The employee may not use any form of leave or receive other pay from the County while performing duties as a precinct board member or election poll worker.

### **8-11. BEREAVEMENT LEAVE**

- A. An employee in a classified, full-time position may take up to five (5) work days paid Bereavement Leave for a death in the immediate family. Classified employees in 20- hour per week positions may be granted up to 20 hours off with pay, or up to 30 hours off with pay if the employee is in a 30-hour per week position. Grant employees may be granted bereavement leave only if there are sufficient funds in the grant and the use of such funds is permissible.
- B. For the purpose of this Section, immediate family shall include: spouse, domestic partner; child, stepchildren, son-in-law, daughter-in-law; parents or stepparents of the employee, spouse, or domestic partner; grandparents of the employee, spouse or domestic partner; grandchildren; brother or sister including half- and step-siblings; brother-in-law or sister-in-law including equivalent for domestic partners; mother- or father-in-law or eligible dependent including equivalent for domestic partners.
- C. Payment for Bereavement Leave shall be computed at the bereaved employee's regular base rate.
- D. The employee must present reasonable proof of death, relationship, and/or attendance at the service.

### **8-12. BLOOD DONATION**

- A. Employees may be granted reasonable time during their work shift for the purpose of donating blood when participating in a County-sponsored blood drive. All such absences shall be scheduled with the employee's supervisor or Department Head.

### **8-13. EMERGENCY VOLUNTEER SERVICE LEAVE**

- A. A volunteer emergency responder is a member in good standing of a volunteer fire Department, an emergency-medical service, a search-and-rescue team or a law enforcement agency who is enrolled by the state or a political subdivision of the state for response to an emergency or disaster.
- B. A volunteer emergency responder, while acting in said capacity, may be absent from work for a period of ten (10) work days per calendar year in order to respond to any officially declared emergencies or disasters.

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- C. The employee shall make reasonable efforts to notify his/her supervisor of the service and make reasonable notification efforts over the course of the absence.
- D. The County may request an employee to provide a written verification from the Office of Emergency Management or a state or local official managing an emergency or disaster of the dates and time the employee served as a volunteer emergency responder to an emergency or disaster.
- E. The County will pay an employee's regular pay for the time that the employee is absent from employment while serving as a volunteer emergency responder.
- F. No employee shall be terminated, demoted or in any other manner discriminated against in the terms and conditions of employment because the employee, when serving as a volunteer emergency responder, is absent from work in order to respond to an emergency or disaster.

**8-14. ADMINISTRATIVE LEAVE DUE TO INCLEMENT WEATHER AND HAZARDOUS CONDITIONS**

- A. Office Closure/Delayed Opening Prior to Work Hours.
  - 1. County offices will be open for business except in cases of extreme conditions that may affect the ability of the County and its employees to conduct business. Generally, all employees are expected to report to work unless major thoroughfares have been closed due to extreme weather or hazardous conditions.
  - 2. Because of the key role County Government plays in any weather emergency, it is expected that all employees who aid in the delivery of emergency services will report to work as scheduled, as long as they do not expose themselves to personal danger in doing so. Employees who report for work to provide emergency services, will be paid at their normal rate of pay, and will be eligible for overtime under the standard guidelines.
  - 3. All Office closures will be determined by County management, and will be broadcast on local television and radio stations. If extreme weather conditions exist prior to the beginning of the County work hours, employees should check local television and radio stations for instructions. In the event of an announced closure or delayed opening of County offices by Management, employees will receive administrative leave for the hours of closure/delay during 8 a.m. through 5 p.m.
- B. Office Closure or Hazardous Conditions During Work Hours.
  - 1. During those occasions when extreme weather conditions develop during County business hours, employees may be directed by a member of County Management to a place of safety within the building, or may be told to leave the premises. Under these circumstances, employees should follow the same procedures as if they are leaving for the weekend, such as exiting out of

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software programs, turning off computers and peripheral devices, and securing County offices.

**8-15. HOLIDAYS AND PERSONAL DAY**

A. Holidays.

1. Legal holidays, including the date the holiday will be observed, shall be designated each year by the Board of County Commissions (BOCC), and must be used in an 8-hour increment or prorated based on the employee's budgeted full-time equivalent (e.g. 4, 6, or 8 hours) unless the holiday designated by the Board is a partial day holiday. The BOCC will designate the number of hours for holiday on those partial days.
2. A FLSA non-exempt employee who regularly works 8-hour shifts shall receive holiday pay of 8-hours if the employee works on the holiday and 8 hours of regular pay or prorated based on the employee's budgeted full-time equivalent (e.g. 4, 6, or 8 hours). Approval of an alternate work schedule does not adjust the number of hours granted for a holiday or personal day.
3. A FLSA non-exempt employee who regularly works 12-hour shifts and who regularly works at least 84 hours in a pay period shall receive holiday pay of 12- hours for the holiday if the employee works it. If the employee does not work the holiday, the employee shall only receive 8 hours of holiday pay.
4. A FLSA non-exempt employee who regularly works 10-hour shifts shall receive holiday pay of 10-hours for the holiday if the employee works it. If the employee does not work the holiday, the employee shall only receive 8 hours of holiday pay.
5. Temporary employees are not entitled to holiday pay.
6. Grant-funded employees are entitled to holiday pay subject to the conditions of the grant and the availability of grant funding.
7. In order to receive holiday pay for a designated legal holiday, an employee must be at work or taking approved paid leave on the scheduled work day immediately preceding and following the holiday. An employee who is absent and not in an approved paid leave status on the scheduled work day before or after a holiday will not receive holiday pay for that holiday. Sick leave the day prior to or following a holiday shall only be considered approved if a note from a medical provider or other health care professional is submitted to substantiate the need for the absence.
8. An FLSA exempt employee who normally works Monday through Friday and is required to work on the holiday shall receive another day off with pay in lieu of the holiday within the same pay period, if feasible.

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9. In order to ensure that FLSA exempt employees working shifts receive equivalent benefits to all other employees, the exempt employee working shifts will receive an additional 8 hours of pay or the department will give that employee a different day off when the BOCC approved holiday falls on that employee's regular day off. The determination of whether to give additional pay or a different day off is at the discretion of the department head based upon which option best meets the operational needs and budgetary constraints for that unit.

### B. Personal Day.

1. Employees shall receive one (1) day of personal leave each fiscal year. The hours shall be based upon the employee's budgeted work schedule (e.g., 4, 6, 8, 10 or 12 hours per day) each fiscal year. Approval of a flex-schedule does not adjust the number of hours granted for the personal day.
2. A personal day off for grant employees is subject to the conditions of the grant and the availability of grant funding. The personal day must be used prior to the end of the County's fiscal year or be forfeited.
3. Requests for the use of an employee's personal-leave day must be made in advance and approved by the employee's supervisor.
4. Personal-leave days shall not be compensated upon termination of employment.
5. Personal-leave days must be taken in consecutive hours during a single work shift.

### 8-16. LEAVE OF ABSENCE

- A. The County Manager may grant a Leave of Absence to a classified employee for a short- or long-term period not to exceed ninety (90) calendar days in a 12-month rolling calendar year. Leave of Absence may be with pay if the employee has adequate leave balances or shall be without pay if the employee has inadequate leave balances. Requests for a leave of absence, other than those for Military Leave, Family Military Leave, or FMLA leave, are subject to the following:
  1. An employee on a leave of absence shall be required to use all available and applicable paid leave, before being placed on unpaid leave.
  2. All requests for a leave of absence are subject to the review and recommendation of the Human Resources Director and the approval of the County Manager.
  3. The County may attempt to re-employ an employee returning from Leave of Absence within ninety (90) days in a position for which the employee is

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qualified, if the employee's former position is no longer available.

4. An agreement shall be signed by the employee, the Department Head, and the Human Resources Director. The agreement will state that the employee understands that there is no guarantee that the employee will be returned to his/her former position.
5. All benefits, including but not limited to leave accrual, holidays, insurance and PERA will cease while an employee is on an approved leave of absence if the leave is without pay, as permitted by law. An employee wishing to continue welfare insurance benefits may do so by paying 100 percent of the total premium (employer and employee portions) to the Finance Department. Payment for the insurance premiums must be received by the first of each month.
6. The County may terminate any leave of absence, except those granted pursuant to statute or regulation, prior to its expiration date by sending written notice to the employee.
7. An employee who fails to return to duty upon expiration or termination of the Leave of Absence is considered to have abandoned his/her employment and will be considered to have resigned from employment with the County.

### **8-17. ADMINISTRATIVE LEAVE WITH PAY**

- A. The County Manager will make the final decision whether to authorize administrative leave with pay. It will be used only in those cases when it is in the best interest of the County. Employees who are on paid administrative leave must be accessible to the Department Head during regular business hours, and shall be available to be called into the office.
- B. In the event of allegations of serious misconduct, the County Manager or designee is authorized to place the employee on administrative leave with pay. Depending upon the nature of the allegations, the accused employee may be transferred to a different work site to work in the same or other distinct capacity during the time period of the investigation. Such decisions will be made on a case by case basis for the purpose of protecting County resources, personnel and/or the integrity of the internal investigation. The employee may remain on administrative leave until cleared by the investigation, or until a determination is made whether criminal, administrative or other corrective action is necessary, and until a decision is rendered in any pre- determination process.
- C. Employees placed on administrative leave shall turn in all County property including keys, badge, and any other equipment assigned. The employee shall not contact any County employee pertaining to this matter other than the Department Head or Human Resources staff, and not to return to the workplace until requested by County Management. During the hours of 8:00 a.m. and 5:00p.m., Monday through Friday, the employee is to remain available for County

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business.

- D. Administrative leave with pay shall not exceed thirty (30) calendar days unless the requesting party submits a memorandum of justification requesting to extend the leave and receives approval from the County Manager.

**8-18. DOMESTIC ABUSE LEAVE**

- A. The County will provide guaranteed leave for victims of domestic abuse for the purpose of seeking protection and court time in prosecuting the abuser as required by the Promoting Financial Independence for Victims of Domestic Abuse Act, (50-4A NMSA 1978).
- B. Domestic Abuse has the same meaning as it does in the Family Violence Protection Act (40-13-1 NMSA 1978).
- C. Domestic Abuse Leave means intermittent paid or unpaid leave to obtain or attempt to obtain an order of protection or other judicial relief from domestic abuse or to meet with law enforcement officials, to consult with attorneys or district attorneys' victim advocates or to attend court proceedings related to the domestic abuse of an employee or an employee's family member.
- D. Family member for this purpose of this section is defined as a minor child of the employee or a person for whom the employee is a legal guardian.
- E. Employees who are victims of domestic abuse may use up to fourteen (14) days of leave per calendar year (maximum of 8 hours per day).
  - 1. The employee may use vacation leave, personal leave, or compensatory time.
  - 2. Unpaid leave will be used after vacation, personal and compensatory time has been depleted.
  - 3. Sick Leave can be used for medical treatment and/or counseling and psychological services for the abuse as provided in Section 8-4.
- F. Notice.
  - 1. The employee is required to notify the supervisor and Human Resources as soon as possible. In an emergency situation, the notice should be given no later than 24 hours after the leave began.
- G. Verification that the leave was for a qualifying reason may be required and may be:
  - 1. Police Report

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2. Copy of an order of protection. An order of protection is defined as a court order granted pursuant to the Family Violence Protection Act (40-13-1 NMSA 1978).
3. A written statement stating that the employee or employee's family member appeared or is scheduled to appear in court in connection with an incident of domestic abuse from one of the following:
  - a. an attorney representing the employee
  - b. a district attorney's victim advocate
  - c. law enforcement official
  - d. a prosecuting attorney.

### H. Confidentiality.

1. All inquiries and use of the leave will be kept strictly confidential.
2. The fact that an employee or employee's family member was involved in a domestic abuse incident is also confidential.
3. The County may disclose an employee's information related to domestic abuse leave only when the employee consents, when a court or administrative agency orders the disclosure, or when otherwise required by Federal or State law.

### I. Retaliation.

1. The County may not interfere, restrain or deny the exercise of the rights under this act. Retaliation against an employee for using domestic abuse leave is prohibited.

## **IX. PERFORMANCE MANAGEMENT**

Regular communication and feedback is essential to personal and professional development as well as a positive work experience. The purpose of this section is to encourage regular communication and establish a consistent, equitable system by which the performance of County personnel is evaluated regularly and work performance issues are addressed in a timely, effective fashion.

### **9-1. COACHING AND COUNSELING**

- A. Coaching is an ongoing process whereby the supervisor directs the development of the employee through regular performance feedback. If the employee is meeting the supervisor's expectations, positive feedback can be used to reinforce performance and further motivate the employee to even higher levels of performance. This is also an opportunity for the supervisor and employee to discuss job and career aspirations as well as the options which may be available to assist the employee in attaining these goals.
- B. Supervisors are encouraged to provide regular feedback to employees on their performance and on their continued development through coaching. Employees are also encouraged to ask questions and request guidance from their supervisors whenever needed.
- C. The County expects a high level of performance, professionalism, and accountability from supervisors and employees. Communication between a supervisor and employee regarding performance-related issues should occur informally and formally on a regular basis including an annual performance evaluation.
- D. Counseling occurs when there are performance deficiencies. The goal of counseling is to proactively assist the employee in achieving a satisfactory level of performance prior to initiating any more formal disciplinary action. In such cases, the supervisor should meet with the employee to clarify performance expectations and determine what obstacles are impeding the employee's ability to perform to standard. The problem could be a lack of clear instructions, a need for training, the lack of tools/resources, or the impact of another employee's behavior. Whatever the cause, it is the supervisor's role to minimize barriers to acceptable performance and provide clear expectations for the employee. The position description can be a valuable tool for this purpose.
- E. Coaching and Counseling Distinguished from Disciplinary Action. Supervisory coaching and counseling is an ongoing, interactive process between supervisor and employee designed to provide the employee with sufficient guidance and job training to succeed in the position. Disciplinary action is a distinct and more formal process designed to document the employer's attempt to correct unsatisfactory work performance or to hold an employee accountable for a violation of County policy or other misconduct. See 10-3. Types of Discipline

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- F. A counseling meeting should be viewed as developmental and corrective rather than punitive. The supervisor should stress that counseling is not part of the disciplinary action procedure, but that disciplinary action may result if the employee does not change the job behavior. Written documentation pertaining to the counseling meeting is not kept in the employee's Official Personnel File, but it should be kept in the Departmental file.

**9-2. PERFORMANCE MANAGEMENT**

- A. It is the policy of the County to manage performance through ongoing communication between an employee and his/her supervisor regarding performance expectations and employee accomplishments.
- B. Within 14 calendar days of hire, transfer, promotion or demotion, the supervisor shall meet with the employee, provide a copy of the performance evaluation instrument, and establish written goals, objectives, and expectations with the employee. The written document specifying the goals, objective and expectations shall be submitted to the Human Resources Department for placement in the employee's official personnel file. This document shall be used as the basis for a probationary employee's evaluation in accordance with policy 4-6. Probationary Status.
- C. Each supervisor is responsible to set and communicate clear performance standards for his/her employees and to observe and discuss employee performance at the beginning of and throughout the review period.
- D. The employee is responsible for understanding the duties and responsibilities required of the position, the employee work-plan goals and measures, the core competencies and for asking any questions concerning those expectations and/or the evaluation process.
- E. Periodic performance evaluations provide an opportunity for employees and supervisors to review and discuss work performance; identify performance elements in which the employee does well and those elements which require improvement; and to plan future performance objectives and career development. Performance evaluation, whether formal or informal, does not create a contract or other right to continued employment.
- F. A formal performance evaluation shall be conducted annually during the first quarter of the fiscal year for all employees who have completed their probationary period and for grant-funded employees who have completed one year of employment. Managers and supervisors shall also meet with the employee mid-year to review the established performance goals and discuss expectations related to any area of performance that needs improvement. The performance evaluations and mid-year review of goals shall be submitted to the Human Resources Department no later than 45 days after the specified review period.
- G. Informal evaluations should be conducted periodically for coaching and performance improvement and retained in the Departmental working file.

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- H. All formal performance evaluations shall be prepared on the approved County performance evaluation form, and forwarded to the Human Resources Department to be placed in the employee's Official Personnel File.
- I. All probationary employees will be formally evaluated as set forth in Section 4-6 Probationary Status.
- J. If an employee changes assignment, position, or Department during the performance cycle, performance up to that point will not be disregarded. The current supervisor shall complete an interim evaluation of the employee's performance prior to the employee's change in assignment, position or Department and send to the Human Resource Department for retention in the employee's Official Personnel File.
- K. Employees are responsible for contributing to the development of the performance objectives by completing and submitting a self-evaluation to their supervisor for each rating period and for providing performance input throughout the evaluation period and explanation of actions occurring during the rating period.
- L. Employees are encouraged to record their perceptions of their performance, accomplishments, training requests and future goals and objectives. Supervisors should review and incorporate these into the evaluation as appropriate.
- M. At the end of each performance evaluation cycle, the supervisor will meet with each employee under his/her supervision to evaluate performance, discuss training needs and establish goals and objectives for the next evaluation cycle.
- N. Prior to finalization of any work-performance evaluation, an employee shall be given the opportunity to provide input for consideration by the supervisor(s). After consideration of items brought to the supervisor's attention, the supervisor shall finalize the work-performance evaluation form, and both the supervisor and employee shall sign it. The employee's refusal to sign the performance evaluation form does not make the performance evaluation unofficial. In the event that an employee refuses to sign the supervisor should note the refusal to sign and initial and date the notation.
- O. Both the supervisor and the employee shall retain a copy of the work-performance evaluation form to facilitate ongoing discussions about work performance objectives, progress, or revised responsibilities.
- P. The supervisor's overall assessment of the employee's work performance is not grievable; however, individual ratings may be grieved. See 10-6. Grievance Procedures. The employee has a right to attach a rebuttal to the performance evaluation form within 30 days of receiving the performance evaluation. The rebuttal will be placed in the employee's personnel file and retained with the performance evaluation which is being rebutted.

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- Q. The original copy of the completed, signed performance evaluation form, and any attachment submitted by the employee, will be forwarded to the Human Resources Department and placed in the employee's Official Personnel File.
- R. The Department Head shall forward all completed evaluations for staff and managers, supervisors and Administrators to the Human Resources office within 45 days of the rating period.

**9-3. PERFORMANCE IMPROVEMENT PLAN**

- A. The County recognizes that performance issues can often be resolved before they become disciplinary issues. Supervisors are encouraged to discuss performance issues with their employees as they occur. These issues may include, but are not limited to, attendance and tardiness, appearance, safety, and other forms of employee conduct and performance. The use of FMLA Leave may not be used as a basis for disciplinary action.
- B. The supervisor should take the following steps to make the employee aware of the performance problem and to initiate corrective action.
  - 1. Document the performance issue and expectations on the Performance Improvement Form or in a brief memorandum addressed to the employee.
  - 2. Meet with the employee to review the memorandum and the situation. Explain the concerns clearly to ensure that the employee understands the performance problem and the expectations.
  - 3. Listen to the employee's explanation of the situation and determine whether there are mitigating circumstances.
  - 4. Develop a Performance Improvement Plan that outlines how the employee will improve his/her behavior/performance, and how the supervisor will observe and determine that the change has taken place. Establish a time frame in which the changes should take place and monitor progress.
  - 5. If an employee does not progress in a satisfactory manner or meet the established time frame, the supervisor shall contact Human Resources to consult regarding the next steps.
- C. This process is not required before disciplinary action is initiated. There are employee issues that should immediately be addressed with as disciplinary action.

## **X. DISCIPLINE, GIEVANCES, AND COMPLAINTS**

The purpose of Section X is to establish the policies and essential procedures pursuant to which employees will be held accountable for poor work performance and/or misconduct in the workplace, including the distinction between job coaching and corrective action, the use of progressive discipline, the parameters for paid administrative leave, and the processes by which employees are notified and given the opportunity to respond to proposed corrective action, as well as appeal determinations regarding disciplinary action.

Section X also sets forth the County's dispute resolution policy; clarifies which types of administrative action are not grievable; provides classified employees a right to appeal corrective action; and directs employees to other informal and formal processes by which contested personnel matters may be resolved.

### **10-1. DISCIPLINE SYSTEM**

- A. Each supervisor shall have the responsibility and authority, with the approval of the Department Head, to administer appropriate discipline up to and including a verbal reprimand to subordinates using a positive, progressive-discipline process as a corrective measure.
- B. In order to ensure consistency throughout the County and to reduce the potential for exposure to liability, supervisors and Administrators are strongly encouraged to inform and consult with Human Resources regarding coaching, counseling, and performance improvement plans as well as regarding the level of discipline that may be appropriate for violations of Department work rules, County policy, poor performance and other misconduct.
- C. For written reprimands or notice of intent to suspend, demote or terminate an employee, concurrence from the Human Resources Director is required prior to commencing the corrective action.
- D. The continued employment of any individual by the County depends upon acceptable conduct and satisfactory work performance. Failure to meet these standards of conduct and work performance is sufficient grounds for disciplinary action up to and including termination of employment.
- E. Maintenance of Disciplinary Action Documentation. The final documentation of disciplinary action taken, other than a verbal reprimand, becomes part of the employee's Official Personnel file and shall not be purged from the file except by order of a County hearing officer or court of competent jurisdiction.
- F. Nothing in this policy changes the status of probationary, temporary or unclassified employees.

### **10-2. GROUNDS FOR DISCIPLINARY ACTION**

- A. Just Cause.

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SECTION X- DISCIPLINE, GRIEVANCES AND COMPLAINTS

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1. Classified employees shall not be subject to corrective/disciplinary action without just cause. Just cause is described as any conduct, action, or inaction, arising from, connected with, or impacting on the employee's work, whether on or off duty, that is inconsistent with the employee's obligations to the employer; or conduct which reflects poorly on the County including but not limited to a disregard of the employer's interests, policies or procedures. Just cause includes but is not limited to, inefficiency unacceptable performance, incompetence, misconduct, negligence, insubordination, or conviction of a felony or misdemeanor under the provisions of the Criminal Offender Employment Act (Section 28-2-1, et. seq., NMSA 1978).
- B. The following includes those actions that may be a basis for disciplinary action. This list is not intended to be all-inclusive, but is illustrative of the types of actions that may lead to disciplinary action. Also see 6-4 Standards of Conduct.
1. The employee's performance does not meet expectations.
  2. The employee has been abusive in his/her or her language, or has threatened or caused physical harm to others.
  3. The employee has violated a written policy or order, or has failed to obey any lawful, reasonable directions given by his/her supervisor or other responsible County Official.
  4. The employee has been found under the influence of alcohol or drugs while on duty and/or in County facilities. The employee has violated the Drug Free Work Place policies.
  5. The employee has been convicted of a felony or has engaged in any activity that violates State or Federal criminal statutes.
  6. The employee has provided false or misleading information in any document, report, or statement related to his/her employment with the County. This includes but is not limited to the employment application and related materials, complaints and grievances.
  7. The employee has caused damage to County property or waste of County supplies, through negligence or misconduct.
  8. The employee is unsafe to himself, to other employees or to the public in the performance of his/her duties and responsibilities.
  9. The employee has been inexcusably absent, has failed to receive prior approval for any absence, or has abandoned his/her or her position. The use of FMLA leave may not be used as a basis for disciplinary action.
  10. The employee has taken any action that discriminates on the basis of race, color, sexual orientation, sex, religion, national origin, age, disability, or any

other legally protected status.

11. The employee has engaged in improper political activities.
12. The employee has engaged in conduct, either during or outside of regular work hours that brings discredit upon the County.

### 10-3. TYPES OF DISCIPLINE

- A. The material below describes types of discipline that may be taken to correct and discipline employees. The intent is neither to limit the range nor prescribe the sequence of possible disciplinary actions. The County retains the right to determine the level of discipline based upon the specific circumstances of the situation requiring corrective action.
- B. Administration of any proposed disciplinary action.
  1. It is highly recommended that a Human Resources Administrator review verbal reprimands prior to administering the action.
  2. All written reprimands must be reviewed and approved by a Human Resources Administrator prior to administering the action. No written reprimands are to be delivered to any employee prior to approval by a Human Resources Administrator as this will provide Human Resources a chance to review all facts as someone outside of the Department and to ensure discipline is being administered consistently throughout the Department and/or County.
  3. Any proposed discipline that involves suspension without pay, demotion or dismissal must first be reviewed with and approved by the Human Resources Director.
- C. Verbal Reprimand. The supervisor will verbally notify the employee that an official warning is being given for violation of work rules, policies or procedures. Record of a verbal reprimand remains in the Departmental file in the Department of origin.
- D. Written Reprimand. A written reprimand will be discussed with the employee by a supervisor and approved by the Department Head. The reprimand will briefly describe the offense, behavior or performance issue and the corrective action. The employee will be asked to sign the reprimand to acknowledge its receipt. If the employee refuses to sign the notice, the Department Head shall note the employee's refusal. A copy of the reprimand will be placed in the employee's Official Personnel File.

Where the offense is a result of misunderstanding, corrective action may be training or retraining. The offense and the corrective action will be documented in a memorandum from the Department Head or designee to the employee. The

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SECTION X- DISCIPLINE, GRIEVANCES AND COMPLAINTS

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employee will be asked to sign the memorandum to acknowledge its receipt. A copy of the memorandum will be placed in the employee's Official Personnel File.

- E. Demotion. The Department Head may recommend demotion of an employee who has completed the probationary period when performance does not meet expectations, or for disciplinary purposes. The recommended demotion shall be documented in a Notice of Intent to Suspend, Demote or Terminate and discussed with the employee. The procedures in Section 10-5 shall be followed. The employee shall acknowledge the notice by signing it. If the employee refuses to sign the notice, the Department Head shall note the employee's refusal and continue with the procedure in Section 10-5. The notice shall be filed in the employee's Official Personnel File.
  
- F. Suspension without Pay. The Department Head may recommend to suspend an employee who has completed the probationary period without pay from his/her position at any time for a disciplinary purpose. Suspension without pay shall not exceed thirty (30) calendar days. The recommendation for the suspension without pay shall be documented in a Notice of Intent to Suspend, Demote or Terminate and discussed with the employee. The employee shall sign to acknowledge receipt of the memorandum. If the employee refuses to sign the memorandum, the Department Head shall note the employee's refusal to sign on the memorandum and continue with the procedure in Section 10-5. A copy of the memorandum shall be placed in the employee's Official Personnel File. A pre-determination hearing shall be held in advance of a suspension without pay if a hearing is requested. FLSA exempt employees must be suspended for full work day increments. An employee may be allowed to utilize compensatory time or vacation leave for 50% of the suspension time, not to exceed 10 days. The use of compensatory time or vacation leave is only available if the employee does not request the predetermination hearing.
  
- G. Termination of Employment. The Department Head may recommend termination of an employee. The offense and the rationale for the termination shall be documented in a Notice of Intent to Suspend, Demote or Terminate and discussed with the employee. An employee who has completed their probationary period shall be afforded their due process in accordance with Section 10-5. Upon the review and approval of the Human Resources Director, the Department Head shall give notice of the intent to terminate employment in a memorandum delivered to the employee and placed in the employee's Official Personnel File.
  
- H. Resignation in Lieu of Termination. An employee may request to resign in lieu of termination or other disciplinary action. Such a request must be submitted in writing to the immediate supervisor prior to a final determination following the pre-determination hearing or the effective date of the proposed action if a pre-determination hearing is not elected. If an employee resigns in lieu of termination, the employee will remain ineligible for rehire, if applicable, in accordance with Section 11-6. Eligibility for Rehire.

**10-4. DISCIPLINARY MEETINGS**

- A. Prior to any disciplinary action that may penalize an employee who has completed the probationary period, the Department shall hold a meeting with the employee. This shall be a meeting to present and discuss the charges subject to disciplinary action. The following apply to this meeting.
  - 1. The employee shall be provided written notice of the disciplinary charges and recommended disciplinary action.
  - 2. During the meeting, the Department Head or designee shall explain the disciplinary charges and any other issues that have bearing on the situation.
  - 3. The employee shall be given the opportunity to respond to the disciplinary charges and to provide any additional information that the employee believes to be relevant to the charges.

**10-5. PRE-DETERMINATION PROCESS**

- A. A classified employee who has completed the probationary period is entitled to a pre- determination hearing whenever suspension without pay, demotion or termination of employment has been recommended. Probationary, temporary and grant-funded employees are not entitled to the pre-determination process.
- B. Following notification of intent to suspend, demote or terminate employment the employee may be placed on administrative leave, with pay, pending the pre-determination hearing outcome with the approval of the Human Resources Director and County Manager.
- C. Within three (3) work days of receipt of the Notice of Intent to Suspend, Demote or Terminate, the employee shall deliver a written memorandum to the Human Resources Director to indicate the employee is requesting a pre-determination hearing, and the list of witnesses to be called to testify in the hearing, with receipt acknowledging receipt of the hearing request by the Human Resources department.
- D. If the employee does not request a pre-determination hearing, the employee is deemed to have waived his/her right to contest the matter as well as any further grievance or appeal options and the action recommended in the notice of intent shall take effect.
- E. In the event the employee requests a pre-determination hearing the County will retain a hearing officer from a list of attorneys specializing in employment law. The Hearing Officer shall hold an informal hearing to allow the employee the opportunity to respond to the proposed disciplinary action.
- F. The employee may cross examine any witnesses who have provided statements, and may present documents on his/her behalf.

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- G. The Hearing Officer is fully empowered to grant or refuse extensions of time, to set procedures for the hearing, to conduct the hearing, and to take actions relative to the proceedings.
- H. The hearing may be continued at the request of either the employee or the Department Head or his/her designated representative with the approval of the County Manager. Requests to continue the hearing must be submitted to the County Manager and the Human Resources Administrator in writing at least three (3) work days before the hearing date. Continuances will not be granted to accommodate the schedule of representatives or witnesses. The Human Resources Administrator will notify all concerned parties of the continuance.
- I. Failure of the employee to comply with these procedures and/or failure to appear at the time and place of the hearing will result in dismissal of the appeal and bar any further grievance of the disciplinary action including arbitration.
- J. If the Hearing Officer determines that the recommended disciplinary action was arbitrary or taken without reasonable cause, the disciplinary action may be revoked or modified. The Hearing Officer may otherwise modify or affirm the recommended disciplinary action.
- K. The Hearing Officer may impose appropriate remedial action after considering just and equitable relief to the employee and the best interests of the County and the public.
- L. The Hearing Officer shall make a determination regarding the proposed action based on the evidence presented at the pre-determination hearing.
- M. The employee and County shall be notified by the Hearing Officer, within five (5) business days, of the results of the hearing.
- N. The Notice of Final Determination will specify the disciplinary action to be imposed, and the effective date of the action or whether County management will determine the effective date based upon Department needs. The employee will be notified that the notice is available to be picked up or will be delivered by mail to the employee's address of record.
- O. The findings and decisions of the Hearing Officer may be appealed in accordance with Section 10-7. Only employees who elect to have the pre-determination hearing shall have an appeal right. See 10-7. Appeal of Suspension, Demotion or Termination.
- P. Nature of the Pre-Determination Hearing.
  - 1. The hearing shall be informal. The technical rules of evidence and court procedure shall not apply, except that irrelevant, immaterial, or unduly repetitious material may be excluded. Evidence protected by the rules of privilege recognized by law may also be excluded.

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2. The employee shall represent himself/herself, but may have a representative attend the hearing, as an observer. The observer is not to participate in nor obstruct the hearing process. In the event that an observer is disruptive to the proceedings, the hearing officer may remove them from the hearing. If the representative is an attorney, the employee must so inform the Human Resources Administrator to allow the County time to arrange for its general counsel to be present at the hearing. The County reserves the right to have the general counsel present at any and all hearings.
3. The pre-determination hearing shall be audio or video recorded.

Q. Witnesses.

1. The Hearing Officer may limit the number of witnesses on any issue, including character and reputation evidence.
2. The Hearing Officer may exclude from the room any witness not at the time under examination. The employee, the Department Head, and their representatives may not be excluded unless their behavior is disruptive.
3. Coordination of witnesses and collection of witness statements on behalf of the employee requesting the hearing are that employee's responsibility except in cases of unlawful discrimination, harassment or workplace violence. In cases of unlawful discrimination, harassment or workplace violence, the employee shall provide a witness list to at the time the hearing is requested and Human Resources will arrange for the witness(s) to appear. In the event that a county employee is uncooperative when contacted, Human Resources shall be notified by the employee requesting the hearing and will assist in securing the employee's cooperation.

**10-6. GRIEVANCE PROCEDURES**

A. The purposes of this grievance procedure include:

1. To promote improved employer-employee relations by establishing grievance procedures on matters for which appeal or hearing is not provided.
2. To afford each employee a systematic means of obtaining further consideration of problems.
3. To ensure that efforts are made to settle grievances at the lowest level.
4. To handle grievances as informally as possible.

B. Matters Subject to Grievance Procedure.

1. All classified employees, grant-funded employees and volunteer firefighters shall have the right to grieve any decision they believe violates County

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ordinances, policies or procedures; Federal or State laws or regulations; or established public policy, with the following **exceptions**:

- a. Suspensions without pay, demotions, and terminations, which may proceed directly to appeal or arbitration. See 10-7. Appeal of Suspension, Demotion or Termination and Arbitration.
  - b. Performance evaluations except as specified in 9-2. P., reclassifications and salary issues.
  - c. Non-selection for vacant positions.
  - d. Dismissal from probationary status.
  - e. Disputes as to whether an established County policy or practice is good or appropriate.
  - f. Management style, job direction and assignment of tasks/duties.
  - g. Reassignment or transfer provided there is no loss in pay.
  - h. Resignation by the employee.
  - i. Staffing patterns.
2. Grievances must be initiated within ten (10) work days of the incident to be considered.

C. Informal Grievance Procedure.

1. Any employee who has a grievance is encouraged to first try to settle it through discussion with his/her immediate supervisor. This step should be taken without undue delay.
2. If, after this discussion, the employee does not believe the problem has been satisfactorily resolved, the employee shall have the right to discuss it with his/her Department Head. Every effort should be made to find an acceptable solution by informal means.
3. If the informal grievance procedure does not result in resolution, the employee initiating the grievance may exercise the formal grievance process within five (5) work days of concluding the informal process.

D. Formal Grievance Procedure.

1. Issues that cannot be resolved through the informal grievance procedure may be taken to the formal procedure. The levels of review in the formal grievance procedure follow the chain of supervision and are listed below:

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SECTION X- DISCIPLINE, GRIEVANCES AND COMPLAINTS

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2. First Step. The grievant shall serve a written grievance with the grievant's immediate supervisor and the Human Resources Department unless the grievance is against the immediate supervisor in which case the employee shall serve the written grievance at the next supervisory level and the Human Resources Department within ten (10) work days of the precipitating event or five (5) work days of concluding the informal grievance process whichever is later. The respondent has ten (10) workdays to submit a response to the grievant with a copy to the Human Resources Department.
3. Second Step. If the grievance is not resolved within ten (10) work days at the First Step, the grievant may serve a copy of the written grievance with the Department Director. This written grievance must be served within ten (10) work days from the date of the immediate supervisor's response or the date that a response was due, whichever is earlier, or the grievance is forever barred. The respondent has ten (10) workdays to submit a response to the grievant with a copy to the Human Resources Department.
4. Third Step. If the grievance is not resolved within ten (10) work days at the Second Step, the grievant may serve a copy of the written grievance with the County Manager. This written grievance must be served within ten (10) work days from the date of the Department Director's response or the date that a response was due, whichever is earlier, or the grievance is forever barred.
  - a. Timing of Meeting. The County Manager or designee will hold a meeting on the grievance within ten (10) calendar days of receiving the written grievance at this step.
  - b. Evidence/Testimony. Management and the grievant will be permitted to submit documents and call witnesses at the meeting. Although the formal rules of evidence do not apply, the County Manager may refuse to permit the calling of witnesses whose testimony the County Manager deems irrelevant or cumulative. The County Manager may deny the consideration of evidence that determined to be irrelevant or cumulative.
  - c. Witnesses. Witnesses who are employees of the county will generally appear during work hours and will not lose pay for their attendance. Witnesses who are employees of the county and who are required to appear outside their normal work hours will be paid at their appropriate rate of pay under the Fair Labor Standards Act.
  - d. The County Manager or designee will issue a decision within ten (10) work days of the meeting unless otherwise agreed in writing between the County Manager and the grievant. The County Manager's decision shall be final.

E. Conduct of Grievance Procedure.

1. The time limits specified above may be extended by mutual agreement of the employee and management.

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2. Once a grievance has been dismissed, either through direct action or by inaction, the grievance cannot be reinstated by the employee.
3. Employees shall be free from reprisal for using the grievance procedures.

**10-7. APPEAL OF DEMOTION, SUSPENSION OR TERMINATION AND ARBITRATION**

A. Appeal

1. The employee may appeal the Notice of Final Determination. The employee must provide written appeal notice to the Human Resources Department within five (5) work days of receiving the Notice of Final Determination. Additional time may be granted on a case-by-case basis by written request to the Human Resources Director.
2. The appeal notice must include the basis of the appeal which identifies specific employment practices and procedures.
3. The party charged will be provided with a copy of the complaint documents and will have five (5) work days to provide a written response to the Human Resources Department. Additional time may be granted on a case-by-case basis by written request to the Human Resources Director.
4. The complainant will be provided a copy of the response, and may amend the initial appeal within two (2) work days of receiving the response. If amended, the party charged will also be extended two (2) workdays to provide any additional documentation.
5. The entire complaint and response will be submitted to an appeal panel composed of three (3) members of management. The employee will have an opportunity to request that a member of the panel be recused for cause such as a personal relationship or other conflict of interest. The appeal panel may request that the hearing officer attend a meeting with the panel to provide information from the pre-determination hearing. The appeal panel will make a determination within ten (10) work days after the panel is convened. Determinations will be made by majority vote. Both the complainant and the respondent will be provided with a copy of the appeal panel's written determination.
6. Appeals of a termination decision from the hearing officer for the pre-determination hearing may proceed directly to arbitration.

B. Arbitration

1. The only personnel actions which may proceed to arbitration are demotions suspensions without pay and involuntary terminations for classified employees who have completed the probationary period and volunteer firefighters.

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2. While the County is hopeful that disputes and complaints can be resolved before reaching arbitration, the purpose of arbitration is to arrange for independent third party resolution by a neutral party to assure the employee of a fair and impartial recommendation based on the applicable statute, rule, regulation, common law remedy, policy and procedure job performance and conduct of the employee free of personalities and issues not pertinent to the dispute.
3. When the employee elects to proceed directly to arbitration based on termination the employee has ten (10) work days following the Notice of Final Determination to request arbitration in writing. If the employee elects to utilize the appeal process rather than proceed directly to arbitration, the employee will have ten (10) work days from receipt of the written notice of the appeal panel's determination.
4. When requesting arbitration, the requesting party must include the following:
  - a. The written request for arbitration shall be submitted in writing and accompanied by a cashier's check or money order in an amount equal to the filing fees for a civil matter in District Court.
  - b. The notification shall state the issues proposed to be submitted to arbitration, that statute, rule, regulation, or common law remedy on which the claim or complaint rests or out of which the dispute arises, and the relief or remedy sought.
  - c. Failure to request arbitration in writing within such period shall be deemed to be a withdrawal of the complaint or dispute.
5. Within ten (10) work days of the party's notification of intent to pursue a post-disciplinary arbitration hearing, the Human Resources Director or designee will provide the party with the name of the arbitrator.
6. During and following the arbitration:
  - a. Each party shall have the right to call witnesses whose testimony may be pertinent to the issues of the case and to cross-examine other party's witnesses.
  - b. Each party shall have the right to make oral presentation and argument to the arbitrator.
  - c. Each party shall have the right to present documentary evidence that is relevant to the issue(s) being arbitrated.
7. At least 10 work days prior to the scheduled arbitration date, the parties shall exchange and simultaneously submit to the arbitrator a list of each document or exhibit that each party intends to submit, use, or refer to in its presentation

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at the hearing. Each party shall include with the list a copy of each document or exhibit referenced on the list.

- a. Each party shall have the right to be represented by an attorney or representative of that party's choice.
  - b. The arbitrator shall render a written recommendation based on the record with a statement of reasons for the recommendation containing Findings of Fact and Conclusions of Law within 30 days of the hearing.
  - c. The expenses and fees of the arbitrator shall be shared equally by the employee and the County.
  - d. Each Party shall bear the expenses of their own witnesses.
8. Past practices, which may have existed from time to time, shall not be used as a basis for interpretation. Practices currently existing may be considered only where the language of the statute, rule, common law remedy, regulation or procedure is so ambiguous that the intention as to the meaning and application can be ascertained in no other manner. The arbitrator may consider only the particular issue or issues presented to him/her. The arbitrator's recommendation must be based solely on the interpretation of applicable statutes, rules, regulations, policies, or procedures and the remedies available as to the issues presented for arbitration.
9. The determination of size of work force, skills required in the performance of any work, the assignment of employees to do any required work and what work shall be contracted out shall not be arbitrable.
10. Authority of Arbitration.
- a. The arbitrator shall have the authority to make a recommendation to the County Manager regarding relief for the arbitrated matter.

**10-8. COMPLAINTS**

- A. Hotline. In accordance with the Whistleblower Act and OMB A-123, the County has established a telephone and web-based hotline to which employees may report instances of waste, fraud, abuse, corruption and mismanagement. Examples of information that may be reported to the hotline include: kickbacks, safety hazards, conflicts of interest, use or sale of drugs, theft of cash or goods, falsifying county records, fraudulent insurance claims, physical abuse or harassment.
- B. The hotline allows for reporters to remain anonymous to the extent allowable by law. The appropriate official will investigate all information reported via the hotline.

## **XI. SEPARATION**

Section XI provides policies and procedures to be followed by supervisors in the event of employee separation from County service. It also clarifies employee rights related to separation pay, eligibility for rehire, and reinstatement rights in the event of a reduction-in-force.

### **11-1. TERMINATION OF PROBATIONARY OR UNCLASSIFIED EMPLOYEES**

- A. A probationary or unclassified employee may be terminated with or without cause at any time without notice or hearing during the probationary period with written approval of the County Manager.

### **11-2. MEDICAL SEPARATIONS**

- A. An employee who, due to a medical condition is unable to perform his/her essential job duties with or without reasonable accommodation, will be transferred or reassigned to a vacant position for which the employee is qualified in accordance with the provisions of the manual of personnel policies. If no vacant position exists for which the employee is qualified, the employee will be terminated.

### **11-3. RESIGNATIONS**

- A. An employee may resign by giving written notice and the effective resignation date to the supervisor or Department Head. A two-week written notice of resignation is requested. Upon receipt of the written notice of resignation, the Department Head may waive the two-week notice period.
- B. An employee who resigns shall be asked to complete an exit-interview questionnaire, provided by the Human Resources Department, to specify the effective date and reason for the resignation. The employee will be asked to authorize the County to deduct any monies owed to the County from the employee's final paycheck. Final paycheck will not result in payment for wages at a rate less than minimum wage.
- C. An employee who fails to report to work for two (2) consecutive work days without authorization or notification shall be considered to have abandoned his/her position. Job abandonment is considered a resignation.

### **11-4. EXIT PROCESSING**

- A. Upon notice that an employee is to leave County employment for any reason, the Department shall provide to the employee an Employment Separation Checklist so that the employee may begin exit processing.
- B. An employee must return or account for all County property, including uniforms, keys, badge, credit or fuel cards, equipment and other items of value.

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- C. Any money due to the County as a result of missing or damaged County property or other unpaid debt shall be itemized and presented to the employee for payment. If the employee is due payment for accrued leave, the amount owed to the County will be offset prior to final payment.
- D. If an exiting employee is deemed to pose a security or other risk by a member of executive management, the employee may be asked to leave immediately and/or be provided an escort from the premises by a law enforcement officer. If the exiting employee is being separated for cause and is not deemed to pose a security or other risk, the department head or supervisor shall ensure that the employee exits the premises. Consultation with Human Resources is recommended in making this determination and for assistance in the exit process.

**11-5. SEPARATION PAY**

- A. An employee who voluntarily separates or is subject to a medical separation from the County will receive a final paycheck, including accrued vacation leave, on the payday following the pay period that the separation date was effective.
- B. Employees who voluntarily separate from the County will receive their final paycheck in the same manner that they have received their regular paychecks.
- C. In case of death, the final salary and compensation for unused vacation leave shall be paid to the employee's estate.
- D. Employees separating for any reason other than retirement shall receive payment for earned wages and accrued vacation leave up to a maximum of two hundred forty (240) hours. An employee who resigns shall be paid his/her wages on the next regularly scheduled payday.
- E. An employee who is terminated or involuntarily laid-off shall be paid his/her wages within five (5) calendar days from the date of termination will receive their final paycheck in the same manner that they have received their regular paychecks.
- F. All employees terminating their employment with the County will be paid for accrued overtime and compensatory time. This payment will be included in the final paycheck.
- G. Employees retiring through PERA, with a minimum of fifteen (15) years of continuous County service, shall receive compensation for accrued vacation leave up to a maximum of three hundred (300) hours. Retirees with a minimum of fifteen (15) years of continuous County service shall also be compensated for accrued sick leave hours at a 1:1 ratio for up to a maximum of six hundred (600) hours, subject to a maximum cash payment of fifteen thousand dollars (\$15,000).

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- H. An employee with accrued sick leave as of November 27, 1999, the effective date of Ordinance No. 187-99, shall, upon future retirement from the County (under PERA), receive compensation for those sick leave hours on the books as of November 27, 1999. In addition to any balance as of this date, the employee will also be paid upon retirement for sick leave hours accrued after this date, up to the 600-hour/\$15,000 limit. Sick leave accumulated after November 27, 1999 will be taken before the pre- November 27, 1999 balance is reduced; once taken, those hours will not be reinstated.
- I. The payment-for-leave benefits may be paid in a separate check from the employee's paycheck at the discretion of the County.
- J. Employees separating for reasons other than retirement subject to G. above shall not be compensated for sick leave hours.

**11-6. ELIGIBILITY FOR REHIRE**

- A. To facilitate a safe and secure service and employment environment in which employees may be effective and successful in their work experiences at Doña Ana County and to ensure adequate protection of the public and public trust, former Doña Ana County employees shall not be rehired by the County if their separation from employment occurs due to but not limited to the following:
  - 1. Unlawful discrimination or harassment;
  - 2. Violence in the workplace;
  - 3. Dismissal from County employment as a result of disciplinary action;
  - 4. Latent discovery of misconduct which would have resulted in dismissal from employment;
  - 5. Resignation or retirement in lieu of termination;
  - 6. Resignation or retirement during the course of an investigation for alleged misconduct of the above, which if substantiated would constitute cause for termination;
  - 7. Resignation or retirement during development or pendency of administrative proceeding seeking termination of employment, based on substantiated misconduct;

This list is not intended to be all inclusive, but is illustrative of the types of actions that may lead to a determination of ineligibility for rehire.

- B. Duration of Ineligibility for rehire
  - 1. Former employees will be made permanently ineligible for rehire if made

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ineligible as a result of:

- a. Unlawful harassment, discrimination or retaliation
  - b. Workplace violence
  - c. Theft
  - d. Gross misconduct
  - e. Latent discovery of the types of misconduct noted above; resignation or retirement in lieu of termination for such misconduct or during the course of an investigation into such misconduct.
  - f. This list is not intended to be all inclusive, but is illustrative of the types of actions that may lead to a determination of permanent ineligibility for rehire.
2. Former employees will be made ineligible for rehire for a minimum of five (5) years if made ineligible as a result of:
- a. Breach of confidentiality
  - b. Misuse or destruction of equipment or property
  - c. Alteration of records
  - d. Insubordination
  - e. This list is not intended to be all inclusive, but is illustrative of the types of actions that may lead to a determination of permanent ineligibility for rehire.
3. Former employees will be made ineligible for rehire for a minimum of two (2) years if made ineligible as a result of:
- a. Excessive absenteeism or tardiness; unexcused absences
  - b. Inattention not resulting in an accident or injury to self or others or property damage
  - c. Inability to perform the essential functions of the job for reasons other than a disability or worker's compensation injury.
  - d. This list is not intended to be all inclusive, but is illustrative of the types of actions that may lead to a determination of permanent ineligibility for rehire.

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- C. Within 90 calendar days of separation from service or completion of the appeal or arbitration process, whichever comes later, the Department Head or Elected Official of an employee may request that individual be made ineligible for rehire. The request and explanation of the reason for the request shall be sent to the Human Resources Department requesting that the notice of ineligibility for rehire be sent to the employee. To ensure the consistent application of this policy, the Human Resources Administrator may also initiate the sending of a notice of ineligibility for rehire. The Director of Human Resources will make a final determination and notify the employee in writing either:
1. During an exit interview process;
  2. In a Final Determination Letter following proposed disciplinary action; or
  3. By other written notification to the employee mailed to the employee's home address of record.
- D. The former employee may seek reconsideration of his/her ineligibility for rehire status by submitting a written request to the Human Resource Director within ten (10) work days of the notification having been mailed to him/her.
1. The former employee shall include all information that they wish the County to consider when reconsidering the ineligibility for rehire status determination.
  2. The Human Resources Director or designee shall convene a panel of three (3) members of management to review the request and any prior documentation from the former employee's Official Personnel File and make a determination.
    - a. The employee may request that a member of the panel be recused for cause such as a personal relationship or other conflict of interest.
  3. The former employee will be notified of the determination in writing.
  4. The panel may uphold, overturn or modify the ineligible status based upon the criteria described above. The determination made by the panel is final.
- E. A temporary or probationary employee may seek a review of his or her ineligible status through the process described above but cannot request a review of the termination decision.
- F. A former employee who has not been deemed permanently ineligible for rehire may request a review of his or her ineligible status any time following the minimum period of ineligibility which is specified in the notice the former employee received.
1. The request for review shall include all information that they wish the County

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- to consider when reconsidering the ineligibility for rehire status determination.
2. The Human Resources Director shall convene a panel of three (3) members of management to review the request and any prior documentation from the former employee's Official Personnel File and make a determination.
    - a. When evaluating a request for employment eligibility to be reinstated, the panel shall consider the following:
      - i. Circumstances that led to the original ineligibility for rehire determination;
      - ii. Persuasive evidence or information that the factors leading to ineligibility have been remedied and will not reoccur if re-employed by the County;
      - iii. Employment history since leaving County employment;
      - iv. Any other factors deemed relevant by the panel
  3. The former employee may request that a member of the panel be recused for cause such as a personal relationship or other conflict of interest.
  4. The former employee will be notified of the determination in writing.
  5. The panel may uphold, overturn or modify the ineligible status based upon the criteria described above. The determination made by the panel is final.
- G. Volunteers shall also be determined to be ineligible for volunteer service and/or future employment opportunities with the County based on the type of violations described above. Notice will be provided in writing to the volunteer as described above. The process for reconsideration of the ineligible status will also apply to volunteers.

### **11-7. REDUCTIONS-IN-FORCE (LAYOFFS)**

- A. All employees are subject to separation by layoff due to a shortage of County funds, elimination of positions, or lack of work.
- B. When a Department anticipates a layoff, the Human Resources Department, with the approval of the County Manager, shall provide notification as far in advance as reasonably possible to the affected employee, with a minimum notice period of two (2) weeks. Pay for the notice period may be provided in lieu of time at the discretion of the County Manager.
- C. Order of Layoff.
  1. The order of layoffs will be guided by the mission mandates of County service to the Community.
  2. In determining positions to be eliminated and incumbents affected,

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consideration should be given to the following:

- a. Available funding
  - b. Required staffing levels
  - c. Retention of specific skills or qualifications necessary for Department operations
  - d. Demonstration of superior performance by incumbents
  - e. Seniority will be a final determinant when all other criteria are equal
  - f. Specific skills and/or superior performance must be clearly documented to ensure that the County does not discriminate, intentionally or unintentionally, based on race, color, sex, age, national origin, disability, or veteran status.
3. Employees scheduled for layoff may be assigned to another position provided they meet the minimum qualifications and agree to accept the pay rate of the position.
4. Recall rights
- a. Laid off employees shall have recall rights for one year from the date the employee's layoff was effective or the employee was assigned to another position.
  - b. The County will provide written notice to laid-off employee(s) of recall opportunities.
  - c. Employee(s) being offered a recall must give notice of acceptance or refusal of the position within five (5) work days, and if accepted must report for work within two (2) weeks of the date they were notified of the available position.
  - d. Refusal of a recall offer shall end any further obligations on the part of the County with regard to recall opportunities.

## XII. DEFINITIONS

### A

Abusive Conduct - acts and/or omissions that a reasonable person would find hostile based on the severity, nature and frequency of such conduct including but not limited to: repeated infliction of verbal abuse such as the use of derogatory remarks, insults and epithets; verbal or physical conduct of a threatening, intimidating or humiliating nature; the sabotage or undermining of one's work or performance; or attempts to exploit one's known psychological or physical vulnerability. A single act normally shall not constitute abusive conduct but an especially severe and egregious act may meet this standard.

Administrative Leave - paid leave approved at the discretion of the County Manager for good cause. Administrative Leave allows the employee to be away from work without losing any work-related benefits.

Allocation -the assignment of a position as to class and specific pay grade.

Anniversary - the date on which an employee was appointed to a classified position, also referred to as the "date of hire."

Appeal - formal request that a decision pertaining to a formal grievance be reconsidered at a further stage in the grievance procedure.

Applicant - individual who has filed an application for a vacant position and desires to be considered for appointment to a position in the County service.

Assault - layman's definition - to attack someone physically or verbally, causing bodily or emotional injury, pain and/or distress. May involve the use of a weapon and includes actions such as hitting, punching, pushing, poking, or kicking.

### C

Call-Back - Call-Back occurs when an employee is on scheduled time off (excluding lunch breaks) and is unexpectedly notified to return to work. The order to return to work is due to an unexpected event beyond control of management and normally results in an increase to the scheduled number of employees on duty. It is not one employee replacing another scheduled employee.

Cause - reason for discipline of classified employees, determined by the standards of job performance and maintenance of the public interest.

Child - A biological, adopted, foster, step child or a legal ward.

County - the county government composed of the County Commission, the County Manager, all

## SECTION XII- DEFINITIONS

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divisions, Departments, agencies, employees and volunteers which comprise the organization designed to provide service to the citizenry.

County Manager - the county's government's chief executive officer charged with complete responsibility of employees, facilities, and other resources as set forth by N.M. State Law and the County Charter. It includes anyone designate by the County Manager to act on his/her behalf.

Class - one or more positions which are sufficiently alike to warrant using the same (or similar) title, qualification requirements, examination, and pay grade. Sometimes called "Classification."

Classification Plan -the sum total of all class specifications in the county service.

Classified Employee – An employee holding a classified position who has completed the initial probationary period. A classified employee is entitled to all of the rights and benefits specified in the Human Resources Policies and Procedures as provided by Doña Ana County Code, Section 45 Human Resources.

Classified Position – A position approved by the Board of County Commissioners for which there is a job description and a set salary range with attendant fringe benefits, is subject to recruitment procedures, and for which all employment actions must be based on qualifications.

Class Specification - a written description of a class, which includes the position title, a general statement of duties and responsibilities, requirements, and definition of working conditions.

Compensation Plan - An organization of positions and compensation for employees set by the Board of County Commissioners.

Compensatory Time - those hours granted to employees covered by the Fair Labor Standards Act in lieu of overtime, on the basis of one and one-half (1-1/2) hours compensatory time for each hour of overtime.

Confidential Information – Information not available to the public and protected by the NMSA 1978, Article 14, Chapter 2, "The Inspection of Public Records Act".

Creditable Service - time on the County payroll constitutes creditable service. Creditable service does not include time that an employee is on unpaid leave, lay-off status, or the time the employee is on workers' compensation.

### D

Demotion - the assignment of an employee from one class to another which has a lower pay grade and lower maximum rate of pay (also called downgrade and reclassification).

Department Head - a County official designated with responsibility for operation and management of a major division of County government. Departments comprise several sections and units with similar service missions.

## SECTION XII- DEFINITIONS

Dependent – an employee's child, step child, adopted child, foster child who resides with the employee; is under the age of 19 at the end of the calendar year, or under age 24 and a full-time student for at least five months out of the year, or any age and totally and permanently disabled and for whom the employee provided more than half of their support during the year.

Disability - a physical or mental impairment which substantially limits one or more major life activities; or a record of having such impairment; or is regarded as having such an impairment.

Discipline - action taken with regard to an employee that may include reprimand, suspension, demotion, transfer, or termination.

Domestic partners - Two individuals who are in a mutually exclusive, committed relationship for the last twelve (12) months, who share a primary residence, who are jointly responsible for the common welfare of each other, who share financial obligations and have executed an affidavit of domestic partnership with the Human Resources Department and have been granted domestic-partnership status.

Due Process - the right granted to a full-time or part-time classified employee and volunteer firefighters, who has completed the probationary period, to the pre-determination process for disciplinary actions including suspension, demotion, or dismissal.

### E

Elected Official –an elected official department head; does not include County Commissioners

Eligible List - a list of persons qualified to fill a vacancy in a particular class.

Entry Level Rate - the minimum base rate in any salary grade established for a class.

Essential Job Functions - the fundamental job duties of the employee's position.

Exempt Employee - employees occupying positions determined to have met the exemption requirements as defined in Department of Labor regulations relating to the Fair Labor Standards Act, and whose compensation is based on a fixed annual salary.

### F

Fair Labor Standards Act (FLSA) - the Federal law which sets minimum wage, overtime pay, equal pay, record keeping, and child labor standards for employees who are covered by the Act.

Family Medical Leave - leave granted under the Family and Medical Leave Act of 1993 and as amended in 2008, 2010 and 2014.

Fixed Term Employee - Full- or part-time employees hired to perform work on a project of a non-permanent nature and for a limited period of time to be at least 12 months but not to exceed 36

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months.

Flexible Schedule – A prearranged and approved work schedule which includes core time which the employee is expected to work each day, with the remaining hours worked as determined by mutual arrangement of the employee and supervisor.

Full-Time- an employee budgeted to work 40 hours or more per seven-day period.

**G**

Grievance - an employee complaint regarding alleged poor working conditions, unjust application of discipline, or unjust application, interpretation, or violation of the rules and regulations of the County or the Department for whom the employee works.

**H**

Hearing - a formal review of the facts and circumstances surrounding a personnel action.

**I**

Immediate Family (Sick) - for purposes of sick leave: spouse, child or stepchild, parent of employee or spouse, an individual for whom the employee is a court appointed legal guardian or domestic partner and their eligible dependent.

Insubordination - failure to obey a direct lawful order of a supervisor or someone higher in the chain of command

Intimidating Behavior - threats or other conduct that frightens, alarms, inhibits others or impairs operations. Verbal intimidation may include making false statements that are malicious, disparaging, derogatory, disrespectful, abusive or rude.

**J**

Job Analysis - comprehensive analysis of the duties and responsibilities and essential functions of a position and of the qualifications required of persons selected for the position.

Job Description - a written statement of duties, responsibilities and essential functions which characterizes a job and includes the education, experience, knowledge, and ability required to perform the duties of the job.

**L**

## SECTION XII- DEFINITIONS

Layoff - the separation of an employee which occurs when a regular position has been abolished because of material changes in duties, or shortage or stoppage of work or funds, or other reasons in the best interest of the County, as determined by the County Manager.

Leave - an authorized absence from regularly scheduled work hours for reasons specified in the personnel rules (holidays, vacation, sickness, injury, disability, jury duty, etc.).

Leave With Pay- Authorized absence from work with pay.

Limited Competition - competition for a vacancy which is available only for eligible County employees.

Loudermill - the informal "due process" or "pre-disciplinary" hearing given to an employee prior to termination, demotion, or suspension of any classified employee.

### M

Management & Supervision -persons designated as heads of a group of employees, a section, a major functional unit, or an activity, with authority and responsibility to exercise independent judgment; who assign tasks, set standards of job performance, recommend hires, transfers, suspensions, layoffs, recalls, promotions, and terminations of subordinates. Further, they may assign, or discipline and direct or adjust employee grievances.

Medical Standards - medical requirements established for selected classes of positions which are related to performance and consistently applied.

Merit System - a personnel system designed to attract and hold employees by making individual employment decisions based on qualifications, experience, and performance rather than on political association.

Military Leave - paid leave granted to an employee who is a member of the armed services or air national guard or a military reservist not to exceed fifteen (15) work days per calendar year.

### N

Nepotism - patronage of one's immediate family as defined in Section 2-4 by providing them employment or position.

New Hire- a person not previously employed by the County.

Nonexempt Employees - all employees who are not exempt employees as defined in Department of Labor regulations relating to the Fair Labor Standards Act.

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### **O**

Open Competition - competition for a position which is available to all interested persons.

Overtime - means time an employee is directed and authorized to work in excess of the 40 hours per week, or 86 hours per 14-day period for designated Sheriff and Detention Center employees.

### **P**

Part-Time Employee - one who is budgeted to work less than 40 hours per seven-day period.

Pay Period - a two-week period, of which there are twenty-six (26) specified per year.

Pay Plans -the salary schedules for salaried exempt and non-exempt employees or any other class(es) of positions.

Pay Rate - also called base rate.

Pay Range - the minimum, midpoint, and maximum base rates established for each salary grade or pay plan consisting of grades and steps.

Performance Improvement Plan – The written plan set by a supervisor to improve performance of an employee including: standards, deficiencies, expectations for improvement, time deadline and a monitoring schedule.

Performance Evaluation - an assessment of an employee's work.

Personal Day - One (1) paid day or equivalent hours per fiscal year to be used at the employee's discretion subject to the supervisor's approval.

Political Appointee- An employee appointed by an Elected Official to an unclassified position.

Predetermination Hearing – A hearing conducted by the County Manager or designee to determine propriety of proposed disciplinary action of suspension, demotion, or dismissal, in order to provide due process.

Probation - A one year (12 month) period of employment, during which an employee is required to demonstrate fitness for continued employment. The probation period is another aspect of the selection process.

Probationary Employee - a full-time or part-time employee hired to fill a position in the classified service who has not yet completed the probationary period of employment during which time the employee may be terminated at will.

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Promotion - the assignment of an employee from one class to another, which has a higher maximum rate of pay, and greater responsibility. Promotion requires that an employee be upgraded and reclassified.

**R**

Regular Employees - classified employees working in positions that have no defined ending date. A regular employee may be full-time or part-time.

Reclassification- reassignment of a position from one class (grade) to a different class (grade) to correct an error in the original assignment or to recognize a change in the duties and responsibilities of a position. Ideally, reclassification should occur when a position is vacant. Reclassification shall not be used solely as a method of awarding an incumbent a salary increase or decrease.

Reasonable Accommodation - any modification or adjustment to a job, the work environment, or the way in which the work is customarily done that makes it possible for a qualified individual with a disability to perform the essential functions of the job and ensure equal employment opportunity.

Re-Hire - Re-employment of a former employee who left County in good standing.

Reinstatement - an action whereby an employee is restored to the County employment after involuntary termination or suspension. Reinstatement may be to a position with pay and benefits comparable to those received at the time of termination or suspension.

Resignation - voluntary separation from County employment prior to retirement.

Retirement Date - the date on which a regular County employee retires and begins drawing PERA retirement.

Reviewer - the rater's immediate supervisor who is required to review and approve each performance review within his/her purview before it is included as part of the reviewed employee's permanent record.

**S**

Salary - payment for work performed that is pre-determined and uniform from one payday to the next and does not depend on the number of hours worked.

Salary Schedules- (Refer to "Pay Plans") matrices of base rate salaries ranging from minimum, midpoint and maximum, or grades and steps, depicting approved pay ranges for employees in the County service.

Selection -the choosing of a candidate for employment

## SECTION XII- DEFINITIONS

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Selection Device- devices used separately or in combination, as appropriate, to obtain the best qualified candidates for vacant positions. Such devices may include, but are not limited to, work sample and performance tests, practical written tests, oral examinations, rating of training and experience, interview, skill tests, and others.

Separation - removal of an employee from the payroll for voluntary or involuntary reasons; to include dismissal, resignation, layoff, retirement, abandonment of the job, death, and other reasons.

Sick Leave - leave with pay, granted to a classified or qualified unclassified employee, after accrual at a specific rate for illnesses.

Student Intern - a part-time temporary employee who is enrolled in an institution of higher learning and whose field of study is related to the work being performed.

Supervisor - An employee who devotes a substantial amount of work time in supervisory duties, who customarily directs the work of two or more employees and who has authority to recommend the hiring, retaining, promoting, disciplining, adjustment of grievances, or evaluation of other employees. Does not include an individual who occasionally assumes a supervisory role or whose duties are substantially similar to those of subordinates, and does not include lead employees.

### T

Temporary Assignment - when an employee is assigned additional, significantly higher-level duties to meet operational needs or in order to fill in for a vacant position. Typically, the temporary assignment will begin five (5) work days after the employee is assigned the additional duties. It will normally run for ninety (90) calendar days; however, the assignment may be extended, with approval of the County Manager or designee, if the conditions are unchanged. In no case should the temporary assignment extend beyond one (1) year.

Temporary Employee - an employee who has been appointed to a temporary position in accordance with the personnel rules, who is not eligible to receive leave and benefits, and who is not entitled to rights of grievance and appeal. A temporary employee may be full-time or part-time.

Temporary Pay Upgrade - employee compensation for temporarily performing assigned duties or responsibilities of a higher pay grade, provided the temporary upgrade in assignment exceeds more than 28 calendar days.

Termination -the resignation, retirement, dismissal, or death of an employee.

Threat - oral or written expression or gesture that would be interpreted by a reasonable person as conveying intent to cause physical harm to persons or property. Any indication of impending danger or harm. Any signs or warnings of impending danger or harm.

## SECTION XII- DEFINITIONS

Transfer - assignment of an employee from one position to another in the same salary schedule. May also be assignment of an employee from one work site to another, from one agency to another, to more or less responsible or skilled occupations, or from one operational assignment to another in accordance with existing policy. Transfers may be voluntary or involuntary.

### U

Unauthorized Absence - absence from duty without supervisory approval.

Unclassified Employees – An employee employed in any position other than a classified position or an employee who has not completed the probationary period. Unclassified employees are at will and may be terminated for any nondiscriminatory reason and have no layoff rights or recourse to the grievance procedure.

Unpaid Leave - Authorized absence from work without pay.

### V

Vacancy - an authorized position not occupied by an incumbent which has been approved by the appropriate designated authority for filling.

Vacation Leave - leave with pay granted to employees at a specific rate to be used by an employee with prior approval from management.

### W

Wage - payment that is calculated according to the number of hours worked and which may fluctuate from one pay day to the next as the number of hours worked varies.

Workplace Violence - any action, whether verbal, written, or physical aggression that is intended to control, cause or is capable of causing injury or emotional damage to oneself or others or to damage property.