



## LEWIS AND CLARK COUNTY POLICY

<b>Subject:</b> Performance and Conduct	<b>Policy No:</b> 1.2.9
<b>Approved:</b>	<b>Effective Date:</b> August 1, 2017 <b>Revised Date:</b> 05/31/17

### I. Policy Statement

Lewis and Clark County strives to create a work environment that is conducive to performing work as efficiently and effective as is practical while protecting the rights of employees, adhering to all applicable County, state and federal workplace rules, and enforcing high standards of professional conduct.

### II. Applicability

All Lewis and Clark County employees.

### III. Definitions

Cause/Good Cause – Reasonable job-related grounds for dismissal based on a failure to satisfactorily perform job duties, disruption of the employer's operation, or other legitimate business reason.

Conflict of Interest – An employee engaging in outside employment or activities that conflict with County interests or the employee's ability to satisfactorily perform his/her duties as a County employee.

Department Director – A County employee who has the powers, duties, and responsibilities for managing a defined group of functions and services.

Discharge – The involuntary termination of employment for reasons other than lack of funds, lack of work, retirement or resignation.

Elected Official – Any one of the following: Board of County Commissioners; Coroner; Clerk of District Court; County Attorney/Public Administrator; Justice of the Peace; Superintendent of Schools; Sheriff; Treasurer/Clerk and Recorder/Auditor/Surveyor/Assessor.

Family Member – Any individual related by blood or marriage.

Grievance – A complaint or dispute initiated by a County employee over the application, meaning, or interpretation of this Personnel Policy Manual.

Human Resource Director – Under general administrative direction of the Chief Administrative Officer, responsible for administration of County personnel policies and pay rules.

Officer – An elected or appointed County employee with statutorily defined responsibilities.

Supervisor – Any individual authorized to assign and direct other employees, adjust employee grievances, discipline other employees, perform performance appraisals, and exercise authority delegated by the elected official/department director that is not of a merely routine or clerical nature but requires the use of independent judgment.

Termination – Separation from employment due to retirement, resignation, dismissal, temporary nature of the position, or end of term of employment or appointment.

#### IV. Directives

##### A. On-the-Job Performance

1. Employees are responsible for performing duties as specifically assigned either orally or in writing, and as guided by the attached Code of Ethics and County policies.
2. Supervisors will ensure that all employees read and sign the attached Code of Ethics, incorporated fully herein, and return the form to the Human Resource Department.

##### B. Standards of Conduct

1. Employees and officers of the County are subject to a code of ethics prohibiting conflict between public duty and private interests. Montana Code Annotated, Title 2, Chapter 2, describes the standards of conduct.
2. A County Commissioner, any other officer, any employee, or any member of an appointed board or bureau, may not, using discretionary authority, take any official action when the officer, employee, or board member or any relative thereof is directly or indirectly interested in the profits received as a result of or produced by the official action.
3. The following acts by County employees or officers violate the rules of conduct and constitute grounds for disciplinary action, up to and including suspension or discharge:
  - a. Using public time, facilities, equipment, supplies, personnel, or funds to solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue unless the use is:
    - i. authorized by law; or

- ii. properly incidental to another activity required or authorized by law, such as the function of an elected public officer, the officer's staff, or the legislative staff in the normal course of duties.
- b. Using public time, facilities, equipment, supplies, personnel, or funds for the employee's private business purposes.
- c. Engaging in a substantial financial transaction for the employee's private business purposes with a person whom the employee inspects or supervises in the course of official duties.
- d. Performing an official act directly and substantially affecting the economic benefit of a business or other undertaking in which the employee or officer either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent.
- e. Soliciting or accepting employment, or engaging in negotiations or meetings to consider employment, with a person whom the employee or officer regulates in the course of official duties without first giving written notification to the employee's supervisor and elected official/department director.
- f. Employees or officers maintaining other employment if it conflicts with the interests of the County or the employee's or officer's ability to perform his/her job duties in full.

### **C. Off-the-Job Conduct**

1. Employees are expected to comply with all laws and inform the County of any criminal charges that may affect County or personal credibility or affect a person's ability to perform in his or her assigned capacity.
2. Employees who have been arrested for any criminal offense other than minor traffic offenses (except D.U.I.) must notify their supervisor and provide information on their status through final disposition.
3. If an employee is incarcerated or detained and unable to report for work, he or she must contact the immediate supervisor to request a leave of absence for each scheduled shift; failure to request a leave of absence will be considered absence without approval and may result in disciplinary action up to and including discharge.

### **D. Unacceptable Performance and Conduct**

1. Unacceptable performance and conduct for County employees includes, but is not limited to, the following:
  - a. violation of law;
  - b. violation of policy, directives, or other employer regulations;
  - c. neglect or failure to carry out assigned duties and responsibilities;
  - d. committing theft, damage, or unauthorized use or possession of County property;
  - e. assaulting, endangering, stalking, or maliciously intimidating or harassing another person;
  - f. verbal or physical threats to personal or collective safety (including, but not limited to, the display of weapons, shouting, swearing, name calling and sarcastic comments);
  - g. threatening gestures, statements, behaviors or actions (public or private behaviors that are threatening, intimidating, humiliating, or offensive);

- h. abuse of authority (unsubstantiated negative evaluations, arbitrary instructions or unsafe assignments);
- i. interference with work performance (sabotaging, undermining, or ensuring failure of another employee);
- j. fighting;
- k. falsifying any official record;
- l. unauthorized dissemination of confidential information;
- m. abuse of sick leave or excessive tardiness,
- n. unauthorized use of County time, equipment, or facilities for private business or personal use;
- o. failure to remain alert and vigilant while on the job;
- p. employee negligence resulting in damage or loss of County property;
- q. failure to maintain a courteous, productive and otherwise acceptable working relationship with fellow workers and the general public;
- r. use of any illegal drugs;
- s. use or misuse of any prescribed or over-the-counter substance that may impact the effective performance of duties and responsibilities not reported in advance to the appropriate supervisor;
- t. sabotaging, impeding, interfering, or failing to cooperate with any authorized County investigation;
- u. failure to timely report policy violations, or job-related illegal or unethical behavior to the appropriate authority; and
- v. failure to timely self-report an arrest, conviction, or professional disciplinary action against a professional license required by the position.

#### **E. Workplace Intimidation**

1. County employees have the right to work in an environment free from physical violence, threats of violence or intimidation. This type of behavior undermines work relationships, hampers productivity and causes unnecessary stress. The County expects each employee to perform his/her job without violence, threats to or intimidation of other individuals in the workplace. The County will not, in any instance, tolerate intimidating behavior and employees found to be in violation of this will face disciplinary action, up to and including suspension or discharge.

#### **F. Disciplinary Procedures**

1. Prompt feedback on performance and regular communication is necessary between supervisors and their employees. In addition, if an employee is not performing his/her duties in a satisfactory manner, it is the responsibility of his/her supervisor to give proper notice and guidance outlining the deficiencies. In general, the Human Resource Department should be consulted before any disciplinary procedure is taken. In the case where discipline involves suspension or discharge, the Human Resource Director must be consulted.
2. The following progressive disciplinary steps will be used when deemed appropriate by the supervisor. However, it should be understood that depending on the nature and circumstances of the unsatisfactory performance, an elected official/department director may use any disciplinary measure deemed appropriate within his or her

- judgment, up to and including discharge, without first using the progressive disciplinary steps listed below. The Human Resource Director must approve any variation from progressive discipline.
- a. LEVEL ONE: A verbal warning.
  - b. LEVEL TWO: A written warning.
  - c. LEVEL THREE: A suspension without pay.
  - d. LEVEL FOUR: Discharge.
3. Each level of discipline should outline the unsatisfactory job performance and the corrective measures that need to be taken. Written notices should include:
- a. statement of discipline;
  - b. any previous discipline;
  - c. corrective measures;
  - d. time period the employee has in which to improve his/her performance or correct his/her behavior;
  - e. further actions that may be taken if the employee does not improve his/her performance or correct his/her behavior; and
  - f. employee's notice of rights.
    - i. Copies of any written notices outlining discipline will be forwarded to the employee and to the Human Resource Department for placement in the employee's personnel file.
    - ii. The employee has the right to make a written response to the notice and to have that response placed in the personnel file together with the notice.
4. The Human Resource Director and elected official/department directors may use corrective action plans to address certain persistent or repeated workplace performance issues. Corrective action plans most generally apply to situations where written notice is deemed appropriate (LEVEL 2). Corrective action plans will contain specific tasks with specific accomplishment dates. Corrective action plans may not take longer than six (6) months to complete unless both parties agree to extend the length of time for completion. The Human Resource Director must approve corrective action plans and extensions of corrective action plans. A copy of the plan must be placed in the employee's personnel file.
5. SUSPENSION WITHOUT PAY AND DISCHARGE:
- a. Prior to a LEVEL THREE or LEVEL FOUR disciplinary action, the elected official/department director (or designee) will conduct an investigation into the circumstances surrounding the alleged infraction. An employee may be placed on administrative leave with pay pending the outcome of the investigation. The elected official/department director will work with the Human Resource Department to draft a letter to the employee stating the reason for the administrative leave. The original letter will be sent to the employee, with a copy to the personnel file.
  - b. If the investigation reveals that discipline may be warranted, the elected official/department director will consult with the Human Resource Director to discuss the violation(s) and recommended action.
  - c. The Human Resource Director will consult the County Attorney prior to any action to suspend or dismiss an employee.
  - d. The elected official/department director will provide the employee with a letter outlining the charges against him or her and a summary of the employer's

investigation and evidence. This letter will also notify the employee of the time and place of a meeting where he or she may respond and present contrary evidence or facts.

- e. After the meeting, the elected official/department director will submit a written recommendation to the Human Resource Director. The Human Resource Director may accept, reject or modify the recommendation.
- f. The elected official/department director will work with the Human Resource Department to draft a letter notifying the affected employee of the decision. The original letter will be sent to the employee, with a copy to the personnel file.
- g. If the employee is discharged, the Human Resource Department will provide the employee a copy of the County's grievance procedure within seven (7) calendar days of discharge.
- h. Employees who are discharged for good cause will be paid all the unpaid wages on the next regular payday for the pay period during which the employee was separated from employment or 15 days from the date of separation from employment, whichever occurs first.
- i. An employee who terminates employment for a reason not reflecting discredit on the employee and who has worked the qualifying period to earn vacation time is entitled to cash compensation for unused vacation leave. Abuse of sick leave is cause for discharge and forfeiture of the lump-sum payments for unused sick leave.

## **G. Other Terminations**

1. Under the authority of the Board of County Commissioners, the Chief Administrative Officer has the authority to terminate or end the employment of any County employee not covered by a termination procedure set forth in Montana state law or collective bargaining agreement for any of the following reasons.
  - a. Dismissal During Probationary Period – Refer to Policy 1.2.3.
  - b. Termination Due to Lack of Funds-Curtailment of Work (Lay-Off)-Employees may be laid off, without prejudice, at any time because of lack of funds or curtailment of work.
    - i. No Regular full-time employee may be laid off when there are Probationary, Temporary, or Seasonal employees in the class of work affected by the reduction in work force.
    - ii. Elected official/Department directors will determine the number of employees to be laid off based on where he/she can reduce personnel and still maintain the essential services of the department.
    - iii. When considering reductions in staff, elected official/department directors will consider the following:
      - A. mandated services the department is required to provide;
      - B. the job performance (which may be measured by conduct, knowledge, skills, and ability) of those employees in the classification being reduced during their tenure both with the County and in the classification being reduced; and
      - C. employee's length of service with the County and in the current classification;
    - iv. Employees will be given ten (10) working days' notice of impending layoffs.

- v. Laid-off personnel from a department will receive preference if and/or when the department rehires for that position within twelve (12) months of the lay off.
- vi. Laid-off personnel do not accrue sick or vacation leave credits, service time for longevity, retirement or seniority, and the County payment of health, dental and vision plan coverage cease.
- vii. Upon approval of the elected official/department director, laid-off personnel may carry over sick and vacation leave credits with the County for use upon reemployment. If credits are carried over, time worked from the previous year will count towards the qualifying periods. Sick and vacation credits must be jointly carried over OR cashed out, but not a combination thereof.
- viii. The Human Resource Department will work with laid-off personnel to identify and coordinate benefits due the employee upon termination.

## **H. Outside Employment**

1. Employees may maintain outside employment with employers other than the County. Employees who hold positions with other employers must notify the elected official/department director and Human Resource Director. In the event that a conflict arises between the outside employment and the County position, the employees will give precedence to the County position.
2. Any elected official/department director who maintains outside employment must provide written notice of employment to the Chief Administrative Officer.

## **I. Nepotism**

1. A person under service to the County who, by virtue of his/her position, has the right to hire, promote, supervise or otherwise appoint any person to render services to the County, will not appoint or enter into any agreement or promise to do so with any family member, unless approved by the Human Resource Director.

## **J. Solicitation in the Workplace**

1. Solicitation by charities or organizations in County workplaces during work hours is prohibited, unless the charity or organization has secured approval in advance from the elected official/department director. Elected Officials/department directors will notify the Human Resource Department when permission to solicit is granted. Gifts or expressions of sympathy to fellow employees or their families may be permitted without prior authorization.

## **V. Closing**

Provisions of this policy will be followed unless they conflict with negotiated labor contracts which will take precedence to the extent applicable.

Questions concerning this policy should be directed to the Human Resource Department.

## **VI. References**

None

**VII. Attachments**

Code of Ethics