

# **SPECIAL DISTRICT ASSOCIATION OF COLORADO**



## **Model Personnel Policies**

Martin Semple, Esq.  
Patrick B. Mooney, Esq.  
Michelle Briggs Duensing, Esq.  
SEMPLER, MILLER & MOONEY, P.C.  
The Chancery, Suite 1308  
Denver, Colorado 80203  
(303) 595-0941  
(303) 861-9608 FAX

**Updated: 2002**

## FORWARD

### A. Purpose and Use Of These Policies.

This document is intended to provide Special District Board members and administrators with ideas and sample language for use in adopting or modifying employment policies. The policies have been drafted for use both as adopted district policies concerning terms and conditions of employment and as statements of those policies provided to employees in handbook form. Whether any specific policy may be appropriate for any given special district depends upon the size of the district, the existing policies and practices of the district, and the intentions of board members. In smaller districts some of the subjects addressed in these policies may be dealt with administratively, informally, or not at all. In larger districts, needs for uniformity and the dissemination of correct information to all employees may dictate a more comprehensive selection of policies.

This document does not purport to set forth all personnel policies which might be adopted by a special district board. To a large extent the number and type of personnel policies adopted by an employer, and even the characterization of a policy as a "personnel policy" as opposed to, for example, an "operating procedure", is a matter of judgment. This document addresses subjects describing basic terms and conditions of employment which employers and employees alike should understand.

This document is not intended to provide any special district with legal advice. In promulgating these model personnel policies neither the Special District Association of Colorado nor Semple, Miller & Mooney, P.C. undertakes to provide a legal opinion concerning any matter addressed in the policies or in any comments accompanying the policies. The effect of any of these policies may depend upon the specific circumstances in which they are applied. District legal counsel should be consulted when considering adopting these policies.

### B. Organization Of These Model Personnel Policies.

These policies are organized under eleven general headings, numbered in series from 1.00 to 11.00. Specific policies are numbered decimally within the series. Where alternative policies addressing a given subject are offered, each alternative policy is designated alphabetically.

Many of the model policies are accompanied by comments. These comments are not intended to be part of the policies, either as adopted by a board or as distributed to employees. Rather, they are included to further the reader's understanding of the significance of the policies. **The comments should not be included in a personnel policy handbook developed from these model policies.**

## TABLE OF CONTENTS

### SPECIAL DISTRICT ASSOCIATION OF COLORADO

#### Model Personnel Policies

	<u>Page</u>
<b>1.00 INTRODUCTION</b>	1
1.10 Disclaimer	1
1.20 Purpose and Scope of Policies	1
1.30 Employment At-Will	2
1.40 Authority of Board of Directors	2
1.50 Equal Employment Opportunity Policy	3
<b>2.00 WORKING CONDITIONS</b>	4
2.10 Work Week	4
2.11 Regular Work Week	4
2.12 On-Call Time	5
2.13 Sleeping Time	5
2.14 Training Time	5
2.20 Overtime	6
2.21 Overtime Compensation	7
2.22 Compensatory Time	7
2.23 Exempt Employees	8
2.30 Hours of Work	8
2.31 Break Times	8
2.40 Attendance	9
2.41 Notice of Absence	9
2.42 Tardiness	9
2.50 Pay Policies and Procedures	9
2.51 Pay Periods	9
2.52 Deductions	10
2.53 Garnishment	10
2.54 Direct Deposit	10
2.60 Safety	10
2.61 Safety Rules	10
2.62 Reporting Accidents/Worker's Compensation	11
2.63 Maintenance/Housekeeping	11
<b>3.00 COMPENSATION</b>	12
3.10 Pay Schedule	12
3.20 Holiday Pay	12
3.30 Insurance Benefits	12
3.31 Health and Dental Insurance	12
3.32 Life Insurance	13
3.33 Long-Term Disability Insurance	13
3.34 Vision Insurance	13
3.40 Retirement Benefits	13

## TABLE OF CONTENTS

### SPECIAL DISTRICT ASSOCIATION OF COLORADO

#### Model Personnel Policies

	<u>Page</u>
<b>4.00 LEAVE TIME/HOLIDAYS/VACATION</b>	14
4.10 Vacation	15
4.20 Holidays	15
4.30 Leave Time	15
4.31 Sick Leave	16
4.32 Maternity Leave	16
4.33 Family and Medical Leave	16
4.34 Parental Leave	18
4.35 Personal Leave	19
4.36 Military Leave	19
4.37 Bereavement Leave	19
4.38 Injury Leave/Worker's Compensation	19
4.39 Administrative Leave	20
4.40 Unpaid Leave	20
4.50 Jury Duty/Court Time	20
4.60 Voting	20
4.70 Leave to Seek Protection	21
<b>5.00 EMPLOYMENT PRACTICES</b>	22
5.10 Introductory Period	22
5.20 Training and Education	22
5.30 Vacancies	22
5.40 Promotions	23
5.50 Transfers	23
5.60 Nepotism	23
5.70 Temporary Employment	24
5.80 Part-Time Employment	24
5.90 Employee Appraisals	24
5.91 Appraisal Standards	25
5.92 Appraisal Process	25
<b>6.00 LAYOFF</b>	26
<b>7.00 EMPLOYEE CONDUCT</b>	27
7.10 General Rules of Conduct	27
7.20 Drugs and Alcohol	27
7.21 Reporting Convictions	27
7.22 Drug and Alcohol Testing	27
7.30 Sexual Harassment	29
7.40 Use of District Property	30
7.50 Use of District Vehicles	30
7.60 Conflict of Interest	30
7.70 Polygraph Tests	31
7.80 Off-Duty Conduct	32

## TABLE OF CONTENTS

### SPECIAL DISTRICT ASSOCIATION OF COLORADO

#### Model Personnel Policies

	<u>Page</u>
<b>8.00 DISCIPLINE</b>	33
8.10 Disciplinary Rules	33
8.20 Disciplinary Action	35
<b>9.00 GRIEVANCES</b>	36
9.10 Purpose of Grievance Procedure	36
9.20 Grievance Procedure	36
<b>10.00 EMPLOYEE RECORDS</b>	38
10.10 Personnel Records	38
10.20 Release of Information	38
<b>11.00 SEPARATION FROM EMPLOYMENT</b>	39
11.10 Disciplinary Termination	39
11.20 Layoff	39
11.30 Resignations	39
11.40 Retirement	40
11.50 Exit Procedure	40
<b>12.00 MISCELLANEOUS POLICIES</b>	41
12.10 Political Activity	41
12.20 Board Membership of Employees	42
12.30 Smoking	42
12.40 Expenses	42
12.50 Outside Employment	42
12.60 Health Examinations	42
12.70 Desk/Lockers/Storage/Inspections	43
12.80 Staff Use of Internet	43
12.90 Staff Use of Electronic Mail	44

## **1.00 INTRODUCTION**

### **1.10 Disclaimer**

#### **IMPORTANT**

**The policies and procedures contained in this handbook do not represent a contract, are not meant to be enforceable, and should not be relied upon as binding, inflexible promises made by the District. The District reserves the right to change or rescind these policies at any time, as well as the right to determine their meaning, purpose, and effect. The District also reserves the right, in its sole discretion, to determine whether, and to what extent, these policies and procedures should be applied in any given circumstances.**

*Comment: Colorado courts recognize that published employee handbooks and policies can create a contract between employer and employee, creating causes of action based on breach of contract and promissory estoppels. Many courts have recognized that a conspicuous, unambiguous disclaimer in an employment handbook can bar lawsuits by employees seeking to enforce a policy or procedure contained in the handbook. The Colorado Court of Appeals has held that an employer was entitled to summary judgment in such a lawsuit on the basis of the disclaimer contained in its handbook. The Court's opinion, however, implies that a disclaimer may be considered ambiguous if it is contained in a handbook, which also contains policies or procedures stating that employees will be disciplined or discharged for cause. The Colorado Supreme Court has not yet addressed the enforceability or effect of a disclaimer in an employment handbook.*

*Despite the current uncertainty, any employer who seeks to avoid claims that it is contractually bound to follow its employment policies and procedures should include a disclaimer in its policies. To maximize the enforceability of a disclaimer, it should be conspicuously placed on the first page of the handbook, in a separate paragraph, with at least some boldface or uppercase type. Some courts have held that if a disclaimer is not sufficiently conspicuous, the enforceability of personnel policies is a question of fact to be determined by a judge or jury at trial.*

### **1.20 Purpose and Scope of Policies**

These policies are intended to inform employees of the District's position on basic, employment-related subjects. They are not all-inclusive, but address those general topics most likely to be of interest to employees in the course of ordinary, day-to-day operations of the District. The policies establish guidelines to be used as a reference source by employees and supervisors. The District expects that they ordinarily will be followed.

(A) These policies and procedures apply to all employees of the District, except where otherwise stated.

OR, AS AN ALTERNATIVE:

(B) These policies and procedures apply to all District employees except those in the following positions:

[List positions to which policies do not apply]

OR, AS AN ALTERNATIVE:

(C) These policies and procedures apply to all District employees, except that the following policies do not apply to the following positions:

[List specific policies and positions]

**Comment:** *The specific purpose of a personnel policy and procedure handbook may vary from district to district. Any statement of purpose, however, should be consistent with any disclaimer contained in a handbook. An employer may create an ambiguity by declaring in a disclaimer that policies are non-binding, informational, and subject to change, but then drafting a statement of purpose declaring its intent to uniformly follow the policies and mandating that all supervisors and employees know and be bound by the policies.*

*Depending upon the organization of a given special district, it may make sense to exempt certain employees from some or all of the policies in the handbook. This sample policy sets forth simple optional alternative ways of exempting employees from some or all of the policies. An employer should expect that its policies and procedures apply to all employees unless the policies include a statement to the contrary. Oral statements or "common knowledge" should not be relied upon as a basis for limiting application of the policies.*

*If some employees are exempted from some or all of the policies, it must be understood that they cannot be exempted from most of the laws upon which those policies may be based. The requirements of state and federal statutes and regulations ordinarily do not depend upon an employer's policies.*

### **1.30 Employment At-Will**

Employment with the District is "at-will." Any employee may be terminated with or without cause, a statement of reasons, or a hearing, just as any employee may resign at any time, for any reason. Nothing in this handbook is intended to modify the District's at-will employment policy.

**Comment:** *Any special district is free to determine whether its employees should be employed at-will. In Colorado public employees are presumably employed at-will, therefore employees of a special district may be considered at-will employees even without a specific policy on the subject. In order to ensure that the at-will status of employees is preserved, however, an explicit at-will employment policy is recommended.*

### **1.40 Authority of Board of Directors**

The District Board of Directors reserves the right to adopt, amend, or rescind any policy, procedure, or benefit. Any modification of these policies and procedures may be made only pursuant to formal action of the Board of Directors, reflected in the official records of the Board. No employee or agent of the Board is authorized to modify these policies by agreement, practice, or otherwise.

Ultimate responsibility for operation of the District is vested in the Board of

Directors. The Board retains the right to operate the District consistent with its legal authority, including, but not limited to, the right to direct the work of employees; hire, promote, demote, classify, evaluate, and retain employees in positions with the District; demote, suspend, discharge, or otherwise discipline employees; transfer, assign and schedule employees; lay off employees; determine and implement the methods, equipment, facilities, personnel, and other means by which District operations are to be conducted; take steps it deems necessary to maintain the efficiency and safety of operations; determine the budget of the District; determine the level of any activity or service provided by the District; and determine planning or staffing levels.

The Board of Directors may exercise its authority to manage the district through its supervisory employees.

**Comment:** *The first paragraph of this section is intended to minimize potential claims that the Board or management personnel have modified or done away with one or more policies of the district through statements or conduct. The second paragraph is a typical recitation of management rights, which may be exercised by the board of directors. The third paragraph points out that the management rights of the Board may be exercised through the Board's supervisory employees.*

#### **1.50 Equal Employment Opportunity Policy**

The District is an equal employment opportunity employer. These policies are to be applied without regard to any otherwise qualified person's race, creed, color, sex, age, national origin, ancestry, or disability, subject to such reasonable requirements of the District as may be permitted by law.

**Comment:** *This policy sets forth in general terms those personal characteristics concerning which employment discrimination is prohibited by state and federal law, except for marital status, which is addressed separately in the nepotism policy. This policy does not impose any requirements on an employer not already imposed by law and is intended to preserve the employer's right to consider bona fide occupational qualifications and its ability reasonably to accommodate disabled persons. The policy is necessarily general; it would not be possible to draft a readily comprehensible policy describing the requirements of this complex area of the law.*

*Policies such as this are commonplace. Many employers have even adopted policies exceeding the requirements of the law. Equal employment opportunity policies, however, are not ordinarily required unless an employer has a government contract or receives a government grant mandating such a policy as a condition of the contract or grant. An employer's obligation not to discriminate is fixed by law, irrespective of its employment policies.*

## **2.00 WORKING CONDITIONS**

### **2.10 Work Week**

Each employee's work week consists of a seven-day period beginning and ending at midnight Sunday unless otherwise specified in writing by an authorized representative of the District.

Fire suppression [and emergency medical] employees assigned to fire suppression duties shall normally be employed in recurring work cycles of \_\_\_\_\_ consecutive days each beginning at \_\_\_ o'clock \_m. on the first day of the cycle, unless otherwise assigned.

Fire suppression employees are those whose duties require them to prevent, control, or extinguish fires or whose duties are directly concerned with the prevention, control, or extinguishment of fire. Emergency medical employees are those who have special training in the rescue of fire and accident victims and who are regularly dispatched to fires, accidents, and other medical emergencies.

**Comments:** *The Fair Labor Standards Act requires employers to establish a work week to provide for a consistent approach to overtime. For most employees, the Act requires overtime only for hours actually worked over 40 per week; hours for which employees are paid, but don't work, such as vacation, holidays, or sick leave, need not be counted in determining whether an employee has worked 40 hours in a week.*

*For fire suppression and emergency medical personnel, the Act permits a partial exemption from overtime by allowing public employers to establish work cycles of from 7 up to 28 days and requires overtime only if those employees work more than 212 hours in a 28-day work cycle, or more than a proportionate number of hours for a shorter cycle. Effective in 2000, the Act was amended to clarify confusion about whether this partial overtime exemption could be applied to fire protection employees who were assigned to other related activities. Generally, under the amended definition, an "employee in fire protection activities" is a fire department employee who is: 1) trained in, and authorized to engage in, fire suppression duties and 2) engaged in the prevention, control and extinguishment of fires or in the response to emergency situations where life, property, or the environment is at risk. Where a fire suppression employee meets both parts of the foregoing definition, the partial overtime exemption applies whether the employee is assigned as a firefighter, paramedic, emergency medical technician, rescue worker, ambulance personnel, or hazardous materials worker.*

*The Act contains an exemption from overtime requirements for fire districts with fewer than five employees.*

### **2.11 Regular Work Week**

The regular work week shall be forty (40) hours for all non-exempt employees, ordinarily to be worked in five (5) consecutive eight hour shifts, unless otherwise specified.

Employees assigned to fire suppression duties [and emergency medical employees] shall normally work an average of \_\_\_\_\_ hours during each work cycle based on a twenty-four (24) hour alternating basis Berkeley system.

**Comment:** *The second paragraph of this policy applies only to districts with fire suppression or emergency medical employees, and provides one example of a work week for such employees. As is noted in the Comment to Policy 2.10, the FLSA regulates hours worked during work weeks and work cycles for overtime purposes.*

## **2.12 On-Call Time**

(A) Employees may be assigned on-call duty requiring that they be available for call-in during a specified time period outside their normal working hours. Employees placed on-call may be paid up to \_\_\_\_\_ hours straight time pay or compensatory time for each week of on-call duty.

OR, AS AN ALTERNATIVE:

(B) Employees may be assigned on-call duty requiring that they be available for call in during a specified time period outside their normal working hours. Employees are not paid for on-call time except as may be required by law.

**Comment:** *The FLSA requires on-call pay where an exempt employee is so restricted in his activities that he cannot use his time as he chooses. Whether an employee is sufficiently restricted depends upon a number of factors. An employee who is not required to remain on the employer's premises but is merely required to leave word where the employee may be reached is not working while on call. Where an employee who is on-call is free to come and go and to engage in personal activities, such time is not hours worked. This is true even if the employee is required to carry a paging device while on-call. As a general rule, an employee is working on-call if he is required to stay home or on the employer's premises or required to respond within less than 20 minutes. See Wage & Hour Opinion Letters (July 12 and September 3, 1999) Where on-call pay is mandated by the FLSA, employees must be paid for all time spent on call, although they can be paid a lower rate for that time. Many employers provide at least some compensation for on-call duty, even when the FLSA does not otherwise require pay. This policy sets forth two alternatives, one providing for on-call pay, the other providing none, unless required by law.*

## **2.13 Sleeping Time**

Employees assigned to shifts of twenty-four (24) hours or longer shall be provided eight (8) hours sleeping time without pay. Employees shall be paid for interruptions to sleep time for the performance of duties. If sleep is interrupted such that at least five (5) hours sleep is not possible, all sleep time shall be compensated.

**Comment:** *This policy is appropriate for districts with twenty-four (24)hour employees which provide adequate sleeping facilities and which have an express or implied agreement with such employees that sleep time will not be compensated. The policy reflects the Department of Labor's enforcement policy concerning sleep time. See Wage & Hour Opinion Letter (September 30, 1999)*

## **2.14 Training Time**

District employees ordinarily are compensated for time spent in District-required training activities. Compensation will not be provided, however, for the following

training unless specifically authorized by the District.

a) Training undertaken to meet certification requirements mandated by a higher level of government (e.g., the State of Colorado or the United States) for performance of the employee's duties; and

b) Training meeting all of the following criteria:

- 1) Attendance is outside the employee's regular working hours;
- 2) Attendance is voluntary;
- 3) The employee performs no productive work during attendance; and
- 4) Training is not directly related to the employee's job, unless the training is obtained at an independent school or college attended on the employee's own initiative or the training program is established by the District and corresponds to courses offered by independent learning institutions.

**Comment:** *This policy is intended to reflect the Department of Labor's requirements regarding compensation for training time. See Wage and Hour Opinion Letter, May 3, 2001. It sets forth the minimum requirements for such compensation.*

## **2.20 Overtime**

The District may require employees to work overtime.

(A) Employees who are not exempt from the Fair Labor Standards Act shall receive overtime compensation for hours actually worked in excess of forty (40) hours during the work week. Overtime shall not be worked or compensated unless approved by an authorized representative of the District.

OR, AS AN ALTERNATIVE:

(B) Employees who are not exempt from the Fair Labor Standards Act shall receive overtime compensation for hours actually worked over forty (40) hours during any work week or over eight (8) hours during any day. Overtime shall not be worked or compensated unless approved by an authorized representative of the District.

OR, AS AN ALTERNATIVE:

(C) Employees other than those assigned to fire suppression [or emergency medical] duties who are not exempt from the Fair Labor Standards Act shall receive overtime compensation for hours actually worked in excess of forty (40) hours during the work week. Employees assigned to fire suppression duties who are not exempt from the overtime requirements of the Fair Labor Standards Act shall be compensated at overtime rates for work actually performed in addition to their regularly assigned work schedule. Overtime shall not be

worked or compensated unless approved by an authorized representative of the District.

Overtime compensation for time spent training shall be provided as required by the Fair Labor Standards Act.

**Comment:** *This policy presents several options, but certainly does not exhaust the possibilities. Paragraphs (A) and (B) differ only in that the latter provides for payment of overtime for hours worked over 8 per day in addition to overtime for hours over 40 in a week. Paragraph (A), like the Fair Labor Standards Act, calls for the payment of overtime only for hours worked over 40 per week. An alternative policy is presented for firefighters and emergency medical personnel, and an optional provision concerning training time is also set forth.*

## **2.21 Overtime Compensation**

Non-exempt employees who actually work more than forty (40) hours in a work week [or more than eight hours in a day] shall be paid one and one-half (1-1/2) times their regular rate of pay as determined by the District pay schedule for hours worked over forty (40) [or over eight (8)], unless compensatory time is provided for the overtime worked.

Fire suppression and emergency medical personnel shall be compensated at one and one-half (1-1/2) times their regular rate of pay as determined from the District pay schedule for work actually performed in addition to their regularly assigned work schedule, unless compensatory time is provided for such work.

**Comment:** *For most employees, the Fair Labor Standards Act requires that hours worked over 40 in a week be compensated with an additional one-half (1/2) time the employee's regular rate of pay. Overtime compensation need be paid only for hours actually worked over the statutory maximum, as this policy states, although employers are free to count some or all hours paid but not worked (such as sick leave, holidays, etc.) as "hours worked" for overtime purposes. Overtime for firefighters and emergency medical personnel must be paid according to a formula prescribed by the FLSA, which formula should be taken into account when scheduling work for such employees.*

*The second paragraph of this policy is applicable only to districts employing fire fighters.*

## **2.22 Compensatory Time**

Overtime actually worked by non-exempt employees may be compensated in compensatory time of one and one-half (1-1/2) hour for each overtime hour worked. It is understood that in agreeing to work for the District, employees agree to accept compensatory time in compensation for overtime actually worked when deemed appropriate by the District. Employees will be advised in advance whether overtime will be compensated with compensatory time or with payment at 1-1/2 time the employee's regular rate.

Employees ordinarily are not permitted to accumulate more than \_\_ hours of compensatory time. Any employee may be directed to use accrued but unused compensatory time where he or she has accumulated the maximum permissible number of hours or, in the alternative, the employee may be precluded from earning additional compensatory time until hours are used. Upon termination of employment, employees shall be compensated for any unused compensatory time at their then-current rate of pay or their rate of pay at the time the

compensatory time was earned, whichever is higher.

**Comment:** *In general, a district may provide compensatory time for overtime worked only if it used compensatory time prior to April 15, 1986, or if it has an agreement with individual employees or a collective bargaining representative concerning the use of compensatory time. The FLSA prohibits accumulation of more than 250 compensatory time hours, except that seasonal, public safety, and emergency response employees may accumulate 480 hours. This policy is intended to notify employees that the use of compensatory time is a condition of the employment relationship. The policy statement that employees will be paid for unused compensatory time upon termination of employment is consistent with the requirements of the Fair Labor Standards Act.*

*Please note that a federal appeals court has held that an employer cannot require employees to use accrued compensatory time. That decision is not binding precedent in Colorado, but it does call into question policies or practices permitting employers to tell employees they must take compensatory time off on any given day.*

### **2.23 Exempt Employees**

Salaried executive, managerial, and supervisory employees are normally not eligible for overtime compensation of any kind. Such employees may receive bonus compensation in the form of additional pay or compensatory time in emergency situations requiring extraordinary work if authorized by the Board [or the Chief Executive Officer of the District].

**Comment:** *Generally, executive, administrative, and professional employees are exempt from the overtime requirements of the FLSA. Whether a given employee is exempt depends upon the nature of his or her duties, not the employee's job title. It is not practical to describe here the complete requirements of the Act for exempt positions, but, in general, exempt employees are salaried and have supervisory authority, exercise independent discretion, or have a professional education. NOTE: If an employee's pay is subject to reduction based on quantity or quality of work, the employee may not be considered "salaried" for FLSA purposes. Some courts have held that employees were not salaried, and therefore not exempt, where their pay could be docked for disciplinary reasons or short term absences, even where their employers showed that the employees never actually lost pay for such reasons.*

### **2.30 Hours of Work**

Normal business hours for the District shall be from \_\_\_\_\_ o'clock A.M. until \_\_\_\_\_ o'clock P.M., Monday through Friday. Employees shall report to work no later than \_\_\_\_\_ o'clock A.M. and shall normally work until \_\_\_\_\_ o'clock P.M., with one hour [or one-half hour] for lunch, except that those employees assigned to shifts outside the normal business hours of the District shall work those hours designated for their shifts.

**Comment:** *An employer is free to establish its own business hours.*

### **2.31 Break Times**

In addition to scheduled one-hour [or one-half hour] lunch breaks, employees shall be entitled to two (2) \_\_-minute breaks each work day. All breaks, including

lunch breaks, shall be scheduled by each employee's supervisor, provided that, where possible, lunch breaks shall be scheduled between \_\_\_ a.m. and \_\_\_ p.m., or between the beginning of the and ending of the \_\_\_ hour of each shift. Once assigned, lunch periods and break time shall remain constant unless changed by an employee's supervisor. Supervisors may require minor variations in lunch periods from day to day based on individual work requirements.

**Comment:** *The Fair Labor Standards Act does not regulate break time directly, but employees may have to be paid for breaks under certain circumstances. Breaks are not required by law for special district employees.*

## **2.40 Attendance**

Regular attendance by all employees is important to the successful operation of the District. Employees are expected to maintain a good attendance record and to report promptly for work in accordance with shift schedules.

### **2.41 Notice of Absence**

Employees who must be absent from work ordinarily are expected to notify their immediate supervisors a reasonable time (normally not less than one-half (1/2) hour) before their scheduled starting time. The reason for and probable duration of the absence shall be provided by the employee. An employee's failure to provide such notice may result in disciplinary action or discharge.

**Comment:** *This policy establishes a time frame for notice of absence. The time required for advance notice can be chosen by an employer at its discretion; one-half hour is specified here only as an example.*

### **2.42 Tardiness**

Persistent tardiness of nonexempt employees shall be charged as leave without pay. Any employee's tardiness may be the basis for disciplinary action, including termination.

## **2.50 Pay Policies and Procedures**

The Personnel Department [or other department, division, officer or employee who may be responsible] is responsible for administering payroll and benefits, including receiving and resolving employee questions and problems concerning compensation.

### **2.51 Pay Periods**

(A) Employees are paid twice each month, on the \_\_\_\_\_ and \_\_\_\_\_ day of the month. When payday falls on Saturday, checks will be available the first work day preceding Saturday. When payday falls on a holiday or Sunday, checks will be available the next following work day.

OR, AS AN ALTERNATIVE:

(B) Employees are paid on alternate Fridays in the week following the

end of the pay period. Pay periods begin on Fridays at midnight. When payday falls on a holiday, checks will be presented the next work day following the holiday. An employee who must be absent on payday may authorize in writing the release of his or her paycheck to a representative. The District does not assume responsibility for any paycheck after it is released to an authorized representative. An employee who must be absent from work for a prolonged period may request in writing that his or her check be mailed to a designated address.

**Comment:** *This policy sets forth two examples of different pay periods. Colorado employers have a great deal of discretion in determining pay periods, limited only by the requirements that there be established and posted regular pay periods of no greater than one month or 30 days duration, whichever is longer, and that regular paydays be established no later than 10 days following the close of each pay period, unless the employer and employee "mutually agree" otherwise.*

## **2.52 Deductions**

Federal and state income taxes [and social security contributions, if applicable] are automatically deducted from employee paychecks, as is required by law. In addition, the following payroll deductions may be authorized in writing by individual employees:

[LIST AVAILABLE DEDUCTIONS, E.G., EMPLOYEE CONTRIBUTIONS FOR HEALTH OR LIFE INSURANCE, CREDIT UNION PAYMENTS, DEFERRED COMPENSATION, CHARITABLE CONTRIBUTIONS, OR REIMBURSEMENT TO EMPLOYER]

No other deductions will be made by the District.

**Comment:** *Beyond payroll taxes, an employer is not required to make payroll deductions. The District may decide to allow additional deductions as it sees fit and may require deductions for employment benefits such as health insurance.*

## **2.53 Garnishment**

A garnishment is a legal deduction of a specified sum from an employee's wages in order to satisfy a creditor. If the District is required to garnish an employee's wages, the garnishment will be made in accordance with the law.

## **2.54 Direct Deposit**

Employees may authorize in writing the direct deposit of their net earnings with a designated financial institution [or with a financial institution designated by the District]. Upon the authorization of direct deposit by any employee, that employee's net earnings shall be deposited with the designated institution until such time as the authorization is rescinded in writing.

## **2.60 Safety**

It is the responsibility of each employee to learn and observe all applicable safety practices, policies, directives, or procedures. Safety-related questions should be directed to each employee's immediate supervisor. Violation of safety practices, policies, directives, or procedures may result in disciplinary action up to and including discharge.

## **2.61 Safety Rules**

The District has safety rules with which employees are expected to comply. These rules are not exclusive; employees are expected to do their jobs in a reasonable and safe manner whether or not specific safety rules apply. It is the responsibility of each

employee to read and understand all District safety rules. Disobeying a safety rule may result in disciplinary action up to and including discharge.

## **2.62 Reporting Accidents/Worker's Compensation**

Any employment-related accident involving any injury or property damage whatsoever must be reported to the immediate supervisor of each employee involved in or witnessing the accident. Such report shall be made at the earliest practicable time. Failure to report promptly any accident involving injury or property damage may result in disciplinary action up to and including discharge.

Employees are covered for employment-related injury or illness by the Colorado Worker's Compensation Act. Under the Act an employee may receive benefits for missing work as a result of an employment-related injury or illness. Delay in reporting a work-related injury or illness may result in a loss of benefits under the Act.

## **2.63 Maintenance/Housekeeping**

Each employee is responsible for the condition of equipment used on the job. Equipment which is damaged, worn, or in need of maintenance should be reported to appropriate personnel. Employees should direct any concerns regarding the use of equipment to their immediate supervisors.

Cleanliness and orderliness are important to the operation of the District. Employees are responsible for keeping their work areas clean and orderly. The District reserves the right to restrict the placement of pictures or posters on walls within District premises.

**Comment:** *The regulation of pictures or posters on walls within employee work areas may raise First Amendment concerns where only materials containing messages disfavored by district management are prohibited.*

### **3.00           COMPENSATION**

#### **3.10           Pay Schedule**

Employees are paid according to a pay schedule adopted by the Board of Directors. Employees shall be placed on the pay schedule according to their job classification [and any other factors relevant to the specific pay schedule]. Any employee temporarily assigned outside of his or her regular classification shall be paid at the rate for the temporary classification after \_\_\_\_\_ week(s), until such time as he or she returns to his or her former classification.

**Comment:** *This policy leaves it to the board of directors to establish pay classifications and rates of pay which are entirely separate from the employment policies. If the district's pay schedule contains step increases and pay grades requiring explanation, an appropriate explanation may, but need not be provided in these policies.*

#### **3.20           Holiday Pay**

Employees who work on district-designated holidays shall be compensated at their regular rate or with compensatory time at the rate of one hour [or one and 1/2 hours] for each hour worked, in addition to their holiday pay.

**Comment:** *Employers are free to determine what, if any, additional compensation will be provided for holiday work. This policy describes one option.*

#### **3.30           Insurance Benefits**

All employees [or regular, full-time employees, or any group of employees designated by the District] are eligible to receive group insurance benefits as established by the District Board of Directors. The terms and conditions of all group insurance plans offered by the District are subject to change from time to time at the discretion of the Board of Directors. District insurance plans may require employee contributions as a condition of participation. Required contributions must be made through payroll deductions.

**Comment:** *Employers are not required to provide insurance benefits of any kind (except worker's compensation and unemployment coverage), to any employee. This policy and those that follow concerning insurance benefits are completely optional.*

#### **3.31           Health and Dental Insurance**

The District offers health [and dental] insurance for eligible employees. Information is available from the Personnel Department [or appropriate administrator] concerning available options, coverage dates and scope of coverage.

Employees or their spouses may be eligible for continuation of coverage under the District's group health and dental plans upon separation from employment for reasons other than gross misconduct.

**Comment:** *If health and/or dental insurance is provided by an employer having 20 or more employees, federal law requires that employees be offered continuation of coverage at employee*

*expense for up to 18 months upon separation from employment under normal circumstances. Colorado law requires that all employers providing group sickness and accident coverage provide up to 90 days continuation coverage at employee expense.*

### **3.32 Life Insurance**

The District provides group life insurance for all eligible employees up to a maximum amount determined by the Board of Directors and available from the Personnel Department [or appropriate administrator]. Specific information as to coverage and any available options is available from the Personnel Department [or appropriate administrator].

### **3.33 Long-Term Disability Insurance**

The District provides long-term disability insurance coverage for eligible employees. Specific information concerning such insurance is available from the Personnel Department [or appropriate administrator].

### **3.34 Vision Insurance**

The District provides vision insurance coverage for regularly employed, full-time [regular] employees. Specific information concerning such insurance is available from the Personnel Department [or appropriate administrator].

### **3.40 Retirement Benefits**

(A) Retirement benefits are provided pursuant to state law.

OR, AS AN ALTERNATIVE:

(B) The District offers a retirement plan in which all regularly employed, full-time employees must participate. Information concerning specific details of the retirement plan is available from the Personnel Department [or appropriate administrator].

OR, AS AN ALTERNATIVE:

(C) The District participates in the Old Age and Survivors Insurance System (social security). All District employees and the District are required to make contributions as required by the Federal Insurance Contribution Act (FICA).

**Comment:** *This policy presents the basic retirement options available to special districts. The options are not necessarily exclusive of each other, depending upon the specific circumstances.*

**4.00 LEAVE TIME/HOLIDAYS/VACATION**

Unless otherwise specified, all regularly employed, full-time employees are provided the following leave time, holidays, and vacation. Employees are considered full-time within the meaning of these policies if they are regularly employed for at least \_\_\_\_\_ hours per week.

**Comment:** *Employers have extremely broad discretion concerning leave time, holidays, and vacation. Other than as required by the Family and Medical Leave Act, the law does not mandate vacations, leave, or holidays, but does impose certain restrictions if such benefits are offered. Some restrictions are discussed in connection with specific policies below.*

*The policies set forth below are all optional.*

**4.10 Vacation**

Full-time, regular employees accrue vacation annually after the first full year of employment as follows:

<u>Years Completed</u>	<u>Vacation Hours Per Year</u>
___	__ hours (__ days)
___	__ hours (__ days)
___	__ hours (__ days)

Employees may accrue vacation from one year to the next only with the approval of their supervisor. In no event shall an employee be permitted to accrue more than \_\_\_ hours vacation.

Vacation shall not be used in advance of its accrual. All use of vacation time must be approved by each employee's immediate supervisor.

Absent written agreement to the contrary, signed by the District's chief executive officer, employees will not be paid for accrued but unused vacation, provided that employees who terminate their employment with accrued but unused vacation shall be paid at their current regular rate for such vacation time.

**Comment:** *Whether employees receive paid vacations, and if so how much, are matters determined by employers or through agreement with employees. Payment for accrued vacation upon separation from employment is not mandated by law, but rather is determined by agreement or policy. If accrued vacation is not to be compensated upon separation from employment, district policy should so state. Employers probably can provide for payment for accrued vacation time in some circumstances, e.g. retirement, while denying such payment in others, e.g. dismissal for cause.*

**4.20 Holidays**

The District provides the following paid holidays:

New Year's Day (January 1)

Martin Luther King Day (third Monday in January)  
President's Day (third Monday in February)  
Memorial Day (last Monday in May)  
Independence Day (July 4)  
Colorado Day (first Monday in August)  
Labor Day (first Monday in September)  
Veteran's Day (November 11)  
Thanksgiving Day (fourth Thursday in November)  
Christmas Day (December 25)

When a holiday falls on a Sunday, the following Monday shall be observed. When a holiday falls on a Saturday, the preceding Friday shall be observed. Employees who are normally scheduled to work on Saturdays or Sundays will observe the actual day of the holiday. To receive pay for a designated holiday, an employee must have worked on or been paid for the work day immediately preceding and the work day immediately following the holiday.

**Comment:** *Special districts are not required by law to provide any paid holidays to employees, and may provide paid holidays other than those listed.*

#### **4.30 Leave Time**

The District provides paid or unpaid leave for use by employees under specific circumstances. Available leave and the circumstances under which it may be used are described below. The use of paid leave ordinarily must be approved in advance by each employee's supervisor. Unless advance approval is obtained, if possible, an employee may be charged for unpaid leave even if he or she is absent for a reason for which leave could otherwise be used. In addition, absence from work without advance approval may subject an employee to discipline, up to and including discharge.

**Comment:** *The following policies set forth examples of kinds of leave that might be offered by an employer. Paid leave is not required by law, although most employers provide at least some such leave, and the Family and Medical Leave Act (FMLA) may require paid benefits during leave. Except as restricted by the FMLA, employers have great leeway in deciding the terms and conditions on which such leave will be made available when it is offered.*

#### **4.31 Sick Leave**

All regular, full-time employees accrue sick leave. Sick leave shall accrue monthly at the rate of \_\_\_\_ ( ) hours per month.

Fire suppression [and emergency medical] employees assigned to fire suppression duties and working twenty-four (24) hour shifts shall accrue sick leave at the rate of hours for each \_\_\_\_ hours worked.

Sick leave may be used only for the following purposes:

- (1) When an employee is incapacitated due to illness or injury;
- (2) When an employee or an immediate family member of an employee requires a health examination or medical treatment;
- (3) As a supplement to Worker's Compensation benefits upon the expiration of injury leave; and
- (4) When an employee is required to be in attendance for the necessary medical care of a member of the employee's immediate family.

Employees who know in advance that they will be using sick leave (for example, when a health examination or medical treatment has been scheduled) are expected to notify their supervisors promptly of the time and anticipated duration of their absence.

Sick leave may be used for fractions of work days, however employees will be charged for at least \_\_ (\_\_) hours each time sick leave is used. If illness or injury impairs an employee's job performance, the District may require that the employee use sick leave for the remainder of his or her work day or shift.

Sick leave may be accumulated from year to year. Upon separation from employment after \_\_ (\_\_) years of continuous service, employees may receive \_\_ hour's pay at their regular rate for every \_\_ hours of accumulated sick leave, unless such separation is the result of dismissal for cause.

The District reserves the right to require at any time that an employee using sick leave or returning from sick leave provide a written statement of a physician regarding the nature of the employee's illness or injury and/or the employee's fitness to return to work.

**Comment:** *There are many different types of sick leave policies. This policy suggests one possibility. The Family and Medical Leave Act requires extended health leave for eligible employees under certain circumstances and requires that employees be permitted to use sick leave (if they have any available) under certain circumstances.*

#### **4.32 Maternity Leave**

Child-birth and disabling conditions arising from pregnancy are regarded by the District in the same manner as any other physical condition or disability. Because it can reasonably be expected that pregnancy will necessitate an employee's absence from work at some point in time, employees are expected to notify their supervisors when pregnancies become known.

**Comment:** *The law requires that physical disabilities resulting from pregnancy be treated in the same manner as other physical disabilities. Pregnancy itself is not a disability, but ordinarily results in a temporarily disabling condition. If leave, be it paid or unpaid, is available for illness or other disabling conditions, such leave must be made available for pregnancy-related physical conditions. An employer runs afoul of the law by imposing additional conditions on the use of leave for maternity purposes.*

#### **4.33 Family and Medical Leave.**

Employees may be eligible for up to twelve weeks leave under the Family and Medical Leave Act (FMLA). Generally, to qualify for such leave, an employee must have worked at least 1,250 hours for the District during the twelve months preceding the beginning of the leave and the District must employ at least 50 people at the time of the leave. FMLA leave ordinarily is available for the following reasons:

a. Because of the birth of a son or daughter of the employee and in order to care for such son or daughter;

b. Because of the placement of a son or daughter with the employee for adoption or foster care;

c. In order to care for the spouse, or son, daughter, or parent, of the employee, if such spouse, son, daughter, or parent has a serious health condition; or

d. Because of a serious health condition that makes the employee unable to perform the functions of his or her position.

The amount of FMLA leave available will be determined based on a "rolling" twelve month period, meaning that the amount of FMLA leave available to an eligible employee at any given time is twelve weeks less the amount of FMLA leave used during the preceding twelve months.

Spouses who both are employed by the District ordinarily will be limited to an aggregate of twelve weeks leave under the Act on account of the birth or placement of a son or daughter or to care for a sick parent.

Employees may elect, or the District may require the employee to use accrued vacation or any other available paid leave other than sick leave during FMLA leave when FMLA leave is taken because of the birth or placement of a child or to care for a family member with a serious health condition. An employee may elect, or the District may require the employee to use any paid leave, including sick leave, during FMLA leave when FMLA leave is taken because of an employee's serious health condition or to care for a family member with a serious health condition.

Employees who intend to use FMLA leave must give at least thirty days notice when circumstances permit. The District may also require a physician's certification for health leave and may require a second opinion at District expense from a District-designated physician, as a condition to approval of such leave. An employee's failure to provide physician's certification may result in denial of leave.

Any employee taking FMLA leave shall be provided health insurance benefits upon the same terms and conditions as if the employee had continued to work during the time on leave. Employees taking FMLA leave shall be responsible for any required employee contributions for such benefits throughout the time of the leave. Failure to make employee contributions may result in lapse of health insurance. If an employee fails to return from FMLA leave for reasons other than the continuation, recurrence, or onset of a serious health condition or because of other circumstances beyond the employee's control, the District shall be entitled to reimbursement for the cost of providing such benefits.

At the end of an approved FMLA leave the District will return the employee to the same or an equivalent position with no loss of benefits

If an employee takes FMLA leave due to the employee's own serious health condition, a return to work certification from an appropriate health care provider may be required. Failure to provide such certification may result in denial of reemployment.

**Comment:** *Congress enacted the Family and Medical Leave Act in 1993. The FMLA applies to any "public agency." Employees are not eligible for FMLA leave, however, unless they work at a site employing 50 or more employees within a 75 mile radius. Employees eligible to take advantage of the Act also must have been employed for at least twelve months, having worked at least 1,250 hours during that time.*

*As a practical matter, even though all special districts are covered by the FMLA, no employee of a special district is eligible for FMLA leave unless the district employs at least 50 people.*

*This policy sets forth most of the restrictions on FMLA leave permitted by the Act. Certain others are discussed in this comment. Federal regulations require that employee handbooks describe an employer's FMLA policies and provide information regarding FMLA rights and responsibilities.*

*The Act requires employers to provide eligible employees with up to twelve weeks leave during any twelve month period for the birth of a child; placement of a child for adoption; care of a spouse, son, daughter, or parent; or a "serious health condition" rendering the employee unable to perform the functions of his or her position. Where both a husband and wife work for the same employer, they may be limited to twelve (12) weeks leave in the aggregate for reasons of birth, adoption, or parent care.*

*The Act specifies that a spouse, child, or parent need not be biologically related. A "parent" can be one who stands "in loco parentis" and a "child" may be adopted, foster, step, a legal ward, or someone to whom the employee stands "in loco parentis." A child, however, must be under eighteen years old or incapable of self care because of disability. A "serious health condition" is a physical or mental condition requiring in-patient care or continuing treatment by a health care provider.*

*The Act states that leave "shall not be taken" intermittently or part-time unless otherwise agreed, but establishes an exception "when medically necessary." If an employee requests such leave based on planned medical treatment, an employer may transfer the employee temporarily to an available alternative position that "better accommodates recurring periods of leave." Such position must carry the same pay and benefits. To take intermittent or part-time leave an employee must make a reasonable effort to schedule treatment that will not "disrupt unduly" the employer's operations, must give thirty days notice, if possible, and may be required to provide certification of the planned treatments, dates of treatment, and duration of treatment.*

*For any foreseeable leave, employees must give thirty days notice. An employer may require a physician's certification for any health leave and may require a second opinion (at the employer's expense) from a doctor designated by the employer. If the employer's doctor's opinion differs from that of the employee's doctor, the parties must agree on a third doctor whose opinion would be conclusive.*

*At the end of a leave an employer is obligated to return the employee to the same or equivalent position with no loss of benefits. The employer may require a certificate of fitness upon return if such requirement is pursuant to a uniformly applied practice. The employer may deny restoration to a salaried employee who is among the highest-paid ten percent of those employed within a seventy-mile radius if "grievous economic injury" would otherwise result and if the employer notifies the employee as soon as the likelihood of such injury becomes apparent. If such notice is given after the employee's leave has begun and the employee elects to return to employment, restoration may not be denied.*

*During an employee's leave, the employer must maintain coverage for the employee under any "group health plan" on the same basis as if the employee had worked continuously during the leave. If an employee does not return from the leave the employer may recover premiums unless the employee fails to return because of a serious health condition or for other circumstances beyond the control of the employee.*

#### **4.34 Parental Leave**

Upon the birth or adoption of a child in an employee's family, the employee may be provided up to \_\_\_\_\_ weeks unpaid parental leave. Such leave may be renewed upon the

employee's request at the discretion of the District. Any employee who takes a parental leave of more than one month's duration shall be required to pay the full cost of any insurance benefits provided to the employee by the District.

**Comments:** *Parental leave is not required by law for districts with fewer than 50 employees. The Family and Medical Leave Act requires up to 12 weeks parental leave for employees of districts with more than 50 employees working within a 75-mile radius. See Policy 4.33. Districts not subject to the FMLA have a free hand in determining whether to grant parental leave and, if so, how much such leave to grant.*

#### **4.35 Personal Leave**

Each full-time, regular employee of the District is allowed up to \_\_\_ ( ) days personal leave which may be used in case of emergency or upon approval of the employee's supervisor. Such leave must be applied for in writing, in advance if possible, and does not accumulate from year to year.

#### **4.36 Military Leave**

Full-time employees who are members of the National Guard or reserve forces are entitled to military leave without loss of benefits or status for up to fifteen (15) days each calendar year while they are engaged in training or other service under orders. Any employee who is required to continue in military service beyond the time allowed for military leave shall be afforded leave without pay for the duration of his or her service and shall be reinstated to full employment rights upon separation from military service as required by law, provided he or she reports to the District for work within ninety (90) days from such separation.

Employees on military leave are paid the difference between their regular straight time pay and pay received for military service for up to ten (10) working days per calendar year. To receive such pay, an employee must provide a military pay statement verifying the amount received by him or her for military service.

**Comment:** *Leave for military service is required by state and federal law, although there is no requirement that employers pay the difference between military pay and an employee's regular pay during such leave.*

#### **4.37 Bereavement Leave**

Any employee who suffers a death in his or her immediate family will be allowed \_\_\_ ( ) day's leave at full pay and may request additional unpaid leave. For purposes of this policy, an employee's "immediate family" includes his or her spouse, children, parents, grandparents, grandchildren or siblings, and the parents, siblings or children of the employee's spouse.

Employees who work 24-hour shifts shall be granted bereavement leave up to a maximum of \_\_\_ work shifts, but may request additional unpaid bereavement leave.

#### **4.38 Injury Leave/Worker's Compensation**

Any employee who incurs a work-related injury or illness is entitled to benefits pursuant to the Worker's Compensation Act. The District shall pay such employee the difference between his or her Worker's Compensation benefits and his or her regular straight time pay for up to \_\_\_ ( ) calendar days from the date of the injury or onset of illness. After the day, any additional period of injury leave shall be charged to the employee's accumulated sick leave, accumulated vacation leave, and accumulated compensatory time, in that order.

Any employee on injury leave shall provide the District with such

information concerning his or her medical condition as the District may require from time to time.

**Comment:** *Employers are not required to make up the difference between worker's compensation payments and regular earnings, although this policy is drafted to provide for such payment for a time to be specified.*

#### **4.39 Administrative Leave**

Employees may be placed on administrative leave, with or without pay, when possible disciplinary action is under consideration, when the employee has been charged with serious criminal misconduct, or under such other circumstances as may be deemed necessary by the District. Employees placed on administrative leave will be advised of the reason for the leave and, if possible, the probable duration of the leave.

#### **4.40 Unpaid Leave**

Under circumstances where an employee is not eligible for paid leave he or she may be granted unpaid leave on such terms and conditions as may be permitted by the District in its discretion. Unpaid leave shall not be granted for more than six (6) months, but may be renewed by the District upon its expiration.

Employees shall not accrue vacation, sick leave, or personal leave while on unpaid leave. Employees on unpaid leave are eligible to receive group insurance benefits upon their timely payment of appropriate premiums.

Failure of an employee to return upon expiration of unpaid leave may result in termination of employment.

#### **4.50 Jury Duty/Court Time**

Any employee who is summoned for jury duty or subpoenaed in connection with his or her employment during a regularly scheduled work time will be compensated for scheduled hours. A copy of the subpoena or order requiring such duty must be submitted with a leave request in order for such compensation to be paid. As a condition of the receipt of such pay, any stipend paid to the employee for jury service or as a witness fee must be paid to the District or an equivalent amount deducted from the employee's pay.

**Comments:** *Colorado requires that employers pay employees their regular wages up to \$50 per day for the first three days of jury service. Employees must tender a juror service certificate before they are lawfully entitled to receive such pay. Employers are also prohibited by law from depriving employees of any "incidents or benefits" of employment as a result of jury service; harassing, threatening or coercing any employee for performing his or her obligations as a juror; or making any demands upon any employee which will substantially interfere with the performance of juror service.*

#### **4.60 Voting**

Any employee whose work schedule is such that polls are not open during at least three (3) non-working hours on Election Day shall be permitted paid leave for the time spent voting, not to exceed two (2) hours

**Comment:** *This policy reflects the requirements of Colorado law.*

#### 4.70 Leave to Seek Protection

An employee who is the victim of domestic abuse, stalking, sexual assault, or any other crime involving domestic violence may be eligible for up to three working days of leave in a twelve-month period to seek protection. Generally, to qualify for such leave under Colorado law, an employee must have worked for the District for the twelve months preceding the beginning of the leave and the District must employ at least 50 people at the time of the leave. Such leave ordinarily is available for the following purposes:

- a. To seek a civil restraining order to prevent domestic abuse;
- b. To obtain medical care or mental health counseling for the employee or the employee's child to address physical or psychological injuries resulting from the act of domestic abuse, stalking, sexual assault, or other crime involving domestic violence;
- c. To secure the employee's home from the perpetrator or seek new housing to escape the perpetrator; or
- d. To seek legal assistance to address issues arising from the domestic abuse, stalking, sexual assault, or other crime involving domestic violence, and attending and preparing for related court proceedings.

Except in cases of imminent danger, the employee taking leave to seek protection shall provide advance notice to the District and shall provide any documentation requested by the District. The employee shall be required to use any annual, vacation, personal, and sick leave, as applicable, before being granted any leave under this section. If no such paid leave is available, the employee's leave to seek protection will be granted without pay.

**Comment:** *In 2002, the Colorado General Assembly enacted a new law applicable to employers of at least 50 people. See C.R.S. § 24-34-402.7 ("Unlawful action against employees seeking protection). This law gives an employee who has worked for the employer for at least twelve months the right to take leave from work for up to three days in a twelve-month period for the purposes outlined above. The leave is applicable only in relation to certain crimes, domestic abuse, stalking, sexual assault, or other crime involving domestic violence, as such crimes are defined by statute. The employer may require the employee to exhaust vacation, annual, personal, and sick leave, as applicable, before granting leave to seek protection. However, if no such paid leave is available, the employer must grant leave to seek protection to the eligible employee. The sample policy above provides that leave to seek protection will be without pay, but an employer may elect to fully or partially compensate the employee during such leave.*

*In a related amendment, the General Assembly also modified procedures for obtaining a restraining order so that an employer may seek a restraining order against a person in order to protect its employees from imminent danger. See C.R.S. § 13-14-104(4)(b) (2002). However, if an employer does not seek a restraining order to protect its employees, it is not liable for failing to do so.*

## **5.00 EMPLOYMENT PRACTICES**

### **5.10 Introductory Period**

Each new employee is employed on an introductory basis for \_\_\_\_\_ ( ) days. During this introductory period employees will undergo orientation, will receive such training as is deemed appropriate, and will be evaluated by their supervisors. Upon successful completion of the introductory period, an employee shall be considered a regular employee and as such may apply for transfer or promotion.

Classification of an employee as "regular" is not intended to alter the at-will status of the employment relationship, but rather is intended to distinguish such employees from temporary and introductory employees.

An employee's introductory period may be extended for an additional \_\_\_\_\_ ( ) days at the discretion of the District. An employee whose introductory period is extended will be so notified in writing.

### **5.20 Training and Education**

The District supports education and training programs which improve the skills, qualifications, and performance of District employees. The District will pay the fees and costs of education and training programs which are specifically required by the District. In addition, the District may in its discretion approve payment of all or a portion of the fees and costs of education or training programs requested by employees. The District's approval of payment for one segment, portion, or course which is a component of an education or training program does not obligate the District to pay for any additional segment, portion, or course.

It is ordinarily each employee's responsibility to maintain state-mandated certificates or credentials necessary to the employee's job.

Educational leave is available, at the District's discretion, to assist employees in developing professional and technical skills related to employment with the District. Such leave may be granted to attend professional or technical conferences, training seminars, schools, or programs. Educational leave must be approved in advance by [the District's Chief Executive Officer or other appropriate manager]. Requests for educational leave must be made in writing and must clearly state the dates and purpose of the leave requested.

### **5.30 Vacancies**

The District considers a position vacant when there is no employee assigned to the position who has the foreseeable ability or apparent intention to perform the duties of the position. The District reserves the right to declare a position vacant under other circumstances, for example, the apparent abandonment of a position by an employee, and also reserves the right not to declare a position vacant, in its discretion.

Employees of the District are encouraged to apply for vacant positions for which they are qualified. The District awards vacant positions to the applicants who are best-suited to meet the needs of the District. If a vacancy is awarded to a current employee, that employee shall serve a \_\_\_\_\_ ( ) day introductory period in that position.

## **5.40 Promotions**

A promotion is considered the advancement of an employee to a position that carries more responsibility and a higher rate of pay. All regular employees of the District are eligible to be considered for promotions for which they apply and are qualified. An employee who is promoted shall serve a \_\_\_\_ ( ) day introductory period in his or her new position.

The effective date of an employee's promotion establishes a new starting date for any annual salary increases for which the employee may be eligible.

**Comment:** *Promotion policies are totally discretionary except that they may not be unlawfully discriminatory.*

## **5.50 Transfers**

An employee may be transferred through promotion, successful application for a vacant position, or at the direction of the District. Employees may be transferred involuntarily, although the District intends to minimize such transfers.

An employee who is temporarily transferred to a different position for \_\_\_\_ ( ) days or less, shall incur no reduction in pay during that temporary transfer. Employees temporarily transferred to higher paying positions will be paid at the higher rate of pay after ( ) days. The District may approve payment at the higher rate prior to 60 days, in its discretion.

**Comment:** *Again, transfer policies are totally discretionary except that they may not be unlawfully discriminatory. This policy contains suggestions addressing various issues that arise when transfers occur.*

## **5.60 Nepotism**

The District ordinarily will not employ close relatives under circumstances where:

- (1) One would directly or indirectly exercise supervisory, appointment, or dismissal authority over the other;
- (2) One would directly or indirectly have authority over disciplinary action as to the other;
- (3) One would audit, verify, receive, or be entrusted with money received or handled by the other in the course of employment; or
- (4) One would have access to the employer's confidential information, including payroll and personnel records.

For purposes of this policy, a close relative is anyone of equal or greater relationship than a first cousin, which includes anyone descended from the employee's grandparents. In addition, a close relative includes an employee's spouse and anyone descended from that spouse's parents.

When employees of the District become related and their working relationship is prohibited by this policy, one employee will be required to transfer to another position, provided

a position is available, or to resign. If neither affected employee voluntarily transfers or resigns, the District shall terminate or transfer one of the employees, in its discretion.

**Comment:** *No employer is required to have a nepotism policy, and, if one is adopted, it can be much less restrictive than this one is. Colorado law prohibits discrimination against spouses except in the circumstances identified in this policy, therefore, this policy is as restrictive as it can be as to spouses. Employers may impose broader restrictions on the employment of relatives other than spouses. For the sake of consistency, this policy treats all close relatives, including spouses, equally.*

## **5.70 Temporary Employment**

Employees who are hired for positions known to be of limited duration are considered temporary employees. A position is considered to be of limited duration if it is reasonably expected at the time the position is filled that the position will terminate in the foreseeable future, even though the precise termination date may not be known.

Temporary employees are not eligible to participate in any group insurance programs offered by the District and are not provided vacation, sick leave, maternity leave, parental leave, personal leave, bereavement leave, or injury leave, nor will the District provide any pay differential for military service, jury duty, or worker's compensation to temporary employees. Temporary employees are paid for holidays only if worked.

Temporary employees are entitled to overtime compensation as provided for in these policies.

**Comment:** *Temporary employees may, but need not, be provided some or all of the benefits available to other employees. Worker's compensation, unemployment, minimum wage, and overtime pay and requirements apply to them.*

## **5.80 Part-Time Employment**

Any employee who is regularly scheduled to work less than \_\_\_\_\_ ( ) hours per week is considered a part-time employee. Part-time employees who are regularly employed for ( ) hours or more per week are eligible for all leave time and benefits described in these policies, provided that such leave time shall accrue, and such benefits shall be paid for by the District only in the same proportion that the number of hours worked by the employee bears to forty (40) hours. Part-time employees regularly scheduled to work less than \_\_ hours per week accrue leave time in such proportion, however they are not provided paid insurance benefits. Such employees are eligible to participate in the District's group insurance programs upon payment through payroll deduction of the full cost of such benefits.

**Comments:** *The foregoing comments on temporary employees also apply to part-time employees. This policy sets forth a common method of providing benefits to part-time employees, but is by no means mandatory. The last sentence of this policy provides an example of a way to provide benefits for part-time employees. There is no requirement that benefits be made available to part-time employees.*

## **5.90 Employee Appraisals**

The District expects each of its employees to be appraised concerning his or her job performance at least annually. The appraisal process is intended to provide employees with information concerning their employment progress and to serve as a means of improving employee performance. The appraisal process is not meant to serve as a substitute for ongoing discussions between supervisors and employees.

Supervisors are expected to appraise each employee annually. This expectation is

not intended to create a right to an annual appraisal, but rather imposes a duty on supervisors. Similarly, the District's appraisal policy is not intended to entitle employees to a specific method or standard of appraisal, but is intended to impose an affirmative obligation on supervisors to appraise employees regularly and consistently.

**Comment:** *Employee appraisals are not required by law, but are useful for improving and evaluating employee effectiveness and documenting deficiencies.*

#### **5.91 Appraisal Standards**

It is the responsibility of District management to develop appraisal standards. Written appraisal standards are to be maintained by each supervisor for the employees under his or her supervision. Whenever the nature of the job permits, appraisal standards should be objective indicators of job performance. All appraisal standards and other details of the District's performance appraisal process shall be communicated by supervisors to the employees under their direction.

**Comment:** *Objective standards alone may not be desirable or possible, but objective standards do help minimize claims of discrimination.*

#### **5.92 Appraisal Process**

The appraisal process shall permit oral and written responses by employees, shall require annual written appraisals for each employee which are signed by the employee and the appraiser, and shall include review of each appraisal by the appraiser's supervisor.

Each written appraisal shall become a part of the appraised employee's personnel record.

## 6.00 LAYOFF

The District reserves the right to lay off employees for reasons of efficiency, economy, lack of work, or for such other reason as the Board of Directors deems sufficient. Employees who are laid off are eligible to continue health and dental insurance, if any, at their own expense as authorized by federal and state law.

(A) Laid off employees may apply for vacancies with the District and shall be afforded preference over new hires for positions for which they are qualified.

OR, IN THE ALTERNATIVE:

(B) The District shall maintain a list of laid off employees for a period of \_\_\_\_\_ months. Employees will be recalled by the District to any vacancies for which they may be qualified in reverse order of lay off. After \_\_\_\_\_ months a laid off employee shall not be eligible for recall but may apply for any vacancy with the District.

**Comment:** *This policy provides two of many possible alternatives describing re-employment rights of laid off employees. Employers have no obligation to afford laid off employees recall rights or hiring preferences, but may do so.*

## **7.00 EMPLOYEE CONDUCT**

### **7.10 General Rules of Conduct**

The District expects all of its employees to act in the best interests of the District and its constituents. It is the responsibility of all employees to observe all rules, policies, operating procedures and directives of the District. The District further expects that each of its employees will behave with courtesy and respect toward other employees and members of the public. Specific rules of conduct adopted by the District or described in these policies are not meant to be all inclusive, but rather address some common and serious potential problems.

**Comment:** *The following rules of conduct are totally discretionary, although the sexual harassment and conflict of interest policies are in large part reflective of legal requirements.*

### **7.20 Drugs and Alcohol**

The District strictly prohibits the manufacture, distribution, use or possession on District premises of alcoholic beverages of any kind and drugs other than those prescribed by a physician or obtained from a legal over-the-counter source. Employees are expected to use prescription or legal over-the-counter drugs in an appropriate manner and dosage and are expected to know whether the appropriate use of such drugs may impair their ability to perform their jobs safely and competently.

No employee is permitted to report for duty while impaired by or under the influence of alcohol or drugs to the slightest degree. Any employee who reports to work impaired by or under the influence of drugs or alcohol shall be relieved of his or her duties immediately and without pay.

Any violation of this policy will subject an employee to discipline, up to and including immediate discharge.

### **7.21 Reporting Convictions**

Any employee who is convicted or pleads no contest under any criminal drug statute regarding a violation occurring on the job or in the workplace shall notify the District of the conviction or plea within five days. Failure to so notify the District may result in termination of employment.

**Comment:** *The Drug-Free Workplace Act requires most employers who have federal contracts to prohibit unlawful use, possession, manufacture and distribution of controlled substances in the workplace; to establish drug free awareness programs; and to require employees to report workplace-related convictions for drug offenses.*

### **7.22 Drug and Alcohol Testing**

All District employees required to hold commercial drivers' licenses shall be subject to a drug and alcohol testing program that fulfills the requirements of Code of Federal Regulations Title 49, Part 382. Tests shall be conducted under the following circumstances:

(a) Each such employee shall be tested before the first time they perform any safety-sensitive function for the District. Such functions including driving; waiting to be dispatched; inspecting and servicing equipment; supervising, performing or assisting in loading or unloading; repairing or obtaining and waiting for help with a disabled vehicle; performing driver requirements related to accidents; and performing any other work related to vehicle maintenance or operation. Pre-employment tests shall be required only after an applicant is offered a position.

(b) Alcohol and controlled substance tests shall be conducted after any accident involving any safety-sensitive function. Such tests shall be conducted as soon as is practicable following an accident if the accident involved personal injury, property damage, or a citation for a moving traffic violation. Employees involved in accidents shall make themselves available for testing unless they need immediate medical attention, and shall not use alcohol for eight hours after any accident or until after a post-accident alcohol test, whichever occurs first.

(c) Tests shall be conducted on a random basis at unannounced times throughout the year. Such random tests shall be conducted just before, during, or just after the performance of safety-sensitive functions.

(d) Tests shall be conducted when a supervisor or District official trained in accordance with law has reasonable suspicion that an employee has violated the District's alcohol or drug prohibitions. Reasonable suspicion must be based on specific, contemporaneous, articulable observations concerning the employee's appearance, behavior, speech or body odors. Such observations may include indications of the chronic and withdrawal effects of controlled substances.

(e) A drug or alcohol test shall be conducted if and when an employee who has violated the District's drug or alcohol prohibition returns to performing safety-sensitive duties. No employee may be assigned to a safety-sensitive position until a return-to-duty drug test is administered with a negative result.

(f) An employee who violates the District's drug or alcohol prohibition and is subsequently identified by a substance abuse professional as needing assistance in resolving a drug or alcohol problem shall be subject to unannounced follow-up testing as directed by the substance abuse professional in accordance with law. Such follow-up testing shall be conducted just before, during, or just after the performance of safety-sensitive functions.

Testing procedures and facilities used for tests shall conform with the Code of Federal Regulations, Title 49, Section 40, et seq.

Any driver who refuses to submit to a drug or alcohol test required by this policy shall not perform or continue to perform safety-sensitive duties and will be subject to discipline up to and including dismissal. An employee will be deemed to have refused to submit to testing if he or she is unavailable or fails to provide samples sufficient for testing absent any medical necessity. Verified positive tests for alcohol or drugs shall subject employees to disciplinary action up to and including dismissal.

**Comment:** *Federal regulations require that employees required to obtain commercial drivers' licenses be given drug and alcohol tests under the circumstances set forth in this rule. Although the law does not require testing of other employees, any person employed in a "safety-sensitive" position probably can be required to submit to drug and alcohol testing under similar circumstances. A "safety-sensitive" position would be any position involving the operation or maintenance of motor vehicles or heavy equipment, the operation of potentially dangerous equipment, the use of a firearm, or the operation of water treatment equipment. If the use of drugs or alcohol in a position reasonably could threaten individual or public safety, it probably can be classified as "safety-sensitive."*

*Any employee, whether employed in a safety-sensitive position or not, can be required to submit to drug and alcohol testing based on reasonable individualized suspicion.*

*The federal regulations impose a number of administrative requirements regarding drug and alcohol testing for commercial drivers' licenses that are not set forth in this policy because they relate to administrative operations, not personnel requirements. For example, federal regulations impose certain record-keeping requirements, require that commercial vehicle operators be provided with certain educational materials concerning testing and district policies, and require that commercial motor vehicle drivers be given post-accident procedures. Such requirements are more appropriate for an operations manual than for personnel policies.*

### **7.30 Harassment**

The District prohibits any harassment of its employees on the basis of sex, race, color, national origin, ethnicity, disability, or religion. Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other inappropriate oral, written or physical conduct of a sexual nature when:

- a. submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment;
- b. submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting that individual; or
- c. such conduct has the purpose or effect of substantially interfering with an individual's job performance or creating an intimidating, hostile or offensive employment environment.

Harassment based on race, color, national origin, ethnicity, disability, or religion consists of verbal or other conduct relating to any of those characteristics which has the purpose or effect of creating an intimidating, hostile or offensive working environment; which has the purpose or effect of substantially or unreasonably interfering with an individual's work performance; or which otherwise adversely affects an individual's employment opportunities.

Any employee who believes he or she has been the victim of prohibited harassment or who has observed such harassment is expected to report the harassment to his or her immediate supervisor or to \_\_\_\_\_. In all events, prohibited harassment should be reported to a person in a position to take corrective action against the harasser, including, if necessary, members of the District's Board of Directors.

Upon notification of prohibited harassment, a supervisor shall notify the District's chief personnel officer [or other appropriate manager]. The District's chief personnel officer [or other appropriate manager] shall immediately investigate, take action to prevent and remedy any harassment, and report his or her findings and course of action to appropriate District administrators and the complaining party. Investigations of reported harassment and the results of such investigations will be kept confidential to the extent possible, given the need for a complete and fair investigation.

Employees shall not be subject to retaliation for making good faith complaints or reports of prohibited harassment.

If prohibited harassment is found to have occurred, the District shall take such disciplinary action against the harassing party as it deems necessary and appropriate, including warning, suspension, or immediate discharge.

**Comment:** *Recent decisions of the U.S. Supreme Court have recognized that employers can defend against certain harassment claims if employees have failed to act reasonably to prevent or correct the harassment. To establish this defense, an employer must show that it has an effective policy and practice prohibiting harassment and that employees have been advised of the means by which they may invoke employer assistance to prevent and remedy harassment. It is important that any policy identify more than one person to whom complaints may be brought, as the person responsible for fielding complaints may be the perpetrator.*

*Once an employee reports harassment or a supervisor reasonably should be aware of it, an employer may be liable. It is essential to investigate possible harassment immediately and thoroughly, and to take prompt remedial action, if warranted.*

#### **7.40 Use of District Property**

District property is to be used only for official District business, in an appropriate manner, and in accordance with all applicable rules, operating procedures, or directives. No employee shall remove District property or the property of any other employee from District premises or work sites without proper authorization. Any employee who steals District property or the property of any other employee, or who abuses, misuses, damages, or destroys District property shall be subject to discipline, up to and including immediate discharge.

#### **7.50 Use of District Vehicles**

District vehicles may be used only for the purpose and in the manner authorized by the District. Only authorized and qualified District employees may operate District vehicles. All vehicles shall be operated in accordance with all applicable traffic laws and vehicle operators shall be responsible for the condition and proper use of their vehicles.

Unauthorized or improper use of District vehicles may result in discipline, up to and including discharge.

#### **7.60 Conflict of Interest**

District employees shall not place their personal interests above the best interests of the District or Board's constituents. Accordingly, employees of the District shall not:

1. Engage in a substantial financial transaction for private business purposes with another employee whom he or she supervises;
2. Take any official action directly and substantially affecting to its economic benefit a business or other undertaking in which he or

she has a substantial direct or indirect financial interest or business arrangement;

3. Disclose or use confidential information acquired in the course of his or her official duties to further substantially his or her personal financial interests; or
4. Accept a gift of substantial value or a substantial economic benefit which might tend improperly to influence him or her in the discharge of his or her responsibilities, or which could be construed as a reward for action taken in the course of official duties.

Any employee who knows or reasonably should know he or she has a potential conflict of interest shall disclose such potential conflict to his or her supervisor.

**Comment:** *This policy incorporates the requirements of Colorado law applicable to employees of special districts. Specific conflict of interest issues may require legal advice. A district may adopt ethics or conflict of interest rules imposing additional requirements should it so desire.*

#### **7.70 Polygraph Tests**

(A) While investigating alleged employee wrongdoing in the course of official business of the District, the District may require that an employee or employees take polygraph examinations. Polygraph examinations shall be given only under the following conditions:

1. There shall be a reasonable basis to believe that any employee to be tested may have knowledge material to the investigation;
2. Each employee to be tested shall be advised in advance that his or her answers cannot be used in any criminal proceeding;
3. Each employee to be tested shall be advised that questions asked will relate specifically and narrowly to district business; and
4. Each employee to be tested shall be advised in advance that he or she may be terminated for refusal to take the polygraph examination.

OR, AS AN ALTERNATIVE:

(B) While investigating alleged wrongdoing in the course of official business, the District may request that an employee take a polygraph examination or may offer an employee the opportunity to take such an examination. No employee, however, may be disciplined or discharged for refusing such a request or declining such an offer. If an employee agrees to take a polygraph examination, he or she may terminate the examination at any time without penalty.

**Comment:** *Courts generally take a dim view of polygraph examinations. Some courts have held that mandatory polygraph examinations offend public policy or have refused to permit employers to terminate employees for their refusal to take such exams. Other courts have permitted mandatory polygraph exams and have upheld employee terminations resulting from refusal to take such exams. Mandatory polygraph examinations are more likely to be upheld for police officers, and to a lesser extent, firefighters, than for other public employees. No Colorado appellate court has yet addressed this issue.*

*Some states' courts which have approved mandatory polygraph examinations have established certain guidelines concerning the administration of such examinations. The policy set forth in paragraph (A) summarizes these requirements. It cannot be predicted whether the Colorado courts will endorse mandatory polygraph examinations even if these guidelines are followed, however any employer would be well-advised to include these guidelines in any mandatory polygraph policy. The policy set forth in paragraph (B) leaves it up to each employee to decide whether to take a polygraph exam.*

## **7.80 Off-Duty Conduct**

The District reserves the right to take appropriate action including dismissal from employment, in response to off-duty conduct of employees which:

- (a) Relates to a bona fide occupational requirement or is reasonably and rationally related to the employment activities and responsibilities of the employee; or
- (b) Is necessary to avoid a conflict of interest or the appearance of such a conflict with any of the employee's responsibilities.

**Comment:** *This policy reflects the requirements of §24-34-402.5 C.R.S., as to lawful off-duty conduct. Employers may not terminate an employee for lawful off-duty conduct unless one of the requirements of the policy is met. Employers ordinarily have considerably more discretion in terminating employees for unlawful off-duty conduct.*

## **8.00 DISCIPLINE**

The District, through its Board of Directors, management, and supervisors, retains the right to take such disciplinary action as it deems appropriate in any given circumstances. The District's disciplinary policies and rules are intended to place employees on notice that specified conduct is likely to have serious consequences in the workplace, not to limit the District's right to take such action as it may deem appropriate in any given instance.

**Comments:** *Employers are free to adopt their own disciplinary policies, but must take care in doing so if they wish to preserve at-will employment. This policy is intended to place employees on notice that the District retains discretion in the application of discipline.*

*It is important for every employer to determine whether it intends to retain at-will employment or to provide employees with a substantive right to be terminated only if a specified standard is met. These policies are drafted with an eye toward preserving at-will employment.*

### **8.10 Disciplinary Rules**

The following conduct may result in disciplinary action, to and including immediate discharge. This list is not exhaustive; the District reserves the right to discipline, suspend, or discharge employees for any reason, at any time.

1. Inadequate job performance.
2. Insubordination.
3. Fighting or threats of physical violence.
4. Conviction of, a plea of guilty to, or failure to contest a charged felony where the offense is directly or indirectly related to employment with the district, involves dishonesty or moral turpitude, or otherwise renders the employee unsuitable for continued employment.
5. Falsification of or material omission from an employment application, payroll records, time reports, or other District documents.
6. Violation of the District's drug and alcohol policy.
7. Carelessness, negligence, or misuse of District property.
8. Theft, vandalism, or destruction of District property.
9. Improper use of District vehicles or equipment, including communications equipment.

10. Violation of safety rules or practices.
11. Unauthorized absence.
12. Frequent or habitual tardiness.
13. Leaving assigned work area without prior authorization.
14. Violation of the District's conflict of interest policy.
15. Violation of the District's nepotism policy.
16. Possession of firearms or dangerous weapons on District property.
17. Misuse of sick leave.
18. Misuse of break periods.
19. Release of confidential information of the District.
20. Violation of the District's sexual harassment policy.
21. Failure to report for work without proper notification.
22. Inducing or encouraging any employee of the District to violate any District rule, policy, or directive.
23. Engaging in any unauthorized interruption of work.
24. Loss of any license, certificate, or other credential required for the performance of a job responsibility.

**Comments:** *This policy lists possible grounds for discipline. Specific grounds listed in any given employer's policy can and should be tailored to the employer's needs.*

## 8.20 Disciplinary Action

The District favors progressive disciplinary action, however, the level of discipline to be imposed for an infraction shall be that which the District, through its Board of Directors, managers, or supervisors, deems appropriate under the circumstances. District management retains the right to determine in its discretion, that any of the following disciplinary actions is appropriate without using lower levels of discipline first.

Disciplinary action may include:

1. A verbal warning or reprimand, which may be accompanied by a written notation in the supervisory record or in the employee's personnel file.
2. A written reprimand, signed by the employee's supervisor and acknowledged by the employee. Written reprimands are intended to be placed in the reprimanded employee's personnel file. Employees may provide written explanations or responses to reprimands for placement in their personnel file.
3. Suspension without pay. A suspension without pay shall be accompanied by a written statement, signed by the employee and his or her supervisor, setting forth the fact of the suspension, the reason for the suspension, and the duration of the suspension.
4. Demotion. All disciplinary demotions must be reflected by a written statement placed in the demoted employee's personnel file stating that the demotion was for disciplinary purposes and setting forth the reason for the discipline.
5. Termination .

**Comment:** *Progressive discipline is not required by law, nor is there any prescribed format for such discipline. Nevertheless, it is generally recognized that progressive discipline is sound management practice, and if an employer has a "just cause" for dismissal policy, progressive discipline is ordinarily considered mandatory except for very serious offenses. This sample policy is necessarily general. The particular practices or organizational structure of a given district may call for a more detailed policy and should be reviewed by district counsel. This policy does not mandate progressive discipline in every instance, rather it preserves a district's right to determine whether progressive discipline is required.*

*Supervisors should ordinarily discuss disciplinary action with affected employees. Employees should be advised of the reasons for the discipline, the supervisor's expectations concerning future conduct, and the consequences of any further conduct such as that which led to the discipline. An employee should be given an opportunity to respond to any disciplinary action. Such response may be in writing and may be placed in the employee's personnel file.*

*A district is not required to permit written employee responses to disciplinary action or appeals of such action unless the district has limited its right to terminate employees at will, in which case due process considerations require notice of charges and an opportunity to respond in a hearing. Considerations of fairness and sound management practices aside, however, employee responses to disciplinary action often prove useful when an employer must subsequently establish the circumstances of disciplinary action.*

## **9.00 GRIEVANCES**

The District has established a grievance procedure which is available to any non-supervisory employee for the resolution of complaints, disputes, or concerns regarding the interpretation or application of District policies. Any such dispute, complaint, or concern may be raised as a grievance pursuant to the grievance procedure.

*Comments: Employers are not required to have grievance procedures. These policies describe a three-step procedure that ends with the district's chief executive officer. Any district could adopt a grievance procedure ending at the board level, or even ending in arbitration, depending upon the needs of the district.*

### **9.10 Purpose of Grievance Procedure**

The grievance procedure is intended to provide a formal process for the resolution of grievances. It is not, however, intended to be a substitute for healthy and appropriate communication between employees and supervisors, nor is it intended that the grievance procedure be used to harass supervisors or interfere with the operations of the District. Before the grievance procedure is started, employees should attempt to resolve disputes, complaints, and concerns with their immediate supervisors by discussing such matters informally.

### **9.20 Grievance Procedure**

The grievance procedure shall consist of the following steps:

Step 1. An employee may present a written complaint to his or her immediate supervisor setting forth the subject of the grievance, identifying the policy or policies at issue, and requesting consideration pursuant to this procedure. The employee and the supervisor shall confer on the matter and the supervisor shall respond to the complaint, orally or in writing, within \_\_\_\_ ( ) working days. A supervisor shall advise the Personnel Director [or other appropriate person] of the grievance.

Step 2. If the grievance is not resolved at Step 1, the employee may, within \_\_\_\_ ( ) working days of the supervisor's response, request in writing that a meeting be held between the employee and [the Personnel Director, department head, or next level supervisor, whichever is appropriate]. Such request shall also specify the nature of the grievance and the policy or policies at issue. The employee and [appropriate person] shall meet as soon as is practicable thereafter and [the appropriate person] shall respond to the grievance in writing within \_\_\_\_ ( ) working days of that meeting, circumstances permitting.

Step 3. If the grievance is not resolved at Step 2, the employee may, within \_\_\_\_ ( ) working days after receiving the Step 2 response, request in writing that a meeting be held between the employee and [the District's Chief Executive Officer]. The employee and [the Chief Executive Officer] shall meet as soon as is practicable and [the Chief Executive Officer] shall respond to the grievance within \_\_\_\_ ( ) working days, circumstances permitting. The decision of the [Chief Executive Officer] shall be final.

Any grievance not pursued to the next step within the time specified will be

considered resolved. The time limits for taking any action under this policy may be extended by agreement. The failure of any District supervisor to respond to a grievance within the time limits specified in this policy or agreed upon should be reported to the [Personnel Director or other appropriate person]. An employee filing a grievance shall have the sole right to determine whether to pursue a grievance from one step to the next.

## **10.00 EMPLOYEE RECORDS**

### **10.10 Personnel Records**

Personnel records are retained by the District concerning all employees. Such records ordinarily include applications, insurance forms, payroll deduction authorizations, performance appraisals, certain pay records, transfer and promotion forms, records of disciplinary action, training records, and any certificates or credentials required for an employee's job. Other information concerning employees may be kept as personnel records, in the discretion of the District.

In order to keep personnel records current, the Personnel Department [or appropriate person] must be notified of any change in any employee's address, phone number, marital status, or military status; any birth or death in any employee's immediate family; any change in the name or telephone number of the person to be notified in case of emergency; any change in insurance beneficiary; or any other information needed to maintain accurate records. Each employee is responsible for providing the District with records concerning any licenses or certificates required for the performance of his or her job, as well as any documents showing that education or training relevant to employment has been completed.

**Comments:** *Personnel records policies are not required by law. It is useful to advise employees of the need to keep the district informed of changes in basic information ordinarily required by the district.*

### **10.20 Release of Information**

Personnel records are considered confidential subject to statutory requirements. Employees may examine their own personnel records, except for letters of reference, by contacting the Personnel Department [or appropriate person]. Employees may authorize the release of specified personnel records by executing a written request designating the record(s) to be released and the person or entity to whom they may be released.

No personal information on past or present District employees shall be provided by the District via telephone inquiries, except to confirm or deny information presented by a third party. Responses to requests by mail shall be limited to confirmation of documented information provided by a third party, unless such requests for information are accompanied by an authorization to release the information requested, signed by the employee.

A copy of any written information sent to a third party concerning a former or current employee shall also be sent to the last known address of the employee.

**Comments:** *Employees have a statutory right to review their personnel files, except for letters of reference. Special districts are required to keep personnel records confidential except for employment applications, employment agreements, any amount paid or benefit provided incident to termination of employment, performance ratings, and any compensation, including expense reimbursement, made to any employee.*

*The third paragraph of this policy reflects a requirement of Colorado law.*

## **11.00 SEPARATION FROM EMPLOYMENT**

An employee may separate from employment by disciplinary termination, layoff, resignation, or retirement.

### **11.10 Disciplinary Termination**

Employees who are terminated for disciplinary reasons are not eligible for rehire. Such employees shall be paid for accrued but unused compensatory time and vacation, but shall not be paid for accrued but unused sick leave. Employees who are dismissed for disciplinary reasons may be entitled to continue coverage under the District's group health and dental insurance programs at their own expense as provided by state and federal law.

**Comment:** *This policy summarizes what is required of employers when employees are discharged for disciplinary reasons.*

### **11.20 Layoff**

Employees who are laid off are eligible for rehire. At the time of lay off, employees shall be paid for accrued but unused compensatory time and vacation, and for accrued but unused sick leave at \_\_\_\_\_ ( ) their regular rate of pay. Laid off employees are eligible to continue coverage under the District's group health and dental insurance programs at their own expense as provided by state and federal law.

**Comment:** *Laid off employees are entitled to be paid for unused compensation time and vacation and to continue group health and dental insurance at their expense for such time as the law requires. Any additional payments or benefits are optional.*

### **11.30 Resignations**

An employee who resigns in good standing is eligible for re-employment with the District. An employee resigns in good standing if he does not resign under threat of discharge, gives the District at least \_\_\_\_\_ ( ) weeks notice, and completes necessary exit forms. A resignation may be withdrawn prior to its effective date if approved by the District.

Employees who resign shall be paid for all accrued but unused compensatory time and vacation, and for accrued but unused sick leave at \_\_\_\_\_ ( ) their regular rate of pay [or one-half their regular rate of pay].

**Comment:** *Employees who resign are entitled to be paid in full for accrued but unused compensatory time and vacation upon separation, but need not be paid for accrued but unused sick leave. At the employer's discretion, they may be paid for some or all accrued but unused sick leave.*

*The first paragraph of this policy is primarily intended to encourage employees to give advance notice of impending resignations.*

#### **11.40 Retirement**

Employees who retire are not eligible for rehire. Upon retirement employees shall be paid their accrued but unused compensatory time, vacation and sick leave.

**Comment:** *As with other forms of separation, retiring employees need not be paid for unused sick leave.*

#### **11.50 Exit Procedure**

Employees who are laid off, resign, or retire shall contact the Personnel Department [or appropriate person] to provide all information required for separation and to make arrangements concerning final pay, payment for accrued leave, and continuation of benefits.

## 12.00 MISCELLANEOUS POLICIES

### 12.10 Political Activity

Any District employee has the right as a citizen to participate fully in the political process. No District employee, however, shall campaign for any candidate or cause on District time or using District resources. No District employee shall publicly campaign for any candidate or cause while wearing a District uniform or District insignia.

**Comment:** *Public employees have a First Amendment right to engage in political activity, but they do not have the right to use public resources to influence elections. Any restrictions on employee political activity should be carefully formulated to ensure district neutrality in elections, not to inhibit legitimate First Amendment activity of employees.*

### 12.20 BOARD MEMBERSHIP OF EMPLOYEES

A board member may not be employed by the district.

Where a board member applies for employment with the district, he or she must resign from the board if employment is offered and accepted. No board member may begin employment with the district until after the effective date of his or her resignation.

Where an employee of the district is elected to the district board, he or she must take a leave of absence for his or her term of office [or must resign his or her employment with the district]. Failure to do so shall result in termination of employment.

**Comment:** *§32-1-902(3), C.R.S., effectively precludes district directors from district employment by prohibiting a director from receiving compensation as an employee of the special district on whose board he or she serves. At minimum, therefore, an employee elected to a district board must take an unpaid leave of absence during his or her term of office. A district is not required to grant a leave of absence under such circumstances, however. An employee may be required to resign or be terminated if he or she wishes to serve on the board.*

*A board probably can adopt a broader policy than this one, i.e., a policy prohibiting employment of board member spouses or other close relatives of board members. Policy 5.60 regarding nepotism could be applied to relatives of board members as well as to relatives of employees.*

### **12.30 Smoking**

The District reserves the right to designate no smoking areas. All such areas shall be posted as such. Employees who smoke in designated no smoking areas shall be subject to discipline.

Employees who are assigned offices may designate their offices as no smoking areas by posting appropriate notices. Any group of employees assigned to an enclosed area may unanimously agree to designate their work area as a no smoking area with the approval of their supervisor. Appropriate notices shall be posted in any area so designated.

**Comment:** *Smoking policies are completely optional, although various bills have been introduced in the legislature from time to time concerning smokers' rights.*

### **12.40 Expenses**

The District reimburses employees for expenses reasonably incurred in the course of District business, provided such expenses have been authorized in advance or are determined by the District, in its discretion, to have been necessarily incurred under circumstances where advance approval was not reasonably possible. Employees seeking reimbursement for expenses will ordinarily be required to document those expenses.

The District shall not approve meal expenses per person, including tips, greater than \$\_\_\_ for breakfast, \$\_\_\_\_\_ for lunch, and \$\_\_\_\_\_ for dinner.

The District shall reimburse employees for use of their personal vehicles on District business at the rate of \$\_\_\_ per mile.

All requests for reimbursement for expenses shall be submitted on the District's expense form.

### **12.50 Outside Employment**

Any employee of the District who wishes to engage in outside employment shall notify his or her immediate supervisor [or other appropriate person] prior to accepting such employment. The employee's supervisor shall contact the Personnel Director [or other appropriate person] for approval of such outside employment.

No District employee shall engage in outside employment which interferes with the proper and effective performance of his or her duties or which results in a conflict of interest. Requirements of employment with the District shall have priority over any requirements of outside employment.

### **12.60 Health Examinations**

The District reserves the right to require physical or psychological examinations of any District employee, at District expense, as follows:

a) to determine the ability of an applicant who has been offered employment to perform job-related functions required by business necessity. [In the alternative: All applicants who are offered employment shall be examined;]

b) when there is a need to determine whether an employee is able to perform the essential functions of his or her job;

c) as may be required to determine the necessity or feasibility of reasonable accommodations for a disability;

d) periodically, as may be necessary to comply with fitness for duty or monitoring requirements imposed by law.

Results of all physical or psychiatric examinations shall be treated as confidential records by the District and shall be maintained separately from District personnel records.

**Comment:** *Colorado law requires that employers pay for mandatory health examinations.*

*The Americans with Disabilities Act restricts the right to require employee examinations for employers with more than 14 employees. EEOC regulations permit physicals in the circumstances outlined in this policy. Certain terms used in this policy, such as "essential functions" and "business necessity" may require consultation with legal counsel in any given instances. Note that subparagraph (a) is presented in the alternative.*

## **12.70 Desks/Lockers/Storage/Inspections**

The District reserves the right to open and enter any office, desk, locker, file cabinet, or other storage location within District premises and to inspect District vehicles and any containers brought into the workplace. Although an employee may be assigned an office, desk, vehicle, locker, file cabinet, or other storage area or device, such assignment does not create an expectation of privacy in the use of such items or areas.

**Comment:** *A public employer's right to search offices, desks, lockers, or file cabinets is not absolute. This policy is intended to clarify the District's right of access to such places.*

## **12.80 Staff Use of the Internet**

All computers having Internet access must be used in a responsible, efficient, ethical and legal manner. Failure to adhere to this policy may result in revocation of access privileges and may result in disciplinary action, including termination.

Employee use of the Internet must be consistent with the objectives of the District. Transmission or access of any material in violation of any U.S. or state law or regulation is prohibited, as is transmission or access of non-work-related material. Access to sexually-oriented material is specifically prohibited. The District reserves the right to determine what use of the Internet in the workplace is appropriate.

Internet transactions and e-mail messages are not private. District staff and

administrators may monitor these transactions and messages at any time, for any reason without notice to the user.

Security on the District's computer system is a high priority. The District is to be notified of known or suspected security problems. Any user identified as a security risk, or as having a history of problems with other computer systems, may be denied access to the Internet.

Vandalism will result in cancellation of privileges. Vandalism is defined as any malicious attempt to harm or destroy data of another user, the Internet, or any agencies or other networks that are connected to the Internet. This includes, but is not limited to, the uploading or creation of computer viruses.

Without specific permission from the District, staff members are prohibited from accessing fee services via the Internet. If such services are accessed, the staff member will be responsible for any fee or cost involved.

All employees shall be required to agree in writing to the conditions of this policy, and to such other terms and conditions as the District may require, as a condition to use of the Internet in the workplace.

#### **12.90 Staff Use of Electronic Mail**

Electronic mail is an electronic message that is transmitted between two or more computers or electronic terminals, whether or not the message is converted to hard copy format after receipt and whether or not the message is viewed upon transmission or stored for later retrieval. Electronic mail includes all electronic messages that are transmitted through a local, regional, or global computer network.

All District electronic mail systems are owned by the District and shall be used for the purpose of conducting official District business only. All other uses, including personal use, are prohibited.

Users of District e-mail systems are responsible for their appropriate use. All illegal and improper uses of the electronic mail system, including but not limited to pornography, obscenity, harassment, solicitation, gambling and violating copyright or intellectual property rights are prohibited. Use of the electronic mail system for which the District will incur an expense without express permission of a supervisor is prohibited.

Electronic messages are not for private or confidential matters. Because there is no guarantee of privacy or confidentiality, other avenues of communication should be used for such matters.

In order to keep District electronic mail systems secure, users shall not leave the terminal unsigned on when unattended and shall not leave their password available in an obvious place near the terminal or share their password with anyone except the electronic mail system administrator.

Electronic messages are not private. The District retains the right to monitor,

review, store and disclose all information sent over the District electronic mail system at any time for any reason, without notice to the employee.

Except as provided herein, District employees are prohibited from accessing another employee's electronic mail without the express consent of the employee. All District employees are advised that electronic mail messages can be retrieved even if they have been deleted and that statements made in electronic mail communications can form the basis of various legal claims against the individual author or the District.

Electronic mail sent or received by the District or the District's board of directors and employees may be considered a public record subject to public disclosure or inspection under the Colorado Open Records Act.

District employees shall be subject to disciplinary action, including termination, for violation of this policy and regulation.

All District employees shall sign an acknowledgment form stating they have received and read the policy and regulation. The form will be maintained in the employee's personnel file.