



# City of Elkins

## Personnel Committee Meeting

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August 5, 2024  
1:00 PM  
401 Davis Avenue  
Council Chamber, 2nd Floor

**Charter Authority of the Personnel Committee:** Review and propose to Council employment policies, including employee compensation and benefits and an employee handbook. Review applications for primary staff positions recommended by the Mayor and make hiring recommendations to Council.

### AGENDA

1. **Call to order and roll call**
2. **Public comment**
3. **Minutes**
  - a. Proposed minutes for the meeting of July 1, 2024
4. **New business**
  - a. Personnel Policy update
5. **Announcements**
6. **Adjournment**



## CITY OF ELKINS AGENDA ITEM REPORT

|                          |                                                        |
|--------------------------|--------------------------------------------------------|
| <b>Meeting Date:</b>     | August 5, 2024                                         |
| <b>Section:</b>          | Minutes                                                |
| <b>Category:</b>         | Action Item                                            |
| <b>Agenda Item Name:</b> | Proposed minutes for the meeting of July 1, 2024       |
| <b>Recommended By:</b>   | City Clerk                                             |
| <b>Summary:</b>          | Minutes for the committee's meeting of July 1          |
| <b>Fiscal Impact:</b>    | n/a                                                    |
| <b>Recommendation:</b>   | Consider for approval                                  |
| <b>Attachments:</b>      | 1. Personnel Committee - 2024_07_01 - minutes_proposed |

# **PERSONNEL COMMITTEE REGULAR MEETING MINUTES**

***401 Davis Avenue  
City Hall, Council Chambers  
July 1, 2024  
1 p.m.***

Present were members: R. Chenoweth (chair), C. Thompson.

M. Hinchman was absent.

Also present were: Mike Kesecker (operations manager), Steve Himes (fire chief), Travis Bennett (police chief), Melissa Washington (human resources), J. Deighan (communications), and Sutton Stokes (city clerk).

## **PUBLIC COMMENT**

There was no public comment.

## **MINUTES**

Thompson **MOVED APPROVAL OF THE MINUTES OF THE MEETING OF MAY 6, 2024.** The motion carried.

## **NEW BUSINESS**

Thompson **MOVED RECOMMENDING COUNCIL APPROVAL OF PROPOSED NEW HOLIDAYS ON THE LAST FRIDAY OF FOREST FESTIVAL, THE FRIDAY AFTER THANKSGIVING, AND CHRISTMAS AND NEW YEAR’S EVE (OR THE FRIDAY BEFORE WHEN THESE FALL ON WEEKENDS).** The motion carried.

Thompson **MOVED RECOMMENDING COUNCIL APPROVAL OF THE ADDITION OF SICK LEAVE TO THE LEAVE DONATION PROGRAM, AS WELL AS REQUIRING THAT DONORS RETAIN AT LEAST 160 HOURS COMBINED ANNUAL/SICK LEAVE AFTER A DONATION IS MADE.** The motion carried.

The committee reviewed proposed changes to the city’s Personnel Policy but took no action.

The meeting adjourned at 1:38 p.m.

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Name & Title

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Signature



## CITY OF ELKINS AGENDA ITEM REPORT

|                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|--------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Meeting Date:</b>     | August 5, 2024                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>Section:</b>          | New business                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>Category:</b>         | Action Item                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>Agenda Item Name:</b> | Personnel Policy update                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>Recommended By:</b>   | Human Resources, City Clerk                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>Summary:</b>          | <p>City staff is seeking approval to move forward with the city's Personnel Policy. At Monday's meeting, we wish to update you and have highlighted the substantial changes in the personnel policy attached.</p> <p>We have updated the current personal policy due to:</p> <ul style="list-style-type: none"> <li>• Needed clarifications of existing policy.</li> <li>• Changes that will further strengthen our compliance with federal/state laws and regulations and/or widely accepted HR best practices.</li> </ul> <p>See attached memo for more information, including a summary of proposed substantial changes.</p> |
| <b>Fiscal Impact:</b>    | n/a                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>Recommendation:</b>   | Consider for recommendation to council                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>Attachments:</b>      | <ol style="list-style-type: none"> <li>1. 240701 Memo - personnel policy updates1</li> <li>2. Personnel Manual Draft Revision 240627</li> </ol>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |

# Memo

**To:** Personnel Committee

**From:** Melissa Washington, HR

**cc:** Sutton Stokes, City Clerk

**Date:** July 1, 2024

**Re:** Personnel Policy Revisions

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We are seeking approval to move forward with the city's Personnel Policy. At Monday's meeting, we wish to update you and have highlighted the substantial changes in the personnel policy attached.

We have updated the current personal policy due to:

- Needed clarifications of existing policy.
- Changes that will further strengthen our compliance with federal/state laws and regulations and/or widely accepted HR best practices.

We recommend you review the information presented in advance of the meeting; come with any initial questions you might have. Between now and the next council meeting, we will continue to edit for grammatical consistency without changing any of the policies.

If your committee approves on July 1, we will then bring the final version to full council on July 11 so that it may be considered for official adoption.

Here is a summary of the policy effects of the proposed changes:

1. Updated introduction and included a section for the resources and where to go for questions. Included a purpose section for the personnel manual. (pp. 1-2)
2. Policy enabling temporary adjustment of policy by staff when urgently required by law, to be approved by council as soon as possible. (TBD)
3. Equal Employment Opportunity now has a disability and accommodation section, religious accommodation, pregnancy accommodation, and sexual and other unlawful harassment section. (pp. 4-6)
4. Providing greater clarification on the different employment types. (p. 8)

5. Removing the old step and grade system pending implementation of a new framework. Recommendation is for any new compensation schemes to be standalone documents, not included in the city's overall Personnel Policy. (deleted)
6. Updated interviewing process and included a section on conditional offer letters of employment and the pre-hire process to include background checks. (pp. 10-11)
7. Section on Romantic Relationships at Work, previously only a very short section that needed clarification. (p. 12)
8. Included Orientation and training section. (p. 13)
9. Added section on personal data changes. Up to date information to be given to payroll clerk promptly. (p. 14)
10. Added an open-door policy to encourage staff to reach out to their supervisor or respective administrative officer with any concerns. (p. 14)
11. Updated the standards of Workplace Conduct (pp. 14-15)
12. Added an Anti-Retaliation policy to encourage "A Speak Up Culture". (p. 16)
13. Outside employment section is much more thorough; previously called moonlighting and was a short section. (pp. 21-22)
14. Payment of Police and fire Wages: we recommend that these sections simply reference state code, as the city has no latitude in designing civil-service pay policies. (p. 22)
15. Section detailing Paycheck deductions and Reporting Errors and how employees should handle. (p. 23)
16. Meal and Rest Breaks – Policy previously didn't stipulate number of hours worked until a meal break required by law. (p. 25)
17. Added a Lactation Accommodation – previously policy didn't include (p. 26)
18. Call out Pay - Eligibility for call-out pay is at the supervisor's discretion. Previously stated it was at the discretion of the administrative officer. (p. 28)
19. Business Travel Reimbursement and Per Diem Pay – Updated to match current policy and included a line about fraudulent use of the P-card as requested by the state auditor. (pp. 29-30)
20. FMLA Policy – Updated the policy to be more comprehensive. (pp. 35-41)
21. Military Leave Policy is more detailed to clarify eligibility, notice, and compensation, and reinstatement (p. 42)
22. Office Technology and Systems use is much more comprehensive and will help protect the city from misuse by putting guidelines in place. (pp. 46-49)
23. Workplace Safety is comprehensive and there is a dedicated section (p. 50)
24. Solicitation and Visitors – Policy now includes a non-solicitation during work time (p. 64)
25. Separation from employment and the different types of separation to include exit interviews. (pp. 68-69)

##

City of Elkins  
**Personnel Manual**  
**Revised 06/27/2024**

Adopted by Elkins City Council [date]



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## 1. GENERAL INFORMATION

### e. **Welcome**

Welcome to the City of Elkins, West Virginia. One of the keys to our success is hiring good employees. We have hired you because we believe you have the skills and the potential to help our city succeed. We expect employees to perform the tasks assigned to them to the best of their abilities. We believe that hard work and commitment will benefit the City of Elkins and give all our employees a sense of pride and accomplishment.

We are glad to have you as a member of our team. We hope that your employment proves mutually satisfying. Every employee has an important role in our organization, and we value the abilities, experience, and background that each employee brings. Our employees provide the services that our city relies upon and makes Elkins a great place to live, work, and play for generations to come.

The City intends to provide employees with all the support and resources needed to perform their job effectively. If, at any time, an employee needs assistance or guidance, the employee should not hesitate to ask Human Resources.

Once again, welcome to the City of Elkins. We are glad to have you with us.

Please take time to review the policies contained in this handbook. If you have questions, feel free to ask your supervisor or to contact the Human Resources department.

### f. **Purpose of This Personnel Manual**

This Personnel Manual contains information about the employment policies and practices of the City of Elkins, West Virginia (the City). These policies reflect the City's values. We expect each employee to read this Personnel Manual carefully as it is a valuable reference for understanding your job and the City of Elkins.

No manual can anticipate every situation, and not all the City's policies and procedures are outlined in this Personnel Manual. We have summarized only some of the more important ones. If an employee has questions or concerns about this Personnel Manual or any other policy or procedure, please ask Human Resources.

These policies and procedures apply to all City employees, including those employed by the offices of elected officials and other constitutional officers, as defined by the West Virginia Code. However, where an employee enjoys civil-service coverage (e.g., police and fire department employees), none of the policies and procedures contained herein shall apply if they conflict with the requirements or procedures adopted by the pertinent civil-service commission. Where such conflicts do not exist, this manual shall apply equally to all employees.

The City posts at each of the City's regular work sites state and federal labor posters that describe employees' rights under the law. We expect employees to know the posting location for their worksite and to review these posters frequently. Employees unfamiliar with the posting location should contact their supervisor or Administrative Officer. Some legally required notices are permitted by law to be delivered electronically. Consequently, every employee is given an email account with the City to receive those notices and other important information about the City and employment.

This Personnel Manual supersedes all previously issued Personnel Manuals. The City of Elkins reserves the right to revise, delete, and add to the provisions of this Personnel Manual. All such revisions,

**Commented [A1]:** Updated introduction and included a section for the resources and where to go for questions.

**Commented [A2]:** Included a purpose section for the personnel manual.

deletions, or additions must be in writing and approved by City Council per the City Charter. No oral statements or representations can change the provisions of this Personnel Manual.

This Personnel Manual does not constitute an express or implied contract guaranteeing continued employment for any employee. No manager or supervisor has any authority to enter a contract of employment, express or implied, that changes or alters the fact that employment with the City of Elkins is at-will.

The term “management” is used throughout this manual. The City’s Charter and Code describe the authority of the council, boards, and committees, including the duties of each member of those entities. For the purposes of this manual, “management” refers to those in the daily management of the activities of the City and include the Mayor and the Administrative Officers.

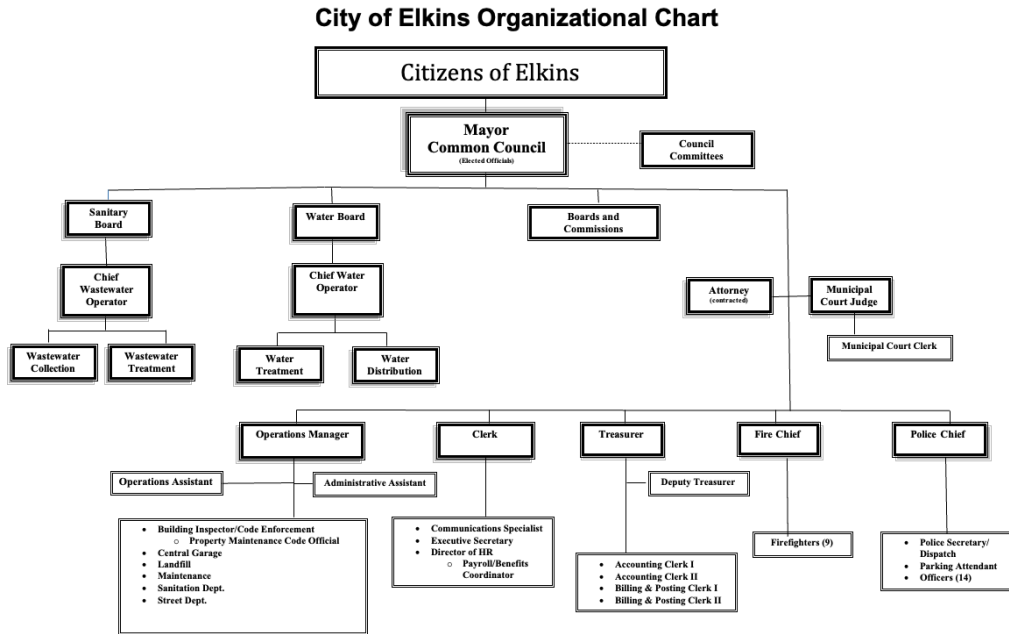
Nothing in this Manual or any other document or policy is intended to violate any local, state or federal law. Nothing in this Manual is intended to limit any concerted activities by employees relating to their wages, hours, working conditions, or any other conduct protected by Section 7 of the National Labor Relations Act. Furthermore, nothing in this Manual prohibits an employee from reporting concerns to, filing a charge or complaint with, making lawful disclosures to, providing documents or other information to or participating in an investigation or hearing conducted by the Equal Employment Opportunity Commission (“EEOC”), National Labor Relations Board (“NLRB”), Securities and Exchange Commission (“SEC”) or any other federal, state or local agency charged with the enforcement of any laws.

This manual represents our best effort to comply with all applicable laws, rules, and regulations. In the event that a conflict is discovered between this manual and any applicable laws, rules, or regulations, the HR Director is authorized to issue a temporary interpretation that authorizes diverging from this policy. Council will officially adopt the manual accordingly as soon as possible thereafter.

#### ***g. Employment At-Will***

Employment with the City of Elkins is at-will unless state law provides otherwise. This means that employment may be terminated for any or no reason, with or without cause or notice, at any time by the employee or by the City. Nothing in this Manual or any oral statement shall limit the right to terminate at-will. This at-will employment policy is the sole and entire agreement between the employee and the City of Elkins (City) regarding the fact that employment with the City is at-will. No manager or supervisor has any authority to enter into a contract of employment, express or implied that changes the fact that employment with the City is at-will. Only the City Council, by way of ordinance or resolution, has the authority to enter into an employment agreement that alters the fact that employment with the City of Elkins is at-will.

## 2. ORGANIZATION CHART



### 3. COMMITMENT TO DIVERSITY

#### *h. Equal Employment Opportunity*

The City of Elkins is an equal-opportunity employer. In accordance with applicable law, we prohibit discrimination against any applicant or employee based on any legally-recognized basis, including, but not limited to: race, color, religion, sex (including pregnancy, lactation, childbirth, or related medical conditions), sexual orientation, gender identity, age (40 and over), national origin or ancestry, citizenship status, physical or mental disability, genetic information (including testing and characteristics), veteran status, uniformed servicemember status, or any other status protected by federal, state or local law. Our commitment to equal opportunity employment applies to all persons involved in our operations and prohibits unlawful discrimination by any employee, including supervisors and co-workers.

##### ***i. Disability and Accommodation***

To comply with applicable laws ensuring equal employment opportunities for individuals with disabilities, the City of Elkins will make reasonable accommodations for the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or an employee, unless undue hardship and/or a direct threat to the health and/or safety of the individual or others would result. Any employee who requires accommodation to perform the essential functions of their job, enjoy an equal employment opportunity, and/or obtain equal job benefits should contact their Supervisor to request such accommodation. Supervisor will communicate with the employee and engage in an interactive process to determine the nature of the issue and what, if any, reasonable accommodation(s) may be appropriate. In some cases, this interactive process may be triggered without a request from the employee, such as when the City receives notice from its own observation or another source that a medical impairment may be impacting the employee's ability to perform essential job functions.

Employees who believe they need an accommodation must specify, preferably in writing, what barriers or limitations prompted the request. The City will evaluate information obtained from the employee, and possibly from the employee's health care provider or another appropriate health care provider, regarding any reported or apparent barriers or limitations and will then work with the employee to identify possible accommodations, if any, that will help to eliminate or otherwise address the barrier(s) or limitation(s). If an identified accommodation is reasonable and will not impose an undue hardship on the City and/or create a direct threat to the health and/or safety of the individual or others, the City of Elkins will generally make the accommodation, or it may propose another reasonable accommodation which may also be effective. Employees must cooperate with this process by providing all necessary documentation supporting the need for accommodation and being willing to consider alternative accommodations when applicable.

The City of Elkins will also consider requests for reasonable accommodations for medical conditions related to pregnancy, childbirth, and lactation and may request reasonable supporting documentation from employee.

Employees requesting unpaid time away from work to accommodate a disability should speak to Human Resources.

**Commented [A3]:** Equal Employment Opportunity now has a disability and accommodation section, religious accommodation, pregnancy accommodation, and sexual and other unlawful harassment section.

## ***j. Religious Accommodation***

The City will provide reasonable accommodation for employees' religious beliefs, observances, and practices when a need for such accommodation is identified, and reasonable accommodation is possible. Reasonable accommodation is one that eliminates the conflict between an employee's religious beliefs, observances, or practices and the employee's job requirements without causing undue hardship to the City.

The City has developed an accommodation process to assist employees and administration. Through this process, the City establishes a system of open communication between employees and the City to discuss conflicts between religion and work and to take action to provide reasonable accommodation for employees' needs. This process intends to ensure a consistent approach when addressing religious accommodation requests. Any employee who perceives a conflict between job requirements and religious belief, observance, or practice should bring the conflict and request accommodation to the attention of his or her Supervisor to initiate the accommodation process. The City requests that accommodation requests be made in writing and, in the case of schedule adjustments, as far in advance as possible.

## ***k. Pregnancy Accommodation***

Under the West Virginia Pregnant Workers Fairness Act, the City will provide reasonable accommodation for an employee's known limitations related to pregnancy, childbirth, or related medical conditions so long as the requested accommodation does not pose an undue hardship on the City. Employees requesting accommodation under this policy should contact their Supervisor.

"Reasonable accommodation" and "undue hardship" have the meanings given those terms in section 101 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111).

## ***l. e. Sexual and Other Unlawful Harassment***

The City of Elkins is committed to providing a work environment free of prohibited harassment. As a result, the City maintains a strict policy prohibiting sexual harassment and harassment against applicants and employees based on any legally-recognized status, including, but not limited to, race, color, religion, sex, pregnancy (including lactation, childbirth, or related medical conditions), sexual orientation, gender identity, age (40 and over), national origin or ancestry, physical or mental disability, genetic information (including testing and characteristics), veteran status, uniformed servicemember status, or any other status protected by federal, state or local law.

The City's anti-harassment policy applies to all persons involved in its operations, regardless of their position, and prohibits harassing conduct by any employee of the City of Elkins, including supervisors, managers, and nonsupervisory employees. This policy also protects employees from prohibited harassment by third parties, such as customers (i.e., citizens and/or visitors), vendors, clients, visitors, or temporary or seasonal workers. If such harassment occurs in the workplace by someone not employed by the City of Elkins, the procedures in this policy should be followed. The workplace includes actual worksites, any setting in which work-related business is being conducted (whether during or after normal business hours), City-sponsored events, or City owned/controlled property.

### ***i. Sexual Harassment Defined***

Sexual harassment includes unwanted sexual advances, requests for sexual favors, or visual, verbal, or physical conduct of a sexual nature when:

- Submission to such conduct is made a term or condition of employment; or
- Submission to, or rejection of, such conduct is used as a basis for employment decisions affecting the individual; or
- Such conduct has the purpose or effect of unreasonably interfering with an employee's work performance or creating an intimidating, hostile, or offensive working environment.

Sexual harassment includes various forms of offensive behavior based on sex. The following is a non-exhaustive list of the types of conduct prohibited by this policy:

- Unwanted sexual advances or propositions (including repeated and unwelcome requests for dates).
- Offers of employment benefits in exchange for sexual favors.
- Making or threatening reprisals after a negative response to sexual advances.
- Visual conduct: leering, making sexual gestures, displaying of sexually suggestive objects or pictures, cartoons, posters, websites, emails, or text messages.
- Verbal conduct: making or using sexually derogatory comments, innuendos, epithets, slurs, sexually explicit jokes, or comments about an individual's body or dress, whistling, or making suggestive or insulting sounds.
- Verbal and/or written abuse of a sexual nature, graphic verbal and/or written sexually degrading commentary about an individual's body or dress, sexually suggestive or obscene letters, notes, invitations, emails, text messages, tweets, or other social media postings.
- Physical conduct: touching, assault, or impeding or blocking normal movements.
- Retaliation for making reports or threatening to report sexual harassment.

### ***m. Other Types of Harassment***

Harassment based on any legally protected status is prohibited, including harassment based on: race, color, religion, sex, pregnancy (including lactation, childbirth, or related medical conditions), sexual orientation, gender identity, age (40 and over), national origin or ancestry, physical or mental disability, genetic information (including testing and characteristics), veteran status, uniformed servicemember status, or any other status protected by federal, state, or local law. Prohibited harassment may include behavior similar to the illustrations above pertaining to sexual harassment. It also includes, but is not limited to:

- Verbal conduct, including taunting, jokes, threats, epithets, derogatory comments, or slurs based on an individual's protected status.
- Visual and/or written conduct, including derogatory posters, photographs, calendars, cartoons, drawings, websites, social media, emails, text messages, or gestures based on an individual's protected status; and

- Physical conduct, including assault, unwanted touching, or blocking normal movement because of an individual's protected status.

#### ***n. Responsibility of Administrative Officers and Supervisors***

All supervisors and managers are responsible for:

- Implementing this policy, which includes, but is not limited to, taking steps to prevent harassment and retaliation.
- Ensuring that all employees under their supervision have knowledge of and understand this policy.
- Promptly reporting any complaints to the designated Human Resources Representative so the complaints may be investigated and resolved in timely manner.
- Taking and/or assisting in prompt and appropriate corrective action when necessary to ensure compliance with this policy; and
- Conducting themselves, at all times, in a manner consistent with this policy.

Failure to meet these responsibilities may lead to disciplinary action, up to and including termination.

#### ***f. Complaint Procedure***

Employees who believe they have been harassed, discriminated against or subject to retaliation by a co-worker, supervisor, agent, client, vendor, or customer (i.e., citizens and/or visitors) of the City of Elkins, in violation of the foregoing policies, or who is aware of such harassment, discrimination or retaliation against others, should immediately provide a written or verbal report to their supervisor.

If the complaint involves the supervisor, the incident should be reported directly to the Administrative Officer, unless the supervisor is the Administrative Officer, in which case the incident is reported directly to Human Resources.

Employees are encouraged, but not required, to communicate to the offending person that the person's conduct is offensive and unwelcome. Any supervisor, Administrative Officer, or elected official who receives a complaint of harassment, discrimination, or retaliation must immediately report the allegation to Human Resources, which will create a confidential file for the investigation.

The City takes claims of harassment seriously, no matter how trivial a claim may appear. All complaints of harassment, sexual harassment, other inappropriate sexual conduct, discrimination, or retaliation will be promptly, thoroughly, and impartially investigated by the City.

The City prohibits retaliation against any employee who files or pursues a harassment claim. To the extent possible, all complaints and related information will remain confidential, except to those individuals who need the information to investigate, educate, or take action in response to the complaint.

All employees are expected to cooperate fully with any ongoing investigation regarding a harassment incident. Employees who believe they have been unjustly charged with harassment can defend themselves verbally or in writing at any stage of the investigation.

To protect the privacy of persons involved, confidentiality will be maintained throughout the investigatory process to the extent practicable and appropriate under the circumstances. Investigations may include interviews with the parties involved, and, where necessary, individuals who may have observed the alleged conduct or who may have relevant knowledge.

At the conclusion of a harassment investigation, the complainant and the alleged “harasser” will be informed of the disposition. Where appropriate, the “harasser” and the “victim” may be offered mediation or counseling services.

The Equal Employment Opportunity Commission ("EEOC") and equivalent state agencies will accept and investigate charges of unlawful discrimination or harassment at no charge to the complaining party.

(See also Appendix B: Grievance Procedure)

#### ***i. Protection Against Retaliation***

Retaliation is prohibited against any person by another employee or by the City of Elkins for using this complaint procedure, reporting proscribed harassment, or for filing, testifying, assisting, or participating in any manner in any investigation, proceeding, or hearing conducted by a governmental enforcement agency. Prohibited retaliation includes, but is not limited to, termination, demotion, suspension, failure to hire or consider for hire, failure to give equal consideration in making employment decisions, failure to make employment recommendations impartially, adversely affecting working conditions, or otherwise denying any employment benefit.

An employee should report any retaliation prohibited by this policy to their supervisor, an Administrative Officer, or Human Resources. Any report of retaliatory conduct will be investigated in a thorough and objective manner. If a report of retaliation is substantiated, appropriate disciplinary action, up to and including termination of employment, will be taken.

#### ***Good Faith***

The initiation of a good faith complaint of harassment or retaliation will not be grounds for disciplinary action, even if the allegations cannot be substantiated. Any individual who makes a complaint that is demonstrated to be intentionally false may be subject to discipline, up to and including termination.

#### ***Support for Individuals Impacted by Harassment or Retaliation***

The City will strive to assist anyone who has been subjected to unwelcome harassment or retaliation to feel more comfortable in the work environment. Such assistance may, but does not necessarily include transfer or reassignment. Any such assistance is at the City’s sole discretion.

### **4. GENERAL EMPLOYMENT PRACTICES**

#### ***a. Employee Classifications***

Employees of the City of Elkins are classified as either exempt or nonexempt under federal and state wage and hour laws and are further classified for administrative purposes. The following designations are used throughout this Personnel Manual.

#### ***i. Exempt Employees***

Exempt employees are employees whose job assignments meet specific tests established by the federal Fair Labor Standards Act (FLSA) and state law and who are exempt from minimum wage and overtime pay requirements. Exempt employees are compensated on a salary basis. Employees will be informed

**Commented [A4]:** Providing greater clarification on the different employment types

whether their status is exempt or nonexempt and should consult their supervisor or their Administrative Officer with any questions or concerns regarding this status.

## ***ii. Nonexempt Employees***

Nonexempt employees are employees whose job positions do not meet FLSA or applicable state exemption tests and who are NOT exempt from minimum wage and overtime pay requirements. Nonexempt employees are eligible to receive overtime pay (or “Compensatory Time Off” if qualified; see section pp) for hours worked in excess of 40 hours in a given week, or as otherwise required by applicable state law. Employees will be informed whether their status is exempt or nonexempt and should consult Human Resources with any questions or concerns regarding this status.

## ***iii. Elected Officials***

The West Virginia Constitution and State Code and the Charter of the City of Elkins prescribe the duties and responsibilities of elected officials. It shall be the elected officials’ duty to make these policies and procedures known to their staff and to see that they are practiced.

## ***iv. Administrative Officers***

The term Administrative Officers is not used in the City Charter or City Code, although certain city officers (job titles) are named with specific duties under Title III – Administration of the City Code. The term “Administrative Officer” is used in this manual and the policies contained herein to designate those individuals who actively collaborate on the administrative aspects of the City. The main purposes of this group of employees are (1) to ensure effective, efficient administration and consistent application of policies and procedures among the various departments of the City and (2) to determine when an issue may need to be presented to the Personnel Committee or other committee of the City Council. The following positions are considered to be the Administrative Officers of this City: City Clerk, City Treasurer, Fire Chief, Operations Manager, and Police Chief.

Administrative Officers are appointed by the city council. Administrative Officers have certain express authority according to the City Charter and City Code and are collectively considered “management.”

## ***v. Civil-Service Employees***

Police officers and firefighters, other than the Chief of Police and the Fire Chief, are civil-service employees. For these employees, the State of West Virginia establishes basic prerequisites for employment such as compliance with minimum age and educational requirements. Some sections of this manual may not be applicable to these employees because the State may prescribe specifics regarding certain employment procedures, including matters such as promotion and educational opportunities, comprehensive medical insurance coverage, and Pension. As noted in section 1.2: Purpose of This Personnel Manual, none of the policies and procedures contained in this manual shall apply if they conflict with the requirements or procedures adopted by the pertinent civil service commission.

## ***vi. Full-Time Regular Employees***

Full-time employees are those employees who are normally scheduled to work a minimum of twenty (20) hours per week, year-round. Employees in this category must work a minimum of 1,040 hours in each given calendar year. Generally, they are eligible for the full benefits package, subject to the terms, conditions, and limitations of each benefit program.

### ***vii. Part-Time Regular Employees***

Employees who work less than 20 hours per week, year-round, shall be considered part-time, regular employees. They do not receive benefits. Part-time employees are prohibited from working more than 1,039 total cumulative hours per calendar year. The Payroll/Benefits Coordinator will monitor the cumulative hours of part-time regular employees each year. Upon such employees reaching 1000 hours worked each year, electronic or written notification will be made to the relevant administrator and the part-time employee's supervisor.

### ***viii. Temporary Employees***

Occasionally, circumstances exist where extra help is required for one-time projects, illness, or periods of short staffing. In such instances, the Administrative Officer may take action to hire temporary employees. Payment for such work shall be on an hourly basis, at an hourly rate agreed upon by the Administrative Officers that is comparable to the paid rate to full-time employees, and normally for a period of less than a 40-hour work week. Benefits are not available for temporary employees, except those specifically mandated by federal and/or state government. Except in unusual circumstances, temporary help will be employed for periods of less than 90 days.

These employees shall be appointed by Administrative Officers to carry out necessary seasonal or temporary work. As these employees are not entitled to fringe benefits, extensions should be carefully considered and if the services of the individuals are necessary, full-time or part-time regular employment should be considered.

Retention of a temporary employee beyond the previously mentioned ninety-day period of employment shall require recommendation by the Administrative Officer. In the event a temporary employee is granted full-time employment, and employment has been continuous, the employee shall receive the equivalent of time worked up to three months credit for personnel evaluations and for leave credit.

### ***ix. Temporary Assignment***

A temporary assignment is when an employee is assigned, on a temporary basis—typically less than 90 days and more than a workweek—the significant duties of a higher-level position. A temporary assignment does not apply to employees performing backup duties implied by their current job description.

Employees asked to serve in interim roles or assignment outside of their usual scope of work, or assuming the duties of a higher-level position that is vacant will receive an increase to base salary for the duration of the interim assignment. If the employee's new role is at the same salary level and involves substantial additional work, there will be supplemental pay of 5 – 15% depending on the nature and amount of additional work. The Administrative Officers and Human Resources will determine the supplemental pay and it will be documented in personnel files. The amount of supplemental pay will be based on whether the employee functions in both his or her current position as well as the vacated position, or only in the vacated position.

## ***b. Interviewing and Selection***

The City is an equal opportunity employer and fills positions on the basis of an individual's qualifications and ability to perform the essential functions of the job to be filled. Entry-level positions

**Commented [A5]:** 1 Updated interviewing process and included a section on conditional offer letters of employment and the pre-hire process to include background checks.

will generally be filled by external recruiting or external applicants, in accordance with the City's equal opportunity program. Job openings above entry-level will be filled by promotion from within or filled by external recruiting.

All jobs within the city that need to be filled shall be posted using the applicant tracking system the City has in place at the time. The posting shall last no less than five days. Any qualified, full-time city employees that apply for a new position shall be granted an interview, however the hiring official is not obligated to hire existing city employees. Determination of whether a city employee is qualified for the opening shall be based on possession of required certifications, licenses, years of experience, or similar reasons. A determination that an employee is not qualified, and will not be interviewed, shall be documented to the employee and hiring manager in writing. . Any employee aggrieved by such a determination retains that employee's rights under section 3.6 complaint procedure."

All postings shall include the approved job description. The posting can be a partial job description with a full description available by inquiring to Human Resources or hiring manager.

Selection decisions will be based on qualifications, ability to perform the essential functions of the job, work history, appropriate reference checks, acceptance of the conditional offer of employment letter, and successful completion of pre-hire requirements specified in the conditional offer of employment letter.

### ***c. Conditional Offer of Employment Letters***

The City will provide each applicant or employee being considered for a new position or promotion a conditional offer of employment letter before any pre-employment activity. The letter will disclose all the conditions for employment as well as all the information required under the West Virginia Wage and Payment Collections Act. Since pre-employment activity varies by position and by certain other factors (e.g., rehire or promotion), conditional offer of employment letters will vary, but all will contain language ensuring equal opportunity employment and non-discrimination.

### ***d. Employee Eligibility and Work Authorization***

The City of Elkins is committed to employing only individuals who are authorized to work in the United States and who comply with applicable immigration and employment law. As a condition of employment, every individual must provide satisfactory evidence of their identity and legal authority to work in the United States within three business days of commencing employment. If the employee cannot verify their right to work in the United States within three business days of employment, the City will be required to terminate their employment immediately.

In the event the City would receive a federal contract or subcontract that contains the Federal Acquisition Regulation (FAR), or any legal ruling or legislative mandate requiring the use of E-Verify, the City will utilize E-Verify to verify employee eligibility. E-Verify is a web-based system that allows enrolled employers to confirm the eligibility of their employees to work in the United States. E-Verify employers verify the identity and employment eligibility of newly hired employees by electronically matching information provided by employees on the Form I-9, Employment Eligibility Verification, against records available to the Social Security Administration (SSA) and the Department of Homeland Security (DHS).

Procedurally, the City will use the most current version of the required forms (e.g., I-9), which can be found at <https://www.uscis.gov/forms/all-forms>.

#### ***e. Romantic and Family Relationships at Work***

**Commented [A6]:** Section on Romantic Relationships at Work, previously only a very short section that needed clarification.

The City will not take any adverse employment action against any employees for engaging in romantic relationships during nonworking hours away from City premises. However, we will consider such relationships when they affect an employee's job performance, occur during working time or on City premises, or pose a danger of a conflict of interest.

A familial or intimate relationship among employees can create an actual, potential, or perceived conflict of interest in the employment setting, especially where one relative, spouse, partner, or member of such a relationship supervises another relative, spouse, partner, or member. To avoid this problem, we may refuse to hire or place a relative or other intimately associated individual in a position where the potential for favoritism or a conflict exists.

When a conflict of interest or potential risk is identified during employment, Human Resources and the relevant Administrative Officer(s) will work with the parties involved to consider options for resolving the problem. The initial solution may be to make sure the parties no longer work together on matters where one is able to influence the other or take action for the other. Matters such as hiring, firing, promotions, performance management, compensation decisions, and financial transactions are examples of situations that may require reallocation of duties to avoid any actual or perceived reward or disadvantage.

In some cases, other measures may be necessary, such as transfer of one or both parties to other positions and departments. If one or both parties refuse to accept a reasonable solution, such refusal will be deemed a voluntary resignation.

Failure to cooperate with this policy to resolve a conflict or problem caused by a romantic or sexual relationship between co-workers or managers or others in positions of authority in a mutually agreeable fashion may be deemed insubordination and result in disciplinary action up to and including termination.

For the purposes of this policy, a relative is any person who is related by blood or marriage, or whose relationship with the employee is similar to that of persons who are related by blood or marriage (e.g., domestic partnership or civil union status).

### ***1. Background Checks***

The City recognizes the importance of maintaining a safe, secure workplace with employees who are qualified, reliable, and nonviolent, and who do not present a risk of serious harm to their coworkers or others. To promote these concerns and interests, the City reserves the right to investigate an individual's prior employment history, personal references, and educational background, as well as other relevant information (e.g., driving record and drug testing). Consistent with legal or contractual requirements, the City also reserves the right to obtain and to review an applicant's or an employee's criminal conviction record and related information, and to use such information when making employment decisions, but only to the extent permissible under applicable law.

A pending criminal matter may be considered in appropriate circumstances for business-related reasons, consistent with applicable law. All background checks will be conducted in strict conformity with the federal Fair Credit Reporting Act (FCRA), applicable state fair credit reporting laws, and state and federal anti-discrimination and privacy laws. The City is an equal opportunity employer and will comply with applicable federal, state, and local laws relating to the use of background checks for employment purposes.

## ***2. New Hires, Promotions, and Probationary Periods***

Compensation at the full rate associated with the given position will begin on the first day of employment. Health insurance, if accepted by the employee, will begin the first day of the month after the employee is hired (see section sssss: Insurance Plans). Annual leave and sick leave will accrue from the first day of employment and can be used once time is accrued.

Civil-service employees are subject to a probationary period of employment of one year.

Employees who have been promoted or transferred are not subject to restrictions on the use of any benefits they are otherwise eligible to receive.

## ***3. Orientation and Training***

**Commented [A7]:** Included Orientation and training section.

To help you become familiar with the City and our way of doing things, the City will provide an orientation and training session within the first few days after you begin work. Some of the content of the session will depend in large part on the nature of your responsibilities, while other parts will be applicable to all employees. In addition, the City may periodically offer additional training or educational programs. Some programs may be voluntary, while others will be required.

## ***4. Access to Personnel Files***

The City will maintain a personnel file for each employee. Human Resources will have care, custody, and control over the employees' personnel files.

Managers and supervisors, other than Human Resources, may only have access to personnel file information on a need-to-know basis.

A manager or supervisor considering the hire of a former employee, or the transfer of a current employee may be granted access to the file, or limited parts of it, in accordance with anti-discrimination laws.

Personnel files may not be taken outside of the HR department.

Representatives of governments or law agencies, in the course of their duties may be allowed access to file information. This decision will be made at the discretion of The City of Elkins or HR department in response to the employee's request, a valid subpoena or valid court order.

Personnel file access by current and former employees will generally be permitted upon request as long as a request from the employee was submitted to the Human Resource Office in advance, the review will be scheduled at a mutually convenient time.

- The review will be supervised by Human Resources or their appointee.
- Employees may copy but may not remove any documents or other materials from their files. A reasonable charge, not to exceed the actual cost to the City, will be made for any copies made or requested by the employee.
- An employee who believes that any file material is incomplete, inaccurate, or irrelevant may file a grievance using the regular grievance procedure.

#### **f. *Personal Data Changes***

To better assist employees and/or their families in the event of personal emergencies, the City of Elkins needs to maintain up-to-date contact information. Maintaining accurate information in our files also is important for recordkeeping, payroll, and benefits purposes.

Changes in name, address, telephone number, marital status, number of dependents, next of kin, and/or beneficiaries should be given to the Payroll/ Benefits Coordinator promptly.

**Commented [A8]:** Added section on personal data changes. Up to date information to be given to payroll clerk promptly.

#### **1. *Voluntary Open Door Policy***

We recognize that employees may have suggestions for improving our workplace, as well as complaints about the workplace. We feel that the most satisfactory solution to a job-related problem or concern is usually reached through a prompt discussion with an employee's supervisor. Employees should feel free to contact their supervisors or respective Administrative Officer with any suggestions and/or complaints.

While we provide employees with this opportunity to communicate their views, please understand that not every complaint can be resolved to the employee's satisfaction. Even so, we believe that open communication is essential to a successful work environment and all employees should feel free to raise issues of concern without fear of reprisal.

Please note that some City policies, such as the Sexual and Other Unlawful Harassment policy, contain specific reporting procedures that must be followed. Employees should utilize this voluntary open-door policy for reports and ideas that are not addressed through the City's specific reporting procedures.

**Commented [A9]:** Added an open-door policy to encourage staff to reach out to their supervisor or respective administrative officer with any concerns.

### **5. WORKPLACE CONDUCT**

#### ***o. Standards of Conduct***

City employees frequently interact with the public, are observed by the public, and serve the public. Thus, City employees are expected to be always professional and cordial and should strive not to bring discredit upon City operations.

It is not possible to list all the forms of behavior that are considered unacceptable in the workplace, but the following are examples of infractions of rules of conduct that may result in disciplinary action, including suspension, demotion, or termination of employment:

- Falsification of employment records, employment information, or other records;

Recording the work time of another employee, allowing any employee to record another employee's work time, or allowing falsification of any time worked, whether yours or another employee's;

- Theft or the deliberate or careless damage of any City property or the property of any employee or client;
- Use of City materials, supplies, tools or products for personal reasons without advanced permission from management;
- Abuse of the City's electronic resources, including sending personal emails during working time or in a manner that interferes with the employee's work performance;

**Commented [A10]:** Updated the standards of Workplace Conduct

- Possessing, distributing, selling, transferring, using, or being under the influence of alcohol or illegal drugs in the workplace;
- Provoking a physical fight or engaging in physical fighting during working hours or on premises owned or occupied by the City;
- Carrying firearms, weapons, or dangerous substances at any time, on premises owned or occupied by the City, other than for the exceptions noted in this manual, section eeee: Weapons in the Workplace.
- Using abusive, violent, threatening, or vulgar language at any time during working hours or while on premises owned or occupied by the City;
- Absence of **three (3)** consecutive scheduled workdays without prior notice to the City;
- Failing to obtain permission to leave work during normal working hours;
- Failing to observe working schedules, including meal and rest breaks;
- Abusing or misusing paid sick leave (note: for employees subject to mandatory sick-leave laws, the provisions of the applicable policy govern sick leave issues);
- Failing to provide a certificate from a health care provider when requested or required to do so in accordance with applicable law;
- Working overtime without authorization or refusing to work assigned hours;
- Violating any safety, health or security policy, rule or procedure of the City; and
- Committing a fraudulent act or intentional breach of trust under any circumstances.

Although employment may be terminated at-will by either the employee or the City at any time without following any formal system of discipline or warning, we may exercise discretion to utilize forms of discipline that are less severe than termination. Examples of less severe forms of discipline include verbal warnings, written warnings, demotions, and suspensions. Although one or more of these forms of discipline may be taken, no formal order or procedures are necessary. The City reserves the right to determine which type of disciplinary action to issue in response to any type of performance issue or rule violation.

This statement of prohibited conduct does not alter or limit the policy of at-will employment. Either the employee or the City may terminate the employment relationship at any time for any reason, with or without cause, and with or without notice. As previously set forth in this Personnel Manual.

## ***p. Reporting and Anti-Retaliation Policy***

### ***We Encourage A Speak Up Culture***

Choosing to speak up about workplace concerns helps build a healthy, ethical, and compliant workplace and is part of our culture. To promote that culture, the City encourages employees to speak up and raise questions and concerns promptly about any situation that may violate our Code of Conduct, our core values or our policies. At City of Elkins, our people are our most valuable asset. It benefits all of us if we raise our concerns so the City may consider them carefully and address them properly.

**Commented [A11]:** Added a Anti-Retaliation policy to encourage "A Speak Up Culture".

*Follow the City's Commitment to our Code and the Law*

The City is deeply committed to promoting a culture of ethical conduct and compliance with:

- Our Code, Core Values, and policies;
- The laws, rules, and regulations that govern our business operations; and
- Best practices in accounting, auditing, and financial reporting matters.

We expect all of our employees, officers, elected officials, and agents to follow this commitment in all aspects of their work.

*Raise Good Faith Questions and Concerns About Conduct that may Violate our Code.*

Consistent with our commitment to ethics, compliance, and the law, we welcome your good faith questions and concerns about any conduct you believe may violate our Code, especially conduct that may be illegal, fraudulent, unethical, or retaliatory. For purposes of this policy, and because our Code captures standards of ethics and compliance at a broad level, references to our "Code" should be read to encompass all of our obligations to perform our jobs in a manner that is consistent with the City's policies and procedures, as well as applicable laws.

We promote an environment that fosters honest, good faith communications about matters of conduct related to our business activities, whether that conduct occurs within City of Elkins, involves one of the City's contractors, suppliers, consultants, or clients, or involves any other party with a business relationship to City of Elkins.

*The City Does Not Tolerate Retaliation*

Coming forward with questions or concerns may sometimes feel like a difficult decision, but we are committed to fostering an environment that does not deter individuals from speaking up when they observe conduct that may violate our Code. For that reason, the City will not tolerate retaliation of any kind because an employee in good faith raises a question or concern about a violation or suspected violation of our Code, our policies, or the laws and regulations under which we do business, or because the employee participates in or cooperates with an investigation of such concerns.

Retaliation is any conduct that would reasonably dissuade an employee from raising, reporting, or communicating about good faith concerns through our internal reporting channels or with any governmental authority, or from participating in or cooperating with an investigation or legal proceeding raising such concerns.

Retaliation may occur through conduct or written communication and may take many forms, including actual or implied threats, verbal or nonverbal behaviors, changes to the terms or conditions of employment, coercion, bullying, intimidation, or deliberate exclusionary behaviors.

The following are examples of potential retaliation the City prohibits:

- Adverse employment action affecting an employee's salary or compensation;
- Demotion, suspension, or termination of employment;
- Taking away opportunities for advancement;
- Excluding an employee from important meetings;
- Threatening an employee who has made a report;

- Directing an employee who has made a report not to report to outside regulators;
- Deliberately rude or hostile behaviors or speech; and
- Creating or allowing the creation of a work atmosphere that is hostile toward an employee who has reported a concern.

It is the City's policy to adhere to all applicable laws protecting our employees against unlawful retaliation or discrimination as a result of their raising good faith questions or concerns. If you are ever aware of an instance or threat of retaliation, please immediately report it.<sup>1</sup>

#### *How to Raise Questions and Concerns*

Employees can submit their good faith questions or concerns about conduct they believe may violate our Code, our policies or the laws and regulations under which we do business to:

- Their supervisor or Administrative Officer
- Any elected official
- Human Resources
- The City Attorney

When an employee raises a concern, the City will maintain confidentiality to the fullest extent possible, consistent with applicable legal requirements and the need to conduct an adequate investigation or review.

When raising concerns, we ask that employees provide as much detailed information as possible, including the background and history of the concern; names, dates and places where possible; and the reasons why the situation is cause for concern. This is especially important for concerns raised anonymously, so that the City may conduct an appropriate review and, if necessary, begin an investigation.

Please note as well that City of Elkins does not prohibit anyone from electing to communicate with, report concerns to, file a charge or complaint with, make lawful disclosures to, provide documents or other information to, or participate in an investigation or hearing conducted by the Equal Employment Opportunity Commission ("EEOC"), National Labor Relations Board ("NLRB"), Securities and Exchange Commission ("SEC"), or any other federal, state, or local agency charged with the enforcement of any laws.

Other parts of this Manual address the confidentiality of the City's proprietary information. You should note that in raising any questions or concerns you may have about potentially illegal conduct, pursuant to the 2016 Defend Trade Secrets Act (DTSA), no individual will be held criminally or civilly liable under Federal or State trade secret law for disclosure of a trade secret (as defined in the Economic Espionage Act) that is: (A) made in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney, and made solely for the purpose of reporting or investigating a suspected violation of law; or, (B) made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal so that it is not made public. And, an individual who pursues a lawsuit for retaliation by an employer for reporting a suspected violation of the law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court or arbitration proceeding, if the individual files any document containing the trade secret under seal, and does not disclose the trade secret, except as permitted by court order or arbitration award.

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<sup>1</sup> Nothing in this policy prevents the City from taking appropriate disciplinary or other legitimate employment action consistent with its usual disciplinary practices and the law. In addition, this policy prohibits and does not protect employees who knowingly and intentionally raise false concerns or reports.

### *What the City of Elkins Will Do*

The City of Elkins is committed to reviewing all reported concerns; conducting proper, fair, and thorough investigations tailored to the circumstances; and taking appropriate remedial and concluding steps as warranted. All action taken by the City in response to a concern will necessarily depend on the nature and severity of the concern. This may include initial inquiries and fact-gathering to decide whether an investigation is appropriate and, if so, the form and scope of the investigation. Note that an investigation into concerns raised is not an indication that they have either been confirmed or rejected. The City complies with the law in conducting investigations and expects that employees will cooperate with an investigation, except when voluntary compliance with an investigation is being requested. The City also expects that employees will provide truthful information when participating in an investigation and, during the investigation, will keep matters related to the investigation confidential.

Remember, all good faith concerns and reports raised under this policy will be taken seriously.

### *Adherence to This Policy*

Employees who believe that they have been subjected to any conduct that violates this policy may register a complaint using the procedures outlined above. Any employee who unlawfully discriminates or retaliates against another employee as a result of the employee's protected actions as described in this policy may be subject to corrective action, up to and including termination.

## ***q. Confidential City Information***

The City's confidential and proprietary information is vital to its current operations and future success. Each employee should use all reasonable care to protect or otherwise prevent the unauthorized disclosure of such information.

In no event should employees disclose or reveal confidential information within or outside the City without proper authorization or purpose.

"Confidential Information" refers to a piece of information, or a compilation of information, in any form (on paper, in an electronic file, or otherwise), related to the City's business that the City has not made public or authorized to be made public, and that is not generally known to the public through proper means.

By way of example, confidential or proprietary information includes, but is not limited to, nonpublic information regarding the City's business and clearly identified as an exemption in the Freedom of Information Act (reference <https://www.dol.gov/general/foia/exemptions>). Additionally, employees who by virtue of their performance of their job responsibilities have the following information, should not disclose such information for any reason, except as required to complete job duties, without the permission of the employee at issue: social security numbers; driver's license or resident identification numbers; financial account, credit or debit card numbers; and/or security and access codes or passwords that would permit access to medical, financial, or other legally protected information.

Confidential Information does not include information lawfully acquired by non-management employees about wages, hours or other terms and conditions of employment, if used by them for purposes protected by §7 of the National Labor Relations Act such as joining or forming a union, engaging in collective bargaining, or engaging in other concerted activity for their mutual aid or

protection. Nothing in this Personnel Manual prohibits an employee from communicating with any governmental authority or making a report in good faith and with reasonable belief of any violations of law or regulation to a governmental authority; disclosing Confidential Information which the employee acquired through lawful means in the course of employment to a governmental authority in connection with any communication or report; or from filing, testifying, or otherwise participating in a legal proceeding relating to any violations, including making other disclosures protected or required by any whistleblower law or regulation to the Securities and Exchange Commission, the Department of Labor, or any other appropriate government authority.

Further, employees are hereby notified that under the 2016 Defend Trade Secrets Act (DTSA): (1) no individual will be held criminally or civilly liable under Federal or State trade secret law for the disclosure of a trade secret (as defined in the Economic Espionage Act) that: (A) is made in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and made solely for the purpose of reporting or investigating a suspected violation of law; or, (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal so that it is not made public; and, (2) an individual who pursues a lawsuit for retaliation by an employer for reporting a suspected violation of the law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court or arbitration proceeding, if the individual files any document containing the trade secret under seal, and does not disclose the trade secret, except as permitted by order in that proceeding.

#### ***r. d. Personal Appearance***

The image the City of Elkins projects to the public is reflected in the appearance of our employees. Simply stated, employees should look well-groomed and should be dressed appropriately for their specific duties. If a uniform is provided for a specific job it should be worn. Employees are expected to use good judgment in their appearance and grooming, keeping in mind the nature of the work, their own safety and the safety of co-workers, and their need to interact with the public.

Below are a few guidelines for professional appearance:

- Clothing should not constitute a safety hazard.
- All employees should practice commonsense rules of cleanliness and comfort.
- When jeans are appropriate for the position, the jeans must be in good condition.
- Garments that are unnecessarily revealing, sweatpants, and other similar apparel are generally not permitted.
- Personal appearance should include cleanliness. If an employee shaves, then the employee's facial hair should be clean-shaven or trimmed. If an employee does not shave, facial hair should be clean.
- Jewelry may be restricted for safety reasons, based on the position.
- Tattoos are acceptable as long as they're not offensive, unprofessional, or distracting.

**Commented [A12]:** Added a few conditions on appearance and also on tattoos.

Separate policies may apply for civil service employees.

We encourage employees to seek the advice of their supervisor if they have questions regarding appropriate dress or appearance at work. Employees who report to work improperly dressed or groomed

may be instructed by their supervisor to return home to change. The time that nonexempt employees are absent for this purpose will be unpaid unless state law requires otherwise.

Nothing in this policy is intended to prevent employees from wearing a hair or facial-hair style that is consistent with their cultural, ethnic, or racial heritage or identity. This policy will be interpreted to comply with applicable local, state, or federal law.

### ***i. Religious, Medical and Disability Accommodations***

The City will reasonably accommodate exceptions to this policy if required due to an employee's religious beliefs, medical condition, or disability. Employees who need such an accommodation should contact their supervisor or respective Administrative Officer.

### ***s. Attendance and Punctuality***

Employees are expected to be regular in attendance and to be punctual. If employees are absent, their work generally must be performed by others or go undone. To limit problems caused by employees' unapproved absences, we have adopted the following policy.

Employees are expected to report to work as scheduled, prepared to start work. Employees are also expected to remain at work for their entire work schedule, except for meal or break periods, or when required to leave on authorized City business or other authorized reason. Unapproved late arrivals, early departures or other absences from scheduled hours are disruptive and must be avoided.

If an employee is unable to report for work on any particular day the employee must contact the employee's supervisor at least one hour in advance of the time the employee is scheduled to begin working for that day (unless it is impossible to do so, in which case the employee must call as soon as possible thereafter). Employees who need to leave early must notify their supervisor as soon as they learn that they will not be able to complete their scheduled shift. The City may inquire about the general reason for an absence, tardiness, or early departure. Unless extenuating circumstances exist, employees must contact their supervisor in on each scheduled day on which they will not report to work, unless they are on an approved leave of absence.

Excessive absenteeism or tardiness may result in disciplinary action up to and including termination of employment unless the absence or tardiness is excused or approved. The following are examples of types of time off that will not be considered grounds for disciplinary action under this policy:

Time off that was previously approved, including vacation;

Paid sick and safe time provided under a mandatory sick and safe time leave law;

Approved state and federal leaves of absence, including but not limited to jury duty leave, military leave, leave protected under the Family and Medical Leave Act or similar state laws, and time off or leave specifically approved by the City as an accommodation under the Americans with Disabilities Act or similar state laws; and/or

Time off due to a work-related injury that is covered by workers' compensation.

Each situation of absenteeism, tardiness or early departure will be evaluated on a case-by-case basis. Even one unexcused absence or tardiness may be considered excessive, depending upon the circumstances. However, the City will not subject employees to disciplinary action or retaliation for an absence, tardiness or early departure for which discipline may not be imposed under applicable law. If

the employee believes that an absence, tardiness, or early departure is (or should be) excused pursuant to applicable law, the employee should notify their manager of this fact as soon as possible, but no later than at the time of the absence, tardiness, or early departure. (For the required timing of an employee's notice of the need for a foreseeable leave of absence, see the applicable leave policy). If an employee believes they have mistakenly been subject to disciplinary action for an absence, tardiness, or early departure that the employee believes is or should be excused/approved, the employee should promptly discuss the matter with their supervisor or administrative officer. The City will investigate the situation and any errors will be corrected. Employees who fail to report for work without any notification to their supervisor and whose absence continues for a period of three (3) days (No Call / No Show) will be considered to have abandoned and voluntarily terminated their employment, absent extraordinary circumstances.

#### ***t. Personal Devices***

Although the City permits employees to bring personal electronic devices, including cellular phones, smartphones, and PDAs, into the workplace, employees are expected to remember that working time is for work.

Therefore, employees should only engage in personal phone calls and communications and other use of personal electronic devices during nonworking time, including breaks and meal periods. Outside of this time, personal phone calls and other personal device use should be kept to a minimum and for emergency use only.

#### ***u. Personal Calls***

While employees are at work, they are expected to perform their job duties and responsibilities. Personal calls should be made primarily outside of working time.

The City may monitor the frequency and duration of an employee's usage of its telephones. In the event it is necessary to make a personal long-distance call, employees may be asked to reimburse the City of Elkins for the cost, when applicable. Abuse of the City's telephones and/or long-distance service may result in discipline, up to and including termination of employment.

#### ***v. Contact with the Media***

To ensure that the City communicates with the media in a consistent, timely and professional manner about matters related to the City, you should notify the City's Communications Specialist anytime you are contacted by the media. Do not respond to media inquiries on the City's behalf without authorization. This rule does not prevent you from speaking with the media, but you should not attempt to speak on behalf of the City unless you have specifically been authorized by the mayor or city council to do so.

#### ***w. Outside Employment***

The City respects each employee's right to engage in activities outside of employment such as those that are of a personal or private nature, to the extent that such activities do not create a conflict of interest as described in the State's Code of Ethics, and/or do not adversely affect the employee's ability to perform the employee's job. Under certain circumstances, however, if an employee's personal conduct adversely affects performance on the job or makes it impossible for the employee to carry out any or all job duties while at work, appropriate disciplinary action up to and including termination of employment may be appropriate.

**Commented [A13]:** Outside employment section is much more through; previously called moonlighting and was a short section.

An example of an activity that might adversely affect an employee's ability to perform their job duties is outside employment. While the City does not prohibit employees from holding other jobs, the following types of outside employment are generally prohibited (to the extent allowed under applicable law):

Employment that conflicts with the employee's work schedule, duties and responsibilities or creates an actual conflict of interest;

Employment that impairs or has a detrimental effect on the employee's work performance with the City;

Employment that requires employees to conduct work or related activities during working times or using any of the City's tools, materials, or equipment; and

Employment that directly or indirectly competes with the business or the interests of the City.

For the purposes of this policy, self-employment is considered outside employment.

The City will not assume any responsibility for employees' outside employment. Specifically, the City of Elkins will not provide workers' compensation coverage or any other benefit for injuries occurring from, or arising out of, such outside employment.

Furthermore, full-time public employees may not accept private pay for providing information or services within the scope of their public duties. Public employees are also prohibited from seeking or accepting employment with any person or business that has a matter before an agency on which they or their subordinates are taking or have, within the past twelve months, taken regulatory action. City employees who regularly wear a uniform and/or use City equipment (including vehicles) in the course of their City employment cannot wear those uniforms or use City equipment in the performance of other employment; an exception to this is the Police and Fire Departments while working public events within the corporate limits of the City of Elkins.

## PAY PRACTICES

### ***x. Payment of Wages***

The City intends to fully comply with all state and federal requirements concerning the payment of salaries and wages. The City will pay its employees every other Friday for a period of time consisting of fourteen (14) consecutive days beginning at 12:01 a.m. Sunday and ending at 12:00 midnight Saturday immediately preceding the pay date. If a payday falls on a Friday that is a legal holiday, then the payroll date will be on Thursday. Direct deposit is available and encouraged. Authorization forms may be obtained from the Payroll/ Benefits Coordinator.

### ***y. Payment of Police Wages***

The City pays police officers under civil service in accordance with §8-14-2 and §8-14-2a of the West Virginia Code.

### ***z. Payment of Firefighter Wages***

The City pays firefighters under civil service in accordance with §8-15-10 and §8-15-10a of the West Virginia Code.

See also 6.4: Holiday Pay and 6.10.2:Civil-Service Employees (Firefighters and Police Officers).

**Commented [A14]:** Payment of Police and fire Wages: we recommend that these sections simply reference state code, as the city has no latitude in designing civil-service pay policies.

#### **aa. Paycheck Deductions**

The City is required by federal and some state laws to make certain deductions from your paycheck each pay period. Such deductions typically include taxes and Social Security. Depending on the benefits you choose, additional deductions may occur.

The pay of some nonexempt employees may be subject to additional deductions. Such deductions will be made in accordance with state and federal law and will require written authorization from the employee.

The amount of all deductions will be listed on the employee's pay stub.

#### **bb. Reporting Errors and Obtaining More Information**

Employees, exempt or nonexempt, who have questions about deductions from their pay, believe they have been subjected to improper deductions, or believe that the amount paid does not accurately reflect their total hours worked or salary, should promptly contact their supervisor or Administrative Officer.

Every report will be fully investigated, and the City will provide the employee with any compensation to which the employee is entitled in a timely fashion.

The City complies with all applicable laws, including the Fair Labor Standards Act, and will not allow any form of retaliation against individuals who make good faith reports of alleged violations of this policy, or who cooperate in an investigation by the City, even if the reports do not reveal any errors or wrongdoing.

**Commented [A15]:** Section detailing Paycheck deductions and Reporting Errors and how employees should handle.

#### **cc. Reinstatement or Rehire**

If an employee voluntarily resigns or is terminated from employment and the Administrative Officer determines within the ninety (90) calendar days following the employee's last day of employment, that reinstatement to the same position is warranted, the employee shall be reinstated at the same rate the employee occupied at the time of their departure. If any individual is rehired after ninety (90) calendar days for the same job position the employee formerly occupied, the employee will be treated as a new employee.

All changes in pay shall be documented for the personnel file and include the following:

- Reason for change in pay;
- Amount of the change in pay, showing previous rate, new rate, and difference;
- Effective date for the change in pay;
- The pay-date the employee should expect to see the change on the employee's paycheck;
- Acknowledgements of the approving Administrative Officer, Human Resources, and the employee.

#### **dd. Performance Evaluations**

A written performance evaluation and an evaluation interview shall be conducted with each City employee, excluding elected and appointed officials, at least annually, as scheduled. The purpose of a performance evaluation is to help improve the employee's understanding of the employee's progress on the job and the supervisor's understanding of the employee's viewpoints about factors that affect the performance during the period covered by the evaluation. Scheduled evaluations provide an opportunity

to assess progress and to plan for future performance improvements, but these should never replace day-to-day communication between the supervisor and the employee regarding expectations and actual performance. Also, an evaluation should not be used in place of a disciplinary action as described in Section 10 of this manual.

The annual evaluation will also be utilized by Administrative Officers in determining employee eligibility for, promotions, demotions, reinstatement, or rehiring. Wage increases resulting from performance evaluations take effect July 1.

To be eligible for a wage increase the following must occur:

- An employee must be employed for a minimum of one-hundred eighty (180) calendar days. This provision does not apply to employees who are transferred or promoted into a different position.
- An employee must receive an overall satisfactory rating and cannot receive any unsatisfactory/below average remarks on his or her annual performance review. This appraisal shall be performed by the person having direct supervision of the employee and must be approved by the administrative officer.
- An employee who receives a written reprimand or suspension during the period of the evaluation or who has failed to fulfill the requirements of an improvement plan, shall not be eligible for a raise within that particular year.
- Elkins City Council, upon the recommendation of the Finance Committee, must identify and approve available funds to support wage increases for all employees receiving a favorable evaluation.

Employees may also be eligible for wage increases under the following circumstances:

- They obtain a new certification which enhances their applicable skills.
- A recommendation for advancement is received from an employee's supervisor and approved by the Administrative Officer.

Supervisors and department heads will also conduct performance evaluations on any employee at the end of their first ninety days of employment.

Performance evaluation records are maintained in each employee's personnel file located in the City Payroll/ Benefits Coordinator's office.

### ***ee. Holiday Pay***

For clarification, holidays count as part of the regular work week. All benefit-eligible employees receive holiday pay. For clarification on benefit-eligible employees, see [Section a: Employee Classifications](#).

Non-civil-service, non-exempt employees required to work on holidays shall receive pay at the rate of one and one-half times regular pay plus the holiday shall be counted as part of the regular work week, i.e., an employee would be compensated for 20 hours pay for an 8-hour work period on that day. In the event that work on a holiday is also overtime work (by reason of having already worked 40 hours in a work week), no additional compensation shall be provided. Time worked on a holiday in excess of eight hours shall be compensated at the rate of the normal time and one-half or be taken as compensatory time (calculated at the rate of one- and one-half times the number of hours worked). In such cases, the 40-hour-per-week rule must be met.

Civil service firefighters shall be compensated in accordance with §8-15-10a of W. Va. Code.  
Civil service police officers shall be compensated in accordance with §8-14-2a of W. Va. Code.

The above provisions do not apply to exempt employees since they do not receive overtime pay.

#### ***ff. Longevity Pay***

All Administrative Officers and full-time and part-time regular employees, including civil-service employees, are eligible to receive annual longevity pay based on years of service, providing their hire date was at least 90 days before August 31. This restriction does not apply to employees in the first ninety days after a transfer, promotion, or demotion into a different position.

Longevity pay will be issued to eligible employees during the month of October of each year based on the following years of service.

| <u>Length of Service</u> | <u>Full-time</u> | <u>Part-time</u> |
|--------------------------|------------------|------------------|
| Time 0-20 years          | \$500.00         | \$250.00         |
| Over 20 years            | \$750.00         | \$375.00         |

#### ***gg. Work Schedules***

The City is normally open for business Monday through Friday, 8:00 a.m. to 4:30 p.m. The normal workweek shall be from 12:01 a.m. Sunday through midnight the subsequent Saturday. Your supervisor will assign your work schedule.

Most city hall employees will be scheduled Monday through Friday from 8:00 a.m. to 4:30 p.m. with one half hour (unpaid) for lunch. Work times for the various departments contained within the Operation Department, Water Department, and Wastewater Department may vary. Fire and police civil-service employees' work schedules are determined by their respective chiefs.

With the approval of their immediate supervisor, employees may be permitted to adjust their work hours within the normal workweek. Staffing needs and operational demands may necessitate variations in starting and ending times, as well as variations in total hours that may be scheduled each day and week.

All employees are expected to be at their desk or designated work area at the start of their scheduled shift, ready to perform their work.

Supervisors will schedule meal and rest periods as appropriate. The City complies with federal and state laws in this regard.

If an employee clocks in or out at any time that falls inside a quarter of an hour, their time will be rounded to the nearest fifteen minutes.

#### ***hh. Meal and Rest Breaks***

It is the City's policy to comply with state and federal laws regarding meal break requirement.

Meal breaks

All employees who work six or more hours in a day are required to take an unpaid meal break of 30 minutes. Meal breaks are not counted toward hours worked. In case of emergencies, or when the tasks

**Commented [A16]:** Meal and Rest Breaks – Policy previously didn't stipulate number of hours worked until a meal break required by law

being performed do not allow for an interruption of work, the departmental supervisor may authorize an employee to work a regularly scheduled meal break. In these circumstances, the supervisor will ensure that the employee is allowed necessary restroom breaks and is either allowed to eat while working or given a rest period of short duration lasting up to twenty-minutes, which would be compensable time under this policy.

#### Enforcement

Managers are responsible for the scheduling of meal and rest periods. Employees who fail to return on time from breaks or lunch will be subject to disciplinary action and docking of pay for time missed.

### ***ii. Lactation Accommodation***

As part of our family-friendly policies and benefits, the City supports breastfeeding employees by accommodating an employee who needs to express breast milk during the workday. For up to one year after the child's birth, any employee who is breastfeeding will be provided reasonable break times to express breast milk. Employees needing breaks for lactation purposes may use ordinary paid rest breaks or may take other reasonable break time when needed. If possible, the lactation break time should run concurrently with scheduled meal and rest breaks already provided to the employee.

Employees will be relieved of all work-related duties during any break time to breast pump milk.

The City will provide employees with the use of a room or a private area, other than a bathroom or toilet stall, that is shielded from view and free from intrusion from coworkers and the public. The City will make a reasonable effort to identify a location within close proximity to the work area for the employee to express milk. This location may be the employee's private office, if applicable.

Employees should discuss with their supervisor the location for storage of expressed milk. In addition, employees should contact their supervisor during their pregnancy or before their return to work to identify the need for a lactation area.

For employees working in a jurisdiction that has a mandatory lactation accommodation law, the City will comply with all legal requirements, including providing greater or different benefits than those indicated here.

### ***jj. Timekeeping***

#### ***kk. Nonexempt Employees***

Employees who are classified as nonexempt must accurately record the time they work each day, including arrival, departure, and meal break times.

When employees receive their paychecks, they should verify immediately that their working time was recorded accurately and that they were paid correctly for all hours worked.

Nonexempt employees must report all time worked and not work any time that is not authorized by their supervisors or administrative officers. This means nonexempt employees must not start work early, finish work late, work during a meal or rest break, or perform any other extra or overtime work unless directed to do so. Employees who have questions about when or how many hours they are expected to work should contact their supervisor.

**Commented [A17]:** Added a Lactation Accommodation – previously policy didn't include

It is a violation of the City's policy for anyone to instruct or encourage another employee to work "off the clock," to incorrectly report hours worked, or to alter another employee's time records. If any employee is directed or encouraged to incorrectly report hours worked, or to alter another employee's time records, that employee should report the incident immediately to a supervisor or Administrative Officer.

## ***II. Exempt Employees***

Exempt employees are paid on a salary basis. This means the employee regularly receives a predetermined amount of compensation each pay period. Employees who are classified as exempt must accurately record the number of hours worked each day. Exempt employees must record absences from work for reasons such as sick leave, personal days, vacation, and leaves of absence.

### ***mm. Overtime Compensation***

This section explains overtime compensation for non-civil-service and civil-service employees.

### ***nn. Non-Civil-Service Employees***

The policy of the City is to keep overtime to a minimum. When operating requirements or other needs cannot be met during regular working hours, both nonexempt and exempt employees may be scheduled or expected to work overtime.

Nonexempt employees will be paid one and one-half (1.5) times their regular rate of pay for all hours worked in excess of 40 in one workweek and as otherwise required by applicable state and federal law. (Nonexempt employees have the option of receiving compensatory time in lieu of payment, as described further below.) An employee shall not receive overtime pay if the actual hours worked in the given week is 40 hours or less. Any paid time off such as holiday, sick, vacation, personal leave, or jury duty, shall not be counted towards hours worked.

All overtime work must be authorized in advance by the nonexempt employee's supervisor or Administrative Officer. Working overtime without prior authorization may result in disciplinary action.

Exempt employees may accrue compensatory time on an hour-for-hour basis for hours worked in excess of 40 in one workweek. (See explanation of compensatory time, below.)

For overtime pay calculation purposes, the workweek is the seven-day period beginning at Sunday, 12:00 AM.

### ***oo. Civil-Service Employees (Firefighters and Police Officers)***

Overtime is calculated differently for firefighters and police officers because these employee's scheduled shifts may overlap workweeks and because West Virginia State Code specifies how overtime for these employees should be calculated. For non-exempt firefighters and police officers, the City calculates overtime in accordance with State Code §8-15-10a and §8-14-2, respectively. Employees with questions regarding this calculation should contact their supervisor or Administrative Officer.

### ***pp. Compensatory Time Off***

Employees of the City may receive compensatory time off for hours worked in excess of 40 in one workweek. When using compensatory time to take time off from work, employees will be compensated

at the rate of pay that is current during the period that the compensatory time is being used, regardless of their rate of pay during the period when the compensatory time was earned.

For nonexempt employees electing to receive compensatory time in lieu of payment, this compensatory time is calculated at a rate not less than one and one-half hours for each hour worked for which overtime is required. Nonexempt employees electing compensatory time off in lieu of overtime payment must complete the appropriate form to ensure that this time is correctly recorded in the employer's records. The maximum allowed compensatory time accrual for nonexempt employees is 80 hours. Any excess hours accrued above 80 hours by nonexempt employees will be paid as overtime compensation.

Nonexempt employees must use or receive payment for accrued compensatory time no later than the last day of the last complete pay period prior to June 30th of the fiscal year in which the time has been earned. At such time, accrued compensatory time off will be paid to the employee at the regular rate earned by the employee at the time the employee receives such payment. Nonexempt employees may be paid for accrued compensatory time at any other time during the year, upon written request to the Payroll/ Benefits Coordinator.

An employee who has accrued compensatory time off in accordance with this policy shall be permitted to use such time within a reasonable time if the use of the compensatory time does not unduly disrupt the operation of the City.

For exempt employees, compensatory time off is calculated on an hour-for-hour basis. Exempt employees must provide the Payroll/ Benefits Coordinator with a written contemporaneous record of compensatory time earnings and usage.

Any employee who has accrued unused compensatory time in compliance with this policy shall, upon termination of employment, be paid for the unused compensatory time at the regular rate earned by the employee at the time the employee receives such payment.

For purposes of this subsection the term "compensatory time off" mean hours during which an employee is not working, which are not counted as hours worked during the applicable workweek or other work period for purposes of overtime compensation, and for which the employee is compensated at the employee's regular rate.

#### **qq. On-Call Pay and Call-Out**

When an hourly employee is called upon to work outside of his/her regular hours, the employee shall receive overtime pay at time and one-half for the hours worked on the call-out, at a minimum of two and one-half hours.

When call-outs are required, they shall be apportioned as reasonably as practical among the qualified employees within the department. This call-out provision does not apply to salaried supervisory personnel exempt from overtime provisions.

In those cases where an employee's normal duties require his/her presence at varying hours during any day which are over and above his/her normal work hours and such presence is routine in the overall accomplishment of his/her duties, the call-out policy does not apply. Eligibility for call-out pay is at the supervisor's discretion. If the call-out policy is not applicable, an employee will be compensated for any hours in excess of forty (40) in any one work week, under either the overtime policy or the compensatory time policy.

**Commented [A18]:** Call out Pay - Eligibility for call-out pay is at the supervisor's discretion. Previously stated it was at the discretion of the administrative officer.

**rr. *Business Travel Reimbursement and Per Diem Pay***

**Commented [A19]:** Business Travel Reimbursement and Per Diem Pay – Updated to match current policy and included a line about fraudulent use of the P-card as requested by the state auditor.

Employees' supervisors and the appropriate administrative officer must approve, in advance, the purpose and cost of out-of-town travel.

Acceptable purposes for out-of-town travel are:

- Official city business.
- Training courses, seminars, and similar events that are job related and/or required for validating certifications or maintaining/improving qualifications for the job position to which the employee is assigned.

Travel for training courses or other purposes with no direct relation to city business or the employee's job duties will not be at the City's expense.

Procedures for attending training courses or seminars:

- a.) An employee desiring to attend a training course, at the City's expense, shall submit a request to his/her supervisor. Such requests shall be submitted sufficiently in advance to allow time to adjust work schedules and arrange coverage on the job.
- b.) The supervisor will forward the request and his/her recommendation to the appropriate administrative officer for review and approval. If the administrative officer disapproves the request, no further action shall be taken, and his/her decision shall be final.

Business travel within the State of West Virginia, which is approved in advance as described above, will be reimbursed pursuant to the following guidelines:

- All reimbursements will be made to the person authorized to make the expenditures.
- Reimbursement expenses for travel will be made in a timely fashion based on submission of an approved expense report. Expense reports must be submitted within 30 days of the approved travel/training to be paid. The expense report shall be supported by receipts or other appropriate documentation.
- Mileage reimbursement for authorized use of private vehicles is at the same rate utilized by the State of West Virginia. Mileage is calculated round trip from the City building.
- A per diem rate for lodging, meals, and incidentals, will be paid to employees for authorized travel days at the same rate utilized by the U.S. General Services Administration (GSA). Where there is a conflict or a special situation, the Treasurer will decide on a case-by-case basis the possibility of covering additional expenses.
- The practice of receiving cash advances for authorized travel is an alternative to personally paying and then being reimbursed for expenses. This practice is discouraged but is available in exceptional circumstances. Administrative Officers desiring cash advances for their staff must make a written request for the cash advance and must include an accurate estimate of anticipated expenses. This request must be made well in advance of the check being issued prior to the travel taking place. An

expense report must account for all monies advanced, and any remaining balance must be returned to the City Treasurer within five (5) working days after the employee's return from the business-related travel.

- The responsibility for accurate record keeping rests with the traveler, and it is necessary to maintain good clear reporting for auditing purposes.

Reimbursement for any travel outside the State of West Virginia must be discussed at the time pre-authorization for the travel is sought. Any questions in this regard should be directed to the City Treasurer's Office.

If a Cardholder fraudulently uses their P-Card, the following actions could potentially take place: card privileges revoked, disciplinary action per the personnel policy, termination of employment and notification of potential criminal violation to appropriate authorities.

**ss.**

#### ***tt. Time Off and Leaves of Absence***

The City recognizes that its employees are the backbone to the city. Although work makes up a large portion of an employee's life, we believe that a balance between work and nonwork activities is essential to maintain quality performance and a positive work atmosphere. To support this philosophy, the City provides time off—both paid and unpaid—to eligible employees for the following situations:

Holidays

Personal Days

Annual Leave

Sick Leave

Family and Medical Leave

Military Leave

Jury and Witness Duty Leave

Voting Leave

Bereavement Leave

Other Leaves of Absence

#### ***uu. Holidays***

The City offers paid time off for the observance of specific holidays each calendar year. Typically, the City observes the following paid holidays:

- New Year's Day (January 1 of each year)
- Martin Luther King, Jr. Day (third Monday of each January)

- Presidents' Day (third Monday of each February)
- Good Friday
- Memorial Day
- West Virginia Day (June 20 of each year)
- Independence Day (July 4 of each year)
- Labor Day (first Monday of each September)
- Veterans' Day (November 11 of each year)
- Thanksgiving Day (fourth Thursday of each November)
- Christmas Day

If a holiday otherwise described in this section falls on a Saturday, then it will be observed on the preceding Friday; if a holiday otherwise described in this section falls on a Sunday, then it will be observed on the following Monday.

In addition to the holidays specified above, holidays shall be observed on any days in which an election is held throughout the state and any such other day as the Mayor and Council shall proclaim to be a legal holiday.

In addition to the paid holidays described above, City Hall is closed on the Mountain State Forest Festival Friday, the day after Thanksgiving, and starting at noon on Christmas Eve and New Year's Eve (or on the working day preceding Christmas Eve and New Year's Eve when these days fall on a weekend). These are not paid holidays. However, during these closures, and with the approval of their supervisors, City Hall employees whose job duties permit may take time off by using any accrued annual leave or compensatory time. Personal days may also be used for the day after Thanksgiving, might be eligible for use for Christmas Eve (verify the annual deadline for using personal days with the Human Resources Department), and cannot be used for New Year's Eve.

**Please see section cc: Reinstatement or Rehire**

**If** an employee voluntarily resigns or is terminated from employment and the Administrative Officer determines within the ninety (90) calendar days following the employee's last day of employment, that reinstatement to the same position is warranted, the employee shall be reinstated at the same rate the employee occupied at the time of their departure. If any individual is rehired after ninety (90) calendar days for the same job position the employee formerly occupied, the employee will be treated as a new employee.

All changes in pay shall be documented for the personnel file and include the following:

Reason for change in pay;

Amount of the change in pay, showing previous rate, new rate, and difference;

- Effective date for the change in pay;
- The pay-date the employee should expect to see the change on the employee's paycheck;

- Acknowledgements of the approving Administrative Officer, Human Resources, and the employee.
- Performance Evaluations
- A written performance evaluation and an evaluation interview shall be conducted with each City employee, excluding elected and appointed officials, at least annually, as scheduled. The purpose of a performance evaluation is to help improve the employee's understanding of the employee's progress on the job and the supervisor's understanding of the employee's viewpoints about factors that affect the performance during the period covered by the evaluation. Scheduled evaluations provide an opportunity to assess progress and to plan for future performance improvements, but these should never replace day-to-day communication between the supervisor and the employee regarding expectations and actual performance. Also, an evaluation should not be used in place of a disciplinary action as described in Section 10 of this manual.
- The annual evaluation will also be utilized by Administrative Officers in determining employee eligibility for, promotions, demotions, reinstatement, or rehiring. Wage increases resulting from performance evaluations take effect July 1.
- To be eligible for a wage increase the following must occur:
- An employee must be employed for a minimum of one-hundred eighty (180) calendar days. This provision does not apply to employees who are transferred or promoted into a different position.

An employee must receive an overall satisfactory rating and cannot receive any unsatisfactory/below average remarks on his or her annual performance review. This appraisal shall be performed by the person having direct supervision of the employee and must be approved by the administrative officer.

- An employee who receives a written reprimand or suspension during the period of the evaluation or who has failed to fulfill the requirements of an improvement plan, shall not be eligible for a raise within that particular year.
- Elkins City Council, upon the recommendation of the Finance Committee, must identify and approve available funds to support wage increases for all employees receiving a favorable evaluation.

Employees may also be eligible for wage increases under the following circumstances:

- They obtain a new certification which enhances their applicable skills.
- A recommendation for advancement is received from an employee's supervisor and approved by the Administrative Officer.

Supervisors and department heads will also conduct performance evaluations on any employee at the end of their first ninety days of employment.

Performance evaluation records are maintained in each employee's personnel file located in the City Payroll/ Benefits Coordinator's office.

Holiday Pay regarding how employees are paid for the holidays listed above.

Employees who are on a continuous leave of absence are not eligible to receive holiday pay.

## ***vv. Personal Days***

With prior approval of the supervisor, personal days can be used at the employee's discretion at the equivalent hours worked for a normal shift. Only employees hired before the first day of January of each calendar year are eligible to receive personal days. Non-civil-service employees shall be entitled to three

personal days per calendar year (equivalent to twenty-four hours). Civil-service firemen will receive one personal day (equivalent to twenty-four hours). Civil-service policemen will receive two personal days (equivalent to twenty-four hours). Personal days must be used no later than the last day of the final pay period of December each year or days will be lost. Personal days are not paid out.

***ww. Annual Leave***

All full-time employees will accrue Annual leave according to the following schedule:

| <u>Length of Service Time</u> | <u>Hours Credited Per Pay</u> | <u>Total Annual Accumulation</u> |
|-------------------------------|-------------------------------|----------------------------------|
| 0-2 years                     | 3                             | 78 hours                         |
| Over 2 through 5 years        | 5                             | 130 hours                        |
| Over 5 through 9 years        | 6                             | 156 hours                        |
| Over 9 through 14 years       | 7                             | 182 hours                        |
| Over 14 through 25 years      | 8                             | 208 hours                        |
| Over 25 years                 | 9                             | 234 hours                        |

Employees' hire dates will constitute their anniversary dates, and annual leave eligibility will be calculated as of each employee's anniversary date. The term "year" as used above, shall refer to the twelve-month period running from anniversary date to anniversary date. If an employee voluntarily leaves employment or is terminated from employment and the relevant Administrative Officer determines within the ninety (90) calendar days following separation to reinstate the employee, length of service time will be calculated to include the previous employment, minus the time absent (Example: At the time of separation and employee has accrued 3 years and 3 months of service. Upon being reinstated after 30 days, the employee would resume counting years of service from this date forward adding to the 3 years and 3 months). If an individual is rehired after a separation of ninety (90) calendar days or more, accrual of benefits restarts from zero (0).

Each employee shall arrange an annual leave schedule with the employee's department head or supervisor as early in the year as possible. Employee's preferences as to annual leave schedules will be honored as much as possible; however, annual leave schedules shall be arranged in such a manner as to avoid impairment of the department's operations. Each department head shall have the final authority to determine individual annual leave schedules.

Annual leave shall be credited during all periods of paid employment. Absences from work in an authorized paid status, such as annual leave, jury leave, sick leave, funeral leave, and military leave for 30 or fewer days are creditable for leave accrual purposes. Reserve or National Guard personnel who are ordered to active duty for periods more than 30 calendar days will not accrue leave during such absences. Employees absent from work in an unauthorized status for two or more scheduled shifts will not accrue leave during such absence.

Personnel employed or personnel who terminate employment during a pay period will be credited with annual leave as follows:

| <u>Hours Worked During Pay Period</u> | <u>Leave to be Credited For Pay Period</u> |
|---------------------------------------|--------------------------------------------|
| 26 hours or less                      | 1/3 of entitlement                         |
| 27 -53 hours                          | 2/3 of entitlement                         |
| 54 or more                            | 100% of entitlement                        |

Annual leave accumulations shall be limited; however, the following provisions shall apply in the granting of leave:

No employee shall be authorized to use more than 160 hours of continuous leave. The maximum leave that may be taken in a calendar year shall not exceed the amount of leave earned in 26 pay periods (1 year) by more than 40 hours. For example, an employee who earns 234 hours in one year may take a maximum of 274 hours, if available, but in no more than 160-hour increments. An employee who earns 78 hours of leave in one year may take a maximum of 118 hours in a calendar year, if available. In both cases, the maximum amount that can be taken in a year is the amount earned plus 40 hours from a previous year.

On termination of employment, an employee will not be compensated for any unused accrued annual leave exceeding the maximum amount earned in a 12-month period (26 pay periods).

Accrued leave may be granted in increments of one hour or more, and it may be taken by the employee for whatever purpose the employee desires. However, all leave granted must be approved by the employee's supervisor on a leave request form. Annual leave may be used while absent due to illness if all accrued sick leave has been exhausted.

Once an employee has commenced annual leave, the employee will not be permitted to have any portion of that leave charged to sick leave. Example: An employee is granted 40 hours of annual leave but becomes ill after using 16 hours of leave, with such illness lasting one day. In this case, the employee will be charged annual leave for the entire forty (40) hours, as opposed to thirty-two hours of annual leave and eight hours of sick leave. Under the same circumstance, if the employee's illness persists past the conclusion of the scheduled leave, and if the employee provides proof of illness, then the period of illness extending past the conclusion of the scheduled leave may be charged against sick leave.

There are no provisions for granting annual leave in advance of the leave being accrued.

Employees taking less than a full day of annual leave may exclude the authorized lunch break in computing amount of leave taken. Example: an employee taking the first four hours of the employee's normal workday may be absent for the four hours plus the normal time allotted for lunch.

## **xx. Sick Leave**

Sick leave is to be used for the following purposes only: (1) personal injury or illness; (2) medical and dental appointments for employees and their dependents; or (3) illness of an immediate family member or domiciliary requiring recuperative care. To see if you meet the requirements for the Family Medical Leave Act, see section yy.

Sick leave must be reported as such to the employee's supervisor as early as possible before the shift is to begin, but in no event later than fifteen minutes after the start of the shift in which illness occurs (except for emergency situations). Employees who become ill and need to leave work before the end of their shift should notify their supervisor before departing.

Sick leave will be accrued at a rate based on five hours per pay period for full-time employees. Sick leave may be accumulated from year to year with no limitation on time carried over, but may only be used for the reasons specified above.

Sick leave is not to be regarded as a form of additional compensation, and no employee will be entitled to pay in lieu of sick leave upon termination of employment.

For absences of three consecutive days or more due to illness or injury not connected with employment, a doctor's note from a health care provider is required. An employee must provide a doctor's note when requested by the supervisor. The certification must state that the employee was under the provider's care or treatment for the days in question. The supervisor or administrative officer will monitor whether an inordinate number of sick days are being taken on the days immediately before or after the employee's regular days off and if abuse is suspected it may result in disciplinary actions.

The City reserves the right to require a release from the employee's health care provider before the employee returns to work.

Accrued sick leave will carry over from year to year. Employees are not compensated for unused sick leave at the end of employment with the City of Elkins or at any other time.

When applicable, sick leave taken under this policy may run concurrently with available FMLA and/or state family medical leave.

**yy. Family and Medical Leave**

The City will grant family and medical leave in accordance with the requirements of applicable federal and state law in effect at the time the leave is granted. Although the federal and state laws sometimes have different names, the City refers to this type of leave collectively as "FMLA Leave." In any case, employees will be eligible for the most generous benefits available under applicable law.

**zz. Employee Eligibility**

To be eligible for FMLA Leave benefits, employees must: (1) have worked for the City for a total of at least 12 months; (2) have worked at least 1,250 hours over the previous 12 months as of the start of the leave; and (3) work at a location where at least 50 employees are employed by the City within 75 miles, as of the date the leave is requested. Eligibility requirements may differ for employees who have been on a protected military leave of absence. If employees are unsure whether they qualify, they should contact Human Resources.

**aaa. Reasons for Leave**

Federal and state laws allow FMLA Leave for various reasons. Because employees' legal rights and obligations may vary depending upon the reason for the FMLA Leave, it is important to identify the purpose or reason for the leave. FMLA Leave may be used for one of the following reasons, in addition to any reason covered by an applicable state family/medical leave law:

The birth, adoption, or foster care of an employee's child within 12 months following birth or placement of the child (Bonding Leave);

To care for an immediate family member (spouse, child, or parent) with a serious health condition (Family Care Leave);

An employee's inability to work because of a serious health condition (Serious Health Condition Leave);

**Commented [A20]:** FMLA Policy – Updated the policy to be more comprehensive.

A “qualifying exigency,” as defined under the FMLA, arising from a spouse’s, child’s, or parent’s “covered active duty” (as defined below) as a member of the military reserves, National Guard, or Armed Forces (Military Emergency Leave); or

To care for a spouse, child, parent or next of kin (nearest blood relative) who is a “Covered Servicemember,” as defined below (Military Caregiver Leave).

### **bbb. Definitions**

“**Child,**” for purposes of Bonding Leave and Family Care Leave, means a biological child, adopted child, foster child, stepchild, legal ward, or child of a person standing in loco parentis, provided that the said child is either (1) younger than 18 or (2) age 18 or older and incapable of self-care because of a mental or physical disability at the time that Family and Medical Leave is to commence.

“**Child,**” for purposes of Military Emergency Leave and Military Caregiver Leave, means a biological child, adopted child, foster child, stepchild, legal ward, or child of a person standing in loco parentis, of any age.

“**Parent**” for purposes of this policy, means a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the person. This term does not include parents-in-law. For Military Emergency leave taken to provide care to a parent of a deployed military member, the parent must be incapable of self-care as defined by the FMLA.

“**Covered Active Duty**” means (1) in the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country and (2) in the case of a member of a reserve component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty (or notification of an impending call or order to active duty) in support of a contingency operation as defined by applicable law.

“**Covered Servicemember**” means (1) a member of the Armed Forces, including a member of a reserve component of the Armed Forces, who is undergoing medical treatment, recuperation, or therapy; is otherwise in outpatient status; or is otherwise on the temporary disability retired list, for a serious injury or illness incurred or aggravated in the line of duty while on active duty that may render the individual medically unfit to perform their military duties, or (2) a person who, during the five years prior to the treatment necessitating the leave, served in the active military, Naval, or Air Service, and who was discharged or released therefrom under conditions other than dishonorable (a “veteran” as defined by the Department of Veteran Affairs), and who has a qualifying injury or illness incurred or aggravated in the line of duty while on active duty that manifested itself before or after the member became a veteran.

“**Spouse**” means the other person with whom an individual entered into marriage as defined or recognized under state law for purposes of marriage in the state in which the marriage was entered into, or, in the case of a marriage entered into outside of any state, if the marriage is valid in the place where entered into and could have been entered into in at least one State. This includes common-law marriage and same sex marriage in places where these marriages are recognized.

“**Key employee**” means a salaried FMLA-eligible employee who is among the highest paid 10 percent of all the employees employed by the employer within 75 miles of the employee's worksite.

### **ccc. Length of FMLA Leave**

The maximum amount of FMLA Leave will be 12 workweeks in any 12-month period when the leave is taken for: (1) Bonding Leave; (2) Family Care Leave; (3) Serious Health Condition Leave; and/or (4) Military Emergency Leave. However, if both spouses work for the City and are eligible for leave under this policy, the spouses will be limited to a total of 12 workweeks off between the two of them when the leave is for Bonding Leave or to care for a parent using Family Care Leave. The applicable "12-month period" utilized by the City is the rolling 12-month period measured backward from the date an employee uses any leave under this policy. Each time an employee takes leave, the company will compute the amount of leave the employee has taken under this policy in the last 12 months and subtract it from the 12 weeks of available leave, and the balance remaining is the amount the employee is entitled to take at that time.

The maximum amount of FMLA Leave for an employee wishing to take Military Caregiver Leave will be a combined leave total of 26 workweeks in a single 12-month period. A "single 12-month period" begins on the date of the employee's first use of such leave and ends 12 months after that date.

If both spouses work for the City and are eligible for leave under this policy, the spouses will be limited to a total of 26 workweeks off between the two when the leave is for Military Caregiver Leave only or is for a combination of Military Caregiver Leave, Bonding Leave and/or Family Care Leave taken to care for a parent.

To the extent required by law, some extensions to leave beyond an employee's FMLA entitlement may be granted when the leave is necessitated by an employee's work-related injury or illness or by a "disability" as defined under the Americans with Disabilities Act and/or applicable state or local law. Certain restrictions on these benefits may apply.

### **ddd. Intermittent or Reduced Schedule FMLA Leave**

Under some circumstances, employees may take FMLA Leave intermittently, which means taking leave in blocks of time, or by reducing the employee's normal weekly or daily work schedule. An employee may take leave intermittently whenever it is medically necessary to care for a seriously ill family member, or because the employee is seriously ill and unable to work.

Employees may take FMLA leave in one consecutive block of time, may use the leave intermittently (take a day periodically when needed over the year) or, under certain circumstances, may use the leave to reduce the workweek or workday, resulting in a reduced hour schedule. In all cases, the leave may not exceed a total of 12 workweeks (or 26 workweeks to care for an injured or ill service member) in a 12-month period.

The City may temporarily transfer an employee to an available alternative position with equivalent pay and benefits if the alternative position would better accommodate the intermittent or reduced schedule, in instances when leave for the employee or employee's family member is foreseeable and for planned medical treatment, including recovery from a serious health condition or to care for a child after birth or placement for adoption or foster care.

For the birth, adoption or foster care of a child, the company and the employee must mutually agree to the schedule before the employee may take the leave intermittently or work a reduced-hour schedule. Leave for birth, adoption or foster care of a child must be taken within one year of the birth or placement of the child.

Employees who take leave intermittently or on a reduced work schedule basis for a planned medical treatment must make a reasonable effort to schedule the leave so as not to unduly disrupt the City's operations. Please contact Human Resources prior to scheduling planned medical treatment. If FMLA Leave is taken intermittently or on a reduced schedule basis due to foreseeable planned medical treatment, we may require employees to transfer temporarily to an available alternative position with an equivalent pay rate and benefits, including a part-time position, to better accommodate recurring periods of leave.

If employees have been approved for intermittent leave and they request leave time that is unforeseeable, they must specifically reference either the qualifying reason for leave or the need for FMLA leave at the time they call off.

If an employee's request for intermittent leave is approved, the City may later require employees to obtain recertification of their need for leave. For example, the City may request recertification if it receives information that casts doubt on an employee's report that an absence qualifies for FMLA Leave.

### ***eee. Notice and Certification Requirements***

This section describes notice, certification, and recertification requirements for various types of FMLA leave.

#### ***1.1.1.1 Bonding, Family Care, Serious Health Condition and Military Caregiver Leave***

Employees wishing to use FMLA leave for Bonding, Family Care, Serious Health Condition or Military Caregiver Leave are required to provide notice and certification as follows.

When the need for the leave is foreseeable, 30 days advance notice or such notice as is both possible and practical if the leave must begin in less than 30 days (normally this would be the same day the employee becomes aware of the need for leave or the next business day);

When the need for leave is not foreseeable, notice within the time prescribed by the City's normal absence reporting policy, unless unusual circumstances prevent compliance, in which case notice is required as soon as is otherwise possible and practical;

When the leave relates to medical issues, a completed Certification of Health-Care Provider form within 15 calendar days (for Military Caregiver Leave, an invitational travel order or invitational travel authorization may be submitted in lieu of a Certification of Health-Care Provider form);

Periodic recertification (upon request); and

Periodic reports during the leave.

Certification forms are available from Human Resources. At our expense, we may require a second or third medical opinion regarding the employee's own serious health condition or the serious health condition of the employee's family member. In some cases, we may require a second or third opinion regarding the injury or illness of a Covered Service Member. Employees are expected to cooperate with the City in obtaining additional medical opinions that we may require.

When leave is for planned medical treatment, employees must try to schedule treatment so as not to unduly disrupt the City's operation. Please contact Human Resources prior to scheduling planned medical treatment.

#### ***1.1.1.2 Recertification After FMLA Grant of Leave***

In addition to the requirements listed above, if an employee's Family and Medical Leave is certified, the City may later require medical recertification in connection with an absence that the employee reports as qualifying for Family and Medical Leave. For example, the City may request recertification if (1) the employee requests an extension of leave; (2) the circumstances of the employee's condition as described by the previous certification change significantly (e.g., employee's absences deviate from the duration or frequency set forth in the previous certification; employee's condition becomes more severe than indicated in the original certification; employee encounters complications); or (3) the City receives information that casts doubt upon the employee's stated reason for the absence. In addition, the City may request recertification in connection with an absence after six months have passed since the employee's original certification, regardless of the estimated duration of the serious health condition necessitating the need for leave. Any recertification requested by the City will be at the employee's expense.

#### ***1.1.1.3 Military Emergency FMLA Leave Requirements***

Employees requesting Military Emergency FMLA Leave are required to provide:

As much advance notice as is reasonable and practicable under the circumstances;

A copy of the covered military member's active duty orders when the employee requests leave and/or documentation (such as Rest and Recuperation leave orders) issued by the military setting forth the dates of the military member's leave; and

A completed Certification of Qualifying Exigency form within 15 calendar days, unless unusual circumstances exist to justify providing the form at a later date.

Certification forms are available from Human Resources.

#### ***1.1.1.4 Failure to Provide Certification and to Return from Leave***

Absent unusual circumstances, failure to comply with these notice and certification requirements may result in a delay or denial of FMLA leave. If an employee fails to return to work at the expiration of FMLA leave and has not obtained an extension of the leave, the City may presume that the employee does not plan to return to work and has voluntarily terminated their employment.

### ***fff. Compensation During FMLA Leave***

Generally, FMLA Leave is unpaid. However, employees may be eligible to receive benefits through state-sponsored programs or the City's sponsored wage-replacement benefit programs.

An employee who is taking FMLA leave because of the employee's own serious health condition or the serious health condition of a family member must use all paid vacation, personal or sick leave prior to being eligible for unpaid leave. Sick leave may run concurrently with FMLA leave if the reason for the FMLA leave is covered by the established sick leave policy.

Disability leave for the birth of a child and for an employee's serious health condition, including workers' compensation leave (to the extent that it qualifies), will be designated as FMLA leave and will run concurrently with FMLA. For example, when an employee takes six weeks of [Company name] pregnancy disability leave, the six weeks will be designated as FMLA leave and counted toward the employee's 12-week entitlement. The employee will then be required to substitute accrued (or earned) paid leave as appropriate before being eligible for unpaid leave for what remains of the 12-week entitlement. An

employee who is taking leave for the adoption or foster care of a child must use all paid vacation, personal or family leave prior to being eligible for unpaid leave.

An employee who is using military FMLA leave for a qualifying exigency must use all paid vacation and personal leave prior to being eligible for unpaid leave. An employee using FMLA military caregiver leave must also use all paid vacation, personal leave or sick leave prior to being eligible for unpaid leave.

All payments of wage-replacement benefits and accrued paid leave will be integrated so that employees will receive no greater compensation than their regular compensation during this period. The City may require employees to use accrued vacation and sick leave to cover some or all of the FMLA Leave to the extent permissible under applicable law. The use of paid benefits will not extend the length of a FMLA Leave.

### ***ggg. Benefits During FMLA Leave***

The City will continue making contributions to employee group health benefits during their leave on the same terms as if employees had continued to actively work. This means that if employees want their benefits coverage to continue during FMLA leave, they must continue to make the same premium payments that they are now required to make for themselves or their dependents. Employees taking Bonding Leave, Family Care Leave, Serious Health Condition Leave, and Military Emergency Leave will generally be provided with group health benefits for a 12 workweek period. Employees taking Military Caregiver Leave may be eligible to receive group health benefits coverage for up to a maximum of 26 workweeks. In some instances, the City may recover premiums it paid on the employee's behalf to maintain health coverage if the employee fails to return to work following a FMLA Leave.

The employee's length of service as of the leave will remain intact, but accrued benefits such as vacation and sick leave will not accrue while on an unpaid FMLA Leave.

### ***hhh. Job Reinstatement after FMLA Leave***

Under most circumstances, employees will be reinstated to the same position they held at the time of the leave or to an equivalent position with equivalent pay, benefits, and other terms and conditions of employment. However, employees have no greater right to continued employment than if they had not been on leave. For example, if an employee would have been laid off if the employee had not gone on leave or, if the employee's position was eliminated during the leave, then the employee will not be entitled to reinstatement.

Prior to being allowed to return to work, an employee wishing to return from a Serious Health Condition Leave must submit an acceptable release from a health care provider that certifies the employee can perform the essential functions of the job as those essential functions relate to the employee's serious health condition. For an employee on intermittent FMLA leave, such a release may be required if reasonable safety concerns exist regarding the employee's ability to perform their duties, based on the serious health condition for which the employee took the intermittent leave.

Key employees (see 7.7.7.3: Definitions) may be subject to reinstatement limitations in some circumstances. If employees are considered a "key employee," those employees will be notified of the possible limitations on reinstatement at the time the employee requests a leave of absence.

### ***iii. Confidentiality***

Documents relating to medical certifications, recertifications or medical histories of employees or employees' family members will be maintained separately and treated by the City as confidential

medical records, except that in some legally recognized circumstances, the records (or information in them) may be disclosed to supervisors and managers, first aid and safety personnel or government officials.

### ***jjj. Fraudulent Use of FMLA Prohibited***

An employee who fraudulently obtains Family and Medical Leave from the City is not protected by FMLA's job restoration or maintenance of health benefits provisions. In addition, the City will take all available appropriate disciplinary action against such employee due to such fraud.

### ***kkk. Nondiscrimination***

The City takes its FMLA obligations very seriously and will not interfere, restrain or deny the exercise of any rights provided by the FMLA. We will not terminate or discriminate against any individual for opposing any practice or because of involvement in any proceeding related to the FMLA. If an employee believes their FMLA rights have been violated in any way, that employee should immediately report the matter to Human Resources.

### ***III. Additional Information Regarding FMLA***

A Notice to Employees of Rights Under FMLA (WHD Publication 1420) is attached to this Manual.

Employees should contact Human Resources as to any FMLA questions they may have.

### ***mmm. State Law Concerning FMLA Parental Leave***

West Virginia's Parental Leave Act provides all state and county employees with up to 12 weeks of unpaid leave during any 12-month period. This unpaid leave is provided after the exhaustion of the employee's entire annual and personal leave. This means that public employees can extend their paid time off by the 12 weeks of unpaid leave for a greater benefit than that which is provided by the federal FMLA.

- The unpaid leave may be used for:
  - The birth of a son or daughter of the employee.
  - The placement of a son or daughter with the employee for adoption.
  - Care for the employee's son, daughter, spouse, parent, or dependent who has a serious health condition.
- If family leave is foreseeable, the employee must provide the City with at least two weeks written notice of an expected birth, adoption, or planned medical treatment.

### **Terms Defined**

- An employee means any individual hired for permanent employment who has worked for at least 12 consecutive weeks (about three months) for the employer.
- A dependent means anyone living with the employee or dependent upon the employee's income, whether related by blood or marriage, or unrelated.

- A serious health condition is defined as:
  - A physical or mental illness, injury, or impairment that requires inpatient or continuing care under the supervision of a health care provider.
- A son or daughter is defined as a:
  - Biological child
  - Adopted child
  - Foster child
  - Stepchild
  - Legal ward

The son or daughter as defined here must be either under 18 years of age or be incapable of self-care because of a mental or physical disability.

#### **Written Certification May Be Required**

- The City may require the employee requesting leave to provide certification by a health care provider of the serious health condition of the employee's family member.

#### **Continuation of Benefit**

- During the parental leave, the City will continue group health insurance coverage for the employee as long as the employee pays the premium costs of such coverage.

#### **Intermittent Leave Permitted**

Leave may be taken intermittently when medically necessary to care for a:

- Son
- Daughter
- Parent
- Dependent with a serious health condition

#### **Reinstatement**

An employee returning from leave shall be returned to the employee's original position.

However, the employer may employ a temporary employee to fill the position for the period of the parental leave.

#### **nnn. Military Leave**

Federal law provides employees with the right to take leave to serve in the military. At the federal level, military leave rights are governed by the Uniformed Services Employment and Reemployment Rights Act, commonly referred to as USERRA. This policy discusses military leave under USERRA.

Military members in West Virginia are entitled to the same benefits that the Uniformed Services Employment and Reemployment Rights Act (USERRA) offers, including:

If an employee plans to request leave based on military service, that employee should contact Human Resources for information on any additional rights or requirements, if applicable, under state law.

**Commented [A21]:** Military Leave Policy is more detailed to clarify eligibility, notice, and compensation, and reinstatement

### ***ooo. Eligibility for Leave***

The City provides unpaid military leaves of absence to employees who serve in the uniformed services as required by USERRA and applicable state laws. The uniformed services are defined as the Air Force, Army, Coast Guard, Marine Corps, Navy, Space Force, Army National Guard, Air National Guard, Commissioned Corps of the Public Health Service, and any other category of persons designated by the President of the United States in time of war or national emergency. The uniformed services also include participants in the National Disaster Medical System when activated to provide assistance in response to a public health emergency, to be present for a short period of time when there is a risk of a public health emergency, or when they are participants in authorized training.

Service consists of performing any of the following on a voluntary or involuntary basis: active duty, active duty for training, initial active duty, inactive duty training, full-time National Guard duty, State active duty for a period of 14 days or more, State active duty in response to a national emergency declared by the President under the National Emergencies Act or in support of a major disaster declared by the President under Section 401 of the Stafford Act, absence from work for an examination to determine fitness for such duty, and absence for performing funeral honors duty. For purposes of this policy "State active duty" means training or other duty, other than inactive duty, performed by a member of the National Guard of a State, under the authority of the Governor of a State. It does not include duty performed under federal authority (such as Title 10 or Title 32), nor duty for which the National Guard member is entitled to pay from the Federal Government. A "State" includes the several states of the United States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands and other U.S. territories.

Total military leave time may not exceed five years during employment, except in certain, defined circumstances.

### ***ppp. Notice of Leave***

Advance notice of leave is required, preferably in writing, unless giving of notice is impossible or unreasonable, or notice is prohibited by military necessity (which is defined by the United States Department of Defense). When notice is required, employees must provide their supervisor with as much advance notice as possible of any anticipated leave of absence for military service.

### ***qqq. Compensation and Benefits During Leave***

Accrued, unused annual leave will be paid during military leave at the employee's request. After 30 days of continuous military leave, employees may elect to continue their health plan coverage at their own expense, for up to 24 months or during the remaining period of service, whichever is shorter.

### ***rrr. Reinstatement***

In order to be eligible for reinstatement, an employee must have provided advance notice of the need for military leave (where required) and have completed service on a basis that is not dishonorable or otherwise prohibited under USERRA.

Employees whose military service will be for 30 or fewer days must report to back to work at the beginning of the first full, regularly scheduled workday following completion of service, after allowing for a period of safe travel home and eight hours of rest.

Employees whose military service will be for more than 30 days but no more than 180 days must apply for re-employment within 14 days after completing service.

Employees whose service is greater than 180 days must apply for re-employment within 90 days after completing service.

As with other leaves of absence, failure to return to work or to reapply within applicable time limits may result in loss of reemployment rights. Full details regarding reinstatement are available from Human Resources.

In general, an employee returning from military leave will be re-employed in the position and seniority level that the employee would have attained had there been no military leave of absence. If necessary, the City will provide training to assist the employee in the transition back to the workforce.

Annual Leave benefits do not continue to accrue during a military leave of absence. An employee returning from military leave is entitled to any unused, accrued annual leave the employee had at the time the military leave began minus any annual leave the employee chose to use during the leave. Upon reinstatement, the employee will begin to accrue annual leave at the rate that employee would have attained if no military leave had been taken.

### ***sss. Civic Duty***

#### **1. Jury duty**

Employees summoned for jury duty should notify their supervisor as soon as possible.

The City shall pay employees their regular wages for the time served on jury duty. A slip verifying attendance must be produced prior to deadlines for the applicable payday. If an employee is released from jury duty and can work any part of the normal workday or workweek, the employee shall do so. No jury pay will be paid if this requirement is not met.

#### **2. Voting**

The City encourages all employees to exercise their important right to vote. Polling places are usually open for such extended periods that it should not be necessary for employees to miss work in order to vote. Time away from work for this purpose will not be compensated.

#### **3. Civic Groups**

The City encourages employees to participate in and support civic and charitable organizations and events, so long as their activities and goals do not conflict with the City's charter and mission. Employees may request time off for recognized activities, but this time will not be compensated.

#### **4. Political Activity**

Partisan political activity (campaigning) for any candidate or issue will not be permitted on City property or during an employee's work time. This prohibition applies to all employees, invitees, and any other third parties.

#### **5. Legal Proceedings**

Employees will be granted reasonable amounts of time off for legal proceedings. When subpoenaed as a witness, employees should give their supervisor as much advance notice as possible. Time spent testifying in court or responding to a subpoena will not be compensated unless the City issued the subpoena, or the litigation is City-related.

### ***ttt. Bereavement Leave***

Up to three (3) days of paid leave will be granted in the event of a death in the immediate family. Immediate family members are defined as including the employee's spouse, parent, step-parent, spouse's parent, brother, sister, son, or daughter. One day of funeral leave will be granted on the day of the funeral for other family members. Other family members are defined as including aunt, uncle, grandparent, brother-in-law, or sister-in-law.

If the distance travelled to attend a funeral or memorial service creates a hardship for the employee, the Administrative Officer may approve a leave of longer than three (3) days when an immediate family member dies; however, the employee must use either annual leave or family sick leave.

In the event of the death of a current city employee whose funeral or related observances are scheduled to be held during working hours, employees who worked in the same department as the deceased employee shall be granted one day of funeral leave to attend the funeral or related observances, as operations permit.

### ***uuu. Leave of absence for public officials for performing public duties.***

West Virginia Code, Chapter 6, Article 5, Section 12 (§6-5-12.) states that "Any persons elected to a part-time public office or appointed to a part-time elected public office shall be entitled to a leave of absence from his or her private employment except when such employment is with an employer employing five or fewer persons on a full-time basis on the days or portion of any day during which he or she is engaged in performing the duties of his or her public office. The leave of absence shall not result in any penalty being imposed upon the persons entitled to the leave of absence: Provided, that such leave of absence may be without pay by the private employer."

### ***vvv. Civil Air Patrol Leave***

Eligible employees who are members of the West Virginia wing of the Civil Air Patrol will be allowed up to 10 days of unpaid leave annually for the purpose of participating in Civil Air Patrol training for an emergency mission and 30 days of unpaid leave for the purpose of responding to an emergency mission.

### ***www. Volunteer Emergency Responder Leave***

The City has a program to utilize volunteer firefighters and other emergency responders. These volunteer emergency responders should be aware of West Virginia Code Chapter 21, Article 5, Section 17 (§21-5-17) that states in part "At the request of an employer, any employee losing time as provided herein shall supply his or her employer with a statement from the chief of the volunteer fire department or the supervisor or other appropriate person in charge of the emergency medical service entity stating that the employee responded to an emergency call and the time thereof."

As used in this section, "emergency" means going to, attending to, or coming from: (1) A fire call; (2) a hazardous or toxic materials spill and cleanup; (3) a motor vehicle accident; or (4) any other situation to which the employee's fire department or emergency medical service entity has been or later could be dispatched.

Any volunteer emergency responder who is requested by their employer to provide such a statement should contact the chief of the fire department.

### **xxx. Leave Donation**

Full time employees of the City of Elkins are eligible to participate in a voluntary Leave Donation Program under which leave accumulated by an employee may, if voluntarily agreed to by the employee, be transferred as donated leave to another designated employee if the requesting employee has exhausted all available paid leave due to a medical emergency.

For the purpose of this program, a medical emergency is defined as a medical condition of the employee or an immediate family member of the employee (as defined in the City of Elkins personnel Policy) that will require the prolonged absence of the employee from duty and will result in a substantial loss of income to the employee because the employee will have exhausted all paid leave available apart from the Leave Donation Program. The Leave Donation Program Policy and Procedures are attached as Appendix C to this Personnel Manual.

## **WORKPLACE SAFETY AND SECURITY**

### **yyy. Security Rules and Regulations**

Although most City facilities are open to the public, reasonable steps should be taken to safeguard the security of persons and property on its premises. Because members of the public have legitimate reasons for visiting City offices, employees must exercise prudence regarding their personal safety and for the protection of employees' personal property.

In order to protect the City's property, the following rules must be observed by all employees:

- Employees may enter or remain at City facilities outside of their normal working hours only with the permission of their supervisor.
- Employees may not remove City property or equipment from the premises without first obtaining permission from their supervisors. Supervisors shall keep a written record of all property and/or equipment so removed. Unauthorized use or removal of City property may result in discipline, up to and including discharge.
- With the exception of authorized law enforcement agents, employees are not permitted to possess, store, or transport weapons on City property, in City vehicles, or while on City business. An exception shall be made for unloaded firearms being legally transported in a private vehicle.
- Consistent with all applicable legal requirements, the City retains and may exercise the right to make reasonable searches and surveillance on City property and at City affiliated functions.

Any breach of the City's security policy may subject persons or property to harm, damages, or loss. Employees should report any violations of the policy or potential problems to their supervisor or to Human Resources. Employees are expected to cooperate with any investigation into possible violations of this policy.

### **zzz. OFFICE TECHNOLOGY AND SYSTEMS USE**

The City has established the following policy regarding access to and use of all office technology, including electronic data services and access and disclosure of voice mail and e-mail messages created, sent, or received by employees of the City. The City reserves

**Commented [A22]:** Office Technology and Systems use is much more comprehensive and will help protect the city from misuse by putting guidelines in place.

the right to change this and any other policy at any time, as may be required under the circumstances.

#### **aaaa. Definitions**

**“Electronic mail (e-mail)”** is defined as an office communication tool whereby electronic messages are prepared, sent, and retrieved on personal computers.

**“On-line service (e.g., the Internet)”** is defined as a communication tool whereby business information, reference materials, and messages are sent and retrieved electronically on personal computers.

**“Document”** includes photographs, pictures, animations, movies, or drawings.

**“Display”** includes monitors, flat panel active or passive matrix displays, monochrome LCDs, projectors, television, and virtual reality tools.

#### **bbbb. Policy**

The City maintains a telephone system, facsimile equipment, data processing programs, e-mail system, and associated access to the Internet. These systems are provided by the City to assist in the conduct of business within its various departments.

1. The telephone system, computer hardware, and licensed software are the property of the City. Additionally, all messages composed, sent, recorded, or received on the telephone and e-mail systems and the Internet are, and remain, the property of the City. They are not the private property of any employee.
2. The use of the e-mail system and associated Internet use are reserved solely for the conduct of business at the City. They may not be used for personal, private, or non-business matters.
3. Employees may only use IT service vendors approved by the city.
4. Employees cannot utilize the telephone system, e-mail system, or the Internet to solicit or recruit for commercial ventures, religious or political causes, outside organizations, or other non-job-related solicitations.
5. The City has software and systems in place that can monitor and record all e-mail and Internet usage. The security systems are capable of recording (for each and every user) each World Wide Web site visit; each chat, news group, or e-mail message; and each file transfer into and out of our Internet networks. The City reserves and intends to exercise the right to do so at any time. No employee should have any expectation of privacy as to the employee’s e-mail or Internet usage.
6. The City reserves and intends to exercise the right to review, audit, intercept, access, and disclose all messages created, received, or sent over the voice mail, e-mail, or other on-line systems for any purpose. The contents of these systems, properly obtained for legitimate business purposes, may be disclosed within the City’s operations without the permission of the employee.

7. The confidentiality of any message or information should not be assumed. Even when a message or other data is deleted, it is still possible to retrieve and read that message or data. Additionally, these messages may be subject to discovery and requests and orders in court and administrative proceedings.
8. Notwithstanding the City's right to retrieve and read any voice mail, e-mail messages, or other data transmissions, these messages should be treated as confidential by other employees and accessed only by the intended recipient. Employees are not authorized to retrieve or read any voice mail or e-mail messages or data that are not sent to them. Any exception to this policy must receive prior approval by the supervisor.
9. Employees shall not use a code, access a file, or retrieve any stored information unless authorized to do so. Employees should not attempt to gain access to another employee's messages or data without the latter's permission. All computer pass codes must be provided to the supervisor. No pass code may be used that is unknown to the employee's supervisor. Further, the use of passwords for security does not guarantee confidentiality.
10. The display of any kind of sexually explicit image or document on any City system is a violation of our policy on sexual harassment. In addition, sexually explicit material may not be received, stored, distributed, edited, or recorded using the City's telephones, network, or computing resources.
11. The City may use independently supplied software and data to identify inappropriate or sexually explicit Internet sites. The City may block access from within its network to those sites of which it is aware. If an employee connects accidentally to a site that contains sexually explicit or offensive material, the employee must disconnect from that site immediately, regardless of whether that site had been previously deemed acceptable by any screening or rating program.
12. Neither the e-mail system nor the Internet is to be used to display or transmit any offensive or disruptive messages. Among those which are considered offensive are any messages which contain sexual content, racial slurs, gender-specific comments, or any other comments that mention age, sexual orientation, religious or political beliefs, national origin, or disability in a derogatory manner.
13. Neither the e-mail system nor the Internet shall be used to send (upload) or receive (download) copyrighted materials, trade secrets, proprietary financial information, or similar materials without prior authorization.
14. The Internet facilities and computing resources of the City of Elkins may not be used to violate the laws and regulations of any state, city, province or other local jurisdiction. Use of any city resource for illegal activity is grounds for immediate dismissal, and the City will cooperate with any legitimate law enforcement activity related thereto.
15. Any software or file downloaded via the Internet into the City's network becomes the property of the City. Any such files or software may be used only in ways that are consistent with their licenses or copyrights.

16. No employee may use the City's Internet facilities to knowingly download or distribute pirated software or data.
17. No employee may use the City's Internet facilities to deliberately propagate any virus, worm, Trojan horse, or trap-door program, or any other computer code, malicious or otherwise.
18. No employee may use the City's Internet facilities to knowingly disable or overload any computer system or network or to circumvent any system intended to protect the privacy or security of another user.
19. E-mail and voice mail should not be used to transfer confidential, privileged, or sensitive information outside of the City's computer system or over the Internet unless approval is obtained in advance from a supervisor.
20. The City retains the copyright to any material posted to any forum, newsgroup, chat, or World Wide Web page by any employee in the course of the employee's duties.
21. Unnecessary or unauthorized Internet usage causes network and server congestion; it slows other users, takes away from work time, consumes supplies, and ties up printers and other shared resources. Unlawful Internet usage may also generate negative publicity and expose the City to significant legal liabilities.
22. Any employee who discovers violation of this policy shall notify a supervisor immediately.
23. Any employee who violates this policy or uses the telephone system, data processing system, e-mail system, Internet or other electronic data base for improper purposes shall be subject to discipline, up to and including discharge.

Nothing in this policy is intended to, nor should be construed to limit or interfere with employee rights as set forth under all applicable provisions of the National Labor Relations Act, including Section 7 and 8(a)(1) rights to organize and engage in protected, concerted activities regarding the terms and conditions of employment.

#### **cccc. Software Code of Ethics**

Employees may not duplicate any licenses, software, or related documentation for use either on the City's premises or elsewhere unless the City is expressly authorized to do so by agreement with the licensor. Unauthorized duplication of software may subject users and/or the City to both civil and criminal penalties under the United States Copyright Act. Employees may not give software to any outsiders including contractors, customers, or others. Employees may use software on local area networks or on multiple machines only in accordance with applicable license agreements. Employees may not download software from the internet and install it on their computers.

The City reserves the right to audit any City computer to determine what software is installed on the local drive(s).

#### **dddd. Workplace Violence**

**Commented [A23]:** Workplace Safety is comprehensive and there is a dedicated section

The safety and security of employees is of vital importance to the City of Elkins. Therefore, the City has adopted a zero-tolerance policy concerning workplace violence. Threats or acts of violence—including intimidation, bullying, physical or mental abuse, and/or coercion—that involve or affect City employees or that occur on the City’s premises will not be tolerated.

The prohibition against threats and acts of violence applies to all persons involved in the operation of the City, including, but not limited to, City employees and other personnel, contract and temporary workers, consultants, contractors, customers, vendors, visitors, and anyone else on the City’s premises.

Violations of this policy by an employee will result in disciplinary action, up to and including termination from employment.

It is our goal to have a workplace free from acts or threats of violence and to respond effectively in the event that such acts or threats of violence do occur.

Workplace violence is any intentional conduct that is sufficiently severe, abusive or intimidating to cause an individual to reasonably fear for their own personal safety or the safety of their family, friends and/or property such that employment conditions are altered or a hostile, abusive, or intimidating work environment is created for one or several employees.

Examples of workplace violence include but are not limited to:

Threats or acts of violence occurring on City premises, regardless of the relationship between the parties involved in the incident;

Threats or acts of violence occurring off City premises involving someone who is acting in the capacity of a representative of the City;

Threats or acts of violence occurring off City premises involving an employee if the threats or acts affect the business interests of the City;

All threats or acts of violence occurring off City premises, of which an employee is a victim, if we determine that the incident may lead to an incident of violence on City premises; and

Threats or acts of violence resulting in the conviction of an employee or agent of the City, or an individual performing services for the City on a contract or temporary basis, under any criminal code provision relating to violence or threats of violence when that act or the conviction adversely affect the legitimate business interests of the City.

Examples of conduct that may be considered threats or acts of violence under this policy include, but are not limited to:

- Threatening physical contact directed toward another individual;
- Threatening an individual or the individual’s family, friends, associates or property with harm;
- The intentional destruction or threat of destruction of property belonging to the City of Elkins or any other;
- Menacing or threatening phone calls;

- Stalking;
- Veiled threats of physical harm or similar intimidation; and/or
- Communicating an endorsement of the inappropriate use of firearms or weapons.

Workplace violence does not refer to workplace arguments or debates that are zealous or impassioned, provided there is no resort to any form of coercion. Discussions about sporting activities, popular entertainment or current events are not considered workplace violence when there is no threat of violence being directed to the workplace or any individual connected with it. Rather, workplace violence refers to behavior that demonstrates an intention to engage in violence, condones violence in our workplace, or targets any individual with acts or threats of violence.

Employees should help maintain a violence-free workplace. To that end, employees are encouraged to immediately report any incident that violates this policy to a supervisor, Administrative Officer, or Human Resources.

No provision of this policy statement or any other provision in this policy alters the at-will nature of employment with the City of Elkins. We will make the sole determination of whether and to what extent threats or acts of violence will be acted upon by the City. In making this determination we may undertake a case-by-case analysis in order to ascertain whether there is a reasonable basis to believe that workplace violence has occurred.

#### **eeee. Weapons in the Workplace**

**ffff. Although most City facilities are open to the public, reasonable steps should be taken to safeguard the security of persons and property on its premises. Because members of the public have legitimate reasons for visiting City offices, employees must exercise prudence regarding their personal safety and for the protection of employee's personal property. In order to protect the City's property, the following rules must be observed by all employees:**

**gggg. • Employees may enter or remain at City facilities outside of their normal working hours only with the permission of their supervisor.**

**hhhh. • Employees may not remove City property or equipment from the premises without first obtaining permission from their supervisors. Supervisors shall keep a written record of all property and/or equipment so removed. Unauthorized use or removal of City property may result in discipline, up to and including discharge.**

**iiii. • With the exception of authorized law enforcement agents, employees are not permitted to possess, store, or transport weapons on City property, in City vehicles, or while on City business. An exception shall be made for unloaded firearms being legally transported in a private vehicle.**

• Consistent with all applicable legal requirements, the City retains, and may exercise the right to make reasonable searches and surveillance on City property and at City affiliated functions.

Any breach of the City's security policy may subject persons or property to harm, damages, or loss. Employees should report any violations of the policy or potential problems to their supervisor or to Human Resources. Employees are expected to cooperate with any investigation into possible violations of this policy.

#### **jiii. Workplace Bullying**

The City does not tolerate bullying behavior. Individuals who engage in workplace bullying may be disciplined, up to and including termination of employment.

Workplace bullying is the use of force, threats, or coercion to abuse, intimidate, or humiliate another employee. Workplace bullying includes but is not limited to the following:

- Verbal abuse, such as the use of patently offensive, demeaning, and harmful derogatory remarks, insults, and epithets;
- Verbal or physical conduct that is threatening, intimidating, or obscene;
- Pushing, shoving, kicking, poking, tripping, assaulting, or threatening physical assault;
- Intentionally damaging a person's work area or property; or
- Sabotage, or deliberately subverting, obstructing, or disrupting another person's work performance.

Cyberbullying refers to bullying, as defined above, that occurs through the use of a computer, cell phone, smartphone, tablet, pager, or other device that transmits electronic information, regardless of whether the device is owned by or located at the City or connected to the City network. Cyberbullying is also prohibited.

This policy in no way prohibits employees from engaging in activities that are protected under applicable state and federal laws, including but not limited to any activity that is protected under Section 7 of the National Labor Relations Act, which includes the right of employees to speak with others, engage in workplace debates, and protest about their terms and conditions of employment.

#### ***kkkk. Reporting and Response***

Employees who are subject to or witness workplace bullying are encouraged to notify their supervisor, Administrative Officer, or Human Resources immediately. The City will promptly investigate the complaint. The City will maintain confidentiality to the extent possible, consistent with its commitment to investigating the complaint promptly and thoroughly.

If the complaint is verified, the City will take appropriate remedial and disciplinary action, which may include but is not limited to verbal or written warnings, suspension, termination of employment, counseling, and other actions. The City will also report to law enforcement, if appropriate. The complaining party will be advised of the results of the investigation.

#### ***llll. Anti-Retaliation***

The City strictly prohibits retaliation against an employee for making a good-faith claim of bullying or for participating in good faith in an investigation of bullying.

#### ***mmmm. Work-Related Injuries***

An employee who sustains a work-related injury or illness should inform their supervisor immediately. No matter how minor an on-the-job injury may appear, it is important that it be reported immediately.

Employees who sustain work-related injuries may receive workers' compensation benefits. See the City's Workers' Compensation Insurance policy for more information. Employees who need to take time off from work due to a workers' compensation illness or injury may also be eligible for a leave of absence under the City's leaves of absence or reasonable accommodation policies. Employees should consult with Human Resources for additional information.

#### ***nnnn. Smoke-Free / Tobacco-Free Workplace***

The City provides a work environment that is smoke and tobacco free. Smoking and the use of all tobacco-related products, including but not limited to smoking, the use of chewing tobacco, and the use of e-cigarettes is strictly prohibited inside any city-owned building. Employees who observe other individuals smoking or using tobacco products in the workplace have a right to object and should report the violation to their supervisor or to another member of management. Employees will not be disciplined or retaliated against for reporting tobacco use that violates this policy.

Employees that violate this policy or who tamper with "no smoking" signs may be subject to disciplinary action up to and including termination.

#### ***oooo. Emergency Evacuation***

In the event of a fire, the emergency fire alarm system should be activated by pulling one of the fire alarms. The source of a potential fire or hazardous material emergency should not be investigated. Any employee who suspects an emergency should report it immediately. In any emergency, reporting is the essential first step in protecting oneself and others.

When the emergency fire alarm system is activated, all employees and visitors are expected to evacuate the building by exiting in an orderly manner through the nearest exit.

When exiting, employees should not use elevators and should descend stairwells in an orderly manner. After exiting, employees should report to the area away from the building exits designated as the meeting location. Once employees arrive at the designated area, they should immediately report to their supervisor or Administrative Officer and remain at that location until accounted for and authorized to leave.

No reentry to the building will be permitted until an official all-clear notification is given.

Employees should review this policy and the evacuation procedures and notify their supervisor or Administrative Officer if they believe they might require an accommodation or assistance in order to comply with these procedures in the event of an emergency.

#### ***pppp. Drug-Free Workplace***

The City strives to provide a safe environment for employees and others and to minimize the risk of accidents and injuries. Accordingly, each employee has a responsibility to co-workers and the public to deliver services in a safe and conscientious manner. Continuing research and practical experience have proven that even limited quantities of illegal drugs, abused prescription drugs, or alcohol can impair reflexes and judgment. This impairment, even when not readily apparent, can have catastrophic consequences. Moreover, studies have shown that impairment by controlled substances may last long after the user believes the effects to have worn off. For these reasons, the City has adopted a policy that all employees must report to work and remain completely free of illegal drugs, abused or nonprescribed prescription drugs, and alcohol. This section also explains relevant City policies concerning prescribed medications that may cause impairment.

See also Appendix A: The City of Elkins Substance Abuse Policy for additional details concerning the administration of this policy.

#### ***qqqq. Drug Use/Distribution/Possession/Impairment***

The City strictly prohibits the use, sale, attempted sale, conveyance, distribution, manufacture, purchase, attempted purchase, possession, cultivation and/or transfer of illegal drugs or other unlawful intoxicants at any time and in any amount or any manner, regardless of occasion. "Illegal drugs" means all drugs whose use or possession is regulated or prohibited by federal, state, or local law. These include prescription medication that is used in a manner inconsistent with the prescription or for which the individual does not have a valid prescription. To the extent permitted by state and local law, this policy also prohibits the use of marijuana and marijuana products. The City will accommodate individuals who are medically certified to use marijuana when required to do so by law, but in no case may an employee use or possess marijuana or marijuana products at work or during work time or work while impaired.

Employees are also prohibited from having any such illegal or unauthorized controlled substances in their system while at work.

Included within this prohibition are lawful controlled substances that have been illegally or improperly obtained.

***rrrr. Alcohol Use/Distribution/Possession/Impairment***

All employees are prohibited from distributing, dispensing, possessing, or using any beverage or medicine containing alcohol while at work or on duty and from coming onto City premises, reporting to work, or working with alcohol in their systems. Furthermore, lawful off-duty alcohol use, while generally not prohibited by this policy, must not interfere with an employee's job performance.

***ssss. Prescription and Over-the-Counter Drugs***

This policy does not prohibit the possession and proper use of lawfully prescribed or over-the-counter drugs. However, an employee taking medication should consult with a health care professional or review dosing directions for information about the medication's effect on the employee's ability to work safely, and promptly disclose any work restrictions to a supervisor or Human Resources. Employees are not required to reveal the name of the medication or the underlying medical condition.

The City reserves the right to transfer, reassign, place on leave of absence or take other appropriate action regarding any employee during the time the employee uses medication that may affect the ability to perform safely. The City will comply with all requirements pertaining to providing reasonable accommodations to the extent required by applicable law.

The City's general prohibition against the possession or use of marijuana at work applies regardless of whether an employee is certified to use marijuana for medical reasons under state law. Unless otherwise required by law, the City will not accommodate the use or possession of marijuana by individuals who are medically authorized to use marijuana as a matter of state law but will offer such individuals alternative accommodations related to any underlying disability. Employees who have any questions regarding the City's position concerning medical marijuana in a particular location should contact Human Resources.

***tttt. Counseling and Rehabilitation***

Employees who voluntarily seek help for substance abuse (self-referral) by contacting the City will be provided an opportunity to pursue counseling and rehabilitation. The City will make available to these employees information about counseling and rehabilitation services. An employee who is receiving counseling and/or treatment for substance abuse may use available annual leave, sick leave, or, if eligible, family and medical leave. Health insurance often covers the costs of such services, but costs not covered must be paid by the employee. The employee cannot return to work until released by a treatment provider to do so, and upon receiving a negative result on a return-to-work drug and/or alcohol test (as appropriate for that individual). In addition, the employee may be asked to submit to follow-up testing for a period following the return to work.

An employee's decision to seek help voluntarily will not be used as a basis for disciplinary action, although the individual may be transferred, given work restrictions or placed on leave, as appropriate. A request for help is considered voluntary only if it is made before the employee is asked to submit to any drug or alcohol test or is discovered to have otherwise violated this policy.

***uuuu. Required Notification to Federal Agency***

Pursuant to the West Virginia Drug-Free Workplace Act, and having been a recipient of a federal grant in excess of \$100,000, the City shall notify, in writing, the federal agency administering the grant,

within ten (10) calendar days after receiving notice from an employee of a conviction for a violation of a criminal drug statute occurring in the workplace or otherwise receiving actual notice of such conviction. Such notice, including position title, must be submitted to every grant officer or other designee on whose grant activity the convicted employee was working, unless the federal agency has designated a central point for the receipt of such notices. The notice shall include the identification number(s) of each affected grant. State agencies covered by the Act are subject to suspension of payments and termination of the contract or grant for violations of any of the requirements of a drug-free workplace.

#### ***vvvv. City's Right to Search***

The City wishes to maintain a work environment that is free of illegal drugs, alcohol, firearms, explosives, or other improper materials. To this end, the City prohibits the control, possession, transfer, sale, or use of such materials on its premises to the extent permitted by applicable law. We require the cooperation of all employees in administering this policy.

Desks, lockers and other storage devices are provided for the convenience of employees but remain the sole property of the City. Accordingly, they, as well as any articles found within them, can be inspected by any agent or representative of the City at any time, either with or without prior notice.

In addition, to ensure the safety and security of employees and customers and to protect our legitimate business interests, we reserve the right to question and inspect or search any employee or other individual entering or leaving City premises or job sites. The inspection or search may include any packages or items that the individual may be carrying, including briefcases, handbags, knapsacks, shopping bags, et cetera. If a non-exempt employee is present during any search or inspection, the employee must report the time spent during the search or inspection as working time.

These items are subject to inspection and search at any time, with or without prior notice. We also may require employees to agree to reasonable inspection of their personal property and/or person while on the job or on the City's premises. The individual may be requested to self-inspect their personal property or person by displaying the contents of any packages and/or turning out their pockets, etc., in the presence of two City representatives, typically management employees of the same gender. The City will not tolerate any employee's refusal to submit to a search.

A minimum of three management representatives are required to conduct an unannounced search. Two of these representatives should conduct the search, and the third representative should record the inventory. Items found and identifying locations should be noted.

One of the company representatives conducting the search must be of the same gender as the person whose belongings are being searched.

The search should be conducted in the following manner:

- The employee involved will be taken to a private location and informed that the City of Elkins would like to conduct a search and inspection of the employee's personal possessions (including the employee's vehicle), in accordance with company policy. The company representative conducting this meeting should ask the employee if he or she will cooperate with the search.
- The search should not begin until the employee gives written consent to the search.
- In the presence of all required City of Elkins representatives and the employee, the designated company representatives will search as necessary through the employee's

locker, work area, personal items or vehicle. The designated company representative should record an inventory of all items found during the search and secure relevant items.

- After the search is completed, the designated company representative should:
  - Conclude the search by either thanking the employee for cooperating or by placing the employee on unpaid suspension pending the outcome of the investigation.
  - Set up a specific time for the employee to meet with the department director or other designated [Company Name] representative.

An employee who refuses to cooperate with a search request from an authorized City of Elkins representative should:

- Not be detained in any way or for any reason but should be informed that any sort of refusal to cooperate will be grounds for disciplinary action up to and including termination.
- Be immediately relieved of duty and placed on unpaid suspension pending investigation.

The following may be searched:

- Any property of City of Elkins, including lockers, desks and other individually assigned spaces.
- Any personal property brought onto City of Elkins premises by the employee, including:
  - Pockets
  - Purses/wallets
  - Briefcases
  - Automobiles
  - Shopping bags/boxes
  - Removable clothing

The employee may be asked to remove a coat, sweater, lab coat or similar type of clothing so that it can be inspected. The employee may be asked to empty all pockets on the employee's clothing. The search should not include any form of body searching.

Each City of Elkins representative present during the search/investigation must immediately write an independent report of the incident, or if all parties involved agree, a joint statement/summary may be written and signed by all involved in the search, including the employee(s). The report(s) should be delivered to the director of human resources.

The following information must be included in the report:

- The reason for the search.
- Who was involved in the search.
- Where the search was conducted.
- The date and time of search.
- What, if anything, was found during the search.
- What actions were taken with the employee involved.
- What items were seized and what action was taken with the item(s).
- What instructions were given to the employee.

The director of human resources should immediately report to the appropriate authorities any illegal items that are found and should document such notification.

### ***www. Cameras and Video Surveillance***

For purposes of workplace safety and security and to prevent theft and other misconduct the City may install video surveillance cameras in work areas.

If there is any reported incident of theft, trespass, workplace violence, employee misconduct, or any type of safety violation (hereafter collectively referred to as "security incidents"), the City will utilize its surveillance equipment as an investigatory tool. The City will also make use of its surveillance equipment to deter any future security incidents.

The City also reserves the right to actively monitor, through its surveillance cameras, any areas for safety reasons (to protect against equipment failure, breakage, or accident) or confidentiality reasons (to protect documents or other proprietary information).

Although the video surveillance described in this policy is intended to monitor for security incidents and other safety reasons at the City, it is possible that such surveillance may monitor activities not related to the City's business.

The City respects the privacy of its employees. Accordingly, no video cameras will be installed in the City's restrooms or in any lactation or changing areas.

The surveillance video cameras and any video footage from the surveillance are to be used solely for the purposes of this video surveillance policy. Any unauthorized use of these video cameras and/or videotapes is strictly forbidden and may result in discipline, up to and including termination of employment.

### ***xxxx. Visitors***

Restricting access to certain City premises and/or certain work areas helps maintain safety standards, protect against theft, ensure security of equipment, protect confidential information, safeguard employee welfare, and avoid potential distractions and disturbances. For this reason, only authorized visitors are allowed in those restricted-workplace areas and all authorized visitors, including friends, family, and former associates, must register with the site supervisor. All visitors to restricted areas must be escorted at all times by a City of Elkins employee.

Employees being visited are responsible for the actions of their guest(s). Should a guest of an employee act in such a manner that disrupts the normal working conditions of the City or threatens the security of the City and/or its employees, the employee accompanying the guest may be held responsible for the guest's actions and subject to disciplinary action up to and including termination of employment.

The City reserves the right to verify the contents of packages and briefcases brought onto City premises by visitors.

If an employee suspects or becomes aware of any unusual situation, that employee should immediately notify the Elkins Police Department.

### ***yyyy. Use of City Equipment and Resources***

#### ***zzzz. City Equipment***

When using City vehicles or other property, employees are expected to exercise care, maintain the property in safe working order, and follow all operating instructions, safety standards and guidelines.

Employees should notify their supervisors if any equipment, machines, tools, or vehicles appear to be damaged, defective, or in need of repair. Prompt reporting of damages, defects, and the need for repairs could prevent deterioration of equipment and possible injury to employees or others. Employees who have questions about their responsibility for maintenance and care of equipment or vehicles used on the job should consult their supervisor.

All employees are expected to comply with all local, state, and federal laws while operating City vehicles and other equipment. The City may discipline employees who engage in unlawful conduct.

#### ***aaaaa. Electronic Resources***

This policy describes the City's general guidelines for using its electronic resources, including electronic mail (email), voicemail, internet access, and computer systems.

Employees should use the City's electronic resources with the understanding that these resources are provided for the benefit of the City's business. Employees may use City electronic resources for personal use, during nonworking time, as long as such use complies with City rules and applicable laws. Employees should never use the City's electronic resources for personal use in a manner that interferes with their work duties or any responsibilities to customers.

Sending, saving, accessing, or viewing obscene, uncivil, or otherwise inappropriate material on the City's electronic resources is prohibited. Messages stored and/or transmitted by the City's electronic resources, including the computer, voicemail, email, or the telephone system must not contain content that may reasonably be considered to be obscene or other patently offensive material. Prohibited material includes but is not limited to sexual comments, jokes or images, racial slurs, gender-specific comments, or any comments, jokes, or images that would discriminate against or harass someone on the basis of their race, color, sex, age, national origin or ancestry, disability, or any other category protected by federal, state, or local law. Likewise, any use of the internet, email, or any other electronic resource to engage in harassment or discrimination prohibited by City policies is unlawful and strictly prohibited. Violators may be subject to discipline, up to and including termination of employment.

Unless otherwise noted, all software on the internet should be considered copyrighted work. Therefore, employees are prohibited from downloading software and/or modifying any such files without permission from the copyright holder.

#### ***bbbbb. No Solicitation***

The City's electronic resources must not be used for solicitation purposes during working time. The City's no solicitation rule applies to the use of electronic resources.

#### ***ccccc. Employee Responsibility***

Employees are responsible for the content of all text, audio, or images that they place or send using the City's electronic resources. The same standards should be utilized for the creation of email messages in connection with an employee's work as would be utilized for other City correspondence or memoranda.

#### ***dddd. Computer and Systems Security***

All computers and the data stored on them are, and remain at all times, the property of the City of Elkins. As such, all messages created, sent or retrieved over the internet or the City's electronic mail systems are the property of the City and should be considered City information. The City reserves the right to retrieve and read any message composed, sent, or received using the City's electronic resources,

including all computer equipment and the electronic mail system, for any business reason, including but not limited to ensuring compliance with this and all City policies.

Employees should be aware that even when a message is deleted or erased, it is still possible to recreate the message; therefore, ultimate privacy of a message cannot be ensured to anyone. Accordingly, internet and email messages are not private. Furthermore, all communications including text and images can be disclosed to law enforcement or other third parties without prior consent of the sender or the receiver.

Employees should also be aware that duplicates of email transmitted through a personal, web-based email account using City equipment could be stored on that equipment; likewise, information regarding internet sites that an employee has accessed may also be stored.

#### ***eeee. Email Content Screening***

The City maintains the right to screen all inbound and outbound email content. Email messages or attachments that contain obscene or similarly offensive material may be quarantined and held from transmission or receipt until the sender or recipient can verify the message or attached document is work related.

The City may, in its discretion, review communications to and from a personal account, subject to state laws regarding attorney-client communications.

If an employee wants to communicate with an attorney or send an otherwise confidential piece of communication that the employee does not want the City to monitor, the employee should consider using a personal email address and personal computer equipment. If an employee does use City equipment, the employee consents to any monitoring by the City and should understand that there is no right to privacy with respect to such communications, to the extent permissible under applicable law.

#### ***ffff. Virus Protection***

To prevent computer viruses from being transmitted through the system, employees are not authorized to download any software from the internet onto their computer or any drive in that computer.

The City maintains virus protection software on all network servers and filters all inbound and outbound email for virus attachments. Email containing a virus will be quarantined and both the sender and recipient will be informed. If the virus can be removed, the message will be forwarded to the recipient.

#### ***ggggg. Driving for City Business***

The City of Elkins provides City-owned vehicles for approved selected employees to drive on City-designated business. The City will also reimburse employees for business use of personal vehicles in accordance with this policy

All employees are expected to comply with all local, state, and federal laws while operating City vehicles and other equipment or driving a personal vehicle for business purposes. The City may discipline employees who engage in unlawful conduct. For example, employees who are assigned to drive a City-owned vehicle or otherwise required to drive as part of their job duties are required to have and maintain a valid driver's license, wear seat belts, and travel at a safe speed. The improper, careless, negligent, destructive, or unsafe use or operation of equipment or vehicles, as well as excessive or avoidable traffic and parking violations, can result in disciplinary action, up to and including termination of employment.

Employees are to use their City-owned vehicle for work-related purposes only, but may run incidental, personal errands during their commute to and from work or during their meal break. This commuting and meal break time is the employee's time. Employees are not allowed to use City vehicles outside of normal work hours or call-out unless specifically authorized.

City vehicles are to be driven by authorized employees only, except in the case of repair testing by a mechanic. Any accidents in City vehicles or while driving on City business, regardless of severity, must be reported immediately to the police department and to the City Treasurer. Failing to stop after an accident and/or failure to report an accident may result in disciplinary action up to and including termination of employment.

Drivers are responsible for the security of City vehicles assigned to them. The vehicle engine must be shut off, ignition keys removed, and vehicle doors locked whenever the vehicle is left unattended.

#### ***hhhhh. Cell Phone Use/Texting While Driving***

Employees whose job responsibilities include regular or occasional driving and who are issued a City cellular telephone or use their personal cellular telephone for business-related work are expected to put safety first. Therefore, personal and City-supplied cellular telephones are not to be used while driving.

If an employee receives a call on a cellular telephone while driving, the employee must pull over safely, park, and then either answer the telephone or return the call or text message. Furthermore, if an employee needs to make a City-related cellular telephone call, the employee must also pull over safely, park, and then place the call.

Employees also may not send or review text messages while driving as part of their job responsibilities. The purpose of this policy is to ensure the safety of employees, other motorists and City property. Employees who are charged with traffic violations or who cause accidents or injuries resulting from their use of personal or City-issued cellular telephones or other devices while driving will be solely responsible for all liabilities, fines, etc., that result, to the extent permissible under the law.

Employees whose job responsibilities do not specifically include driving as an essential function, but who are issued a City-provided cellular telephone for business use or who use their personal cellular telephone for business use, are also expected to abide by the provisions of this policy.

#### ***iiii. Inclement Weather & Related Emergencies***

Employees are expected to exercise appropriate judgment if faced with inclement weather or emergency conditions. While employees should not jeopardize their personal safety unnecessarily in order to get to work or remain on the job for the full workday, neither should they overreact to normal fluctuations in the weather.

If local weather or similar conditions warrant, the city government may announce a closure. This section provides guidance for how work schedules and compensation may adjust during emergency closures of the city government. This section also explains how closure times will be determined and announced.

#### ***jjjjj. Essential and Non-essential Employees***

When the city government is closed because of inclement weather or emergencies, employees are affected differently depending on whether they are considered "essential" or "non-essential." These categories are defined below.

#### ***1.1.1.5 Essential Employees***

Essential employees are those whose work duties either involve responding to weather/emergency conditions (e.g., snow-plow or equipment operators) or cannot be suspended without posing danger to persons and/or property (e.g., emergency responders, plant operators, etc.).

Availability for response to emergencies is a condition of employment for many city positions. Check with your supervisor if you are not sure whether your position would be considered “essential” during an emergency closure.

When the city government is closed because of weather or other emergencies, essential employees should report for or remain at work as usual or otherwise operate as directed by their supervisors.

As of the announced closure time (explained below), essential workers will be paid under the terms of the Call-Out Policy described earlier in this document. That is, essential workers will only be paid for hours actually worked, but they will be entitled to a minimum of two and one-half hours’ overtime pay each time they report for a new shift during the emergency. They will be paid one-and-a-half times their usual rate for all hours worked during the emergency. Essential workers are not required to punch out for meals during the emergency.

#### ***1.1.1.6 Non-Essential Employees***

Non-essential employees are those whose work (1) does not involve responding to the weather/emergency condition and (2) can be suspended temporarily without posing danger to persons and/or property.

When the city is closed, non-essential employees are excused from work but continue to receive the same pay they would have received for all previously scheduled shifts that they would have worked if not for the closure.

When the city government is closed because of weather or other emergencies, non-essential employees should not report to work or perform any non-essential work without authorization from the appropriate administrative officer. Some employees generally considered non-essential may be needed from time to time during the emergency to perform essential tasks related to the emergency (e.g., periodic public-facing communication; analysis and decision-making concerning the duration of the closure; or coordination of response to the emergency).

Availability for such tasks is a condition of employment for some city positions. Check with your supervisor if you are not sure whether some of your job duties might be considered essential during an emergency closure.

If hourly non-essential employees perform any work for the city during the closure, they will be compensated at time and a half. If exempt non-essential employees perform any work for the city during the closure, they will receive one hour of compensatory time for each hour worked. (See below for more information.)

#### ***kkkkk. Closures Announced During a Workday***

It may happen that the city is open at the beginning of a workday but must be closed later, due to the onset of severe weather or other emergency conditions.

As of the announced closure time, essential employees will operate and be compensated as described in section H.1.1., “Essential Employees.” They will receive Call-Out Pay as of the announced closure time,

if they remain on-site and available for work as directed by their supervisors.

As of the announced closure time, non-essential employees will operate and be compensated as described in section H.1.2., “Non-Essential Employees.” These employees’ excused paid period commences as of the announced closure time.

### **8.19.3 Delayed Openings**

When conditions require delaying the start of the workday, non-essential employees will be excused and essential employees must report, as described in sections H.1.1 “Essential employees” and H.1.2. “Non-essential employees.”

#### **1.1.1.7 Employees Unavailable for Work**

During a closure, early closing, or delayed opening, the status of any employees who are already absent due to illness or on previously scheduled time off will not be affected. They will be charged for sick leave, annual leave, personal days, or compensatory time, as previously planned.

## **IIII. Closure Announcements**

Closures will be announced by the Mayor or the Mayor’s designee. Closure decisions will be made by the Mayor or the Mayor’s designee, after consultation with appropriate staff, depending on the nature of the emergency. Emergency announcements from other levels of government will not automatically result in a closure of the city government.

### **mmmmm. Announced Closure Time**

In the closure announcement, the Mayor or the Mayor’s designee will specify the closure time. The announced closure time will signal the beginning of special emergency pay status for essential workers (see H.1.1., above). The announced closure time will signal the beginning of the paid excused period for non-essential workers (see H.1.2., above).

### **nnnnn. Announced End-of-Closure Time**

The Mayor or the Mayor’s designee will announce the date and time of the lifting of the emergency, after consultation with appropriate staff, depending on the nature of the emergency.

For non-essential workers, the announced end time will signal the end of their paid excused period. As of the announced end time, non-essential workers will be expected to report for work at the beginning of their next regularly scheduled workday and return to their normal work schedules thereafter.

For essential workers, the announced end time will signal the end of their special pay status. As of the announced end time, essential workers will be released from special emergency duties. These workers will be expected to report for the beginning of their next regular workday and return to their normal work schedules thereafter.

### **ooooo. Solicitation and Visitors**

Soliciting others at work can be disruptive to employee productivity, create uncomfortable or even harassing situations for employees, and could pose a security threat when visitors are allowed to solicit on company premises.

**Commented [A24]:** Solicitation and Visitors – Policy now includes a non-solicitation during work time

Therefore, the City of Elkins prohibits selling, soliciting and the distribution and posting of materials on or at company property by any employee or nonemployee, except as permitted by this policy.

The sole exceptions to this policy are charitable and community activities supported by The City of Elkins

#### ***ppppp. Employees***

Employees may not solicit other employees during their own work time, or during the work time of another employee, except in connection with a company approved or sponsored event.

Employees may not distribute literature of any kind during their work time, or in any work area at any time, except in connection with a company-sponsored event.

Work time means at all times employees are expected to be working and does not include meal or break times. Work areas include all areas in which work is performed.

#### ***qqqqq. Visitors***

Nonemployees may not solicit employees or distribute literature of any kind on The City of Elkins premises at any time. Employees may only admit nonemployees to company premises with management approval or as part of a company-sponsored program. These visits should not disrupt workflow. A City of Elkins employee must accompany the nonemployee at all times.

Violation of this policy should be reported to the human resources department.

Nothing in this policy is intended to, nor should be construed to limit or interfere with employee rights as set forth under all applicable provisions of the National Labor Relations Act, including Section 7 and 8(a)(1) rights to organize and engage in protected, concerted activities regarding the terms and conditions of employment.

### **EMPLOYEE BENEFITS**

#### ***rrrrr. Benefits Overview***

Benefit plans offered by the City of Elkins are defined in legal documents such as insurance contracts and summary plan descriptions. If employees are offered benefits, and if a question arises about the nature and extent of plan benefits or if there is a conflict in language, the formal language of the Plan documents govern, not the informal wording of this Manual. Plan documents, if applicable, are available for your inspection. The City and its designated benefit-plan administrators reserve the right to determine eligibility, interpretation and administration of issues related to benefits offered by the City.

Employment benefits vary according to the position and status of the employee.

Full-time employees are eligible to receive all employment benefits offered by the City of Elkins. Part-time employees are NOT eligible to receive any employment benefits offered by the City,

Employees should contact Human Resources for detailed benefits information.

### ***sssss. Insurance Plans***

All full-time employees are eligible to participate in the State of West Virginia's group medical insurance plan or such plan to which the City may subscribe. The City Council will determine how much of the medical insurance premium cost for employees will be paid by the City, and how much of a co-payment employees will be required to contribute towards their premiums.

Tobacco users shall pay an additional surcharge to defray the higher costs of their insurance coverage.

The cost of \$10,000 of basic life insurance is paid by the City for each full-time employee. If an employee wishes to have additional coverage, the employee may purchase additional optional life or accidental death insurance policies and have the premiums deducted from the employee's payroll check.

Details concerning insurance coverage will be explained by the Payroll/ Benefits Coordinator at the time of employment. Coverage for health and life insurance begins the first day of the month following employment.

The initial enrollment period is the month the employee is hired and following two calendar months. Once the selection is made it will remain fixed for the remainder of the plan year; however, employees will have an opportunity to make changes to their benefit selections during the City's annual open enrollment period.

Employees who experience a qualifying life event such as marriage, divorce, or the birth of a child will also be allowed to make a change in their benefit selection when that event occurs, in accordance with the terms of the Plan document.

Both the City and the employee contribute to the cost of medical insurance. Employees should contact the Payroll/ Benefits Coordinator with any questions.

### ***ttttt. Retirement Benefits***

Most City employees participate in the West Virginia Public Employees Retirement System, administered by the West Virginia Consolidated Public Retirement Board. Civil-service police and civil-service fire personnel participate in their own separate retirement plans.

The purpose of this policy is to ensure uniform adherence to the established procedures for compensating eligible employees of the city and its spending units.

Questions regarding retirement benefits should be directed to the Payroll/ Benefits Coordinator.

### ***uuuuu. Same-Sex Marriages, Civil Unions, & Domestic Partnerships***

The City complies with all applicable laws regarding the provision of benefits to same-sex spouses, domestic partners, and couples in a civil union. Employees should contact Human Resources if they have any questions regarding benefits eligibility for themselves or their spouses, domestic partners, or partners in a civil union.

### ***vvvvv. Workers' Compensation***

When work-related accidents, injuries, or illnesses occur, employees may be eligible for workers' compensation insurance benefits. The City provides a comprehensive workers' compensation insurance program at no cost to employees and in accordance with applicable state law. This program covers most

injuries or illnesses, sustained in the course of employment, that require medical, surgical, or hospital treatment. Subject to applicable legal requirements, workers' compensation insurance provides benefits or, if the employee is hospitalized, treatment immediately.

**wwwww.      *Reporting Work-Related Injury or Illness***

Employees who sustain a work-related injury or illness should inform their supervisor immediately. No matter how minor an on-the-job injury may appear, it is important that it be reported immediately. This will enable an eligible employee to qualify for coverage.

**xxxxx.      *Leaves of Absence/Accommodation***

Employees who need to take time off from work due to a workers' compensation illness or injury may also be eligible for a leave of absence under the City's leaves of absence or reasonable accommodation policies. Employers are prohibited from forcing an employee to use this leave in lieu of workers' compensation benefits. Therefore, the City will not require an employee to use other leave in lieu of workers' compensation benefits.

West Virginia Code §23-4-1, et seq. in pertinent part, prohibits employees of the State of West Virginia and its political subdivisions from receiving payment for accrued sick leave while receiving benefit payments due to a work-related injury compensable under workers' compensation.

An example of how this policy may apply is when an employee may opt to use annual leave to pay the difference between normal, full wages and the amount workers' compensation pays. Employees should consult with their immediate supervisor or Administrative Officer for additional information.

**yyyyy.      *Return to Work***

Employees who are ready to return to work following a workers' compensation-related leave of absence must supply a certification from a health care provider confirming the employee's ability to return to work.

**zzzzz.      *Fraud***

The City will notify the workers' compensation insurance company if we have reason to believe an employee has supplied false or misleading information in connection with a claim and/or has filed a fraudulent claim. Workers' compensation fraud is a crime and may also be grounds for disciplinary action, up to and including termination of employment.

**DISCIPLINARY POLICY**

If an employee's behavior or conduct is such that the employee's supervisor believes that disciplinary action should be taken, the supervisor will make a written record of the pertinent circumstances on a disciplinary form and discuss it with the employee. The employee and the supervisor will both sign the form indicating that the matter was discussed. If an employee disagrees with the disciplinary action, the employee may take the necessary steps to appeal the supervisor's decision as outlined in the Grievance Procedure section.

Although employment may be terminated at-will by either the employee or the City at any time, without following any formal system of discipline or warning, we may exercise discretion to utilize forms of discipline that are less severe than termination. Examples of less severe forms of discipline include verbal warnings, written warnings, demotions, and suspensions. Although one or more of these forms of

discipline may be taken, no formal order or procedures are necessary. The City reserves the right to determine which type of disciplinary action to issue in response to any type of performance issue or rule violation.

NOTE: The following lists are not all-inclusive, nor complete, but merely are given as examples of some of the most common forms of employee misconduct.

*Section 1.* Examples of offenses that could result in an oral warning for the first offense, a written warning for the second offense, and suspension without pay or discharge for subsequent offenses:

- a) Chronic tardiness
- b) Unauthorized absences from the job or work area
- c) Foul and abusive language
- d) Inefficiency or negligence in the performance of duties
- e) Chronic inability to work with others

*Section 2.* Examples of offenses that could result in immediate discharge or suspension without pay:

- a) Sleeping on the job
- b) Three days of absence without notification to the appropriate supervisor
- c) Excessive absenteeism defined as more than two unauthorized absences within a 60-day period.
- d) Harassment of any kind
- e) Intoxication or illegal drug use while on the job or reporting for work or entering City premises while under the influence of any intoxicant or controlled substance
- f) Assault of a fellow employee, official, individual doing business with the City, or a member of the general public, while at work or representing the City of Elkins, West Virginia
- g) Theft
- h) Refusal to perform assigned lawful tasks or performing in an insubordinate manner
- i) Destruction of property
- j) Possession of firearms on City property except for unloaded firearms being legally transported in a locked personal vehicle, and except for City positions that require the employee to carry a firearm (e.g., police officer)
- k) Gross insubordination
- l) Conviction of a felony
- m) False record keeping (i.e., timecards)

## LEAVING THE CITY

### **aaaaaa. Separation from Employment**

Employees of the City of Elkins are employed on an at-will basis. This means that employment may be terminated by either party at any time, with or without cause or notice. Nothing in this policy is intended to limit or alter the at-will nature of your employment.

Employees may leave the City for a variety of reasons. Regardless of the reason, we strive to ensure that all separations from employment are handled fairly, efficiently, and in compliance with applicable federal and state laws.

Reasons for termination include, but are not limited to, the following:

### **bbbbbb. Voluntary Termination**

A voluntary termination means an employee has made the decision to end the working relationship with the City. Voluntary resignations include, but are not limited to, written or verbal resignation, retirement (more fully discussed below), and job abandonment. An employee is considered to have abandoned the job if the employee fails to return within **three (3) days** and has not notified the City of their intention to resign.

Employees who voluntarily leave the City are encouraged to give two weeks written notice prior to their last day of work to their supervisor in order to allow a reasonable amount of time to transfer ongoing work. Upon resignation, an employee must return all keys, uniforms, credit cards, or other City-issued property.

Employees in good standing who retire or resign from their positions may be eligible for re-hire.

### **ccccc. Retirement**

The City has established retirement plans designed to provide certain benefits to eligible employees. Since the type and level of benefits vary according to the terms of each plan and are subject to modification, they are not specifically set forth in this Manual. Each plan is described in detail in a summary plan description, a copy of which is provided to each employee eligible to participate in such plan. Employees should contact Human Resources for additional information that will help to determine eligibility.

Nothing in this policy shall be deemed to modify any employee benefit plan or plans referred to herein or that may subsequently be established.

### **ddddd. Involuntary Termination**

An involuntary termination occurs when the City decides to end the working relationship with an employee. Involuntary terminations may occur for cause or for reasons other than cause.

Involuntary terminations for cause include but are not limited to terminations for violating City policy, misuse or theft of resources, the falsification of information, or unsatisfactory work performance.

Involuntary terminations for reasons other than cause include but are not limited to a reduction in workforce.

**Commented [A25]:** Separation from employment and the different types of separation to include exit interviews.

### **Pay and Benefits Upon Termination**

Final wages will be paid in accordance with applicable law. In accordance with City policy, no paid time off other than accrued compensatory time and annual leave will be paid upon termination unless otherwise required by law.

### **eeeeee. Return of City Property**

Employees are required to return all City property (e.g., computers, vehicles, passwords, uniforms, ID badges, credit cards) that is in their possession or control in the event of termination of employment, resignation, retirement, or layoff or immediately upon request. No information belonging to the City can be copied for the employee's use. We may also take all action deemed appropriate to recover or protect City property.

### **fffff. References/Verifications of Employment**

So that the City can handle requests for job references in a consistent, fair, and lawful manner, all requests for official job references on behalf of the City should be forwarded to Human Resources. No other manager or supervisor is authorized to release references on the City's behalf for current or former employees. Our policy concerning references for former employees is to disclose only the dates of employment and the title of the last position held. If an employee authorizes disclosure in writing, we will also provide a prospective employer with information on the amount of the salary or wage last earned.

### **gggggg. Exit Interviews**

Before leaving the City of Elkins, employees may be asked to participate in a voluntary exit interview. This will provide closure to the employee's employment with the City and will allow the City to ensure that it has resolved various administrative matters, answered any questions about continuation of benefits, and listened to any of the employee's comments or ideas about improving the City's operations.

## ACKNOWLEDGEMENT AND RECEIPT

I acknowledge that I have received and read a copy of the City of Elkins Personnel Manual. I understand that the Personnel Manual sets forth certain terms and conditions of my employment with the City as well as the duties, responsibilities, and obligations of employment with the City. I understand that the City of Elkins has provided me various alternative channels, including anonymous and confidential channels, to raise concerns of violations of this Manual and City policies and encourages me to do so promptly so that the City of Elkins may effectively address such situations. I understand that nothing herein interferes with any right to report concerns, make lawful disclosures, or communicate with any governmental authority regarding potential violations of laws or regulations. I agree to abide by and be bound by the rules, policies and standards set forth in the Personnel Manual.

I acknowledge that, except where required otherwise by applicable state law, my employment with the City of Elkins is at-will, meaning that it is not for a specified period of time and that the employment relationship may be terminated at any time for any reason, with or without cause or notice, by me or the City. I further acknowledge that only the City Council or their authorized representative has the authority to enter into an agreement that alters the fact that my employment with City of Elkins is at-will. Any such agreement must be in writing and signed by the Mayor or authorized representative, after resolution by council.

I further acknowledge that the City reserves the right to revise, delete, and add to the provisions of the Personnel Manual, but I also understand that all such revisions, deletions, or additions must be in writing. No oral statements or representations can change the provisions of the Manual. Furthermore, the City's policy of at-will employment can only be changed as stated in the prior paragraph.

I understand and acknowledge that nothing in this Personnel Manual or in any other document or policy is intended to prohibit me from reporting concerns to, filing a charge or complaint with, making lawful disclosures to, providing documents or other information to, or participating in an investigation or hearing conducted by the Equal Employment Opportunity Commission ("EEOC"), National Labor Relations Board ("NLRB"), Securities and Exchange Commission ("SEC") or any other federal, state or local agency charged with the enforcement of any laws.

I also understand and acknowledge that nothing about the policies and procedures set forth in this Manual should be construed to interfere with any employee rights provided under state or federal law, including Section 7 of the National Labor Relations Act.

I have read and understand the above statements.

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date:

**[TO BE PLACED IN EMPLOYEE'S PERSONNEL FILE]**

## APPENDICES AND ADDENDA

### I

#### *Appendices:*

- A. Drug and Alcohol Testing Policy
- B. Leave Donation Program

#### *Addenda:*

- A. Observable Behavior Checklist
- B. Safety Sensitive Checklist
- C. FMLA Poster

**hhhhh. APPENDIX A: City of Elkins Substance Abuse Policy**

The City of Elkins is committed to providing a safe, productive, and healthy work environment. Since substance abuse poses a serious threat to the health and safety of all employees, the City will not tolerate substance abuse in the workplace and maintains a zero-tolerance policy in this regard. Substance abuse occurs when an individual misuses alcohol or another legal substance, uses illegal drugs, or misuses prescription and over-the-counter drugs and inhalants.

This Substance Abuse Policy is in effect at all of our facilities, on all City property, in any City owned or leased vehicle, and while on duty or immediately available for duty, regardless of location. Drivers of commercial motor vehicles are subject to the City's "Drug and Alcohol Testing Policy for Drivers of Commercial Motor Vehicles." The City retains the right to take actions designed to further this generally applicable policy pursuant to its own authority in addition to any actions it takes in order to comply with its responsibilities under the Omnibus Transportation Employee Testing Act of 1991.

It is a violation of City policy for any employee to:

- Use, possess, sell, trade, offer for sale, buy, or otherwise engage in the distribution of any illegal drug or inhalant.
- Consume alcoholic beverages on City property.
- Report to work under the influence of alcohol, any mind-altering substance, or any illegal drug or inhalant.
- Test positive for alcohol or any illegal drug or inhalant.
- Refuse to be tested, tamper with or destroy a test sample, submit a false sample, or otherwise interfere with the integrity of any testing procedure.
- Misuse prescription or over-the-counter drugs or legal substances with mind-altering properties in any manner that may result in job impairment or a positive drug test.

Employees violating this policy are subject to discharge.

**Drug/Inhalant/Alcohol Testing**

Employees will be tested for drugs, inhalants, alcohol, and other mind-altering substances in accordance with applicable law. Consistent with those laws, all City employees shall be required to participate in the following kinds of substance abuse testing:

1. Pre-Employment. Following a job offer as part of the employee's pre-employment screening process.
2. Reasonable Suspicion. Whenever there is a reasonable, good-faith, objective suspicion that an employee has reported to work or is working under the influence of alcohol or a drug, or substance of abuse, or has otherwise violated this policy. Reasonable suspicion may be based on a number of factors including, but not limited to, the following (see Addendum A: Observable Behavior Checklist):
  - i. Direct observation of substance abuse at work;

- ii. Abnormal conduct or erratic behavior while at work, or a significant deterioration in work performance or other actions that indicate impairment;
- iii. A report of substance abuse by a credible source. A credible source is an objective individual whose identity is known and who has provided reliable information that can be verified;
- iv. Evidence that an employee has used, possessed, sold, distributed, or solicited a drug, inhalant, alcohol, or other mind-altering substance on City property, while engaged in City business, or while operating a City vehicle, machinery, or equipment.

3. Post-accident. If, while operating a city vehicle, an employee is involved in an accident, that employee is subject to an immediate, mandatory drug screening, regardless of whether or not the employee is determined to be at fault.

It is the responsibility of the supervisor of the affected employee to make arrangements for a drug screening to be done within 24 hours following the accident.

Other, additional requirements may apply to holders of commercial driver's licenses under state and federal law.

4. Fitness for duty. Testing may be required as a part of a fitness for duty medical examination. For example, testing may be conducted where required by law, regulation, or established policy.
5. Random. Random testing will be conducted of all safety-sensitive employees (see Addendum B: Safety Sensitive Checklist). Safety-sensitive employees are those who perform tasks or duties fraught with such risk of injury to the employee or others that even a momentary lapse of attention or judgment, or both, can lead to serious bodily harm or death.

### **Self Referral**

Employees may avoid termination for violation of this policy by referring themselves to the City for referral to a substance abuse professional prior to any violation of this policy. Once an employee has violated the policy, this option is no longer available. Referral to a substance abuse professional is then at the City's sole discretion. Substance abuse is a treatable condition, and the City encourages employees who think they may have a problem to obtain help before it becomes a disciplinary issue.

### **Opportunity to Contest or Explain Test Results**

Test results are evaluated by a Medical Review Officer. If an employee disputes the accuracy of a positive test result, the employee may challenge the result with the Medical Review Officer. The Medical Review Officer will consider any information offered by the employee in this regard. If the medical review officer does not accept the employee's explanation for the challenged result, the test shall be reported back to the City as positive. The employee will be entitled to a copy of the result if requested within five working days.

### **Confidentiality**

Any information obtained by the City pursuant to its drug testing program shall be treated as confidential medical information. All records will be maintained in a secure location in a controlled access area. The City will only release any drug/alcohol testing records under the following circumstances.

1. With the employee's written authorization or upon request of the employee's power of attorney should the employee be incompetent or incapacitated;
2. To the decision-maker in a lawsuit, grievance or other proceeding initiated by or on behalf of the individual and arising from the results of an alcohol and/or drug test or from the City's determination that the employee engaged in prohibited conduct (including, but not limited to, worker's compensation, unemployment compensation, or other proceedings relating to a benefit sought by the employee);
3. Pursuant to a court order, search warrant, or other legally constituted request for such information.

Information relating to an employee's drug and alcohol testing, administration of this policy, and imposition of disciplinary action will be provided only to a limited number of persons, including, but not limited to, the employee's supervisor and the Operations Manager. Such information may be shared only by those persons having a legitimate interest in these issues as they relate to the management and direction of the work force.

**iiiiii. APPENDIX B: Grievance Procedure**

1. A grievance is a request by an employee or group of employees, acting as individuals, for personal relief in a matter, which is subject to the control of the municipal government. It may include any dispute or disagreement about any term or condition of employment including safety on the job. All employees have the right to communicate with, and to seek advice from, others if they have a valid reason for not consulting their immediate supervisor; the right to present a grievance without fear of reprisal or interference; the right to represent themselves or to be represented by a co-worker; and the right to have a reasonable amount of time to present a grievance at any level of the grievance review system, including directly to the appropriate state agency (where applicable), without fear of reprisal.
2. All grievances should be settled at the lowest organizational level and in the shortest amount of time possible. An employee or group of employees may present such grievance either formally or informally, as follows:
  - a) Present the grievance, providing all facts and circumstances, either orally or in writing to the employee's immediate supervisor.
  - b) The supervisor will, within two working days, provide a response to all reasonable complaints. If a solution is not achieved, the supervisor will discuss the problem with the appropriate Administrative Officer and provide that person with all relevant background information and any recommended solutions.
  - c) The employee or group of employees may present the case directly to the Mayor. This presentation may be orally or in writing, depending on the nature of the grievance. If no solution is achieved at this level of review, the employee or group of employees shall, if desired, present the grievance under the procedure established for formal presentation set forth in paragraphs d) through f) below.
  - d) Complete a City Grievance Form. Care should be taken to include all relevant facts and circumstances, reflecting dates, times, names of witnesses, and any other information having a bearing on the case. Additionally, indicate what action—if any—was taken or recommended by the supervisor, and why such action or recommendation is not adequate.
  - e) Forward the completed form to the Mayor's office within five (5) days from the date of the aforesaid supervisor's response to the grievance for the Mayor's review and action.
  - f) The Mayor shall review the case, may have the case investigated, and will normally provide a reply to the parties concerned within five (5) days of receipt of the completed form.

If a civil-service employee does not agree with the Mayor's decision, the employee may have the right to present the grievance to the appropriate Civil Service Commission. If the latter recourse is taken, the Mayor will provide details on the procedure.

This policy and procedure does not prevent employees from exercising any constitutional rights they may have to utilize the judicial system.
3. All records, including investigation reports, grievance forms, memoranda, and actions taken on each official grievance filed within the municipal government will be

maintained in the employee's personnel record. The fact that an employee filed a complaint or grievance will not be considered in future personnel actions.

**CITY OF ELKINS  
GRIEVANCE FORM**

**Name of employee filing this form:**

**Name of supervisor:**

**Date of this filing:**

**Date of incident:**

**Witnesses, if any:**

**Names of other employees involved:**

**Details of grievance:**

**(Use back if necessary)**

---

**Signature of employee**

Date filed with supervisor or Human Resources: \_\_\_\_\_

Supervisor's response, including any solution, recommendations, suggestions, reaction of employee (use back if necessary):

Supervisor's signature: \_\_\_\_\_

Date (within two days of filing): \_\_\_\_\_

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*This section to be filled out by aggrieved employee:*

If you do not agree with the action taken by your supervisor, explain below (use back if necessary):

\_\_\_ I want this grievance presented to the Director of Human Resources.

Sign/date here: \_\_\_\_\_

(Must be presented within 5 days of supervisor's response)

---

Action taken by Human Resources (required within 5 days of receipt):

Director of Human Resource's signature: \_\_\_\_\_

Date of action: \_\_\_\_\_

***jjjjj. APPENDIX C: Annual Leave Donation Program***

**POLICY**

**1. Definitions**

Terms used in this program which are not defined in this section have the usual and customary meaning of the term.

- a. Annual Leave: An earned employee benefit of paid time off from work as provided in the City of Elkins Personnel Manual.
- b. Dollar Value of Annual Leave: The hourly rate of an employee multiplied by the number of hours of annual leave.
- c. Donor: An employee who voluntarily donates accrued annual leave to a recipient.
- d. Employee: Any person who is paid a wage or salary and who is entitled to annual leave as a benefit of employment.
- e. Hourly Rate: The total annual base salary for a full-time employee divided by 2080 hours.
- f. Immediate Family: The immediate family consists of the parents, children, siblings, spouse, parents-in-law, children-in-law, grandparents, grandchildren, step-parents, stepsiblings, stepchildren, and individuals in a legal guardianship relationship.
- g. Medical Emergency: A medical condition of an employee or a member of the employee's immediate family that is likely to require the prolonged absence of the employee from duty and which will result in a substantial loss of income to the employee because of the unavailability of paid leave.
- h. Recipient: An employee who receives annual leave donation(s) from any other employee(s).
- i. Substantial Loss of Income: An amount greater than or equal to one-half month of an employee's base pay.

**2. Eligibility**

In order to be eligible to receive donations of leave, an employee must meet the following conditions:

- a. The employee must have a medical emergency involving a medical condition of the employee or a member of the employee's immediate family.
- b. In the case of a medical emergency involving a medical condition of the employee, the employee must have exhausted all sick leave and all annual leave as well as any other accrued paid leave that the employee is entitled to access;
- c. In the case of a medical emergency involving a medical condition of a member of the employee's immediate family, the employee must have exhausted all annual leave and the sick leave allowance for members of the employee's immediate family as provided in the City of Elkins Personnel Policy.
- d. The medical condition of the employee or the member of the employee's immediate family must be verified in writing by a physician or medical practitioner as requiring the absence of the employee from work for at least one

half of a month continuously after the exhaustion of available leave as specified in subdivisions 2.b and 2.c. of this section.

- e. The employee must apply to receive donated leave according to the procedures established by this program. If, because of the nature of an employee's medical condition, the employee is unable to apply to receive donated leave, the application may be made by a member of the employee's immediate family or by the employee's medical power of attorney; and
- f. The employee must not be receiving or be eligible to receive compensation for absence from work from the Worker's Compensation Fund, nor may the employee be receiving Social Security Disability benefits for absence from work.

**Donor Eligibility.** In order to be eligible to make donations of leave, an employee must meet the following conditions:

- a. The employee must have a remaining balance of 80 hours of accrued sick and/or annual leave after making the annual leave donation (unless the employee is retiring or resigning; see "exception," below) and
- b. The employee must make the leave donation according to the procedures established by this program.

*Exception:* Employees who are resigning or retiring are not required to retain the above 80 hours or any other amount of accrued sick and/or annual leave after making the annual leave donation. However, their donation will not become final until the effective date of their resignation or retirement. Employees being terminated for cause are not eligible to make leave donations.

### 3. Recipient Status

Employees who are recipients of donated leave are considered in leave-without-pay-status in accordance with the City of Elkins Personnel Policy.

Recipients whose absences are due to their own medical condition are considered on medical leave of absence without pay for up to six months, and, if requested by the and approved by the City of Elkins proper authority, on personal leave of absence for medical reasons for up to an additional six months.

Recipients whose absences are due to the medical conditions of members of their immediate families are considered on personal leave of absence without pay.

The following restrictions regarding benefits shall apply to recipients:

- a. Recipients do not accrue annual or sick leave, nor do they earn years of service credit for leave accrual purposes, while in this status;
- b. Recipients are not eligible for paid holidays while in this status;
- c. Recipients do not earn tenure for purposes of order of separation on layoff while in this status;
- d. Recipients do not earn service credit for purposes of an annual increment while in this status;
- e. Recipients do not earn service credit for any retirement system administered by the City of Elkins while in this status; and
- f. Recipients' eligibility to have the employer share of insurance premiums paid is determined in accordance with the rules and procedures of the

Public Employees' insurance Agency for employees in leave without pay status.

The receipt of donated leave in no way relieves an employee of the responsibilities of applying for either a personal or a medical leave of absence without pay or receiving approval for a personal leave of absence without pay in accordance with the City of Elkins Personnel Policy.

#### 4. Method of Donations and Use of Donated Leave

All donations of leave and the use of donated leave is governed by the following criteria as well as procedures established by the City of Elkins in conformance with these criteria.

##### Method of Donations

- a. Donations shall be in the form of whole hours of annual leave only.
- b. Donors shall specifically designate the recipient(s) of the leave donation.
- c. The Payroll/ Benefits Coordinator shall deduct the total donation from the leave balance of the donor upon receipt of the approved donation form.
- d. The Payroll/ Benefits Coordinator shall calculate the dollar value of the donated leave, and in the case of inter-departmental donations, shall transmit that information to the department supervisor of the recipient according to procedures established by this program.
- e. For inter-departmental donations, the account the donor is paid from shall reimburse the account from which the recipient was paid according to procedures established by this program.
- f. The City Treasurer may limit inter-departmental donations when the City Treasurer determines that the donation will cause the account from which the potential donation is paid to exceed its cash balance.

##### Use of Donated Leave

- a. Donated leave shall be used at its present dollar value.
- b. The Payroll/ Benefits Coordinator shall continue to pay the recipient, according to procedures established by this program, as long as there is a positive balance of the total dollar value of all leave donated to the recipient.
- c. For inter-departmental donations, the Payroll/ Benefits Coordinator shall request reimbursement from the account the donor is paid from, as long as there is a positive balance of the total dollar value of all leave donated to the recipient.
- d. A recipient's use of donated leave shall cease:
  - A. If the recipient, for any reason, ceases employment with the City of Elkins;
  - B. If the recipient voluntarily requests termination of the use of donated leave;

- C. If the recipient fails to provide the required physician/practitioner's verification or otherwise fails or ceases to meet eligibility requirements;
  - D. Upon the exhaustion of the total dollar value of all leave donated to the recipient; or
  - E. Upon the recipient's return to work.
- e. Any unused leave donation shall be returned to the donor and re-credited to the donor's leave balance according to procedures established by this program.

5. Payroll/ Benefits Coordinator Responsibilities

- a. Ensure compliance with this policy and the procedures established by the City of Elkins for implementation of the policy.
- b. Responsible for ensuring that donors and recipients meet all conditions of eligibility for the Leave Donation Program.
- c. Solely responsible for and authorized to provide information regarding instances of eligible employees seeking donations of leave in accordance with the procedures established by this program.
- d. Shall maintain all records of donations and use of donated leave in accordance with procedures established by this program.
- e. Shall provide all required and requested information and reports in accordance with the procedures established by this program.

6. Treasurer's Responsibilities and Annual Report

- a. Responsible for establishing standards and procedures for implementation of this program and for preparing an annual status report on the Leave Donation Program to be presented to City Council no later than its last meeting in the month of January each year.

## **Leave Donation Procedures and Forms**

### **INTRODUCTION**

The procedures and forms detailed as follows were adopted from the State of WV Division of Personnel's Leave Donation Program. These procedures and forms may be changed from time to time as the need arises.

Full time employees of the City of Elkins are eligible to participate in a voluntary Leave Donation Program under which leave accumulated by an employee may, if voluntarily agreed to by the employee, be transferred as donated leave to another designated employee if the requesting employee has exhausted all available paid leave due to a medical emergency.

For the purpose of this program, a medical emergency is defined as a medical condition of the employee or an immediate family member of the employee (as defined in the City of Elkins Personnel Policy) that will require the prolonged absence of the employee from duty and will result in a substantial loss of income to the employee because the employee will have exhausted all paid leave available apart from the Leave Donation Program.

### **PROCEDURES**

#### **1. Applying To Receive Donated Leave**

Employees who think they may be eligible for leave donations must first:

- Complete Part I (Applicant Information) of the form titled APPLICATION TO RECEIVE DONATED LEAVE; and,
- Have their physician or medical practitioner complete Part III of the same form. If employees are applying to receive donated leave to care for an ill or injured member of their immediate family, the physician or medical practitioner for the family member completes Part III.

NOTE: If employees, because of their medical condition, are unable to complete the application, the application may be completed by an immediate family member or by the appointing authority. Item 10, however is optional and, if completed, can only be completed by the employee.

Once both Parts I and III have been completed, the employee must:

- Submit the APPLICATION TO RECEIVE DONATED LEAVE to the employee's department supervisor.

#### **2. Processing the APPLICATION TO RECEIVE DONATED LEAVE**

When an APPLICATION TO RECEIVE DONATED LEAVE is received by a department supervisor:

- It should be forwarded immediately to the person responsible for keeping the applicant's leave records (Payroll/ Benefits Coordinator).

The person responsible for keeping the applicant's leave records (Payroll/ Benefits Coordinator) should:

- Make sure Parts I and III are complete (if not, return to the applicant for completion), then
- Complete Part II of the APPLICATION TO RECEIVE DONATED LEAVE

Once Part II of the APPLICATION TO RECEIVE DONATED LEAVE is completed, the Payroll/ Benefits Coordinator will either:

- Prepare the NOTICE OF ELIGIBILITY TO RECEIVE LEAVE DONATIONS if the employee is eligible; or
- Return a copy of the completed APPLICATION TO RECEIVE DONATED LEAVE to the employee if the employee is NOT eligible.

NOTE: The earliest date a recipient employee can be eligible to receive leave donations is either the date the APPLICATION TO RECEIVE DONATED LEAVE is received by the agency or the date all leave available to the recipient employee is exhausted, whichever is later.

NOTE: Participation in the leave donation program does not relieve an employee of the responsibility of applying and receiving approval for an appropriate leave of absence without pay. It should be noted, however, that the employee is participating in the program.

### **3. Completing the NOTICE OF ELIGIBILITY TO RECEIVE LEAVE DONATIONS**

All information required for the notice is available from the APPLICATION TO RECEIVE DONATED LEAVE. The NOTICE OF ELIGIBILITY TO RECEIVE LEAVE DONATIONS:

- Is completed and distributed by the Payroll/ Benefits Coordinator to advise interested employees that a fellow employee is in need of and eligible for leave donations.
- Must be signed by the Payroll/ Benefits Coordinator or the 5. Payroll/ Benefits Coordinator's designee.

**NOTE: The additional information (Part I, item 10, of the Application to Receive Donated Leave), if any, must be published exactly as the employee has written it.**

The Payroll/ Benefits Coordinator or the Payroll/ Benefits Coordinator's designee:

- Must make the notice (or an electronic equivalent/facsimile) available to other employees of the City of Elkins in a manner deemed appropriate by the appointing authority.

### **4. Applying to donate leave**

An employee who wishes to make a voluntary donation of leave to a designated eligible employee must:

- Complete Part I of the APPLICATION TO DONATE LEAVE; and
- Submit the APPLICATION TO DONATE LEAVE to the Payroll/ Benefits Coordinator.

### **5. Processing the APPLICATION TO DONATE LEAVE**

The Payroll/ Benefits Coordinator should:

- Make sure Part I is complete and signed (if not, return to the applicant for completion); then
- Complete Part II of the APPLICATION TO DONATE LEAVE.

Once Part II of the APPLICATION TO DONATE LEAVE is completed, either:

- Return a copy of the APPLICATION TO DONATE LEAVE to the donor applicant if said donor applicant is NOT eligible; or
- If the donor applicant is eligible but is NOT paid from the same account as the designated recipient, an INTER-DEPARTMENTAL DONATION FORM must be completed.
- If the donor applicant is eligible and is paid from the same account as the designated recipient, an INTER-DEPARTMENTAL DONATION FORM is not necessary.

#### 6. Paying recipients of donated leave

**NOTE: Donated leave is wages for the recipient employee according to the IRS, *Revenue Ruling 90-29*. Consequently, wage-based deductions are taken from leave donations except for State retirement deductions since the leave donation law prohibits service credit from being granted during periods when donated leave is used. However, since the object of the leave donation program is to replace "take-home" pay, gross pay is adjusted to account for the retirement exception and payments of donated leave are processed as payroll as described below.**

Once you have received approved leave donations for an eligible recipient employee, you should:

Calculate the recipient employee's adjusted gross pay for a regular pay period (i.e. one-half a month) by subtracting the employee's usual State retirement deduction from the employee's usual gross pay for a regular pay period (excluding overtime).

If there are donations at least equal to the recipient employee's adjusted gross pay for a halfmonth (or portion of a half-month if the employee's eligibility begins or ends prior to the end of a pay period), take the mandated deductions [**except** State retirement] and any other deductions authorized by the employee from the adjusted gross and process as payroll. The recipient employee's take home pay should be the same (or within pennies of the same) as that employee's take home pay (excluding overtime) if that employee were at work or on paid leave. If the donations are less than the recipient employee's adjusted gross pay for a half-month, take the mandated deductions [**except** State retirement] and any other deductions authorized by the employee from the available donations and process as payroll. In either case, you may pay the leave donations on a regular payroll or a supplemental, whichever the circumstances dictate. If you pay the leave donations on a regular payroll, remember to zero out the retirement deduction.

**NOTE: As you receive approved APPLICATIONS TO DONATE LEAVE or INTER-DEPARTMENTAL DONATION FORMS, it is recommended that you keep a ledger for each recipient that shows all donations received and payments made. Donations should be used in the order received (earliest to latest) from within the department FIRST, then in the order received from outside the department.**

If the recipient has been paid from inter-departmental leave donations, request reimbursement from the donor employee's department as follows.

Complete Part II of the INTER-DEPARTMENTAL DONATION FORM as follows.

Send the INTER-AGENCY DONATION FORM to the contact person in the donor's department (Part I, item 6).

When you receive an INTER-DEPARTMENTAL DONATION FORM requesting reimbursement, process an expense-to-expense transfer using appropriate account information and attaching a copy of the INTER-AGENCY DONATION FORM.

**7. Returning and Re-crediting Unused Leave Donations**

If, for whatever reason, more leave is donated to a recipient than the recipient needs or is eligible to use, that excess leave donation should be returned to the donor(s) and re-credited to each donor's leave balance as follows.

If the leave donation is inter-departmental (i.e. the recipient and the donor are paid from different funds), notify the contact person in the donor's agency of the dollar balance of the leave donation which was/will not be used by completing Part III of the INTER-AGENCY DONATION FORM.

If the recipient and the donor are paid from the same fund or if you have received notice that an inter-departmental donation will not be used (either in whole or in part):

- Determine the amount of the unused leave donation in hours by dividing the unused dollar amount of the leave donation by the hourly rate of the donor at the time the donation was made;
- Re-credit the number of hours of unused leave donation to the leave balance of the donor; and,
- Notify the donor of the amount of unused leave donation re-credited to the donor's leave balance.

Unused leave donations are re-credited to the donor's leave balance as of the original date of the donation. In the case of leave which could **not** have been carried forward to the new calendar year, the donor will be given one additional opportunity to donate the leave to another designated eligible recipient. This donation should be made within five work days of notice of the recrediting of the unused donation. If the subsequent donation is unused, that donation is recredited to the donor's leave balance as of the **original** date of the **first** donation and the City of Elkins Personnel Policy is followed regarding carry-forward hours.

**NOTE: In no case shall the provisions of the leave donation program be used or interpreted to allow an employee to carry forward hours of leave in excess of those allowed in the City of Elkins Personnel Policy.**

**8. Documenting and Reporting Leave Donations**

The Treasurer is required to report to City Council annually on the status of the leave donation program.

This report will be based on the following information provided by the Payroll/ Benefits Coordinator: copies of all completed APPLICATIONS TO RECEIVE DONATED LEAVE, NOTICES OF ELIGIBILITY TO RECEIVE LEAVE DONATION, APPLICATIONS TO DONATE LEAVE, and INTER-DEPARTMENTAL DONATION FORMS (i.e. with reimbursement requested). This information must be submitted to the Treasurer on a quarterly basis, within two weeks after the end of each quarter

**9. Account Information**

Payment of leave donations to recipients should be made from the payroll account of the fund and org to which the recipient's position is allocated with benefit payments made from the appropriate benefit accounts.

For reimbursement of inter-departmental donations (i.e. the donor and recipient are paid from different funds/operating accounts), the reimbursement for personal services should be made from the personal services account of the fund and org to which the donor's position is allocated, and the reimbursement for the employer's FICA match should be made from the Social Security line item (011) of the benefits account of the fund and org to which the donor's position is allocated using the appropriate reimbursement object code. Any exceptions should be noted by attachment to the expense-to-expense cover sheet.

Certain funds are not eligible sources of payment for leave donations or reimbursement for interdepartmental leave donations. Generally, these are single purpose fund sources which are defined by statute or for which the Budget Bill specifies eligible expenditures from the appropriation. These include: current expenses; equipment; repairs and alterations; any capital outlay appropriation; buildings (construction or reconstruction); land purchases; debt service; and, any special revenue fund that is single purpose. Questions regarding the eligibility of a fund as a source of reimbursement for leave donations should be directed to the Auditor's Office.

#### **FORMS**

The following forms for the Leave Donation Program are available in the office of the Payroll/ Benefits Coordinator:

APPLICATION TO RECEIVE DONATED LEAVE  
NOTICE OF ELIGIBILITY TO RECEIVE LEAVE DONATIONS  
APPLICATION TO DONATE LEAVE  
INTER-AGENCY DONATION FORM  
[Revenue Ruling 90-29, 1990-15 I.R.B]

**kkkkkk. ADDENDUM A: Observable Behavior Checklist**

**Reasonable Suspicion of Drug/Inhalant/Alcohol Use**

NOTE: This information is highly sensitive and strictly confidential. This form's use is limited to administration of the City's drug/inhalant/alcohol testing program, and will only be otherwise maintained in the employee's confidential medical file.

Employee's name: \_\_\_\_\_ Date: \_\_\_\_\_

I, \_\_\_\_\_, the above-named employee's supervisor or manager, have examined the employee's appearance and behavior, and recorded the following observations:

|                                                                  | YES | NO |
|------------------------------------------------------------------|-----|----|
| 1. Smell of alcohol on breath or clothing                        |     |    |
| 2. Speech pattern(s):                                            |     |    |
| Slurred                                                          |     |    |
| Fragmented                                                       |     |    |
| Confused                                                         |     |    |
| Unusually quiet                                                  |     |    |
| Unusually talkative                                              |     |    |
| Louder or more soft-spoken than usual                            |     |    |
| 3. Disoriented as to time and/or place                           |     |    |
| 4. Unable to focus on work                                       |     |    |
| 5. Sleepy, excessive yawning, etc.                               |     |    |
| 6. Decreased coordination and/or agility                         |     |    |
| 7. Attitude:                                                     |     |    |
| Refuses to follow reasonable directions                          |     |    |
| Belligerent Agitated or nervous                                  |     |    |
| Giddy                                                            |     |    |
| Weepy                                                            |     |    |
| 8. Unusually pale or flushed                                     |     |    |
| 9. Excessive perspiration                                        |     |    |
| 10. Excessive visits to restroom(s)                              |     |    |
| 11. Eyes bloodshot, pinpoint or dilated                          |     |    |
| 12. Traces of alcohol and/or drugs in containers or on clothing  |     |    |
| 13. Admission of drug and/or alcohol use by employee             |     |    |
| 14. Observation of drug and/or alcohol use by other employees    |     |    |
| 15. Possession of drug paraphernalia                             |     |    |
| 16. Smell of marijuana                                           |     |    |
| 17. Visits to areas in facility the employee does not usually go |     |    |
| 18. Unexplained fatigue or exhaustion                            |     |    |
| 19. Unusually disheveled or unkempt appearance                   |     |    |
| 20. Sudden and/or unpredictable change in energy level           |     |    |
| 21. Shakes or trembling                                          |     |    |
| 22. Sunglasses worn inappropriately                              |     |    |

|     |                                                                                                                | YES | NO |
|-----|----------------------------------------------------------------------------------------------------------------|-----|----|
| 23. | Peer avoidance or withdrawal                                                                                   |     |    |
| 24. | Co-worker reports and/or complaints                                                                            |     |    |
| 25. | Unauthorized or unscheduled absences, especially on Mondays, Fridays, and before or after holidays and paydays |     |    |
| 26. | Changed appearance after lunch or other breaks                                                                 |     |    |
| 27. | Unexplained breathing or swallowing difficulties                                                               |     |    |
| 28. | Unusual sneezing, bloody nose or nasal congestion not attributable to colds or allergies                       |     |    |
| 29. | Needle marks                                                                                                   |     |    |
| 30. | Tardiness, especially returning from lunch or other breaks                                                     |     |    |
| 31. | Unexplained disappearances from the job or work area                                                           |     |    |
| 32. | Decreased efficiency or productivity                                                                           |     |    |
| 33. | Unusual carelessness with equipment and/or supplies                                                            |     |    |
| 34. | Unexplained or abnormally high number of job-related mistakes, injuries or accidents.                          |     |    |
| 35. | Unexplained deterioration in general health condition                                                          |     |    |

Additional comments:

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☐ I have reviewed my observations and this form with \_\_\_\_\_ (other supervisor or manager, Program Administrator, DER).

☐ I was unable to review my observations with another supervisor or manager in a timely manner.

\_\_\_\_\_  
Supervisor/Manager's Signature

**IIIIII. ADDENDUM B: Safety Sensitive Job Classification Checklist**

Job positions within the City of Elkins, whether full-time or temporary positions, requiring any of the following are considered to be safety-sensitive. Classification as safety-sensitive means that employees in these positions are subject to random drug testing.

- ☐ Working with or around industrial equipment such as pumps, motors, hoists, presses, blowers or compressors.
- ☐ Working at heights, including on ladders or lifts
- ☐ Operating a motor vehicle owned by the City of Elkins
- ☐ Repair of a motor vehicle
- ☐ Working in or around motor vehicle traffic areas
- ☐ Construction work or working in or around construction sites
- ☐ Operating any type of heavy equipment
- ☐ Operating any type of machinery, including (but not limited to) lawn mowers, leaf and snow blowers, weed eaters, or generators
- ☐ Operating any type of power tools and/or equipment including (but not limited to) welders, saws, jackhammers, drills, or other handheld power tools
- ☐ Working with or around hazardous materials or chemicals, whether in gaseous, liquid, or solid form
- ☐ Working with or around flammable materials or explosives
- ☐ Working with electrical wiring or components
- ☐ Maintenance of heating or cooling systems

*Job Classification:* \_\_\_\_\_

*Evaluated by:* \_\_\_\_\_

*Title:* \_\_\_\_\_

*Date:* \_\_\_\_\_

*e. Addendum C – FMLA Poster*

# EMPLOYEE RIGHTS UNDER THE FAMILY AND MEDICAL LEAVE ACT

THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

## LEAVE ENTITLEMENTS



Eligible employees who work for a covered employer can take up to 12 weeks of unpaid, job-protected leave in a 12-month period for the following reasons:

- The birth of a child or placement of a child for adoption or foster care;
- To bond with a child (leave must be taken within one year of the child's birth or placement);
- To care for the employee's spouse, child, or parent who has a qualifying serious health condition;
- For the employee's own qualifying serious health condition that makes the employee unable to perform the employee's job;
- For qualifying exigencies related to the foreign deployment of a military member who is the employee's spouse, child, or parent.

An eligible employee who is a covered servicemember's spouse, child, parent, or next of kin may also take up to 26 weeks of FMLA leave in a single 12-month period to care for the servicemember with a serious injury or illness.

An employee does not need to use leave in one block. When it is medically necessary or otherwise permitted, employees may take leave intermittently or on a reduced schedule.

Employees may choose, or an employer may require, use of accrued paid leave while taking FMLA leave. If an employee substitutes accrued paid leave for FMLA leave, the employee must comply with the employer's normal paid leave policies.

While employees are on FMLA leave, employers must continue health insurance coverage as if the employees were not on leave.

Upon return from FMLA leave, most employees must be restored to the same job or one nearly identical to it with equivalent pay, benefits, and other employment terms and conditions.

An employer may not interfere with an individual's FMLA rights or retaliate against someone for using or trying to use FMLA leave, opposing any practice made unlawful by the FMLA, or being involved in any proceeding under or related to the FMLA.

## ELIGIBILITY REQUIREMENTS

An employee who works for a covered employer must meet three criteria in order to be eligible for FMLA leave. The employee must:

- Have worked for the employer for at least 12 months;
- Have at least 1,250 hours of service in the 12 months before taking leave; \* and
- Work at a location where the employer has at least 50 employees within 75 miles of the employee's worksite.

\*Special "hours of service" requirements apply to airline flight crew employees.

## REQUESTING LEAVE

Generally, employees must give 30-days' advance notice of the need for FMLA leave. If it is not possible to give 30-days' notice, an employee must notify the employer as soon as possible and, generally, follow the employer's usual procedures.

Employees do not have to share a medical diagnosis, but must provide enough information to the employer so it can determine if the leave qualifies for FMLA protection. Sufficient information could include informing an employer that the employee is or will be unable to perform his or her job functions, that a family member cannot perform daily activities, or that hospitalization or continuing medical treatment is necessary. Employees must inform the employer if the need for leave is for a reason for which FMLA leave was previously taken or certified.

Employers can require a certification or periodic recertification supporting the need for leave. If the employer determines that the certification is incomplete, it must provide a written notice indicating what additional information is required.

## EMPLOYER RESPONSIBILITIES

Once an employer becomes aware that an employee's need for leave is for a reason that may qualify under the FMLA, the employer must notify the employee if he or she is eligible for FMLA leave and, if eligible, must also provide a notice of rights and responsibilities under the FMLA. If the employee is not eligible, the employer must provide a reason for ineligibility.

Employers must notify its employees if leave will be designated as FMLA leave, and if so, how much leave will be designated as FMLA leave.

## ENFORCEMENT

Employees may file a complaint with the U.S. Department of Labor, Wage and Hour Division, or may bring a private lawsuit against an employer.

The FMLA does not affect any federal or state law prohibiting discrimination or supersede any state or local law or collective bargaining agreement that provides greater family or medical leave rights.



For additional information or to file a complaint:

**1-866-4-USWAGE**

(1-866-487-9243) TTY: 1-877-889-5627

**www.dol.gov/whd**

U.S. Department of Labor | Wage and Hour Division



WH1420 REV 04/16