



CITY OF ELKO

HUMAN RESOURCE

POLICY MANUAL

2023

1. GENERAL PROVISIONS

1.1. Purpose

These policies are established to carry out the **City of Elko's** (hereafter **employer's**) personnel resolution, personnel ordinance, or intent of the governing board to adopt uniform personnel policies that will enable each employee to make the fullest contribution to the programs and services of the **employer**. Each employee is responsible for reviewing and complying with the **employer's** personnel policies.

The **employer** retains the sole right to manage its affairs and direct its workforce within the existing framework of law (federal, state, and local), but not limited to the right to plan, direct, and control its operations: to determine the location of its facilities; to determine working hours; to decide the types of services to be provided and the manner of providing them; to decide the work to be performed; to decide the method and place of providing its services; to determine the schedules of work; to hire, layoff, assign, transfer, and promote employees; to determine the qualifications of employees; to determine and re-determine job content; to determine the starting and quitting times; to make such reasonable rules and regulations not in conflict with any collective bargaining agreement, as it may from time to time deem best for the purpose of maintaining order, safety, and/or effective operations of its facilities and to require compliance therewith by employees; to discipline and discharge employees for cause. These management rights are not subject to the dispute resolution/grievance procedure except as may be provided in a collective bargaining agreement.

1.2. Scope

In cases where the application of these policies would conflict with a collective bargaining agreement that is in effect between a recognized employee organization and the employer, the provisions of the collective bargaining agreement shall govern. In all other cases, these policies shall govern. Nothing in these policies is intended to supersede applicable state or federal laws or administrative regulations/ordinances related to personnel matters.

1.3. Computing Time for Notices

Unless otherwise provided, the length of time for processing an action in these policies, days shall be counted beginning with the calendar day following mailing or delivery of notice and concluding at 5 p.m., on the last day to be counted. If the last day to be counted falls on a weekend or holiday, the period will end at 5 p.m., on the first business day following the last counted day.

1.4. Administration

The **employer** reserves the right to change these personnel policies at any time. Nothing contained in these policies is intended to confer any property right in continued employment or imply a contract of employment.

All employees of the **employer** are expected to read and familiarize themselves with the contents of these policies, including Definitions. After receiving and reviewing these policies, each employee is expected to sign an acknowledgment form. The employee must return the signed acknowledgment form to the Human Resources Department for inclusion into the employee's master personnel file. Employees who fail to comply with these policies may be subject to disciplinary action, up to and including termination.

All changes, revisions, additions, and notices of deletions to these policies will be made available to all employees. Whenever feasible, the **employer** will provide all employees notice of any proposed revisions to the adopted policies prior to implementation of the proposed changes.

1.5. Administrative Directive

The Elko City Council shall have the authority and the duty to develop and disseminate administrative directives, interpretive memoranda, and other administrative procedures to execute these policies, and to implement the **employer's** personnel program on a consistent basis.

1.6. Change of Address

It is the responsibility of each employee to keep the **employer** informed, in writing, of the employee's current address, telephone number, change of name, and any other information relating to employment status.

1.7. Failure to Receive Notices

Written communications to employees considered to be routine in nature shall be delivered to the current address on record or via email. Written communications to employees identified as significant, important and/or time-sensitive shall be hand-delivered or sent by certified mail, return receipt requested, to the employee's current address on record or via email utilizing the read receipt function. All written communications to applicants shall be hand-delivered or sent by U.S. mail to the address shown on the application for employment or sent via email as shown on the application. The **employer** is not responsible in the event mail is not received. It is the employee's responsibility to respond to all **employer** communications, including those mailed and/or emailed to the address on record, and the responsibility of the applicant to comply with all phases of the selection process within the specified time. Failure to respond for any reason, including failure to receive written notice, may have an adverse effect on an individual's employment status and/or result in disqualification from the selection and hiring process.

1.8. Personnel Files

1.8.1. Guidelines

Employer maintains job-related information for each employee throughout the course of employment. It is **employer's** policy to operate effectively and efficiently, in a manner that encourages transparency in government in compliance with all applicable laws, and in so doing to protect confidential information from disclosure to the extent allowed by law. To the extent allowable by law, including specifically but without limitation Nevada's Public Records Act, personnel files are confidential to the extent such files contain personal privacy information subject to a nontrivial privacy interest. Such information is subject to nondisclosure. To that end, **employer** strives to maintain accurate and complete personnel records. Employees must promptly notify **employer** of any changes to their personal information, such as address, telephone number, legal name, marital status, and number of dependents. Records are retained and destroyed in accordance with **employer** policies as well as all applicable laws governing record retention.

The types of files which may be maintained include:

- General employee personnel records such as application/résumé, job offer letter(s) or contract(s), job description, signed acknowledgment forms and/or agreements, performance records; disciplinary documentation, training records, and other job-related documents.
- Documents related to recruitment and selection for each position filled, such as job announcements, applications and résumés, and interview questions and notes.
- Information regarding an applicant's background such as reference checks, conviction records, and credit histories.
- Form I-9 for each employee (and supporting documentation, if retained).
- Records related to pay including but not limited to: timesheets, attendance records, payroll records, tax records (including W-4 forms), payroll deductions, direct deposit information, and wage garnishments.
- Files related to safety including but not limited to: safety training records; occupational injury and illness reports; workers' compensation reports (no names listed); and reports related to exposure to toxic substances and/or blood-borne pathogens.
- Information regarding medical or psychological conditions or diagnoses such as doctor's note, FMLA forms, workers' compensation forms, and drug/alcohol test results.

- Documents related to an investigation including copies of complaints, investigation reports, witness statements and investigation notes, notices given to employees, and other related documents.
- Documents related to a grievance including, but not limited to: copies of grievance form, employee's request/appeal for grievance; witness statements and interview notes; copies of each response to the grievance from the organization; copies of requests from employee/union to advance the grievance to the next level in the appeals process; copies of all correspondence sent/received regarding processing the grievance; and other related documents.

1.8.2. Master Personnel File

1. Maintenance

The **employer** shall maintain a master personnel file for each employee. An employee's supervisor/manager may elect to maintain a duplicate copy of the documents. However, this does not supersede or eliminate the **employer's** need to maintain the master personnel file for each employee.

2. Employee Access

An employee may view the contents of one's own master personnel file upon request in the presence of the Human Resources Manager or designee. An employee may request copies of any or all documents in one's own master personnel file but may not remove any documents from the file. The **employer** will provide only one set of copies to the employee without charge per year.

3. Negative Information

The **employer** shall not put negative or derogatory material in an employee's master personnel file unless the employee has had a reasonable opportunity to review the material beforehand. The **employer** will require the employee to sign such material to acknowledge they have reviewed and not necessarily agree. If the employee refuses to sign such material, the **employer** may place it in the employee's master personnel file with a dated notation that the employee refused to sign such material after having been given an opportunity to do so. Whenever possible, another supervisor or manager should be used as a witness to the employee's refusal and should co-sign the entry along with the originating supervisor.

4. Employee Information Submitted

Statements by an employee submitted in rebuttal to adverse material placed in the master personnel file will be included in the employee's master personnel file. The **employer** may place other information submitted by the employee in the master personnel file if the **employer** finds that such information is relevant to the employee's work history with the **employer**.

1.9. Confidential Information

1.9.1. Identification and Access

The following types of information are considered, without limitation, confidential by the **employer** and access to records is limited as listed below.

***Note:** This policy has been developed to identify and protect records for internal purposes and is not intended to comply with the Nevada Public Records Act. Public records requests will be evaluated independently on their own merits.*

1. Recruitment and Background Information

The following types of information and records concerning current employees, former employees, and applicants for employment that the **employer** maintains are confidential:

- All information related to an employment application including, but not limited to, letters of reference, résumés, and status as an applicant for employment.
- All information that the **employer** received or compiled concerning the qualifications of an applicant or an employee including, but not limited to, reports by employers, law enforcement officials, or other individuals concerning the hiring, promotion, performance, conduct, or background of an applicant or employee.
- Ratings, rankings, scoring sheets, or remarks by members of an evaluation board or individual interviewer, concerning an applicant or results from any testing or employment screening process.
- Materials used in employment examinations including but not limited to answers, rating guides, and score sheets, on any written exam or rating criteria for interviews.
- The names of members of an evaluation panel and tests that are governed by confidentiality agreements.

Access to such records is restricted to the following unless specifically provided in a separate policy:

- Employee(s) with a business need-to-know in order to fulfill the responsibilities assigned by **employer**;
- The employee's manager/administrator, human resources director/manager, or designee;
- Person(s) authorized pursuant to any state or federal law or court order (i.e., governmental/legal/auditing/ investigating agencies);
- Counsel retained by or on behalf of the **employer**; and
- Any other party(ies) with whom the **employer** has a contractual relationship in order to enable the **employer** to respond accurately and fully to any lawsuit, complaint, grievance, request or other action filed by or on behalf of an employee or former employee against the **employer**.

2. Personnel-related Information

The following types of personnel-related information are confidential:

- Information maintained in an employee's master personnel file or record of employment which relates to the employee's:
 - Performance;
 - Conduct, including any proposed or imposed disciplinary action taken; and/or
 - Protected class membership, date of birth, or social security number.
- Past or present home address, telephone number, post office box, or relatives;
- All information concerning the voluntary or involuntary termination of an employee, other than the dates of actual employment; and
- The name of an employee's/former employee's designated beneficiary.

Access to these confidential records is restricted to the following unless specifically provided in a separate policy:

- The employee;

- The employee's representative with a current signed authorization from the employee;
- The employee's manager/supervisor, with a need-to-know, or as needed for a reasonable accommodation and human resources;
- Persons authorized pursuant to any state or federal law or court order;
- Counsel retained by or on behalf of the **employer**;
- **Employer's** workers' compensation carrier in order to address a claim filed for workers' compensation; and
- Any other parties with whom the **employer** has a contractual relationship in order to enable the **employer** to respond accurately and fully to any lawsuit, complaint, grievance, request or other action filed by or on behalf of an employee or former employee against the **employer**.

3. Medical Information

The following types of medical information are confidential:

- Pre-employment and post-employment medical and psychological examinations;
- Disability and documentation relating to any reasonable accommodation requested by or granted to the employee;
- Drug and alcohol testing;
- Genetic information;
- Pregnancy, health care provider's certification and other communication;
- Subsequent Injury Fund Questionnaire;
- Any other medical information that an employee or applicant has voluntarily provided, or the **employer** has requested.

***Note:** Medical information shall be kept in files segregated from other personnel and employment records. Notations on attendance sheets that an employee took sick leave are not confidential records.*

Access to an employee's confidential medical information is limited to:

- Supervisors/managers, regarding necessary restrictions and accommodations in the employee's duties;
- First-aid and safety personnel;
- Government officials investigating compliance with applicable laws, on request;
- State workers' compensation office officials;
- Insurance company employees when the company requires a medical examination to provide health or life insurance; and
- **Employer's** workers' compensation carrier in order to address a claim filed for workers' compensation.
- As otherwise required by applicable law.

4. Investigations and Grievances

The **employer** shall keep all information and documents pertaining to an employee investigation separate from other personnel and employment records, ensuring privacy of all employees, witnesses, and other individuals involved.

Grievance files that include notices, notes, and decisions of appeal will be maintained in a separate file. Access is limited to only those individuals with a demonstrable business need-to-know, including:

- The employee's manager/supervisor, human resources director/manager, or designee;
- Persons authorized pursuant to any state or federal law or court order;
- Counsel retained by or on behalf of the **employer**; and
- Any other parties with whom the **employer** has a contractual relationship in order to enable the **employer** to respond accurately and fully to any lawsuit, complaint, grievance, request or other action filed by or on behalf of an employee or former employee against the **employer**.

1.9.2. Disposal of Personal Records

In compliance with the Fair and Accurate Credit Transactions (FACT) Act Disposal Rule, the **employer** shall dispose of any record about an individual that is a consumer report or is derived from consumer reports to ensure there will be no unauthorized access to or use of information in a consumer report.

In addition, any identifying personal information which is stored on electronic files, shall be destroyed or erased so that the information cannot be read or reconstructed.

Method of disposal: The **employer** shall dispose of consumer report information by shredding or burning any and all documents which contain personal information. Although the law specifically applies to consumer reports and the information derived from consumer reports, the **employer** shall, in accordance with good personnel practices, properly dispose of any records containing employee personal or financial information. An electronic record must be destroyed in accordance with the applicable schedule in a manner that ensures the information cannot be retrieved or reconstructed, including, without limitation, overwriting, degaussing and the physical destruction of the storage media.

2. EMPLOYEE RELATIONS

2.1. Fair Employment Practices

2.1.1. Policy

The **employer** recognizes the fundamental rights of applicants and employees to be assessed on the basis of merit. Recognition of seniority and current employment with the **employer** may also be considered. Therefore, it is the policy of the **employer** to provide equal employment opportunity for all applicants and employees. The **employer** does not sanction or tolerate discrimination in any form on the basis of any protected class including race, color, religion, age, gender, pregnancy, sexual orientation, national origin, ancestry, disability, veteran status, domestic partnership, genetic information, gender identity or expression, political affiliation, membership in the Nevada National Guard, or any other class that becomes protected by federal and/or state law.

The **employer** will:

- Recruit, hire, train, promote, discharge, and discipline without regard to protected class membership, as well as to ensure that all compensation, benefits, transfers, layoffs, return from layoffs, employer-sponsored training, social, and recreation programs will be administered in conformance with the employer's policy.
- Comply with all applicable laws prohibiting discrimination in employment.
- Provide *reasonable* accommodations as required by law/statute.
- Hold all managers and supervisors responsible for ensuring personnel policies, guidelines, practices, procedures, and activities are in compliance with applicable federal and state fair employment practices, statutes, rules, and regulations.

2.1.2. Scope

This policy applies to all persons involved in the operation of the **employer** and prohibits harassment, discrimination, and retaliation by any employee, including supervisors and coworkers, volunteers, customers or clients of the **employer**, and any vendor or other service provider with whom the **employer** has a business relationship. The **employer** will not tolerate instances of harassment, discrimination, or retaliation, whether or not such behavior meets the threshold of unlawful conduct. While single incidents of alleged harassment, discrimination, or retaliation may not be sufficiently severe or pervasive to rise to the level of being a violation of the law, the **employer** nevertheless prohibits such conduct and may impose appropriate disciplinary action against any employee engaging in such.

2.1.3. Equal Employment Opportunity Officer Designated

The primary responsibilities for ensuring fair employment practices for the **employer** are promoted and adhered to are assigned to the **employer's** designated Equal Employment Opportunity (EEO) Officer. The **employer's** designated EEO Officer will also serve as the Americans with Disabilities (ADA) Coordinator, unless otherwise noted, and as such, also has responsibility for coordinating the **employer's** compliance with federal and state disability laws. The designated EEO Officer for **employer** is the HR Manager. The name and work telephone number of the designated individual will be posted at **employer** work sites. In the event the designated EEO Officer is unavailable, the City Manager is designated as the alternative EEO Officer.

2.2. Anti-Harassment

2.2.1. Policy

Employer promotes a productive work environment and does not tolerate verbal, physical, written, or graphical conduct/behavior(s) that harasses, disrupts, or interferes with another's work performance or that creates an intimidating, offensive, or hostile environment based on that person's protected class membership.

2.2.2. Prohibited Conduct/Behavior(s)

The **employer** will not tolerate any form of harassment, including but not limited to any conduct/behavior(s) on the part of employees, volunteers, clients, customers, vendors, and contractors, that impairs an employee's ability to perform assigned duties. Examples of prohibited conduct/behavior(s) include, but are not limited to:

- *Offensive verbal communication* including slurs, jokes, epithets, derogatory comments, degrading or suggestive words or comments, unwanted sexual advances, invitations, or sexually degrading or suggestive words or comments.
- Offensive written communication including notes, letters, notices, emails, texts, or any other offensive message sent by electronic means.
- Offensive gestures, expressions and graphics including leering, obscene hand, finger, or body gestures, sexually explicit drawings, derogatory posters, photographs, cartoons, drawings, or displaying sexually suggestive objects or pictures.
- Physical contact when the action is unwelcomed by recipient including brushing up against someone in an offensive manner, unwanted touching, impeding or blocking normal movement, or interfering with work or movement.
- Expectations, requests, demands, or pressure for sexual favors.

2.2.3. Training

The **employer** will periodically provide training to all employees on the prevention of discrimination and prohibited conduct/behavior(s) in the workplace. All new employees will be provided a copy of this policy upon hire and the contents will be discussed during the new hire orientation process. New employees will participate in training on the prevention of discrimination and prohibited conduct/behavior(s) within 30 days. A copy of this policy will be made available to applicants upon request.

2.3. Employee Bullying

2.3.1. Definition

The **employer** defines bullying as repeated mistreatment of one or more persons by one or more perpetrators that takes one of the following forms:

- Verbal abuse or mistreatment;
- Offensive conduct/behaviors (including nonverbal, physical, and cyber-bullying) which are threatening, humiliating, or intimidating; or
- Work interferences, such as sabotage, which prevents work from getting done.

2.3.2. Purpose

The purpose of this policy is to communicate to all employees, including supervisors/managers, that the **employer** will not tolerate bullying behavior. Employees found in violation of this policy may be subject to disciplinary action, up to and including termination.

2.3.3. Prohibited Behaviors/Conduct

The **employer** considers the following types of behavior/conduct examples of bullying (this list is not all-inclusive):

- *Verbal Bullying* including slandering, ridiculing or maligning an employee or an employee's family; persistent name calling which is hurtful, insulting, or humiliating; yelling, screaming, and cursing; chronic teasing; belittling opinions or constant criticism.

- *Physical Bullying* including pushing, shoving, kicking, poking, tripping, assault or threat of physical assault, damage to an employee's work area or property.
- *Nonverbal Bullying* including nonverbal threatening gestures or glances which convey threatening messages; threatening actions; socially or physically excluding or disregarding a person in a work-related activity.
- *Cyber-Bullying* including repeatedly tormenting, threatening, harassing, humiliating, embarrassing, or otherwise targeting an employee using email, instant messaging, text messaging, social media, or any other type of digital technology.
- *Workplace Interference* including sabotaging which prevents work from getting done; deliberately tampering with a person's work area or property; unreasonably assigning menial tasks outside of a person's normal job duties.

2.4. Dealing w/Allegations of Prohibited Conduct/Behavior(s)

2.4.1. Process

Employees or applicants who believe they are being subjected to any form of prohibited conduct/behavior(s) as described in the Anti-Harassment or Employee Bullying policies by another (e.g., employee, client, customer, vendor, volunteer, contractor), as well as employees or applicants who believe they have witnessed another employee, client or member of the public being subjected to prohibited conduct/behavior(s), have an affirmative duty to bring the situation to the attention of the **employer**. Employees covered by a collective bargaining agreement may opt to use the process described in this policy or in an applicable grievance procedure delineated by their collective bargaining agreement but may not use both.

2.4.2. Employee Responsibilities

1. An employee who believes they personally are being or have been subjected to prohibited conduct/behavior(s) and/or are the target of any form of prohibited conduct/behavior(s), or have witnessed any other employee being subjected to these behaviors, are encouraged to inform the alleged harasser/bully that the behavior/conduct is unwelcome and must stop.

***Note:** An employee is NOT required to talk directly to the alleged harasser/bully or to the employee's supervisor. It is critical, however, that employees who believe they have been targeted or have witnessed what the employee believes to be prohibited conduct/behaviors(s) directed to or committed by another, contact one of the individuals listed in sections 2 or 3 below.*
2. If the employee feels uncomfortable in speaking directly to the alleged harasser/bully or if the employee requested the prohibited conduct/behavior(s) to cease, but the request did not produce the results desired, the employee should report the conduct/behavior(s) as soon as possible to any supervisor/manager, **employer's** designated EEO Officer, or the HR representative.
3. An employee who believes the EEO Officer has engaged in prohibited conduct/behavior(s) should bring such concerns to the attention of the alternate EEO Officer (City Manager) who will designate an objective person to conduct an investigation of such allegations. Employees may also report the conduct/behavior(s) to the **employer's** attorney.
4. An employee who witnesses or obtains information regarding prohibited conduct/behavior(s) by the immediate supervisor is required to report the incident to the EEO Officer or HR representative.

Any applicant or employee who has concern regarding violations of this policy is encouraged to contact the designated **EEO Officer** or the alternate.

2.4.3. Supervisor/Manager Responsibilities

Regardless of whether the employee involved is in the supervisor's or manager's department and regardless of how the supervisor/manager became aware of the alleged prohibited conduct/behavior(s), all supervisors and managers must immediately report all allegations or complaints or observations of such conduct/behavior(s) to the EEO Officer, HR representative, department head, or City Manager. The information reported must include:

- The persons(s) involved, including all witnesses;
- A written record of specific conversations held with the accused and any witnesses; and
- All pertinent facts, including date(s), time(s), and locations(s).

A supervisor's/manager's failure to immediately report such activities, complaints, or allegations will result in discipline, up to and including termination.

2.4.4. Investigation

1. Upon being made aware of allegations or complaints of prohibited conduct/behavior(s), the **employer** will ensure that such allegations or complaints are investigated promptly. The **employer** treats all allegations or complaints seriously and requires all employees to be candid and truthful during the investigation process.
2. The **employer** will make efforts to ensure that all investigations are kept as confidential as reasonably possible. Employees will be required to refrain from discussing the subject content with other employees or persons who may have information pertinent to the investigation throughout the course of the investigation. Employees shall be required, upon request, to provide information to regulatory agencies. The **employer** will release information obtained only to those individuals involved in the investigation and the administration of the complaint with a business need-to-know, or as required by law.
3. The **employer** will communicate to the individual who made the initial complaint, as well as the individual against whom the complaint was made, that the investigation is completed and appropriate action, if any, has been taken.
4. If evidence arises that a participant in the investigation made intentionally false statements, that employee will be subject to disciplinary action, up to and including termination.
5. If it is determined that a violation of this policy has occurred, the will be subject to disciplinary action up to and including termination. The **employer** will also initiate action to deter any future prohibited conduct/behavior(s) from occurring.
6. With regard to disability-related complaints, the EEO Officer (when appropriate, working with the City Manager and/or the complainant) shall propose a resolution to the complaint based upon the findings of such investigation. Such resolution will include reasonable accommodation when the **employer** determines that such a reasonable accommodation can be provided by the **employer**.

2.4.5. Prohibition Against Retaliation

Retaliation is adverse treatment which occurs because of opposition to prohibited conduct/behavior(s) in the workplace. The **employer** will not tolerate any retaliation by management or by any other employee against an employee who exercises rights under this policy. Employees who believe they have been harassed, retaliated, or discriminated against in any manner whatsoever as a result of having filed a complaint, assisted another employee in filing a complaint, or participated in an investigative process should immediately notify the EEO Officer or alternative EEO Officer. The **employer** will promptly investigate and deal appropriately with any allegation of retaliation.

2.5. Employee Dating

2.5.1. Policy

The **employer** recognizes that an environment where employees maintain clear boundaries between personal and workplace interactions is most effective for conducting business. This policy does not prevent the development of friendships or romantic relationships between employees. However, employees in supervisory/managerial positions are precluded from having a romantic relationship with any subordinate employee.

2.5.2. Employee Responsibilities

Employees are prohibited from engaging in physical contact that would in any way be deemed inappropriate by a reasonable person while anywhere on **employer** property, in an **employer** vehicle, or on **employer** business whether or not such physical contact occurs during work hours.

Violation of this policy may result in disciplinary action up to and including termination.

2.5.3. Supervisor/Manager Responsibilities

Employees employed in supervisory/managerial positions are prohibited from engaging in a romantic relationship with a subordinate employee. Employees employed in supervisory/managerial positions need to be cognizant of their status as role models, their access to sensitive information, and their ability to influence others.

Violation of this policy may result in disciplinary action up to and including termination.

2.6. Employment Disabilities

2.6.1. Policy

It is the **employer's** policy to comply proactively with the applicable employment provisions of disability laws, including without limitation the Americans with Disabilities Act (ADA) and Nevada Law. The **employer** does not tolerate discrimination against any qualified individual with a disability in regard to any terms, conditions, or privileges of employment and prohibits any type of harassment or discrimination based on the physical or mental impairment, history of impairment, or perceived impairment of an individual holding or seeking employment with the **employer**.

The **employer** is committed to provide reasonable accommodation wherever the need for such is known to the **employer** or whenever the employee or applicant indicates a need for reasonable accommodation, provided that the individual is otherwise qualified to perform the essential functions of the assigned job and the employee's performance of the assigned job duties does not pose an obvious threat to the safety of oneself or others.

2.6.2. Determination of Disability

In determining whether an employee or an applicant has a disability under the law, the employee/applicant must have a physical or mental impairment that substantially limits one or more major life activities, have a record of such an impairment, or be regarded as having an impairment.

2.6.3. Disability-Related Inquiries

The **employer** shall adhere to the provisions of applicable laws regarding an **employer's** limitations on making disability-related inquiries or requiring medical examinations.

The **employer's** restrictions regarding disability-related inquiries and medical examinations apply to all employees/applicants, whether or not they have disabilities. A disability-related question to an applicant may be a violation of law, even though the applicant may not have a disability.

The **employer** may require the employee to provide a fitness-for-duty certification from an appropriate health care provider whenever the **employer** has reason to believe the employee may be unable to perform the essential functions of the job, poses a direct threat to oneself or to others, and consistent with the business necessity of the **employer**.

2.6.4. Accommodation

1. *Accommodation for Applicants:* Whenever an applicant requests accommodation in applying for, testing, or interviewing for a position with the **employer**, the **employer's** ADA Coordinator shall determine whether the request for accommodation for a covered disability is reasonable or if another type of accommodation can be provided. In making the determination of reasonableness, the ADA Coordinator may consider whether granting such requests might impose an undue hardship on the **employer**.
2. *Accommodation for Employees:* **Employer** shall provide a **reasonable** accommodation where the need for such is known by the **employer**, and the applicant or employee requests such reasonable accommodation, provided that the individual is otherwise qualified to perform the essential functions of the assigned job and the employee's performance of the assigned job duties does not pose a threat to the safety of oneself or others. Whenever a manager or supervisor becomes aware that an employee has requested or may require some type of reasonable accommodation, the manager/supervisor shall promptly notify the ADA Coordinator, who shall arrange to meet with the supervisor and the employee to discuss the accommodation request, the need for any reasonable documentation to support the request, the associated functional limitations, and the impact of the proposed accommodation on the **employer**. Review of an employee's particular situation by a health care provider may assist the organization in determining appropriate accommodation.

2.7. Pregnancy, Childbirth, and Related Medical Conditions

2.7.1. Policy

It is the **employer's** policy to comply proactively with the applicable employment provisions of discrimination laws, including without limitation the Federal Pregnancy Discrimination Act (PDA) and Nevada Pregnant Workers' Fairness Act.

The **employer** is committed to provide reasonable accommodation, as listed in the Accommodation section under Employment Disabilities, whenever an employee/applicant requests an accommodation for a condition of the employee relating to the employee's pregnancy, childbirth, or a related medical condition, provided that the individual is otherwise qualified to perform the essential functions of the assigned job, absent undue hardship.

2.7.2. Accommodation

Whenever a manager/supervisor becomes aware that an employee has a need for an accommodation due to pregnancy, childbirth, or related medical conditions, the manager/supervisor should promptly notify the reporting officer/EEO Officer. The **employer** is committed to provide reasonable accommodation, as listed in the Accommodation section under Employment Disabilities.

2.7.3. Prohibitions

The **employer** will not:

- Take adverse employment action against an employee because the employee requests or uses a reasonable accommodation.
- Deny an employment opportunity to an otherwise qualified applicant because they have requested a reasonable accommodation.
- Require an employee or applicant to accept an accommodation the employee did not request or chooses not to accept.

- Require an employee to take leave if a reasonable accommodation is available that would allow the employee to continue working.

2.7.4. Notice Requirements

This policy complies with the **employer's** obligation to provide written or electronic notice to all new employees upon commencement of employment that they have the right to be free from discriminatory or unlawful employment practices as well as the right to a reasonable accommodation for a condition of the employee relating to pregnancy, childbirth, or related medical condition. This notice will be provided within ten days after an employee notifies her immediate supervisor that she is pregnant. This notice will also be posted at conspicuous locations that are accessible to employees.

2.8. Reasonable Accommodation for Victims of Domestic Violence

2.8.1. Policy

It is the employer's policy to comply proactively with the applicable employment provisions of discrimination laws, including NRS 613, which set forth requirements for employers, absent creating an undue hardship, to provide reasonable accommodation to employees who are victims of domestic violence or whose family or household members are victims of domestic violence. For the purpose of this policy, "family or household members" include the employee's spouse, domestic partner, minor child, or parent or other adult person who is related within the first degree of consanguinity or affinity to the employee, or other adult person who is or was actually residing with the employee at the time of the act which constitutes domestic violence.

2.8.2. Accommodation

Whenever a manager/supervisor becomes aware that an employee has a need for an accommodation due to domestic violence, the manager/supervisor should promptly notify the **EEO Officer**. The **employer** is committed to provide reasonable accommodation, as listed in the Accommodation section under Employment Disabilities.

2.8.3. Prohibitions

The employer will not discharge, discipline, discriminate against, in any manner, or deny employment or promotion to, or threaten to take any such action against an employee because:

- The employee requested accommodation pursuant to this policy; or
- An act of domestic violence was committed against the employee at the workplace.

2.9. Drug- and Alcohol-Free Workplace

2.9.1. Policy

The **employer** recognizes that substance abuse in our nation and our community exacts staggering costs in both human and economic terms. Substance abuse can be reasonably expected to produce impaired job performance, lost productivity, absenteeism, accidents, wasted materials, lowered morale, rising health care costs, and diminished interpersonal relationship skills. This drug- and alcohol-free workplace policy applies to volunteers as well as employees.

1. The **employer is committed to:**

- Maintaining a safe and healthy workplace for all employees and volunteers;
- Assisting employees or volunteers who recognize they have a problem with drugs, prohibited substances, or alcohol in receiving appropriate treatment;
- Periodically providing employees and volunteers with information about the dangers of workplace drug use; and
- When appropriate, taking disciplinary action for failure to comply with this policy.

2. The **employer** strictly prohibits the following behavior:

- The use, sale, attempted sale, manufacture, attempted manufacture, purchase, possession or cultivation, distribution and/or dispensing of illegal drugs or prohibited substances by an employee, unless otherwise provided by law. For the purpose of this policy, illegal drugs include those classified as such under local, state, or federal laws. Prohibited substances include medical and recreational marijuana (cannabis), the use or possession of prescription medicines for which the individual does not have a valid prescription, and the inappropriate use of prescribed medicines for which the employee has a valid prescription. The prohibition also includes using over-the-counter medications contrary to manufacturer instructions, or consumer products not meant for human consumption. In addition, the employer prohibits employees from possessing open containers of alcoholic beverages while on the employer's premises and/or while on duty and from working with a blood-alcohol level of .02 or more at any time.
- Bringing alcohol, illegal drugs, and other prohibited substances which may impair the safety or welfare of employees or the public onto the premises controlled by the employer or placing in vehicles or equipment operated on behalf of the employer.
- Driving an organizational vehicle while on or off duty with a blood alcohol level of .02 or more or under the influence of an illegal drug or prohibited substance, regardless of the amount.
- Law enforcement personnel may possess and/or transport such substances as required in the course and scope of job-related functions.

3. Reporting Requirements

- A supervisor who receives information or is a witness to any use of illegal drugs, prohibited substances, or alcohol by an employee which violates employer's policies or the law, is required to report this information to the Department Head or HR Manager immediately. The information reported must include:
 - The persons(s) involved, including all witnesses;
 - Any information gathered, such as actual observation of drug/alcohol use, the presence of paraphernalia, observation of any unusual physical signs or behaviors;
 - A written record of specific conversations held with the accused and any witnesses;
 - All pertinent facts, including date(s), time(s), and locations(s).
- An employee who witnesses or obtains information regarding illegal drug/prohibited substance/alcohol use by the immediate supervisor is required to report the incident to that supervisor's supervisor.

4. Specimen collection, drug testing procedures, sample collection, and alcohol testing procedures will comply with all applicable provisions of federal and state law.

5. Employees in safety-sensitive positions as defined in 49 CFR Part 382, et seq., are subject to the Federal Department of Transportation (DOT) (49 CFR Part 40) and the Federal Motor Carrier Safety Regulations (FMCSR), as prescribed by the Federal Motor Carrier Safety Administration (FMCSA) (49 CFR Parts 382, 383, 387, 390-397, and 399), as well as the **employer's** Drug- and Alcohol-Free Workplace Policy.

6. The **employer** receives funding through federal grants and is therefore subject to the Drug-Free Workplace Act of 1988. Marijuana (including medical and recreational cannabis), cocaine, opioids, amphetamines (including methamphetamines), phencyclidine (PCP), and methylenedioxy-methamphetamine (MDMA) are considered illegal Schedule I or II drugs through the federal government. **Employer** is committed to a policy of a drug- and alcohol-free workplace and employees may not have any detectable level of Schedule I or II drugs in their system while at work. However, this policy is adopted in compliance with the requirements of NRS 678C.

2.9.2. Employee Responsibilities

1. Each employee is responsible for meeting standards for work performance and safe on-the-job conduct.
2. Employees shall not report to work under the influence of alcohol, illegal drugs, prohibited substances, or misused prescription or over-the-counter drugs, regardless of the amount.
3. Employees who suspect they may have a substance abuse problem are encouraged to seek counseling and rehabilitation from the employer's Employee Assistance Program (EAP) provider, substance abuse professional, or other treatment provider. The employer's medical insurance policy may provide for payment of some or all of the treatment costs.
4. It is the responsibility and obligation of employees in safety-sensitive positions to determine, by consulting a health care provider if necessary, whether or not a legal drug being taken may/or will affect one's ability to safely perform assigned job duties. An employee in a safety-sensitive position whose medication may affect their ability to safely perform their job must contact the human resources director or department director who will attempt to find an appropriate alternative assignment. If none is available, the employee and the employer will take steps consistent with the advice of a health care provider which could include the use of sick leave or a leave of absence. If an employee reports to work under the influence of medication and, as a result, endangers oneself or others, the employee will be subject to discipline, up to and including termination.
5. Each employee must report the facts and circumstances of any drug or alcohol arrest resulting from an incident that occurred while the employee was on duty. Each employee must report the facts and circumstances of any drug or alcohol conviction which may impact the employee's ability to perform the duties of the job. If duties involve driving a vehicle or operating heavy equipment, the employee must report to their supervisor a conviction for driving under the influence (DUI), and/or restriction, revocation, or suspension of the driver's license pending adjudication before resuming work duties.
6. Employees in safety-sensitive positions identified by the employer are subject to random drug and/or alcohol testing as provided in this policy.
7. Employees must act as responsible representatives of the employer and as law-abiding citizens. It is every employee's responsibility to report suspected or known violations of this policy to the immediate supervisor or to Human Resources Manager. Such reporting is critical in preventing serious injuries or damage to the employer's property.
8. Employees who are required to submit to a drug/alcohol test must complete and sign a consent form. Employees acknowledge that by consenting to testing, they are waiving any expectation of privacy between the employer and employee in the information provided related to the drug/alcohol test.

Note: Law enforcement employees and applicants for law enforcement positions are also subject to the law enforcement department's drug testing policy.

2.9.3. Department Head Responsibilities

The department head or designee is responsible for:

1. Authorizing the testing of employees.
2. Coordinating drug and/or alcohol testing.
3. Completion of a required consent form.
4. Notifying employees of positive test results and their right to a retest of the same sample.
5. Implementing disciplinary action against employees who fail to comply with provisions outlined in this policy.
6. Notifying the employer's attorney of an employee's conviction of a federal or state drug and/or alcohol violation.
7. Ensuring that the drug and/or alcohol test forms and results are kept confidential and only provided to employees with a business need for the information.
8. Identifying safety-sensitive positions.
9. Notifying employees in department safety-sensitive positions that they are subject to random drug and/or alcohol testing.

2.9.4. Supervisor Responsibilities

Supervisors are responsible for:

1. Determining if reasonable suspicion exists to warrant drug and/or alcohol testing and detailing, in writing, the specific facts, symptoms, or observations that are the basis for the reasonable suspicion.
2. Submitting the documentation to the department head or designee.
3. Complying with the appropriate provisions outlined in this policy that apply to supervisory personnel.

2.9.5. Employer Responsibilities

Employers are responsible for:

1. Providing communication and training on this policy to include a training program to assist supervisors to recognize the conduct and behavior that gives rise to a reasonable suspicion of inappropriate drug and/or alcohol use by employees and how to take appropriate corrective action.
2. Receiving and maintaining employee drug and alcohol testing records and files from all sources and assuring that they are kept confidential.
3. Making drug and/or alcohol testing and notice forms available.
4. Notifying appropriate department heads of positive results of drug and alcohol tests.
5. Administering the contract with a third party to provide drug and alcohol testing services.
6. Overseeing the administration of the employer's Drug- and Alcohol-Free Workplace Policy.
7. Designating safety-sensitive positions.
8. Notifying department heads of their employees randomly selected for drug and/or alcohol testing.
9. Ensuring the administration of all pre-employment drug testing.

2.9.6. Training

The **employer** maintains information relating to the hazards of and treatment for drug- and alcohol-related problems. Proactive training and information shall be sponsored by the **employer** periodically. Any employee may voluntarily seek advice, information, and assistance. Medical confidentiality will be maintained consistent with this policy.

2.9.7. Employee Assistance and Voluntary Referral

1. The **employer** strongly encourages employees who suspect they have substance abuse problems to voluntarily refer themselves to a treatment program. A voluntary referral is defined as being one that occurs prior to any positive test for illegal drugs, prohibited substances, or alcohol under this policy and prior to any other violation of this policy, including a conviction of that individual for a drug or alcohol related offense. A decision to participate in the employee assistance or other treatment program will not be a protection or defense from discipline.
2. Any employee who voluntarily requests assistance in dealing with a personal drug and/or alcohol problem may do so through a private treatment program for drug and alcohol problems. An employee who is being treated for a substance issue in a recognized rehabilitation program may, if the Americans with Disabilities Act applies, be entitled to reasonable accommodation so long as the employee is conforming to the requirements of the program and is abstaining from the use of a controlled substance(s) and/or alcohol. These situations will be addressed on a case-by-case basis.
3. The cost of the drug or alcohol rehabilitation or treatment program shall be borne by the employee and, if applicable, the employee's insurance provider. All information regarding an employee's participation in treatment is confidential. Only information that is necessary for the performance of business will be shared by the **employer's** management.

2.9.8. Reasonable Suspicion Testing

1. When any supervisor has reasonable suspicion that an employee may be under the influence of alcohol, drugs, or prohibited substances, the employee in question will be directed by the department head or designee, or the **employer's** Human Resources Manager, to submit to drug and/or alcohol testing. This test may include a breath or blood test or urinalysis.
2. The supervisor shall be responsible to determine if reasonable suspicion exists to warrant drug and/or alcohol testing and shall be required to document, in writing, the specific facts, symptoms, or observations which form the basis for such reasonable suspicion. When possible, the documentation will be forwarded to the department head or designee to authorize the drug and/or alcohol test of an employee.
3. The department head or designee, or the **employer's** Human Resources Manager shall direct an employee to undergo drug and/or alcohol testing if there is reasonable suspicion that the employee is in violation of this policy. The employee will be placed on administrative leave with pay pending results of the test.

An employee who is required to submit to reasonable suspicion testing:

- Must sign a consent form. By consenting to testing, the employee acknowledges waiving any expectation of privacy between the **employer** and employee in the information provided related to the drug/alcohol test.
- Will be immediately provided transportation by the **employer** to the location of the test.
- Will be advised to refrain from eating or drinking before being tested.

- Will be provided transportation by the **employer** or transportation arrangements will be made available by the **employer** after the employee submits to the test or refuses to be tested.
4. Circumstances which constitute a basis for determining reasonable suspicion may include, but are not limited to:
- Information provided either by reliable and credible sources or independently corroborated.
 - The first line supervisor or another supervisor/manager receives information from a reliable and credible source as determined by the department head that an employee is violating the **employer's** policy.
 - Direct observation of drug, prohibited substance, or alcohol use while on duty.
 - The first line supervisor or another supervisor/manager directly observes an employee using drugs, prohibited substances, or alcohol while an employee is on duty.
 - Employee admits using drugs, prohibited substances, or alcohol prior to reporting to work or while at work.
 - Drug, prohibited substance, or alcohol paraphernalia possibly used in connection with illicit drugs, prohibited substances, or alcohol found on the employee's person or at or near the employee's work area.
 - Evidence that the employee has tampered with a previous test for drugs, prohibited substances, or alcohol.
5. The following behaviors will also contribute toward reasonable suspicion and, collectively or independently, on a case-by-case basis may provide a sufficient reason for requesting a test for drugs, prohibited substances, or alcohol:
- *A pattern of abnormal or erratic behavior:* This includes, but is not limited to a single, unexplainable incident of serious abnormal behavior or a pattern of behavior which is radically different from what is normally displayed by the employee or grossly differing from acceptable behavior in the workplace.
 - *Presence of physical symptoms of drug and/or alcohol use:* The supervisor observes physical symptoms that could include, but are not limited to, glassy or bloodshot eyes, slurred speech, poor motor coordination, or slow or poor reflex responses different from what is usually displayed by the employee or generally associated with common ailments such as colds, sinus problems, hay fever, and diabetes.
 - *Violent or threatening behavior:*
 - First Incident: If an employee engages in unprovoked, unexplained, aggressive, violent, and/or threatening behavior against any person, the department head may request that the employee submit to drug and/or alcohol testing.
 - Second Incident: Whether or not an employee has previously received formal counseling or disciplinary action for unprovoked, unexplained, aggressive, violent, or threatening behavior, upon a second or subsequent episode of similar behavior/conduct, the department head will request that the employee undergo drug and/or alcohol testing.
 - *Absenteeism and/or tardiness:* If an employee has previously received disciplinary action for absenteeism and/or tardiness, a continued poor record that warrants a second or subsequent

disciplinary action may, in combination with other relevant behaviors, result in drug and/or alcohol testing.

2.9.9. Post-Accident Testing

1. Each employee involved in an accident will be tested for illegal drugs, prohibited substances, and alcohol as soon as possible after the accident, but after any necessary emergency medical attention has been provided. Accidents that trigger testing are those that result in:

- Death;
- Medical treatment of employee or another individual, other than first-aid;
- Loss of consciousness; or
- Property damage estimated to be valued at or in excess of five-hundred dollars (\$500).

An employee who is subject to a post-accident test:

- Must sign a consent form. By consenting to testing, the employee acknowledges waiving any expectation of privacy between the **employer** and employee in the information provided related to the drug/alcohol test.
- Must remain readily available for testing. An employee who leaves the scene without good reason before the test is administered or who does not make oneself readily available may be deemed to have refused to be tested, and such refusal shall be treated as a positive test.
- Will be immediately provided transportation by the **employer** to the location of the test.
- Will be advised to refrain from eating or drinking before being tested, and must refrain from consuming alcohol for eight hours following the accident or until the employee submits to an alcohol test, whichever comes first.
- Will be provided transportation by the **employer** or transportation arrangements will be made available by the **employer** after the employee submits to the test or refuses to be tested.

Upon completion of the test:

- If the employee caused or contributed to the accident, or the **employer** determines there is a risk to return the employee to work, the employee will be provided transportation home or the **employer** will make transportation arrangements, and the employee will be placed on administrative leave with pay pending the results of this test.
- If the **employer** determines the employee did not cause or contribute to the accident, the employee will be transported back to the work site (if medically able) and will resume work.

If the test comes back positive and the employer needs to conduct further investigation, the employee will be placed on administrative leave with or without pay.

Note: *NRS 616C states a positive test for illegal drugs, prohibited substances (including marijuana), or alcohol per limits set forth in NRS 484C can cause the denial of workers' compensation claims. By consenting to post-accident testing, the employee waives any expectation of privacy between the **employer** and employee in the information provided related to the drug/alcohol test.*

2. In the event an employee is so seriously injured that a blood, breath, or urine specimen cannot be provided at the time of the accident, the employee must provide necessary authorization, as soon as the employee's physical condition allows, to enable the **employer** to obtain hospital records or other documents that indicate the presence of drugs, prohibited substances, or alcohol in the employee's system when the accident occurred.

3. In the event federal, state, or local officials conducted drug and/or alcohol testing following an accident, the employee will be required to sign a release allowing the **employer** to obtain the test results from such officials.

2.9.10. Safety-Sensitive Positions

1. The **employer** may conduct pre-employment testing and random testing for drugs, prohibited substances, and/or alcohol for positions identified as safety-sensitive by the **employer**. Successfully passing these tests is a condition of future or continued employment.
2. Safety-sensitive positions mean positions which may, in the normal course of business:
 - Require the employee to operate a vehicle or heavy equipment on a regular and recurring basis; and/or
 - Involve job duties which, if performed with inattentiveness, errors in judgment or diminished coordination, dexterity, or composure, may result in mistakes that could present a real and/or imminent threat to the personal health and safety of the employee, coworkers, and/or the public, including positions that require use of dangerous tools/equipment; performance of job duties at heights; use of dangerous chemicals; or carrying firearms in the performance of job duties.
3. The **employer** shall maintain a list entitled "List of Positions Designated as Safety Sensitive."

2.9.11. Random Testing

1. All employees in positions identified as safety-sensitive by the **employer** shall be subject to random testing for drugs, prohibited substances, and alcohol.
2. Per DOT testing guidelines for CDL holders, the **employer** will test for drugs/prohibited substances at a minimum, 50% of the average number of employee-CDL positions each calendar year. The **employer** will alcohol test, at a minimum, 10% of the average number of employee-CDL positions each calendar year.
3. For all other safety-sensitive positions, the **employer** will test for drugs/prohibited substances, at a minimum, 25% of the average number of employee positions designated as safety-sensitive each calendar year. The **employer** will alcohol test, at a minimum, 10% of the average number of employee positions designated as safety-sensitive each calendar year.
4. The selection of employees for random testing shall be on a non-discriminatory basis and made from a computer-based random number generator that is matched with the employee's social security number. Random testing will be unannounced and the dates for administering the tests will be spread reasonably throughout the year. Random testing will be performed at any time while the employee is at work.
5. An employee selected for random testing shall proceed immediately to the test site and will be advised to refrain from eating or drinking prior to the test. An employee who engages in conduct which does not lead to testing as soon as possible after notification may be considered to have refused to be tested.
6. Employees selected for a random test but absent due to annual, sick leave, other leave, or on urgent **employer** business approved by their department head will not be notified to take the random test until the first day they return to work after random selection.
7. Random selection may result in some employees being tested more than once each year; some may not be tested at all.

2.9.12. Return-to-Work Testing/Follow-Up Testing

1. If the **employer** agrees to continue employment, an employee who violates this policy and undergoes rehabilitation for drugs, prohibited substances, or alcohol will, as a condition of returning to work, be required to undergo follow-up testing as established by the **employer**. The extent and duration of the follow-up testing will depend upon the safety and security nature of the employee's position and the nature and extent of the employee's substance use issue. The **employer** will review the conditions of continued employment with the employee prior to the employee's returning to work. Any such condition for continued employment shall be given to the employee in writing. The **employer** may consider the employee's rehabilitation program in determining an appropriate follow-up testing program.
2. Any employee subject to return-to-work testing that has a confirmed positive drug or alcohol test will be in violation of this policy and subject to termination.

2.9.13. Consequence of Refusal to Submit to Testing/Adulterated Specimen

The following shall be treated as a positive test and will result in disciplinary action, up to and including termination:

- Refusal to submit to testing for drugs, prohibited substances, and/or alcohol, or who consents to a test but fails to appear timely at the collection site, or who fails to give a sample after reasonable opportunity to do so, or engages in conduct which attempts to or does impact the validity of any such testing, will be treated as a refusal to submit to a test. Such refusal shall be treated as a positive test.
- Submission of an invalid, substituted, or adulterated specimen will be considered a refusal to test and such refusal shall be treated as a positive test.
- A diluted positive test result will be treated as a positive test.

2.9.14. Testing Guidelines

1. The **employer** may test for alcohol and illegal/prohibited substances including but not limited to:
 - Marijuana (Cannabis)*
 - Cocaine, including crack
 - Opioids, including heroin, codeine, morphine, hydrocodone, hydromorphone, oxycodone, and oxycodone
 - Amphetamines, including methamphetamines
 - Phencyclidine (PCP)

**Tests for marijuana for workers' compensation purposes must be a blood test per requirements set forth in NRS 616C.230.*

2. In addition to testing for the above substances, CDL holders are subject to testing for the following substances:
 - 6-Acetylmorphine
 - MDMA (Ecstasy)
3. Where applicable, the **employer** will follow federal testing procedures for drugs and alcohol set forth by the Federal Department of Transportation (DOT) 49 CFR Part 40 and the Federal Motor Carrier Safety Regulations (FMCSR). These regulations may be amended from time to time.

2.9.15. Option for Drug/Prohibited Substance Retest

1. In the event that an employee is required to submit to a screen test for drugs/prohibited substances within 30 days of employment, the employee shall have the right to submit an additional screening test, at one's own expense, to rebut the results of the initial screening test. The **employer** shall accept and give appropriate consideration to the results of such a screening test. This provision does not apply to the extent that it is inconsistent or otherwise conflicts with an applicable collective bargaining agreement or federal law, or to a position funded by a federal grant.
2. In all other cases:
 - No later than 72 hours after receipt of a positive test, an employee who tests positive may request a confirmatory retest of the same sample at one's expense at a certified laboratory of the employee's choice.
 - Upon request, the medical review officer will authorize the laboratory holding the employee's sample to release to a second laboratory, approved by the U.S. Department of Health and Human Services, a sufficient quantity of the sample to conduct a second testing analysis.
 - The employee will be required to authorize the laboratory to provide the **employer** with a copy of its test results. The accuracy of the test results will be verified by the laboratory conducting the analysis. The result of the confirmatory test is final.

2.9.16. Requirement for Drug/Prohibited Substance Retest

An employee who tests negative dilute will be required to immediately retest. The employee will:

- Be given the minimum possible advance notice of retest,
- Will be accompanied by a supervisor to the collection site, and
- Will not be allowed to eat or drink between the period of being noticed of the retest and the actual test.

The retest will not be under direct observation unless directed so by the Medical Review Officer. If the retest is also negative dilute, the test will be considered negative and the **employer** will not conduct a third test unless directed to do so by the Medical Review Officer.

2.9.17. Searches

If the **employer** suspects that an employee is in possession of illegal drugs, prohibited substances, alcohol, or contraband in violation of this policy, the **employer** may search employer vehicles, lockers, desks, and work areas as outlined in **employer's** Use of Employer Property and Premises and Searches policies.

2.9.18. Violation of Policy

1. Employees in violation of the provisions of this policy will be subject to disciplinary action, up to and including termination.
2. An employee may be found to have violated this policy on the basis of any appropriate evidence including, but not limited to:
 - Direct observation of use of drugs or use of prohibited substances; prohibited use of alcohol; or possession of illegal drugs, prohibited substances, alcohol, or related contraband;
 - Evidence obtained from an uncontested motor vehicle citation, or a conviction for use or illicit possession of drugs or prohibited substances, or for the use or being under the influence, of alcohol on the job;

- A verified positive test result; or
 - An employee's voluntary admission.
3. Prior to determining its course of action, the **employer** may direct an employee who has tested positive to submit to an evaluation by a substance abuse professional. The evaluation will attempt to determine the extent of the employee's use of or dependence on the substance(s) noted in the positive test and, if necessary, recommend an appropriate program of treatment.
 4. If an evaluation is conducted which results in a recommendation for treatment, continued employment may, but is not required, to be allowed if the recommended treatment is immediately begun and successfully completed. The treatment program may include, but is not limited to, rehabilitation, counseling, and after-care to prevent future substance use issues. The treatment program will not be at the **employer's** expense; however, employees may use benefits provided by applicable insurance coverage. Failure by the employee to enroll within the required timeframe in the recommended treatment program, to consistently comply with the program's requirements, to complete it successfully, and/or to complete any continuing care program shall be grounds for immediate termination from employment.
 5. When an employee undergoes treatment under this policy, the employee may be required to comply with the following as a condition of continued employment:
 - Monitoring of the treatment program and the employee's participation by the **employer**;
 - Submission to return-to-work testing as required under this policy and continuing follow-up testing as provided in the *Return-to-Work Testing/Follow-Up Testing*; and
 - Any other reasonable condition that the **employer** deems necessary to maintain a safe and healthy workplace for all employees.
- Failure by the employee to enroll in a required treatment program, to consistently comply with the program requirements, to successfully complete the program, and/or to complete any continuing care program will be grounds for immediate termination of employment.
6. Appropriate disciplinary action will also be taken for any job performance or behavior that may otherwise be cause for disciplinary action.

2.9.19. Confidentiality

Test results may only be disclosed to the employee; the appropriate medical and treatment providers; the **employer's** attorney; an **employer** representative necessary to respond to an alleged violation of this policy; individuals within the **employer** who have a need-to-know of drug and/or alcohol testing results; and a court of law or administrative tribunal, as required.

2.10. Prohibition of Workplace Violence

2.10.1. Policy

The **employer** is committed to providing for the safety and security of all employees, customers, visitors, and property.

2.10.2. Scope

This policy applies to all employees, including full-time, part-time, casual/temporary/seasonal, and elected officials, as well as volunteers and contract employees and anyone else on the **employer's** property.

2.10.3. Implementation of Policy

1. The **employer** will not tolerate any form of workplace violence including acts or threats of physical violence, intimidation, harassment, and/or coercion, which involve or affect the **employer**, or which occur on property owned or controlled by the **employer** during the course of the employee's performance of job duties, which affect the **employer's** business, or which occur at an **employer**-sponsored or commissioned event or social gathering. Examples of workplace violence include, but are not limited to, the following:
 - All threats (including direct, conditional, or veiled) or acts of violence occurring on premises owned or controlled by the **employer**, regardless of the relationship between the **employer** and the parties involved in the incident.
 - All threats of any type or acts of violence occurring off the **employer's** premises involving someone who is acting in the capacity of a representative of the **employer**.
 - All threats of any type or acts of violence occurring off the **employer's** premises involving an employee of the **employer**, if the threats or acts affect the legitimate interests of the **employer**.
 - Any acts or threats resulting in a criminal conviction of an employee or agent of the **employer** or an individual performing service for the **employer** on a contract or temporary basis which adversely affect the legitimate interests and goals of the **employer**.
2. Specific examples of conduct which may be considered threats or acts of violence include, but are not limited to, the following:
 - Hitting, shoving, or otherwise assaulting an individual;
 - Direct, conditional, or veiled threats of harm directed to an individual or family, friends, associates, or property;
 - The intentional or malicious destruction or threat of destruction of the **employer's** property, or property of another employee;
 - Harassing or threatening phone calls, text messages, notes, letters, computer messages, or other forms of communication;
 - Harassing surveillance or stalking;
 - Unauthorized possession or inappropriate use of firearms, weapons, hazardous biological or chemical substances, or explosives while on **employer** business;
 - Displaying overt signs of extreme stress, resentment, hostility, or anger;
 - Making intimidating, abusive, or threatening remarks;
 - Displaying irrational or inappropriate behavior.
3. The **employer** desires to detect and deter real, potential, or threatened violence. Every employee is required to report immediately any acts of violence or any threat of violence against any coworker, supervisor, manager, elected official, visitor, volunteer, other individual, or property. Supervisory and managerial personnel who witness or become aware of any acts or threats of violence must notify their superior immediately. Every other person on **employer** property is encouraged to report incidents of threats or acts of violence.
4. Reports of violence or threatening behavior should be made to human resources, an employee's immediate supervisor or manager, or any other supervisory or management employee. The **employer** is committed to ensuring that employees reporting real or perceived threats in good

faith will not be subject to harassment or retaliation. Nothing in this policy alters any other reporting obligation established in the **employer's** policies or in state, federal, or other applicable law.

2.10.4. Violation of Policy

Violations of this policy by any employee will lead to disciplinary action, up to and including termination and/or appropriate legal action. The **employer** may also take appropriate disciplinary action against any employee who intentionally makes a false or malicious statement about coworkers or others.

Actions of law enforcement personnel which are necessary in the performance of their duties and are consistent with policies or sound law enforcement procedures shall not be considered to violate this policy. In addition, actions necessary for bona fide self-defense or protection of employees of the **employer** or of **employer** property shall not be considered to violate this policy.

2.10.5. Temporary Restraining Orders

The **employer** may apply for an order for protection against harassment in the workplace under the terms of NRS 33.200 – 33.360.

2.11. Employment of Relatives

Pursuant to the provisions of NRS 281.210, no officer or appointing authority of the **employer** may employ in any capacity on behalf of the **employer** any relative of such person who is within the third degree of consanguinity or affinity. Existing employees may continue in their current position following the election or appointment of their relative to an appointing authority position.

For the purpose of this policy, the following definitions shall apply:

- Public Officers are defined as elected and appointed officials as outlined in the Elko City Charter.
- Appointing authority refers to elected officials who may appoint individuals to “appointed official” positions within the City of Elko, or to appointed officials who are duly authorized to hire and/or appoint employees.

For all other employees not classified as an elected or appointed official, the following exception applies: Two or more relatives who are within the third degree of consanguinity or affinity shall not be employed in the same department where one relative occupies a position which has a routine and direct supervisory responsibility and/or influence over another relative's employment, promotion, salary administration, or related management activities.

***Example:** An employee reports to an immediate supervisor, who reports to a manager, who reports to a department head, who reports to the city manager. The employee may not be related within the third degree of consanguinity or affinity to any of those employees.*

2.12. Code of Ethical Standards

The elected and appointed officers and employees of **employer** recognize that holding public office and/or employment is a public trust. To preserve that trust, **employer** demands the highest code of conduct and ethical standards. The purpose of this policy is to define and establish the standards of ethical conduct that are required of public officials and employees so as to ensure their professional integrity in the performance of their duties. The officers, employees, and volunteers of **employer** shall comply with the following provisions. This list is not all-inclusive, but simply provides the basic level of conduct expected.

- All elected and appointed officials and employees will conduct themselves with honesty and integrity in the course of performing their duties and responsibilities.
- They will act with care and diligence in the course of their employment.

- They will treat everyone, including coworkers, subordinates, supervisors, customers and the public, with the utmost professionalism and courtesy.
- They will comply with all applicable federal, state, and local laws.
- They will comply with any lawful and reasonable direction given by someone in the employee's agency who has authority to give the direction.
- They will maintain appropriate confidentiality.
- They will disclose, and take reasonable steps to avoid, any actual or potential conflict of interest in connection with their employment.
- They will use **employer** resources in a proper manner.
- They will not provide false or misleading information in response to a request for information that is made for official purposes in connection with their employment.
- They will, at all times, act in a way that upholds the values and the integrity and good reputation of **employer**.
- They will comply with any other conduct requirement that is prescribed by the **employer**.

In addition, the **employer's** officials and employees are required to comply with the provisions of NRS 281A and NRS 281. Employees shall familiarize themselves with Nevada Ethics in Government Manual available through the Nevada Commission on Ethics.

Employees who suspect violations of this policy must report the conduct/behavior(s) as soon as possible to any supervisor/manager or the HR representative. Violations of any of the above provisions may result in disciplinary action, up to and including termination.

The **employer** will not tolerate any retaliation by management or by any other employee against an employee who exercises rights under this policy. Employees who believe they have been retaliated against in any manner whatsoever should immediately notify the Human Resources Manager. The **employer** will promptly investigate and deal appropriately with any allegation of retaliation. In the event retaliation is substantiated, disciplinary action up to and including termination will be taken.

2.13. Political Activity

2.13.1. Policy

Employees shall not engage in political activity of any kind during working hours. This includes, but is not limited to: soliciting money, influence, service, or any other valuable thing to aid, promote, or defeat any political committee or the nomination or election of any person to public office. Wearing or displaying of apparel, buttons, insignia, or other items which advocate for or against a political candidate or a political cause is also an example of prohibited political activity during work hours. Furthermore, no person shall attempt to coerce, command, or require a person holding or applying for any position, office, or employment, including a citizen requesting service supplied by **employer**, to influence or to give money, service, or other valuable thing to aid, promote, or defeat any political committee, or to aid, promote, or defeat the nomination or election of any person to public office.

Employees may not participate in any of the above-mentioned activities off duty while wearing a uniform, name tag, or any other item identifying them as a representative of the **employer**.

Employees are expressly forbidden to use any **employer** resources, including but not limited to: interoffice mail, email, telephone, fax machines, the Internet, or copy machines to engage in any political activity outside the approved scope of the employees' official duties.

2.13.2. Running for or Holding Political Office

While employees are encouraged to participate in the political process, they must understand the **employer** also has an obligation to provide service to the public.

Employees who are seeking, or who have been elected or appointed to public office, shall not conduct any campaign-related business while on duty.

If there is a conflict with, or the activities hinder the performance of the duties with **employer**, the employee will comply with one of the following (final approval is at the **employer's** sole discretion):

- The employee will be expected to resign their position;
- The employee may apply and seek approval for use of accrued leave time; or
- The employee may request unpaid leave per **employer's** Leave of Absence Without Pay policy.

The maximum duration of unpaid leave time approved will be 10 days. **Employer's** leave policies addressing continuation of health insurance, retirement benefits, accrual of additional leave time, and job and seniority status will be applied in this situation.

2.13.3. Election-Related Communications

Pursuant to NRS 294A, any election-related communications published in support of or opposition to a candidate which contain official contact information of **employer** must state that the communication is not endorsed by, and is not an official publication, of **employer**.

2.14. Solicitation Prohibited

2.14.1. Employee Activities

Distribution of literature by employees in work areas or solicitation by employees during work time on behalf of any club, society, labor union, religious organization, political party, philanthropic or similar organization, or for any purpose whatsoever is strictly prohibited. Distribution of information and correspondence related to the administration of a collective bargaining agreement by officers, consultants, and business representatives of a recognized employee organization may be allowed pursuant to the terms of a collective bargaining agreement.

2.14.2. Non-Employee Activities

Non-employees will not be allowed on the premises for the purpose of distribution of literature to employees or solicitation of employees at any time whatsoever, except as specifically provided below.

1. Consultants and business representatives of recognized employee organizations are allowed access to employees as allowed by the specific terms of a current collective bargaining agreement.
2. Representatives of employee benefit programs (e.g., supplemental insurance or deferred compensation) specifically approved by the **employer** for payment through payroll deduction may meet with employees during designated work time at designated places or on **employer** property as may be approved by the appropriate **employer** representative.

2.15. Work Stoppage Prohibited

No employee will instigate, promote, encourage, sponsor, or engage in any strike, picketing, slowdown, concerted work stoppage, sick out, or any other intentional interruption of work. Any employee who violates the provisions of this section will be subject to disciplinary action, up to and including termination.

2.16. Use of Employer Property and Premises

2.16.1. Policy

Employees will use the **employer's** property and equipment including, but not limited to, monies and funds, communication equipment, vehicles, tools, equipment, and facilities only for work-related purposes as directed or approved by management. When using **employer** property and equipment, employees are expected to exercise care, perform required maintenance, and follow all operating instructions as well as comply with safety standards and guidelines. Employees will not misuse, destroy, or otherwise use in an improper or unsafe manner any property of the **employer**. Employees are prohibited from making unauthorized copies, any other unauthorized use of, or

allowing or facilitating the unauthorized possession by others of **employer** keys or other access devices. Employees are prohibited from transporting non-employees in the **employer's** vehicles unless specifically authorized to do so by their supervisor.

2.16.2. Searches

The **employer** may authorize the examination of lockers, desks, vehicles, and all other property and spaces owned or controlled by the **employer** to check for the presence of any unauthorized material, weapons of any type, or controlled substances including, but not limited to, alcohol, illegal drugs, and prohibited substances. Prior notice to employees that **employer**-owned property or space is to be searched is not required; entrance onto or use of **employer** property is deemed consent.

If an individual is asked to submit to a search and refuses, that individual will be considered insubordinate and will be escorted off the job site and disciplined, as appropriate. The **employer** may take whatever legal means are necessary, consistent with this policy, to determine whether unauthorized material, weapons of any type, or controlled substances are located or being used on **employer** premises. The **employer** may call upon law enforcement authorities to conduct an investigation if deemed necessary.

Searches will be conducted by management personnel or law enforcement authorities and may or may not be conducted in the presence of the person whose work area is searched. Any suspected contraband will be confiscated and may be turned over to law enforcement as appropriate. Any person whose property is confiscated will be given a receipt for that property by the **employer's** representative conducting the search.

2.17. Phone Policy

The **employer's** policy covers phone usage while at work, including the use of cell phones while operating motor vehicles.

2.17.1. Personal Calls & Texts

Personal phone calls, messages, texting, audio/video recording, and other features of employee's private cell phone or the **employer's** equipment, are limited to reasonable times during work hours.

Excessive personal communication can result in lost productivity and distract coworkers.

Employer-issued cell phones are to be used only for official business reasons. If an emergency situation arises and the **employer**-issued cell phone must be used for a personal call or text and the employee is not able to obtain prior authorization from a supervisor, the employee is required to notify the supervisor as soon as is practicable. The employee is required to furnish the reason for the call/text and, if requested, the number called. Employees are expected to protect the **employer**-issued mobile equipment from loss, damage, or theft.

2.17.2. Cell Phone Use in Vehicles

1. All employees are expected to follow applicable state and federal laws regarding the use of cell phones, or other hand-held devices at all times. Employees on duty and/or conducting **employer** business at any time while operating a motor vehicle are prohibited from using cell phones while the vehicle is in motion unless using a hands-free device. This includes dialing, answering, texting, and checking messages. Employees are neither required nor expected to use a cell phone while the vehicle is in motion. Safety must come before all other concerns.
2. Employees shall pull off the road and safely stop before placing or accepting calls, texting, checking and responding to messages, unless they are using hands-free operations/devices.
3. This provision does not include passenger use of cell phones.
4. This prohibition is in effect regardless if the cell phone is issued by the **employer** or is privately owned by the employee.
5. An exception to this rule is the legitimate use of cell phones by specific departments and for specific reasons as established by each department and under NRS 484B. For example, the police, fire,

ambulance, and EMT departments may operate vehicles while using cell phones only in direct response to emergency calls, but must always keep safety a paramount concern.

2.17.3. Phone Use in Business Meetings

Phone use during meetings, to include texting, unless specifically required and authorized by management, should be limited and only work-related.

2.18. Information Technology

2.18.1. Policy

The **employer** requires employees to use information technology (computer systems, telecommunication and other devices, and electronic information/communication) responsibly and in a manner which is not detrimental to the mission and purpose of **employer**. To maintain a level of professionalism, any publication through any means (electronic or otherwise) which is potentially adverse to the operation, morale, public perception, or efficiency of **employer** will be deemed a violation of this policy.

Employees are prohibited from engaging in any conduct which would violate **employer** policy or procedure. Use of personal or **employer** electronic devices to engage in such conduct can create liability for **employer**, and as such, obligates **employer** to undertake reasonable procedures to investigate such allegations, including but not limited to inspection of such equipment. In the event an employee becomes the subject of such an investigation and the allegations include potential violations of **employer** policies, whether on work or personal time, and whether using **employer** or personal devices, the **employer** will undertake such an investigation and inquiry by all means allowable under state and federal law.

2.18.2. Privacy

Employees should not expect privacy with respect to any of their activities when using the **employer's** computer and/or electronic and telecommunication property, systems, or services even when accessing from a personal device. Use of passwords or account numbers by employees does not create a reasonable expectation of privacy and confidentiality of information being maintained or transmitted. The **employer** reserves the right to review, retrieve, read, and disclose any files, messages, or communications that are created, sent, received, or stored in the **employer's** network, or on the **employer's** computer systems, and/or equipment. The **employer's** right to review, also called monitoring, is for the purpose of ensuring the security and protection of business records, preventing unlawful and/or inappropriate conduct, and creating and maintaining a productive work environment.

In accordance with provisions of NRS 613.135, the **employer** will not request usernames and passwords for personal social media accounts and will not take any type of employment action against an employee who refuses to provide the username and password for their personal social media account. This provision does not prevent an **employer** from requiring an employee to disclose the username and password for access to the **employer's** computer or information system.

2.18.3. Use

1. The computers, electronic equipment, associated hardware and software, including, but not limited to electronic mail (email or instant messaging "IM") and access to on-line services, as well as voice mail, pagers, smart phones, and faxes, even when accessed from a personal device, belong to the **employer** and, as such, are provided for business use. Very limited or incidental use of **employer**-owned equipment by employees for personal, non-business purposes is acceptable as long as it is:
 - Conducted on personal time (i.e., during designated breaks or meal periods);
 - Does not consume system resources or storage capacity;
 - Does not involve any prohibited uses; or
 - Does not reference **employer** or themselves as an employee without prior approval. This includes, but is not limited to:

- Text which identifies **employer**.
 - Photos which display **employer** logos, patches, badges, or other identifying symbols of **employer**.
 - Information of events which occurs involving **employer** without prior approval.
 - Any other material, text, audio, video, photograph, or image which would identify **employer**.
2. Employees loading, importing, or downloading files from sources outside the **employer's** system, including files from the Internet, social media sites, and any computer disk/drive, must ensure the files and disks/drives are scanned with the **employer's** current virus detection software before installation and execution. Compliance to copyright or trademark laws prior to downloading files or software must be adhered to explicitly.
 3. Employees may use information technology, including the Internet, and social media sites during work hours on job-related matters to gather and disseminate information, maintain their currency in a field of knowledge, participate in professional associations, and communicate with colleagues in other organizations regarding business issues.
 4. An employee's use of the **employer's** computer systems, telecommunication equipment and systems, and other devices or the employee's use of personally owned electronic devices to gain access to **employer's** files or other work-related materials maintained by **employer** constitutes the employee's acceptance of this policy and its requirements.

2.18.4. Prohibited Activities

The following activities are strictly forbidden by this policy:

1. Violations of the rights of any person or entity protected by copyright, trade secret, patent or other intellectual property, or similar laws or regulations, including but not limited to the installation or distribution of "pirated" or other software products that are not appropriately licensed for use by **employer**.
2. Unauthorized copying of copyrighted material including but not limited to digitization and distribution of photographs from magazines, books or other copyrighted sources, copyrighted music, and the installation of any copyrighted software for which **employer** or the end user does not have an active license.
3. The installation of software on **employer** computers without the prior approval of the Information Systems manager is prohibited.
4. Exporting software, technical information, encryption software or technology, in violation of international or regional export control laws. The **employer** Information Systems manager should be consulted prior to export of any material that is in question.
5. Introduction of malicious programs into the network or server (e.g., viruses, worms, Trojan horses, email bombs).
6. Allowing access to confidential or proprietary information on **employer** systems. This includes family and other household members when work is being conducted at an employee's home.
7. Using **employer** equipment or systems to actively engage in procuring or transmitting materials that is in violation of sexual harassment or hostile workplace laws.
8. Making fraudulent offers of projects, items or services originating from any **employer** account.
9. Making statements about warranty, expressly or implied, unless it is a part of normal job duties.
10. Effecting security breaches or disruptions of network communication.

11. Port scanning or security scanning, unless conducted by or on behalf of the Information Systems manager or designee during his or her duties on behalf of **employer**.
12. Executing any form of network monitoring which will intercept data not intended for the employee's host unless this activity is a part of the employee's normal job/duty.
13. Circumventing user authentication or security of any host network or account.
14. Interfering with or denying service to any user other than the employee's host (e.g., denial of service attack).
15. Using any program/script/command, or sending messages of any kind, with the intent to interfere with, or disable, a user's terminal session, via any means, locally or via the Internet/intranet/extranet.
16. Sending unsolicited email messages, including the sending of "junk mail" or other advertising material to individuals who did not specifically request such material (email spam).
17. Any form of harassment via email, telephone or paging, whether through language, frequency or size of messages.
18. Unauthorized use, or forging, or email header information.
19. Solicitation of email from any other email address, other than that of the poster's account, with the intent to harass or to collect replies.
20. Creating or forwarding "chain letters" or "Ponzi" or other pyramid schemes of any type.
21. Use of unsolicited email originating from within **employer's** networks or other Internet/intranet/extranet service providers on behalf of, or to advertise, any service hosted by **employer** or connected via **employer's** network.
22. Physical alteration or repair of any hardware or software such as computers, laptops, printers, fax machines, phones, online services, email systems, bulletin board systems, recording equipment, copiers, monitors, mice, keyboards, or any other software that is owned, licensed by or operated by **employer**; users must report any problems with hardware or software to the **employer** Information Systems manager.

2.18.5. Permitted Activities

Use of **employer** computers and electronic communications resources are for program and business activities of **employer**. All use of such resources shall be conducted in a framework of honest, ethical and legal activities that conform to applicable license agreements, contracts, and policies regarding their intended use. Although incidental and occasional personal use of the organization's communications systems are permitted, users automatically waive any rights to privacy.

2.19. Social Networking (Social Media) Policy

2.19.1. Policy

The **employer** takes no position on an employee's decision to start or maintain a blog or participate in other social networking activities. However, employees' use of social media can pose risks to **employer's** confidential and proprietary information and reputation, can expose **employer** to discrimination and harassment claims, and can jeopardize **employer's** compliance with business rules and laws. To minimize these business and legal risks, to avoid loss of productivity and distraction from employees' job performance, and to ensure that the **employer's** IT resources and communications systems are used appropriately as explained below, **employer** expects its employees to adhere to the following guidelines and rules regarding social media use. The **employer's** social networking policy includes rules, guidelines, and best practices for **employer**-authorized social networking and personal social networking and applies to all **employer** personnel policies.

2.19.2. General Provisions

Social media includes all means of communicating or posting information or content of any sort on the Internet, including but not limited to, employee's own or **employer's** video or wiki posting, social networking sites such as Facebook, LinkedIn, and Twitter, personal blogs, personal websites, or other similar forms of online communication journals, diaries, or personal newsletters not affiliated with the **employer**.

Unless specifically instructed, employees are not authorized and, therefore, restricted to speak on behalf of the **employer**. Employees are expected to protect the privacy and well-being of the **employer** and its employees. Employees are prohibited from disclosing confidential employee and non-employee information as outlined in Confidential Information policy and any other non-public information to which employees have access to the extent such discussion or disclosures are not protected under state or federal law.

2.19.3. Social Media Post Disclaimer

Social media postings by employees from **employer** email addresses should contain the following disclaimer stating that the opinions expressed are strictly their own and not necessarily those of **employer**, unless the posting is in the course of business duties:

- Any views or opinions presented in this message are solely those of the author and do not necessarily represent those of **employer**. Employees of **employer** are expressly required not to make defamatory statements and not to infringe or authorize any infringement of copyright or any other legal right by electronic communications.

Any such communication is contrary to **employer** policy and outside the scope of the employment of the individual concerned. **Employer** will not accept any liability in respect of such communication, and the employee responsible will be personally liable for any damages or other liability arising.

2.19.4. Employer Monitoring

Employees are cautioned there is no expectation of privacy while using **employer's** Internet, equipment, or facilities for any purpose, including authorized posting or editing to social networking sites. Employee's posting can be viewed by anyone, including the **employer**. The **employer** reserves the right to monitor its Internet, equipment, and facilities that are used to post comments or discussions about the **employer** or its employees on social networking sites. The **employer** may use search tools and software to monitor use of its Internet, equipment, and facilities, for posting to social networking sites.

The **employer** reserves the right to use content management tools to monitor, review, or block content on **employer's** social networking sites that violate this policy. Employees consent to such monitoring by acknowledgment of this policy and use of the **employer's** IT resources and systems.

2.19.5. Reporting Violations

The **employer** requests and strongly urges employees to report any actual or perceived violations of this policy to their immediate supervisor, manager, human resources, or City Manager.

2.19.6. Violation of Policy

The **employer** will investigate promptly and respond to all reports of violations of the social networking policy and other-related policies. Violation of the **employer's** social networking policy will result in disciplinary action, up to and including termination. The **employer** reserves the right to take legal action where necessary against employees who engage in prohibited or unlawful conduct.

2.19.7. Authorized Employer Social Networking

The goal of authorized social networking is to become a part of the community conversation and promote web-based sharing and exchange of **employer** information and feedback from members of the public. Authorized social networking is used to convey information about **employer** operations and services; promote and raise awareness of the organizational culture; search for potential new equipment and training tools; communicate with other

employees, members of the public, and interested parties; issue or respond to breaking news or other matters of public interest; and discuss organization-specific activities and events.

When social networking, the **employer** must ensure that use of these communication paths maintain honesty, integrity, courteousness, and reputation while minimizing actual or potential legal risks, whether used inside or outside the workplace.

2.19.8. Rules and Guidelines

The following rules and guidelines apply to entries made on all **employer**-related social networking sites.

1. Only authorized employees can prepare and modify content for the **employer's** social networking sites. If an employee is required to use social media as part of assigned job duties, for **employer's** marketing, public relations, recruitment, communications, or other business purposes, the content must be relevant, add value, and be approved by the **employer** in advance of posting. If uncertain about any information, material, or conversation, employees must contact their supervisor or manager, department head or human resources to discuss the content.
2. Note that **employer** owns all social media accounts used on behalf of **employer** or otherwise for business purposes, including any and all log-in information, passwords, and content. **Employer** owns all such information and content regardless of the employee that opens the account or uses it and will retain all such information and content regardless of separation of any employee from employment with **employer**.
3. If an employee's job duties require one to speak on behalf of **employer** in a social media environment, the employee must still seek approval for such communication from the supervisor or manager, department head or human resources who may require the employee to receive training before posting and may impose certain requirements and restrictions regarding the employee's social media activities.
4. All employees must identify themselves as employees of the **employer** when posting comments or responses on the **employer's** social networking sites. If an employee is contacted to comment about the **employer** for publication, including any social media outlet, the request should be directed to their supervisor or manager, department head or human resources who will then determine the response to be provided on behalf of the **employer**.
5. Any copyrighted information where written reprint information has not been obtained in advance cannot be posted.
6. All employees of the **employer** are responsible for ensuring all social networking information complies with the **employer's** written policies. Management is authorized to remove any content posted on an **employer** social media site that does not meet the rules and guidelines of this policy, any other **employer** policy, or that may be illegal, prohibited, or offensive. Removal of such content will be done at the discretion of the **employer** without permission or advance warning.
7. The **employer** expects all **employer**-authorized guests to social networking sites to abide by all rules and guidelines of this policy. The **employer** reserves the right to remove, without advance notice or permission, all guest content considered malicious, defaming, obscene, threatening, or intimidating. The **employer** also reserves the right to take legal action against guests who engage in prohibited or unlawful conduct.
8. Employees must not expose themselves or the **employer** to legal risk by using a social media site in violation of its terms of use. Review the terms of use of all social media sites visited to ensure compliance with those terms of service.

2.19.9.

Personal Social Networking

The **employer** respects the right of employees to use social networking sites and does not want to discourage employees from self-publishing and self-expression. However, employees are expected to follow the rules and guidelines as set forth in this policy to provide a clear line between the employee as the individual and/or as an employee of the **employer**. In accordance with provision of NRS 613.135, the **employer** will not request usernames and passwords for personal social media accounts. This policy applies to all board members, management, employees, and volunteers. The **employer** does not discriminate against employees who use these sites for personal interests and affiliations or other lawful purposes.

1. Commenters are personally responsible for their commentary on social networking sites and can be held personally liable for commentary that is considered malicious, defamatory, obscene, threatening, intimidating, or libelous by any offended party, not just the **employer**. Remember that what is published might be available to be read by the masses (including the **employer**, future employers, and social acquaintances) for an extended period of time. Employees should keep this in mind before posting content.
2. Employees are prohibited from using **employer** equipment, including computers, licensed software or other electronic equipment, or facilities on work time to conduct personal social networking activities. Employees are prohibited from using their work email address to register on social networking sites utilized for their personal use.
3. Employees shall not use social networking sites to harass, threaten, discriminate, or disparage against employees or anyone associated with or doing business with the **employer**. Social media should never be used in a way that violates any other **employer** policies or employee obligations. If an employee's social media activity would violate any of the **employer's** policies in another forum, it will also violate them in an online forum.
4. If employee chooses to identify oneself as an employee of **employer**, note that some readers may view the employee as a spokesperson for the **employer**. Because of this possibility, employees are required to state their views expressed on the social networking site belongs to the employee alone and is not reflective of the **employer** or of any person or organization affiliated or doing business with the **employer**.
5. Employees should use good judgment about what is posted on social media and remember that anything posted can reflect on **employer**, even if a disclaimer is used. Employees should always strive to be accurate in their communications about **employer** and remember that posted statements and materials have the potential to result in liability for the employee and the **employer**. **Employer** encourages professionalism and honesty in social media and other communications.
6. Employees cannot post the name, trademark, or logo of the **employer** or any business with a connection to the **employer**. Employees cannot post **employer**-privileged information, including copyrighted information or **employer**-issued documents.
7. Authorized employees posting to **employer**-owned social media accounts may not post photographs of other employees, volunteers, members of the public, vendors, and suppliers on the **employer** premises, nor can employees post photographs of persons engaged in **employer** business without prior authorization by immediate supervisor, manager, department head or human resources.
8. Employees cannot post any advertisements or photographs of **employer** products and services, nor use the **employer** in advertisements without disclosing the employee's connection to the **employer**.

9. Employees cannot link from a personal social networking site to the **employer's** internal or external websites.

This policy is not intended to restrict communications or actions protected or required by federal or state law.

2.19.10. Media Contacts

If contacted by the media, press, or any other public news source about employees' post that relates to **employer** business, employees are required to obtain written approval from the immediate supervisor, manager, department head or human resources prior to responding on behalf of the **employer**.

2.19.11. Prohibition Against Retaliation

The **employer** will not tolerate any retaliation by management or by any other employee against an employee who reported a violation of this policy or cooperating with an investigation. Employees who believe they have been retaliated against in any manner whatsoever should immediately notify the EEO Officer or alternative EEO Officer. The **employer** will promptly investigate and deal appropriately with any allegation of retaliation.

2.20. Use of Tobacco or Smoking Products

The **employer** is committed to providing a safe and healthy workplace and to promoting the health and well-being of its employees. As required in accordance NRS 202.2483 (Nevada Clean Indoor Air Act), smoking in any form, including electronic smoking devices and similar products, is prohibited within any building owned, leased, contracted for, and utilized by the **employer**. This prohibition extends to areas that are routinely or regularly used by employees, including but not limited to: work areas, restrooms, hallways, employee lounges, cafeterias, conference and meeting rooms, lobbies, reception areas, and vehicles **employer** owns or uses. The **employer** may designate an outdoor smoking area for its employees. The **employer** shall not allow the use of tobacco or smoking products during staff and training meetings.

2.21. Outside Employment

2.21.1. Policy

In order to maintain a workforce that is available to provide proper services and carry out functions of the **employer**, employees are prohibited from engaging in outside employment which presents real or potential conflict with or negatively impacts their employment with the **employer**.

2.21.2. Conflicting Employment

Outside employment may be classified as in conflict with the **employer's** interests if it:

1. Interferes with or negatively impacts the employee's ability to perform assigned job.
2. Prevents the employee's availability for work beyond normal working hours, such as emergencies or peak work periods, when such availability is a regular part of the employee's job.
3. Is conducted during the employee's work hours.
4. Requires the services of other employees during their normally scheduled work hours.
5. Makes use of the **employer's** telephones, computers, supplies, or any other resources, facilities, or equipment.
6. Is represented as an activity of the **employer** or an activity endorsed, sanctioned, or recommended by the **employer**.
7. Takes advantage of the employee's employment with the **employer**, except to the extent that the work with the **employer** may demonstrate expertise or qualification to perform the outside work.
8. Requires the employee to schedule time off at specific times that could disrupt the operation of the **employer**.

9. Involves employment with a firm that has contracts or does business with the **employer**. Exceptions to this policy have been identified in *Code of Ethical Standards* policy.
10. Negatively impacts the public's perception of the integrity or credibility of the **employer**.

2.21.3. Procedure

1. An employee must request written approval from the direct supervisor/manager for outside employment, including self-employment. The proposed outside employment may not be construed as an extension of assigned duties or responsibilities with the **employer**.
2. In order to determine if there is a conflict with the employee's duties, the supervisor/manager may request information, such as:
 - The outside employer's name;
 - Nature of the work performed by the outside employer;
 - Whether the activity of the outside employment requires employee to disclose information obtained with **employer** and/or impairs employee's independence or ethics;
 - Proposed work schedule;
 - Job location; and
 - Duties to be performed.
3. If the outside employment, including self-employment, does not reasonably appear to cause a conflict, the supervisor may grant preliminary approval, and will then forward the request to the City Manager for final approval.
4. If the supervisor determines the outside employment, including self-employment, causes a conflict, or perceived conflict, and denies the initial request, the employee may request a review by the City Manager.
5. The City Manager will make the final decision as to whether or not the outside employment is approved, or considered to cause a conflict, or perceived conflict.
6. The **employer** may withdraw approval of the outside employment if a conflict is determined.
7. Employees who engage in outside employment which is prohibited by this policy may be subject to discipline, up to and including termination.
8. Provisions of policies and procedures of the Police Department may provide additional restrictions or conditions for approval of outside employment and will remain in effect as they are currently written or as they may be modified.

2.22. Personal Appearance

2.22.1. Policy

1. Each employee is expected to dress and groom appropriately for the job, presenting a clean, safe, and neat appearance. An employee unsure about whether attire or grooming is appropriate should consult with the direct supervisor or manager.
2. Employees working in office areas should dress professionally. Appropriate attire includes, but is not limited to, slacks, khakis, capris, or crop pants (if they portray a business appearance), knit blouses or tops, dress shirts, polo and cotton shirts, skirts and dresses, turtlenecks, sweaters, loafers, and sandals.
3. For those employees who do not have direct contact with the public, dress should still be neat and clean and pose no safety hazard to themselves or others.

4. On approved casual days, employees may dress in casual clothing, including jeans and T-shirts, although dress standards still require a neat, clean appearance.
5. Field employees are required to wear the assigned work uniform provided by the **employer**. If a work uniform has not been assigned, employees may wear jeans and T-shirts as well as shorts that are no more than 3 inches above the knee. Any employee who performs any work assignments in the field must wear closed-toe shoes. Long hair must be tied back to ensure the employee's personal safety. Loose clothing or dangling jewelry that poses a safety hazard to employees also is prohibited.
6. Under no circumstances may employees wear halter tops, strapless tops, spaghetti straps, tank tops, cropped tops, clothing with offensive wording (sexually related references or inappropriate language) or that promotes the use of illegal drugs, prohibited substances, or alcohol, clothing that shows undergarments (sheer), torn clothing, clothing with holes in it, or tight-fitting, revealing, or oversized clothing. All clothing must be clean, neat, and fit properly. Safe, neat, and clean shoes should be worn at all times.
7. An employee's work environment will be taken into consideration when making the following determinations:

While dress and grooming standards may vary depending on the type of work and level of public/customer contact and/or interaction, the **employer** expects employees to maintain good hygiene and grooming while working. Facial hair is permitted as long as it is neat and well-trimmed. Earrings in the earlobe are acceptable; gauges no larger than 12mm in size are acceptable, provided they do not pose a safety hazard; however, larger gauges, extenders, and/or o-rings must be removed while working. Employees shall make every responsible effort to minimize the visibility of other types of body piercings to ensure a professional and appropriate appearance for the workplace and the employees' respective job duties. Rings/studs through the nose, eyebrow, tongue, or body parts other than the ear lobe that are visible to the public are discouraged from being worn while working. Employees will be required to cover tattoos that may be deemed offensive or inappropriate for viewing in the workplace (sexually related references, gang related references, inappropriate wording, and the promotion of illegal drugs or prohibited substances is prohibited). Employees are expected to be conservative in the wearing of makeup, scented products, and hairstyles.
8. If an employee requires a reasonable accommodation regarding personal appearance for bona fide legal reasons, the employee shall contact the direct supervisor or manager to discuss an exception to the personal appearance guidelines. Unless it would constitute an undue hardship or safety hazard, the **employer** will accommodate such requests.

2.22.2. Enforcement

1. All employees should practice common sense rules of neatness, good taste, and comfort. Provocative clothing is prohibited. **Employer** reserves the right to determine appropriate dress at all times and in all circumstances.
2. When the **employer** believes an employee's dress or grooming does not comply with the personal appearance guidelines, the immediate supervisor will discuss the issue with the employee. If counseling fails to result in the desired response, the supervisor may initiate disciplinary action.
3. **Employer** may require employees to change clothes should it be determined that dress is not appropriate.

2.23. Children, Animals, and Visitors in the Workplace

To avoid disruptions to the employee and coworkers, potential distractions in serving members of the community, and to reduce personal and property liability, employees shall not bring children and/or animals to the workplace and are limited in having family and friends visit.

This policy is intended to address the presence of children and animals while the employee is on duty and does not include official functions or activities promoted by the **employer** which may allow children and/or animals.

Supervisors may grant a temporary exception to the rule prohibiting children and animals in the workplace, not to exceed one workday, to accommodate the employee. If an exception is granted, it is the responsibility of the employee to supervise and control the movements of the child or animal. It is not acceptable to request an accommodation to bring sick children into the workplace.

This policy does not apply to employees whose service animal has been approved by the **employer** as a reasonable accommodation under the Americans with Disabilities Act.

The **employer** understands that an occasion may arise when an employee receives a visit from a family member or friend during working hours and allows such visits, providing they are short in duration and not disruptive to other employees or the public.

2.24. Reporting Convictions, Investigations, and Change of License

2.24.1. Reporting Convictions

All employees and volunteers are required to immediately report convictions, guilty or nolo contendere pleas, or deferred adjudications for felony, misdemeanor (excluding juvenile adjudication), or any lesser crime other than minor traffic infractions to their supervisor or manager. Convictions shall not automatically impact the employees' employment or the volunteer's assignment. The **employer** will make an assessment of the effect of the conviction to the essential duties of the position the employee holds or the duties the volunteer performs.

2.24.2. Reporting Investigations

All employees and volunteers are required to immediately report to their supervisor or manager if they are under investigation by a licensing board or other regulatory entity for actions related to their employment or volunteer assignment.

2.24.3. Reporting Change of License

An employee or volunteer must immediately notify the direct supervisor or manager of any suspension, restriction, or revocation of one's driver's license, permit, or other license or certification required for the performance of assigned job duties.

2.25. Whistleblower Protection

2.25.1. Prohibition of Threats or Coercion

An officer or employee shall not directly or indirectly use or attempt to use the officer's or employee's official authority or influence to intimidate, threaten, coerce, command, influence, or attempt to intimidate, threaten, coerce, command, or influence another officer or employee in an effort to interfere with or prevent the disclosure of information concerning improper governmental action or to pressure another officer or employee to take reprisal or retaliatory action. The provisions of this policy shall not be used to harass another officer or employee.

In accordance with NRS 281.631, an officer or employee is required to use official authority or influence to remedy any reprisal or retaliatory action of which the officer or employee becomes aware. Use of "official authority or influence" may include taking, directing others to take, recommending, processing or approving any personnel action such as an appointment, promotion, transfer, assignment, reassignment, reinstatement, restoration, reemployment, evaluation or other disciplinary action.

Employees who believe a reprisal or retaliatory action against the officer or employee for disclosing information concerning improper governmental action as defined in NRS 281.611 may file a written appeal, per NRS 281.641.

Employer will further comply with its obligations per NRS 281.611-671, inclusive.

2.25.2. Disclosure of Untruthful Information

This policy does not preclude the **employer** from initiating proper disciplinary action against an individual who discloses untruthful information concerning improper governmental action.

2.26. Remote Work

2.26.1. Purpose

The purpose of this policy is to define the remote work program of the **employer** and the guidelines under which it will operate.

Remote working is defined as working at an alternate worksite that is away from the main or primary worksite typically used by the **employer**. Remote work is a mutually agreed upon alternative work location between the remote employee and **employer**.

Remote work is not an employee benefit, but rather a work alternative or possible reasonable accommodation based upon the job content, satisfactory work performance, and work requirements of the department and **employer**.

2.26.2. Scope

The policy applies to all employees, supervisors, and managers who are approved to work remotely as a work alternative.

2.26.3. Requesting Permission to Work Remotely

An employee who wishes to request a remote work arrangement shall submit a written request for approval to the direct supervisor/manager. The request must be approved by the appropriate department head before employee may work remotely. There may be some circumstances in which select employees are directed by the **employer** to work remotely if working at the traditional work site is not practicable due to an emergency, including but not limited to, public health concerns related to communicable diseases, natural disasters, or extreme weather events. Employees who are directed to work remotely due to an emergency may be exempted from the written request and the department head approval process.

***Note:** Employees requesting remote work as a reasonable accommodation shall make such requests to their supervisor and the EEO Officer or ADA coordinator as applicable.*

2.26.4. Employee Rights and Responsibilities

Except as specified in this policy or agreed to in an individual remote work agreement signed by the employee and the direct supervisor/manager, employee rights and responsibilities are not affected by participating in remote work. As such, all of the policies set forth herein remain applicable to any employee working remotely. An employee's compensation, benefits, and expected total number of hours worked will not change regardless of work location. No benefits provided by **employer** are enhanced or abridged by the implementation of a remote work agreement. All forms of remote work imply an employee-**employer** relationship. The employee is expected to adhere to all of the same policies, regulations, and performance expectations established for all employees of **employer**. Remote work employees must keep their supervisor informed of progress on assignments worked on at the alternative worksite, including any problems they may experience while working remotely. The employee must generate a synopsis of activities and accomplishments for the workday in a prescribed format. Methods of planning and monitoring the work shall be at the discretion of the supervisor/manager, department head, and/or **employer**. Office needs will take precedence over remote work time. An employee must forgo working remotely if needed in the office on the regularly scheduled remote work time.

The employee is responsible for providing an appropriate workspace, including all necessary equipment not otherwise provided by **employer** to perform their normal job functions unless otherwise stated in the written agreement. Employees who are directed to work remotely due to an emergency may be supplied with necessary equipment by the **employer**. Equipment supplied by **employer** is to be used for business purposes only. Any

additional financial burden resulting from the remote work arrangement is solely the responsibility of the employee unless the arrangement is identified as an ADA reasonable accommodation in which case, the situation will be addressed individually.

Employee must notify the direct supervisor of any changes to one's standard workweek (e.g., sickness, health care provider visits, or annual leave).

Remote work is not intended to serve as a substitute for child or adult care. If children or adults in need of primary care are in the alternate work location during employees' work hours, some other individual must be present to provide care. Exceptions may be allowed on a limited basis due to emergencies at the discretion of the department head.

2.26.5. Employer Rights and Responsibilities

Participation in a remote work agreement is at the sole discretion of the **employer**, unless identified as a reasonable accommodation. Except as specified in this policy or agreed to in the individual remote work agreement, **employer** rights are not affected by an employee's participation in remote work.

The **employer** will determine the methods of planning, monitoring, receiving, and reporting the employee's activity and accomplishment. **Employer** must manage the work of employees in their area of responsibility and assure that employees receive the assistance they need to accomplish their responsibilities.

The employees will be given as much advance notice as possible if they will be needed in the office on the regularly scheduled remote work day.

Each remote work agreement will be discussed and renewed at least annually, or whenever there is a major job change. Because remote work is selected as a feasible work option based on a combination of job characteristics, employee performance, and **employer** needs, a change in any one of these elements may require a review of the agreement.

Employer may, upon notice, inspect the employee's alternate workspace for safety and workers' compensation concerns.

2.26.6. Termination of Remote Work Agreement

Employer and/or employee may terminate the remote work agreement for any reason, at any time. Whenever feasible, written notice will be provided, but this is not a requirement.

The opportunity to participate in a remote work agreement is offered only with the understanding that it is the responsibility of the employee to ensure a proper work environment is maintained, dependent care arrangements do not interfere with work, and personal disruptions such as non-business telephone calls and visitors are kept to a minimum. Failure to maintain a proper work environment, as determined by the **employer**, may provide cause for discipline and/or the termination of the employee's remote work agreement.

Approval for any remote work request is based upon **employer** and department requirements as determined by the **employer**. Employees previously participating in a remote work agreement are not assured a remote work agreement in the future.

***Note:** If remote work is considered as a reasonable accommodation, the **employer** and employee will follow the **employer's** applicable policy and process, to include proper use of appropriate forms and procedures.*

2.27. Workplace Safety

Employees have a duty to comply with all safety rules and are expected to take an active part in maintaining a hazard-free environment. Nevada OSHA requires that each new employee reads, understands, and signs the Nevada Workplace Safety Employee Rights and Responsibilities form. Employees are to direct questions to their supervisor. Employees are expected to observe all posted safety rules, adhere to all safety instructions, and properly use all equipment. Employees are required to report any accidents or injuries, and any breaches of safety to the direct supervisor as soon as possible.

Disciplinary action, up to and including termination, may be imposed for violation of known safety policy and/or procedure.

Employees with ideas, concerns, or suggestions for improved safety within the workplace are encouraged to raise them with their supervisor or with another member of management. Reports and concerns about workplace safety issues may be made anonymously if the employee wishes. All reports made in good faith may be made without fear of discrimination or retaliation.

3. EMPLOYMENT

THIS SECTION COVERS HIRING FOR REGULAR FULL- AND PART-TIME POSITIONS, AND FOR CASUAL/TEMPORARY/SEASONAL POSITIONS.

3.1. Scope

The **employer** will involve department management in the recruitment, examination, and selection process.

3.2. Source of Applicant

Regular positions may be filled by applicants selected from within or outside the organization or existing eligible lists. If no eligible list exists, the **employer** may initiate a recruitment (open or promotional) to create an eligible list. Applications from present employees may be considered for open positions before non-employee applicants are considered. For open recruitments, the position vacancy announcement will be posted internally and externally. Promotional recruitments limit consideration of applicants to qualified employees currently working for the **employer** within a single department of the **employer** (departmental/promotions) or to qualified employees currently working within the **employer** (**employer**-wide/promotional). Departmental/promotional recruitments shall be limited to employees in regular or introductory status. **Employer**-wide/promotional recruitments are limited to regular or introductory employees of the **employer**.

3.3. Job Announcements

Prior to initiating recruitment, the **employer** may verify the essential job functions; identify knowledge, skills, and abilities needed, and determine what education, experience, and credentials will provide the desired knowledge, skills, and abilities.

3.3.1. Open Recruitments

The **employer** will announce all vacancies for regular positions. An announcement may be for the purpose of filling a single vacancy or to establish an eligible list for one or more vacancies in the same job class. Position vacancies will be publicized to allow potentially qualified and interested individuals to learn of employment opportunities and to encourage qualified applicants from diverse backgrounds to apply. Recruitment announcements will always be posted on the City of Elko website, and in such other places as the **employer** feels appropriate. The announcement will normally include:

1. Title and pay range of the class of the vacancy;
2. Nature of the work to be performed, including the essential job functions;
3. Minimum as well as any preferred qualifications, including education and/or experience, knowledge, skills, and abilities, or other special criteria associated with the position;
4. License or certifications required;
5. Manner of applying (where, how and deadlines); and
6. A declaration that the **employer** is an Equal Employment Opportunity (EEO) **employer**, and Americans with Disabilities (ADA) accommodations are available.

Regular employees will be released from work, on paid status, to take an examination and participate in an interview held during their scheduled work time. Overtime will not be granted to participate in an open recruitment, unless required by law or prior agreement. Casual/temporary/seasonal workers will not be paid for time taken to participate in an examination or interview.

3.3.2. Promotional Recruitments

Notice of promotional recruitments will be posted in the **employer's** work locations as appropriate. When an eligible list is to be established as a result of a promotional recruitment and used to fill more than the current

vacancy, the announcement will state the time period during which the list will be used and state that only the most appropriately qualified applicants will be placed on the list. The announcement will include the criteria outlined above in sub-section *Open Recruitments*, items 1-6.

Regular employees will be released from work, on paid status, to take a promotional examination and participate in an interview held during their scheduled work time. Casual/temporary/seasonal workers will not be paid for time taken to participate in a promotional examination or interview.

3.4. General Requirements for Filing of Applications

3.4.1. Application Forms

1. Applicants must complete a separate application for each vacancy unless the job announcement indicates otherwise. The employer may also require résumés, completed supplemental questionnaires, and other evidence of education, training, experience, or other lawful requirements, including licenses and certifications. Applications submitted become the property of the employer.
2. The following provisions apply to all applicants except an applicant for a position that is a peace officer, firefighter, or has physical access to a computer or other equipment used for access to the Nevada Criminal Justice Information System or the National Crime Information System.
3. Applications for employment must be made in writing on prescribed forms (whether hard copy or electronic) which will include a statement that a record of conviction will not necessarily bar the applicant from employment and certain factors will be considered, such as:

- Whether any criminal offense charged against an applicant or committed by the applicant directly relates to the responsibilities of the position for which the applicant has applied;
- The nature and severity of each criminal offense charged against the applicant or committed by the applicant;
- The age of the applicant at the time of the commission of each criminal offense;
- The period between the commission of each criminal offense and the date of the application for employment; and
- Any information or documentation demonstrating the applicant's rehabilitation.

4. The following procedures apply to applicants for a position that is a peace officer, firefighter, or has physical access to a computer or other equipment used for access to the Nevada Criminal Justice Information System or the National Crime Information System.

- Applications for employment must be made in writing on prescribed forms (whether hard copy or electronic).
- Applicants must complete a separate application form for each vacancy unless the job announcement indicates otherwise.
- The **employer** may also require résumés, completed supplemental questionnaires, and other evidence of education, training, experience, or other lawful requirements, including licenses and certifications.
- Applications submitted become the property of the **employer**.

5. In addition, applicants for a position that is a peace officer will need to attest to the following, to be considered for employment:

- The applicant is not disqualified from serving as a peace officer;

- The applicant has not been discharged, disciplined, or asked to resign from employment with a law enforcement agency for certain conduct; and
- The applicant has not resigned from employment or otherwise separated from employment with a law enforcement agency while an investigation concerning certain alleged conduct was pending.

3.4.2. Signatures

Applications must be signed by the applicant. An electronic signature is acceptable.

3.5. Application Filing Periods

Recruitment announcements will specify the application filing period. Applications must be received by the date specified. The filing period may end on a specific date and/or may allow acceptance of applications until a sufficient number of appropriately qualified applicants have applied. The **employer**, consulting with department management, will determine when sufficient applications have been received.

Application periods will end at the close of the business day or at the specific time stated on the recruitment announcement. A job announcement may be cancelled at any time and for any reason as determined by the **employer**.

3.6. Eligibility of Applicants

An applicant may be disqualified from further participation in the recruitment process and/or from placement on an eligible list by the **employer** for material reasons, including, but not limited to:

1. The application does not indicate the applicant possesses the qualifications required for the position.
2. The application is not fully and/or truthfully completed.
3. The applicant has prior convictions that relate to the position for which the applicant is being considered as a peace officer, firefighter, a position for an agency which provides child welfare services or residential mental health treatment to children; or a position which entails physical access to computer and/or equipment used to access the Nevada Criminal Justice Information System or the National Crime Information Center, as provided for in Nevada statute, as applicable; or other positions exempted by state or federal law.
4. The applicant has been discharged from or resigned in lieu of dismissal from any prior employment for any cause which would constitute a reason for dismissal from employment with the **employer**.
5. The applicant does not appear at the time and place designated for an examination or interview.
6. The applicant is a former employee of the **employer** who, absent a compelling reason, quit without notice.
7. Applicant's failure to possess a valid license, certificate, permit, or occupational certification. If a prospective applicant for a position cannot obtain the required license, certificate, permit, or occupational certification required for the job, the applicant will not be given any further employment consideration. Any job offer, offer of promotion, or offer of transfer previously made will be withdrawn.
8. The applicant is a former employee whose performance evaluations indicated below acceptable performance and/or behavioral problems, such as insubordination, leave abuse, or excessive tardiness.

3.7. Limitation of Applicant Pool to Most Qualified

The **employer** may determine at any point in the recruitment process that only those applicants who are deemed most qualified for the vacancy being filled will continue to be considered.

3.8. Examination Process

3.8.1. Administration of Examinations

All examinations for initial employment, whether formal or informal, are conducted under the direction of the **employer**. Examinations shall be conducted when there is a need to establish an eligible list or in any circumstances the **employer** deems appropriate. The techniques used in the examination process shall be consistent, impartial, practical, and relate to the qualifications and suitability of applicants to perform the job duties and responsibilities of the position.

3.8.2. Factors Evaluated

Examinations may be used to evaluate applicants' qualifications and suitability for the position. Factors evaluated through the examination process may include, but are not limited to, the knowledge, ability, skill, achievement, physical and mental fitness, and job-related competencies such as customer service skills.

3.8.3. Minimum Standards

In any examination, the **employer** may include qualifying and/or competitive components and may establish minimum standards or scores for each component and/or the examination as a whole.

3.9. Eligible Lists

The **employer** may maintain eligible lists consisting of the names of applicants eligible for hire based on the recruitment process. While generally used to fill a single position, eligible lists may be used to fill additional positions which occur within twelve months of the establishment of the list or until a published expiration date, whichever occurs first.

An applicant will be removed from an eligible list if the applicant submits a written request to be removed, or if the applicant fails to respond within an allotted time period to instructions regarding participation in an examination or selection interview sent to the eligible applicant. An eligible applicant who refuses an offer of employment will be removed from an eligible list unless the specific circumstances of the refusal warrant otherwise as determined by the **employer**.

3.10. Referral of Applicants for Hire

When the hiring department requests that a vacancy be filled, Human Resources will provide the Department Head with the names of applicants from the appropriate eligible list. Any person on an appropriate reinstatement list shall be considered for appointment in accordance with the **employer's** established layoff policy. If the **employer** decides to fill a vacancy by hiring from a promotional eligible list, such a list will be created with eligible applicants from the promotional list being referred to the hiring department for consideration. Eligible applicants will be referred for consideration on the basis of the results of competitive examination scores or, in the case of reinstatement lists, according to the **employer's** layoff policy.

When an eligible list (except a reinstatement list) contains fewer than three eligible applicants willing to accept appointment, the **employer** may make an appointment from among such eligible applicants or may request the Human Resources Manager to provide a new list. When so requested, the Human Resources Manager will provide the Department Head with eligible applicants from another appropriate eligible list or, if no other list exists, conduct a new recruitment and establish a new eligible list.

3.11. Interviewing Applicants

Once applications have been evaluated and a determination of whether to interview has been made, applicants

should be notified as to their status.

Each applicant applying for the same position will be asked the same job-related questions and rated using the same evaluation form to measure the extent to which each applicant possesses the necessary knowledge, skills, and abilities required for the position. Whenever necessary, follow-up questions should be asked to clarify the response of the applicant. Questions which are unlawful or on inappropriate subjects must be avoided.

Applicants who are selected for an interview will be provided the pay range of the position for which they applied.

3.12. Selection

Employment decisions will be based solely on merit. Consistent with applicable federal, state, and local laws and regulations, employment decisions may not be influenced by any protected class membership or the applicant's wage or salary history. The **employer** will not request usernames and passwords for personal social media accounts. The hiring manager has ultimate responsibility for selection of the applicant for hire; however, input of the other members of the interview team will be taken into consideration. The hiring manager is responsible for ensuring the selected applicant meets the required qualifications. The hiring manager will document the basis of the decision to select a particular applicant; e.g., why the applicant is the most qualified and the best fit for the position. The hiring manager should also document why other applicants were not selected; the Applicant Interview Evaluation Form is a good tool for this. The hiring manager will submit the documentation regarding the reasons the selected applicant was chosen and notify the Department Head of the selection.

In compliance with NRS 281.060(2), if all other qualifications of applicants are considered equal, the **employer** will give preference first, to honorably discharged military personnel who are citizens of the State of Nevada, and second to citizens of the State of Nevada.

3.13. Correction of Administrative Errors

If the **employer** should discover any administrative error regarding the process of filling a vacancy, the **employer** will correct the error at any time during the duration of the eligible list. No such correction shall affect an appointment.

3.14. Reference Checks

Acquiring and providing accurate employment references is an important component of acquiring, retaining, and providing relevant information concerning employees. Therefore, the **employer** is committed to adhering to the following procedure whenever conducting a reference check for an applicant for employment or when responding to inquiries from others for information regarding a current or former employee.

3.14.1. Acquiring References

Reference checks are conducted to assist the **employer** in assessing an applicant's fitness for employment with the **employer**. Only those employees designated by the Human Resources Manager may acquire employment references. Any authorized employee of the **employer** who attempts to acquire reference information on an applicant must comply with the following:

1. Obtain an **employer** employment application that is signed and dated by the applicant. The applicant must have completed all relevant sections of the application.
2. Obtain authorization from the applicant by means of the applicant's signature directly on the application and/or separate release form for the release of information from former employers, military, educational institutions, other institutions, personal references, and other individuals listed on the application. Authorization for release of such information by the applicant shall include a release from liability of any company, institution, or individual providing such information. Applicants who refuse to sign such a release will be eliminated from further consideration for employment with the **employer**.

3. Inform the applicant that the **employer** will conduct a reference check and that evaluating the applicant's suitability for employment includes contacting employment and other references, educational institutions, and personal and professional associates to verify information provided.
4. Develop questions that are related to the essential functions of the position and are non-discriminatory. Questions related to an applicant's training, knowledge, skills, production, timeliness, quality of work, and ability to work with others are examples of appropriate inquiries. Discriminatory or non-work-related questions such as family or marital status, disabilities, age, and related areas are not appropriate.
5. Identify the appropriate individual(s) to question regarding the applicant's work performance, knowledge, skills, and abilities related to the essential functions of the position.
6. Adequately document the conversation and record refusals to provide information.
7. Maintain strict confidentiality of all reference information. Only employees, supervisors, or management officials of the **employer** who have a demonstrable work-related need-to-know should be accorded access to such information.

***Note:** For positions that require a CDL or otherwise defined as safety-sensitive positions by 49 CFR Part 382 and U.S. Department of Transportation regulations, the **employer** shall obtain, pursuant to an applicant's written consent, information on the applicant's alcohol tests and/or verified positive controlled substance test results, and refusals to be tested within the preceding two years from date of application which are maintained by the previous employers.*

3.14.2. Providing References

All requests for employment information shall be referred to the Human Resources Manager. Only those personnel designated by the **employer** are authorized to release employment information to third parties.

The **employer** has a neutral reference policy as well as a confidential information policy. Only the following personnel information and employment records that the **employer** maintains concerning current and former employees shall be provided upon request:

- Name
- Class/Job Title
- Dates of employment
- Rate of pay
- Information regarding an employee terminated for violent actions in the workplace or who may have demonstrated dangerous behavior in the workplace will be provided only after consultation with **employer's** legal counsel.
- Employment information and documented incidents regarding the character, honesty, and potential for violence of the **employer's** employees may be provided to governmental employers, including, but not limited to, any federal, state, county, municipality or city employers, or any other private (non-governmental) **employer** where the employee's character, honesty, sexual misconduct, and potential for violence are relevant issues. Examples include, but are not limited to, jobs which involve public safety, entrustment for the care or safety of children, the elderly or health care patients, or positions having access to money and/or valuables. Information in this section may be provided after consultation with **employer's** legal counsel.

In addition, employers will:

- Provide information requested by public safety agencies in accordance with NRS 239B.

- Make available to subsequent employers upon receipt of written request from the employee or former employee, records which are required for employees in safety-sensitive positions, as defined in 49 CFR Part 382 and U.S. Department of Transportation regulations.

In accordance with NRS 239.012, a public officer or employee who acts in good faith in disclosing or refusing to disclose information and the employer of the public officer/employee are immune from liability for damages, either to the requester or to the person whom the information concerns.

3.15. Background Checks

The **employer** desires to maintain a productive, efficient, effective, healthy, and safe work environment and, as a result, will conduct pre-employment background checks of applicants, and current employees as necessary.* Background checks may include verification of employment, educational background, criminal/court history records check; credit report check; military records check; drug test for safety sensitive positions; character references, and other publicly available information deemed to be job related. In addition, if the position requires driving a vehicle, a Department of Motor Vehicles (DMV) search may be conducted. If the position involves contact with minors or with any persons having diminished capacity to care for themselves, a search of government sex offender registries may be conducted. If the position requires licensing or certification, the institution and/or licensing authority may be contacted to verify possession of education, licenses, and/or certificates.

If these background checks are conducted by external third parties (also called “consumer reporting agencies”), they will be governed by relevant provisions of the Fair Credit Reporting Act (FCRA) and the Fair and Accurate Credit Transactions Act (FACT). FCRA and FACT cover background checks and other investigations for prospective employees, and current employees in certain situations, such as a promotion to positions requiring additional information. FCRA and FACT specifically exclude misconduct investigations, such as unlawful harassment charges. Nevada law (NRS 613.580) restricts the use of consumer credit information to limited positions; Unless, pursuant to a specific provision of state or federal law, the criminal history of an applicant for employment may be considered only after the earlier of:

- The final interview conducted in person; or
- A conditional offer of employment has been made.

This provision does not apply to an applicant for a position that is a peace officer, firefighter, or has physical access to a computer or other equipment used for access to the Nevada Criminal Justice Information System or the National Crime Information System, or other positions exempted by state or federal law.

**NRS 179A requires organizations which provide care or care placement services to children, elderly persons, or persons with disabilities to conduct background checks through the Central Repository for Nevada Records of Criminal History to determine fitness of employees, volunteers, and persons applying to be an employee or volunteer who have supervised or unsupervised access to children, elderly persons, or persons with disabilities.*

3.15.1. Consumer Reporting Agencies Reports

The types of reports that may be requested from consumer reporting agencies under this policy include, but are not limited to: credit reports, criminal records checks, court records checks, driving records, and/or summaries of educational and employment records and histories. These reports or checks are also called “consumer reports.” The information contained in these reports may be obtained by a consumer reporting agency from public record sources or through personal interviews with the applicant’s or employee’s coworkers, neighbors, friends, associates, current or former employers, or other personal acquaintances. These are sometimes referred to as “investigative consumer reports.” Any information contained in such reports may be taken into consideration in evaluating an applicant’s or employee’s suitability for employment, promotion, reassignment, or retention.

3.16. Offers of Employment

3.16.1. Policy

The following provisions apply to all applicants except for a position that is a peace officer, firefighter, or has physical access to a computer or other equipment used for access to the Nevada Criminal Justice Information System or the National Crime Information System, or other positions exempted by State or federal law.

1. Unless, pursuant to a specific provision of state or federal law, the criminal history of an applicant for employment may be considered only after the earlier of:

- The final interview conducted in person; or
- A conditional offer of employment has been made.

2. The **employer** may, before selecting an applicant as a finalist for a position or extending to an applicant a conditional offer of employment, notify the applicant of any provision of state or federal law that disqualifies a person with a particular criminal history from employment in a particular position.

3. The **employer** may decline to make an offer of employment or rescind a conditional offer of employment extended to an otherwise qualified applicant who has criminal charges pending against the applicant that were filed within the previous six months or has been convicted of a criminal offense only after considering:

- Whether any criminal offense committed by the applicant directly relates to the responsibilities of the position for which the applicant has applied;
- The nature and severity of each criminal offense committed by the applicant;
- The age of the applicant at the time of the commission of each criminal offense;
- The period between the commission of each criminal offense and the date of the application for employment; and
- Any information or documentation demonstrating the applicant's rehabilitation.

4. The **employer** shall not consider any of the following criminal records in connection with an application for employment:

- An arrest of the applicant which did not result in a conviction;
- A record of conviction which was dismissed, expunged or sealed; or
- An infraction or misdemeanor for which a sentence of imprisonment in a county jail was not imposed.

5. If the criminal history of an applicant is used as a basis for rejecting an applicant or rescinding a conditional offer of employment, such rejection or rescission of a conditional offer of employment must:

- Be made in writing;
- Include a statement indicating that the criminal history of the applicant was the basis for the rejection or rescission of the offer; and
- Provide an opportunity for the applicant to discuss the basis for the rejection or rescission of the offer with the Human Resources Manager or a person designated by the Human Resources Manager.

3.16.2. Job Offer Letters

1. The following procedures apply to *all applicants* except an applicant for a position that is a peace officer, firefighter, or has physical access to a computer or other equipment used for access to the

Nevada Criminal Justice Information System or the National Crime Information System (the provisions outlined in *Job Offer Letters, Pre-Employment Drug Screening for Safety-Sensitive Positions, and Other Conditions* are applicable).

- After an applicant has been selected for employment or promotion, the Department Head will notify the Human Resources Manager who will extend (when applicable), the following:
 - A “conditional offer of employment pending background check” if criminal background checks are required.
 - A “bona fide conditional offer letter” (if medical exam is required); this letter will condition the offer on passing medical examinations.
 - A “formal job offer letter” once all applicable criminal and medical checks and exams have been passed; this letter will include the terms and conditions of employment.
- Prior to selecting the applicant as a finalist or extending letters, the Human Resources Manager may:
 - Contact the applicant by telephone to determine whether there is continued interest in employment and to indicate that a request to hire has been made, but must state that only a notification in writing can be considered an official job offer.
 - Notify the applicant of any provision of state or federal law that disqualifies a person with a particular criminal history from employment in a particular position.

Note: *All non-medical background checks must be completed before applicant is subject to medical exams.*

2. The following procedures apply to an applicant for a position that is a peace officer or firefighter.

- After an applicant has been selected for employment or promotion, the Department Head will notify the Human Resources Manager who will extend (when applicable), a “formal job offer letter” once all applicable criminal and medical checks and exams have been passed; this letter will include the terms and conditions of employment.
- Prior to selecting the applicant as a finalist or extending letters, the Human Resources Manager may:
 - Contact the applicant by telephone to determine whether there is continued interest in employment and to indicate that a request to hire has been made, but must state that only a notification in writing can be considered an official job offer.
 - Notify the applicant of any provision of state or federal law that disqualifies a person with a particular criminal history from employment in a particular position.

Note: *The provisions of NAC 289.110 apply for an applicant for a position of peace officers.*

3. The following procedures apply to an applicant for a position that has physical access to a computer or other equipment used for access to the Nevada Criminal Justice Information System or the National Crime Information System, or other positions exempted by state or federal law.

- After an applicant has been selected for employment or promotion, the Department Head will notify the Human Resources Manager who will extend (when applicable), the following:
- A “notification of background check” if non-medical checks are required (i.e., background, criminal, DMV, consumer reporting, drug test).

- A “bona fide conditional offer letter” (if medical exam is required). Once non-medical checks and tests have been successfully passed, this letter will condition the offer on passing required medical examinations.
- A “formal job offer letter” once all applicable non-medical and medical checks and exams have been passed; this letter will include the terms and conditions of employment.
- Prior to notifications/letters being extended, the Human Resources Manager may contact the applicant by telephone to determine whether there is continued interest in employment and to indicate that a request to hire has been made, but must state that only a notification in writing can be considered an official job offer.

Note: All non-medical checks must be completed before applicant is subject to medical exams.

3.16.3. Pre-Employment Drug Screening for Safety-Sensitive Positions

1. The **employer** may require successful applicants for safety-sensitive positions to consent to a pre-employment screening test for drugs/prohibited substances. The **employer** will advise the applicant that the presence of one or more drug metabolites may be cause for rejection from further consideration for employment, and that offers of employment are contingent upon a negative test result. The applicant may be asked to authorize the **employer**, as a condition of employment, to conduct through the **employer's** designated laboratory testing facility, a screen test for drugs/prohibited substances. Refusal to authorize and participate in a screen test shall eliminate the applicant from further consideration for the position.
2. The **employer** may direct applicants to an appropriate collection facility. The screen test must be undertaken as soon after notification as possible, and in no circumstances later than 48 hours after notice to the applicant.
3. The **employer** will advise applicants of the opportunity to submit medical documentation to support a legitimate use for a specific drug. Such information will be reviewed only by medical consultants determining whether the applicant is lawfully using an otherwise illegal drug or prohibited substance.
4. The **employer** will not extend a formal job offer letter to any applicant with a verified positive test result, and such applicant will not be considered for any vacancy of the **employer** for a period of 12 months. The **employer** shall disqualify the applicant on the basis of failure to pass the applicable test(s).

3.16.4. Other Conditions

1. All offers of initial employment are conditioned upon the applicant furnishing satisfactory evidence of identity and legal authority to work in the United States. Each applicant must attest to one's identity and legal authority to work in the United States in accordance with the applicable federal statute by completing and signing INS Form I-9 (Employment Eligibility Verification).
2. The hiring supervisor or manager will notify all unsuccessful applicants that they have not been selected, either verbally or in writing. The hiring supervisor will document any verbal notification.
3. Employees required to report the abuse or neglect of a child must be provided notice, in writing or electronically, of their duty as a mandatory reporter. The employee must sign acknowledgment of this notice which is to be filed in employee's personnel file (This requirement is not necessary if the employee is licensed, certified, or endorsed by a board in the state).

3.17. Orientation

The **employer** recognizes that an appropriate and timely orientation program can aid the assimilation of new staff members. The hiring supervisor or manager will be responsible for the orientation of each new employee. Orientation may include, but is not limited to, a review of the organization and services of the **employer**, work rules, standards of performance, and personnel policies and procedures including the policies relating to fair employment practices, prohibited conduct/behavior, workplace violence, alcohol and drug abuse, and workplace safety. Additionally, the supervisor or manager will ensure that the new employee:

- Has completed all new hire paperwork including payroll and benefit forms;
- Will receive or be provided access to the **employer's** personnel policies;
- Has been introduced to other employees; and
- Has had the opportunity to have questions addressed.

3.18. Introductory Period

All new and rehired employees, except elected officials, casual, temporary, or seasonal employees, and those identified as "at-will," will serve a six (6) month introductory period beginning with the day the employee initially reports for work. Current employees who are promoted or transferred will also be required to serve a six (6) month introductory period. During this introductory period, the employee and the **employer** have the opportunity to evaluate one another and determine whether the employment relationship should be continued. At its sole discretion, the **employer** may extend this introductory period up to six (6) months when the **employer** has had insufficient opportunity to assess the employee's ability to perform the job functions or such extension is determined appropriate. During the introductory period, the employment relationship is at-will and can be terminated by the employee or by the **employer** at any time during the introductory period or during the extension of the introductory period, with or without cause or advance notice.

Unless otherwise provided in an applicable bargaining agreement, for law enforcement personnel, the introductory period is established as one year, with the extension period also established as one year. This introductory period may be prorated for employees working less than full-time.

The supervisor will conduct performance evaluations as outlined in *Performance Management* section of this policy manual, to ascertain the advisability of continued employment.

3.19. Failure to Appear for Work

If a selected applicant fails to report for work within the time period prescribed by the **employer**, that applicant may be deemed to have declined the position and be removed from the eligible list.

3.20. Transfers

A transfer is a lateral move to a job in the same pay range as the employee's present position for which the employee meets the minimum education and/or experience requirement.

3.20.1. Employee-Requested Transfer

If the transfer is to another department, the employee may submit an application packet, or contact the hiring supervisor or manager, who will consider the transfer request by conducting discussions with the employee and appropriate supervisors or managers with knowledge of the employee's job performance. The hiring supervisor will also consider the employee's past performance, qualifications, abilities, and job experience as key factors in evaluating transfer requests. Approval of the transfer is at the sole discretion of the **employer**.

3.20.2. Agency-Directed Transfer

A manager/department head may, after giving ten (10) working days' notice, transfer an employee to another position in the same class or a comparable class for the purpose of providing continued services to the citizens of the **employer** or other appropriate cause. A transfer pursuant to this section must not be made to harass or discipline an employee.

3.21. Promotions

The **employer** encourages employees to apply for promotional opportunities for which they are qualified. Promotions will be based on the ability, qualifications, and potential of all applicants for the positions. Employees interested in announced positions must follow the application instructions outlined in the job announcement.

3.22. Rehire

Regular employees, or employees serving an introductory period following promotion who subsequently resign, may be rehired without undergoing any recruitment within two (2) years of the effective date of their resignation. The rehire must be to a position in the same class or a class comparable to the one in which the employee formerly served as a regular employee.

The decision to rehire shall be at the complete discretion of the **employer** and no former employee shall have any right to or expectation of such rehire. Background and reference checks applicable to the position will be conducted for all rehires who resigned more than six (6) months prior to being considered for rehire.

Upon rehire, the employee shall be required to successfully complete an introductory period. No credit for former employment shall be granted in determining eligibility for leave or other benefits.

***Note:** Limitations exist for rehiring retired public employees (NRS 286.523).*

3.23. Emergency Appointments

An appointing authority may make emergency appointments upon specific approval of the City Manager or designee, when necessary to prevent termination of public business, loss of life, or extensive damage to persons or property for a period not to exceed the duration of an officially declared emergency or for not more than sixty (60) working days. Emergency appointments may be made without regard to the rules on certification or appointment. Time served under emergency appointments shall not be considered as part of a probationary period nor credited for purposes of annual leave, sick leave, or merit salary increases, unless it is immediately followed by a probationary/regular appointment.

3.24. Casual/Temporary/Seasonal Employment

3.24.1. Purpose

Because some of the **employer's** work is indefinite and/or irregular with regard to schedule and duration, the **employer** may need to employ casual/temporary/seasonal workers at all levels of responsibility from time to time on an as-needed basis or to work for limited periods of time at the discretion of the **employer**.

3.24.2. Authorization to Hire Casual/Temporary/Seasonal Workers

In general, a casual/temporary/seasonal worker may be hired for work which will require fewer than 20 hours per week or fewer than 120 consecutive working days to complete, if the **employer** has appropriated sufficient funds in the budget to pay the worker. Work requiring more hours to complete will usually require the establishment of a regular position. The **employer** will not hire casual/temporary/seasonal workers to avoid establishing a regular position when the work to be performed is ongoing. However, the **employer** may, from time to time, find that its best interests are served by assigning work to a casual/temporary/seasonal worker for longer than 120 days or more than 20 hours per week.

3.24.3. Duration of Casual/Temporary/Seasonal Employment

A casual/temporary/seasonal worker has no right to or expectation of continued employment or any property right regarding employment. A casual/temporary/seasonal worker may be terminated at any time, with or without cause, with or without notice, and shall have no right to appeal.

3.24.4. Employment in a Regular Position

The **employer** may hire a casual/temporary/seasonal worker into a regular position only after the applicant has been found to be qualified as a result of completing an authorized recruitment and selection process for that position. The employee's service date will be determined according to the date of hire in the regular position with no credit given toward completion of an introductory period or the accrual of benefits for the time an employee was hired for casual/temporary/seasonal work.

3.25. License/Occupational Certification

3.25.1. Purpose

The **employer** mandates that, if required by the current job, all employees obtain and maintain a valid license, certificate, permit, or other occupational certification issued by the state, county, city, or other applicable authority.

3.25.2. Employee Responsibilities

In the event the employee receives notice of revocation or non-renewal of a license, certificate, permit, or occupational certification, the employee shall immediately notify the direct supervisor. The employee shall not perform any task for which the license, certificate, permit, or other occupational certification is required after the license, certificate, permit, or occupational certification has been non-renewed or revoked. Employees who do not have a valid license, certificate, permit, or occupational certification, will not meet the job requirements. Failure to meet the job requirements will result in termination.

3.25.3. Applicant's Failure to Possess a Valid License, Certificate, Permit, or Occupational Certification

Prospective applicants for a position who cannot obtain the required license, certificate, permit, or occupational certification required for the job will not be given any further employment consideration. Any job offer, offer of promotion, or offer of transfer previously made will be withdrawn.

3.25.4. Driving Records

The **employer** may conduct a review of driver's license records annually for those employees required to drive as a part of their duties.

3.26. Volunteer Program

3.26.1. Purpose

The **employer** recognizes that there are benefits to members of the community to become involved in the delivery of the **employer's** programs and services on a volunteer basis. Individuals have an interest in assisting public agencies by applying their knowledge, skills, and experience to a worthwhile endeavor. Also, the community and the **employer** receive enhanced services because of the individual's specialized skills and commitment. Using volunteers is a true win-win situation for those willing to volunteer for the **employer** and for the community.

3.26.2. Scope

This policy covers the essential elements of an effective volunteer program which is compliant with applicable state and federal regulations pertaining to the **employer's** volunteers. As this policy is broad in scope, individual departments should establish additional specific requirements consistent with this policy to guide the use of volunteers within the specific program areas.

3.26.3. Planning

Prior to implementing a volunteer program, a department will develop a plan for utilizing volunteers.

1. The plan may include:

- Job assignment descriptions for each volunteer.
- A statement describing how and by whom volunteers are overseen.
- A program to recognize and reward volunteer services.

2. The plan will include:

- A needs assessment and a statement outlining how volunteers will be used to meet these needs;
- A budget for any personnel costs, operating costs, and direct and indirect costs

3.26.4. Recruiting, Screening, Interviewing, and Selecting Volunteers

As with employees, the **employer's** ability to meet its goals and objectives is directly related to the skill and ability of volunteers selected. Criteria for selecting volunteers will be developed in the same manner as used for selecting new employees.

The **employer** prohibits discrimination, harassment, or retaliation directed at volunteers on the basis of any protected class membership.

The recruitment, screening, and interviewing process should be planned and sufficiently thorough to result in selecting the best volunteer possible for departmental needs.

Volunteer applicants engaged in activities for the **employer** shall complete the **employer's** volunteer application, including an acknowledgment that the function to be performed is not a paid position and the person is truly volunteering services.

The **employer** will promptly address problems associated with the volunteer's performance or behavior. However, if problems cannot be corrected, the services of the volunteer may be discontinued.

Specific requirements that apply to employees in certain occupations such as fingerprinting, detailed background checks*, and screening for drug use apply to volunteers performing similar occupations.

**NRS 179A requires organizations which provide care or care placement services to children, elderly persons, or persons with disabilities to conduct background checks through the Central Repository for Nevada Records of Criminal History to determine fitness of employees, volunteers, and persons applying to be an employee or volunteer who have supervised or unsupervised access to children, elderly persons, or persons with disabilities.*

3.26.5. Managing Volunteers

1. Volunteers will be covered by the **employer's** workers' compensation policy per NRS 616A.130.

Volunteers shall receive appropriate oversight for the functions performed including an orientation to the **employer's** policies and procedures, departmental operating procedures, safety practices, and other relevant information.

2. Day-to-day oversight of volunteers shall be conducted as with employees. Adequate equipment and supplies, as well as a safe working environment, will be provided for volunteers.

3. The **employer** will maintain detailed and accurate records of volunteer activities including a roster of active volunteers. The date, time, and duration of each volunteer activity session will be recorded, along with the work performed. The **employer** will remove volunteers from the roster whenever volunteers are inactive for more than ninety (90) days.

4. Volunteers may be reimbursed for expenses incurred. In addition, the **employer** may provide limited and reasonable benefits and/or nominal remuneration to volunteers. The benefits provided cannot be in an amount or of a type that implies that the volunteer is being paid a wage or salary for time spent as a volunteer, or for the quantity or quality of the work performed. All such benefits must be approved, in advance, by the City Manager.

5. Annual performance evaluations may also be completed on volunteers.

6. Volunteers serve at the pleasure of the **employer** and are subject to dismissal at any time with or without cause.

4. POSITION CLASSIFICATION PLAN

4.1. Policy

4.1.1. Purpose

The **employer** will develop and maintain a classification plan for all positions. Classification plans categorize positions into similar duties, qualifications, and responsibilities called “classes.” Each class is defined in a position description form. The position description will include: title; definition and/or distinguishing characteristics; essential functions; qualifications for employment including knowledge, skills, ability, experience and/or training required to perform the job; physical and mental requirements and working conditions; and Fair Labor Standards Act (FLSA) status (exempt/non-exempt).

4.1.2. Classification

1. Each position shall be classified consistent with this policy and in accordance with the nature and relative complexity of the essential functions, responsibilities, and authority of the position. Classification of a position shall be effective when approved by the City Council.
2. Positions will be allocated to the same class when the following conditions exist:
 - The same descriptive title may be used to designate the positions;
 - Substantially the same level of education, experience, knowledge, skills, ability, and other qualifications are required to perform the duties/essential functions;
 - Similar tests may be used to select employees for the positions;
 - All applicants offered employment in the class are subject to the same type of medical exam(s), if any; and
 - The same level of compensation is appropriate for the positions.
3. Classes will be allocated to a pay grade as established in **employer's** Compensation Plan policy.

4.1.3. Maintenance and Revision

The **employer** will periodically review the classification plan and recommend to the City Council the revision, addition, or abolishment of classes.

4.1.4. New Positions

When a new position is to be created, the Human Resources Manager will recommend to the City Manager an appropriate class for the new position. When preparing a request for a new position, the requesting party shall consult the City Manager to determine the appropriate classification for the duties to be assigned to the new position.

4.1.5. Reclassification

When a department manager believes the duties/essential functions of a position have changed to the extent they no longer fit within the current class, the duties/essential functions will be reviewed and, if appropriate, the position reclassified to the appropriate class. Reclassification will not be undertaken as a substitute for discipline or hiring practices, nor to effect a change in pay in the absence of a significant change in assigned duties/essential functions and responsibilities.

Reclassification must be confirmed by the City Council.

A change in a position's classification does not constitute the sole basis for determining whether the current employee in a position will also be assigned to the new position.

The decision as to reclassification of a position shall be made by the City Manager with the concurrence of the City Council.

The decision to place the current employee in the new class shall be based upon the qualifications and job

performance of the employee.

Whenever a position is reclassified to a lower-level class, the current employee will be placed in the lower-level class.

4.1.6. Reallocation

A class may be reallocated to a higher pay grade or to a lower pay grade based on a change in duties/essential functions and responsibilities for all positions in the class, or based upon salaries paid by other comparable employers for comparable work.

4.2. Procedure

4.2.1. Requests for Classification Review

1. Submission Process

An employee may request that the Department Head submit a written request for classification review to the Human Resources Manager. The Human Resources Manager will review the request and, if appropriate, send it to the City Manager with a written memorandum explaining the specific duty and responsibility changes, and a verification that the changes are to be permanent. The City Manager will review the request and indicate if the request meets the Criteria for Determining the Need for Classification Review and whether or not a study will be conducted.

An employee may request the classification review be forwarded to the City Council even if the City Manager does not concur. The employee will notify the City Manager in writing to review the denied request. The reasons for disagreeing with the employee's request shall accompany any request forwarded to the City Council.

2. Criteria for Determining the Need for Classification Review

The City Manager may authorize a classification review when it is believed permanent and substantial changes in the duties assigned to a position have occurred. The new duties must be clearly defined and assigned before a review is begun. The classification review may include any positions which are in the same work unit, have related duties, or are in the same class series as the position for which classification review is requested.

4.2.2. Effective Date

1. Reclassification/Reallocation: The effective date of a reclassification or a class reallocation shall be the first day of the pay period following the **employer's** approval of the action. If the position is reclassified or reallocated upward, the anniversary date for future step increases shall be established as the first day of the pay period following twelve (12) months in the new classification, and will not include the period for which retroactive pay is granted, as described below. If the position is reclassified/reallocated at the same level or at a lower level, the anniversary date will remain unchanged.

2. Retroactive pay: At the discretion of the **employer**, out-of-class pay may be paid back to the date on which a formal reclassification request was made if the reclassification is subsequently approved (see Work Out-of-Class policy).

4. POSITION CLASSIFICATION PLAN

5. COMPENSATION PLAN

5.1. Pay Periods and Paydays

Employees are paid biweekly on Friday. If a payday falls on a holiday, employees are paid on the preceding workday.

5.2. Workweek Defined

The workweek begins at 12:01am on Sunday and ends seven days (168 hours) later at midnight (12:00pm) on the next Saturday.

5.3. Work Time

5.3.1. Attendance

Employees are expected to work their entire assigned shifts, and be available and ready for work at the beginning of their assigned shifts and at the end of their scheduled rest and meal periods. Required preparation for rest and meal periods, as well as the end of the workday, is considered work time. Rest and meal periods include the time spent going to and from the place where the break is taken.

5.3.2. Work Schedules

The supervisor or manager shall schedule work hours according to the needs of the **employer**.

- Employees working a five-day, 40-hour week (designated 5/40) shall work eight hours per day for five days in any workweek and shall receive two days off.
- Employees working a four-day, 40-hour week (designated 4/40) shall work 10 hours per day for four days in any workweek and shall receive three days off.

5.3.3. Rest Periods

Employees will be granted one 15-minute break or rest period during each shift of four or more hours. Employees may not regularly take rest periods at the beginning or at the end of the shift. Rest periods may not be scheduled or taken consecutively or in conjunction with meal periods. (This policy does not apply to firefighters, and law enforcement personnel. Refer to departmental policy or applicable collective bargaining agreement.)

5.3.4. Meal Periods

Employees who work six (6) or more hours in a workday are allowed an uninterrupted, unpaid meal period of 30 minutes or longer at or about mid-point of their workday. Supervisors or managers will be responsible to ensure that wherever and whenever possible, employees will be permitted the meal period uninterrupted by work-related duties. If an employee's meal period is interrupted by a work-related matter, the employee will be paid for the meal period. Meal periods may not be regularly scheduled or taken consecutively or in conjunction with rest periods. (This policy does not apply to firefighters, and law enforcement personnel. Refer to departmental policy or applicable bargaining agreement.)

5.3.5. Work Assignments

Work should be scheduled in a manner which allows employees rest periods and meal periods. Rest and meal periods shall be scheduled in a manner which allows maximum public access to the **employer's** services. The **employer** may adjust rest and meal periods from time to time to meet the needs of individual employees and/or to respond to changes in department workload. Nothing herein should be considered to limit or restrict the authority of the **employer** to make temporary assignments to different or additional locations, shifts, hours of work, or duties as needed to meet the **employer's** needs or to respond to unforeseen or emergency situations.

5.4. Time Reporting

5.4.1. Purpose of Time Reporting

Recording of hours worked and/or leave time taken by employees is necessary to provide an accurate basis for preparing paychecks, to assure compliance with federal and state laws, and to maintain an effective and efficient cost accounting system. (For payroll purposes, the Fair Labor Standards Act (FLSA) requires non-exempt employees report all time spent performing work.)

5.4.2. Hours Worked

Non-exempt employees will be paid for all hours worked. Hours worked include, but are not limited to:

1. Time worked before or after the normally assigned shift, or any other irregular hours, even if the employee volunteers to perform the work. Periods of six minutes or less are not considered overtime unless they occur regularly. (This provision does not apply to employees who are performing volunteer work which is unrelated to their normal job functions.)
2. Rest periods of 15 minutes or less.
3. Travel time that occurs during an employee's normally scheduled work hours, including regular days off and holidays.
4. Except as provided below, hours spent at lectures, meetings, and training activities, unless attendance is completely voluntary, outside of normal work hours, not job-related, and no other work is performed.

Employees will not be compensated for the time spent under the following conditions:

- Voluntary attendance, outside of work hours, at an independent school, college, trade school, or similar training offered by the **employer** at the employee's own initiative even if the courses are related to the employee's current job or paid for by the **employer**.
- Training outside of regular work hours required by law for certification for public-sector employees.
- Off-duty time for police officers or employees in fire protection activities who are in attendance at a police or fire academy or other training facility, if they are free to use such time for personal pursuits.
- Hours spent serving as volunteer ambulance, fire, or law enforcement personnel for an emergency response during normally scheduled work hours.

5.4.3. Position Designations - Exempt or Non-Exempt

All positions are designated as "exempt" or "non-exempt" according to federal and state laws and regulations.

5.4.4. Responsibility for Exempt or Non-Exempt Designation

The Human Resources Manager will examine and evaluate position descriptions and duties performed for all positions to determine the designation of the position as exempt or non-exempt. Departments will notify the Human Resources Manager when the duties of a position have substantially changed in order to ensure an accurate designation.

5.4.5. Responsibility for Time Reporting

Employees are responsible for accurately completing their own timesheets. Supervisors shall **not** alter or adjust the hours that an employee reports on the timesheet. If the supervisor believes the employee has completed the timesheet in error, the supervisor shall discuss the issue with the employee.

All non-exempt employees will record all hours worked and all leave time taken, whether paid or unpaid, and the

type of leave taken (e.g., sick leave, annual leave, compensatory time) on the timesheet.

All exempt employees in positions which require an accounting of hours worked will enter their hours worked for each project. They shall record all leave taken in whole day increments on the timesheet.

All exempt employees in positions not required to account for hours worked will record only those hours off for sick leave or annual leave in whole day increments. Except as permitted by the Family and Medical Leave Act (for example, intermittent leave), exempt employees may not be charged for absences of less than whole day increments.

5.5. Overtime

5.5.1. Non-Exempt Employees

Except as provided below, employees in positions designated as “non-exempt” will be eligible for overtime compensation as follows:

1. Employees will receive overtime compensation for hours worked in excess of eight hours in one day with the following exceptions:

- Employees who work more than eight, but not more than ten hours in a day, will receive overtime compensation for hours worked in excess of 40 hours in the workweek.
- Employees who chose and are approved for a variable workday or variable 80-hour work schedule will receive overtime compensation for hours worked in excess of 40 hours in the workweek.
- Employees whose hours are established by collective bargaining agreements will receive overtime accordingly.

2. Per the FLSA, law enforcement personnel, and fire protection personnel with a formalized policy or agreement with the **employer**, may establish work periods:

- Law enforcement employers may establish a work period of up to 171 hours within a 28-day period.
- Fire protection employers may establish a work period of up to 212 hours within a 28-day period.
- If the work period for law enforcement personnel or fire protection personnel is not established, these employees are then subject to overtime after 40 hours in a workweek per NRS 281.100 and the Fair Labor Standards Act.

3. All overtime hours must be specifically authorized in advance by the employee’s supervisor/manager. Overtime will be compensated at time-and-one-half the employee’s regular rate of pay. An employee’s regular rate includes all payments made by the **employer** to the employee. Examples of payments to be included are: on-call pay, shift differential, hazard duty pay, and longevity pay. Paid overtime will be included in the same paycheck covering the pay period in which the overtime was earned unless the correct overtime amount cannot be determined until after the regular pay period. Employees who earn overtime may, with the approval of the Department Head, elect to receive compensatory time off in lieu of overtime pay. Requests for compensatory time off in lieu of overtime must be made in writing and, once approved, will be placed in the employee’s payroll file. Compensatory time will be earned at the rate of one and one-half hours off for each overtime hour worked. Employees who elect compensatory time off may accrue up to 80 hours (or for employees represented by union contracts, refer to the applicable collective bargaining agreements). When an employee has exceeded the maximum number of hours specified, the excess hours will be paid out as overtime. Employees will be allowed to use compensatory time within a reasonable period of request

unless it unduly disrupts the operations of the **employer**. At any time, the **employer** may pay an employee for accrued compensatory time not used at the employee's regular rate of pay, or schedule use at its discretion.

4. Time paid but not worked, including sick leave, holidays, compensatory time off, and annual leave, does not count toward hours worked for the purpose of computing overtime hours.

5. Firefighters and law enforcement personnel are governed by different overtime requirements. Refer to applicable collective bargaining agreement, and the FLSA.

6. If a non-exempt employee believes overtime under the FLSA or state law has been improperly paid, it is the responsibility of the employee to seek correction by reporting any error to the Department Head. An investigation will be conducted on a timely basis and **employer** will act to correct any errors as soon as practicable.

5.5.2. Exempt Employees

Generally, exempt employees are hired with the understanding that they are responsible for accomplishing the duties required for their assigned position. It is our policy to comply with all aspects of the FLSA including its salary-basis requirements. Therefore, making any deductions from the salaries of exempt employees which are not allowed by law is prohibited.

Consistent with the FLSA and NRS, employees in exempt positions are not required to be paid for overtime.

1. Exempt employees utilizing intermittent leave under the Family and Medical Leave Act (FMLA) may have their pay deducted, including from sick or annual leave balances, for partial day or hour-by-hour absences.

2. Subject to certain exceptions set forth in the FLSA regulations and FMLA as provided above, **employer** has a bona fide annual and sick leave policy and may make deductions from pay in full-day increments when an exempt employee does not qualify to use leave, does not have accrued leave, or chooses not to use paid leave and is absent from work for one or more full days. Deductions from sick or annual leave balances may be made in full day increments.

3. Deductions will be made to offset amounts employees receive as jury or witness fees, or for military pay; or for unpaid disciplinary suspensions of one or more full days imposed in good faith for workplace conduct rule infractions. The **employer** will prorate an employee's salary based upon the days worked during the initial and terminal pay period of employment.

4. Exempt employees are generally expected to be available to perform their job duties during normal business hours (usually 8 am to 5 pm, Monday through Friday). It is expected that in order for exempt employees to complete their assigned work from time to time, it will be necessary that they work beyond the normal workdays and business hours of the **employer**. If, however, an exempt employee is working well beyond a 40-hour workweek on a regular recurring basis, the **employer** may examine staffing levels and the employee's work habits and procedures.

5. Exempt employees who have completed an extraordinary work assignment and/or spent substantially more time than a typical workweek to accomplish the job, may be recognized at the sole discretion of the **employer**, including required final approval by the City Manager, with:

- Up to 2 days of time off without using accrued annual or sick leave. The time off granted under this provision does not constitute compensation and, thus, has no cash value.
- Additional compensation (e.g., flat sum, bonus payment, straight-time hourly amount, time and one half, or any other basis). Such additional compensation will not void their otherwise exempt status as specifically provided under the FLSA.

5.6. Safe Harbor

Employer will classify employees as exempt or non-exempt, in accordance with the provisions of the FLSA and applicable state law. Employees who believe their position is improperly classified should request a review of the classification from the Human Resources Manager. An investigation will be conducted on a timely basis and **employer** will act to correct any errors as soon as practicable. The **employer** will not make improper deductions of pay from any employee, regardless of exempt or non-exempt status. Improper deductions should be reported to the Department Head. The complaint will be investigated, and **employer** will act to reimburse the employee if an error is found. **Employer** will continuously make a good faith commitment to comply with all provisions of FLSA and state laws and intends this policy of correction to satisfy the “safe harbor” provisions of the FLSA.

5.7. Rates of Pay

5.7.1. Compensation Plan

Each regular position will be assigned to a class and pay grade in the compensation plan. Assignment to a pay grade will be based on the relative level and complexity of the duties, responsibilities, and authority of the job. The **employer** shall determine the pay ranges based on these considerations:

- Rates paid by the **employer** for comparable work;
- Internal relationships of other job classes in the same or similar occupation;
- Rates paid by other employers for comparable work;
- Other financial commitments of the **employer**; and
- Funds available to the **employer** for salaries.

The **employer** may adjust the minimum and maximum for each pay range periodically as changes in any of the factors listed above occur or to recruit and retain qualified employees for each job.

5.7.2. Discussion of Wages

NRS 613.330 states it is unlawful to discriminate against an employee for inquiring about, discussing, or voluntarily disclosing information about wages. This does not apply to any employee who has access to or information about the wages of other employees as part of their essential job functions and discloses that information to a person who does not have access to that information unless the disclosure is ordered by the Labor Commissioner or court.

5.7.3. Hiring Rate of Pay

The normal hiring rate is the first step of the pay range for the position’s classification. The **employer** may authorize advanced step appointments.

5.7.4. Advanced Step Hire

Fairness and equity in the administration of the compensation plan will be maintained when making advanced step/pay hires. The **employer** may authorize advanced step/pay appointments when all of the following circumstances exist:

1. The applicant’s qualifications indicate the individual will perform at a level commensurate with the requested step/pay;
2. Other applicants with similar qualifications not requiring an advanced level pay rate are unavailable;
3. Funds are available in the hiring department’s budget to pay the higher rate; and
4. Advanced hire rate will not exceed the step commensurate with current employees of comparable education, experience, and skill levels.

5.7.5. Pay Rate on Promotion, Transfer, Demotion, Reclassification, and Reallocation

1. Except as may otherwise be provided by a collective bargaining agreement, a regular employee who is promoted to a higher classification will move to that step in the range for the new class which provides at least an approximate 5% pay increase, not to exceed the top step in the range for the new class. A promoted employee's pay rate shall not be less than the starting rate of the pay range for the new position. Reclassification to a class with a higher-grade level is treated as a promotion for pay purposes.
2. An employee who transfers to a position at the same grade level will retain their current grade and step.
3. Employees who apply, interview, or are offered a promotion or transfer will be provided the pay range for the new position upon request.
4. An employee who demotes to a position with a lower grade level will be placed at a step in the lower grade level which is closest to their current pay rate. If the employee's pay rate exceeds the top pay rate of the lower pay range, the employee will be Y-Rated (see Y-Rate policy). Reclassification to a class with a lower grade level will be treated as a demotion for pay purposes.
5. Reallocation of an existing class:
 - To a higher-grade level is NOT a promotion. An employee in a class that is reallocated to a higher-grade level shall be placed in the higher grade at a step closest to the current pay rate that does not provide a decrease, or step 1 of the new grade if the current pay rate does not fall within the grade range.
 - To a lower-grade level shall be placed at the step closest to the employee's current pay rate that does not provide a decrease. If the employee's pay rate exceeds the top pay rate of the lower pay range, the employee will be Y-Rated (see Y-Rate policy).

5.8. Step Increases

5.8.1. Step Advancements Authorized

1. An employee who is currently not paid at the top of the pay range for the class is normally eligible for step advancement on the employee's anniversary date. Raises in pay resulting from step advancements are based on longevity and satisfactory performance and are not automatic. A step advancement may be granted only upon a finding by the **employer** that the employee meets all of the performance requirements of the position and complies with all of the **employer's** rules, regulations, and policies. An employee who is determined to be eligible for step advancement shall move to the next higher step within the range.
2. Except when Y-Rated, an employee will not be paid a regular rate of pay above the top step of the pay range for the classification.
3. Pay advancements are administered by the Human Resources Manager, subject to the confirmation provided by the Department Head of adequate documentation that all requirements have been met.

5.8.2. Anniversary Date Step Advancement

4. The date on which an employee becomes eligible for consideration for step advancement is known as the anniversary date. When approved in writing, step advancements will become effective on the employee's anniversary date.
5. A promotion and reclassification to a class with a higher pay range shall establish a new anniversary date.

6. A demotion or reclassification to a class with a lower pay range shall not establish a new anniversary date.

5.9. Withholding of Step/Pay Advancements

5.9.1. Job Performance

When the **employer** has determined that the job performance of an employee is less than satisfactory, the step advancement shall be withheld. The employee's performance shall be documented, and a copy of the documentation provided to the employee.

5.9.2. Unpaid Leaves of Absence

An employee's eligibility for consideration for step advancement shall be delayed by temporary layoffs or unpaid leaves of absence in excess of 15 working days during the 12-month period following the employee's last step advancement. The employee's anniversary date shall be adjusted by the total number of days of unpaid leave, including any unpaid leave taken during the initial probationary period.

5.9.3. Granting of Withheld Advancements

The **employer** may approve step advancement at the beginning of any pay period upon finding that the employee currently meets the qualifications for an advancement. The employee's anniversary date shall be adjusted to the date on which the step advancement is actually granted. If step advancement is not granted in the interim, the employee shall be considered for step advancement on the next anniversary date.

5.10. Flat Rates of Pay

Certain job classes may be assigned to flat rates of pay in the compensation plan. Employees in classes assigned to a flat rate of pay are not eligible for step increases.

5.11. Compensation for Casual/Temporary/Seasonal Workers

5.11.1. Rates of Pay

The **employer** will pay casual/temporary/seasonal workers at the rate of pay established for the same work when performed by regular employees, or as appropriate for the type of work performed. Students receiving school credit for work may be paid at a rate established by the **employer** for student interns.

The **employer** may adjust the rates of pay annually consistent with general pay increases granted regular employees.

5.11.2. Step/Pay Advancements

As the budget allows each year, the **employer** may advance casual/temporary/seasonal workers to the next step in the approved pay range for the work assigned. The **employer** shall consider the qualifications and performance of the worker, the length of time the casual/temporary/seasonal worker has been assigned to the work, the rates paid to regular employees assigned similar work, and the funds available when determining whether to grant step advancement.

5.12. Y-Rate

The **employer** may pay an employee, who is reduced to a lower class as a result of reclassification or reorganization not associated with layoff or discipline and not the result of employee action or request, at the employee's current rate of pay which is above the top step of the range or between the steps of the range. Similarly, an employee in a class which has its pay adjusted to a lower rate may also be paid at a rate of pay above the top step of the range. This rate shall be known as a "Y-Rate." At the discretion of the **employer**, assignment to such a rate of pay is

available to employees who are fully qualified to perform the work of the lower paid class.

An employee who is at a Y-rate above the top step of the range for the new (lower) class shall continue to receive the Y-rate while employed in the new class until a change in the rate of pay for the employee's new class causes the top step of the new class to be equal to or greater than the employee's Y-rate.

An employee who is at a Y-rate which is between the step of the range for the new (lower) class shall continue to receive the Y-rate until a change in the rate of pay for the employee causes the rate for the step in the range to which the employee is entitled to exceed the employee's current rate of pay.

5.13. Work Out-of-Class

5.13.1. Policy

Employees may occasionally be assigned to temporarily assume the duties of a higher-level budgeted position for a short period. In the event that such work extends beyond a short-term assignment, the **employer** establishes criteria for paying employees for temporarily performing work outside the assigned duties of their current job class, and for employees temporarily assigned the duties of a management or administrative position.

5.13.2. Assignments

7. Employees may be temporarily assigned substantially all the duties and responsibilities of a budgeted, higher-level position for such reasons as:
 - the position is currently vacant,
 - the employee normally filling the position is on authorized leave, or has been temporarily relieved of all regular duties to complete a special project approved by the employer, or
 - temporarily increased workload requirements.
8. The same employee shall not be assigned to the higher-level duties for more than six (6) consecutive months, unless specifically approved by the City Manager, who may extend the assignment.

5.13.3. Employee Eligibility

To be eligible for work-out-of-class pay:

9. Employees must be formally assigned and actually performing substantially all the duties of the higher job class.
10. The pay range for the higher paid class must be at least 5% above the range for the employee's current job class.
11. Beginning on the first workday of performing substantially all the duties of the higher-level position, employees will be paid at a rate 6% above their current rate of pay, or at the entry rate of the higher job class, whichever is greater, but not to exceed the top step of the higher classification.
12. The provisions of this section shall not be used to authorize additional pay to reward employees for outstanding service, or any purpose other than those stated.

5.14. Longevity Pay

1. This plan will include exempt City employees and exclude employees covered by collective bargaining unit agreements, and City Council members. This plan is effective for employees who were hired prior to January 1, 2012. Employees hired after that date are not eligible for longevity pay.
2. The schedule for longevity pay for employees with performance reviews of standard or better, is

as follows:

Years of Completed Service	Semi-Annual Amount	Total Amount
8	\$ 150.00	\$ 300.00
9	\$ 175.00	\$ 350.00
10	\$ 200.00	\$ 400.00
11	\$ 250.00	\$ 500.00
12	\$ 275.00	\$ 550.00
13	\$ 300.00	\$ 600.00
14	\$ 325.00	\$ 650.00
15	\$ 350.00	\$ 700.00
16	\$ 425.00	\$ 850.00
17	\$ 450.00	\$ 900.00
18	\$ 475.00	\$ 950.00
19	\$ 500.00	\$ 1,000.00
20	\$ 525.00	\$ 1,050.00
21	\$ 650.00	\$ 1,300.00
22	\$ 675.00	\$ 1,350.00
23	\$ 700.00	\$ 1,400.00
24	\$ 725.00	\$ 1,450.00
25	\$ 750.00	\$ 1,500.00
26	\$ 775.00	\$ 1,550.00
27	\$ 800.00	\$ 1,600.00
28	\$ 825.00	\$ 1,650.00
29	\$ 850.00	\$ 1,700.00
30	\$ 875.00	\$ 1,750.00

3. Longevity pay shall be payable the first payday in June and December of each year. An employee will receive the first check during the year following the employee's eighth (8th) anniversary year of employment with the City of Elko.

4. For purposes of merit longevity pay, continuous service is defined as uninterrupted employment for the City of Elko.

6. LEAVE PLANS

1.1 Holidays

1.1.1 Holidays Designated

The following holidays are recognized by the **employer (NRS 236.015)**:

New Year's Day – January 1

Martin Luther King, Jr.'s Birthday – Third Monday in January

President's Day – Third Monday in February

Memorial Day – Last Monday in May

Independence Day – July 4

Labor Day – First Monday in September

Nevada Day – Last Friday in October

Veterans Day – November 11

Thanksgiving Day – Fourth Thursday in November

Family Day – Friday following the fourth Thursday in November

Christmas Day – December 25

Any day declared a legal holiday by the President of the United States will be observed in accordance with the presidential proclamation. The **employer** will observe a holiday, which occurs on a Saturday or a Sunday, on the day before or after the holiday.

1.1.2 Holiday Pay

Recognized holidays are typically non-work days. Each regular, full-time employee will be paid eight hours of pay at his/her rate of pay for each recognized holiday. Bargaining unit employees will be paid according to the provisions of the applicable bargaining unit agreement

1.1.3 Weekend Holidays

For employees regularly assigned to work Mondays and/or Fridays, if a holiday falls on a Saturday, the Friday preceding will be observed as the holiday. If a holiday falls on a Sunday, the Monday following will be observed as the holiday, unless an alternative is authorized by the **employer**.

1.1.4 Work on Holidays

Non-exempt full-time employees who work on a designated holiday shall be paid for the holiday plus one and one-half times their regular rate of pay for any time worked on a holiday. Bargaining unit employees who work on a holiday shall be paid overtime as provided in the collective bargaining agreement.

1.2 Annual Leave

1.2.1 Annual Leave Accrual

1. All full-time employees with more than six months of continued employment will earn annual leave beginning from their initial date of hire as follows:

From the Beginning of the Pay Period Following Completion of:	Through the Pay Period During Which the Employee Completes:	Hours Accrued for Each Regularly Scheduled Hour on Paid Status:
Initial date of employment	Five consecutive years of eligible employment	120 hours/year max accrual of 160 hours
More than five consecutive years of eligible employment	Fifteen years of eligible employment	168 hours/year max accrual of 240 hours
More than fifteen consecutive years of eligible employment		168 hours/year max accrual of 280 hours

2. Except as noted, all accrual rates are expressed in terms of fractions of an hour earned for each regularly scheduled hour worked or on paid leave. Annual leave is not accrued for any other hours.
3. Annual leave is earned and credited to the employee on a biweekly, basis coinciding with pay periods. The amount of annual leave accrual is based upon years of service adjusted, as specified, for leaves of absence without pay.

1.2.2 Eligibility Maximum Accrual

1. Accrued annual leave may not exceed is based upon years of service with the City of Elko. All accrued leave above the stated maximum shall be forfeited.

1.2.3 Use of Annual Leave

1. Annual leave is provided to employees for the purpose of rest and relaxation from their duties and for attending to personal business. Employees may not use annual leave before it is accrued.

1.2.4 Annual Leave Pay at Termination

1. Upon termination, an employee with more than six months of continuous employment will be paid for all accrued annual leave at the employee's last regular rate of pay.

1.3 Sick Leave

1.3.1 Policy

1. *Accrual*

The **employer** expects each employee to be available for work on a regular and reliable basis. The **employer** will monitor attendance and leave use whether or not the employee has accumulated leave balances remaining in his/her sick leave account.

- a. Employees will accrue sick leave at the rate of 4.62 hours for each pay period while employed. Sick leave is not accrued for any other hours.
- b. Sick leave hours are earned and credited to the employee on a biweekly basis, coinciding with pay periods.
- c. Unused sick leave will be credited to the employee's sick leave balance to a maximum accrual of 960 hours. Sick leave accrual greater than 960 hours will be split. After 960 hours is accrued, half of the sick time will be credited to the employee's sick leave accrual and half will be credited to an extra sick leave account. Before the time in the extra sick leave bank can be used, all regular sick and vacation time must be exhausted. Only the City Council can authorize usage of the time accrued in the extra sick leave bank.
- d. At such time as an employee exhausts all of their sick leave benefits, including extra sick leave; accrued overtime; holiday and vacation credits, from a catastrophic event, sick leave donations may be given to the affected employee.

1. *Use of Sick Leave*

Sick leave is for use in situations in which the employee must be absent from work due to:

- a. His/her own physical illness or injury.
- b. His/her own exposure to contagious diseases or when attendance at work is prevented by public health requirements.
- c. The need to care for an ill or injured dependent child, spouse/registered domestic partner, parent, grandparent, grandchild, immediate in-law, or sibling who is dependent upon the employee for support.
- d. Health Care Provider or dental appointments for the employee; provided that the employee makes a reasonable effort to schedule such appointments at times which have the least interference with the work day.
- e. Any disability.

Employees who are absent from work due to sick leave shall be at their residence, a medical facility, their doctor's office, or shall notify their supervisor of their whereabouts when using sick leave.

2. *Abuse of Sick Leave*

Use of sick leave for purposes other than those listed above is evidence of abuse of sick leave. Abuse of sick leave is cause for disciplinary action, up to and including termination. If the **employer** suspects abuse, they may require substantiating evidence which may include, but is not limited to, a certificate from a health care provider.

3. *Illness During Annual Leave*

If an employee on annual leave suffers an illness or injury which requires medical treatment from a licensed physician or health practitioner, s/he may elect to charge that time to accumulated sick leave provided the employee furnishes the **employer** with a certificate issued by health care provider providing treatment.

4. *Placing an Employee on Sick Leave*

The **employer** may place an employee on sick leave if s/he has an illness that appears to be contagious or due to a known or suspected illness or injury, the employee is not able to perform the essential functions of their position with or without reasonable accommodation.

5. *Return to Work*

An employee on sick leave shall notify his/her department manager as soon as the employee is able to return to work. An employee returning from an extended absence shall give as much advance notice of return as possible. The **employer** may also require a statement from a licensed physician or health practitioner certifying the employee's fitness to return to work.

6. *Sick Leave at Separation*

- a. Upon separation from employment due to P.E.R.S. retirement, an employee shall receive a one-time recognition payment based upon the amount of unused sick leave remaining in the employee's sick leave account. The rate at which sick leave is paid out will be based upon the P.E.R.S. service time factor up to a maximum of 960 hours.
- c. If the separation is due to the death of the employee the balance will be paid out at 100%. The compensation due will be paid to the beneficiary(s) designated by the employee.

1.3.2 Procedure

1. Leave Approval

An employee shall complete an appropriate leave request form as soon as the need for a leave is known. The **employer** shall determine whether to approve use of accrued sick leave and shall approve such a request whenever it is deemed reasonable.

2. Notification

Any employee who is ill or unable to report to work for any reason shall notify his/her immediate supervisor as soon as practical, but no later than 15 minutes following the employee's normal work reporting time. In the event of a continuing illness, the employee shall continue to notify his/her immediate supervisor daily or at appropriate intervals agreed on by the supervisor of his/her condition. The **employer** may deny sick leave requests which are not in compliance with this policy.

3. Doctor's Certification

The **employer** may require an employee to provide a medical doctor's certification that the illness/injury incapacitated the employee from performing his/her duties, was necessary for the employee to make full and timely recovery, or was appropriate to avoid the spread of a contagious disease. The certification will also verify the employee's fitness for return to work. A medical doctor's statement is required when specifically requested by the supervisor or manager. Whenever an employee qualifies for FMLA leave, the employee is required to submit to the **employer** the "Certification of Physician" form referenced in the FMLA policy.

6.4 Family and Medical Leave

6.4.1 Policy

Public employers are covered under the Family and Medical Leave Act (FMLA), and will comply with the requirements of the FMLA and advise employees if they meet all the FMLA eligibility requirements. **Employer** must provide employees *Form WHD-1420 Employee Rights and Responsibilities Under the Family and Medical Leave Act* and are also required to post and keep posted this notice in a conspicuous place, that can readily be seen by employees and applicants alike even if no employees are eligible.

1. Eligibility

Employees who have been employed by the **employer** for a total of 12 months and worked for the **employer** at least 1,250 hours during the preceding 12-month period and are

employed at a work site where 50 or more employees work for the **employer** within 75 surface miles of that work site are eligible for FMLA leave. An employee who has a military service obligation must be credited with the hours of service that would have been performed, but for the period of military service. The required 12 months of employment does not have to be consecutive. There may be a break in service as long as it does not exceed seven years. There is an exception to the seven-year condition for USERRA-covered military service or written agreements. All employees meeting the above qualifications qualify for FMLA, regardless of their seasonal, temporary, etc., status.

2. *Compensation During Leave*

FMLA leave will be unpaid leave unless the employee has accrued paid leave and is otherwise eligible to use the leave. If an employee requests leave for the employee's own serious health condition for the serious health condition of the employee's spouse, child, or parent, to provide military caregiver leave, or exigency leave, the employee **must** use all of his/her accrued paid annual leave, sick leave (if it qualifies under employer's sick leave use requirements), compensatory time leave, and personal time off as part of the FMLA leave. (See the applicable collective bargaining agreement for alternate provisions which may apply.) When substituting accrued paid leave, the employee must comply with the employer's procedural requirements, terms, and conditions of the paid leave policy as appropriate. The remainder of the leave period will then consist of unpaid FMLA leave. Employees must be made aware that they are required to use sick, annual, compensatory time and personal leave as appropriate, in the rights and responsibilities notice Form WH-381: Notice of Eligibility and Rights & Responsibilities.

3. *Intermittent or Reduced Schedule Leave*

When medically necessary (as distinguished from voluntary treatments and procedures) or for any qualifying exigency, leave may be taken on an intermittent or reduced schedule basis. Leave for bonding with a healthy newborn or placement of a healthy child for adoption or foster care is not considered medically necessary and, therefore, may not be taken on a reduced schedule or intermittent basis unless agreed to by the employer. Employees needing intermittent leave or reduced schedule leave must make a reasonable effort to schedule their leave so as not to disrupt unduly the employer's operations. If the leave is foreseeable, the

employer may require an employee on intermittent leave or reduced schedule leave to temporarily transfer to an available alternative position for which the employee is qualified if the position has equivalent pay and benefits and better accommodates the employee's intermittent or reduced schedule leave. Intermittent leave and reduced schedule leave reduces the 12-week entitlement only by the actual time used. When an employee who was transferred, no longer needs intermittent or reduced scheduled leave, the employee must be placed in the same or equivalent position held prior to when the leave commenced.

6.4.2 Duration of and Reasons for Leave

1. Duration of Leave

Any eligible employee, as defined above, may be granted a total of 12 weeks of unpaid FMLA leave (which can run concurrent with paid leave) during a 12-month period (see exception for Military Caregiver Leave as provided in section 6.4.3 below). This period is measured backward from the date an employee uses any FMLA leave. A "week" is defined as a calendar week, regardless of the number of days the employee normally works. Twelve weeks does not entitle a part-time employee working three days a week to 60 leave days, but rather 12 weeks.

2. Conditions for Leave

a. Serious Health Condition

A serious health condition is an illness, injury, impairment, or physical or mental condition of incapacity or treatment that involves:

- Inpatient care (overnight stay) in a hospital, hospice, or residential medical care facility.
- Continuing treatment by (or under the supervision of) a health care provider for a period of incapacity of more than three consecutive full calendar days, combined with at least two visits to a health care provider within 30 days of the first day of incapacity or one visit to a health care provider requiring a regimen of continuing treatment, e.g. prescription medication.

b. Exigency leave:

- Short-term notice deployment (deployment in seven or less calendar days)
- Military events and activities
- Childcare and school activities
- Family support or assistance programs
- Financial and legal arrangements
- Counseling

- Service member's rest and recuperation leave (limited to 15 calendar days for each instance)
- Post-deployment activities
- Parental leave for the spouse, son, daughter, or parent of a military member to care for the military member's [aren't who is incapable of self-care. The leave may be used arranging for alternate care, providing care, admitting or transferring the patient to a care facility, or attending a meeting with care facility staff.
- Additional activities arising out of active duty that the **employer** and employee agree upon.

c. Covered Active Duty:

- 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.
- 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 in support of a contingency operation.

3. Limitations of Leave

The entitlement to FMLA leave for the birth or placement of a child for adoption or foster care **will** expire 12 months from the date of the birth or placement. If both an employee and his/her spouse are employed by the **employer**, their combined time off may not exceed 12 weeks during any 12-month period for the birth, adoption, foster care, or care of a parent with a serious health condition. Each spouse is, however, eligible for the full 12 weeks within a 12-month period to care for a son, daughter, or spouse with a serious health condition.

Employees may not take more than a combined total of 12 weeks for all FMLA qualifying reasons listed above in section 6.4.2.2.

6.4.3 Military Caregiver Leave

1. Policy

An eligible employee, as defined in 6.4.1.1. above, may be granted a total of 26 weeks of unpaid FMLA leave (which can run concurrent with paid leave) during a 12-month period to provide caregiver leave for a seriously ill or injured covered service member or veteran who is the employee's spouse, son, daughter, parent, or next of kin. This period is always measured forward from the date an employee takes FMLA leave to care for the covered service member or veteran and ends 12 months after that date.

2. Eligibility

The Covered Service member under the Military caregiver leave must be:

- a. A current member of the Armed Forces (including a member of the National Guard or Reserves), who is undergoing

medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness that:

- Was incurred by the covered service member in the line of duty in the Armed Forces, or
 - Existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces, and
 - May render the member medically unfit to perform the duties of the member's office, grade, rank, or rating
- b. A covered veteran is an individual who was a member of the Armed Forces (including a member of the National Guard or Reserves), and was discharged or released under conditions other than dishonorable at any time during the five-year period* prior to the first date the eligible employee takes FMLA leave to care for the covered veteran who is undergoing medical treatment, recuperation or therapy for a serious injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and manifested itself before or after the member became a veteran, and is:
- A continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the service member unable to perform the duties of the Service member's office, grade, rank, or rating; or
 - A physical or mental condition for which the covered veteran had received a U.S. Department of Veteran Affairs Service-Related Disability Rating (VASRD) of 50 percent or greater, and such VASRD rating is based in whole or in part, on the condition precipitating the need for military caregiver leave; or
 - An injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veteran Affairs Program of Comprehensive Assistance for Family Caregivers.

* The period between 10-28-09 and 03-08-13 is excluded in the determination of the five year period.

3. Limitations of Leave

Employees cannot take more than a combined total of 26 weeks for military caregiver leave or because of other FMLA qualifying reasons as provided in 6.4.2. A Husband and wife both working for the same employer are limited to a combined total of 26 weeks of FMLA military caregiver leave

6.4.4 Notice of Leave

An employee intending to take FMLA leave because of an expected birth or placement or child for adoption or foster care, a planned medical treatment or medical care, or qualifying exigency, shall provide notice for such leave at least 30 days before the leave is to begin. If a requested leave will begin in less than 30 days, the employee must give notice to his/her immediate supervisor as soon as the necessity for the leave is known. Reasonable advance notice is required for all leaves, even if the event necessitating the leave is not foreseeable. If an employee gives less than 30 days' notice, the **employer** may require an explanation.

Within five days (absent extenuating circumstances) of receiving notice that 1) an employee requests to use FMLA leave, or 2) the **employer** acquires knowledge that a leave may be for a FMLA-qualifying reason, the **employer** will complete *Form WH-381 Notice of Eligibility and Rights and Responsibilities*. Completion of this form will designate if an employee is eligible for FMLA or if an employee is not eligible, the reason(s) why s/he is not eligible. The form will designate if the employee is required to obtain certification related to medical conditions and/or required family relationships. The **employer** may require the use of FMLA leave for any absence which would otherwise qualify as FMLA leave, even if no formal application for such leave was made by the employee, provided notice is given to the employee. Employees cannot waive, nor may the employer's induce employees to waive their rights under FMLA.

6.4.5 Certification of Leave

1. Certification Forms

a. Serious Health condition

A request for leave based on the serious health condition of the employee or the employee's spouse, child, or parent must be supported by completion of Form WH-380-E -Certification of Health Care Provider for Employee's Serious Health Condition or Form WH-380-F -Certification of Health Care Provider for Family Member's Serious Health Condition completed by the health care provider. (Note: Attach the employee's current job description to Form 380-E when it is sent to the employee's health care provider.)

The Certification of Health Care Provider form must be completed and returned by the employee within 15 calendar days, absent extenuating circumstances.

b. Exigency Leave

Employees requesting FMLA leave for qualifying exigency are required to complete *Form WH-384 Certification of Qualifying Exigency for Military Family Leave* and provide a copy of the

military member's active duty orders or other documentation issued by the military which indicates that the military member is on covered active duty or call to covered active duty status.

c. Caregiver Leave

Employees requesting FMLA leave for military caregiver leave are required to complete *Form WH-385 Certification of Serious Injury or Illness of Covered Service member for Military Family Leave* or *WH-385-V Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave* within 15-calendar days, absent extenuating circumstances. Employees may also submit invitational travel orders (ITOs) or invitational travel authorizations (ITAs) issued to any family member to join an injured or ill service member at his/her bedside in lieu of forms WH-385 or WH-385-V.

2. *Incomplete or Insufficient Certification (cure period)*

If a certification is incomplete or insufficient, the employee will be given seven calendar days (unless not practicable under the particular circumstances despite the employee's diligent good faith efforts) to cure any such deficiency. If the deficiencies specified by the **employer** are not cured in the resubmitted certification, the **employer** may deny the taking of FMLA leave. A certification that is not returned to the **employer** is not considered incomplete or insufficient, but constitutes a failure to provide certification.

3. *Clarification or Authentication of certification*

Employer may contact the employee's health care provider for the purpose of clarification or authentication after giving the employee an opportunity to clarify specific discrepancies. Only the Human Resources manager or designee may contact the health care provider.

4. *Second and Third opinions*

If the employer questions the validity of the certification, the employer may require, at its expense, the employee obtain a second opinion from a health care provider designated by the employer. If the second opinion conflicts with the original opinion, the employer may require, at its expense, that the employee obtain the opinion of a third health care provider designated or approved jointly by the employer and the employee. This third opinion will be considered final and binding on both parties.

Second and third opinions are not permitted for leave to care for a covered service member when the certification has been completed by a Department of Defense or Department of Veterans Affairs health care provider. However, second and third opinions are permitted when the certification has been completed by other health care providers as provided for by law.

Second and third opinions are not allowed on a fitness for duty certification.

5. *Recertification*

In instances where the minimum duration of leave anticipated by the original certification is more than 30 days, the **employer** may require the employee to recertify that the original medical condition still exists. Such requests can be made no more frequently than the minimum duration of the leave requested (e.g., 40 days) or once every six months in connection with an absence.

In situations in which the minimum duration of leave anticipated by the original certification is less than 30 days, the **employer** may request recertification if the employee requests an extension of leave, the circumstances described by the original certification have changed significantly, or the **employer** receives information casting doubt upon the continuing validity of the certification.

Recertifications are not permitted for leave to care for a covered service member.

6. Annual Medical Certification

The **employer** may require the employee to provide new medical certification, not recertification, for his/her first FMLA-related absence in a new 12-month leave year.

6.4.6 Designation Notice

Within five business days (absent extenuating circumstances) of receipt of all required information, the **employer** will make a determination if employee's request for leave is for an FMLA-qualifying reason. The **employer** will complete *Form WH-382 -Designation Notice* indicating if leave is approved or not and provide to employee.

If the **employer** cannot make a determination from the information provided, they will use this form to:

Indicate the information presented is incomplete or insufficient and provide the employee seven calendar days to provide complete information.

Provide notice to an employee if a second or third medical certification is required.

Employer may also use this form to designate a fitness-for-duty certificate which will be required prior to returning to work.

6.4.7 Benefits Coverage During Leave

During a period of FMLA leave, an employee will be retained on the **employer's** health plan under the same conditions that would apply if the employee was not on FMLA leave. To continue health coverage, the employee must continue to make any contributions that s/he would otherwise be required to make. Failure of the employee to pay his/her share of the health insurance premium may result in loss of coverage.

If the employee fails to return to work after the expiration of the FMLA leave, the employee may be required to reimburse the **employer** for

payment of health insurance premiums during the leave, unless the reason the employee cannot return is due to circumstances beyond the employee's control. The definition of "beyond the employee's control" includes a large variety of situations such as: the employee being subject to layoff, continuation, recurrence, or the onset of an FMLA-qualifying event; or the employee's spouse's unexpected worksite relocation of more than 75 miles from the current worksite.

An employee is not entitled to the accrual of any seniority or employment benefits during any unpaid leave. An employee who takes FMLA leave will not lose any seniority or employment benefits that accrued before the date the leave began and will be entitled to any unconditional pay increase, such as cost of living increase granted to all employees during the FMLA leave period.

6.4.8 Outside Employment

An employee may not accept other employment during an FMLA absence if the job conflicts with the reason the employee is on FMLA leave; e.g., an employee is on FMLA leave due to a back injury and accepts a job requiring heavy lifting. All other requirements of **employer's** outside employment policy apply.

6.4.9 Periodic Reporting

Any employee on FMLA leave must notify **employer** periodically of his/her status and intention to return to work. The **employer** has the authority to determine how often the employee must provide this notification.

6.4.10 Change in Duration of Leave

1. Return Prior to Expiration

If an employee wishes to return to work prior to the expiration of the approved FMLA leave period, s/he must notify the supervisor within two business days prior to the employee's planned return. Employees may be required to provide a fitness-for-duty certification (if indicated on the designation notice) specifically addressing the employee's ability to perform the essential functions of his/her job, prior to returning to work if the FMLA leave of absence was due to the employee's own serious health condition. Employees required to present a fitness-for-duty certification may be delayed in restoration to employment until certification is provided. Second and third opinions are not allowed on a fitness-for-duty certification.

2. Request an Extension of Leave

An employee who requests an extension of FMLA leave due to the continuation of a qualifying exigency, care for service member, continuation, recurrence, or onset of his/her own serious health condition, or of the serious health condition of the employee's spouse, child, or parent, must submit a request for an extension, in writing, to the **employer**. This written request should be made as soon as the employee realizes that s/he will not be able to return at the expiration of the leave period. Any additional time requested beyond the FMLA

12-week period (or 26-week period for caregiver leave) will not be considered as FMLA. Rather, such time, if approved by the **employer**, will be characterized as either paid or unpaid leave, thereby ending the **employer's** reinstatement obligations included in Section 6.4.11. (See the applicable collective bargaining agreement for alternate provisions which may apply.)

6.4.11 *Return from Leave*

Upon returning to work, an employee on FMLA leave will be restored to his/her most recent position or to a position with equivalent pay, benefits, and other terms and conditions of employment. The **employer** cannot guarantee that an employee will be returned to his/her original position. The **employer** will determine whether a position is an "equivalent position" as defined by FMLA. Employee's right to restoration, however, ceases at the end of the applicable 12-month FMLA leave year.

6.4.12 *Failure to Return from Leave*

Failure of an employee to return to work upon the expiration of an FMLA leave of absence will subject the employee to disciplinary action, up to and including termination, unless the **employer** has granted an additional (paid or unpaid) extension. (Note: Refer to **employer's** other leave policies.) Nothing in this policy limits **employer's** obligations of reasonable accommodation under the Americans with Disabilities Act, as amended.

6.5 **Leave of Absence Without Pay**

6.5.1 *Policy*

The **employer** may approve leaves of absence without pay for up to six months. Such approval will be for exceptional circumstances and conditions, such as education or prolonged illness, when the approval of such leave is consistent with the **employer's** needs, when the work of the office or department will not be impeded by the employee's absence, and when the leave will not require the appropriation of additional funds for the operation of the employee's department. Such leave may be extended for an additional period of up to six months at the sole discretion of the **employer**. Exceptions for leave beyond one year may be provided as required by law. The **employer** will require the use of all accrued paid leave prior to granting leave without pay.

6.5.2 *Procedure*

1. Approval – Less Than 30 Days

Leaves of absence without pay not exceeding 30 days may be granted by the employer with substantiating documentation.

2. Approval – More Than 30 Days

The **employer** may grant a leave in excess of 30 days following written certification by the employee that the leave is consistent with the intent

of this section and substantiating documentation as requested by **employer** is provided.

3. Purpose

Leaves of absence without pay will not be granted for the purpose of allowing an employee to seek or accept other employment, except when or if the **employer** determines that the granting of such leave is in its best interest.

4. Employer Termination of Leave

The employer may terminate any leave of absence without pay, except those granted pursuant to statute or regulation, prior to its expiration by providing written notice to the employee. The document granting the leave of absence will state the terms of the leave and any reason(s) for terminating such leave. Upon receipt of notice of termination of the leave, the employee is required to return to work within five calendar days or by a later-approved alternate date. In the event the **employer** terminates a leave of absence, the employee will be returned to the same class or position s/he occupied when the leave of absence was granted.

5. Insurance

Employees on approved leave of absence without pay may continue their medical, dental, and life insurance coverage in accordance with COBRA health benefit continuation regulation

6. Return from Leave

Employees on approved leave of absence without pay are required to return to work on the first work day following the end of leave. An employee who does not return from a leave of absence without pay on the first work day following the end of a leave will be considered to have resigned.

7. Introductory Period

If an employee is granted unpaid leave during his/her introductory period, the introductory period will be extended by the number of days of leave taken by the employee during his/her introductory period.

8. Medical Leaves

The **employer** may require a physician's certification or other appropriate type of verification to substantiate a need for a medical leave of absence without pay.

9. Anniversary Date

An employee's anniversary date will be adjusted by the number of days off work for all unpaid leaves of absence in excess of 15 days during any 12-month period. (See special provisions for Military Leave in *Section 6.8* below.)

10. Benefit Accrual

If an employee is on an unpaid leave of absence, no leave benefits shall accrue. The **employer** shall contribute towards the cost of insurance benefits for the employee if the employee works at least one day per month. The **employer** will also contribute towards the cost of the employee's insurance benefit when on unpaid leave if the employee is on approved FMLA status.

6.6 Court Leave

6.6.1 When Granted

The **employer** will grant court leave to allow employees to serve as juror or a witness in a court proceeding provided that neither employee nor the employee's collective bargaining representative is a party to the action. Employees shall provide their supervisors with relevant documents verifying the need for court leave as soon as the need becomes known.

6.6.2 Compensation

Subject to the following conditions, eligible employees shall receive their regular base rate of pay for those hours spent in court and traveling to and from court when such time occurs during employee's regular scheduled work days and hours of work. Non-regular employees will be granted time off without pay. Law enforcement personnel appearing in court as part of their duties are not affected by this policy.

1. The employee's regular rate of pay shall be limited to compensation for court and travel time which occurs during the employee's regularly scheduled hours of work. Court leave will not result in payment of overtime or be considered as hours worked for purposes of determining eligibility for overtime, unless the court leave is related to the employee's job responsibilities.
2. Upon completion of jury/court/witness service for which the employee received his/her regular pay, the employee will immediately forward any compensation received from the court or other party to the **employer** upon receipt. Reimbursements received for out-of-pocket expenses such as meals, mileage, and lodging may be kept by employees, unless the **employer** has reimbursed the employee for such expenses or such expenses were paid by the **employer**.
3. An employee shall not receive pay for the work time missed if s/he is required to miss work because of court appearances in a matter to which the employee is a party or to serve as a witness for a party who has filed an action against the **employer**. However, the employee may choose to use his/her annual leave.

6.6.3 Late Start/Early Release

An employee who is not required to report to court until the middle of his/her scheduled work day or who is released from court/jury duty

before the end of his/her scheduled work day shall report to work for the hours which are not required for court duty or for related travel time.

6.7 Bereavement Leave

A regular, full-time or part-time employee who must be absent from work to attend the funeral of a family member who is within the third degree of consanguinity or affinity may use up to a maximum of 24 hours of bereavement leave per each occurrence. Bereavement leaves longer than 24 hours may be approved with advance notice of the Department Head on a case by case basis. Supervisors or managers may require evidence of attendance at the funeral.

6.8 Military Leave

6.8.1 Policy

Employees who are members of the uniformed services are entitled to military leave and to re-employment rights as provided in 38 USC, sections 2021-2024, and 4302 et.seq. and the relevant sections of the Nevada Revised Statutes. The uniformed services covered include the Army, Navy, Marines, Air Force, Coast Guard, Public Health Service Commissioner Corps, the reserve components of these services, and any other category dispatched by the President in time of war or national emergency. The Army National Guard and Air National Guard are also covered.

6.8.2 Notice and Notification

1. The **employer** must provide employees with notice of their rights under the Uniformed Services Employment and Reemployment Rights Act (USERRA). This requirement may be met by posting the notice where the **employer** customarily places notices for employees.
2. The **employer** may require written (orders) or verbal notice of service obligation, but must waive the requirement if notice is impossible or unreasonable.

6.8.3 Salary and Benefits

1. Leave Without Pay

- a. The **employer** will treat the employee the same as any other employee on leave without pay.
- b. The employee is entitled to 15-working days of leave with pay in one calendar year (NRS 281.145).
- c. The **employer** is not required to pay the employee's salary after 15-working days.
- d. The employee may choose to use annual leave and compensatory time, if any, before going on leave without pay.

2. Health Insurance

There is no impact to the employee's insurance coverage, including life insurance inclusive of the health insurance package. The **employer** and employee premium payments or obligations, if any,

remain unchanged for 30 days. Employee may then continue coverage similar to that required by the Consolidated Omnibus Budget Reconciliation Act (COBRA) for either 24 months or through the day after the date on which the employee fails to apply for reemployment in a timely manner; whichever is less (see *Reemployment, Section 6.8.4.* below). The **employer** must reinstate coverage upon the employee's prompt reemployment without the imposition of exclusions or waiting periods. An employee who takes up to 90 days after leaving the military before commencing his/her reemployment may stay on the military health insurance; however, it is the employee's responsibility to verify the continuation, scope, and duration of coverage.

3. Seniority

An employee is entitled to the seniority (and rights and benefits governed by seniority) s/he had accrued at the commencement of military leave, plus any additional seniority rights and benefits that s/he would have attained if s/he had remained continuously employed (the "escalator principle"). However, if an introductory period is a bona fide period of observation and evaluation, the returning employee must complete the remaining period of introduction upon reemployment. The **employer** must count time served for the purpose of determining annual and sick leave accrual rates, if the accrual amount is based on seniority. Additionally, the **employer** must count time in the military when determining the employee's rate of pay if the rate is based on seniority (e.g., a grade-and-step pay system). The **employer** is not required to accumulate annual or sick leave for an employee during his/her absence. The "escalator principle" will be applied to a returning employee's opportunities to take promotional examinations or skills tests and to merit pay increases.

4. Retirement

Time served will be counted as work time for purposes of retirement. The **employer** must make contribution payments to the retirement plan as if the employee had not left, provided the employee returns to work. The **employer** contribution will be based on the rate of pay the employee would have been paid had s/he not been called to military service (e.g., a grade-and-step pay system). An exception to this requirement is when the higher pay is based on additional knowledge, skill, or ability that can only be gained by work experience.

5. Death or Disability

If an employee does not return to work due to death or disability, the survivor or disability benefit is treated as if the employee had been working until the date of the death or disability. The **employer** must make the retirement contribution up to the date of the death or disability.

6. Other Leave

The **employer** must count time served in the military when calculating the employee's Family Medical Leave Act eligibility.

6.8.4 Re-employment

1. An employee has certain report-to-work obligations following military service. Eligible returning service members must be promptly reemployed, which in most cases means within two weeks of reporting. The employee's report-to-work obligations are:
 - a. Service of one to 30 days: The beginning of the next regularly-scheduled work period on the first full day following completion of service, and expiration of an eight-hour rest period following safe transportation home.
 - b. Service of 31 to 180 days: Application for reinstatement must be submitted not later than 14 days after completion of military duty.
 - c. Service of 181 or more days: Application for reinstatement must be submitted not later than 90 days after completion of military duty.
2. The deadline for reinstatement may be extended for up to two years for persons who are convalescing due to a disability incurred or aggravated during military service, and the **employer** must make reasonable accommodations for the impairment.
3. Reemployment rights apply to veterans whose cumulative period of uniformed service does not exceed five years while employed by the same **employer**. Time spent in National Guard and reservist training does not count towards the five-year period.

6.8.5 Discharge

If time served is greater than 30 days, but less than 181 days, an employee may not be discharged within 180 days of reemployment, except for just cause. If time served is greater than 180 days, an employee may not be discharged for one year, except for just cause.

6.9 Emergency Conditions/Disaster Leave

6.9.1 Emergency Volunteer Service

An employee who is a participant in any volunteer emergency service (e.g., fire protection, ambulance service, or search and rescue) shall not schedule him/herself for on-call duty during work hours. In the event an employee is required to respond to an emergency during normal working hours, s/he shall remain in full employment status and shall receive total regular compensation while performing the volunteer service for the period that s/he would have been working for the **employer**.

6.9.2 Emergency Road Conditions

1. Any non-exempt employee who is unable to report to work due to road closures or hazardous road conditions caused by ice, snow, floodwaters, washouts, or slides shall not receive regular salary. Employees are advised to use their best judgment in making a decision of whether or not to report to work under such conditions. Should an employee decide to remain at his/her residence, all reasonable attempts should be made to notify his/her immediate supervisor. Any employee wishing to receive payment for time missed due to hazardous road conditions may do so by using either accrued annual leave or accrued compensatory leave time.
2. Any non-exempt employee who reports to work late due to road closures or hazardous road conditions will be compensated only for the actual hours worked. In the event the employee wishes to receive a full day's pay, s/he may use annual leave or accrued compensatory leave time to complete the normal work period.
3. Any employee who elects not to report to work due to hazardous road conditions or reports to work late under such conditions shall not be subject to discipline. In the event the supervisor is in doubt of the employee's reasoning, the final decision shall be made by the **employer** on the basis of documentation or confirmation of the hazardous conditions by either a law enforcement agency or the appropriate public works agency having jurisdiction over the roadways in question.

6.9.3 Disaster Area Declaration

1. "Disaster Area" is defined as a designated area affected by an event declared to be a disaster by a state or federal governmental agency duly authorized to make such designation. Employees who are unable to report to work due to a disaster may use accrued annual leave or compensatory leave time as compensation for scheduled time not worked.
2. Employees shall make every effort to report to work as soon as is reasonable under such conditions provided the **employer's** operation is open and functioning. An employee who has made such an effort, yet fails to report to work under such declared "disaster" conditions, shall not be subject to discipline. Employees shall make every effort to report their circumstances to their immediate supervisor.

6.10 Blood Donor Leave

6.10.1 Policy

Employees may be granted reasonable time off during their work shift for the purpose of donating blood when participating in an **employer-**sponsored blood donation. All such absences shall be scheduled with the employee's supervisor. In no event shall an employee be eligible for overtime as a result of donating blood.

6.11 Leave for Parents of Children Enrolled in School

6.11.1 Policy

For **employers** with 50 or more employees employed for 20 or more calendar weeks per year, those employees who are parents of children enrolled in public or private school (K-12) are entitled to four hours of unpaid leave, per school year, for each child enrolled in school. The employee may use the entitled leave time to:

- a. Attend parent-teacher conferences;
- b. Attend school-related activities during regular school hours;
- c. Volunteer or otherwise be involved at the school in which the child is enrolled during regular school hours; and
- d. Attend school-sponsored events.

The time for the leave must be mutually agreed upon by the employee and the **employer**. The employee must request the leave in writing at least five school days prior to the date on which the leave is to be taken. The employee may also be required to furnish documentation demonstrating that s/he was present at the school activity for which the leave was provided.

6.11.2 Retaliation

An employee shall not be retaliated against for utilizing the leave described in this section. Any employee who believes s/he has been retaliated against as a result of having taken leave under this section may file a claim with the Nevada Labor Commissioner. The **employer** shall provide the employee with all of the forms necessary for the claim filing.

6.12 Leave for Nursing Mothers

6.12.1 Policy

As required by federal law, the **employer** will provide unpaid “reasonable” breaks each time an employee needs to express breast milk for her nursing infant who is up to one-year old. Employees may elect to use their paid break times for this purpose. The **employer** will furnish a private space, other than a bathroom, for that activity. The space will be shielded from view and free from interruption. Employers with less than 50 employees may be exempt if they can demonstrate requirements would impose an undue hardship by causing significant difficulty or expense.

private space, other than a bathroom, for that activity. The space will be shielded from view and free from interruption. Employers with less than 50 employees may be exempt if they can demonstrate requirements would impose an undue hardship by causing significant difficulty or expense.

7. BENEFITS

7.1 Health Insurance Coverage

7.1.1 Eligibility

Eligible employees as defined in the group health insurance plan are eligible to enroll in the group health insurance plan effective the first of the month following thirty (30) days of employment. Dependents of employees, as defined in the current plan document, are also eligible for coverage under the insurance plan at the employee's expense. Employees must authorize a payroll deduction of any share of the health coverage premium which is to be paid by the employee.

7.1.2 Benefits

The specific terms and conditions of coverage are specified in the plan document for medical, dental, vision, and prescription drug insurance issued by the insurance company.

7.1.3 Plan Changes

The **employer** will, from time to time, evaluate the health coverage plan that is offered and make adjustments, as the **employer** deems appropriate, in the level of coverage and the amount of premium cost to be paid by the **employer**. Affected employees will be notified of any plan changes.

7.2 Life Insurance Coverage

7.2.1 Eligibility

Eligible employees, as defined in the life insurance plan, are covered by an employer-paid term life insurance and accidental death and dismemberment insurance plan effective the first of the month following thirty (30) days of employment.

7.2.2 Policy

The specific terms and conditions of coverage are specified in the plan document issued by the insurance company and are available from the Human Resources Manager.

7.2.3 Coverage

Eligible employees are covered by a life insurance policy in the amount of \$30,000.

7.3 Retirement

As defined in NRS 286, the **employer** is considered a public employer and employees in positions considered to be half-time or more, according to the full-time work schedule for at least 120 consecutive workdays, are covered by the Public Employees Retirement System (PERS). Eligibility for membership in PERS for elected officials is covered in NRS 286.293. Eligibility for membership in PERS for district judges, justices of the peace, and municipal judges is covered in NRS 1A.

7.4 Workers' Compensation

Employees are insured under the provisions of the State Workers' Compensation Act for occupational injuries and diseases that arise/arose out of and in the course of their employment. Employees are required to report all on-the-job accidents, injuries, or illness to their immediate supervisor as soon as reasonably possible or within 24 hours of the accident, injury, or illness. Failure to report may impact workers' compensation benefits. Employees are also required to complete and submit to the **employer** the Form C-1 within seven days of the accident, injury, or illness.

regardless of whether medical attention was received.

The following provisions are adopted pursuant to and are intended to implement the requirements of NRS 281.390:

1. When an employee is eligible at the same time for benefits for temporary total disability under NRS 616A to 616D, inclusive, or NRS 617, and for any leave benefit the employee may, by giving notice to the Human Resources Manager, elect to continue to receive normal pay instead of the benefits under those statutes until all accrued sick leave, comp time, annual leave, or approved catastrophic leave (if any), in this order, is exhausted. The **employer** will notify the Workers' Compensation Administrator of the election. The **employer** will continue to pay the employee's normal pay, but charge against the employee's accrued leave time as taken during the pay period an amount which represents the difference between normal pay and the amount of any benefit for temporary total disability received, exclusive of reimbursement or payment of medical or hospital expenses under NRS 616A to 616D, inclusive, or NRS 617 for that pay period.
2. When the employee's accrued leave time is exhausted, payment of normal pay under subsection 1 must be discontinued and the **employer** will promptly notify the Workers' Compensation Administrator so that it may begin paying the benefits to which the employee is entitled directly to the employee.
3. An employee who declines to make the election provided in subsection 1 may use all or any part of the leave benefit normally payable to the employee while directly receiving benefits for temporary total disability under NRS 616A to 616D, inclusive, or NRS 617, but the amount of leave benefit paid to the employee for any pay period must not exceed the difference between normal pay and the amount of any benefit received, exclusive of reimbursement or payment of medical or hospital expenses under those statutes for that pay period.
4. If the amount of the employee's leave benefit is reduced, pursuant to subsection 3, below the amount normally payable, the amount of leave time charged against the employee as taken during that pay period must be reduced in the same proportion.
5. An employee may decline to use any part of the leave benefit normally payable to the employee while receiving benefits under NRS 616A to 616D, inclusive, or NRS 617. During that period of time, the employee will be considered on leave of absence without pay.

7.5 Transitional Duty

7.5.1 Policy

The **employer** is committed to providing work, when possible, for employees who have been restricted by a treating health care provider due to a work-related injury or illness. Such work will be provided subject to availability. Work will be assigned according to the nature of the injury or illness and the limitations set forth by the treating health care provider. Every effort will be made to place employees within their own departments. If necessary, an employee will be placed wherever appropriate work is available.

7.5.2 Compensation

While on transitional duty, employees will continue to receive their regular rate of pay. Employees who are placed outside their department will continue to have their pay charged to their regular department.

7.5.3 Duration and Conditions of Transitional Duty

An employee on transitional duty must furnish a written update from the health care provider to the workers' compensation coordinator after each visit in order to remain in the reassigned job. Transitional duty assignments are

limited to a period of 90 days, subject to review.

7.6 Deferred Compensation

Employees may defer a portion of their taxable income by participation in a deferred compensation plan as provided for in NRS 287.

Initial enrollment may be made at any time during the year. Changes in contribution are governed by the terms and conditions of the particular plan.

Only income earned after the effective date of initial or increased participation can be deferred.

Prior to retirement, participants may withdraw the balance of their deferred compensation account only upon termination of employment. In the event of an unforeseeable emergency, the employee may withdraw a portion of the account needed to pay for the emergency. The IRS defines the conditions for and requires **employer** approval of early withdrawal on a hardship basis. The City Manager will review and approve all requests for early withdrawal.

7.7 Educational Assistance

The **employer**, subject to availability of budgeted funds, may provide educational assistance for tuition and/or fees, other than books, for career-related education, limited to one (1) job-related degree per employee. The following qualifications must be met:

1. Employees must be in a regular full-time status.
2. The course must be taken from an accredited institution of higher learning or an **employer**-approved adult education class.
3. Approval for college level courses requires completion of an Educational Assistance Request form prior to starting the program or entering into any financial commitment. Any employee who fails to obtain prior approval will not be eligible for education assistance payments.
4. All employee expense associated with the Educational Assistance Program must be submitted to the Finance Department for processing.
5. The employee must submit receipts for the eligible expenses and grades received.
6. Employee requests for eligible education assistance will be based upon the grade received in the course. Educational materials used in conjunction with an approved class may also qualify for reimbursement.
 - a. For a grade of "A" or "B" or "PASS" 100%
 - b. For a grade of "C" 85%
 - c. For a grade of "D" or below 0%
7. Employees receiving reimbursement from any outside source, such as Department of Veteran Affairs or scholarships, may use the above formula. The total reimbursement to the employee by the City of Elko shall not exceed 100% of the total eligible expenses received from all sources.
8. Time spent in class or studying by employees who voluntarily apply for educational assistance will not be classified as hours worked and employee will not be paid by the City for the time spent in class or studying. In the event that the class is only scheduled during work hours, the employee may use annual leave to attend class. Annual leave must be approved according to policy. Employees who take a class at the direction of management will be allowed to count time spent class as work time.
9. The course must be job-related or be required for a degree that is job-related. An employee must request approval for educational assistance from the Department Head. Upon approval by the Department Head, the request will be forwarded for review and final approval by the Human Resources Manager. Such approval may be conditioned upon meeting commitments for continuing employment and/or job-related conditions. Employees who do not complete the course with a notice

of “satisfactory” or grade of “C” or better, or who voluntarily terminate their employment within six months of receiving educational assistance must reimburse the **employer** for the full amount of the assistance provided.

10. Employees who are terminated during enrollment because of a reduction in force or job elimination and are unable to complete an approved course will be reimbursed for the full amount of the eligible costs to date. Employees who are terminated for cause prior to completing the course will not be reimbursed for expenses associated with the course.

8. TRAVEL EXPENSES

8.1 Policy

Employees will be reimbursed for reasonable travel expenses which are required for the performance of their assigned duties and which are appropriately authorized.

To obtain reimbursement, employees must submit an expense report on a proper claim form and substantiate the amounts claimed as required below.

Reimbursement shall be made only for expenses actually incurred, paid, and authorized under this policy and procedure.

8.2 Allowances

8.2.1 Mileage

The **employer** will attempt to make a vehicle available to employees to use for official travel. If there are no **employer** vehicles available and the employee must use a personal vehicle, or the employee chooses to use a personal vehicle for convenience, mileage will be reimbursed at 75% of the current IRS mileage rate, per mile. If an employee drives a personal vehicle when commercial air travel would be more efficient, the mileage reimbursement will be limited to the cost of the airfare. Employees using a personal vehicle for official travel must have proof of current registration and insurance for that vehicle.

8.2.2 Lodging

Moderate cost lodging should be pre-arranged at a location nearest to the meeting/training site as possible.

Reimbursement will be based on the cost of a single room if available. A receipt is required for reimbursement of incurred lodging expenses. Pre-arranged, extended stay lodging, or alternate lodging for work related purposes, may be considered by the City Manager on a case by case basis.

8.2.3 Meals

1. The cost of meals for breakfast, lunch and dinner, shall be reimbursed according to the current US General Services Administration (GSA) published per diem rates, available at www.gsa.gov.
2. If the cost of meals purchased exceeds these allowances, the employee may apply to the City Manager for a variance on the allowances by submitting such request with the original receipts and an explanation for the expenditures.
3. Except as provided in item 6 below, an employee shall be entitled to reimbursement for the cost of breakfast only if required to leave the normal work location prior to 7:00 am and return to such location after 10:00 am.
4. Except as provided in item 6 below, an employee shall be entitled to reimbursement for the cost of lunch only if required to leave the normal work location prior to 10:00 am and return to such location after 3:00 pm.
5. Except as provided in item 6 below, an employee shall be entitled to reimbursement for the cost of dinner only if required to leave the normal work location prior to 4:00 pm and return to such location after 6:00 pm.
6. No reimbursement shall be allowed for any meal which is provided or made available to an employee as part of the cost of a meeting, class, or other function, regardless of whether the employee partakes of the provided meal or purchases the meal elsewhere.

8.2.4 Other Expenses

Necessary business telephone calls, parking charges, and/or ground transportation will be reimbursed.

8.2.5 Unallowable Expenses

1. The **employer** does not reimburse for fines and parking tickets, towing or impounding fees, traffic violations, alcoholic beverages, personal entertainment, tobacco or smoking products, or expenses unrelated to the business purpose of the travel as determined by the City Manager.
2. The **employer** discourages combining personal travel with business travel due to the public's perception regarding use of **employer** funds. Employees must clearly disclose any personal travel and/or annual leave to be taken in conjunction with **employer** travel. An employee's family or guest may accompany the employee on **employer** business, provided travel is not in an **employer** vehicle. The **employer** will not, however, pay any additional expenses so incurred.

8.3 Processing

8.3.1 Claims

All claims with required receipts for travel expenses are to be submitted for approval to the Department Head, and forwarded for payment, to the Finance Department within sixty (60) calendar days following the trip.

8.3.2 Advances

Employees may request an advance to cover anticipated expenses. This request must be made not more than three (3) weeks nor less than one (1) week before departure. When advanced funds have been provided, all unused funds must be returned with a claim form and submitted to the Finance Department within fourteen (14) working days following any trip.

9. EMPLOYEE SEPARATION

9.1 Resignation

9.1.1 Notice

Employees are requested to provide at least two weeks' notice, in writing, to their supervisor or manager of their intent to resign their employment. At the sole discretion of the **employer**, an employee may withdraw a resignation at any time prior to its effective date. An employee's failure to give appropriate notice when resigning may constitute cause for denying reemployment with the **employer**.

9.1.2 Return of Employer Property

When resigning or being terminated, an employee must return all **employer** property including clothing, keys, credit cards, employee ID, tools, equipment, and other items of value prior to the last day of employment.

9.1.3 Job Abandonment

The **employer** may consider employees who are absent from work without approved leave for a period of three (3) consecutive workdays to have abandoned their position and, thus, to have resigned.

9.1.4 Final Paycheck

The **employer** shall issue a paycheck by the next payday following the effective date of resignation or discharge.

9.2 Layoffs

The **employer** may lay off employees because of lack of work; lack of funds; material change in duties or organization; or in the interests of economy, efficiency; or for other appropriate causes, as determined by the **employer**. In cases where the application of this policy conflicts with a collective bargaining agreement that is in effect between a recognized employee organization and the **employer**, the provisions of the collective bargaining agreement shall govern.

An employee hired for a project of limited duration (e.g., grant funded) will not be afforded rights relative to layoff at the end of the funding period unless, at the time of hire, the **employer** elected to grant layoff rights to the employee.

9.2.1 Alternatives to Layoff

Whenever a layoff is anticipated, the **employer** will notify employees whose jobs may be affected and explain all available options to them. The **employer** will make reasonable efforts to integrate affected employees into other available positions. The **employer** may also utilize options in lieu of layoffs where feasible such as part-time work schedules, reduction in work hours, job sharing, or reductions in class or pay.

9.2.2 Order of Layoffs

The order of layoff among employees in the same class within a department will be as follows: employees serving an introductory period will be considered first, and then all other employees will be considered.

In deciding which regular employees shall be laid off and which retained, the **employer** shall consider job-related factors such as job knowledge, skill, and ability to do the required work; previous work experience, including ability to perform other jobs which the employee may be called upon to perform as a result of the layoff; attendance, safety, and disciplinary records; performance evaluations while with the **employer**; and efficiency of operations. Where two employees are equally qualified based on the application of these factors, the **employer** shall retain the employee with the most time served since the current hire date.

9.2.3 Designation of Employees to be Laid Off

In the event of a layoff, the Human Resource Manager shall provide the City Manager with a list designating the

class, position, and names of employees to be laid off. The Human Resources Manager, with input from the Department Head, shall be responsible for providing the rationale for selecting particular employees within the same job class for layoff. The Human Resources Manager shall review the list for conformance to **employer** policy, and together with the City Manager, will make the final determination.

9.2.4 Layoff Notice

Upon confirmation of the layoff list, the Human Resources Manager shall provide each affected employee with a written notice of layoff. Such written notice of the layoff shall either be hand-delivered or sent by certified mail, return receipt requested, to the current address on record or via email utilizing the read receipt function to the affected employees at least ten (10) days prior to the expected date of layoff.

9.2.5 Reinstatement

Employees who have been laid off shall be placed on one or more reinstatement lists. All employees laid off from positions in the same class shall be placed on a single reinstatement list without regard to department. A laid-off employee may request and receive placement on a reinstatement list for any job class in which the employee previously held post-introductory status. When a vacancy occurs in the same job class for which a reinstatement list exists, the Human Resources Manager shall fill the vacancy using the appropriate reinstatement list.

9.2.6 Reinstatement Process

The most recently laid-off employee on the applicable reinstatement list who is qualified for the position and is willing to accept employment in the class and department where a vacancy exists shall be reinstated. The Human Resources Manager may select the most appropriately qualified employee based upon the same considerations described under *Order of Layoffs* section. An employee reinstated to a position in the same class and department as held prior to the layoff will not be required to serve an additional introductory period, provided the required introductory period had been served prior to layoff.

9.2.7 Duration of Reinstatement List

The names of employees laid off shall be maintained on a reinstatement list for one year from the date of layoff. Persons on this list who are hired in positions in the same or (should they apply for and be selected for a vacancy) higher class from which they were laid off shall, upon such hire, be removed from the reinstatement list. An employee who refuses reinstatement to the same position from which the layoff occurred shall be removed from the reinstatement list. Persons reinstated to a position in a lower class from which they were laid off or called to work as a casual worker shall remain on the reinstatement list for the designated period of time the reinstatement list is active. Persons who refuse reinstatement to a position in a lower class from which the layoff occurred shall remain on the reinstatement list for the designated period of time the reinstatement list is active.

10. PERFORMANCE MANAGEMENT

10.1 Statement

The **employer's** performance management system is designed to be a formal, objective, consistent, and ongoing process to assess the on-the-job effectiveness of each employee by communicating to the employee the status and the objectives and standards of performance which the employee is expected to achieve. The **employer** views performance management as an ongoing process that focuses on the future and continued improvement.

10.1.1 Purpose

The performance management process exists to ensure timely and periodic two-way communication between employees and supervisors regarding job performance. This process is designed to:

1. Clarify the **employer's** goals and link them to performance expectations.
2. Assist employees in reaching their full potential by identifying training needs and developing specific plans for continual improvement.
3. Identify and document performance achievements and deficiencies.
4. Provide ongoing opportunities for supervisors to coach and encourage personal development and improved job performance.

Performance evaluations, whether formal or informal, do not create a contract or other right to continued employment.

10.1.2 Ongoing Communication Regarding Performance

It is the policy of the **employer** and the responsibility of each supervisor to routinely provide employees with accurate, constructive feedback regarding job performance expectations, accomplishments, deficiencies, and opportunities for growth.

10.1.3 Frequency of Performance Evaluations

Formal performance evaluations are to be conducted a minimum of once a year. Additionally, supervisors shall conduct formal evaluations at the following times:

1. For new employees, no later than six (6) months after initial hire.
2. Six (6) months following transfer to a new position within the same class.
3. When there is a significant change (either improvement or deterioration) in performance or behavior affecting the job.
4. Within three (3) months following an evaluation documenting that the employee's performance needs substantial improvement. (The **employer** encourages frequent, ongoing meetings between the employee and supervisor.)
5. At any other more frequent interval as the supervisor deems appropriate. In addition, informal performance communications (feedback) should occur routinely and regularly throughout an evaluation cycle.

10.1.4 Written Record

Formal evaluations will be in writing, utilizing the approved performance evaluation form. All information on the form shall be consistent with the information communicated verbally during the performance evaluation meeting with the employee. Employees will be allowed an opportunity to comment on the evaluation, sign the forms, and receive a copy. A copy of the evaluation, along with any written comments by the employee, will be placed in the employee's master personnel file.

10.1.5 Personnel Actions Resulting from Performance Evaluations

Personnel actions, whether positive or adverse, are based on an assessment of the overall performance and behavior of the employee, rather than on a single performance evaluation.

Substandard performance or violation of a policy or procedure which necessitates disciplinary action is not part of the performance evaluation process and will be addressed as provided in the *Disciplinary Actions and Appeals* section of these policies.

10.1.6 Employee Involvement

Supervisors will conduct evaluations in a private meeting with the employee. The **employer** strongly encourages employee participation in the performance evaluation process. Opportunities for participation include the following:

1. Supervisors providing employees with an opportunity to present a self-evaluation which the supervisor may then consider prior to and discuss during the evaluation meeting.
2. Discussions between the supervisor and the employee for the purpose of establishing performance expectations or goals for the next evaluation period.
3. If requested by the employee, a discussion with the next level supervisor to review any disagreements over a performance evaluation.

11. 11. DISCIPLINARY ACTIONS AND APPEALS

11.1. Discipline and Appeal

11.1.1. Justification for Discipline

Disciplinary action, up to and including termination, may be taken against an employee for unsatisfactory performance or for misconduct including, but not limited to, the following:

1. Rude or offensive conduct by an employee in the course and scope of employer's duties, or discourteous treatment of members of the public or a fellow employee, or any other act or omission that creates the appearance of impropriety on the part of the employee, or erodes the public confidence in the employee or **employer**.
2. Falsification of or making a material omission on forms, records, or reports including applications, timecards, and other **employer** records.
3. Absence from work without permission or without prior notification to an appropriate supervisor/manager, habitual absence or tardiness, or misuse of sick leave.
4. Unauthorized possession, removal, or use of the **employer's** property including, but not limited to, funds, records, keys, confidential information of any kind, equipment, supplies, or any other materials.
5. Insubordination, refusing to follow directions, or other unprofessional conduct directed toward a supervisor/manager.
6. Harassment, bullying, or other prohibited behavior directed toward another employee, member of the public, vendor, or anyone doing business with the **employer**, or anyone present on premises owned or controlled by the **employer**.
7. Actual or threatened violence including, but not limited to, intimidation, overt or subtle threats, harassment, stalking, or any form of coercion.*
8. Possession or inappropriate use of drugs, prohibited substances, or alcohol on property owned or controlled by the **employer** or while on duty or during an on-call status.*
9. Possession, bringing, or aiding others in bringing unauthorized firearms, weapons, hazardous biological material or chemicals, or other dangerous substances onto property owned or controlled by the **employer**.*
10. Violation of safety or health policies or practices, or engaging in conduct that creates a safety or health hazard to other employees, the public, vendors, or oneself.
11. Dishonesty, including intentionally or negligently providing false information.
12. Violating or failing to comply with federal, state, or local law (including the Elko City Code) or the **employer's** policies, rules, regulations, and/or procedures.
13. Unsatisfactory work performance.

**Except as may be required of a peace officer in the course of assigned duties.*

11.1.2. Forms of Disciplinary Action

Disciplinary action includes, but is not limited to, one or more of the following:

1. Verbal warning
2. Written reprimand
3. Suspension*

4. Pay reduction*
5. Demotion
6. Termination

For items 2-5 above, on or before the effective date of the disciplinary action, the employer will deliver to the employee a written notice of discipline with signature blocks for the employee and the employer. The employee's signature block will indicate that the employee acknowledges receipt of the written notice of discipline. If the employee refuses to sign the written notice, the employer will note the refusal on the written notice. The written notice will then be placed in employee's master personnel file and a copy will be provided to the employee. If the employee is terminated, the employee will receive a written notice of termination.

**Exempt employees are subject to the following rules regarding disciplinary pay reductions and unpaid suspensions:*

- Pay reductions may be imposed as discipline due to violations of safety rules, including rules related to the prevention of serious danger in the workplace or to other employees. An example would be violating a rule that prohibits smoking around flammable material.
- Disciplinary pay reductions will be consistent with NRS 608.100 and any other applicable statutes and regulations.
- Unpaid suspensions may be imposed for infractions of workplace conduct rules, such as rules prohibiting sexual harassment, workplace violence, drug or alcohol use, or for violating state or federal laws. The suspension must be for serious misconduct, not for performance issues. Suspensions must be in full-day increments.
- Unpaid suspensions for performance issues will be made in full-workweek increments.

11.1.3. Procedural Due Process

Prior to taking disciplinary action involving suspension, reduction in pay, demotion, or termination against any regular employee, the **employer** will provide the employee with procedural due process. Procedural due process for an employment related disciplinary action includes, among other actions, providing the employee with notice of the reason for the disciplinary action and the opportunity to be heard in response to the proposed disciplinary action prior to a final decision. The employer will also provide the employee with the opportunity to appeal a disciplinary action involving suspension, reduction in pay, demotion, or termination. An employee who is covered by a collective bargaining unit may exercise their rights under either this policy or the collective bargaining agreement, but not both.

1. Written Notice

If the proposed disciplinary action involves a suspension, a reduction in pay, a demotion, and/or a termination, written notice of the proposed disciplinary action will be hand-delivered or sent by certified or registered mail to the employee. If the notice is hand-delivered, the date of delivery shall be the date of actual receipt by the employee. If the notice is sent by certified or registered mail, the date of delivery to the employee shall be the date of first attempted or actual delivery by the U.S. Postal Service. The employee's failure or refusal to sign for a certified letter sent with a request for a return receipt shall not affect the date of delivery. The written notice to the employee will include the following information:

- The nature of the disciplinary action proposed;
- The effective date of the proposed disciplinary action, which may be the same as but not earlier than the date of delivery;
- A statement of the proposed disciplinary action together with appropriate summaries or documentation, statements, and/or other evidence supporting the proposed disciplinary action;

- A statement advising the employee of the right to file a written response, and/or to submit a written request for a pre-disciplinary conference with the Department Head or Assistant City Manager within five (5) work days of receipt of the notice of proposed disciplinary action (in the event that the Assistant City Manager is the Department Head, pre-disciplinary conference may be scheduled with the City Manager); and
- The following statements:
 - (a) The failure of the employee to file a written response within five (5) work days of receipt of the notice of proposed disciplinary action constitutes a waiver of the right to appeal the disciplinary action stated in the notice; and
 - (b) The employee's failure to request a pre-disciplinary conference within five (5) work days of receipt of the notice of proposed disciplinary action or the failure to attend a previously requested and scheduled pre-disciplinary conference constitutes a waiver of the right to have a pre-disciplinary conference.

2. Employee Review

Upon request, the employee will be given the opportunity, as soon as practical, to review the documents or other evidence (except for confidential and/or privileged documents) used to support the proposed disciplinary action.

3. Pre-Disciplinary Conference

A pre-disciplinary conference is a meeting conducted with an employee, typically by the employee's supervisor, prior to imposing a disciplinary action. For the employer, the pre-disciplinary conference is used to hear the employee's position on the proposed disciplinary action and to determine an appropriate response.

If the employee timely requests a pre-disciplinary conference, the immediate supervisor, department head and/or Assistant City Manager (as appropriate) will schedule the pre-disciplinary conference with the employee and the employee's representative (if the employee requests that a representative be present) to review the grounds for the proposed disciplinary action. In the event that the Assistant City Manager is the Department Head, pre-disciplinary conference may be scheduled with the City Manager. The person in the employee's chain of command proposing the discipline will be present at the pre-disciplinary conference and the employee will be provided with an opportunity to present relevant information which may impact the proposed disciplinary action, to include its nature and severity.

4. Implementation of Discipline

No later than five (5) work days from the **employer's** receipt of the employee's written response or conclusion of the pre-disciplinary conference, either the Department Head of the department in which the employee is employed (or a position which is the functional equivalent), the Assistant City Manager, or the City Manager, will render and issue a written decision to the affected employee. The City Manager shall determine which individual renders the decision based on such factors as perceived or actual bias, familiarity with the facts and circumstances of the matter, expertise in the subject matter at issue, and the needs of the employer. Notwithstanding the foregoing, if the City Council determines at a subsequent appeal hearing that the decision maker selected by the City Manager served or should have served as a witness in the behavior/conduct leading up to the intended disciplinary action, or otherwise has a conflict related to the situation, an alternative decision maker who does not come under the authority of the final decision maker may be selected by the City Council. The alternative decision maker will be a person who is functionally equivalent to the decision maker previously selected by the City Manager (e.g. the head of a different department if the employee's department head was previously selected), but who does not have a conflict, whether perceived or actual. The selection of the alternative decision maker by the City Council cannot be appealed separately.

The written decision will inform the employee that:

- The proposed disciplinary action will be implemented for the reasons stated in the written notice; or
- The proposed disciplinary action will be implemented for the reasons stated in the written notice but will be modified, with an explanation; or
- The proposed disciplinary action is rescinded, with an explanation.

5. Appeal

- An employee may appeal a disciplinary action to the City Council by filing a written notice of appeal with the Assistant City Manager or City Manager, as appropriate, within five (5) work days of the date of receipt of written notification of the disciplinary action. The written notice of appeal must state the basis for the appeal and admit or deny each of the **employer's** grounds supporting the decision.
- If the employee subject to discipline fails to file a written notice of appeal conforming to these requirements by the above-stated deadline, the employee shall be deemed to have waived the right to appeal, unless otherwise provided by law.
- After an employee has submitted a timely notice of appeal to the Assistant City Manager or City Manager, as appropriate, the employer will set a date for a disciplinary appeal hearing before the Elko City Council. The disciplinary hearing may be subject to the closed meeting requirements contained in NRS Chapter 241.
- The procedures pursuant to which the City Council shall hear an appeal pursuant to this section are as follows:
 1. The employee shall first describe the decision being challenged, state the grounds for the appeal, and present a summary of the employee's argument.
 2. The employee may then testify, submit documents and/or call witnesses in support of the appeal.
 3. The employer shall then state the grounds for opposing the appeal.
 4. The employer may submit documents and/or call witnesses in proposition to the appeal.
 5. The employee may then present a rebuttal argument, witnesses and/or documents. The failure of an employee to provide argument, witnesses and/or documents on rebuttal shall not be considered by the City Council in deciding the appeal.
 6. The employee and the employer, respectively, may present closing arguments.
 7. The employee and the employer are entitled to be represented by counsel, and present testimony, evidence and argument on all issues raised on appeal.
 8. The City Council may, if it appears helpful to a clear understanding of the issues, consider matters not raised at the hearing.
 9. All testimony by the employee and the parties' witnesses shall be under oath.
 10. The rules of evidence shall not apply.
 11. The Mayor or Mayor Pro Tem may limit testimony or other proffered evidence that is duplicative, unnecessarily argumentative or not reasonably related to the matter being appealed.
 12. The Mayor or Mayor Pro Tem may terminate the hearing upon finding that sufficient testimony, documents and arguments have been presented to enable the City Council to fully deliberate and decide the appeal; provided, the Mayor or Mayor Pro Tem shall first

request from the employee a summary of all remaining matters employee intends to present at the hearing.

- The City Manager will issue to the parties the decision of the City Council following such hearing within five (5) working days. The decision of the City Council shall do one of the following:
 1. Affirm the disciplinary action;
 2. Affirm the disciplinary action in part and reverse the disciplinary action in part
 3. Affirm the disciplinary action in part, with conditions (e.g., a probationary period);
 4. Impose a lesser form of discipline;
 5. Reverse the disciplinary action;
 6. If the employee was terminated, reinstate the employee's employment, with or without back pay; or
 7. Remand the disciplinary action to a different but functionally equivalent decision maker.Except for the decision to remand the disciplinary action to a different by functionally equivalent decision maker (which is not appealable), the decision of the City Council is final and may only be appealed as provided for in a collective bargaining agreement if applicable, and/or as provided by law; provided the City Council may, in its discretion, enact an ordinance setting forth the requirements for a petition or other action seeking judicial review of the City Council's decision.

11.1.4. Public Hearing for Dismissed Employees

Pursuant to NRS 268.405, a public hearing is available for a dismissed employee other than a department head, city manager or city administrator who has been employed for 12 months or more. Such dismissed employee is not required to utilize an established pre-disciplinary conference and appeal process before requesting a public hearing. To utilize this statutory process, the employee must request a written statement specifically setting forth the reasons for the dismissal within 15 days of the date of dismissal. The **employer** shall furnish a written statement within 15 days after the request is received. Within 30 days after receipt of such written statement the dismissed employee may, in writing, request a public hearing before the City Council to determine the reasonableness of such action. The public hearing will occur within 15 days of receipt of such request. Any inconsistency between this policy and the requirements of NRS 268.405 shall be resolved in favor of NRS 268.405..

11.1.5. Administrative Leave During Disciplinary Proceeding

By notifying the employee in writing, the **employer** may place an employee on administrative leave, with or without pay pending an investigation of alleged misconduct or performance deficiencies, prior to or during a disciplinary proceeding, or during the review of the employee's response to a proposed disciplinary action. The notice of administrative leave will include a statement that the leave is not a disciplinary action. An employee placed on administrative leave without pay who is later reinstated without punitive disciplinary action being imposed will be reimbursed for any pay lost during the period of administrative leave.

12. DISPUTE RESOLUTION

12.1. Definition of Dispute

Subject to the exclusions listed below, a dispute is any disagreement between the **employer** and an employee pertaining to the application of the **employer's** personnel policies, or an allegation by an employee that the **employer** has failed to provide a condition of employment established by the **employer** or required by law. The term "dispute," as used herein, shall exclude the following:

1. Disciplinary action (including termination of an employee).
2. Complaints for which the **employer** provides an alternate dispute resolution process.
3. Any impasse or disagreement in collective bargaining negotiations.
4. Any matter within the scope of representation for employees in a recognized bargaining unit.
5. Any matter which may be or has been grieved under an applicable collective bargaining agreement.
6. Termination of an introductory employee.
7. Termination of an at-will employee.

12.2. Prohibition Against Retaliation

The **employer** shall not restrain, coerce, retaliate, interfere with, or discriminate against any employee based on the employee engaging in a protected activity, to include exercising the employee's rights under the dispute resolution process. No employee will be subject to retaliation for filing a complaint under this policy.

12.3. Dispute Resolution Procedures

Step 1. Discussion with Immediate Supervisor

1. Initially, employee should bring their concerns or complaints to their immediate supervisor. If the complaint involves the employee's supervisor, the employee should schedule an appointment with that supervisor to discuss the problem that gave rise to the complaint within five (5) work days of the date the incident occurred.
2. The immediate supervisor should respond in writing to the complaint within five (5) work days of the meeting held with the complainant employee.

Step 2. Written Complaint and Decision

1. If the discussion with the immediate supervisor does not resolve the problem to the mutual satisfaction of the employee and the supervisor, or if the supervisor does not respond to the complaint, the employee may submit a written complaint to the employee's director/department head
2. The employee's director/department head should forward a copy of the complaint to the HR Department.
3. The submission of the written complaint is due within five (5) work days of the response from the supervisor. The complaint should include:
 - The problem and the date when the incident occurred
 - Specify potential solutions to resolve the problem

- A copy of the immediate supervisor's written response or a summary of his or her verbal response and the date when the employee met with the immediate supervisor. If the supervisor provided no response, the complaint should state this.
- 4. Upon receipt of the formal complaint, the director/department head must schedule a meeting with the employee within five (5) work days to discuss the complaint. Within approximately five (5) work days after the discussion, the director/department head should issue a decision both in writing and orally to the employee filing the complaint.
- 5. Any dispute resolved at this step shall be subject to the review and confirmation of the City Manager before the resolution is effective. Such review will occur within ten (10) work days and the confirmation shall be final and binding.

Additional Guidance

- If an employee fails to appeal from one level to the next level of this procedure within the time limits set forth above, the problem should be considered settled on the basis of the last decision, and the problem should not be subject to further consideration.
- Because problems are best resolved on an individual basis, the conflict resolution procedure may be initiated only by individual employees and not by groups of employees. All complaints must be made in good faith.

Employer reserves the right to impose appropriate disciplinary action for any conduct it considers to be disruptive or inappropriate. The circumstances of each situation may differ, and the level of disciplinary action may also vary, depending on factors such as the nature of the offense, whether it is repeated, the employee's work record and the impact of the conduct on the organization.

13 Vehicle Operators Drug and Alcohol Policy

13.1. Purpose

The City of Elko is the employer referenced throughout this policy manual.

The employer seeks to operate a drug- and alcohol-free workplace that is in compliance with the Federal Department of Transportation (DOT) (49 CFR Part 40) and the Federal Motor Carrier Safety Regulations (FMSCR), as prescribed by the Federal Motor Carrier Safety Administration (FMCSA) (49 CFR Parts 382, 383, 387, 390-397, and 399). Therefore, it is the policy of the employer that all employees who perform safety-sensitive functions as defined in this policy, including employees required to maintain commercial driver's licenses (CDL), be drug and alcohol free.

To further this goal, the employer has implemented this Vehicle Operators Drug and Alcohol Policy. The policy provides the employer with reasonable measures to ensure that an employee's drug or alcohol use does not jeopardize the employer's successful operations, the employer's workplace, its employees, or the general public.

13.2. Coverage

The Vehicle Operators Drug and Alcohol Policy covers all employees who are required to obtain and maintain a CDL as a qualification for their position. All employees covered by this policy are referred to as "drivers" for the purposes of this policy. A CDL is required for all drivers that operate a vehicle:

1. In excess of 26,000 pounds Gross Vehicle Weight Rating (GVWR); or
2. Designed to carry 16 or more passengers (including the driver); or
3. Of any size which is used in the transportation of a placardable amount of hazardous material.

This includes, but is not limited to: full-time, part-time, casual, intermittent, or occasional drivers. Mechanics who operate commercial vehicles to test their operations are specifically covered by this policy.

13.2.1 Basic Information about Alcohol and Controlled Substances

Section 382.601(b) of the FMSCR requires that all employees be provided with information concerning the effects of alcohol and controlled substances use on an individual's health, work, and personal life; signs and symptoms of an alcohol or a controlled substances problem; and available methods of intervening when an alcohol or a controlled substances problem is suspected.

1. Alcohol

a. Health Effects

- The liver is the primary site of alcohol metabolism and can be severely affected by heavy alcohol use. The three primary dangers are fatty liver, alcoholic hepatitis, and cirrhosis.
- Heavy alcohol use can also severely affect the gastrointestinal tract, contributing to inflammation of the esophagus, exacerbating peptic ulcers, and causing acute and chronic pancreatitis. It interferes with the absorption of nutrients from food and contributes to malnutrition.
- Heavy alcohol use affects the heart and vascular system, contributing to heart attacks, hypertension, and strokes.
- Either because of direct action or indirectly through the malnutrition, liver disease, and other effects it causes, alcohol depresses immune system functioning and increases the likelihood of infection.

- There is considerable evidence that alcohol abuse is associated with the incidence of cancer, particularly cancers of the liver, esophagus, nasopharynx, and larynx.
 - Heavy alcohol consumption causes brain damage, manifested through dementia, blackouts, seizures, hallucinations, and peripheral neuropathy.
 - Birth defects.
- b. Workplace Issues
- Alcohol affects vision, reflexes, coordination, emotions, aggressiveness, and judgement, which deprives a professional driver of most of the tools s/he relies upon to perform safely.
 - Hangovers also present a risk to driving behavior. The sick feeling associated with hangovers, including headaches, nausea, and other symptoms, can distract a driver's attention and lead to accidents even though alcohol may no longer be detectable in the body.
- c. Signs and Symptoms of Use
- Evidence of presence of alcohol: Bottles, cans, and other containers which alcohol-containing beverages may have been purchased and/or consumed in; bottle caps from alcohol containers; bottle or can openers; drivers drinking from paper bags; odor of alcohol on containers or on driver's breath.
 - Physical symptoms: Reduction of reflexes, slurred speech, loss of coordination, unsteady gait.
 - Behavioral symptoms: Increased talkativeness, reduced emotional control, distorted judgment, impaired driving ability, gross effects on thinking and memory.
2. Marijuana
- a. Health Effects
- When marijuana is smoked, it is irritating to the lungs. Chronic smoking causes emphysema-like conditions.
 - One joint causes the heart to race and be overworked. People with undiagnosed heart conditions are at risk.
 - Marijuana is commonly contaminated with a fungus called Aspergillus, which can cause serious respiratory tract and sinus infections.
 - Marijuana smoking lowers the body's immune system response, making users more susceptible to infection.
 - Chronic smoking causes changes in brain cells and brain waves.
 - Decrease in fertility.
 - Birth defects.
 - Delayed decision making, diminished concentration, impaired short-term memory, erratic cognitive function, distortion of time estimation.
- b. Workplace Issues
- The active chemical, THC, is stored in body fat and slowly released.
 - Marijuana smoking has long-term effects on performance.
 - Increased THC potency in modern marijuana increases the impairment.
 - Combining alcohol or other depressant drugs with marijuana increases impairment.
- c. Signs and Symptoms of Use

- Evidence of presence of marijuana: Plastic bags (commonly used to sell marijuana); smoking papers; roach clip holders; small pipes of bone, brass, or glass; smoking bongs; distinctive odor.
 - Physical symptoms: Reddened eyes; stained fingertips from holding joints; chronic fatigue; irritating cough; chronic sore throat; accelerated heartbeat; slowed speech; impaired motor coordination; altered perception; increased appetite.
 - Behavioral symptoms: Impaired memory; time-space distortions; feeling of euphoria; paranoia; false sense of power.
3. Cocaine
- a. Health Effects
- Regular use may upset the chemical balance of the brain. As a result, it may speed up the aging process by causing damage to critical nerve cells.
 - The onset of nervous system illnesses such as Parkinson's disease could also occur.
 - Cocaine use causes the heart to beat faster and harder and rapidly increases blood pressure. In addition, cocaine causes spasms of blood vessels in the brain and heart. Both effects lead to ruptured vessels causing strokes or heart attacks.
 - Strong dependency can occur with one "hit" of cocaine. Usually mental dependency occurs within days of using. Cocaine causes the strongest mental dependency of any known drug.
 - Treatment success rates are lower than those of other chemical dependencies.
 - Cocaine is extremely dangerous when taken with depressant drugs. Death due to overdose is rapid. The fatal effects of an overdose are not usually reversible by medical intervention.
- b. Workplace Issues
- Extreme mood and energy swings create instability. Sudden noise causes a violent reaction.
 - Lapses in attention and ignoring warning signals increases probability of accidents.
 - High cost frequently leads to theft and/or dealing.
 - Paranoia and withdrawal may create unpredictable or violent behavior.
 - Performance is characterized by forgetfulness, absenteeism, tardiness and missing assignments.
- c. Signs and Symptoms of Use
- Evidence of presence of cocaine: Small folded envelopes, plastic bags, or vials used to store cocaine; razor blades; cut-off drinking straws or rolled bills for snorting; small spoons; heating apparatus.
 - Physical symptoms: Dilated pupils, runny or irritated nose, profuse sweating, dry mouth, tremors, needle tracks, loss of appetite, hyper-excitability, restlessness, high blood pressure, heart palpitations, insomnia, talkativeness, formication (sensing of bugs crawling on skin).
 - Behavioral symptoms: Increased physical activity, depression, isolation and secretive behavior, unusual defensiveness, frequent absences, wide mood swings, difficulty in concentration, paranoia, hallucinations, confusion, false sense of power and control.
4. Opioids
- a. Health Effects

- Intravenous users have a high risk of contracting hepatitis or AIDS when sharing needles.
- Increased pain tolerance. As a result, a person may more severely injure themselves and fail to seek medical attention as needed.
- Narcotic effects are multiplied when combined with other depressants causing an increased risk for an overdose.
- Because of tolerance, there is an ever increasing need for more.
- Strong mental and physical dependency occurs.
- With increased tolerance and dependency combined, there is a serious financial burden for the user.

b. Workplace Issues

- Side effects such as nausea, vomiting, dizziness, mental clouding and drowsiness place the user at high risk for an accident.
- Causes impairment of physical and mental functions.

c. Signs and Symptoms of Use

- Evidence of presence of opioids: Foil, glassine envelopes, or paper “bindles” (packets for holding drugs); balloons or prophylactics used to hold heroin; bloody tissues used to wipe the injection site; a pile of burned matches used to heat the drug prior to injection.
- Physical symptoms: Constricted pupils, sweating, nausea, and vomiting, diarrhea, needle marks or “tracks”, wearing long sleeves to cover “tracks”, loss of appetite, slurred speech, slowed reflexes, depressed breathing and heartbeat, and drowsiness and fatigue.
- Behavioral symptoms: Mood swings, impaired coordination, depression and apathy, stupor, euphoria.

5. Amphetamines

a. Health Effects

- Regular use causes strong psychological dependency and increased tolerance.
- High doses may cause toxic psychosis resembling schizophrenia.
- Intoxication may induce a heart attack or stroke due to increased blood pressure.
- Chronic use may cause heart or brain damage due to severe constriction of capillary blood vessels.
- Euphoric stimulation increases impulsive and risk taking behavior, including bizarre and violent acts.
- Withdrawal may result in severe physical and mental depression.
- Long-term heavy use can lead to malnutrition, skin disorders, ulcers, and various diseases that come from vitamin deficiencies.

b. Workplace Issues

- Since the drug alleviates the sensation of fatigue, it may be abused to increase alertness during periods of overtime or failure to get rest, which can result in increased accidents.
- With heavy use or increasing fatigue, the short-term mental or physical enhancement reverses and becomes an impairment.

- The hangover effect of amphetamines is characterized by physical fatigue and depression, which make operation of equipment or vehicles dangerous.
- c. Signs and Symptoms of Use
- Evidence of presence of amphetamines: Most frequently – pills, capsules, or tablets; envelopes, bags, vials for storing the drug; less frequently – syringes, needles, tourniquets.
 - Physical symptoms: Dilated pupils, sweating, increased blood pressure, palpitations, rapid heartbeat, dizziness, decreased appetite, dry mouth, headaches, blurred vision, insomnia, high fever (depending on level of the dose).
 - Behavioral symptoms: Confusion, panic, talkativeness, hallucinations, restlessness, anxiety, moodiness, false sense of confidence and power.
6. Phencyclidine (PCP)
- a. Health Effects
- The potential for accidents and overdose emergencies is high due to the extreme mental effects combined with the anesthetic effect on the body.
 - PCP, when combined with other depressants, including alcohol, increases the possibility of an overdose.
 - If misdiagnosed as LSD induced, and treating with Thorazine, can be fatal.
 - Irreversible memory loss, personality changes, and thought disorders may result.
- b. Workplace Issues
- Not common in workplace primarily because of the severe disorientation that occurs.
 - The distortions in perception and potential visual and auditory delusions make performance unpredictable and dangerous. PCP use can cause drowsiness, convulsions, paranoia, agitation, or coma.
- c. Signs and Symptoms of Use
- Evidence of presence of PCP: Packets, stamps, injection paraphernalia, herbs.
 - Physical symptoms: Dilated or floating pupils, blurred vision, nystagmus (jerky eye movement), drooling, muscle rigidity, profuse sweating, decreased sensitivity to pain, dizziness, drowsiness, impaired physical coordination (e.g., drunken-like walk, staggering), severe disorientation, rapid heartbeat.
 - Behavioral symptoms: Anxiety, panic/fear/terror, aggressive/violent behavior, distorted perception, severe confusion and agitation, disorganization, mood swings, poor perception of time and distance, poor judgment, auditory hallucinations.
7. Intervening When an Alcohol or a Controlled Substances Problem is Suspected
- No matter what the employee's position is in the organization, it is requested that any signs or symptoms of drug use or alcohol abuse be reported to the employee's immediate supervisor. Alternatively, employees may report any signs or symptoms to the Designated Employer Representative (DER).
- Employees who suspect they may have a substance abuse problem are encouraged to seek counseling and rehabilitation from the employer's Employee Assistance Program (EAP) provider, a substance abuse professional (SAP), or other treatment provider. The employer's medical insurance policy may provide for payment of some or all of the treatment costs.

13.3 Education and Training

In an ongoing effort to prevent and eliminate substance abuse in the workplace, the employer provides drivers with information and referral resources regarding substance abuse. In addition, supervisors receive a minimum of sixty (60) minutes of training on controlled substance use and sixty (60) minutes of training on alcohol misuse to include the identification of actions, appearance, and conduct of a driver that may indicate drug use and/or alcohol misuse.

13.4. Safety-Sensitive Functions

Pursuant to the FMSCA, safety-sensitive functions mean any of the following on-duty functions.

On-duty means all the time from the time a driver begins to work or is required to be in readiness to work until the time s/he is relieved from work and all responsibility for performing work. On-duty work includes:

1. All time at an employer or shipper plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the employer;
2. All time inspecting, servicing, or conditioning any commercial motor vehicle or equipment at any time;
3. All time spent at the driving controls of a commercial motor vehicle in operation;
4. All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth;
5. All time loading or unloading a vehicle, supervising or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; and
6. All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

13.5 Prohibited Conduct

The following conduct is prohibited for purposes of this program. No driver shall:

1. Consume alcohol while performing safety-sensitive functions;
2. Perform a safety-sensitive function within four (4) hours after using alcohol;
3. Have an alcohol concentration of .02 or greater just before, during, and just after performing his/her safety-sensitive functions.
 - If a driver has a blood alcohol content (BAC) of .02 to .039, the driver will be immediately removed from all safety-sensitive functions for a period of twenty-four (24) hours.
 - If a driver has a BAC of .04 or greater just before, during, or just after performing a safety-sensitive function, the immediate consequences shall include the driver being removed from safety-sensitive functions and referred to an evaluation by a Substance Abuse Professional (SAP).
 - In addition, the employer may take additional disciplinary action against a driver who has a test result of .02 or greater;
4. Use alcohol for eight (8) hours following an accident or until the driver undergoes a post-accident test, whichever comes first;
5. Possess alcohol while on duty, unless the alcohol is manifested and transported as a part of the shipment;
6. Use or possess any drug, except when use is pursuant to the instructions of a physician or dentist who has advised the driver that the substance does not adversely affect the driver's ability to operate a commercial motor vehicle.

NOTE - Prescription Drugs: Drivers may take over-the-counter or prescription drugs under the guidance of a physician in the course of medical treatment.

A driver should ask his/her physician or pharmacist whether the use of the prescription drug or over-the-counter drug could adversely affect his/her ability to perform safety-sensitive functions. Drivers must follow all manufacturers' directions or package inserts when taking any over-the-counter or prescription drugs.

In addition, the employer requires a driver to report that s/he is using any over-the-counter or prescription drug if the use of the drug could affect the safe performance of his/her safety-sensitive functions;

1. Test positive for drugs;
2. Refuse to submit to a post-accident, random, reasonable suspicion, or follow-up drug or alcohol test;
3. Switch, adulterate, or commit any other misconduct pertaining to any breath, urine, or saliva sample;
4. Fail to provide an adequate sample for testing without a valid medical explanation;
5. Disclose to individuals, other than on a need-to-know basis, information pertaining to alcohol and/or drug testing referrals, results of such testing or treatment referrals;
6. Fail to sign the DOT Alcohol Testing Form (ATF) or Federal Drug Testing Custody and Control Form (CCF) (see current form on website www.health.org/workplace);
7. Fail to consent and sign the *Drug/Alcohol Test Informed Consent Form*;
8. Fail to consent and sign the Consent to Release of Drug / Alcohol Information-Drug / Alcohol Testing Form;
9. Fail to report to the collection site in the time allocated;
10. Leave the scene of an accident without a valid reason before submitting to a post-accident test;
11. Engage in any other conduct that clearly obstructs the testing process; and
12. Use illicit drugs on or off duty.

13.6. Consequences for Violation of the DOT/FMCSA Drug and Alcohol Policies

The Federal DOT/FMCSA mandates certain immediate consequences whenever a driver engages in prohibited conduct. These consequences include removal from duty and referral to a SAP. *In addition, it is important to note that the Employer may apply additional consequences, up to and including termination, for violation of this policy and DOT/FMCSA. A driver who is removed from performing safety-sensitive functions may be suspended, without pay.*

13.7. Consequences for Drivers for a Confirmed Violation of this Policy

Specific immediate consequences shall occur whenever a driver:

1. Has verified, positive drug test or an alcohol test result of .04 or greater.
2. Consumes alcohol while performing or four (4) hours before performing a safety-sensitive function.
3. Consumes alcohol within eight (8) hours following an accident or before s/he is tested, whichever occurs first.
4. Refuses to submit³ to any required random, post-accident, reasonable suspicion, or follow-up test.

5. Possesses drugs or alcohol in violation of this policy.

13.7.1 The immediate consequences are:

1. The driver will be immediately removed from performing all safety-sensitive functions.
2. The driver may be disciplined, up to and including termination.
3. The driver will be referred for evaluation by a SAP. When an employee has a verified, positive, adulterated or substituted test result, or has otherwise violated this policy, the employer shall not return the employee to the performance of safety-sensitive functions until or unless the employee completes the return-to-duty process provided in this policy.

If the employer decides to continue employing a driver who has violated this policy or DOT/FMCSA, the following shall occur:

1. The driver will receive, from the employer, information on resources available to the driver to resolve and evaluate any problems associated with substance abuse.
2. Before being returned to his/her safety-sensitive functions, the driver must undergo a return-to-duty drug and/or alcohol test.
3. If the driver required treatment as recommended by a SAP, the driver must complete the treatment and be re-evaluated by a SAP before submitting to a return-to-duty test.
4. If the driver required treatment as recommended by a SAP, the driver will be subject to unannounced follow-up drug and/or alcohol tests.

13.7.2. Consequences for Job Applicants

1. Applicants who fail a pre-employment test will be denied employment.
2. A current employee (who is transferring to a covered position) who fails a pre-employment test will not receive the position. In addition, the employer may refer the employee to a SAP for evaluation and treatment and may take additional disciplinary actions.

13.7.3. Failure of a Post-Accident Test

A driver who has a positive drug or alcohol test result following an accident, as provided in Section D. of this policy, will be terminated from employment.

13.7.4. DOT Penalties

NOTE: Employer discipline is likely in addition to the DOT penalties.

Any driver who violates the DOT/FMCSA drug and alcohol rules will be subject to civil or criminal penalties. (see *Appendix D* of this policy).

In addition, 49 CFR §383.51 also provides penalties for drug- and alcohol-related conduct of commercial motor vehicle drivers (see *Appendix D* of this policy).

The following are “disqualifying” offenses:

1. Driving a commercial motor vehicle while under the influence of drugs or alcohol.
2. Refusing to submit to a test as required by any state or jurisdiction in the enforcement of federal or state law.
3. Leaving the scene of an accident involving a commercial motor vehicle.

First Offenders: A driver who is convicted of driving a commercial motor vehicle while under the influence of drugs or alcohol for the first time will be disqualified for a period of one (1) year provided the vehicle was not transporting hazardous materials. If the vehicle was transporting hazardous materials, the driver will be disqualified for a period of three (3) years.

In addition, a driver who is convicted of the use of a commercial motor vehicle in the commission of a felony involving manufacturing, distributing, or dispensing drugs (controlled substances) is disqualified for life.

Second Offenders: A driver who is convicted of driving a commercial motor vehicle while under the influence of drugs or alcohol for a second time will be disqualified for life. Ten (10) years after the violation, if the driver has voluntarily enrolled in and successfully completed an appropriate treatment program, the driver may apply for reinstatement of his/her CDL.

Third Offenders: If a reinstated driver is convicted of another drug- or alcohol-related offense, s/he will be permanently disqualified for life, and will not be eligible to re-apply for a reduction of the lifetime disqualification.

13.7.5. Employer-Imposed Penalties and Actions

All violations of this policy (even a first offense) will serve as the basis for discipline, up to and including termination. The severity of the penalty imposed by the employer will depend on the circumstances of each case. However, drivers need to be aware that any offense, including but not limited to possession, sale or use of controlled substances or illegally used drugs on employer premises or while on duty is likely to result in immediate termination.

In addition to any disciplinary action imposed for a violation of this policy, or while such actions are held in abeyance, the employer may, at its sole discretion, refer the driver for appropriate assessment, counseling, and/or a treatment program as applicable. However, the employer reserves the right to make the final decision.

13.8 Alcohol and Drug Testing

The methods used to determine the presence of alcohol and/or drugs in the driver's system under the DOT/FMCSA regulations include a urine⁴, breath, and/or saliva test. All alcohol and drug testing will be conducted in accordance with DOT procedures for transportation workplace drug and alcohol testing programs, 49 CFR Part 40. Any employee who refuses to submit to discovery testing for alcohol or drugs pursuant to this policy will be deemed to have failed the test and will be subject to disciplinary action, up to and including termination. Drivers will be subject to the following types of alcohol and drug testing:

- Pre-employment testing
- Reasonable suspicion testing
- Post-accident testing
- Random testing
- Return-to-duty testing
- Follow-up testing

13.8.1. Testing Forms

1. The *Federal Drug Testing Custody and Collection Form (CCF)* (see current form on website <https://www.transportation.gov/sites/dot.dev/files/docs/Alcohol-Drug-Testing-Form-Suppliers.pdf>) must be used for each drug test under this policy, and the *DOT*

⁴ All urinalysis tests for drugs will use the "split sample" method of collection. The driver's urine sample will be split into two specimen bottles. One will contain the primary specimen; and the other, the split specimen. The split specimen will be preserved under stringent laboratory conditions. Whenever a driver employee receives notification of a positive drug test, the driver may request that the split sample be tested in a different laboratory that is certified by the Department of Health and Human Services (DHHS). This request must be made within seventy-two (72) hours after the Medical Review Officer (MRO) gives the driver notification of the positive drug test.

Alcohol Testing Form (ATF) (see “*Sample*” *Form 4*) must be used for each alcohol test under this policy.

2. Tests under the Vehicle Operators Drug and Alcohol policy must be conducted prior to and separate from any other drug or alcohol tests. The employer shall not use the CCF or the ATF in non-DOT Drug and Alcohol Testing Programs.

13.8.2. Pre-Employment Testing

1. All driver applicants⁵ whom the employer intends to hire or use to perform safety-sensitive functions must give their consent and submit to a urine drug test
2. The employer may choose not to require pre-employment drug testing for a driver applicant if the employer can verify the individual:
 - a. Has participated in a valid controlled substance testing program that meets the requirements of 49 CFR Part 382, within the previous thirty (30) days; and
 - b. Was tested for controlled substances within the past six (6) months from date of application with the employer while participating in the program, or participated in a random testing program within the previous twelve (12) months from the date of application with the employer.
 - c. After obtaining the driver applicant’s written consent via completion of the *Consent to Release of Drug/Alcohol Information Drug/Alcohol Testing Form* employer will verify that no former employer of the driver applicant in the preceding two (2) years has knowledge or records that the individual:
 1. Had an alcohol test with a result of .04 alcohol concentration or greater; or
 2. Had a verified positive-controlled substance test result; or
 3. Refused to be tested; or
 4. Violated other DOT drug and alcohol testing regulations.
3. With respect to a driver applicant’s violation of a DOT drug and alcohol regulation, the employer shall obtain documentation of the driver applicant’s successful completion of return-to-duty requirements (including follow-up tests). If the previous employer does not have information about the return-to-duty process, the employer shall obtain this information from the employee. Refer to 49 CFR 40.25 for guidance, if unable to obtain this information.
4. As the employer, the employer shall also ask the employee whether s/he has tested positive or refused to test on any pre-employment drug or alcohol test administered by an employer to which the employee applied for, but did not obtain safety-sensitive transportation work covered by Federal Highway Safety Administrator’s Drug and Alcohol Testing Rules during the past two (2) years. If the employee admits that s/he had a positive test or a refusal to test, the employer shall not use the employee to perform safety-sensitive functions until and unless the employee documents successful completion of the return-to-duty process.
5. If information is requested from another employer, the employer shall, after reviewing the employee’s specific written consent, immediately release the requested information to the employer making the inquiry.

As an employer requesting the information required, the employer shall maintain a written confidential record of the information the employer obtained of the good faith efforts the employer made to obtain the information. The employer shall retain this

⁵ different laboratory that is certified by the Department of Health and Human Services (DHHS). This request must be made within seventy-two (72) hours after the Medical Review Officer (MRO) gives the driver notification of the positive drug test.

information for three (3) years from the date of the employee's first performance of safety-sensitive functions for the employer.

6. (Optional) The employer may, but is not required to, conduct pre-employment alcohol testing. If such tests are conducted, the employer shall comply with the requirements of 49 CFR 382.301.

13.8.3. Reasonable Suspicion Alcohol and/or Drug Testing

A driver shall be required to submit to an alcohol and/or drug test when the employer has reasonable suspicion the driver has violated the prohibitions of the alcohol and/or drug policy.

- **Determining Reasonable Suspicion**

A supervisor shall determine that reasonable suspicion exists that requires the driver to undergo testing based on directly making specific contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver. In addition, the observations for drug use may include indications of the chronic use and/or the withdrawal effects of controlled substances.

- **Timing of a Reasonable Suspicion Test**

- 1) Alcohol testing is authorized only if the observations are made during, just preceding, or just after the driver performs safety-sensitive functions. A driver shall be directed to undergo reasonable suspicion testing only while the driver is performing safety-sensitive functions, just before the driver is performing safety-sensitive functions, or just after the driver has ceased performing such functions.
- 2) Alcohol testing shall occur as soon as possible after the observed conditions or event. If the test is not administered within two (2) hours, the employer shall prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered. If the alcohol test is not administered within eight (8) hours, the employer shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test.
- 3) Drug testing shall occur as soon as possible after the observed conditions or event. If the test is not administered within thirty-two (32) hours, the employer shall cease attempts to administer the drug test and shall state in the record the reasons for not administering the test.

- **Documentation of a Reasonable Suspicion Test**

A written record of the driver's conduct that creates reasonable suspicion shall be prepared and signed by the supervisor(s) who made the observations within twenty-four (24) hours of the observed behavior or before the results of the test are released, whichever is earlier (see *Documentation Reasonable Suspicion Drug / Alcohol Testing Form*)

- **Transportation of Driver for Reasonable Suspicion Testing**

A driver who is required to submit to reasonable suspicion testing shall be transported by the employer to the location of the test. After the driver submits to the test, the employer shall provide transportation for the driver to his/her home. The driver shall be placed on leave with pay, pending test results.

13.8.4. Post-Accident Testing

No requirements in this section shall be construed to require the delay of necessary medical attention for injured people following an accident, or to prohibit a driver from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care.

Drivers who are involved in an accident shall be sent for an alcohol and drug test following the accident whenever:

1. The accident involved a fatality; or
2. The driver received a citation for a moving traffic violation arising from the accident, and the accident involved:
 - a. Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
 - b. One or more of the vehicles involved in the accident was towed away from the scene.

Type of Accident Involved	Has Citation Been Issued to the CMV Driver?	Must be Tested by employer?
Human fatality	Yes No	Yes Yes
Bodily injury with immediate medical treatment away from the scene	Yes No	Yes No
Disabling damage to any motor vehicle requiring tow away	Yes No	Yes No

13.8.5 The Employer's Responsibility

- 1) The employer shall provide drivers with necessary post-accident report information, procedures, and instructions before the driver operates a commercial motor vehicle to allow drivers to comply with the testing requirements.
- 2) The employer is responsible for adhering to the following post-accident timeline, including any recording requirements.

Time Lapsed	Action Required
2 hours	ALCOHOL – If the driver has not submitted to an alcohol test at this time, the employer will prepare and maintain on file, a statement of the reasons the test was not promptly administered.
8 hours	ALCOHOL – The employer shall cease attempts to administer an alcohol test and prepare and maintain on file, a statement of the reasons why the test was not promptly administered.
32 hours	DRUGS – If the driver has not submitted to a drug test at this time, the employer shall cease attempts to administer the test and prepare and maintain on file, a statement of the reasons why the test was not promptly administered.

- 3) In the event that federal, state, or local officials conduct a breath or blood test for the use of alcohol and/or urine tests for the use of drugs following an accident, these tests shall be considered to meet the DOT requirements, providing the tests conform to applicable federal, state, or local testing requirements and that the results of the tests are obtained by the employer. The employer shall provide transportation for the driver to the location of the test. After the driver submits to the test, the employer shall provide transportation for the driver to his/her home.

13.8.6 Driver's Responsibility

A driver is obligated to complete a post-accident report form, to follow the post-accident instructions supplied by the employer, and to see that the alcohol and/or drug test(s) are conducted.

- 1) A driver must submit to an alcohol test as soon as practicable, but not later than eight (8) hours after the accident.
- 2) A driver must submit to a drug test as soon as practicable, but not later than thirty-two (32) hours following the accident.
- 3) In the event a driver is so seriously injured that the driver cannot provide a blood, breath, or urine specimen at the time of the accident, the driver must provide necessary authorizations, as soon as the driver's physical condition allows, to enable the employer to obtain hospital records or other documents that indicate whether there were drugs or alcohol in the driver's system when the accident occurred.
- 4) In the event federal, state, or local officials conducted alcohol and/or drug testing following an accident as provided in Section D.3. "Employer's Responsibility," the driver will be required to sign a release allowing the employer to obtain the test results from such officials.
- 5) A driver who is subject to a post-accident test must remain readily available for testing. A driver who leaves the scene before the test is administered or who does not make himself/herself readily available may be deemed to have refused to be tested and such refusal shall be treated as a positive test. Further, the driver, subject to a post-accident test, must refrain from consuming alcohol for eight (8) hours following the accident, or until the driver submits to an alcohol test, whichever comes first.
- 6) For safety reasons, a driver required to submit to post-accident testing will be placed on administrative leave, with pay, pending receipt of the post-accident testing result.

13.8.7 Random Testing

All drivers are subject to random alcohol and drug testing.

1. Random Selection Process

- a. The selection of drivers for random alcohol and drug testing shall be made from a random number table or a computer-based random number generator that is matched with the driver's social security number. Random testing will be unannounced and the dates for administering the tests will be spread reasonably throughout the year; and
- b. The employer will drug test, at a minimum, twenty-five percent (25%) of the average number of driver positions each calendar year. The employer will alcohol test, at a minimum, ten percent (10%) of the average number of driver positions each calendar year.

(Optional) The employer utilizes a Consortium/Third-party Administrator (C/TPA) to conduct random testing for alcohol and controlled substances. The total number of drivers to be calculated shall be based on the total number of drivers covered by the C/TPA at the same minimum annual percentage rate.

2. Timing for Random Testing

- a. Random drug testing will be performed at any time while the driver is at work;
- b. Random alcohol testing will be performed just before, during, or just after the driver is performing safety-sensitive functions; and

- c. A driver selected for random testing shall proceed immediately to the test site. A driver who engages in conduct, which does not lead to testing as soon as possible after notification, may be considered to have refused to test and such refusal shall be treated as a positive test.

13.8.7.1.Return-to-Duty Process and Testing

1. Referral

A driver, who has violated a DOT Drug and Alcohol Regulation, shall be provided by the employer or through a C/TPA or other Service Agent a listing of SAPs including their names, addresses, and telephone numbers of SAPs who are readily available to the employees and acceptable to the employer.

2. SAP and Treatment Services for Employees

- a. The employer may, but is not required to, offer an employee an opportunity to return to a position performing DOT safety-sensitive functions following a violation of a DOT drug or alcohol regulation.
- b. Before the employee again performs a safety-sensitive function following a violation, the employer must ensure that the employee receives an evaluation by a SAP, and that the employee successfully complies with the SAP's evaluation recommendations.
- c. Payment for SAP evaluations and services shall be the responsibility of the employee, or as otherwise covered in the employer's health care benefits, and/or governed by existing management/labor agreements.

3. SAP Evaluation/Recommendations

- a. Once an employee with a DOT Drug and Alcohol Regulation violation has been evaluated by a SAP, neither the employee nor the employer can seek a second SAP evaluation in order to obtain another recommendation.
- b. If the employee, contrary to (a) above, does obtain a second SAP evaluation, the employer may not rely on it.

4. Changing a SAP Initial Evaluation

- a. Except as provided in (b) below, no one may change in any way the SAP's evaluation or recommendations for assistance.
- b. The SAP who made the initial evaluation may modify his/her initial evaluation and recommendations based on new or additional information (e.g., from an education or treatment program).

5. Additional Treatment, Aftercare Services

The employer, upon receiving recommendations from a SAP for an employee who has resumed the performance of safety-sensitive functions,) may, in addition to follow-up tests:

- a. Require the employee to participate in the recommended services as a part of the return-to-duty agreement with the employee;
- b. Monitor and document the employee's participation in the recommended services; and
- c. Make use of SAP and employee assistance program (EAP) services in assisting and monitoring the employee's compliance with the SAP recommendations.

13.8.7.2.Follow-Up Testing

If the employer decides to permit the employee to return to the performance of safety-sensitive functions, the employee must take a return-to-duty test after the SAP has

determined that the employee has successfully complied with the prescribed treatment and/or education. The employer must direct a collection under direct observation if the drug test is a return-to-duty test or follow up test.

The employee must have a negative drug test and/or an alcohol test with an alcohol concentration of less than 0.02 before resuming performance of safety-sensitive functions.

All drivers who have committed a violation of DOT Drug or Alcohol regulations will be subject to a written follow-up drug and/or alcohol testing plan prepared by the SAP. A copy of this plan shall be presented directly to the Designated Employer Representative (DER).

Follow-up testing applies during the period following completion of a treatment program. The driver will be subject to a minimum of six (6) unannounced, follow-up drug and/or alcohol tests over the following twelve (12) months following the employee's return to safety-sensitive functions.

The SAP can require additional testing up to a maximum of sixty (60) months from the date the driver returns to duty. Likewise, the SAP can terminate the additional follow-up testing that was ordered in excess of the minimum twelve (12) month period.

A driver whose follow-up alcohol test result is .02 to .039 must be removed from any safety-sensitive functions for twenty-four (24) hours. This test result is not a violation of the DOT/FMCSA regulations. The employer may also impose additional disciplinary action.

The employer shall carry out the SAP's follow-up testing requirements. The employee shall not be permitted to perform safety-sensitive functions, unless follow-up testing is completed as directed by the SAP.

The employer shall schedule follow-up tests at its discretion and shall ensure the tests are unannounced without any discernable pattern as to their timing and that the employee is not given advance notice.

There shall be no substitution of any other tests (e.g., those carried out under the random testing program) conducted on the employee for this follow-up testing requirement.

A cancelled follow-up test does not constitute a completed test. Any follow-up test that was cancelled must be re-collected.

- *Timing of a Follow-Up Alcohol Test*
Follow-up alcohol testing shall be conducted just before, during, or just after the driver performs safety-sensitive functions.
- *Timing of a Follow-Up Drug Test*
Follow-up drug testing may be performed at any time while the driver is at work. The driver does not have to be performing a safety-sensitive function.

13.8.7.3 Test Results (Invalid)

If the employer receives a drug test result indicating that the employee's specimen was invalid and that a second collection must take place under direct observation:

1. Immediately direct the employee to provide a new specimen under direct observation;
2. Do not attach consequences to the finding that the test was invalid, other than collecting a new specimen under direct observation;
3. Do not give any advance notice of this test requirement to the employee;

4. Instruct the collector to note on the Federal Drug Testing Custody and Control Form (CCF) the same reason (e.g. random test, post-accident test) as for the original collection.

13.8.7.4 Report of a Dilute Specimen

1. If the MRO informs the DER that a positive drug test was dilute, the DER shall treat the test as a verified positive test and must not direct the employee to take another test based on the fact that the specimen was dilute.
2. If the MRO informs the DER that a negative test was dilute, the employer will take the following action:
 - a. If the MRO directs the employer to conduct a recollection under direct observation (i.e., because the creatinine concentration of the specimen was equal to or greater than 2mg/dL, but less than or equal to 5mg/dL, the employer must do so immediately.
 - b. Otherwise (i.e., if the creatinine concentration of the dilute specimen is greater than 5mg/dL), the employer may, but is not required to, direct the employee to take another test immediately.
 - i. Such recollections must not be collected under direct observation, unless there is another basis for use of direct observation (see § 40.67 (b) and (c))
 - ii. The employer must treat all employees the same for this purpose. The employer may, however, establish different policies for different types of tests (e.g., conduct retests in pre-employment situations, but not in random test situations). The employer must inform their employees in advance of the employer's decisions on these matters.
 - c. The employer must ensure that the employee is given the minimum possible advance notice that he or she must go to the collection site; the employer must treat the result of the test as the test result of record. If the result of the test the employer directed the employee to take is also negative and dilute, the employer is not permitted to make the employee take an additional test because the result was dilute. Provided, however, that if the MRO directs the employer to conduct a recollection under direct observation the employer must immediately do so.

13.8.7.5 Cancelled Drug or Alcohol Test

A cancelled drug or alcohol test is neither positive nor negative.

1. The employer must not attach to a cancelled test the consequences of a positive test or a violation of a DOT Drug or Alcohol Testing Regulation (e.g., removal from a safety-sensitive position).
2. The employer must not use a cancelled test as evidence of a negative test to authorize the employee to perform safety-sensitive functions (i.e., in the case of a pre-employment, return-to-duty, or a follow-up test).
3. The employer must not direct a re-collection from an employee, except when conducting a pre-employment return-to-duty or a follow-up test, or in other provisions of the regulations that require another test to be conducted as provided in 49 CFR 40.159(a) (5) when a drug test result is invalid, and 40.187(b) when a split specimen laboratory result failed to reconfirm Drug(s)/Drug Metabolite(s) not detected.
4. A cancelled test does not count toward compliance with DOT requirements for the number of tests needed to meet the employer's minimum random testing rate.
5. A cancelled DOT test does not provide a valid basis for a non-DOT test.

6. A cancelled alcohol test must be reported to the DER and treated as if the test never occurred.

13.8.7.6 Insufficient Amount of Urine for Drug Test

1. When a collector informs the DER that an employee has not provided a sufficient amount of urine for a drug test, the DER must, after consulting with the MRO, direct the employee to obtain within five (5) working days an evaluation from a licensed physician, who is acceptable to the MRO, and who has expertise in the medical issues raised by the employee's failure to provide a sufficient specimen.
2. When the MRO indicates to the DER that a test is cancelled due to a medical condition that has, or with a high degree of probability could have precluded the employee from providing a sufficient amount of urine, the employer shall take no further action with the employee. The employee shall remain in the random testing pool.

13.8.7.7 Insufficient Amount of Saliva or Breath for an Alcohol Test

1. When a STT informs the DER that the employee has not provided a sufficient amount of saliva for an alcohol-screening test, the DER must immediately arrange to administer an alcohol test to the employee using an EBT or other breath-testing device.
2. When a BAT or SAT informs the DER that the employee has not provided a sufficient amount of breath, the employer must direct the employee to obtain, within five (5) working days, an evaluation from a licensed physician who is acceptable to the employer, and who has expertise in the medical issues raised by the employee's failure to provide a sufficient specimen. The DER must provide the physician with the following information and instructions:
 - a. That the employee was required to take a DOT breath alcohol test, but was unable to provide a sufficient amount of breath to complete the test;
 - b. The consequences for refusing to take a required alcohol test include removal from performing all safety-sensitive functions, referral for evaluation by a SAP, and disciplined up to and including termination;
 - c. The physician must provide the DER with a signed statement of his/her conclusion regarding the employee's failure to provide a sufficient amount of saliva or breath for an alcohol test; and
 - d. That the physician, in his/her reasonable medical judgment, must base those conclusions on requirements listed in 49 CFR 40.265.
3. Upon receipt of the report from the examining physician, the DER must immediately inform the employee and take appropriate action based upon Federal Highway Administration Regulations.

13.8.7.8 Addressing "Correctable Flaws" in Alcohol Testing

1. If a BAT or STT reports to the DER that a correctable flaw has occurred, and another testing device is not available for the new test at a testing site, the DER shall make reasonable efforts to ensure that the test is conducted at another test site as soon as possible.
2. All other problems must be addressed by a BAT, STT, employer, or other Service Agent administering the process, or the test must be cancelled.

13.8.7.9 Fatal Flaws

The employer must cancel an alcohol test if any of the following "fatal flaws" occur. The test is cancelled and must be treated as if the test never occurred. These problems are:

1. In the case of a screening test conducted on saliva ASD or a breath tube ASD:

- a. The STT or BAT reads the result either sooner than or later than the time allotted by the manufacturer.
- b. The saliva ASD does not activate, or
- c. The device is used for a test after the expiration date printed on the device or on its package.

13.8.7.10 Alcohol Confirmation Test Result

The employer shall take the following steps with respect to the receipt and storage of alcohol test results information:

1. If the test results are not in writing (e.g., by telephone or electronic means), the DER shall identify and record the BAT sending the results.
2. Store all test results information in a way that protects confidentiality.

13.8.7.11 Direct Observation

The employer must direct an immediate collection under direct observation with no advance notice to the employee, if:

1. The laboratory reported to the MRO that the specimen is invalid, and the MRO reported to the employer that there was not an adequate medical explanation for the result; or
2. The MRO reported to the employer that the original positive, adulterated, or substituted test result had to be cancelled, because the test of the split specimen could not be performed.
3. The laboratory reported to the MRO that the specimen was substituted with a creatinine concentration greater than or equal to 2mg/dL and less than 5mg/dL and the MRO reported the specimen to the employer as negative and dilute.

13.8.7.12 Stand-Down Employee

The employer is prohibited from standing down an employee following the MROs receipt of a laboratory report of a confirmed positive test for a drug or drug metabolite, an adulterated test, or a substituted test pertaining to the employee prior to the MRO completing the verification process. Note: To obtain a waiver to this prohibition, the employer shall send a written request which includes all of the information required to the Federal Motor Carrier Safety Administrator, U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590.

13.8.7.13 Service Agents

1. If the employer uses a Service Agent to perform the tasks necessary to comply with the DOT drug and alcohol testing requirements, it shall ensure the Service Agent complies with 49 CFR Part 40 (Q), Roles and Responsibilities of Service Agents.
2. The employer shall ensure that Service Agents used meet qualifications required for their specialty area, and may require Service Agents to present documentation that they meet these requirements.
3. The employer shall obtain information required from their Service Agents. For example, the employer must not assume that “no news is good news” and permit an applicant to perform safety-sensitive functions before receiving the test results.
4. The employer must not permit the Service Agent to also serve as the DER.

13.8.7.14 Designated Employer Representative (DER)

The employer shall provide to collectors, BATs and STTs, the name and telephone number of the appropriate DER and C/TPA to contact about any problems or issues that may arise during the testing process.

13.8.7.15 Payment for the Test of a Split Specimen

1. The employer is responsible for making sure that the MRO, first laboratory, and second laboratory perform testing of split specimens in a timely manner once the employee has made a timely request for a test or split specimen.
2. The employer must not condition compliance with this requirement on the employee's direct payment to the MRO, or laboratory, or the employee's agreement to reimburse the employer for the costs of testing. The employer may seek payment or reimbursement of all the costs for the split specimen from the employee.

13.8.7.16 SAP Information Provided by Agent Employer

The employer, through a C/TPA or other Service Agent, shall provide to each employee, (including an applicant or new employee) who violates a DOT Drug or Alcohol Regulation, a listing of SAPs with their addresses and phone numbers who are readily available to the employee and acceptable to the employer. The employee shall not be charged any fee for compiling or providing this list.

13.8.7.17 Confidentiality and Release of Information

1. The employer shall not release individual test results or medical information about an employee to third parties without the employee's specific written consent.
 - a. A third party is any person or employer to whom other subparts of 49 CFR 40 do not explicitly authorize or require the transmission of information in the course of the drug and alcohol testing process.
 - b. Specific written consent means a statement signed by the employee that s/he agrees to the release of specific information to an explicitly identified, person or employer at a particular time. Blanket releases of information (e.g., all test results) or release of information to a category of parties (e.g., other employers who are members of a C/TPA, companies to which the employee may apply for employment) are prohibited.
2. The employer may release information pertaining to an employee's drug or alcohol test without the employee's consent in certain legal proceedings as provided for in 49 CFR 40.323.
3. The employer shall, upon request of DOT agency representatives, provide the following:
 - a. Access to the employer's facilities for DOT agency drug and alcohol program functions.
 - b. All written, printed, and computer-based drug and alcohol program records and reports (including copies of name-specific records or reports), files, materials, data, documents/documentations, agreements, contracts, policies, and statements.
4. If requested by the National Transportation Safety Board as part of an accident investigation, the employer shall provide information concerning post-accident tests administered after the accident.
5. If requested by a federal, state, or local safety agency with regulatory authority over the employer or the employee, the employer shall provide drug and alcohol test records concerning the employee.

13.8.8 Record Retention Requirements

1. The employer shall keep the following records for a period of five (5) years:
 - a. Records of employee alcohol test results indicating an alcohol concentration of 0.02 or greater;
 - b. Records of employee's verified positive drug test results;

- c. Documentation of refusals to take required alcohol and/or drug tests (including substituted or adulterated drug test results);
 - d. SAP reports; and
 - e. All follow-up tests and schedules for follow-up tests.
- 2. The employer shall keep records of information concerning drug and alcohol test results obtained from previous employers on employees that perform safety-sensitive functions for three (3) years.
- 3. The employer shall keep the following records for a period of two (2) years:
 - a. Records of the inspection, maintenance, and calibration of EBT for ; and
 - b. Records related to the alcohol and drug collection process. These include documents related to random selections, reasonable suspicion determinations, and post-accident determinations; medical evaluations for insufficient amounts of urine and breath; and supervisor and employee education and training records.
- 4. The employer shall keep records of negative and cancelled drug test results and alcohol results with a concentration of less than 0.02 for one (1) year.
- 5. The employer shall maintain these records described in 1 through 4 above in a location with controlled access.
- 6. If the employer decides to have their Service Agent retain these records, the employer shall ensure the records can be produced at the employer's place of business in the time required by the FMCSA (e.g., within two (2) days of a request by the FMCSA inspector).

13.9 Reservation of Rights

The employer reserves the right to interpret, change, or rescind this policy in whole or in part, with or without notice, subject to any state and federal laws and relevant collective bargaining agreements.

Provisions within the Federal Department of Transportation (DOT), Federal Motor Carrier Safety Regulations (FMCSR), and state law will supercede any conflicting language in this policy manual.

Nothing in this policy creates a binding employment contract nor modifies an existing contract.

APPENDIX A

DRUG SPECIMEN COLLECTION AND TESTING PROCEDURES

1. The Laboratory

The employer has retained a laboratory that is certified by the Department of Health and Human Services (DHHS) and qualified to service federally mandated drug testing programs. The use of a certified laboratory ensures the highest standards of forensic toxicology and includes a quality assurance program that covers the entire drug testing process. The laboratory maintains stringent security at its facilities and strictly adheres to federally mandated chain-of-custody procedures.

1. Key People Involved in the Collection and Testing Process

The Collection Site Personnel. The individual(s) who walks a driver through the specimen collection process.

The Laboratory Personnel. Individuals who test the specimen for the presence of drugs and are qualified to perform screening and confirmation tests.

The Medical Review Officer (MRO). A licensed physician who specializes in substance abuse. The Medical Review Officer reviews all test results, contacts the driver for additional information about a positive test, and reports the final test result to the employer. This individual will be referred to as the MRO.

2. The Collection and Testing Process

Chain of Custody: A standardized, chain-of-custody form will be used to maintain control and security of the specimen and to track the specimen as it proceeds through each collection and testing phase. Each time a specimen is handled or transferred, the date, purpose, and individual handler's identification will be noted.

Once a driver has been referred to testing, the following steps will be followed. These steps are described in the following pages.

- STEP 1:** The specimen is collected.
- STEP 2:** The specimen is split and shipped to the lab.
- STEP 3:** The laboratory tests the specimen.
- STEP 4:** The test results are reviewed and reported.
- STEP 5:** The employee may request a test of the split specimen.
- STEP 6:** The lab stores the specimen and keeps records.

Step 1: The specimen is collected.

3. The driver arrives at the site.

The driver must arrive at the collection site on time and present a valid photo identification (either a driver's license or an employee badge) to the collection site personnel. The driver may also ask the collector to provide identification to the driver.

If the driver does not have a valid form of photo identification, an employer representative must arrive at the collection site and identify the driver.

The driver must remove any unnecessary outer clothing such as a jacket or coat. Any briefcase or personal belongings will be kept with the coat. The driver may keep his/her wallet and may ask the collection site personnel for a receipt for his/her belongings.

Medical Attention: If the employee needs immediate medical care (e.g., after an accident), medical attention will not be delayed in order to collect the specimen.

4. The driver privately provides the specimen.

The driver will wash his/her hands. Then the driver will stay with the collection site personnel until the driver is given a specimen collection container.

The driver will provide the specimen, in private, in a secure area. There will be safeguards in place, such as blue water in the toilet, to ensure a driver does not dilute or otherwise tamper with the urine specimen.

Direct Observation Exception: The specimen must be provided under direct visual observation by an authorized individual of the same gender if there is a reason to believe the driver may alter or substitute the specimen. However, there are only six circumstances where direct observation will be allowed:

- The specimen is above or below the normal body temperature range (90.5 to 99.8°F).
- The driver refuses to allow his/her temperature to be taken orally.
- The driver's temperature varies more than 1.8°F from the collected specimen.
- Collection site personnel observe conduct that clearly indicates an attempt to substitute or adulterate the specimen.
- The driver had a prior urine specimen specific gravity of less than 1.003 and a creatinine concentration below .25g/L.
- The driver has previously tested positive for drugs and is now taking a return-to-duty or follow-up test.

Whenever a decision is considered to directly observe a collection, a higher-level supervisor of the collection site person or an authorized representative of the employer must review and agree to the decision before the collection takes place.

The driver must provide a specimen that is at least 45 milliliters (ml) of urine (45 ml is approximately 1.5 ounces or ¼ of a cup).

Shy Bladder: If the employee can't produce 45 ml, the specimen will be thrown out and the employee will be given one 8-ounce glass of water every 30 minutes, but no more than a total of 24 ounces, until the employee can produce a specimen of 45 ml. If two hours lapse and the employee still cannot provide a sample, the collection will end.

The Medical Review Officer (MRO) will refer the employee for a medical evaluation to determine whether there is a medical explanation for the employee's inability to produce a specimen. The

medical evaluator will report the results back to the MRO, who will report the written conclusions to the employer.

After the specimen is collected, the collection site personnel will immediately check the temperature and other factors for signs of contamination, tampering, or adulteration. If there are any signs of such activity, the collection site person will send the specimen to the lab for testing and ask the driver to provide a second specimen under direct observation.

Step 2: The specimen is split and shipped to the lab.

Throughout the splitting and shipping process, two safeguards are in place:

- First, the driver will observe the splitting and packaging of the specimen.
- Second, the driver will be asked to initial certain identification labels and other documents throughout the process.

5. The specimen is split.

The collection site personnel will “split” the specimen, in front of the driver, by pouring 30 ml into one container (the primary specimen) and at least 15 ml into another container (the split specimen).

7. The specimen is packaged and shipped to the laboratory.

The specimens will be sealed with a tamper-proof seal and an identification label, and the collection site personnel will sign and fill out a custody and control form. Both bottles will be shipped in one specially designed shipping container. The container will be sealed to prevent tampering.

At this time, the driver will also be asked to sign the laboratory consent and release form that allows the laboratory to test the specimen and the MRO to review the test results and report those results to the employer.

Important: If the driver does not sign the laboratory consent form, the process will end and *this action will be viewed as a refusal to be tested.*

Step 3: The laboratory tests the specimen.

8. The lab receives the shipment.

The laboratory personnel will inspect the package for any evidence of tampering. The lab personnel will also review the information on the specimen bottles and the chain-of-custody form. Any differences in the information or evidence of tampering will immediately be reported to the employer.

9. The lab tests for seven drugs.

The laboratory will routinely test for the seven drugs listed in the table below. Each drug listed will be tested at the specified cut-off level.

Drug Metabolites	Screen Test Cut-Off Level*	Confirmation Test Cut-Off Level*
Marijuana (pot, weed, grass)	50	15
Cocaine (coke, crack)	150	100
Opiates (heroin, morphine, codeine)	2000	Morphine 2000 Codeine 2000
6-Acetylmorphine	10	10
Phencyclidine (PCP)	25	25
Amphetamine (speed, uppers, meth, ice)	500	Amphetamine 250 Methamphetamine 250
MDMA (ecstasy)	500	250
*All levels are measured at ng/ml (nanograms per milliliter). These cut-off levels are subject to change by the DHHS as advances in technology or other considerations warrant identification of these substances at other concentrations.		

The first test (the screen) will use the immunoassay method of testing. If the screen is positive, the specimen will undergo a confirmation using the more accurate Gas Chromatography/Mass Spectrometry (GC/MS) test. A different cut-off level is used for the GC/MS.

Step 4: The test results are reviewed and reported.

10. The MRO reviews and investigates.

The Medical Review Officer (MRO) provides a final review of all test results and reports the conclusion to the employer. The MRO will:

- Receive the test results.
- Verify the test results.
- Report the final results to the employer.

11. A negative test result is reported.

If the test is negative, the MRO reports the negative result to the employer. A positive test with a valid, confirmed medical explanation would also be reported as negative (explanation follows).

12. A positive test result is reported.

If the test is positive, the MRO will consider and investigate alternative medical explanations for the positive test. The investigation will include a discussion with the driver and require the driver's cooperation.

The MRO will conduct a medical interview of the driver and review the driver's medical history or other relevant biomedical information.

The MRO will contact the driver directly and give the driver an opportunity to discuss the test result before making a final decision.

If the MRO cannot reach the individual (after making a reasonable effort), the MRO will contact the **employer**. Then the **employer** will try to contact the driver and direct the driver to contact the MRO as soon as possible. The MRO and the employer must try to the greatest extent possible to contact the individual in confidence.

There are two situations where the MRO may verify a positive test without speaking directly with the driver:

1. When the driver declines to discuss the test.
2. If the employer has successfully contacted the driver and instructed the driver to contact the MRO and five days have passed and the driver has not contacted the MRO.

The MRO may reopen the investigation if the driver later presents the MRO with information regarding a serious illness, injury, or other circumstances that unavoidably prevented the driver from contacting the MRO.

The MRO will report a “positive” test result to the employer as negative if the MRO determines there is a legitimate medical explanation for the positive test result.

The MRO may also declare the test specimen negative if the MRO determines that the result is scientifically insufficient. Such an action by the MRO will be based on review of inspection reports, quality control data, multiple samples, and other pertinent results. The MRO may request re-analysis of the original sample before making this decision.

The MRO is the only individual authorized to order a re-analysis of the original sample if any question arises as to the accuracy or validity of a positive test result. Retests may be conducted at DHHS-certified laboratories only.

Throughout the reporting process, the laboratory, the employer, and the Medical Review Officer (MRO) will treat all information as strictly confidential and must limit access to testing information.

Step 5: The employee may request a test of the split specimen.

The MRO will notify the driver of the right to test.

The MRO will notify the driver with a positive test that the driver has 72 hours to request a test of the split specimen. The driver must pay for the test.

The MRO will notify the lab of the driver’s request.

If the driver requests a split specimen test within the 72-hour period, the MRO will ask the laboratory, in writing, to provide the split specimen to another DHHS-certified laboratory for analysis.

The lab will send the specimen to another lab.

When the MRO informs the laboratory that the driver has requested a test of the split specimen, the laboratory will forward the sealed split specimen bottle, a copy of the MRO request, and the split specimen copy of the chain-of-custody form to a different DHHS-approved laboratory.

The split specimen will undergo both a screen and a confirmation test at the same cut-off levels noted in Step 3.

The MRO reviews the split test result and reports to the employer.

The result of the test of the split specimen is transmitted by the second laboratory to the MRO.

NOTE: Action required by DOT agency regulations as the result of a positive drug test (e.g., removal from performing a safety-sensitive function) is not delayed pending the result of the test of the split specimen.

If the split test is negative, the MRO will declare the final result to be negative.

If the split test is positive, the MRO will declare the final result to be positive.

If the MRO determines there is a legitimate medical explanation for the positive test result, the MRO shall report the test result to the employer as negative. Likewise, if the split specimen is unavailable, inadequate, or untestable, the MRO will cancel the test and report the cancellation and the reasons for it to the DOT, the employer, and the driver.

Step 6: The lab stores the specimen and keeps records.

The employer receives quarterly reports from the lab.

The laboratory shall provide the employer a quarterly statistical summary of tests conducted. To further confidentiality, the summary will be forwarded by registered or certified mail to the individual designated by the employer to coordinate the testing program.

The quarterly summary will not include any personal identifying information. If necessary, the laboratory may choose not to send a report until enough data has been collected to prevent the disclosure of any identifying information. For example, if only one test is conducted in a month, the laboratory may not send a report until other tests are conducted. The laboratory will notify the employer if a report is withheld for this reason.

The specimens are frozen in long-term storage.

The laboratory will keep a positive specimen frozen in long-term storage for a minimum of one year. Long-term frozen storage ensures that positive urine specimens will be available for any necessary retest during administrative or disciplinary proceedings. The employer may request the laboratory retain the specimen for an additional period of time.

The laboratory will retain all records regarding a urine specimen for a minimum of two years unless otherwise requested by the employer.

APPENDIX B

ALCOHOL SAMPLE COLLECTION AND TESTING PROCEDURES

Alcohol Testing

The initial sample must be collected through the use of a saliva device, a nonevidential breath test device [alcohol screening device (ASD)], or an evidential breath testing device (EBT) that is approved by the National Highway Traffic Safety Administration (NHTSA). All screening tests must be performed by a trained breath alcohol technician (BAT). Saliva and nonevidential breath testing must only be performed by a trained screening test technician (STT).

The confirmation sample must be conducted within 30 minutes of the completion of the screening test. The confirmation test must use an EBT that is approved by NHTSA. The test must be performed by a trained BAT.

Evidential Breath Testing Device

An EBT is a breath testing device that is capable of measuring a driver's blood alcohol concentration. It must be able to distinguish alcohol from acetone at the 0.02 alcohol concentration level. An EBT must be capable of conducting an air blank and performing an external calibration check. For confirmation tests (defined later), the employer must use EBTs that can:

- Produce a printed result in triplicate or three consecutive identical copies of each breath test
- Print a unique and sequential number of each completed test, with the BAT and the driver being able to read the number before each test, and print the number on each copy of the result

- Print, on each copy of the result, the manufacturer's name for the device, the device's serial number, and the time of the test

The EBT must have a manufacturer-developed quality assurance plan approved by NHTSA. The plan must include

- A designated method or methods to be used to perform external calibration checks of the device
- Specified minimum intervals for performing external calibration checks of the device that account for different frequencies of use, environmental conditions (e.g., temperature, altitude, humidity), and contexts of operation (e.g., stationary or mobile use)
- Specified tolerances on an external calibration check within which the EBT is regarded to be in proper calibration
- Specified inspection, maintenance, and calibration requirements and intervals for the device.

The employer must ensure that the external calibration checks of each EBT are performed as described in the manufacturer's plan and that the EBT will be taken out of service if any external calibration check results in a reading outside the tolerances for the EBT. The EBT cannot be returned to service until it has been recalibrated and has had an acceptable external calibration check. The employer must also ensure that the inspection, maintenance, and calibration of each EBT are performed by the manufacturer or a maintenance representative certified by the manufacturer or an appropriate State agency. The employer must also maintain records of the external calibration checks of the EBT and store the EBT in a secure place when not being used.

Breath Alcohol Technician

The alcohol tests must be performed by a BAT who is "trained to proficiency" in the operation of the EBT that he/she is using and in the alcohol testing procedures specified in the regulations. The BAT must successfully complete a DOT-approved course of instruction that provides training in the principles of EBT methodology, operation, and calibration checks. In addition, the BAT must complete training on the fundamentals of breath analysis for alcohol content, the procedures required for obtaining a breath sample, and interpreting and recording EBT results.

The BAT must demonstrate competence in the operation of the specific EBT he/she will use. The BAT will be required to receive additional training as new or additional devices or technology are introduced. The employer must identify the individual(s) who will serve as the employers BAT(s).

Alcohol Testing Site

Alcohol tests should be conducted at a site that provides privacy to the driver being tested. The testing site must be secured, with no unauthorized access at any time the ASD and/or EBT is unsecured or when testing is occurring. The BAT must conduct only one test at a time and must not leave the testing site while the preparations for testing or the test itself are in progress.

In unusual circumstances (e.g., an accident), an alcohol test can be conducted at a place other than an alcohol testing site. In such cases, the STT or BAT shall conduct the test in a manner that provides the driver with privacy to the greatest extent practicable.

Alcohol Testing Process

The following procedures must be used to conduct the test.

Preparation

Upon arrival at the alcohol testing site, the driver must provide positive identification to the STT or BAT. The identification can be in the form of a company photo identification card, a commercial driver's license (CDL), or identification by an employer representative.

After the testing procedures are explained to the driver, the driver and the STT or BAT must complete, date, and sign the alcohol testing form. The driver and the STT or BAT sign the form indicating that the driver is present and providing a saliva or breath sample.

EBT Screening Test

The BAT will inform the driver of the need to conduct a screening test. The BAT must open an individually sealed, disposable mouthpiece in view of the driver and attach it to the EBT. For screening tests, air blanks are not required.

The BAT will instruct the driver to blow forcefully into the mouthpiece for at least 6 seconds or until an adequate amount of breath has been obtained. Following the screening test, the BAT must show the driver the result displayed on the EBT or the printed result.

If the result of the screening test is an alcohol concentration of less than 0.02, no further testing is required and the test will be reported as a negative test. The driver may then return to his/ her safety-sensitive function.

ASD Screening Test

The steps for preparation for testing are the same as provided for EBT alcohol testing. If a saliva test is being conducted, the STT will explain the testing procedure to the driver. The STT will check the expiration date of the saliva testing device, showing the date to the driver, and must not use a device at any time after the expiration date. The STT will open an individually sealed package containing the device in the presence of the driver and then will offer the driver the opportunity to use the swab. If the driver chooses to use the swab, the

STT will instruct the employee to insert the absorbent end of the swab into his/her mouth, moving it actively throughout the mouth for a sufficient time to ensure that it is completely saturated, as indicated in the manufacturer's instructions for the device.

If the employee chooses not to use the swab, or in all cases in which a new test is necessary because the device did not activate, the STT will insert the absorbent end of the swab into the driver's mouth, moving it actively throughout the mouth for a sufficient time to ensure that it is completely saturated, as indicated in the manufacturer's instructions for the device.

The STT will wear a surgical glove while doing so. The STT will place the device on a flat surface or otherwise in a position in which the swab can be firmly placed into the opening provided in the device for this purpose. The STT will insert the swab into this opening and maintain firm pressure on the device until the device indicates that it is activated.

If the swab breaks, or the STT drops the swab on the floor or another surface, or the swab is removed or falls from the device before the device is activated, the STT will discard the device and swab and conduct a new test using a new device. The new device will be one that has been under the control of the employer or STT prior to the test. The STT will note in the remarks section of the form the reason for the new test. In this case, the STT shall offer the employee the choice of using the swab himself or herself or having the STT use the swab. If the test continues to be unsuccessful, the collection shall be terminated and an explanation provided in the remarks section of the form. A new test shall then be conducted, using an EBT for both the screening and confirmation tests.

If the procedures are followed successfully but the device is not activated, the STT will discard the device and swab, and conduct a new test. In this case, the STT will place the swab into the driver's mouth to collect saliva for the new test.

The STT will read the result displayed on the device 2 minutes after inserting the swab into the device and will show the device and its reading to the driver and enter the result on the form.

Confirmation Test

If the result of the screening test is an alcohol concentration of 0.02 or greater, a confirmation test must be performed.

The confirmation test must be conducted at least 15 minutes, but not more than 30 minutes, after the completion of the initial test. This delay prevents any accumulation of alcohol in the mouth from leading to an artificially high reading.

Employers that use non-evidential ASDs are responsible for ensuring that an EBT is available for use within 30 minutes of obtaining a test result on the ASD. If employer cannot ensure that an EBT will be available within the 30-minute time limit, the employer must not use ASDs in an alcohol testing program. The FMCSA will not allow, as a standard practice, employers to violate the 30-minute time limit for getting a confirmation test started. Rare instances may be allowed, at the FMCSA's discretion, on a case- by-case basis.

Once a screening test indicates an alcohol concentration of 0.02 or greater, however, a confirmation test must be conducted, no matter how long it takes to complete it. As stated above, these instances will be rare.

The BAT will inform the driver of the need to conduct a confirmation test. The driver will be instructed not to eat, drink, or put any object or substance in his/her mouth. The BAT will also instruct the driver not to belch (to the extent possible) while awaiting the confirmation test. The BAT must inform the driver that the test will be conducted at the end of the waiting period, even if the driver has disregarded the instructions.

Before the confirmation test is administered, the BAT shall conduct an air blank on the EBT. An air blank is a test of ambient air containing no alcohol to ensure that the EBT is properly calibrated. If the reading is greater than 0.00, the BAT shall conduct one more airblank. If the second air-blank reading is greater than 0.00, the EBT must not be used to conduct the test.

The confirmation test is conducted using the same procedures as the EBT screening test. A new mouthpiece must be used if the screening test was conducted on the EBT. If the initial and confirmation test results are not identical, the confirmation test result is deemed to be the final result.

If the result displayed on the EBT is not the same as that on the printed form, the test will be cancelled and the EBT removed from service.

The BAT will sign and date the form. The driver will sign and date the certification statement, which includes a notice that the driver cannot perform safety-sensitive functions or operate a motor vehicle if the results are 0.02 or greater. If the results are 0.04 or greater, the driver must be removed from his/her driving duties and attendant safety-sensitive functions and be evaluated by an SAP. The BAT will attach the alcohol test result printout directly onto the alcohol collection form with tamper-evident tape (unless the results are printed directly on the form).

Reporting

The BAT will transmit all results to a designated representative in a confidential manner (in writing, in person, by telephone, or other electronic means). In the event a driver must be removed from safety-sensitive functions, the BAT will notify employer immediately.

Incomplete Tests

If a screening or confirmation test cannot be completed, the BAT must, if practical, begin a new test using a new alcohol testing form with a new sequential test number.

Refusal by a driver to complete and sign the alcohol testing form, to provide breath, to provide an adequate amount of breath, or otherwise to cooperate with the collection process must be noted on the form and the test will be terminated.

If a driver attempts and fails to provide an adequate amount of breath, the BAT must note this on the form and immediately inform employer. Employer shall direct driver to obtain, from an acceptable licensed physician, an evaluation concerning the driver's medical ability to provide an adequate amount of breath. The evaluation should be made as soon as practical after the attempted breath test. If the physician indicates that there was a valid medical reason, the driver's failure to provide an adequate amount of breath will not be considered a refusal. If no valid medical reason is determined, the inadequate amount of breath must be considered a refusal to take the test.

Test Accuracy

To protect the integrity of the test and to ensure accurate results, the procedures for conducting an alcohol test are rigorous. Alcohol tests are considered invalid when the following occur:

- The external calibration check of the EBT produces a result outside the allowed tolerance levels.
- The BAT does not wait 15 minutes between the screening and confirmation tests.
- A valid air blank test that registers 0.00 is not performed before each confirmation test.
- The alcohol test form with the attached EBT printout is not completed correctly. Employee, STT, and BAT signatures, and relevant STT and BAT remarks, must be included.
- The EBT fails to print the confirmation results, the sequential test number on the EBT is not the same as the number on the printout, or the alcohol concentration displayed on the EBT is different from what is printed out.
- For tests conducted on a saliva device —
 - The result is read before 2 minutes or after 15 minutes from the time the swab is inserted into the device.
 - The device does not activate.
 - The device is used for a test after the expiration date printed on its package.
 - The STT fails to note on the alcohol testing form that the test was conducted using a saliva device.

APPENDIX C

Department of Transportation

United States Code Annotated

Title 49. Transportation

Subtitle I, Chapter 5, Special Authority

Subchapter II – *Penalties*

Pursuant to the FHWA regulations §382.507, any employer or driver who violates the requirements of this part shall be subject to the penalty provisions of 49 U.S.C. §521(b). Section 521(b), Civil Penalties, provides:

(b) Violations Relating to Commercial Motor Vehicle Safety Regulation and Operators. –

(1) Notice. –

(A) In general. - If the Secretary finds that a violation of a provision of subchapter III of chapter 311 (except sections 31138 and 31139) or section 31302, 31303, 31304, 31305(b), 31310(g) (1) (A), (1) or 31502 of this title, or a violation of a regulation issued under any of those provisions, has occurred, the Secretary shall issue a written notice to the violator. Such notice shall describe with reasonable particularity the nature of the violation found and the provision which has been violated. The notice shall specify the proposed civil penalty, if any, and suggest actions which might be taken in order to abate the violation. The notice shall indicate that the violator may, within 15 days of service, notify the Secretary of the violator's intention to contest the matter. In the event of a contested notice, the Secretary shall afford such violator an opportunity for a hearing, pursuant to section 554 of title 5, following which the Secretary shall issue an order affirming, modifying, or vacating the notice of violation.

(B) Nonapplicability to reporting and recordkeeping violations. - Subparagraph (A) shall not apply to reporting and recordkeeping violations.

(2) Civil Penalty. -

(A) In general. - Except as otherwise provided in this subsection, any person who is determined by the Secretary, after notice and opportunity for a hearing, to have committed an act that is a violation of regulations issued by the Secretary under subchapter III of chapter 311 (except sections 31138 and 31139) or section 31502 of this title shall be liable to the United States for a civil penalty in an amount not to exceed \$10,000 for each offense. Notwithstanding any other provision of this section (except subparagraph (C)), no civil penalty shall be assessed under this section against an employee for a violation in an amount exceeding \$2,500.

(B) Recordkeeping and reporting violations. - A person required to make a report to the Secretary, answer a question, or make, prepare, or preserve a record under section 504 of this title or under any regulation issued by the Secretary pursuant to subchapter III of chapter 311 (except sections 31138 and 31139) or section 31502 of this title about transportation by motor carrier, motor carrier of migrant workers, or motor private carrier, or an officer, agent, or employee of that person -

(i) who does not make that report, does not specifically, completely, and truthfully answer that question in 30 days from the date the Secretary requires the question to be answered, or does not make, prepare, or preserve that record in the form and manner prescribed by the Secretary, shall be liable to the United States for a civil penalty in an amount not to exceed \$1,000 for each offense, and each day of the violation shall constitute a separate offense, except that the total of all civil penalties assessed against any violator for all offenses related to any single violation shall not exceed \$10,000; or

(ii) who knowingly falsifies, destroys, mutilates, or changes a required report or record, knowingly files a false report with the Secretary, knowingly makes or causes or permits to be made a false or incomplete entry in that record about an operation or business fact or transaction, or knowingly makes, prepares, or preserves a record in violation of a regulation or order of the Secretary, shall be liable to the United States for a civil penalty in an amount not to exceed \$10,000 for each violation, if any such action can be shown to have misrepresented a fact that constitutes a violation other than a reporting or recordkeeping violation.

(C) Violations pertaining to cdls. - Any person who is determined by the Secretary, after notice and opportunity for a hearing, to have committed an act which is a violation of section 31302, 31303, 31304, 31305(b), or 31310(g)(1)(A) of this title shall be liable to the United States for a civil penalty not to exceed \$2,500 for each offense.

(D) Determination of amount. - The amount of any civil penalty, and a reasonable time for abatement of the violation, shall by written order be determined by the Secretary, taking into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice and public safety may require. In each case, the assessment shall be calculated to induce further compliance.

(E) Copying of records and access to equipment, lands, and buildings. - A person subject to chapter 51 or a motor carrier, broker, freight forwarder, or owner or operator of a commercial motor vehicle subject to part B of subtitle VI who fails to allow promptly, upon demand, the Secretary (or an employee designated by the Secretary) to inspect and copy any record or inspect and examine equipment, lands, buildings and other property in accordance with sections 504(c), 5121(c), and 14122(b) shall be liable to the United States for a civil penalty not to exceed \$1,000 for each offense. Each day the Secretary is denied the right to inspect and copy any record or inspect and examine equipment, lands, buildings and other property shall constitute a separate offense, except that the total of all civil penalties against any violator for all offenses related to a single violation shall not exceed \$10,000. It shall be a defense to such penalty that the records did not exist at the time of the Secretary's request or could not be timely produced without unreasonable expense or effort. Nothing in this subparagraph amends or supersedes any remedy available to the Secretary under section 502(d), section 507(c), or any other provision of this title.

(3) The Secretary may require any violator served with a notice of violation to post a copy of such notice or statement of such notice in such place or places and for such duration as the Secretary may determine appropriate to aid in the enforcement of subchapter III of chapter 311 (except sections 31138 and 31139) or section 31302, 31303, 31304, 31305(b), or 31502 of this title, as the case may be.

(4) Such civil penalty may be recovered in an action brought by the Attorney General on behalf of the United States in the appropriate district court of the United States or, before referral to the Attorney General; such civil penalty may be compromised by the Secretary.

(5)(A) If, upon inspection or investigation, the Secretary determines that a violation of a provision of subchapter III of chapter 311 (except sections 31138 and 31139) or section 31302, 31303, 31304, 31305(b), or 31502 of this title or a regulation issued under any of those provisions, or combination of such violations, poses an imminent hazard to safety, the Secretary shall order a vehicle or employee operating such vehicle out of service, or order an employer to cease all or part of the employer's commercial motor vehicle operations. In making any such order, the Secretary shall impose no restriction on any employee or employer beyond that required to abate the hazard. Subsequent to the issuance of the order, opportunity for review shall be provided in accordance with section 554 of title 5, except that such review shall occur not later than 10 days after issuance of such order.

(B) In this paragraph, "imminent hazard" means any condition of vehicle, employee, or commercial motor vehicle operations which substantially increases the likelihood of serious injury or death if not discontinued immediately.

(6) Criminal Penalties. -

(A) In general. - Any person who knowingly and willfully violates any provision of subchapter III of chapter 311 (except sections 31138 and 31139) or section 31502 of this title, or a regulation issued under any of those provisions shall, upon conviction, be subject for each offense to a fine not to exceed \$25,000 or imprisonment for a term not to exceed one year, or both, except that, if such violator is an employee, the violator shall only be subject to penalty if, while operating a commercial motor vehicle, the violator's activities have led or could have led to death or serious injury, in which case the violator shall be subject, upon conviction, to a fine not to exceed \$2,500.

(B) Violations pertaining to cdl's. - Any person who knowingly and willfully violates—

(i) any provision of section 31302, 31303(b) or (c), 31304, 31305(b), or 31310(g) (1) (A) of this title or a regulation issued under such section, or

(ii) with respect to notification of a serious traffic violation as defined under section 31301 of this title, any provision of section 31303(a) of this title or a regulation issued under section 31303(a), shall, upon conviction, be subject for each offense to a fine not to exceed \$5,000 or imprisonment for a term not to exceed 90 days, or both.

(7) The Secretary shall issue regulations establishing penalty schedules designed to induce timely compliance for persons failing to comply promptly with the requirements set forth in any notices and orders under this subsection.

(8) Prohibition on operation in interstate commerce after nonpayment of penalties. -

(A) In general. - An owner or operator of a commercial motor vehicle against whom a civil penalty is assessed under this chapter or chapter 51, 149, or 311 of this title and who does not pay such penalty or fails to arrange and abide by an acceptable payment plan for such civil penalty may not operate in interstate commerce beginning on the 91st day after the date specified by order of the Secretary for payment of such penalty. This paragraph shall not apply to any person who is unable to pay a civil penalty because such person is a debtor in a case under chapter 11 of title 11, United States Code.

(B) Regulations. - Not later than 12 months after the date of the enactment of this paragraph, the Secretary, after notice and an opportunity for public comment, shall issue regulations setting forth procedures for ordering commercial motor vehicle owners and operators delinquent in paying civil penalties to cease operations until payment has been made.

(9) Any aggrieved person who, after a hearing, is adversely affected by a final order issued under this section may, within 30 days, petition for review of the order in the United States Court of Appeals in the circuit wherein the violation is alleged to have occurred or where the violator has his principal place of business or residence, or in the United States Court of Appeals for the District of Columbia Circuit. Review of the order shall be based on a determination of whether the Secretary's findings and conclusions were supported by substantial evidence, or were otherwise not in accordance with law. No objection that has not been urged before the Secretary shall be considered by the court, unless reasonable grounds existed for failure or neglect to do so. The commencement of proceedings under this subsection shall not, unless ordered by the court, operate as a stay of the order of the Secretary.

(10) All penalties and fines collected under this section shall be deposited into the Highway Trust Fund (other than the Mass Transit Account).

(11) In any action brought under this section, process may be served without regard to the territorial limits of the district of the State in which the action is brought.

(12) In any proceeding for criminal contempt for violation of an injunction or restraining order issued under this section, trial shall be by the court, or, upon demand of the accused, by a jury, conducted in accordance with the provisions of rule 42(b) of the Federal Rules of Criminal Procedure.

(13) The provisions of this subsection shall not affect chapter 51 of this title or any regulation promulgated by the Secretary under chapter 51.

(14) As used in this subsection, the terms "commercial motor vehicle", "employee", "employer", and "State" have the meaning such terms have under section 31132 of this title.

DEFINITION OF TERMS

The terms used in these policies shall have the meanings defined below:

Adulterated Specimen: A specimen is considered adulterated if it contains a substance that is not a normal constituent or contains an endogenous substance at a concentration that is not a normal physiological concentration.

Air Blank: In evidential breath testing devices (EBT's) using gas chromatography technology, a reading of the device's internal standard. In all other EBT's, a reading of ambient air containing no alcohol

Alcohol: The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohol including methyl and isopropyl alcohol.

Alcohol Concentration: The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath.

Alcohol Confirmation Test: A subsequent test using an EBT following a screening test with a result of 0.02 or greater that provides quantitative data about the alcohol concentration.

Alcohol Test: A test using an evidential breath test device (EBT) or a non-evidential breath test device (such as a saliva test); the method of testing used to detect the level of alcohol. Both a screening test and a confirmation test must be used to establish a positive test result.

Alcohol Screening Test: An analytic procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath or saliva specimen.

Alcohol Testing Site: A place selected by the employer where employees present themselves for the purpose of providing breath or saliva for an alcohol test.

Alcohol Use: The drinking or swallowing of any beverage, liquid mixture, or preparation (including any medication) containing alcohol.

Aliquot: A fractional part of a specimen used for testing. It is taken as a sample representing the whole specimen.

Allocation: The assignment of a single position to its proper classification on the basis of the duties performed and responsibility assigned.

Administrative Leave: Authorized leave for administrative purposes, such as for conducting an investigation which may be with or without pay, at the option of the **employer**.

Anniversary Date: The date the employee is hired as defined below, or promoted or reclassified upward or downward. This is the date an employee becomes eligible for consideration for a salary increase. The anniversary date may be adjusted as specifically provided elsewhere in the personnel policies. (Note special provisions regarding military leave).

Applicant: A person, including a current employee, who is applying for any position with the **employer**. (May also be referred to as the candidate)

At-will: Employment status wherein the employee may be terminated at any time, with or without cause. An employee in an at-will status has neither a property right nor an expectation of continued employment with the **employer** and is not covered by the provisions of the discipline, layoff, or dispute resolution sections of these personnel policies.

Authentication: For purposes of FMLA, providing the health care provider with a copy of the medical certification and requesting verification that the information contained on the certification form was completed and/or authorized by the health care provider who signed the document; no additional medical information may be requested.

Authorized Employee: An employee approved by his/her department to make purchases and enter into contracts under this policy.

Blind Specimen or Blind Performance Test Specimen: A specimen submitted to a laboratory for quality control testing purposes, with a fictitious identifier, so that the laboratory cannot distinguish it from an employee specimen.

Blood Alcohol Concentration (BAC): The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test.

Board: The governing body of the employer.

Breath Alcohol Technician (BAT): A person who instructs and assists employees in the alcohol testing process and operates an evidential breath-testing device.

Canceled Test: A drug or alcohol test that has a problem identified that cannot be or has not been corrected, or which 49 CFR Part 40 otherwise requires to be cancelled. A cancelled test is neither a positive nor a negative test.

Casual Worker/Hire: An employee hired on an as-needed basis, either as a replacement for permanent employees who are out on short- and long-term absences or to meet **employer's** additional staffing needs during peak business periods.

Chain of Custody: The procedure used to document the handling of the urine specimen from the time the employee gives the specimen to the collector until the specimen is destroyed. This procedure uses the *Federal Drug Testing Custody and Control Form (CCF)* (see current form on website www.health.org/workplace).

Child: (Son or daughter) For purposes of FMLA, a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in Loco Parentis, who is either under age 18, or age 18 or older and “incapable of self-care because of a mental or physical disability.”

Clarification: For purposes of FMLA, contacting the health care provider to understand the handwriting on the medical certification or to understand the meaning of a response.

Class Series: Two or more classes which are similar as to the fundamental type of work, but which differ as to degree of responsibility and difficulty, and which have been arrayed in a progression of level of responsibility and complexity of duties.

Class Specification: A description of the essential characteristics of a job class, and the factors and conditions that make it unique from other classes, described in terms of duties, responsibilities, and qualifications.

Collection Container: A container into which the employee urinates to provide the specimen for a drug test.

Collection Site: A place selected by the employer where employees present themselves for the purpose of providing a urine specimen for a drug test.

Collector: A person who instructs and assists employees at a collection site, who receives and makes an initial inspection of the specimen provided by those employees, and who initiates and completes the *Federal Drug Testing Custody and Control Form (CCF)* (see current form on website www.health.org/workplace).

Commercial Motor Vehicle: A motor vehicle used in commerce to transport passengers or property, if the motor vehicle: (1) has a gross vehicle weight rating (GVWR) in excess of 26,000 pounds, or (2) is designed to carry 16 or more passengers (including the driver), or (3) of any size, which is used in the transportation of a placardable amount of hazardous material.

Confirmation Test: For alcohol testing, means a second test using an evidential breath test device, following a screening test with a result of .02 or greater, that provides quantitative data of alcohol concentration. For drug testing, means a second analytical procedure to identify the presence of a specific drug or metabolite that is independent of the screen test, and that uses a different technique and chemical principle from that of the screen test in order to ensure reliability and accuracy, generally a Gas Chromatography/Mass Spectrometry (GC/MS).

Confirmatory Drug Test: A second analytical procedure performed on a different aliquot of the original specimen to identify and quantify the presence of a specific drug or drug metabolite.

Confirmatory Validity Test: A second test performed on a different aliquot of the original urine specimen to further support a validity test result.

Confirmed Drug Test: A confirmation test result received by an MRO from a laboratory.

Consortium/Third-party Administrator (C/TPA): A service agent that provides or coordinates the provision of a variety of drug and alcohol testing services to employers. C/TPA's typically perform administrative tasks concerning the operation of the employers' drug and alcohol testing programs. This term includes, but is not limited to, groups of employers who join together to administer, as a single entity, the DOT drug and alcohol testing programs of its members.

Contraband: Any item such as illegal drugs, drug paraphernalia, or other related items whose possession is prohibited by this policy.

Conflicting Employment: Outside employment that interferes with the employee's ability to perform his/her assigned job.

Contract: An agreement, verbal or written, between two or more capable parties. To constitute a contract, there must be an "offer" and an "acceptance".

Conviction: A finding of guilt, including a plea of no contest or imposition of sentence or both, by any judicial body charged with the responsibility to determine violations of the federal or state criminal drug or alcohol statutes.

Date of Hire/Hire Date: The actual date an employee first renders paid service in a regular position.

Day: Calendar days unless work days are specified.

Demotion: Involuntary movement of an employee from one job class to another job class having a lower maximum base rate of pay, as a result of disciplinary action.

Department Head/Department Manager: An employee who is directly responsible for the operations of a department of the **employer**. This person may also serve as a Director.

Designated Employer Representative (DER): An employee authorized by the employer to take immediate action(s) to remove employees from safety-sensitive functions and to make required decisions in the testing and evaluation processes. The DER also receives test results and other communications for the employer. Service agents cannot act as DER's.

Diluted Specimen: Diluted specimens have a creatinine and specific gravity values that are lower than expected for human urine. The HHS has determined that specimens with creatinine levels greater than or equal to 2.0 mg/dL and have a specific gravity greater than 1.0020 but less

than 1.0030 are dilute. Individuals with creatinine levels greater than or equal to 2.0 mg/dL but less than 5.0 mg/dL are required to be retested under direct observation.

Disability-Related Inquiry: A question (or series of questions) likely to elicit information about a disability. Generally, disability-related inquiries are not allowed during the hiring process. Examples of disability-related inquiries not permitted include:

- Asking whether the employee/applicant currently has or has ever had a disability, how s/he became disabled, or inquiring about the nature or severity of an employee's/applicant's disability;
- Asking an employee/applicant a broad question about his/her impairments that is likely to elicit information about a disability;
- Asking an employee/applicant whether s/he is currently taking any prescription drugs or medication; and
- Asking about an employee's/applicant's genetic information.
- Asking about an applicant's prior workers' compensation history.
- Asking an employee's/applicant's coworker, family member, doctor, or other person about the employee's/applicant's disability.

Discharge: Termination, separation, dismissal, or removal from employment for cause.

Discipline: A suspension (generally without pay), involuntary demotion, reduction in pay, discharge, or written reprimand or verbal warning.

Discrimination: Employment decisions or actions which are inappropriately taken because of the applicant's or employee's race, color, religion, age, gender, pregnancy, sexual orientation, national origin, ancestry, disability, veteran status, domestic partnership, genetic information, gender identity or expression, political affiliation, or membership in the Nevada National Guard, or union activity.

Dispute: Unresolved work-related problems identified by an employee or group of employees pertaining to work-related issues. Disputes may not be related to disciplinary action.

Domestic Partner: Persons who are registered as domestic partners with the state of Nevada per NRS 122A.200.

DOT, the Department, DOT Agency: These terms encompass all DOT agencies, including, but not limited to, the United States Coast Guard (USCG), the Federal Aviation Administration (FAA), the Federal Railroad Administration (FRA), the Federal Motor Carrier Safety Administration (FMCSA), the Federal Transit Administration (FTA), the National Highway Traffic Safety Administration (NHTSA), the Research and Special Programs Administration (RSPA), and the Office of the Secretary (OST). These terms include any designee of a DOT agency.

Driver: Any person who operates a commercial motor vehicle. This includes, but is not limited to: full-time, regularly employed drivers; casual, intermittent, or occasional drivers; leased drivers; and independent, owner-operator contractors who are either directly employed by, or under lease to, an employer or who operate a commercial motor vehicle at the direction of, or with the consent of the employer.

Drugs: The drugs for which tests are required are: marijuana, cocaine, amphetamines, phencyclidine (PCP), and opiates.

Drug Test: A blood or urine test that includes specimen collection and testing by a Department of Health and Human Services (DHHS)-certified laboratory. Both a screening test and a confirmation test must be used to establish a positive test result.

Eligible List: A list of names of persons who have satisfactorily completed an examination for a position and have qualified; also includes **Reinstatement List** (see below), A list of the names of persons who have been laid off and are available for reinstatement.

Employee: A person employed in a budgeted position on a full- or part-time basis. For purposes of those sections of these policies covering discipline, hiring, layoff, and dispute resolution, the term employee **excludes** elected officials, part-time/casual/temporary and seasonal workers.

Regular Full-time Employee: A person who has successfully completed an initial introductory period in a regular budgeted position with a normally scheduled workweek of at least 40 hours.

Regular Part-Time Employee: A person who has successfully completed an initial introductory period in a regular budgeted position which requires at least 20 hours per week, but less than full-time employment.

Introductory Employee: A person who serves in an at-will status for a specified period of time during which s/he is evaluated by the **employer** to ensure that s/he has demonstrated fitness for a position by actually performing the duties of the position.

Exempt Employee: An employee who is exempt from the overtime provisions of the Fair Labor Standards Act. (Such determination is made on the basis of duties and responsibilities performed and the method of pay computation).

Non-Exempt Employee: An employee who is subject to the overtime provisions of the Fair Labor Standards Act.

Employer: A person or entity employing one or more employees (including an individual who is self-employed) subject to DOT agency regulations requiring compliance with this Policy. The term includes an employer's officers, representatives, and management personnel. Service agents are not employers for the purposes of this Policy.

Employer Premises: All **employer** property and facilities, the surrounding grounds and parking lots, leased space, **employer** motor-driven equipment/vehicles, offices, desks, cabinets, closets, etc.

Equal Employment Opportunity (EEO) Officer: The staff member assigned the responsibility and authority to receive, investigate, and resolve complaints of alleged discrimination/harassment. This individual also has the responsibility to provide training to the **employer** and assure appropriate notices are posted.

Essential Function: A fundamental job duty of the position held or desired. A function is essential if the job exists to perform that function, a limited number of other employees are available to perform the function, or the function requires special skill or expertise. (Marginal functions associated with any job should not be considered essential functions).

Evidential Breath Testing Device (EBT): A device approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath at the .02 and .04 alcohol concentrations, placed on NHTSA's Conforming Products List (CPL) for "Evidential Breath Measurement Devices," and identified on the CPL as conforming with the model specifications.

Examination/Test: Any measure, combination of measures, or procedures used as a basis for any employment decision. Examinations include the full range of assessment techniques from traditional paper and pencil tests, performance tests, assessment centers, introductory periods, and evaluation of physical, educational, and work experience qualifications through informal

interviews and scored application forms. **Open** examinations are open to all applicants, internal and external. **Promotional** examinations are open only to selected categories of employees of the employer.

Full-Time: Work which requires hours of work as established by the **employer** as full-time. A full-time employee is regularly scheduled to work a normal work week of 40 hours. Note: For the purpose of determining eligibility for benefits and layoff, collective bargaining agreements may provide alternate definitions of full-time.

Grade: The designation of a salary range for a class.

HHS. The Department of Health and Human Services or any designee of the Secretary, Department of Health and Human Services.

Illegal Drugs: Any controlled substance or drug which is illegal to sell, possess, cultivate, transfer, use, purchase, or distribute. Illegal drugs include prescription drugs not legally obtained and/or prescription drugs not being used in the manner, combination, or quantity prescribed, or by the individual for whom prescribed.

Incomplete or Insufficient Certification: For purposes of FMLA, a medical certification is considered incomplete if the employer receives a certification, but one or more of the applicable entries have not been completed. A medical certification is considered insufficient if the employer receives a complete certification, but the information provided is vague, ambiguous, or non-responsive.

In Loco Parentis: A relationship in which a person has put him/herself in the situation of a parent by assuming and discharging the obligations of a parent to a child, with whom he or she has no legal or biological connection, including day-to-day responsibilities to care for or financially support a child.

Initial Drug Test (Screening Drug Test): The test used to differentiate a negative specimen from one that requires further testing for drugs or drug metabolites.

Initial Specimen Validity Test: The first test used to determine if a urine specimen is adulterated, diluted, substituted, or invalid.

Introductory Period: A trial or working test period which is an integral part of the examination and selection process during which an employee serves in an at-will status and is required to demonstrate fitness for the position for which s/he was hired by actually performing the duties of the position.

Invalid Specimen: An invalid specimen is one that contains an unidentified adulterant, contains an Unidentified interfering substance. Has an abnormal physical characteristic, or has an endogenous substance at an abnormal concentration that prevents the laboratory from completing testing or obtaining a valid drug test result.

Key Employee: A salaried FMLA-eligible employee who is among the highest paid ten percent of all the employees employed by the employer within 75 miles of the employee's worksite.

Joinder Agreement: May also be referred to as "Mutual Contract". A means for making purchases through the contracts or bid awards of another Nevada governmental agency, as allowed under Nevada law

Laboratory: Any U.S. laboratory certified by HHS under the National Laboratory Certification Program as meeting the minimum standards of Subpart C of the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs; or, in the case of foreign laboratories, a laboratory approved for participation by DOT under this part.

Layoff: A separation from the **employer's** service because of a shortage of funds, lack of work, abolishment of a position, reorganization, or for other reasons not reflecting discredit on an employee and for reasons outside of the employee's control.

Leave Without Pay: Authorized leave in a non-paid status.

Legal Drugs: Prescription drugs and over-the-counter drugs that have been legally obtained and are being used in the manner, combination, and quantity for which they were prescribed or manufactured.

Limit of Detection (LOD): The lowest concentration at which a measure can be identified, but (for quantitative assays) the concentration cannot be accurately calculated.

Limit of Quantitation: For quantitative assays, the lowest concentration at which the identity and concentration of the measure can be accurately established.

Manager: An employee, or an elected official who has been authorized to select, train, schedule, and evaluate the work of other employees, and to make decisions or effectively recommend actions related to the hiring, evaluation, and discipline of assigned employees. This person may also serve as the department head.

Market Conditions: The discretionary measure used to determine if the number of qualified providers available are sufficient to justify the time and expense necessary to obtain quotes.

Medical Examination: A procedure or test usually given by a health care professional or in a medical setting that seeks information about an individual's physical or mental impairments or health. Medical examinations include, but are not limited to:

- Vision tests conducted and analyzed by an ophthalmologist or optometrist;
- Blood, urine, and breath analyses to check for alcohol use;
- Blood pressure screening and cholesterol testing; nerve conduction tests;
- Range-of-motion tests that measure muscle strength and motor function;
- Pulmonary function tests;
- Psychological tests designed to identify a mental disorder or impairment; and
- Diagnostic procedures such as x-rays, CAT scans, and MRI's.

Medical Review Officer (MRO): A person who is a licensed physician and who is responsible for receiving and reviewing laboratory results generated by an employer's drug testing program and evaluating medical explanations for certain drug test results.

Negative Result: The result reported by an HHS-certified laboratory to an MRO when a specimen contains no drug or the concentration of the drug is less than the cutoff concentration for the drug or drug class and the specimen is a valid specimen.

Next of Kin: For purposes of FMLA, the nearest blood relative other than the covered servicemember's spouse, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA. When no such designation is made, and there are multiple family members with the same level of relationship to the covered servicemember, all such family members shall be considered the covered servicemember's next of kin and may take FMLA leave to provide care to the covered servicemember, either consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the covered servicemember's only next of kin.

Non-negative Specimen: A urine specimen that is reported as adulterated, substituted, positive (for drug(s) or drug metabolites(s)), and /or invalid.

Parent: For purposes of FMLA, includes a biological, adoptive, step or foster father or mother, or any other individual who stood In Loco Parentis to the employee or covered servicemember.

Office of Drug and Alcohol Policy and Compliance (ODAPC): The office in the Office of the Secretary, DOT, that is responsible for coordinating drug and alcohol testing program matters within the Department, and providing information concerning the implementation of 49 CFR Part 40.

Oxidizing Adulterant: A substance that acts alone or in combination with other substances to oxidize drugs or drug metabolites to prevent the detection of the drug or drug metabolites, or affects the reagents in either the initial or confirmatory drug test.

Personnel Action: Any action taken with reference to appointment, compensation, promotion, transfer, layoff, dismissal, or any other action affecting an employee's employment status.

Position: A group of duties and responsibilities requiring the ongoing services of one or more employees, which is listed in the authorized position list contained in the currently approved employer's budget or established by formal action of the City Council.

Positive Drug or Alcohol Test: Any detectable level of drugs or its metabolite (in excess of trace amounts attributable to secondary exposure) in an employee's urine or blood. With respect to alcohol, a blood alcohol concentration of 0.02 or higher constitutes a positive test.

Positive Result: The result reported by an HHS-certified laboratory when a specimen contains a drug or drug metabolite equal to or greater than the cutoff concentrations.

Professional Services: Personal services requiring a high degree of professional or technical skill such that selection of the appropriate person/entity may not be adaptable to the competitive bid process.

Promotion: The movement of an employee from one class to another class having a higher maximum base rate of pay, usually as a result of some type of examination.

Public Works Projects: A term which refers to new construction, repair, or reconstruction of a project financed in whole or part from public money for public buildings, roads, streets, sewers, parks, and playgrounds, as more fully defined in NRS 338.010.

Purchase: Includes expenditures for goods and services, as well as payments for leases of personal property (including motor vehicles, equipment, copiers, etc.).

Rate of Pay: An employee's salary as shown in the employer's compensation plan.

Reallocation: A change in the classification and pay grade of a class to a higher or lower pay grade.

Reasonable Accommodation:

- A modification or adjustment to a job application process that enables a qualified applicant with a disability to be considered for the position such qualified applicant desires; or
- A modification or adjustment to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; or

- A modification or adjustment that enables a covered employee, with a disability, to enjoy equal benefits and privileges of employment as are enjoyed by other similarly situated employees without disabilities.

Reclassification: The change of a position to a different job class which results from changes in duties and responsibilities.

Reasonable Suspicion of Drug and/or Alcohol Use: Reasonable suspicion means such suspicion that will justify a supervisor in referring a driver for an alcohol and/or drug test. It is the amount of suspicion sufficient to convince a trained supervisor under the circumstances to believe that:

- a. The driver has violated the Vehicle Operators Drug and Alcohol Policy; or
- b. The actions, appearance, or conduct of an on-duty driver are indicative of the use of drugs or alcohol.

The suspicion must be based in fact on specific, contemporaneous, articulable observations by a trained supervisor(s) concerning the appearance, behavior, speech, or body odors of the driver.

For reasonable suspicion of alcohol misuse, such observations must be made during, just preceding, or just after the period of the work day that the driver is performing a safety-sensitive function. Reasonable suspicion is more than mere speculation but less than absolute certainty.

Reconfirmed: The result reported for a split specimen when the second laboratory is able to corroborate the original result reported for the primary specimen.

Regular Position: An authorized position which appears in the authorized position list contained in the **employer's** budget documents or its amendments approved by the City Council. (Normally a regular position consists of duties which must be performed at least 20 hours per week on a regular, year-round basis).

Reinstatement: The restoration of a laid-off employee or an employee rejected during a promotional introductory period to a position in a class in which the employee formerly served as a regular employee.

Reinstatement List: A list of names of persons who have been laid off and are available for reinstatement (rehire without examination).

Rejected for Testing: The result reported by an HHS-certified laboratory when no tests are performed for a specimen because of a fatal flaw or a correctable flaw that is not corrected.

Reprimand: A written notice to an employee stating specific performance and/or behavioral deficiencies and the improvements in behavior and/or performance which the employee must make, and that further disciplinary action will follow if the employee does not make the required improvements. (A performance evaluation form shall not be considered a reprimand).

Resignation: A notice by an employee that s/he intends to separate from the **employer's** service. The **employer** may require that resignations be in writing.

Salary Range: The minimum and maximum salary set for each classification, grade, or level as designated by the position compensation plans. (Also see Grade.)

Screening Test: In alcohol testing, it means an analytical procedure to determine whether a driver may have a prohibited concentration in his/her system (breath or saliva test). In drug testing, it means an immunoassay screen to eliminate "negative" urine specimens from further consideration.

Screening Test Technician (STT): A person who instructs and assists employees in the alcohol testing process and operates an Alcohol Screening Device (ASD).

Seasonal Employee: See Casual Worker.

Service Agent. Any person or entity, other than an employee of the employer, who provides services specified under this part (49 CFR Part 40) to employers and/or employees in connection with DOT drug and alcohol testing requirements. This includes, but is not limited to, collectors, BAT's, STT's, laboratories, MRO's, SAP's, and C/TPA's. To act as service agents, persons and employers must meet the qualifications set forth in applicable sections of 49 CFR Part 40. Service agents are not employers for purposes of 49 CFR Part 40.

Sole Source: A single vendor or other source of goods or services such that the purchase of the goods or services is not adaptable to the competitive bid process.

Son or Daughter of a Covered Servicemember: For purposes of FMLA, a biological, adopted, or foster child, stepchild, legal ward, or a child for whom the covered servicemember stood In Loco Parentis, and who is of any age.

Son or Daughter on Covered Active Duty or Call to Covered Active Duty Status: For purposes of FMLA, employee's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood In Loco Parentis who is on covered active duty or call to covered active duty status, and who is of any age.

Spouse: A husband or wife as defined or recognized under State law for purposes of marriage.

Split Specimen Collection: A collection in which the urine collected is divided into two separate specimen bottles, the primary specimen (Bottle A) and the split specimen (Bottle B).

Stand-down: The practice of temporarily removing an employee from the performance of safety-sensitive functions based only on a report from a laboratory to the MRO of a confirmed positive test for a drug or drug metabolite, an adulterated test, or a substituted test, before the MRO has completed verification of the test result.

Step: A specific rate of pay within the salary range established for a class. (Also see Rate of Pay).

Substance Abuse Professional (SAP): A licensed physician, or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of drug- and alcohol-related disorders.

Substituted Specimen: Substituted specimens have creatinine and specific gravity values that are so diminished or so divergent that they are not consistent with normal human urine. The HHS has determined that specimens with creatinine levels of less than 2.0 mg/dL are substituted.

Supervisor: An employee, or an elected official who has been authorized to select, train, schedule, and evaluate the work of other employees, and to make decisions or effectively recommend actions related to the hiring, evaluation, and discipline of assigned employees. This person may also serve as the department head or Director.

Suspension: The temporary separation from service, with or without pay, of an employee for disciplinary reasons or pending investigation of an employee's conduct.

Temporary Employee: See Casual Worker.

Transfer: A lateral change of an employee from one position to another position in the same class or to a different class in the same salary range.

Verified Test: A drug test result or validity testing result from an HHS-certified laboratory that has undergone review and final determination by the MRO.

Warning: Verbal notice or counseling of an employee specifying required changes in work performance or on-the-job behavior.

DEFINITION OF TERMS

The terms used in these policies shall have the meanings defined below:

Adulterated Specimen: A specimen is considered adulterated if it contains a substance that is not a normal constituent or contains an endogenous substance at a concentration that is not a normal physiological concentration.

Air Blank: In evidential breath testing devices (EBT's) using gas chromatography technology, a reading of the device's internal standard. In all other EBT's, a reading of ambient air containing no alcohol

Alcohol: The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohol including methyl and isopropyl alcohol.

Alcohol Concentration: The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath.

Alcohol Confirmation Test: A subsequent test using an EBT following a screening test with a result of 0.02 or greater that provides quantitative data about the alcohol concentration.

Alcohol Test: A test using an evidential breath test device (EBT) or a non-evidential breath test device (such as a saliva test); the method of testing used to detect the level of alcohol. Both a screening test and a confirmation test must be used to establish a positive test result.

Alcohol Screening Test: An analytic procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath or saliva specimen.

Alcohol Testing Site: A place selected by the employer where employees present themselves for the purpose of providing breath or saliva for an alcohol test.

Alcohol Use: The drinking or swallowing of any beverage, liquid mixture, or preparation (including any medication) containing alcohol.

Aliquot: A fractional part of a specimen used for testing. It is taken as a sample representing the whole specimen.

Allocation: The assignment of a single position to its proper classification on the basis of the duties performed and responsibility assigned.

Administrative Leave: Authorized leave for administrative purposes, such as for conducting an investigation which may be with or without pay, at the option of the **employer**.

Anniversary Date: The date the employee is hired as defined below, or promoted or reclassified upward or downward. This is the date an employee becomes eligible for consideration for a salary increase. The anniversary date may be adjusted as specifically provided elsewhere in the personnel policies. (Note special provisions regarding military leave).

Applicant: A person, including a current employee, who is applying for any position with the **employer**. (May also be referred to as the candidate)

At-will: Employment status wherein the employee may be terminated at any time, with or without cause. An employee in an at-will status has neither a property right nor an expectation of continued employment with the **employer** and is not covered by the provisions of the discipline, layoff, or dispute resolution sections of these personnel policies.

Authentication: For purposes of FMLA, providing the health care provider with a copy of the medical certification and requesting verification that the information contained on the certification form was completed and/or authorized by the health care provider who signed the document; no additional medical information may be requested.

Authorized Employee: An employee approved by his/her department to make purchases and enter into contracts under this policy.

Blind Specimen or Blind Performance Test Specimen: A specimen submitted to a laboratory for quality control testing purposes, with a fictitious identifier, so that the laboratory cannot distinguish it from an employee specimen.

Blood Alcohol Concentration (BAC): The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test.

Board: The governing body of the employer.

Breath Alcohol Technician (BAT): A person who instructs and assists employees in the alcohol testing process and operates an evidential breath-testing device.

Canceled Test: A drug or alcohol test that has a problem identified that cannot be or has not been corrected, or which 49 CFR Part 40 otherwise requires to be cancelled. A cancelled test is neither a positive nor a negative test.

Casual Worker/Hire: An employee hired on an as-needed basis, either as a replacement for permanent employees who are out on short- and long-term absences or to meet **employer's** additional staffing needs during peak business periods.

Chain of Custody: The procedure used to document the handling of the urine specimen from the time the employee gives the specimen to the collector until the specimen is destroyed. This procedure uses the *Federal Drug Testing Custody and Control Form (CCF)* (see current form on website www.health.org/workplace).

Child: (Son or daughter) For purposes of FMLA, a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in Loco Parentis, who is either under age 18, or age 18 or older and “incapable of self-care because of a mental or physical disability.”

Clarification: For purposes of FMLA, contacting the health care provider to understand the handwriting on the medical certification or to understand the meaning of a response.

Class Series: Two or more classes which are similar as to the fundamental type of work, but which differ as to degree of responsibility and difficulty, and which have been arrayed in a progression of level of responsibility and complexity of duties.

Class Specification: A description of the essential characteristics of a job class, and the factors and conditions that make it unique from other classes, described in terms of duties, responsibilities, and qualifications.

Collection Container: A container into which the employee urinates to provide the specimen for a drug test.

Collection Site: A place selected by the employer where employees present themselves for the purpose of providing a urine specimen for a drug test.

Collector: A person who instructs and assists employees at a collection site, who receives and makes an initial inspection of the specimen provided by those employees, and who initiates and completes the *Federal Drug Testing Custody and Control Form (CCF)* (see current form on website www.health.org/workplace).

Commercial Motor Vehicle: A motor vehicle used in commerce to transport passengers or property, if the motor vehicle: (1) has a gross vehicle weight rating (GVWR) in excess of 26,000 pounds, or (2) is designed to carry 16 or more passengers (including the driver), or (3) of any size, which is used in the transportation of a placardable amount of hazardous material.

Confirmation Test: For alcohol testing, means a second test using an evidential breath test device, following a screening test with a result of .02 or greater, that provides quantitative data of alcohol concentration. For drug testing, means a second analytical procedure to identify the presence of a specific drug or metabolite that is independent of the screen test, and that uses a different technique and chemical principle from that of the screen test in order to ensure reliability and accuracy, generally a Gas Chromatography/Mass Spectrometry (GC/MS).

Confirmatory Drug Test: A second analytical procedure performed on a different aliquot of the original specimen to identify and quantify the presence of a specific drug or drug metabolite.

Confirmatory Validity Test: A second test performed on a different aliquot of the original urine specimen to further support a validity test result.

Confirmed Drug Test: A confirmation test result received by an MRO from a laboratory.

Consortium/Third-party Administrator (C/TPA): A service agent that provides or coordinates the provision of a variety of drug and alcohol testing services to employers. C/TPA's typically perform administrative tasks concerning the operation of the employers' drug and alcohol testing programs. This term includes, but is not limited to, groups of employers who join together to administer, as a single entity, the DOT drug and alcohol testing programs of its members.

Contraband: Any item such as illegal drugs, drug paraphernalia, or other related items whose possession is prohibited by this policy.

Conflicting Employment: Outside employment that interferes with the employee's ability to perform his/her assigned job.

Contract: An agreement, verbal or written, between two or more capable parties. To constitute a contract, there must be an "offer" and an "acceptance".

Conviction: A finding of guilt, including a plea of no contest or imposition of sentence or both, by any judicial body charged with the responsibility to determine violations of the federal or state criminal drug or alcohol statutes.

Date of Hire/Hire Date: The actual date an employee first renders paid service in a regular position.

Day: Calendar days unless work days are specified.

Demotion: Involuntary movement of an employee from one job class to another job class having a lower maximum base rate of pay, as a result of disciplinary action.

Department Head/Department Manager: An employee who is directly responsible for the operations of a department of the **employer**. This person may also serve as a Director.

Designated Employer Representative (DER): An employee authorized by the employer to take immediate action(s) to remove employees from safety-sensitive functions and to make required decisions in the testing and evaluation processes. The DER also receives test results and other communications for the employer. Service agents cannot act as DER's.

Diluted Specimen: Diluted specimens have a creatinine and specific gravity values that are lower than expected for human urine. The HHS has determined that specimens with creatinine levels greater than or equal to 2.0 mg/dL and have a specific gravity greater than 1.0020 but less

than 1.0030 are dilute. Individuals with creatinine levels greater than or equal to 2.0 mg/dL but less than 5.0 mg/dL are required to be retested under direct observation.

Disability-Related Inquiry: A question (or series of questions) likely to elicit information about a disability. Generally, disability-related inquiries are not allowed during the hiring process. Examples of disability-related inquiries not permitted include:

- Asking whether the employee/applicant currently has or has ever had a disability, how s/he became disabled, or inquiring about the nature or severity of an employee's/applicant's disability;
- Asking an employee/applicant a broad question about his/her impairments that is likely to elicit information about a disability;
- Asking an employee/applicant whether s/he is currently taking any prescription drugs or medication; and
- Asking about an employee's/applicant's genetic information.
- Asking about an applicant's prior workers' compensation history.
- Asking an employee's/applicant's coworker, family member, doctor, or other person about the employee's/applicant's disability.

Discharge: Termination, separation, dismissal, or removal from employment for cause.

Discipline: A suspension (generally without pay), involuntary demotion, reduction in pay, discharge, or written reprimand or verbal warning.

Discrimination: Employment decisions or actions which are inappropriately taken because of the applicant's or employee's race, color, religion, age, gender, pregnancy, sexual orientation, national origin, ancestry, disability, veteran status, domestic partnership, genetic information, gender identity or expression, political affiliation, or membership in the Nevada National Guard, or union activity.

Dispute: Unresolved work-related problems identified by an employee or group of employees pertaining to work-related issues. Disputes may not be related to disciplinary action.

Domestic Partner: Persons who are registered as domestic partners with the state of Nevada per NRS 122A.200.

DOT, the Department, DOT Agency: These terms encompass all DOT agencies, including, but not limited to, the United States Coast Guard (USCG), the Federal Aviation Administration (FAA), the Federal Railroad Administration (FRA), the Federal Motor Carrier Safety Administration (FMCSA), the Federal Transit Administration (FTA), the National Highway Traffic Safety Administration (NHTSA), the Research and Special Programs Administration (RSPA), and the Office of the Secretary (OST). These terms include any designee of a DOT agency.

Driver: Any person who operates a commercial motor vehicle. This includes, but is not limited to: full-time, regularly employed drivers; casual, intermittent, or occasional drivers; leased drivers; and independent, owner-operator contractors who are either directly employed by, or under lease to, an employer or who operate a commercial motor vehicle at the direction of, or with the consent of the employer.

Drugs: The drugs for which tests are required are: marijuana, cocaine, amphetamines, phencyclidine (PCP), and opiates.

Drug Test: A blood or urine test that includes specimen collection and testing by a Department of Health and Human Services (DHHS)-certified laboratory. Both a screening test and a confirmation test must be used to establish a positive test result.

Eligible List: A list of names of persons who have satisfactorily completed an examination for a position and have qualified; also includes **Reinstatement List** (see below), A list of the names of persons who have been laid off and are available for reinstatement.

Employee: A person employed in a budgeted position on a full- or part-time basis. For purposes of those sections of these policies covering discipline, hiring, layoff, and dispute resolution, the term employee **excludes** elected officials, part-time/casual/temporary and seasonal workers.

Regular Full-time Employee: A person who has successfully completed an initial introductory period in a regular budgeted position with a normally scheduled workweek of at least 40 hours.

Regular Part-Time Employee: A person who has successfully completed an initial introductory period in a regular budgeted position which requires at least 20 hours per week, but less than full-time employment.

Introductory Employee: A person who serves in an at-will status for a specified period of time during which s/he is evaluated by the **employer** to ensure that s/he has demonstrated fitness for a position by actually performing the duties of the position.

Exempt Employee: An employee who is exempt from the overtime provisions of the Fair Labor Standards Act. (Such determination is made on the basis of duties and responsibilities performed and the method of pay computation).

Non-Exempt Employee: An employee who is subject to the overtime provisions of the Fair Labor Standards Act.

Employer: A person or entity employing one or more employees (including an individual who is self-employed) subject to DOT agency regulations requiring compliance with this Policy. The term includes an employer's officers, representatives, and management personnel. Service agents are not employers for the purposes of this Policy.

Employer Premises: All **employer** property and facilities, the surrounding grounds and parking lots, leased space, **employer** motor-driven equipment/vehicles, offices, desks, cabinets, closets, etc.

Equal Employment Opportunity (EEO) Officer: The staff member assigned the responsibility and authority to receive, investigate, and resolve complaints of alleged discrimination/harassment. This individual also has the responsibility to provide training to the **employer** and assure appropriate notices are posted.

Essential Function: A fundamental job duty of the position held or desired. A function is essential if the job exists to perform that function, a limited number of other employees are available to perform the function, or the function requires special skill or expertise. (Marginal functions associated with any job should not be considered essential functions).

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Examination/Test: Any measure, combination of measures, or procedures used as a basis for any employment decision. Examinations include the full range of assessment techniques from traditional paper and pencil tests, performance tests, assessment centers, introductory periods, and evaluation of physical, educational, and work experience qualifications through informal

interviews and scored application forms. **Open** examinations are open to all applicants, internal and external. **Promotional** examinations are open only to selected categories of employees of the employer.

Full-Time: Work which requires hours of work as established by the **employer** as full-time. A full-time employee is regularly scheduled to work a normal work week of 40 hours. Note: For the purpose of determining eligibility for benefits and layoff, collective bargaining agreements may provide alternate definitions of full-time.

Grade: The designation of a salary range for a class.

HHS. The Department of Health and Human Services or any designee of the Secretary, Department of Health and Human Services.

Illegal Drugs: Any controlled substance or drug which is illegal to sell, possess, cultivate, transfer, use, purchase, or distribute. Illegal drugs include prescription drugs not legally obtained and/or prescription drugs not being used in the manner, combination, or quantity prescribed, or by the individual for whom prescribed.

Incomplete or Insufficient Certification: For purposes of FMLA, a medical certification is considered incomplete if the employer receives a certification, but one or more of the applicable entries have not been completed. A medical certification is considered insufficient if the employer receives a complete certification, but the information provided is vague, ambiguous, or non-responsive.

In Loco Parentis: A relationship in which a person has put him/herself in the situation of a parent by assuming and discharging the obligations of a parent to a child, with whom he or she has no legal or biological connection, including day-to-day responsibilities to care for or financially support a child.

Initial Drug Test (Screening Drug Test): The test used to differentiate a negative specimen from one that requires further testing for drugs or drug metabolites.

Initial Specimen Validity Test: The first test used to determine if a urine specimen is adulterated, diluted, substituted, or invalid.

Introductory Period: A trial or working test period which is an integral part of the examination and selection process during which an employee serves in an at-will status and is required to demonstrate fitness for the position for which s/he was hired by actually performing the duties of the position.

Invalid Specimen: An invalid specimen is one that contains an unidentified adulterant, contains an Unidentified interfering substance. Has an abnormal physical characteristic, or has an endogenous substance at an abnormal concentration that prevents the laboratory from completing testing or obtaining a valid drug test result.

Key Employee: A salaried FMLA-eligible employee who is among the highest paid ten percent of all the employees employed by the employer within 75 miles of the employee's worksite.

Joinder Agreement: May also be referred to as "Mutual Contract". A means for making purchases through the contracts or bid awards of another Nevada governmental agency, as allowed under Nevada law

Laboratory: Any U.S. laboratory certified by HHS under the National Laboratory Certification Program as meeting the minimum standards of Subpart C of the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs; or, in the case of foreign laboratories, a laboratory approved for participation by DOT under this part.

Layoff: A separation from the **employer's** service because of a shortage of funds, lack of work, abolishment of a position, reorganization, or for other reasons not reflecting discredit on an employee and for reasons outside of the employee's control.

Leave Without Pay: Authorized leave in a non-paid status.

Legal Drugs: Prescription drugs and over-the-counter drugs that have been legally obtained and are being used in the manner, combination, and quantity for which they were prescribed or manufactured.

Limit of Detection (LOD): The lowest concentration at which a measure can be identified, but (for quantitative assays) the concentration cannot be accurately calculated.

Limit of Quantitation: For quantitative assays, the lowest concentration at which the identity and concentration of the measure can be accurately established.

Manager: An employee, or an elected official who has been authorized to select, train, schedule, and evaluate the work of other employees, and to make decisions or effectively recommend actions related to the hiring, evaluation, and discipline of assigned employees. This person may also serve as the department head.

Market Conditions: The discretionary measure used to determine if the number of qualified providers available are sufficient to justify the time and expense necessary to obtain quotes.

Medical Examination: A procedure or test usually given by a health care professional or in a medical setting that seeks information about an individual's physical or mental impairments or health. Medical examinations include, but are not limited to:

- Vision tests conducted and analyzed by an ophthalmologist or optometrist;
- Blood, urine, and breath analyses to check for alcohol use;
- Blood pressure screening and cholesterol testing; nerve conduction tests;
- Range-of-motion tests that measure muscle strength and motor function;
- Pulmonary function tests;
- Psychological tests designed to identify a mental disorder or impairment; and
- Diagnostic procedures such as x-rays, CAT scans, and MRI's.

Medical Review Officer (MRO): A person who is a licensed physician and who is responsible for receiving and reviewing laboratory results generated by an employer's drug testing program and evaluating medical explanations for certain drug test results.

Negative Result: The result reported by an HHS-certified laboratory to an MRO when a specimen contains no drug or the concentration of the drug is less than the cutoff concentration for the drug or drug class and the specimen is a valid specimen.

Next of Kin: For purposes of FMLA, the nearest blood relative other than the covered servicemember's spouse, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA. When no such designation is made, and there are multiple family members with the same level of relationship to the covered servicemember, all such family members shall be considered the covered servicemember's next of kin and may take FMLA leave to provide care to the covered servicemember, either consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the covered servicemember's only next of kin.

Non-negative Specimen: A urine specimen that is reported as adulterated, substituted, positive (for drug(s) or drug metabolites(s)), and /or invalid.

Parent: For purposes of FMLA, includes a biological, adoptive, step or foster father or mother, or any other individual who stood In Loco Parentis to the employee or covered servicemember.

Office of Drug and Alcohol Policy and Compliance (ODAPC): The office in the Office of the Secretary, DOT, that is responsible for coordinating drug and alcohol testing program matters within the Department, and providing information concerning the implementation of 49 CFR Part 40.

Oxidizing Adulterant: A substance that acts alone or in combination with other substances to oxidize drugs or drug metabolites to prevent the detection of the drug or drug metabolites, or affects the reagents in either the initial or confirmatory drug test.

Personnel Action: Any action taken with reference to appointment, compensation, promotion, transfer, layoff, dismissal, or any other action affecting an employee's employment status.

Position: A group of duties and responsibilities requiring the ongoing services of one or more employees, which is listed in the authorized position list contained in the currently approved employer's budget or established by formal action of the City Council.

Positive Drug or Alcohol Test: Any detectable level of drugs or its metabolite (in excess of trace amounts attributable to secondary exposure) in an employee's urine or blood. With respect to alcohol, a blood alcohol concentration of 0.02 or higher constitutes a positive test.

Positive Result: The result reported by an HHS-certified laboratory when a specimen contains a drug or drug metabolite equal to or greater than the cutoff concentrations.

Professional Services: Personal services requiring a high degree of professional or technical skill such that selection of the appropriate person/entity may not be adaptable to the competitive bid process.

Promotion: The movement of an employee from one class to another class having a higher maximum base rate of pay, usually as a result of some type of examination.

Public Works Projects: A term which refers to new construction, repair, or reconstruction of a project financed in whole or part from public money for public buildings, roads, streets, sewers, parks, and playgrounds, as more fully defined in NRS 338.010.

Purchase: Includes expenditures for goods and services, as well as payments for leases of personal property (including motor vehicles, equipment, copiers, etc.).

Rate of Pay: An employee's salary as shown in the employer's compensation plan.

Reallocation: A change in the classification and pay grade of a class to a higher or lower pay grade.

Reasonable Accommodation:

- A modification or adjustment to a job application process that enables a qualified applicant with a disability to be considered for the position such qualified applicant desires; or
- A modification or adjustment to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; or

- A modification or adjustment that enables a covered employee, with a disability, to enjoy equal benefits and privileges of employment as are enjoyed by other similarly situated employees without disabilities.

Reclassification: The change of a position to a different job class which results from changes in duties and responsibilities.

Reasonable Suspicion of Drug and/or Alcohol Use: Reasonable suspicion means such suspicion that will justify a supervisor in referring a driver for an alcohol and/or drug test. It is the amount of suspicion sufficient to convince a trained supervisor under the circumstances to believe that:

- a. The driver has violated the Vehicle Operators Drug and Alcohol Policy; or
- b. The actions, appearance, or conduct of an on-duty driver are indicative of the use of drugs or alcohol.

The suspicion must be based in fact on specific, contemporaneous, articulable observations by a trained supervisor(s) concerning the appearance, behavior, speech, or body odors of the driver.

For reasonable suspicion of alcohol misuse, such observations must be made during, just preceding, or just after the period of the work day that the driver is performing a safety-sensitive function. Reasonable suspicion is more than mere speculation but less than absolute certainty.

Reconfirmed: The result reported for a split specimen when the second laboratory is able to corroborate the original result reported for the primary specimen.

Regular Position: An authorized position which appears in the authorized position list contained in the **employer's** budget documents or its amendments approved by the City Council. (Normally a regular position consists of duties which must be performed at least 20 hours per week on a regular, year-round basis).

Reinstatement: The restoration of a laid-off employee or an employee rejected during a promotional introductory period to a position in a class in which the employee formerly served as a regular employee.

Reinstatement List: A list of names of persons who have been laid off and are available for reinstatement (rehire without examination).

Rejected for Testing: The result reported by an HHS-certified laboratory when no tests are performed for a specimen because of a fatal flaw or a correctable flaw that is not corrected.

Reprimand: A written notice to an employee stating specific performance and/or behavioral deficiencies and the improvements in behavior and/or performance which the employee must make, and that further disciplinary action will follow if the employee does not make the required improvements. (A performance evaluation form shall not be considered a reprimand).

Resignation: A notice by an employee that s/he intends to separate from the **employer's** service. The **employer** may require that resignations be in writing.

Salary Range: The minimum and maximum salary set for each classification, grade, or level as designated by the position compensation plans. (Also see Grade.)

Screening Test: In alcohol testing, it means an analytical procedure to determine whether a driver may have a prohibited concentration in his/her system (breath or saliva test). In drug testing, it means an immunoassay screen to eliminate "negative" urine specimens from further consideration.

Screening Test Technician (STT): A person who instructs and assists employees in the alcohol testing process and operates an Alcohol Screening Device (ASD).

Seasonal Employee: See Casual Worker.

Service Agent. Any person or entity, other than an employee of the employer, who provides services specified under this part (49 CFR Part 40) to employers and/or employees in connection with DOT drug and alcohol testing requirements. This includes, but is not limited to, collectors, BAT's, STT's, laboratories, MRO's, SAP's, and C/TPA's. To act as service agents, persons and employers must meet the qualifications set forth in applicable sections of 49 CFR Part 40. Service agents are not employers for purposes of 49 CFR Part 40.

Sole Source: A single vendor or other source of goods or services such that the purchase of the goods or services is not adaptable to the competitive bid process.

Son or Daughter of a Covered Servicemember: For purposes of FMLA, a biological, adopted, or foster child, stepchild, legal ward, or a child for whom the covered servicemember stood In Loco Parentis, and who is of any age.

Son or Daughter on Covered Active Duty or Call to Covered Active Duty Status: For purposes of FMLA, employee's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood In Loco Parentis who is on covered active duty or call to covered active duty status, and who is of any age.

Spouse: A husband or wife as defined or recognized under State law for purposes of marriage.

Split Specimen Collection: A collection in which the urine collected is divided into two separate specimen bottles, the primary specimen (Bottle A) and the split specimen (Bottle B).

Stand-down: The practice of temporarily removing an employee from the performance of safety-sensitive functions based only on a report from a laboratory to the MRO of a confirmed positive test for a drug or drug metabolite, an adulterated test, or a substituted test, before the MRO has completed verification of the test result.

Step: A specific rate of pay within the salary range established for a class. (Also see Rate of Pay).

Substance Abuse Professional (SAP): A licensed physician, or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of drug- and alcohol-related disorders.

Substituted Specimen: Substituted specimens have creatinine and specific gravity values that are so diminished or so divergent that they are not consistent with normal human urine. The HHS has determined that specimens with creatinine levels of less than 2.0 mg/dL are substituted.

Supervisor: An employee, or an elected official who has been authorized to select, train, schedule, and evaluate the work of other employees, and to make decisions or effectively recommend actions related to the hiring, evaluation, and discipline of assigned employees. This person may also serve as the department head or Director.

Suspension: The temporary separation from service, with or without pay, of an employee for disciplinary reasons or pending investigation of an employee's conduct.

Temporary Employee: See Casual Worker.

Transfer: A lateral change of an employee from one position to another position in the same class or to a different class in the same salary range.

Verified Test: A drug test result or validity testing result from an HHS-certified laboratory that has undergone review and final determination by the MRO.

Warning: Verbal notice or counseling of an employee specifying required changes in work performance or on-the-job behavior.