



Marin Local Agency Formation Commission
Regional Service Planning | Subdivision of the State of California

NOTICE

POLICY AND PERSONNEL COMMITTEE MEETING AND AGENDA

Tuesday, August 4, 2020

10:00 AM

Appointed Members

Damon Connolly | Sashi McEntee | Tod Moody

***** BY VIRTUAL TELECONFERENCE ONLY *****

Pursuant to the provisions of California Governor's Executive Order N-29-20, issued on March 17, 2020, this meeting will be held by teleconference only. No physical location will be available for this meeting. However, members of the public will be able to access and participate in the meeting.

PUBLIC ACCESS AND PUBLIC COMMENT INSTRUCTIONS

PUBLIC ACCESS

Members of the public may access and watch a live stream of the meeting on Zoom at <https://zoom.us/j/4350473750>. Alternately, the public may listen in to the meeting by **dialing (669) 900-6833** and entering **Meeting ID 4350473750#** when prompted.

WRITTEN PUBLIC COMMENTS may be submitted by email to staff@marinlafco.org. Written comments will be distributed to the Commission as quickly as possible. Please note that documents may take up to 24 hours to be posted to the agenda on the LAFCO website.

SPOKEN PUBLIC COMMENTS will be accepted through the teleconference meeting. To address the Commission, click on the link <https://zoom.us/j/4350473750> to access the Zoom-based meeting.

1. You will be asked to enter an email address and name. We request that you identify yourself by name as this will be visible online and will be used to notify you that it is your turn to speak.
2. When the Commission calls for the item on which you wish to speak, click on "raise hand" icon. Staff will activate and unmute speakers in turn. Speakers will be notified shortly before they are called to speak.
3. When called, please limit your remarks to the time limit allotted (3 minutes).

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James Campbell, Alternate
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Las Gallinas Valley Sanitary

Lew Kious, Regular
Almonte Sanitary District

Tod Moody, Alternate
Sanitary District #5

Larry Loder, Public
Public Member

Chris Skelton, Alternate
Public Member

10:00 AM CALL TO ORDER - Executive Officer to call the meeting to order

ROLL CALL – Executive Officer to call the roll

SELECTION OF CHAIR

The Committee shall nominate and select a Chair of the Policy and Personnel Committee for calendar year 2020.

PUBLIC COMMENT

This portion of the meeting is reserved for persons desiring to address the committee on any relevant matter not listed on this agenda and that are within the jurisdiction of the committee. Speakers are limited to three minutes.

BUSINESS ITEMS

The Committee is scheduled to discuss and provide direction on the following items.

1. Approval of June 8, 2019, Meeting Minutes
2. Review of Draft Personnel Handbook

ADJOURNMENT

ATTEST:



Jason Fried
Executive Officer

Any writings or documents pertaining to an open session item provided to a majority of the Commission less than 72 hours prior to a regular meeting shall be made available for public inspection at Marin LAFCo Administrative Office, 1401 Los Gamos Drive, Suite 220, San Rafael, CA 94903, during normal business hours.

Pursuant to GC Section 84308, if you wish to participate in the above proceedings, you or your agent are prohibited from making a campaign contribution of \$250 or more to any Commissioner. This prohibition begins on the date you begin to actively support or oppose an application before LAFCo and continues until 3 months after a final decision is rendered by LAFCo. If you or your agent have made a contribution of \$250 or more to any Commissioner during the 12 months preceding the decision, in the proceeding that Commissioner must disqualify himself or herself from the decision. However, disqualification is not required if the Commissioner returns that campaign contribution within 30 days of learning both about the contribution and the fact that you are a participant in the proceedings. Separately, any person with a disability under the Americans with Disabilities Act (ADA) may receive a copy of the agenda or a copy of all the documents constituting the agenda packet for a meeting upon request. Any person with a disability covered under the ADA may also request a disability-related modification or accommodation, including auxiliary aids or services, in order to participate in a public meeting. Please contact the LAFCo office at least three (3) working days prior to the meeting for any requested arraignments or accommodations.

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Marin Local Agency Formation Commission

Regional Service Planning | Subdivision of the State of California

AGENDA REPORT

August 4, 2020

Item No. 1 (Business)

TO: Policy and Personnel Committee

FROM: Jason Fried, Executive Officer

SUBJECT: Approve the July 8, 2019, Committee Meeting Minutes

Background

The Ralph M. Brown Act was enacted by the State Legislature in 1953 and establishes standards and processes therein for the public to attend and participate in meetings of local government bodies as well as those local legislative bodies created by State law; the latter category applying to LAFCos. The “Brown Act” requires – and among other items – public agencies to maintain minutes for all meetings.

Discussion

The draft minutes for the July 8, 2019 Committee meeting accurately reflect the Committee’s actions as recorded by staff and are attached. A copy of the approved meeting minutes is available online.

Staff Recommendation for Action

1. **Staff recommendation** – Approve the draft minutes prepared for the Policy and Personnel Committee meeting with any desired corrections or clarifications.
2. Alternative Option - Continue consideration of the item to the next committee meeting and provide direction to staff, as needed.

Attachment:

- 1) Draft Minutes for July 8, 2019



DRAFT

POLICY AND PERSONNEL COMMITTEE MEETING MINUTES

Thursday, July 8, 2019
1401 Los Gamos Drive Suite 220
San Rafael, California 94903

Appointed Members

Sashi McEntee (Chair) | Damon Connolly (Vice-Chair) | Sloan Bailey

CALL TO ORDER

Chair McEntee called the meeting to order at 12:18 p.m.

ROLL CALL

Commission Clerk called roll.

PUBLIC COMMENT

Chair McEntee asked for public comment. Hearing none, closed public comment.

BUSINESS ITEMS

1. Approval of February 7, 2019, Meeting Minutes

Approved; M/S by Commissioners Bailey and Connolly to approve the February 8, 2019, meeting minutes.

Ayes: Commissioners McEntee, Bailey, Connolly

Noes: None

Absent: None

Abstaining: None

Motion was approved unanimously.

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Sanitary District #5

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Public Member

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Public Member

2. Review of Updates to the Marin LAFCo Policy Handbook

Executive Officer reiterated his staff report regarding the proposed changes.

No public comment.

Approved; M/S Commissioners Bailey and McEntee to approve the new policy revisions and bring final approval to the Commission at the next regular meeting.

Ayes: Commissioners McEntee, Bailey, Connolly

Noes: None

Absent: None

Abstaining: None

Motion was approved unanimously.

3. Determine Criteria for the Revised Personnel Policy

The Committee reviewed the numerous personnel policies provided by Leibert Cassidy Whitmore and determined it was best practice to include all policies that may have basis for possible liability in the future.

The Executive Officer will revise the policy as requested by the Committee, work to replace sections where LAFCo has historically used Marin County policies, and bring back to the Committee for additional review.

Chair McEntee called for adjournment at 1:12 p.m.

ATTEST:

Jason Fried
Executive Officer



Marin Local Agency Formation Commission

Regional Service Planning | Subdivision of the State of California

AGENDA REPORT

August 4, 2020

Item No. 2 (Business Item)

TO: Policy and Personnel Committee

FROM: Jason Fried, Executive Officer

SUBJECT: Review and Amend New Policy Handbook

Background

Last year the Commission agreed to purchase from Liebert Cassidy Whitmore (LCW) the Model Personnel Policies Portal (LMP3) in order to completely overhaul the current personnel policies that dated to 2013. During the course of this, the Commission halted this work for a time due to the Commission learning that we would be moving out of the Marin County HR and Payroll system. So instead of doing this twice, we have been waiting to make sure we understand how LAFCo will be moving forward outside of the County systems that have always been used by LAFCo.

In the attached documents you will find reformatted LMP3 documents to better fit the style of Marin LAFCo's Policy handbook. More work needs to be done to get this to its final finished format which will occur once we have completed the basic review. All parts of the LMP3 are the same as in the original document with 2 exceptions. The first is all parts pertaining to first responders were taken out since we are not a government agency that will employ those types of positions. The second is parts of section 6 and 8 were replaced by Marin County policies. In the cases where complete changes were made it is noted in a comment box at which point redline changes would be to Marin County policy and not LMP3. When referring to the County policies, currently LAFCo staff are under different contracts. In order to streamline our HR and Payroll process staff is looking to use the contract language from Jeren's position as the base model that staff will use so we do not have to worry about small differences between different staff classifications that the County has due to multiple union contracts. While the county employs hundreds of staff and has a specially built HR system, LAFCo only has 3 FTE and now must use a generic system so it does not make sense to have 3 different benefit programs as currently exist with the County for our benefits. The only difference between staff would be between hourly and salaried employees along with overtime eligible and exempt employees.

In addition, throughout the document, you will see red lines of where a position is suggested and I placed a substitute, normally my position. With a few limited locations, such as the grievance process, it would be good for the Committee to decide if all those changes are correct. Throughout the document there are generally two types of comment boxes. One type is where LCW is suggesting something or a choice needs

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to be made so the Committee will need to review and decide what it wants to do in each case. The second is where staff is making a suggestion on what would work for LAFCo and wants to get Committee feedback on that matter.

You will also see in a few spots a “Commentary” section in the document. All these sections are in blue italic lettering. LMP3 has a lot more of those but most got removed since they just gave background not really needed to complete the document. The commentary left in will be removed as part of the completion of this document, but staff felt they were needed to help you review and make decisions for the section where the commentary was left in place.

LCW should shortly be sending staff a new draft policy for remote working during times of COVID but we have not gotten as of the writing of this memo. Should we have that new draft policy by the meeting, staff will share it with the Committee at the meeting.

There are also some comment boxes where staff still needs to find out how the County does some certain actions to see if we can match what they do. It may be hard for us to do, so we will need to have that discussion if we want or need to do that item.

It is not likely that the Committee will complete this work in one meeting so staff would suggest saving the last 10 minutes of the meeting to see if any Committee member has any questions or comments on items that do not get covered during this meeting review so staff can prepare to get the answers prior to the next meeting.

Staff Recommendation for Action

1. Staff recommendation – Continue consideration of the item to a future meeting of the Committee and provide direction to staff, as needed.

Attachment:

- 1) Draft Personnel Handbook

**MARIN COUNTY
LOCAL AGENCY FORMATION COMMISSION**



PERSONNEL HANDBOOK

ADOPTED
?????

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Chapter 1 - Introduction and General Information Policies

1.1 Effect and Applicability of Personnel Policies

1.1a *No Contract Right; LAFCo Discretion to Modify These Policies*

These Personnel Policies (“Policies”) do not create any contract right, or any express or implied contract of employment. The Marin Local agency Formation Commission (LAFCo) retains the full discretion to modify these Policies at any time in accordance with law.

1.1b *Applicability of Policies*

These Policies apply to all categories of employees of the LAFCo unless a specific section or provision excludes them. Independent contractors, volunteers, and Commissioners are not employees.

1.1c *Conflict Between These Policies and a Collective Bargaining Agreement*

If a provision of these Policies conflicts with any provision of a valid collective bargaining agreement between the LAFCo and a recognized employee organization, the provision of the collective bargaining agreement that is in conflict shall apply to employees covered by that collective bargaining agreement.

1.1d *Employee Acceptance of Policies and Revisions to Policies*

As a condition of employment, all employees are required to read and request necessary clarification of these Policies. Each employee is required to sign a statement of receipt acknowledging that: a) he or she has received a copy, or has been provided access to the Policies; and b) understands that he or she is responsible to read and become familiar with the contents and any revisions to the Policies.

1.2 Delegation of Authority

1.2a *Delegation of Appointing and Personnel Authority to Executive Officer*

The LAFCo Board delegates to the Executive Officer, the authority to authorize employment, establish job responsibilities, and perform other personnel actions as to all subordinate employees in accordance with all federal and state laws and regulations and these Policies.

1.2b *Retention of Personnel Authority as to Certain Personnel*

As to those elected officials, or employees who directly report to the Commission Board, if any, the Commission Board retains all authority over all personnel actions as authorized by law and these Policies.

1.3 Categories of Employees and Non-Employees

1.3a At-Will Employee

An at-will employee is one who serves at the pleasure of the appointing authority, has no property right in continued employment, and has no right to any pre- or post-disciplinary procedural due process or evidentiary appeal. At-will employees include any of the following:

- (a) [Executive Officer
- (b) Assistant or Deputy Executive Officer [
- (c) **General Counsel**
- (d) **Special Legal Counsels]**
- (e)
- (f) **Employees** whose positions are funded under a state or federal employment program
- (g) **Employees** designated as temporary/ seasonal [**or extra-help, limited-term, etc.**]
- (h) **Probationary** employees

1.3b Probationary Employee

A probationary employee is one who is serving a probationary period at either: the outset of initial employment with LAFCo; or at the outset of a promotion to a higher classification. During the initial probationary period, a probationary employee serves at the pleasure of the appointing authority, has no property right in continued employment, and has no right to any pre- or post-disciplinary procedural due process or evidentiary appeal. A probationary employee serving in the initial probationary period is an at-will employee.

1.3c For-Cause Employee

A for-cause employee is one who has satisfactorily completed the initial probationary period and cannot be disciplined except when LAFCo has cause to do so. A for-cause employee has a property right in continued employment, and has the right to pre- and post-disciplinary procedural due process and an evidentiary appeal for certain types of disciplinary actions that result in a significant deprivation of property.

1.3d Full or Part-Time Employee

A full time employee is one whose position is budgeted to work at least **[40]** hours per week. Full-time employees receive all benefits provided in these Policies, unless otherwise provided in an MOU, or an employment agreement approved by LAFCo. A part-time employee is one whose position is budgeted to work less than **[40]** hours per week. Part-time employees may

have different rights to leave and other benefits under the law or these Policies, depending on the number of hours they work.

1.3e *Temporary / Seasonal /Extra-Help Employee*

A temporary/ seasonal or extra-help employee is an at-will employee who is appointed other than from an eligible list for a short term or seasonal basis, not to exceed six months. A temporary/ seasonal or extra-help employee serves at-will and at the pleasure of the appointing authority, has no property right in continued employment, and has no right to any pre- or post-disciplinary procedural due process or evidentiary appeal.

1.3f *Volunteer*

A volunteer is not an employee, but instead is an individual who provides services to the Agency for civic or philanthropic reasons and receives no compensation or benefits other than nominal fees and reimbursement of expenses. A volunteer serves at-will and at the pleasure of the appointing authority, has no property right in continued employment, and has no right to any pre- or post-disciplinary procedural due process or evidentiary appeal.

1.3g *Independent Contractor*

An independent contractor is not an employee, and serves solely pursuant to a contract that has been formed and approved as required by LAFCo purchasing policies and procedures. An independent contractor cannot be used to perform any part of the LAFCo regular and customary work.

Chapter 2 Equal Employment Opportunity

2.1 Equal Employment Opportunity Policy

LAFCo affords equal employment opportunity for all qualified employees and applicants as to all terms of employment, including compensation, hiring, training, promotion, transfer, discipline and termination. LAFCo prohibits discrimination against employees or applicants for employment on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age (40 and over), sexual orientation, or military and veteran status or any other basis protected by law. (Gov. Code § 12940(a).) Employees, volunteers, or applicants who believe they have experienced any form of employment discrimination or abusive conduct are encouraged to report the conduct immediately by using the complaint procedures provided in these Policies, or by contacting the U.S. Equal Employment Opportunity Commission, or the California Department of Fair Employment and Housing.

2.2 Policy Against Discrimination, Harassment and Retaliation; Complaint Procedure

2.2a *Purpose*

LAFCo has a strong commitment to prohibiting and preventing discrimination, harassment and retaliation in the workplace. LAFCo has zero tolerance for any conduct that violates this Policy. Conduct need not arise to the level of a violation of state or federal law to violate this Policy. Instead a single act can violate this Policy and provide grounds for discipline or other appropriate sanctions. This Policy establishes a complaint procedure for investigating and resolving internal complaints of discrimination, harassment and retaliation. LAFCo encourages all covered individuals to report any conduct they believe violates this Policy as soon as possible. Any retaliation against an employee because they filed or supported a complaint or because they participated in the complaint resolution process is prohibited. Individuals found to have retaliated in violation of this Policy will be subject to appropriate sanction or disciplinary action, up to and including termination.

2.2a.1 *Covered Individuals and Scope of Policy*

The individuals covered by this Policy are: applicants, employees regardless of rank or title, elected or appointed officials, interns, volunteers, and contractors. This Policy applies to all terms and conditions of employment, internships, and volunteer opportunities, including, but not limited to, selection, hiring, placement, promotion, disciplinary action, layoff, recall, transfer, leave of absence, compensation, and training.

2.3 *Definitions*

2.3a *Protected Classification*

This Policy prohibits harassment, discrimination or retaliation because of an individual's protected classification. "Protected Classification" includes race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age (40 and over), sexual orientation, or military and veteran status, or any other basis protected by law. (Gov. Code § 12940(a).) This Policy prohibits discrimination, harassment or retaliation because: 1) of an individual's protected classification; 2) the perception that an individual has a protected classification; or 3) the individual associates with a person who has or is perceived to have a protected classification.

2.3b ***Protected Activity***

This Policy prohibits discrimination, harassment, or retaliation because of an individual's protected activity. Protected activity includes: making a request for an accommodation for a disability; making a request for accommodation for religious beliefs; making a complaint under this Policy; opposing violations of this Policy; or participating in an investigation under this Policy.

2.3c ***Discrimination***

This Policy prohibits treating covered individuals differently and adversely because of the individual's protected classification, actual or perceived; because the individual associates with a person who is member of a protected classification, actual or perceived; or because the individual participates in a protected activity as defined in this Policy. (Gov. Code § 12926(o).)

2.3d ***Harassment***

Harassment includes, but is not limited to, the following types of behavior that are taken because of a person's actual or perceived protected classification:

- (a) Speech, such as epithets, derogatory comments or slurs, and propositioning on the basis of a protected classification. This includes inappropriate comments about appearance, dress, physical features, gender identification, or race-oriented stories and jokes.
- (b) Physical acts, such as assault, impeding or blocking movement, offensive touching, or physical interference with normal work or movement. This includes pinching, grabbing, patting, or making explicit or implied job threats or promises in return for submission to physical acts.
- (c) Visual acts, such as derogatory posters, cartoons, emails, pictures or drawings related to a protected classification.
- (d) Unwanted sexual advances, requests for sexual favors and other acts of a sexual nature, where submission is made a term or condition of employment, where submission to or

rejection of the conduct is used as the basis for employment decisions, or where the conduct is intended to or actually does unreasonably interfere with an individual's work performance or create an intimidating, hostile, or offensive working environment. (Gov. Code §12940(j); 2 Cal.Code Regs § 11091(b)(1).)

2.3d.1 Guidelines for Identifying Harassment

Harassment includes any conduct which would be unwelcome or unwanted to an individual of the recipient's same protected classification. The following guidelines to determine if conduct is unwelcome or unwanted should be followed:

- (a) It is no defense that the recipient "appears" to have consented to the conduct at issue by failing to protest about the conduct. A recipient may not protest for many legitimate reasons, including the need to avoid being insubordinate or to avoid being ostracized or subjected to retaliation.
- (b) Simply because no one has complained about a joke, gesture, picture, physical contact, or comment does not mean that the conduct is welcome. Harassment can evolve over time. Small, isolated incidents might be tolerated up to a point. The fact that no one has yet complained does not preclude someone from complaining if the conduct is repeated in the future.
- (c) Even visual, verbal, or physical conduct between two people who appear to welcome the conduct can constitute harassment of a third person who witnesses the conduct or learns about the conduct later. Conduct can constitute harassment even if it is not explicitly or specifically directed at a particular individual.
- (d) Conduct can constitute harassment even if the individual has no intention to harass. Even well-intentioned conduct can violate this Policy if the conduct is directed at, or implicates a protected classification, and if an individual would find it offensive (e.g., gifts, over-attention, endearing nicknames, hugs).

2.3e Retaliation

Retaliation occurs when adverse conduct is taken against a covered individual because of the individual's protected activity as defined in this Policy. "Adverse conduct" may include but is not limited to: disciplinary action, counseling, taking sides because an individual has reported harassment or discrimination; spreading rumors about a complainant or about someone who supports or assists the complainant; shunning or avoiding an individual who reports harassment or discrimination; or making real or implied threats of intimidation to prevent or deter an individual from reporting harassment or discrimination.

2.3f Complaint Procedure

A covered individual who believes he or she has been subjected to discrimination, harassment or retaliation may make a complaint -- orally or in writing -- to any supervisor, manager, or department head, without regard to any chain of command. Any supervisory or management employee who receives a harassment complaint should immediately notify the Executive Officer. Upon receiving notification of a harassment complaint, the Executive Officer will complete and/or delegate the following steps. If the Executive Officer is accused, or a witness to the events at issue, an individual with higher authority will complete and/or delegate the following steps.

- (a) Authorize and supervise the investigation of the complaint and/or investigate the complaint. The investigation will usually include interviews with: 1) the complainant; 2) the accused; and 3) other persons who have relevant knowledge concerning the allegations in the complaint.
- (b) Review the factual information gathered through the investigation to determine whether the alleged conduct violates the Policy giving consideration to all factual information, the totality of the circumstances, including the nature of the conduct, and the context in which the alleged incidents occurred.
- (c) Report a summary of the determination as to whether this Policy has been violated to appropriate persons. If discipline or sanctions are imposed, the level of discipline or sanctions will not be communicated to the complainant.
- (d) If conduct in violation of this Policy occurred, take or recommend to the appointing authority prompt and effective remedial action. The remedial action will be commensurate with the severity of the offense.
- (e) Take reasonable steps to protect the complainant from further harassment, discrimination or retaliation.

2.3f.1 *Proactive Approach*

LAFCo takes a proactive approach to potential Policy violations and will conduct an investigation if its supervisory or management employees become aware that harassment, discrimination or retaliation may be occurring, regardless of whether the recipient or third party reports a potential violation.

2.3g *Option to Report to Outside Administrative Agencies*

An individual has the option to report harassment, discrimination or retaliation to the U.S. Equal Employment Opportunity Commission (EEOC) or the California Department of Fair Employment and Housing (DFEH). These administrative agencies offer legal remedies and a complaint process. The nearest offices are listed on the Internet, in the government section of

the telephone book or employees can check the posters that are located and hanging in the copy room for office locations and telephone numbers.

2.3h Confidentiality

Every effort will be made to assure the confidentiality of complaints made under this Policy to the greatest extent allowed by law. Complete confidentiality cannot occur, however, due to the need to fully investigate and the duty to take effective remedial action. An employee who is interviewed during the course of an investigation is prohibited from attempting to influence any potential witness while the investigation is ongoing. An employee may discuss his or her interview with a designated representative. LAFCo will not disclose a completed investigation report except as it deems necessary to support a disciplinary action, to take remedial action, to defend itself in adversarial proceedings, or to comply with the law or court order.

2.3i Responsibilities

(a) Each non-manager or non-supervisor is responsible for:

- 1) Treating all individuals in the workplace or on worksites with respect and consideration.
- 2) Modeling behavior that conforms to this Policy.
- 3) Participating in periodic training.
- 4) Cooperating with LAFCo investigations pursuant to this Policy by responding fully and truthfully to all questions posed during the investigation.
- 5) Taking no actions to influence any potential witness while the investigation is ongoing.
- 6) Reporting any act he or she believes in good faith constitutes harassment, discrimination or retaliation as defined in this Policy, to his or her immediate supervisor.

(b) In addition to the responsibilities listed above, each manager and supervisor is responsible for:

- 1) Informing employees of this Policy.
- 2) Taking all steps necessary to prevent harassment, discrimination and, retaliation from occurring, including monitoring the work environment and taking immediate appropriate action to stop potential violations, such as removing inappropriate pictures or correcting inappropriate language.

- 3) Receiving complaints in a fair and serious manner, and documenting steps taken to resolve complaints.
- 4) Following up with those who have complained to ensure that the behavior has stopped and that there are no reprisals.
- 5) Informing those who complain of harassment or discrimination of his or her option to contact the EEOC or DFEH regarding alleged Policy violations.
- 6) Assisting, advising, or consulting with employees and the Executive Officer regarding this Policy.
- 7) Assisting in the investigation of complaints involving employee(s) in their departments and, when appropriate, if the complaint is substantiated, recommending appropriate corrective or disciplinary action in accordance with these Policies, up to and including termination.
- 8) Implementing appropriate disciplinary and remedial actions.
- 9) Reporting potential violations of this Policy of which he or she becomes aware to the Executive Officer, regardless of whether a complaint has been submitted.
- 10) Participating in periodic training and scheduling employees for training.

2.4 Reasonable Accommodation and Interactive Process

2.4a *Reasonable Accommodation*

Absent undue hardship or direct threats to the health and safety of employee(s), LAFCo provides employment-related reasonable accommodations to:

- (a) qualified individuals with disabilities, both applicants and employees, to enable them to perform essential job functions (Gov. Code § 12940(m)); and
- (b) employees with conditions related to pregnancy, childbirth, or a related medical condition, if she so requests, and with the advice of her health care provider (Gov. Code § 12945(3)(A)); and
- (c) employee victims of domestic violence, sexual assault, or stalking to promote the safety of the employee victim while at work (Labor Code § 230(f)(4)); and
- (d) employees who request reasonable accommodation to address a conflict between religious belief or observance and any employment requirement (Gov. Code § 12940(l)).

2.5 *Supporting Documentation or Certification*

2.5a *Reasonable Medical Documentation of Disability*

If the disability or the need for reasonable accommodation is not obvious, LAFCo may require the individual to provide reasonable medical documentation confirming the existence of the disability and the need for reasonable accommodation, along with the name and credentials of the individual's health care provider. If the individual provides insufficient documentation, the agency will: 1) explain the insufficiency; 2) allow the employee or applicant to supplement the documentation; and 3) pursue the interactive process only to the extent that the request for reasonable accommodation is supported by the medical documentation provided. (2 Cal.Code Regs § 11069(c)(2) & (d).)

2.5b *Medical Certification Indicating the Need for a Reasonable Accommodation or Transfer Due to Pregnancy or Related Conditions*

If a pregnant employee, or an employee with a pregnancy-related condition, requests a reasonable accommodation or transfer due to pregnancy, LAFCo will provide the employee with notice of the need for a medical certification within two business days after the employee's request for accommodation. A medical certification confirming the need for a reasonable accommodation, including transfer, is sufficient if it contains: a description of the requested accommodation or transfer; a statement describing the medical advisability of the accommodation or transfer due to pregnancy; and the date that the need for the accommodation or transfer will become necessary and the estimated duration of the accommodation or transfer. (2 Cal.Code Regs § 11050(b)(3).)

2.5c *Certification of Victim Status*

An employee who is a victim of domestic violence, sexual assault, or stalking and who requests an accommodation to provide for his or her safety while at work must provide both of the following:

- (a) a written statement signed by the employee or an individual acting on the employee's behalf, to certify that the accommodation is to address victim-safety concerns while at work; and
- (b) a certification demonstrating the employee's status as a victim of domestic violence, sexual assault, or stalking, which can be in the form of: a police report indicating the employee's victim status; a court order separating the perpetrator from the employee or that the employee has appeared in court for that purpose; or documentation from a medical professional or counselor that the employee is undergoing treatment for physical or mental injuries or abuse resulting from an act of domestic violence, sexual assault, or stalking. (Labor Code § 230(f)(7).)

2.6 Fitness for Duty Examinations

2.6a Applicants

After a conditional offer of employment has been extended to an applicant, LAFCo may require the applicant to submit to a fitness for duty examination that is job-related; necessary for efficient operations of the agency; and required of all applicants for the job classification. (Gov. Code § 12940(e) &(f).) An applicant or employee who is required to pass a medical and/or psychological examination will be notified of his/her right to obtain a second opinion at his/her expense and that he/she may submit such second opinions for consideration. (2 Cal.Code Regs § 11071(b)(2).)

2.6b Current Employee

The Executive Officer may require an employee to submit to a fitness for duty examination to determine if the employee has a disability and is able to perform the essential functions of his or her job when there is significant evidence that:

- (a) the employee's ability to perform one or more essential functions of his or her job has declined; or
- (b) could cause a reasonable person to question whether an employee is still capable of performing one or more of his or her essential job duties, or is still capable of performing those duties in a manner that does not harm him or herself or others. (Gov. Code § 12940(e) &(f).)

2.6c Role of Health Care Provider

LAFCo may request the applicant's or employee's health care provider to conduct a fitness for duty exam on the applicant or employee, or may request a LAFCo selected health care provider to do so at the LAFCo expense. LAFCo will allow an employee paid time off to attend the exam. LAFCo will provide the health care provider with a letter requesting a fitness for duty examination and a written description of the essential functions of the job. The examination will be limited to determining whether the applicant or employee can perform the essential functions of his/her position and any work restrictions and/or functional limitations that apply to the applicant or employee. The health care provider will examine the employee and provide LAFCo with non-confidential information regarding whether:

- (a) the applicant or employee has a disability within the meaning of the California Fair Employment and Housing Act;
- (b) the applicant or employee is fit to perform essential job functions;

- (c) workplace restrictions or functional limitations apply to the applicant or employee, and the duration of the work restrictions or functional limitations;
- (d) there are any reasonable accommodations that would enable the employee to perform essential job functions; and
- (e) the employee's continued employment poses a threat to the health and safety of him or herself or others.

Should the health care provider exceed the scope of LAFCo's request and provide confidential health information, without valid consent of the applicant or employee, LAFCo will return the report to the health care provider and request another report that includes only the non-confidential fitness for duty information that LAFCo has requested. (2 Cal.Code Regs § 11069(c) & (d).)

2.6d *Authorization for Use of Medical Information*

During the course of a fitness for duty examination, LAFCo will not seek or use information regarding an employee's medical history, diagnoses, or course of treatment without an employee's written authorization.

2.6e *Medical Information from the Employee or Applicant*

If an employee or applicant submits medical information to LAFCo from his or her own health care provider, the Executive Officer will not forward that information on to the health care provider who conducted the examination for LAFCo, without the employee or applicant's written authorization. Upon receipt of the written authorization, the Executive Officer will request LAFCo-paid health care provider to determine whether the information alters the original fitness for duty assessment.

2.7 *Interactive Process*

2.7a *When to Initiate the Interactive Process*

The Executive Officer will initiate the interactive process when:

- (a) an applicant or employee with a known physical or mental disability or medical condition requests reasonable accommodation(s) (2 Cal.Code Regs § 11069(b)(1)); or
- (b) LAFCo otherwise becomes aware of the need for an accommodation through a third party (e.g. a doctor's note requesting an accommodation), or by observation of the employee's work (2 Cal.Code Regs. § 11069(b)(2)); or

- (c) LAFCo becomes aware of the possible need for an accommodation because the employee with a disability has exhausted workers' compensation leave, Family and Medical Act leave, or other leave rights, but the employee and/or the employee's health care provider indicate that further accommodation is still necessary for recuperative leave or other accommodation (2 Cal.Code Regs. § 11069(b)(3)); or
- (d) an employee disabled by pregnancy, childbirth or related medical conditions requests a reasonable accommodation or transfer based on the advice of her health care provider (2 Cal.Code Regs § 11040(a)(1)); or
- (e) an employee with a physical or mental disability, regardless of cause, fails to return to work following pregnancy disability leave (2 Cal.Code Regs § 11047); or
- (f) an employee-victim of domestic violence, sexual assault, or stalking requests a reasonable accommodation(s) for his or her safety at work (Labor Code § 230(f)(1)); or
- (g) an employee requests an accommodation to address a conflict between religious belief, observance, or practice and any employment requirement (Gov. Code § 12940(l)); or
- (h) an employer is aware of the need for a reasonable accommodation for an employee's or applicant's religious beliefs, observance or practices. (2 Cal.Code Regs § 11060(b).)

2.7b *Interactive Communication*

After the occurrence of any of the above-stated circumstances that trigger the need to conduct an interactive process meeting, the Executive Officer will promptly arrange for a discussion or discussions, in person or via conference telephone call, with the applicant or employee and his or her designated representative, (if any). The purpose of the interactive communications will be to discuss in good faith all feasible potential reasonable accommodations. The Executive Officer will document these communications in writing. (Gov. Code 12940(n); 2 Cal.Code Regs § 11069(a).)

2.7c *Potential Accommodations for Applicants or Employees with Disabilities*

Depending on the facts of each case, the interactive process analysis will generally begin with a review of possible reasonable accommodations that would enable the individual to retain his or her current job. The process will generally then move on to possible reasonable accommodations in other vacant jobs, for which the individual is qualified, if there is no reasonable accommodation in the current job that does not cause undue hardship, or that does not present a risk of harm to the individual or others. LAFCo will consider accommodations that the applicant or employee suggests, but has the right to select and implement any reasonable accommodation that it deems effective. The range of potential reasonable accommodations includes, but is not limited to:

- making existing facilities used by employees readily accessible to, and usable by, individuals with disabilities, including: acquisition or modification of equipment or devices, adjustment or modifications of examinations, training materials or policies, and/or the provision of qualified readers or interpreters;
- job restructuring;
- part-time or modified work schedules (Gov. Code § 12926(p));
- paid or unpaid leave of absence of a finite duration that is likely to enable the employee to return to work at the end of the leave (2 Cal.Code Regs § 11068(c));
- preferential consideration to reassignment to a vacant, comparable position, except when such preference would violate a bona fide seniority system (2 Cal.Code Regs § 11068(d)(5));
- reassignment to a vacant lower-paid position if there is no funded, vacant comparable position for which the individual is qualified for (2 Cal.Code § 11068(d)(2)); or
- reassignment to a temporary position, if the individual agrees. (2 Cal.Code Regs § 11068(d)(3).)

2.7d ***Potential Accommodations for Employees Affected by Pregnancy and Related Medical Conditions***

Depending on the facts of each case, the interactive process will attempt to identify and implement a reasonable accommodation that is consistent with the medical certification applicable to the applicant or employee. Whether an accommodation is reasonable is a case-by-case analysis that takes into account several factors, including, but not limited to: the employee's medical needs; the duration of the needed accommodation; and the employer's legally permissible past and current practices. (2 Cal.Code Regs. § 11040(a)(2)(A).) The range of potential accommodations includes, but is not limited to:

- transfer to a less strenuous or hazardous position for the duration of the pregnancy (Gov. Code § 12945(a)(3)(C));
- change in or restructuring of work duties, such as modifying lifting requirements (2 Cal.Code Regs § 11040(b));
- providing more frequent breaks;
- providing seating;
- time off for medical appointments;
- transfer temporarily to a job with equivalent pay and benefits that the employee is qualified to perform in order to accommodate reduced work schedule or intermittent leave. (2 Cal.Code Regs. § 11041(c).) (However, a reduction in work hours may be considered a form of pregnancy disability leave and deducted from the employee's four month pregnancy disability leave entitlement.) (2 Cal.Code Regs § 11040(b).)

2.7e ***Potential Accommodations for Employee-Victims of Domestic Violence, Sexual Assault, or Stalking***

Depending on the facts of each individual case, the interactive process analysis will review all possible accommodations that would enhance the safety of the employee victim at work. In determining what accommodation is reasonable, LAFCo will consider the exigent circumstance or danger facing the employee. LAFCo will consider the preferences of the employee to be accommodated, but has the right to select and implement any accommodation that it deems effective. The range of potential safety measure accommodations includes, but is not limited to:

- transfer, reassignment, modified schedule;
- change in work telephone number;
- change in location of work station;
- installation of locks;
- assistance in documenting domestic violence, sexual assault, or stalking that occurs in the workplace;
- the implementation of a safety procedure(s);
- adjustment to job structure, workplace facility, or work requirement; and
- referral to a victim assistance organization. (Labor Code § 230(f)(2).)

2.7f ***Potential Accommodations for Religious Creed, Religious Dress Practice, or Religious Grooming Practice***

Depending on the facts of each case, the interactive process analysis will review all possible accommodations that would resolve the conflict between the religious belief or observance and any employment requirement. LAFCo will consider the preference of the employee or applicant, but has the right to select and implement any accommodation that it deems effective. The range of potential accommodations includes, but is not limited to:

- (a) job restructuring or job reassignment (but not segregation from other employees or the public) (Gov. Code § 12940(l)(2));
- (b) modification of work practices, including dress or grooming standards (2 Cal.Code Regs § 11062(c)(2));
- (c) allowing time off in an amount equal to the amount of non-regularly scheduled time the employee has worked in order to avoid a conflict with his or her religious observances (2 Cal.Code Regs § 11062(a));
- (d) allowing alternatives to union membership or payment of union dues (2 Cal.Code Regs § 11062(c)(3)).

2.7g ***Determination***

After the interactive process communications, the Executive Officer will review the information received, and determine: whether all available information has been reviewed; whether all potential accommodations that the applicant or employee has suggested have been considered; whether additional discussions with the applicant or employee would be helpful; whether the applicant's or employee's preferences have been taken into account; if there is a reasonable accommodation that would enable the applicant or employee to perform essential job functions without harming him or herself or others; and if the accommodations would pose an undue hardship on LAFCo finances or operations. The Executive Officer will inform the applicant or employee of his or her determination in writing. The Executive Officer will use his or her discretion based upon the particular facts of each case.

2.7h *Access to Medical Information Regarding Fitness for Duty*

Medical records and information regarding fitness for duty, or the need for an accommodation, will be maintained separately from non-medical records and information. Medical records and information regarding fitness for duty and the need for accommodation will be accessible only by the Executive Officer, LAFCo's legal counsel, first aid and safety personnel in case of emergency, and supervisors who are responsible for identifying reasonable accommodations. Medical records and information contained therein may be released pursuant to state and federal law. (2 Cal.Code Regs § 11069(g).)

2.8 *Whistleblower Protection*

2.8a *Policy*

LAFCo prohibits all of the following:

- (a) taking any retaliatory adverse employment action against an employee because the employee has or is believed to have disclosed information to any government or law enforcement agency, including to LAFCo, if the employee has reasonable cause to believe that the information discloses a violation of state or federal law, or a violation or noncompliance with a local, state, or federal rule or regulation (Labor Code § 1102.5(b));
- (b) preventing an employee from disclosing information to a government agency, including to LAFCo, if the employee has reasonable cause to believe that the information discloses a violation of state or federal law, or a violation or noncompliance with a local, state, or federal rule or regulation (Labor Code § 1102.5(a));
- (c) retaliating against an employee for refusing to participate in any activity that would result in a violation of state or federal law, or a violation or noncompliance with a local, state, or federal rule or regulation (Labor Code § 1102.5(c)); and
- (d) retaliating against an employee because the employee's family member has, or is perceived to have engaged in any of the protected activities listed in (a)-(c) above.

2.8b **Policy Coverage**

This Policy governs and protects LAFCo officials, officers, employees, seasonal/ temporary/ extra help employees, or applicants for employment.

2.8c **Definitions**

(a) **“Protected activity”** includes any of the following:

- Filing a complaint with a federal or state enforcement or administrative agency that discloses any information that the employee has reasonable cause to believe violates state or federal law or a violation or noncompliance with a local, state, or federal rule or regulation.
- Participating in or cooperating in good faith with a local, federal or state enforcement agency that is conducting an investigation in to alleged unlawful activity.
- Testifying in good faith and with reasonable cause as a party, witness, or accused regarding alleged unlawful activity.
- Associating with another covered individual who is engaged in any of the protected activities enumerated here.
- Making or filing in good faith and with reasonable cause an internal complaint with the LAFCo regarding alleged unlawful activity.
- Providing informal notice to the LAFCo regarding alleged unlawful activity.
- Calling a governmental agency’s “Whistleblower hotline” in good faith.
- Filing a written complaint under penalty of perjury that LAFCo has engaged in gross mismanagement, a significant waste of public funds, or a substantial and specific danger to public health or safety. (Labor Code §§ 53296(c) & 53297(d).)
- Refusing to participate in any activity that the employee reasonably believes would result in a violation of state or federal law, or a violation or noncompliance with a local, state, or federal rule or regulation. (Labor Code § 1102.5(c).)

(b) **“Adverse action”** may include, but is not limited to, any of the following:

- Real or implied threats of intimidation to attempt or prevent an individual from reporting alleged wrongdoing or because of actual or potential protected activity.
- Refusing to hire an individual because of actual or potential protected activity.
- Denying promotion to an individual because of actual or potential protected activity.
- Taking any form of disciplinary action because of actual or potential protected activity.
- Extending a probationary period because of actual or potential protected activity.
- Altering work schedules or work assignments because of actual or potential protected activity.
- Condoning hostility and criticism of co-workers and third parties because of actual or protected activity.
- Spreading rumors about a person because of that person’s actual or perceived protected activity.

- Shunning or unreasonably avoiding a person because of that person's actual or perceived protected activity.

2.8d **Complaint Procedure**

An applicant, employee, or seasonal/ temporary/ extra help employee who feels he or she has been retaliated against in violation of this Policy should immediately report the conduct according to the complaint procedure in LAFCo's Policy Against Discrimination, Harassment or Retaliation (**Section 2.2**) so that the complaint can be resolved fairly and quickly. Supervisors and Managers have the same responsibilities as defined in the Policy Against Discrimination, Harassment or Retaliation.

Chapter 3 Classification Policies

3.1 Classification Plan

3.1a *Classification Plan*

The Executive Officer shall ascertain and record the duties and responsibilities of all positions and, after consulting with affected department heads, shall recommend a classification plan, including job descriptions, for such positions.

3.2 *Reclassification*

The Executive Officer may initiate a job audit to determine whether the duties of a position have changed to such an extent that they necessitate reclassification of the position from the existing classification to a more appropriate classification. Upon completion of the job audit, the Executive Officer shall report to the Commission regarding reclassification changes. .

Chapter 4 Recruitment, Selection, and Appointment

4.1 Recruitment, Selection and Appointment Policy

4.1a *Job Announcement*

The Executive Officer will prepare a job announcement to announce a proposed recruitment. The announcement may be posted on the LAFCo's website and other locations the Executive Officer deems appropriate, depending upon whether the recruitment is open to the public or current employees only. The announcement will include:

- The title and pay for the position;
- The nature of the work to be performed and essential job duties of the position;
- The minimum qualifications, including whether the job is a promotional position;
- The last date that the Executive Officer will accept applications, if any;
- The time, place, and type of the examination, if known, and if a medical examination, and/or a drug screen will be required following a conditional offer of employment; and
- Such other information as determined in the discretion of the Executive Officer.

4.1b *Application Process*

Job applications shall require information describing an individual's training, experience, and other pertinent information as deemed necessary to assess qualifications for the job. Applicants may be required to provide supplementary information, including but not limited to: answers to job-related questions; resume; licenses; certifications; diplomas; letters of recommendation; and references. All applications must be completed in full, physically or electronically, by the person applying. The Executive Officer will not process any application which is not fully completed. Should an applicant be appointed to a position, the supplemental information shall become a part of the individual's permanent employment records.

4.1c *Disqualification of Applications*

The Executive Officer may reject any application which: is not properly completed or incomplete; received after the application deadline; or indicates that the applicant does not meet the minimum qualifications for the position. .

4.1d *Criminal Conviction Check*

After LAFCo makes a conditional offer of employment, the Executive Officer may then request information about criminal convictions, except for misdemeanor marijuana-related convictions that are over two years old, or convictions that have been judicially sealed, eradicated, or expunged. (Labor Code §§ 432.7-432.8.) Unless required by law, LAFCo will not deny employment to any applicant solely because he or she has been convicted of a crime. LAFCo

may, however, consider the nature, date and circumstances of the offense, evidence of rehabilitation, as well as whether the offense is relevant to the duties of the position. This Policy does not apply to applicants for public safety jobs.

4.1e *Employment Examinations*

- (a) The Executive Officer will determine the manner and methods of administering employment examinations. Examinations may consist of: written tests; oral tests; performance tests; evaluations of prior training and performance, experience and/or education; interviews; working style assessments; practical exercises; file review; or any combination thereof. The content of all examinations will be job-related and designed to test knowledge, skills or abilities that help predict successful completion of job duties.
- (b) The content of all examinations will be kept confidential prior to the administration of the examination. All applicants who are invited to the examination will be notified of the nature of the examination.
- (c) An applicant with a disability may request accommodation in an examination process. Following receipt of a request for accommodation, the Executive Officer may require additional information, such as reasonable documentation of the existence of a disability. (2 Cal.Code Regs § 11069(c)(2).)
- (d) Failure in one part of the examination, or the failure to meet established standards described in the job announcement, may be grounds for declaring such applicant as failing in the entire examination or as disqualified for subsequent parts of an examination. Each applicant will be notified by mail or email whether he or she will continue in the examination process.
- (e) Applicants who meet the minimum qualifications and pass all examinations may be subject to a background and/or reference check.

4.1f *Eligibility Lists*

- (a) After completion of an open or promotional examination for a classification, the **[Personnel Officer]** will prepare an eligibility list consisting of the names of candidates who passed the examination. Eligibility lists shall become effective upon the certification by the **[Personnel Officer]**.
- (b) A person appearing on an eligible list will be mailed or emailed notice of his or her placement on the list.
- (c) A person placed on an eligibility list shall be removed from the list if he or she so requests in writing or fails to respond to notification of an opening within five days after

notification. It is the responsibility of the eligible person to keep the **[Personnel Officer]** informed of his/her current physical or email address, or phone number.

4.1g **Appointments**

- (a) The Executive Officer will make all appointments except for those classifications that report to the governing body. The Executive Officer has discretion to decide in what manner a vacancy shall be filled. Vacancies may be filled by reinstatement, promotion, transfer, demotion, appointment of temporary / seasonal employees, or from an appropriate eligibility list if available. No specific list shall have priority over other lists. The LAFCo Commission will make appointments for those classifications that report to it.
- (b) When a position is to be filled from a promotional list, the **[Executive Officer]** may choose from the specified list one of the top three candidates on the eligibility list. If no person among the top three candidates indicates a willingness to accept the appointment, the **Executive Officer** may make the appointment from among the remaining names on the eligibility list, may request a new examination and establish a new eligibility list, or may fill the position by any other method authorized by these Policies.
- (c) Appointment to certain positions may be made contingent upon the applicant/employee passing a drug / alcohol test, and/or a job-related medical and/or psychological examination. Such examination shall only be required after a conditional offer of employment has been made. (See Policy 2.4, Reasonable Accommodation and Interactive Process; and Policy 12.4, Prohibitions on Drugs and Alcohol in the Workplace.)
- (d) The person accepting appointment shall report to the Executive Officer or designee on the date designated by the Executive Officer. Otherwise, the applicant shall be deemed to have declined the appointment.

4.1g.1 **Probationary Appointment**

- (a) At-Will Status: The probationary period is part of the examination process and is used to determine whether work performance or work-related behavior meets the required standards of the position. A probationary employee may be rejected at any time during the probationary period with or without cause or reason, without notice or appeal or grievance, and without any rights set forth under Policy 10.1, Causes for Discipline and Procedures. The probationary employee will be notified prior to the expiration of the probationary period that he or she has been rejected from probation.
- (b) Length of Probation: Unless otherwise specified by memorandum of understanding or these Policies, the probationary period is **[12 months, 2080 hours]** of actual and

continuous service. The probationary period is automatically extended by the length of any absence of one work week or more. The probationary period can also be extended by the Agency at the discretion of the Executive Officer or his/her designee.

4.1h *Probationary Period for Promotional Appointments*

- (a) At-Will Status: A promotional probationary employee may be rejected at any time during the promotional probationary period with or without cause or reason, without notice or appeal or grievance, and without any rights described in Policy 10.1, Causes for Discipline and Procedures. If the employee fails to satisfactorily complete the probationary period in the promotional position, the employee may return to the position held prior to promotion at the range and step held prior to promotion, if there is a vacancy in the prior position, unless he or she is terminated for cause.

- (b) Length of Probation: On accepting a promotion, an employee serves a new probationary period of **[six months]** of actual and continuous service. The probationary period is automatically extended by the length of any absence of a week or more.

Chapter 5 Employment of Relatives or Spouses/ Domestic Partners

5.1 Employment of Relatives, Spouses, Domestic Partners

5.1a *Policy*

LAFCo regulates the employment and placement of relatives, spouses, and domestic partners so as to avoid conflicts of interest and to promote safety, security, supervision, and morale.

5.1b *Definitions*

- (a) “Relative” means child, step-child, parent, grandparent, grandchild, brother, sister, half-brother, half-sister, aunt, uncle, niece, nephew, or in-laws of those enumerated by marriage or domestic partnership.
- (b) “Spouse” means one of two persons to a marriage, or two people who are registered domestic partners, as those terms are defined by California law. (Fam. Code § 297 & 300.)
- (c) “Supervisory relationship” means one in which one employee exercises the right or responsibility to control, direct, reward, or discipline another by virtue of the duties and responsibilities assigned to his or her LAFCo appointment.

5.1c *Employment of Relatives*

LAFCo will not appoint, promote or transfer a person to a position within the same department, division, or facility in which the person’s relative already holds a position, if any of the following would result:

- A direct or indirect supervisory relationship between the relatives;
- The two employees having job duties which require performance of shared duties on the same or related work assignment;
- Both employees having the same supervisor; or
- A potential for creating an adverse impact on supervision, safety, security, morale or efficiency.

5.1d *Spouses or Domestic Partners*

LAFCo will not appoint, promote, or transfer a person, to the same department, division, or facility in which the person’s spouse or registered domestic partner already holds a position, if such employment would result in any of the following:

- One spouse or domestic partner being under the direct supervision of the other spouse or domestic partner; or

- Potential conflicts of interest or hazards for married persons or those in domestic partnership which are greater than for those who are not married or in domestic partnerships.

5.1e *Marriage or Domestic Partnership After Employment*

- (a) **Transfer:** If two LAFCo employees who work in the same department later become spouses or domestic partners, the Executive Officer has discretion to transfer one of the employees to a similar position in another department. Although the wishes of the two employees will be considered, the Executive Officer retains sole discretion to determine which employee will be transferred based upon LAFCo needs for supervision, safety, security or morale. Any such transfer that results in a salary reduction is not disciplinary and is not subject to any grievance or appeal, or pre- or post-disciplinary appeal due process.
- (b) **Separation:** If continuing employment of both employees, who work in the same department and who later become spouses or domestic partners, cannot be accommodated in a manner the Executive Officer finds to be consistent with the LAFCo's interest in the promotion of supervision, safety, security, or morale, then the Executive Officer retains sole discretion to separate one employee from LAFCo employment. Absent the resignation of one employee, the less senior employee will be separated. Any such separation is not considered to be disciplinary and is not subject to any grievance or appeal, or pre- or post-disciplinary appeal due process.

Chapter 6 Compensation and Payroll Practices

6.1 Work Schedules and Attendance

6.1a *Work Schedules*

Work schedules are determined at the discretion of the department head and are subject to change with or without notice, according to the needs of the department or LAFCo. An overtime-eligible employee shall be in attendance and at work during the hours specified by the supervisor.

6.1b *Meal Period*

A [**one hour**] non-compensated meal period will be provided to all full-time overtime-eligible employees who work at least an eight hour work day. A 30 minute non-compensated meal period will be provided to all overtime-eligible full-time employees who work more than five hours, but less than eight hours during the work day. Overtime-eligible employees are responsible for taking their meal period at a time designated by the supervisor.

6.1c *Rest Period*

A 15-minute compensated rest period will be provided to all overtime-eligible employees for each four-hour period of service. The rest period shall be taken at a time designated by the employee's supervisor. Rest periods may not be combined to shorten the workday.

6.1c *Lactation Break Time*

An overtime-eligible employee who wishes to express breast milk for her infant child during her scheduled work hours will receive additional unpaid time beyond the 15-minute compensated rest period. (Labor Code § 1030; 29 USC § 207(r).) Those desiring to take a lactation break must notify a supervisor prior to taking such a break. Breaks may be reasonably delayed if they would seriously disrupt operations. (Labor Code § 1032.) Once a lactation break has been approved, the break should not be interrupted except for emergency or exigent circumstances.

6.1c.1 *Private Location*

LAFCo will make reasonable efforts to accommodate employees by providing an appropriate location to express milk in private. LAFCo will attempt to find a location in close proximity to the employee's work area, and the location will be other than a toilet stall. (Labor Code § 1031; 29 USC § 207(r).) Employees occupying such private areas shall either secure the door or otherwise make it clear to others through signage that the area is occupied and should not be disturbed. All other employees should avoid interrupting an employee during an authorized break under this section, except to announce an emergency or other urgent circumstance.

Authorized lactation breaks for employees assigned to the field may be taken at the nearest appropriate private area.

6.1c.2 *Storage of Expressed Milk*

Any employee storing expressed milk in any authorized refrigerated area within LAFCo shall clearly label it as such. No expressed milk shall be stored at LAFCo beyond the employee's work day/ shift.

6.1d *Advance Request for Permission to Deviate from Regular Work Hours*

An overtime-eligible employee is required to seek advance permission from his or her supervisor for any foreseeable absence or deviation from regular working, break, and meal times.

6.1e *Notification of Unforeseen Late Arrival or Absence*

An overtime-eligible employee who is unexpectedly unable to report for work as scheduled must notify his or her immediate supervisor no later than the beginning of the employee's scheduled work time and report the expected time of arrival or absence. If the immediate supervisor is not available, the employee must notify the department head.

6.1f *Unauthorized Absence is Prohibited*

Arriving late to work or leaving early in connection with scheduled work times, breaks, or meal periods is prohibited, absent authorization. An overtime-eligible employee who fails to timely notify the supervisor of any absences as required by this Policy, or who is not present and ready to work during all scheduled work times will be deemed to have an unauthorized tardy or absence and will not receive compensation for the period of absence.

6.1g *Excessive Tardiness/Absenteeism and Abuse of Leave*

Excessive tardiness occurs when an overtime-eligible employee who, without authorization, is late to work or late to return from breaks more than three times during any 30-day period. Excessive absenteeism occurs when the number of unapproved absences for reasons that are not permitted by state or federal law, exceeds **[three days in any three-month period]**. Excessive tardiness or absenteeism may be grounds for discipline, up to and including termination.

Abuse of leave is a claim of entitlement to leave when the employee does not meet the requirements for taking the leave, and may be grounds for discipline, up to and including termination. Should the LAFCo suspect that there is an abuse of leave by an employee, the LAFCo may require that the employee submit a physician's certificate to support the absence.

6.2 Work Week, Overtime and Compensatory Time Off

6.2a Work Week

The work week begins at 12:00 a.m. on Sunday and ends at 11:59 p.m. on Saturday or as otherwise designated in an applicable MOU, or by a Fair Labor Standards Act (FLSA) 29 USC § 207(k) work period for fire and police employees.

6.2a.1 Work Week for 9/80 Work Schedule

Employees working a 9/80 work schedule will have a regular day off every other week as determined by LAFCo. For employees working a 9/80 work schedule, each employee's designated work week shall begin exactly four hours after the start of his/her eight hour shift on the day of the week that corresponds to the employee's alternating regular day off.

6.3a Overtime

Overtime is all hours an overtime-eligible employee actually works over 40 hours in his or her designated work week. Only actual hours worked will be counted toward the 40-hour threshold for purposes of calculating Fair Labor Standards Act (FLSA) overtime pay; paid leave will not be counted. Overtime-eligible employees who are directed to work overtime must do so.

6.3a.1 No Remote Access for Overtime-Eligible Employees

Unless the Executive Officer specifies otherwise in writing, overtime-eligible employees may not have remote access to LAFCo equipment, resources, or email unless the access is during normal work hours where the employee is working from home due to needed office closure and authorization has been provided by the Executive Officer.

6.3a.2 Prior Approval Required for Overtime

Overtime-eligible employees are not permitted to work overtime except as directed and authorized by their supervisor, or in case of emergency, as determined by the agency. Working overtime without prior authorization or approval is grounds for discipline. In emergency situations that necessitate working overtime, the employee must notify a supervisor as soon as possible, and in no event later than the end of that day upon which the emergency occurred. If the supervisor denies the request to work overtime, the employee must obey the supervisor's directive and cease working. Failure to follow these overtime approval procedures may subject the employee to disciplinary action, up to and including termination, for violating the overtime approval procedures.

6.3b Accurate Time Reporting

All employees must accurately report all work time to the nearest five minutes.

6.3c *No Volunteering of Work Time*

All time spent for the benefit of the LAFCo must be reported as hours worked on time records so that the employee is paid for all work. Overtime-eligible employees may not "volunteer" work time to perform duties that are the same or similar as their stated or regular job duties. Employees have no authorization to work without compensation. No supervisor has authority to request overtime-eligible employees to volunteer work time.

6.3d *Compensatory Time Off*

An overtime-eligible employee may opt to accrue compensatory time-off (CTO) in lieu of cash payment for overtime worked if his or her supervisor agrees prior to overtime work being performed.

- (a) **Accrual Rate:** CTO accrues at the rate of 1.5 hours for each hour, or fraction thereof, worked after 40 hours of actual work within the employee's designated work week. Time in paid leave status does not count toward CTO. CTO cannot be accumulated in excess of **[80]** hours at any given time.
- (b) **Employee Request to Use CTO:** LAFCo will grant an employee's request to use accumulated CTO provided that: 1) the department can accommodate the use of CTO on the day requested without undue disruption to department operations; and 2) the employee makes the request in writing to the supervisor no later than five days prior to the date requested. If the employee does not provide five days' notice, or if the department cannot accommodate the time off without undue disruption, LAFCo will provide the employee the opportunity to cash out the amount of CTO requested at the end of the current pay period.
- (c) **LAFCo Cash Out:** LAFCo reserves the right to cash out accumulated CTO at any time.
- (d) **Value of CTO Cash Out:** During employment, CTO is cashed out at the employee's current FLSA regular rate of pay (including all FLSA-applicable salary differentials and special pays). Employees separating from LAFCo service shall be compensated for all accrued, unused compensatory hours at their current FLSA regular rate of pay, or their average FLSA regular rate for the prior three years, whichever is higher. (29 USC § 207(o)(3)(B) & (4); 29 CFR § 553.27.)

Chapter 7 Performance Evaluation Policies

7.1 Performance Evaluations

7.1a *Performance Evaluations*

A non-probationary employee's supervisor will prepare and sign a performance evaluation on an LAFCo form for each performance evaluation period. The Executive Officer will review and approve all performance evaluations of employees under his or her supervision. Additional performance evaluations may be prepared at any time the Executive Officer deems necessary. Outside of the six month probationary review mentioned in section 7.1b all evaluations performed by the Executive Officer will occur between the LAFCo Commission meeting where the proposed budget is approved and the meeting where the final budget is to be approved. The Executive Officer and other at-will employees appointed by the Commission will be evaluated on a date and time determined by the Commission.

7.1b *Probationary Employee Performance Evaluations*

On or about the completion of six months of a probationary period, and again at any point prior to separation or the successful completion of the probationary period, the Executive Officer will prepare and sign a performance evaluation. The purpose of the probationary performance evaluation is to chart the probationer's progress toward meeting the standards of his or her position.

7.1c *Performance Evaluation Meeting*

The supervisor will meet with the employee to discuss the evaluation. The employee shall sign the evaluation to acknowledge its contents and that he or she has met with his or her supervisor to discuss the evaluation. The employee's signature shall not mean that he or she endorses the contents of the evaluation.

7.1d *No Appeal Right*

An employee does not have the right to appeal or submit a grievance regarding any matter relating to the content of a performance evaluation. Instead, the employee may comment on the evaluation in a written statement which will then be placed with the evaluation in the employee's personnel file. The written statement must be submitted within 10 days after the employee receives the evaluation.

Chapter 8 Leaves of Absences

8.1 Vacation Leave and Holidays

8.1a Vacation Leave

Eligible full-time and part-time employees, **[with the exception of temporary/ seasonal and extra help employees,]** earn vacation leave while in paid status until they reach the applicable vacation accrual cap. Employees accrue vacation time according to their full or part-time status and the number of consecutive years the employee has worked for LAFCo as follows:

- (a) **Full-Time Employee Accrual Rate:** Each employee shall be entitled to accrue vacation credits for each hour on paid status in continuous service in accordance with the following schedule

Months of Service	Hourly Standard Accrual	Maximum Workdays Per Year
Start through 24 months	.0385	10
Greater than 24 months through 108 Months	.0577	15
Greater than 108 months through 228 Months	.0770	20
Greater than 228 months through 348 Months	.0962	25
Greater than 348	.1154	30

- (b) **Part-Time Employee Accrue Pro-rated Vacation:**

Part-time employees **[who are budgeted to work at least 20 hours per week]** earn vacation leave while in paid status in a pro-rated amount based upon the accrual applicable to full time employees. Once a part-time employee reaches the pro-rated accrual cap, they stop earning vacation.

8.1b Limitations on Vacation Leave Accrual

Accumulated, unused vacation time shall not exceed three hundred (300) standard duty hours per employee. Thereafter, additional accumulation shall be suspended unless otherwise approved in advance by the Executive Officer, in the Executive Officer sole discretion, in cases where such is beneficial to LAFCo.

8.1c Scheduling of Vacation Leave

Vacation leave may not be used until it is earned. The employee and the Executive Officer will schedule the times when an employee may take vacation leave. The scheduling will be based on the employee's preference and LAFCo operational needs. An employee shall provide a minimum of one week's written advance notice, unless waived by the department head, when requesting vacation time off. LAFCo may, at its discretion, require an employee to use accrued vacation.

Unpaid Leave of Absence

No vacation leave will accrue during any unpaid leave of absence.

8.1d *Unused Vacation Leave Upon Separation*

Any employee separating from the LAFCo who has accrued vacation leave shall be paid for all accrued vacation at his or her rate of pay at the time of separation.

8.1e *Holidays*

Full-time employees, except **[temporary/ seasonal and extra help employees]** receive the holidays listed below with pay. If New Year's Day, Independence Day, Veterans Day or December 25 falls on a Sunday, the Monday following shall be treated as the holiday. If any of those holidays falls on a Saturday, the preceding work day shall be treated as the holiday. Part-time employees whose scheduled work time falls on a holiday will receive that holiday off with pay for the hours they were scheduled to work.

- New Year's Day (January 1)
- Martin Luther King'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)
- Veteran's Day (November 11)
- Thanksgiving Day (Fourth Thursday in November)
- Day After Thanksgiving Day (Fourth Friday in November)
- December 24 shall be observed as half (1/2) day holidays if that date fall on a Monday, Tuesday, Wednesday, or Thursday.
- Christmas Day (December 25)
- December 26 through December 31 shall be deemed Holidays, any day that falls on the weekend shall not be moved as described above.

8.1f *Effect of Holiday on Vacation Leave*

If one or more holidays falls within a vacation leave that an eligible full time employee is taking, such holiday shall not be charged as vacation leave

8.1g ***Floating Holidays***

1. Each full time employee on the payroll as of July shall be credited with two (2) floating holidays for that fiscal year. Employees newly appointed between July 1 and December 31 shall be credited with two (2) standard workdays as floating holidays for that fiscal year. Employees newly appointed between January 1 and May 31 shall be credited with one (1) standard workday as floating holiday for that fiscal year. Employees newly appointed between June 1 and June 30 shall not be credited with any floating holidays for that fiscal year. This pro-ration shall also apply to employees who have returned from an approved leave of absence where they were in leave without pay status.
2. With the approval of the department head, floating holidays may be taken at any time or times during the year.
3. Floating holidays shall not accrue from one fiscal year to the next.
4. Upon termination, unused floating holidays shall be paid at the straight-time rate so that the total of unused floating holidays to be paid off and floating holidays used by the employee shall not exceed one (1) work day if the termination occurs between July 1 and December 31 or two (2) work days if the termination occurs between January 1 and June 30 or per the prorated schedule for new employees.

8.1h ***Pay for Holidays***

Employees entitled to paid holidays or floating holidays shall be paid for the number of hours the employee was scheduled to work had it not been a holiday or floating holiday. An overtime-eligible employee who is required to work on a holiday will receive holiday pay and pay for the actual time worked on the holiday.

8.1i ***Management Leave***

LAFCo will credit each full-time salaried employee who is exempt under the Fair Page Labor Standards Act (FLSA) and not eligible for time-and-a-half overtime under this Agreement with forty (40) hours of management leave every July 1.

Management leave is credited to eligible employees as acknowledgement of the extra hours that salaried employees are required to work from time to time. Management leave is not a vested right nor compensation for services rendered and as such is not subject to payout upon separation from employment. Unused management leave will carry over from fiscal year to fiscal year as long as the incumbent is a regular-hire employee of LAFCo.

8.1j Personal Leave

- A. Five (5) workdays per year shall be deemed personal leave which may be taken at any time or times during the year, after accrual, with the approval of the department head.
- B. Each regular employee on the payroll as of July 1 shall be credited immediately with five (5) personal leave days for that fiscal year. Employees newly appointed between July 1 and October 31 shall be credited with five (5) days of personal leave for that fiscal year. Any such employee appointed between November 1 and February 28 (29) shall be credited with two and a half (2-1/2) days of personal leave for the balance of that fiscal year. Any such employee appointed between March 1 and May 31 shall be credited with one (1) day of personal leave for the balance of that fiscal year. Any such employee appointed between June 1 and June 30 shall receive no personal leave for that fiscal year. This pro-ration shall also apply to employees who have returned from an approved leave of absence where they were in leave without pay status.
- C. Personal leave shall be taken in the fiscal year accrued and shall not accrue from one fiscal year to the next.
- D. Upon termination of employees who have completed their initial probationary period, unused personal leave shall be paid at a straight-time rate so that the total of unused personal leave days to be paid off and personal leave used by the employee shall not exceed two and one half (2-1/2) standard workdays if the termination occurs between July 1 and December 31 or five (5) workdays if the termination occurs between January 1 and June 30 or per the prorated schedule for new employees. Personal leave upon termination will not be paid to employees who have not completed their initial probationary period. In the above sections, "day" shall be defined eight (8) hours depending upon the regularly scheduled hours for each job class.

8.2 Sick Leave

1. Each regular, full-time employee covered by this Agreement shall be entitled to one working day of sick leave with pay for each month or fraction thereof served. Sick leave accruals shall be pro-rated for regular employees who work less than full time.
2. Association recognizes the County's right to determine by reasonable means the validity of any sick-leave usage by an employee at any time.
3. Sick leave with pay up to a total of hours accumulated shall be granted by the department head in cases of bona-fide illness or bona-fide injury to an employee. After four (4) consecutive days of illness, the County may require a physician's certificate or other evidence either as a condition of continuing an employee on sick leave or as a requirement for returning to work.
4. Leave with pay up to six (6) standard workdays per year shall be granted by the department head for an employee who must care for a son, daughter, spouse, domestic partner, or person of a familial relationship residing in the same household during illness. Such leave shall be charged against accumulated sick leave.

5. During the first six (6) months of employment, an employee may borrow sick leave in excess of the number of hours accumulated aforesaid, not to exceed the standard workweek for a regular, full-time employee. However, if an employee Page | 12 borrows sick leave, such sick leave borrowed shall be subtracted from future accumulations as above provided until accumulations equal excess sick leave actually taken. Thereafter, sick leave shall accumulate as provided in paragraph one (1) above. An employee who separates from employment while in arrears on sick leave shall be required to agree to a repayment plan for such sick leave days.

6. Pursuant to State Law, effective July 1, 2015, temporary employees (contingent-hire employees) are eligible to receive 24 hours of sick leave per year after more than 30 days of employment with the County. Eligible employees shall receive 24 hours of sick leave each fiscal year. Eligible employees may not use paid sick leave until after 90 days of hire. Unused accruals do not roll over from one fiscal year to the next fiscal year. All notice requirements and rules regarding the appropriate use of sick leave apply to contingent-hire employees.

8.2b Terms of Sick Leave

(a) Accrual & Carryover for Different Categories of Employees:

- 1) A [*seasonal/ temporary or extra help employee*] who works 30 or more days within a year from the commencement of employment with the [Agency] accrues one hour of paid sick leave for every 30 hours worked. (Labor Code § 246(a).) Accrued and unused sick leave carries over to the following year of employment but a [*seasonal/ temporary or extra help employee*] stops earning sick leave once he or she has accrued 48 hours or 6 work days/ shifts, whichever is greater. (Labor Code § 246(i).)

(b) Sick Leave Use

An employee may use accrued sick leave, in a minimum increment of two hours, beginning on the 90th day after the first day of employment with the [Agency], subject to the limits and request provisions in this Policy. (Labor Code § 246(c) & (j).)

***Minimum Increment:** Employers may set a minimum increment for paid sick leave use that is less than the two hours listed in this Policy. This Policy uses the largest minimum increment -- two hours -- that the law allows (Labor Code § 246(j)) as a means to prevent some types of sick leave abuse. Because the 2014 Healthy Workplaces Law generally does not allow an employer to request verification of the need for leave, the larger the minimum increment that the employer uses, the less likely an employee is to use sick leave in very small increments or as means to cover tardiness to work or a late return to work from a break.*

(c) Protected Sick Leave:

- 1) For full time employees who are not **[seasonal/temporary or extra help]**, one-half of the employee's accrued and available annual sick leave is protected and may be used for any of the purposes stated in this Policy. (Labor Code §§ 233(b)(2); 233(b)(3)(A); 246(d).)
- 2) For **[Seasonal / temporary or extra help employees]**, up to 24 hours, or three days, whichever is greater, of accrued and available sick leave each year is protected and may be used for any of the purposes stated in this Policy. (Labor Code § 246(d).) The year is measured beginning on July 1, 2015, or the employee's anniversary of hire date, whichever is later.

(d) Sick Leave Request:

To request to use sick leave if the need for leave is foreseeable, an employee must give the immediate supervisor reasonable advance written or oral notice. (Labor Code §§ 246(l); 246.5(a).) If the need for sick leave is not foreseeable, the employee shall provide written or oral notice of the need for the leave as soon as practicable. (Labor Code § 246(l).) If the employee is required to be absent on sick leave for more than one day, the employee must keep the immediate supervisor informed each day as to the date the employee expects to return to work and the purpose of the leave. Failure to request sick leave as required by this Policy without good reason, may result in the employee being treated as absent without leave.

(e) Certification

LAFCo may require that employees who are not **[seasonal, temporary, or extra help]**, must provide a physician's certification to support any absence that involves the illness of the employee or family member if LAFCo suspects that there is an abuse of sick leave by the employee. All employees, including **[seasonal, temporary, or extra help]**, who use paid leave to address issues related to domestic violence, sexual assault or stalking, and who cannot provide advance notice of their need for leave must provide certification of the need for leave within a reasonable time thereafter. (Labor Code § 230(d)(2).)

(f) Sick Leave on Separation from Employment

Unused sick leave is not cashed out upon termination, resignation, retirement, or other separation from employment. (Labor Code § 246(f)(1).) Unused sick leave may be converted to retirement service credits only as may be permitted under applicable retirement system laws and regulations.

(g) Sick Leave Reinstatement:

If an employee separates and is rehired within one year from separation, accrued and unused sick leave, to a maximum of 6 days or 48 hours, whichever is greater, will be reinstated. (Labor Code § 246(f)(2).) An employee who worked at least 90 days in the initial employment with LAFCo may immediately use reinstated sick leave. An employee who had not worked 90 days in the initial employment with LAFCo must work the remaining amount of the 90 day-qualifying period to be able to use accrued sick leave. (Labor Code § 246(c).)

8.3 Family and Medical Care Leaves

8.3a Statement of Policy; Concurrent Running of FMLA and CFRA Leaves

LAFCo provides family and medical care leave for eligible employees as required by State and federal law. Employees who misuse or abuse family and medical care leave may be disciplined up to and including termination. Employees who fraudulently obtain or use CFRA leave are not protected by the CFRA's job restoration or maintenance of health benefits provisions. This Policy is supplemented by the Federal Family and Medical Leave Act ("FMLA"), and the California Family Rights Act ("CFRA"). Unless otherwise stated in this Policy, "Leave" means leave pursuant to the FMLA and CFRA. Unless otherwise provided by law, LAFCo will run each employee's FMLA and CFRA leaves concurrently.

8.3b Definitions

- (a) "12-Month Period" means a rolling 12-month period measured backward from the date leave is taken and continuous with each additional leave day taken. (29 CFR § 825.200(b)(4); 2 Cal.Code Regs § 11090(b).)

Commentary

An agency can select from four different options for defining the 12-Month Period for counting the 12-week family leave entitlement. (29 CFR § 825.200(d)(1).) The above Policy uses the rolling backward method. (29 CFR § 825.200(b)(4); 2 Cal.Code Regs. § 11090(b).) Under the rolling backward method, each time an employee takes FMLA leave, the remaining leave entitlement is any balance of the 12 weeks which has not been used during the previous 12-month period. (29 CFR § 825.200(c).) The second option is the rolling forward option; each time an employee takes FMLA leave, the remaining leave entitlement is any balance of the 12 weeks which has not been used during the immediately preceding 12 months. (29 CFR § 825.200(c).) The remaining two options for defining the 12-Month Period are the calendar year (29 CFR § 825.200(b)(1)), or any fixed 12-month year, such as a fiscal year or the employee's anniversary date. (29 CFR § 825.200(b)(2).) Only the "rolling"

options prevent leave from being stacked together to make a 24-week leave covering two 12-Month Periods.

- (b) “Single 12 Month Period” means a 12-month period which begins on the first day the eligible employee takes FMLA leave to take care of a covered servicemember and ends 12 months after that date. (29 CFR § 825.200(f).)

- (c) “Child” means a child under the age of 18 years of age, or 18 years of age or older who is incapable of self-care because of a mental or physical disability. An employee’s child is one for whom the employee has actual day-to-day responsibility for care, and includes a biological, adopted, foster or step-child. A child is “incapable of self care” if he/she requires active assistance or supervision to provide daily self-care in three or more of the activities of daily living or instrumental activities of daily living, such as caring for grooming and hygiene, bathing, dressing and eating, cooking, cleaning shopping, taking public transportation, paying bills, maintaining a residence, or using telephones and directories. (29 CFR § 825.102; Gov. Code § 12945.2(c)(1).)

- (d) “Parent” means the biological parent of an employee or an individual who stands or stood in loco parentis (in place of a parent) to an employee when the employee was a child. This term does not include parents-in-law. (29 CFR § 825.102; Gov. Code § 12945.2(c)(7).)

- (e) “Spouse” means one or two persons to a marriage, regardless of the sex of the persons, and for purposes of CFRA leave, includes a registered domestic partner as defined below. (29 CFR § 825.102; Fam. Code § 300; 2 Cal.Code Regs § 11087(r).)

- (f) “Domestic Partner” is another adult with whom the employee has chosen to share their life in an intimate and committed relationship of mutual caring and with whom the employee has filed a Declaration of Domestic Partnership with the Secretary of State, and who meets the criteria specified in California Family Code section 297. A legal union formed in another state that is substantially equivalent to the California domestic partnership is also sufficient. (Fam. Code § 299.2.)

- (g) “Serious Health Condition” means an illness, injury impairment, or physical or mental condition that involves:
 - 1) Inpatient Care in a hospital, hospice, or residential medical care facility, including any period of incapacity (e.g., inability to work or perform other regular daily activities due to the serious health condition, treatment involved, or recovery therefrom). A person is considered “inpatient” when a health care facility admits him or her to the facility with the expectation that he or she will remain at least

overnight, even if it later develops that such person can be discharged or transferred to another facility, and does not actually remain overnight; or

- 2) Continuing treatment by a health care provider: A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:
 - a. A period of incapacity (i.e., inability to work, or perform other regular daily activities) due to serious health condition of more than three consecutive calendar days; and
 - b. Any subsequent treatment or period of incapacity relating to the same condition, that also involves:
 - i. Treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision by a health care provider, or by a provider of health care services (e.g., a physical therapist) under orders of, or on referral by a health care provider; or
 - ii. Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider. This includes, for example, a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition. If the medication is over the counter, and can be initiated without a visit to a health care provider, it does not constitute a regimen of continuing treatment.
- 3) Any period of incapacity due to pregnancy or for prenatal care. (29 CFR § 825.120; Gov. Code §12945.2(c)(8).) Note that pregnancy is a "serious health condition" only under the FMLA. Under California law, an employee disabled by pregnancy is entitled to pregnancy leave. (See Policy 808, Leave Because of Pregnancy, Childbirth, or Related Medical Condition.)
- 4) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:
 - i. Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;
 - ii. Continues over an extended period of time (including recurring episodes of a single underlying condition); and

iii. May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.). Absences for such incapacity qualify for leave even if the absence lasts only one day.

- 5) A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by health care provider.
- 6) Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment. (29 CFR § 825.113; Gov. Code § 12945.2(c)(8); 2 Cal.Code Regs § 11087(q)(1).)

(h) "Health Care Provider" means:

- 1) A doctor of medicine or osteopathy who is authorized to practice medicine or surgery in the State of California;
- 2) Individuals duly licensed as a physician, surgeon, or osteopathic physician or surgeon in another state or jurisdiction, including another country, which directly treats or supervises treatment of a serious health condition;
- 3) Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist) authorized to practice in California and performing within the scope of their practice as defined under California State law;
- 4) Nurse practitioners and nurse-midwives and clinical social workers who are authorized to practice under California State law and who are performing within the scope of their practice as defined under California State law;
- 5) Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; and
- 6) Any health care provider from whom an employer or group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits. (29 CFR § 825.102; Gov. Code § 12945.2(c)(6).)

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- (i) “Covered active duty” means: 1) in the case of a member of a regular component of the Armed Forces, duty during deployment of the member with the Armed Forces to a foreign country; or 2) in the case of a member of the reserve component of the Armed Forces, duty during the deployment of members of the Armed Forces to a foreign country under a call or order to active duty under certain specified provisions. (29 CFR § 825.102.)
- (j) “Covered Servicemember” means: 1) 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; or 2) a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces, including a member of the National Guard or Reserves, at any time during the period of five years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy. (29 CFR § 825.102 & 825.122.)
- (k) “Outpatient Status” means, with respect to a covered servicemember, the status of a member of the Armed Forces assigned to either: (1) a military medical treatment facility as an outpatient; or (2) a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients. (29 CFR § 825.102.)
- (l) “Next of Kin of a Covered Servicemember” means 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. (29 CFR § 825.102.)
- (m) “Serious Injury or Illness” means: 1) in the case of a member of the Armed forces, including a member of the National Guard or reserves, means an injury or illness that a covered servicemember incurred 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 the service in the line of duty on active duty in the Armed Forces) and that may render the servicemember medically unfit to perform the duties of the member’s office, grade, rank, or rating; or 2) in the case of a veteran who was a member of the Armed Forces, including a member of the National Guard or Reserves, means an 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 that manifested itself before or after the member became a veteran. (29 CFR § 825.102.)

8.3c *Reasons for Leave*

Leave is only permitted for the reasons listed below.

- (a) The birth of a child or to care for a newborn of an employee; (29 CFR § 825.120; Gov. Code § 12945.2(c)(3)(A));
- (b) The placement of a child with an employee in connection with the adoption or foster care of a child; (29 CFR § 825.121; Gov. Code § 12945.2(c)(3)(A));
- (c) Leave to care for a child, parent, spouse, or domestic partner who has a serious health condition; (29 CFR § 825.113; Gov. Code § 12945.2(c)(3)(A) & (B));
- (d) Leave because of a serious health condition that makes the employee unable to perform any one or more essential functions of his/her position; (29 CFR § 825.113; Gov. Code § 12945.2(c)(3)(C));
- (e) Leave for a variety of “qualifying exigencies” arising out of the fact that an employee’s spouse, son, daughter, or parent is on active duty or call to active duty status in the National Guard or Reserves in support of a contingency operation (29 CFR § 825.126 -- This is a FMLA leave and not a CFRA leave); or
- (f) Leave to care for a spouse, son, daughter, parent, or “next of kin” who is a covered servicemember of the U.S. Armed Forces who has a serious injury or illness: incurred in the line of duty while on active military duty; 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. This leave can run up to 26 weeks of unpaid leave during a single 12-month period. (29 CFR § 825.127 -- This is a FMLA leave and not a CFRA leave.)

8.3d *Employees Eligible For Leave*

An employee is eligible for leave if:

- (a) The employee has been employed by LAFCo for at least 12 months; and
- (b) The employee has been employed by LAFCo for at least 1,250 hours during the 12-month period immediately preceding the commencement of the leave; and
- (c) The **LAFCo** directly employs at least 50 full or part-time employees within a 75-mile radius for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year. The workweeks do not have to be consecutive. The phrase “current or preceding calendar year” refers to the calendar year in which the

employee requests the leave or the calendar year preceding this request. (29 CFR § 825.109(d)-29 CFR § 825.111; Gov. Code § 12945.2(a) & (b); 2 Cal.Code Regs §§ 11087(d)(1) & 11087(e).)

An employee is eligible for 12 weeks of parental leave to bond with a new child within one year of the child's birth, adoption or foster care placement if:

- (a) The employee has been employed by **LAFCo** for at least 12 months; and
- (b) The employee has been employed by LAFCo for at least 1,250 hours during the 12-month period immediately preceding the commencement of the leave; and
- (c) LAFCo directly employs at least 20 full or part-time employees within a 75-mile radius. (Gov. Code § 12945.6(a)(1).)

8.3e *Amount of Leave*

Eligible employees are entitled to a total of 12 workweeks (or 26 workweeks to care for a covered servicemember) of leave during any 12-month period. If FMLA leave qualifies as both military caregiver leave and care for a family member with a serious health condition, the leave will be designated as military caregiver leave first. (29 CFR § 825.127.)

8.3f *Minimum Duration of Leave*

- (a) If leave is requested for the birth, adoption or foster care placement of a child of the employee, leave must be concluded within one year of the birth or placement of the child. In addition, the basic minimum duration of such leave is two weeks. However, an employee is entitled to leave for one of these purposes (e.g. bonding with a newborn) for less than two weeks duration on any two occasions. (2 Cal.Code Regs § 11090(d).)
- (b) If leave is requested to care for a child, parent, spouse or the employee him/herself with serious health condition, there is no minimum amount of leave that must be taken. However, compliance with the notice and medical certification provisions in this Policy is required. (29 CFR § 825.205; 2 Cal.Code Regs § 11090(e).)

8.3g *Parents both Employed by LAFCo*

If both parents of a child, adoptee, or foster child are employed by LAFCo and are entitled to bonding leave, the aggregate number of workweeks of leave to which both may be entitled may be limited to 12 workweeks during any 12-month period. (29 CFR § 825.120(a)(3).) If both

parents of a covered servicemember are employed by LAFCo and are entitled to leave to care for a covered servicemember, the aggregate number of workweeks of leave to which both may be entitled is limited to 26 work weeks during the 12-month period. This limitation does not apply to any other type of leave under this Policy. (29 CFR § 825.127(f).)

8.3h *Employee Benefits While On Leave*

- (a) **Group Health Insurance During Unpaid Leave:** Leave under this Policy is unpaid. While on unpaid leave, employees will continue to be covered by LAFCo's group health insurance for up to 12 weeks each leave year to the same extent that coverage is provided while the employee is on the job. If the employee is disabled by pregnancy, coverage will continue up to four months each leave year. If an employee disabled by pregnancy also uses leave under the CFRA for baby-bonding, LAFCo will maintain her coverage while she is disabled by pregnancy (up to four months or 17 1/3 weeks) and during her CFRA leave (up to 12 weeks). (Gov. Code §§ 12945(a)(2)(A) & 12945.2(s).)

(b) **Benefit Plans Not Provided through LAFCo Group Health Plan During Unpaid Leave Do Not Continue:** LAFCo does not pay for benefit plans that are not part of the group health plan for any employee on unpaid leave. As a result, employees will not continue to be covered under LAFCo benefit plans that are not provided through LAFCo group health plans while the employee is on unpaid leave. (2 Cal. Code Regs § 11092(e).)

OR ...

(b) **Benefit Plans Not Provided through LAFCo's Group Health Plan During Unpaid Leave Do Continue:** While on unpaid leave, employees will continue to be covered by LAFCo's benefits plans that are not part of its group health plan for up to 12 weeks each leave year to the same extent that coverage is provided while the employee is on the job. (2 Cal.Code Regs § 11092(e).)

Commentary

Your agency should choose between one of the two provisions above, depending upon whether your agency provides those on unpaid leave the opportunity to continue coverage in employer-provided benefit plans that are not part of your agency's group health plan benefits. The CFRA entitles employees on unpaid leave to participate in these plans (e.g., life, short-term, or long-term disability or accident insurance, retirement and pension plans) to the same extent and under the same conditions that would apply to employees on any other unpaid leave other than family leave. (Gov. Code § 12945.2(f)(2); 2 Cal. Code Regs § 11092(e).) Note that the employer need not contribute to a pension plan during the portion of unpaid family leave. (Gov. Code § 12945.2(f)(2); 2 Cal.Code Regs § 11092(e).)

(c) **Payment of Premiums:** Employees may make the appropriate contributions for continued coverage under the health benefits plans by payroll deductions (if the employee is using his or her paid leave) or direct payments (if the employee is not using his or her paid leave). LAFCo will inform the employee whether the direct payments for premiums should be paid to the carrier or to LAFCo, and the deadlines for paying premiums in order to prevent coverage from being dropped. Employee contribution rates are subject to any changes in rates that occur while employee is on leave.

(d) **Recovery of Premium if the Employee Fails to Return from Leave:** If an employee fails to return to work after his/her leave entitlement has been exhausted or expires, LAFCo shall have the right to recover its share of health plan premiums for the entire leave period, unless the employee does not return because of the continuation, recurrence, or onset of a serious health condition of the employee or his/her family member which would entitle the employee to leave, or because of circumstances beyond the employee's control. (29 CFR § 825.213; Gov. Code § 12945.2(f)(1); 2 Cal.Code Regs § 11092(c)(5).)

8.3i *Substitution of Paid Accrued Leaves*

Although family and medical care leave is unpaid, an employee may elect and LAFCo will require an employee to concurrently use all paid accrued leaves during family and medical care leave as described below.

8.3i.1 *Employee's Right to Use Paid Accrued Leave Concurrently with Family Leave*

An employee may use any earned or accrued paid leave except sick leave for all or part of any unpaid family and medical care leave. An employee is entitled to use sick leave concurrently with family and medical care leave for the employee's own serious health condition or that of the employee's parent, spouse, domestic partner or child. (Gov. Code § 129045.2(e); Labor Code §§ 233 & 246.5(a)(1).)

8.3i.2 *LAFCo's Right to Require an Employee to use Paid Leave when using FMLA/CFRA Leave*

Employees must use and exhaust their accrued leaves concurrently with family and medical care leave to the same extent that employees have the right to use their accrued leaves concurrently with family and medical care leave with two exceptions:

- (a) Employees are not required to use paid leave during leave pursuant to a disability plan that pays a portion of the employee's salary while on leave unless the employee agrees to use paid leave to cover the unpaid portion of the disability leave benefit; (29 CFR § 825.207(d); 2 Cal.Code Regs. § 11092(b)(2) & (3)); and
- (b) An employee must agree to use accrued sick leave to care for a child, parent, spouse or domestic partner. (Gov. Code § 12945.2(e); 2 Cal.Code Regs § 11092(b).)

8.3i.3 LAFCo's Right to Require an Employee to Exhaust FMLA/CFRA Leave Concurrently with Other Leaves

If an employee takes a leave of absence for any purpose which also qualifies under both the FMLA and CFRA, **LAFCo** will designate that leave as running concurrently with the employee's 12-week FMLA/CFRA leave entitlement. (Labor Code §4850(e).)

8.3i.4 LAFCo's and Employee's Rights if an Employee Requests Accrued Leave without Mentioning FMLA or CFRA

If an employee requests to utilize accrued vacation leave or other accrued paid time off without reference to a FMLA/CFRA qualifying purpose, LAFCo may not ask the employee if the leave is for a FMLA/CFRA qualifying purpose. (2 Cal.Code Regs § 11092(b)(4)(A).) However, if LAFCo denies the employee's request and the employee provides information that the requested time off is for a FMLA/CFRA qualifying purpose, LAFCo may require the employee to exhaust accrued leave as described above. (2 Cal.Code Regs § 11092(b)(4)(A)(1).)

8.3j Medical Certification/ Recertification

Employees who request leave must provide a medical certification and/or recertification to support the need for the leave as described below:

- (a) **Employee's Own Serious Health Condition:** Employees who request leave for their own serious health condition must provide written certification from the health care provider that contains all of the following: the date, if known, on which the serious health condition commenced; the probable duration of the condition; and a statement that, due to the serious health condition, the employee is unable to work at all or is unable to perform any one or more of the essential functions of his or her position. (Gov. Code § 12945.2(j)(2); 2 Cal. Code Regs § 11087(a)(2); 2 Cal.Code Regs § 11091(b)(2).) Upon expiration of the time period the health care provider originally estimated that the employee needed for his/her own serious health condition, the employee must obtain recertification if additional leave is requested. (Gov. Code § 12945.2(j)(2); 2 Cal. Code Regs § 11091(b)(2); 29 CFR § 825.308.)

- (b) **Family Member Serious Health Condition:** Employees who request leave to care for a child, parent, domestic partner or a spouse who has serious health condition must provide written certification from the health care provider of the family member requiring care that contains all of the following: the date, if known, on which the serious health condition commenced; the probable duration of the condition; an estimate of the amount of time which the health care provider believes the employee needs to care for the child, parent, domestic partner, or spouse, and a statement that the serious health condition warrants the participation of the employee to provide care during a period of treatment or supervision of the child, parent or spouse. The term "warrants

the participation of the employee” includes, but is not limited to, providing psychological comfort, and arranging third party care for the covered family member, as well as directly providing, or participating in, the medical care. (Gov. Code § 12945.2(k)(1); 2 Cal.Code Regs § 11087(a)(1); 2 Cal.Code Regs § 11091(b)(1).) Upon expiration of the time period the health care provider originally estimated that the employee needed to care for a covered family member, the employer must obtain recertification if additional leave is requested. (Gov. Code § 12945.2(j)(2); 2 Cal.Code Regs § 11091(b)(1); 29 CFR § 825.308.)

- (c) ***Servicemember Serious Injury or Illness:*** Employees who request FMLA leave to care for a covered servicemember who is a child, spouse, parent or “next of kin” of the employee, must provide written certification from a health care provider regarding the injured servicemember’s serious injury or illness. (29 CFR § 825.310.) LAFCo will verify the certification as permitted by the FMLA regulations. (29 CFR § 825.310(e) &(f).)

- (d) ***Qualifying Exigency:*** The first time an employee requests FMLA leave because of a qualifying exigency, an employee may require the employee to 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 active duty status in a foreign country, and the dates of the military member’s active duty service. A copy of the new active duty orders or similar documentation shall be provided to **LAFCo** if the need for leave because of a qualifying exigency arises out of a different active duty or call to active duty status of the same or a different military member. (29 CFR § 825.309.) LAFCo will verify the certification as permitted by the FMLA regulations. (29 CFR § 825.309(d).)

8.3k *Time to Provide a Medical Certification*

When an employee has provided at least 30 days’ notice for a foreseeable leave, the employee must provide a medical certification before the leave begins. When this is not possible, the employee must provide the medical certification to LAFCo within the time frame requested by LAFCo (which must allow at least 15 calendar days after the employer’s request), unless it is not practicable under the particular circumstances to do so despite the employee’s diligent, good faith efforts. (2 Cal.Code Regs § 11091(b)(3); 29 CFR § 825.305(b).)

8.3l *Consequences for Failure to Provide an Adequate or Timely Certification*

If an employee provides an incomplete medical certification, the employee will be given a reasonable opportunity to cure any such deficiency. (2 Cal.Code Regs § 11091(b)(3); 29 CFR § 825.313(a) & (b).) However, if an employee fails to provide a medical certification within the time frame established in this Policy, LAFCo may delay the taking of FMLA/CFRA leave until required certification is provided, or deny FMLA/CFRA protections following the expiration of

the time period to provide an adequate certification. (2 Cal.Code Regs § 11091(b)(3); 29 CFR § 825.313(a).)

8.3m ***Executive Officer Review of the Contents of Medical Certification for Employee's Own Serious Health Condition***

- (a) **Complete and Sufficient:** The employee must provide a certification for his or her own serious health condition that is complete and sufficient to support the request for leave. A certification is incomplete if one or more of the applicable entries on the certification form have not been completed. A certification is insufficient if the information on the certification form is vague, ambiguous, or not responsive. If the certification is incomplete or insufficient, the **Executive Officer** will give the employee written notice of the deficiencies and seven days to cure, unless a longer period is necessary in light of the employee's diligent, good faith efforts to address the deficiencies. (29 CFR § 825.305(c).)

- (b) **Authentication and Clarification:** After giving the employee an opportunity to cure the deficiencies in a medical certification for the employee's own serious health condition, the Executive Officer may contact the health care provider who provided the certification to clarify and/or authenticate the certification. "Authentication" means providing the health care provider with a copy of the certification form and requesting verification that the information on the form was completed or authorized by the health care provider who signed the form. "Clarification" means contacting the health care provider to understand the handwriting on the medical certification or to understand the meaning of the response. The **Executive Officer** may not ask for additional information beyond that required on the certification form. (29 CFR § 825.307(a).)

8.3n ***Second and Third Medical Opinions For Employee's Own Serious Health Condition***

If LAFCo has a good faith, objective reason to doubt the validity of a certification for the employee's serious health condition, LAFCo may require a medical opinion of a second health care provider chosen and paid for by LAFCo. If the second opinion is different from the first, LAFCo may require the opinion of a third provider jointly approved by LAFCo and the employee, but paid for by LAFCo. The opinion of the third provider will be binding. (29 CFR § 825.307(b) & (c); 2 Cal.Code Regs § 11091(b)(2)(A).) LAFCo must provide the employee with a copy of the second and third medical opinions, where applicable, without cost, upon the request of the employee. (29 CFR § 825.307(d); 2 Cal.Code Regs § 11091(b)(2)(D).)

8.3o ***Intermittent Leave or Leave on a Reduced Leave Schedule***

If an employee requests leave intermittently (a few days or hours at a time) or on a reduced leave schedule for his or her own serious health condition, or to care for an immediate family member with serious health condition, the employee must provide medical certification that such leave is medically necessary. “Medically necessary” means there must be a medical need for the leave and that the leave can best be accomplished through an intermittent or reduced leave schedule. (2 Cal.Code Regs § 11090(e); 29 CFR § 825.202(b).) LAFCo may require an employee who certifies the need for a reduced schedule or intermittent leave to temporarily transfer to an alternate position of equivalent pay and benefits that better accommodates the leave schedule. (2 Cal.Code Regs § 11090(e)(1); 29 CFR § 825.204.)

8.3p Employee Notice of Leave

Although LAFCo recognizes that emergencies arise which may require employees to request immediate leave, employees are required to give as much verbal or written notice as possible of their need for leave. (29 CFR § 825.304(a).) If leave is foreseeable, at least 30 days’ notice is required. In addition, if an employee knows that he/she will need leave in the future, but does not know the exact day(s) (e.g. for the birth of a child or to take care of a newborn), the employee shall inform his/her supervisor as soon as possible that such leave will be needed. (29 CFR § 825.302(a); 2 Cal.Code Regs § 11091(a)(2) & (3).) For foreseeable leave due to a qualifying exigency, an employee must provide verbal or written notice of the need for leave as soon as practicable, regardless of how far in advance such leave is foreseeable. (29 CFR § 825.302(a).)

Commentary

Does Your Agency Want to Use this Remedy? If the employee fails to provide timely notice of a foreseeable leave, the employer’s remedy is to delay the start of the leave. (29 CFR § 825.304; 2 Cal.Code Regs § 11091(a)(4).) An employer who uses this remedy prolongs the onset of FMLA/CFRA leave. Because it is generally in the employer’s interest to expedite the completion of the leave, this remedy may not be helpful for foreseeable leaves. Note that the CFRA regulations prohibit an employer from denying an unforeseeable or emergency-need CFRA leave on the basis that the employee did not provide advance notice of the need for the leave. (2 Cal.Code Regs § 11091(a)(4).)

8.3q Reinstatement Upon Return From Leave

- (a) **Reinstatement to Same or Equivalent Position:** Upon expiration of leave, an employee is entitled to be reinstated to the position of employment held when the leave commenced, or to an equivalent position with equivalent benefits and pay. Employees have no greater rights to reinstatement, benefits, and other conditions of employment than if the employee had been continuously employed during the FMLA/CFRA period.

(2 Cal.Code Regs § 11087(f) & (g); 2 Cal.Code Regs § 11089(a); 29 CFR § 825.214-215; 29 CFR § 825.216.)

- (b) **Date of Reinstatement:** If a definite date of reinstatement has been agreed upon at the beginning of the leave, the employee will be reinstated on the date agreed upon. If the reinstatement date differs from the original agreement of the employee and LAFCo, the employee will be reinstated within two business days, where feasible, after the employee notifies the employer of his/her readiness to return. (2 Cal.Code Regs § 11089(c)(1) & (2).)
- (c) **Employee's Obligation to Periodically Report on His/Her Condition:** Employees may be required to periodically report on their status and intent to return to work. This will avoid any delays to reinstatement when the employee is ready to return. (29 CFR § 825.311.)
- (d) **Fitness for Duty Certification:** As a condition of reinstatement of an employee whose leave was due to the employee's own serious health condition, which made the employee unable to perform his or her job, the employee must obtain and present a fitness-for-duty certification from the health care provider stating that the employee is able to resume work. Failure to provide such certification will result in denial of reinstatement. (Gov. Code § 12945.2(k)(4); 29 CFR § 825.312.)

Commentary

***Not Useful for Public Agency Employers:** Note that it is nearly impossible for a public agency to deny reinstatement to a key employee because a public agency is not a profit making entity and it is harder to prove substantial and grievous economic injury. The key employee defense to reinstatement is included here for that rare occasion when it may be useful.*

8.3r Required Forms

Employees must complete the applicable forms to receive family and medical care leave. The forms may be found at **[list locations where forms are located.]**

Commentary

***Do No Ask for Name of Medical Condition:** If your agency uses the forms that are provided with the FMLA, be sure that you alter the form to not ask for the name of the medical condition or diagnosis because there is no right to know that under California law. (2 Cal.Code Regs § 11087(a)(1) & (2).)*

8.4 Leave Because of Pregnancy, Childbirth, or Related Medical Condition

8.4a Amount of Leave

An employee who is disabled because of pregnancy, childbirth, or a related medical condition is entitled to an unpaid leave for up to the number of hours she would normally work within four calendar months (one-third of a year or 17 1/3 weeks). (Gov. Code § 12945(a).) For a full-time employee who works 40 hours per week, “four months” means 693 hours of leave entitlement, based on 40 hour per week times 17 1/3 weeks. (2 Cal. Code Regs § 11042(a)(1).) An employee who works less than 40 hours per week will receive a pro rata or proportional amount of leave. (2 Cal. Code Regs § 11042(a)(2).)

8.4b Notice & Certification Requirements

- (a) Notice:** Requests for pregnancy disability leave must be submitted in writing with reasonable advance notice of the medical need for the leave. (2 Cal.Code Regs § 11042(c)(1).) All leaves must be confirmed in writing, have an agreed-upon specific date of return, and be submitted to the Executive Officer. (2 Cal.Code Regs § 11042(a).)

- (b) Certification:** The request for pregnancy disability leave must be supported by a written certification from the attending physician stating that: 1) the employee is disabled from working by pregnancy, childbirth or a related medical condition; 2) the date on which the employee became disabled by pregnancy, childbirth or a related medical condition; and 3) the estimated duration or end date of the leave. (2 Cal.Code Regs §§11050(b)(7); 11050(e).)

8.4c Compensation During Leave

Pregnancy disability leaves are without pay. However, the employee must first use sick leave, if any. (2 Cal.Code Regs § 11044(b)(1).) Once sick leave is depleted, the employee may elect to use vacation leave or any other accrued paid time off during the leave. (2 Cal.Code Regs § 11044(b)(2).)

8.4d Benefits During Leave

- (a) Group Health Insurance:** An employee on pregnancy disability leave may continue to receive any group health insurance coverage that was provided before her leave, beginning on the date the pregnancy disability leave begins and continuing for up to four months in a 12-month period, at the same level and under the same conditions that coverage would have been provided if the employee had continued in employment

continuously for the duration of the leave. (Gov. Code § 12945(a)(2)(A); 2 Cal. Code Regs § 11044(c).) LAFCo may recover premiums it paid to maintain health coverage if an employee does not return to work following pregnancy disability leave, unless the reason for the failure to return is a circumstance beyond her control or the use of the separate right to 12 weeks of bonding leave under the California Family and Medical Leave Act. (Gov. Code § 12945(a)(2)(A); 2 Cal.Code Regs § 11044(c)(3).)

- (b) Sick and Vacation Leaves:** Sick and vacation leaves **[do not]** or **[do]** accrue while an employee is on unpaid pregnancy disability leave. (See 2 Cal. Code Regs § 11044(d)(1).)

Commentary

California's PDL law requires the unpaid PDL leave to be treated as other types of unpaid leaves for vacation and sick leave accrual. So if your agency allows sick or vacation leave to accrue during periods of unpaid leave, then it must accrue for PDL leave too. You will need to select the policy language above that fits your agency's practices.

- (c) Employee Status during Leave:** The employee retains employee status during the leave. The leave is not a break in service for purposes of longevity or seniority under any collective bargaining agreement or employee benefit plan. Benefits will be resumed upon the employee's reinstatement in the same manner and at the same levels as provided when the leave began, without any new qualification period, physical exam, or other qualifying provisions. (2 Cal.Code Regs § 11044(e).)

8.4e Reinstatement

- (a) Upon the expiration of pregnancy leave, the employee will be reinstated to her original or a comparable position, so long as it was not eliminated for a legitimate business reason during the leave. (2 Cal.Code Regs § 11043(c).)
- (b) If the employee's original position is no longer available, the employee will be assigned to a comparable, open position. (2 Cal.Code Regs § 11043(c)(2).)
- (c) If upon return from leave an employee is unable to perform the essential functions of her job because of a physical or mental disability, LAFCo will initiate an interactive process with the employee in order to identify a potential reasonable accommodation in accordance with these Policies. (See Policy 206, Reasonable Accommodation and Interactive Process.)

8.5 Other Leaves

8.5a Management Leave

LAFCo will credit each full-time employee who is exempt under the Fair Page | 11 Labor Standards Act (FLSA) and not eligible for time-and-a-half overtime under this Agreement with forty (40) hours of management leave every July 1.

Employees in, eligible job classes, part-time employees in eligible job classes, and employees hired into eligible job classes after the effective date will be credited with a pro-rated amount of management leave. Employees newly appointed between July 1 and October 31 shall be credited with five (5) days of management leave for that fiscal year. Any such employee appointed between November 1 and February 28 shall be credited with two and a half (2-1/2) days of management leave for the balance of that fiscal year. Any such employee appointed between March 1 and May 31 shall be credited with one (1) day of management leave for the balance of that fiscal year. Any such employee appointed between June 1 and June 30 shall receive no management leave for that fiscal year. This pro-ration shall also apply to employees who have returned from an approved leave of absence where they were in leave without pay status.

Management leave is credited to eligible employees as acknowledgement of the extra hours that management employees are required to work from time to time. Management leave is not a vested right nor compensation for services rendered and as such is not subject to payout upon separation from employment. Unused management leave will carry over from fiscal year to fiscal year as long as the incumbent is a regular-hire employee of the County.

8.5b Jury Duty Leave/Subpoenaed or Court-Ordered Witness Leave

Any employee, **[including a temporary, seasonal, or extra help employee]**, who is summoned to serve on a jury, or subpoenaed or ordered to be a witness, must notify his or her supervisor or department head as soon as possible. Any employee who is released from jury service prior to the end of his or her scheduled work hours must report to work unless otherwise authorized by his or her supervisor. (Gov. Code § 1230; Labor Code § 230; 28 USC § 1875(c).)

Commentary

Jury or Court Leave is Required: State and federal laws require an employer to grant any employee – including temporary or seasonal employees – a leave for jury service. (28 USC § 1875(c); Labor Code § 230(a); Gov. Code § 1230.) State law also requires an employer to grant an employee who is a victim of a crime to grant leave to appear in court to comply with a subpoena or other court order as a witness in any judicial proceeding. (Labor Code § 230(b).)

8.5b.1 Overtime-Eligible Employees

All overtime-eligible employees will be paid for actual work hours missed because of time spent in jury service or court. The time spent on jury duty is not work time for purposes of calculating

overtime compensation. LAFCo will offset from pay the amount the employee receives from the Court for jury fees.

8.5b.2 Overtime-Exempt Employees

All FLSA-exempt employees will continue to receive their normal salary while on jury duty or as serving as a witness only for any work week in which they perform any work duties. (29 CFR § 541.602(a) & (b)(3).) LAFCo will offset the amount from pay the employee receives from the Court for jury fees. (29 CFR § 541.602(b)(3).)

8.5c Other Court or Administrative Proceeding Appearances

8.5c.1 Regarding Agency Duties

Any employee, **[including a temporary, seasonal, or extra help employee]**, who is subpoenaed to appear in court in a matter regarding an event or transaction in the course of his or her LAFCo job duties, must give his or her supervisor as much advance notice as is possible. LAFCo will determine whether the matter involves an event or transaction in the course of the employee's LAFCo job duties. If so, this leave to appear in court will be without loss of compensation, and the time spent will be considered work time. LAFCo will offset the amount from pay the employee receives for witness fees.

8.5c.2 Regarding Employee-Initiated Proceedings

Any employee, **[including a temporary, seasonal, or extra help employee]**, who is subpoenaed to appear, or appears in court because of civil or administrative proceedings that he or she initiated, is not entitled to receive compensation for time spent related to those proceedings. An employee may request to receive time off without pay, or may use any accrued leave other than sick leave for time spent related to those proceedings. The time spent in these proceedings is not considered work time. Notwithstanding the above, an employee who is testifying or appearing as the designated representative in PERB conferences or hearings, or at a personnel or merit commission is entitled to paid release time. (Gov. Code § 3505.3(a)(2) & (3).)

8.5c.3 Regarding Crime Victim/ Victim Family Member Court Attendance Leave

Any employee, **[including a temporary, seasonal, or extra help employee]**, who is a victim of a crime that is a serious or violent felony, or a felony involving theft or embezzlement, may take leave from work to attend judicial proceedings related to that crime, if the employee provides LAFCo a copy of the notice of the scheduled proceeding in advance. If advance notice is not feasible, the employee must provide LAFCo, within a reasonable time after the leave is taken, documentation from the District Attorney, victim's rights office, or court / governing agency

that shows that the judicial proceeding occurred when the leave was used. An employee who is an immediate family member of such a crime victim, including: a registered domestic partner; the child of the registered domestic partner; spouse; child; stepchild; brother; stepbrother; sister; stepsister; mother; stepmother; father; or stepfather of the crime victim is also entitled to leave from work to attend judicial proceedings relating to that crime. The leave is unpaid unless the employee elects to use accrued vacation, sick, or other paid leave, or compensatory time off. (Labor Code § 230.2.)

8.5c.4 *Regarding Crime Victim/ Family Member Victims' Rights Proceedings Leave*

Any employee, **[including a temporary, seasonal, or extra help employee]**, who is a victim of a crime listed in Labor Code section 230.5(a)(2)(A), may take leave from work to appear in court to be heard at any proceeding in which the right of the victim is at issue, if the employee provides the employer reasonable advance notice. If advance notice is not feasible, the employee must provide LAFCo, within a reasonable time after the leave is taken, certification from a police report, a district attorney or court, or from a health care provider or victim advocate, that the employee was a victim of any of the crimes listed in Labor Code section 230.5(a)(2)(A). An employee who is a spouse, parent, child, sibling, or guardian of such a crime victim is also a victim who is entitled to this leave if the above notice or certification requirements are met. The leave is unpaid unless the employee elects to use accrued vacation or paid leave, or compensatory time off.

8.5d *Leave for Victims of Domestic Violence, Sexual Assault, or Stalking to Obtain Restraining Orders or Injunctive Relief*

Any employee, **[including a temporary, seasonal, or extra help employee]**, who is a victim of domestic violence, sexual assault, or stalking, may take leave from work to obtain or attempt to obtain any relief, including, but not limited to: a temporary restraining order, restraining order, or other injunctive relief to help ensure the health, safety, or welfare of the employee or his or her child, if the employee provides advance notice of the need for leave. If advance notice is not feasible, the employee must provide any of the following certifications within a reasonable time after the leave: a police report indicating that the employee was a victim; a court order protecting the employee from the perpetrator; evidence from the district attorney or court that the employee has appeared in court; or documentation from a health care provider or counselor that the employee was undergoing treatment for physical or mental injuries or abuse. The leave is unpaid unless the employee elects to use 2014 Healthy Workplaces sick leave (Labor Code § 246.5(a)(2)), accrued vacation or paid leave, or compensatory time off. (Labor Code § 230.5(f).)

8.5d.1 *Leave for Victims of Domestic Violence, Sexual Assault, or Stalking to Obtain Medical Attention or Counseling or Safety Planning*

Any employee, **[including a temporary, seasonal, or extra help employee]**, who is a victim of domestic violence, sexual assault, or stalking, may take leave from work to attend to any of the following: obtaining medical attention or psychological counseling; obtaining services from a shelter, program or crisis center; or participating in safety planning or other actions to increase safety, if the employee provides advance notice of the employee’s intention to take time off for these purposes. If advance notice is not feasible, the employee must provide any of the following to LAFCo within a reasonable time after the leave: a police report indicating that the employee was a victim; a court order protecting the employee from the perpetrator; evidence from the district attorney or court that the employee has appeared in court; or documentation from a health care provider or counselor that the employee was undergoing treatment for physical or mental injuries or abuse. The leave is unpaid unless the employee elects to use 2014 Healthy Workplaces sick leave (Labor Code § 246.5(a)(2)), accrued vacation or personal leave, or compensatory time off.

Commentary

*Only for Employers with 25 or More Employees: This leave only applies to employers who have 25 or more employees and is not mandatory for employers with less than 25 employees. (Labor Code § 230.1(a).) This leave is in addition to the leave that victims of domestic violence, sexual assault, or stalking may receive for the purpose of obtaining restraining orders or injunctive relief. Although this leave law does not permit an employee to use sick leave to receive pay during this leave. (Labor Code § 230.1(e), the 2014 Healthy Workplace Law **does** allow an employee to use paid sick leave of up to three days/shifts, or 24 hours, whichever is greater, per year for this purpose.) (Labor Code § 246.5(a)(2).)*

8.5e Bereavement Leave

All employees, **[including or except temporary, seasonal, or extra help employees]**, may utilize paid bereavement leave to attend a funeral or memorial service, or to take care of family matters, that are related to the death of a member of immediate family. “Immediate family” consists of the following: employee’s spouse, domestic partner, child, stepchild, parent, grandparent, grandchild, brother, sister, mother/father-in-law, son or daughter-in-law, brother or sister-in-law, legal guardian, or custodial child, or the same relatives of a domestic partner. Employees are entitled to up to three days for each death in the immediate family. An employee who utilizes bereavement leave shall notify his/her supervisor or department head of the intent to use such leave.

Commentary

Customize this Policy: Neither State nor federal law requires an employer to provide bereavement leave – paid or unpaid. But, employers routinely provide it for humanitarian purposes. Your agency can determine how long to grant each bereavement leave; some agencies provide longer leaves for employees to travel out of state or out of the country.

This Policy provides paid leave. Your agency can modify this Policy to provide unpaid leave, and to allow the employee to use sick or vacation leave.

8.5f Military Leave

Military leave will be granted in accordance with state and federal law. An employee requesting leave for this purpose shall promptly provide the department head with a copy of the military orders specifying the dates, site and purpose of the activity or mission. Within the limits of such orders, the department head may determine when the leave is to be taken and may modify the employee's work schedule to accommodate the request for leave.

8.5g School-Related Leave

8.5g.1 School or Licensed Day Care Activity Leave

Any employee who is a parent, guardian, stepparent, foster parent, grandparent, or person who stands in loco parentis to one or more children who are in kindergarten or grades 1 through 12, or who are in a licensed child care facility, shall be allowed up to 40 hours each school year, not to exceed eight hours in any calendar month of the school year, to: participate in activities of their child's school or licensed child care facility; find, enroll, or reenroll a child in a school or with a licensed child care provider; or to pick up a child due to a child care provider or school emergency. The employee must provide reasonable advance notice to his/her supervisor of the planned absence. The leave is unpaid unless the employee uses vacation, personal leave or compensatory time off. The employee must provide documentation from the school or licensed child care facility as verification that the employee participated in school or child care facility activities on a specific date and at a particular time. If both parents, guardians or grandparents having custody work for LAFCo at the same LAFCo work site, only the first parent requesting will be entitled to leave under this provision. (Labor Code § 230.8.)

Commentary

This leave only applies to employers of 25 or more employees working at the same location. (Labor Code § 230.8(a).) Effective January 1, 2016, the California Legislature extended the reasons for this leave to cover: finding, enrolling or reenrolling a child in school or with a licensed day care provider; and to pick up a child as a result of an emergency relating to a school or a licensed child care provider. (Labor Code § 230.8(a)(1)(A) & (B).) Emergencies are defined as: a request from the school or the child care provider that the child be picked up; behavioral or discipline problems; unexpected closure; or a natural disaster. (Labor Code § 230.8(e)(2).) The January 1, 2016 law also extends the list of employees who can use the leave. (Labor Code § 230.8(e)(1).)

8.5g.2 ***Child Suspension Leave***

Any employee who is the parent or guardian of a child in grades 1 through 12 may take time off to go to the child's school in response to a request from the child's school, if the employee gives advance notice to his or her supervisor. A school has the authority to request that the parent attend the child's school if the child has: committed any obscene act; habitually used profanity or vulgarity; disrupted school activities; or otherwise willfully defied the valid authority of school personnel.

8.5h ***Paid Administrative Leave***

LAFCo has the right to place an employee on leave with full pay for non-disciplinary reasons at any time when the Executive Officer has determined that the employee's and/or LAFCo best interests warrant the leave. The employee does not have a right to appeal the decision to be placed on administrative leave with pay.

8.5i ***Leave of Absence Without Pay Must Be Authorized By Law or These Policies***

Unless authorized by law or a LAFCo policy, an employee is not entitled to a leave of absence without pay. An authorized leave of absence without pay is not a break in service for purposes of calculating seniority. Unless required by law, vacation leave credits, sick leave credits, increases in salary, all other paid leaves, holidays and fringe benefits and other similar benefits do not accrue to an employee on unpaid leave. Unless required by law, LAFCo will not maintain contributions toward group insurance or retirement coverage for the employee on such leave. During the period of authorized unpaid leave, all service and leave credits shall be retained at the levels existing as of the effective date of the leave.

8.5j ***Industrial Injury Leave***

8.5j.1 ***Employees Not Covered by Labor Code Section 4850***

Employees, other than those covered by Labor Code section 4850, who are absent from work by reason of an injury or illness covered by Workers' Compensation, shall continue in pay status under the following provisions.

8.5j.1.A ***Coordination of Benefits***

When the employee authorizes, the difference between the amount granted pursuant to such Workers' Compensation and the employee's regular pay will be deducted from the employee's accumulated sick leave, vacation, personal holidays, and compensatory time, if any. The employee will continue in pay status and receive his or her pay until his/her accumulated sick

leave, and authorized compensatory time, personal holidays and vacation days, have been depleted to the nearest hour.

8.5j.1.B *Accrual of Sick and Vacation Leave Continues While on Paid Leave*

During the time the employee is in fully paid status while absent from work by reason of injury or illness covered by Workers' Compensation, he or she shall continue to accrue sick leave and vacation benefits as though he or she were not on leave of absence.

8.5j.1.C *Unpaid Leave and Continuation of Health Care Benefits*

Any employee subject to this Policy who depletes his or her accumulated sick leave, compensatory time, personal holiday time and vacation days while absent from work by reason of an injury or illness covered by Workers' Compensation may receive an unpaid leave of absence and continuation of health care benefits consistent with state and/or federal law.

8.5k *Time Off to Vote*

Any employee, if he or she does not have sufficient time outside of working hours to vote, may request up to two hours of paid leave either at the beginning or end of scheduled working hours to enable him or her to vote. The employee must request time off to vote from his or her supervisor at least two days prior to election day.

Chapter 9 Resignation, Job Abandonment, Layoff, and Separation

9.1 Resignation, Job Abandonment, Layoff and Separation

9.1a *Types of Separation*

All separations of employees from positions in LAFCo employment are designated as one of the following types:

- Probationary Release;
- Release of **[temporary/ seasonal/ extra help]** employee;
- Resignation;
- Retirement;
- Job abandonment;
- Layoff;
- Non-disciplinary separation;
- Disciplinary separation.

9.1b *Probationary Release*

Probationary employees serving in their initial probationary period with LAFCo may be released at any time during the probationary period as recommended by the Executive Officer, without cause or reason or notice. A released probationary employee has no right to appeal or to submit a grievance.

9.1c *Release of [Temporary/Seasonal/Extra Help] Employees*

A **[temporary/ seasonal/ extra help]** employee may be separated at any time, without cause, and without right to any appeal or grievance.

9.1d Resignation

An employee who wishes to resign his or her LAFCo employment in good standing must submit written notice of resignation to the Executive Officer at least two weeks prior to the planned separation date. The written notice must state the reasons for the resignation. Failure to follow the aforementioned procedure may be cause for denying future employment with LAFCo. A resignation becomes final when the Executive Officer accepts the resignation in writing. Once a resignation has been accepted, it is final and irrevocable. A resignation can be accepted by the Executive Officer even if it is submitted less than two weeks prior to the planned resignation date.

9.1e Retirement

An employee planning to retire may provide a written notice to the Executive Officer prior to the effective date of the retirement. A notice of retirement becomes final when the Executive Officer accepts the notice of retirement in writing. Once a notice of retirement has been accepted, it is final and irrevocable.

9.1f Job Abandonment

An employee is deemed to have resigned from his/her position if he or she is absent for five consecutive scheduled work days/shifts without prior authorization and without notification during the period of the absence. The employee will be given written notice, at his or her address of record, of the circumstances of the job abandonment, and an opportunity to provide an explanation for the employee's unauthorized absence. An employee who promptly responds to the agency's written notice, within the timeframe set forth in the written notice, can arrange for an appointment with the Executive Officer before final action is taken, to explain the unauthorized absence and failure of notification. An employee separated for job abandonment will be reinstated upon proof of justification for such absence, such as severe accident, severe illness, false arrest, or mental or physical impairment which prevented notification. No employee separated for job abandonment has the right to a post-separation appeal.

9.1g Layoff

Whenever, in the judgment of LAFCo Commission , a reduction in personnel is necessary for economic or operational reasons, any employee may be laid off or demoted for non-disciplinary reasons.

9.1g.1 Order of Layoffs

Employees will be laid off in the inverse order of their seniority in their classification in the department. Seniority is determined based on the length of employment in the affected classification in the department, or higher classifications in the department. Length of employment includes all days of employment in attendance at work and on authorized or legally-protected leaves of absence. Length of service does not include unauthorized periods of leave or suspension or layoff. Within each classification, employees will be laid off in the following order: temporary; part-time; probationary; and for-cause status. If two or more employees in a classification to be laid off have the same length of employment, the employee to be laid off will be decided by lottery.

9.1g.2 Notification of Layoff

Employees to be laid off will be given **[21 calendar days' notice]** of layoff.

Commentary

Your agency can select a length of time for notice that suits your agency's needs. This Policy suggests a 21-day notice, but your agency can select a longer period of time. A shorter period of time is not advisable because of time needed to review transfers, displacements, and appeals.

9.1g.3 Displacement

For-cause employees who are noticed for layoff and who have held for-cause status in a lower classification within the same classification series in the same department, may displace employees in the lower classification provided that the employee seeking to displace has greater length of employment in the lower classification than the incumbent in the lower classification. Employees in lower classifications will be displaced in inverse order of their length of employment in the classification. Any employee who seeks to displace another must provide the Executive Officer with written notice no later than five working days after the date of the notice of layoff.

Commentary

There is no legal requirement to allow a transfer in lieu of layoff, but it is a way to retain talent that would otherwise be lost. This Policy avoids favoritism or bias by requiring the transferee to be qualified for the position.

9.1g.5 Appeal

An employee who has been noticed for layoff, and who has any questions or concerns about the layoff decision or process may make an appointment to be heard by the Executive Officer for an informal pre-layoff review. The employee must request this appeal in writing within five work days from the date of the notice of layoff. The Executive Officer decision is final.

9.1h *Non-Disciplinary Separation*

Any employee separated because of an inability to accommodate after the reasonable accommodation and interactive process is concluded, will be given a written pre-separation notice of the reasons for the separation, the evidence supporting the decision to separate for non-disciplinary reasons, and an opportunity to respond before the separation takes effect. Any for cause employee has the opportunity for a post-separation appeal as described in Policy 1002, Causes for Discipline and Procedures.

9.1i *Disciplinary Separation*

A for cause employee may be separated for disciplinary reasons pursuant to the policy and procedures in Policy 1002, Causes for Discipline and Procedures.

9.1j *Return of LAFCo Property*

All LAFCo property in the employee's possession must be returned prior to separation, including keys, key fobs, identification cards, equipment, credit cards, gas cards, cell phones, pagers, and any other LAFCo equipment.

9.1k *Job References/Verification of Employment*

All reference inquiries and verifications of employment must be referred to and approved by the Executive Officer. Unless the Executive Officer receives a written waiver signed by the employee, LAFCo will release only the employee's dates of employment, last position held, and final salary rate. Department heads and supervisors should not provide information in response to requests for reference checks or verification of employment, unless specifically approved by the Executive Officer on a case-by-case basis.

Chapter 10 Discipline

10.1 Causes for Discipline and Procedures

10.1a *Causes for Discipline*

Employees may be disciplined for, including but not limited to, any of the following causes of discipline:

1. Violation of any department rule, LAFCo policy or LAFCo regulation, ordinance or resolution;
2. Absence without authorized leave or tardiness;
3. Excessive absenteeism and/or tardiness as defined by the employee's department head, and/or these Policies;
4. Use of leave from work in a manner not authorized or provided for under LAFCo policies;
5. Making any false representation or statement, or making any omission of a material fact;
6. Providing wrong or misleading information or other fraud in securing appointment, promotion or maintaining employment;
7. Unsatisfactory job performance;
8. Inefficiency;
9. Damaging any LAFCo property, equipment, resource, or vehicle, or the waste of LAFCo supplies through negligence or misconduct.
10. Insubordination; or insulting or demeaning the authority of a supervisor or manager;
11. Dishonesty;
12. Theft;
13. Violation of the LAFCo's or a department's confidentiality policies, or disclosure of confidential LAFCo information to any unauthorized person or entity;
14. Misuse or unauthorized use of any LAFCo property, including, but not limited to: physical property, electronic resources, supplies, tools, equipment, LAFCo communication systems, LAFCo vehicles or intellectual property;

15. Mishandling of public funds;
16. Falsifying or tampering with any LAFCo record, including work time or financial records;
17. Discourteous or offensive treatment of the public or other employees;
18. Abusive conduct, including malicious verbal, visual or physical actions, or the gratuitous sabotage or undermining of a person's work performance.
19. Conviction, meaning any judicial determination of guilt, of a crime that has a nexus to the employee's job duties;
20. Unapproved outside employment or activity, or other enterprise that constitutes a conflict of interest with service to the LAFCo;
21. Any conduct that impairs, disrupts or causes discredit to the LAFCo, to the public service, or other employee's employment;
22. Reckless or unsafe conduct;
23. Working overtime without prior authorization or refusing to work assigned overtime;
24. Carrying firearms or other dangerous weapons while on duty when not required by job duties.
25. Horseplay or fighting.

Commentary

The above causes for discipline set standards of conduct for all employees and is not an exhaustive list of all the grounds that could lead to discipline. Your Agency should modify the grounds to best suit it. Although at-will categories of employees (e.g., probationary, seasonal, temporary, or extra help) can be held to these standards, your agency generally should not cite a reason for the release of an at-will employee. Do not use the pre- and post-disciplinary due process procedures in this policy to release at-will employees because those procedures only apply to for cause employees. If the reason for the release of an at-will employee is for misconduct that stigmatizes his/her reputation such that it is more difficult to obtain future employment, and the reason has been provided to the employee or made public, the employee may be entitled to a "name clearing" meeting (also known as liberty interest or Lubey meeting) with the appointing authority before the date of release. (Lubey v. City and County of San Francisco (1979) 98 Cal.App.3d 340; Katzberg v. Regents of the UC (2002) 29 Cal.4th 300, 305.)

10.1b **Types of Counseling, Reprimands and Discipline**

The following are types of counseling, reprimands and discipline which LAFCo may impose:

- (a) **Counseling Memo:** A counseling memo will be provided to an employee to identify: a failure of appropriate conduct or performance issue; the performance the employee is to demonstrate in the future; and consequences for failure to correct the behavior or problem. A counseling memo will be retained in the supervisor's file until the completion of the evaluation year, and then documented in the performance evaluation, as the supervisor deems necessary. A counseling memo is not subject to the discipline or discipline appeal procedures described below. A counseling memo is not considered "punitive action" under the Public Safety Officers Procedural Bill of Rights Act (Government Code §3300, *et seq.*).
- (b) **Verbal Reprimand:** A verbal reprimand is a verbal direction from a supervisory employee to discontinue inappropriate conduct or to correct a performance issue. A verbal reprimand will be documented in writing and retained in the supervisor's file until the completion of the evaluation year and then documented in the performance evaluation, as the supervisor deems necessary. A verbal reprimand is not subject to the discipline or discipline appeal procedures described below.
- (c) **Written Reprimand:** A written reprimand is written direction from a supervisory employee to discontinue inappropriate conduct or to correct a performance issue. A written reprimand will be retained in the employee's personnel file and documented in the performance evaluation. Unless required by law, a written reprimand is not subject to the discipline or discipline appeal procedures described below. The employee has the right to have his or her written rebuttal attached to the reprimand in the employee's personnel file, if the employee submits the rebuttal to the Executive Officer within 14 days after the reprimand is received.
- (d) **Suspension Without Pay:** LAFCo may suspend an employee from his/her position without pay for cause. Documents related to a suspension shall become part of the employee's personnel file when the suspension is final and documented in the performance evaluation. A suspension without pay is subject to the discipline and discipline appeal procedures described below. Employees who are exempt from Fair Labor Standards Act (FLSA) overtime will only be suspended as authorized by the FLSA.
- (e) **Reduction in Pay or Paid Leave:** LAFCo may reduce an employee's pay or paid leave for cause. A reduction in pay for disciplinary purposes may take one of three forms: 1) a decrease in salary to a lower step within the salary range; 2) a decrease in salary paid to an employee for a fixed period of time; or 3) loss of accrued paid vacation or administrative leave, floating holiday, or compensatory time off. Documents related to a reduction in pay shall become part of the employee's personnel file when the

reduction in pay is final and documented in the performance evaluation. A reduction in pay is subject to the discipline and discipline appeal procedures described below. Employees who are exempt from the Fair Labor Standards Act (FLSA) overtime requirements are not subject to pay reduction, except loss of accrued vacation, floating holiday, or administrative leave.

- (f) **Demotion:** LAFCo may demote an employee from his or her position to a lower position for cause. Documents related to a demotion shall become part of the employee's personnel file when the demotion is final and documented in the performance evaluation. A demotion is subject to the discipline and discipline appeal procedures described below.
- (g) **Dismissal:** LAFCo may dismiss an employee from his or her position for cause. Documents related to the dismissal shall become a part of an employee's personnel file when the dismissal is final. A dismissed employee is entitled to the discipline and discipline appeal procedures described below.

10.1c Discipline Procedures

The following discipline procedures only apply to the LAFCo's for-cause employees. All employees other than for-cause employees, namely **[temporary, seasonal, extra-help, at-will, probationary]** employees, may be disciplined or separated at will, with or without cause, and without the disciplinary procedures listed below. The following discipline procedures apply only to suspension without pay, reduction in pay, demotion, or dismissal.

- (a) **"Skelly" Notice of Intended Disciplinary Action to Employee:** A written notice of the intended disciplinary action shall be given to the employee, which will include the following information:
- The level of the intended discipline;
 - The specific charges that support the intended discipline;
 - A summary of the facts that show that the elements of each charge at issue in the intended discipline;
 - A copy of all materials upon which the intended discipline is based;
 - Notice of the employee's right to respond to the **[department director]** regarding the intended discipline within **[five]** days from the date of the notice, either by requesting a *Skelly* conference, or by providing a written response, or both;
 - Notice of the employee's right to have a representative of his or her choice at the *Skelly* conference; and
 - Notice that failure to respond by the time specified constitutes a waiver of the right to respond prior to final discipline being imposed.

- (b) **Response by Employee and Skelly Conference:** If the employee requests a *Skelly* conference, the **Executive Officer** or designee will conduct an informal meeting with the

employee. During the informal meeting, the employee shall have the opportunity to rebut the charges against him or her and present any mitigating circumstances. The **Executive Officer** will consider the employee's presentation before issuing the disciplinary action. The employee's failure to attend the conference, or to deliver a written response by the date specified in the *Skelly* notice, is a waiver of the right to respond, and the intended disciplinary action will be imposed on the date specified in the *Skelly* letter.

(c) Final Notice of Discipline: After the *Skelly* conference and/or timely receipt of the employee's written response, the **Executive Officer** will: 1) take no disciplinary action; 2) modify the intended discipline; or 3) impose the intended disciplinary action. In any case, the **Executive Officer** will provide the employee with a notice that contains the following:

- The level of discipline, if any, to be imposed and the effective date of the discipline;
- The specific charges upon which the discipline is based;
- A summary of the facts that show that the elements of each charge at issue in the intended discipline;
- A copy of all materials upon which the discipline is based; and
- A reference to the employee's appeal right and deadline to appeal.

(d) Delivery of the Final Notice of Discipline: The final notice of discipline will be sent by mail method that verifies delivery to the last known address of the employee, or delivered to the employee in person. If the notice is not deliverable because the employee has moved without notifying LAFCo or the employee refuses to accept delivery, the effective date of discipline will be the date the post office or delivery service attempted delivery.

10.1d *Discipline Appeal Procedures*

The following appeal procedures only apply to LAFCo's for-cause employees. All employees other than for-cause employees, namely [**temporary, seasonal, extra-help, at-will, probationary**] employees, may be disciplined or separated at will, with or without cause, and without the disciplinary appeal procedures listed below. The following appeal procedures apply only to suspension without pay, demotion, reduction in pay or dismissal.

(a) Request for Appeal Hearing: An employee may submit a written request for appeal to the Executive Officer within [**14**] days from: 1) receipt of the final notice of discipline; or 2) the date of attempted delivery by the post office or delivery service of the notice to the last known address of the employee. Failure to file a timely written request for an appeal waives the right to an appeal hearing and any appeal of the discipline.

(b) Appeal Hearing Officer: The appeal hearing officer shall be the Executive Officer or an individual designated by the **Executive Officer**[who is selected through [**State Mediation**

and Conciliation Service (SMCS)] [the California Office of Administrative Hearings (OAH)] so long as the Executive Officer did not serve as the *Skelly* officer for the discipline at issue. If the Executive Officer served as the *Skelly* officer for the discipline at issue, then the appeal hearing officer shall be an individual designated by the LAFCo Commission who is selected through **[State Mediation and Conciliation Service (SMCS)] [the California Office of Administrative Hearings (OAH)]**.

OR

Appeal Hearing Officer: The appeal hearing officer shall be an individual selected through **[State Mediation and Conciliation Service (SMCS)] [the California Office of Administrative Hearings (OAH)]**.

Commentary

This first option for the appeal hearing officer provides for the general manager, city manager, or administrative officer, or a delegated hearing officer to serve as the appeal hearing officer. Oftentimes, the general manager, city manager, or administrative officer will not have the time to hear a multi-day disciplinary appeal, and that the hearing officer duties will be delegated. Accordingly, the first option provides the California Office of Administrative Hearings (OAH) or the State Mediation and Conciliation Service (SMCS) as options for the selection of a designated hearing officer. The OAH has offices in Sacramento, Oakland, Los Angeles, and San Diego. Administrative Law Judges are trained in conducting hearings and are selected in a random rotation by the OAH. The SMCS also provides a panel of arbitrators who may serve as hearing officers if hearing officer duties are delegated. Selecting a designated hearing officer through OAH or SMCS hearing officer reduces the possibility of a claim of bias in the selection. (See Nightlife Partners, Ltd. v. City of Beverly Hills (2003) 108 Cal.App.4th 81, 133 Cal.Rptr.2d 234.)

The second option assumes that the general manager, city manager, or administrative officer will not serve as the appeal hearing officer, and automatically utilizes the OAH or SMCS to select the hearing officer.

- (c) Date and Time of the Appeal Hearing:** Once the appeal hearing officer has been designated, the Executive Officer will set a date for an appeal hearing. The employee shall be notified in writing at least 21 days prior to the hearing of the scheduled date.
- (d) Prehearing Notice of Witnesses and Evidence:** No later than 10 days before the hearing date, each party will provide the other and the appeal hearing officer a list of all witnesses to be called (except rebuttal witnesses), and a copy of all evidence (except rebuttal evidence) to be submitted at the hearing. LAFCo will use numbers to identify its evidence; the employee will use alphabet letters. Neither party will be permitted to call any witness or evidence that has not been listed, unless that party can show that the party could not have reasonably anticipated the need for the witness or exhibit.

- (e) **Subpoenas:** Upon the request of either party, and upon his or her own motion, the hearing officer will issue subpoenas to compel attendance at the appeal hearing. Each party is responsible for serving his/her/its own subpoenas. LAFCo employees who are subpoenaed to testify during working hours will be released with pay to appear at the hearing. LAFCo employees who are subpoenaed to testify during non-working hours will be compensated for the time they actually spend testifying.
- (f) **Continuances:** The appeal hearing officer may continue a scheduled hearing only upon good cause shown.
- (g) **Record of the Appeal Hearing:** The hearing shall be recorded, either electronically or by a court reporter, at the option of LAFCo. If LAFCo orders a transcript or makes a transcript of the recording, LAFCo will notify the employee within three days of ordering or making the transcript, and will provide a copy of the transcript upon receipt of the costs of duplication.
- (h) **Employee Appearance:** The employee must appear personally before the hearing officer at the time and place set for the hearing. The employee may be represented by any person he or she may select.
- (i) **Conduct of the Hearing:**
- 1) **Sworn Testimony:** All witnesses shall be sworn in prior to testifying. The hearing officer or court reporter shall request each witness to raise his or her hand and respond to the following: "Do you swear that the testimony that you are about to give is the truth, the whole truth, and nothing but the truth?"
 - 2) **Evidence:** Hearings need not be conducted according to technical rules relating to evidence and witnesses, but hearings shall be conducted in a manner that the hearing officer decides is the most conducive to determining the truth. The rules dealing with privileges shall be effective to the same extent that they are recognized in civil actions. Irrelevant or unduly repetitious evidence may be excluded. The appeal hearing officer shall determine the relevance, weight and credibility of testimony and evidence.
 - 3) **Exclusion of Witnesses:** During the examination of a witness, all other witnesses, except the parties, shall be excluded from the hearing.
 - 4) **Burden of Proof:** LAFCo has the burden of proof by the preponderance of the evidence.

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- 5) **Authority of Hearing Officer:** The appeal hearing officer shall not have the power to alter, amend, change, add to, or subtract from any of the terms of these Policies.

 - 6) **Professionalism:** All parties and their attorneys or representatives shall not, by written submission or oral presentation, disparage the intelligence, ethics, morals, integrity or personal behavior of their adversaries or the appeal hearing officer.

 - (j) Presentation of the Case:** The parties will address their remarks, evidence, and objections to the appeal hearing officer. The appeal hearing officer may terminate argument at any time and issue a ruling regarding an objection or any other matter. The appeal hearing officer may limit redundant or irrelevant testimony, or directly question the witness. The hearing will proceed in the following order unless the appeal hearing officer directs otherwise:
 - 1) LAFCo is permitted to make an opening statement;
 - 2) The employee is permitted to make an opening statement;
 - 3) LAFCo will produce its evidence;
 - 4) The employee will produce its evidence;
 - 5) LAFCo, followed by the employee, may present rebuttal evidence;
 - 6) Oral closing arguments of no more than **[20]** minutes may be permitted at the discretion of the appeal hearing officer. LAFCo argues first, the employee argues second, and if LAFCo reserved a portion of its time for rebuttal, LAFCo may present a rebuttal.

 - (k) Written Briefs:** Either party may request to submit a written brief and/or a draft decision. The appeal hearing officer will determine whether to allow written briefs or draft decisions, the deadline for submitting briefs, and the page limit for briefs.

 - (l) Appeal Hearing Officer's Recommended Decision:** Within **[60]** days of the conclusion of the hearing, the appeal hearing officer shall make written findings and a recommended decision as to the discipline.
 - 1) If the Executive Officer was not the appeal hearing officer or the *Skelly* officer he or she shall review the findings and recommendations of the appeal hearing officer and may then affirm, revoke, or modify the findings, recommendations, or disciplinary action taken. The decision of the Executive Officer is final. There is no process for reconsideration.

- 2) If the Executive Officer was the *Skelly* officer, the LAFCo Commission shall review the findings and recommendations of the appeal hearing officer and may then affirm, revoke, or modify the findings, recommendations, or disciplinary action taken. The decision of the LAFCo Commission is final. There is no process for reconsideration.

(m) Proof of Service of the Written Findings and Decision: LAFCo will mail a copy of the final written findings and decision, along with a proof of service of mailing that confirms that each of the parties and each of the parties' representatives were mailed the final written findings and decision. It shall be the responsibility of the employee to inform the LAFCo of his/her address. A copy of the decision shall also be provided to the Executive Officer.

Chapter 11 Grievances

11.1 Grievance Procedures

11.1a *Definition of a Grievance*

A grievance is an alleged violation of a specific provision of these Policies that adversely affects the employee and that contains all of the information listed in the “Statement of the Grievance” below. The following procedure applies to all LAFCo employees, unless: the employee is covered by a grievance procedure in a memorandum of understanding; another dispute resolution procedure applies to the dispute; or a discipline policy and procedure applies. The grievance procedure cannot be utilized to challenge the content of a performance evaluation.

11.1b *Statement of the Grievance*

A concern is not a grievance unless the affected employee is able to state each of the following: the date of the alleged violation; the specific provision(s) of these Policies that were allegedly violated; a description of all facts regarding how the alleged violation occurred; and a list of all persons who are witnesses or are involved. The grievant may use an LAFCo form to make the Statement of the Grievance. A Statement of the Grievance must be signed by the employee filing the grievance to certify that it is filed in good faith.

11.1c *Timelines*

Failure of the LAFCo to comply with the time limits of the grievance procedures allows the grievant to appeal to the next level of review. Failure of the grievant to comply with the time limits of the grievance procedures constitutes settlement and resolution of the grievance on the basis of the last disposition. The parties may extend time limits by mutual written agreement in advance of a deadline.

11.1d *Procedures*

- (a) **Step I Informal Resolution with Supervisor:** The employee must first work in good faith to resolve the grievance informally through discussion with his/her immediate supervisor no later than **[14]** days after the grievant first became aware of the facts or circumstances resulting in the filing of the grievance.
- (b) **Step II Department Head:** If the employee believes that the grievance has not been resolved through Step I, the employee may submit a written Statement of the Grievance to his/her department head. The employee must submit the Statement of the Grievance within **[28]** days after the grievant first became aware that a grievance has occurred. The department head shall consider, discuss the grievance with the grievant, and/or investigate as he/she deems appropriate, and shall, within **[14]** days of receipt of

the written Statement of the Grievance, submit his/her decision in writing to the grievant.

- (c) **Step III [Personnel Officer]:** If the employee believes that the grievance has not been resolved through Step II, the employee may appeal the grievance decision of the department head to the **[Personnel Officer]**. Such appeal must be filed within **[14]** days of the date of the department head's written decision. The **[Personnel Officer]** shall consider, discuss the grievance with the grievant, and/or investigate as he/she deems appropriate, and shall, within **[14]** days of receipt of the written Statement of the Grievance, submit his/her decision in writing to the grievant. The decision of the **[Personnel Officer]** shall be final.

Chapter 12 Miscellaneous Policies

12 Personnel Files

12.1a *Confidential LAFCo Files*

LAFCo maintains a personnel file on each employee. Files are kept for at least three years after separation of employment. (Labor Code § 1198.5(c)(1).) A personnel file will contain only material that LAFCo deems necessary and relevant or that is required by law. Personnel files are the property of LAFCo, and access to the information they contain is restricted to protect employee privacy interests.

12.1b *Notification of Changes*

Each employee is responsible to promptly notify the Executive Officer of any changes in his or her contact and benefits information, including: mailing address; telephone number; persons to contact in emergency; and number and names of dependents.

12.1c *Access to Applicant or Employee Medical Information*

All medical information about an employee or applicant is kept in separate medical files and is treated as confidential. Access to employee or applicant medical information shall be strictly limited to only those with a legitimate need to have such information for LAFCo business reasons, or if access is required by law, subpoena or court order. In the case of an employee with a disability, managers and supervisors may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations. (2 Cal.Code Regs § 11069(g)(1).)

12.1d *Employee Access to Personnel File*

- (a) Inspection of File:** A current employee may inspect his or her own personnel file, at reasonable times and at reasonable intervals, within 30 days of a written request. A former employee is entitled to inspect his or her personnel records one time per year. (Labor Code § 1198.5(d).) A current or former employee and/or his or her representative, who wishes to review his or her personnel file should make a written request to the Executive Officer. (Labor Code § 1198.5(b)(2)(A).) The inspection must occur in the presence of the Executive Officer or designee and: at a location where the employee works and at a time other than the employee's work time (Labor Code § 1198.5(b)(1)); or 2) at another agreed upon location without loss of compensation to the employee. (Labor Code § 1198.5(c)(2).)

(b) Copies: A current or former employee is entitled to receive a copy of his or her personnel records within 30 days after the employer receives a written request. (Labor Code § 1198.5(b)(1).) A current or former employee who wishes to receive such a copy should contact the Executive Officer in writing. LAFCo may charge a fee for the actual cost of copying. (Labor Code § 1198.5(b)(1); 1198.5 (b)(2)(A).)

(c) Representative's Inspection: If the current or former employee wishes to have another person/representative inspect his or her personnel file, he or she must provide the person/representative with written authorization. (Labor Code § 1198.5(e).) The **Executive Officer** will notify the employee and/or representative of the date, time and place of the inspection in writing.

(d) No Removal of File Documents: No person inspecting a personnel file is permitted to add or remove any document or other item to/from the personnel file.

12.1e *Limitations on Access or Copying of Personnel File*

Prior to making a copy of personnel records or allowing inspection, LAFCo may redact the names of nonsupervisory employees. (Labor Code § 1198.5(g).) Under no circumstances will LAFCo provide access or copying of the following categories of personnel file documents: records relating to the investigation of a possible criminal offense; letters of reference; ratings, reports, or records that were obtained prior to employment, prepared by identifiable examination committee members, or obtained in connection with a promotional examination. (Labor Code § 1198.5(h).)

12.2 Limitations on Outside Employment

12.2a *No Outside Employment Without Prior Approval*

An employee shall not engage in any paid or self-employment, activity, or enterprise which is inconsistent, incompatible or in conflict with his or her LAFCo duties, functions, responsibilities, or that of the department in which he or she is employed at LAFCo. In order to avoid perceived or actual conflicts of interest that may arise from outside employment, all employees must obtain written approval from the Executive Officer prior to undertaking any outside employment as described in this Policy. (Gov. Code § 1126(a).)

12.2b *Authorization and Appeal Process*

(a) Written Request: Any employee who wants to undertake a paid outside employment, activity, or enterprise must submit a written request to his or her department head. The written request must include: the work hours and/or time required; job title or the nature of the activity; the work location; and the supervisor, manager and name of the employer or activity.

- (b) **Analysis and Decision:** The Executive Officer will determine if the outside employment, activity, or enterprise is compatible with the employee's employment at LAFCo. If the Executive Officer determines such activity is compatible, or would be if any conditions or restrictions applied, he or she will authorize the activity and specify the conditions/restrictions in writing, give the employee the outside employment authorization, and place a copy of the written authorization in the employee's personnel file.
- (c) **One Year Authorization:** An outside employment authorization is valid only up to one year. Should the employee continue the outside employment, activity, or enterprise for a longer duration, he or she must make another request following the process in this Policy.
- (d) **Appeal:** If the [Personnel Officer] denies an employee's outside employment request, the employee may submit a written notice of appeal to the [City Manager, General Manager, Chief Executive Officer] within 10 days after the date of the denial. The decision on appeal will be put in Writing, provided within 10 days after the receipt of the appeal, and will be final.

12.2c Prohibited Outside Activities

An employee's outside employment, activity, or enterprise may be prohibited if it:

- (a) involves the use for private gain or advantage of LAFCo time, facilities, equipment, and supplies, or the badge, uniform, prestige, or influence of LAFCo or employment LAFCo;
- (b) involves receipt or acceptance by the employee of any money or other consideration from anyone other than LAFCo for the performance of an act which the employee would be required or expected to render in the regular course of his/her LAFCo employment;
- (c) involves the performance of an act in other than his/her capacity as a LAFCo employee which act may later be subject directly or indirectly to the control, inspection, review, audit, or enforcement by such employee or the department by which he/she is employed;
or
- (d) involves time demands that would render the employee's performance of his or her regular LAFCo employment less efficient or dangerous to the employee.

12.2d Changes in Outside Employment Status

The employee must promptly report in writing to the Executive Officer any of the following changes that may occur during the year of an authorized outside employment: the outside

employment ends; or the authorized employment changes as to the number of work hours, location, or types of duties.

12.2e *Revocation / Suspension of Outside Employment Authorization*

Any outside employment authorization may be revoked or suspended during the year it is granted under the circumstances listed below. An employee may appeal the revocation or suspension as provided in this Policy.

- (a) The employee's work performance declines; or
- (b) An employee's conduct or outside employment conflicts with the conditions of the outside work authorization or is incompatible with the employee's work for LAFCo.

12.2f *Use of [Agency] Equipment Prohibited*

Under no circumstances may an employee use any LAFCo equipment, vehicles, tools, supplies, machines, or any other item that is LAFCo property while an employee is engaged in any outside employment, activity or enterprise.

12.3 *Limitations on Political Activity*

12.3a *No Solicitation During Work Hours or [Agency] Offices*

LAFCo employees or officers may not solicit or receive political funds or contributions to promote the passage or defeat of any ballot measure that would affect working conditions during the working hours of its officers and employees, or in LAFCo offices. (Gov. Code § 3209.)

12.3b *No Targeted Solicitation of [Agency] Officers or Employees*

Officers or employees of LAFCo, or candidates for elective office of LAFCo, may not directly or indirectly solicit political contributions from other officers or employees of LAFCo unless the solicitation is part of a solicitation made to a significant segment of the public which may incidentally include officers from and employees of LAFCo. (Gov. Code § 3205(c).)

12.3c *No Political Activity in Uniform*

No LAFCo employee or official shall participate in political activities of any kind while in a LAFCo uniform or other LAFCo -issued clothing. (Gov. Code § 3206.)

12.3d *No Political Activity on LAFCo Property or Work Hours*

LAFCo employees and officials are prohibited from engaging in political activity during working hours or on LAFCo property. (Gov. Code § 3207.)

12.4 *Prohibitions on Drugs and Alcohol In the Workplace*

12.4a *Purpose and Scope*

The purpose of this Policy is to promote a drug and alcohol-free workplace and to eliminate drug and alcohol-related inefficiencies and risks. This Policy applies to all LAFCo employees, whether they are on LAFCo property, or they are performing LAFCo -related business elsewhere, except as this Policy is superseded by a memorandum of understanding or federally mandated drug and alcohol policies. Compliance with this Policy is a condition of employment. Disciplinary action will be taken against those who violate this Policy.

12.4b *Drug- and Alcohol-Free Awareness Program*

LAFCo's employee assistance provider offers counseling and treatment of drug- or Alcohol-related problems. The employee assistance provider has information about: (a) the dangers of drug or alcohol abuse in the workplace; (b) the penalties that may be imposed for drug or alcohol abuse violations; (c) the LAFCo's Policy of maintaining a drug- and alcohol free workplace; and (d) any available drug or alcohol counseling, rehabilitation or employee assistance programs. (41 USC § 701(a)(1)(B) – federal contractors; 41 USC § 702(a)(1)(B) – federal grant recipients; Gov. Code § 8355(a)(2).)

12.4c Prohibited Conduct

- (a) The manufacture, distribution, sale, dispensation, possession, or use of any controlled substance in either LAFCo workplaces or wherever LAFCo business is performed. (41 USC §§ 701-702; Gov. Code § 8355(a)(1).)
- (b) Working or being subject to call in if impaired by alcohol or any controlled substance.
- (c) An employee's failure to notify his/her department head before beginning work when taking medications or drugs which could interfere with the safe and effective performance of duties or operation of LAFCo equipment.
- (d) An employee's failure to notify the Executive Officer of any criminal conviction for a drug violation that occurred in the workplace within five days after such conviction. (41 USC § 701-702.)
- (e) An employee's criminal conviction for a drug violation that occurred in the workplace.

12.4d Drug and Alcohol Testing

The **[Agency]** has discretion to test applicants and employees for alcohol and drug use under the following circumstances. The LAFCo will use an outside laboratory to perform all testing.

- (a) **Pre-Employment Testing for External Applicants for Certain Jobs:** Those external applicants who apply for certain jobs where a special need for pre-employment drug and alcohol testing exists must take and pass a drug and alcohol test following a conditional offer of employment. The categories of jobs subject to pre-employment drug and alcohol testing include, but is not limited to:
 - 1) safety sensitive jobs that have public safety implications, such as operating heavy trucks to transport hazardous material, protecting national security, enforcing drug laws, and/or operating natural gas pipelines; and
 - 2) jobs that involve the direct influence over children.
- (b) **Reasonable Suspicion Testing:** LAFCo may require a blood test, urinalysis, or other drug and/or alcohol screening of those employees who are reasonably suspected of using or being under the influence of a drug or alcohol at work, under the following circumstances.
 - 1) **"Reasonable suspicion"** to test exists if, based on objective factors, a reasonable person would believe that the employee is under the influence of drugs or alcohol at work. Examples of objective factors, include, but are not limited to: unusual behavior, slurred or altered speech, body odor, red or

watery eyes, unkempt appearance, unsteady gait, lack of coordination, sleeping on the job, a pattern of abnormal or erratic behavior, a verbal or physical altercation, puncture marks or sores on skin, runny nose, dry mouth, dilated or constricted pupils, agitation, hostility, confused or incoherent behavior, paranoia, euphoria, disorientation, inappropriate wearing of sunglasses, tremors, or other evidence of recent drug or alcohol use. If [Agency] suspects drugs or alcohol may have played a role in an accident involving [Agency] property or equipment, that will also constitute reasonable suspicion.

- 2) **Document and Analysis:** In order to receive authority to test, the supervisor must record the factors that support reasonable suspicion in writing and analyze the matter with the Executive Officer . Any reasonable suspicion testing must be pre-approved by the Executive Officer .
- 3) **Testing Protocol:** If the documentation and analysis show that there is a reasonable suspicion of drug or alcohol abuse at work, and the **Executive Officer** has approved, the employee will be relieved from duty, transported to the testing facility and to his or her home after the test. The employee will be placed on sick or other paid leave until the test results are received.

12.5 Use of [Agency] Equipment or Resources

12.5a *Policy and Applicability*

[Agency] equipment and resources may only be used to conduct LAFCo business, except for incidental personal use that is consistent with this Policy. As a result, LAFCo equipment and resources are non-public forums. Every LAFCo employee is required to adhere to this Policy.

12.5b *Agency Equipment or Resources*

LAFCo equipment or resources is any LAFCo -owned or supplied item or resource, including, but not limited to: intellectual property (e.g., photographs, plans, drawings, formulas, customer lists, designs, formulas), vehicles, telephones, cell phones, pagers, tools, machines, supplies, copy machines, facsimile machines, desks, office equipment, computers (including hardware and software), file cabinets, lockers, Wi-Fi, internet, intranet, LAFCo network, data systems, routers, voice mail, servers, and email or voice mail communications stored in or transmitted through LAFCo electronic resources or equipment.

12.5c *No Expectation of Privacy*

The LAFCo periodically and without prior notice, monitors, reviews, accesses, or retrieves data from its equipment or resources, including electronic communications and content contained in or transmitted through LAFCo networks or electronic resources. LAFCo employees must provide the agency with the employee's username or password for any LAFCo issued equipment or resource. The existence of passwords or delete functions does not restrict the LAFCo's access. As a result, LAFCo employees have no expectation of privacy in their use of any LAFCo equipment or resources.

12.5d *Appropriate Use Only -- No Misuse*

Employees may only use LAFCo equipment or resources in compliance with LAFCo policies. Except as authorized by this Policy, employees are expected to avoid any use or communication which is unrelated to LAFCo business, destructive, wasteful, or illegal. The LAFCo has discretion to restrict or rescind employee access to LAFCo equipment or resources. The following are examples of misuse of LAFCo equipment or resources:

- (a) Any use that violates applicable law and/or LAFCo policies, rules or procedures.
- (b) Exposing others to material which is offensive, harassing, obscene or in poor taste. This includes information which could create an intimidating, offensive or hostile work environment.
- (c) Any use that may create or further a hostile attitude or give offense on the basis of race, color, religion, sex, gender, gender expression, gender identity, national origin, ancestry, citizenship, age, marital status, physical or mental disability, medical condition, genetic information, sexual orientation, veteran status or any other basis protected by law.
- (d) Communication of confidential LAFCo information to unauthorized individuals within or outside of LAFCo.
- (e) Unauthorized attempts to access or use LAFCo data or break into any LAFCo or non-LAFCo system.
- (f) Theft or unauthorized transmission or copying of paper or electronic files or data.
- (g) Initiating or sustaining chain/spam letters, e-mail or other unauthorized mass communication.
- (h) Misrepresentation of one's identity for improper or illegal purposes.
- (i) Personal commercial or business activities (e.g. "for sale" notices, personal ads, etc.).

- (j) Transmitting/accessing obscene material and/or pornography.
- (k) E-Commerce.
- (l) Online gambling.
- (m) Installing or downloading unauthorized software or equipment.
- (n) Violating terms of software licensing agreements.
- (o) Using LAFCo equipment or resources to access and/or use dating web resources, personal social media, or games of any type.
- (p) Any unauthorized access to LAFCo equipment or resources, including: using keys or key cards; using or disclosing the username or password of another person or employee to gain access to his or her email or other electronic resources; or making LAFCo equipment or resources available to others who would otherwise have no authorized access.
- (q) Using LAFCo equipment or resources to speak on the LAFCo's behalf without authorization.

12.5e *LAFCo Email Address Must be Used for LAFCo Business*

The LAFCo's email system is an official communication tool for LAFCo business. The LAFCo establishes and assigns official email addresses to each employee as the LAFCo deems necessary. Employees must send all LAFCo communications that are sent via email to and from his or her official LAFCo email address. Employees are prohibited from using their private email address (such as Gmail, yahoo, MSN/Hotmail, etc.) when communicating LAFCo business via email. Should an email related to LAFCo business be sent to an employee's personal email account, the email should be immediately forwarded to the employee's LAFCo email account and responded to accordingly.

12.5f *Incidental Personal Use of LAFCo Communications Equipment Permitted*

Employees may use LAFCo telephones, cell phones, internet access, and e-mail for incidental personal communications provided that the use:

- (a) Is kept to a minimum and limited to break times or non-working hours;
- (b) Does not interfere or conflict with LAFCo operations or the work performance of any LAFCo employees;

- (c) Allows the employee to more efficiently perform LAFCo work;
- (d) Is not abusive, illegal, inappropriate, or prohibited by this Policy (for example, no social media use, no electronic dating, no gaming); and
- (e) Clearly indicates it is for personal use and does not indicate or imply City sponsorship or endorsement.

12.6 Policy Against Violence in the Workplace

12.6a Safe and Secure Workplace

The LAFCo is committed to providing a safe and secure workplace and will not tolerate acts or threats of violence in the workplace. (Labor Code § 6400.) The workplace includes any location where LAFCo business is conducted, including vehicles and parking lots. Any violation of this Policy may lead to criminal prosecution, and/or disciplinary action, up to and including termination.

12.6b Prohibited Behavior

Employees are prohibited from participating in or promoting acts of intimidation, violence, threats, coercion, assault and/or abusive behavior toward any person while in the course of LAFCo employment. The LAFCo has zero tolerance for any conduct that references workplace violence, even if it was intended to be harmless, humorous, a prank, blowing off steam, or venting.

12.6c “Workplace Violence”

“**Workplace violence**” is defined as any conduct that causes an individual to reasonably fear for his or her personal safety or the safety of his or her family, friends, and/or property. Specific examples of workplace violence include, but are not limited to, the following:

- (a) Threats or acts of physical harm directed toward an individual or his/her family, friends, associates, or property.
- (b) The destruction of, or threat of destruction of LAFCo property or another employee’s property.
- (c) Fighting, challenging another person to fight, or participating in dangerous or threatening horseplay.
- (d) Striking, punching, slapping, or assaulting another person.

- (e) Grabbing, pinching, or touching another person in an unwanted way whether sexually or otherwise.
- (f) Harassing or threatening phone calls.
- (g) Surveillance.
- (h) Stalking.
- (i) Possessing a weapon(s) during work hours unless the LAFCo issues the weapon(s) for performance of the job. "Weapon" is defined as a firearm, chemical agent, club or baton, knife, or any other device, tool, or implement that can cause bodily harm if used as a weapon or displayed in such a manner to cause harm or threaten a person with harm.

12.6d ***Incident Reporting Procedures***

- (a) Employees must immediately report to their supervisor or department director whether they have been a victim of, or have witnessed, workplace violence. The supervisor or department director will immediately report the matter to the Executive Officer.
- (b) The **Executive Officer** or designee will document the incident, including the employee names(s), date/time, location, incident description, witness names and statements, description of unidentified parties, description of the act(s) and/or behavior arising from the incident, action taken, and provide any other relevant information regarding the incident.
- (c) The Executive Officer or designee will take appropriate steps to provide security, such as:
 - 1) Placing the employee alleged to have engaged in workplace violence on administrative leave, pending investigation;
 - 2) Asking any threatening or potentially violent person to leave the site; or
 - 3) Immediately contacting an appropriate law enforcement agency.

12.6e ***Investigation***

The [**Personnel Officer**] will see that reported violations of this Policy are investigated as necessary.

12.6f ***Prevention***

Each department head has authority to enforce this Policy by:

- (a) Training supervisors and subordinates about their responsibilities under this Policy;
- (b) Assuring that reports of workplace violence are accurately and timely documented and addressed;
- (c) Notifying the Executive Officer and/or law enforcement authorities of any incidents;
- (d) Making all reasonable efforts to maintain a safe and secure workplace; and
- (e) Maintaining records and follow up actions as to reports of workplace violence.

12.7 Appearance Standards

12.7a Basis for Standards

These dress code, tattoo, and body piercing appearance standards are designed to promote the [Agency's] legitimate and non-discriminatory goals to promote workplace safety and a professional image that is consistent with the employee's job duties and level of public contact.

12.7b Dress Code

Employees are required to dress appropriately for the jobs they are performing. The following dress code regulations shall apply to all LAFCo employees. If an employee has questions about how these standards apply to him or her, the matter should be immediately raised with his/her supervisor for consideration and determination.

- (a) All clothing and footwear must be neat, clean, in good repair, and appropriate for the work environment and functions performed.
- (b) Prescribed uniforms and safety equipment must be worn.
- (c) Hair must be neat, clean and well-groomed.
- (d) Beards, mustaches, and sideburns must be maintained in neat and well-groomed fashion.
- (e) Jewelry that does not pierce the skin is acceptable except where it constitutes a health or safety hazard.
- (f) Good personal hygiene is required.

- (g) Dress must be professionally appropriate to the work setting, particularly if the employee has contact with the public at work.

12.7c ***Tattoos***

Employees are expected to project a professional appearance while at work. If an employee has questions about how these standards apply to him or her, the matter should be immediately raised with his/her supervisor for consideration and determination.

1214.4 ***Piercing***

Employees are expected to project a professional appearance while at work and not endanger themselves or others with excessive body piercing. If an employee has questions about how these standards apply to him or her, the matter should be immediately raised with his/her supervisor for consideration and determination.