



# **SANDOVAL COUNTY, NEW MEXICO**

## **PERSONNEL**

# **RULES AND REGULATIONS**

Adopted February 5, 2009  
Amended October 7, 2010  
Amended November 17, 2011  
Amended May 5, 2016 / Effective July 1, 2016

2016011698 05/26/2016 11:39:49 AM  
MISCELLANEOUS Pg.1 of 152  
Eileen Garbagni, Sandoval County Clerk B: 419 P: 11698





**SANDOVAL COUNTY, NEW MEXICO  
PERSONNEL RULES AND REGULATIONS  
TABLE OF CONTENTS**

**ARTICLE I - PURPOSE AND SUPPLEMENTATION OF THE RULES AND REGULATIONS.**

A. INTERPRETATION..... 1

**ARTICLE II - PERSONNEL ADMINISTRATION, HIRING, COMPENSATION AND EMPLOYEE RECORDS**

A. ADMINISTRATION BY COUNTY MANAGER..... 3  
B. EMPLOYEE RECORDS..... 3  
C. POSITION CLASSIFICATION..... 4  
D. RECRUITMENT, SELECTION, PROMOTION, TRIAL PERIOD AND PROBATIONARY PERIOD..... 6  
E. EMPLOYMENT STATUS..... 11  
F. CHANGE IN EMPLOYMENT STATUS..... 13  
G. PERFORMANCE EVALUATIONS..... 14  
H. EMPLOYEE COMPENSATION, WORK PERIOD/DAY..... 15

**ARTICLE III - UNCLASSIFIED EMPLOYEES**

A. APPLICABLE SECTIONS OF THE PERSONNEL RULES AND REGULATIONS... 19  
B. POLICY STATEMENT..... 19  
C. UNCLASSIFIED EMPLOYEE CATEGORIES..... 19  
D. PAY UPON SEPARATION..... 21  
E. ANNUAL LEAVE..... 21  
F. SICK LEAVE..... 22  
G. COMPENSATION..... 22  
H. PERSONAL HOLIDAYS..... 23

**ARTICLE IV - ATTENDANCE AND WORK HOURS**

A. ATTENDANCE MANAGEMENT POLICY..... 24  
B. HOURS OF WORK..... 28  
C. OVERTIME PAY FOR FLSA NON-EXEMPT EMPLOYEES..... 30  
D. COMPENSATORY TIME IN LIEU OF OVERTIME PAY..... 33  
E. CALLBACK PAY FOR FLSA NON-EXEMPT EMPLOYEES..... 34  
F. STANDBY TIME AND PAY FOR FLSA NON-EXEMPT, NON-PUBLIC SAFETY EMPLOYEES..... 34  
G. PUBLIC SAFETY EMPLOYEES – CALLBACK AND/OR STANDBY TIME..... 34  
H. SHIFT DIFFERENTIAL FOR FLSA NON-EXEMPT EMPLOYEES..... 35  
I. TIME SHEET..... 35  
J. INCLEMENT WEATHER / EMERGENCIES..... 36

**ARTICLE V - LEAVE AND HOLIDAYS**

A. AUTHORIZED LEAVE..... 39

B.	UNAUTHORIZED ABSENCE AND VOLUNTARY RESIGNATION.....	40
C.	ANNUAL LEAVE.....	40
D.	SICK LEAVE.....	43
E.	PERSONAL LEAVE.....	46
F.	HOLIDAYS.....	46
G.	CIVIC DUTY LEAVE.....	47
H.	BEREAVEMENT LEAVE.....	48
I.	PARENT-TEACHER CONFERENCE ADMINISTRATIVE LEAVE.....	48
J.	LEAVE AND EMPLOYMENT RIGHTS FOR MEMBERS OF THE UNIFORMED SERVICES.....	51
K.	FAMILY AND MEDICAL LEAVE ACT (FMLA).....	52
L.	FAMILY AND MEDICAL LEAVE ACT MILITARY FAMILY LEAVE ENTITLEMENTS.....	62
M.	DOMESTIC ABUSE LEAVE.....	63
N.	LEAVE WITHOUT PAY.....	64
O.	CATASTROPHIC LEAVE.....	66

**ARTICLE VI - MANAGEMENT RIGHTS, EMPLOYEE RIGHTS AND  
EMPLOYEE CONDUCT**

A.	MANAGEMENT RIGHTS.....	75
B.	SUPERVISORY RESPONSIBILITY.....	77
C.	EMPLOYEE RIGHTS.....	77
D.	AVOIDING CONFLICT OF INTEREST.....	77

**ARTICLE VII- DISCIPLINE**

A.	BASIS FOR EMPLOYEE DISCIPLINE.....	84
B.	BEHAVIOR/ACTIONS SUBJECT TO DISCIPLINE.....	84
C.	RANGE OF DISCIPLINE.....	87
D.	COUNTY RESERVES RIGHT.....	89
E.	ALTERNATE ASSIGNMENT /ADMINISTRATIVE LEAVE PENDING DECISION.....	89
F.	NOTICE OF CONTEMPLATED ACTION/EMPLOYEE RESPONSE.....	90
G.	PRE-DISCIPLINARY HEARING.....	92
H.	ACCEPTS DISCIPLINE – NOTICE OF FINAL ACTION.....	92
I.	PRE-DISCIPLINARY HEARING - NOTICE OF FINAL ACTION.....	93
J.	COMPUTATION OF TIME AND TIME LIMITS.....	94

**ARTICLE VIII - GRIEVANCE PROCEDURE**

A.	NOTICE OF APPEAL OF SUSPENSIONS, DEMOTIONS OR TERMINATIONS.....	96
B.	COUNTY MANAGER REVIEW.....	96
C.	APPEAL FROM FINAL DECISION OF THE COUNTY MANAGER TO HEARING OFFICER.....	97

**ARTICLE IX - REDUCTION IN FORCE (LAYOFF)**

A.	REDUCTION IN FORCE.....	104
B.	PROCEDURES FOR LAYOFFS.....	104

C.	ORDER OF LAYOFF.....	105
D.	LAYOFF PRIVILEGES.....	105
E.	ORDER OF RE-EMPLOYMENT.....	106
F.	LAYOFF NOT GRIEVABLE.....	106

**ARTICLE X -SEPARATION FROM COUNTY**

A.	ACCOUNTING.....	107
B.	REIMBURSEMENT FOR MISSING OR DAMAGED COUNTY PROPRETY.....	107
C.	SEPARATION PAY.....	107
D.	RESIGNATIONS.....	107
E.	TIME IN SERVICE COMPUTATION/BREAK IN SERVICE.....	108

**ARTICLE XI - JOB RELATED INJURIES, OCCUPATIONAL ILLNESS AND PERSONAL INJURIES**

A.	REPORTING PROCEDURES.....	110
B.	MEDICAL PROCEDURES.....	110
C.	COMPENSATION.....	111
D.	WAITING PERIOD.....	111
E.	COORDINATION.....	112
F.	MODIFIED DUTY.....	112
G.	WORK-RELATED INJURY/ILLNESS RETURN TO WORK.....	113
H.	RE-EMPLOYMENT OF AN INJURED COUNTY EMPLOYEE.....	115
I.	NON-WORK RELATED INJURY/ILLNESS RETURN TO WORK.....	115
J.	STATUTORY REQUIREMENTS.....	115

**ARTICLE XII - PARTISAN AND NON-PARTISAN OFFICE HOLDERS**

A.	CANDIDACY.....	116
B.	LEAVE FOR SEEKING POLITICAL OFFICE.....	116
C.	LEAVE FOR STATE OR LOCAL OFFICE OFFICIALS.....	116
D.	COMPENSATION BY THE STATE OR LOCAL GOVERNMENT.....	117

**ARTICLE XIII - DRUG AND ALCOHOL POLICY AND TESTING  
DRUG FREE WORKPLACE**

A.	PURPOSE.....	118
B.	PROHIBITIONS/NOTIFICATIONS.....	118
C.	DRUG AND ALCOHOL TESTING.....	119
D.	EMPLOYEE ASSISTANCE PROGRAM.....	126
E.	ACKNOWLEDGMENT AND COMPLIANCE REQUIRED.....	127

**ARTICLE XIV - DISCRIMINATION, HARASSMENT AND VIOLENCE IN THE WORKPLACE**

A.	EQUAL EMPLOYMENT OPPORTUNITY POLICY.....	128
B.	SEXUAL HARASSMENT POLICY.....	128
C.	OTHER HARASSMENT.....	140
D.	VIOLENCE IN THE WORKPLACE.....	140

E. WEAPONS..... 140

**ARTICLE XV - DISABILITES AND REASONABLE  
ACCOMMODATION**

A. DISABILITY 141  
B. REASONABLE ACCOMMODATION 141  
C. COMPLAINT PROCEDURE 144

**ARTICLE XVI - OTHER POLICIES**

A. EMPLOYEE RESPONSIBLE FOR REPORTING CHANGES 145  
B. TRAINING 145  
C. LICENSING REQUIREMENTS 145  
D. UNION ACTIVITY 145  
E. WORKING CONDITIONS 145  
F. DRESS AND APPEARANCE 146  
G. AUTHORIZED PER DIEM AND TRAVEL REIMBURSEMENT 146  
H. UNIFORMS AND PERSONAL PROTECTIVE EQUIPMENT 146  
I. PERA AND INSURANCE BENEFITS 146

**SANDOVAL COUNTY, NEW MEXICO**  
**PERSONNEL RULES AND REGULATIONS**

**ARTICLE I - PURPOSE AND SUPPLEMENTATION OF THE RULES  
AND REGULATIONS.**

The Board of County Commissioners has adopted these Rules and Regulations in order to create a system of personnel administration to implement the provisions of Sandoval County Code Article 2, 26-20 through 26-31, as adopted and/or amended.

These Rules and Regulations are intended to provide rules governing the employment of classified employees. A “classified employee” is an employee who is hired into a classified position in the County and who has successfully completed his/her probation. A “classified position” is any position in the County service that is not specifically designated as unclassified by Sandoval County Code Article 2, 26-20 through 26-31, as amended and/or in these Rules and Regulations.

These Rules and Regulations also govern the employment of unclassified employees to the extent specified in Article III.

The Board of County Commissioners as the superintending authority of the County has adopted these Rules and Regulations and may amend, repeal or adopt new or revised rules and regulations at its discretion. These Rules and Regulations may be supplemented by properly approved general policies and procedures and department Standard Operating Procedures (“SOPs”). These Rules and Regulations may be subject to interpretive memoranda issued by the County Manager. No policy, procedure or interpretive memoranda shall be contrary to these Rules and Regulations. A complete set of all policies, procedures and interpretive memoranda shall be maintained by the Human Resources Director and shall be available to all employees.

**A. INTERPRETATION**

1. Use of Pronouns

All pronouns used in these Rules and Regulations shall include the masculine, feminine and neuter gender, and shall include the singular and plural, and the context of these Rules and Regulations shall be read accordingly.

2. Use of “Shall”, “May” Or “Can”

As used in these Rules and Regulations, the terms “shall”, “will” and “must” or the like are mandatory and terms “may” or “can” or the like are permissive.

3. “Director”

As used in these Rules and Regulations, the term “Director” used alone shall mean the County Human Resources Director.

**ARTICLE II - PERSONNEL ADMINISTRATION, HIRING,  
COMPENSATION AND EMPLOYEE RECORDS**

The County Manager, through the Director, shall administer Sandoval County Code Article 2, 26-20 through 26-31 as promulgated or amended and follow these Rules and Regulations as adopted or amended by the Board of County Commissioners.

**A. ADMINISTRATION BY COUNTY MANAGER.**

1. The County Manager shall administer the employment relations system as established in Sandoval County Code Article 2, 26-20 through 26-31, as amended these Personnel Rules and Regulations and all existing and future approved policies, directives and procedures.

2. The County Manager shall recommend to the Board of County Commissioners new or revised amendments to the Ordinance, Rules and Regulations and policies and procedures as necessary for the efficient operation of the County.

3. The County Manager is authorized to implement administrative procedures, standard operating procedures and directives not contrary to the Ordinance or these Rules and Regulations to effectively administer the employment relations of the County.

4. The County Manager shall maintain the classification plan and pay scale of the County for classified employees.

5. The County Manager shall maintain a pay system and benefits for unclassified employees.

**B. EMPLOYEE RECORDS.**

1. The Director shall maintain an official personnel file and a separate medical file for each employee.

2. The employee's personnel file, at a minimum, shall contain the employee's name, Social Security Number, title, division, status of employment, job classification, payroll change notices, application form, certifications, letters of reference, commendations, performance evaluations, benefit participation authorizations, emergency contact information, records of final notice of disciplinary actions and other records required by State or Federal law or regulation. Each disciplinary action in the employee's file must be signed or initialed by the employee, or if the employee refuses to sign, a supervisory-level employee, through his signature, shall attest that the document was given to the employee.

3. Leave Request Forms shall be retained until the Sandoval County financial audit report for the year in which said request was created has been released.

4. All employee information designated confidential (except personal medical information) shall be accessible only by the employee, the Director, managers in the employee's direct line of supervision, an Elected Official or Division Director in the event the employee seeks another County position, the County Attorney/designee, any person or representative authorized in writing by the employee or pursuant to any court order, judicial or administrative subpoena, or other applicable state or federal law.

### **C. POSITION CLASSIFICATION.**

#### **1. Position Classification Criteria.**

The Director shall determine position classifications subject to County Ordinances and the Fair Labor Standards Act (FLSA). Positions shall be evaluated in relation to one another based on duties and responsibilities, knowledge, skills and abilities required, working relationships and conditions, and impact and accountability.

#### **2. Job Descriptions.**

a. Job descriptions shall include the job title, classification, duties, responsibilities, minimum qualifications, and essential physical and mental functions of the job and shall specify required knowledge, skills, certifications and abilities.

b. The Director shall establish and maintain a complete set of job descriptions for all classified and unclassified positions subject to the recommendation of the County Manager and approval by the Board of County Commissioners.

c. The Director shall review and revise job descriptions as necessary, with the advice and concurrence of the Elected Official or Division Director or designee.

### 3. Position Evaluation Studies and Reclassification.

a. The County Manager may direct a job analysis study when the conditions warrant an evaluation of the County's workforce. The Director, after performing the study or engaging the services of a contractor to perform the study, shall submit its recommendation to the County Manager for review and action by the Board of County Commissioners.

b. An Elected Official or Division Director may request a new position classification or a reclassification of an existing position by submitting a written request to the Director listing the duties, responsibilities and qualifications of the proposed new position or proposed reclassification. The Director is to determine if the new position classification or reclassification is warranted, and submit her determination to the County Manager for review. The Director will inform the employee and the employee's supervisor of the County Manager's determination.

c. An employee who can justify that her position is improperly classified may submit to her supervisor, a written request for a job evaluation. The request must contain the specific job duties being performed which are not commensurate with the existing job description and submit the request to her supervisor. The supervisor will review the request and submit it to the Elected Official or Division Director with her recommendation. If

the Elected Official or Division Director agrees that a job evaluation is warranted she will submit it to the Director for review. The Director shall determine if the reclassification is warranted, and shall submit her determination to the County Manager for review. Human Resources will inform the employee and Elected Official/Department Director of the County Manager's determination.

**D. RECRUITMENT, SELECTION, PROMOTION, TRIAL PERIOD AND PROBATIONARY PERIOD.**

1. Posting of Vacant Positions.

a. The Director is responsible for posting and recruiting qualified applicants for vacant budgeted positions.

b. The Elected Official or Division Director initiates the recruitment process by submitting a Job Requisition Form to the Director on an approved form. The Director, after review and after obtaining any necessary additional information or clarification, will open the job for recruitment by:

(1) Posting the announcement on the County website and employee intranet.

(2) Posting the announcement on the Human Resources Job Vacancy bulletin board accessible to the general public;

(3) If determined necessary, placing a paid classified advertisement in a newspaper of general circulation in the area;

(4) A Veteran's Certification Form shall be included in every job posting to identify and certify veterans who are applying for vacancies in County divisions; and/or,

c. The posting shall be effective for a minimum of one (1) week and may remain open "until filled" if the Director deems the position difficult to fill. Only the County Manager or designee may rescind a posting.

2. Exceptions to Posting Process.

Posting may be waived, with the approval of the County Manager, in order to fill a position with a qualified County employee when it is determined to be in the best interest of the County, or for an emergency hire, or for an unclassified position.

3. Position Applications.

a. Applications for posted positions shall be submitted to the Director on the County's application form. An applicant shall only be considered for a position for which he is qualified and for which he has submitted a properly completed application containing the applicant's original signature and date. Only properly filled out application forms received on or before the closing date will be accepted.

b. The applicant is responsible for furnishing proof of qualifying experience, certification, licensure, degree or other documents or credentials verifying qualifications for the job. When a degree is required an official transcript from the degree granting institution shall be submitted directly to the County within the prescribed date set by the Director.

c. The applicant shall furnish proof of identification and right to work in accordance with the Immigration Reform and Control Act of 1986.

d. The applicant shall certify to the truth of all statements in his application for employment.

e. False claims, statements, omissions or misrepresentations shall cause an applicant to be disqualified or, if discovered after hiring, shall be grounds for the dismissal of the employee. If an untrue statement is discovered after hiring, the employee can be dismissed.

f. All applicants shall sign a Release of Information Form permitting the County to check references, employment history, and to conduct background investigations. Failure to sign the Release of Information Form shall cause the applicant to be disqualified.

g. Veterans applying for a County position and wishing to identify their veteran status must complete and submit the Veteran's Certification Form included in the job posting and attach a copy of their DD214 or DD215 Form and/or proof of Active, Guard or Reserve enlistment.

4. Screening of Applications and Selection of Candidate.

a. The Director or her designee shall screen all applications and determine which applicants meet the minimum qualifications required for consideration to fill the vacant position. Upon receipt of a veteran's application, the Human Resources Division shall verify that the veteran applicant has received an honorable discharge from the military or verify that the applicant is a member of the National Guard who has successfully completed basic training.

b. The Director or her designee will prepare an unranked list of all applicants meeting the minimum requirements for review by the Elected Official or Division Director. The Human Resources Division shall specifically identify veterans who meet the minimum qualifications for the posted position on the list of qualified applicants and inform hiring departments when a qualified applicant for a vacant position they are seeking to fill is a veteran.

c. The Elected Official or Division Director seeking to fill the vacant position is responsible for selecting a minimum of three (3) qualified applicants to be interviewed based on the applications of all applicants meeting the minimum qualifications. In the event fewer than three (3)

qualified applicants apply for the position, all applicants will be interviewed. The Elected Official or Division Director shall interview qualified veterans identified on the hiring list provided by Human Resources. If there are more than four qualified veteran applicants for a position, a minimum of four veterans shall be interviewed. The Elected Official or Division Director will provide the Director with the names of applicants who are to be interviewed and return the files of the remaining applicants. The Elected Official or Division Director will set up the interview dates and times and provide the Director with the name of the applicant selected to fill the position. The Elected Official or Division Director will return all of the applications to the Director.

d. Upon selecting a candidate for the position, the Elected Official or Division Director will provide a completed Request for Hire Form, interview questions, notes and reference check forms for the recommended candidate to the Director.

e. Applicants who are interviewed but not selected will be notified in writing by the Director within ten (10) working days.

f. The Director will maintain all documents required by this section for a minimum of two (2) years after the candidate is selected and hired.

#### 5. Applicant Testing.

a. Written, verbal, physical agility and/or other testing of skills specific to the job description may be required.

b. Testing of an applicant shall only be administered if authorized by the Director and if such testing is developed in accordance with established professional techniques, relevant law, regulations and guidelines with the outcome to measure skills and abilities necessary for job performance.

c. If required, the County shall pay for any post-offer medical examination, drug test or psychological examinations.

d. Upon notice from the professional administering the examination and/or drug test that the applicant is unable to perform the duties and responsibilities of the job or for whom a confirmed positive test for drugs has been reported, that applicant shall not be offered the position.

6. Ineligible for Hire.

**An applicant shall be deemed ineligible for hire if:**

a. The applicant made any false statements, omitted relevant information or made any misrepresentation in his application.

b. Applicant did not meet the qualifications for the position.

c. Applicant failed any examination or test administered by the County or failed to meet other requirements of the job description.

d. The applicant does not meet the criteria for insurance or bonding as required by County Ordinance or State law.

e. Applicant has previously been dismissed for cause by the County or left County employment while the subject of a pending notice of contemplated disciplinary action or a performance improvement plan.

f. Applicant has been convicted of a felony or of a misdemeanor involving moral turpitude and

(1) the criminal conviction directly relates to the particular job duties of the position for which the applicant has applied, which determination and the reasons therefore shall be explicitly stated in writing ; or

(2) the criminal conviction does not directly relate to the particular position but the applicant has not been sufficiently rehabilitated to warrant the public trust.

(a) There shall be a presumption of sufficient rehabilitation if the applicant has completed probation or parole supervision, or upon expiration of a period of 3 years after the final discharge or release from any imprisonment without any subsequent conviction. However, this subparagraph (2) (a) does not apply to an applicant for a position in law enforcement.

g. The above list is not exhaustive and does not include all of the reasons which would make an applicant ineligible for hire.

## **E. EMPLOYMENT STATUS.**

### **1. Classification of Employees (FLSA).**

#### **a. Non-exempt employees**

(1) non-exempt Employee is a full-time Fair Labor Standards Act (FLSA) employee who normally is scheduled for work a minimum of forty (40) hours in a seven (7) consecutive day period and is paid on an hourly basis for hours worked.

(2) Certain Non-exempt employees in public safety divisions may work from seven (7) to twenty eight (28) days in each work period as provided by FLSA Section 7(k) partial exemption from the forty (40) hours in a seven (7) consecutive day period.

#### **b. Exempt employees.**

(1) An Exempt Full-Time Employee is an executive, administrative, computer related, highly compensated or professional employee as defined by the FLSA, whose compensation is based upon a fixed annual salary and is a salaried employee.

(2) The Director shall maintain a list of positions that are identified as exempt.

c. Unclassified employees are covered in Article III of these Rules and Regulations.

2. Probationary Employees.

a. Probationary Period. An employee hired to fill a classified position shall serve a trial probationary period of three hundred sixty five (365) calendar days. At the end of the trial probationary period the employee's supervisor shall be responsible for completing an evaluation and (if appropriate) certifying that the employee has satisfactorily completed the trial probationary period. Notwithstanding the expiration of three hundred sixty five (365) days, the employee will continue in probationary status until the Division Director or elected official certifies in writing that the employee has successfully completed probation. Upon receipt of such certification, the employee shall become a non-probationary classified employee entitled to the rights and benefits of that classification pursuant to Sandoval County Code Article 2, 26-20 through 26-31, as amended, and these Personnel Rules and Regulations. Factors affecting calculation of probationary period are:

(1) Any period of temporary light/modified duty or leave without pay during the probationary period shall extend the probationary period by an equivalent amount of time.

(2) An employee transferred or promoted to a new job classification during his probationary period shall serve a full 365 calendar day trial/probationary period in his new job classification.

(3) When an unclassified employee is hired to fill a classified position, the hire date for the classified position shall be used in computing the beginning of the probationary period.

b. Probationary Evaluation. In order to evaluate the employee's performance and to determine if the employee is adapting to and fulfilling the requirements of the job, the probationary employee should receive a written performance evaluation at six (6) months and a probationary evaluation upon completing eleven (11) months of employment, unless

terminated prior to completing his probation. The evaluation should inform the employee of areas for improvement, including a corrective action plan with timelines for each area needing improvement. However, a supervisor or manager's failure to perform the prescribed evaluations shall not limit the County's right or discretion regarding termination of the employee during the probationary period.

#### **F. CHANGE IN EMPLOYMENT STATUS.**

1. Demotion. An employee may be demoted to a position in a lower grade due to disciplinary action or when an employee requests a demotion to a vacant position for which he qualifies. An employee desiring a voluntary demotion must submit a written request for a voluntary demotion to the County Manager.

a. Voluntary demotions shall be in accordance with Article II.F.1 and Article II.H.7.

b. Involuntary demotions shall be in accordance with Article, II.F.1 Article II.H.7, and VII. Demotions as a result of discipline are grievable pursuant to Article VIII.

2. Transfer.

An employee may be transferred to another position for which he/she is qualified at the same or an equivalent grade at the recommendation of the Elected Official or Division Director with the concurrence of the Director, for any business reason deemed by the County Manager to be in the best interests of the County. Transfers may be within the same organizational unit and division or to a different organizational unit or division. A temporary assignment to a lateral position shall not result in a pay adjustment. A temporary assignment to a higher classification shall be in accordance with Article II.F.4. Transfers under this subsection are not grievable.

3. Promotion.

Employees, upon application, shall be considered for promotion to fill any vacant position over outside applicants with equivalent qualifications. The County encourages employees to develop skills, attain greater knowledge in their career field and make known their qualifications for promotion to a more responsible position within County service. No supervisor shall deny an employee permission to apply for a promotion.

a. Promotion Salary Increase:

A promoted employee shall receive an increase in line with the County salary plan: The increase is to the minimum of the new pay grade or five (5%) percent, whichever is greater. The pay adjustment shall be documented by the Director and forwarded to the County Manager for approval.

4. Temporary Promotion

Assignments given to an employee requiring a higher level of responsibility or a higher classification for which she qualifies will entitle her to a temporary salary adjustment of five (5%) percent or to the minimum of the grade rate of the position, whichever is greater; or in the case of an unclassified employee, the County Commission may approve such rate as it deems appropriate. The salary of an employee whose current salary has been adjusted because of a temporary promotion will revert to the employee's original salary upon termination of the temporary assignment and before any subsequent personnel action involving a salary rate change.

## **G. PERFORMANCE EVALUATIONS**

The performance evaluation process is established to inform a classified employee of his performance; identify performance elements in which an employee does well and those duties which require improvement and provide him with an improvement plan, with dates for review on the specific improvement plan and performance objectives, based on best management practices. Performance evaluations are a tool to inform the employee of his/her performance, and is not grievable.

Each classified employee shall be evaluated by his supervisor at least every two (2) years. However, a supervisor's failure to complete a performance evaluation at least every two (2) years shall not be grounds to grieve a suspension, demotion or termination.

The original, completed, performance evaluation form, signed by all parties, shall be forwarded to the Director for procedure verification and to file in the employee's personnel file. A copy of the signed and verified evaluation form will be given to the employee and to the Elected Official or Division Director.

## **H. EMPLOYEE COMPENSATION, WORK PERIOD/DAY**

### **1. Compensation Plan**

A compensation plan for classified employees shall be adopted and/or amended by the Board of County Commissioners. Such plan shall establish a schedule containing a minimum and maximum pay range for each position in the classified service.

### **2. Compensation Plan Provisions**

The compensation plan is intended to provide fair compensation for all classes in relation to the pay for other classes, general rates of pay for similar employment in the public and private sector, cost of living data, financial condition of the County and other factors. To this end the County Manager shall review the compensation plan annually and may initiate a comparative wage study by assigning the Director to make comparative studies of all the factors affecting the level of salaries and recommend such changes as may be justified. Such adjustments shall be made by increasing or decreasing the salary ranges provided in the base salary schedule and submitting them to the Board of County Commissioners for consideration. Employee rate of pay may be adjusted to conform to the adjustment of the salary range for that class, but an employee's rate of pay will not be decreased as a result of the study or of the plan approved by the Board of County Commissioners. If a study shows that an employee's rate of pay exceeds the salary range for that class, the employee will be red-circled at their current rate of pay until such time the salary range catches up to their rate of pay.

### **3. Unclassified Employees**

The compensation for unclassified employees shall be in accordance with the County's compensation plan and other guidelines established by the Board of County Commissioners.

#### 4. Salary Basis

It is the County's policy to comply with the salary basis requirements of the Fair Labor Standards Act (FLSA). The FLSA requires that most employees be paid at least the federal minimum wage for all hours worked and overtime pay at time and one-half the regular rate of pay for all hours worked over 40 hour in a workweek. (For some occupations, other than a 40 hour workweek is authorized.) However, the FLSA provides an exemption from both minimum wage and overtime pay for employees employed as bona fide executive, administrative, professional and outside sales employees and certain computer employees. To qualify for an exemption, employees generally must meet certain tests regarding their job duties and be paid on a salary basis at not less than \$455 per week, or for computer employees, on an hourly basis at a rate not less than \$27.63 an hour.

"Salary basis" means the employee regularly receives a predetermined amount of compensation each pay period. The predetermined amount cannot be reduced because of variations in the quality or quantity of the employee's work. Subject to exceptions (see next paragraph), an exempt employee must receive the full salary for any workweek in which the employee performs any work, regardless of the number of days or hours worked. If the employer makes deductions from an employee's predetermined salary, i.e., because of the operating requirements of the business, that employee is not paid on a "salary basis." If the employee is ready, willing and able to work, deductions may not be made for time when work is not available.

Deductions from pay are permissible when an exempt employee:

- a. Is absent from work for one or more full days for personal reasons other than sickness or disability;
- b. For absences of one or more full days due to sickness or disability, if the deduction is made pursuant to an employer's policy or practice;
- c. To offset amounts employees receive as jury or witness fees, or for military pay;

- d. For unpaid disciplinary suspensions of one or more full days imposed in good faith for workplace conduct rule infractions;
- e. For penalties imposed in good faith for infractions of safety rules of major significance;
- f. For unpaid leave taken by an employee under the Family and Medical Leave Act; or
- g. For the initial or terminal week of employment if the employee works less than the full work week;

Supervisors are prohibited from making any improper deductions from the salaries of exempt employees. An employee who believes that an improper deduction has been made to his or her salary should immediately report this information to his or her supervisor or to the Director. Reports of improper deductions will be promptly investigated. If it is determined that an improper deduction has occurred, the employee will be promptly reimbursed for any improper deduction made.

#### 5. Salary/Pay Ranges

Salary ranges are intended to furnish administrative flexibility in recognizing job content differences among positions allocated to the same class and in providing employee incentive for growth and improved performance.

#### 6. Pay Adjustments

All pay increases for classified and unclassified employees shall be within the Board of County Commissioners' approved budget and the adopted compensation plan, if applicable. Pay adjustments of ten (10%) percent or less for a classified employee(s), may be granted by the County Manager when justified by job market, retention and/or recruitment factors and when within the adopted compensation plan and approved budget. Pay adjustments above ten (10%) percent must be approved by the Board of County Commissioners.

### Pay Adjustment for Demotion

When a classified employee is demoted, the employee's pay shall be reduced by 2.5% per classification range. At no point will the salary be less than the entry level for that position unless otherwise provided in an approved collective bargaining agreement.

## **ARTICLE III - UNCLASSIFIED EMPLOYEES**

### **A. APPLICABLE SECTIONS OF THE PERSONNEL RULES AND REGULATION**

Including this Article, the provisions of these Rules and Regulations that apply to unclassified employees, except as otherwise provided in an individual contract of employment, are as follows: Article I; Article II.A, B, II.H.3, 4 and 6; Article IV.A through G and I through J; Article V.A, B, and G through N; Article VI.A, B and D; Article X.A, B and D.1, 2, 4 and 5; Article XI; Article XII; Article XIII; Article XIV; Article XV; and, Article XVI.A through C and E through I.

Any reference to disciplinary action, grievance and/or arbitration contained in the Articles cited above, stated or implied, does not apply to unclassified employees.

### **B. POLICY STATEMENT**

Unclassified employees are “at-will” employees of the County and have no rights, benefits or privileges not specified in this Article, or in any written, signed and duly approved employment agreement.

### **C. UNCLASSIFIED EMPLOYEE CATEGORIES**

Unclassified employees are the following:

1. Appointees of Elected Officials

The appointees of the Board of County Commissioners are the County Manager and the County Attorney. The appointees of the Sheriff are the Undersheriff and Executive Assistant. The appointee of the County Assessor, County Clerk and County Treasurer is a Chief Deputy for each elected office. Appointees of elected officials may be allowed to participate in County-sponsored insurance benefits, in the County’s sole discretion, if they meet eligibility criteria. They may also, in the County’s sole discretion, be allowed to accrue and receive retirement benefits in accordance with applicable State statutes and regulation.

## 2. Appointees of the County Manager

The Appointees of the County Manager are the Assistant County Manager, contract employees and/or other positions determined necessary by the Board of County Commissioners and funded in the County's budget. Appointees of the County Manager may be allowed, in the County's sole discretion, to participate in retirement benefits in accordance with applicable State statutes and regulations

## 3. Casual Employees/PRN

Casual employees are employees paid on an hourly basis and who are called on short notice on an occasional or irregular basis in a division. Casual employees are paid only for the hours worked. They do not receive or accrue any employee benefits, including but not limited to leave or holiday.

## 4. Emergency Hires

Emergency hire employees are employees hired to fill positions for a period not to exceed sixty (60) calendar days, without posting the job, because of an emergency situation and are paid on an hourly basis only for the hours worked. An emergency hire may be extended with the approval of the County Manager for a period not to exceed thirty (30) additional calendar days. Emergency hires do not receive or accrue any employee benefits, including but not limited to leave or holidays.

## 5. Temporary Employees

Temporary employees are hired for a period of no more than six (6) months. Temporary employment may be extended with the approval of the County Manager for a period of no more than sixty (60) calendar days. Temporary employees do not receive or accrue any employment benefits, including but not limited to leave or holidays.

## 6. Term Employees

Term employees are hired for a specific period of time to perform a specific service, whose term and conditions of employment are determined by the County

Manager. Term employees shall be terminated at the conclusion of the term unless terminated earlier in the sole discretion of the County.

#### **D. PAY UPON SEPARATION**

An unclassified employee leaving County employment shall receive payment for all earned compensation, and a maximum of two Hundred and twenty-five (225) hours of accrued annual leave. An unclassified employee resigning his employment shall receive his final paycheck, less any amount owed to the County, at the next regular scheduled date of pay. An unclassified employee who is terminated shall receive his final pay check, less any amount owed to the County, within ten (10) days of his last day of work.

#### **E. ANNUAL LEAVE**

1. A full-time unclassified employee shall accrue annual leave at the rate of ten and fifteen one hundredth (10.15) hours per pay period or receive Paid Time Off ("PTO") consistent with terms as set forth in any written agreement between the unclassified employee and the Board of County Commissioners.

2. A part-time unclassified employee shall accrue annual leave on a pro-rata basis as set forth for classified employees.

3. Casual, temporary and emergency hires do not accrue annual leave, personal leave, bereavement or other leave benefits unless required by Federal or State laws.

4. Unclassified employees shall not be granted annual leave in advance of accrual.

5. An unclassified full-time employee who has completed twelve (12) months of County employment and who has accrued over two hundred twenty five (225) hours of annual leave shall be eligible to sell-back to the County forty (40) hours of annual leave in June of every year.

6. An unclassified employee who is eligible for PERA retirement and provides the Director with written notice that he will be retiring from employment

may, subject to the approval of the County Manager or his designee, take annual leave just prior to his separation from the County.

7. Unclassified employees, with the exception of part-time employees, may carry forward a maximum of four hundred eighty (480) hours after the last pay period in December of each calendar year, or fifty percent (50%) of the time earned from the date of hire if the employee has worked for the County less than one year as of the last pay period in December. This provision applies to all unclassified employees unless otherwise provided in a written agreement between the unclassified employee and the Board of County Commissioners.

8. Annual leave shall not be charged in less than multiples of one-half (.5) hour.

#### **F. SICK LEAVE**

1. Part-time unclassified employees accrue sick leave on a pro-rata basis as set forth for classified employees.

2. Casual, temporary and emergency hires do not accrue sick leave.

3. Full-time unclassified employees shall not accrue sick leave and may use accrued annual leave in lieu of sick leave, unless specified in a contract between the unclassified employee and the Board of County Commissioners.

#### **G. COMPENSATION**

1. The compensation for the appointees of the County Clerk, County Treasurer, County Assessor and County Sheriff is set by the Board of County Commissioners.

2. The compensation for all other unclassified employees shall be set by the County Manager through the budget process as approved by the Board of County Commissioners or by a contract between the unclassified employee and the Board of County Commissioners.

**H. PERSONAL HOLIDAYS**

In addition to designated holidays, each full-time unclassified employee, except casual, temporary and emergency hire employees, shall be given two (2) personal holidays per fiscal year. These days shall be used during the fiscal year in which these are received or they are forfeited. Personal holidays shall be requested three (3) days in advance and shall be taken in two (2) eight (8) hour segments.

Part-time employees shall earn one (1) personal holiday per fiscal year which may be taken in two (2) four (4) hour segments.

## **ARTICLE IV - ATTENDANCE AND WORK HOURS**

### **A. ATTENDANCE MANAGEMENT POLICY**

Sandoval County is a public service organization responsible for providing taxpayers with quality services in a safe and timely manner. The ability to do so is directly dependent upon all County employees' attendance and work performance. When an employee is absent from work he or she adversely impacts coworkers, the work flow within their division and the delivery of services to the taxpayers.

#### 1. Goal:

Excellent attendance is an expectation of all employees of Sandoval County. Sandoval County recognizes that regular attendance promotes higher staff morale and fair workload allocation. To that end, the Attendance Management Policy is intended to provide the basis for a consistent and equitable approach towards the management of attendance.

#### 2. Definitions:

a. Unauthorized Leave /Absent without Leave: Any scheduled hours of work missed without prior permission or reasonable excuse (as determined in the discretion of the County) will be considered an unauthorized absence. This includes tardiness for work, from lunch or breaks and early departure from work. Any appearance at work that is in violation of County or division policy governing readiness for work shall be considered to be unauthorized leave without pay.

b. Authorized Leave: Any approved absence, which utilizes accrued annual or sick leave or leave without pay for which the employee has provided justification and that is approved by the Division Director, Elected Official or their designee.

c. Excessive Absenteeism: Unauthorized Absenteeism that affects productivity, causes a deadline to be missed, a service/deliverable to be

delayed, results in errors or an inferior work product; results in the absent employee's work being reassigned to his or her coworkers; or absenteeism that may be shown by ranking of employees in order of attendance and showing that the employee of note is far behind the middle or norm, or as defined by division SOPs.

3. Expectations:

Excluding leave or time utilized for certified conditions or qualifying exigencies under the Family and Medical Leave Act (FMLA), or as provided for pursuant to the Americans with Disabilities Act, Uniformed Services Employment and Reemployment Rights Act (USERRA) or the NM Workers Compensation Act (NMWCA), the following conditions for attendance shall apply:

a. Tardiness: When an employee reports late to work, or from a break or lunch, the employee is expected to immediately report the reason to their supervisor. The supervisor should apply reasonable and fair standards in determining if the reason given by the employee should be considered a valid excuse.

b. Early Departure: No employee shall leave work early without their supervisor's permission. Employees departing without permission will be required to submit a Request for Leave Form for the time missed and will be subject to disciplinary action for unauthorized leave. If a supervisor has been asked for permission to leave early on the same work day, the supervisor may either approve a Request for Leave Form or grant permission to flex an employee's schedule within the work week for an FLSA Non-exempt employee, or pay period for an FLSA Exempt employee, as applicable. Consideration must be given to whether or not such absence will have a negative impact on staffing levels, work load or work flow within the unit, an impending deadline or on the delivery of services to customers. FLSA Non-exempt employees shall record the actual hours worked each day on their time sheet.

c. **Unscheduled Absence:** All employees unable to report to work shall notify their supervisor, or a person expressly designated by their Supervisor, as much in advance as reasonably possible, but no less than within one hour of the normal time the employee is expected to report to work. A Request for Leave Form shall be completed and submitted to their supervisor upon the employee's return to work. An employee who is absent for three (3) or more consecutive work days, or who has demonstrated a pattern of tardiness or absence, may be asked to provide an original written note from a health care provider or other corroborating source or document.

#### 4. FLSA Exempt employees

FLSA Exempt employees are required to utilize wage replacement benefits (leave) for absences from work that would result in less than forty (40) hours being worked in a week. If an exempt employee has exhausted their sick leave accruals, they may not be docked pay for absences of less than eight (8) hours; however, they are still subject to disciplinary action for unauthorized leave or abuse of leave as described herein.

#### 5. Flex Time

a. If an employee is approved for flex time, FLSA Non-exempt employees must flex their hours within the same work week. FLSA Exempt employees may flex their hours pursuant to an agreed upon schedule.

b. Exempt employees, with their supervisor's approval, may flex their schedule or make up time pursuant to an agreed upon schedule.

#### 6. Roles and Responsibilities

a. Employees are expected

(1) to attempt best efforts to be physically and mentally fit for work;

- (2) to attend work, on time, for every scheduled day of work;
- (3) to provide advance notice of a scheduled absence to enable the supervisor to adjust work flow during their absence;
- (4) to provide reasons for absence, tardiness or leaving early;
- (5) to contact the Supervisor directly or through a person expressly designated by the Supervisor if unable to attend work;
- (6) to provide documentation from a health care provider (or other certification, as appropriate) when requested under County policy; and
- (7) to follow required procedures when requesting and utilizing leave and recording hours worked.

b. Supervisors are expected

- (1) to communicate expectations and the County Attendance Management Policy to employees;
- (2) to review and approve or deny Requests for Leave in a timely and reasonable manner;
- (3) to ensure time sheets and leave forms accurately reflect leave and actual hours worked before signing them;
- (4) to counsel employees regarding attendance;
- (5) to provide employees with information concerning their personal rate of absenteeism;

(6) to record reasons given for absences, tardiness and leaving early;

(7) to report absenteeism concerns to Human Resources including absences in excess of three (3) days, patterns of repeated absenteeism and conditions or events which may be qualifying under FMLA or the ADAA, as amended; and

(8) to refer employees to Human Resources for information and guidance on the ADAA, as amended, FMLA, USERRA and NMWCA, as appropriate.

c. The Human Resources Department is expected to:

(1) to distribute this policy and answer questions and concerns regarding its implementation;

(2) to assess situations or issues of concern to determine the applicability of FMLA or the ADAA, as amended; and

(3) to provide advice and guidance to Elected Officials, Division Directors and supervisors regarding the appropriate application of the FLSA, the FMLA, the ADAA, as amended, USERRA, NMWCA, the Sandoval County Personnel Rules and Regulations and other relevant policies.

d. Represented employees are subject to the terms of their collective bargaining agreement. If their contract does not address attendance, this policy shall prevail.

## **B. HOURS OF WORK**

### **1. Work Week**

The scheduled work week of an employee shall normally be consistent with that of his departmental unit. The County Manager may approve necessary deviations to meet the needs of the County as long as the forty (40) hour weekly total is observed. A normal work week is usually a forty (40) hour period, not inclusive of unpaid meal time, consisting of five (5) work days. The Board of County Commissioners may establish work weeks for fire, sheriff and detention center or other public safety units ranging from seven (7) to twenty eight (28) days in which overtime is paid after a specified number of hours in each pay period pursuant to FLSA Section 7(k)

## 2. Work Day

The normal work day, beginning at 8:00 a.m. is a scheduled work period of at least eight (8) hours within a twenty-four (24) hour period. Work days for field personnel may begin as early as 6:00 a.m. based on the operational requirements and seasonal needs. The normal work day for public safety personnel may consist of shifts as recommended by the Elected Official or Division Director and the County Manager and approved by the Board of County Commissioners in the annual budget.

## 3. Flex Schedule.

Staggered work days or work periods, rotating shifts, split shifts, and other exceptions to the standard schedule may be established as required to meet the needs of the division, department and the County. Such exceptions are subject to advance approval by the County Manager. Employees who are required to work an exception to the normal hours or basic shift are to be notified before the beginning of the workday or shift.

## 4. Meal Period.

Employees' meal time is an unpaid meal period and is not inclusive of their minimum forty-hour work week. The employee's unpaid meal period shall be

taken within the first five (5) hours of the work schedule. The meal period will be determined by the Elected Official, Division Director or County Manager. During the unpaid meal period the employee is relieved of his job responsibilities and is encouraged to leave the work area. Public Safety employees are not subject to the provision of this subsection.

5. Paid Rest Breaks.

Employees may be provided two (2) fifteen (15) minute paid breaks within the eight (8) hour work day. Rest breaks shall be scheduled by the Elected Official or Division Director. Rest breaks are not cumulative and if not used within the eight hour work day are forfeited. Public Safety employees are not subject to the provision of this subsection.

**C. OVERTIME PAY FOR FLSA NON-EXEMPT EMPLOYEES**

Overtime work is work performed by non-exempt employees and ordered and approved by the Elected Official or Division Director or designee. Overtime work without prior approval will be paid; however, unauthorized work outside of normal work hours may be subject to disciplinary action. Emergency situations, as determined by the Elected Official or Division Director, shall be an exception to the prior approval requirement.

1. Actual Time

Overtime is actual time worked in excess of forty (40) hours in a work period of seven (7) consecutive days. County approved holidays shall be credited as actual time worked when calculating overtime. Paid time-off, including annual leave, sick leave, and other approved leave time or other compensable hours not actually worked, shall not be credited for the purpose of calculating overtime.

2. Overtime Pay

An employee covered by the overtime provisions of FLSA working more than forty (40) hours within a work period of seven (7) consecutive days shall be compensated at the rate of one and one-half (1.5) times the employee's hourly rate

of pay, for each hour of overtime worked. Public safety employees are covered by a partial FLSA exemption to the forty (40) hour overtime provision.

### 3. Recording Overtime on Time Sheet

An employee who worked overtime during a scheduled work week shall assure such hours are properly recorded on his time sheet to reflect actual time worked. The accumulated overtime during a scheduled work week shall be rounded to the nearest fifteen (15) minute increment.

### 4. Authorizing Overtime

a. Purpose: The purpose of the Overtime Authorization Procedure is to control labor costs by managing the cost of overtime pay to FLSA non-exempt employees.

b Compliance: Sandoval County pays time and one-half to non-exempt employees who exceed forty (40) hours of work time in a work week in accordance with the Fair Labor Standards Act (FLSA). Public Safety employees are covered by a partial FLSA exemption to the forty (40) hour overtime provision.

c. Overtime Approval: Supervisors should always consider Flex time if practical, before requesting authorization for overtime. Supervisors are required to utilize an approved overtime authorization form to obtain approval from the Elected Official or Division Director (or their designee) prior to allowing the use of overtime, with the exception of emergency situations. Employees who anticipate the need for overtime to complete the week's work must notify the supervisor in advance and obtain approval prior to working hours that extend beyond their normal schedule. Non-exempt employees are not allowed to take work home with them under any circumstances.

d. **Mandatory Overtime:** During busy periods, for special events or in an emergency, Sandoval County may require employees to work extended hours. Supervisors will first ask for volunteers to work overtime. If there are no volunteers, the supervisor may then impose overtime beginning with the least senior member of the work unit. Mandatory overtime shall be imposed on a rotating basis in order to ensure the same employee(s) are not always required to work overtime.

e. **Qualifications:** In the event the work to be performed requires specific licensing, certification or experience, supervisors shall ensure that any employee working overtime possesses the required qualifications.

f. **Assignment of Overtime work:** Subject to any other provisions of this Section all employees should have the opportunity to work overtime when a legitimate need arises, provided they meet the requirements to safely and professionally perform the necessary tasks. The opportunity to work overtime shall not be continuously given to or imposed upon the same employee(s).

g. **Consequences of unauthorized overtime-Employees:** Overtime worked without prior approval will be paid; however, employees who fail to obtain approval prior to working hours that extend beyond their normal forty (40) hour work week may be subject to disciplinary action. Repeated offenses will result in disciplinary action up to and including termination.

h. **Consequences of overuse of overtime-Supervisors:** Supervisors who authorize staff members to work overtime, or who have knowledge of overtime work being performed without prior approval from management, will be subject to disciplinary action. Supervisors who continually rely on the use of overtime hours in order to complete a week's work without it

being deemed extenuating by management will be subject to disciplinary action up to and including termination.

#### **D. COMPENSATORY TIME IN LIEU OF OVERTIME PAY**

The accrual of compensatory time in lieu of overtime pay must be approved by the Elected Official or Division Director before the work commences. Compensatory time accrues at a rate of one and one-half hours (1.5) for every hour of overtime worked and is limited to the same conditions set in Article IV.C.1 and IV.C.3. Because compensatory time is granted in lieu of overtime pay, it is subject to restrictions on overtime pay specified in 5 U.S.C. §4109 a.(1).

##### **1. Compensatory Time Bank**

A non-exempt employee may not accrue more than one-hundred twenty (120) hours in his Compensatory Time Bank. An employee with the maximum hours of compensation must be paid overtime pay for the overtime worked.

##### **2. Use of Compensatory Time**

An employee shall be permitted to use such time within a reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operation of the division, department or the County. It shall normally be unduly disruptive if the request will require another employee to work overtime.

##### **3. Pay for Compensatory Time**

Compensatory time is to be paid at the regular time hourly rate of the employee. Only full-time classified non-exempt employees are eligible to accrue compensatory time in lieu of overtime. All accrued compensatory time must be paid upon termination of a non-exempt employee or upon a change to exempt status.

**E. CALLBACK PAY FOR FLSA NON-EXEMPT EMPLOYEES**

Callback occurs when a FLSA non-exempt employee not on duty, mealtime excluded, is notified to return to work. Authorized callback shall be compensated at one and one-half (1.5) times the employee's hourly rate for each hour worked. An employee on callback shall be guaranteed a minimum of two (2) hours pay for each authorized callback, unless his regular reporting time is within one (1) hour of the callback. Callback time shall commence when the employee actually reports to duty and his first hour of callback shall be calculated as two (2) hours of callback.

**F. STANDBY TIME AND PAY FOR FLSA NON-EXEMPT, NON-PUBLIC SAFETY EMPLOYEES**

1. An Elected Official or Division Director may place a FLSA non-exempt employee on standby status. Standby time is the time an employee is required to be available for duty during non-working hours. Standby time shall not be considered time worked when computing overtime. Standby time shall be assigned in writing on the basis of the County's need for the employee to be available and fit for duty during his non-working hours. The employee shall be issued a mobile phone, or agree to the use his personal mobile or land line phone without compensation, and is expected to be available for duty. The employee with the most seniority in the job classification shall be offered the right of first refusal for the standby time.

2. An employee assigned standby duty shall be paid on either a daily or weekly basis. A division or unit utilizing daily standby shall pay the employee one-half of his hourly salary for the time he was on standby.

**G. PUBLIC SAFETY EMPLOYEES – CALLBACK AND/OR STANDBY TIME**

Public safety employees, because of their role in protecting the general population from all manner of significant danger, injury, or harm, may be subject to properly approved standard operating procedures and/or Collective Bargaining Agreement(s) regarding callback and standby time.

## **H. SHIFT DIFFERENTIAL FOR FLSA NON-EXEMPT EMPLOYEES**

The County Manager will recommend swing and evening shift pay rates for FLSA non-exempt employees who are assigned such shifts in the proposed annual budget for the Board of County Commissioner's action. Shift differential shall be included in the regular rate of pay for the purpose of calculating the overtime pay rate.

## **I. TIME SHEET**

The Director shall prepare uniform time sheet forms for exempt and non-exempt employees, which shall be utilized by all County employees. The employee shall certify to the accuracy of the time sheet prior to submitting it for processing. The employee's signature shall represent that he has reviewed the time sheet and that the entries are accurate as to actual time worked, leave used, overtime or other allowances owed by the County for the services rendered during the affected biweekly pay period. The employee's supervisor must attest to the accuracy of the time sheet and sign it before it will be processed for payment. Time sheets must be submitted prior to issuing the paycheck.

### **1. Unsigned Time Sheet**

Time sheets lacking the required employee signature will be processed; however, unless the employee has authorized direct deposit, the paycheck will be held until special authorization is provided by the Elected Official or Division Director or County Manager to release the paycheck. If the employee is on direct deposit, he must verify the accuracy of the unsigned timesheet and sign it prior to the next pay period.

### **2. Subsequent Inaccurate Time Sheets**

Any unintended inaccuracies subsequently discovered or changes occurring after the employee signs a time sheet shall be processed on a corrected time sheet signed by the employee and the Elected Official, Division Director, County Manager or designee.

### **3. Paycheck Authorization**

An employee's paycheck shall not be delivered to any person except to the employee, unless the employee gives Finance written authorization for direct deposit or provides an authorization naming a person to pick up the check.

4. Final Pay in Case of Death

In case of death of an employee, the final salary and compensation for services rendered and unused annual leave shall be paid to the employee's named beneficiary, or if unnamed, to the employee's spouse or estate.

5. Time Sheet Records Retention

Hard copy [paper] time sheets shall be retained by the Finance Department until the Sandoval County financial audit report for the year in which said time sheet records were created is released. Electronic time records shall be retained for a minimum of three (3) years from date of creation.

**J. INCLEMENT WEATHER / EMERGENCIES**

1. When the Sandoval County area experiences bad weather with snow and/or ice on the roads making it difficult for employees to get to work on time or when there is an emergency, the County Manager, in consultation with the Chair of the Board of County Commissioners, will announce the nature of the emergency and the action to be taken by the County. The County provides many essential services which involve divisions providing services around-the-clock, seven days a week or services which require employees to take care of the road conditions or provide assistance to citizens who are dependent on the County for their safety and wellbeing. These services cannot be suspended; therefore, the County's policy toward bad weather must reflect the distinct nature of its work and the diversity of the various divisions.

2. The County will remain open and may allow two hours of administrative paid leave for those employees who follow the inclement weather policy. Employees should make every effort to get to work in those divisions providing essential services. Employee should realize it may take additional time to get to work and start their commute to work early to allow for the road

conditions. Further, it is the employee's responsibility to understand the inclement weather practice as it applies to his job and to inform his supervisor of his ability to fulfill his employment obligation. Employees from the previous shift will be held over until they are released by their supervisor. The Supervisor will assure that the appropriate staffing level has been achieved before allowing them to go home.

3. While essential services will be continued, sometimes it is considered prudent by the administration to delay the opening of less essential elements of the County. Information regarding the County's action will be posted on the County's website and issued to the media, primarily local television and radio stations and the Associated Press. Even so, employees are to call their supervisor for instructions and about reporting to work. For those divisions where the County is not "officially closed" by announcement of the County Manager, employees experiencing problems, (icy/snow packed roads, dead battery, etc.) should report in by telephone for instructions from their supervisor. With their supervisor's approval, the employee will be allowed to charge his time off to vacation or personal holiday or to make up the time.

4. The following guidelines will be used in reporting time for employees during inclement weather or other emergency occurrences:

- a. Employees who do not report for work and do not call in will not be paid.
- b. Employees who call in and who are more than two (2) hours late for work because of inclement weather shall be placed on Administrative Leave with pay for two (2) hours and will be given the option to utilize their annual leave or personal holiday, or to make up the time during the work week if practicable, for the balance of their time missed.
- c. Employees who call in and are unable to get to work and are approved for annual leave or leave without pay will not be credited with the two (2) hour administrative leave granted by the declared emergency. These employees will be charged with the entire day of annual leave or leave without pay.

d. Employees who are not providing essential services who wish to leave early due to hazardous road conditions, carpooling arrangements, child care or other circumstances affected by the emergency, shall request annual leave or leave without pay. Supervisors are encouraged to approve reasonable requests when feasible.

e. Employees who report being sick during the inclement weather or emergency will be eligible to use sick leave only when approved by their supervisor.

f. Because inclement weather may be localized, the Elected Official or Division Director may request the County Manager, to declare an emergency for the specific location.

5. The Fair Labor Standards Act (FLSA) presumes that the employer, therefore the supervisor, controls the actions of each non-exempt employee. The policy relative to the action of essential service employees during inclement weather and or emergencies depends on communication between the employee and her supervisor. It is the responsibility of the employee to contact his supervisor and inform him of the conditions affecting their particular situation. The supervisor in turn must provide the employee with clear direction. Even in some non-essential service divisions, some functions must go on; therefore, the supervisor must know who they can count on to cover the required staffing during the emergency period.

## **ARTICLE V - LEAVE AND HOLIDAYS**

As a benefit, Sandoval County provides for the accrual of paid annual and sick leave to attend to personal matters including unexpected illness; however, these benefits should be utilized in a manner that does not adversely impact coworkers, work flow, work product or services to the taxpayer. Employees are required to follow division protocols and the procedures in this Article for requesting and utilizing leave.

### **A. AUTHORIZED LEAVE**

1. Authorized leave is any approved absence which utilizes accrued annual or sick leave, or other leave provided for in this Article or written employment agreement. Approval is granted by the Elected Official, Division Director or County Manager or designee.

2. Authorized leave is granted in accordance with the work load in the division and must be approved in advance by the Elected Official, Division Director, or County Manager. Inappropriate or untimely submittals for leave may result in the leave being denied.

3. Leave must be requested on the Leave Form and shall be submitted by the employee at least three (3) working days prior to the proposed annual leave. Employees requesting annual leave of one (1) workweek or more should submit their leave request at least two (2) work weeks prior to the requested leave.

4. When the leave affects the submittal of the time sheet, the employee shall submit his time sheet to his Elected Official, or Division Director with the appropriate entry for the leave and sign and date it at the time he turns it in to his Elected Official, Division Director, County Manager or supervisor. The time sheet will be processed by his Elected Official or Division Director in a timely manner.

5. Leave without pay which has been authorized will be noted on the time sheet, signed by the employee or his designee to whom he has given written authorization to sign the time sheet, and processed by the Elected Official, Division Director, County Manager or designee.

6. An employee on extended leave without pay in excess of forty (40) continuous working hours or greater shall make arrangements one (1) work week prior to the expiration of the leave without pay to return to work by calling his Elected Official, Division Director or the County Manager. Failure to do so may result in disciplinary action up to and including termination.

7. The County Manager, the Elected Official or Division Director in each division shall be responsible for the maintenance and transmittal of leave records to Finance.

## **B. UNAUTHORIZED ABSENCE AND VOLUNTARY RESIGNATION**

1. An employee who fails to appear for work and is not on authorized leave shall be considered to be on unauthorized leave without pay. It is understood that there may be extenuating circumstances for the unauthorized absence and the County reserves discretion to authorize such absence, to classify it as approved leave, and or to take such other action as it deems appropriate.

2. Failure of an employee to return to work at the date and time that his or her authorized leave expires (including any extension requested in advance by the employee and granted by the Elected Official, Division Director or County Manager in his sole discretion), shall be considered to be absent without leave.

3. An employee on unauthorized leave shall not be paid for any period of unauthorized leave and shall not accrue leave benefits during unauthorized leave.

4. An employee who is absent without authorized leave for three (3) consecutive work days shall be considered to have abandoned his/her position and to have submitted a voluntary resignation.

## **C. ANNUAL LEAVE**

1. Annual Leave Accrual/Utilization

a. A classified employee shall not accrue annual leave for time worked in excess of the normal forty (40) hours in a workweek, nor shall annual leave be accrued when the employee is on unpaid leave. Upon termination or separation from County employment, he shall be compensated for unused, accrued annual leave, less any amount owed the County. Probationary employees shall be entitled to accrue annual leave; however, they are not allowed to take annual leave until they have successfully completed three (3) months of employment with the County.

b. Classified employees shall accrue annual leave from the first day of employment and shall accrue annual leave at a rate in accordance with Article V. Annual leave shall be in proportion to the time sheet of hours paid up to a maximum eighty (80) hours per pay period.

c. A maximum of eighty (80) hours of annual leave may be carried forward after the last pay period in December of each calendar year. However, in the event a classified employee's request for annual leave was denied due to operational requirements with regard to workforce, that employee shall not suffer loss of leave time accrued, provided, however, that the excess time shall be taken by March 1<sup>st</sup> of the following year. That employee's request shall be granted on a priority first-come first-serve basis, unless the duties of the employee require her to complete time-sensitive arrangements. The County Manager may provide an additional extension based on good cause as justified by the employee and his Elected Official or Division Director.

d. Annual Leave Cash Out. Employees who have worked for Sandoval County for a continuous period of ten (10) or more years may cash out those hours in excess of eighty (80) hours in December of each calendar year, but may not cash out more than forty (40) hours in any calendar year.

e. The estate of an employee in a classified position who dies while a County employee shall be compensated for all of the employee's accrued annual leave at the employee's final hourly rate.

f. When a classified employee changes from one accrual rate to another by completing five (5) years and ten (10) years of County

employment, the increased accrual rate for the employee shall commence on the anniversary date of employment.

g. A temporary or casual employee shall not be eligible to accrue annual leave.

h. An employee who has exhausted all accrued sick leave shall be entitled to use annual leave for an illness or injury or FMLA.

i. Approval of annual leave may be rescinded due to workload requirements or workforce shortages. In the event approved leave is rescinded, annual leave accruals above the eighty (80) hour maximum allowed to be carried over to the next calendar year will be paid, unless an extension is granted in writing.

j. Annual leave shall not be charged in increments of less than one-half (.5) hours, and increments of less than one-half (.5) hours will be counted as a full one-half (.5) hour.

k. Annual leave will not be granted in advance of accrual.

## 2. Annual Leave Accrual Rates

a. Classified employees who have been employed by the County from one (1) to five (5) years shall accrue 3.08 hours of annual leave per eighty (80) hour pay period.

b. Classified employees who have been employed by the County from five (5) to ten (10) years shall accrue 4.62 hours of annual leave per eighty (80) hour pay period.

c. Classified employees who have worked ten (10) years or more shall accrue 6.15 hours of annual leave per eighty (80) hour pay period.

d. Part-time employees who work between twenty (20) hours and thirty-nine (39) hours in a workweek shall accrue annual leave on a prorated basis.

## D. SICK LEAVE

Sick leave may be authorized to a classified employee for a medical reason, when the employee's attendance jeopardizes the health of others, or for care of immediate family members in the event of an illness.

### 1. Sick Leave Utilization

a. Sick leave requests for an appointment with a health care provider should be turned in by the employee as soon as the appointment is confirmed or as soon as practicable.

b. Sick leave shall be reported to the employee's supervisor or designee by the employee or a family member, if the employee is hospitalized or physically unable to place the call himself, within one (1) hour of his normal reporting to work time. If the illness or injury is going to require an extended absence from work, the employee or family member shall inform the supervisor or designee of the amount of sick leave that is required to recover from the illness or injury.

c. A Request for Leave Form shall be completed by the employee when sick leave is requested or upon returning to work. Sick leave shall not be charged in less than one-half (.5) hour increments, and increments of less than one-half (.5) hours will be counted as a full one-half (.5) hour

d. An employee who is absent for three (3) consecutive work days or more for his own illness or injury may be asked to bring in an original signed explanation by a health care provider who is attending to the illness or injury certifying that he was unable to work due to health reasons.

e. In instances when the employee utilizes sick leave for three (3) consecutive work days for the medical treatment of the employee's spouse, parent, minor children or any person for whom he serves as legal guardian, the employee may be required to provide a written notation from the health care provider rendering treatment to the family member, certifying that the employee participated in providing care to the spouse, child, parent or legal dependent.

f. A note from the health care provider may be requested by the Elected Official, Division Director or County Manager to support sick leave where a utilization pattern indicates abuse of sick leave, when there is excessive use of sick leave in relation to employment with the County, when performance is inadequate and/or the employee demonstrates an inability to maintain regular work attendance, or when there is reason to believe the employee's absence may not be for a legitimate personal or family health reason.

g. An employee requesting sick leave for any portion of or for the day before or following a holiday may be required to bring in an original note from the health care provider who treated him certifying that he was unable to work for health reasons or because of medical considerations of an immediate family member.

h. A probationary employee's use of sick leave shall be reviewed for approval by the Elected Official, Division Director or County Manager.

## 2. Sick Leave Accrual

Classified employees accrue four (4) hours of sick leave per pay period. Sick leave accruals can be carried over from year to year up to a maximum of four hundred and eighty (480) hours.

a. Sick leave accruals in excess of four hundred and eighty (480) hours may be sold back to the County in June of every year at the rate of \$.65 on the dollar.

b. Sick leave shall not be compensated upon separation from County employment, except as defined in Article V.D.3. Retirement Incentive – Sick Leave Conversion.

c. Sick leave benefits will not accrue when the employee is on leave without pay.

d. Part-time employees who work between twenty (20) hours and thirty nine (39) hours per week shall accrue sick leave on a prorated basis.

e. Approved sick leave shall not be debited for absence on observed holidays or other non-work days; however, hours shall be counted as FMLA if an employee is on approved FMLA leave.

3. Retirement Incentive - Sick Leave Conversion

An employee, upon qualifying for PERA retirement by years of service plus age, number of years of service or medical retirement, is eligible to participate in the County's Retirement Incentive Program. The Program allows an employee who is allowed to accrue sick leave, to convert up to five hundred thirty two (532) hours of accrued sick leave into one-time lump sum cash dollar for dollar payment at his current hourly pay rate. The conditions to participate are as follows:

a. The employee must have at least ten (10) years of County service.

b. The employee must verify that they requested PERA retirement.

c. An employee within this provision of these Rules and Regulations may accrue and convert up to five hundred thirty two (532) hours in his sick leave bank.

d. The incentive pay will be made with the employee's final pay period check.

#### **E. PERSONAL LEAVE**

Classified employees who have completed their probationary periods and who work more than twenty (20) hours shall receive one (1) day of personal leave with pay per calendar year. Non-probationary employees may take their personal days with the approval of their Elected Official, Division Director, County Manager or designee. The personal leave day must be taken within the calendar year or be forfeited.

#### **F. HOLIDAYS**

Legal holidays and all proposed County holidays or partial holidays for the calendar year shall be designated by the Board of County Commissioners by the end of January of each year. The holiday schedule for the succeeding calendar year will be posted by the Director upon receipt of the Board's action.

1. Temporary, seasonal and emergency hire employees shall not be entitled to holiday pay, and will be on an unpaid status for the holiday.

2. When the holiday falls on the employee's regular day off, the employee shall be granted the holiday on the day following the holiday, work load permitting, as determined by the Elected Official, Division Director or County Manager, and, in any event, she shall be granted the holiday by the following pay period.

3. A FLSA non-exempt employee who is required to work on a designated legal holiday shall be paid at the rate of two (2.0) times their regular hourly rate of pay for the first eight (8) hours worked. Thereafter, the employee

shall be compensated at his regular straight hourly rate until the employee qualifies for overtime under the FLSA provisions of these Rules and Regulations.

4. Part-time employees shall be paid for the holiday at the employee's straight time hourly rate prorated. A part-time employee who works the holiday shall be paid a premium of one and one-half (1.5) times his straight hourly rate of pay for the actual hours worked on the holiday.

5. An employee who is on unauthorized leave or leave without pay on his scheduled workday before or after a holiday shall not receive pay for that holiday.

6. For Divisions that conduct operations outside of the standard Monday through Friday work week, a Director/Elected Official may approve an employee's request to work on a County designated holiday and take off on an alternate day provided it is deemed to be beneficial to the County's business interests and does not result in overtime work. If an employee elects to work a designated holiday, he/she will not be compensated at two times (2X) their normal hourly rate, but will be given an alternate day off with pay.

## **G. CIVIC DUTY LEAVE**

An employee shall be granted necessary time off with pay for the following:

1. Performing jury duty. Compensation for the hours that an employee serves as a juror shall be in compliance with State Statutes. The fee the employee receives for serving as a juror shall be turned into the County.

2. When subpoenaed to appear before a court, hearing officer, labor board or public body for the purpose of testifying.

3. Performing emergency civilian duty in connection with civil defense.

4. Voting in a national, State or local election in which an employee is a qualified elector. An employee who is registered to vote shall be granted up to two (2) hours paid leave for voting between the voting poll's time of opening and time of closing on Election Day. The employee's Elected Official, Division Director or

County Manager may specify the hours of the leave and the employee shall take only the time required to go, vote and return from voting. This leave is not granted to any employee whose workday begins more than two (2) hours subsequent to the time of the opening of the polls, or ends more than three (3) hours prior to the closing of the polls or whose work hours are modified accordingly. Employees are encouraged to vote early, absentee or request a mail-in ballot.

#### **H. BEREAVEMENT LEAVE**

Bereavement leave is leave with pay for which an employee is not charged annual or sick leave due to the death and services for a mother, father, spouse, son, daughter, stepchild(ren), sibling, a pre-acknowledged domestic partner (the Domestic Partner relationship shall be established by submission of an Affidavit of Domestic Partnership filed with County Human Resources), a grandparent, grandparent in-law, grandchild, or parent in-law, daughter-in-law or son-in-law. An employee shall be required to complete the Bereavement Leave Request Form and provide proof of the familial relationship of the deceased relative, in a method acceptable to the Director. At the discretion of the Elected Official or Department Director:

1. A maximum of three (3) bereavement leave days are allowed for in-state familial deaths and services.
2. A maximum of five (5) bereavement leave days are allowed for out-of-state familial death and services.
3. Additional days may be granted by the Elected Official or Division Director or County Manager; however, any additional days will be charged to accrued annual leave or leave without pay, or PTO.

#### **I. PARENT-TEACHER CONFERENCE ADMINISTRATIVE LEAVE**

This section shall apply to all eligible employees who attend parent-teacher conference(s) at their child or children's school(s) utilizing paid administrative leave granted pursuant to this section of the Sandoval County Personnel Rules and Regulations.

1. Definitions

a. "Child" or "Children" means a person or persons 18 years-old or younger who is enrolled in School, and who is or are the biological child(ren), legally adopted child(ren), foster child(ren), stepchild(ren), or legal ward(s) of an eligible employee.

b. "Eligible employee" means any person employed by the County with a child or with children enrolled in a School.

c. "Fall semester" means August through December.

d. "School" means a single attendance center in which instruction is offered by one or more teachers and is discernible as a building or group of buildings generally recognized as either a licensed child care center, preschool, elementary, middle, junior high, or high school, or any combination of those, including charter schools, state institutions, and private schools, but not including home schools.

e. "Spring semester" means January through May.

2. A Division Director, Elected Official or County Manager may grant an eligible employee the following amounts of paid administrative leave for parent-teacher conferences:

a. Eligible employees with three (3) or more children may be granted up to four (4) hours of paid administrative leave during the Spring semester, and up to four (4) hours of paid administrative leave during the Fall semester for parent-teacher conferences;

b. Eligible employees with one (1) child or two (2) children may be granted up to two (2) hours of paid administrative leave during the Spring semester, and up to two (2) hours of paid administrative leave during the Fall semester for parent-teacher conferences.

3. The available amount of administrative leave may be granted provided that:

The express purpose of the leave is to attend a parent-teacher conference during the eligible employee's normal work day, including reasonable travel time;

a. The leave is requested for the parent-teacher conference for a child enrolled in a school in grades pre-kindergarten (Pre-K) through twelve (12), and is not being requested for parental participation or assistance in extra-curricular school activities (i.e. sporting events, orientations, ceremonies, field trips, registrations, etc.);

b. The eligible employee provides reasonable notice to their Division Director or Elected Official regarding any scheduled parent-teacher conference in an effort to avoid disruptions to the operational needs of the County;

c. The eligible employee follows the required procedures to request paid administrative leave for the parent-teacher conference;

d. On the day of the parent-teacher conference, the eligible employee reports to work during regularly scheduled hours, except for the leave taken pursuant to this policy, unless the eligible employee has requested and uses other available leave in accordance with the Sandoval County Personnel Rules and Regulations.

4. Two (2) eligible employees may request available leave to attend the same scheduled parent-teacher conference(s) for their child (ren).

5. An eligible employee requesting administrative leave shall:

a. Attempt to schedule their child's conference so that their absence will have the least possible impact on the work unit. Once the conference is scheduled, the employee must complete the appropriate County form and submit it to their direct supervisor;

b. Complete a Request for Leave form identifying the requested leave as Parent Teacher Conference Administrative Leave.

c. Identify the leave as Parent Teacher Conference Administrative Leave when completing their time sheet for the pay period in which the leave was utilized.

6. Division Director, Elected Official or County Manager receiving the appropriate form shall review the form and the leave request to ensure compliance with the policy prior to granting the requested leave.

**J. LEAVE AND EMPLOYMENT RIGHTS FOR MEMBERS OF THE UNIFORMED SERVICES**

An employee who is a member of the National Guard, a State Defense Force, a reserve component of the uniformed services of the United States, the Civil Air Patrol or who volunteers for such service shall be granted military leave with or

without pay in accordance with The Uniformed Services Employment and Reemployment Rights Act (USERRA), 43 USC §4301-4033, for "services in the uniformed services" as defined in the Act, and the New Mexico Statutes and Rules, including but not limited to NMSA 1978, §20-4-7, §20-5-14, and §20-7-5.

1. An employee who is a member of a uniformed service shall provide proof of his military duty.

2. Military leave with pay shall be granted for a period not to exceed one hundred and twenty (120) hours each Federal Fiscal year. An employee on military leave in excess of one hundred and twenty (120) hours in that year may utilize his annual leave; however, an employee shall not be required to first exhaust his annual leave, comp time, PTO and/or personal leave day before being placed on leave without pay status. The employee on military leave without pay does not accrue annual or sick leave.

3. Military leave shall be granted for all required and documented examinations, service drills, training periods and military-related deployment and emergency obligations.

4. An employee who is on military leave with pay shall have the same rights and benefits as any other employee who is on a leave with pay status.

5. An employee returning from military leave shall be entitled to job restoration.

6. For service of 1 to 30 days, a veteran must report to his or her employer by the beginning of the first regularly scheduled work period that begins on the next calendar day following completion of service, after allowance for safe travel home and an 8-hour rest period. For Service of 31 to 180 days, a veteran must submit an application for reemployment no later than 14 days (as is possible and reasonable) after their completion of military service. For service of 181 or more days, a veteran must apply for pre-service reemployment within ninety (90) days after separation from active duty.

7. If the veteran is hospitalized or recuperating when discharged, the ninety (90) day application period begins upon release from the hospital or completion of the recuperation as certified by the health care provider, which may last up to two (2) years and/ or as otherwise provided in USERRA Title 38, Chapter 43 Section 4312e..

8. The County shall, in accordance with the Americans with Disabilities Act, make reasonable accommodations for the employee.

9. The employee discharged or released from active duty in the armed forces of the United States must attest to their discharge by other than a dishonorable discharge.

10. Reservist and National Guard members returning from initial active duty for training have an application period of thirty (30), days instead of the ninety (90) days for veterans.

#### **K. FAMILY AND MEDICAL LEAVE ACT (FMLA)**

##### **1. Objective**

To outline a uniform policy to administer leave for eligible employees under the Family and Medical Leave Act of 1993 (FMLA).

## 2. Statement

The FMLA provides eligible employees up to twelve (12) work weeks of unpaid leave in a defined twelve (12)-month period for certain qualifying reasons, as defined below. The County may substitute, or the employee may request to substitute, accrued paid leave for unpaid leave; accordingly, the substitution of paid leave is outlined below. Any time utilized, whether paid or unpaid, counts toward the twelve (12)-week entitlement.

## 3. Glossary of FMLA Terms

a. Domestic Partner: A person to whom the person is not married but with whom the person is living as a couple on a genuine domestic basis (irrespective of gender). The Domestic Partner relationship shall be established by submission of an Affidavit of Domestic Partnership filed with the County Human Resources Division.

b. Eligible Employee: Eligibility is determined as of the day FMLA leave is to commence and requires the following:

(1) Employment for at least twelve (12) months with the County.

(a) The twelve (12) months need not be consecutive.

(b) The twelve (12) months equals fifty-two (52) weeks for purposes of determining whether intermittent/occasional/casual employment qualifies.

(c) A week in which an employee is maintained on the payroll counts as a week of employment.

(2) The employee has provided at least 1,250 hours of service during the twelve (12) months immediately preceding the period of leave. FLSA Exempt employees who have worked at least twelve (12) months for the employer are presumed to have worked at least 1,250 hours during the previous twelve (12) months.

c. Family Member: "Family member" is defined in FMLA to include the employee's spouse, son, daughter or parent (but not a parent "in-law"). A "son" or "daughter" is any child under eighteen (18) years of age who is the biological child of the employee, who is adopted by the employee, or whom the employee supervises on a day-to-day basis and for whom the employee is financially responsible or who is an eligible dependent under the County's health benefits plan (e.g., a step child or foster child.) A "son" or "daughter" is also a child over eighteen (18) years of age who is incapable of self-care because of a mental or physical disability. A "parent" is any biological parent, or any individual who assumed day-to-day and financial responsibility for the employee when the employee was a child.

d. Health Care Provider: Health care providers who may provide certification of a serious health condition include:

(1) Doctor of medicine or osteopathy authorized to practice medicine or surgery (as appropriate) by the state in which the doctor practices.

(2) Podiatrists, dentists, clinical psychologists, optometrists and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) who are authorized to practice in the State and are performing within the scope of their practice as defined by State law.

(3) Nurse practitioners, nurse midwives and clinical social workers authorized to practice under State law and performing within the scope of their practice as defined by law.

(4) Any health care provider recognized by the County.

(5) A health care provider listed above who practices in a country other than the United States and who is authorized to practice under the laws of that country.

e. Parent: Biological parent or an individual who stands or stood *in loco parentis* to an employee when the employee was a child; does not include parent in-law.

f. Serious Health Condition: A serious health condition is defined as an illness, injury, impairment or physical or mental condition that involves any of the following:

(1) Any period of incapacity or treatment connected with in-patient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility.

(2) A period of incapacity requiring absence of more than three (3) consecutive calendar days from work, school, or other regular daily activities that also involves continuing treatment by (or under the supervision of) a health care provider.

(3) Any period of incapacity due to pregnancy or for prenatal care.

(4) Any period of incapacity (or treatment therefore) due to a chronic serious health condition (e.g., asthma, diabetes, epilepsy, etc.); or a period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective (e.g., Alzheimer's disease, stroke, terminal diseases, etc.).

(5) Any absences to receive multiple treatments (including any period of recovery from there) by, or on referral by, a health care provider for a condition that likely would result in incapacity of more than three (3) consecutive days if left untreated (e.g., chemotherapy, physical therapy, dialysis, etc.).

g. Son or Daughter: Biological, adopted, or foster-child, stepchild, legal ward, or child of a person standing *in loco parentis*.

h. Spouse: Husband or wife as recognized under State law for purposes of marriage.

i. 12-Month Period: The twelve (12) month period measured forward from the date the employee's first FMLA leave begins.

4. Leave Provisions, Second and Third Opinions

a. Qualifying Conditions: Eligible employees are entitled to take up to twelve (12) weeks of leave during the defined twelve (12)-month period for the following reasons:

(1) Birth of a child to the employee, adoption of a child by the employee, or placement of a foster child with the employee.

(a) Entitlement to leave under this provision expires at the end of the twelve (12) month period beginning on the date of such birth/adoption/placement.

(b) Intermittent or reduced leave schedule is permitted for leave under this provision.

(2) The employee is needed to care for a spouse, domestic partner, child, or parent with a serious health condition (as defined below).

(3) The employee has a serious health condition (as defined below) making him/her unable to perform the essential functions of his job.

b. Intermittent or Reduced Leave: When medically necessary, leave for a serious health condition may be taken intermittently or on a reduced leave basis in increments of not less than one-half (.5) hour.

(1) If leave is foreseeable based upon planned medical treatment, the employee shall make a reasonable effort to schedule treatment so as not to unduly disrupt County operations and provide

no less than 30 days' notice before leave is to begin, unless treatment is required to begin in less than 30 days.

(2) The County retains the right when an employee requests intermittent leave or leave on a reduced leave schedule that is foreseeable based on a planned medical treatment, to temporarily transfer the employee to an alternative position for which the employee is qualified if such position is available and would better accommodate recurring periods of leave than does the employee's regular position. Such an alternative position shall have equivalent pay and benefits but may also be a part-time job provided the employee shall not be required to take more leave than medically necessary.

(3) Intermittent leave may be taken for bonding with a newborn child, or a child accepted for adoption or foster care, only with the consent of the County through the supervisor, in coordination with the Human Resources Division and in accordance with the FMLA.

(4) Use of any accrued annual or sick leave for intermittent FMLA purposes must be documented on an Application for Leave of Absence Form.

(5) Certification for intermittent/reduced leave for planned medical treatment must include dates of expected treatment and the duration of such treatment.

c. Both Parents Employed by the County: In the case of leave for a birth, adoption or, placement of a child into foster care, married couples or domestic partners are limited to a combined total of twelve (12) weeks. This limitation does not apply to leave for a serious health condition of the employee, the employee's child, spouse or parent, except that the employee is limited to a maximum of twelve (12) weeks in a twelve (12)-month period, including any time used for the birth of a child, adoption of a child, or placement of a child in foster care with the employee.

d. Procedure: Employees must request leave under the provisions of FMLA, in writing, through their supervisor to the Director, or his/her designee. When an employee requests family or medical leave, the employee's department must send a Personnel Action Form (PAF), the Application for Leave of Absence, and the Medical Certification for Leave of Absence to the Director. The Director will advise the employee, in writing, of his or her reemployment and benefit rights.

e. Notice: Thirty (30) days' notice shall be given by the employee to his/her supervisor and the Director, or his/her designee, when the need for leave is foreseeable. When the need for leave is not foreseeable, the employee is required to provide notice as soon as practicable. This generally means within one (1) or two (2) business days of learning of the need for leave. Initial notice in this case may be verbal, but must be followed up in writing. Where extenuating circumstances exist in regard to this notice requirement, individual situations will be considered on a case-by-case basis, and designation of leave is not guaranteed if notice requirements are not met. Note: There will be no adjustment to previously issued performance evaluation forms as a result of a request for retroactive designation of leave as FMLA leave. In the case of an extended period of disability due to illness, injury or maternity beyond the twelve (12) week FMLA entitlement, an employee may request Extended Leave of Absence, in accordance with these Rules and Regulations.

f. Designation of Leave: When the County becomes aware of a situation that qualifies for FMLA leave, and the employee has not requested such leave, the County may designate any time utilized for this situation as FMLA leave. The employee shall be so notified. The twelve (12) month period in which the twelve (12) weeks of FMLA leave entitlement occurs shall be measured forward from the date an employee's first FMLA leave begins.

g. Paid or Unpaid Leave: Employees shall be required to utilize available sick leave for FMLA qualifying absences. If sick leave is exhausted, employees may elect to use annual leave, compensatory time or unpaid leave.

h Note: In all cases, FMLA leave is for a total of twelve (12) work weeks in a twelve (12)-month period for all qualifying FMLA absences combined (except as provided for under Military Family Leave Entitlements).

i. Medical Certification: Any employee seeking leave under the FMLA for a serious health condition of the employee, spouse, domestic partner, child or parent must provide the Director with a medical certification issued by the health care provider for the employee, spouse, domestic partner, child or parent. Subsequent recertification may be required by the County by verbal or written request at reasonable intervals during family/medical leave, but not more often than every thirty (30) days. These forms may be obtained from the Human Resources Department. The certification must state all of the following:

- (1) The commencement date of the condition.
- (2) The probable duration of the condition.
- (3) Appropriate medical facts regarding the condition.
- (4) As applicable:
  - (a) A statement that the employee is needed to care for the family member including the estimated time that such care is needed.
  - (b) A statement that the employee is unable to perform the functions of his/her position.
  - (c) A statement of the medical necessity for intermittent leave or a reduced schedule.
  - (d) The dates on which treatment is expected to be given and the duration of the treatment where intermittent leave or a reduced schedule is requested.

(e) A statement that intermittent or reduced leave is necessary to care for a family member or to assist in the recovery of the family member, including the expected duration and schedule of the leave.

(f) A statement of the expected frequency and duration of chronic or episodic conditions where intermittent leave or a reduced schedule is requested.

j. Second and Third Opinions

An employee may be required, at the County's expense, to obtain a second opinion by a health care provider designated or approved by the County. If necessary, a third opinion may be required at the County's expense from a health care provider to be approved jointly by the employee and the County. This third opinion shall be final and binding.

5. Returning To Work

A fitness-for-duty report is required prior to the employee's return from FMLA leave for their own serious health condition. Upon returning from leave, an employee is entitled to be restored to the position held when the leave began or an equivalent position. The employee is also entitled to receive any negotiated pay increases which have occurred and for which the employee would have been eligible during the leave period.

If an employee is no longer qualified to hold the prior position due to the lapse of a license or the inability to attend necessary courses as a result of the leave taken, a reasonable opportunity to fulfill these conditions will be provided upon the employee's return to work so long as the employee may lawfully discharge the essential functions of his job in the interim.

An employee who takes leave due to personal illness must provide certification from the health care provider on a County approved form that the employee can return to work.

## 6. Employment and Benefits Protection

a. Health Insurance: Under FMLA, during paid or unpaid leave, an employee is entitled to maintain his/her selected health plan under the same conditions as if employment had continued during the leave period. The employee must continue to pay the employee's portion of the health care premium if the employee's health care plan calls for such payment. An employee may choose not to retain health coverage during leave. However, upon returning from leave, the employee is entitled to be reinstated in the health coverage plan on the pre-leave terms (except as the plan may have been amended in the interim) without a qualifying period, physical exam, etc.

The County's obligation to maintain health benefits ceases if an employee's premium payment is more than 30 days late. However, benefits will be reinstated upon the employee's return from leave, subject to the employee's reimbursement to the County as follows:

### b. Premium Payments.

(1) In the event an employee fails to make the premium payments, and the County continues to provide the health care coverage, the County may recover the premiums paid while the employee was on leave.

(2) The County may also recover premiums paid during the leave period if the employee fails to return to work after the leave expires, unless failure to return to work is due to the continuation, recurrence, or onset of a serious health condition or other circumstances beyond the employee's control.

(3) Recovery of the premium may be collected through a deduction from any sums due to the employee provided the deduction does not result in the employee receiving less than minimum wage. However, overtime wages shall remain intact.

c. Life Insurance: This benefit will continue during an approved FMLA leave.

d. PERA: The employee will not accrue service credit for PERA benefits during the period of any unpaid portion of an approved FMLA leave.

#### 7. Required Action

The Director shall be responsible for the communication, explanation, implementation, and maintenance of this policy to assure compliance by all affected employees.

#### 8. Confidentiality

The County will keep confidential all information relating to requests for FMLA leave. This information will only be disclosed to those with a need to know, and will be used only to make decisions in regard to the provisions of this policy.

### **L. FAMILY AND MEDICAL LEAVE ACT MILITARY FAMILY LEAVE ENTITLEMENTS**

The National Defense Authorization Act for FY 2008 (NDAA) amended the FMLA to allow eligible employees to take up to twelve (12) weeks of job-protected leave in the applicable twelve (12) month period for any “qualifying exigency” arising out of the active duty status of a spouse, son, daughter, or parent. The NDAA also amended the FMLA to take up to twenty-six (26) weeks of job-protected leave in a “single twelve (12) month period” to care for a covered service member with a serious injury or illness.

#### 1. Eligibility, Leave Entitlements, Notice and Certification Requirements; Second and Third Opinions and Recertification (not permitted)

Sandoval County will comply with all provisions of the Family and Medical Leave Act as amended by the National Defense Authorization Act for FY 2008 (NDAA) providing for Military Family Leave Entitlements.

#### 2. Required Action

The Director shall be responsible for the communication, explanation, implementation, and maintenance of this policy to assure compliance by all affected employees.

### 3. Confidentiality

The County will keep confidential all information relating to requests for FMLA leave. This information will only be disclosed to those with a need to know, and will be used only to make decisions in regard to the provisions of this policy.

## **M. DOMESTIC ABUSE LEAVE**

As required by Chapter 50, Article 4A NMSA 1978, the "Promoting Financial Independence for Victims of Domestic Abuse Act," Sandoval County shall grant leaves of absence, intermittent if necessary and paid or unpaid, for up to fourteen (14) days in any calendar year, up to eight (8) hours per day, for victims of domestic abuse who require the time off to obtain orders 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 domestic abuse of the employee or an employee's family member.

### 1. Leave Provisions

For domestic abuse leave, employees may use annual leave, sick leave, compensatory time (if any has been accrued), or unpaid leave.

### 2. Notice

Employees are required to provide notice prior to taking such leave, or to provide notice within twenty-four (24) hours of taking leave when taken in an emergency.

### 3. Certification

The County may require proof of need such as police reports, written statements of attorneys, orders of protection or other Court documents. Time off for domestic abuse leave shall not count against an employee's attendance record.

#### 4. Required Action

The Director shall be responsible for the communication, explanation, implementation, and maintenance of this policy to assure compliance by all affected employees.

#### 5. Confidentiality

The County will keep confidential all information relating to requests for Domestic Abuse Leave. This information will only be disclosed to those with a need to know, and will be used only to make decisions in regard to the provisions of this policy.

### **N. LEAVE WITHOUT PAY**

1. **County Manager Authorization:** The County Manager may grant a classified employee Authorized Leave Without Pay (ALWOP) for a period not to exceed one (1) year, when the County Manager deems that such leave is in the best interest of the County. An employee on ALWOP shall return to work upon exhausting the ALWOP. If the employee does not return to work and has not been authorized an extension for just cause the employee shall be deemed to have voluntarily resigned and separated from County employment.

#### 2. Procedures/Requirements for Use of ALWOP

a. Requests for leave without pay of five (5) working days or less may be approved by the Elected Official or Division Director, for just cause.

b. An employee granted ALWOP shall first exhaust all available and applicable annual leave, sick leave, comp time and personal leave day prior to being placed on ALWOP.

c. An employee on ALWOP shall not accrue annual or sick leave or a personal leave day while on ALWOP.

d. A temporary employee may be hired to fill the position of the employee on ALWOP of greater than three (3) months of ALWOP.

e. The ALWOP employee shall be returned to the same position if the employee returns within three (3) months of the day the ALWOP became effective. The position will not be guaranteed for a period of greater than three (3) months.

f. An employee requesting ALWOP of more than three (3) months must sign an agreement requesting the ALWOP and stating that he understands that he is no longer guaranteed his former position.

g. An ALWOP employee may return to employment status with the County within the period of the ALWOP provided the employee notifies the County Manager in writing of his intention to return to work at least one (1) month in advance.

h. A request for ALWOP for medical reasons must be accompanied by a physician's certificate when the request is made and by a physician's certification of suitability for work when the employee returns to work from medical ALWOP.

i. All benefits cease while the employee is on ALWOP, except as provided for by FMLA. An employee whose leave is not covered by FMLA, wishing to continue his medical benefits, may do so solely at his own expense.

j. ALWOP Required by State or Federal Law

Leave without Pay will be afforded to all employees where required by State or Federal law (such as the Pregnancy Discrimination Act, ADAA, as amended, New Mexico Human Rights Act, the NM Promoting Financial Independence for Victims of Domestic Violence Act, or other applicable law) applies. Employees will be required to provide proof/certification of the need for leave.

(1) Leave under this section shall be restricted to a maximum of six months, or as otherwise provided by applicable law. Employees will not accrue annual or sick leave or a personal leave day while on leave without pay.

(2) An employee whose leave is not covered by FMLA, wishing to continue his medical benefits, may do so solely at his own expense.

(3) The employee shall, as appropriate, fulfill Return to Work requirements.

(4) When leave without pay is extended to a probationary employee, the probationary period shall be extended for the same amount of time the probationary employee was absent from work.

k. An employee granted ALWOP for the convenience of the County is not subject to the provisions in paragraph b, e, f and i, above.

## **O. CATASTROPHIC LEAVE**

### **1. Purpose**

The purpose of this policy is to establish a uniform practice for administering catastrophic leave for employees of Sandoval County, collective bargaining agreements notwithstanding. The purpose of this voluntary program is to permit employees to contribute a portion of their accrued annual leave, sick leave, or personal holiday when an eligible employee has suffered a catastrophic injury or illness or has an immediate family member suffer from a catastrophic illness or injury, which renders the employee unable to work, as certified by a qualified medical provider.

### **2. Definitions**

For the purpose of this leave program, "CATASTROPHIC" shall be interpreted to include a serious illness or injury which is monumental, unusual, immediate in nature and which is expected to preclude the employee from returning to work for an extended period of time.

#### **a. Catastrophic Illness or Injury**

(1) Examples of a catastrophic illness or injury include, but are not limited to:

(a) Serious, debilitating illness, impairment, or physical/mental condition that involves an extended period of treatment or in connection with an extended stay in a hospital, hospice or residential medical facility.

(b) High intensity/high frequency of treatment encounters necessary for a chronic or long-term condition that is so serious that, if not treated, would likely result in an extended period of incapacity or death.

(c) Terminal Illness.

(d) An emergency medical condition as defined by NMSA§10-7-22.

b. Exclusions

(1) In addition to the below eligibility requirements, the following exclusions apply:

(a) Elective surgery does not qualify as a catastrophic illness or injury if complications arise resulting in a serious health condition, the situation may then qualify as a catastrophic illness or injury.

(b) Most leave associated with pregnancy is not covered by Catastrophic Leave. If complications arise resulting in a serious health condition, the situation may qualify as a catastrophic illness or injury.

c. Immediate Family Member

"Immediate Family member" includes the employee's spouse, son, daughter or parent (but not a parent "in-law"). A "son" or "daughter" is any child under eighteen (18) years of age who is the biological child of the employee, who is adopted by the employee, or whom the employee supervises on a day-to-day basis and for whom the employee is financially responsible or who is an eligible dependent

under the County's health benefits plan (e.g., a step child or foster child) A "son" or "daughter" is also a child over eighteen (18) years of age who is incapable of self-care because of a mental or physical disability. A "parent" is any biological parent, or any individual who assumed day-to-day and financial responsibility for the employee when the employee was a child.

3. Contributions. It is the policy of Sandoval County to permit employees to contribute a portion of their accrued leave credit to another employee when such employee is on *approved* FMLA leave without pay or leave of absence without pay due to a verifiable illness or injury (personal or family leave). No employee shall directly or indirectly intimidate, threaten, or coerce (or attempt to do so) any other employee for the purpose of interfering with an employee's ability to donate, receive or use annual or sick leave, including Catastrophic Leave.

4. Applicability. This policy and the procedures detailed herein apply to any regular full-time or part-time employee who works twenty (20) hours or more per week (.50 FTE or greater) and who has completed one year of continuous employment with Sandoval County.

- a. Participation is voluntary.
- b. Eligibility to receive catastrophic leave is determined as follows:

- (1) The incapacitation or inability to work must be the result of the employee's own or immediate family member's serious illness or injury, which is estimated to last more than two weeks, and which meets the eligibility as defined in the Family and Medical Leave Act (FMLA).

- (2) The employee must have exhausted all available paid leave balances, including but not limited to sick leave, annual leave, compensatory time and personal holiday, and therefore, be facing financial hardship due to an inability to work.

- (3) The employee must be on *approved* FMLA leave without pay or leave of absence without pay. If the employee has not exhausted their FMLA leave entitlement, donated leave shall be counted as FMLA leave.

(4) The employee shall not have received discipline for attendance issues or leave abuse violations of the Personnel Rules & Regulations, Attendance Management Policy, Division Standard Operating procedures or any relevant division or department policy within one year of submitting a request for Catastrophic Leave.

(5) The employee must not be receiving disability benefits or Workers' Compensation.

c. A maximum of six months' worth of catastrophic leave may be available for an individual based upon the twelve (12) month period immediately preceding the commencement of this leave (the individual shall not have been the recipient of catastrophic/donated leave within the preceding twelve months). Leave may not be awarded retroactively.

d. Once donated leave is transferred, the hours will be used as a supplement to the recipient's own accrual, however, the recipient shall not accrue any annual leave, sick leave or personal day while on catastrophic leave.

e. While on catastrophic leave, the recipient will not receive holiday pay.

f. All donated hours must be used on a continuous and uninterrupted basis, except for conditions authorized under subsection 3.a.(1)(b) above, and will be paid at the normal rate of pay and work schedule of the recipient until the earliest of the following events occurs:

- (1) All donated leave is exhausted; or
- (2) The employee returns to work at his/her normal work schedule or modified work schedule; or
- (3) The six (6) months of catastrophic leave (leave of absence) is exhausted; or
- (4) The employee separates from employment with the County.

g. Used donated leave time shall be subject to the recipient's normal payroll deductions including insurance premiums and Section 125 contributions.

h. At no time may a recipient's salary exceed one hundred percent (100%) of base pay

i. The granting of Catastrophic Leave does not create any expectations or promise of continued employment.

j. Denial of a request for Catastrophic Leave is not subject to grievance.

5. Transfer of Donated Leave:

a. All transfers of donated leave shall be in whole hour increments and shall first be taken from the employee's home department and then from employees County-wide. Hours of catastrophic leave transferred shall be calculated by multiplying the number of hours donated by the donor's hourly salary and dividing that total by the recipient's hourly salary. *For example: An employee whose hourly salary is \$20.00 donates ten (10) hours of leave to an employee whose hourly salary is \$10.00. To calculate the leave transferred multiply  $\$20.00 / \text{hour} \times 10 \text{ hours donated} = \$200.00$  divided by  $\$10.00$  (recipient's hourly salary) = twenty (20) hours of catastrophic leave for the recipient.*

b. The donor employee must have an annual leave balance of at least forty (40) hours remaining after the donation of annual leave. The donor employee may not donate more than one-half of their accrued sick leave and must maintain a balance of at least one-hundred sixty (160) hours of accrued sick leave after the donation. Employees may donate their personal holiday.

c. All transfers of donated hours will occur in installments that coincide with payroll dates. Hours will not be deducted from the donor's accrual banks until such time as they are needed.

d. An employee may not receive donations from a subordinate employee where a direct supervisor/subordinate relationship exists, except as approved by the County Manager or his/her designee. Any exception to this provision must be approved by the County Manager or his/her designee.

e. No employee may directly solicit, influence or coerce another employee into donating leave on their own behalf or on the behalf of another employee. All solicitations of donated leave will be issued by the Human Resources & Risk Management Division in the approved format.

A Leave Committee comprised of the Elected Official/ Director of the employee's division, the Human Resources Director, the County Attorney or their designees and the employee's supervisor will review requests for catastrophic leave donation to ensure 1) all requirements for leave have been met, 2) the employee has received all rights and benefits under the FMLA, and 3) granting of the request is in the best interests of the County. A union representative shall be invited to participate in any committee meeting where a request from a member of their bargaining unit is being considered. The bargaining unit representative will serve as advisor to the Committee regarding any provisions for donated leave set forth in their respective collective bargaining agreement to ensure the terms of that agreement are fulfilled.

The Committee will make a recommendation to the County Manager for approval or disapproval.

f. Transfers of donated hours are subject to the final approval of the County Manager and shall be based upon a determination that the requested donation/transfer of leave is in accordance with this policy and in the best interest of the County. The County Manager's decision is not subject to grievance.

6. Procedures:

a. To request benefits, an employee or an individual authorized to act in the interest of the employee must complete and submit an Application for Catastrophic Leave (HR Form 15) and Health Care Provider Statement (HR Form 15.A) for an initial application. Should the employee's need for leave exceed the amount initially requested, the employee must submit an Application for Continuation of Catastrophic Leave (HR Form 15.B) and Health Care Provider Recertification Statement (HR Form 15.C) for recertification to Human Resources. The total amount of Catastrophic Leave granted shall not exceed six months. The County reserves the right to request periodic updates, second opinions, and other medical information as needed. The application shall include a release from the employee, which allows Human Resources to speak with the physician if it is determined that additional information or a second opinion is needed.

b. The Elected Official / Division Director (or designee) or the employee (or his representative) must first contact Human Resources to ensure that the catastrophic leave requirements have been met and the employee is eligible for the leave. Following approval by the County Manager, Human Resources will prepare a generalized statement of the employee's need for leave that will be distributed to County employees. The statement shall not disclose any information regarding the employee's medical condition. Donated hours will first be taken from the employee's home division or department.

c. Donations must be submitted by the donor employee on a County provided donation form (HR Form 15.D) and forwarded to Human Resources. The recipient will acknowledge acceptance of the provisions of this policy by completing the Recipient Acknowledgement Form (HR Form 15.E). Distribution and collection of donation forms must be done in a way to ensure confidentiality for both the recipient and the donors.

d. Human Resources will do the following:

(1) Verify that employee is eligible for catastrophic leave as provided for in V.O.4 above.

(2) Notify members and convene Leave Committee meetings when a qualified request for catastrophic leave has been submitted.

(3) Verify that donors have appropriately completed and signed the Catastrophic Leave Policy Donation Form.

(4) Verify that the recipient has completed and signed the *Catastrophic Leave Policy Recipient Acknowledgement Form*;

(5) Determine the number of hours that may be credited to the recipient's leave account and inform Finance/Payroll;

(6) Forward leave donation forms to Finance/Payroll.

(7) Maintain catastrophic leave documents in a confidential file separate from the employee's personnel file.

(8) Notify the recipient of the termination of catastrophic leave.

e. Finance/Payroll will do the following:

(1) Verify that each donor has enough time to cover the donation as of a designated pay period;

(2) Deduct donated leave hours from the donor's designated leave accrual bank when needed for each pay period and add the appropriate number of hours to the recipient's catastrophic leave. In no event shall the donor have hours deducted before they are required by the recipient and in no event shall the recipient have a surplus in their leave bank.

(3) Notify Human Resources at least one pay period prior to the exhaustion of donated leave so as to provide time to notify the recipient.

7. Confidentiality:

The County will keep confidential all information relating to requests for catastrophic leave, except as authorized in Subsection 6 above. Human Resources will maintain all documents and information relating to requests for catastrophic leave in a confidential file separate from the personnel file. This information will be disclosed to those who need to know, and will be used only to make decisions in regard to the provisions of this policy.

8. Return To Work:

Employees will be required to submit a Return to Work / Fitness for Duty Form completed by their medical provider to Human Resources and Risk Management before they will be permitted to return to the work site. Employees who attempt to report to the worksite without a Return to Work clearance from County HR and Risk Management must be sent immediately to Human Resources and Risk Management where they will be given instructions for completing the Return to Work process.

9. Fraudulent use:

The County reserves the right to obtain information that may lead to the discovery of an employee's fraudulent use of catastrophic leave. Any employee who fraudulently obtains catastrophic leave will be required to reimburse the County for any donated leave utilized and may be subject to disciplinary action up to and including termination.

10. Represented Employees

Union represented employees are subject to the terms of their collective bargaining agreement. If their contract does not specify a leave donation procedure, the procedure outlined in this policy will apply after both the thirty (30) day notice and ten (10) day response periods have elapsed.

**ARTICLE VI - MANAGEMENT RIGHTS, EMPLOYEE RIGHTS AND EMPLOYEE CONDUCT**

**A. MANAGEMENT RIGHTS**

The Board of County Commissioners, through and by the County Manager, Elected Officials or Division Directors, other managers or designees shall retain all management rights, including but not limited to:

1. Represent the County and have the care of the County property and the management of the interests of the County in all cases where no other provision is made by law.
  - a. Maintain the efficiency of government operations entrusted to it by law;
  - b. Determine the mission of the County;
  - c. Determine the resources to be allocated to accomplish the mission and goals of the respective County division as units of County government;
  - d. Determine the number of employees to be employed and for the capacity of such employment at any time;
  - e. Determine the methods, means, and personnel by which the operations of the County's Divisions are to be operated and conducted;
  - f. Act in the advancement of the objectives and interests of all other duties and responsibilities imposed upon the County by the New Mexico State Constitution, Federal and State statutes, ordinances and administrative regulations;
  - g. Determine the location and operation of its facilities;
  - h. Maintain uninterrupted service to the community; and
  - i. Take all such actions necessary to maintain such services.

2. Take the necessary action regarding its employees to discharge the functions of the County and to hire a County Manager to conduct the business of the County.

a. Direct employees, establish and enforce reasonable rules and regulations governing the conduct and safety of its employees;

b. Establish schedules and take such other actions necessary to carry out the functions entrusted to, or imposed upon it by law;

c. Hire, promote, transfer, assign and retain employees in positions;

d. Suspend, demote, dismiss, and otherwise discipline classified employees for just cause, and other employees with or without cause;

e. Lay-off or otherwise relieve employees from duty for lack of work or other legitimate reasons;

f. Determine the qualifications for, select and hire new classified employees;

g. Determine the qualifications and select employees for promotion and transfer;

h. Determine qualifications for, and select and hire supervisory, unclassified and exempt personnel;

i. Determine the number and arrangement of work schedules, shifts, and starting and stopping times thereof;

j. Evaluate, test and provide for the examination of employees and applicants for employment or continued employment to determine their fitness and suitability to carry out their job functions; and

k. Determine and implement all procedures and standards not otherwise restricted, limited or prohibited by Sandoval County Code, Article 2, §26-20 through §26-31, as amended.

## **B. SUPERVISORY RESPONSIBILITY**

Supervisors are at all times responsible for their own adherence to, and for ensuring employees' compliance with all applicable Sandoval County ordinances, rules, regulations, policies and procedures, as well as with all applicable State of New Mexico and Federal laws and regulations.

## **C. EMPLOYEE RIGHTS**

All classified employees shall have the right to:

1. A pre-determination hearing prior to suspension, demotion or termination, provided the employee has successfully completed his or her trial/probationary period.

2. File a grievance relating to a suspension, demotion or termination of an employee who has successfully completed his or her probationary/trial period pursuant to Article VIII and to be free from employer coercion, harassment or retaliation for filing such grievance.

3. Review his personnel file at a time that is mutually convenient for the Director and employee.

## **D. AVOIDING CONFLICT OF INTEREST**

1. Nepotism.

It is the policy of the County that the practice of nepotism is prohibited. Nepotism, for the purpose of these Rules and Regulations, is defined as the practice of giving preferential treatment to near relatives in the area of employment, including but not limited to: selection, assignments, responsibilities, benefits, pay, promotion, and discipline. In order to avoid nepotism or the appearance of impropriety involving nepotism, an Elected Official or Division

Director, shall not hire or fill a classified or unclassified position with a near relative, or engage in direct or indirect supervision of a near relative, except: (a) when that person's compensation in any calendar year is \$600.00 or less, (b) or such employment has been approved by the Board of County Commissioners, contingent upon posting of a bond by the hiring individual sufficient to cover reimbursement to the County of any compensation unlawfully paid out, and the approval of said bond by the County Commission pursuant to NMSA 1978, §10-1-10, et. Seq.

a. "Near Relative" –defined

(1) Any person who is related by blood or marriage, or whose relationship with the employee is similar to that of persons who are related by blood, marriage, or a recognized union similar to marriage.

(2) A near relative includes: spouse or ex-spouse, child, step-child, parent, step-parent, sibling, step-sibling, grandparent or step-grandparent, grandchild or step-grandchild, aunt, uncle, first cousin, niece/nephew, or like relations of the employee's spouse. The definition shall cover any person related to the employee by birth, adoption, marriage or domestic partnership or cohabitation.

b. "Direct and Indirect Supervision" - defined

(1) Direct supervision is the first level of supervision that has responsibility for the employee's performance evaluation, disciplinary action and/or employment status.

(2) Indirect supervision involves a supervisor at least one (1) level above the employee's direct supervisor and who has the authority to make recommendations regarding the employee's

employment status, performance evaluation, compensation or promotion.

(3) If an indirect supervisor is in the chain of command for a near relative, then the next supervisor up shall make all such supervisory decisions on employment status, performance, evaluations, compensation and promotion, assignments, responsibilities, and benefits.

c. Change in Assignment or Relationship Status.

Within five (5) working days of a change in assignment or near relative relationship between County employees, which leads to the direct or indirect supervision of or by a near relative, the employee shall inform the Elected Official or Division Director or designee in writing of the change in status. The Elected Official or Division Director shall notify the Director and the County Manager, who will make reasonable effort to arrange for the transfer of one of the affected employees or provide an alternative procedure to avoid nepotism or the appearance of impropriety in supervision. Any transfer will be without loss of pay or length of service unless the employee offers a voluntary demotion (to an available classification) or resignation. If transfer to an existing position is not available, and the employee does not offer a voluntary demotion (to an available classification) or resignation, the employee will be terminated. Violation of this policy shall constitute just cause for discipline, up to and including, termination whether or not the employee knowingly or willfully engaged in such violation.

2. Conflict of Interest.

No employee shall:

a. Engage in any business or transaction, have a financial, direct or indirect interest, accept private employment or other public employment, or render services for private interest, which is incompatible with the proper discharge of the employee's responsibilities, which gives the appearance of impropriety, or could tend to impair his independence of judgment or action in the performance of his duties.

b. Accept any gift, whether in the form of money, service, loan, thing or promise, from any person that could tend to impair the employee's independence of judgment or action in the performance of his duties.

c. Disclose confidential information concerning the property, government or affairs of the County without proper legal authorization; or use such information to advance the financial or other private interest of self or others.

3. Self-Employment/Supplementary/Outside Employment.

a. An employee may engage in self-employment, supplementary employment and/or outside employment if such employment complies with the requirements of this Section.

b. An employee of the County shall not engage in self-employment, supplementary employment and/or outside employment unless such employment is reported in writing to and approved by the Elected Official or Division Director. The business needs of the County shall take precedence over the needs of any self-employment, supplementary employment or outside employment.

c. An employee whose last performance evaluation was below satisfactory overall, or who is on a Corrective Action Plan, or who has received a disciplinary suspension or demotion within the previous 12 months, is not eligible for approval of self-employment, supplementary employment and/or outside employment.

d. Authorization to engage in such employment shall not be denied unless the employee's outside employment is found to interfere with the primary responsibilities of an employee who is in an on call status for the County or is required to respond to a public safety emergency, or if it reasonably appears that such employment is likely to result in one of the following:

- (1) Use of County time, facilities, equipment or supplies and/or conflicts with the employee's official duties.

(2) Impairment of job duty performance.

(3) Unfavorable publicity to the County or the employment defames, embarrasses or reflects discredit upon the County in any manner.

(4) Reduction in the employee's punctuality, safety, work performance or an increase in use of accrued leave.

(5) The employment is unusually physically strenuous and/or hazardous.

e. Permission for non-County employment, whether temporary or part-time, may be withdrawn if the employee receives a performance evaluation that is below satisfactory overall, or is placed on a Corrective Action Plan, or receives a disciplinary suspension or demotion, or if such employment results in the following:

(1) Use of County time, facilities, equipment or supplies and/or conflicts with the employee's official duties.

(2) Impairment of job duty performance.

(3) Unfavorable publicity to the County or the employment defames, embarrasses or reflects discredit upon the County in any manner.

(4) Reduction in the employee's punctuality, safety, work performance or an increase in use of accrued leave.

(5) The employment is unusually physically strenuous and/or hazardous.

f. An employee shall not be entitled to sick leave pay if unable to perform his County duties as a result of an injury or an occupational disease attributable to outside, supplementary or self-employment.

g. The employee is ineligible under the Workers' Compensation Act, NMSA 1978 §52-1-1 et. seq., benefits for injuries incurred while engaged in such employment.

h. A new authorization form must be submitted and approved every twelve (12) months after initial approval, or whenever there is a material change to the employee's outside work or his/her County duties or responsibilities. Failure to complete or update the authorization form or failure to provide complete and accurate information may result in revocation of permission to engage in the outside work and shall constitute just cause for discipline up to and including termination.

4. Political Activity.

The County finds that certain partisan and/or non-partisan political activity is inconsistent with the merit principles of Sandoval County Code of Ordinances, Article 2, §26-20 through §26-31, as amended and these Rules and Regulations. Nothing in these Rules and Regulations shall be construed to restrict off-hours political activity, to prohibit an employee from making voluntary contributions for political purposes, to restrict the right of employees to vote as they may choose or to restrict the right of employees to express their opinion on political subjects or candidates or to attend general political meetings.

a. Prohibited Employee Political Activity.

An employee shall not:

(1) Engage in any political activity during his hours of work for the County.

(2) Hold a political position which is incompatible with his County employment.

(3) During his hours of work for the County, solicit, orally or by letter, or obtain in any manner an assessment, subscription or contribution for any political party or for any partisan or non-partisan purpose whatever from any County employee.

(4) Appear in any political advertisement or testimonial while in uniform or in apparel which displays the County's logo or name.

(5) Wear or display any campaign clothing, signs, buttons or literature in the work place or on County equipment or vehicles.

b. Violation of this Section shall constitute just cause for discipline up to and including termination.

c. Partisan and non-partisan candidates and office holders shall also comply with Article XII of the Rules and Regulations.

5. Federally Funded Positions.

An employee whose employment is completely funded by Federal Loans or grants is required to comply with the provisions of the Hatch Act (5 U.S.C §§ 7321-7328).

## **ARTICLE VII- DISCIPLINE**

### **A. BASIS FOR EMPLOYEE DISCIPLINE**

Disciplinary actions of classified employees shall be based on just cause. Disciplinary action(s) is not necessarily progressive and the County reserves the right and discretion to determine the appropriate level of discipline for any performance deficiency or misconduct without utilizing progressive discipline. In some instances, a specific incident may justify severe disciplinary action up to and including termination.

### **B. BEHAVIOR/ACTIONS SUBJECT TO DISCIPLINE**

The following is an illustrative list of actions or behavior, which may result in disciplinary action. It is not intended to be an exhaustive list and the County reserves the right to discipline an employee for actions or reasons not set forth in this list:

1. Substandard work performance;
2. Repeated absence or tardiness;
3. Unauthorized absence without leave or failure to be on the job when expected;
4. Insubordination;
5. Failure to follow safety rules or County procedures;
6. Inattention to duties;
7. Physical or non-physical altercation with fellow employee(s) or the public;
8. Violence, threats of violence, rude, insolent and/or angry behavior;
9. Misuse or abuse of County property or time, or the property of another person;
10. Failure to report any arrest or traffic citation within 2 workdays of the event, except for minor traffic violations and civil offenses;

11. Failure to report an accident in a County vehicle within a prescribed time limit or within a reasonable time, whichever is less;
12. Sexual harassment, or any other inappropriate harassment;
13. Unlawful discrimination;
14. Retaliation by an employee against any other employee or other person for reporting or complaining about the employee, or for exercising any right to complain about unlawful or improper conduct;
15. DWI conviction, if the employee is required to drive in the course of his or her employment;
16. Theft of County property or the property of another person;
17. Falsifying or unauthorized alteration of time sheets or of any County record or report;
18. Untruthfulness and/or failure to disclose relevant information known to the employee, which adversely affects work outcomes or the effective investigation of a workplace incident, complaint or concern;
19. Use of County position, equipment, employment or work time for personal advantage, to advance private interests, or for illegal purposes;
20. Gambling in any form on County property or County time;
21. Accepting a gift or entertainment that has the appearance of influencing the employee's objectivity in the discharge of his or her duties;
22. Plea of No Contest or Conviction of a felony or of a misdemeanor involving moral turpitude provided that for non-law enforcement personnel:

(a) the criminal conviction directly relates to the particular job duties of the employee's position, which determination and the reasons therefore shall be explicitly stated in writing; or

(b) the criminal conviction does not directly relate to the particular position but the employee has not been sufficiently rehabilitated to warrant the public trust. There shall be a presumption of sufficient rehabilitation if the employee has completed probation or parole supervision, or upon expiration of a period of 3 years after the final discharge or release from any imprisonment without any subsequent conviction

23. Any other failure to be eligible for hire, in accordance with Article II.D.6 if such failure is established by the County after the employee has been hired;

24. Use of, or under the influence of, alcohol, prescribed or controlled medications and/or illegal substances while on duty which impair judgment and/or affect ability to perform job duties and/or pose a safety threat to themselves or others;

25. Conflict of interest as defined by the County's Ordinance and/or Article VI.D.2 of these Rules and Regulations;

26. Violation of the nepotism policy set forth in Article VI.D.1;

27. Unauthorized outside employment or other violation of the Outside Employment Policy set out in Article VI.D.3;

28. Violation of the political activity policy set forth in Article VI.D.4 and VI.D.5;

29. Third preventable vehicle or construction equipment accident;

30. Failure to satisfactorily fulfill required duties;
31. Failure to timely obtain or failure to retain licensure, certification or other authority required for performance of the employee's position;
32. Failure to report revocation or suspension of licensure, certification, or other authority which prevents the employee from performing an essential function of his/her job;
33. Willful, excessive or repeated infractions and/or violations of County rules, policies and/or procedures;
34. Any actions, which violate these Personnel Rules and Regulations, the Personnel Ordinance, Division policies and procedures and/or Standard Operating Procedures (SOPs) or applicable law;

### **C. RANGE OF DISCIPLINE**

Discipline short of termination, to be effective, should be designed to correct and improve an employee's performance and/or behavior. The County encourages employees to resolve disciplinary issues informally and County supervisors are encouraged to use counseling and corrective action plans to assist the employee in correcting work violations and behavioral issues and to improve work performance. However, the County retains full discretion to determine what constitutes appropriate discipline. Disciplinary actions, criticism or counseling shall be conducted in a professional manner and not in the presence of the employee's coworkers or the public

#### **1. Verbal Warning**

A verbal warning is typically used for minor infractions and shall serve to inform the employee that his behavior, work performance and/or conduct require improvement. Supervisors shall keep written notations of oral warnings, in a confidential file within their control, and the employee shall be informed that the informal record of the incident exists. Verbal warnings should be administered as soon after the incident occurs or as soon after the supervisor becomes aware that the incident took place as is reasonably achievable. The employee will be given a

reasonable period of time to correct the behavior. If the employee's work improves and no further action is taken within a 12 month period after the infraction, the notation shall be destroyed and the employee informed that he is meeting his work performance satisfactorily. Verbal warnings are not placed in the employee's personnel file and are not grievable.

## 2. Written Reprimand and Corrective Action Plan

In situations where a verbal warning has not resulted in the expected improvement in performance, or when the infraction justifies more severe initial action, the classified employee may be issued a written reprimand, with or without a corrective action plan. The written reprimand notice and any corrective action plan must be reviewed by the Director before the warning is given. The Elected Official or Division Director or designee shall issue the warning and any corrective action plan. The employee will be required to sign the notice and will be given a copy of the warning and any corrective action plan and of any rule, policy, procedure or Article violated. He will also be informed that he has the opportunity to respond in writing to the warning and that any written response will be placed in his personnel file with the warning and any corrective action plan. The purpose of the signature is not to admit to the purported misconduct, but only to acknowledge receipt. If the employee refuses to sign, a supervisory-level employee, through his signature, shall attest that the written reprimand was given to the employee.

## 3. Suspension

A classified employee may be suspended without pay for a single serious infraction, for multiple infractions, or for continued substandard job performance or misconduct after previous attempts to correct behavior have failed. All suspensions must be reviewed by the Director prior to issuing the notice of contemplated disciplinary action. A suspension of an employee shall not exceed thirty (30) working days unless approved, in writing, by the County Manager.

#### 4. Demotion

A classified employee may be demoted for a single serious infraction, for multiple infractions, or for continued substandard job performance or misconduct after previous attempts to correct behavior have failed. The proposed demotion must be reviewed by the Director prior to issuing the notice of contemplated disciplinary action.

#### 5. Termination

A classified employee may be terminated when the employee commits a single serious infraction, for multiple infractions, when he has failed to correct unacceptable behavior, or for continued failure to execute or fulfill job duties or requirements. The proposed termination must be reviewed by the Director prior to issuing the notice of contemplated disciplinary action.

### **D. COUNTY RESERVES RIGHT**

The County reserves the right to exercise judgment and to impose disciplinary actions as determined appropriate based on the circumstances of each case.

### **E. ALTERNATE ASSIGNMENT /ADMINISTRATIVE LEAVE PENDING DECISION\**

In cases where County property, other employees or citizens could be or are at risk as a result of the employee's action, or the employee's continuing presence in the workplace is deemed to pose a risk to the integrity of a factual investigation or to County operations during an investigation and consideration of possible disciplinary action, the County Manager may designate an alternative assignment, place the employee on administrative leave with pay up to a maximum of thirty (30) working days, or both. When on Administrative Leave, the employee must remain available for work and must call his supervisor each workday within one-half hour after the start of his normal work reporting time and affirm his availability to report to work if needed. Failure by the employee to call, or to

appear for work if instructed to do so, shall be considered insubordination and/or unauthorized absence and shall be grounds for discipline up to and including termination.

#### **F. NOTICE OF CONTEMPLATED ACTION/EMPLOYEE RESPONSE**

This section sets forth the procedure for suspension, demotion or dismissal of a classified employee.

1. An Elected Official, the County Manager<sup>1</sup> or a Division Director or designee shall draft a written Notice of Contemplated Action in consultation with the Director, who shall review the Notice before it is issued to the employee (unless the Director is the subject of the Notice). In the case of a proposed suspension of more than thirty (30) days, the County Manager shall review and approve the Notice before it is issued to the employee.

2. The Notice shall:
- a. Specify the basis for the proposed disciplinary action;
  - b. Cite to and attach a copy of any violated section of Sandoval County Code Article 2, 26-20 through 26-31, as amended of these Rules and Regulations or of division and/or departmental policy or procedure;
  - c. Describe the evidence relied upon to support the proposed discipline;
  - d. Specify the proposed disciplinary action;
  - e. Advise the employee of the right to respond in writing within five (5) working days from service of the notice; and that failure to respond in writing within that time will be deemed acceptance of the proposed discipline; and

---

<sup>1</sup> When the County Manager is the employee's direct supervisor

f. Specify a date, time and place for the pre-disciplinary hearing.

3. Service of Notice of Contemplated Action.

The Notice of Contemplated Action shall be hand-delivered to the employee by his immediate supervisor and /or Elected Official, County Manager, or Division Director. The employee shall acknowledge receipt by signing a copy of the notice and affixing the date and time of receipt. The purpose of the signature is not to admit to the purported misconduct or agree with the proposed discipline, but only to acknowledge receipt. If the employee refuses to sign, a supervisory-level employee, through his signature, shall attest that the Notice was given to the employee. If hand delivery is not feasible, the notice may be sent by certified mail, return receipt requested, with a copy by regular mail. Receipt of the notice shall be presumed two (2) days after the date of mailing, unless an earlier date of receipt is established by return receipt.

4. Employee Response

If the employee chooses to respond in writing to the Notice of Contemplated Action, he must do so within five (5) working days of receipt of the Notice, but no later than two (2) working days prior to the scheduled hearing; and must be hand delivered by the employee or a representative to the Elected Official, County Manager or Division Director and receipt acknowledged by her. If the employee responds in writing, he shall be deemed to have waived the pre-disciplinary hearing, unless the employee expressly requests, in writing, that the pre-disciplinary hearing be convened.

If the time set in the Notice of the pre-disciplinary hearing is not feasible for the employee, the employee may request that the hearing be rescheduled. Such request must be submitted in writing to the Elected Official, County Manager or Division Director within five (5) working days of the receipt of the Notice of Contemplated Action, but no later than two (2) working days prior to the scheduled hearing; and must be hand delivered by the employee or a representative to the Elected Official, County Manager or Division Director and receipt acknowledged by her. The request shall specify the reason(s) why the employee seeks to reschedule the hearing. It shall also provide a phone number where the employee can be reached (or a message reliably left for) the employee responding to the request.

The Elected Official, County Manager or Division Director will respond to the employee's request within one (1) working day prior to the scheduled hearing, advising whether the hearing is being rescheduled and, if so, specifying the date, time and location of the rescheduled hearing. Such response will be to the phone number provided by the employee, and a written response will follow either by hand delivery to the employee or by mail. A copy of the written response will be provided to the Director.

#### **G. PRE-DISCIPLINARY HEARING**

Absent the waiver of the pre-disciplinary hearing by written response to the Notice of Contemplated Action, the Elected Official, County Manager or Division Director shall meet with the employee or with the employee and his representative (retained at the employee's expense). The employee's representative may speak on the employee's behalf at the hearing. The pre-disciplinary hearing is the employee's opportunity to respond to the proposed disciplinary action. The employee or his representative may present information and argument; however, this is not an evidentiary hearing and testimony will not be offered or accepted.

The Director or designee, the County Attorney or designee, and/or a recording clerk (to make notes and/or an audio recording) may attend the Pre-Disciplinary Hearing. The hearing may be audio recorded at the discretion of the Elected Official County Manager or Division Director.

#### **H ACCEPTS DISCIPLINE – NOTICE OF FINAL ACTION**

If the employee does not respond in writing within five (5) working days of being served the Notice of Contemplated Action, and fails to appear at the pre-disciplinary hearing, the employee will be deemed to have accepted the discipline and the Elected Official, County Manager or Division Director shall issue the Notice of Final Action.

The Notice of Final Action shall:

1. State the date that the Notice of Contemplated Action was issued;
2. State that the employee did not respond in writing within five (5) working days of being served the Notice, or did not appear at the pre-disciplinary hearing, or the employee affirmatively agreed to the contemplated discipline

3. Specify the action to be taken;
4. Specify the facts forming just cause for the disciplinary action;
5. Specify the supporting evidence;
6. Specify the effective date of the disciplinary action, which must be at least 24 hours from the service of the notice of Final Disciplinary Action;
7. Identify any corrective action and/or change in behavior or performance expected of the employee and the consequences of the employee's failure to take the corrective action or to fulfill the expectations.
8. Be hand-delivered to the employee by his immediate supervisor and /or Elected Official, County Manager or Division Director. The employee shall acknowledge receipt by signing a copy of the notice and affixing the date and time of receipt. The purpose of the signature is not to admit to the purported misconduct or agree with the proposed discipline, but only to acknowledge receipt. If the employee refuses to sign, a supervisory-level employee, through his signature, shall attest that the Notice was given to the employee. If hand delivery is not feasible, the notice may be sent by certified mail, return receipt requested, with a copy by regular mail. Receipt of the notice shall be presumed two (2) working days after the date of mailing, unless an earlier date of receipt is established by return receipt.
9. The Elected Official, County Manager or Division Director shall send the Director the original, receipt-acknowledged copy of the Notice of Contemplated Action and Notice of Final Action, or copies of the mailed Notices, to be placed in the employee's Personnel File.

#### **I. PRE-DISCIPLINARY HEARING - NOTICE OF FINAL ACTION**

In the event the classified employee has responded pursuant to Article VII.F.4 the Elected Official, County Manager or Division Director shall render her decision in a written, Notice of Final Action within five (5) working days of the written response or the pre-disciplinary hearing, whichever is later, unless an extension of time is approved in writing by the County Manager or designee.

The Notice of Final Action shall:

1. Specify the action to be taken;
2. Specify the facts forming just cause for the disciplinary action;
3. Specify the supporting evidence;
4. Address any explanations or defenses the employee/representative offered in writing or during the informal hearing;
5. Specify the effective date of the disciplinary action, which must be at least 24 hours from the service of the notice of Final Notice of Disciplinary Action; and
6. Advise the employee of the right to file a written appeal of the proposed disciplinary action within ten (10) days of the effective date of disciplinary action.
7. Identify any corrective action and/or change in behavior or performance expected of the employee and the consequences of the employee's failure to take the corrective action or to fulfill the expectations.
8. The Notice of Final Action shall be either hand-delivered to the employee, who shall acknowledge receipt of the notice, or sent to the employee by certified mail, return receipt required.
9. Disciplinary actions levied per the above procedure shall not be held in abeyance pending appeals to a third party hearing officer.

#### **J. COMPUTATION OF TIME AND TIME LIMITS**

All time periods referred to in Article VII and Article VIII shall be measured in workdays, excluding holidays recognized by the County, except where stated otherwise. Computation of time shall begin on the first work day after physical service and end at the close of business on the designated working day. Service by

certified mail, return receipt, is considered physically served four (4) working days after the postmarked date, or on the date acknowledged in the return receipt, whichever is earlier; and service by regular mail is considered physically served two (2) working days after the date of mailing.

All time limits set out in Article VII and Article VIII shall be strictly enforced, except that the County Manager (or designee) may extend any time limit in writing and in his sole discretion.

## **ARTICLE VIII - GRIEVANCE PROCEDURE**

The purpose of the Grievance Procedure is to provide a classified employee with a means to contest a suspension, demotion or termination. A grievance may be initiated only by the affected employee. The employee may file only a single grievance concerning a particular disciplinary action. While the grievant may designate a representative at any point in the grievance process, labor unions do not have representation rights for non-bargaining unit employees and the employee cannot have more than one (1) designated representative for a grievance.

Sections A and B of this Article do not apply to discipline taken by the County Manager directly. Such discipline may be appealed pursuant to Section C below.

### **A. NOTICE OF APPEAL OF SUSPENSIONS, DEMOTIONS OR TERMINATIONS**

A classified employee may file a Notice of Appeal for a suspension, demotion or termination. Notice of Appeal must be filed with the County Manager, and a copy delivered to the Director, no later than ten (10) days after receipt of the Notice of Final Action.

The Notice of Appeal shall identify: (a) those facts relied upon in the Notice of Final Action which are disputed, (b) any interpretation or application of Sandoval County Code Article 2, 26-20 through 26-31, as amended of these Rules and Regulations or of division and/or departmental policy or procedure relied upon in the Notice of Final Action which is disputed by the employee; and (c) any other reason why the employee is contesting the disciplinary action.

### **B. COUNTY MANAGER REVIEW**

The County Manager or designee shall review the appeal. He may, in his discretion, schedule an informal review hearing with the employee to give the employee the opportunity to present information and/or argument in support of the appeal. The employee may be represented at that informal hearing by a single representative. The Elected Official or Division Director (or designee) may also attend the hearing and respond to the information and/or argument presented on behalf of the employee. However, this is not an evidentiary hearing and testimony will not be offered or accepted. The Director (or designee) may also attend the

hearing. The hearing may be audio recorded at the discretion of the County Manager (or designee).

Within ten (10) working days after his receipt of the Notice of Appeal or an informal review hearing, whichever is later, the County Manager or designee shall issue a decision upholding, reversing or modifying the disciplinary action. In the event the County Manager or designee has not issued a decision within ten (10) calendar days after the date of filing of the Notice of Appeal, the employee has the right to appeal to a Hearing Officer as if the County Manager or designee has upheld the Notice of Final Action.

### **C. APPEAL FROM FINAL DECISION OF THE COUNTY MANAGER TO HEARING OFFICER**

If the employee is not in agreement with the County Manager's decision, or if ten (10) days has expired without a County Manager decision, the employee has ten (10) days to file with the Director a written Request for a Grievance Hearing before a Hearing Officer. Such hearing shall be for review of the Notice of Final Action as it may have been issued or modified by the County Manager or designee.

Hearings on appeal from disciplinary actions relate to personnel matters and shall be closed to the public, unless both the employee and the County Manager agree to an open hearing. The hearing before the Hearing Officer is solely for the purpose of receiving evidence and argument concerning the factual basis for the discipline and/or the reasonableness of the discipline imposed. The Elected Official, County Manager or Division Director shall have the burden of proof by a preponderance of evidence.

#### **1. Hearing Officer**

The Hearing Officer has the authority to set a hearing on the merits of the challenged discipline, and to set pre-hearing conferences or otherwise determine issues of grievability, jurisdiction and procedural issues, and to render decisions thereon. The decisions shall include findings of fact and conclusions of law consistent with the evidence. The Hearing Officer shall not have the authority to amend, modify or arbitrate away any of the provisions of Sandoval County Code Article 2, 26-20 through 26-31, as amended, these Personnel Rules and Regulations, or of adopted

departmental/division policies or procedures. The Hearing Officer shall be confined to the precise issues raised by the employee in his Notice of Appeal and such other issues as may be stipulated to by the employee and the County.

2. Selection of a Hearing Officer

a. The Director shall issue a request for qualifications for Hearing Officer services and shall compile and maintain an active list of at least five (5) qualified hearing officers. That list will be available for review at Human Resources during normal business hours.

b. Within ten (10) calendar days of submitting a timely appeal, the employee or the employee's representative will meet with the Director and select a Hearing Officer with the parties alternately striking a name off the list of eligible hearing officers until only one name remains. Alternatively, the employee shall submit a written notice to the Director within the same time period (ten calendar days) indicating the numbered order of the employee's strikes from the list of eligible hearing officers, and the Director shall notify the employee of the person remaining on the list after all strikes have been exercised. In either case, the employee shall exercise the first strike.

c. Failure by the employee or the employee's representative to meet with the Director or designee, or to submit written notification of the employee's strikes, within ten (10) days of submitting a timely appeal, shall constitute a waiver of the employee's right to pursue his or her appeal, unless such failure is excused by the Director. The time may also be extended by written agreement of the parties.

d. Within five (5) calendar days of the selection of a Hearing Officer, or of the employee's receipt of the Director's notice of the selected Hearing Officer, the employee shall submit to the Director a Notice of Acceptance, signed by the employee, attesting and agreeing to the provisions of Article VIII.C.6.b.(1) through (3) regarding payment of the Hearing Officer's fees and expenses. The employee's failure to sign and submit such Notice of Acceptance within five (5) calendar days of the designation of the

Hearing Officer shall constitute a waiver of his or her right to proceed with the grievance.

3. Pre-Hearing Conference and Hearing Rules of Procedure

Within ten (10) days of being appointed, the Hearing Officer shall schedule and conduct a pre-hearing conference by such method deemed appropriate by the Hearing Officer. Each party shall submit a pre-hearing statement to the Hearing Officer at the pre-hearing conference or as otherwise ordered by the Hearing Officer. The pre-hearing statement shall contain the following information:

- a. A statement of the issues raised in the Notice of Appeal and any other stipulated or proposed stipulated issues;
- b. Proposed stipulations of fact;
- c. A list of witnesses to be called and a summary of their testimony;
- d. A list of exhibits;
- e. Requests for discovery;
- f. Request for subpoenas; and
- g. Estimated amount of time needed for the hearing.

4. Pre-Hearing Order

The Hearing Officer shall issue a pre-hearing order which shall contain the following:

- a. The issue(s) to be heard;
- b. Stipulations of fact;

- c. A deadline for disclosure of all witnesses and documentary evidence;
- d. A deadline for discovery;
- e. A deadline for filing pre-hearing motions and the manner in which they will be heard or acted upon; and
- f. A hearing date, scheduled within thirty (30) days, which may be continued only for good cause or by stipulation of the parties.

5. Hearing Rules, Order of the Hearing

- a. The Hearing Officer shall follow the evidentiary standards for administrative hearings.
- b. Either party may be represented at the hearing by a person of their choosing, at the party's own expense, provided the representative has submitted a written entry of appearance to the Hearing Officer prior to the hearing.
- c. The County shall be entitled to have an employee, in addition to its representative, in the hearing room throughout the hearing. The appealing employee may also be present throughout the hearing.
- d. The Hearing Officer shall clear the hearing room of all witnesses prior to commencing the hearing.
- e. All oral evidence and testimony shall be taken only under oath.
- f. The Hearing Officer may admit all evidence if it is evidence on which reasonable persons are accustomed to rely for the conduct of serious affairs. The Hearing Officer may exclude immaterial, irrelevant or unduly cumulative testimony.
- g. The Hearing Officer may take administrative notice of those matters in which courts of this State may take notice.

h. The Director shall arrange for an electronic record of the hearing to be made. The employee or his representative may request a copy of the recording from the Director. No transcripts shall be produced unless one is requested by a party, and such requesting party shall be responsible for the cost of the transcript. If a party arranges for a transcript, the Hearing Officer may obtain a copy as a Hearing Officer's expense for purposes of Article VIII.C.6.b. The County will be responsible for payment of this expense, subject to reimbursement from the employee if some or all of the expense is apportioned to the employee pursuant to Article VIII.C.6.b. If one party arranges for a transcript, the other party may obtain a copy at his own cost.

i. Order of the Hearing shall be:

(1) Opening statements, limited to ten [10] minutes:

(a) by County Manager, Elected Official or Division Director or representative

(b) by employee grieving or representative

(2) Presentation of issues:

(a) by County Manager Elected Official or Division Director or representative, with witnesses being subject to cross examination by the employee or representative and then to questions by the Hearing Officer, with the right to redirect and further cross examine respective parties and witnesses.

(b) by employee grieving or representative, with witnesses being subject to cross-examination by the County Manager, Elected Official or Division Director or representative and then to questions by the Hearing Officer, with right to redirect and further cross examine respective parties and witnesses.

(3) Rebuttal and surrebuttal

(a) by County Manager, Elected Official or Division Director or representative

(b) by employee grievant or representative

(4) Closing statements:

(a) by County Manager, Elected Official or Division Director or representative

(b) by employee grievant or representative

j. The Hearing Officer may hold the hearing open after the conclusion of the foregoing proceedings, for submission of specific supplemental evidence and/or for submission of written argument by the parties. A specific deadline will be set by the Hearing Officer for any supplemental submission and for conclusion of the hearing.

6. Decision of the Hearing Officer

The Hearing Officer shall prepare a written decision upholding, reversing or modifying the suspension, demotion or termination within twenty (20) calendar days of the conclusion of the hearing, unless an extension of time is approved, in writing, by the Director. The decision shall be served on the parties by certified mail, return receipt requested. The decision of the Hearing Officer is the final administrative decision of the case.

a. Reversal/Modification of Discipline. In the event the Hearing Officer has reversed or modified the disciplinary action, the Hearing Officer shall have the authority to award back wages and County-contributed benefits to the employee. The Hearing Officer shall have no authority to grant interest in connection with any award of back wages or benefits. In the event the Hearing Officer awards back wages, the employee shall provide the County with a sworn statement of gross earnings or unemployment compensation since the effective date the employee began serving his disciplinary action. The County shall be able to offset earnings and

unemployment compensation received during the period against the back wages awarded. After the written decision is issued the Hearing Officer shall retain jurisdiction of the case for the sole purpose of resolving any disputes regarding back wages and County-contributed benefits.

b. Fees/Costs. The Hearing Officer's fees, and expenses for the hearing shall be paid:

(1) Equally by the County and the employee if the employee's suspension, demotion or termination is modified by the Hearing Officer;

(2) By the County if the Hearing Officer reverses the suspension, demotion or termination; or

(3) By the employee if the Hearing Officer upholds the suspension, demotion or termination.

c. Each party shall bear all of its own costs.

d. The final decision of the Hearing Officer may be confirmed, modified, corrected or vacated pursuant to the provision of the Uniform Arbitration Act, NMSA 1978, §44-7A-23 through 25.

## **ARTICLE IX - REDUCTION IN FORCE (LAYOFF)**

### **A. REDUCTION IN FORCE**

Employees are subject to separation by layoffs due to a shortage of County funds, abolishment of position(s), lack of work, or action by the Board of County Commissioners to reduce or eliminate function(s). The action to approve a reorganization or elimination of function(s) shall be documented in a Layoff Plan. The Plan shall be submitted to the Board of County Commissioners for approval at least 30 working days prior to an action being taken to implement the Plan. The Plan shall include the criteria to be used to determine the order of layoff and the order in which employees will be considered for rehire and/or reinstatement.

### **B. PROCEDURES FOR LAYOFFS**

1. When a division or Elected Official or Division Director proposes abolishing a position through reorganization or to eliminate a function due to technological or other modernizations, the County Manager shall be notified of the proposed change.

2. The County Manager will review the proposed layoff and inform the Board of County Commissioners of the elimination of the job function(s) or reorganization, within forty-five (45) days of the request. The employee(s) holding the position(s) will be informed within the forty-five (45) day period prior to action by the Board of County Commissioners.

3. The County Manager shall cancel all postings for job vacancies except those that are considered critical or essential to the mission of the County.

4. Employee(s) scheduled for layoff shall be notified no less than twenty (20) calendar days prior to the layoff of their impending layoff, insofar as reasonably practicable.

5. Employee(s) on layoff must reapply for a position in order to be considered for future employment.

**C. ORDER OF LAYOFF**

1. The County Manager, with the assistance of the Director, shall determine the order of layoff based upon the business needs of the County.

2. A classified, full-time employee shall not be laid off if there is a vacant position into which the employee can be transferred for which the employee is qualified.

3. A classified employee scheduled for layoff may be offered or assigned to another position provided:

a. He meets the qualifications for the position.

b. He agrees to accept the pay of the grade to which he will be assigned, and

c. He has not been disciplined within the past twelve (12) months.

4. When two or more classified employees holding similar positions are to be laid-off, determination on retention and job transfer shall be made in the following order:

a. Length of service with the County;

b. Length of service in the position; and

c. Job performance and/or prior disciplinary action.

**D. LAYOFF PRIVILEGES**

A classified employee on layoff status shall be given a preference for rehire for any vacancy for which he has applied and for which he qualifies.

1. Rehire limitation and layoff term. The preference for rehire shall continue for six (6) months after the layoff date, or until the laid-off

employee's acceptance of another County position, or until he has refused a job for which he qualifies for which the pay rate is the same or comparable to the position from which he is being laid-off.

**E. ORDER OF RE-EMPLOYMENT**

1. Laid-off classified employees shall be offered re-employment in reverse order of layoff, i.e., the last employee to be laid-off shall be the first employee to be re-employed, if qualified for available work.

2. Any classified employee who is laid-off and returns to work within six (6) months from the date of layoff shall be re-credited all unused sick leave hours and shall be placed in the accrual rate he had on the date of his layoff.

3. A classified employee who is subsequently re-employed within the six (6) month layoff term limit shall not have a break in service for the purposes of calculating time-in-service and County benefits; however, the layoff time served is not creditable time for purposes of PERA.

**F. LAYOFF NOT GRIEVABLE**

An employee has no grievance rights with regards to layoff actions or reinstatement from layoff status.

## **ARTICLE X -SEPARATION FROM COUNTY**

An employee who resigns, is laid-off or terminated by the County shall complete an Employee Clearance Form prior to leaving the County's employment.

### **A. ACCOUNTING.**

The employee who is separating from the County will account for any tools or items for which he has accepted responsibility while employed by the County. The accounting by the Elected Official, County Manager or Division Director shall include the condition of the tools/items, their location and, if he cannot account for the County property, provide a statement regarding their reassignment, loss or theft.

### **B. REIMBURSEMENT FOR MISSING OR DAMAGED COUNTY PROPERTY.**

The Director shall process all separating employees by completing an exit interview and checking the Employee Clearance Form. If any money is due the County, resulting from missing or damaged County property, the Director shall obtain from the Elected Official, County Manager or Division Director the signed Equipment/Property Issue Form with the replacement cost of the County property and deduct a reasonable amount for the depreciation of the missing, damaged and/or lost equipment. The County Manager will determine the appropriate action to collect the amount that is owed the County, if any.

### **C. SEPARATION PAY**

An employee leaving County employment shall receive payment for all earned compensation and accrued annual leave hours, less any amount owed the County. The employee shall receive his final paycheck on the next regular pay day after his date of resignation. An employee who is terminated or laid-off shall receive his final paycheck within five (5) workdays of his last day of work.

### **D. RESIGNATIONS**

1. Letter of Resignation.

An employee who intends to resign shall provide the Elected Official, County Manager or Division Director with a written notice of resignation specifying the date of departure and the reason for leaving County employment. The letter of resignation shall be attached to the Employee Clearance Form and both delivered to the Director within two (2) workdays of receipt.

2. Resignation/Job Abandonment.

An employee who fails to report to work for three (3) consecutive workdays without prior leave authorization shall be considered to have abandoned his position and resigned from the County. This is job abandonment and is not grievable by a classified employee. His final paycheck will be available for him within ten (10) days of resignation. He will be required to fill out the Employee Clearance Form and to return all County Property at the time he picks up his final paycheck. The three (3) days of abandonment will be charged to leave without pay. The employee is ineligible for rehire.

**E. TIME IN SERVICE COMPUTATION/BREAK IN SERVICE**

1. Computation of time-in-service for leave accrual and other purposes, except PERA, shall be made on the basis of each employee's date of hire into a classified position, less any leave without pay or other break in service. Time in service for PERA retirement purposes is determined solely by PERA. In general, an employee hired on or before the 16<sup>th</sup> of the month receives credit for the month and if an employee terminates on or after the 15<sup>th</sup> of the month, service credit is awarded for that month. In addition to hire date and termination date, an employee must receive fifty (50%) percent or more of their monthly salary to be awarded service credit for the month.

2. A classified employee who has resigned in good standing from the County and is rehired within ninety (90) calendar day of his resignation shall be credited with the break-in-service time at the date of rehire, except for PERA retirement time. He shall not serve a probationary period.

3. Any accrued sick leave on his balance at the time of resignation shall be reinstated when re-employed within ninety (90) days of his resignation in good standing.

4. A classified employee who resigns in good standing and is rehired may be credited prior County employment time for annual leave accrual calculation upon receipt and approval of a written request submitted to the County Manager, provided that the request is submitted within ninety (90) days of rehire; however, leave accrual rates shall not be adjusted retroactively.

## **ARTICLE XI - JOB RELATED INJURIES, OCCUPATIONAL ILLNESS AND PERSONAL INJURIES**

Employees injured on the job or suffering from occupational diseases, as defined in the New Mexico Workers' Compensation Statutes NMSA 1978 §52-1-1, as amended, shall receive Workers' Compensation benefits as prescribed in the law.

Employees with a personal injury or illness may be covered by Family and Medical Leave, if eligible, or may be approved to use available sick and annual leave, or Leave without Pay for medical reasons pursuant to Article V.C, D, and N.

### **A. REPORTING PROCEDURES**

1. Employees shall report all on-the-job injuries or accident, regardless of how minor, to their direct supervisor (or chain of command) immediately after the occurrence or as soon as possible (within the same shift). The supervisor shall ensure that the employee immediately receives all required medical treatment.

2. Upon notice of an accident or injury, supervisors must call the Risk Management Claims "Hotline" (505) 239-1610 (days, evenings and weekends) to report the incident and action taken.

3. Employees are required to complete and submit a Notice of First Accident Form. and a HIPAA compliance" Authorization for Disclosure of Protected Health Information" form to their supervisor within twenty-four (24) hours of the incident, whenever possible.

4. Supervisors are required to complete and submit an Employer's First Report of Injury or Illness" packet to Risk Management, within 24 hours of an n employee report of an injury or illness.

### **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) may be conducted pursuant to any duly adopted County policy.

#### **C. 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.

#### **D. WAITING PERIOD.**

1. 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, PTO or accumulated compensatory time for any time missed from work due to the work-related injury/illness so that pay will continue from the County. If available leave has been exhausted, the employee will be unpaid for missed work time subject to FLSA regulations.

2. Workers' Compensation payment received for all such days when annual or sick leave was used by the employee shall be reimbursed to the County by the employee. Annual or sick leave used by the employee in lieu of Workers' Compensation during the Waiting period shall be re-credited to the employee upon the County's receipt of the reimbursement.

3. In no event shall such use of paid leave result in receipt by the employee of more remuneration than would normally be received in the regular course of employment. The Finance Department is responsible for monitoring this provision.

4. The employee shall accrue annual, sick leave and PTO while on injury time.

5. In the event the employee receives a lump sum settlement, pursuant to the Workers Compensation Act, the employee shall reimburse the County for the injury time payments previously received, provided that in no case shall the deduction exceed the amount of the lump sum settlement.

#### **E. COORDINATION.**

FMLA will run concurrently with Workers' Compensation Leave. The Human Resources Division and Risk Management will coordinate the administration of FMLA and Workers' Compensation .

#### **F. MODIFIED DUTY.**

1. 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.

2. 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.

3. 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.

4. Sandoval County will not place individuals into positions in which the employee's restrictions will pose a direct threat to the health or safety of others or themselves.

5. The terms and conditions of temporary light/modified duty assignment, if approved, shall be determined by the Elected Official or Division Director in conjunction with the Director and Risk Management.

6. 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.

7. The County may require periodic medical updates from the physician regarding the employee's ability to perform the duties of the temporary assignment or to be released to return to full duty.

8. A modified duty assignment shall not last for more than ninety (90) calendar days in a 12-month rolling calendar year, unless extended, in writing, by the County Manager. 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, or physical difficulty with prohibiting the continuance of temporary assignment, or the employee's inability to satisfactorily perform the duties of the modified duty assignment.

#### **G. 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, including any restrictions, from the treating physician and shall submit the release, to Risk Management.

2. If the employee is released without restrictions, Risk Management will notify the Elected Official or Division Director that the employee is cleared to return to work without restrictions. The employee shall return to work on the assigned date and time .

3. If the employee is released with temporary restrictions, Risk Management will notify the Elected Official or Division Director and Human Resources of the employee's restrictions. The Elected Official or Division Director or their 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 Human Resources Division. The employee will report to that department/sub-unit on modified duty on the assigned date and time.

4. The Elected Official or Division Director or designee will permit the injured employee to keep physician appointments and any prescribed physical therapy sessions. The employee will be required to use accrued sick or annual leave or authorized leave without pay for medical appointments or therapy

5. If, while on temporary modified duty 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 Risk Management prior to returning to the work site. Risk Management will notify the Elected Official or Division Director and Human Resources of any changes in restrictions and determine if the Modified Duty Agreement can be extended.

6. If no work is available consistent with the employee's restrictions, the employee shall be sent home.

7. Risk Management shall maintain contact with the injured worker, the treating physician, the department and Human Resources in order to provide information on the employee's workers' compensation status and any changes in

restrictions.

#### **H. RE-EMPLOYMENT OF AN INJURED COUNTY EMPLOYEE.**

The County shall hold the position of an employee who is receiving or is due to receive, benefits pursuant to the Workers' Compensation Act for a six (6) month period. An employee who is unable to return to his position within the six month period may apply for a position and will receive preference in hiring, provided the County is hiring, the employee is qualified for the position and the employee's treating health care provider certifies that the employee is fit to carry out the job duties of the position without significant risk of injury.

#### **I. NON-WORK RELATED INJURY/ILLNESS RETURN TO WORK**

An employee who is returning from approved Family and Medical Leave (FMLA) or Authorized Leave without Pay (ALWOP) for their own non-work related serious illness or injury shall fulfill the return to work/fitness for duty requirements as provided for in the applicable sections of Article V.K.5, respectively.

#### **J. STATUTORY REQUIREMENTS**

In the event any conflict between this Article and the ADAA, as amended and/or the New Mexico Human Rights Act, the County shall comply with the applicable statute.

## **ARTICLE XII - PARTISAN AND NON-PARTISAN CANDIDATES AND OFFICE HOLDERS**

An employee who is a State or local government elected official or a candidate for such office shall be covered by Sandoval County Code Article 2, 26-20 through 26-31, as amended, this Article and Article VI §D.4.

### **A. CANDIDACY**

An employee becomes a candidate when the employee files a petition or nomination papers, pays a filing fee or is nominated by a political party or non-partisan group for public office.

### **B. LEAVE FOR SEEKING POLITICAL OFFICE**

• 1. An employee declaring her candidacy in a contested race for a public position requiring an election by voters registered with any county clerk, shall take leave of absence without pay and/or use accrued annual leave, or PTO for a period of fifteen (15) calendar days before the municipal, primary, general, run-off and/or special election. If the employee elects to utilize accrued annual leave she will be placed on authorized leave without pay upon exhaustion of her accrued annual leave balance.

2. If the elected position creates a conflict of interest, the employee shall resign prior to taking the oath of office.

3. If the employee is not elected in the primary, run-off or general election, he shall return to his position the day after the election, or request to be placed on annual leave or another authorized leave status.

### **C. LEAVE FOR STATE OR LOCAL OFFICE OFFICIALS**

A County employee who is also a State or local government official shall take annual leave or arrange for another form of authorized leave status to be approved by the County Manager, when she is on State or local government business. The County Manager shall ensure that the duties of the County position be given first priority.

**D. COMPENSATION BY THE STATE OR LOCAL GOVERNMENT**

When the employee is on annual leave or other paid leave status paid for by the County and is also paid for that time by their elected position, she shall reimburse the County the amount paid to her by the State or local governmental unit. This does not cover per diem or mileage reimbursement.

## **ARTICLE XIII - DRUG AND ALCOHOL POLICY AND TESTING**

### **DRUG FREE WORKPLACE**

#### **A. PURPOSE**

It is the policy of Sandoval 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 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, unclassified, 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.

#### **B. PROHIBITIONS/NOTIFICATIONS**

1. 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.

2. 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 alcohol or 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. "*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.

3. Employees must give notification in writing to the Human Resources Director within three (3) calendar days of any conviction for violation of a criminal drug 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 departmental 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.

4. 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 substance abuse or abuse per this policy.

5. 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.

### **C. DRUG AND ALCOHOL TESTING**

#### **1. Nature, Frequency, and Type of Drug Testing to be Instituted**

All covered County employees will be subject to testing to determine the presence of illegal drugs or a detrimental level of alcohol or legal drug within an employee which interferes with job performance, conduct, attendance, safety, or when the presence of such substance is unlawful. Testing is intended to detect problems, deter usage and allow appropriate corrective and/or disciplinary action.

a. The County may perform post-offer, pre-employment drug and alcohol screening.

b. The County shall perform random drug and alcohol tests on individuals under the following circumstances:

(1) in safety sensitive positions as required by Federal and/or State of New Mexico laws and regulations such as, but not restricted to, United States Department of Transportation (USDOT) and Federal

Motor Carrier Safety Administration (FMCSA), New Mexico Public Regulations Commission (NMPRC); or

(2) in safety sensitive positions as otherwise designated safety sensitive by the County Manager, and

c. The County may also perform drug and alcohol testing when reasonable suspicion exists that an employee under the influence of drugs or alcohol in violation of this Article.

## 2. Drugs for Which Individuals Are Tested<sup>2</sup>

In addition to alcohol, the County will test for the following drugs: Marijuana, Cocaine, Opiates, Amphetamines, Phencyclidine.

*The County reserves the right to add or delete substances on this list above*

## 3. Prohibited Conduct

The County prohibits the following:

a. Being under the influence of a controlled substance, prescribed and non-prescribed drug or alcohol when it interferes with job performance, conduct, attendance, safety or when it violates the law.

b. The unlawful manufacture, distribution, dispensation of, possession or use of a controlled substance or possession of drug paraphernalia by employees while on County premises or while on County business.

c. An employee, while on duty, who has a blood alcohol level in excess of .04.

---

<sup>2</sup> *The County reserves the right to add or delete substances on this list above*

d. An employee, while on duty, who is under the influence of illegal drugs.

e. An employee conducting County business, which includes driving vehicles or operating County equipment, while under the influence of alcohol or other drugs.

f. Violation of any other provision of this Article.

Engaging in any of these prohibited conducts may result in disciplinary action up to and including termination from employment.

5. Random Alcohol and Drug Testing for CDL and Other Safety Sensitive Positions

a. 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.

b. The County complies with Title 18 TRANSPORTATION AND HIGHWAYS of the New Mexico Public Regulation Commission Motor Transportation Rules. Random alcohol and/or substance abuse testing is required for Fire/EMS positions on an unannounced basis in compliance with CHAPTER 3 MOTOR CARRIER GENERAL PROVISIONS PART 1 GENERAL PROVISIONS, CHAPTER 3 MOTOR CARRIER GENERAL PROVISIONS PART 4 SAFETY REQUIREMENTS, AND CHAPTER 3 MOTOR CARRIER GENERAL PROVISIONS PART 14 AMBULANCE SERVICES of the NMPRC Rules.

c. The County requires random testing for employees in safety sensitive positions, subject to County criteria. Among the factors the County Manager shall consider in designating safety sensitive positions are whether the position or an employee in the position:

- (1) Is engaged in law enforcement;
- (2) Is authorized to carry firearms;
- (3) Firefighters, paramedics and EMTs;
- (4) Detention personnel

(5) Is authorized to drive a County vehicle to transport passengers, equipment or goods, collect geographic or property data, conduct property or facility inspections, etc.);

(6) Is authorized to drive or operate heavy machinery or otherwise potentially hazardous equipment;

(7) Is otherwise engaged in activities affecting public health or safety;

(8) Other positions that the County determines involve the utilization of motorized equipment.

(9) Is subject to other applicable State of New Mexico or Federal regulatory requirements.

d. Random alcohol and/or substance-abuse testing is characterized by randomly selecting designated employees for drug and alcohol testing on an unannounced basis

e. All applicants or present employees being considered for a job that requires a CDL **must be tested**.

6. Voluntary Self-Identification by Employees.

a. 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.

b. Employees shall be tested during the rehabilitation period. The employee will be responsible for the cost of these tests. A positive test result shall be grounds for termination of employment.

7. Refusal to Submit to Alcohol or Drug Testing.

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.

8. Positive Results of Alcohol and Drug Testing.

a. If an employee tests positive for drugs or alcohol, the employee will be placed on administrative leave pending disciplinary action and/or rehabilitation alternatives.

b. Drug Rehabilitation Program. If the employee is not terminated and 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.

c. Accrued sick leave shall be used first, and then compensatory time and annual 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.

d. 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.

e. 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.

f. 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.

#### 9. Confidentiality.

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

#### 10. Reasonable suspicion alcohol and controlled substance testing (cdl and non-cdl)

a. 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.

b. The determination for reasonable suspicion testing may be based upon, among other things:

(1) Direct observation of drug or alcohol use or possession and/or physical or behavioral symptoms of being under the influence of a drug or alcohol;

(2) Arrest or conviction for a drug-related offense, DWI or DUI;

(3) Identification of an employee as the focus of a criminal investigation into illegal drug possession, use or trafficking;

(4) Information provided by one or more reliable and credible sources, provided that a reasonable effort has been made to

corroborate the information via direct observation, that the supervisor makes a written record explaining how the information and/or direct observation constitutes reasonable suspicion, and that the Elected Official or Division Director or designee concurs with the determination of reasonable suspicion;

(5) Newly discovered information that the employee has tampered with a previous drug or alcohol test.

c. Reasonable suspicion will be documented in such manner as the Director may prescribe.

d. Procedures. At the time of reasonable suspicion observation, the supervisor will promptly notify Risk Management and /or Human Resources of the reasonable suspicion. The employee will then be escorted by the supervisor or other member of management to an approved testing facility immediately.

(1) 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 Elected Official or Division Director and the Director of Human Resources explaining why the testing was not done in a timely manner. The testing should be completed as soon as possible thereafter. Under no circumstances shall alcohol testing be after eight (8) hours.

(2) 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 Elected Official or Division Director and the 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) hours.

(3) Employees are required to submit to reasonable suspicion testing upon request. Refusal to be tested or failure to comply with the time requirements will be regarded the same as a positive test result and 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.

11. Post-Accident Alcohol and Controlled Substance Testing (CDL and Non-CDL)

a. In the event of a work-place or work-related injury or illness resulting in the need for medical treatment for any party or property damage, the employee shall be tested for controlled substances and alcohol testing.

b. 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.

c. 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 Elected Official or Division Director and the Director of Human Resources Failure to adhere to the requirements of this policy will result in disciplinary action up to and including termination.

d. Employees may be placed on administrative leave with pay pending the results of the test.

**D. EMPLOYEE ASSISTANCE PROGRAM**

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 any available drug counseling or rehabilitation programs and the Employees Assistance Program (EAP) provided by the County at no cost to employees and their families for substance abuse, on and off-the-job behavioral concerns, financial, and certain legal issues.

**E. ACKNOWLEDGMENT AND COMPLIANCE REQUIRED**

Employees are required to acknowledge (in writing) and comply with the County's Alcohol and Drug-Free Workplace policy and Procedures.

## **ARTICLE XIV - DISCRIMINATION, HARASSMENT AND VIOLENCE IN THE WORKPLACE**

### **A. EQUAL EMPLOYMENT OPPORTUNITY POLICY**

#### **1. Purpose.**

Sandoval County provides equal employment opportunity to all employees and applicants for employment without regard to race, color, religion, gender, sexual orientation, national origin, age, disability, (see Article XV) spousal affiliation, gender identity, ancestry, or serious medical condition or status as a covered veteran, in accordance with applicable State and Federal law. This policy applies to all terms and conditions of employment, including, but not limited to, hiring, placement, promotion, demotion, termination, layoff, recall, transfer, leave allocation, compensation, and training.

Sandoval County expressly prohibits any form of unlawful employee harassment or discrimination based on race, color, religion, gender, sexual orientation, national origin, age, disability, spousal affiliation, gender identity, ancestry, or serious medical condition or veteran status.

Sandoval County also expressly prohibits any form of retaliation against an employee for making a complaint or report of discrimination, for assisting in any investigation of such a complaint or report, or for requesting a reasonable accommodation under Article XV. Any employee found to have engaged in such retaliation will be subject to discipline up to and including termination.

#### **2. Reporting and Complaint Procedure**

If an employee feels he or she has been subject to such treatment, or has witnessed such treatment, the situation should be reported immediately to the Human Resources Director. The Director shall be responsible for ensuring that a confidential and impartial investigation is conducted.

### **B. SEXUAL HARASSMENT POLICY**

#### **1. Purpose**

The purpose of this policy is to define sexual harassment, provide procedures for the investigation of sexual harassment claims, and ensure that violations are remedied fully.

The County of Sandoval ("County") does not tolerate workplace sexual harassment. Sexual Harassment violates an individual's right to work in a professional atmosphere which promotes equal opportunities and prohibits discriminatory practices, including sexual harassment. Sexual harassment, whether verbal, physical or environmental, is unacceptable and will not be tolerated.

The term "Director" as used in this Policy means the Human Resources Director, except when referring to an employee's "Division Director".

## 2. Sexual Harassment Defined

Sexual harassment is unwanted sexual conduct of a persistent or offensive nature made by a person who knows, or reasonably should know, that such attention is unwanted. Sexual harassment includes sexually oriented conduct that is sufficiently pervasive or severe to unreasonably interfere with an employee's job performance or create an intimidating, hostile, or offensive working environment. While sexual harassment encompasses a wide range of conduct, some examples of specifically prohibited conduct include:

- a. Unwanted sexual advances;
- b. Demands for sexual favors in exchange for favorable treatment or continued employment;
- c. Repeated sexual jokes, flirtations, advances or propositions;
- d. Verbal abuse of a sexual nature; graphic, verbal commentary about an individual's body, sexual prowess or sexual deficiencies;
- e. Leering, whistling, touching, pinching, assault, coerced sexual acts or suggestive, insulting or obscene comments or other non-verbal gestures;

- f. Displaying sexually suggestive objects or pictures in the work place;
- g. Displaying, storing, or transmitting pornographic or sexually oriented materials to, or from, County equipment or facilities.
- h. Engaging in indecent exposure; or
- i. Making sexual or romantic advances toward an employee and persisting despite the employee's rejection of the advances.

### 3. Individuals Covered

This policy covers all County employees. The County will not tolerate, condone or allow sexual harassment, whether engaged in by fellow employees, supervisors, or by customers, suppliers, or other non-employees who conduct business with the County. The County strongly encourages reporting of all incidents of sexual harassment, regardless of who the harasser is.

Sexual harassment can involve males or females being harassed by members of either sex. Although sexual harassment typically involves a person in a greater position of authority as the harasser, individuals in position of lesser or equal authority also can be found responsible for engaging in prohibited harassment.

### 4. Responsibilities of Employees, Supervisors and Directors

#### a. Employees

If an employee(s) believes that she/he have been subject to sexual harassment or any unwanted sexual attention, she/he should:

- (1) Make her/his unease and/or disapproval directly and immediately known to the harasser, if possible;
- (2) Make a written record of the date, time, and nature of the incident(s) and the names of any witnesses; and

(3) Immediately report the incident to the County's Human Resources Director or designee, or the Legal Department.

(4) Employees may also choose to report the incident to their supervisor or Division Director/Elected Official.

b. Supervisors (including Division Directors and Elected Officials):

(1) A supervisor (which term includes a Division Director or Elected Official) who receives a report or complaint of sexual harassment) is to address the allegation(s) of sexual harassment within their department immediately and responsibly, whether there has been a verbal or a written, informal or formal complaint.

(2) Supervisors shall report the allegation immediately to the Director and, if the situation calls for immediate corrective action to prevent prohibited conduct from reoccurring pending further investigation, a supervisor shall discuss the matter and recommended action with the Director.

(3) A supervisor who knowingly allows or tolerates sexual harassment is in violation of this policy shall be subject to disciplinary action up to and including dismissal.

c. Human Resources Director/County Attorney/Investigator

The Director and/or the County Attorney shall be responsible for:

(1) Ensuring that both the individual filing the complaint (hereinafter "Complainant") and the accused individual (hereinafter "Respondent") are aware of the seriousness of a sexual harassment complaint.

(2) Explaining the County's sexual harassment policy and investigation procedures separately with the Complainant and Respondent.

(3) Exploring informal means of resolving sexual harassment complaint(s).

(4) Notifying law enforcement if criminal activity(ies) is alleged.

(5) Conducting or arranging for an investigation of the alleged harassment and the preparation of a written report with findings of fact

#### 5. Reporting a Complaint

a. Putting the Offender on Notice. Often, an employee often can stop or prevent sexual harassment by immediately and directly expressing her/his disapproval of an employee or person's attention or conduct that gives the impression of being unwelcomed sexual behavior. While the County encourages an employee who believes she/he is being harassed to firmly and promptly notify the offender that his/her behavior is unwelcomed, it also recognizes that power, position and/or status difference between a Respondent and Complainant may make such a confrontation impracticable.

b. Reporting Incident to Director. In any case, an employee is responsible for promptly reporting any incident of alleged sexual harassment to the Director or designee or to the employee's supervisor, Division Director or Elected Official as soon as possible after the occurrence of the incident. The person receiving such a report or complaint shall promptly report it to the County Manager.

c. Completing the Complaint. The Director/designee shall assist the employee who has been harassed, i.e., "Complainant" in completing a complaint report. To ensure the prompt and thorough investigation of a sexual harassment complaint, the Complainant should provide as much of the following information as possible:

(1) The name, department, and position of the employee(s) or person(s) allegedly causing the harassment;

(2) An accurate description of the objectionable behavior or misconduct, including the date(s), location(s), and the names of witness(es);

(3) The alleged effect of the objectionable behavior or misconduct on the Complainant. If her/his position, salary, benefits, promotional opportunities, or other terms or conditions of employment are or have been affected.

(4) The name(s) of other employee(s) who may have been subjected to the same or similar harassment;

(5) The steps the Complainant has taken to try to stop the harassment; and how she/he would like the objectionable behavior to be addressed, and

(6) Any other information the Complainant believes to be relevant to the harassment complaint.

#### 6. Investigation

a. Timetable. The Director/designee shall be responsible for ensuring that a confidential and impartial investigation begins within ten (10) working days after a complaint has been filed. The County shall attempt to complete investigations within thirty (30) working days after the complaint has been filed.

b. Investigator(s). In most cases, the Director/designee shall conduct the investigation. However, the County may utilize a human resources representative or an independent outside investigator to lead the investigation if necessary to expedite the resolution of a complaint or to resolve any potential conflict of interest. In any case, a second person, usually a human resource representative or member of County Legal, may accompany the primary investigator during all interviews with the Complainant, Respondent, and witnesses so that information obtained during the interviews can be corroborated. The interview may be audio recorded upon notice to the person being interviewed.

c. Notice to Respondent. The investigator shall contact the Respondent, inform him/ her of the factual allegations, and solicit the Respondent's account of the alleged incidents. The Director/designee or independent investigator shall inform the Respondent that a report will be prepared at the close of the investigation.

Confidentiality shall be maintained throughout the investigatory process by the County, Respondent and the Complainant, to the extent practical and appropriate under the circumstances.

d. Investigatory Process – Employees:

In investigating a report or complaint of sexual harassment, the County shall consider the suggestions and requests of the Complainant, but shall investigate the matter independently as it sees fit, keeping the Complainant informed of the status of the investigation as the County deems appropriate. Steps to be taken in the investigation shall be determined based upon the particular facts and circumstances of any given complaint

When first interviewing the Charging Party and the Respondent, he/she shall be advised of the County's policy against retaliation for making a complaint of sexual harassment.

e. Investigatory Process - Non-Employees:

Although the County's ability to discipline a non-employee harasser is limited by the degree of control, if any, that the County has over the alleged harasser, the County shall investigate allegations of sexual harassment raised by its employees involving alleged harassing conduct by non-employees and take appropriate action under the circumstances.

7. Investigative Report

The Director or designated investigator shall prepare a written report following the completion of the investigation.

The report shall include:

- a. A summary of the complaint.
- b. A summary of the Respondent's response.
- c. A summary of the statements and evidence obtained during the investigation.

d. A finding of whether a violation of this policy occurred and an explanation supporting the finding. Policy violations can include prohibited sexual harassment as well as a reckless or frivolous filing or filing a complaint without grounds of a sexual harassment complaint.

e. Identification and explanation concerning any employee who the investigator determines knew of sexual harassment or of an allegation of sexual harassment and failed to bring that information to an appropriate member of management, or any supervisor who failed to follow up on an allegation, report or complaint of sexual harassment in accordance with this policy.

f. If a violation is found to have occurred, the findings must include a statement about the severity of the violation. and, if obtained, information concerning prior training given to the Respondent concerning sexual harassment and

g. If a violation is found, the report may also describe (if information has been obtained about) prior sexual harassment training of the Respondent and/or any prior substantiated complaint(s) against the Respondent.

h. If an alleged violation is found to be unsubstantiated, the investigator shall make a finding as to whether the allegation was asserted by the Complainant knowing that it was false or in a malicious, reckless or frivolous manner, and fully explain the factual basis for that finding.

i. An appendix containing the complaint, statements of the Complainant and the Respondent, witness statements, and other tangible evidence obtained during the investigation.

The report shall be submitted to the Human Resources Director within 15 days of the completion of the investigation. If the Director conducted the investigation (or is a Respondent), the report shall instead be submitted to the County Manager within 15 days from the completion of the investigation. If the County Manager conducted the investigation (or is a

Respondent), the report shall instead be submitted to an independent review officer appointed by County Commission.

#### 8. Management Review

The Director or, if the Director conducted the investigation or is the Respondent, the County Attorney shall review and consider the report and consult with the Division Director(s) for the Complainant and the Respondent (unless a Division Director is a Respondent), with Risk Management and (unless the County Attorney is conducting the review) with the County Attorney. If further investigation is deemed to be appropriate, he/she shall direct the investigator to obtain such information and/or documents as are deemed necessary and require a supplemental report within ten (10) working days (unless a longer time is approved by the Director or the County Attorney). If no further investigation is directed, he/she shall make a determination concerning the validity of the complaint and any action deemed appropriate to remedy any violation and/or to prevent future sexual harassment in the relevant workplace.

#### 9. Substantiated Complaint.

If an allegation of sexual harassment is found to be substantiated: the determination will normally:

- a. Explain in writing why the complaint is found to have been substantiated; and
- b. Order the harassment to stop; and
- c. Initiate such disciplinary action, training and/or counseling of the Respondent as may be deemed appropriate; and
- d. Initiate such remedial action as may be deemed necessary to restore to the Complainant any employment benefit the Complainant lost because of the harassment; and

e. Provide any other relief deemed appropriate to remedy the situation, including but not limited to referring the Complainant and Respondent to conflict resolution and/or training of the Complainant, Respondent and/or others in the workplace.

#### 10. Unsubstantiated Complaint

If an allegation of sexual harassment is found not to be substantiated, the determination will normally:

a. Explain in writing why the complaint is found to be unsubstantiated as to each alleged violation.

b. If a complaint is found to have been reckless or frivolous, initiate such disciplinary or remedial action against the Complainant as deemed appropriate.

c. Initiate such training of the Complainant, Respondent and/or others in the workplace.

d. If the evidence is inconclusive as to any allegation, that allegation will be deemed unsubstantiated.

#### 11. Resolution of the Complaint

The Complainant shall be informed of the outcome of the investigation and complaint, including at a minimum which allegations were substantiated and whether remedial action is being taken. The nature of any disciplinary action taken against any person as a result of a sexual harassment complaint will not be shared with the Complainant.

a. Disciplinary action for violations:

Individuals found to have engaged in misconduct constituting sexual harassment shall be appropriately disciplined, up to and including dismissal.

b. False accusations:

If an investigation results in a determination that the Complainant falsely accused another of sexual harassment knowingly or in a malicious, reckless or frivolous manner, the Complainant shall be subject to disciplinary action, up to and including dismissal.

c. Failure to report or to respond to sexual harassment:

If an investigation results in a determination that an employee knew of sexual harassment or of an allegation of sexual harassment and failed to bring that information to an appropriate member of management, or that a supervisor failed to follow up on an allegation, report or complaint of sexual harassment in accordance with this policy, that person shall also be appropriately disciplined, up to and including dismissal.

12. Monitoring Compliance

The Elected Official/Division Director of an individual found to have violated this policy, or the County Manager for the Director or an individual who is a Division Director, shall be responsible for monitoring an employee's compliance with any conflict resolution or counseling referrals, training obligations or other remedial action. He/she shall make all reasonable efforts to ensure that the harassment does not reoccur and that the Complainant is not subjected to retaliation.

13. Protection Against Retaliation

The County shall not in any way retaliate against a Complainant or a participant in an investigation or permit any employee to do so. Retaliation is a serious violation of this policy and shall be reported immediately. Any person found to have retaliated against another individual for reporting sexual harassment or for providing information pursuant to a sexual harassment investigation shall be subject to disciplinary action, up to and including dismissal. However, protection against adverse action for making a complaint of sexual harassment does not extend to those who knowingly or in a malicious, reckless or frivolous manner make false allegations of sexual harassment or otherwise provide false information pursuant to an investigation.

#### 14. Records Retention and Confidentiality

The County shall maintain a written record of each complaint, its investigation and resolution. Written records shall be maintained in a confidential manner. Written records shall be maintained for a minimum of three (3) years from the date of the resolution.

All inquiries, complaints and investigations shall be treated confidentially. Information shall be revealed strictly on a need-to-know basis and in accordance with State and Federal law. The identity of the Complainant usually is revealed to the Respondent and witnesses. The investigator shall advise all parties and witnesses that the Complainant and witnesses are protected from retaliation.

No record of a complaint shall be kept in the Complainant's personnel file, except where discipline taken based upon a false allegation that was made maliciously, recklessly or frivolously. All other information pertaining to a sexual harassment complaint or investigation shall be maintained by the Director in a secure file.

#### 15. Other Available Procedures

The procedures available under this policy shall not preempt or supersede any legal procedures or remedies otherwise available to a victim of sexual harassment under State or Federal law.

#### 16. Training

The Division Director/Elected Official shall as part of the County's commitment to maintaining a work place that is free from sexual harassment, ensure that periodic training for employees and supervisors occurs on at least an annual basis.

#### 17. Acknowledgment and compliance required.

Employees are required to acknowledge (in writing) the County's Sexual Harassment Policies and Procedures and comply with these policies.

### **C. OTHER HARASSMENT**

Employees are also prohibited from harassing other employees or members of the public. Non-sexual harassment, can be physical, verbal or environmental and is prohibited regardless of whether it is based on an unlawful discriminatory motive, other discrimination, personal animosity or for any other reason. Harassment is grounds for discipline up to and including termination of employment.

### **D. VIOLENCE IN THE WORKPLACE**

It is the County's goal to provide a work environment that is free from violent behavior, threats of violence, intimidation and bullying. Violent behavior, threats of violence, intimidation and bullying are unacceptable and are prohibited. Retaliation against an employee for reporting such behavior, or for assisting with an investigation of a complaint of such behavior, is prohibited.

### **E. WEAPONS**

It is strictly prohibited for any employee, other than sworn law enforcement officers, to possess firearms (including handguns, regardless of any authorized permit); explosives or dangerous weapons on County premises, in County property or at County sponsored events. County premises includes worksites and vehicles (owned, rented or leased), parking garages and parking lots.

The County may conduct searches when there is a reason to believe that a person is in possession of a firearm, including handguns (regardless of any authorized permit), explosives or any other weapon or device, instrument or substance, which in the manner it is used or intended to be used, is capable of producing death or serious bodily injury.

Any violation of this policy, including a refusal to consent to a search, will be subject an employee to disciplinary action up to and including termination.

## **ARTICLE XV - DISABILITES AND REASONABLE ACCOMMODATION**

Sandoval County is committed to the fair and equal employment of individuals with disabilities. It is Sandoval County's policy to reasonably accommodate qualified individuals with disabilities unless the accommodation would impose an undue hardship on the organization. In accordance with the Americans with Disabilities Act (ADAA, as amended), reasonable accommodations will be provided to qualified individuals with disabilities when such accommodations are necessary to enable them to perform the essential functions of their jobs or to enjoy the equal benefits and privileges of employment. This policy applies to all applicants for employment and all employees.

### **A. DISABILITY**

"Disability" refers to a physical or mental impairment that substantially limits one or more of the major life activities of an individual. A "qualified person with a disability" means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the job.

### **B. REASONABLE ACCOMMODATION**

Sandoval County will seek to provide reasonable accommodation for a known disability or at the request of an individual with a disability. Many individuals with disabilities can apply for and perform the essential functions of their jobs without any reasonable accommodations. However, there are situations where a workplace barrier may interfere. A "reasonable accommodation" is any change or adjustment to the job application process, work environment, or work processes that would make it possible for the individual with a disability to perform the essential functions of the job.

#### **1. Types of Reasonable Accommodations.**

There are three types of reasonable accommodations that may be considered:

- a. Changes to the job application process so that a qualified applicant with a disability will receive equal consideration for the job opportunity;

b. Modifications to the work environment so that the qualified individual with a disability can perform the essential functions of the job;  
*or*

c. Adjustments that will allow a qualified individual with a disability to enjoy the same benefits and privileges of employment as other similarly situated employees without disabilities.

## 2. Essential Job Functions

For each position, the job description typically will identify essential job functions. The Human Resources Division will generally review job descriptions on a periodic basis to evaluate job functions designated as essential. If there are any questions about the job requirements, they should be directed to the Human Resources Department.

## 3. Requesting a Reasonable Accommodation

An employee with a disability is responsible for requesting an accommodation from the Human Resources Division, or his or her supervisor, and for providing medical documentation regarding the disability when requested by the Human Resources Division. In the absence of an employee's request for accommodation, no employee should be asked if he or she needs or desires an accommodation, except as follows: Where an employee has disclosed a disability, or has an obvious disability, and her supervisor reasonably believes that she may need an accommodation, the supervisor or his Division Director should consult with the Human Resources Director to determine whether the employee may be asked about the possible need for an accommodation. In no case should a supervisor or Division Director discuss the matter directly with the employee or anyone else but the Human Resource Director, except as expressly authorized by the Human Resource Director. Once medical documentation is received, the Human Resources Department will work with the employee to identify possible reasonable accommodations and to assess the effectiveness of each in allowing the employee to perform the essential functions of the job.

Based on this interactive process, a reasonable accommodation will be selected that is most appropriate for both Sandoval County and the individual employee. While an individual's preference will be considered, Sandoval County is free to choose between equally effective accommodations with consideration toward expense and impact on the rest of the organization.

A request for reasonable accommodation may be denied if it would create an undue hardship for Sandoval County. Factors to be considered when determining whether an undue hardship exists include the cost of the accommodation, the County's overall financial resources, the financial resources of the particular facility at which the accommodation is to be made, the number of employees at the facility, the total number of employees of the organization, and the type of operation.

#### 4. Safety

All employees are expected to comply with all safety procedures. Sandoval County will not place qualified individuals with disabilities into positions in which they will pose a direct threat to the health or safety of others or themselves. A direct threat means a significant risk to the health or safety of one's self or others that cannot be eliminated by reasonable accommodation. The determination that an individual with a disability poses a direct threat will be made by the Human Resources Department and will be based on factual, objective evidence. A written copy of the determination will be given to the employee so that he or she may submit additional information and/or challenge the determination that he or she poses a direct threat

#### 5. Confidentiality.

All information obtained concerning the medical condition or history of an applicant or employee will be treated as confidential information, maintained in separate medical files, and disclosed only as permitted by law.

**C. COMPLAINT PROCEDURE**

It is the policy of Sandoval County to prohibit any harassment of, or discriminatory treatment of, employees on the basis of a disability or because an employee has requested a reasonable accommodation. If an employee feels he or she has been subject to such treatment, or has witnessed such treatment, the situation should be reported immediately to the Human Resources Director. The Director shall be responsible for ensuring that a confidential and impartial investigation is conducted. Any employee found to have engaged in retaliation against an employee for making a request for reasonable accommodation under this policy, registering a complaint under this procedure, or for assisting in the investigation of any registered complaint will be subject to immediate disciplinary action up to and including termination.

## **ARTICLE XVI - OTHER POLICIES**

### **A. EMPLOYEE RESPONSIBLE FOR REPORTING CHANGES**

All employees shall report changes of name, address, telephone number, emergency contact and other related employment information within five (5) working days to the Director.

### **B. TRAINING**

The Director shall be responsible for proposing employee training to the County Manager which fosters and promotes County service programs and in-service training of employees for the purpose of improving the quality of personnel services rendered to the County and aiding to equip employees to advance in County employment.

### **C. LICENSING REQUIREMENTS**

Employees are responsible for obtaining and maintaining the necessary licenses, certificates, permits and registrations required and/or necessary to carry out their duties and responsibilities. The Director shall inform the Elected Official or Division Director when a new licensing, certification or permitting requirement is imposed for a position. The Elected Official or Division Director or designees shall inform the affected employee of the new requirement that she is responsible for maintaining her credentials. Failure to maintain required credentials may result in disciplinary action pursuant to Article VII.A.

### **D. UNION ACTIVITY**

No employee shall be coerced, threatened or pressured into joining or not joining any organization or union. No union or organization or their representative may interrupt or interfere with the normal conduct of County business. Visits for the purpose of conducting organization business and/or recruiting shall be confined to those areas where no County business is being conducted.

### **E. WORKING CONDITIONS**

The County Manager is encouraged to promote measures directed toward providing sanitary, safe and healthful working conditions; benefits such as group insurance options; and improving the working conditions for County employees.

**F. DRESS AND APPEARANCE**

Employees are constantly in the public eye and should present the best image possible to the public. Employees shall always be clean and neatly dressed in clothing appropriate and suitable for their work assignment.

**G. AUTHORIZED PER DIEM AND TRAVEL REIMBURSEMENT**

Authorized reimbursements for travel and other activities related to official County business shall be approved through the budget process. The Elected Official or Division Director shall authorize all payments of mileage, per diem, and travel allowances pursuant to the policies established by the Board of County Commissioners, State of New Mexico or if applicable, the Federal reimbursement rate.

**H. UNIFORMS AND PERSONAL PROTECTIVE EQUIPMENT**

An employee who is required by the County to wear a uniform in order to perform his duties will be provided a uniform or a voucher to purchase such uniform according to the guidelines established by the division or department. An employee who is required to wear personal protective equipment to perform his job function shall be issued the protective equipment or a voucher to purchase such protective equipment pursuant to guidelines established by the department or division.

**I. PERA AND INSURANCE BENEFITS**

All County employees, except elected officials and certain casual and certain temporary employees are required to join the Public Employees Retirement Association of New Mexico, (PERA). Copies of the latest PERA rules and provisions may be obtained from the Human Resources Division.

The County provides group health, life insurance and other benefits to its classified and unclassified employees. These benefits may be changed at the discretion of the Board of County Commissioners. Specific benefits of the current programs and related policies may be obtained from the Director.

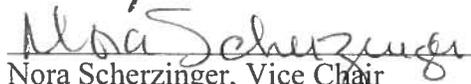
**SAVINGS CLAUSE.** To the extent that any of the procedures specified in this policy are inconsistent with any of those specified in any relevant state or federal law, or any subsequent amendment thereto, such Mandatory Guidelines or amendment shall supersede the procedures specified in this section, but only to the extent of the inconsistency.

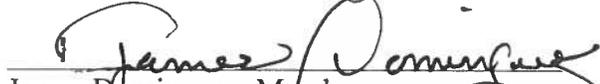
**THESE AMENDED RULES AND REGULATIONS REPLACE AND RESCIND ANY AND ALL VERSIONS OF THE SANDOVAL COUNTY PERSONNEL RULES AND REGULATIONS PREVIOUSLY ADOPTED, AS WELL AS PREVIOUSLY APPROVED STAND ALONE POLICIES NOW INCORPORATED HEREIN.**

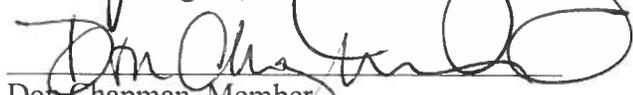
**PASSED, APPROVED AND ADOPTED BY THE SANDOVAL BOARD OF COUNTY COMMISSIONERS, THE GOVERNING BODY OF SANDOVAL COUNTY, NEW MEXICO, THIS 5<sup>TH</sup> DAY OF MAY 2016.**

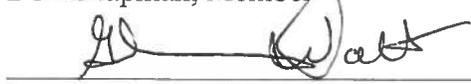
**BOARD OF COUNTY COMMISSIONERS  
OF SANDOVAL COUNTY**

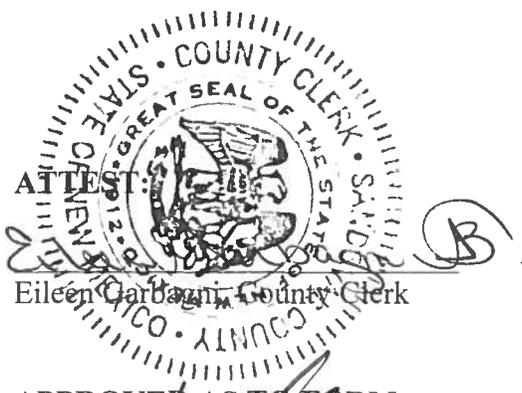
  
\_\_\_\_\_  
Darryl F. Madaleña, Chair

  
\_\_\_\_\_  
Nora Scherzinger, Vice Chair

  
\_\_\_\_\_  
James Dominguez, Member

  
\_\_\_\_\_  
Don Chapman, Member

  
\_\_\_\_\_  
Glenn Walters, Member



ATTEST:  
  
Eileen Carbaugh, County Clerk

APPROVED AS TO FORM:  
  
\_\_\_\_\_  
Patrick F. Trujillo, County Attorney

